

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

8 December 1949
Yokohama, Japan

UNITED STATES OF AMERICA VS KEIJIRO OTANI

Review of the Staff Judge Advocate

1. The attached record of trial of Keijiro Otani tried at Yokohama, Japan, from 25 April 1949 to 13 September 1949, by a Military Commission appointed by paragraph 1, Special Orders No. 86, Headquarters Eighth Army, United States Army, dated 21 April 1949, as amended by paragraph 3, Special Orders No. 87, Headquarters Eighth Army, United States Army, dated 22 April 1949, as further amended by paragraph 1, Special Orders No. 106, Headquarters Eighth Army, United States Army, dated 19 May 1949, having been referred to the Staff Judge Advocate, this review thereof is submitted to the Commanding General.

Personal Data Concerning Accused

NAME: Keijiro Otani
AGE: 51
RESIDENCE: Nagano-Ken, Suwa-Gun,
Fujimi-Mura, Shindo
MARITAL STATUS: Married
RELATIVES: Wife, one child
EDUCATION: Graduate Military Academy
VOCATION: Profession soldier
MILITARY CAREER: Commissioned 2nd Lt.
Infantry 1919, Kempei Captain 1930,
Kempei Major and Branch Unit Com-
mander 1936, Kempei Lt. Col. 1939,
Kempei Col. 1943, Instructor Kempei
School 1944, Tokyo Kempei Tai Com-
mander 1944, Tobu Kempei Tai Com-
mander 1945.

DATE OF CONFINEMENT: 5 March 1949
DATE OF ARRAIGNMENT: 25 April 1949
PLACE OF TRIAL: Yokohama, Japan
PERIOD OF TRIAL: 25 April 1949 to
13 September 1949
DATE OF SENTENCE: 13 September 1949
SENTENCE: CHL for ten (10) years
CLEMENCY RECOMMENDED BY COMMISSION:
Yes

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 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: That between about December 1944 and about 15 August 1945, at the Tokyo Kempei Tai, accused as the Commanding Officer thereof and then and there being in authority over the treatment and detention of about three hundred (300) American prisoners of War, did willfully and unlawfully disregard and fail to discharge his duty, as such Commanding Officer, by failing to provide to said prisoners adequate and proper quarters, clothing, food and water, hygiene, medical care and supplies, and hospitali-	NG	G excepting the words "a- bout three hundred (300)", "willfully and", "disre- gard and", "quarters, clothing, food", "hygiene", "and hospitalization", "disabilities", "Robert C. Armstrong, Richard R. Bishop," "Paul M. Clark," "Mark S. Kennard, Gerald B. Livingston," "Irving S. Newman,"; substituting for the phrase "about three hundred" the word "numerous"; of the excepted words, NG; of the substituted word, G.	Yes

Charge and Specification:PleasFindingsLegally Sustained

zation, thereby causing and contributing to the sicknesses, diseases, injuries, wounds, disabilities, and sufferings of the said prisoners, including the following:

Robert G. Armstrong, Richard R. Bishop, Vere D. Carpenter, Paul M. Clark, Robert P. Evans, Robert F. Goldsworthy, Fiske Hanley, Mark S. Kennard, Gerald B. Livingston, Olinot F. Lodovici, Irving S. Newman, Michael C. Sherdon, Harold J. Anderson, Jack G. Evans, Robert L. Fink, Edward Gorrie, Franklyn S. Green, Maynor B. Hanks, Albert P. Lounsbury, Glidden C. Lurvey, John F. McGuire, Frank G. Massey, Joe L. McQuade, Lester C. Morris, Robert E. Ring, Michael J. Robertson, William P. Rosenthal, Arthur M. Shelton, Dennis E. Tying, George L. Sheridan, and Kenneth Patterson.

