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

Yokohama, Japan  
5 August 1948

UNITED STATES OF AMERICA VS MATASUKE ISHIMATSU  
UNITED STATES OF AMERICA VS KOSEKI YAMAJI

Review of the Staff Judge Advocate

1. The attached record of trial by common trial of Matasuke Ishimatsu and Koseki Yamaji, at Yokohama, Japan, from 6 October 1947 to 15 October 1947, by a Military Commission appointed by paragraph 25, Special Orders No. 230, Headquarters Eighth Army, United States Army, dated 1 October 1947, having been referred to the Staff Judge Advocate, this review is submitted to the Commanding General.

Personal Data Concerning Accused

NAME: Matasuke Ishimatsu	DATE OF CONFINEMENT: 5 Dec 1945
AGE: 53	DATE OF ARRAIGNMENT: 6 Oct 1947
RESIDENCE: Moji City, Daiji, Higashifuromachi, 3-Chome	PLACE OF TRIAL: Yokohama, Japan
MARITAL STATUS: Married	PERIOD OF TRIAL: 6 to 15 Oct 1947
RELATIVES: Father, mother, 3 brothers	DATE OF SENTENCE: 15 Oct 1947
EDUCATION: 8 yrs schooling	SENTENCE: CHL for twelve (12) yrs
VOCATION: Farmer	CLEMENCY RECOMMENDED BY COMMISSION: No
MILITARY CAREER: 23 yrs service, 1914 to Jan 1930, Sep 1937 to end of war; rank of captain at end of war.	

NAME: Koseki Yamaji	DATE OF CONFINEMENT: 26 Nov 1945
AGE: 59	DATE OF ARRAIGNMENT: 6 Oct 1947
RESIDENCE: Kagawa-Ken, Nakatada Gun, Zentsuji-Machi, Shimoyoshida	PLACE OF TRIAL: Yokohama, Japan
MARITAL STATUS: Married	PERIOD OF TRIAL: 6 to 15 Oct 1947
RELATIVES: Wife, mother	DATE OF SENTENCE: 15 Oct 1947
EDUCATION: 8 yrs schooling	SENTENCE: CHL for fifteen (15) yrs
VOCATION: Farmer	CLEMENCY RECOMMENDED BY COMMISSION: No
MILITARY CAREER: Broken service from 15 Aug 1937 to end of war	

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

<u>Charge and Specifications:</u>	<u>Pleas</u>	<u>Findings</u>	<u>Legally Sustained</u>
ISHIMATSU			
Ch: Accused, at the times and places NG set forth in the specifications, and during a time of war between the United States and Japan, did violate the Laws and Customs of War.		G	Yes

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Sp 1: At divers times between 27 November 1942 and 10 April 1945, at or near Hiroshima Branch POW Camp No. 4, Mukaishima, Mukaishima Island, Japan, accused did willfully and unlawfully mistreat and abuse numerous Allied PWs by misappropriating, withholding and otherwise converting to his own use and benefit Red Cross and other supplies provided and intended for the use and benefit of Allied PWs

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Sp 2: At divers times between 27 November 1942 and 10 April 1945, at or near Hiroshima Branch POW Camp No. 4, accused did willfully and unlawfully mistreat approximately eight unidentified Allied PWs by beating them with a sword encased in a scabbard.

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Yes

Sp 3: At divers times between 27 November 1942 and 10 April 1945, at or near Hiroshima Branch POW Camp No. 4, accused did willfully and unlawfully mistreat and torture one Golab, a Canadian PW, one Harrick, one Foster, one Wringe, one Mellon, and numerous other Allied PWs, by ordering and causing them to be placed in solitary confinement in cells unfit for human habitation and by otherwise abusing them.

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Yes

Sp 4: At divers times between 27 November and 10 April 1945, at or near Hiroshima Branch POW Camp No. 4, accused did willfully and unlawfully mistreat and torture numerous Allied PWs by forcing them to kneel at attention for long periods of time with sticks placed behind their knees and by otherwise abusing them.

