

*Restricted*

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

Yokohama, Japan  
NOV 22 1948

UNITED STATES OF AMERICA VS SHIGEJI MORI

Review of the Staff Judge Advocate

1. The attached record of trial of Shigeji Mori at Yokohama, Japan, from 23 October 1947 to 7 November 1947, by a Military Commission appointed by paragraph 6, Special Orders No. 245, Headquarters Eighth Army, United States Army, dated 18 October 1947, having been referred to the Staff Judge Advocate, this review is submitted to the Commanding General.

Personal Data Concerning Accused

NAME: Shigeji Mori	DATE OF CONFINEMENT: 4 June 1946
AGE: 63	DATE OF ARRAIGNMENT: 23 October 1947
RESIDENCE: 1225 Banchi, Town of Fukui, City of Sakaide, Kagawa Prefecture, Japan	PLACE OF TRIAL: Yokohama, Japan
MARITAL STATUS: Married	PERIOD OF TRIAL: 23 October 1947 to 7 November 1947
RELATIVES: Children not named	DATE OF SENTENCE: 7 November 1947
EDUCATION: Graduate of Japanese Military Academy	SENTENCE: CHL for life
VOCATION: Soldier, educator and writer	CLEMENCY RECOMMENDED BY COMMISSION: No
MILITARY CAREER: Graduated from Military Academy 1905; retired from Army in 1928; recalled to active duty 29 July 1941; discharged March 1944; attained rank of Lt. Col.; became POW Camp Commander, Cabanatuan, P.I., 29th or 30th of May 1942	

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

<u>Charges 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, and during a time of war between the United States of America, its Allies and Dependencies, and Japan, did violate the Laws and Customs of War.	NG	G	Yes
Sp. 1: Between 26 May 1942 and 1 November 1942, at or near Cabanatuan Prisoner of War Camp, Nueva Ecija, Luzon, Philippine Islands, the accused did unlawfully disregard and fail to discharge his duty as Commander of said Camp by failing to provide and maintain for the American Prisoners of War thereat confined, adequate and proper quarters, shelter, hygiene, food,	NG	NG (R 159)	--

*Restricted*

*Restricted*

medicines, medical supplies and attention, thereby contributing to the sickness, disease, suffering, and death of many of them.

Sp. 2: About 31 May 1942, the accused did willfully and unlawfully order, cause and permit the unlawful killing of Private William R. Benson, Private Wesley E. Jordan, Corporal Frederick L. Lee, and Private Hugh J. Wellman, American Prisoners of War, by shooting them.

NG

NG

Sp. 3: About 26 June 1942, the accused did willfully and unlawfully order, cause and permit the unlawful killing of Private Robert J. Graham, Private Jose R. Gastelum, Private Fred J. Reed, Private Irvin Penrose, Corporal Kenneth L. Sisson, and Staff Sergeant Thomas E. Hunt, American Prisoners of War, by shooting them.

NG

G

Yes

Sp. 4: About 29 September 1942, the accused did willfully and unlawfully order, cause and permit the unlawful killing of Lieutenant Colonel Lloyd W. Biggs, Lieutenant Colonel Howard Edward C. Breitung, and Lieutenant Roydell Gilbert, American Prisoners of War, by shooting them.

NG

G

Yes

Sp. 5: Between 26 May 1942 and 1 November 1942, the accused did willfully and unlawfully mistreat numerous American Prisoners of War other than as herein above specified by beating and otherwise abusing them.

NG

NG

Sp. 6: Between 26 May 1942 and 1 November 1942, the accused did unlawfully disregard and fail to discharge his duty as Commander of said Camp to restrain and control the members of his command and persons under his supervision and control, by permitting them to commit the following atrocities and other offenses against American Prisoners of War:

a. About 17 September 1942, the unlawful mistreatment of Corporal Edward A. Beyukà by beating and otherwise abusing him;

NG

G

Yes

except the words "beating and otherwise;" of the excepted words Not Guilty.

b. About 21 September 1942, the unlawful mistreatment of Private William Cameron, Private

NG

G

Yes

*Restricted*

*Restricted*

First Class Carlton Toup, and Corporal James M. Ballard by beating and otherwise abusing them;

c. At divers times between 26 May 1942 and 1 November 1942, the unlawful mistreatment of numerous American Prisoners of War, other than as herein above specified by beating and otherwise abusing them.

