

Review of the Staff Judge Advocate

1. The attached record of trial of the case of Masami Kanno and Takeo Watanabe, tried at Yokohama, Japan, from 31 July 1947 to 8 August 1947, by a Military Commission appointed by paragraph 8, Special Orders No. 168, Headquarters Eighth Army, dated 21 July 1947, having been referred to the Staff Judge Advocate, this review thereof is submitted to the Commanding General.

Personal Data Concerning Accused

NAME: Masami Kanno	DATE OF CONFINEMENT: 17 April 1947
AGE: 20	DATE OF ARRAIGNMENT: 31 July 1947
RESIDENCE: No. 21, South Sekida, Nagoso Town, Iawaki Gun, Fukushima Ken	PLACE OF TRIAL: Yokohama, Japan
MARITAL STATUS: Not shown	PERIOD OF TRIAL: 31 July 1947 to 8 August 1947
RELATIVES: Not shown	DATE OF SENTENCE: 8 August 1947
EDUCATION: 8 years of Primary School	SENTENCE: CHL for seven (7) years
VOCATION: Not shown	CLEMENCY RECOMMENDED BY COMMISSION: No
MILITARY CAREER: None	

NAME: Takeo Watanabe	DATE OF CONFINEMENT: 22 July 1946
AGE: 39	DATE OF ARRAIGNMENT: 31 July 1947
RESIDENCE: No. 60 Aza Harugata Ninatsuka, Shinobu Gun, Fukushima Ken	PLACE OF TRIAL: Yokohama, Japan
MARITAL STATUS: Married	PERIOD OF TRIAL: 31 July 1947 to 8 August 1947
RELATIVES: Wife, 1 child	DATE OF SENTENCE: 8 August 1947
EDUCATION: 2 years of Primary School	SENTENCE: CHL for ten (10) years
VOCATION: Factory Laborer	CLEMENCY RECOMMENDED BY COMMISSION: No
MILITARY CAREER: 1 July 1941 to March 1943	

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

<u>Charges and Specifications:</u>	<u>Pleas</u>	<u>Findings</u>	<u>Legal Sufficiency</u>
<u>KANNO</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: That on numerous occasions between 1 November 1944 and about 11 January 1945, the accused did willfully and unlawfully mistreat and abuse Sapper Albert Forth, a British Prisoner of War, by beating him when he was weak and sick, thereby contributing to his death.	NG	G except the words, "thereby contributing to the death," and of the excepted words, Not Guilty.	Yes

Sp 2: That in or about February 1945, the accused did willfully and unlawfully mistreat and abuse Reginald C. Billington, a British Prisoner of War, by beating and kicking him and by immersing him in cold water for a long period of time.

NG NG

Sp 3: That between 1 November 1944 and 15 August 1945, the accused did willfully and unlawfully mistreat and abuse Harold G. Ramsey, an Australian Prisoner of War, by beating him.

NG G No
except the words "and abusing and by beating him," of the excepted words, Not Guilty.

Sp 4: That in or about April 1945, the accused did willfully and unlawfully mistreat and abuse W. R. Smith, an Australian Prisoner of War, by beating him into insensibility.

NG G Yes

Sp 5: That in or about April 1945, the accused did willfully and unlawfully mistreat and abuse W. R. Smith, an Australian Prisoner of War, by beating and kicking him, into unconsciousness.

NG G Yes

Sp 6: That between 1 November 1944 and 15 August 1945, the accused did willfully and unlawfully mistreat and abuse William P. Webb, an Australian Prisoner of War, by beating him.

NG G Yes

Sp 7: That in and about May 15, 1945, the accused did willfully and unlawfully mistreat and abuse Driver A. S. Hunt, an Australian Prisoner of War, by beating him.

NG G Yes

Sp 8: That between 1 November 1944 and 15 August 1945, the accused did willfully and unlawfully mistreat numerous American and Allied Prisoners of War by beating and otherwise abusing them.

NG NG

Add Sp: That between 1 December 1944 and 19 February 1945, the accused did willfully and unlawfully mistreat H. F. Morgan, a sick British Prisoner of War, by beating and otherwise abusing him, thereby contributing to his death on 19 February 1945.