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Yes

Sp 5: At divers times between 27 November 1942 and 10 April 1945, at or near Hiroshima Branch POW Camp No. 4, accused did willfully and unlawfully mistreat John Chagania, an American PW, by beating and otherwise abusing him.

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Sp 6: At divers times between 27 November 1942 and 10 April 1945, at or near Hiroshima Branch POW Camp No. 4, accused did willfully and unlawfully mistreat Wilfred Greaves, H. E. Haley, L. E. Fryer and one Yateman, Allied PWs, by forcing them to work when ill and in an unfit physical condition for work and by otherwise abusing them, thereby contributing to their death.

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Yes

except the words: "for work and by otherwise abusing them," of the excepted words, NG. Except the words "thereby contributing to their death" stricken (R. 46)

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Sp 7: At divers times between 27 November and 10 April 1945, at or near Hiroshima Branch POW Camp No. 4, accused did willfully and unlawfully mistreat numerous Allied PWs by beating and otherwise abusing them.

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Sp 8: Between 27 November 1942 and 10 April 1945, at or near Hiroshima Branch POW Camp No. 4, accused did unlawfully disregard and fail to discharge his duty as Commander of said Camp to control and restrain members of his command and persons under his supervision and control by permitting them to commit the following atrocities and other offenses against Allied PWs:

a. Between 7 September 1944 and 10 April 1945, the unlawful mistreatment and torture by Koseki Yamaji of Private Eugene W. Coxey, an American PW, by beating him, by forcing him to kneel on a cement walk for a long period of time with a bamboo pole behind his knees and by otherwise abusing him in cold weather and while said Prisoner was insufficiently clothed.

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Yes

b. On or about 25 November 1944, the unlawful mistreatment by one Koseki Yamaji of Corporal Christopher Baker, a British PW, by refusing to furnish and to have furnished to him medical supplies and treatment at a time immediately following the sustaining of a serious injury to his right leg and by otherwise abusing him.

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c. Between 27 November 1942 and 10 April 1945, the unlawful mistreatment and abuse by Koseki Yamaji of numerous Allied PWs by misappropriating and otherwise converting to his own use and benefit Red Cross and other supplies provided and intended for the use and benefit of Allied PWs.

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d. At divers times between 27 November 1942 and 10 April 1945, the unlawful mistreatment and torture by one Koseki Yamaji of numerous Allied PWs by ordering and imposing collective punishment on groups of said Prisoners for offenses alleged to have been committed by individual Prisoners of War.

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e. At divers times between 27 November 1942 and 10 April 1945, the unlawful mistreatment by Koseki Yamaji of numerous Allied PWs by beating them, by ordering others to beat them, by confining them to solitary confinement in cells unfit for human habitation, by depriving them of their full food rations and by otherwise abusing them.

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f. At divers times between 27 November 1942 and 10 April 1945, the unlawful mistreatment of numerous Allied PWs by beating and otherwise abusing them.

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Yes

YAMAJI

Ch: Accused, at the times and places set forth in the specifications, and during a time of war between the United States and Japan, did violate the Laws and Customs of War.

NG

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Yes

Sp 1: Between 7 September 1944 and 15 August 1945; at Hiroshima Branch POW Camp No. 4, Mukaishima, Mukaishima Island, Japan, accused did willfully and unlawfully mistreat and torture Private Lawrence I. Martin, an American PW, by beating him with a pick handle and fists until he was rendered insensible, by then reviving him and repeating said abuse, by forcing him to kneel on a ladder with a stick behind his knees for a long period of time and by jumping up and down on his legs and on such stick while said prisoner was so kneeling, all necessitating the receiving of medical treatment.

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Yes

Sp 2: On an occasion other than as mentioned under Specification 1, preceding and between 7 September 1944 and 15 August 1945; at Hiroshima Branch POW Camp No. 4, accused did willfully and unlawfully mistreat and torture Private Lawrence I. Martin, an American PW, by beating him with rifle butt, bamboo stick and fists and kicking him and by forcing him to stand at attention for a long period of time after said beating.

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Yes

Sp 3: Between 7 September 1944 and 15 August 1945; at Hiroshima Branch POW Camp No. 4, accused did willfully and unlawfully mistreat and torture Private James Aragon, an American PW, by confining him to a cell unfit for human habitation and on reduced rations for about three days and by otherwise abusing him.

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Yes

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Sp 4: Between 7 September 1944 and 15 August 1945; at Hiroshima Branch POW Camp No. 4, accused did willfully and unlawfully mistreat and torture Private Eugene W. Coxe, an American PW, by beating him, by forcing him to kneel on a cement walk for a long period of time with a bamboo pole behind his knees and by otherwise abusing him, all in cold weather and while said Prisoner was insufficiently clothed.

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Yes

Sp 5: Between 27 November 1942 and 15 August 1945; at Hiroshima Branch POW Camp No. 4, accused did willfully and unlawfully mistreat Warrant Officer Alfred W. May, a British PW, by beating and otherwise abusing him.

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Sp 6: Between 27 November 1942 and 15 August 1945; at Hiroshima Branch POW Camp No. 4, accused did willfully and unlawfully mistreat and abuse Flying Officer Frank M. Golab, a Canadian PW, by beating him until he was rendered insensible, resulting in his sustaining a ruptured eardrum.

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Yes

Sp 7: In or about June or July 1945, at Hiroshima Branch POW Camp No. 4, accused did willfully and unlawfully mistreat and torture Leading Air Craftsman George W. Kenny, a British PW, by beating him with fists and a sword scabbard; by forcing him to kneel on the edge of a raised bamboo ladder with one pole of said ladder under his knees and the other supporting his instep for a long period of time and by then forcing him to stand at attention, and by otherwise abusing him.

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Yes

except the words: "and a sword scabbard," of the expected words, NG.

Sp 8: Between 27 November 1942 and 15 August 1945; at Hiroshima Branch POW Camp No. 4, accused did willfully and unlawfully mistreat and torture approximately twelve (12) unidentified British PWs, by forcing them to kneel at attention on the edge of a raised bamboo ladder, with one pole of said ladder under their knees and the other supporting their insteps, for a long period of time, by then forcing them to stand at attention, by ordering and causing other guards to beat said Prisoners with fists for failure to comply with such order of standing at attention and by otherwise abusing them.

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Yes

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Sp 9: On or about 25 November 1944, NG  
at Hiroshima Branch POW Camp No. 4,  
accused did willfully and unlawfully  
mistreat Corporal Christopher Baker,  
a British PW, by refusing to furnish  
and to have furnished to him necessary  
medical supplies and treatment at a  
time immediately following the sustain-  
ing of a serious injury to his right  
leg and by otherwise abusing him.

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Yes

Sp 10: Between 27 November 1942 and NG  
15 August 1945, at Hiroshima Branch  
POW Camp No. 4, accused did willfully  
and unlawfully mistreat and abuse  
numerous Allied PWs by misappropri-  
ating, withholding and otherwise cen-  
verting to his own use and benefit  
Red Cross and other supplies pro-  
vided and intended for the use and  
benefit of Allied PWs.

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Sp 11: At divers times between 27 NG  
November 1942 and 15 August 1945, at  
Hiroshima Branch POW Camp No. 4,  
accused did willfully and unlawfully  
mistreat and torture numerous Allied  
PWs by ordering and imposing col-  
lective punishment on them for of-  
fenses alleged to have been commit-  
ted by individual PWs.

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Sp 12: At divers times between 27 NG  
November 1942 and 15 August 1945, at  
Hiroshima Branch POW Camp No. 4,  
accused did willfully and unlawfully  
mistreat and torture numerous Allied  
PWs by beating them, by ordering  
and causing others to beat them, by  
confining them in solitary confine-  
ment in cells unfit for human habi-  
tation, by depriving them of their  
full food rations, by forcing them  
to work when ill, sick, diseased  
and in an unfit physical condition  
for work and by otherwise abusing  
them.

