C O P Y

HEADQUARTERS EIGHTH ARMY

United States Army

Office of the Staff Judge Advocate

Yokohama, Japan

15 July 1946

Case No. 35

UNITED STATES OF AMERICA VS SEIZO NAGAKURA

Review of the Staff Judge Advocate

1. The attached record of trial of Seizo Nagakura at Yokohama, Japan from 10 May 1946 to 14 May 1946, by Military Commission appointed by paragraph 17, Special Orders No. 117, Headquarters Eighth Army, United States Army, dated 6 May 146, having been referred to the Staff Judge Advocate this review is submitted to the Commanding General.

Personal Date Concerning Accused

NAME: Seizo Nagakura

AGE: Twenty-seven (27)

RESIDENCE: Not shown

MARITAL STATUS: Not shown

RELATIVES: Not shown

EDUCATION: Not shown

VOCATION: Supply Corporal at Fukuoka Prisoner of War Camp Number 3.

MILITARY CAREER: Japanese Army from February 1942 to 1 September 1945.

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

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| --- | --- | --- | --- |
| Charges and Specifications | Pleas | Findings | Legally Sustained |
| Charge: Between 1 October 1943 and 1 September 1945 at Kokura, Fukuoka, Japan, the accused unlawfully committed cruel and inhuman acts and atrocities against American and Allied prisoners of war, in violation of the Laws and Customs of War. | NG | G | Yes |
| Sp 1: Between 1 October 1943 and 1 September 1945 accused, as supply corporal, refused to issue or cause to have repaired clothing for American and Allied prisoners of war, causing misery and ill health among them. | NG | G | Yes |

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| Charges and Specifications | Pleas | Findings | Legally Sustained |
| Sp 2: On or about 15 June 1945 accused and other unlawfully mistreated Virgil A. Ouillette by forcing him to assume a push-up position, beating him with a club and kicking him in the face for three hours. | G | G | Yes |
| Sp 3: In or about the month of January 1945 accused and others unlawfully beat five American prisoners of war and made them stand in an outdoor tank of water for three hours and poured buckets of water over them. | G | G | Yes |
| Sp 4: In or about the month of March 1945 the accused unlawfully eat Edward Matt, and American Prisoner of war, stripped him of his clothes and made him stand in a tank of water for two hours. | NG | NG | Yes |
| Sp 5: In or about the month of June accused beat and kicked Michael H. Tussing, and American prisoner of war. | NG | G | Yes |
| Sp 6: In or about the month of June 1945 accused beat Howard W. Browning, an American prisoner of war. | NG | G | Yes |
| Sp 7: In or about the month of February 1945 accused forced Lonnie Visnon, an American prisoner of war, to stand in a pool of water and beat him on the head with bamboo poles to force his head under water. | NG | G | Yes |
| Sp 8: In or about the month of November 1944 accused threw William C. Mahoney, an American prisoner of war, into a pit of cold water while naked, and then forced him to stand in the cold for two hours without clothing. | NG | G | Yes |
| Sp 9: In or about 14 May 1944 accused and others beat and kicked William O. Cash, Thomas B. Armitage and Munroe Dave Woodall, American prisoners of war, forced water into their noses and mouths and pressed lighted cigarettes against their bodies. | NG | G | Yes |
| Sp 10: During the period from 1 October 1943 to 1 September 1945 the accused, otherwise than as charged in Specifications 1 to 9 inclusive herein, unlawfully mistreated and tortured numerous American and Allied prisoners of war. | G | G | Yes |

Sentence Imposed: Hard Labor for forty (40) years.

Maximum Legal Punishment: Death

1. Summary of Evidence:
2. For the Prosecution: Prior to the time covered by the charge in the present case the Japanese Government agreed to apply mutatis mutandis, the provisions of the Geneva Prisoner of War Convention of 27 June 1929 to American prisoners in its power (Ex. 1).

The Accused was a Corporal in the Japanese Army and, as such, was assistant to the person in charge of clothing supply at Fukuoka Camp Number 3 (R. 22).

As to Specification 1: Lt. Colonel Dorris, a prisoner of war at the camp, was informed that they had no shoes of any kind for issue to the prisoners. However, upon surrender he found, in the warehouse in charge of accused 100 pairs of Japanese leather shoes, about 250 pounds of repair leather and 1300 work uniforms. The clothing issued was not sufficient to keep the men properly clothed for the climate. Shoes were taken for repair only upon the accuser’s approval and many prisoners were required to wear their shoes when completely worn out. They worked with their feet on the ground in extremely cold weather which caused colds, lung diseases and pneumonia. The accused refused to issue socks to the prisoners and upon surrender 500 pairs, all Red Cross issue, were found in the warehouse at the camp. Even when ordered by the Japanese Medical Officer to issue socks to certain prisoners he refused (Exs. 2,3,4,5,22).