NG NG

WATANABE

Charge: 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: That in or about February 1945, the accused did willfully and unlawfully mistreat Reginald Clifford Billington, a British Prisoner of War, by beating and kicking him until he became unconscious, by submerging him while unconscious in a tank of water and by otherwise abusing him.

NG G Yes

Refused

Sp 2: That between 17 March 1945 and 30 August 1945, the accused did willfully and unlawfully mistreat one Atkins, a British Prisoner of War, by beating and otherwise abusing him. NG NG

(As amended, R 79-a)
(by changing first line from "17 March" to "17 March 1945")

Sp 3: That in or about the early part of 1945, the accused did willfully and unlawfully mistreat and abuse Able Seaman Francis J. McGovern, an Australian Prisoner of War, by beating him. NG G Yes

Sp 4: That between 17 March 1943 and 30 August 1945, the accused did willfully and unlawfully mistreat, torture, abuse and beat numerous Allied Prisoners of War. NG G Yes

Add Sp 1: That between 1 December 1944 and 19 February 1945, the accused did willfully and unlawfully mistreat H. F. Morgan, a sick British Prisoner of War, by beating and otherwise abusing him, thereby contributing to his death on 19 February 1945. NG G Yes
except the words, "thereby contributing to his death, 19 February 1945"; of the excepted words, Not Guilty

Add Sp 2: That between 1 December 1944 and 19 February 1945, the accused did willfully and unlawfully mistreat H. M. Campbell, a sick Australian Prisoner of War, by beating and otherwise abusing him, thereby contributing to his death on 20 February 1945. NG NG

3. Summary of the Evidence:

a. For the Prosecution:

The accused were civilian guards employed by the Shibaura Electric Company where the Prisoners of War from Camp 11-D (14-D) worked. Accused Kanno was known to prisoners as "Little Rubber Neck". There are nine photo identifications of Kanno and nine of Watanabe made by former Prisoners of War. Prosecution evidence is in the form of affidavits from thirty-four former Prisoners of War of the above camp and one live witness.

While the Commission rendered findings of Not Guilty of such portions of various specifications as alleged acts of the accused as contributing to the deaths of various Prisoners of War, references to beatings contributing to such deaths will be incorporated herein as quotations from Prosecution's affidavits as relating to the intensity of such beatings.

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Prosecution witness Douglas Gordon Myers, an Australian, testified that he was a Prisoner of War at Camp 11-D from about September 1944 to August 1945. He identified Kanno, also known as Kando and "Little Rubber Neck" to all Prisoners of War, and Watanabe, as former civilian guards employed by Shibaura Electric Works by pointing them out in the court room. They were armed while in their performance of the duties with octagonal clubs, five feet by two and one-half inches made of cherry wood. Further extracts from his testimony will be introduced under appropriate specifications.

KANNO

As to Specification 1: Bosboon, in his affidavit distinguishes "Rubber Neck" (Onodera) and Kondo, "Little Rubber Neck". He saw the victim, PW Forth, maltreated severely many times in his presence by Kondo by beating with sticks and fists. He suffered such injury to his health through these maltreatments at the hands of Kondo and other guards that he died in January 1945 (Ex 3). W. J. Cook describes "Little Rubber-neck" as "almost as bad as Onodera" and seemed to be anxious to emulate him. Forth was a very quiet man who seemed to be mentally affected by his experiences in Japanese captivity and was clumsy in his work (Ex 4). Harry Cooper identified Kondo as a junior guard known as "Little Rubber Neck". PW Forth was sick with dysentery and was beaten up on several occasions by various guards including Kondo. Forth was unable to work as hard as other Prisoners of War and was beaten up daily. He complained in general of being sick and died as a result of such beatings (Ex 5). Billington refers to Kondo, "Little Rubber Neck", aged 17-18, five feet six inches tall, pronounced squint and as one of the civilian guards responsible for beating up Forth who was quiet, and suffering from dysentery and malnutrition. Towards the end of 1944, Forth was beaten at least once a week for two months (Ex 6). Owen Curtis: "Kondo was responsible for Forth's death" (Ex 7). F. J. Matthews describes "Little Rubber Neck" about five feet one inch high and stocky; cruel; was responsible for death of Forth by beatings. "Little Rubber Neck" appeared to have a set on Forth and at every possible opportunity, he would bash him. Distinguishes between "Little Rubber Neck" and Onodera, "Rubber Neck" (Ex 23). "Forth was beaten one day with a stick by "Little Rubber Neck" so severely, at the same time suffering ju-jitsu throws at the hands of this sadist, that Forth died after having been in the sick bay for a week. Reason for maltreatment was that Forth, owing to his weakness, worked extremely slowly" (Rhearev, Ex 27) (Ex 29, 32, 34, 35). Witness Myers testified that one morning, Forth got a severe thrashing from Kanno. Witness did not see this bashing but saw Forth at lunch and his face was very badly bruised and he could hardly walk; went back to work after lunch, where he received another bad beating in which Kanno was the main offender after which Forth was helped back to camp and went straight to bed. He never recovered from that beating. Kanno beat Forth before the day of severe beatings, worrying him with two or three punches or a slap with his stick for two weeks (R 46-48).