Sp. 2: That between about December 1944 and about 15 August 1945, at the Tokyo Kempei Tai, accused as the Commanding Officer thereof and then and there being in authority over the treatment and detention of American Prisoners of War, did willfully and unlawfully disregard and fail to discharge his duty as such Commanding Officer by failing to provide to the following named American Prisoners of War adequate and proper quarters, clothing, food and water, hygiene, medical care and supplies, and hospitalization, thereby causing and contributing to their sicknesses, diseases, injuries, wounds, disabilities, sufferings, and deaths on or about the dates indicated: Sergeant Clifford A. Myra, 10 February 1945; Sergeant Thomas M. Goffrey, 11 February 1945; Aviation Ordnanceman Third Class Edward V. Andriso, 19 February 1945; Ensign William N. McConnell, 22 February 1945; Colonel Byron E. Brugge, 4 March 1945; Sergeant Ro J. Janacek, 6 March 1945; Corporal Jack D. Krone, 20

NG

G

Yes

excepting the words "willfully and", "disregard and", "quarters, clothing, food and", "hygiene", "and hospitalization"; "causing and", "disabilities", substituting the word "and"; the words "and deaths on or about"; "the dates indicated"; "10 February 1945, 11 February 1945, 19 February 1945, 22 February 1945, 4 March 1945, 6 March 1945; Corporal Jack D. Krone, 20 March 1945"; "14 April 1945, 18 April 1945; Sergeant William H. Osborn, 20 April 1945"; "1 May 1945, 24 April 1945, 27 May 1945, 26 June 1945, 5 June 1945, 5 June 1945, 5 June 1945, 3 August." Of the excepted words, NG; of the substituted word "and", G.

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Sustained

1945; Second Lieutenant John S. Houghton, 14 April 1945; Second Lieutenant Roland F. Nelson, 18 April 1945; Sergeant William H. Osborn, 20 April 1945; Sergeant Walter E. Walk, 1 May 1945; Master Sergeant Erwin R. Griffin, 24 April 1945; Corporal Stanley Forystek, 27 May 1945; Second Lieutenant Robert L. Williams, 26 June 1945; Sergeant Warren D. Olson, 5 June 1945; Sergeant Harold E. Halldorson, 5 June 1945; Sergeant Charles W. Snell, 5 June 1945; Second Lieutenant Theodore H. Fox, 3 August 1945.

Sp. 3: That on or about 10 March 1945 at Tokyo, accused then the Commander of the Tokyo Kempei Tai, did willfully and unlawfully order and permit persons under his control to unlawfully kill Second Lieutenant Leland P. Fishback, an American Prisoner of War, thereby causing the death of said prisoner.

NG

NG

Sp. 4: That on or about 28 May 1945 at Tokyo, accused then the Commander of the Eastern District Kempei Tai, did willfully and unlawfully order and permit persons under his control to unlawfully kill Second Lieutenant Dwight N. Knapp, an American Prisoner of War, thereby causing the death of said prisoner.

NG

G

Yes

excepting the words "willfully and unlawfully order and permit", substituting therefor the words "fail to prevent"; of the excepted words, NG; of the substituted words, G.

Sp. 5: That between about 10 March 1945, and about 15 August 1945 at Tokyo, accused then the Commander of the Tokyo Kempei Tai, did willfully and unlawfully order and permit prisoners under his control to kill by poisoning the following named American Prisoners of War, thereby causing the deaths of said Prisoners of War on or about the dates indicated: Corporal Jack D. Krone, 20 March 1945; Second Lieutenant John S. Houghton, 14 April 1945; Sergeant William H. Osborn, 20 April 1945;

NG

G

Yes

excepting the words "willfully and", "order and", "prisoners;" substituting for the word "prisoners" the word "persons"; excepting the words "Second Lieutenant John S. Houghton, 14 April 1945"; "Second Lieutenant Roland F. Nelson, 18 April 1945; Master Sergeant Erwin R. Griffin, 24 April 1945; Sergeant Warren L. Olson, 5 June 1945; Sergeant Harold E.

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Second Lieutenant Roland F. Nelson, 18 April 1945; Master Sergeant Erwin R. Griffin, 24 April 1945; Sergeant Warren L. Olson, 5 June 1945; Sergeant Harold E. Halldorson, 5 June 1945; Sergeant Charles W. Snell, 5 June 1945; and Second Lieutenant Robert L. Williams, 26 June 1945.

Halldorson, 5 June 1945; Sergeant Charles W. Snell, 5 June 1945; and Second Lieutenant Robert L. Williams, 26 June 1945." Of the excepted words, NG; of the substituted word, G.

