

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

Yokohama, Japan
23 December 1947

UNITED STATES OF AMERICA VS FUKUSABURO ADACHI

Review of the Staff Judge Advocate

1. The attached record of trial of Fukusaburo Adachi at Yokohama, Japan, from 17 February 1947 to 21 February 1947 by a Military Commission appointed by paragraph 1, Special Orders No. 35, Headquarters Eighth Army, United States Army, dated 14 February 1947, having been referred to the Staff Judge Advocate, this review thereof is submitted to the Commanding General.

Personal Data Concerning Accused

NAME: Fukusaburo Adachi	DATE OF CONFINEMENT: 2 February 1946
AGE: 32	DATE OF ARRAIGNMENT: 17 February 1947
RESIDENCE: Osaka	PLACE OF TRIAL: Yokohama, Japan
MARITAL STATUS: Married	PERIOD OF TRIAL: 17 February 1947 to
RELATIVES: Wife	21 February 1947
EDUCATION: Nine years	DATE OF SENTENCE: 21 February 1947
VOCATION: Restaurant	SENTENCE: CHL for twenty (20) years
MILITARY CAREER: 5½ years in Japanese army	
CLEMENCY RECOMMENDED BY COMMISSION: Yes	

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

<u>Charges and Specifications:</u>	<u>Pleas</u>	<u>Findings</u>	<u>Legally Sustained</u>
Charge: Accused, a civilian attached to the Imperial Japanese Army, at the times and places set forth in the specifications hereto attached, did violate the Laws and Customs of War.	NG	G	Yes
Sp 1: Between 1 April 1944 and 23 May 1945, accused with Toranoshin Akamatsu did willfully and unlawfully mistreat and abuse Machinist Mate First Class Clifford W. Seifert, an American PW, by striking him with fists and sledge hammer handles.	NG	Guilty, with the exception of the words "and sledge hammer handles".	Yes
Sp 2: Between 1 April 1944 and 23 May 1945, accused with Toranoshin Akamatsu did willfully and unlawfully mistreat and abuse Pvt. Oscar M. Eldal, an American PW, by striking him with fists and sledge hammer handles.	NG	NG	
Sp 3 (as amended, R. 4): Between 1 April 1944 and 23 May 1945, accused with Toranoshin Akamatsu did willfully and unlawfully mistreat, abuse and torture Signalman Second Class William Spizziro and Sgt. Herschel G. Heinmann, American PW's, by twisting their arms behind them and tying them to a ladder.	NG	Guilty, substituting the dates "1 April 1944" and "23 May 1945" for the dates "1 September 1944" and "31 March 1945".	Yes

Sp 4: On or about 1 October 1944, accused with others did willfully and unlawfully mistreat and abuse Cpl. Norman E. Bussell and Sgt. Wayne Lorraine, American PW's, by beating them and compelling them to stand at attention with a pail of water in each hand.	NG	G	Yes
Sp 5: On or about 25 January 1945, accused with Toranoshin Akamatsu did willfully and unlawfully mistreat and abuse Cpl. Harry H. Smith, an American PW, by striking him with fists and by kicking him.	NG	G	Yes
Sp 6: On or about 13 February 1945, accused with Toranoshin Akamatsu did willfully and unlawfully mistreat and abuse Sgt. Melvin H. Hamlin, an American PW, by striking him with fists.	NG	G	Yes
Sp 7: On or about 4 March 1945, accused did willfully and unlawfully mistreat and abuse Major Frank Lloyd Richardson, an American PW, by beating him.	NG	G	Yes
Sp 8: On or about 6 March 1945, accused with Toranoshin Akamatsu did willfully and unlawfully mistreat and abuse Sgt. Homer K. Drennen, an American PW, by beating him with fists.	NG	G	Yes
Sp 9 (as amended, R. 4): Between 1 April 1944 and 23 May 1945, accused with others did willfully and unlawfully mistreat and abuse Pvt. John R. Ward, an American PW, by striking and beating and otherwise abusing him.	NG	Guilty, substituting the words "between 1 April 1944 and 23 May 1945" for the words "in or about March 1945".	Yes
Sp 10: In or about April 1945, accused did willfully and unlawfully mistreat and abuse Cpl. Earl E. Deal, an American PW, by beating and striking him with a club.	NG	NG	
Sp 11: Between 1 April 1944 and 23 May 1945, accused did willfully and unlawfully mistreat and abuse numerous American PW's by striking, beating and kicking them and by otherwise abusing them.	NG	G	Yes
Sp 12: On or about 1 July 1945, accused did willfully and unlawfully mistreat and abuse Pvt. James L. Huston, an American PW, by striking and beating him with a stick.	NG	G	Yes
Sp 13: On or about 6 July 1945, accused did willfully and unlawfully mistreat and abuse Pvt. Anson H. Cartwright, an American PW, by striking and beating him with a stick.	NG	G	Yes