As to Specification 2: Not Guilty.

As to Specification 3: H. Ramsey, a former Prisoner of War, states, "I have been beaten by him, "Little Rubber Neck", myself" (Ex 26). Witness Myers testified Ramsey was badly beaten up one morning by Kanno. He saw the start of the beating as a result of which Ramsey was in bed three days. (In his own affidavit, Ramsey states he was in bed three days as a result of a beating from "Rubber Neck" Onodera).

As to Specification 4: PW William Downs states that "Little Rubber Neck" punched the victim Smith, then beat him insensible with a heavy stick for washing his shirt at the factory. Then unconscious, Smith was

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revived by cold water, dragged to his feet and again beaten unconscious. "Little Rubber Neck" was assisted by other guards in this beating (Ex 11). Smith states that early in April 1945, "Little Rubber Neck" beat him all over his body with a stick five feet by two inches; also punched him on the dam's apple. This particular bashing took place in the factory (Ex 30).

As to Specification 5: This refers to another beating on the same day of the occurrence set forth in Specification 4 (Ex 11). Smith states: After work was finished on the same day (as referred to in Specification 4 above), he was again beaten by "Little Rubber Neck", knocked unconscious with his fists, kicked and then revived with water.

As to Specification 6: Webb, the victim, states that on one occasion, "Little Rubber Neck" beat him with heavy blows at his face and neck and then called for other guards who beat him severely (Ex 35).

As to Specification 7: J. H. Dwyer: On May 15, 1945, saw Kondo known as "Little Rubber Neck", and another guard, bashing Driver Hunt with a stick and his fist. They struck Hunt many times, across the face and back and both his eyes were blackened and his face badly bruised (Ex 10). Witness Myers was told by Hunt on the day of the beating that Kanno and another guard had beaten him up (Ex 39). Hunt states that about May 1945, he received his worst bashing at the hands of Kanno and two other guards (Ex 19).

As to Specification 8: Not Guilty.

As to Additional Specification: Not Guilty.

WATANABE:

As to Specification 1: Billington: In February 1945, Watanabe beat him with a stick similar to a broom handle for having his hands in his pockets until the stick broke on his back; he was hit on his head and back and kicked whilst on the floor and beaten until unconscious, then held in a water tank head downwards to revive him after which he was allowed to go back on parade. He was not able to eat properly for over a week and still suffers severe headaches from that beating (Ex 6). Dwyer: Towards the end of April 1945, saw Watanabe and other guards beat Billington. They threw him to the ground, kicked him in the back, hit him with sticks and maltreated him until he lost consciousness and they then flung him into a tub of cold water until he became conscious. Billington's face and back were terribly bruised and swollen (Ex 10). During the summer of 1945, Billington was accused by Watanabe of smoking and severely beaten after which time, Watanabe made it a practice to beat Billington on the slightest pretext. On one occasion, Watanabe and another guard beat Billington senseless and threw him into a tub of water to revive him after which he was beaten again (Hooren, Ex 16). J. R. Smith: Approximately March 1945, witnessed Watanabe severely ill-treat Billington in factory mess hut after completion of work. He punched him severely until he lost consciousness and with assistance of another guard, up-ended him into a tank of water, almost drowning him. Billington was then pulled out, severely bashed and held under water again by Watanabe. After recovering consciousness the second time, Watanabe knocked him unconscious and left him on the ground (Ex 30) (Ex 3, 5, 14, 15, 20, 21, 23, 29). Witness Myers testified that one night after work in the mess hut, he saw Watanabe participate in the beating of Billington. Billington was knocked to the ground with sticks and was kicked unconscious and thrown into a vat of water until he revived -- nearly drowned; pulled out, beaten again and knocked unconscious, then thrown into the vat of water and sent back to the lines. This was the worst bashing witness ever saw in a prison camp. Billington's face was just a pulp and for days, he couldn't eat and his whole body was bruised.