Sp. 6: That between about December 1944 and about 15 August 1945 at the Tokyo Kempei Tai, accused as the Commanding Officer thereof and then and there being in authority over the treatment and detention of about three hundred (300) American Prisoners of War, did willfully and unlawfully mistreat and otherwise abuse the said Prisoners of War:

NG

G

Yes

excepting the words "about three hundred (300)" substituting therefor the word "numerous", and excepting the words "willfully and"; of the excepted words, NG; of the substituted word, G.

a. By failing to provide the facilities to permit the prisoners to wash themselves or their clothing;

NG

G

Yes

b. By failing to provide the facilities to permit the prisoners to shave and have their hair cut;

NG

G

Yes

c. By permitting intermittent withholding of the daily food and water rations from the prisoners;

NG

G

Yes

d. By permitting persons under his control to lock about eighteen (18) prisoners into one filthy, unventilated, vermin-infested cell, about 8½ feet wide and 11 feet long by 8 feet high, and to detain them there many weeks;

NG

NG

e. By permitting persons under his control to throw on the floor the daily food rations intended for consumption by the prisoners;

NG

NG

f. By denying the prisoners the opportunity to take reasonable exercises;

NG

NG

g. By permitting persons under his control to torture prisoners by various means, such as kicking and beating

NG

G

Yes

Charge and Specifications:

Pleas

Findings

Legally
Sustained

them upon their wounds, and forcing them to stand at attention or to squat Japanese fashion for long periods of time, resulting in the prisoner's loss of consciousness in some cases;

h. By failing to provide for and effect the isolation of seriously wounded, sick, diseased, and infected prisoners from other prisoners.

NG

G

Yes

i. By failing to furnish available medicine, medical treatment, and hospitalizations to seriously wounded and diseased prisoners; and

NG

G

Yes

inserting "and" between "medicine, medical"; of the inserted word, G; excepting the words "and hospitalizations"; of the excepted words, NG.

j. By otherwise failing to treat and require his subordinates to treat said prisoners with humanity, thereby causing the said prisoners extreme pain, suffering and misery.

NG

G

Yes

excepting the words "treat and"; of the excepted words, NG.

Sp. 7: That between about December 1944 and 15 August 1945, at the Tokyo Kempei Tai, accused as Commanding Officer thereof, and then and there being in authority over the treatment and detention of American Prisoners of War, did willfully and unlawfully disregard and fail to discharge his duty as such Commanding Officer to control and restrain persons under his control, by permitting them to unlawfully mistreat numerous American Prisoners of War by beating, kicking and otherwise abusing them.

NG

G

Yes

excepting the words "willfully and"; of the excepted words, NG.

3. Summary of the Evidence:

a. For the Prosecution:

General: The accused Keijiro Otani was a Colonel in the Imperial Japanese Army and from 1 November 1944 to 22 August 1945 was the Commanding Officer of the Tokyo Kempei Tai Headquarters, located in Tokyo, Honshu, Japan. Under the then existing regulations, captured American airmen were forwarded to and detained at the headquarters for interrogation and investigation, pending disposition either as prisoners of war or as suspected war criminals. The violations of the laws and customs of war, in the instant case, occurred during the period and at the place above set forth.

As to Specification 1: Accused was found guilty of unlawfully failing to discharge his duty as the Commanding Officer of the Tokyo Kempei Tai, later called the Eastern District Kempei Tai, by failing to provide to numerous American prisoners of war adequate and proper water, medical care and supplies, thereby causing and contributing to their sicknesses, diseases, injuries, wounds and sufferings. Evidence was adduced to the effect the accused made monthly inspection trips of the cells of the Kempei Tai where the Americans were held and knew the existing conditions, during which time no facilities were furnished to the prisoners for personal hygiene or cleanliness nor were they given an opportunity to wash either themselves or their clothing; that medical supplies and treatment were entirely inadequate and, in most cases, denied entirely in spite of the fact that numerous prisoners were suffering from serious burns, wounds, diseases, broken bones and other afflictions and were urgently in need of same; that as a result of the foregoing the confined prisoners suffered from personal filth, body vermin, skin eruptions and sores, untended burns, wounds, broken bones and diseases and were reduced and degraded to a sub-human standard of existence (R 20-34; Exhibits 9, 10, 16, p 16) (U.S. vs Fujino, Case Docket No. 310, R 1348, 1367).

As to Specification 2: Same as Specification 1.

As to Specification 3: Not guilty.

