Restricted

HEADQUARTERS EIGHTH ARMY

United States Army

Office of Staff Judge Advocate

Yokohama, Japan

15 October 1948

UNITED STATES OF AMERICA VS SEITARO HATA

UNITED STATES OF AMERICA VS YUKIO ASANO

UNITED STATES OF AMERICA VS TAKEO KITA

UNITED STATES OF AMERICA VS HIDEJI NAKAMURA

Review of the Staff Judge Advocate

1. The attached record of trial by common trial of Seitaro Hata, Yukio Asano, Takeo Kita, and Hideji Nakamura at Yokohama, Japan from 1 May 1947 to 28 May 1947, by a Military Commission appointed by paragraph 4, Special Orders no. 96; Headquarters Eighth Army, United States Army, dated 25 April 1947; as amended by paragraph 1, Special Orders 99, same headquarters, dated 29 April 1947, having been referred to the Staff Judge Advocate, this review thereof is submitted to the Commanding General.

Personal data concerning accused

NAME: Seitaro Hata DATE OF CONFINEMENT: 2 Feb 1946

Age: 34 DATE OF ARRAIGNMENT: 1 May 1947

RESIDENCE: Not shown PLACE OF TRIAL: Yokohama, Japan

MARITAL STATUS: Married PERIOD OF TRIAL: 1-28 May 1947

RELATIVES: Wife and two children DATE OF SENTENCE: 28 May 1947

EDUCATION: Medical Doctor SENTENCE: CHL for twenty-five (25) years

VOCATION: Medical Doctor

MILITARY CAREER: Medical Officer 1943 CLEMENCY RECOMMENDED BY

1943 to cessation of hostilities COMMISSION: No

NAME: Hideji Nakamura DATE OF CONFINEMENT: 7 Dec 1945

Age: Not shown DATE OF ARRAIGNMENT: 1 May 1947

RESIDENCE: Not shown PLACE OF TRIAL: Yokohama, Japan

MARITAL STATUS: Not shown PERIOD OF TRIAL: 1-28 May 1947

RELATIVES: Not shown DATE OF SENTENCE: 28 May 1947

EDUCATION: Not shown SENTENCE: CHL for twenty (20) years

VOCATION: Not shown

MILITARY CAREER: Japanese Army CLEMENCY RECOMMENDED BY

1 Mar 1940 to 1 Sep 1945 COMMISSION: No

NAME: Takeo Kita DATE OF CONFINEMENT: 21 Jun 1946

Age: 32 DATE OF ARRAIGNMENT: 1 May 1947

RESIDENCE: Ginsui Omuta City PLACE OF TRIAL: Yokohama, Japan

Prefecture of Fukuoka

MARITAL STATUS: Married PERIOD OF TRIAL: 1-28 May 1947

RELATIVES: Wife, 1 son DATE OF SENTENCE: 28 May 1947

EDUCATION: Not shown SENTENCE: CHL for fifteen (15) years

VOCATION: Not shown

MILITARY CAREER: Japanese Army CLEMENCY RECOMMENDED BY

3 Mar 1941 to 21 Aug 1945, COMMISSION: No

Sgt/Major

NAME: Yukio Asano DATE OF CONFINEMENT: 22 Nov 1945

Age: Not shown DATE OF ARRAIGNMENT: 1 May 1947

RESIDENCE: Fukuoka, Japan PLACE OF TRIAL: Yokohama, Japan

MARITAL STATUS: Married PERIOD OF TRIAL: 1-28 May 1947

RELATIVES: Wife, 2 sons DATE OF SENTENCE: 28 May 1947

EDUCATION: Not shown SENTENCE: CHL for fifteen (15) years

VOCATION: Not shown

MILITARY CAREER: Non CLEMENCY RECOMMENDED BY

COMMISSION: No

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

|  |  |  |  |
| --- | --- | --- | --- |
| Charges and Specifications | Pleas | Findings | Legally Sustained |
| HATA |  |  |  |
| Ch: Accused, at times and places set forth in the specifications and during a time of war between the United States and Japan, did violate the Laws and Customs of War. | NG | G | Yes |
| Sp. 1: Between 1 May 1943 and 1 June 1944 at Fukuoka POW Camp No. 3, Fukuoka ken, Kyushu, Japan, the accused did willfully and unlawfully take, misappropriate and convert to his own use Red Cross and other supplies intended for the use and benefit of American and Allied PWs. | NG | G | Yes |
| Sp. 2: Between 1 March 1943 and 1 June 1944 at Fukuoka POW Camp No. 3, Fukuoka ken, Kyushu, Japan, the accused did willfully and unlawfully mistreat and abuse James Martin, an American PW, by causing an unidentified Japanese medical corpsman to beat him | NG | G | Yes |
| Sp 3: In or about July or August 1943, at Fukuoka POW Camp No. 3, Fukuoka ken, Kyushu, Japan, the accused did willfully and unlawfully brutally mistreat, abuse and torture Morris O. Killough, an American PW, by beating and kicking him and by fastening him on a stretcher and pouring water up his nostrils. | NG | G | Yes |
| Sp. 4: On an occasion in or about November or December 1943, at Fukuoka POW Camp No. 3, Fukuoka ken, Kyushu, Japan, the accused did willfully and unlawfully mistreat and abuse approximately sixty of seventy unidentified Allied PWs by causing a number or unidentified guards to beat said PWs while crawling on their hands and knees, one PW astride the back of another PW. | NG | G | Yes |
| Sp 5: On or about 15 May 1944, at Fukuoka POW Camp No. 3, Fukuoka ken, Kyushu, Japan, the accused did willfully and unlawfully brutally mistreat and torture Thomas B. Armitage, William O. Cash and Munroe Dave Woodall, American PWs, by beating and kicking them; by forcing water into their mouths and noses; and by pressing lighted cigarettes against their bodies. | NG | G | Yes |
| Sp 6: At various times between 1 March 1943 and 1 June 1944, at Fukuoka POW Camp No. 3, Fukuoka ken, Kyushu, Japan, accused did as Medical Officer of said Camp, willfully and unlawfully mistreat and abuse various American and Allied PWs at sick call by forcing them to be exposed to cold weather for long periods of time and by beating them and allowing them to be beaten by persons under his supervision and control. | NG | G | Yes |
| Sp 7: Between 1 March 1943 and 1 June 1944, at Fukuoka POW Camp No. 3, Fukuoka ken, Kyushu, Japan, accused did willfully and unlawfully disregard and fail to discharge his duty as Medical Officer by permitting and authorizing medical corpsmen under his supervision and control, without medical knowledge or experience, to make decisions requiring expert medical knowledge affecting Allied PWs, thereby contributing to the suffering and ill-health of said PWs.NG | NG | G | Yes |
| Sp 8: Between 1 March 1943 and 1 June 1944, at Fukuoka POW Camp No. 3, Fukuoka ken, Kyushu, Japan, accused did willfully and unlawfully disregard and fail to discharge his duty as Medical Officer by allowing and forcing sick Allied PWs to perform labor while physically unfit to perform such labor, thereby contributing to the suffering, ill-health and death of said PWs. | NG | G | Yes |
| Sp 9: Between 1 March and 1 June 1944 at Fukuoka POW Camp no. 3, Fukuoka ken, Kyushu, Japan, accused did willfully and unlawfully disregard and fail to discharge his duty as Medical Officer by failing and refusing to provided numerous American and Allied PWs with proper medical supplies and medicines, thereby contributing to the suffering, ill-health and death of said PWs. | NG | G, except for the words "and death"/ Of the excepted words, NG. | Yes |
| Sp 10: Between 1 March 1943 and 1 June 1944, at Fukuoka POW Camp No. 3, Fukuoka ken, Kyushu, Japan, accused did willfully and unlawfully brutally mistreat, abuse and torture various American and Allied PWs other that referred to in specifications 1 to 9, inclusive of the Charge herein. | NG | G | Yes |
| Additional Sp: On or about 21 January 1944, at Fukuoka POW Camp No. 3, Fukuoka ken, Kyushu, Japan, accused did willfully and unlawfully brutally mistreat and torture ray Goodson, and American PW, by beating and otherwise abusing him, while he was undergoing an operation for appendicitis. | NG | NG | - - - |
| NAKAMURA |  |  |  |
| Ch: Accused Nakamura, Non-commissioned Officer, at the time and places set forth in the specifications and during a time of war between the United States, its Allies and Dependencies, and Japan, did violate the Laws and Customs of War (as amended, R. 4). | NG | G | Yes |