As to Specification 2: On or about 15 June 145 Virgil A. Ouillette, a prisoner at the camp, was discovered having four yen fifty sen in one of his shoes. He had received the money as pay for his work. Because the accused considered his acts of a suspicious nature he forced Ouillette to take a position similar to the one assumed for the purpose of doing “pushups”, and when his knees touched the ground he beat him with a club. When he could no longer keep this position of rigidity, he was beaten continuously as he lay on his stomach and was kicked and beaten in the face. This treatment continued for about three hours. As a result of the above Ouillette could not get up without assistance, and suffered numerous cuts and bruises there from. (Ex. 6).

As to Specification 3: In the latter part of January 1945 five American civilian steelworkers, who were prisoners at this camp, were discovered to have some beans in their possession which they had obtained by trading with Japanese civilians. The accused and six others forced them to take off their clothing and then beat them with clubs, bamboo poles and pickaxe handles. Then they were placed in a tank and forced to stand in five feet of water for three hours. It was snowing at the time and the temperature was at freezing point. They were then taken back to the guardhouse and buckets of water were thrown over them (Ex. 7).

As to Specification 5: In or about the month of June 1945 Michael H. Tussing had saved some of his ration of butter and chocolate and, during an inspection, the guards discovered it. The accused beat Tussing for about ten minutes using his fists. During the beating he was knocked down several times and was kicked when on the floor. As a result, his face was reduced to a bleeding condition and his lips were cut (Ex. 9).

As to Specification 6: Howard H. Browning, and American internee at the camp, was caught trading with Koreans in violation of orders in or about the month of June 1945. The accused took Browning in front of the guardhouse and, together with two or three other guards, beat him for about twenty minutes with their fists and a heavy stick. They knocked him down several times but forced him to stand at attention again so that they could resume their beating. His entire body became black and blue, resulting in a badly bruised and swollen condition and necessitating medical attention (Ex. 10).

As to Specification 7: In February 1945, Lonnie Vinson, and American prisoner at the camp, had traded some of his clothes for a quantity of beans. When this was discovered he was taken before the accused, who was duty non-commissioned officer of the day. The accused forced him to undress and to stand in water up to his chest. During this time he beat him with bamboo poles to force his head under water. This treatment lasted for thirty-five minutes (Ex. 11).

As to Specification 8: William C. Mahoney was discovered smoking after hours in one instance during November 194. For punishment the accused and another threw him naked into a water pit, where he was forced to remain for about an hour. They then put a bamboo pole in the back of his legs and he was required to kneel in that fashion in the cold, without clothes, for two hours (Ex. 12).

As to Specification 9: About 15 May 1943, three American prisoners at the camp, William O. Cash, Thomas B. Armitage and Monroe D. Woodall, were tortured and beaten in an effort by the accused and others to learn where they had disposed of certain missing clothes. They were tied to a ladder and beaten from the shoulders to the hips. They were then knocked down several times. The weapon used was a club about five feet long and two inches square. They were tied to a stretcher and were propped up, hands down, and about two gallons of water were poured into their noses, until they became unconscious. Burning cigarettes were pressed against the cuticle of their fingernails and against their bodies. This treatment continued for about six hours when they were returned to their barracks. In a few minutes however, they again beat them for another hour. Woodall was hospitalized for four days because of the beatings (Exs. 13-18).

As to Specification 10: The accused, during the period between 1 October 1943 and 1 September 1945, abused numerous allied prisoners of war. He handled all exchanges of clothing. As the prisoners lined up for clothing repairs or exchanges, if, in his opinion, the clothing was not worn out sufficiently or was too dirty, they were severely kicked and beaten with his hands, fists, the shoes presented for exchange, a club, or anything that was handy. Several beatings of this nature took place at every exchange of clothing. The affidavits of the prisoners show many instances in which he mistreated, beat and tortured prisoners by various methods (Exs. 2, 4, 5, 8, 19-22).

1. For the Defense: The defense presented the testimony of Major Yaichi Rikitake who stated that he was the commanding officer of the Fukuoka Prisoner of War Camp from 6 March 1944 until the cessations of hostilities and that the accused was a member of his command. There were no instructions issued by the Japanese Army regarding the condition of clothing and shoes for exchange them. It was the accused’s duty to exchange unserviceable clothing for the prisoners. The witness knew of no instance where a prisoner was unable to exchange clothing. He received 1000 working suites one month before cessation of hostilities and from 500 to 700 pairs of shoes the last of August or the first of September 1945. He remembered the name of Cash, but Woodall and Armitage were unfamiliar names to him. He stated that, upon theft of some clothing, he had the accused investigate and the latter reported to him that three prisoners were involved. He did not know whether the accused struck the prisoners or not for this theft. He did not recall the name of Tussing, nor did he hear of any burning of prisoners with lighted cigarettes. As supply Corporal, the accused did his job very well. Daily the witness instructed the Japanese personnel not to punish the prisoners. The accused was the sole judge as to whether clothing was to be exchanged or repaired. In the Opinion of the witness, he is a good man and “he never had a mind of brutality”/ (R. 32-46).