NG G Yes

3. Summary of the Evidence:

a. For the Prosecution:

As to Specification 3: On or about 26 June 1942, at or near Cabanatuan Prisoner of War Camp, Luzon, P.I., accused, Shigeji Mori, then a Lt. Col. in the Japanese Army and commander of said camp, did willfully and unlawfully order, cause and permit the unlawful killing of Private Robert J. Graham, Private Jose R. Gastelum, Private Fred J. Reed, Private Irvin Penrose, Corporal Kenneth L. Sisson and Staff Sergeant Thomas E. Hunt, American Prisoners of War, by shooting them. The victims were captured returning to the camp from a nearby barrio where they obtained food for themselves and other PWs (Ex 12). Upon being apprehended, they were severely beaten by Japanese guards and tied to a fence in front of Japanese Headquarters. They were tied in such a manner that they could not stand up straight nor could they sit down. No one was allowed to give them food or water and they were not permitted hats to protect them from the sun (R 33). After approximately forty-eight hours of this treatment, four (4) of the PWs were executed on the duty side of the camp and the remaining two (2) PWs were executed on the hospital side. Said executions were witnessed by many PWs interned in the camp (Ex 13).

As to Specification 4: On or about 29 September 1942, the accused, did willfully and unlawfully order, cause and permit the unlawful killing of Lt. Col. Biggs, Lt. Col. Howard Edward C. Breitung and Lt. Roydell Gilbert, USN, American Prisoners of War, by shooting them, at or near Cabanatuan Prisoner of War Camp, Nueva Ecija, Luzon, P.I.

While these officers were attempting to escape, they were apprehended by American Security guards and due to noise and confusion resulting therefrom, they were captured by the Japanese guards (R 33). After being questioned at Japanese Headquarters by Lt. Col. Nori, the three PWs were subjected to severe beatings by Japanese guards and jujitsu experts resulting in great bodily harm and a broken jaw by Col. Biggs (R 99). After approximately two and one-half (2½) hours of this treatment, the three PWs were taken toward the main gate near Japanese Headquarters and tied up to posts. Their clothes were torn off them and they were exposed to the weather and beaten for the following forty-eight (48) hours (R 99). At the end of three (3) days, they were cut down and thrown into a truck and taken into a clearing within sight of the camp and executed (R 123).

As to Sub-Specification 6-a: On or about 17 September 1942, the accused did unlawfully disregard and fail to discharge his duties as camp commander by failing to restrain and control members of his command and persons under his supervision and control by permitting them to unlawfully mistreat and beat Corporal Edward A. Beyuka an American Prisoner of War. PW Beyuka escaped from Cabanatuan Internment Camp on 7 August 1942 and was recaptured by the Japanese on 17 September 1942. Upon recapture, PW Beyuka was placed in solitary confinement and beaten over the head with an iron bar by a Japanese

*Restricted*

*Restricted*

Army sergeant. On several occasions, PW Beyuka was led around camp by Col. Mori to serve as a subject for lectures to other American PWs. He was pointed out to them and ridiculed by accused and other Japanese officers and forced to wear a sign which read "Example of an Escaped Prisoner" (Ex. 17).

As to Sub-Specification 6-b: On or about 21 September 1942, the accused did unlawfully disregard and fail to discharge his duties as camp commander by failing to restrain and control the members of his command and persons under his supervision by permitting them to unlawfully mistreat Private William Cameron, Private First Class Carlton Toup, and Corporal James M. Ballard by beating and otherwise abusing them. The three PWs escaped from Cabanatuan Prisoner of War Camp on 12 September 1942 and were recaptured on 21 September and returned to the same camp. Upon return the three PWs' feet were tied together and their hands were crossed behind their backs and tied with rope. A long rope was tied around their wrists and they were suspended from a rafter so that only their toes touched the ground. The entire weight of their bodies rested on their arms. While in this position they were subjected to severe beatings by Japanese guards. After being subjected to this treatment for a period of three days, they were tied hand and foot and placed in a prison cell for thirty (30) days on a diet of rice and water. During this period, PW Ballard was severely beaten by an unknown Japanese lieutenant (Ex. 18).

As to Sub-Specification 6-c: Between the period 26 May 1942 and 1 November 1942, the accused, at or near Cabanatuan Prisoner of War Camp, Luzon, P.T., did unlawfully disregard and fail to discharge his duty as camp commander by failing to restrain and control members of his command and persons under his supervision by permitting them to unlawfully mistreat numerous American Prisoners of War by beating and otherwise abusing them. It was a common occurrence to line the PWs up for work details and if the Japanese sentries did not like the way things looked, they'd come by and poke everybody's shins with their hobnailed shoes (R 57). Also, on the details that were sent out of camp, any man the Japanese sentries took a notion wasn't doing what he should, or for any other reason, was beaten around (R 86). (Also R 34, 35, 54, 64, 67, 75, 87, 104).

b. For the Defense:

The accused, Col. Mori, took the stand and testified under oath (R 176). Accused stated that he divided his time between Camp #1 and Camp #3 depending upon his duties at that time (R 179). That accused graduated from the Japanese Military Academy in 1905 and served in the army until 1928 when he retired. On 29 July 1941 he was recalled to the army from retirement with the rank of Lt. Col. and assigned to the Philippines as Commanding Officer, Northern line of communications, North Luzon (R 177). Accused assumed charge of the Cabanatuan Prisoner of War Camp on either the 29th or 30th of May 1942 and remained in charge of said camp until the 28th of October 1942 (R 178).

