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HEADQUARTERS EIGHTH ARMY  
United States Army

Office of the Staff Judge Advocate

Yokohama, Japan  
20 February 1948

UNITED STATES OF AMERICA VS TSUTAFU KIMURA

Review of the Staff Judge Advocate

1. The attached record of trial of Tsutafu Kimura, also known as Tsutau Kimura, at Yokohama, Japan, from 20 to 24 November 1947 by a Military Commission appointed by paragraph 1, Special Orders No. 270, Headquarters Eighth Army, United States Army, dated 18 November 1947, having been referred to the Staff Judge Advocate, this review thereof is submitted to the Commanding General.

Personal Data Concerning Accused

NAME: Tsutafu Kimura, aka Tsutau Kimura	DATE OF CONFINEMENT: 22 May 1947
AGE: 39	DATE OF ARRAIGNMENT: 20 Nov 1947
RESIDENCE: 173 Banchi Tokusen, Iizuka Shi, Fukuoka Pref.	PLACE OF TRIAL: Yokohama, Japan
MARITAL STATUS: Married	PERIOD OF TRIAL: 20 Nov 1947 to 24 Nov 1947
RELATIVES: Wife, three chil- dren, mother	DATE OF SENTENCE: 24 Nov 1947
EDUCATION: Not shown	SENTENCE: CHL for one (1) year and six (6) months
VOCATION: Mining Company employee	CLEMENCY RECOMMENDED BY COMMISSION: No
MILITARY CAREER: Japanese Army 1929 to 1931	

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>
Accused, a Japanese civilian employed by the Nittetsu Mining K.K., a Japanese concern employing Allied PW, at the times and places set forth in the specifications hereto attached, did violate the Laws and Customs of War.	NG	G	Yes
Sp 1: On or about September 1944, at or near Fukuoka Branch PW Camp No. 10, Futase, Kyushu, Japan, the accused did willfully and unlawfully mistreat Cpl. Edward H. Howe, an American PW, by beating and otherwise abusing him.	NG	G	Yes
Sp 2: On or about March 1945 at or near Fukuoka Camp No. 10 accused did willfully and unlawfully mistreat Cpl. Edward H. Howe, American PW, by beating and otherwise abusing him.	NG	G	Yes
Sp 3: In or about 15 May 1945 at or near Fukuoka Camp No. 10 accused did willfully and unlawfully mistreat Sgt. Earl V. Gould, American PW, by beating him.	NG	G	Yes
Sp 4: Between 20 May 1943 and 21 September 1945 at or near Fukuoka Camp No.	NG	G	Yes

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(P 1, KIMURA, Case #264)

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10, accused did willfully and unlawfully mistreat Cpl. David R. Spooner, American PW, by beating him.

Sp 5: On or about November 15, 1944 at or near Fukuoka Camp No. 10, accused did willfully and unlawfully mistreat Cpl. Albert W. Roberts, American PW, by beating him. NC G Yes

Sp 6: At divers times between 20 May 1943 and 21 September 1945 at or near Fukuoka Camp No. 10, accused did willfully and unlawfully mistreat numerous American Prisoners of War by beating and otherwise abusing them. NC G, as amended by insertion of words "and Allied" after word "American". Yes

SENTENCE IMPOSED: Confinement at hard labor for one (1) year and six (6) months.  
MAXIMUM LEGAL PUNISHMENT: Death

### 3. Summary of the Evidence:

#### a. For the Prosecution:

As to Specification 1: The accused, Tsutafu Kimura, on or about September 1944, at or near Fukuoka Branch Prisoner of War Camp Number 10, Futase, Kyushu, Japan, mistreated Corporal Edward H. Howe, an American Prisoner of War, by striking him with his fists about fifteen times for moving in ranks when supposed to be standing at attention. The accused then picked up a club and struck the corporal several times, knocking him down and kicking him several times after he fell (Ex. 5 and Ex. 1, p. 2).

As to Specification 2: On or about March 1945 Corporal Edward H. Howe feeling sick was given permission by the guard to leave the mine in which he was working. The accused saw him as he was leaving the mine, ordered him to stand at attention, kicked him in the shins, beat him in the face with his fists and ordered him below. When the corporal got below he was given permission by the guard to sit down and rest. While the corporal was resting, the accused saw him, ordered him to his feet, beat him with his fists and ordered him to go to work (Ex. 1, p. 2).

As to Specification 3: On or about 15 May 1945 the accused beat Sergeant Earl V. Gould, an American Prisoner of War, with a large stick because he would not divulge who had been smoking cigarettes in the coal mine shaft where they were working. The sergeant was not seriously injured (Ex. 2, p. 2; Ex. p. 1).

As to Specification 4: Between 20 May 1943 and 21 September 1945 the accused beat Corporal David R. Spooner about the face with his fists. The accused said the corporal was late in getting back from an errand. The corporal suffered no permanent injuries or scars from this treatment (Ex. 4, p. 3).

As to Specification 5: On or about 15 November 1945 Chief Mechanist's Mate Albert W. Roberts, an American Prisoner of War, was injured in the leg by an explosion in a lateral tunnel of a coal mine. While being escorted out by comrades, he met the accused who became infuriated when one of the escorts did not want to unwrap the wound and struck the escort twice in the face, then slapped Roberts in the face and kicked him in both legs inflicting great pain especially in the wounded leg. No permanent injuries were suffered (Ex. 5, p. 2).



As to Specification 6: That at divers times between 20 May 1943 and 21 September 1945, at or near Fukuoka Branch Prisoner of War Camp Number 10, Futase, Kyushu, Japan, the accused abused and mistreated American and Allied Prisoners of War by beating and abusing them (Ex. 1, p. 2; Ex. 3, p. 1; Ex. 4, p. 3; Ex. 5, p. 2 and 3).

b. For the Defense:

The accused, Tsutau Kimura, disguised himself under the name of Tsutafu Kimura to avoid apprehension (R. 3, 4). He has a wife, three children and a mother dependent on him and is 39 years old (R. 32). He was a civilian at the time he inflicted the various beatings for which he was charged. He, having been apprised of his rights as a witness (R. 2), as provided in Paragraph 5b of Letter Order, AG 000.5 (5 December '45) LS, General Headquarters, Supreme Commander for the Allied Powers, took the stand and testified under oath in his own behalf (R. 32, 39). He handled the prisoners of war working at the Futase Mining Company, Futase, Kyushu from July 1943 until the termination of the war (R. 33). He had a special rest room built for the prisoners of war which was heated with steam for their comfort. He had a special garden planted to give the prisoners better food. He tried to lighten their work and to see that they were properly treated (R. 34). He put in special signal devices to protect the prisoners of war who could not understand Japanese (R. 35). He was continually looking after the well-being of the prisoners of war. He struck one prisoner of war for smoking in the mine. He did not catch the prisoner of war smoking but other prisoners of war reported this to the accused (R. 37, 38). First he reprimanded the prisoner and when the prisoner took a sneering attitude, he struck him with his open hand. He did not kick or strike the prisoner with a stick. He had continually warned the prisoner of the danger of smoking in the coal mine which was in a group that contained free methane gas. The other prisoners of war condoned the action he had taken (R. 37).

Yukio Kajimi of the Fukuoka-Ken Kako-Gun, Konagi-Mura, Kittetsu Futase Mine Company, testified in behalf of the accused. He stated the accused had the duty of getting the prisoners of war at the camp gate to the various foremen in the mines and at the end of the work day getting them back to the camp (R. 9). In some gas-infested mines there were strict regulations against smoking. He never knew of an instance where the accused struck a prisoner (R. 11).

Seiichiro Yoshitsugu, who from 23 June 1944 to 4 February 1945, was camp commandant of the prisoner of war camp in Futase, identified the accused (R. 13) and stated he had warned prisoners about smoking in the mine. He never received reports of mistreatment of prisoners of war by the accused and in reality the accused had received special commendations for the kindly way he handled prisoners (R. 14).

Kiyoshi Sakai, camp commandant of Futase Prisoner of War Camp from 9 February 1945 to 15 August 1945, stated the accused treated prisoners fairly and sincerely.

Yoshiwaka Suenaga, doctor for the camp from 1 February 1944 until the termination of the war, testified that the prisoners of war feigned sickness and mental illness (R. 22) to get out of work.

Fusayuki Kamebe, project supervisor of the Futase Mine, identified the accused as the man he had selected in 1943 for

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the position of general supervisor over the prisoners of war, and that particular selection was made because the accused was earnest and impartial (R. 24).

Kimishiro Kido, who was labor foreman at the Futase Mines supervising prisoners of war between April 1944 to March 1945, never saw the accused abuse a prisoner of war (R. 29).

**4. Opinion:**

The Commission was constituted by proper authority and had jurisdiction over the accused and of the offenses charged. The question of sanity was not raised, nor is it an issue in this case. The accused was given a fair trial and was ably defended. He cooperated in his own defense, produced several witnesses on his own behalf and took the witness stand in his own defense.

All evidence presented by the prosecution was in the form of statements and affidavits.

Sergeant Earl V. Gould who was referred to in Specification 3 was not without blame. By his own statement he admits that he with three other PWs did smoke in the shaft (Ex. 3, p. 2). By such deliberate action he endangered the lives of all the prisoners of war. A reprimand and even punishment properly administered would have been justified, but that did not, under the Treaties Governing Land Warfare, justify the manner in which the accused handled this flagrant violation of the rules.

Motion asking the disapproval or modification of findings or sentence was filed by the defense.

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

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

**5. Recommendations:**

The accused was sentenced to confinement at hard labor for a period of one year and six months. No request for clemency was submitted. The sentence is legal and it is recommended that it be approved. It is further recommended that, owing to the length of time the accused has been in confinement prior to the date of sentence, three (3) months of the sentence be remitted.

**6. Action:**

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

I. O. HAGEN  
Major CMLC  
Reviewer

**I concur:** The sentence is inadequate. Nevertheless, pre-trial confinement is in no way to be considered as confinement served in expiation for offenses of which an accused is later convicted. Therefore a reviewing authority should consider such restraint entirely separately from that adjudged by a commission. The blackest rogue is entitled to an early trial under the enlightened rules of civilized nations. When trials are postponed, as this one was,



because of the great number of those awaiting justice, fair allowances should be made for undue pre-trial confinement regardless of the inadequacy of a sentence. This is all the more true since commissions are instructed that pre-trial confinement is not to be considered in adjudging sentences. Specifications 1 to 5 inclusive are necessarily duplicated in Specification 6. In view of the low sentence no harm to the accused resulted. The addition in the finding under Specification 6 of the words "and allied" actually benefited the accused because it insulated him against future trials for mistreating the persons referred to.

ALLAN R. BROWNE  
Lt Colonel JAGD  
Army Judge Advocate

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