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3. Summary of the Evidence:

a. For the Prosecution:

ISHIMATSU, Camp Commander, POW Camp Number 4,  
Mukiashima, Mukiashima Island, Japan

As to Specification 1: Not Guilty.

As to Specification 2: Former prisoner Coxey testified that he witnessed accused hitting seven or eight prisoners over their heads, faces and bodies with an encased scabbard. Four or five of them were bleeding from their heads as a result of the beating. Coxey heard afterward that they were beaten because they had not counted off correctly or that they were not standing at attention (R. 33, 35)

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As to Specification 3: Prisoner Diver states in his affidavit (Ex. 16):

"Another favourite form of punishment by Ishimatsu was to fasten prisoners up in a wooden box which measured approximately 5'4" tall, 3' wide and 3' deep, for a period of days, during which time the rations allowed to the prisoners was 1 pint of water, and three handfuls of salt and rice daily. When inside the box, it was impossible for the prisoner to stand up or lie down properly, and a man could only squat in a crouched position. No washing facilities were allowed, and the only provision made for the prisoner to relieve himself was an empty can which the prisoner took in the 'box' with him. The 'box' was in the Camp compound and, when the door closed up, the prisoner was entirely in darkness. The following men have been confined in this 'box' for the most trifling breaches of discipline:

"L. A. C. Barrick, Warrant Officer Golub, (Royal Canadian Air Force), L. A. C. Foster, Corporal Wrigne, L. A. C. Mellor, and most other members of the Camp, excepting myself." (Also supported by Ex. 4, 5, 9-11, 15-17, 26).

As to Specification 4: For the slightest infraction of the rules accused caused many prisoners to kneel on two bamboo poles which were three inches from the ground. One was under the prisoners' knees and the other supported their insteps. They were forced to kneel in this position at rigid attention for long periods of time--sometimes for hours. In some cases, when they were released from this position, they were ordered to stand at attention. Because their legs were crippled and cramped this was impossible to do and they were further beaten by the guards (R. 34; Ex. 2, 3, 5, 9, 12, 13, 14, 16).

As to Specification 6: Accused forced many prisoners to work who were ill. Among these prisoners were the four named in the specification. He personally went into the sick bay and picked out men who were almost dying and sent them to work (R. 35; Ex. 7-10, 15, 16, 18, 22).

As to Specification 8a: Prisoners Coxe and Lawrence were accused of stealing some rice. When they came in from work accused Yamaji beat them across the face and body with a bamboo pole for about fifteen minutes and made them kneel with a pole between their legs from about five o'clock in the afternoon until about nine o'clock that night. The kneeling was done on a cement and gravel walk. The weather was cold and their coats and shoes were taken away from them and they wore nothing but cotton shirts. Accused Ishimatsu came to where they were kneeling during this time and spoke something in Japanese which Coxe did not understand (R. 34-36, 41).

As to Specifications 8b and 8c: Not Guilty.

As to Specification 8d: Accused Yamaji on many occasions collectively punished the prisoners for the alleged wrongful act of an individual. This punishment was standing at attention for long periods of time and kneeling on a bamboo ladder for long periods of time (R. 29, 30, 34, 41; Ex. 13, 24, 26).

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As to Specification 8e: Not Guilty.

As to Specification 8f: Constantly and on numerous occasions when accused was in command, for the slightest alleged infraction of the rules the guards beat prisoners. The beatings were administered with fists, bamboo poles and rifle butts. They forced them to stand at attention for long periods of time as additional punishment. Sick and weak men were beaten. They often were forced to kneel on bamboo poles for long periods of time (R. 30, 31, 33-36; Ex. 1, 4, 6, 8-16, 20-23, 25, 26, 28).

YAMAJI, Sergeant Major POW Camp Number 4, Subordinate to accused Ishimatsu

As to Specification 1: On one occasion prisoner Martin allegedly stole some rice or some fish powder (R. 20), or he wore dress shoes to work (Ex. 1), or he stole some food (Ex. 19). When the group returned to camp that evening about four-thirty o'clock accused called him out of the ranks and started to slap him, first with his hands and fists and then used a bamboo pole about four or five feet long. With the pole he beat him over the head and back. During this beating he used a rifle butt and a bayonet in its scabbard and knocked him down and kicked him in the face. The beating lasted for about thirty minutes and after it was finished Martin's face was bruised and bleeding. Following this he forced Martin to kneel with a pole behind his knees and jumped up and down on it. Martin had to go to the hospital for one or two days as a result of this treatment (R. 20, 21, 20; Ex. 1, 19).

As to Specification 2: Prisoner Martin was beaten a second time by accused. He struck Martin with his fists and a pick handle. After he became unconscious he kicked him in the ribs and poured water on him to revive him and repeated this two or three times (R. 21, 22, 39; Ex. 2).

As to Specification 3: Prisoner Aragon allegedly stole some rice or fish powder. Accused beat him with his fists and then confined him in a wooden box. The box was small and he could not stand or lie down in it. He was forced to remain in this confinement for two or three days on reduced rations. The latrine facilities consisted of a can which he took with him in the box. The weather was cold and the box was unheated (R. 22, 23, 35, 41; Ex. 23, 24, 26).

As to Specification 4: Same as Specification 8a, Ishimatsu.

As to Specification 5: Not Guilty.

As to Specification 6: Prisoner Golab was smoking at work and he received a severe beating from accused which ruptured his eardrum. He received no medical treatment for this (R. 27, 42; Ex. 11).

As to Specification 7: Accused beat prisoner Kenny with his fists and made him kneel on a bamboo pole for three and one-half hours. He then confined him in a cell for seven days and each day he forced him to kneel on the bamboo pole. One day he was forced to stand at attention for the entire day. This punishment was meted out to him for cooking rice and beans on a charcoal fire in his billet (R. 31, 32; Ex. 13, 16, 18, 21, 27).

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As to Specification 8: Because Kenny was cooking as set forth in Specification 7, fifteen (Ex. 16), or twelve (Ex. 27), or twelve or fourteen (R. 26) prisoners who lived in Kenny's barrack were forced to kneel on bamboo poles, one under the knee and one under the instep. They were compelled to kneel at rigid attention for one and one-half hours. Under accused's orders the guards then told them to stand at attention. This was not possible because they were "crippled with cramps." However, they were beaten about the face and back with the clenched fists of the guards for disobeying the orders (R. 26, 37; Ex. 16, 27).

As to Specification 9: On 25 November 1944 at about 11:30 o'clock in the morning prisoner Baker's leg was crushed between a cart and a telegraph pole. The right front part of the leg was torn open exposing the bone. The wound extended just below the knee to about six inches above the ankle. Accused would not permit a doctor to be called nor would he allow Baker to be carried back to the camp for treatment. He insisted that the work in which they were engaged be finished first. He received no medical treatment until about 3 o'clock that afternoon. The wound required about twelve stitches (R. 27, 28, 42; Ex. 17).

As to Specifications 10, 11 and 12: Not Guilty.

b. For the Defense:

The gist of the pertinent testimony is as follows:

Testimony and evidence other than by accused

Prisoner Yateman died of tuberculosis (R. 49, 52; Ex. A). Doctor Kioke or, in his absence, Medical Corporal Hashimoto or S/Pvt Yamanaki decided which prisoners were too ill to go to work (Ex. A).

In the case of Baker, immediately after the injury medical orderlies from the camp were called and in the meantime a tourniquet was applied. In ten or fifteen minutes the medical orderlies arrived. Baker then went to camp by boat where the wound was sutured (Ex. A).