During the beating, Watanabe picked Billington up off floor and placed him in the tub and held him under water about a minute and a half (R 35-37).

As to Specification 2: Not Guilty.

As to Specification 3: In April 1945, Watanabe caught a sailor from the "Perch" urinating in a secluded spot and commenced to bash him with a stick. He knocked the man down, then bashed him for five to ten minutes. Dwyer saw this incident (Ex 10). Downs: Early in 1945, an Australian soldier named McGovern was brutally beaten by a civilian guard named Watanabe (Ex 11). Hubbard: Watanabe was a civilian escort and particularly brutal. On one occasion, he beat McCubbin unmercifully outside the steel works for urinating (Ex 18). Witness Myers was told of the beating of McGovern that night by a PW Petty Officer Dunkin. His face was badly battered. (R 32).

As to Specification 4: Higgins: Watanabe used "ju-jitsen" on Prisoners of War during lunch hours for doing something wrong at work. Saw accused brutally assault Regan in the works canteen (Ex 13). Hyde: Watanabe and Kondo punished Prisoners of War regularly and "picked their own meat". If anything, they were more sadistic than "Rubber Neck" (Ex 17). Matthews: On one occasion, Watanabe beat him with his fist for about twenty minutes. At that time, he was sick with malaria and had asked permission to stop work. Practically every day, some PW would suffer from a beating by Watanabe (Ex 23). Mayne: Watanabe was a brutal type and would bash prisoners frequently. On about March 1945, saw him beat PW Heywood unmercifully about his face and head, rendering him semiconscious (Ex 24). Ramsey: Watanabe, quite often, would show other guards how a beating should be administered. Once, Watanabe saw a PW lying in a hand-cart being brought home from work. On being told there was something wrong with the man's stomach, Watanabe unmercifully drove his stick into the PW's stomach. On the way to and from work each day, he would bash and kick PW's and appeared to derive great enjoyment from the suffering he caused (Ex 26) (Ex 3, 8, 14, 28, 31, 34). Witness Myers saw PWs Lukes and Brooks severely beaten by Watanabe. Watanabe punched Lukes until he fell to the ground and beat Brooks similarly. They could hardly walk back to camp. Lukes could not eat that night and Brooks' face was cut so he could hardly be recognized. This occurred in January or February 1945 (R 27). Watanabe participated in the beating of Dutch PW No. 117 until he was unconscious. He kicked him in the face and revived him with a bucket of water, beat him again and another bucket of water was thrown over him. His face was unrecognizable and blood poured from it. He had to walk back to camp in the cold and the water froze on his clothes. About February 1945, Watanabe participated in the beating of a Dutchman named Gubbles one afternoon in the factory, with sticks and clubs and fists for ten minutes, leaving his face and back very badly bruised. Saw Frank Lawrence beaten in February or March 1945 by Watanabe and another guard with clubs and fists and kicked in the face by Watanabe when he fell down. Lawrence worked alongside of Myers who testified that this beating lasted three or four minutes and was given for no apparent reason (R 31, 32). Witness was told by other Prisoners of War that accused participated in beatings of PW Hunt. On one occasion Hunt told the witness he was beaten by Watanabe and another guard (R 39).

As to additional Specification 1: Horren: Watanabe participated in beatings of Morgan that in the affiant's opinion caused his death. Morgan was beaten until he had delusions about two stomachs and refused to eat (Ex 16). Witness Myers testified that he saw Watanabe participate in pushing and beating Morgan everyday for no provocation. One day, Watanabe and another guard beat Morgan for being empty handed at the moment. Morgan was knocked down and the severe beating continued for fifteen minutes. Two Prisoners of War carried him to the mess hall and he was taken back to camp on the mess cart. After this beating, Morgan couldn't talk sanely and recognized no one. His bed mate, Billington, told Myers that even he wasn't recognized by Morgan after that beating (R 45 & 46).

