HEADQUARTERS EIGHTH ARMY

United States Army

Office of the Staff Judge Advocate

Yokohama, Japan

3 December 1948

UNITED STATES OF AMERICAN VS YOICHI SAITO

UNITED STATES OF AMERICAN VS KIYOFUSA SAKAGUCHI

UNITED STATES OF AMERICAN VS MORIO INOUYE

Review of the Staff Judge Advocate

1. The attached record of trial of Yoichi Saito, Kiyofusa Sakaguchi, and Morio Inouye at Yokohama, Japan, tried from 13 August 1947 to 5 September 1947 by a Military Commission appointed by paragraph 7, Special Orders Number 184, Headquarters Eighth Army, dated 8 August 1947, as amended 11 August 1947, having been referred to the Staff Judge Advocate, this review thereof is submitted to the Commanding General.

Personal Data Concerning Accused

DATE OF CONFINEMENT: 28 November 1945

DATE OF ARRAIGNMENT: 13 August 1947

PLACE OF TRAIL: Yokohama, Japan

PERIOD OF TRIAL: 13 August 10 5 September

 1947

DATE OF SENTENCE: 5 September 1947

SENTENCE: CHL for twenty-five (25)

 years.

CLEMENCY RECOMMENDED BY COMMISSION: No

NAME: Yoichi Saito

AGE: 45

RESIDENCE: Not Shown

MARITAL STATUS: Married

RELATIVES: Mother, two brothers, three sisters

EDUCATION: 13 years; graduated from commercial school

VOCATION: Lumber Dealer

MILITARY CAREER: Entered Army 10

 January 1939 and served until end of

 War. Highest rank attained: captain.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

NAME: Kiyofusa Sakaguchi

AGE: 30

RESIDENCE: c/o Hogyo Kai, Sakino Cho, Nagahama, Kokura, Fukuoka Ken

MARITAL STATUS: Married

RELATIVES: Father, brother, sister,

 All missing in Formosa

EDUCATION: 12 years

VOCATION: Administrator to Formosa

MILITARY CAREER: Entered service

 January 1938; served until September

 1940. Rank: Superior Private

DATE OF CONFINEMENT: 22 November 1945

DATE OF ARRAIGNMENT: 13 August 1947

PLACE OF TRAIL: Yokohama, Japan

PERIOD OF TRIAL: 13 August 10

 5 September 1947

DATE OF SENTENCE: 5 September 1947

SENTENCE: CHL for two (2) years.

CLEMENCY RECOMMENDED BY COMMISSION: No

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

NAME: Morio Inouye

AGE: 29

RESIDENCE: Fukuoka Prefecture, Moji,

 Kusunoki-Machi, 8 Chome

MARITAL STATUS: Married

RELATIVES: Father, mother, 3 brothers

EDUCATION: Graduate, middle school

VOCATION: Clerk in drug store

MILITARY CAREER: Entered service 10

 February 1940; discharged 20 March

 1942. Highest rank attained: corporal

DATE OF CONFINEMENT: 22 November 1945

DATE OF ARRAIGNMENT: 13 August 1947

PLACE OF TRAIL: Yokohama, Japan

PERIOD OF TRIAL: 13 August 10

 5 September 1947

DATE OF SENTENCE: 5 September 1947

SENTENCE: CHL for two (2) years.