Resubmitted

Sp 14: Between 24 May 1945 and 15 August 1945, accused did willfully and unlawfully mistreat numerous American and Australian PW's by striking, beating and kicking them and by otherwise abusing them. NG G Yes

3. Summary of the Evidence:

a. For the Prosecution:

As to Specification 1: The accused was identified as a civilian guard at the Yodogawa POW Camp from about the first of April, 1944, until 18 May 1945 (R. 13, 119). An American prisoner by the name of Machinist Mate First Class Clifford W. Seifert had approached the Japanese galley with the intention of stealing food. He was apprehended by one of the guards, whereupon the accused, Akamatsu, and five other guards took turns beating him (Ex. 1, 2).

As to Specification 2: (Not Guilty)

As to Specification 3: On 6 July 1944, prisoners Heinmann and Spizziro were strung up by their wrists. Two ladders had been placed against a building. Each had a rope tied to one of the rungs and around the wrists of these prisoners, whose arms were folded behind them. The ropes were tightened from time to time by the accused until the prisoners were practically standing on their toes. Spizziro claims he was suspended about one inch off the ground. They were then beaten. This was done in an effort to force the prisoners to confess stealing some beans. The incident lasted for an hour or two. The men were in extreme pain. The next day Heinmann was very stiff. He had trouble moving his arms. His wrists were raw from the rope cutting in. He did not have good use of his arms for ten days. His fingers were numb for a year. His face appeared to be bruised (R. 14, 15, 16, 17, 18, 41 to 46, 55; Ex. 2, 4, 5, 6, 7, 20). Over two years later, in September, 1946, Spizziro did not know if the injury to him would be permanent or not (Ex. 6).

As to Specification 4: On 1 October 1944, prisoners Russell and Lorraine were punished for two hours. They were required to stand at attention, holding a pail of water in each hand, during which time they were beaten and cold water was thrown on them. The accused was in charge and took part in this beating with others. The prisoners were required to stand 36 to 48 hours (R. 21, 22, 46; Ex. 9, 10).

As to Specification 5: About 25 January 1945, the accused and Akamatsu beat PW Smith for not saluting the accused. Adachi beat him with his fists and kicked him in the stomach while he was lying on the ground. It lasted about fifteen minutes, until Smith was unconscious. Two other prisoners helped Smith to his bunk (Ex. 2, 11, 12, 21).

As to Specification 6: On 13 February 1945, the accused and Akamatsu accused PW Hamlin "with having turned them in to the camp commander for actions which were against camp regulations. They then stood him at attention and took turns beating him about the face with their fists, each striking him at least fifteen times. The result was that Sgt. Hamlin was black and blue and had numerous cuts which did not heal for about a week" (R. 22, 23, 47, 48; Ex. 13, 14, 15).

As to Specification 7: On 5 March 1945, the accused struck PW Capt. Richardson because some prisoners did not salute when the accused came into the room (R. 23, 24, 47).

As to Specification 8: Former PW Major Richardson stated that PW Drennen was beaten with a leather belt and iron tongs for giving another prisoner a rice ball. He states that he believed Akamatsu and Adachi were involved but he was not sure of it (Ex. 16). Lt. Col. Reardon testified that Drennen was beaten on 6 March 1945 by a member of the camp staff. He assumed it was the accused (R. 24, 25, 26, 50, 51).

