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SOURCE:

CASE DOCKETS OF FAR EAST WAR CRIMES TRIALS

RECORD GROUP 153

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HEADQUARTERS EIGHTH ARMY
 United States Army
 Office of the Staff Judge Advocate
 APO 343

Yokohama, Japan
 18 June 1946
 Case No. 34

UNITED STATES OF AMERICA VS SHOICHIRO AOKI

Review of the Staff Judge Advocate

1. The attached record of trial of Shoichiro Aoki at Yokohama, Japan from 24 May 1946 to 26 May 1946, by a Military Commission appointed by paragraph 24, Special Orders No. 131 dated 22 May 1946 as amended by paragraph 20, Special Orders No. 132, Headquarters, Eighth Army, United States Army, dated 23 May 1946, having been referred to the Staff Judge Advocate this review is submitted to the Commanding General.

Personal Data Concerning Accused

NAME: Shoichiro Aoki.
 AGE: Thirty-eight (38).
 RESIDENCE: City of Kyoto, Hyashiyama, Yama-shina, Nishino Yoma, Sakura Baba Cho, No. 239.
 MARITAL STATUS: Married, three children.
 RELATIVES: Not shown.
 EDUCATION: Not shown.
 VOCATION: Weaving silk belts.
 MILITARY SERVICE: 10 January 1930 to 23 November 1931; recalled on 30 August 1937 to 20 December 1939.

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>
Charge: Violation of the Laws and Customs of War between 1 December 1944 and 1 June, 1945 at Umeda Bunsho Prisoner of War Camp, Osaka Area, Honshu, Japan, then a civilian guard serving with the Armed Forces of Japan, did, willfully and unlawfully commit cruel, inhuman and brutal acts, atrocities and other offenses against certain American Prisoners of War.	NG	G	Yes
Sp 1: Between 1 December 1944 and 30 April 1945, mistreat and torture Machinist Mate First Class Keith Charles Turner, an American PW.	NG	G	Yes
Sp 2: About March 1945, mistreat Corporal Frank Emery Copeland, an American PW.	NG	NG	
Sp 3: About April 1945, inflict collective punishment against about ninety Americans and Allied PWs for individual infractions alleged to have been committed by certain of said Prisoners.	NG	G	Yes
Sp 4: About May 1945, mistreat and torture seaman W. T. Dial, an American PW.	NG	G	Yes

G O R I

Sp 5: About February 1945, mistreat and torture Seaman Second Class Edward L. Harvel, an American PW.	NG	NG	
Sp 6: About March 1945, mistreat Chief Radioman John T. Nicholson, an American PW.	NG	NG	
Sp 7: Between 18 February 1945 and 26 May 1945, did, at diverse times, willfully and unlawfully, mistreat and torture numerous American PWs.	NG	G	Yes

Sentence Imposed: To be confined at hard labor for thirty (30) years.

Maximum Punishment: Death.

3. Scope of the Review

The accused, a guard at Umeda Bunsho Camp between 1 December 1944 and 1 June 1945, was tried on 7 specifications, all laid under the charge of willfully and unlawfully committing cruel, inhuman and brutal acts and other offenses against certain American Prisoners of War, in violation of the Laws and Customs of War. He was adjudged guilty of 4 of the specifications and guilty of the charge. Those specifications of which he was found guilty will be taken up for discussion in this review.

The accused was found guilty of striking and beating Machinist Mate First Class Charles Keith Turner into insensibility, between 1 December 1944 and 30 April 1945 (Sp 1); of slapping and beating about ninety American and Allied Prisoners of War with a club in or about April 1945 (Sp 3); of beating Seaman W. T. Dial, an American Prisoner of War with a belt and buckle and forcing him to stand at attention all night in or about May 1945 (Sp 4); and of beating, mistreating and torturing numerous American Prisoners of War, between 18 February 1945 and 26 May 1945 (Sp 7).

4. Summary of the Evidence

a. For the prosecution. The accused was a guard at Umeda Bunsho Prisoner of War Camp, Osaka Area, Honshu, Japan, between 16 January 1945 and 26 May 1945 (R. 38, Exs 1-5, 7-14).