CLEMENCY RECOMMENDED BY COMMISSION: No

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

|  |  |  |  |
| --- | --- | --- | --- |
| Charges and Specifications | Pleas | Findings | Legally Sustained |
|  |  |  |  |
| SAITO |  |  |  |
|  |  |  |  |
| Charge: Accused, at the times and places set forth in the specifications hereto attached, did violate the Laws and Customs of War | NG | G | Yes |
|  |  |  |  |
| Sp 1: Between 1 January 1945 and 15 August 1945, the accused did willfully and unlawfully mistreat and torture Seaman Second Class Walter W. Cole and First Sergeant James W. Kinder, American PWs, by ordering and permitting subordinates to beat them, by confining them to a cell unfit for human habitation for a period of about ten days on insufficient food rations and with insufficient clothing and bedding, by forcing them to stand at attention for long periods of time, by refusing to furnish them with necessary and available medicines and medical attention and by otherwise abusing them. | NG | G, except the words "by confining them to a cell unfit for human habitation for a period of about ten days on insufficient food rations with insufficient clothing and bedding, by forcing them to stand at attention for long periods of time, by refusing to furnish them with necessary and available medicines and medical attention " of the excepted words, NG (R227, 284) | Yes |
|  |  |  |  |
| Sp 2: Between 13 August 1943 and 15 August 1945, the accused did willfully and unlawfully mistreat and torture Sergeant Jan Karel Jolley, a Dutch PW, by permitting and ordering subordinates to beat him, by confining him to a cell unfit for human habitation for a period of about ten days on insufficient food rations clothing and bedding, by forcing him to stand at attention for long periods of time and by and by otherwise abusing him while he was sick, diseased and in a weakened physical condition, thereby contributing to his death | NG | G, except the words, "by confining him to a cell unfit for human habitation for a period of about ten days on insufficient food rations, clothing and bedding, , by forcing him to stand at attention for long periods of time" and the words "thereby contributing to his death " of the excepted words, NG (R 227, 284) | Yes |
|  |  |  |  |
| Sp 3: Between 4 August 1944 and 15 August 1945, the accused did willfully and unlawfully disregard and fail to discharge his duty as Camp Commander by failing to provide Technical Sergeant Claude Carpenter, an American PW, with proper, necessary and available medicines and medical attention and by forcing him to work when ill and in an unfit physical condition for work, thereby contributing to his death | NG | NG (R 227, 284) | - - |
|  |  |  |  |
| Sp 4: Between 13 August 1943 and 15 August 1945, the accused did willfully and unlawfully disregard and fail to discharge his duty as Camp Commander by compelling and permitting American and Allied PWs to work for excessive periods of time without sufficient rest. | NG | NG | - - |
|  |  |  |  |
| Sp. 5: Between 13 August 1943 and 15 August 1945, the accused did willfully and unlawfully disregard and fail to discharge his duty as Camp Commander by failing to provide Allied PWs with proper and available clothing and needed available medicines and medical attention, thereby contributing to the serious illness and deaths of American and Allied PWs. | NG | G, except the words, "proper and available clothing and" the words ":thereby contributing to the serious illness and deaths of American and Allied PWs," of the excepted words, NG | Yes |
|  |  |  |  |
| Sp 6: Between 13 August 1943 and 15 August 1945, the accused did willfully and unlawfully mistreat and abuse Allied PWs by stealing, misappropriating and withholding Red Cross food and medicines and other supplies intended for their use and benefit and by compelling them to consume large quantities of Red Cross food within a short period of time, resulting in their becoming ill from same and in the waste and spoilage of such food, thereby contributing to the serious illness and deaths of American and Allied PWs. | NG |  G, except the words, "and by compelling them to consume large quantities of Red Cross food within a short period of time, resulting in their becoming ill from same and in the waste and spoilage of such food, thereby contributing to the serious illness and deaths of American and Allied PWs," of the excepted words, NG (R227, 285) | Yes |
|  |  |  |  |
| Sp 7: Between 13 August 1943 and 15 August 1945, the accused did willfully and unlawfully mistreat and torture numerous American and Allied PWs by beating them, by ordering and permitting subordinates to beat them, by forcing sick, ill and diseased PWs to work while in a physically unfit condition and by otherwise abusing them. | NG | NG | - - |
|  |  |  |  |
| Sp 8: Between 13 August 1943 and 15 August 1945, the accused did willfully and unlawfully disregard and fail to discharge his duty as Camp Commander, to control and restrain members of his command and persons under his supervision and control, by permitting them to commit the following atrocities and other offenses against Allied PWs. |  |  |  |
|  a: Between 13 August 1943 and 15 August 1945, the unlawful mistreatment and abuse by Morio Inouye of Captain Allan Berkeley, a British PW, by beating him and causing him to fall and to strike the back of his head upon stone steps, resulting in his sustaining a brain concussion resulting in a loss of consciousness for three days. | NG | G | Yes |
|  |  |  |  |
|  b: Between 1 January 1945 and 15 August 1945, the unlawful mistreatment and abuse by Morio Inouye of Staff Sergeant Arthur Sullivan, an American PW, by beating him into insensibility and otherwise abusing him. | NG | G | Yes |
|  |  |  |  |
|  c: Between 1 may 1945 and 15 August 1945, the unlawful mistreatment by Morio Inouye of Private George Spencer, an American PW, by beating, kicking and otherwise abusing him, thereby breaking a rib. | NG | G | Yes |
|  |  |  |  |
|  d: In or about March or April 1945, the unlawful mistreatment by Morio Inouye and one Tarada of Staff Sergeant George R. Powell, an American PW, by beating kicking and otherwise abusing him. | NG | G | Yes |
|  |  |  |  |
|  e: In or about January or February 1945, the unlawful mistreatment, abuse and torture by Morio Inouye, with others, of Sergeant William E. Braye, an American PW, by beating and inflicting severe cuts and lacerations on and about his body, by kicking him, by forcing him to stand at attention for a long period of time in cold weather while insufficiently clothed and by otherwise abusing him until he was rendered insensible, all while said PW was sick, diseased and in a weakened condition. | Ng | G | Yes |
|  |  |  |  |
|  f: Between 13 August 1943 and 15 August 1945, the unlawful mistreatment and abuse by Morio Inouye of Gunner Fred Chick, a British PW, by beating him into insensibility. | NG | G | Yes |
|  |  |  |  |
|  g: At diverse times between 13 August 1943 and 15 August 1945, the unlawful mistreatment and abuse by Morio Inouye of Lieutenant Thomas C. Borrie, a British PW, by beating and otherwise abusing him. | NG | G | Yes |
|  |  |  |  |
|  h: In or about July 1945, the unlawful mistreatment and abuse by Morio Inouye of Lieutenant J.W. Starkey, a British PW, by beating him into insensibility. | NG | NG |  |
|  |  |  | - - |
|  i. In or about July 1945, the unlawful mistreatment and abuse by Morio Inouye of Warrant Officer Charles Kidwell, a British PW, by beating him. | NG | NG | - - |
|  |  |  |  |
|  j: On or about 9 August 1945, the unlawful mistreatment and abuse by Morio Inouye and Tadashi Takano of Lieutenant S. D. Mitchell, Lieutenant L. P. P. Robertson and Gunner Albert Fletcher, British PWs, and some twenty-four other Allied PWs, by beating, kicking and otherwise abusing them. | NG | G | Yes |
|  |  |  |  |
|  k: In or about December 1944, the unlawful mistreatment and abuse by Morio Inouye of William J. Burns, an American PW, by beating him. | NG | G | Yes |
|  |  |  |  |
|  l: Between 1 January 1945 and 15 August 1945, the unlawful mistreatment and abuse by Morio Inouye, Tadashi Takano and others of Charles R. Peterson, an American PW, by beating and kicking him into insensibility. | NG | G | Yes |
|  |  |  |  |
|  m: Between 1 January 1945 and 15 August 1945, the unlawful mistreatment and torture by Morio Inouye, Tadashi Takano, and others, of Seaman Second Class Walter W. Cole and First Sergeant James W. Kinder, American Prisoners of War, by beating and kicking them, by confining them in a cell unfit for human habitation on insufficient rations, by forcing them to stand at attention for long periods of time, by forcing them to perform strenuous physical exercises, while in a weakened physical condition, until they became unconscious and by otherwise abusing him, | Stricken as a duplication. (R 227, 285) |
|  |  |  |  |
|  n: At divers times between 1 September 1944 and 15 August 1945, the unlawful mistreatment and abuse by Morio Inouye of Sergeant John Miller and Private First Class Manuel Martinez, American PWs, by beating and kicking them. | NG | NG | - - |
|  |  |  |  |
|  o: In or about June 1945, the unlawful mistreatment and abuse by Morio Inouye of Corporal Joseph Packowlski by beating him, thereby breaking his arm. | NG | NG | - - |
|  |  |  |  |
|  p: At diverse times between 13 August 1943 and 15 August 1945, the unlawful mistreatment and torture by Morio Inouye of numerous Allied PWs by beating them, by kicking them, by forcing them to stand at attention for long periods of time, by forcing them to assume painful postures for long periods of time, by refusing to furnish them with necessary and available medicines and medical attention and by otherwise abusing them. | NG | NG | - - |
|  |  |  |  |
|  q: In or about March 1944, the unlawful mistreatment by Sergeant Major Tarnaguchi [Tamaguchi?] of Captain Allan Berkeley, a British PW, and Lieutenant A. Doppert, a Dutch PW, by beating and otherwise abusing them. | NG | G | Yes |
|  |  |  |  |
|  r: Between about December 1943 and 15 August 1945, the unlawful mistreatment and abuse by one Terada of Gunner D.A. Silvey, a British PW, by striking him, thereby fracturing the forearm of said PW. | NG | G | Yes |
|  |  |  |  |
|  s: Between 13 August 1943 and 15 August 1945, the unlawful mistreatment and abuse by one Nobui Hiwatari of Lieutenant S. D. Mitchell, a British PW, by striking him across the mouth with the edge of a plate. | NG | G | Yes |
|  |  |  |  |
|  s: Between 1 January 1945 and 15 August 1945, the unlawful mistreatment and abuse by one Takano of Sergeant William E. Braye, an American PW, and some nineteen and other Allied PWs by beating and otherwise abusing them. | NG | G | Yes |
|  |  |  |  |
|  u: At divers times between 4 August 1944 and 15 August 1945, the unlawful mistreatment and abuse by Kiyofusa Sakaguchi of Sergeant William E. Braye, an American PW, by beating and kicking him into insensibility, by squirting water upon him in cold weather, by forcing him to stand at attention for a long period of time and by otherwise abusing him. | NG | G except the words "into insensibility, by squirting upon him in cold weather, by forcing him to stand at attention for a long period of time and by otherwise abusing him." Of the excepted words, NG | Yes |
|  v: Between 13 August 1943 and 15 August 1945, the unlawful mistreatment by Kiyofusa Sakaguchi of Sergeant E. G. Marshall, a British PW, by beating and otherwise abusing him. | NG | NG (R 227, 295) | - - |
|  |  |  |  |
|  w: Between 1 September 1944 and 15 August 1945, the unlawful mistreatment by Kiyofusa Sakaguchi of Private Paul G. Inzer, an American PW, and of numerous other Allied PWs by beating, kicking and otherwise abusing them. | NG | G except the words, "and of numerous other Allied PWs by beating, kicking and otherwise abusing them " of the excepted words, NG | Yes |
|  |  |  |  |
|  x: Between 4 August 1944 and 15 August 1945, the unlawful mistreatment and abuse by one Tadashi Suzuki of Sergeant William E. Braye, an American PW, and a group of other American PWs by beating and otherwise abusing them. | NG | G | Yes |
|  |  |  |  |
|  y: At diverse times between about December 1943 and 15 August 1945, the unlawful mistreatment by one Terada of numerous Allied PWs, by beating, and refusing to furnish them with necessary and available medicine, and by otherwise abusing them. | NG |  G except the words, "and refusing to furnish them with necessary and available medicine, and by otherwise abusing them" of the excepted words, NG | Yes |
|  z: In or about April or May 1945, the unlawful mistreatment by Yoshika Yagi of Private First Class Joseph J. Bush, an American PW, and a group of about nineteen other Allied PWs by beating and otherwise abusing them. | NG | G | Yes |
|  |  |  |  |
|  aa: In or about March 1945, the unlawful mistreatment and abuse by Yoshika Yagi of Corporal Arthur R. Converse, Jr., an American PW, by beating him. | NG | G | Yes |
|  |  |  |  |
|  bb: At diverse times between 1 September 1944 and 15 August 1945, the unlawful mistreatment by on Yagi of Samuel R. Kerr, an American PW, by beating, kicking and otherwise abusing him. | NG | G | Yes |
|  |  |  |  |
|  cc: Between 1 September 1944 and 15 August 1945, the unlawful mistreatment and abuse by one Yagi of Private First Class Dale E. Moeder, an American PW, by beating him. | NG | G | Yes |
|  |  |  |  |
|  dd: In or about July 1945, the unlawful mistreatment and abuse by one Yoshikawa of Corporal Wilford H. Chapman, an American PW, and Sergeant Ronald Bickerstaffe, a British PW, by beating them into insensibility. | NG | G | Yes |
|  |  |  |  |
|  ee: At diverse times between 1 September 1944 and 15 August 1945, the unlawful mistreatment of Corporal Arthur C. Louis, an American PW, by beating and otherwise abusing him. | NG | G | Yes |
|  |  |  |  |
|  ff: At diverse times between about September 1944 and 15 August 1945, the unlawful mistreatment and abuse of Private Paul G. Inzer, an American PW, by beating him into insensibility and by otherwise abusing him. | NG | G | Yes |
|  |  |  |  |
|  gg: In or about June 1945, the unlawful mistreatment and abuse by Arihisa Sumi of Lieutenant J.W. Starkey, a British PW, by beating him into insensibility. | NG | G | Yes |
|  |  |  |  |
|  hh: Between 4 August 1944 and 15 August 1945, the unlawful mistreatment of Sergeant Jan Karel Jolley, a Dutch PW, by beating, kicking, and otherwise abusing him. |  | Stricken as a duplication. (R 286) |
|  |  |  |  |
|  ii: At diverse times between 13 August 1943 and 15 August 1945, the unlawful mistreatment and abuse of Allied PWs by stealing and misappropriating Red Cross food and drugs and other food supplies intended for their use and benefit. | NG | G | Yes |
|  |  |  |  |
|  jj: At diverse times between 13 August 1943 and 15 August 1945, the unlawful mistreatment and abuse of American and Allied PWs by forcing them to work when sick, ill, diseased and in an unfit physical condition for work, thereby contributing to the serious illness, disability and deaths of Allied PWs. | NG | NG (R 227, 285) | - - |
|  |  |  |  |
|  kk: At diverse times between 13 August 1943 and 15 August 1945, the unlawful mistreatment and torture of numerous American and Allied PWs by beating and kicking them, by forcing them to stand at attention for long periods of time, by confining them to a cell unfit for human habitation, by forcing them to assume painful postures for long periods of time, by forcing them into perform strenuous physical exercises while in a weakened physical condition and by otherwise abusing them. | NG | NG (R 227) | - - |
| SAKAGUCHI |  |  |  |
|  |  |  |  |
| Charge: Accused, at the times and places set forth in the specifications hereto attached, did violate the Laws and Customs of War. | NG | G | Yes |
|  |  |  |  |
| Sp 1: At diverse times between 4 August 1944 and 15 August 1945, the accused did, with others, willfully and unlawfully mistreat and torture Sergeant William E. Braye, an American PW, by beating and kicking him, by forcing him to stand at attention for a long period of time while insufficiently clothed in cold weather and by otherwise abusing him. | NG |  G, except for the works "with others" and "and torture" and "by forcing him to stand at attention for a long period of time while insufficiently clothed in cold weather and by otherwise abusing him.." Of the excepted words, NG | Yes |
|  |  |  |  |
| Sp 2: Between 1 January 1945 and 15 August 1945, the accused did, with others, willfully and unlawfully mistreat Seaman Second Class Walter W. ole and First Sergeant James W. Kinder, American PWs, by beating and otherwise abusing them. | NG | NG | - - |
|  |  |  |  |
| Sp 3: In or about 15 February 1945, the accused did willfully and unlawfully mistreat Corporal Ernest D. Tavlian, an American PW, by beating and otherwise abusing him. | NG |  G, except the words "and otherwise abusing" of the excepted words, NG | Yes |
|  |  |  |  |
| Sp 4: In or about June or July 1945, the accused did willfully and unlawfully mistreat Sergeant Edward G. Marshall, a British PW, by beating him, causing him to sustain a severe cut on the calf of his leg and by otherwise abusing him. | NG |  NG (R 227, 288) |  - - |
|  |  |  |  |
| Sp 5: Between 1 January 1945 and 15 August 1945, the accused did, with another, willfully and unlawfully mistreat Private Paul G. Inzer, an American PW, by beating, kicking and otherwise abusing him, rendering him insensible and by then reviving him repeating such mistreatment. | NG |  G, except the words "with another" and "by beating, kicking and otherwise abusing him, rendering him insensible and by then reviving him and repeating such mistreatment.: Of the excepted words, NG | Yes |
|  |  |  |  |
| Sp 6: Between 15 May 1943 and 15 August 1945, the accused did willfully and unlawfully mistreat numerous Allied PWs not hereinabove specified, by beating and otherwise abusing them. | NG | NG | - - |
|  |  |  |  |
| INOUYE |  |  |  |
|  |  |  |  |
| Charge: Accused, at the times and places set forth in the specifications hereto attached, did violate the Laws and Customs of War. | NG | G | Yes |
|  |  |  |  |
| Sp 1: Between 22 February 1943 and 15 August 1945, the accused did willfully and unlawfully mistreat and abuse Captain Allan Berkely, by bearing him with his fist and causing him to fall and strike his head upon some stone steps, resulting in a loss of consciousness for three days. | NG |  G, except the words "resulting in sustaining of a brain concussion resulting in a loss of consciousness for three days " of the excepted words, NG | Yes |
|  |  |  |  |
| Sp 2: In or about January of February 1945, the accused did, with others, willfully and unlawfully mistreat and torture Sergeant William E. Braye, an American PW, by beating him and thereby inflicting on him severe cuts and lacerations, by kicking him, by forcing him to stand at attention for a long period of time in cold weather while insufficiently clothed and by otherwise abusing him until he was rendered insensible, while said PW was in a sick, diseased and weakened physical condition. | NG | G | Yes |
|  |  |  |  |
| Sp 3: Between 1 January 1945 and 15 August 1945, the accused did, with others, willfully and unlawfully mistreat and torture Seaman Second Class Walter M. Cole and First Sergeant James W. Kinder, American PWs, by beating and kicking them into insensibility and by then reviving them and repeating such mistreatment, by forcing them to stand at attention for long periods of time, by confining them to a cell unfit for human habitation on insufficient rations, by compelling them to perform strenuous physical exercises while in weakened physical condition and otherwise abusing them. | NG |  G, except the words "by forcing them to stand at attention for long periods of time, by confining them to a cell unfit for human habitation on insufficient rations, by compelling them to perform strenuous physical exercises while in a weakened physical condition " of the excepted words, NG | Yes |
|  |  |  |  |
| Sp 4: Between 1 January 1945 and 15 August 1945, the accused did willfully and unlawfully mistreat Staff Sergeant Arthur Sullivan, an American PW, by beating and otherwise abusing him until he was rendered insensible. | NG | G | Yes |
|  |  |  |  |
| Sp 5: Between 22 February 1943 and 15 August 1945, the accused did willfully and unlawfully mistreat and abuse Sergeant Major Leendert A. Van Helden, a Dutch PW, by beating him and thereby breaking his arm. | NG | G | Yes |
|  |  |  |  |
| Sp 6: Between 1 May 1945 and 15 August 1945, the accused did willfully and unlawfully mistreat Private George W. Spencer, an American PW, by beating, kicking and otherwise abusing him, thereby breaking his rib. | NG | G | Yes |
|  |  |  |  |
| Sp 7: In or about March or April 1945, the accused did, with others, willfully and unlawfully mistreat Staff Sergeant George R. Powell, an American PW, by beating, kicking and otherwise abusing him. | NG | G | Yes |
|  |  |  |  |
| Sp 8: Between 22 February 1943 and 15 August 1945, the accused did willfully and unlawfully mistreat one Gunner Chick, a British PW, by beating and otherwise abusing him. | Ng | G | Yes |
|  |  |  |  |
| Sp 9: In or about December 1944, the accused did willfully and unlawfully mistreat and abuse Private First Class William J. Burns, an American PW, by beating and otherwise abusing him. | NG | G | Yes |
|  |  |  |  |
| Sp 10: In or about July 1945, the accused did willfully and unlawfully mistreat Lieutenant J.W. Starkey, a British PW, by beating him into insensibility and otherwise abusing him. | NG | NG | - - |
|  |  |  |  |
| Sp 11: In or about July 1945, the accused did willfully and unlawfully mistreat Warrant Officer C.H. Kidwell, a British PW, by beating and otherwise abusing him. | NG | NG | -- |
|  |  |  |  |
| Sp 12: Between 1 January 1945 and 15 August 1945, the accused did, with others, willfully and unlawfully mistreat and abuse Charles R. Peterson, an American PW, by beating and kicking him into insensibility and by then reviving him and repeating said mistreatment. | NG | G | Yes |
|  |  |  |  |
| Sp 13: On or about 9 August 1945, the accused, with another, did willfully and unlawfully mistreat and abuse Lieutenant S.D. Mitchell and Lieutenant L.P.P. Robertson, British PWs, and a group of about twenty-five other Allied PWs by beating and kicking them. | NG | G | Yes |
|  |  |  |  |
| Sp 14: During about February 1945, the accused did willfully and unlawfully mistreat Staff Sergeant Alfred Nicholson, an American PW, by beating, kicking and otherwise abusing him until he was rendered insensible. | NG | G | Yes |
|  |  |  |  |
| Sp 15: Between 22 February 1943 and 15 August 1945, the accused did willfully and unlawfully mistreat and torture numerous Allied PWs by beating them, by kicking them, by forcing them to stand at attention for long periods of time, by forcing them to perform strenuous physical exercises while in a weakened physical condition, by refusing to provide them with necessary and available medicines and medical attention and by otherwise abusing them. | NG | NG | - - |

3. Summary of the Evidence:

 a. For the prosecution:

 In general:

 The accused, Saito, a captain in the Japanese Army, was, from June 1943 to August 1945, commandant of a prisoner of war camp at Moji, Kyushu, Japan, designated as Fukuoka Prisoner of War Cam, 4th Branch, also known as Moji-4. The accused, Inouye, civilian, was a medical orderly therein; the accused, Sakaguchi, was a civilian guard there; both of the latter were employed by the Army and were subordinates of the accused, Saito. About three hundred prisoners of war were confined there, American, British and Dutch.

 As to INOUYE:

 In general:

 As to Specification 1 (Inouye): PW Berkeley, British Medical officer, was often beaten severely with fists by various guards. On one occasion the accused beat him with fists, knocked him down, his head striking on stone steps, causing him to be hospitalized for two weeks. The prisoner was beaten because he had rendered medical treatment without authorization to another British prisoner of war who was bleeding from injuries inflicted by another guard. This beating was general knowledge in the camp (R 92; Ex 3, 5, 6, 7, 62, 64).

 As to Specification 2 (Inouye): PW Braye (live witness) was ill in the barracks and was told to stay there. Other instructions were given him to proceed to an air raid shelter, which he did. For so going, the accused beat him severely with fists, saber, and kicks, knocking him insensible and dazing him for two days. The prisoner was also compelled to stand at attention after the beating, for four hours outside the guard room in freezing weather, while lightly clothed and in stocking feet. Prisoner's back retained scars of the beating which were exhibited to the court. (R 93, 94, 95, 171, 193, 194; Ex 3, 5, 6, 11,13, 18, 23)

 As to Specification 3 (Inouye): PWs Cole and Kinder were both involved in an episode of stealing a small amount of sugar from a dock. The accused, with other guards, kicked and beat both men severely with fists and sticks, the prisoners becoming insensible and suffering severe cuts, bruises, and welts; were also hurt by judo. Both were unable to work for several days. Many affiants personally saw the beating. Accused apparently took savage delight inflicting this punishment. It was done in full view of most of the camp (R 96, 97, 98, 128, 130, 172; Ex 6, 8, 9, 10, 16, 19, 31, 35, 63).

 As to Specification 4 (Inouye): During an air raid in April or May 1945, PW Sullivan was beaten by the accused because of slowness in shouting his number while en route to an air raid shelter. The prisoner was struck with fists and sticks, and beaten into insensibility. In July 1945, the accused beat PW Sullivan into insensibility with fists and a stick and injuring his spine. At that time the prisoner was sick with malaria and beri-beri, and hand no saluted promptly enough, thus incurring the beating (R 102, 159, 175; Ex 3, 42).

 As to Specification 5 (Inouye): PW Van Helden was beaten, abused and had his arm broken through judo, all done by the accused. The beating arose when men of the prisoner's squad were slow at work (R 103, 175; Ex 6).

 As to Specification 6 (Inouye): PW Spencer was attacked by accused with fists, kicks, and judo, breaking one of his ribs. The prisoner had stopped for natural needs en route to an air raid shelter, thus incurring the wrath and assault of the accused (R 103, 104, 175, 176; Ex 6 (par 24), 55).

 As to Specification 7 (Inouye): In May 1945 the accused struck PW Powell over the head with a stick and beat him severely because some stolen food was found on the prisoner when returning from a work detail (Ex 3). In March 1945 PW Powell was beaten by the accused with a stick and fists, and prisoner's head was cut. The prisoner had been in sick bay during an air raid and did not go promptly to the shelter. (R 104, 159, 176, 177; Ex 3, 6, 11, 12)

 As to Specification 8 (Inouye): PW Chick was beaten into insensibility by the accused with an iron grill and stick for failing to salute (Ex 5, 6, 60).

 As to Specification 9 (Inouye: PW Burns requested medical treatment from the accused for a cyst on his jaw. The accused struck him with his fist, broke the cyst and walked away laughing. This affiant identified the accused thusly, "He was the biggest louse in the Jap Army." (Ex 10).

 As to Specification 10 and 11 (Inouye): Not Guilty.

 As to Specification 12 (Inouye): The accused, with other guards, beat PW Peterson severely with sticks, swords, kicks and fists, knocking him insensible, then reviving him with cold water, beating him again, and repeating the process several times. The incident was caused by the prisoner having stolen a small amount of sugar from the docks. The prisoner's face was unrecognizable after the beating, and he had to be carried to work the next day by other prisoners. (R 106: Ex 16, 19, 20, 22, 25, 36, 52, 63)

 As to Specification 13 (Inouye): The accused severely beat PWs Mitchell and Roberton, (British), and twenty-five others by hitting them with fists and shovels on their heads, flooring them, beating and kicking them while down. The affair was caused by someone misplacing a latrine bucket, supposed to have been taken to an air raid shelter (R 107, 108; Ex 30, 40, 63). Whenever beatings would start, the accused often ran over from his office to participate therein (R 109, 110, 177).

 As to Specification 14 (Inouye): PW Nicholson, about fifty-five years of age, was sick from malnutrition, and without apparent provocation, was attacked by the accused, kicked and beaten with a big club for about an hour. The prisoner was unconscious for several days thereafter (Ex 11, 38).

 As to Specification 15 (Inouye): Not Guilty.

 As to SAKAGUCHI:

 In general:

 The accused signed two statements in which he admitted beatings, but claimed they were done under orders of his commanding officer, Saito, accused (Ex 70, 71).

 As to Specification 1 (Sakaguchi): PW Sgt. William E. Braye, (live witness) was beaten by the accused on at least two occasions. In January 1945, the prisoner, while sick, was beaten by other guards (see Spec #2, Inouye), and the accused joined in the beatings. Prisoner was asked a few questions, and when he started to answer, the accused struck him in the face with fists, kicked him, knocked him down, repeating the process several times (R 93). In November 1945, the prisoner, while in the barracks, failed to salute the accused, not noticing him in the darkness, and was thereupon slapped, beaten with fists, and kicked by the accused (R 124).

 As to Specification 3 (Sakaguchi): PW Tavlian, while working on the dock detail, was approached by the accused, and asked if his number was "314". Upon replying his number was actually "344", the accused became excited, and eat the prisoner severely for about ten minutes with a bamboo slat. The prisoner felt it was useless to report the incident to superiors (R 124; Ex 57, 58).

 As to Specification 4 (Sakaguchi): Not Guilty.

 As to Specification 5 (Sakaguchi): The accused known as "The Clutching Hand", together with another guard, "Peg-leg", beat PW Inzer with a club for half hour, as punishment for stealing some food from the docks. They also stomped on his hands with their hob-nailed boots, inflicting scars which are still visible (R 125, 126; Ex 32).

 As to Specification 6 (Sakaguchi): Not Guilty.

 As to SAITO:

 In general:

 The accused, Saito, in a written statement (Ex 73) admitted two beatings imposed as disciplinary measures.

 As to Specification 1 (Saito): PWs Cole and Kinder were severely beaten by guards with sticks and fists, under the orders and supervision of the accused. This beating was witnessed by most of the camp. (See Spec #3, Inouye, for details.) (R 97, 100, 182: Ex. 1, 8, 9, 10, 21, 35, 53, 54, 70)

 As to Specification 2 (Saito: Accused ordered and permitted his subordinate guards to severely beat PW Jolley (Dutch) because of his theft of a pair of cotton gloves at the dock. The prisoner was stripped and severely beaten while ill, then obliged to work while in very poor physical condition. The prisoner was also beaten at other times by guards for fancied infractions of the rules. (R 130, 131, 132, 134, 136, 185, 186, 187: Ex 15, 27, 28, 48, 49, 63)

 As to Specification 3 and 4 (Saito): Not Guilty

 As to Specification 5 (Saito): The accused, as camp commandant failed to furnish the prisoners with adequate clothing, medical supplies and attention. There was existent in the camp warehouses, a reasonably large quantity of medical supplies and clothing, most of it from Red Cross sources. Nearly every prisoner in the camp was seriously ill during their confinement. Notwithstanding this, only the barest medical supplies were doled out. A large amount of medical supplies were found after the surrender, still reposing in the camp warehouse. As the prisoners unloaded most of these supplies upon their arrival, knowledge of their presence was known to all prisoners. Repeated requests for adequate issuance of them were ignored. During winter, the scarcity of foot gear among the prisoners was distressing; a large number of American and South African shoes were also found in the warehouses after the surrender. Most of the guards wore American foot gear which came from red cross Supplies. Many thousands of multivitamin tablets (B-1) arrived, as well as some blood plasma, but their distribution was refused. (R 121, 123, 181; Ex 3, 5, 6, 7, 15, 19, 20, 24, 26, 28, 33, 41, 47, 48, 49, 50, 53, 60, 61, 62, 64)

 As to Specification 6 (Saito): The accused misappropriated, stole and withheld Red Cross parcels. A large quantity of those boxes arrived from time to time; about 60% of the whole were stolen and appropriated by the accused and his guards. No distribution was made of Red Cross supplies from after Christmas 1944 until the surrender. Red Cross food was observed being cooked in the guard’s kitchen (R 151). The guard staff and the accused, as well as members of their families were seen wearing Red Cross clothing and shoes, as well as possessing food supplies. Repeated requests by the prisoners for regular distribution of intact Red Cross bundles were refused. Scanty distribution in 1944, a large number of Red Cross food bundles were emptied and dumped into one pile indiscriminately, with orders to consume it in one day. (R 151, 152, 154; Ex 3, 4, 5, 6, 7, 15, 20, 24, 28, 29, 30, 33, 40, 47, 48, 49, 50, 51, 53, 58, 60, 61, 62, 63).

 As to Specification 7 (Saito): Not Guilty.

 As to Specification 8 (Saito): The accused disregarded and failed in his duty as camp commander to control or restrain members of his staff, in a long line of abuses of the prisoners. The accused personally observed many such instances. He ordered, directed and tolerated a program of beatings for slight infractions of rules, giving his guards the privilege of using their own discretion in inflicting punishments (R 165). He ignored complaints about mistreatments (R 159). There was a continuous pattern of abuses and beatings of all prisoners with little or no provocation (Ex 62). The accused usually stayed at the camp all day long (R 162, 163). Details as to specific instances appear and were found by the commission in the following sub-specifications:

 As to 8-a (Saito): See Specification 1 (Inouye).

 As to 8-b (Saito): See Specification 4 (Inouye).

 As to 8-c (Saito): See Specification 6 (Inouye).

 As to 8-d (Saito): See Specification 7 (Inouye).

 As to 8-e (Saito): See Specification 2 (Inouye). Beating was observed by the accused without interference by him (R 94).

 As to 8-f (Saito): See Specification 2 (Inouye).

 As to 8-g (Saito): At various times, PW Lt. Borrie (British) was beaten by guard, Inouye. Affiant said that fortunately it was without any serious consequences to himself. He saw Inouye beat a great many other prisoners (Ex 6).

 As to 8-h and 8-I (Saito): Not Guilty.

 As to 8-j (Saito): See Specification 13 (Inouye).

 As to 8-k (Saito): See Specification 9 (Inouye).

 As to 8-l (Saito): See Specification 12 (Inouye). The accused observed the beating of PW Peterson by the guards. Medical treatment was refused after this beating, as well as to other beaten prisoners. (R 106, 130; Ex 16, 19, 20, 22, 25, 36, 52, 63)

 As to 8-m (Saito): Stricken as duplicitous.

 As to 8-n, 8-o and 8-p (Saito): Not Guilty.

 As to 8-q (Saito): PW Berkeley (British medical officer) and Lt. Doppert (Dutch medical officer) were terribly beaten with fists and clubs by guards because they requested more food for ill prisoners (Ex 3, 25).

 As to 8-s (Saito): PW Mitchell (British) was struck in the face with a plate after having its contents thrown in his face by a guard who became enraged at his eating a hot meal. The prisoner's lip was severely cut. PW Berkeley was afterwards severely beaten for having given medical attention to Mitchell's cut lip (Ex 6, 60).

 As to 8-t (Saito): PW Braye and nineteen others were beaten by guard Takano. The prisoners while working in a tunnel were called out by Takano, the English and Dutch prisoners were first seeded out, and the remaining American prisoners were all struck with bamboo poles, and knocked down, the whole column being gone over three times. Several poles were broken down during the incident. The cause of the beatings was the guards' resentment over the losing of the Okinawa battle. The prisoners were beaten every time the Americans won a battle. (R 158; Ex 58, 59, 63) Complaint was made to the accused, Saito, with no results (R 159).

 As to 8-u (Saito): See Specification 1 (Sakaguchi)

 As to 8-y (Saito): Not Guilty.

 As to 8-w (Saito): See Specifications 5 (Sakaguchi).

 As to 8-x (Saito): PW Braye and seventeen others were beaten by guard, Suzuki, because the squad had miscounted; each was struck several times in the face with fists, followed by face striking with a gun belt. Most of the men suffered welts on their faces, and one man's face was bleeding (R 90).

 As to 8-y (Saito): Numerous prisoners were beaten by guard, Terada. He struck prisoners constantly on slight or no provocation and was described as one of the most vicious guards in the camp (Ex 3, 4, 44).

 As to 8-z (Saito): PW Bush and nineteen others were beaten and kicked by guard, Yagi, because one of the prisoners had left Yagi's coat unguarded. The whole work detail was lined up, and all beaten with a ¾" steel roofing rod. One prisoners could not walk for a month afterwards (R 197; Ex 11, 14, 52).

 As to 8-aa (Saito): PW Converse was beaten on the head many times with a poker by guard, Yagi, and required hospitalization for three days. The guard became enraged when the prisoner, upon being addressed in Japanese, could not readily understand, and failed to reply in a polite phrase of words (R 23).

 As to 8-cc (Saito): PW Moeder was beaten by guard, Yagi, with a metal chain and iron bar, and often knocked down, the prisoner suffering bad injuries to his back. The cause of the beating was, "going to the latrine without permission." (Ex 56).

 As to 8-dd (Saito): PW Chapman and PW Bickerstaffe were beaten into insensibility by guard, Yoshikawa, with a three foot lead pipe. The two prisoners had stolen a case of hardtack from the wharf (R 11, 160; Ex 17). Also, PW Chapman was later beaten in camp for the same incident (R 179, 180).

 As to 8-ee (Saito): PW Louis was beaten by guards with fists. Judo was practiced on him for three weeks, his back and leg injured and badly bruised. While washing Japanese uniforms, he was beaten by guards every day for four weeks, five minutes a day, being beaten with fists in the face (R 112; Ex 3, 43, 45, 46). (The affiant of Ex #3 relates that PW Louis was untrustworthy and lied a lot).

 As to 8-ff (Saito): PW Inzer alleges beating on at least four occasions. In one incident, thirty men, including him, were lined up, beaten with iron bars, and knocked down several times (R 126; Ex 32).

 As to 8-gg (Saito): PW Lt. Starkey (British) was beaten into insensibility by guard, Sumi, who took offense at a flippant remark. The prisoner was shoved through a door, he falling to the concrete pavement, and then was beaten into unconsciousness by Sumi, with a heavy stick, the beating lasting about an hour. The prisoner was so dazed he could not remember details of the affair for several days.

 As to 8-hh (Saito): Stricken as duplicitous.

 As to 8-ii (Saito): See Specifications 6 (Saito). Staff members subordinated to the accused stole and misappropriated Red Cross supplies intended for prisoners, the accused permitting those acts.

 As to 8-jj and 8-kk (Saito): Not Guilty

b. For the Defense:

 All three of the accused elected not to testify and persisted in such refusal after being duly warned of their rights (R 282). The defense offered four live witnesses, who testified as follows:

 First witness, Nobata (R 231): He was director of a transportation firm, operating facilities where the prisoners did stevedoring work. He visited the camp many times and observed good conditions there. The accused Saito, ordered the firm to supply additional food rations for the prisoners, which was done, in the amount of 200 grams per day (R 237). The prisoners established a vegetable garden with the help of Saito and the transportation firm (R 237). The prisoner of war camp had priority in purchasing vegetables at the city market (R 243). The witness often observed the prisoners eating vegetables (R 243). The prisoners also were permitted to have hogs in camp. The accused, Saito, bettered the physical facilities at the camp by enlarging and improving the quarters (R 237). The people in the nearby city resented the better treatment afforded in that the prisoners had more food and shorter working hours than the Japanese population (R 239). Accused, Saito, made a speech to local townspeople and the transportation firm's workers, saying the prisoners were protected by International Law, and must be treated decently by them, The transportation firm was obliged, a couple of times, to pay for local medical supplies purchased for the use of the prisoners.

 The second witness, Baba, identified all three accused as being at the camp during the time charged (R 253). The witness worked there, his job being to examine safety conditions at work sited (R 254). Accused, Saito, followed whatever recommendations he made for improving working conditions (R 255, 257); accused, Saito, established recreational facilities, such as allowing baseball, permitting swimming, establishing a library, and allowing religious services. Recreation was had once a week.

 The third defense witness, Ino, (R 259), testified he worked at the prisoner of war camp as intendance Sgt. Major (Supply man), having charge of issuance of food, clothing, and medicines. He had enough clothing to supply needs of prisoners. Received about 1,000 boxes of Red Cross supplies, American and British, containing food, clothing, and medical supplies, about 600 boxes being reserved for use of this camp. Distribution of food packages was made according to schedule furnished by main Fukuoka camp. Witness denied that any of the staff had possession of any Red Cross supplies; sometimes he issued rubber or canvas shoes instead of relief shoes; about 100 pairs of shoes were left at the time of surrender.

 The fourth defense witness, Azuma, (R 269) said he was medical officer; he visited the camp about three days a week (R 273); had enough medical supplies in camp for ordinary needs (R 271); worked well with the prisoner of war doctors (R 274); received medical reports from them, made up daily and examined all sick prisoners so reported to him when he arrived at camp for a visit (R 274). The prisoner of war doctors made up a list of sick prisoners who were too ill to work, and their suggestions were usually followed (R 273, 280). Witness said accused, Inouye, had a kind attitude towards prisoners (R 273). Witness examined all incoming prisoners (R 273, 274). The group off the SS Brazil Maru were in bad condition (R 273, 274) and he gave them decent and proper treatment (R 275). Accused, Saito, told him to render every possible care to the prisoners, and he did so (R 276). No prisoner of war doctors ever requested removal of prisoners to outside hospital (R 276); witness had no blood plasma available for treatment (R 278). All medical supplies and facilities were made available to the prisoner of war doctors (R 279). The prisoner of war doctors conducted all sick calls (R 280). Accused, Saito, had daily medical report on the physical condition of all prisoners (R 280).

 The defense introduced Exhibits B and C (R 282), being letters from PWs Berkeley and Holtham, calling attention to acts of kindness of accused, Inouye.

4. Opinion:

 Various motions were made as to most of the sixty-six specifications against the accused persons.

 A motion was made as to each accused (R 5), requesting a severance as to the trial of each. This motion was properly denied (R 14). A common trial does not of a necessity result in prejudice to the accused. Such trial was authorized by SCAP in assigning the case for trial in his letter of 26 June 1947 to Commanding General, Eighth Army, ordering a common trial to be held, (R 13). Neither SCAP or Eighth Army Rules expressly prohibit or grant common trials, thus, their conduct is governed by general principles of law.

 Motions were made to strike as duplicitous nearly every specification as to each of the accused, and in the alternative, for bills of particulars (R 5, 11), on the ground that several offenses were alleged in the specifications enumerated, and they were lacking in certainty. The motions were properly denied (R 19). The affidavits already furnished several weeks in advance to each of the accused gave sufficient details expected to be proven, in addition to the information contained in the specifications themselves. The facts charged were set forth with sufficient definiteness to enable the accused to successfully interpose a plea of double jeopardy in the remote contingency they might be called upon to meet the same charges at another time. Merely by way of example, it is pointed out that the specifications herein met the requirements of pleading as set forth in Rule 7-c, of the new Federal Rules of Criminal Procedure; (U.S. vs. Starks, 6 F.R.D. 43; U.S. vs Bennett E. Meyers(sic), et al, 76 W.L.R. 614)

 The motions to strike the various omnibus specifications (R 18) were also properly denied (R 19) upon the same grounds.

 A motion was made to strike and dismiss Specifications 8 through 8-kk (Saito) on the ground that the allegation of "command responsibility" did not set forth a crime (R 10). An excellent brief was filed in support thereof, it appearing as "item 2" in the same folder with the exhibits. That motion was properly overruled (R 19). Under the Rules of Land Warfare, par 91, prisoner of war camps must be under a responsible officer. Such a commander is held responsible for all atrocities committed by his subordinates of which he had actual or constructive notice, or of acts which he was in a position to control (Application of Yamashita, 66 S. Ct, 340). The evidence submitted in the case at bar disclosed adequate facts showing a responsible command situation did exist, and in which the accused neglected to take remedial measures at the times when he did not directly participate himself in the wrongful acts.

 The accused, Sakaguchi, was found guilty of three specifications out of six. The accused, Inouye, was found guilty of twelve specifications out of fifteen. The accused, Saito, was found guilty of five main specifications out of eight and guilty of twenty-six sub-specifications out of thirty-seven of Specification 8, these last being based upon command responsibility:

 The appeal brief of the defense was excellently prepared and contained an analytical breakdown of the numerous specifications.

 The brief alleges that the trial commission did not have jurisdiction to adjudicate cases involving prisoners of war, other than American personnel. It has been well settled by previous decisions of this Reviewing Authority that these War Crimes Commissions have jurisdiction to try persons for crimes committed against non-Americans. (Case #76, Kaneko-Uchida; #84, Yorow; # 194 Karihara.).

 The brief contends that according to paragraph 3 of the Eighth Army Rules of Procedure used in these cases, the failure of an accused to testify may be fairly considered by the Commission and adversely commented upon by the prosecution that since the SCAP rules of procedure governing the International trials in Tokyo made no such provision, then the minor criminals tried in Yokohama should likewise not have their right to testify in their own behalf curtailed.

 The SCAP rules promulgated for the Yokohama trials (ltr AG 000.5 (27 Dec 46) LS-L) do not prohibit, either expressly or impliedly, the enactment of the Eighth Army procedural rule complained of. The SCAP rules with reference to the testimony of the accused provide:

 "Para 5-b. Rights of the Accused. The accused shall be entitled:

 (3) To testify in his own behalf and have his counsel present relevant evidence at the trial in support of his defense and cross-examine each adverse witness who personally appears before the commission."

 Merely because the accused has the right to testify in his own behalf, it does not follow as a matter of course that the accused is entitled to the privilege of freedom from any adverse comment upon his failure to so testify. The right of the accused to be free from "adverse comment on failure to testify" is not a fundamental inherent safeguard, but is merely a privilege conferred by statute or constitutional law. Under the old Common Law, an accused was not even permitted to testify in his own behalf.

 In several jurisdictions in the United States, such adverse comment is permitted by statute or judicial opinion. The matter permitting such adverse comment is not a reprehensible practice, but one which is gaining favor in the United States through recent amendments of statutes and constitutions.

 "16 C. J. 901. Par 2247 – Where a statute permits an indicted person to become a witness in his own behalf, and does not provide that his failure to offer himself shall not raise any presumption against him, or does not forbid an allusion to such failure by counsel of the accused's failure to offer himself as a witness in regard to matters which may be disproved by him, it may be commented upon by the prosecuting attorney:………………

(Parker vs State, 61 N.J.L. 308, 39 . 651.

 "16 C. J. 834, par 2106, Koos vs Reg. (1984) AC 650: Rex vs Smith 84 L.J.K.B. 2153.

 16 C J. 1022, par 2449: State vs Clev. 59 Ne. 298; State vs Bartlett, 55 Ne. 200; State vs Connors, 87 N. J. L. 419, 94 A 812.

 23 C.J.S. 558, par 1098, notes 79-80 – (quoting) – In Iowa prior to the amendment of the statute in 1929, a reference to failure of accused to testify was improper and erroneous. (State vs Walker, 185 NW 619; 192 Iowa 823.

 - - note 80 - - (quoting – In California, prior to the amendment of the constitution and statues, the contrary rule prevailed. (People vs Calvert, 251 & 244; 80 Calif. App. 50.

 Also cited under 23 CJS 558, par 1098, are: People vs Perry, (Calif.) 94 P 559, 124 A.L.R. 1123; Patterson vs State, 171 NE 26, 122 Ohio St. 96; Parker vs State, 45 A 1094, 62 NJ Law 801, and others.

 104 A.L.R. 479, calls attention to the fact that in 1931, both the American Law Institute (9 Proceedings Amer Law Inst. 202), and the American Bar Association, (56 Dept of Amer Bar Asso 137), recommended the enactment of legislation permitting adverse comment by prosecuting attorneys and judges upon the failure of an accused to testify."

 The difference in rules between the Tokyo trials and those in Yokohama is a matter of policy. Separate rules were promulgated by SCAP for the Tokyo and Yokohama trials. As all these War Crimes trials are acts of grace because of our military conquest of Japan, any type of court rules may be imposed. None of the rules pronounced run contrary to the over-all publicized determination to conduct these trials in accordance with general prevailing judicial practices used by the modern Allied Nations.

 The comments in the appeal brief on the alleged lack of sufficient evidence in the case of Saito have been noted. It is considered that a careful survey of all the evidence discloses a continuous pattern of acquiescence and actual or constructive knowledge of the bad conditions at the prisoner of war camp. Saito's continuous presence at the camp, his failure to take action on complaints and his "blanket" orders to his guards to punish strictly for infractions of rules, all point to his guilt.

 Reliance upon circumstantial evidence is often necessary in criminal cases. Crimes are usually committed under a cloak of secrecy, by the very nature of things, and if there were an absolute requirement of direct testimony only to sustain a conviction, the consequence would be, to the public, of inadequate protection against criminals. The record displays a chain of events, to which the accused has been connected by competent testimony and which leads directly to the guilt of the accused. (Shelton vs U.S., 76 W.L.R. 1071, U.S. Ct of App., D.C.) While Saito was convicted of many sub-specifications under Specification 8, the acts referred to might be considered as the commission of one single act - - that of lack of proper command supervision. On its magnitude depends the length of the sentence.

 As to the alleged mental incompetency of the accused, Inouye, (first raised in defense appeal brief), it does not appear that alert defense trial counsel considered it marked in sufficient degree to warrant pressing it during the trial, nor making it an issue. The terms, "acting like a maniac", etc., used in some of the affidavits about Inouye, must be considered as words of description in a relative sense rather than of description by way of definition. The periods of "meanness" by the accused show merely instances of violent disposition or ill-temper brought about by various conditions in his private life, common in many persons who are walking the streets now as sane persons. Instances of vicious conduct do not generally show insanity on measuring them by the general legal standards of knowing "right from wrong". The letter of recommendation given by Dr. Berkeley to the accused Inouye was carefully taken into account. It is considered the giving was impelled by a "kind and forgiving heart" expanded by "good feeling" at the time of release from the prisoner of war camp. Afterwards, upon his return to England, that same writer apparently reconsidered, for he made many adverse comments against the accused in the affidavits he submitted in connection with the trial of this case.

 A perusal of the record discloses that the convictions were justified and that guilt was established beyond a reasonable doubt on ample and competent evidence. The commission was constituted by proper authority and had jurisdiction of all the accused and of the offenses alleged. All the accused were duly warned of their rights. Each of them had a fair trial and were represented by counsel who skilled and learned defense. No error appears which injuriously affects the rights of the accused. The law member strictly limited the scope of the prosecution's case, which was to the benefit of the accused. There was no evidence that the accused were insane at the time of the commission of the alleged acts or at the time of trial and insanity was not an issue.

5. Recommendations:

 There are requests for clemency submitted on behalf of the accused Saito and Inouye. It is recommended that clemency be extended the accused Saito in view of the fact that he did improve the camp facilities and, by comparison with other prisoner of war camps, did not interfere too much with medical care extended by the prisoner of war physicians. Furthermore, he was found "Not Guilty" of contributing to the deaths of numerous prisoners of war who died at his camp. The many deaths of prisoners might have inflamed the minds of the trial commission a bit as it was fresh in evidence before them. It is suggested that the sentence of Saito be reduced to fifteen (15) years confinement at hard labor.

 It is also recommended that the accused Inouye be likewise extended clemency, inasmuch as he was often kind and considerate to many prisoners of war and some of the wrongful acts he committed were done under orders of his superior, Saito. It is suggested that the sentence of Inouye be reduced to ten (10) years confinement at hard labor.

 The finding on Specification 8-a (Saito) should be amended to eliminate the "guilty finding" of the words thereof reading "resulting in his sustaining a brain concussion resulting in a loss of consciousness for three days." Specification (8-a) is related to Specification 1 of Inouye and a like deletion was made therein by the trial commission in its finding. The two specifications refer to the same incident, one being based on command responsibility and the other on the actual commission of the physical act.

 Owing to the length of time that the accused have been in confinement prior to the dates of sentence, it is recommended that eighteen and one-half (18 ½) months of the confinement be remitted as to each.

6. Action:

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

ALBERT LYMAN

Reviewer

Judge Advocate Section

I concur in general. However proper conviction of Saito of criminal responsibility for the varied and widespread pattern of mistreatments pleaded in the thirty-one (31) Specifications of which he was found guilty requires approval of the twenty-five (25) year sentence and would support a heavier one. Inouye's offenses as pleaded in twelve (12) Specifications include brutal beatings kickings and exposures - in two (2) instances resulting in fractures – which are not balanced by occasional acts of the kindness which it was his duty to practice. Whatever acts he did under his superior's order were patently done as a willing not involuntary participant. The sentence of fifteen (15) years is considered as lenient. The court stated it considered superior orders and PWs condition in adjudging the sentence.

Alternate proposed actions approving the Commission's sentence are attached.

WILLIAM? R. BROTTE?

Lt. Col., JAGD

Army Judge Advocate