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As to Specification 9: In March or April, 1945, PW Ward was required to hang from a bar by his hands for a half-hour. He was then taken down and beaten in the face with fists by the accused and two others. He was beaten for twenty or thirty minutes. "Ward was knocked unconscious approximately nine times. Each time they would throw a bucket of water on him to bring him to" (Ex. 17). He was then forced to stand at attention in the bitter cold, drenching wet, for two hours (Ex. 18).

As to Specification 10: (Not Guilty)

As to Specification 11: In June 1944, the accused beat PW Spizziro with his fist in ranks ten or fifteen times, knocking him down. This beating lasted about three minutes (Ex. 6). The accused beat PW's Travers, Brantly and Carillo (Ex. 8). The accused beat PW Gannon "for no reason at all" (Ex. 15). "He would get drunk and beat the Americans" (Ex. 21).

As to Specification 12: About 1 July 1945, at the POW camp at Netogawa, the accused beat PW Hueston about the face for approximately five minutes with a stick for not working hard enough (Ex. 23).

As to Specification 13: About 6 July 1945, the accused also beat PW Cartwright for not working hard enough. The accused used a stick and beat the prisoner about the face for approximately five minutes. This took place in front of the guardhouse (Ex. 23).

As to Specification 14: It was almost a daily occurrence for the accused to select some prisoner to beat up at his whim (Ex. 23, 24, 25, 26, 27).

b. For the Defense:

The accused, after being warned of his rights as a witness, took the witness stand and testified under oath. He had spent five and one-half years in the Japanese army. He was in the infantry. His highest rank was sergeant. He was assigned to the Yodogawa POW Camp from 1 April 1944 until the camp was broken up on 13 May 1945. His work related to finance and supply. He worked a full twenty-four hours at a time (R. 118, 119). Referring to Specification 1, he could not recall a prisoner by the name of Seifert (R. 119, 120, 149, 150). With regard to Specification 3, he recalled an incident around July, 1944, involving the tying of two prisoners to a ladder. He stated that when he came out of the office, prisoner No. 33 was suspended from a ladder, and Akamatsu asked him to help him with the other prisoner referred to as "Negro". The accused held the hands of the prisoner while Akamatsu tied them. It took about five minutes. It appeared that Akamatsu was trying to inflict pain to make the prisoner confess to stealing beans. The prisoner was standing on some bricks trying to escape the pressure. The accused removed the bricks. He was present at the scene of the incident only for about five minutes. He neither struck nor kicked either prisoner. This incident pained his conscience the most (R. 123, 124, 125, 150, 151). He remembered the incident described in Specification 4. It was reported that a prisoner had stolen a newspaper and some tobacco. The prisoner confessed, and the accused struck him two or three times with his half-opened hand and required him to hold a bucket full of water. The entire incident occurred within the space of thirty minutes. He did not kick the prisoner, and the prisoner did not fall to the ground (R. 125, 126, 127, 151). Referring to Specification 5, the accused remembered the incident in which he struck PW Smith. He had called to the prisoner, who was acting unmilitarily. Smith turned around and took the stance of a boxer. He probably did not recognize the accused at that time. The accused charged him. The scuffle lasted from three to five minutes and Smith discontinued his resistance. The accused then struck the prisoner four or five times for punishment. Smith did not fall. The accused did not kick the prisoner after the scuffle, but when they fell in the scuffle his foot "might have touched him" (R. 127, 128, 129, 152, 153, 158). Relative to Specification 6, the accused struck PW Hamlin three or four times with a file of papers between half an inch and an inch in thickness. Hamlin had reported to Akamatsu that additional rice was being given to certain prisoners without the prisoners' of war consent. He did not kick Hamlin (R. 130, 131).

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The accused recalled slapping Major Richardson two or three times with his open palm (Specification 7). He did not remember going upstairs and calling Major Richardson down to the office, but the incident could have been just as Lt. Col. Reardon testified at the trial (R. 131, 132). Relative to Specification 8, the accused struck PW Drennen three or four times with his fist for passing rice to a prisoner in the cell. He did not knock him down or kick him. Drennen was not bleeding (R. 134, 135). Referring to Specification 9, the accused was present when Okazaki administered a beating to some prisoner but he did not remember the incident described. Accused did not take part. He did not recall a prisoner by the name of Ward (R. 132). Relative to Specification 11, the accused admitted striking seven or eight prisoners at the Yodogawa camp, in addition to those whom he had previously admitted striking. He struck them with the flat of his hand or with the half-clenched hand two, three or four times each. He had no recollection of ever kicking anyone. He never hit anyone hard enough to knock him unconscious or to cause him to bleed. In striking the prisoners, he was acting within the scope of his official duties and because the prisoners broke army regulations. In each case, the accused explained to the prisoner why he struck him, except in the cases of Negro and Smith. He did not consider it necessary with them (R. 135, 136, 152, 155, 156). Referring to Specification 12, the accused did not remember PW Hueston but he recalled the incident described. He struck the prisoner about the shoulders and neck three or four times with a bamboo stick about an inch in diameter for violating regulations regarding riding work cars. He did not knock him down (R. 136, 137, 138). Relative to Specification 13, the accused did not recall PW Cartwright, but he recalled an incident in which a prisoner supervisor failed to supervise the work and was conversing and "taking it easy" in the shoe repair shop. The accused struck him with his half-clenched fist three or four times. He did not knock him down or draw blood (R. 136, 138, 139). Referring to Specification 14, the accused stated that he struck about six prisoners at the Notogawa camp, in addition to those about whom he had previously testified. Each was struck two, three or four times. Each was told why he was struck. He did not draw blood or render any of the prisoners unconscious. As was customary in Japan, he would kick the side of the foot to make the prisoners come to attention. He never kicked a prisoner on the ground. It was a custom in the Japanese army for superiors to beat their inferiors for minor infractions of the rules. Other punishment consisted of such things as crawling over and under steel beds and standing at attention and at present-arms for long periods of time (R. 140, 141). Before he was assigned to the prison camp, he was never given any instructions in international law or to the effect that corporal punishment should not be given to POWs. He did not think he was committing a crime when he struck the prisoners (R. 141, 142). The accused was able to secure extra food and other articles for the prisoners (R. 142, 143, 144, 145, 146, 147). He was kindly disposed toward American prisoners (R. 147). He struck them because they had broken some regulation and to prevent further disorder. He termed his slappings as so-called "lashes of love", as parents who beat the children they love, to make them mind (R. 148, 149, 156, 159). When he was sympathetic he was calm. Sometimes he was emotional and "just the opposite". The usual punishment in the Japanese army that a superior gives an inferior is a slap with an open palm. It is a general custom for a superior to hit an inferior with a closed fist. It was not customary to kick or use a stick or club, but such incidents occurred from time to time (R. 148, 149). He never struck a prisoner for not working hard enough (R. 156). He believes the charges were brought against him because the prisoners did not understand the Japanese military customs. No doubt the prisoners knew international law and felt that the Japanese people were also familiar with it (R. 157). The camp rules and regulations were posted in English on the bulletin board (R. 159).

Yoshi Nakanishi testified that he was presently in Sugamo Prison but that he was in the Japanese army from 10 October 1944 until 2 September 1945. His highest rank was second lieutenant in infantry. He was the commanding officer at the Yodogawa POW Camp from 25 October 1944 until 31 January 1945, and knew the accused (R. 61). He was also assigned as camp commander to the Notogawa POW Camp from 18 May 1945 until 2 September 1945. He never received any complaints at either camp to the effect that the accused mistreated the prisoners (R. 62, 65). The accused was able to obtain additional food for the prisoners (R. 63). The accused was a "gunzoku", which is a former soldier (R. 64).

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Takeshi Hashimoto, after being warned of his rights as a witness, testified that he was in the Japanese army for about five years. He was assigned as the dispatch camp commander at the Yodogawa POW Camp from the latter part of August, 1943 until 15 October 1944. He identified the accused and told of the efforts of the accused to obtain food for the prisoners (R. 67, 68). The accused came to Yodogawa about 1 April 1944. He usually worked with Akamatsu. The accused had a very kindly attitude toward the American prisoners (R. 68). He never received any complaints from anyone concerning the mistreatment of any American prisoner while he was at the camp (R. 69, 71). He did not recall prisoners Heinmann and Spizziro, but he remembered an incident involving the theft of beans. He had no recollection of whether the men were found. He never heard what happened to them (R. 73).