As to Specification 1: The testimony shows that either in November or December 1944 or March or April 1945, Machinist Mate Turner failed to appear at the correct time for muster. Because Turner had a case of diarrhea he had been in the latrine. The accused became angered at this and beat him with a spade, belts and a club on the head, back, buttocks, kidney, hands and arms. The beating lasted for about 15 minutes and he was then forced to stand at attention for about 15 minutes and was beaten again. The series of being beaten and forced to stand at attention continued for from five to seven and one-half hours, at which time Turner became unconscious. When received at the hospital, where he spent two days, his skin was cut and bleeding and he had a severe cut on the head. His arms and hands were so swollen that he could not feed himself (Exs. 1-7). The prosecution introduced the testimony of Rullin Fein who, upon being sworn, testified that he was interned at the Umeda Camp from 26 November 1942 to 10 May 1945. He identified the accused and pointed him out to the commission. He further stated that he had personally observed a part of the beating administered Turner by the accused and corroborated the above evidence in the present specification (R 16-19)(29,31).

As to Specification 3: In April 1945 about ninety prisoners were being marched to work when some of them "fell out" of formation too quickly in the opinion of the accused. He forthwith ordered the group again into formation,

separated it into two groups, let one section continue unmolested in their work and kept the other one at attention. Then he slapped every man in the group at attention and then beat them with a heavy stick on the back. Several of the prisoners were knocked down by this beating (Ex. 9).

As to Specification 4: In or about the month of May 1945, the accused beat Seaman W. F. Dial with a leather belt and buckle for about 30 minutes. This caused Dial to become temporarily deaf. He was then ordered to stand at attention in the guardhouse all night. The reason for the beating was because he looked skyward as a B-29 flew overhead (Ex. 10).

As to Specification 7: In support of this specification the affidavit of John Nicholson states that he was at the camp from 27 November to 30 May 1945 and that the "beatings were many and frequent" and identified the accused as one of three he names especially as the perpetrators (Ex. 12). Pfc Max B. Osborn in his affidavit states that the accused was one of several named who were responsible for severe punishment and torture of prisoners. They were beaten, tortured and made to kneel with a pole stuck under their knees for hours and were made to stand at attention all night in extremely cold weather (Ex. 13). The joint statements of Guirey and Andrews lists the accused as one of those named who were outstanding in the brutal and barbaric methods used on prisoners. This group, of which the accused was a member, beat men to the ground, stamped, kicked and beat them into unconsciousness. They sent men out to work in such a weakened condition that they had to be supported by their friends (Ex. 14). Rubin Fein, a witness for the prosecution, testified that he was forced by the accused to assume a kneeling position and to hold one of his shoes in each hand with arms extended. When from exhaustion he dropped the shoes he was slapped by the accused and made to pick them up again, and pushed down so that his buttocks touched his heels in a painful sitting position. The witness saw the accused slap prisoners on many occasions, and through hearsay learned of many other beatings administered to prisoners by the accused (R. 19-28, 31, 32).

b. For the Defense. The defense waived an opening statement and introduced into evidence a camp staff personnel roster of the Umeda Camp purporting to show all personnel, military and civilian, at the camp together with dates of their presence (R. 36, Def. Ex. 2).

The accused was informed of his rights and elected to take the stand under oath as a witness in his own behalf. His testimony shows that he is 38 years old, married and has three children. He was a guard at the Umeda Camp from 16 January 1945 to 26 May 1945. He recalled the incident concerning Turner and explained that when Turner told him he had diarrhea and missed roll call that he was concerned about him and advised him to rest. At that point, however, he discovered Turner had been drinking and becoming excited he grabbed a wooden sword and hit him on the buttocks about ten times. On another occasion he slapped three prisoners who, together with the other prisoners, had been warned not to steal soap from the place where they worked and who were subsequently caught with soap in their possession. He denied that he beat any other prisoners. He failed to remember the names of Turner, Copeland, Dial, Howell and Nicholson because he very seldom used names in referring to prisoners. He would designate the one he meant by his number of by "You". Defense introduced its exhibit "B" into evidence. This exhibit is a sketch of the Umeda Camp and was used to aid the defense in clarifying the location of incidents in the testimony (R. 36-51).

c. Rebutal - Prosecution. The prosecution introduced the testimony of Chief Boatswain's Mate Philip Earl Sanders in order to corroborate the testimony in the identification of the accused. Sanders testified that he was confined as a prisoner at the Fushiki Camp and that the accused came to that camp in May 1945. He identified the accused and pointed him out to the commission (R. 51-57).

5. Opinion

The record is legally sufficient to sustain the findings and sentence of the commission. The commission was constituted by proper authority and had

jurisdiction of the accused and of the offenses. The prosecution introduced evidence both by witnesses who took the stand and by affidavits of Americans who had been prisoners in the Umeda Camp, all of whom were in a position to know the facts.

