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

Yokohama, Japan
27 September 1948

UNITED STATES OF AMERICA VS NAGAYASU KAWABE

Review of the Army Judge Advocate

1. The attached record of Nagayasu Kawabe, at Yokohama, Japan, from 22 May 1947 to 28 May 1947, by a Military Commission appointed by paragraph 2, Special Orders No. 116, Headquarters Eighth Army, United States Army, dated 19 May 1947, having been referred to the Army Judge Advocate, this review is submitted to the Commanding General.

Personal Data Concerning Accused

NAME: Nagayasu Kawabe	DATE OF CONFINEMENT: 24 December 1945
AGE: 43 years	DATE OF ARRAIGNMENT: 23 May 1947
RESIDENCE: Kanagawa Prefecture Hawosahi Kugi No. 190	PLACE OF TRIAL: Yokohama, Japan
MARITAL STATUS: Married	PERIOD OF TRIAL: 22-28 May 1947
EDUCATION: Eleven years	DATE OF SENTENCE: 28 May 1947
VOCATION: Clerk	SENTENCE: CHL for five (5) years
MILITARY CAREER: Six years in Japanese Army, highest rank 1st Lieutenant.	CLEMENCY RECOMMENDED BY COMMISSION No

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

<u>Charge and Specifications:</u>	<u>Pleas</u>	<u>Findings</u>	<u>Legally Sustained</u>
Charge: Accused, 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
Sp 1: Between 1 August 1944 and 20 April 1945, accused did willfully and unlawfully withhold and convert to his own use Red Cross food, clothing and supplies intended for Allied Prisoners of War.	NG	NG	
Sp 2: Between 1 August 1944 and 30 April 1945, accused did unlawfully disregard and fail to perform his duties as Commander to control and restrain members of his command by permitting them to commit the following cruel, inhuman acts and other offenses against certain prisoners of war: (as amended R. 34)			
a. Between 1 August 1944 and 31 August 1944 the unlawful mistreatment and abuse of Captain Lundy L. Zeigler by one Yamasaki by beating him.	NG	G	Yes

Restricted

Restricted

b. Between 1 November 1944 and 30 November 1944, the unlawful mistreatment and abuse of Jack Ramsey by Isami Kintaichi, by beating him. NG NG

c. Between 1 April 1945 and 30 April 1945, the unlawful mistreatment and abuse of James William Hallbert by Sannejo Fujii, by beating and kicking him. NG G Yes

d. At divers times between 1 August 1944 and 20 April 1945, the unlawful mistreatment and abuse of Medical Sergeant Harold L. Miller by Zenzo Neko, by beating him with fists. NG Guilty No excepting words "beating with fists" substituting "slapping him". Of the excepted words not guilty, of the substituted words, guilty.

e. Between 1 August 1944 and 31 August 1944, the unlawful mistreatment and abuse of Lt. Maxwell Humble by unidentified Japanese soldier, by beating him. G Yes

f. Between 1 August 1944 and 20 April 1945, the unlawful mistreatment, torture, abuse and beatings of numerous prisoners of war. NG Guilty Yes excepting the word "torture". Of the excepted word not guilty.

ADDITIONAL SPECIFICATIONS

Sp 1: Between 1 August 1944 and 26 April 1945 accused did unlawfully disregard and fail to perform his duties as Commander to control and restrain members of his command by permitting them to commit the following cruel, inhuman and brutal acts and other offenses against certain American and Allied prisoners of war: NG Guilty Yes except the words "them to commit ... cruel, inhuman and brutal acts and other offenses against certain American and Allied Prisoners of War". Of the excepted words not guilty.

a. On or about 28 January 1945, the unlawful mistreatment and abuse by Isami Sasaki of Lieutenant Maxwell Humble by beating him.