| Sp 1: In the Spring or early Summer of 1945, at Fukuoka POW Branch Camp No. 3, Kyushu, Japan, accused did willfully and unlawfully brutally mistreat Howard D. Haynes, an American PW, by beating and otherwise abusing him. | NG | G | Yes |
| Sp 2: Between 1 December 1944 and 1 April 1945, at Fukuoka POW Branch Camp No. 3, Kyushu, Japan, accused did willfully and unlawfully brutally mistreat and torture five unknown American PWs by beating them and forcing them in the dead of Winter into a tank of cold water, while naked. | NG | G | Yes |
| Sp 3: Between 1 December 1944 and 29 April 1945, at Fukuoka POW Branch Camp No. 3, Kyushu, Japan, accused did willfully and unlawfully brutally mistreat and assault Orin O. Wilson, Winifred O Dorris and John L. Curran, American PWs, Donald P. Stokes, William K Harris and Frederick S. Fawcett, British PWs, Barend G. Hogewind, a Netherland PW, Gani, and Indian PW, and other Allied PWs, by beating them. | NG | G | Yes |
| Sp 4: Between 1 December 1944 and 1 September 1945 at Fukuoka POW Branch Camp No. 3, Kyushu, Japan, accused did willfully and unlawfully brutally mistreat and assault Lun Sun, a Chinese PW, by beating him. | NG | G | Yes |
| Sp 5: Between 1 January 1945 and 1 June 1945, at Fukuoka POW Branch Camp No. 3, Kyushu, Japan, accused did willfully and unlawfully brutally mistreat and assault Thomas J. Andrews, an American PW, by beating and kicking him (as amended, R. 4). | NG | G | Yes |
| Sp 6: On or about 15 March 1945, at Fukuoka POW Branch Camp No. 3, Kyushu, Japan, accused did willfully and unlawfully brutally mistreat and assault Jacob Greenwald, an American PW, by beating him. | NG | NG (R.75) | - - - |
| Sp 7: Between about 15 March 1945 and 31 July 1945, at Fukuoka POW Branch camp No. 3, Kyushu, Japan, accused did willfully and unlawfully brutally mistreat and assault John L. Curran, Winnifred O. Dorris, Edward F. Haase, Samuel E. Donald and Vetalis V. Anderson, American PWs, Donald P. Stokes, a British PW, Jacques Baalde, a Netherland PW, and other Allied PWs by beating them | NG | G | Yes |
| Sp 8: In or about May 1945, at Fukuoka POW Branch Camp No. 3, Kyushu, Japan, accused did willfully and unlawfully brutally mistreat and assault Private First Class Sullivan, an American PW, by striking and kicking him. | NG | G | Yes |
| Sp 9: In or about May or June 1945, at Fukuoka POW Branch Camp No. 3, Kyushu, Japan, the accused did willfully and unlawfully brutally mistreat and assault James E. Martin, an American PW, by beating him with a club; by kicking him on the body and by throwing him into a tank of water | NG | G | Yes |
| Sp 10: On or about 15 August 1945, at Fukuoka POW Branch Camp No. 3, Kyushu, Japan, accused did willfully and unlawfully brutally mistreat and assault Edward F. Haase, an American PW, by beating him | NG | NG (R.72) | - - - |
| Sp 11: Between 1 December 1944 and 1 September 1945, at Fukuoka POW Branch Camp No. 3, Kyushu, Japan, accused did willfully and unlawfully brutally mistreat and assault various American and Allied PWs, other than set forth in the Specifications 1 to 10, inclusive to the Charge herein. | NG | G | Yes |
| KITA |  |  |  |
| Ch: Accused, at the times and places set forth in the specifications and during a time or war between the United States and Japan, did violate the Laws and Customs of War. | NG | G | Yes |
| Sp. 1: In March 1943 at Fukuoka POW Branch Camp No. 3, Kyushu, Japan, accused did lawfully disregard and fail to discharge his duty as Sergeant Major at said camp to control and restrain the members of his command and persons under his supervision and control, by permitting them to mistreat and torture Victor Brown, an American PW, by repeatedly bearing him with a stick and rifle and by throwing him into a trough of water. | NG | NG | - - - |
| Sp 2: Between 1 April 1943 and 31 August 1944, at Fukuoka POW Branch Camp No. 3, Kyushu, Japan, accused willfully and unlawfully, brutally mistreated and tortured John Henry Burton, an American PW, by beating him and by forcing water into his nose. | NG | G | Yes |
| Sp 3: Between 1 April 1943 and 31 August 1944 at Fukuoka POW Branch Camp No. 3, Kyushu, Japan, the accused willfully and unlawfully, brutally mistreated and abused George E. Gibson, an American PW, by beating and kicking him. | NG | G | Yes |
| Sp 4: On or about 15 May 1944, at Fukuoka POW Branch Camp No. 3, Kyushu, Japan, accused willfully and unlawfully brutally mistreated and tortured Thomas B. Armitage, William O. Cash and Munroe Dave Woodall, American PWs, by beating them, forcing water into their mouths and noses and by pressing lighted cigarettes against their bodies. | NG | G | Yes |
| Sp 5: Between 1 December 1944 and 28 February 1945, at Fukuoka POW Branch Camp No. 3, Kyushu, Japan, accused willfully and unlawfully brutally mistreated John B. Bennett, an American PW, by beating him. | NG | G | Yes |
| Sp 6: Between 30 November 1942 and 1 April 1945, at Fukuoka POW Branch Camp No. 3, Kyushu, Japan, accused willfully and unlawfully brutally mistreated, tortured, and abused various American and Allied PWs other than as specifically set forth in Specifications 1 to 5, inclusive, of the Charge herein. | NG | G | Yes |
| Asano |  |  |  |
| Ch: Accused, at the times and places set forth in the specifications and during a time or war between the United States and Japan, did violate the Laws and Customs of War. | NG | G | Yes |
| Sp 1: In or about July or August 1943, accused did willfully and unlawfully brutally mistreat and torture Morris O. Killough, an American PW, by beating and kicking him; by fastening him on a stretcher and pouring water up his nostrils. | NG | G | Yes |
| Sp 2: About 15 May 1944, accused willfully and unlawfully, brutally mistreated and tortured Thomas B. Armitage, William O. Cash and Munroe Dave Woodall, American PWs, by beating and kicking them; by forcing water into their mouths and noses; and by pressing lighted cigarettes against their bodies. | NG | G | Yes |
| Sp 3: Between 1 October 1943 and 31 January 1945, accused did willfully and unlawfully brutally mistreat and assault Richard C. Rout, an American PW, by beating him over the head, which resulted in the hearing of his right ear being impaired. | NG | G | Yes |
| Sp 4: Between 1 October 1943 and 31 January 1945, accused did willfully and unlawfully brutally mistreat and torture William O. Cash, an American PW, by beating him with a club; by tying him head downward on a stretcher until he became unconscious; and by burning his body with hot pokers and lighted cigarettes. | NG | NG | - - - |
| Sp 5: Between 1 April 1943 and 31 December 1943 accused willfully and unlawfully brutally mistreated and tortured John Henry Burton, an American PW, by beating him and by fastening him head downward on a stretcher and forcing water into his nose. | NG | G | Yes |
| Sp 6: Between 1 April 1943 and 31 December 1943 accused did willfully and unlawfully brutally mistreat and assault George E. Gibson, an American PW, by beating and kicking him. | NG | G | Yes |
| Sp 7: Between 1 April 1943 and 1 September 1944, accused did unlawfully take and convert to his own use Red Cross packages and supplies delivered to the camp for the use and benefit of American and other Allied PWs confined therein. | NG | G | Yes |
| Sp 8: Between 1 April 1943 and 1 September 1944, accused did willfully and unlawfully brutally mistreat and torture various American and Allied PWs other than the specific offenses referred to in Specifications one to six, inclusive, of the Charge herein. | NG | G | Yes |