The defense objected to the introduction of ex parte affidavits and such objection was properly overruled. Such evidence is expressly admissible under paragraph 5(d) (1)(c) SCAP Regulations Governing the Trials of Accused War Criminals, 5 December 1945. This SCAP rule is legal and in accordance with established practice in Military Commission Trials. Application of Yamashita 66 S Ct 340; Ex parte Quirin 317 U. S. 1, 69 S Ct 2; Fairman, The Law of Martial Rule P 276, 277.

At the beginning of the prosecution's case the defense objected to the introduction of the affidavits into evidence on the ground that they did not sufficiently identify the accused. Further, the defense at this point offered to introduce into evidence Defense Exhibit "A", a roster of the personnel at the camp, which shows that there were two guards at the camp by the name of "Aoki". It is also true that the affidavits refer in many instances to the name of the guard who perpetrated the alleged atrocities as "Acki", "Ioki", and "Aikoi", and at this stage of the trial it might well have referred to either or both. The objection was properly overruled at the time with the understanding, however, that the question of identity would be raised prior to the defense. The commission had a right to admit the affidavits for a consideration of what they were worth, paragraph 5(d)(1) SCAP Regulations Governing the Trials of Accused War Criminals, 5 December 1945. Further, under the regulation just cited, the commission could properly refuse to admit the Defense Exhibit "A", as a challenge to the introduction into evidence of the affidavits, during the prosecution's case and require, if it were to be admitted, that it be so done prior to or during the presentation of the defense (R 7). In any event, the prosecution, by the testimony of Rubin Fein, who had been a prisoner of war in the Umeda Camp, adequately identified the accused, as the perpetrator of the crimes alleged in the specifications and supported by the affidavits (R 19-23).

The defense, upon the introduction into evidence of Defense Exhibit "A" at the start of its case, advanced the argument that because it was certified as a true translation of a record by a 2nd Lieutenant and certified a true copy by a 1st Lieutenant of the United States Army that the commission should take judicial notice of its authenticity, unless the prosecution could show the facts contained therein are not true. The commission properly received it into evidence but not as an official record of the United States Army which calls for a presumption of authenticity. Lt. Omachi signed the document as follows: "I hereby certify that this is a true translation of the official record in our files". It seems quite obvious from these words that the certification of truth is merely of the translation and not of the truth of the matter contained in the document. There is no authority shown for the document itself. To agree with the defense's contention would place the contents of every document in the files of every Army unit in the category of being conclusively the truth (R. 33-36).

In his testimony the accused admitted that he had struck Turner about ten times across the buttocks with a wooden sword, and that he had slapped three other prisoners with his open hand. He denied that he had ever beaten or slapped any other prisoners and denied all of the other allegations made against him. The commission, in this conflict of evidence, chose to find for the prosecution on 4 of the specifications.

There is a conflict in the dates in the affidavits concerning the mistreatment of Turner. This was probably caused by the confused minds and memories of prisoners in captivity. However, this could not have misled the accused because the facts were corroborated, the crime specified and, prior to trial, the accused was properly informed of the crimes charged against him.

The commission, in weighing the evidences, properly found the accused guilty. 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 him a fair trial in every respect. The evidence supports the findings. There is no evidence that the accused was not sane at the time the alleged acts were committed and at the time of trial.

Q Q P X

6. Recommendations:

There appear to be no letters of clemency from any member of the commission or from others.

The Commission sentenced the accused to confinement at hard labor for thirty years. The sentence is legal.

It is therefore recommended that the sentence be approved. The Sugamo Prison, Tokyo, Honshu, Japan is the appropriate place of confinement.

7. Action:

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

/s/ Paul E. Spurlock
PAUL E. SPURLOCK
Reviewer
Judge Advocate Section

I concur:

ALLAN R. BROWNE
Lt. Col. JAGD
Army Judge Advocate

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**HEADQUARTERS EIGHTH ARMY
United States Army
APO 343**

**Yokohama, Japan
June 1946**

In the foregoing case of Shoichiro Aoki, the sentence is approved and will be duly executed. The Sugamo Prison, Tokyo, Honshu, Japan, is designated as the place of confinement, or elsewhere as the Supreme Commander for the Allied Powers, or other proper authority, may direct.

**/s/ E. L. EICHELBERGER
E. L. EICHELBERGER
Lieutenant General, U.S. Army
Commanding**

CERTIFIED TRUE COPY:
