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Case 310

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

Yokohama, Japan
31 May 1949

- UNITED STATES OF AMERICA VS RANJO FUJINO
- UNITED STATES OF AMERICA VS SHOJI KONO
- UNITED STATES OF AMERICA VS TOSHIO TOYAMA
- UNITED STATES OF AMERICA VS NOBUSHIGE WACHI
- UNITED STATES OF AMERICA VS TSUNE NEMOTO

Review of the Staff Judge Advocate

1. The attached record of trial of the case of Ranjo Fujino, Shoji Kono, Toshio Toyama, Nobushige Wachi, and Tsune Nemoto, tried at Yokohama, Japan from 24 May 1948 to 13 October 1948 by a Military Commission appointed by paragraph 26, Special Orders No. 115, Headquarters Eighth Army, United States Army, dated 20 May 1948, having been referred to the Staff Judge Advocate, this review thereof is submitted to the Commanding General.

Personal Data Concerning Accused

NAME: Shoji Kono	DATE OF CONFINEMENT: 30 March 1948
AGE: 58	DATE OF ARRAIGNMENT: 26 May 1948
RESIDENCE: #1 Chome, Hanaza-Machi, Fujisawa, Kanagawa	PLACE OF TRIAL: Yokohama, Japan
MARITAL STATUS: Married	PERIOD OF TRIAL: 24 May 1948 to 13 October 1948
RELATIVES: One daughter	DATE OF ACQUITTAL: 13 October 1948
EDUCATION: Tokyo Middle School, Osaka Medical College	
VOCATION: Doctor	
MILITARY CAREER: 1917 Medical 2nd Lt; 1936 Medical Maj, instructor Army Medical College; 1943 Maj Gen, chief of the 5th Army Medical Department; 1944 Chief of the Eastern Army Medical Department	

NAME: Toshio Toyama	DATE OF CONFINEMENT: 18 January 1948
AGE: 40	DATE OF ARRAIGNMENT: 26 May 1948
RESIDENCE: Hokkaido, Sapporo-shi, Kita Ichi Jo, Nishi Sanchoe, 3	PLACE OF TRIAL: Yokohama, Japan
MARITAL STATUS: Married	PERIOD OF TRIAL: 24 May 1948 to 13 October 1948
RELATIVES: Two children, wife, mother	DATE OF SENTENCE: 13 October 1948
EDUCATION: Tohoku Teidai (University) law	SENTENCE: CHL for life
VOCATION: Procurator	CLEMENCY RECOMMENDED BY COMMISSION: No
MILITARY CAREER: Pvt 1936-37; 2nd Lt, artillery 1941-end of war. Highest attained rank, Capt (September 1945)	

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NAME: Nobushige Wachi
 AGE: 36
 RESIDENCE: Tokyo-to, Katsushika-ku, Nakahara-machi, 28 Banchi
 MARITAL STATUS: Married
 RELATIVES: Wife, two children, sister; mother, brother, sister killed in air raid 10 March 1945
 EDUCATION: Eight years grammar school; three years youth school
 VOCATION: Soldier
 MILITARY CAREER: Called to active duty 1932; assigned Kempei-Tai superior Pvt 1934; Tokyo Kempei-Tai, Sgt Maj 1940; Tokyo Kempei-Tai WO 1943; 2nd Lt 1945

DATE OF CONFINEMENT: 30 April 1946
 DATE OF ARRAIGNMENT: 26 May 1948
 PLACE OF TRIAL: Yokohama, Japan
 PERIOD OF TRIAL: 24 May 1948 to 13 October 1948
 DATE OF SENTENCE: 13 October 1948
 SENTENCE: CHL for eight (8) years
 CLEMENCY RECOMMENDED BY COMMISSION: No

NAME: Ranjo Fujino
 AGE: 46
 RESIDENCE: Kaga-Prefecture, Shozu-gun, Yasuda-Mura
 MARITAL STATUS: Married
 RELATIVES: Wife, three children
 EDUCATION: Graduate Military Academy
 VOCATION: Professional soldier
 MILITARY CAREER: Graduated Military Academy, commissioned 2nd Lt, 1922; 1st Lt 1925; Maj 1941; Lt Col 1943. Became Kempei-Tai officer 1932

DATE OF CONFINEMENT: 30 April 1946
 DATE OF ARRAIGNMENT: 26 May 1948
 PLACE OF TRIAL: Yokohama, Japan
 PERIOD OF TRIAL: 24 May 1948 to 13 October 1948
 DATE OF SENTENCE: 13 October 1948
 SENTENCE: CHL for five (5) years
 CLEMENCY RECOMMENDED BY COMMISSION: No

NAME: Tsune Nemoto
 AGE: 46
 RESIDENCE: Tokyo-to, Shibuya-ku, Tokiwamatsu-machi, 60 Banchi
 MARITAL STATUS: Married
 RELATIVES: Wife, two children; mother, two brothers, three sisters
 EDUCATION: Six years elementary school
 VOCATION: Company employee
 MILITARY CAREER: Entered army 1924, became Kempei 1925; became 1st Lt 1945

DATE OF CONFINEMENT: 18 April 1946
 DATE OF ARRAIGNMENT: 26 May 1948
 PLACE OF TRIAL: Yokohama, Japan
 PERIOD OF TRIAL: 24 May 1948 to 13 October 1948
 DATE OF SENTENCE: 13 October 1948
 SENTENCE: CHL for three and one-half (3½) years
 CLEMENCY RECOMMENDED BY COMMISSION: No

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

<u>Charges and Specifications:</u>	<u>Pleas</u>	<u>Findings</u>	<u>Legally Sustained</u>
SHOJI KONO: Charge: Accused, at the times and places set forth in the specifications hereto attached, did violate the Laws and Customs of War.	NG	NG	

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Sp 1: That between 20 August 1944 NG NG
and 15 August 1945, accused, did unlawfully disregard and fail to discharge his duty by failing to properly supervise and direct the medical affairs and hygiene of the Eastern District Kempei-Tai, and by failing to provide the sick, wounded, diseased, and infirm of said prisoners medicines, medical treatment, and hospitalization, thereby contributing to the sufferings, sicknesses and the deaths, on or about the dates indicated of American Prisoners of War.

Sp 2: That between 20 August NG NG
1944, and 15 August 1945, the accused, did unlawfully disregard and fail to discharge his duty by failing to properly supervise and direct the medical affairs and hygiene of the Eastern District Kempei-Tai, and by failing to provide the sick, wounded, diseased, and infirm of said prisoners medicine, medical treatment, and hospitalization, thereby contributing to the sicknesses, wounds, diseases, infirmities, disabilities, and sufferings of numerous American Prisoners of War.

TOSEIO TOYAMA:

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

Sp 1: That between about 1 April NG G Yes,
1945 and 15 August 1945, accused, did willfully and unlawfully disregard and fail to discharge his duty to the Prisoners of War, by failing to provide adequate and proper quarters, clothing, food and water, hygiene, medical care and supplies, and hospitalization, thereby causing and contributing to the sicknesses, diseases, wounds, disabilities, and sufferings of about 200 American Prisoners of War, including the following: "about 200", "Harold J. Anderson", "Edward I. Karna". Of the excepted words NG.
Harold J Anderson, Jack G Evans, Robert L Fink, Edward Gorrie, Franklyn S Green, Maynor B Hanks, Fiske Hanley, Edward I Karna, Albert P Lounsbury, Glidden C Lurvey, John F MacGuire, Frank C Massey, Joe L McQuade, Lester C Morris, Robert E Ring, Michael J Robertson, William P Rosenthal, Arthur M Shelton, and Dennis E Tying.

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Sp 2: That between about 1 April 1945 and 15 August 1945, accused, did willfully and unlawfully refuse, neglect, and fail to provide adequate and proper quarters, clothing, food and water, hygiene, medical care and treatment, and hospitalization, thereby causing and contributing to the sicknesses, wounds, diseases, sufferings, and the deaths on or about the dates indicated of the following named American Prisoners of War: Second Lieutenant John S Houghton, 2 April 1945; Corporal Seth Rigby, 15 April 1945; Second Lieutenant Roland F Nelson, 15 April 1945; Sergeant William H Osborn, 20 April 1945; Sergeant Walter E Valk, 1 May 1945; Master Sergeant Erwin R Griffin, 24 April 1945; Corporal Stanley Forystek, 27 May 1945; Corporal Elmer H Bertsch, 26 May 1945; Second Lieutenant Robert L Williams, 26 June 1945; Sergeant Warren L Olson, 5 June 1945; Sergeant Harold E Halldorsen, 5 June 1945; Sergeant Charles W Snell, 4 June 1945; Second Lieutenant Francis F Jensen, 8 June 1945; Second Lieutenant Theodore H Fox, 3 August 1945; Second Lieutenant George L Sheridan, 29 August 1945; and, Sergeant Kenneth Potterson, 15 May 1945.

G Yes,
except the words in part
"refuse", "causing
and", "Corp. Seth
Rigby, 15 April 1945",
"Corp. Elmer H. Bertsch,
26 May 1945" and
except the words "2
April 1945" and "29
August 1945", substi-
tuting therefore "14
April 1945" and "29
October 1945". Of
the excepted words NG.
Of the substituted
words, G.

Sp 3: That between about 1 April 1945 and 15 August 1945, accused, did willfully and unlawfully mistreat and otherwise abuse the said Prisoners of War,

G Yes

a. By not permitting the prisoners to talk to each other;

NG NG
(R 974)

b. By not permitting the prisoners to wash themselves or their clothing;

NG Yes

c. By not permitting the prisoners to shave or have their haircut;

NG Yes

d. By intermittently withholding daily food and water rations from the prisoners;

NG NG
(R 974)

e. In several instances, by permitting persons under his control to lock about nineteen (19) prisoners into one filthy, unventilated, vermin infested cell, about 8½ feet wide by 11 feet long by 8 feet high, and to detain them there many weeks;

G No

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f. By taking and withholding the shoes and socks of the prisoners;

NG
(R 974)

g. By permitting persons under his control to throw on the floor the daily food rations intended for consumption by the prisoners;

NG

h. By not permitting the prisoners to exercise;

NG

NG

i. By permitting persons under his control to torture prisoners by various means, such as kicking and beating them upon their wounds, and forcing them to stand at attention or to squat Japanese fashion for long periods of time, resulting in the prisoner's loss of consciousness in many cases;

NG

G

Yes

j. By permitting persons under his control to slap, kick, poke with sticks, spit on, and threaten with guns, the prisoners;

NG

G

Yes

k. By failing to isolate seriously wounded, sick, diseased, and infected prisoners from other prisoners;

NG

G

Yes

l. By refusing medicine, medical treatment, and hospitalization to seriously wounded and diseased prisoners; and,

NG

NG

m. By otherwise failing to treat said prisoners with humanity,

NG

NG
(R 973)

thereby causing the said prisoners extreme pain, suffering, and misery.

Sp 4: That on or about 20 April 1945, accused, did willfully and unlawfully order and direct one Kenji Hirano, a medical officer, to kill William Henry Osborn, an American Prisoner of War, and did thereby cause the death of the said Prisoner of War.

NG

G
except the words "order and". Of the excepted words, NG.

Yes

Sp 5: That between about 1 April 1945, and 15 August 1945, accused, did willfully and unlawfully mistreat American Prisoners of War by committing the following atrocities and other offenses against said Prisoners of War:

NG

G

Yes

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- a. In or about June or July 1945, the unlawful mistreatment of Staff Sergeant Harry H French, an American Prisoner of War, by beating and otherwise abusing him. NG NG
- b. In or about June or July 1945, the unlawful mistreatment of Lieutenant Senior Grade John H Shroff, an American Prisoner of War, by beating and otherwise abusing him. NG NG
- c. In or about July or August 1945, the unlawful mistreatment of Captain Gordon P Jordan, an American Prisoner of War, by beating and otherwise abusing him. NG G Yes
- d. On or about 8 August 1945, the unlawful mistreatment of Master Sergeant Lester C Morris, an American Prisoner of War, by beating and otherwise abusing him. NG NG
- e. On or about 8 August 1945, the unlawful mistreatment of Captain Vincent A Gaudiani, an American Prisoner of War, by beating and otherwise abusing him. NG G Yes
- f. On divers times between 1 April 1945 and 15 August 1945, the unlawful mistreatment of numerous American Prisoners of War by beating, kicking, and otherwise abusing them. Nolle Prossed (h 5)
- Sp 6: That between about 1 April 1945 and 15 August 1945, accused, did willfully and unlawfully disregard and fail to discharge his duty to control and restrain persons under his control, by permitting them to commit the following atrocities and other offenses against American Prisoners of War: NG G Yes
- a. In or about May or June 1945, the unlawful mistreatment of Marcus H Worde, an American Prisoner of War, by beating and otherwise abusing him. NG G Yes
- b. In or about June or July 1945, the unlawful mistreatment of Charles J Couchman, an American Prisoner of War, by beating and otherwise abusing him. NG G Yes

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- c. On or about 26 May 1945, NG G Yes
the unlawful mistreatment of
Charles W Snell, a seriously
wounded American Prisoner of War,
by beating and otherwise abusing
him, thereby contributing to his
death.
- d. On or about 26 May 1945, NG NG
the unlawful mistreatment of
Stanley Forystek, a seriously
wounded American Prisoner of War,
by beating and otherwise abusing
him, thereby contributing to the
death of said prisoner on about
27 May 1945.
- e. On or about 26 May 1945, NG G Yes
the unlawful mistreatment of Loren
E Decker, an American Prisoner of
War, by beating and otherwise
abusing him.
- f. On or about 26 May 1945, NG G Yes
the unlawful mistreatment of
Joseph J Deob, an American Prisoner
of War, by beating and otherwise
abusing him.
- g. On or about 27 July 1945, NG G Yes
the unlawful mistreatment of Walter
W Dickerson, an American Prisoner
of War, by beating and otherwise
abusing him.
- h. On or about 10 June 1945, NG G Yes
the unlawful mistreatment of Scott
M Downing, an American Prisoner of
War, by beating and otherwise
abusing him.
- i. Between 17 April and 19 NG G Yes
April 1945, the unlawful mistreat-
ment of Harvey M Glick, an
American Prisoner of War, by
beating and otherwise abusing him.
- j. On or about 2 April 1945, NG NG
the unlawful mistreatment of John
W Evans, an American Prisoner of
War, by beating and otherwise
abusing him.
- k. On or about 27 May 1945, NG G Yes
the unlawful mistreatment of Floyd
F Fielder, an American Prisoner
of War, by beating and otherwise
abusing him.
- l. On or about 30 May 1945, NG G Yes
and on several succeeding days,
the unlawful mistreatment of
Robert L Fink, an American Prisoner
of War, by beating and otherwise
abusing him.

m. On or about 7 August 1945, the unlawful mistreatment of Vincent A Gaudiani, an American Prisoner of War, by beating and otherwise abusing him.	NG	G	Yes
n. On or about 29 May 1945, the unlawful mistreatment of Nick Gazibara, Jr, an American Prisoner of War, by beating and otherwise abusing him.	NG	G	Yes
o. On or about 7 April 1945, the unlawful mistreatment of Arthur A Gora, an American Prisoner of War, by beating and otherwise abusing him.	NG	G	Yes
p. In or about June or July 1945, the unlawful mistreatment of Franklyn S Green, an American Prisoner of War, by beating and otherwise abusing him.	NG	G	Yes
q. In or about May and June 1945, the unlawful mistreatment of James L Green, an American Prisoner of War, by beating, kicking, and otherwise abusing him.	NG	G	Yes
r. On or about 30 May 1945, the unlawful mistreatment of Glen B Guyton, an American Prisoner of War, by beating and otherwise abusing him.	NG	G	Yes
s. On or about 26 May 1945, the unlawful mistreatment of Wesley C Halbert, an American Prisoner of War, by beating and otherwise abusing him.	NG	G	Yes
t. On or about 28 May 1945, the unlawful mistreatment of Rollin E Heidlebaugh, an American Prisoner of War, by beating and otherwise abusing him.	NG	G	Yes
u. On or about 27 May 1945, the unlawful mistreatment of Harvey H Hoffman, an American Prisoner of War, by beating and otherwise abusing him.	NG	G	Yes
v. On or about 1 June 1945, the unlawful mistreatment of Dale L Johnson, an American Prisoner of War, by beating and otherwise abusing him.	NG	G	Yes
w. On or about 26 May 1945, the unlawful mistreatment of Robert P Jones, Jr, an American Prisoner of War, by beating and otherwise abusing him.	NG	G	Yes

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x. Between about 21 July 1945 and 15 August 1945, the unlawful mistreatment of Gordon P Jordon, an American Prisoner of War, by beating and otherwise abusing him. NG G Yes

y. On or about 10 June 1945, the unlawful mistreatment of Sherwood C Kiornan, an American Prisoner of War, by beating and otherwise abusing. NG G Yes

z. Between 2 April 1945 and August 1945, the unlawful mistreatment of Sylvio LaMarca, an American Prisoner of War, by beating and otherwise abusing him. NG G Yes

aa. On or about 26 May 1945, the unlawful mistreatment of John C Lamon, an American Prisoner of War, by beating and otherwise abusing him. NG G Yes

bb. Between 24 May 1945 and 15 August 1945, the unlawful mistreatment of James T Macomb, an American Prisoner of War, by beating and otherwise abusing him. NG NG

cc. Between 30 May 1945 and 15 August 1945, the unlawful mistreatment of James P Martin, an American Prisoner of War, by beating and otherwise abusing him. NG G Yes

dd. Between 24 May 1945 and 15 August 1945, the unlawful mistreatment of William H McClure, an American Prisoner of War, by beating and otherwise abusing him. NG G Yes

ee. On or about 27 May 1945, the unlawful mistreatment of Robert F Michelsen, an American Prisoner of War, by beating, kicking, and otherwise abusing him. NG NG

ff. On or about 26 May 1945, the unlawful mistreatment of Delbert W Miller, an American Prisoner of War, by beating, kicking, and otherwise abusing him. NG G Yes

gg. On or about 30 May 1945, the unlawful mistreatment of Wallace Moritz, an American Prisoner of War, by beating, and otherwise abusing him. NG G Yes

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hh. On or about June or July 1945, the unlawful mistreatment of John H Newcomb, an American Prisoner of War, by beating and otherwise abusing him. NG G Yes

ii. On or about 31 May 1945, the unlawful mistreatment of Walter W Oestreich, an American Prisoner of War, by beating and otherwise abusing him. NG G Yes

jj. On or about 26 May 1945, the unlawful mistreatment of Edward F O'Mara, an American Prisoner of War, by beating and otherwise abusing him. NG G Yes

kk. In or about June or July 1945, the unlawful mistreatment of Thomas W Peel, an American Prisoner of War, by beating and otherwise abusing him. NG G Yes

ll. In or about June 1945, the unlawful mistreatment of Patrick E Pellecchiâ, an American Prisoner of War, by beating and otherwise abusing him. NG G Yes

mm. On or about 25 May 1945, the unlawful mistreatment of Robert G Phillips, an American Prisoner of War, by beating and otherwise abusing him. NG G Yes

nn. On or about 5 May 1945, the unlawful mistreatment of Warren H Ransler, an American Prisoner of War, by beating and otherwise abusing him. NG G Yes

oo. On or about 26 May 1945, the unlawful mistreatment of Clarence P Reams, an American Prisoner of War, by beating and otherwise abusing him. NG G Yes

pp. On or about 29 May 1945, the unlawful mistreatment of Harmon Reeder, Jr, an American Prisoner of War, by beating and otherwise abusing him. NG G Yes

qq. On or about 2 April 1945, the unlawful mistreatment of Francis E Reynolds, an American Prisoner of War, by beating and otherwise abusing him. NG NG

rr. On or about 26 May 1945, the unlawful mistreatment of Michael J Robertson, an American Prisoner of War, by beating and otherwise abusing him. NG G Yes

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ss. On or about 24 May 1945, NG G Yes
the unlawful mistreatment of Albert
S Romoser, an American Prisoner of
War, by beating and otherwise
abusing him.

tt. Between 24 May and 10 NG G Yes
June 1945, the unlawful mistreat-
ment on three different occasions
of William P Rosenthal, an
American Prisoner of War, by
beating and otherwise abusing him.

uu. In or about April 1945, NG G Yes
the unlawful mistreatment on three
different occasions of Maurice W
San Souci, an American Prisoner
of War, by beating and otherwise
abusing him.

vv. In or about April 1945, NG G Yes
the unlawful mistreatment of
Norman Sellz, an American Prisoner
of War, by slapping and kicking
him.

ww. On or about 1 June 1945, NG G Yes
the unlawful mistreatment of Harry
Slater, an American Prisoner of
War, by beating and otherwise
abusing him.

xx. On or about 26 May 1945, NG G Yes
the unlawful mistreatment of Abel
P Soto, an American Prisoner of
War, by beating and otherwise
abusing him.

yy. In April 1945, the un- NG G Yes
lawful mistreatment, on two
separate occasions, of Ferdinand
A Spacal, an American Prisoner of
War, by beating and otherwise
abusing him.

aaa. On or about 25 May 1945, NG G Yes
the unlawful mistreatment of Roger
L Townsend, an American Prisoner
of War, by beating and otherwise
abusing him.

bbb. Between 21 July and 15 NG G Yes
August 1945, the unlawful mis-
treatment of Paul A Trump, an
American Prisoner of War, by
beating and otherwise abusing him.

ccc. In or about July or NG G Yes
August 1945, the unlawful mis-
treatment of Marvin S Watkins,
an American Prisoner of War, by
beating and otherwise abusing him.

xxx. On divers times between 1 April 1945 and 15 August 1945, the unlawful mistreatment of numerous American Prisoners of War, by beating and otherwise abusing them.

Add Sp 1: That on or about 10 May 1945, accused, did willfully and unlawfully order, direct, and permit Toshitsura Hasebe, a medical officer, to kill an unidentified American Prisoner of War.

NG

G

Yes

except the word "order". Of the excepted word NG.

Add Sp 2: That in or about June 1945, accused, did willfully and unlawfully order, direct, and permit Shinichi Morisue, a medical officer, to kill an unidentified American Prisoner of War.

NG

G

Yes

except the word "order". Of the excepted word NG.

NOBUSHIGE WACHI:

Charge: Accused, Second Lieutenant in the Imperial Japanese Army, during a time of war between the United States of America, its Allies and Dependencies, and Japan, did violate the Laws and Customs of War.

NG

G

Yes

except the words "second lieutenant" and substituting therefore "Warrant Officer". Of the excepted words NG. Of the substituted words G.

Sp 1: That between 20 August 1944 and about 1 April 1945, accused, did willfully and unlawfully disregard and fail to discharge his duty to American Prisoners of War, by failing to provide adequate and proper quarters, clothing, food and water, hygiene, medicines, medical care and attention, and hospitalization, thereby causing and contributing to the sicknesses, wounds, diseases, disabilities, and sufferings of about 60 American Prisoners of War.

NG

NG

Sp 2: That between 20 August 1944 and about 1 April 1945, accused, did willfully and unlawfully disregard and fail to perform his duty to American Prisoners of War, by failing to provide adequate and proper quarters, clothing, food and water, hygiene, medicines, medical care and attention, and hospitalization, thereby causing and contributing to the sicknesses, diseases, wounds, sufferings, and the deaths on or about the date indicated; of the American Prisoners of War.

NG

NG

Sp 3: That between about 1 April 1945 and 15 August 1945, accused, did willfully and unlawfully disregard and fail to discharge his duty to American Prisoners of War by failing to provide adequate and proper quarters, clothing, food and water, hygiene, medicines, medical care, and hospitalization, thereby causing and contributing to the sicknesses, wounds, diseases, infirmities, disabilities, and sufferings, of about 200 American Prisoners of War. NG NG

Sp 4: That between about 1 April 1945 and 15 August 1945, accused, did willfully and unlawfully disregard and fail to discharge his duty to American Prisoners of War by failing to provide adequate and proper quarters, clothing, food and water, hygiene, medicines, medical care, and hospitalization, thereby causing and contributing to the sicknesses, wounds, diseases, infirmities, disabilities, sufferings, and deaths on or about the dates indicated, of American Prisoners of War. NG NG

Sp 5: That between 20 August 1944 and 15 August 1945, accused, as the Commander of the Detention Camp, did willfully and unlawfully mistreat and otherwise abuse about 200 American Prisoners of War. NG G Yes
 except the words "Commander of the Detention Camp" and substituting therefore "Supervisor of the Detention Cell Blocks". Of the excepted words NG. Of the substituted words G.

a. By not permitting the prisoners to talk to each other; NG NG (R 973)

b. By not permitting the prisoners to wash themselves or their clothing; NG G Yes

c. By not permitting the prisoners to shave or have their haircut; NG NG

d. By intermittently withholding daily food and water rations from the prisoners; NG NG (R 973)

e. In several instances, by locking about 19 prisoners into one filthy, unventilated, vermin infested cell, and detaining them there many weeks; NG NG

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- f. By permitting the taking and withholding the shoes and socks of the prisoners; NG NG (R 973)
- g. By permitting the guards under his control to throw on the cell floors the daily food rations intended for consumption by the prisoners; NG NG
- h. By not permitting the prisoners to exercise; NG NG
- i. By permitting the guards under his control to torture prisoners by various means, such as kicking and beating them upon their wounds, and forcing them to stand at attention or to squat Japanese fashion for long periods of time, resulting in the prisoner's loss of consciousness in many cases; NG G Yes
- j. By permitting the guards under his control to beat, slap, kick, poke with sticks, spit on, and threaten with guns, the prisoners; NG G Yes
- k. By failing to isolate seriously wounded, sick, diseased, and infected prisoners from other prisoners; NG NG
- l. By refusing medicine, medical treatment, and hospitalization to seriously wounded and diseased prisoners; and, NG NG
- m. By otherwise failing to treat said prisoners with humanity, thereby causing the said prisoners extreme pain, suffering, and misery. NG NG (R 973)
- Sp 6: That between 20 August 1944 and 15 August 1945, accused, as the Commander of the Detention Camp, did willfully and unlawfully disregard and fail to discharge his duty to control and restrain persons under his supervision and control, by permitting them to commit the following atrocities and other offenses against American Prisoners of War. NG G Yes
except the words "Commander of the Detention Camp" and substituting therefore the words "Supervisor of the Detention Cell Blocks". Of the excepted words NG. Of the substituted words G.
- a. That on or about 25 July 1945, the unlawful mistreatment by guards of First Lieutenant Robert L Fink, an American Prisoner of War, by beating and otherwise abusing him; NG G Yes

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b. That on or about 25 July 1945, the unlawful mistreatment, by guards of Staff Sergeant Dennis E Tyring, an American Prisoner of War, by beating and otherwise abusing him; NG G Yes

c. That on or about 27 May 1945, the unlawful mistreatment, by guards, of Second Lieutenant Patrick E Pellecchia, an American Prisoner of War, by beating and otherwise abusing him; NG G Yes

d. That at divers times between 27 January 1945 and April 1945, the unlawful mistreatment of Sergeant Olinto F Lodovici, an American Prisoner of War, by beating him and otherwise abusing him; NG NG (R 973)

e. That on or about 30 May 1945, the unlawful mistreatment, by guards, of Corporal James L Green, an American Prisoner of War, by beating, bayonetting, and otherwise abusing him. NG G except the word "bayonetting". Of the excepted word NG. Yes

f. That between 25 May 1945 and 15 August 1945, the unlawful mistreatment, by guards, of Corporal Albert P Lounsbury, an American Prisoner of War, by forcing him to stand for long periods of time while suffering from a broken ankle and otherwise abusing him; NG G Yes

g. That between 15 July 1945 and 15 August 1945, the unlawful mistreatment, by guards, of Samuel S Smith, an American Prisoner of War, by intermittent beating, kicking, and otherwise abusing him; NG G Yes

h. That on or about 1 August 1945, the unlawful mistreatment, by a guard, of Sergeant Robert A Franz, an American Prisoner of War, by striking him in the face with a stick, and by otherwise abusing him; NG G Yes

i. That in or about June 1945, the unlawful mistreatment, by a guard, of Second Lieutenant Arthur M Sholton, an American Prisoner of War, by beating him on his wounds, accentuating the pain and suffering therefrom, and otherwise abusing him; NG G Yes

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j. That on or about 29 May 1945, the unlawful mistreatment, by a guard, of Nick Gazibara, an American Prisoner of War, by beating and otherwise abusing him; NG G Yes

k. That on or about 14 April 1945, the unlawful mistreatment by a guard and one Kobayashi, of John S Houghton, an American Prisoner of War, thereby contributing to his death on or about said date; and, NG NG

x. At divers times the unlawful mistreatment of numerous American Prisoners of War, other than as hereinbefore specified, by beating and otherwise abusing them. NG NG

Sp 7: That on or about 10 March 1945, accused, Commander of the Tokyo Kempei-Tai Detention Camp, did willfully and unlawfully mistreat one Glenn Hodak, an American Prisoner of War, and one Laverne Zehler, an American Prisoner of War, by beating, kicking, and otherwise abusing them. NG G Yes
except the words "Commander of the Detention Camp" and "One Glenn Hodak, an American prisoner of war, and one Laverne Zehler, an American prisoner of war" and substituting therefore respectively "Supervisor of the Detention Cell Blocks" and "Two unidentified American prisoners of war". Of the excepted words NG. Of the substituted words G.

Sp 8: That at divers times between 20 August 1944 and 15 August 1945, accused, did willfully and unlawfully mistreat numerous American Prisoners of War, other than as hereinbefore specified, by beating and otherwise abusing them. NG NG

RANJO FUJINO:

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: That between about 20 August 1944 and about 1 April 1945, accused, did willfully and unlawfully disregard and fail to discharge his duty, by failing NG NG

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to provide adequate and proper quarters, clothing, food and water, hygiene, medical care and supplies, and hospitalization, thereby causing and contributing to the sicknesses, diseases, wounds, disabilities, and sufferings of about 60 American Prisoners of War.

Sp 2: That between 20 August 1944 and 1 April 1945, accused, did willfully and unlawfully disregard and fail to discharge his duty, by failing to provide adequate and proper quarters, clothing, food and water, hygiene, medical care and supplies, and hospitalization, thereby causing and contributing to the sicknesses, diseases, wounds, disabilities, sufferings, and the deaths on or about the dates indicated, of American Prisoners of War.

NG

NG

Sp 3: That between about 1 April 1945 and 15 August 1945, accused, as Deputy Commander, did willfully and unlawfully disregard and fail to discharge his duty, by failing to provide adequate and proper quarters, clothing, food and water, hygiene, medical care and supplies, and hospitalization, thereby causing and contributing to the sicknesses, diseases, wounds, disabilities and sufferings of about 200 American Prisoners of War, including the following: Harold J. Anderson, Jack G. Evans, Robert L. Fink, Edward Gorrio, Franklyn S. Green, Maynor B. Hanks, Fiske Hanley, Edward I. Karna, Albert P. Lounsbury, Glidden C. Lurvey, John F. McGuire, Frank G. Massey, Joe L. McQuade, Lester C. Morris, Robert E. Ring, Michael J. Robertson, William P. Rosenthal, Arthur M. Shelton, and Dennis E. Tyring.

NG

G

Yes, in part

except the words "Deputy Commander", "willfully and", "causing and", "about 200", "Edward I. Karna", substituting the words "Senior Staff Officer" for "Deputy Commander". Of the excepted words NG. Of the substituted words G.

Sp 4: That between about 1 April 1945 and 15 August 1945, accused, as Deputy Commander, did willfully and unlawfully refuse, neglect, and fail to provide adequate and proper quarters, clothing, food and water, hygiene, medical care and treatment, and hospitalization, to the American Prisoners of War, thereby causing and contributing to the sicknesses, wounds, diseases, sufferings, and the deaths, on or about the dates indicated, of the following named American Prisoners

NG

G

Yes, in part

except the words "Deputy Commander", "willfully and", "refuse", "causing and", "Corp. Seth Rigby, 15 April 1945", "Corp. Stanley Forystok 27 May 1945", "Corp. Elmer H. Bertsch, 26 May 1945", "Sgt. Kenneth Petterson, 14 May 1945" and

of War: Second Lieutenant John S Houghton, 14 April 1945; Corporal Seth Rigby, 15 April 1945; Second Lieutenant Roland F. Nelson, 18 April 1945; Sergeant William H. Osborn, 20 April 1945; Sergeant Walter E. Walk, 1 May 1945; Master Sergeant Erwin R. Griffin, 24 April 1945; Corporal Stanley Forystek, 27 May 1945; Corporal Elmer H. Bertsch, 26 May 1945; Second Lieutenant Robert L. Williams, 26 June 1945; Sergeant Warren L. Olson, 5 June 1945; Sergeant Harold E. Halldorson; 5 June 1945; Sergeant Charles W. Snell, 5 June 1945; Second Lieutenant Theodore H. Fox, 3 August 1945; Second Lieutenant George L. Sheridan, 29 August 1945; and, Sergeant Kenneth Petterson, 14 May 1945.

"29 August 1945".
Substituting "Senior Staff Officer" for "Deputy Commander" and "29 October 1945" for "29 August 1945".
Of the excepted words NG. Of the substituted words G.

Sp 5: That between about 20 August 1944 and 15 August 1945, accused, did willfully and unlawfully mistreat and otherwise abuse the said Prisoners of War; NG NG

a. By not permitting the prisoners to talk to each other; NG NG (R 974)

b. By not permitting the prisoners to wash themselves or their clothing; NG NG

c. By not permitting the prisoners to shave or have their hair cut; NG NG

d. By permitting intermittent withholding of the daily food and water rations from the prisoners; NG NG (R 974)

e. In several instances, by permitting persons under his control to lock about 19 prisoners into one filthy, unventilated, vermin-infested cell, and to detain them there many weeks; NG NG

f. By taking and withholding the shoes and socks of the prisoners; NG NG (R 974)

g. By permitting persons under his control to throw on the floor the daily food rations intended for consumption by the prisoners; NG NG

h. By not permitting the prisoners to exercise; NG NG

i. By permitting persons under his control to torture prisoners by various means, such as kicking and beating them upon their wounds, and forcing them to stand at attention or to squat Japanese fashion for long periods of time, resulting in the prisoner's loss of consciousness in many cases; NG NG

j. By permitting persons under his control to slap, kick, poke with sticks, spit on, and threaten with guns, the prisoners; NG NG

k. By failing to isolate seriously wounded, sick, diseased, and infected prisoners from other prisoners; NG NG

l. By refusing available medicine, medical treatment, and hospitalization to seriously wounded and diseased prisoners; and, NG NG

m. By otherwise failing to treat said prisoners with humanity, thereby causing the said prisoners extreme pain, suffering, and misery. NG NG

Sp 6: That between about 1 April 1945 and 15 August 1945, accused, as Deputy Commander, did willfully and unlawfully disregard and fail to discharge his duty to control and restrain persons under his control, by permitting them to unlawfully mistreat numerous American Prisoners of War by beating, kicking and otherwise abusing them. NG G Yes
except the words "Deputy Commander" and "willfully and", substituting "Senior Staff Officer" for "Deputy Commander". Of the excepted word NG, of the substituted words G.

TSUNE NEMOTO:

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: That between 20 August 1944 and 1 April 1945, accused, did willfully and unlawfully disregard and fail to discharge his duty to said American Prisoners of War by failing to provide adequate and proper quarters, hygiene, food and water, clothing, medicines, medical care and attention, and hospitalization, thereby contributing to the sicknesses, wounds, diseases, disabilities, and sufferings of about 50 American Prisoners of War. NG NG

Sp 2: That between 20 August 1944 and 1 April 1945, accused, did willfully and unlawfully disregard and fail to perform his duty to the said prisoners by failing to provide adequate and proper quarters, clothing, hygiene, food and water, medicines, medical care and attention, and hospitalization, thereby causing and contributing to the sicknesses, wounds, diseases, sufferings, and deaths on or about the dates indicated, of the prisoners of war.

NG

NG

Sp 3: That between 20 August 1944 and 1 April 1945, accused, as Intelligence Section Chief, did willfully and unlawfully disregard and fail to discharge his duty to control and restrain members of his command and persons under his supervision and control, by permitting them to beat, torture, and use coercion against, about 50 American Prisoners of War, including the following: Richard R Bishop, Vere D Carpenter, Paul M Clark, Robert F Goldsworthy, Charles M Howard, Melvin L Johnston, Mark S Kennard, Gerald B Livingston, Olinto F Lodovici, Irving S Newman, John P Nicholson, and William R Rewitz, for the purpose of obtaining from the said prisoners information not required to be given, and by permitting them to otherwise abuse the said prisoners.

NG

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Yes

except the words "section chief", "about 50", "Vere D. Carpenter", "Robert F. Goldsworthy", "Melvin L. Johnson", "Mark S. Kennard", "Gerald B. Livingston", "John P. Nicholson", substituting therefore "Squad Leader" for "Section Chief". Of the excepted words NG. Of the substituted words G.

Sp 4: That on or about 20 March 1945, accused, did willfully and unlawfully order Kenji Hirano, a medical officer, to kill Jack D Krone, an American Prisoner of War, by injecting poison into the said Prisoner of War, and did thereby cause the death of the said Prisoner of War.

Nolle Prossed (R 5)

Sp 5: That at divers times between 20 August 1944, and 1 April 1945, accused, as Intelligence Section Chief, did willfully and unlawfully mistreat numerous American Prisoners of War other than as hereinbefore specified.

NG

G

Yes

except the words "Section Chief", "Numerous American prisoners of war other than as hereinbefore specified", substituting therefore "Squad Leader" and "Col. Richard H. Carmichael, an American Prisoner of war". Of the excepted words NG. Of the substituted words G.

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3. Summary of the Evidence:

a. For the Prosecution:

KONO:

As to Specification 1 and 2 and the Charge (Shoji Kono),
Not Guilty.

TOYAMA:

The accused, Toshio Toyama, was a lieutenant in the Imperial Japanese Army assigned for duty as Chief of the Intelligence Section, Eastern District Kempei-Tai Headquarters, located in Tokyo, Honshu, Japan, from 1 April 1945 to 15 August 1945. Under the then existing regulations, captured American airmen were forwarded to and detained at the headquarters for interrogation and investigation pending disposition either as prisoners of war or as suspected war criminals. Accused, by duty assignment, was responsible for and was in charge of the interrogation and investigation of such internees and their maintenance, care, treatment and physical well-being during the period of their detention. The violations of the laws and customs of war in the instant case occurred during the period and at the place above set forth.

As to Specification 1: Accused was found guilty of causing and contributing to the sicknesses, diseases, wounds, disabilities and sufferings of numerous American prisoners of war by reason of his willful and unlawful disregard of, and failure to discharge, his duty to provide them with adequate quarters, clothing, food and water, hygiene, medical care and supplies and hospitalization. Evidence was adduced to the effect that the cells in which the prisoners were incarcerated were dark, dirty, unventilated, vermin-infested, lacking in minimum plumbing requirements and grossly overcrowded; that the prisoners were furnished no clothing whatsoever, but were compelled to wear the apparel, if any, which they possessed at the time of their capture during the entire period of their incarceration, which in many cases, was in excess of two months; that the food allowance consisting mainly of rice was insufficient to satisfy minimum human requirements for the preservation of health and life; that no facilities were furnished to the prisoners for personal hygiene or cleanliness nor were they given an opportunity to wash either themselves or their clothing during the entire period of their confinement; that medical supplies and treatment were entirely inadequate and in most cases denied entirely in spite of the fact that numerous prisoners were suffering from serious burns, wounds, diseases, broken bones and other afflictions and were urgently in need of same; and that hospitalization was denied even in the most extreme cases. That as a result of the foregoing, the confined prisoners suffered from malnutrition, personal filth, body vermin, skin eruptions and sores, untended burns, wounds, broken bones and diseases and were reduced and degraded to a sub-human standard of existence (Ex 46, 47, 48, 49, 50, 51, 54, 55, 57 p 2 and 3, 58 p 2 and 3, 59, 61, 62 p 2 and 3, 64 p 2 and 3, 65, 66, 69, 70 p 1 and 3, 71, 72, 73, 74, 75, 77, 78, 79, 84, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 103 p 3 and 4, 105, 106 p 2 and 3, 108, 109, 110, 112, 113, 116 p 3, 5 and 6, 118, 119 p 2 and 3, 120, 121 p 5, 123, 124, 125, 125a, 126, 128, 129, 130, 132, 135 p 3, 4 and 5, 136 p 3, 139 p 4 and 5, 140 p 6, 145, 145a, 146, 152, 155, 156, 157, 159, 160, 165 p 5, 168, 169 p 2, 171 p 3, 4 and 6, 174 p 4; R 42, 151, 269, 270, 271, 272, 273, 279, 286, 296, 343, 350, 351, 357, 361, 362, 388, 389, 400, 470, 477, 488, 544, 553, 556, 569, 570, 572, 573, 576, 595, 596, 603, 605, 606, 609, 612, 617, 640, 641, 642, 644, 652, 678, 710, 711, 730, 731, 759, 760, 766, 767, 778, 785, 786, 798, 800, 846, 847).