Concerning the confinement cells, there was sufficient room and one witness saw the prisoners lying asleep in them. The latrines were just outside of the cells (R. 52).

Accused Yamaji was liked by the prisoners and the Japanese alike and tended strictly to his own business (Ex. A, C). Accused Yamaji was the best liked person in camp (R. 51; Ex. A). No prisoner was beaten for building a fire when accused Ishimatsu was in command (Ex. B). McNiece did not complain to accused Ishimatsu about the treatment of the guards (R. 56). There were no prisoners beaten at the camp (R. 57) or at the dock (Ex. C). Accused Yamaji had no authority to confine anyone in the guardhouse (Ex. C).

Testimony of Accused Yamaji

He denied the allegations of Specifications 1 and 2 (R. 62).

Concerning Specification 3 he stated that a prisoner stole a box from the hold of a ship. Accused Ishimatsu ordered

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him to investigate. He lined up all of the prisoners and investigated for forty minutes at which time prisoner Aragon confessed doing the act. Accused Ishimatsu ordered him confined to the guard house (R. 62). He denied forcing the prisoners to stand at attention during the investigation. He had no authority to order confinement of anyone. There were two cells at this time (R. 63). These boxes were four foot and five inches wide, six feet in length and six feet high (R. 64).

He did not abuse prisoner Coxey in any way and heard of no one else who did (R. 64).

He denied knowledge of the allegations of Specification 6 (R. 65).

Concerning Specification 7 he stated when he had returned one Sunday night from a pass, the camp commandant told him that he had put a prisoner in the cell because the guards had discovered him cooking rice with a charcoal fire. Rice and charcoal had been taken from the dock. He investigated further and found eight others were involved and they had done the same three times before. He "let" them kneel (R. 65). This kneeling lasted for forty minutes. He denied striking them or ordering them to stand at attention. Prisoner Konny knelt the same length of time as the others (R. 66).

He was of the opinion that the allegations of Specifications 7 and 8 concern the same incident. There were nine prisoners involved and not twelve (R. 66).

Concerning Specification 9 he stated that when prisoner Baker was injured he let him lie in an empty cart and called the camp to have them send the medical orderlies. They arrived thirty minutes later and administered first aid. It happened at about one-thirty in the afternoon. He got back to the camp at about three thirty or four o'clock and Baker had gone back two hours before his arrival (R. 67).

Accused Ishimatsu always told accused to treat the prisoners fairly (R. 76). Accused Ishimatsu severely reprimanded a guard for slapping a prisoner. A prisoner told accused that he had saved his life because when he was ill with pneumonia he got him blankets and charcoal with which to keep him warm. When the prisoner left the camp he again expressed his gratitude to him. He used to share his fruit with the prisoners (R. 77). On four separate occasions he obtained a cow and butchered it each time and gave the meat to the prisoners (R. 77-78).

He denied punishing Coxey and did not remember Martin (R. 79). He denied beating Golub (R. 80).

#### Testimony of Accused Ishimatsu

Accused denied knowledge of the allegations of Specification 2, and denied striking any prisoner with a scabbard (R. 82).

During his command he ordered six prisoners to be confined. A prisoner in confinement for violation of the rules under the regulations is allowed one blanket a day if under light confinement and one every three days if under heavy confinement. He issued more than the specified numbers, especially when it was cold (R. 83). Under heavy confinement the prisoner

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was to receive one supplemental ration in every three days. The staple food was not affected by this regulation. Accused Yamaji had no authority to order anyone to be confined. The cells were six feet long, five feet four inches wide and six feet high (R. 84).

He denied that he had committed the acts as alleged under Specification 4 (R. 85).

Concerning Specification 6 he stated that as soon as he learned that prisoner Yateman had tuberculosis he had him removed to the sick bay for treatment (R. 85). He did not remember prisoners by the names of Greaves, Haley or Fryer. It was the medical officer who decided which prisoners were too sick to work. He never disregarded the medical officer's recommendation in this regard. He never struck or beat prisoners (R. 86). He did not abuse the prisoners in any way (R. 87).