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b. For the Defense:

Accused Masami Kanno took the stand and after having been advised of his rights as a witness, testified on his own behalf (R 87). He started working at the Shibaura Electric Company in November 1944 and was then 17 1/2 years old. He does not know Forth (Kanno, Specification 1); knows Billington but never struck him (Kanno, Specification 2); does not know Ramsey (Kanno Specification 3), Smith (Kanno, Specifications 4 and 5) nor Webb (Kanno Specification 6); knows Hunt (Kanno, Specification 7; Watanabe, Specification 4), whom he never slapped or beat but to whom he gave cigarettes at times. He struck two or three Prisoners of War at various times; one, for walking in front of military guards with hands in his pockets and on instructions from the guard Kanno slapped him a couple of times -- just once -- with open hand. He also slapped a Prisoner of War once for stealing oil from the company and another Prisoner of War who stole biscuits at the PW Camp. He does not know the names of these three Prisoners of War. He recalls pushing a PW by his chest with his hand because the prisoner did not work well. Once, the camp commanding officer, Tanaka, told him to strike four PW's in connection with biscuit stealing. He, Kanno, slapped the first two, once each on the cheek with his open hand and slapped the third on the shoulder but he did not want to hit any more PW's so he did not hit the fourth. On examination by the Commission, accused stated there was another guard named Yoshiji Kanno employed by the company but he was not in his group (R 90).

The accused Takeo Watanabe being advised of his rights as a witness took the stand and testified on his own behalf (R 90). He was a civilian guard at Shibaura Electric Company from about August 1944 to August 1945. He was never in the same guard group as Kanno. He knows Billington (Watanabe, Specification 1) and recalls that on one occasion in March or April, 1945 Billington left the job and when he returned, Watanabe cautioned him. Billington did not stand at attention so Watanabe pushed him. At that time, superior private Fujita took him by his legs. Billington had put his hand on the edge of a tank of water and because Fujita had taken him by his legs, he fell in the tank when Watanabe pushed him (R 94). He did not strike Billington and cannot recall whether Fujita beat him at that time. Watanabe suggested that Billington borrow clothes from his friends but he said he was all right as he was. Aside from pushing Billington, he struck a Prisoner of War only once and that was in a weak manner with his open left hand for talking with a Japanese boy in the factory against regulations and after a warning. He does not recall any of the beatings related in the testimony of witness Myers. (Specification 4, Watanabe) On examination by the Commission, he stated that the two Kannos do not look alike at all. Further, that Billington fell into the tank after he had eaten his noodles and came out of the tank alone. (R 100).

Witness Yoshiji Kanno took the stand and stated that he was 27 years old and worked at the Shibaura Factory as a civilian guard from March 1944 to August 1945. He was never in the same group with either accused and never saw any civilian guard striking Prisoners of War (R 100). Defense witness Iku Seki (R 103) testified that he was the group leader of the group in which accused Watanabe worked and that accused Kanno never worked in his group (Also Ex B). Defense witness Toshinosuke Endo (R 107) was the guard chief of the group in which accused Kanno was a member (also Ex J).

Defense introduced affidavit of Atkins (Ex C); questionnaire signed by Atkins (Ex D); statement of H. G. Gubbels (Ex E), as negative testimony in that these former Prisoner of War do not refer to having received any beatings themselves in such affidavits.

Exhibits F and G, statements of Captain Smits who was the Commanding Officer among the Prisoners of War, state that Forth was the

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object of maltreatments in the factory until all desire to live died in him. Billington was maltreated regularly in the factory, usually because of smoking at prohibited times and places. He does not name either of the accused as participants in maltreatments.

Defense Exhibit A is a signal introduced at time of trial wherein Charlie Barlow, former medical orderly at Camp 11-D, states that Forth (Kanno, Specification 1) suffered from wet beri-beri and died in December 1944 with an attack of typhoid fever. No severe beatings were permitted at the camp. Barlow's affidavits (Ex H, K) contain similar statements.

Affidavit of Johannes Brouwer, Dutch doctor: There was a great deal of beating during the work; maltreatments on parade with applications of jiu-jitsu. Neither of the accused are mentioned as participants. (Ex I).

Harry Mines states in his affidavit (Ex I) that "Onadella" (Onodera) selected his victims from the weaker prisoners of war. Forth was beaten on the slightest excuse because he was either a fool or lazy. He was beaten by Onodera daily and eventually died in January 1945. Other maltreatments related in the affidavit do not mention either accused as participants in maltreatments. Similarly, the affidavit of H.A. Spink (Ex M) refers to "Ornadella" and Lt. Tanaka and to beatings by guards but makes no reference to either of accused.

Exhibit N: Defense introduced affidavit of D. J. Myers taken in Melbourne, Australia, on October 23, 1946, to discredit the testimony given by him as prosecution witness. In that affidavit, Myers refers only to the beating of Billington in February 1945 by the accused to the point that Billington lost consciousness, was dropped into a vat of icy cold water and held under until he revived and then was bashed again. In this affidavit, Myers made no reference to any of the other beatings related in his testimony.

4. Opinion:

The Commission was constituted by proper authority and had jurisdiction over the accused and of the offenses alleged. There is no evidence that accused were not sane at the time of the commission of the alleged acts and at the time of the trial. The accused were given a fair trial and represented by competent counsel and took the stand and testified in their own behalf. No ruling of the Commission was prejudicial to the substantial rights of the accused.

The record is legally sufficient to support the findings of the Commission with the exception of the finding of Guilty on Specification 3 against accused Kanno having to do with P1 Harold G. Ramsey. With respect to this finding, Specification 3, Kanno, charges the accused "did willfully and unlawfully mistreat and abuse Ramsey, by beating him." The finding is "Guilty, except the words, 'and abusing and by beating him', of the excepted words, Not Guilty." By deleting all reference to abuse and beating, the Commission emasculated the allegations contained in the Specification and removed the gravamen of the offense. "An accused is acquitted of all material allegations which are excepted by a court in its findings" (Digest of Opinions, 1912-1940, Sec 454 (6) Par 348). The only evidence introduced pertains to beatings. The victim Ramsey, in his affidavit, simply states "I have been beaten by him, 'Little Rubber Neck,' myself" (Ex 26). Prosecution witness Myers testified Ramsey was badly beaten up one morning by Kanno and was in bed three days (R 61, 62). This is clearly a mis-identification on the part of Myers because in his own affidavit, Ramsey states that the beating that caused him to remain in bed three days was given him by another guard, "Rubber Neck", Onodera (Ex 26). Further, the specification has not

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been modified to a lesser included offense by deleting the words "abuse" and "beatings" but has been enlarged in scope to include any manner or method of mistreatment.

The Defense Petition to Set Aside Findings and Modify the Sentences has been carefully read and considered. The arguments advanced in the Memorandum Brief on Lack of Jurisdiction have been passed upon so many times by Reviewing Authorities that they need not be commented upon here (Case Dockets # 84 Yanaru, 124 Kato, 356 Okamoto).

5. Recommendations:

No requests for clemency have been submitted other than the Petition submitted by Defense Counsel referred to above. The sentences are legal and are not considered excessive. The Commission sentenced accused Masami Kanno to confinement at hard labor for seven (7) years and accused Takeo Tatanabe to confinement at hard labor for ten (10) years. It is recommended that the sentences be approved.

In compliance with present policy, due to the length of time accused have been in confinement, it is further recommended that in the case of Masami Kanno one-half ($\frac{1}{2}$) month of the sentence be remitted; and in the case of Takeo Tatanabe, nine and one-half ($9\frac{1}{2}$) months of the sentence be remitted.

Sumoto Prison, Tokyo, Honshu, Japan, is the appropriate place of confinement.

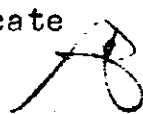
6. Action:

Forms of action designed to carry these recommendations into effect, is attached.

LAWRENCE E. JOHNSON
Lt. Col. Inf
Reviewer
Judge Advocate Section

I concur in general,

ALLAN R. BROWNE
Lt Colonel JAGC
Army Judge Advocate



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