Toranoshin Akamatsu, after being warned of his rights as a witness, testified that he had served in the Japanese army between three and one-half and four years. He was a civilian guard at the Yodogawa POW Camp from 15 December 1942 until April of 1945. He identified the accused as a provisions orderly at the camp from about the middle of 1944 until the camp was closed down (R. 75, 76, 83, 84, 85). The witness admitted tying the hands of PW Spizziro behind his back, assisted by the accused. The witness then tied him to a ladder, the rope a little over his head, to inflict pain so that he would confess to stealing beans. Accused was present only two or three minutes, and did not strike or kick the prisoner or pull on the ropes that tied his wrists. Major Reardon was not present. No other person was tied to another ladder, nor was there anyone other than Spizziro suspected of stealing the beans. The prisoner was not struck (R. 77, 78, 79, 91, 92, 93, 98, 100, 101, 104). The prisoner confessed after about one minute, when the rope broke, and went to the place where the beans and rice were hidden (R. 79, 80, 92). The accused made special efforts to secure food for the prisoners (R. 85). It was the custom in the Japanese army for superiors to beat inferiors for minor infractions of the rules (R. 83, 84, 86). It was not a custom to tie inferiors to a ladder with their hands behind them, causing pain by pulling up on their arms. However, inferiors were made to climb ladders and crawl under beds when it was claimed they had broken slight rules (R. 86). Upon one occasion, the witness had heard the accused shout, but upon going to the scene, he saw both PW Smith and the accused very excited, but nothing was happening. Later the accused told the witness that Smith had resisted the accused (R. 86). The witness had heard that PW Hamlin had been struck, possibly by the accused. The witness heard two or three slaps (R. 89). He did not know about the Dremen incident described in Specification 8 (R. 91). He never saw the accused mistreat a prisoner. The accused was kindly disposed toward the prisoners (R. 99).

Eichi Ito, after being warned as to his rights as a witness, testified on behalf of the defense. He served in the Japanese army for four years (R. 105). He knew the accused and identified him. He was at the Yodogawa camp from 22 November 1942 until the camp closed on 18 May 1945. The accused was also on duty at the camp. The witness was medical orderly from 10 March 1943 until October, 1944. He alternated on duty with the accused (R. 106). It was the custom in the Japanese army for superiors to beat inferiors for minor infractions of the rules (R. 107).

Yumide Katsumi identified the accused, and stated that they had both been stationed at the Yodogawa camp. The accused was provisions orderly and made special effort to secure additional food and tobacco for the prisoners (R. 107, 108). He never heard of the accused ever beating a prisoner. He did not know about the ladder incident. The accused was kindly disposed toward the prisoners (R. 109, 110). He has not seen the accused or talked to him since the camp was broken up (R. 113).

Akiharu Matsumoto testified that he worked together with the accused as his assistant at the Yodogawa camp for about eight months. He was a company employee. The accused took care of the provisions for the prisoners and made special effort to secure extra food for the prisoners (R. 111, 113). He never saw or heard that the accused ever struck any American prisoners with his fist or with a stick. He never saw or heard of the ladder incident or any other mistreatment. The accused was kindly disposed toward the prisoners (R. 112). He had not conversed with the accused since May, 1945.

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The defense referred to a portion of Exhibit 10, in which Akamoto was named as the ringleader in an incident in which Heinmann was suspended by the wrists (R. 117).

4. Opinion:

The Commission was constituted by proper authority and had jurisdiction over the accused and of the offenses charged. There is no evidence that the accused was not sane at the time of the commission of the alleged acts or at the time of the trial. The accused was given a fair trial, was ably defended, cooperated in his own defense, produced witnesses on his own behalf, took the witness stand in his own defense, and was given ample opportunity for cross-examination of the witness testifying against him.

The defense has submitted a brief in support of its motion to set aside the findings and to modify the sentence in this case, to which the prosecution is not replying (Major Goodman).