As to Specification 4: Accused was found guilty of failing to prevent persons under his control from unlawfully killing 2d Lieutenant Dwight N. Knapp, an American prisoner of war. Evidence was adduced to the effect that Knapp, a B-29 flyer, parachuted to earth in the Adachi area of Tokyo in the latter part of May 1945 and was captured by members of the Ueno Kempei Tai Detachment. Prior to capture he shot and killed two Japanese civilians. He was taken to the main Tokyo Kempei Tai Headquarters where a meeting of the Kempei Tai Detachment commanders was held on or about 28 May 1945. Major Horie, the Ueno Commander, reported the capture and questioned accused as to what disposition should be made of the prisoner. The prosecution introduced evidence by way of affidavits and the testimony of living witnesses that accused told Major Horie to make a severe disposition of prisoner at the Ueno Detachment, that the meaning of the order was to execute and that subsequently Knapp was beheaded by Master Sergeant Noguchi, a subordinate of Horie's, at the Ueno Detachment (Exhibits 1-8, 14, 16; R 86) (U.S. vs Noguchi, Case Docket No. 306).

As to Specification 5: Accused was found guilty of unlawfully permitting persons under his control to kill two American prisoners of war, Corporal Jack D. Krone on or about 20 March 1945, and Sergeant William H. Osborn on or about 20 April 1945. Evidence was adduced to the effect that one Kenji Hirano, a medical officer assigned to Eastern District Army Medical Department, was called to the Tokyo Kempei Tai Headquarters in March 1945 to treat Corporal Jack D. Krone, who was seriously burned and in a dying condition. Hirano gave the patient two injections of morphine. He was then ordered by Lt Toyama, a Kempei Tai officer and subordinate of the accused, to inject a poisonous substance into the prisoner's body, which he did, causing the prisoner to expire within a few minutes thereafter. Evidence was adduced that potassium cyanide was obtained from the Kempei Tai dispensary and delivered to Hirano for this killing; that accused knew seriously injured flyers were confined in the cells; that he told his subordinate officers not to request the Eastern District Army for hospitalization in such cases, and that it required an order of Colonel Otani to do anything regarding the American prisoners held at the Kempei Tai Headquarters (U. S. vs Hirano, Case Docket No. 295, R 23, 26, 52-58, 82-84, 99; Exhibits 1, 6, 8, 10, 11) and (U.S. vs Fujino, Case Docket No. 310; R 851, 1348, 1367).

Sergeant William H. Osborn, a B-29 flyer, was reported missing in action over Tokyo on 2 April 1945. Evidence was adduced that he was imprisoned at the Tokyo Kempei Tai Headquarters, and up until 16 April 1945 had received no medical attention for serious burns sustained when he was shot down; that Hirano was called to treat him; that Lt Toyama told Hirano, "The last one didn't die when you gave him a morphine injection. Give this one potassium cyanide

right away", that the poison was handed to Hirano by Kempei Tai personnel, which he injected into the prisoner causing instant death (U.S. vs Hirano, Case Docket No. 295; R 23-26, 52, 58, 83, 84; Exhibits 4-11) and (U. S. vs Fujino, Case Docket No. 310; R 529-554, 807-867; Exhibits 137, 153, 154).

As to Specification 6: Accused was found guilty of unlawfully mistreating and otherwise abusing numerous American prisoners of war, as hereinafter set forth in the sub-specifications.

As to Specification 6A: Evidence was adduced to the effect that prisoners were furnished no facilities nor were they permitted to wash themselves or their clothing during the entire period of their confinement which, in many cases, was in excess of two months (R 22) and (U. S. vs Fujino, Case Docket No. 310; R 270, 400, 470, 617, 647, 791; Exhibits 45, 51, 55, 58, 64, 92-97, 108, 116, 135, 159, 165, 168, 169, 171-174).

As to Specification 6B: Evidence was adduced to the effect that the prisoners were furnished no facilities nor were they permitted to shave or have their hair cut during the entire period of their confinement which, in many cases, was in excess of two months (R 22, 129) (U. S. vs Fujino, Case Docket No. 310, Exhibits 51, 55, 58, 92, 94, 116, 168-174; R 270).

As to Specification 6C: Evidence was adduced to the effect that food and water rations were intermittently withheld from the prisoners during the period of their confinement which, in many cases, was in excess of two months (R 22; Ex 9).

As to Specifications 6D, 6E, 6F: Not guilty.

As to Specification 6G: Evidence was adduced to the effect that subordinates of the accused were permitted to torture prisoners by various means, such as kicking and beating them upon their wounds and forcing them to stand at attention or to squat Japanese fashion for long periods of time, resulting in the prisoners' loss of consciousness in some cases (R 21, 29; Exhibits 9, 10). (U. S. vs. Fujino, Case Docket No. 310, Exhibits 16, 48-53, 57-59, 61, 64, 73, 74, 102, 106, 109-119, 124, 126, 135, 135a, 139, 140, 147, 159; R 267, 331-335, 348-358, 383, 397, 398, 439, 462, 751.)

As to Specification 6H: Evidence was adduced to the effect that seriously wounded sick and diseased prisoners were not isolated or segregated from other prisoners, but on the contrary were permitted to remain with them in the overcrowded cells (R 20, 21; Exhibit 9). (U. S. vs Fujino, Case Docket No. 310, Exhibits 46, 49, 57, 58, 62, 70, 72, 88, 90-98, 110, 128, 148, 151-156, 165, 168, 169, 174).

As to Specification 6I: Evidence was adduced to the effect that available medicine and medical treatment were not furnished to seriously wounded and diseased prisoners (R 20, 21, 129; Exhibits 9, 10).

As to Specification 6J: Evidence was adduced to the effect that accused failed to require his subordinates to treat the prisoners with humanity, thereby causing the prisoners extreme pain, suffering and misery (R 20, 21, 22, 26; Exhibits 9, 10) (U. S. vs Fujino, Case Docket No. 310, Exhibits 16, 21-40, 44, 159; R 42, 46, 51, 61, 94, 95, 135, 136, 147, 150, 174, 176, 216-219, 229, 230, 457, 462, 654-656, 727, 748, 781).

As to Specification 7: Accused was found guilty of an unlawful disregard of and a failure to discharge his duty to control and restrain persons under his control from mistreating numerous American prisoners of war by beating, kicking and otherwise abusing them. Evidence adduced to support the finding of guilty against the accused was the same as under sub-specifications 6G and 6J (R 20-22, 26, 29; Exhibits 9, 10).

b: For the Defense:

The accused, Keiji Otani, after being advised as to his rights as a witness elected to take the stand and testify under oath in his own behalf (R 428). He submitted a sworn statement in lieu of direct oral testimony (Exhibit D). This contained an outline of his military career. Accused became the Tokyo Kempei Tai Commander in November 1944 and learned that American airmen were confined in the Kempei Tai cells. He stated that he knew the position of the American flyers under International Law and that the Kempei Tai were to treat them humanely (Exhibit D, p 62). The prisoners came under the jurisdiction of the Eastern District Army (Exhibit D, p 64). They were held by the Kempei as war crimes suspects for the purpose of investigation. At the several Branch Unit Commanders' meetings accused instructed his subordinates that, "Investigation shall be strict but the treatment shall be kind and courteous." (Exhibit D, p 12). He attended the interrogation of an American flyer at the Kempei Headquarters. No force was used in the questioning (Exhibit D, p 60). Regarding the medical treatment of the flyers accused stated that if the symptoms were slight the Kempei Tai would treat them but serious cases were to be reported to the Eastern District Army and hospitalization requested (Exhibit D, p 84). After the reorganization in April 1945 one medical officer was assigned to the Tokyo Kempei Tai but conditions were bad as to medical supplies. Accused made inspection trips both in April and in June, and in the latter month saw the crowded condition in the cells. The flyers appeared to be in ordinary health. He did not notice any injuries or burns on the exposed parts of their bodies (Exhibit D). He was not aware of the fact that the flyers had lost weight or become seriously ill during confinement (Exhibit D). Accused was convinced that matters pertaining to the bathing and exercise of the flyers were smoothly conducted by those concerned, in this case his subordinates Motokawa, Nemoto and Toyama. He never heard any complaints or protests from the prisoners or his subordinate officers (Exhibit D). Because of the air raids and the limited facilities it was difficult to carry these things into effect (Exhibit D). Accused was so busy every day while in the office that he hardly left his quarters. He never walked around the inside and outside of the headquarters to inspect the work of his subordinates outside of formal inspections (Exhibit D). If a situation arose wherein his subordinates needed his opinion as to matters concerning the flyers they should have come to him for instruction (Exhibit D). Although the medical facilities at the Kempei Tai were insufficient accused was of the opinion the medical personnel of the Kempei Tai had made considerable effort in giving medical treatment to the flyers (Exhibit D). On the basis of the prosecution evidence accused conceded that that Corporal Jack D. Krone and Sergeant William H. Osborn were poisoned to death by medical officer Hirano but that he had no knowledge or responsibility in this matter (Exhibit D). If he had known of conditions as set forth in the charge and specifications he would have taken corrective action (Exhibit D). He did not order Major Horie to execute an American flyer. Horie's report on the capture of this airman was late and accused would not accept it. He returned it to Horie and told him to take strict measures (shori) concerning this incident and remake the report (Exhibit D). By committing suicide Horie accepted the responsibility for this execution (Exhibit D). Accused did not condone Horie's action but postponed taking measures against him because he wanted Horie to exert his utmost effort in case of the decisive battle of the homeland (Exhibit D).

Accused, on cross examination, admitted he knew the American prisoners were entitled to receive the same ration as Japanese soldiers but he did not look further into the matter to see whether or not they were actually receiving the same amount (R 442). The order of the Eastern District Army to him as the Tai Commander to detain the American flyers and investigate them at the Tokyo Kempei Tai was a lawful order within the scope of national defense (R 448).

He never had occasion to complain to superior headquarters regarding any of the orders which he received concerning the captured airmen (R 456). In regard to the Knapp incident Major Horie could have recommended to Eastern District Army that the flyer be tried by court martial or decided that no charges should be brought against him in which latter event Horie would have reported to

the Tai Headquarters and Knapp would have been handled as any other flyer (R 480). He thought his instructions to Horie were clear and that there was no possibility of misunderstanding (R 486).

Accused never made a report of the Knapp execution to any superior headquarters (R 487). When first interrogated by the prosecution at the Legal Section in the Meiji Building accused stated no American flyer died at the Kempei Tai (R 489). After the end of the war accused obtained a quantity of potassium cyanide from his adjutant, Koiso, with the intention of committing suicide. He had this poison in his possession until he was apprehended in 1949. He did not know where Koiso obtained it. Otani did not know whether there was potassium cyanide in the Kempei Tai dispensary (R 492). Accused left Tokyo and went into hiding at a time when he was under arrest as a suspected war criminal (R 493-494).

Keisuke Fujie, a witness for the defense, testified he was the commanding general of the Eastern District Army from 22 March 1944 until 9 March 1945; that captured American airmen were confined at the Tokyo Kempei Tai for investigation to determine whether they were to be treated as prisoners of war or as war criminals (Exhibit E) and that the Eastern District Army had the authority to remove the flyers from the Kempei Tai cells and could have done so quickly if their condition was known (Exhibit E).

Sanji Okido, a witness for the defense testified he was the commanding general of the Kempei GHQ from October 1944 until August 1945. He stated that he had nothing to do with the flyers (R 203). During the period August 1944 to August 1945 the Eastern District Army was responsible for adequate quarters and food for the prisoners (R 214).

Manjiro Tsukamoto, a witness for the defense, testified he was a former Kempei officer and attended the staff meetings of Colonel Otani. He recalled that accused said the flyers should be treated in a just manner (R 237). In regard to the Knapp incident accused scolded Major Horie because his report of the matter was delayed but did not tell him to kill the flyer (R 237). On another occasion accused told Major Kobayashi not to allow civilians to strike an American flyer (R 238). Witness interpreted accused's words to mean that the flyers were protected by the International Law (R 238).

Michiharo Okamura, a witness for the defense was a Kempei lieutenant colonel and during the war years a staff officer at the Kempei General Headquarters at Tokyo. He stated from the beginning of the air raids about March 1945 until the termination of the war there was not sufficient medical personnel or hospitals in and around the Tokyo area to take care of the civilian casualties which resulted from such bombings or air raids (R 278). By the reorganization in April 1945 a medical officer was attached to the Eastern District Kempei Unit Headquarters, but he was a probationary medical officer who was assigned to the Headquarters. Moreover, medical facilities at the Headquarters were insufficient (Exhibit N). Otani was deeply concerned over the medical treatment of the flyers and the detainees in general (Exhibit P).

Shichisaboro Yajima, a witness for the defense, testified he was the Tachikawa Kempei Tai Commander from August 1944 to August 1945 (Exhibit CC). He was an intimate friend of Major Horie, the Ueno Detachment Commander, who told him he voluntarily killed an American flyer after the second air raid on Tokyo sometime around the latter part of May 1945. This conversation took place prior to the meeting of the Detachment Commanders at the Tokyo Kempei Tai Headquarters and Yajima advised him to report the matter to accused. He did not know whether it was reported to Otani, but believed Horie committed suicide because of this incident (R 403).

Etsuji Noguchi, a witness for the defense, testified he did not recall whether or not the Branch Unit Commander Horie clearly said that it was an order from accused to decapitate the American flyer Knapp. Branch Unit Commander Horie did not mention the name of Otani or the names of any other superior officers (Exhibit EE).

At the request of the defense the commission took judicial notice of the Strategic Bombing Survey Reports published by the United States Air Force which were included in U. S. vs Fujino, Case Docket No. 310 (R 502).

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 failure to act or at the time of the trial. The accused was given a fair trial, was aggressively defended, cooperated in his own defense, produced witnesses in his own behalf and took the witness stand in his own defense.

Under the doctrine of command responsibility, which has been discussed in many previous reviews, there was an affirmative duty upon Otani "To take such measures as were within his power and appropriate in the circumstances to protect prisoners of war." In re Yamashita, 327 U. S. 1. The duty of accused as the commanding officer of the Tokyo Kemppei Tai was not discharged by the mere issue of routine orders, if indeed such orders were issued. His duty was to take such steps and issue such orders to his subordinates as would prevent the commission of war crimes and to satisfy himself that such orders were being carried out. This he did not do.

In defense accused said he had no knowledge of existing conditions in the cells as set forth in the charge and specifications or he would have taken corrective action. However, by the evidence of the prosecution such a pattern of mistreatments and abuses was established that it is not considered remotely possible that the accused, who had his office in the same building where the American flyers were confined, was unaware of their occurrence. It is, therefore, concluded that the record is legally sufficient to support the findings of the commission.

No ruling of the commission was prejudicial to the substantial rights of the accused.

5. Recommendations:

Petition for clemency signed by all members of the commission has been carefully considered and the following recommendation is made: Otani's keen mind and the possibility that he might be useful in the reconstruction of Japan do not excuse or mitigate his callous and culpable neglect in failing to protect the prisoners of war under his jurisdiction, and his post war flight and concealment is evidence of a guilty mind. It is considered that, if the commission chose to find this accused guilty of six specifications alleging command responsibility for beatings, poisonings, failure to provide water, medical care and supplies for prisoners of war, as it did, the punishment meted out would appear to fit the crimes. It is considered that the ten year sentence is not excessive by comparison with those of other commissions in cases involving similar facts. Clemency, therefore, is not recommended at this time.

6. Action:

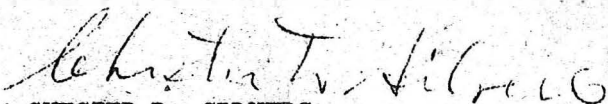
A form of action designed to carry this recommendation into effect is attached hereto.

Charles S. George
CHARLES S. GEORGE
Reviewer
Judge Advocate Section

I have read the record of trial and concur in the opinion and recommendations of the reviewer.

Most of the offenses of which accused has been convicted were committed in the basement area of his headquarters building in Tokyo. It is inconceivable that he did not have actual notice of or reason to believe that the atrocities were being committed by persons under his command. Furthermore, his failure to prevent the beheading of 2nd Lieutenant Dwight N. Knapp was a conscious failure, in fact a refusal, to accord to the prisoner the protection afforded him under the laws of war. Finally the accused's faked suicide and burial, his flight and seclusion in a remote mountainous area for nearly three years, are circumstances which the law will attribute to a guilty mind.

The accused is highly intelligent and cunning. The commission appears to have given him the benefit of every reasonable doubt. The sentence cannot be construed as being disproportionate to the offenses.



CHESTER D. SILVERS
Lt Col JAGC
Army Judge Advocate