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

Yokohama, Japan
 11 May 1948

UNITED STATES OF AMERICA VS FUKUJIRO AKIYAMA

1. The attached record of trial of Fukujiro Akiyama, at Yokohama, Japan, from 19 June 1947 to 23 June 1947, by a Military Commission appointed by paragraph 8, Special Orders No. 139, Headquarters Eighth Army, United States Army, dated 16 June 1947, having been referred to the Staff Judge Advocate, this review is submitted to the Commanding General.

Review of the Staff Judge Advocate

NAME: Fukujiro Akiyama	22 Nov 45-2 Mar 46
AGE: 49 years	DATE OF CONFINEMENT: 25 February 1947
RESIDENCE: #52, 2 Chome, Befukita-Machi, Fukuoka.	DATE OF ARRAIGNMENT: 19 June 1947
MARITAL STATUS: Married	PLACE OF TRIAL: Yokohama, Japan
RELATIVES: Wife, Mother and one child.	PERIOD OF TRIAL: 19-23 June 1947
EDUCATION: 2 yrs High School	DATE OF SENTENCE: 23 June 1947
VOCATION: Retired	SENTENCE: CHL for two (2) years.
MILITARY CAREER: None	CLEMENCY RECOMMENDED BY COMMISSION: No

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

<u>Charge and Specifications:</u>	<u>Pleas</u>	<u>Findings</u>	<u>Legally Sustained</u>
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: On or about 24 September 1943, accused did willfully and unlawfully mistreat and torture approximately eleven Dutch PW's, by beating and causing them to be beaten by Japanese guards numerous times, by forcing them to swallow hot water and salt water and by otherwise abusing them.	NG	NG	
Sp 2: In or about July 1943, accused did willfully and unlawfully mistreat Medical Officer Lieutenant Anton Alfred Jurgan Niewenhuis, a Dutch PW, by beating and otherwise abusing him.	NG	Guilty, except the words "and otherwise abusing" of the excepted words, Not Guilty.	Yes
Sp 3: Between 1 March 1943, and 1 June 1944, accused did willfully and unlawfully mistreat Staff Sergeant O. B. Williams, an American PW, by causing him to be beaten by a Japanese guard.	NG	Withdrawn (R. 49)	
Sp 4: Between 1 March 1943 and 15 August 1945, accused did willfully and unlawfully mistreat numerous other American and Allied PW's, by beating and otherwise abusing them.	NG	Withdrawn (R. 3, 49)	

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3. Summary of the Evidence:

a. For the Prosecution:

As to Specification 1: Not Guilty.

As to Specification 2: On or about 8 July 1943, at Fukuoka Prisoner of War Camp Number Two, Kayagimura, Nagasaki, Kyushu, Japan, the accused Fukujiro Akiyama flew into a rage and struck Medical Officer Lt Anton Alfred Jurgen Niewenhuis a Dutch Prisoner of War with his fists, when in a conversation with the accused the Dutch Prisoner had referred to a Japanese ship as a "Jap" ship (R. 5, 29, 39, Ex. 3, A).

As to Specifications 3 and 4: (Withdrawn, R. 3, 49).

b. For the Defense:

Accused Fukujiro Akiyama being advised (R. 2) of his rights as provided in paragraph 5b of Letter Order AG 000.5, 5 December 1945, LS, General Headquarters, Supreme Commander for the Allied Powers, entitled "Regulations Governing the Trials of Accused War Criminals", took the witness stand in his own behalf. Accused stated he was in camp from the end of March 1943 to the end of March 1944 (R. 31).

Accused stated Dr. Niewenhuis was wearing the wrong type cap to work and accused called this to the doctor's attention (R. 37). An argument took place and Dr. Niewenhuis called accused a "damned Jap". This infuriated accused and he struck Niewenhuis five times in the left jaw with his hand (R. 39). Accused has lived in California for 20 years and felt insulted (R. 38, 39, 45). The trouble between the Dr. and accused was not brought about by a discussion regarding Red Cross ships and "Jap" ships (as per Ex. 3), but was regarding the matter of the cap the Dr. was wearing (R. 36).

The Dr. was not marked or injured by this beating (R. 10). The Dr. was about six feet two inches and the accused was short and had to jump to reach him (R. 10, 30).

4. Opinion:

The Commission was constituted by proper authority and had jurisdiction over the accused and of the offense charged. The question of sanity was not raised nor was it a proper issue in this case. The accused was given a fair trial and was ably defended. He cooperated in his own defense and took the witness stand in his own behalf. The evidence presented by the prosecution was, aside from the testimony given by Captain J. J. Budding, in the form of sworn affidavits and statements. The testimony of Captain Budding was in deposition form.

There is a conflict in the testimony as to what actually brought about the beating. The Dr. (Dutch POW) in his testimony said it is because he referred to Japanese ships as "Jap" ships (Ex. 3). Capt Budding corroborates this but Budding's testimony as to the cause is all hearsay, told him by the Dr (Dutch POW) and Budding admits he did not actually hear what was said (R. 9). The feeling regarding accused is shown somewhat in the testimony of Budding's question and answer (R. 9).

"Q. Was Akiyama looked down upon, more so than the other Japanese, because he lived in the United States and spoke English with an American accent?"

"A. Yes, many Prisoners of War were of the opinion that Akiyama, having lived so long in the United States should know better and ought to act different as from what he did."

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The Dr. immediately apologized and said he was sorry he had called accused "You damned Jap" (R. 29, 30). Accused made no complaint to Major Kilano because the Dr. had called him a "dammed Jap" (R. 31). The POW seemed to overlook the position the accused was in, perhaps overlooked it because he spoke English and had lived in the US for so long. He did all he could for the POW (R. 32). In the matter of the cap episode accused was called as interpreter (R. 35), and accused had to interpret the Doctor's English which was difficult, the Doctor's English being hard to understand. There is no question as to the assault. It is admitted on the part of the accused. There is no way of knowing whether the Commission took the accused's story or the Doctor's story as to what brought about the altercation. In finding the accused guilty of the offense the Commission struck from the specification the words "otherwise abusing". Apparently the assault in this instance was considered more or less of a personal nature, aggravated because of the training acquired by the accused while living in the U.S. He apparently was sensitive to American slang when it was directed towards him. Accused may have misunderstood the Dutch POW who he said was hard to understand. The accused evidently had no trouble in understanding good English.

However even if the accused did consider the slang of the Doctor as uncouth English, he was not justified under the Rules of Land Warfare in using the means in punishment that he did.

The defense filed a "Motion for Modification of Sentence" which has been given careful consideration.

The accused was not adversely affected by any ruling which the Commission made.

The record is legally sufficient to support the findings and the sentence of the Commission.

5. Recommendations:

The accused was sentenced to confinement at hard labor for a period of two years. He was twice incarcerated, first 22 November 1945, being released 2 March 1946 and reconfined on 25 February 1947. In view of the fact that accused was so immured, a lapse of approximately 12 months between the first and second imprisonment and the further fact that he was found guilty only under a part of one specification the sentence imposed should be considered adequate.

It is further recommended that owing to the length of time the accused has been in confinement prior to the date of sentence 4½ months of the sentence be remitted.

6. Action:

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

I. O. HAGEN
Major CML C
Reviewer

I concur generally with the views expressed in the foregoing review. The defense contention is unsound that the Commission was without jurisdiction in a case growing out of abuse of Dutch Nationals, because it is a United States Commission. The Commission was an agency of the Supreme Commander for the Allied Powers and was appointed as required by him.

ALLAN R. BROWNE
Lt Colonel JAGD
Army Judge Advocate

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