Under Specification 8 he denied knowledge of Coxey's being forced to kneel on the cement walk. He denied that there was group punishment administered to the prisoners. He received no complaints about accused Yamaji. However, he received two or three complaints about company guards (R. 87). When it was reported that the prisoners were mistreated at the company on two occasions he told the labor chief in the presence of the two guards that if such conduct were followed in the future he would not send the prisoners to work for the company. He believes that on one occasion he kept the prisoners from going to work for at least one day. He also reported the incidents to the main camp (R. 88).

He believes he did what he could as camp commander (R. 88).

Had prisoners been forced to kneel for long periods of time he would have known about it. He never saw such an incident (R. 91).

He saw Aragon in this cell in February 1945 and ordered that he be issued the regular amount of blankets (R. 92).

He did not see Yateman walking in the snow without shoes. While they were making the special shoes for him it was spring and rather warm and Yateman wore straw sandals (R. 93).

Accused Yamaji's wife testified as to the good character and reputation of her husband and stated she needed him to aid her in her present financial condition (R. 95).

#### 4. Opinion:

The record is legally sufficient to support the findings of the Commission, except as hereinafter noted. Otherwise, each allegation of the charge and specifications of which the accused were found guilty was substantiated by ample and competent evidence. The Commission was constituted by proper authority and had jurisdiction of the accused and of the offenses alleged.

The prosecution introduced its evidence by testimony of a former prisoner of war and by affidavits of former prisoners of war who were interned in the camp, all of whom were in a position to know the facts of the matters in issue. From such the guilt of both of the accused was firmly established.

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It is to be noted that accused Ishimatsu, under Specification 8d, has been found guilty, by virtue of his command responsibility, for the acts of the accused Yamaji, his subordinate, under Specification 11. However, accused Yamaji has been found not guilty of that specification. To find the camp commander guilty of acts of a subordinate which were not committed, or to which there is attached no guilt, is highly illogical. If these were separate findings of two commissions it would amount to a different situation, (U.S. v. Matsumuro, Docket No. 144), but for the same commission, from the same evidence, in the same trial, to arrive at such findings amounts to an inconsistency that, logically, rightfully, and justly may not merit the approval of the Reviewing Authority.

It is contended in the defense motion that accused Ishimatsu may not be properly held guilty under his responsibility as camp commander for the acts of his subordinates unless he knew or should have known that the acts were taking place (P. 24, Ishimatsu Motion).

Under the evidence as presented under Ishimatsu Specifications 8a, d and E, it is shown that the acts were continuous and happened on numerous occasions. It is obvious that under the circumstances that accused either knew or, with the exercise of ordinary diligence, he could have known that the acts complained of took place. When prisoners Cokey and Lawrence were being abused by accused Yamaji accused Ishimatsu "came there several, three or four times while we were kneeling. He yapped something in Japanese..." (R. 25). Accused Ishimatsu stated that had prisoners been forced to kneel for long periods of time he would have known about it (R. 91). Under this statement the commission chose to believe the evidence that the acts took place and that he did, therefore, know about them. This was within the discretion of the Commission as a fact finding body, and it is considered that such findings should not be disturbed.

It is contended in the defense motions (Ishimatsu, P. 24-25, Yamaji, P. 14) that corporal punishment does not in itself constitute a violation of the laws and customs of war. However, under the Geneva Prisoner of War Convention rules, Chapter 6, Article 46, any corporal punishment and any form of cruelty is forbidden. Therefore, extreme brutality or serious injury to the victim is not a necessary element to make such a war crime. A corporal punishment to a prisoner of war, even a slight punishment, is covered by the Article. Likewise, the fact that such punishment was practiced in the Japanese Army did not make that a pattern or guide as to the proper treatment of prisoners of war. It is a known fact that throughout the armies of the world there are divers types and different degrees of disciplinary measures taken against the members of those armies. The leniency and severity of punishments differ greatly, one army from the other. This is the reason that the representatives from the various civilized nations met to decide and enact rules setting forth a certain specified manner of treatment to be extended prisoners of war. A violation of these rules is a war crime, despite the fact that such treatment is practiced in the detaining power's armed forces. Prisoners of war are placed in the category whereby they are to receive this special treatment because otherwise they would be at the mercy of the detaining power without anyone else to whom they might look for protection.

The defense motions further contend that the commission lacked jurisdiction over the offenses charged on the grounds that some of the alleged victims were not subjects of the United States

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of America. It has been passed on by the Reviewing Authority in past cases that the commissions do have such jurisdiction (United States of America v. Yanaru, Case Docket Number 84; United States of America v. Kaneko and Uchida, Case Docket Number 76; United States of America v. Kato, Case Docket Number 124; United States of America v. Takehashi et al, Case Docket Number 91; United States of America v. Nakajima et al, Case Docket Number 128; United States of America v. Sato et al, Case Docket Number 56).

Under the Yamaji Specification 1, the evidence offered indicates that Martin stole some food (Ex. 19), or some rice or fish powder (R. 20), or that he wore dress shoes to work, and for this he received the punishment alleged. Despite the discrepancy as to why he was mistreated, the fact that he was mistreated in the manner he was, constitutes a war crime. The sadistic and brutal treatment of Martin by accused Yamaji cannot find justification in the fact that he violated rules of the camp.

The complete record shows that the accused had a fair trial and that they were represented by competent counsel. They took the stand and testified in their own behalf. A careful scrutiny of the entire record fails to reveal any error which injuriously affected the substantial rights of the accused or any failure to accord them a fair trial in every respect. Except as is pointed out hereinabove, the evidence supports the findings. There is no evidence that accused were not sane at the time the alleged acts were committed and at the time of trial.

#### 5. Recommendations:

There are no letters of clemency from any members of the Commission. The letters of clemency from others have been read and considered.

The Commission sentenced accused Yamaji to confinement at hard labor for a period of fifteen (15) years and accused Ishimatsu to confinement for a period of twelve (12) years. The sentences are legal.

For the reasons set forth in the above opinion it is recommended that the findings of guilty of Specification 8d against Ishimatsu be disapproved and only so much of his sentence as provides for confinement at hard labor for ten (10) years be approved. It is recommended that in all other respects the findings and sentences in the case of both accused be approved and in all other respects the defense motions be denied. The prosecution (Major Goodman) has indicated that no prosecution reply brief will be filed.

Accused Yamaji was confined 26 November 1945, went to trial 6 October 1947, and was sentenced 15 October 1947. Under established policy owing to the length of time this accused has been in confinement prior to date of sentence it is recommended that twenty and one-half (20½) months of the sentence to confinement at hard labor be remitted. Sugamo Prison, Tokyo, Honshu, Japan, or elsewhere as the Supreme Commander for the Allied Powers or other proper authority may direct, is the appropriate place of confinement.

Accused Ishimatsu was confined 5 December 1945, went to trial 6 October 1947, and was sentenced 15 October 1947. Under established policy owing to the length of time this accused has

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been in confinement prior to date of sentence it is recommended that twenty and one-half (20½) months of the sentence to confinement at hard labor (in addition to the two years' reduction in the sentence above recommended) be remitted. Sugamo Prison, Tokyo, Honshu, Japan, or elsewhere as the Supreme Commander for the Allied Powers or other proper authority may direct, is the appropriate place of confinement.

6. Action:

Forms of action designed to carry into effect the above recommendations are attached.

PAUL E. SPURLOCK  
Reviewer  
Judge Advocate Section

I concur in general. However, in view of the aggravated character of the offenses delineated under Specifications 2, 3, 4, 6 and 8f (multiple incidents), it is believed that a sentence of twelve years is not at all excessive. Its approval is recommended.

ALLAN R. BROWNE  
Lt Colonel JAGD  
Army Judge Advocate.

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