3. Summary of the Evidence:

a. For the Prosecution:

HATA

As to Specification 1: This accused is known as the “Corn Willie Kid”. The evidence under this specification alleged that he misappropriated and converted to his own use, Red Cross and other supplies which were intended for the use of the prisoners of war. Typical is Ex. 12 made by Charles L. Burt stating: “In this camp I saw Doctor Hata, the camp doctor, take Red Cross food out of the gate when he left in the evenings. This was on numerous occasions and while we were getting a handful of rice a day.”

Another affidavit, Ex. 13, executed by prisoner Cunningham, states as follows: “There was also a First Lieutenant Hota (sic), who was a doctor. He used to steal Red Cross parcels for himself. An American sailor named Troni was forced to carry Red Cross parcels to a back fence and throw them over to Hota. This happened frequently and I myself saw him making cocoa with American supplies.” (Also, Ex. 7-15, 17, 19-22, 29, 33, 43).

As to Specification 2: Accused, on one occasion, discovered prisoner Martin writing on a piece of paper under which he had placed a Japanese book which he had picked up from a table as a support. This accused ordered one of his Japanese corpsmen to beat Martin severely with his fists (Ex. 11).

As to Specification 3: Prisoner Killough worked at the steel mills. His job was to cut scrap into smaller pieces so it could be handled more easily. This left many ragged edges projecting from the steel. He ripped his trousers on this scrap and brought them to the main office at the camp to exchange them. Accused together with accused Asano, the major who commanded the camp, and two guards, struck Killough across the face with the buckle end of their belts. After this lasted for a half-hour he collapsed to his knees. They then kicked him with their hobnailed shoes and threw water on him. They tied him to a stretcher, gagged him and elevated his legs. They then poured water up his nostrils for five minutes (Ex. 24).

As to Specification 4: On, one occasion, in order to endeavor to learn who had stolen some cookies, accused directed approximately 60 or 70 prisoners to crawl on their hands and knees. Prisoners were forced to carry other prisoners on their backs. They were led through the corridors which were lined with guards who beat them with bamboo sticks, belts and rifle butts. May of the men had numerous lacerations and several collapsed. This beating lasted approximately forty-five minutes (Ex. 20, 25).

As to Specification 5: On or about the 15th of May 1945, some clothing was stolen from an empty barracks. One of the prisoners, whose name base Bill Cash, was observed wearing a pair of trousers that had been taken from this barracks. He, Sergeant Woodall, and prisoner Armitage were beaten and tortured in an effort to discover where the remainder of the missing clothes had been taken. Accused Hata, accused Asano, and accused Kita, together with another Japanese, then took prisoner cash and forced him to stretch himself upon a ladder and proceeded to strike him across the back from the shoulders to the hips. Prisoner Armitage was then beaten about fifteen times across his back during which he was knocked to the ground several times. Armitage was then extended on a ladder, head down, and these accused then poured about two gallons of water from a pitcher into his nose and mouth until he lost consciousness. Each time he revived, they repeated the same beating and “water cure”. Accused Hata took lighted cigarettes and pressed them against the cuticle of his fingernails on his left hand. Three of the prisoner Armitage’s fingernails came off as the result of this torture. Both Cash and Woodall were similarly treated. These tortures lasted about six hours. Prisoner Woodall was hospitalized for about two days as a result of these treatments, and prisoners Cash and Armitage were then placed in the guardhouse for four days before they were able to work (Ex. 6, 17, 18, 27, 54, 75).

As to Specification 6: The accused Medical Officer forced sick prisoners to stand in the snow in the middle of winter. It was only after standing from four and five hours in the afternoon that they received any medical attention. He furthermore, beat sick prisoners of war and permitted his subordinates to beat them. He frequently would walk up and down the line at sick call and beat the prisoners with a stick. The prisoners were convinced that his purpose for the beatings was to discourage them from attending sick call so that there would be more prisoners who would go to work (Ex. 4, 9, 10, 15, 17, 20, 25, 35, 48).

As to Specification 7: Lieutenant Colonel John B. Bennett, Medical Corps, who was a prisoner of the camp, states in his affidavit, Exhibit 11 as follows: “The Japanese policy permitted us, as Medical Officers, to treat our own prisoners which meant that we would actually be administering the medicine; however one of the first complaints was the fact that it was necessary for us doctors to ask the Japanese corpsmen, who were usually illiterate privates, before we could take any of our patients off work details.”

Evidence is replete with instances where the Japanese Corpsmen, who had no knowledge of medicine, were empowered by accused to make decisions which normally would require expert medical advice. This contributed to the suffering and the ill-health of many of the prisoners in the camp (Ex. 10, 20, 53).

As to Specification 8: This accused as Medical Officer, not only allowed, but forced sick prisoners,, who were physically unable to labor, to perform work at the time of their physical incapacity. This contributed to a great amount of suffering and ill health of such prisoners of war (R. 105-107, Ex. 4, 8, 10, 11, 17, 20, 21, 29, 31, 53).

As to Specification 9: There were at this camp sufficient medical supplies for the prisoners who were there interned; however, accused deliberately and purposely withheld these supplies from the prisoners. He further refused medical attention to the prisoners on many occasions, who were in need thereof and he thereby contributed to their suffering and their ill health. (R. 100; Ex. 7, 11-13, 17, 19, 20, 23, 28, 32, 35).

As to Specification 10: Accused was particularly brutal and personally ordered or administered many of the beatings (Ex. 10). He was responsible for many bearings (Ex. 11). He beat prisoner medical corpsman Peden in the face with his fist and kicked him about the stomach and back (Ex. 12). He was vicious and cruel and did not hesitate to attack physically even the men who were seriously ill. He caused the discharge of prisoners from the hospital before they were recovered from their illnesses. (Ex. 20). One complete barracks was punished because a few of the prisoners were caught smoking. They were slapped with the open hands by the guards in the presence of this accused when he was Officer of the Day (Ex. 36; also supported by Ex. 15, 20, 28, 29, 35).

As to Additional Specification: Not Guilty.

NAKAMURA

As to Specification 1: Prisoner Hanes was in a weakened condition and later found to have tuberculosis. He was placed on a labor detail inside the camp. He and another prisoner on this detail were carrying buckets of fertilizer and, because of this condition, his legs collapsed. On that particular day, this caused was in charge of the detail. Because of the fact that prisoner Haynes could not do the work assigned, he was struck in the face by accused with his fists. The blow knocked Haynes to the ground, and at that point, he was viciously kicked by accused and jabbed with a wooden stick (R. 54-55, 300-501).

As to Specification 2: On one occasion, about five American prisoners of war were accused of selling articles at work in order that they might buy soybeans and other food. This was in the middle of the winter season and accused forced these prisoners to strip naked and climb into a large tank of water. Despite the fact that the prisoners promised him they would not commit such a crime again, he forced them to remain in the tank. After some time, they were taken out of the tank and into the kitchen and there were severely beaten with clubs by accused while they were naked, wet and cold until welts stood out on their bodies (R. 56; Ex. 53).

As to Specification 3: The commissioned officers named under this specification, were likewise abused and beaten by accused. The reason he beat the victims was that Lieutenant Colonel Wilson, senior officer, failed to call “Keirei” (which is the order to present arms in Japanese). These officers, as a result, failed to give the salute usually required by the Japanese (Ex. 53).

As to Specification 4: Accused commonly beat prisoners into unconsciousness for violation of the camp rules. On one occasion, he beat a Chinese prisoner, Lun Sing, for drinking water from a fire tank. The reason this prisoner had partaken of the water was that, subsequent to an air raid, the water line had been destroyed and they had no water for two days. According to the affidavit of prisoner Alvis, he “beat him nearly to death” (Ex. 59).

As to Specification 5: In January of 1945, prisoner Andrews was carrying some chow buckets from the barracks to the kitchen. Because he was late, accused beat him with his hands and a club for about ten minutes. Other than as is stated above, Andrews had done nothing to provoke accused into beating him (R. 61, 301; Ex. 58, 60, 61).

As to Specification 6: Not Guilty (R. 75).

As to Specification 7: The officers mentioned in this specification one day entered into the bath about one-half hour ahead of schedule. Because of this, accused beat them individually with a club that consisted of several smaller bamboo sticks which were tied together at both ends and in the middle. He beat them over the head and shoulders, averaging approximately seven blows each. When he finished beating each one, he endeavored to know them down with a blow similar to what is known as a butt stroke practiced in our own Army’s bayonet drill. This blow was aimed at the head and face. During the beating, the officers were required to remain at attention. Any resistance or any attempt to protect the head by raising the arms resulted in a more severe and longer beating (R. 60; Ex. 53, 63, 64, 68).

As to Specification 8: Prisoner Sullivan, while working under a civilian guard, evidently did not please the guard with his work, and he thereupon struck Sullivan. Sullivan then lost his temper and knocked the civilian guard through the door. The guard then attacked him with an iron pipe and beat him severely. Another guard at this point permitted Sullivan to be taken back to the area on a stretcher. From this time on, for approximately twenty-one successive nights, under the orders of and with the participation of accused, he was beaten with fists and all types of instruments by the guards. He was kept in the guardhouse during all this time and forced to work during the day. Accused, on occasions during this time, removed him from the guardhouse and beat him before the other prisoners prior to his going to work (Ex. 60, 65).

As to Specification 9: Prisoner Martin had a class ring which he was wearing in the camp. Major Rikitake, who was camp commander, noticed the ring and inquired of Martin if it was made of gold. Upon receiving an affirmative answer, he instructed him to turn it into his office. That evening, there was a severe American air raid, and, in the confusion, according to Martin’s affidavit, he lost the ring. Because the Japanese did not believe that he was telling the truth, accused “slapped him around quite a bit.” Subsequent to that, they forced him to remove his clothing and get into a water tank. Accused was angry because the water was not over Martin’s head and pushed his head under the water several times. After this, he threw fifteen wooden buckets at Martin. Martin was in the tank for approximately forty-five minutes (Ex. 53, 60, 66, 67).

As to Specification 10: Not Guilty (R. 72).

As to Specification 11: Accused constantly beat the prisoners of war and used his fists, clubs, or anything that was handy to administer these beatings. The beatings were usually severe and left his victims in a bad physical condition. In one case, a chest bone of one of the prisoners was broken. The evidence is replete with numerous beatings by this accused as is set forth by the evidence in the citations listed below (R. 52-53, 62, 63, 68; Ex. 5, 25, 28, 34-36, 44, 53, 57, 59, 62, 69-73).

KITA

As to Specification 1: Not Guilty.

As to Specification 2 and 3: Prisoners Burton and Gibson were not required to go to work because they were ill. They received permission to go up to the roof of their barracks building for exercise. When they came down from the roof, accused beat them with a leather belt which had a buckle attached to it. They were taken to the office where they were charged with stealing Red Cross supplies and accused Asano and Kita beat them with clubs, knocked them down and kicked them. They poured water up Burton’s nose, until it became almost impossible for him to breathe (Ex. 14, 39, 42, 75).

As to Specification 4: Same as Specification 5, Hata.

As to Specification 5: Prisoner Bennett was approached by accused who asked him to approve his using Red Cross food parcels for a party which was to be given for a departing Japanese officer. This permission was denied. Several days later, accused walked up to Bennett and hit him with his knuckles on his forehead. Immediately following this, Bennett went to Major Rikitake’s office to try to learn why he had been so mistreated. The major was not there at the time. Accused came into the office and began hitting Bennett with his fists. Several of the blows caused his face to bleed. Accused then tripped him and when he fell to the floor, accused jumped on him and kicked him. As a result of this abuse, Bennett suffered a slight hemorrhage of the ear and it impaired his hearing for the next week (R. 66, 300; Ex. 11, 55).

As to Specification 6: Accused, together with other guards, participated in the following mistreatment of prisoners:

They used clubs, belts, gun butts, and their hands in beating prisoners. They practiced jujitsu and, after a prisoner was on the ground, they kicked him. They forced groups of prisoners to pair off, face each other, and slap each other’s face. If the slapping was not hard enough to please them, the guards slapped them. Accused was described as being cruel and heartless when his ire was aroused (R. 51-53, 66: Ex. 11, 15, 23, 27, 29, 53, 56).

ASANO

As to Specification 1: Same as Specification 3, Hata.

As to Specification 2: Same as Specifications 4, Kita, and 5, Hata.

As to Specification 3: Prisoner Reut wrote in a letter that he had lost forty pounds in the camp. Accused, who read the letter, stated that Reut had insulted the Japanese people. He then beat him over the head with a web strap. As a result, the hearing of Reut’s right ear was impaired (Ex. 37).

As to specification 4: Not Guilty.

As to Specification 5: Same as Specification 2, Kita.

As to Specification 6: Same as Specification 3, Kita.

As to Specification 7: As the prisoners returned from work each day, the saw accused carrying out a fourteen-pound Red Cross parcel. He and the other guards always wore Red Cross shoes (Ex. 5). Accused and the Japanese doctor withheld Red Cross supplies from the prisoners (Ex. 43). Also supported by Ex. 22, 46).

As to Specification 8: Accused participated in and caused many beatings of prisoners. His usual weapon was a web canteen belt with which he beat the prisoners on the head. Sometimes, he used a wooden club. On occasions these beatings lasted for as long as two hours and left the victim in a pitiable condition. At times they were caused because of some imaginary violation of camp rules which accused had made on the spur of the moment (Ex. 14, 22, 25, 27, 34, 45-51).

b. For the Defense:

Iwao Kawasaki testified that at this camp there was not a shortage of medicines. The supply was sufficient to treat the prisoners while he was camp commander (R. 80). This period extended from 6 March 1944 to the end of the war (R. 77). The accused Hata was in general charge of the improvements that were made in the prison hospital. It was because of his diligent efforts that such was accomplished. Because of his efforts the dispensary became steam heated (R. 81). Prior to April, 1944, there were two prisoner of war physicians and one dentist-prisoner and an undetermined number of medical non-commissioned officers and orderlies. After that date there were five prisoner of war physicians, on dentist and twenty-three orderlies who treated the prisoner of war patients (R. 82).

Accused Hata worked with the classification of prisoners who were too ill to work. This list finally had to be approved by the commanding officer of the camp (R 83-84). The witness believed strongly that this accused would not send any ill prisoners of war to work (R. 84).

Gambling was prohibited in the camp. However, there was gambling among the prisoners of war. There, likewise, was a rule against trading of articles in possession of the prisoners. This witness heard of two or three instances of such trading (R. 84). He never heard that the accused Asano or accused Kita beat any prisoners (R. 84). Accused Kita was very impartial and kind hearted. One person who worked in the kitchen whose name was Moritake looked very much like the accused Nakamura (R. 85).

The witness asked the Regimental Commanding Officer to send him the best non-commissioned officer that he had. There were two of these non-commissioned officers and accused Nakamura was one of them (R. 86-87). Accused Nakamura worked diligently in obtaining necessities for the prisoners (R. 88-89). This witness contended that he was in charge of Red Cross supplies or of their distribution. No other Japanese personnel had access to the warehouse (R. 91). No member of the Japanese personnel stole or took supplies from the warehouse (R. 91-93). Empty Red Cross boxes were kept and used by the Japanese personnel in carrying their issue of fruits and vegetables to their homes (R. 92-93). Accused Hata worked hard to increase the size of the dispensary (R. 93). He likewise worked hard in obtaining medicine and medical supplies from the Army and Company Hospital (R. 94).The Medical or Intendance Officer could not assume command in the absence of the commanding officer. This could only be done by a line officer (R. 96). Accused Kita was in charge of general affairs and followed this witness’ orders (R. 98). Accused Kita took over command of the camp when this witness was absent. Although he had the key to the storehouse the prisoners of war officers had the responsibility of distributing Red Cross supplies (R. 110). There was no set number of prisoners to be sent to work (R. 112). If there were sick prisoners they were not required to send the number requested (R113). It was the duty of the commanding officer to make additions to the hospital and to furnish fixtures for it (R. 114). Accused Hata requested the installation of the boilers and the steam heating facilities (R. 114). He further did his utmost for the welfare of the prisoners (R. 116).

The pertinent testimony of Iwao Kawasaki is as follows: He was paymaster at the camp (R. 117). During that time he did not observe mistreatment of any prisoner of war by the accused Hata (R. 118). Accused Hata was very diligent in his work. Prisoner Bennett never complained to this witness concerning the conduct of accused Hata. He never saw accused Asano strike prisoners of war (R. 119). On one occasion Japanese school children threw rocks at the prisoner train in which they rode every morning. Accused Kita went to the school authorities in order to prevent a repetition of the occurrences (R. 120>

Genji Mineno testified concerning the incident where prisoner Cash was placed on a stretcher and given the “water cure”. Accused Nakamura and three others were present. A guard by the name of Kakura struck Cash. Accused Kita and Asano were present at another incident (R. 124) and each of them struck a prisoner with their open hand (R. 125). Accused Asano obtained a motion picture from Fukuoka for the prisoners and they seemed to enjoy it. Accused Kita conducted athletic events for them. He instructed his subordinates to take care of the prisoners. He was diligent in behalf of the prisoners and obtained medicine every day from the Yawata Hospital for the prisoners of war. On one occasion he personally went to the kitchen and prepared nutritious foods for the prisoners who were patients. Accused Nakamura worked hard as a mess sergeant for the prisoners of war. He went outside the prefecture in order to obtain food for them (R. 126).

Kiyato Saito testified that during the period from September 1943 to September 1944 accused Hata had duties outside of the camp. These duties were at Kakura Prisoner of War Temporary Army Hospital (R.129, 150). These duties were for a short time during the morning. Accused Hata and this witness were constantly talking concerning the supplying of sufficient food for the prisoners. Through their efforts the food supply was greatly increased (R. 130). Accused Hata prepared special soups for the sick prisoners. This witness never saw him take Red Cross supplies home with him (R. 131). Accused Hata requested that sick prisoners be given special foods (R. 135).

Tozo Miakawa testified that he was a Medical Officer in the Japanese Army from 26 January 1944 to 20 April 1945. He was at the main camp during this period. He sometimes went to the camp three times a month and at other times only once every three months (R. 142). At the request of accused Hata the dispensary was completed and improved (R. 123, 149). A group of about two hundred prisoners were shipped into the camp in the month of December. They were clothed in tropical uniforms (R. 144, 147). There was subsequently a great amount of pneumonia among these prisoners as a result of this clothing condition. Their uniforms later were exchanged for the Japanese winter type uniform. Accused Hata improved medical conditions at the camp and he and Major Rikitake obtained a more liberal food ration for the prisoners (R. 144). There were shortages of medicine, especially sulpha drugs. Accused Hata and the witness tried in vain to obtain such medicines from the Army Hospital, the company, and the drug stores (R. 145, 148). At the same time Japanese personnel were dying from pneumonia on account of a shortage of these drugs. Accused Hata requested Red Cross medicine (R. 146). He made the plans for a hundred-bed hospital. This was about the middle of February and the hospital was completed about the end of July. This was comparable to a Japanese Army hospital. Accused Hata planned the dental fixtures and equipment in the dental office. He further obtained extra food for the prisoners who were patients and was insistent that the food be properly prepared (R. 149). This witness at no time saw the accused Hata, Asano, or Kita commit any acts of cruelty toward the prisoners. As a physician and surgeon, the witness thinks that accused Hata did everything he could for the prisoners. The witness asked the prisoner of war doctors if they had any complaints and they made none; accused Hata did everything possible for the prisoners. The witness did not know of any occasion where sick prisoners were sent to work (R. 150). Accused Hata was among the better doctors in the prisoner of war camps which were under this witness’ supervision (R. 152).

Kakuo Sakamoto testified that he was a druggist. Accused Hata came to the witness’ place of business and bought drugs for the prisoners who were suffering from malnutrition. He bought some 4000 to 5000 yen worth of such medicine. The prisoners who came to the store with accused Hata did not seem to be in bad physical condition (R. 174, 175). The prisoners at the time were smiling. Oxygen was hard to obtain in 1943 and 1944 (R. 175).

Takeshi Miyaguchi testified that he was a dentist at the Yawata Steel Mill Hospital. Accused Hata came to him and requested dental equipment and supplies for the prisoners. This was finally obtained (R. 182). An average of ten prisoners a month were treated by this witness. At the camp hospital the prisoners received the same treatment that was given the Japanese. He never saw accused Hata mistreat any prisoners when he brought them to the hospital (R. 183).

Shige Muranatsu testified that he was the head of the pharmacy department at the Steel Mill Hospital. Accused Hata obtained medicines from him during 1943 and 1944. Many of the medicines that he requested could not be obtained (R. 186-187).

Suyemitsu Nishihara testified that he was a warrant officer in the camp from December 1943 through May 1944. Accused Kita and Hata improved the amount of staple food for the prisoners. Concerning Specification 4 against Kita the witness testified that accused Kita did not participate in the incident (R. 198, 199).

Takashi Ikegawa testified that he was in the Labor section of the Steel Mill (R. 198). Accused Kita requested trucks and transportation for the prisoners. He also requested tea, coal for heating, medicines and many other things for them (R. 199). He likewise bought medicines for the prisoners (R. 200). His requests for medicines were complied with promptly (R. 201).

ASANO

Pertinent testimony of accused Asano who testified under oath is as follows: He served at the camp from April 1943 to August 1944 as an interpreter (R. 211). He stated that he knew nothing in regard to Specification 2 and that he did not know Morris O. Killough. He denied that he ever beat, kicked, or put any prisoner on a stretcher and poured water in his nose. HE further denied beating any prisoner during the months of July or August 1943 (R. 212). Concerning Specification 2, he stated that about the middle of May 1944, sometime in the afternoon, the accused Nakamura came to his office and told him that more than one dozen shirts had been stolen and he asked him to investigate the matter. He and a guard sergeant found three of four bundles of Japanese Army shirts in Barracks Number 7. Cash and Armitage came from the steel mill about half-past four. When accused asked them about the shirts they admitted the theft. Suddenly accused became excited and angry and hit Cash a couple of times on the buttocks with his Japanese fencing stick. It was then five o’clock and the accused went to dinner. After dinner accused Hata came to him and asked him to interpret to some officers that, since there was still more than a dozen shirts missing, if they would cooperate and produce the shirts they would not be punished. It was then about six o’clock. What happened after that he did not know. He denied striking Armitage (R. 212-213). Concerning Specifications 3 he stated that prisoners were permitted to send a post card once a month and letters were limited to one every twenty-five days. The accused’s job was to censor the letters. Prisoner Rout wrote on a post card that since he had come to the camp his weight had decreased five or six pounds. It was against the rules to write of such things. When the accused was questioning Rout, Corporal Nakamura (no the accused in the present case) came and asked him what was wrong. Upon being informed, he became angry and struck Rout with his Army belt (R. 213). The accused admitted slapping Rout’s face with the palm of his hand once or twice. Concerning Specification 5 and 6, he testified that in 1943 accused Kita came to him and informed him that five or six Red Cross packages were on the camp roof. He and the accused Kita went up to the roof and saw Burton and Gibson sitting in front of the Red Cross packages. Upon being questioned Burton and Gibson strongly denied stealing the boxes. He and Kita became angry and slapped them. They then took them to the second floor where they continued to deny the theft. At that time seven or eight men surrounded Burton and Gibson and the chief of the guard ordered that a stretcher be brought. The guards put Gibson on the stretcher and poured water in his nose and mouth. This lasted about fifteen minutes. Afterward both confessed and received a punishment of from ten days to two weeks confinement in jail. Regarding Specification 7, he admitted using Red Cross shoes and said he had received permission from the camp commander. When he left this camp he returned the shoes. He denied having access to the storeroom where Red Cross packages were kept (R. 215). Concerning Specification 8, he admitted slapping prisoners on various occasions but contended that each time he only slapped them once or twice with his open hand. Under his general testimony he stated that many of the prisoners were suffering from beriberi and that on his way home he used to obtain vitamin tablets for them. The prisoner of war officers wanted diary supplies which were not available in the camp and he obtained such supplies outside the camp for them. He arranged once a month to have a movie for them. He brought his own portable phonograph for the benefit of the prisoners. There is a possibility that he may have been mistaken in the affidavits for a guard by the name of Asani (R. 216). Other than what the accused told the Commission, he did not strike any other prisoners. Whenever he slapped a prisoner it was because he had violated some of the camp regulations or rules. Accused Kita did not slap Armitage or Cash. The accused does not think Kita was present at that time (R. 217). On cross-examination he stated concerning the incident alleged in Specification 2 that he left the camp before the alleged incident or pour water took place. The next morning he heard that some trouble had taken place the night before (R. 221). He contended that he only beat Cash and not Armitage (R. 222). He stated on redirect-examination that accused Kita took good care of the prisoners of war who worked with him. He furthermore negotiated with the steel mill authorities in order to try to have the food supply increased (R. 224).

HATA

Accused Hata testified under oath, the following being a synopsis of his relevant testimony. He had nothing to do with the amount of rations to be given to the prisoners (R. 226). He did not have charge of Red Cross foods. The branch commander was in full charge of the prisoners. Medicines were scarce during his time at the camp. He purchased medicines from outside sources. Because of the shortage of medicine containers he used empty Red Cross boxes for this purpose. Sometimes at the canteen they received candy and food rations at which time he took this supply home in empty Red Cross boxes. He also gave these empty boxes to other camp personnel. They were also used in the camp. He received some Red Cross food from the prisoner of war medical corpsmen and one of the patients (R. 227). He denied ever taking any Red Cross supplies to his home and denied having misappropriated such supplies. Concerning Specification 2, he did not remember this alleged beating. He never ordered medical corpsmen to beat a prisoner of war. He had no knowledge of the acts alleged in Specification 3, (R. 228). Concerning Specification 4, one morning in November 1943 the accused heard voices and noise in the hallway. He investigated and found several guards and thirty prisoners talking. The explanation was that a prisoner had stolen a twenty-pound can of Japanese candy. Two Hindus had witnessed the theft (R. 22). He asked them to point out who had stolen the candy. They begged them not to make them point out the offender but stated the offender was among these prisoners (R. 225-229). After the guilty one failed to confess he ordered them to straddle each other. He denied that any beating took place. He stated that the number of prisoners was thirty and not seventy as alleged in the Specification. After three or four minutes of this straddling the guilty one confessed and he made the offender and those in his barracks pay for the candy. What was left he gave to the prisoners whom he had forced to straddle each other. As to Specification 5, he stated that one evening in May 1944 he noticed the meal for the prisoners was not brought in, and investigated the reason for this. He learned that about twenty-six Army uniforms were stolen. Intendance Warrant Officer Nishihara had ordered that unless these uniforms were found no supper would be served. The accused told Nishihara that it was wrong to withhold supper. He promised one of the officers in the barracks that no one would be punished if the clothing was returned. The next day he learned that most of the clothing had been turned in. He did not witness the incident as alleged in Specification 5. Regarding Specification 6, he stated that in December of 1943 the number of prisoners who came to the dispensary increased. Some of the patients were not able to get inside of the dispensary during sick call. These patients were “light” patients and were wearing overcoats. He instructed them, through the Medical corpsmen, “that they could wait any place away from the weather” (R. 129). He later changed the system so that the patients from each barracks would come at different hours. He explained that he hit certain prisoners who were well with his open hand or a small note book. The reason for doing this was because they lied or feigned sickness, or when he discovered a prisoner had failed to follow out the treatment he ordered (R. 230> He could not remember ordering his medical corpsmen to strike any of the prisoners who were patients. He did not remember definitely whether or not he ever sent a patient to work over the prisoner-doctors’ protest but there were times when their medical opinions differed. He never sent a patient to work who, according to his opinion and judgment, was too sick to go to work. There was no oxygen available for the pneumonia patients. There was more medical work to be done in the camp than he could do and it was necessary for him to have other help in the treatment of patients. He denied ever withholding medical treatment or medicines from prisoners of war for the purpose of making them suffer (R. 232). He heard that accused Asano was friendly with some of the prisoners of war. Accused Kita was a good soldier. He was kind; however, he was a person “who would do things without any hesitation.” He did not know if accused Kita ever mistreated prisoners. On cross-examination he stated that while he was at the camp there was never an order in effect that a portion of the Red Cross medical supplies were to be retained and not distributed. The amount of food that patients received was set by regulations (R. 240). In December 143 and again in March 1944, he requested an increase in food for the sick prisoners. This request was made to Camp Commander Uwata (R. 242). Between the middle of March 1945 and May 1944 the prisoners were given a physical examination before they went to work. The prisoner of war duty Medical Officer and the Japanese Medical Non-commissioned Officer performed such examinations (R. 243). He did not receive any reports that his subordinates decided which prisoners should be sent to work. While he was duty officer he attended sick calls in person. When he held such sick calls he and the prisoner Medical Officer decided which of the prisoners of war would go to work (R. 244). Occasionally he distributed Red Cross food supplies to the patients. After August 1943, however, a medical officer, Markowitz, arrived in camp and had charge of such distribution (R. 247). On redirect-examination he stated that on the morning roll call the prisoner of war Medical Non-commissioned Officer brought all patients from each barracks to the dispensary. Then the prisoner of war Medical Officer decided who could work and who could not work. At the same time he gave necessary treatment (R. 249). On re-cross-examination he stated that when he was at the camp the prisoner of war doctors were left in charge of the patients. At the evening sick call he and the prisoner of war Medical Officer would decide who would go to work on the following day (R. 250). Upon examination by the Commission he admitted that he had seen Medical Corps personnel under his control strike prisoners (R. 262). When he heard that Medical Corporal Nakamura was beating prisoners in spite of his warning he recommended the Main Camp Medical Officers to have him transferred to another unit. To his knowledge he was the only subordinate who had mistreated prisoners of war (R. 263).

NAKAMURA

Accused Nakamura, after having been advised of his rights, elected to take the stand and testify under oath. The gist of his pertinent testimony is as follows:

He denied knowledge of the incident mentioned in Specification 1 (R. 267). Concerning Specification 2, he stated that a prisoner named Harris brought four prisoners to him and charged that they had stolen some miso paste. The accused stated that he asked them jokingly if they wanted to go to the guardhouse. He then referred the incident to the camp commander. Instead of confining them in the guardhouse they were to do certain work. Next to the kitchen there was a water trough, and in it there were fourteen or fifteen wooden buckets. He then informed the prisoners that their work would be to “bring in” these buckets. The trough was four or five feet deep. They were in the water for about thirty seconds and he ordered them to take a bath and return to the kitchen office (R. 268). Concerning Specification 3, he stated that he gave instructions to the chiefs of the barracks to clean each area. The next morning he discovered the cleaning was not done properly. After roll call he struck each barracks chief (R. 269). Later, through the interpreter, he apologized to them. Concerning Specification 4, he stated that they were hauling ashes from the farm by means of a wagon. Because he desired to get back to the camp early he instructed the prisoners to get the job done as quickly as possible. A prisoner was deliberately loafing and because of this he hit him on his cheek. After he promised the accused he would get the work done as soon as possible, he continued to loaf and the accused hit his cheek once more. Subsequently he failed to follow his instructions as to where to throw the ashes on the road and the accused hit his cheek once more. At this particular time it was becoming known that the war was going against the Japanese and this prisoner’s attitude was haughty. In reference to Specification 5, he did not recall Thomas J. Andrews or remember anything about the incident mentioned in the specification (R. 270). Concerning Specification 7, he stated that there was a Japanese style bath for use of the prisoners, who were permitted to bathe from 4:30 in the evening (R. 270). When the Camp Commander came to the bath house he discovered certain prisoners taking baths and others coming to the bath house before time. He “cautioned” this accused to tell them they were not to take a bath before the proper time. Accused went to the bath house to give instructions, and hit four prisoners with his hand. Concerning Specification 8, he stated that he struck the prisoners cheek twice and pushed him back lightly (R. 271). He denied kicking him. He did not recall James E. Martin, the victim mentioned in Specification 9, nor did he recall the incident alleged in Specification 9. Referring to Specification 2, he stated that it was the month of May and the water was not frozen. He denied making prisoners take off their clothes and get into the tank (R. 272). In his general statement on direct-examination he admitted that he was sorry that he “laid his hands on superiors and other fellows”. For a short period of time for the benefit of the prisoners, he arose at two o’clock in the morning to prepare food. In order to purchase food he went to a distance from twelve and one-half miles to twenty-five miles. He worked late at night and without much rest (R. 275). On cross-examination he stated that he once punished a prisoner of war because he was not doing enough work (R. 274).

KITA

Accused Kita took the stand, and testified under oath on his own behalf. Concerning Specifications 2 and 3 he stated that the Medical Sergeant Major, Yamaguchi, came to his office and stated that there were two Red Cross boxes on the roof of the building. Accused Asano and this accused went to the roof. While they were there prisoners Burton and Gibson came by and were talking and pointing to the boxes. This accused had Asano interpret to them that the camp commander had not arrived and if they would “explain” about the matter it would be settled privately. They contended that they did not know about the boxes and accused felt that they were not telling the truth. He slapped their cheeks two or three times. At that time Gibson stated that Burton had told him to accompany him and that there were some Red Cross boxes and he did not know who had stolen them. The accused told Burton and Gibson to “talk it over” and he returned to his office. When he came back he saw four or five military guards and the squad-leader pouring water into Burton’s nose while he was on a stretcher. This accused and accused Asano stopped this mistreatment (R. 282). Regarding Specification 4, he stated that Lieutenant Stokes told him that they had not issued the evening meal. Accused went to the kitchen and at that time accused Hata came in and called the prisoners together and talked to them. When it was decided that the meal would be issued accused went home (R. 283). Concerning Specification 5, he stated that the camp commander had ordered him to go to their dispensary and caution the prisoner of war Medical Corpsmen because they had failed to salute him. When he arrived at the dispensary Major Bennett, Lieutenant Gordon, Captain Anderson and six or seven prisoners of war, medical corpsmen, were present. He cautioned them about saluting and made them practice saluting twice. Major Bennett failed to participate in this practice. Accused slapped him lightly once on the cheek. When the accused returned to his office Major Bennett, Haase, Lieutenant Gordon and other prisoners came out of the camp commander’s room. There was a regulation that no one could go into the office with shoes on. Furthermore, no one but the prisoner of war liaison officer was permitted to enter the office without permission. Accused said ‘go back’ and pushed Major Bennett. He pushed him so hard that he tripped on the door and fell on his buttocks. About ten minutes later Medical Lieutenant Ogami came to the accused and cautioned him no to hit any prisoners and told him to apologize. He complied with this order (R. 293). Concerning Specification 6, he admitted hitting three prisoners of war once with his open hand. When he was on the weekly tour of duty he customarily gave saluting practice in each barracks for about three minutes. On several occasions during this practice, in order to correct the saluting, he hit their hands. He did not recall slapping anyone’s face (R. 284). In his general statement he contended that had Major Bennett received a serious injury as stated by Sergeant Bell, Major Bennett would have been confined to bed and Sergeant Bell would not have been permitted to go into his room. He denied striking prisoners of war in the face and contended he only hit their hands. He denied ever placing lighted cigarettes against the bodies of any of the prisoners. One Sunday, about June 1943, when the prisoners did not have to go to work he took them to athletic events at Kurosaki Park. Several times he took them to the mountains behind the camp. When they could not go out on Sunday he played catch and volleyball with them inside the camp. In October 1945 the Kempeitai ordered that this practice of taking prisoners out of the camp would have to stop. The prisoners often came to the accused and requested things which were not a part of his duties to obtain for them; such as changing their work in the steel mill, increasing the food, exchanging clothing and improving camp facilities. There were many of these things he was able to do for them. Those things he could not do he reported to the camp commander, negotiated with the camp officials, or talked with the Intendance Officer. The accused tried hard to fulfill all their requests (R. 285). In the winter of 1943-1944 there were many deaths. During the fall of 1944, with permission of the camp commander, he set up stoves inside the barracks and obtained coal to be used in the stoves and boilers (R.285). On cross-examination he stated that he had never struck a prisoner with his closed fist (R. 287). He denied ever striking a prisoner by the name of Haase (R. 295).

4. Opinion:

The record is legally sufficient to sustain the findings of the Commission. The Commission was constituted by proper authority and had jurisdiction of the accused and of the offenses alleged. The prosecution introduced evidence by means of sworn statements of former prisoners of war and by the testimony of a former prisoner, all of whom had been interned in the camp and were in a position to know the facts of the matters in issue. From such the guilt of the accused was firmly established.

The accused entered denials of the offenses alleged against them. However, the Commission, in weighing and evaluating all of the evidence presented by both sides, found in favor of the prosecution as set forth in the findings.

It is contended by the defense that the taking of Red Cross supplies is not a war crime; that when such supplies were turned over to the Japanese they had a right to dispense them as they saw fit (R. 4). The Reviewing Authority has passed on this point in former approved reviews. In the case of United States vs. Katsura, Case Docket No. 59, the following was stated:

“The defense has taken the position that the theft of Red Cross supplies does not constitute an offense against the laws and customs of war (Brief p. 9) . . . . . . . Supplies for the relief of prisoners of war are entrusted to belligerents for detailed distribution. A violation of this high trucks constitutes not only a war crime but is considered by all civilized people as most despicable” (Review p. 9). This contention was also supported in the review of the case of United States of American vs. Oota et al, Case Docket No. 129, p. 49.

The Law Member did not permit the introduction of any hearsay testimony (R. 53, 66). This point was likewise passed on by the Reviewing Authority in the case of United States of American vs. Namba (first review), Case Docket No. 149, wherein is stated: “Hearsay may be admitted under paragraph 5d of the SCAP regulations Governing the Trials of Accused War Criminals supra which provides that ‘the Commission shall admit such evidence as in its opinion would be of assistance in proving or disproving the charge, or in the mind of a reasonable man’”. It should be noted however, in the present case that the accused was in no way prejudiced by the exclusion of hearsay testimony because of the fact that it was the prosecution’s testimony which was not admitted.

The law member refused to admit character testimony offered by the defense and stated: “We know what the answer is going to be before the witness ever answers inasmuch as he is a defense witness” (R. 119). In a second statement the law member remarked that “character witnesses are not particularly necessary and that the prosecution will agree with the defense that the character of these accused in the Japanese Army was at least satisfactory, we may say, in all respects outside of the points that they are being charged with in the Specifications and Charges.” He did not think the time of the Commission should have been taken up with character witnesses, particularly when the evidence expected was known to be favorable (R. 119-120). An accused should have the right to bring witnesses to testify as to his good character in an endeavor to show the Commission that the crimes of which he has been accused would not normally be committed by a person of his character. This should not have been denied the accused in the present case, because the witnesses might have stated that their characters were excellent and not satisfactory as presumed by the Law Member (R. 119). As for taking up time of the Commission, certain short-cuts doubtlessly should be made in war crime cases. However, for mere cause of expediency they should not go to the extreme, especially in view of the position we hold as victors endeavoring to administer justice in a conquered country. If such testimony as to evidence of good character is not admitted in war crimes trials, in view of the irrelevant testimony that oftentimes creeps into such cases, not only the accused but others of their countrymen might believe that we are not endeavoring to extend to them a fair trial.

It is considered that the ruling of the Law Member amounted to error. However, in reading the complete record of the present case, any character witness that might have been coupled to the evidence presented by the defense could not logically overcome the compelling and persuasive evidence of guilt of the accused as presented by the prosecution. The error is, therefore, considered not fatal.

A careful study of the entire record fails to reveal any error which injuriously affected the substantial rights of the accused or any failure to afford them a fair trial in every respect. The evidence supports the findings. They were represented by able counsel, called witnesses, and took the stand and testified in their own behalf. There is no evidence that the accused were not sane at the time of the alleged acts or at the time of the trial.

5. Recommendations:

There are no letters of clemency from any member of the Commission. The letters of clemency for accused Hata and Asano have been carefully read and considered.

The following sentences to confinement at hard labor were meted out by the Commission: Accused Hata, twenty-five (25) years; accused Nakamura, twenty (20) years; accused Kita, fifteen (15) years; and accused Asano, fifteen (15) years. The sentences are legal.

By comparison with sentences imposed by other commissions for similar crimes the sentences imposed in the present case are average and are not excessive.

It is recommended that the sentence of each accused be approved.

Accused Hata was confined 2 February 1946, went to trial 1 May 1947 and was sentenced 28 May 1947. In compliance with established policy, due to the length of time this accused has been in confinement prior to sentence, it is further recommended that thirteen (13) months of the sentence to confinement at hard labor be remitted.

Accused Nakamura was confined 7 December 1945, went to trial 1 May 1947 and was sentenced 28 May 1947. In compliance with the established policy, due to the length of time this accused has been in confinement prior to sentence, it is further recommended that fourteen and one-half (14 ½) months of the sentence to confinement at hard labor be remitted.

Accused Kita was confined 21 June 1946, went to trial 1 May 1947 and was sentenced 28 May 1947. In compliance with established policy, due to the length of time this accused has been in confinement prior to sentence, it is further recommended that eight (8) months of the sentence to confinement at hard labor be remitted.

Accused Asano was confined 22 November 1945, went to trial 1 May 1947 and was sentenced 28 May 1947. In compliance with established policy, due to the length of time this accused has been in confinement prior to sentence, it is further recommended that fifteen (15) months of the sentence to confinement at hard labor be remitted.

Sugamo Prison, Tokyo, Honshu, Japan is the appropriate place of confinement for the four accused.

5. Action:

Forms of action designed to carry these recommendations into effect are attached hereto.

PAUL E. SPURLOCK

Reviewer

Judge Advocate Section

I concur in general.

ALLAN R. BROWNE

Lt Col JAGD

Army Judge Advocate