Sp 2: Between 1 August 1944 and 26 April 1945, accused did unlawfully disregard and fail to discharge duties as Commander by withholding and refusing and failing to issue to prisoners Red Cross food and clothing supplies intended for Allied Prisoners. NG NG (R 61)

Sp 3: Between 1 August 1944 and 26 April 1945, accused did willfully and unlawfully mistreat, abuse and beat numerous prisoners of war. NG NG (R 61)

3. Summary of the Evidence:

a. For the Prosecution:

As to Specification 1: Not guilty finding.

As to Specification 2a: The accused was identified by S/Sgt. Harold L. White as camp commander of Sendai Camp No. 4, Ohasi, from August 1944 until about 20 April 1945 (R. 16, 25). In August 1944 when accused arrived at the camp he notified the prisoners through an interpreter, Yamasaki, that he would be strict and severe. The same night Captain Lundy L. Zeigler, the senior American officer at the camp, was administered a beating upon accused's order by the interpreter for alleged disorder in the camp (Ex. 8, 14).

As to Specification 2b: Not guilty finding.

As to Specification 2c: About the middle of April 1945 one Sannejo Fujii, foreman of the electric shop where some PWs worked, had Private J. W. Hallbert, Canadian Army, a PW, stand at attention and then flogged him about six times against each leg with a staff about 5 feet long and 2 inches thick. The staff broke whereupon Fujii proceeded to kick Hallbert in the legs. At the time Hallbert's legs were badly swollen from beri-beri. The accused was present during this beating and when Captain Zeigler protested accused laughed and did nothing (R. 17, Ex. 7, 12, Ex. 14, 16).

As to Specification 2d: Between 1 August 1944 and 20 April 1945, S/Sgt. Harold L. Miller, a PW, was slapped about twenty-five times by Medical Sergeant Neke. (R. 18).

As to Specification 2e: The day after accused first came to the camp in August 1944, the Japanese corporal of the guard gave Lt. Maxwell Humble, an American PW, a severe beating for not saluting him. When Lt. Humble and Captain Zeigler protested to the accused, he notified them as follows: "In the future you will in no circumstances come into this office with any complaints of any nature. It is my order that the Japanese guards over you have full power to mete out any punishments they so desire and they have the full power of life and death over all prisoners, officer included." (Ex. 14)

As to Specification 2f: At Christmas time in 1944, Norman Graham, an English PW was severely beaten by Sasaki and another Japanese guard for taking two onions (Ex. 6). Private Hallbert received a number of pummelings for small infraction of rules, (Ex. 7). On several occasions accused lined the guards up and instructed them to be tough and mean, and always immediately thereafter the guards would come into the prisoner's billets and create a commotion slapping and kicking prisoners (Ex. 9). In February 1945 the Japanese civilian foreman of the iron mine in which some prisoners worked hit Sergeant Elvin W. Nygeard, American PW, in the mouth with his fist, (R. 10). On August 10, 1944, Lt. Hummel was bashed by a guard known as Ha-cho. On August 22, 1944 six Dutchmen were caught smoking and were given a terrific beating and then made to stand at attention all night. October 5, 1944, five men were worked over for not having their belongings straight on shelves. January 12, 1945 a Dutch boy was severely beaten for lying. On February 3, 1945 Ski and Miles got bashed for not saluting. February 24, 1945, Cofield was beaten by the Tiger for stepping out of ranks. March 2, 1945, new guards slapped some of the men around. April 8, 1945, some men had lost sheets and pillow case and were beaten, four had to stand for three hours at attention (Ex. 16).

As to Additional Specification 1a: On about January 26, 1945 Sasaki in the presence of the accused asked Lt. Maxwell F. Humble if he had said that Sasaki had been mistaken. Humble admitted that he had made such a statement whereupon Sasaki started hitting him with a shovel bruising his face and cutting the top of his head; the cut was deep and about two inches long requiring four or five stitches. (Ex. 3, 4, 5, 13).

As to Additional Specification 2: Not guilty finding.