As to Specification 3: The execution of PWs Graham, Gastelum, Reed, Penrose, Sisson, and Hunt on the 27th of June 1942, was carried out by guard commander Yoshioka who received the orders from Commanding General Homma via Major General Kawane. Accused stated he did not see the men executed and did not talk to anyone in headquarters pertaining to their execution (R 182). These men were executed because they were escapees and had no intention of returning to camp after the purchase of food. Accused stated he did not order the PWs executed, tortured or mistreated and did not witness the same (R 183). During the period of torture and execution of said PWs, accused stated he was in the village of Kabu trying to protect other PWs from guerrilla warfare (R 184).

*Restricted*

*Restricted*

As to Specification 4: Accused stated that on the evening of 27 September 1942, he was working in his office at Camp #1 when he heard a lot of noise and racket originating from the rear of his office near the guardhouse. Upon inquiring as to the reason therefor, he was informed that some PWs had attempted to escape. Thereupon he ordered the PWs be sent to his office. He interviewed Biggs, Breitung and Gilbert separately and in the order named. During the interrogations all three PWs appeared angered but accused did not notice any change in their physical condition. While the interrogations were going on the only persons present were the accused, the PWs and an interpreter. Accused stated he lectured to the three PWs about trying to escape and questioned them as to whether they knew the consequences if this incident was reported to General Homma to which they answered in the affirmative (R 185). Accused then asked them if they would promise not to attempt to escape again to which they replied "no." Thereupon accused called 2nd Lt. Kawai and ordered him to report the incident to Army Headquarters in Manila (R 186). Once the report was rendered to Army Headquarters the determination of what disciplinary action should be taken was up to that office. Since General Homma had issued orders that escapees should be shot upon recapture, the accused stated he could do nothing to alter that order (R 187). Accused stated he did not know of the three PWs being beaten or mistreated but did know that they were tied at the guardhouse which was near the gate and that the guardhouse was under the supervision of guard commander Makishima. He saw them several times while they were tied up but they did not appear severely beaten or tortured and he personally never ordered them beaten and in fact, he always prohibited such acts. Accused stated he did not order their executions and did not hear of it until past noon the following day from Kawane while visiting Manila (R 189).

As to Sub-Specification 6-a: Accused testified that after PW Boyuka was recaptured on 17 August 1942 he used the PW as an example to the other PWs in order to convince them not to attempt to escape but that he never beat or ordered the PW beaten and stated, "I thought of him as my own son" (R 190). Subsequently PW was sent to Manila to be court-martialed (R 191).

As to Sub-Specification 6-b: PWs Cameron, Toun and Ballard were recaptured on 21 September 1942 after being at liberty since the 12th of the same month. An investigation conducted by Lt. Kawai revealed that the PWs had not attempted to engage in guerrilla activities during their liberty and as a consequence the accused tried to give them the lightest sentence possible. A report was forwarded to Manila and thereafter, the three PWs were sent to Manila to be court-martialed instead of being executed in accordance with General Homma's standing order. Accused stated that he never ordered the three PWs beaten or tortured and did not see or hear of such a thing being done (R 191).

As to Sub-Specification 6-c: Accused stated that he had never ordered the slapping, mistreatment, abuse, or torture of any prisoner of war while he was the Commanding Officer at Cabanatuan and that he had never witnessed such an event (R 189, 191, 196).

Takaji Wachi, a former Lt. General in the Japanese Army during the period involved and former Chief of Staff of Fourteenth Army; Assistant Chief of Staff of the Southern Area and Chief of Staff of the Thirty-Fifth Army was a witness for the defense and testified that in 1942 General Homma issued orders to Major General Kawane, Commanding General, Fourteenth Army line of communications, to execute prisoners of war who attempted to escape (R 163). Said witness also stated that the accused did not have authority to order the execution of PWs on his own volition but had to abide by orders of his superiors (R 164). Although accused was camp commander, General Kawane often bypassed him in favor of the guard commander in giving strict and rigid orders because of Mori's lack of knowledge and ability and due

*Restricted*

*Restricted*

to the fact accused had been out of the army for such a long period of time (R 165, 166).

The witness also testified that the accused was refused a promotion because of his inabilities and incapacities. The witness testified that General Tanaka stated that "Mori is too honest, and he is too timid a person. It shows on the record that he is not the type of person who will do things on his own initiative. However, he really does obey the superior officer's orders. His inability and incapacity to meet and react on his own impulse and the lack of such initiative to do things on his own, is what I believe would be the factor of his retaining the rank of Lt. Col. until the present time" (R 168).

4. Opinion:

Specifications 3 and 4:

Defense contends that accused is not guilty of Specifications 3 and 4 as the orders to execute the PWs were issued by superior authority, namely, General Homma through General Kawane. It is also contended that the accused, the camp commander, was bypassed in the chain of command and the orders were issued by General Kawane directly to guard commanders who executed the PWs. However, on examination by the commission, the accused admitted that if inspectors or higher headquarters visited the camp that they went through the camp commander (R 200). That the guard commanders were under his jurisdiction for disciplinary action and that he kept the three (3) PWs, Biggs, Breitung and Gilbert, tied up outside the guardhouse in order to prevent their escape (R 201).

Even though the United States Rules of Land Warfare, FM 27-10, Par. 347, provide that a soldier has a valid defense if his acts were ordered by his government or commander (as contended by the defense), the regulations promulgated by paragraph 4-d (6) of SCAP letter of 5 December 1945 modify the provisions of the manual. The SCAP rules provide that actions pursuant to an order of an accused's superior do not constitute a defense but may be considered in mitigation of punishment if the commission determines that justice so requires.

Compelling evidence establishes that the accused did order the executions alleged in Specifications 3 and 4 and that the commission took into consideration the fact that such actions were taken pursuant to orders from a superior authority, as evidenced by the sentence imposed, i.e. confinement at hard labor for life instead of hanging, as would have been justified if the orders had originated with the accused (Docket #224, Sugawara et al).

As to Specifications 6-a, 6-b and 6-c: Accused denies knowledge of the beating or abusing of PWs Beyuka, Cameron, Toup, Ballard or any other PW in the camp while the same was under his command. Evidence on file establishes beyond a reasonable doubt that said offenses were committed and that at least in the Beyuka case the accused had actual knowledge thereof. Such violations were not an exception but rather were the general rule and continued during the entire time the accused was in charge of the camp. Often PWs dared not report beatings and mistreatments for fear of reprisals. Accused stated he often made inspections of the camp and it is of little consequence as to whether or not he actually witnessed the offenses being committed. If by design, or through negligence, he refrained from making inquiry, he is nevertheless charged with knowledge of the violations. Exercise of due diligence would unmistakably have led to knowledge of the true conditions existing in the camp. He had actual or constructive knowledge of the widespread mistreatment of the PWs and yet failed to take adequate measures for their protection. His

*Restricted*

*Restricted*

failure to do so was either willful or due to gross negligence. "The probable and foreseeable consequence of his failure to adopt adequate and preventive measures was the continued occurrence of such mistreatment and under the law such failure to act was a proximate cause of each act of unlawful mistreatment thereafter occurring, for which the commander would be criminally liable." (45 C.J. 911, 913, 68 ALR 1013; Dunn, Protection of Nationals 546; cited in US v Oota et al Case #129).

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 at the time of the trial. The accused was ably represented by American and Japanese counsel and he fully cooperated in his own defense, produced witnesses in his own behalf and took the witness stand in his own defense.

The record is legally sufficient to support the findings of the commission. It is considered that no ruling of the commission affects adversely the substantial rights of the accused.

5. Recommendations:

a. There are no letters of clemency from any members of the commission or from others.

b. The commission sentenced the accused to confinement at hard labor for the term of his natural life. The sentence is legal and not excessive.

c. It is recommended that the sentence be approved. Accused was confined 4 June 1946; he was sentenced 7 November 1947. Sugamo Prison, Tokyo, Honshu, Japan, is the appropriate place of confinement.

6. Action:

Attached hereto is a form of action designed to carry into effect the above recommendations.

John H. Vogel  
Reviewer  
Judge Advocate Section

I concur in general. The sentence is not considered adequate for conviction of offenses involving torture followed by multiple murders of helpless prisoners of war with the permission of and at the behest of the accused. Whether or not the killing of captured escapees was a standing order from higher authority it is evident that accused voluntarily participated and made no objection, further presiding over some of the fiendish tortures which preceded the deaths. Actually the claim of "higher orders" is rebutted by the evidence that all escapees were not executed (R 191).

The following comments of defense counsel are gratifying to the authorities charged with insuring fair trials for the accused:

*Restricted*

*Restricted*

"I would be . . . less than gracious if I failed to express the appreciation I feel for . . . the most fair trial that the accused could possibly receive."

ALLAN R BROVNE  
Lt Col, JAGD  
Army Judge Advocate

*AB*

*Restricted*