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As to Specification 2: Accused was found guilty of contributing to the sicknesses, wounds, diseases, sufferings and the deaths of fourteen (14) named American prisoners of war by reason of his willful and unlawful neglect and failure to discharge his duty to provide them with adequate quarters, clothing, food and water, hygiene, medical care and treatment and hospitalization. Evidence was adduced to the effect that by reason of the conditions which prevailed in the detention cells as set forth above and because of the lack of medical care, treatment and hospitalization the following named American prisoners of war suffering from various untended physical afflictions contracted at the time of apprehension, or subsequently while in confinement, died, on or about the dates indicated as a direct proximate result thereof:

Stanley Forystek - 27 May 1945
Theodore H. Fox - 3 August 1945
Erwin R. Griffin - 24 April 1945
John S. Houghton - 14 April 1945
Harold E. Halldorsen - 5 June 1945
Francis F. Jensen - 8 June 1945
Roland F. Nelson - 15 April 1945
William H. Osborn - 20 April 1945
Warren L. Olson - 5 June 1945
Kenneth Petterson - 14 May 1945
Charles W. Snell - 4 June 1945
George L. Sheridan - 29 October 1945
Walter E. Walk - 1 May 1945
Robert L. Williams - 26 June 1945

(Ex 46, 49, 50, 51, 52, 53, 54, 55, 57 p 2, 58 p 3, 59, 60, 62 p 2, 70 p 2 and 3, 71, 74, 75, 77, 79, 80, 84, 85, 86, 89, 90, 92, 93, 94, 95, 96, 97 p 3, 98, 99, 100, 101, 102 p 4, 103 p 3 and 4, 105, 106 p 2, 107, 109, 110, 111, 112, 113, 114, 116 p 2, 3 and 4, 117 p 3, 4 and 5, 118, 119 p 3 and 4, 121 p 4 and 5, 123, 124, 126, 127, 128, 129 p 2, 135 p 3, 136, 139 p 3 and 4, 145, 145a, 148 p 1, 3, 4, 7, 9, 10, 12, 13, 14, 15, 16, 17, 18; 151 p 3, 4, 5, 6, 7, 8, 9, 10, 11, 12; 152, 153, 154, 155, 156, 160, 162, 165 p 5, 168, 169 p 2, 171 p 7, 174 p 4; R 151, 274, 275, 276, 277, 286, 287, 335, 351, 361, 362, 368, 440, 477, 553, 554, 569, 572, 573, 576, 732, 733, 734, 764, 765, 809, 811, 813, 814, 815, 867).

As to Specification 3: Accused was found guilty of willfully and unlawfully mistreating and otherwise abusing American prisoners of war as hereinafter set forth in the sub-specifications:

As to Specification 3a: Not Guilty (R 974).

As to Specification 3b: Evidence was adduced to the effect that prisoners were furnished no facilities nor were they permitted to wash themselves or their clothing during the entire period of their confinement which in many cases was in excess of two months (Ex 45, 51, 55, 58 p 2 and 4, 64 p 2, 92, 94, 97, 108, 116 p 5, 135 p 4, 159, 165 p 2 and 5, 168, 169 p 2, 171 p 4 and 7, 174 p 4; R 270, 400, 470, 617, 647, 791).

As to Specification 3c: Evidence was adduced to the effect that the prisoners were furnished no facilities nor were they permitted to shave or have their hair cut during the entire period of their confinement which in many cases was in excess of two months (Ex 51, 55, 58 p 2, 92, 94, 116 p 5, 165 p 5, 168, 169 p 2, 171 p 4, 174 p 4; R 270).

As to Specification 3d: Not Guilty (R 974).

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As to Specification 3e: Evidence was adduced to the effect that prisoners were incarcerated in grossly overcrowded cells, as many as nineteen (19) men at times being confined in one dirty, poorly ventilated, vermin infested cell, approximately 8½' wide by 11' long by 8' high, so that they had insufficient space to move about or to sleep upon the floor (Ex 46, 49, 50, 55, 58 p 2, 61, 62 p 1, 64 p 2, 70 p 2, 72, 75, 76, 78, 80, 85, 86, 87, 88, 90, 93, 95, 97, 98, 99, 102 p 3, 103 p 2, 107, 111, 113, 117 p 3, 118, 125, 125a, 126, 127, 165 p 5, 168, 169 p 2, 174 p 4; R 269, 270, 285, 400, 710).

As to Specification 3f: Not Guilty (R 974).

As to Specification 3g: Not Guilty.

As to Specification 3h: Not Guilty.

As to Specification 3i: Evidence was adduced to the effect that during interrogation, subordinates of accused beat and kicked numerous prisoners upon their wounds and forced them to stand at attention or to squat Japanese fashion for long periods of time (Ex 16 p 8, 48, 49, 50, 51, 52, 53, 57 p 3, 58 p 2 and 5, 59, 61, 64 p 2, 73, 74, 102 p 3, 106 p 2, 109, 111, 112, 113, 116 p 2 and 3, 119 p 2, 124, 126, 135 p 2, 135a, 139 p 2 and 4, 140 p 5 and 6, 147, 159, 165 p 5; R 267, 331, 334, 335, 348, 349, 351, 353, 358, 383, 397, 398, 439, 462, 751).

As to Specification 3j: Evidence was adduced to the effect that during interrogation sessions, subordinates of accused on numerous occasions slapped, kicked and poked the prisoners with sticks (Ex 16 p 8, 47, 48, 49, 50, 51, 52, 58 p 2 and 3, 69, 71, 73, 96, 98, 100, 108, 109, 112, 113, 115, 116 p 2 and 3, 117 p 3, 119 p 2, 121 p 4, 124, 126, 135 p 2 and 3, 140 p 6, 159, 165 p 5; R 267, 292, 295, 348, 349, 351, 353, 358, 360, 383, 428, 430, 435, 437, 439, 440, 462, 751).

As to Specification 3k: Evidence was adduced to the effect that seriously wounded, sick and diseased prisoners were not isolated or segregated from other prisoners but on the contrary were permitted to remain with them in the overcrowded cells (Ex 46, 49, 57 p 3, 58, 62 p 2, 70 p 3, 72, 88, 90, 92, 93, 94, 95, 98, 110, 128, 148 p 7 and 16, 151, 152, 155, 156, 165 p 5, 168, 169 p 2, 174 p 4).

As to Specification 3l: Not Guilty.

As to Specification 3m: Not Guilty (R 973).

As to Specification 4: Accused was found guilty of causing the death of William Henry Osborn, an American prisoner of war, by willfully and unlawfully directing one Kenji Hirano, a medical officer, to kill the said Osborn. Evidence was adduced to the effect that Hirano after being summoned to the Kempei-Tai Headquarters to render medical treatment to the prisoner Osborn, who was then suffering from severe bodily burns and in an extremely weakened condition, was directed by accused to inject a poisonous substance into the prisoner's body, which he did, causing the prisoner to expire within a few moments thereafter (Ex 137 p 2, 3 and 4, 153 p 2 and 4, 154; R 529, 530, 531, 532, 538, 547, 548, 551, 554, 809, 811, 813, 814, 815, 858, 864, 865, 867).

As to Specification 5: Accused was found guilty of willfully and unlawfully mistreating American prisoners of war by committing atrocities and other offenses against them as hereinafter set forth in the sub-specifications:

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As to Specification 5a: Not Guilty.

As to Specification 5b: Not Guilty.

As to Specification 5c: Evidence was adduced to the effect that in or about July or August 1945 during an interrogation session Gordon P. Jordan, an American prisoner of war was severely beaten about the body with a bamboo fencing stick by the accused for allegedly failing to give proper answers to questions propounded to him (Ex 83, 135 p 2, 135a p 3, 140 p 4; R 387, 388, 434).

As to Specification 5d: Not Guilty.

As to Specification 5e: Evidence was adduced to the effect that on or about 8 August 1945 during an interrogation session, Vincent A. Guadiani, an American prisoner of war, was severely beaten about the body with a bamboo fencing stick by the accused (Ex 67, 135 p 2, 135a p 6, 139 p 2 and 3, 140 p 4; R 354, 355, 364, 387, 388, 399, 432).

As to Specification 5f: Nolle Prossed (R 5).

As to Specification 6: Accused was found guilty of a willful and unlawful disregard of and a failure to perform, his duty, in that he failed to restrain subordinates under his supervision and control from committing atrocities and other offenses against American prisoners of war as hereinafter set forth in the sub-specifications:

As to Specification 6a: Evidence was adduced to the effect that in or about May or June 1945, during interrogation, Marcus H. Worde, an American prisoner of war, was severely beaten about the head and back with fists and clubs by subordinates under the supervision and control of accused and was rendered unconscious as a result thereof (Ex 47, 98, 115 p 2).

As to Specification 6b: Evidence was adduced to the effect that in or about June or July 1945 during interrogation, Charles J. Couchman, an American prisoner of war, was badly beaten by subordinates under the supervision and control of accused (Ex 51 p 1).

As to Specification 6c: Evidence was adduced to the effect that on or about 26 May 1945 while being returned to his cell after interrogation, Charles W. Snell, an American prisoner of war, who was then suffering from severe bodily burns, was beaten about the body twenty or thirty times with a bamboo stick by a civilian interpreter who was a subordinate under the supervision and control of accused. Thereafter the prisoner Snell on or about 5 June 1945, expired (Ex 52).

As to Specification 6d: Not Guilty.

As to Specification 6e: Evidence was adduced to the effect that on or about 26 May 1945 during interrogation, Loren E. Decker, an American prisoner of war, was beaten about the head, neck and back with a bamboo fencing stick for a period of about one hour and a half by a civilian interpreter who was a subordinate under the supervision and control of accused. The prisoner's head, neck and back were bruised and discolored as a result thereof (Ex 53, 54 p 1).

As to Specification 6f: Evidence was adduced to the effect that on or about 26 May 1945 during interrogation, Joseph J. Deeb, an American prisoner of war, was beaten about the head, face, back

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and legs with a bamboo fencing stick by a civilian interpreter who was a subordinate under the supervision and control of accused. The prisoner was bruised and sore about the head and body for a period of about two weeks thereafter (Ex 56, 57 p 3 and 4).

As to Specification 6g: Evidence was adduced to the effect that on or about 27 July 1945, Walter W. Dickerson, an American prisoner of war was beaten about the head and neck by one Toyokazu Hikida, a subordinate under the supervision and control of accused (Ex 58 p 2 and 5, 147).

As to Specification 6h: Evidence was adduced to the effect that on or about 30 May 1945 during interrogation, Scott M. Downing, an American prisoner of war, was struck approximately twenty-five blows about the back and legs with a bamboo fencing stick while blindfolded and handcuffed, by a subordinate under the supervision and control of accused (R 267).

As to Specification 6i: Evidence was adduced to the effect that on or about 18 April 1945 and again on 19 April 1945, Harvey M. Glick, an American prisoner of war, was beaten by one Kobayashi, a subordinate under the control and supervision of, accused. The prisoner while unconscious was kicked in the chest by Kobayashi about five (5) times and on the second occasion while blindfolded he was struck in the head with a closed fist (Ex 60 p 2).

As to Specification 6j: Not Guilty.

As to Specification 6k: Evidence was adduced to the effect that during interrogation on or about 30 May 1945, Floyd F. Fielder, an American prisoner of war, was beaten about the head and body by subordinates under the control and supervision of accused. His head and back were bruised, cut and bleeding as a result thereof (Ex 61).

As to Specification 6l: Evidence was adduced to the effect that during the month of June 1945, during interrogation, Robert L. Fink, an American prisoner of war, was beaten by subordinates under the control and supervision of accused on two separate occasions (Ex 62 p 4).

As to Specification 6m: Evidence was adduced to the effect that during interrogation on or about 7 August 1945, Vincent A. Guadiani, an American prisoner of war, while handcuffed and in a kneeling position, was severely beaten with bamboo fencing sticks, by three or four subordinates under the control and supervision of accused (Ex 67, 135 p 2, 139 p 2, 140 p 4, 147a; R 330, 331, 346, 354, 355, 387, 388, 431, 432).

As to Specification 6n: Evidence was adduced to the effect that on or about 29 May 1945 during interrogation, Nick Gazibara, an American prisoner of war, was severely beaten with a bamboo fencing stick, over a period of about two and one-half hours, by a subordinate under the control and supervision of accused. The prisoner was bruised and cut and sustained permanent scars as a result thereof (Ex 69 p 3 and 4, 135 p 2; R 433, 465, 466).

As to Specification 6o: Evidence was adduced to the effect that on or about 7 April 1945 during interrogation, Arthur A. Gora, an American prisoner of war, was beaten with fists and a bamboo fencing stick about the face and body for a period of about ten (10) minutes by Kobayashi, a subordinate under the control and supervision of accused (Ex 71).

As to Specification 6p: Evidence was adduced to the effect

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that in or about June or July 1945 during interrogation, Franklyn S. Green, an American prisoner of war, was struck by subordinates under the control and supervision of accused allegedly for failure to promptly answer questions propounded to him (Ex 74 p 2).

As to Specification 6q: Evidence was adduced to the effect that in or about May or June 1945 during interrogation, James L. Green, an American prisoner of war, was kicked and beaten by three subordinates under the control and supervision of accused (Ex 73, 147a).

As to Specification 6r: Evidence was adduced to the effect that on or about 30 May 1945 during interrogation, Glenn B. Guyton, an American prisoner of war, was struck approximately twenty or twenty-five times about the back and hips with a bamboo fencing stick while in a kneeling position by a subordinate under the control and supervision of accused. As a result thereof, he suffered a permanent injury to his left hip (Ex 75 p 2 and 4).

As to Specification 6s: Evidence was adduced to the effect that on or about 26 May 1945 during interrogation, Wesley C. Halbert, an American prisoner of war, was struck many times with a small club by a subordinate under the control and supervision of accused (Ex 76 p 2).

As to Specification 6t: Evidence was adduced to the effect that on or about 28 May 1945 during interrogation, Rollin E. Heidlebaugh, an American prisoner of war, was struck about fifty times with a bamboo fencing stick by a civilian interrogator and was beaten with fists and kicked by two military guards all of whom were subordinates under the control and supervision of accused. As a result of this beating, the prisoner's mouth was lacerated and swollen and his back was bruised and covered with welts (Ex 49, 78, 79).

As to Specification 6u: Evidence was adduced to the effect that on or about 27 May 1945 during interrogation, Harvey H. Hoffman, an American prisoner of war, was beaten with bamboo sticks and generally mauled by subordinates under the control and supervision of accused (Ex 79).

As to Specification 6v: Evidence was adduced to the effect that on or about 1 June 1945 during interrogation, Dale L. Johnson, an American prisoner of war, was beaten with a bamboo pole by a subordinate under the control and supervision of accused (Ex 81, 97).

As to Specification 6w: Evidence was adduced to the effect that on or about 26 May 1945 during interrogation, Robert P. Jones, an American prisoner of war, was kicked, beaten and finally rendered unconscious, by a civilian interrogator, subordinate to, and under the control and supervision of, accused (Ex 82).