It is contended by the defense that there is no absolute prohibition against the corporal punishment of prisoners of war in international law as "created by common acceptance". Japan accepted the provision of the Convention Relative to the Treatment of Prisoners of War, Geneva Convention of 27 July 1929, which forbids "any corporal punishment". Although Japan did not ratify or formally adhere to the Convention, the Convention came into force by reason of the ratifications or adherences by some thirty-four governments. Japan was a signatory and through the Swiss Government, agreed to apply the provisions of the Convention to American prisoners of war under its control. The standard of treatment for prisoners of war set forth therein was thereby accepted by Japan, and Japanese agents are to be held accountable for any disregard of this standard.

The defense further contends that the agreement of Japan to observe the terms of the Convention "mutatis mutandis" was not an absolute agreement to abide by all of its provisions, and that the phrase "mutatis mutandis" constitutes a reservation which permitted Japan to make necessary changes in detail as required by conditions, customs and usages, thereby permitting Japan to follow the Japanese custom of administering corporal punishment, even with respect to prisoners of war. There is no merit in this contention. The expression "mutatis mutandis" does not constitute a reservation. It means literally "the necessary changes". It means that matters or things are generally the same, but to be altered when necessary as to names, offices, and the like (Bouvier's Law Dictionary). With a view of making an instrument effective in regard to a new situation, it permits necessary changes in detail to conform to a single vital alteration (44 Corpus Juris 1499, 27 Words and Phrases 919). As applied to the Convention under consideration, it means that the terms, provisions and conditions of the Convention are to apply with such changes therein as necessary to make it effective and applicable to Japan in every respect as it applies to the other governments bound by it. Under it, Japan undertook to be bound by the provisions of the Convention, including the prohibition against corporal punishment, in the same manner as the other governments are bound.

It is contended that the omnibus specification which charges the mistreatment of unnamed prisoners does not state any offense against the Laws and Customs of War, nor does it apprise the accused of the offenses with which he is charged, to permit him to adequately prepare his defense. In the absence of any appeal to the sound discretion of the Commission for a bill of particulars, or of any complaint that copies of all prosecution affidavits and statements were not regularly furnished to the defense prior to trial pursuant to the rules, or that they failed to describe the offenses with sufficient particularity as to time, place and the details of the events to permit their identification, the defense is hardly in a position to complain. Apparently the defense was aware, prior to the trial, of all of the evidence to be offered against the accused in the case. Wherein the omnibus specification includes incidents other than those specific events described in other specifications, evidence may be offered in support of such additional offenses. Furthermore, the statement by the defense on page 14 of the Brief that the omnibus specification "can lead only to injustice

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and the conviction of an innocent man", is hardly appropriate in a case in which the accused had previously taken the witness stand after being warned of his rights as a witness, and admitted fourteen cases of beatings ("it might have been that there were more") under the omnibus specifications, in addition to admitting the mistreatment of prisoners under eight other specifications in the case (R. 135, 140, 155).

The defense submits that there is insufficient evidence offered in support of Specification 1 to overcome the presumption of innocence. As requested by the defense, an examination has been made of the evidence produced in the trial of Takeshi Hashimoto, Case No. 168. In that case, Lt. Col. Reardon also testified, and brief extracts of his diary kept at the Yodogawa camp were introduced in evidence. His testimony in that case is to the effect that in November 1943 PW Seifert was caught outside the barracks one night, was beaten and confined in the camp jail for a period of approximately 27, 28 or 30 days, from about 8 November to 5 December 1943. During this time Adachi was not in the camp (R: 37, 122, 123, 124, 160, 200 and Ex. B, E in Case No. 168, Hashimoto). In the present case Lt. Col. Reardon testified that PW Seifert was beaten many times during the period that he was a prisoner. He did not "recall any specific incident where the accused (Adachi) beat him" (R. 13). PW Duckworth, in his affidavit states that some time during the fall of 1943 PW Seafford was placed in a room and beaten almost daily. He then adds:

"I saw him beaten about the body and the face many times. The leaders in the beatings and the men who beat him most frequently were Akamatsu (phonetic) and Adachi (phonetic). These men were not members of the Japanese Army although they wore uniforms similar in appearance. The only insignia they wore was a group of silver stars on the left breast of their uniform. The commander of the camp during this time was Hashimoto (phonetic), a sergeant in the Japanese Imperial Army. He also took part in the beatings on several occasions. The beatings were administered about two times daily and each session would last about twenty to thirty minutes. The guards seemed to work themselves into a rage and the beatings increased in ferocity during each incident." (Ex. 1)

Whether these beatings refer only to the beatings in the room is not clear. PW Seifert gives the following account of one beating administered to him:

"Our food ration had been very meager for a long time, so I decided to try to steal some food from the Jap galley in the area. I started over to this galley late one night but was caught by one of the guards - a Jap soldier nicknamed Clark Gable. He took me to the guard shanty where I was beaten by at least seven different Japs, who took turns beating me. Both Adachi and Akamatso helped to beat me at this time. After I'd been beaten by all these other people, the camp commander - a Jap officer, struck me in the head with his saber, cutting a bad gash on the right side of my head. This wound bled profusely and it seemed to scare the Japs because they immediately stopped beating me and tried to wipe the blood from my face and head. Then I was put in their brig and left until the next morning. My hands and feet were tied all night and at various times during the night the guards would poke me with long poles thrust thru the bars of the brig. The next morning my hands and feet were untied and I was forced to stand at attention

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for the rest of that day - from 0530 hours to 2100 hours. This continued for 28 days, my entire time in the brig. I was forced to stand in the center of the floor so there was nothing for me to lean on or against." (Ex. 2)

He fails to mention daily beatings in connection with this incident. Seifert further states that the accused, Adachi, beat him severely with his hands for about three minutes upon one occasion because he looked too healthy (Ex. 2). There appears to be sufficient evidence to warrant the finding of guilty of the specification which charges that the accused struck him with his fists some time during the time Adachi was on duty in the camp, April 1944 to May 1945.

The proof offered by the prosecution in support of Specification 8 is weak. However, the accused took the witness stand and admitted striking PW Drennen two or three times with his fist (R. 134, 135). This admission, together with the other evidence, is sufficient to support the finding of guilty under this specification.

The record is legally sufficient to support the findings of the Commission. No ruling of the Commission is deemed to affect adversely the substantial rights of the accused.

5. Recommendations:

The request for clemency submitted by Kinuo Adachi, the wife of the accused, has been read and carefully considered. Likewise the letters of Major Olson, dated 23 April 1947, and 22 July 1947, have been considered together with the testimony and exhibits in the case, and the commissioner's clemency request.

The accused was found guilty of twelve specifications charging the mistreatment and beating of prisoners of war. At the trial, he admitted a minimum of twenty-one or twenty-two incidents of mistreatment and beatings. PW Girard described the accused as outstanding for his cruelty on numerous occasions (Ex. 4). PW Childs referred to the accused as a cruel, inhuman beast (Ex. 19). PW Dupree stated that the accused was "just as brutal as they make them" (Ex. 22). It is not considered that clemency is warranted in this case. The accused was sentenced to confinement at hard labor for twenty years. The sentence is legal and is considered adequate. It is recommended that it be approved, and that the motion of the defense to set aside the findings and to modify the sentence, be denied. Owing to the length of time the accused has been in confinement prior to the date of sentence, it is recommended that nine and one-half (9½) months of the sentence imposed be remitted.

Sugamo Prison, Tokyo, is the appropriate place of confinement.

6. Action:

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

CYRIL D. HILL
Lt Colonel, CAC
Asst Staff Judge Advocate

I concur: Letters from a ranking PW officer received by defense counsel after the trial indicate acts of consideration on the part of accused for the prisoners. The three of the five commissioners who are still in Yokohama state that such evidence would have caused a reduction in the sentence if it had been available at the trial. They recommended a mitigation of the sentence. The offenses of which the accused was convicted support the sentence received. Yet the Commission members' statement indicates that their sentence would have

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been revised downward if the additional evidence had been introduced. Accused was not remiss in connection with its untimely production. A lower sentence therefor which could not have been increased by the reviewing authority would have resulted if the missing evidence had been supplied. In line with the Commanding General's policy of complete fairness to accused in disregard of useless technicalities it is recommended that the sentence be approved but that two years of the sentence to confinement at hard labor be remitted. A proposed action to implement this recommendation is attached.

ALLAN R. BROWNE
Lt Colonel JAGD
Army Judge Advocate

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