As to Additional Specification 3: Not guilty finding.

b. For the Defense:

The accused having been warned of his rights took the stand and testified in his own behalf. When he reported to Ohasi POW Camp he had a meeting of the Japanese personnel and informed them to see that the prisoners abided by the regulations, but to treat the POWs justly and not to hit them or slap them (R 64). With respect to Specification 2a he had no knowledge of Yamasaki beating Captain Zeigler; he never issued orders to strike POWs; neither Captain Zeigler nor Lt. Humble reported the incident to him (R 65). Regarding Specification 2c, he had no knowledge of the mistreatment of James Hallbert and it was never reported to him. With respect to Specification 2d, accused remembered Sgt. Miller and had spoken to him; he had no knowledge of any slappings of Sgt. Miller by Neko (R 67). Concerning Specification 2e he did not witness a beating of Lt. Humble in August 1944 and never received a report concerning such a beating. Regarding additional Specification 1a, in February 1945 Lt. Humble, Sgt. Neko and Sasaki were in accused's office talking about the mess, when suddenly he heard a glass break and when he looked up Sasaki had Humble by the collar: accused stopped Sasaki and severely reprimanded him (R 68). Accused denies any knowledge of the beatings alleged in Specification 2f (R 82, 83).

4. Opinion:

The record of trial is legally sufficient to support the findings as to all specifications except as to Specification 2d.

With regard to the beatings alleged in Specifications 2a, 2c, 2e and additional Specification 1a, there was evidence presented to the Commission that the accused was either present at the time of the alleged beatings or was informed of the beatings and did nothing to prevent these activities on the part of his subordinates. With respect to Specification 2f there is sufficient evidence to show numerous beatings of prisoners of war during the time that accused was commander of the camp. The accused denies knowledge of these beatings, but the beatings were so numerous that he must have known that they were taking place, or if he did not know, as commander of the camp, he should have known what was taking place. That accused was aware of what took place and was responsible for what did take place is apparent from the statement which Captain Zeigler, the senior allied officer in the camp, claims that accused made to him and Lt. Humble the day after accused assumed command of the camp, namely, "In the future you will in no circumstances come into this office with any complaints of any nature. It is my order that the Japanese guards over you have full power to mete out any punishments they so desire and they have the full power of life and death over all prisoners, officer included."

Regarding Specification 2d, Sgt. Miller testified that he never informed anyone of the beatings that he received, that accused was never present, and that he didn't believe Sgt. Neko, who administered the beatings, informed the accused of the mistreatment (R 44). Where the facts are such that the commander, even if exercising due diligence, would not be apprised of beatings of a prisoner of war by a subordinate, it is difficult to see how he can be held guilty of the offense committed by the subordinate on the theory of command responsibility. Consequently, it is not felt that the finding with regard to Specification 2d is sustained by the evidence.

The Commission erroneously made separate finding as to Specification 2 and additional Specification 1. Actually these specifications have no separate identity since they are followed in each case by a colon, and the findings should only have been made as to the sub-specifications. These findings should be considered in

Restricted

in conjunction with the findings as to the sub-specifications. This error on the part of the Commission in no way injuriously affected the substantial rights of accused.

5. Recommendation:

Accused is 43 years of age. He has been married since February 1945. In civilian life he was employed in the Kawasaki City Office handling papers and in personnel affairs. He has had approximately six years military experience with highest rank attained being 1st Lieutenant.

No request for clemency has been submitted in this case. Due to the nature of the offenses for which accused stands convicted, it is not considered that clemency is warranted in this case.

It is recommended that the finding of Specification 2d of the charge be disapproved, but that the sentence be approved. Owing to the length of time that accused was confined prior to trial, it is recommended that fourteen months of the sentence imposed be remitted. Sugamo Prison, Tokyo, Honshu, Japan is the appropriate place of confinement.

6. Action:

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

JAMES P. HEALEY, JR.
Captain, JAGD
Asst. Army Judge Advocate

I concur in general except as to Specification 2d. The slapping charged therein occurred over a long period of time and during accused's regime under circumstances indicating that he was fully cognizant of and concurred in other mistreatments of a similar nature. Thus, scienter is imputed to him to the extent that he should be held criminally responsible.

ALLAN R. BROWNE
Lt Colonel JAGD
Army Judge Advocate.

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