As to Specification 6x: Evidence was adduced to the effect that from 21 July to 15 August 1945, Gordon P. Jordan, an American prisoner of war, was interrogated approximately twenty-four times, during which periods he was severely beaten with bamboo sticks and sheathed sabers and was forced to lie on the floor while his interrogator walked upon his body, all of which, was done by subordinates under the supervision and control of accused (Ex 83, 135 p 2, 135a, 147; R 387, 388, 434).

As to Specification 6y: Evidence was adduced to the effect that on or about 10 June 1945, Sherwood C. Kiernan, an American prisoner of war, was beaten with a bamboo pole while blindfolded and handcuffed, by a civilian interrogator, subordinate to, and under the supervision and control of, the accused (Ex 84).

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As to Specification 6z: Evidence was adduced to the effect that during the period from 2 April 1945 to 8 August 1945, Sylvio LaMarço, an American prisoner of war, was interrogated on eight or nine separate occasions during which he was beaten and struck with a bamboo stick, by Kobayashi, a subordinate under the supervision and control of accused (Ex 85).

As to Specification 6aa: Evidence was adduced to the effect that on or about 26 May 1945 during interrogation, John C. Lamon, an American prisoner of war, was beaten about the back with a bamboo stick by subordinates under the supervision and control of accused (Ex 86).

As to Specification 6bb: Not Guilty.

As to Specification 6cc: Evidence was adduced to the effect that on or about 30 May 1945 during interrogation, James P. Martin, an American prisoner of war, was beaten by three subordinates, under the supervision and control of accused (Ex 94).

As to Specification 6dd: Evidence was adduced to the effect that on or about 24 May 1945 during interrogation, William H. McClure an American prisoner of war, was beaten with a bamboo pole by subordinates under the supervision and control of accused (Ex 90).

As to Specification 6ee: Not Guilty.

As to Specification 6ff: Evidence was adduced to the effect that on or about 26 May 1945 during interrogation, Delbert W. Miller, an American prisoner of war, was struck several blows upon the head by subordinates under the supervision and control of accused (Ex 97).

As to Specification 6gg: Evidence was adduced to the effect that on or about 30 May 1945 during interrogation, Wallace Moritz, an American prisoner of war, was struck about the head and back with a bamboo pole by a subordinate under the control and supervision of accused (Ex 98).

As to Specification 6hh: Evidence was adduced to the effect that in or about June 1945 during interrogation, John H. Newcomb, an American prisoner of war, was beaten by a subordinate under the supervision and control of accused (Ex 97 p 3).

As to Specification 6ii: Evidence was adduced to the effect that on or about 31 May 1945 during interrogation, Walter W. Oestreich, an American prisoner of war, was severely beaten about the head with a bamboo club by an interrogator causing him to lose consciousness. Upon regaining consciousness, he was kicked in the chest by a guard. Both the interrogator and the guard were subordinates under the supervision and control of accused (Ex 84, 97, 100).

As to Specification 6jj: Evidence was adduced to the effect that on or about 26 May 1945 during interrogation, Edward F. O'Mara, an American prisoner of war, was struck about the head and shoulders with a bamboo rod and fists by a subordinate under the supervision and control of accused (Ex 101, 102 p 3).

As to Specification 6kk: Evidence was adduced to the effect that in or about June or July 1945 during interrogation, Thomas W. Peel, an American prisoner of war, was beaten on several occasions with a bamboo fencing stick by one Hikida, a subordinate under the supervision and control of accused (Ex 103 p 4, 147).

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As to Specification 6ll: Evidence was adduced to the effect that in or about June 1945 during an interrogation, Patrick E. Pellecchia, an American prisoner of war, was severely beaten with bamboo poles by subordinates under the supervision and control of accused and was rendered unconscious as a result thereof (Ex 104).

As to Specification 6mm: Evidence was adduced to the effect that during an interrogation, Robert G. Phillips, an American prisoner of war, was beaten with a bamboo pole by Kobayashi, a subordinate under the supervision and control of accused (Ex 105).

As to Specification 6nn: Evidence was adduced to the effect that on or about 5 May 1945 during interrogation, Warren H. Ransler, an American prisoner of war, was beaten with a bamboo fencing stick and kicked by subordinates under the supervision and control of accused, (Ex 106 p 2).

As to Specification 6oo: Evidence was adduced to the effect that on or about 26 May 1945 during interrogation, Clarence P. Reams, an American prisoner of war, was beaten with a bamboo pole by Kobayashi, a subordinate under the supervision and control of accused (Ex 107).

As to Specification 6pp: Evidence was adduced to the effect that on or about 29 May 1945, Harmon Reeder, an American prisoner of war, was severely beaten about the hips and head with a bamboo club by a subordinate under the supervision and control of accused (Ex 108).

As to Specification 6qq: Not Guilty.

As to Specification 6rr: Evidence was adduced to the effect that on or about 26 May 1945 during interrogation, Michael J. Robertson, an American prisoner of war, was beaten with a bamboo club by subordinates under the supervision and control of accused. At the time of such beating, the prisoner was suffering from flak wounds in both legs (Ex 111, 112).

As to Specification 6ss: Evidence was adduced to the effect that on or about 26 May 1945 during interrogation, Albert S. Romoser, an American prisoner of war, while blindfolded was struck several times by subordinates under the supervision and control of accused (Ex 113 p 2).

As to Specification 6tt: Evidence was adduced to the effect that between 24 May 1945 and 10 June 1945 on three separate occasions during interrogation, William P. Rosenthal, an American prisoner of war, was beaten with a bamboo fencing stick, slapped and generally mauled by subordinates under the supervision and control of accused (Ex 114, 129).

As to Specification 6uu: Evidence was adduced to the effect that in the month of April 1945 during interrogation, Maurice W. SanSouci, an American prisoner of war, was beaten with a bamboo club and fists about the face and body by Kobayashi and other subordinates under the supervision and control of accused (Ex 116 p 5).

As to Specification 6vv: Evidence was adduced to the effect that in or about April 1945 during interrogation on four or five different occasions, Norman Sellz, an American prisoner of war, was beaten, slapped and kicked by subordinates under the supervision and control of accused (Ex 117 p.2 and 3).

As to Specification 6ww: Evidence was adduced to the effect that on or about 1 June 1945 during interrogation, Harry Slater, an

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As to Specification 5m: Not Guilty (R 973).

As to Specification 6: Accused was found guilty of a willful and unlawful disregard of and a failure to perform his duty in that he failed to control and restrain persons under his supervision and control from committing atrocities and other offenses against American prisoners of war as hereinafter set forth in the sub-specifications.

As to Specification 6a: Evidence was adduced to the effect that on or about 25 July 1945, Robert L. Fink, an American prisoner of war, while in confinement in the detention cell block, was severely beaten, kicked and struck with bamboo clubs about the head, face and body by four cell guards who were under the supervision and control of accused. This beating was allegedly administered because the prisoner was caught whispering to a fellow prisoner (Ex 46, 62 p 3, 70 p 3, 74, 90, 95, 115, 126 p 3, 128).

As to Specification 6b: Evidence was adduced to the effect that on or about 25 July 1945 while in confinement in the detention cell block, Dennis E. Tying, an American prisoner of war, was severely beaten, kicked and struck with bamboo clubs and gun butts about the head, face and body by four cell guards who were under the supervision and control of accused. The beating was allegedly administered because the prisoner was caught whispering to a fellow prisoner. He was rendered unconscious by the beating and sustained a deep head wound which bled profusely (Ex 58 p 4, 62 p 3, 70 p 3, 74, 95, 108, 115, 126 p 3, 128).

As to Specification 6c: Evidence was adduced to the effect that on or about 2 July 1945, Patrick E. Pellecchia, an American prisoner of war, was severely beaten with bamboo canes by two military guards under the supervision and control of accused allegedly for talking to a fellow prisoner (Ex 60 p 2).

As to Specification 6d: Not Guilty (R 973).

As to Specification 6e: Evidence was adduced to the effect that while in confinement in the detention cell block on or about 30 May 1945, James L. Green, an American prisoner of war, was beaten and struck with a bamboo club upon a neck wound from which he was suffering and which was then in a swollen and infected condition by a cell guard under the supervision and control of accused (Ex 50, 73, 119 p 2).

As to Specification 6f: Evidence was adduced to the effect that between 25 May 1945 and 15 August 1945, Albert P. Lounsbury, an American prisoner of war, who had sustained a broken ankle in crash landing from his disabled plane, was compelled to stand for long periods of time and to walk about on his injured limb, for which no medical treatment had been given, by cell guards under the supervision and control of accused (Ex 46, 64 p 3, 70 p 3, 72, 74, 105).

As to Specification 6g: Evidence was adduced to the effect that between 15 July 1945 and 15 August 1945 while confined in the detention cell block, Samuel S. Smith, an American prisoner of war, was beaten, and was abused by being forced to stand with arms outstretched, and to sit upon his heels, for long periods of time, by cell guards under the control and supervision of accused (Ex 121 p 4 and 5).

As to Specification 6h: Evidence was adduced to the effect that on or about 1 August 1945 while confined in the cell block,

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Robert A. Franz, an American prisoner of war, was compelled to kneel at the cell door whereupon he was struck in the face and finally poked in the mouth with a bamboo pole by a guard under the supervision and control of accused. As a result thereof, the prisoner sustained facial lacerations and two teeth were loosened (Ex 65).

As to Specification 6i: Evidence was adduced to the effect that on or about 1 June 1945 while confined in a detention cell, Arthur M. Shelton, an American prisoner of war, was struck upon his leg, which was then in a swollen and badly infected condition, with a bamboo pole by a cell guard under the supervision and control of accused. The resulting pain caused the prisoner to lose consciousness (Ex 118; R 271, 273).

As to Specification 6j: Evidence was adduced to the effect that on or about 29 May 1945, Nick Gazibara, an American prisoner of war, while confined in a detention cell after having been severely beaten during an interrogation session was periodically struck over the head and shoulders with the blunt edge of a sword to prevent him from sleeping, by a cell guard under the supervision and control of accused (Ex 62 p 3, 69 p 3 and 4).

As to Specification 6k: Not Guilty.

As to Specification 6x: Not Guilty.

As to Specification 7: Accused was found guilty of willfully and unlawfully mistreating two unidentified American prisoners of war, on or about 10 March 1945, by beating, kicking and otherwise abusing them. Evidence was adduced to the effect that at least two American prisoners of war whose identity is unknown, were struck and kicked two or more times by accused, in the vicinity of the cell blocks, apparently as revenge for the deaths of members of his family who were killed during air raids. The prisoners were kicked about the head and body and knocked into a prone position on the floor in both cases (Ex 135 p 6, 145 p 4, 145a, 167; R 456, 471, 637, 638, 639, 640, 648, 728, 741, 743, 744).

As to Specification 8: Not Guilty.

FUJINO:

The accused, Ranjo Fujino, was a Lieutenant Colonel in the Imperial Japanese Army assigned for duty as Senior Staff Officer and Chief of the General Affairs Section of the Eastern District Kempai-Tai Headquarters located at Tokyo, Honshu, Japan, from 1 April 1945 to 15 August 1945. Accused was the second ranking officer in the headquarters and was directly subordinate to the unit commander. It was the duty of accused to command and supervise subordinate officers of the headquarters in the performance of their assigned duties and to control, supervise and manage the general business and activities of the headquarters, including the detention, care, treatment and maintenance of American prisoners of war, in accordance with the will and desires of the commanding officer. The violations of the laws and customs of war in the instant case occurred during the period and at the place above set forth.

As to Specifications 1 and 2: Not Guilty.

As to Specification 3: Accused was found guilty of contributing to the sicknesses, diseases, wounds, disabilities and sufferings of numerous American prisoners of war by reason of his unlawful disregard of and failure to perform, his duty to provide them with adequate and proper quarters, clothing, food and water,

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hygiene, medical care and supplies and hospitalization. Evidence adduced as to conditions under which the prisoners were held in confinement and as to their physical condition and sufferings as a result thereof was substantially the same as described under (Toyama, Specification 1) (Ex 16 p 9 and 10, 46, 47, 48, 49, 50, 51, 54, 55, 57 p 2 and 3, 58 p 2 and 3, 59, 61, 62 p 2 and 3, 64 p 2 and 3, 65, 66, 69, 70 p 1 and 3, 71, 72, 73, 74, 75, 77, 78, 79, 84, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 103 p 3 and 4, 105, 106 p 2 and 3, 108, 109, 110, 112, 113, 116 p 3, 5 and 6, 118, 119 p 2 and 3, 120, 121 p 5, 123, 124, 125, 125a, 126, 128, 129, 130, 132, 135 p 3 and 4, 136 p 3, 139 p 4 and 5, 140 p 6, 145, 145a, 146, 152, 155, 156, 157, 159, 160, 167, 168, 169 p 3 and 4, 171 p 3, 4 and 6, 174 p 4; R 42, 151, 269, 270, 271, 272, 273, 278, 279, 286, 296, 343, 350, 351, 357, 361, 362, 388, 389, 400, 449, 451, 470, 477, 488, 544, 553, 556, 569, 570, 572, 573, 575, 576, 583, 589, 590, 595, 596, 597, 599, 603, 605, 606, 608, 609, 611, 612, 613, 616, 617, 640, 641, 642, 644, 651, 652, 659, 678, 684, 692, 710, 711, 729, 730, 731, 759, 760, 766, 767, 778, 785, 786, 798, 800, 846, 847, 849).

As to Specification 4: Accused was found guilty of contributing to the sicknesses, wounds, diseases, sufferings, and deaths of eleven named American prisoners of war by reason of his unlawful neglect and failure to provide adequate and proper quarters, clothing, food and water, hygiene, medical care and treatment, and hospitalization. Evidence was adduced to the effect that by reason of the conditions which prevailed in the detention cells (as described under Toyama, Specification 1) and because of the lack of medical care, treatment and hospitalization, the following named American prisoners of war suffering from various untended physical afflictions contracted at the time of apprehension or subsequently while in confinement, died on or about the dates indicated as a direct and proximate result thereof:

- Theodore H. Fox - 3 August 1945
- Erwin R. Griffin - 24 April 1945
- Harold E. Halldorson - 5 June 1945
- John S. Houghton - 14 April 1945
- Roland F. Nelson - 18 April 1945
- William H. Osborn - 20 April 1945
- Warren L. Olson - 5 June 1945
- Charles W. Snell - 5 June 1945
- George L. Sheridan - 29 October 1945
- Walter E. Walk - 1 May 1945
- Robert L. Williams - 26 June 1945

(Ex 46, 49, 50, 51, 52, 53, 54, 55, 57 p 2, 58 p 3, 59, 60, 62 p 2, 70 p 2 and 3, 71, 74, 75, 77, 79, 80, 84, 85, 86, 89, 90, 92, 93, 94, 95, 96, 97 p 3, 98, 99, 100, 101, 103 p 3 and 4, 105, 106 p 2, 107, 109, 110, 111, 112, 113, 114, 116 p 2, 3 and 4, 117 p 3, 4, and 5, 118, 119 p 3 and 4, 121 p 4 and 5, 123, 124, 126, 127, 128, 129 p 2, 135 p 3, 136, 139 p 3 and 4, 145, 145a, 148 p 1, 3, 4, 7, 9, 10, 12, 13, 14, 15, 16, 17, 18, 151 p 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 152, 153, 154, 155, 156, 160, 167, 168, 171 p 7, 174 p 4; R 151, 275, 276, 277, 286, 287, 335, 351, 361, 362, 368, 440, 477, 553, 554, 569, 572, 573, 575, 576, 583, 589, 590, 732, 764, 765, 809, 811, 813, 814, 815, 867).

As to Specification 5: Not Guilty.

As to Specification 6: Accused was found guilty of an unlawful disregard of, and a failure to discharge, his duty, in that he failed to control and restrain persons under his supervision and control from mistreating numerous American prisoners of war by beating, kicking and otherwise abusing them. Evidence adduced to

support the finding of guilty against accused was the same as under (Toyama, Specifications 5 and 6; Wachi, Specification 6); (R 262, 263). (Ex 46, 47, 49, 50, 51 p 1, 52, 53, 54 p 1, 56, 57 p 3 and 4, 58 p 2, 4 and 5, 60 p 2, 61, 62 p 3 and 4, 64 p 3, 65, 67, 69 p 3, 70 p 3, 71, 72, 73, 74 p 2, 75 p 2, 4, 76 p 2, 78, 79, 81, 82, 83, 84, 85, 86, 90, 94, 95, 97 p 3, 98, 100, 101, 102 p 3, 103 p 4, 104, 105, 106 p 2, 107, 108, 111, 112, 113 p 2, 114, 115 p 2, 116 p 5, 117 p 2 and 3, 118, 119 p 2, 120 p 2, 121 p 4 and 5, 122, 123 p 2, 125, 125a, 126 p 3, 127 p 3, 128, 129, 130, 132, 135 p 2, 135a p 3, 6, 136 p 3, 139 p 2 and 3, 140 p 4, 147, 147a, 159 p 5; R 267, 271, 273, 294, 330, 331, 346, 354, 355, 364, 387, 388, 399, 431, 432, 434, 438, 465, 466).

NEMOTO:

The accused, Tsune Nemoto, was a Lieutenant in the Imperial Japanese Army assigned for duty as Intelligence Squad Leader in the Foreign Affairs Section of the Tokyo Kempei-Tai Headquarters located at Tokyo, Honshu, Japan, from 20 August 1944 to 1 April 1945. Accused by duty assignment was responsible for and was in charge of the interrogation and investigation of captured American airmen being detained at the headquarters as suspected war criminals (the accused performed these duties prior to the headquarters reorganization which was accomplished on or about 1 April 1945, after which date said duties were assumed by the accused Toyama). The violations of the laws and customs of war in the instant case occurred during the period and at the place above set forth.

As to Specification 1 and 2: Not Guilty.

As to Specification 3: Accused was found guilty of a willful and unlawful disregard of, and a failure to perform, his duty in that he failed to restrain subordinates under his supervision and control from beating, torturing, coercing and otherwise abusing numerous American prisoners of war for the purpose of eliciting information from them which they were not legally required to give. Evidence was adduced to the effect that the beating of prisoners during interrogation, for the purpose of securing military information and personal adverse admissions, was generally practiced by interrogators, interpreters and guards, all of whom were subordinates and under the supervision and control of accused. Eighteen prisoners exclusive of those excepted in the commission's findings, are specifically referred to in the evidence as having been beaten, during interrogations, on one or more occasions, namely: Bishop, Clark, Howard, Lodovici, Newman, Rowitz, Armstrong, Pickett, Carmichael, Deterra, Shott, Perry, Kazarin, Humphreys, Brugge, King, Smith, and Myhra (Ex 16 p 2 and 5, 21 p 2 and 3, 22, 23 p 2 and 3, 24, 25 p 2 and 3, 26 p 2, 27, 28 p 2, 29 p 2, 32 p 2, 3 and 4, 34, 35, 36, 38 p 1, 40 p 1 and 2, 44, 159 p 4; R 42, 46, 51, 61, 94, 95, 135, 136, 147, 150, 174, 176, 216, 218, 219, 229, 230, 457, 462, 654, 655, 656, 727, 748, 781).

As to Specification 4: Nolle Prossed (R 5).

As to Specification 5: Accused was found guilty of willfully and unlawfully mistreating Colonel Richard H. Carmichael, an American prisoner of war. Evidence was adduced to the effect that in or about September 1944, the accused while interrogating the prisoner Carmichael, struck the latter in the face with his hand one or more times. The prisoner suffered no injurious effects as a result thereof (Ex 23 p 2, 24; R 726, 780).

b. For the Defense:

TOYAMA:

The accused, Toshio Toyama, being first apprised of

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his rights (R 1340), took the stand and testified under oath in his own behalf. The accused stated that he was assigned for duty as officer in charge of the Counter Intelligence Squad under Lieutenant Colonel Fujino on or about 5 April 1945; that in that capacity, as an additional duty, he was charged with the investigation and interrogation of American detainees and assumed the duties in connection therewith, regarding care and custody, which were formerly assigned to the Foreign Affairs Section and performed by the squads thereof, which were commanded by Lieutenants Nemoto and Motokawa (R 1341); that the commanding officer of the Headquarters, Colonel Otani, made the above assignment, which was objected to as being improper by both Lieutenant Colonel Fujino and himself (R 1342); that his reports, with reference to the performance of duty, were never submitted to the commanding officer directly but were always submitted to Lieutenant Colonel Fujino (R 1343); that upon assuming the duty, he was instructed by Lieutenant Colonel Fujino to carry on the work in the same manner as it had previously been performed (R 1351); that he endeavoured to treat the detainees in as humane a manner as possible in accordance with the provisions of International Law; that he was not responsible for the personal welfare of the prisoners since same was the responsibility of Wachi, the Supervisor of the Cell Blocks (R 1350). The accused stated that he issued standing orders to the effect that the medical officer was to be immediately notified whenever prisoners arrived in a sick or wounded condition (R 1346); that on many occasions, he personally requested medical aid for injured prisoners or instructed his subordinates to do so; that he reported instances of failure to procure prompt hospitalization for prisoners to the commanding officer, Colonel Otani (R 1347); that Colonel Otani took the position that hospitalization was extravagant and unnecessary and that treatment in the cell blocks by a medical officer was adequate; that he was aware of the overcrowded condition of the cells and reported same to his superiors and that both Lieutenant Colonel Fujino and Colonel Otani were completely informed as to existing conditions (R 1348, 1367); that he had no knowledge concerning the alleged poisoning of prisoners by medical officers, Hirano, Hasebe, and Morisue, and denied any complicity in connection therewith; that he was not responsible for furnishing food or clothing to the prisoners; that as regards medical treatment and hospitalization, his sole responsibility was to notify the Medical Section of the need therefor which he always did (R 1349); that when requested, the medical officers always came willingly (R 1353); that such medical officers were always escorted to the cell block by his subordinates and that he was never present when medical treatment was administered to an afflicted prisoner (R 1354); that he was once present when a prisoner died in a cell in or about May or June of 1945, and was in attendance on that occasion only because Major Morisue was treating the prisoner and he wished to show his respect for a superior officer (R 1355); that other than this one occasion, he was never present when a prisoner received medical treatment or died (R 1357); that about ten prisoners died in confinement during the period in which he was Chief of the Counter Intelligence Squad; that the personal welfare of the prisoners was not his responsibility and that he was too occupied with his own work to concern himself with duties assigned to another (R 1358); that the reports which he submitted to Lieutenant Colonel Fujino contained complete information relative to the number of prisoners in confinement and their physical condition with reference to illnesses and injuries, but that he received no orders or instructions concerning action to be taken as regards same (R 1359); that during interrogations, prisoners were struck with fists and bamboo fencing sticks by himself and his subordinates on about ten occasions but that no injured prisoner was ever beaten or abused (R 1344); that he was advised by Colonel Otani that it was permissible to beat prisoners to expedite the procurement of information from them since

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time was of the essence; that he instructed his subordinates not to strike prisoners unless ordered to do so by himself and that whenever it came to his attention that subordinates were violating his instructions, they were reprimanded and warned to desist (R 1345); that he did not remember the prisoners named "Guadiani" or "Jordan" (R 1352); that he had no recollection of having beaten the prisoner "Guadiani" or of having ordered any subordinates to do so (R 1353); that he denied having ordered subordinates to each beat the prisoner "Guadiani" twenty times with a club or that he ordered medical officer Hirano to inject poison into a prisoner (R 1364); and that he had never given an order to inject poison into any prisoner (R 1365).

He stated that he advised his superior officers that existing arrangements relative to the welfare and medical care of the prisoners were inadequate and made recommendations for the improvement of conditions but no action was ever taken in compliance therewith (R 1360).

Evidence consisting of testimony and affidavits by former Kempei-Tai officers, cell guards, mess and medical personnel, and former officers of higher army headquarters was offered to the effect that the District Army, in whose area an American flyer was captured, was responsible for his care and custody and empowered to exercise exclusive control with regard to his ultimate disposition; that in the instant case, the Eastern District Army was charged with such responsibility and by agreement delegated same to the Tokyo Kempei-Tai; that the commanding officer of the Kempei-Tai agreed to accept custody of the prisoners for the purpose of interrogation and investigation, apparently under the impression that such custody would be for a comparatively short period of time; that after assuming custody, the Kempei-Tai became primarily responsible for the care and maintenance of said prisoners while the Army became responsible only for providing necessities not procurable by the Kempei-Tai; and that only the Commanding General of the Eastern District Army had authority to release a detainee to a prisoner of war camp, the Kempei-Tai commander having no such authority (Ex XX p 1, YY p 3, 4, 5 and 6, ZZ p 1 and 2, LLL p 2, 4, 5, and 6, MMM p 1, 2 and 3, UUU p 4, XXX p 1, 5, 6, 7 and 8, CCCC p 3, 4 and 5, JJJJ p 1, 2, 3 and 4, PPPP p 2, 3 and 4, RRRR p 1, 2 and 4, UUUU p 2 and 3; R 1044, 1102, 1132, 1135, 1136, 1172, 1173, 1197, 1198, 1199, 1201, 1202, 1206, 1232, 1234, 1235, 1236 and 1237).

Evidence was offered to the effect that Colonel Otani, as commanding officer of the Tokyo Kempei-Tai, was responsible for procuring adequate food, quarters, clothing, medical care and hospitalization for the prisoners; that he was a harsh officer who did not welcome suggestions and recommendations from subordinates and did not follow them when they were offered; that the accused merely carried out his orders and had no opportunity for independent action; that he submitted reports covering conditions relative to the prisoners to the commanding officer and the latter was kept well informed at all times with respect thereto; that it was the commanding officer's responsibility to apprise the army of existing shortages and inadequacies and if he failed to do so, the accused was powerless to himself remedy conditions; and that each section of the Kempei-Tai Headquarters was responsible for the care and maintenance of its own prisoners and since the American detainees were assigned to the Counter Intelligence Squad, that unit and its commanding officer, the accused Toyama, were responsible for the care and treatment of the said prisoners (Ex GG p 1, 2 and 3, JJ p 4 and 5, PP p 2 and 3, AAAA p 3, 4 and 5, SSSS; R 1075, 1078, 1079, 1080, 1085, 1093, 1106, 1127, 1128, 1180, and 1181).

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Evidence was offered to the effect that the number of men confined in a single cell ranged from seven men during the earlier raids, to as many as sixteen toward the end of the war; that the cells were cleaned out every morning - the detainees washing down the interiors while the guards cleaned the corridors; that the box-type toilets were emptied every day; that the light and ventilation were adequate and as good as could be expected under the circumstances; that the cells were infested with vermin but that the same was true of the regular army barracks, and they were powerless to correct the condition; that there were odors emanating from the cells principally caused by the detainees' unclean bodies and their burns and wounds, but that said odors were not too obnoxious under the circumstances and were tolerated by the cell guards without complaint; that water was furnished generously both for drinking purposes and for the cleaning of the cells; that medical treatment, insofar as limited facilities would permit, was given when requested; that the prisoners' blankets were aired in the sun; and that the prisoners were not beaten or mistreated by the cell guards since only the chief of the guards had the cell keys and the cell doors were only opened by him for official business (Ex F p 1, 2, 3 and 4; G p 3, 4, 5 and 6; H p 2 and 3; I p 3, 4 and 5; J p 3, 4 and 5, K p 2, L p 2, M p 2 and 3; R 992, 994, 1004, 1009, 1039, 1049, 1052, 1053 and 1158).

Evidence was adduced to the effect that the cell blocks became seriously overcrowded due to the failure of the Eastern District Army to promptly dispose of the detainees' cases after the completion of the investigation by the Kempei-Tai; that this condition was known to the commanding officer, Colonel Otani; that Lieutenant Colonel Fujino and the accused Toyama brought the matter to the attention of the Army Headquarters; that the former, on several occasions, inspected numerous buildings in an effort to secure one suitable for use as a place of detention for the prisoners that the Kempei-Tai was not itself authorized to construct a building for this purpose; that repeated requests were made to the Army Headquarters to erect a suitable structure and actual construction of such a building was commenced in or about April of 1945, but was not completed or ready for use at the time the war ended; that the Kempei-Tai was powerless to relieve the overcrowded conditions since only the Commanding General of the Army had authority to release a detainee to a prisoner of war camp; and that the accused himself reported the conditions and explained the urgency for additional cell space, and immediate action, to the Army Liaison Section. (Ex R p 2 and 3, U p 2 and 3, Z p 1 and 2, QQ p 2 and 3, RR p 2 and 3, TT p 2, 3 and 4, UU p 3, DDD p 3, 4, 5 and 6, EEE p 6, KKK p 4 and 5, PPP p 3, 4 and 5, RRR p 2 and 3, OOOO p 2; R 1155, 1156, 1191, 1240, 1241 and 1242).

Further evidence was adduced to the effect that the direct responsibility for feeding, clothing and quartering the detainees was assumed by the Tokyo Kempei-Tai once they accepted physical custody of the prisoners and that the responsibility in that regard retained by the Army was secondary in its nature consisting of the duty to assist the Kempei-Tai by procuring and supplying inadequacies; that as the war progressed, the shortage of food and clothing became increasingly acute and rations and allowances were gradually reduced, not only for the prisoners but for civilians and military alike; that the food ration for detainees was established by War Ministry Regulations and that they always received the authorized quantity; that the American detainees received the same ration that the Japanese detainees received and, although less than allotted to the military, it was sufficient to maintain healthy life, and the quality thereof was the same for all; and that the accused Toyama had no responsibility or duty relative to the feeding or clothing of the prisoners (Ex N p 1, 2 and 3,

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P p 1, V p 1, 3 and 6, W p 2, X p 1 and 2, FF p 7, 8 and 12, NN p 1, 2, 3 and 4, ZZZ p 5 and 6; R 1020, 1025, 1026, 1119, 1120, 1121, 1141, 1142, 1157, 1242, 1243, 1244 and 1245).

Evidence was also adduced to the effect that the Kempei-Tai Headquarters was primarily responsible for the medical treatment and hospitalization of the American detainees who were held in custody and it was authorized to hospitalize prisoners without previous permission of the Army Headquarters; that medical supplies were in short supply; and that the Kempei-Tai dispensaries were inadequately stocked; that requisitions for medical supplies were unfilled since available supplies were being conserved for the final battles; that medical doctors and experienced personnel as well as hospital facilities were utterly inadequate to meet the demands placed upon them by aerial bombardment of the Tokyo Area and as the raids increased in intensity, the situation became progressively worse; that the detainees suffered mainly from bodily burns sustained in escaping from their disabled planes and that available medical supplies and treatment were given to them and were thought to be adequate under the circumstances; and that there were no supplies of potassium cyanide kept at the Kempei-Tai Headquarters; and that no poisonous injections thereof were ever administered to the detainees in the cell blocks (Ex Q Part 2 p 1 and 2, AA p 1, BB p 1 and 2, LL p 1, MM p 1 and 2, OO p 1 and 2, QQQ p 1, SSS p 2, VVVV p 4; R 1002, 1003, 1005, 1018, 1041, 1046, 1090, 1091, 1109, 1110, 1112, 1113, 1175, 1176, 1192, 1193, 1203, 1204, 1218, 1222, 1224, 1225, 1226, 1230, 1238, 1242, 1243, 1244 and 1245).

WACHI:

The accused, Nobushige Wachi, being first apprised of his rights (R 1304), took the stand and testified under oath in his own behalf. The accused stated that he was assigned as supervisor of the cell blocks in August of 1944, in addition to his principal assignment which was office and clerical work; that the duties under this assignment consisted of checking on the cell guards in the performance of their duty and the control of all release orders concerning prisoners which same required his seal; that he was instructed as to his duties by his squad leader prior to assuming same (R 1305); that he was informed that the title "Supervisor of Cell Blocks" was a misnomer and actually carried with it no responsibility, but that he was in reality merely an assistant to the squad leader (R 1339); that he had no duties with respect to the maintenance of the cell blocks and was only concerned with the guards being attentive to duty in order to prevent escapes or suicides; that he had no responsibility regarding the care and treatment of the prisoners which was the responsibility of the Counter Intelligence Squad under Lieutenant Toyama (R 1334, 1335); that he visited the cells once or twice a day and was aware of the prevailing conditions therein with reference to cleanliness, odors, and the inability of the prisoners to wash themselves, but had no authority to take any action in connection with same (R 1336); that as regards medical treatment, when same was necessary, the guards reported the fact to accused who advised the Intelligence Section and that all arrangements in connection therewith were handled by that section (R 1337).

He stated that he had no responsibility regarding the procurement of food, clothing or medical treatment; that he visited the cell blocks once or twice a day to check on the guards; that he knew that the cells were overcrowded and reported the condition to his superiors and was advised that they were already aware of that fact; that he noticed that many prisoners needed haircuts and shaves and reported on the matter; that he heard of two prisoners

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dying in the cell; that he never saw a cell guard beat, kick or mistreat a prisoner and that he had never done so himself; and that he had no subordinates under his command since the cell guards were not subject to his orders and could not be considered as his subordinates (R 1306, 1307, 1308 and 1309). He stated that he had no particular duty to supervise the maintenance of cleanliness in the cell blocks which was actually the responsibility of the Chief of the Counter Intelligence Squad; that during the period from August 1944 to August 1945, he never heard of any prisoner being beaten or mistreated; that he made no effort to supply water to the prisoners for washing purposes since same was the responsibility of the Intelligence Squad; that he issued no orders to the guards regarding the cleaning of the cells or the improvement of conditions therein since he had no authority to do so; and that he instructed the guards not to beat the prisoners although he had no real authority over them to compel compliance (R 1310, 1311, and 1312). He stated that the guard report, which contained a statement regarding the number of prisoners in confinement and their physical condition, was given to accused by the Chief Guard, who forwarded it to Lieutenant Colonel Fujino; and that accused never gave the Chief Guard orders regarding the performance of his duties, but that said guard was governed solely by the regulations published by the Commanding Officer in that regard (R 1313 and 1314).

Evidence consisting of affidavits and testimony of witnesses was offered to the effect that under the table of organization, Wachi was shown to be in charge of the cell guards; that he briefed the chief of the guards regarding daily duties before the latter commenced his tour and always inspected the guards before they were posted; that the cell block guards, while on duty, were under the command and supervision of accused although they could only be punished for misconduct by the Commanding Officer; that he instructed the guards not to strike or injure prisoners; that on one occasion, after members of his family, including his mother, had been killed in an air raid, accused beat a prisoner; that the prisoners were not struck or beaten by the guards since the cell keys were held by the Chief Guard and the cells were only opened for official business; that it was the duty of guards to care for the general cleanliness of the cell blocks, prevent prisoners from escaping or committing suicide, and to serve the prisoners their meals; that accused was responsible for the guards but not for the condition of the cells or the prisoners confined therein since same were the responsibility of the Intelligence Squad; that the accused visited the cell blocks at least once a day and inspected the cells but did not enter same; that guard reports concerning the number of prisoners and their physical condition were always submitted to accused who forwarded them to Lieutenant Colonel Fujino; that request for medical treatment was submitted by the guards directly to accused who thereupon forwarded same to the Intelligence Squad Chief; and that the seal of accused was required on all orders for the release of prisoners from the cells (Ex G p 2, 3, 4, 5 and 6, H p 2, I p 3 and 5, J p 1, 2, 3, 4 and 5, K p 1 and 2, L p 1 and 2, M p 1 and 2, N p 1, O p 2, P p 1, Q Part 1 p 2, R p 1, 2 and 3, S p 1, 2, 3, 4, 5 and 6, T p 1 and 2, U p 3 and 4, V p 6, GG p 1, 2 and 3, NN p 2, PP p 2, YYY p 4, ZZZ p 2, 3, 4 and 5, AAAA p 5, BBBB p 1, 2 and 3, SSSS, VVVV p 3; R 992, 994, 1002, 1003, 1004, 1009, 1033, 1039, 1041, 1046, 1049, 1052, 1053, 1078, 1079, 1085, 1093, 1127, 1128, 1155, 1158, 1180 and 1181).

FUJINO:

The accused, Ranjo Fujino, being first apprised of his rights (R 1371), took the stand and testified under oath in his own behalf. The accused stated that the Kempci-Tai Headquarters

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was subordinate to the Eastern District Army in matters of defense and the latter therefore had authority to order the Kempei-Tai to accept custody of the American flyers (R 1398); that the Army was responsible for furnishing medical treatment and hospitalization for detainees when requested, while care and treatment of a minor nature was the responsibility of the Kempei-Tai (R 1385 and 1396), and that the Kempei-Tai, when it accepted custody of the detainees, assumed the duty of protecting and providing all necessities for them during their confinement (R 1384). He stated that after the reorganization of the headquarters, effected on 1 April 1945, he assumed the duties of Senior Staff Member; that at that time, there was great confusion in assignments resulting from the reorganization and the exact duties of the various officers were not clearly defined; that he was instructed by Colonel Otani to act as liaison between Kempei-Tai Headquarters and the prefectural Kempei-Tai units, and to supervise and observe subordinates in the performance of their duty; that he also had the duty of making on the spot investigations of air raid damage and checking on the personnel of subordinate headquarters; that Wachi was appointed as supervisor of the cell block, to perform during the day, the duties regularly performed by the duty officer at night and he was directly responsible and reported to the commanding officer as did the said duty officer; that Colonel Otani assigned the duty of interrogating and investigating the American detainees to Toyama over the objection of accused; that accused had no authority over Toyama; that he possessed no command authority within the headquarters, but only carried out orders given to him by the commanding officer; and that he had no authority and was given no orders relative to the improvement of conditions concerning the detainees (R 1372, 1373, and 1374). He stated that he supervised some of the office and paper work in the headquarters and was fully acquainted with the duties of both Wachi and Toyama, but that he had never issued any orders to either of them with reference to their duties concerning the flyers (R 1387); that he had no authority and received no instructions regarding medical treatment or hospitalization of the detainees nor with reference to the guards on duty over them (R 1381); that in his assignment, he had no connection with the prisoners; that the commanding officer issued orders concerning same directly to Toyama (R 1399); that he had no authority to issue orders to either Wachi or Toyama regarding the prisoners (R 1402), and had no responsibility for their care or custody; that he possessed no command authority over subordinate Kempei-Tai units (R 1405 and 1408); and that if subordinates at the headquarters thought him to be in charge of the cell blocks, they were mistaken (R 1395). He stated that he objected to the assumption of the custody of the American flyers in the first place since same was outside the scope of the Kempei-Tai mission, which was military police work; that he personally reported the fact that the cells were overcrowded to Colonel Otani but that at the time the latter made no reply and took no action (R 1375); that he offered suggestions to the commanding officer relative to the detainees on about four occasions but same were not concurred in nor acted upon by the latter (R 1376); that Colonel Otani was fully aware of the overcrowded condition of the cells and the situation regarding medical treatment and hospitalization and that he was the only person at the headquarters with the authority and power to remedy and correct same; that accused had no authority and was given no instructions regarding the feeding of the prisoners and had no authority to interfere with or in any manner alter the existing conditions in the cells (R 1380); that he did not know why the food ration for the prisoners was less than that allowed for Kempei-Tai personnel and had never personally checked the amount of food given to them; that he was not aware of the fact that the prisoners had lost weight or become seriously ill during confinement and had no knowledge concerning their physical

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condition; that on one occasion he had heard of a prisoner dying as a result of third degree burns; and that the commanding officer alone was responsible for the care and treatment of detainees (R 1391 and 1392); that he had no knowledge and had heard no rumors concerning the alleged poisoning of prisoners and was not informed as to conditions and happenings within the cell blocks during the period (R 1409). He stated that on or about 14 August 1945, Colonel Otani instructed accused to kill all the American prisoners then confined in the cell blocks since he feared the consequences of turning them over to American authorities in such poor physical condition, but that accused had protested and made immediate preparation for the transfer of the prisoners to the Eastern District Army to avoid compliance with the order (R 1382 and 1383). He stated that Wachi, Toyama, and the chiefs of the guards, insofar as their duties related to the American prisoners, were not his subordinates; that either Wachi or Toyama could have furnished the prisoners with water for washing purposes; that he had no authority or control over the prisoners or their detention, which he stated was completely outside the scope of his authority; and he further denied that he was responsible for the supervision of the detention cells (R 1393).

Evidence consisting of testimony and affidavits by former Kempei-Tai officers, cell guards, mess and medical personnel, and former officers of higher army headquarters was offered on behalf of accused and insofar as it pertains to general matters concerning the treatment of prisoners, medical care and hospitalization, food and clothing, conditions within the cells, and the arrangement under which the Kempei-Tai accepted custody of the American prisoners, this evidence is substantially the same as set forth under (Toyama) and (Wachi) and will therefore not be re-stated in detail.

Additional evidence was adduced to the effect that Colonel Otani and Lieutenant Colonel Fujino were not on friendly terms and the former actively disliked the latter; that after the reorganization of the headquarters on or about 1 April 1945, many additional units were placed under the command of the Tokyo Kempei-Tai and accused was assigned as Senior Member of the Headquarters with the primary duty of assisting the commanding officer in the supervision, command and control of said units, which were spread out over a wide area; that accused had no regular status or assigned duties prescribed by Army regulations, but only that duty and authority specifically delegated to him by the commanding officer; that Colonel Otani was extremely jealous of his authority and delegated very little of same to subordinates; that accused, as senior member, was a coordinator of the headquarters sections and units and passed on the commanding officer's orders to subordinates and received their reports for the commanding officer; that he was empowered to issue orders only concerning minor matters or with reference to more important matters concerning which the commanding officer had already established his policy; that accused had no independent command authority but issued orders and supervised the subordinate members of the unit in the performance of their duty only by the authority, and in the furtherance of the will, of the commanding officer; and that neither accused nor Toyama or Wachi had any authority or responsibility with regard to the supply of food or clothing to the prisoners. (Ex GG p 1, 2 and 3, JJ p 5, PP p 2 and 3, DDD p 3, 4, 5 and 6, JJJ p 2 and 3, WWW p 1, ZZZ p 5 and 6, AAAA p 3, 4 and 5, OOOO p 1, 2 and 3, PPPP p 2, 3, 4, 5 and 6, QQQQ p 7 and 8, RRRR p 1, 2 and 4, SSSS, VVVV p 1, 2 and 4; R 1080, 1082, 1084 and 1106).

NEMOTO:

The accused, Tsune Nemoto, being first apprised of his rights (R 1267 and 1278), took the stand and testified under oath in his own behalf. The accused stated that he was assigned for duty in the Foreign Affairs Section of the Headquarters under

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the command of Major Sugihara, who was the Section Chief; that the first American prisoners arrived at the Headquarters on or about 20 August 1944; that he was placed in charge of their interrogation and investigation by Major Sugihara and that the Command Squad of the Section under Lieutenant Motokawa, was responsible for the physical care and custody of the prisoners (R 1279); that thereafter, his principal duty was supervising the interrogation and investigation of the prisoners (R 1294); that he gave instructions to his subordinates as to the matters to be investigated, the manner in which the prisoners were to be handled and to the effect that they were not to be beaten or mistreated during interrogation; that he supervised the conduct of all of the investigations but only conducted one interrogation himself which was of the prisoner "Carmichael" (R 1280, 1288); that his subordinates did not on any occasion beat or mistreat the prisoners but that he himself, on one occasion, did slap and push the prisoner "Carmichael" (R 1282); that immediately thereafter, he regretted his action; that this was the only incident involving the abuse of a prisoner by himself or his subordinates which occurred during his period of duty (R 1298); that the interrogators were in charge of the individual investigations and were instructed to interrogate only those prisoners who were physically able to stand it (R 1289); that the decision as to whether or not a prisoner was physically fit for interrogation was made by the medical officer, Morisue (R 1291 - 1292); that no prisoner was ever interrogated who was sick, ill or injured (R 1285); that the prisoners were escorted to and from the interrogation room by guards under his control; that some of the prisoners suffered from burns, with which condition he was not concerned since the care and physical well being of the detainee was the responsibility of the Command Squad (R 1283); that he submitted reports covering the physical condition of the flyers to his superior officer, Major Sugihara (R 1284); that in all, his Squad investigated approximately thirty-six men but that he was not present personally at all sessions; that some of the prisoners appeared to be suffering from minor injuries which fact was always reported to the Command Squad leader (R 1297); that the prisoners were also investigated and interrogated by representatives of the Imperial General Staff and the Aviation and Naval Headquarters over whom he had no control (R 1281); that his subordinates were only in charge of the prisoners during the actual interrogation periods and that at all other times the prisoners were under the jurisdiction of the Command Squad headed by Lieutenant Motokawa (R 1299, 1300 and 1301).

Evidence consisting of affidavits and testimony of witnesses was introduced to the effect that the prisoners were not beaten or mistreated by accused or his subordinates and that subordinates were instructed by accused not to beat or mistreat the prisoners during interrogation sessions; that the prisoners, although they complained of living conditions, made no complaints with reference to beatings; that the prisoners did not give the appearance of having been beaten or mistreated and they bore no marks or physical evidence of same; and that from the general atmosphere which prevailed at the Headquarters, it appeared that the American detainees were treated and considered as suspected war criminals rather than as prisoners of war (Ex V p 6, SSSS; R 1004, 1039, 1041, 1046, 1049, 1052, 1078, 1079, 1093, 1180, and 1181).

4. Opinion:

The commission was constituted by proper authority and had jurisdiction over the persons accused and the offenses charged. There is no evidence that any of the accused were not sane at the time of the commission of their alleged acts or at the time of their trial. All of the accused were given a fair trial, were ably

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defended, cooperated in their own defense, and took the witness stand and testified under oath in their own behalf.

TOYAMA:

The record is legally sufficient to sustain the findings of guilty against the accused; Toshio Toyama, under Specifications 1, 2, 3b, 3c, 3i, 3j, 3k, 4, 5c, 5e, 6a, 6b, 6c, 6e, 6f, 6g, 6h, 6i, 6k, 6l, 6m, 6n, 6o, 6p, 6q, 6r, 6s, 6t, 6u, 6v, 6w, 6x, 6y, 6z, 6aa, 6cc, 6dd, 6ff, 6gg, 6hh, 6ii, 6jj, 6kk, 6ll, 6mm, 6nn, 6oo, 6pp, 6rr, 6ss, 6tt, 6uu, 6vv, 6ww, 6xx, 6yy, 6aaa, 6bbb and 6ccc, Additional Specification 1 and Additional Specification 2, as hereinafter modified and of the Charge. Accused, as Chief of the Counter Intelligence Squad, was assigned the duty and was in charge of the investigation and interrogation of the American prisoners of war and was directly responsible for their physical care, treatment and well being. That he failed utterly to discharge that responsibility is overwhelmingly established by the evidence as is the fact that his failure to perform his duty caused and contributed to the sicknesses, disability, pain and suffering of numerous American prisoners and contributed to the deaths of those prisoners named in Specification 2. The shocking conditions of confinement, gross neglect, and cruel and abusive treatment to which the prisoners were subjected both by accused and his subordinates, as shown by the evidence, clearly indicates a vicious and criminal intent and design, upon the part of the accused, to willfully inflict torture, hardship and suffering upon the prisoners with a reckless and wanton indifference as to whether or not that course of conduct resulted in their deaths. Nor can these conditions be explained, excused or mitigated by reason of the shortages and limitations imposed by the war and the desperate military situation which the Japanese Empire faced at the time, since from the evidence, it is apparent that these captured airmen were deliberately segregated for special treatment; were denied the status and rights of prisoners of war, and that their abuse, neglect, and mistreatment, motivated by a desire for revenge, was intentional and deliberate, rather than of necessity, due to the exigencies of war. That the three prisoners referred to in Specification 4, Additional Specification 1 and Additional Specification 2 were actually killed by the intravenous injection into their bodies of a poisonous substance, with the knowledge and at the request and under the direction of accused, has been established beyond a reasonable doubt and, while it may be presumed that these acts were performed under color of superior orders or policies and were known and condoned or approved by superiors of accused, such facts cannot excuse or expunge his guilt therefor. The conduct of accused, with reference to the prisoners, throughout the period in question and the numerous beatings and abuses inflicted upon them both by himself and his subordinates, with his knowledge and approval, evidence a cruel, vicious and sadistic nature and establish the accused as an individual who performed his atrocious acts with relish rather than with repugnance, and as one undeserving of executive clemency. With reference to the allegations contained in Specifications 1, 2 and 3e regarding the failure to provide adequate quarters for the prisoners and the gross overcrowding of the cells, same were not established against accused beyond a reasonable doubt. It was shown that accused had nothing to do with the decision to accept the prisoners; that once same was made and he was charged with their custody, he had no alternative but to utilize available detention facilities, and was compelled to receive all prisoners forwarded to him; that efforts were made to procure additional cell space for the prisoners through higher army headquarters which was the prescribed channel; and that the conditions in that regard were beyond the powers and authority of the local headquarters or accused to remedy. The word "quarters" should, therefore, be excepted from

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the findings under Specifications 1 and 2, and accused should be found Not Guilty of the excepted word under each specification. A finding of Not Guilty should likewise be entered as to Specification 3e. In all other respects, the guilt of accused under the subject specifications was established by the evidence beyond a reasonable doubt.

WACHI:

The record is legally sufficient to sustain the findings of guilty against the accused Nobushige Wachi under Specifications 5b, 5i, 5j, 6a, 6b, 6c, 6e, 6f, 6g, 6h, 6i, 6j and 7 and of the Charge. The evidence clearly establishes the fact that the cell guards, in the performance of their duty as such, were subordinates of accused and were under his supervision and control and that he, as the supervisor of the cell blocks, was responsible for their conduct, and for their mistreatment and neglect of the confined prisoners. The beatings, mistreatment, neglect and abuse of the prisoners by the guards extended over such a long period of time and were so flagrant in their nature that the conclusion that accused knew or should have known of same is irresistible; nor can it be said that having knowledge of these practices, whether actual or constructive, he took adequate steps to correct and eliminate them. On the contrary, his complete failure to perform his duty to protect the prisoners from the illegal and wrongful acts of his subordinates and his indifference to, and disregard of same, as shown by the evidence, are tantamount to an indorsement and approval of the course of conduct in that regard, engaged in by his subordinates. The beatings personally inflicted on two unidentified prisoners by accused as alleged under Specification 7 were established by the evidence beyond a reasonable doubt, but the fact that, shortly prior thereto, accused had lost his mother and other members of his immediate family as a result of air raids should be considered in mitigation of punishment therefor.

FUJINO:

The record is legally sufficient to sustain the findings of Guilty against the accused Ranjo Fujino under Specifications 3, 4 and 6, as hereinafter modified, and of the Charge. The evidence establishes the fact that accused, regardless of the specific title of the position which he occupied, with reference to which there is some conflict, was the second ranking officer in the headquarters and exercised general overall supervision and control of same and its activities, including the detention cells and the interrogation and custody of American prisoners, for the Commanding Officer. Both Toyama and Wachi were subordinates of accused and both submitted reports regarding performance of duty directly to him. According to the evidence, accused could and did exercise supervision and control over both of these officers and should properly be held responsible for their derelictions of duty and wrongful misconduct, which the evidence shows was so flagrant and covered such a long period of time that his knowledge thereof, whether actual or constructive, must be presumed. By reason of his duty assignment and his delegated authority and responsibility, as shown by the evidence, he was duty bound to provide the prisoners with the necessities of life, including clothing, food, water, hygiene, medical care and supplies and hospitalization. That he failed utterly to perform that duty, thereby contributing to the sicknesses, diseases, disabilities, suffering and the deaths of American prisoners as alleged in Specifications 3 and 4 is eloquently attested to by the evidence. For the reasons as set forth under Toyama, the word "quarters" should be excepted from the findings under Specifications 3 and 4 and accused should be found Not Guilty of the excepted word under

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both specifications. In all other respects, the guilt of the accused under the subject specifications was established beyond a reasonable doubt.

NEMOTO:

The record is legally sufficient to sustain the findings of guilty against the accused Tsune Nemoto under Specifications 3 and 5, and of the Charge. The testimony of the witnesses and averments contained in the many affidavits offered by the prosecution, in addition to the adverse admissions made by this accused under oath, establish his guilt under the named specifications beyond a reasonable doubt.

5. Recommendations:

The Defense has filed written motions for Disapproval of Findings and Modification of Sentence on behalf of the accused Toyama and Wachi. No letters of clemency have been submitted by any members of the commission. All motions, and letters of clemency submitted by others, have been carefully read and considered.

TOYAMA:

The commission sentenced the accused to confinement at hard labor for life. The sentence is legal.

It is recommended that the findings of the commission be approved.

It is recommended that the sentence be approved. The accused was confined on 18 January 1946, went to trial on 24 May 1948, and was sentenced on 13 October 1948.

WACHI:

The commission sentenced the accused to confinement at hard labor for eight (8) years. The sentence is legal.

It is recommended that the findings of the commission be approved.

A review of all the evidence relative to this accused and a comparison of his sentence with those imposed by other commissions for offenses similar to those of which he has been found Guilty, leads to the conclusion that the sentence is excessive. It is recommended that only so much of the sentence as provides for confinement at hard labor for five (5) years be approved. The accused was confined on 30 April 1946, went to trial on 24 May 1948, and was sentenced on 13 October 1948. In compliance with established policy, because of the length of time he was in confinement prior to the date of sentence, it is recommended that twenty-six and one-half (26 1/2) months of the sentence of confinement at hard labor imposed be remitted.

FUJINO:

The commission sentenced the accused to confinement at hard labor for five (5) years. The sentence is legal.

It is recommended that the findings of the commission be approved.

It is recommended that the sentence be approved. The

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accused was confined on 30 April 1946, went to trial on 24 May 1948, and was sentenced on 13 October 1948. In compliance with established policy, because of the length of time accused has been in confinement prior to the date of sentence, it is recommended that twenty-six and one-half (26 1/2) months of the sentence of confinement at hard labor imposed be remitted.

NEMOTO:

The commission sentenced the accused to confinement at hard labor for three and one-half (3 1/2) years. The sentence is legal.

It is recommended that the findings of the commission be approved.

It is recommended that the sentence be approved. The accused was confined on 18 April 1946, went to trial on 24 May 1948, and was sentenced on 13 October 1948. In compliance with established policy, because of the length of time accused has been in confinement prior to the date of sentence, it is recommended that twenty-seven (27) months of the sentence of confinement at hard labor imposed be remitted.

6. Action:

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

THOMAS L. MAGEE
Reviewer
Judge Advocate Section

I concur generally. However, it is considered that the Commission, by its finding excepting the two named victims in Specification 7, Wachi, and substituting "two unidentified" Prisoners of War, unduly enlarged the issues under the particular facts and circumstances obtaining in this case as pleaded and proved. Disapproval of the finding of guilty of Specification 7 is recommended.

Even with the elimination of these two beatings, proof of the mass of mistreatments shown in the evidence establishes that the sentence adjudged was lenient. Approval of the sentence is therefor recommended. Likewise those against the other accused were very mild when measured by the grave and multiple offenses of which they were convicted.

The defense in its brief objects to the presence of a Netherlands representative on the Commission basing its complaint on the hypothesis that the court was a United States national tribunal. That this is an unsound premise has been determined so often heretofore that no repetition of the reasoning is indicated. The Commission was a creature of SCAP under his orders and subject to his controls. It was an international body into whose composition a member of a United Nations country was properly integrated (cf US v Yamanaka, Case Docket #60).

A proposed alternate action to implement the above recommendations as to Wachi is attached.

The following comment by the president of the commission is gratifying to those charged with the conduct of War Crimes trials in Yokohama:

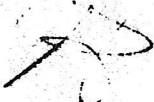
"Speaking for the Commission and I believe I speak for everybody, I am very much pleased with the way you have both put the case before the Commission.

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I think both of you have done an excellent job and cooperated in every way and I am especially pleased with the way the court procedure between the two of you has been conducted. There has been a minimum of what I would call wrangling and personalities and so on. I want to state that if I get no worse than you two are, I think I would feel myself very lucky in any other Commission I might happen to be present on as a law member."

ALLAN R. BROWNE
Lt Col, JAGC
Army Judge Advocate



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