The accused elected to testify as a witness in his own behalf and stated that it was his duty as supply corporal to issue clothing and shoes to the prisoners of war. He was of the opinion that the clothing issued was satisfactory when compared with that worn by the Japanese people. He exchanged clothing for the prisoners on regular exchange days. Sometimes he had insufficient stocks and prisoners had to do without certain articles of clothing. He explained such situations to the prisoners through an interpreter. A great portion of the supplies found in the warehouse was received between 15 August and 2 September 1945. He required prisoners to clean their clothing before exchanging it. He admitted having trouble with some of the prisoners on exchange days and at those times was placed in the position in which there was no alternative but to strike the prisoners with a stick. The striking was always over the buttocks and very light. There was never an occasion when such striking required any medical treatment. As to the five prisoners in Specification 3, testified that they had constantly caused trouble. On examination of the prisoners he found beans in their canteens and bags which they had stolen. Beans were a critical item of food at the time. He forced them to stand in front of the guard house for fifteen minutes and asked them to confess. He then forced them to remove their clothing and stuck them across the buttocks and ordered them into the water tank for ten minutes at which time they made their confessions. As to Ouillette, accused discovered he had four yen fifty sen in his sock. Because it seemed that something was wrong with his hiding of the money in this manner, he forced him to assume a ‘push-up” position for fifteen minutes in order to endeavor to get him to confess. When he refused to confess he hit him across the buttocks with his bamboo sword. Accused did not remember the name of Tussing but remembered the incident concerning him. On inspection of quarters, cigarettes, chocolate, butter and soap were found in one of the barracks and the accused merely reported the incident to the company commander and did not know what happened subsequent to that. He remembered nothing about Browning or the incident in Specification 6. He denied ever punishing Vinson. He did not remember Mahoney or the incident in Specification 8. As to Cash, Armitage and Woodall, the accused recalled the incident and recited that the window had been broken in the barracks where clothing was kept and clothes stolen. Armitage and Woodall confessed their participation in the theft but Cash refused to make a statement. The accused and others tied him to a ladder, placed him head downward and poured water in his nostrils and he confessed. Accused stated he personally poured water in Cash’s nose and mouth. He denied burning any prisoners with cigarettes (R. 21-23, 46-56).

1. Opinion:

The record is legally sufficient to sustain the finding 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 by sworn and unsworn statements of prisoners who had been interned in the camp, and who were in a position to know the facts. From such testimony the guilt of the accused was well established.

The defense objection to the admission into evidence of the official communications between the United States Government and the Japanese Government, by telegraph through the Swiss Government, was properly overruled. This is the usual manner of exchange of diplomatic messages between warring states in prisoner of war matters. The evidence was relevant. The form of the agreement is immaterial. Briggs, The Law of Nations; Cases, Documents and Notes p 406-411. The fact that prior authorization by the governments of the diplomatic messages involved was not shown does not invalidate them. The governments themselves have never denied the authenticity of the communications. This being the case, the official action of the Japanese Government in diplomatic matters bound every Japanese citizen. Under international law each government is bound to inform its own citizens of the duties owed by it and them under international obligations. The Permanent Court of International Justice in its opinion in the Case relative to the Exchange of Greek and Turkish populations (1926) declared it to be a “self-evident” principle that “a State which has contracted valid international obligations is bound to make in its legislations such modifications as may be necessary to insure the fulfillment of the obligations undertaken”. Publications of the P.O.I.J., Series B, No 10, p 20. Briggs, The Law of Nations; Cases, Documents and notes p 434.

The written statements of former prisoners of war introduced into evidence shows that they were made in various places; Luzon, P.I., Albuquerque, N.M., Oakland, California, Boston, Massachusetts, San Antonio, Texas, San Francisco, California and Yokohama, Japan. The facts that the prisoners, in most instances, were separated by a great distance of miles when they made their statements and could not have influenced each other, and the fact that there is corroboration of the statements made, leads one to become strongly convinced of the truth of the matters alleged therein. The case against the accused was substantiated by the accused’s own testimony. It is true, he denied that any of the beatings were severe or a cause of any prisoner’s requiring medical attention as a result thereof. The commission found otherwise. However, even if the commission had believed his testimony, there are sufficient admissions in the record to justify the sentence of the accused. He admitted such acts, in addition to the beatings, as forcing prisoners to assume the push-up position for long periods of time, of punishing a prisoner for having money which he was permitted to have in his possession and of the participation in placing a prisoner head-down and pouring water into his nose until he lost consciousness. The above admissions constitute crimes against the Laws and Customer of War, punishable with ay sentence, including death, that the commission might reasonably adjudge proper.

The defense objection to the admission in evidence of ex parta affidavits was properly overruled. Such evidence is expressly admissible under paragraph 5d (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 C: 340: Ex parte Quirin 317 U.S. 1, 63 5C” 2: Fairman, The Law of Martial Rule, P 276-277.

A careful scrutiny of the entire record fails to reveal any error which affected the substantial rights of the accused, or any failures 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.

1. Recommendations: There are no letters of clemency from any member of the commission or from others.

The commission sentenced the accused to confinement at hard labor for forty years. The sentence is legal.

The accused admitted striking the prisoners, forcing one of them to assume a push-up position for a long period of time, and pouring water in one prisoner’s nose until he became unconscious. The sadistic acts of which the accused was adjudged guilty remove any thought of recommendation for clemency. It is, therefore, recommended that the sentence be approved. The Sugamo Prison, Tokyo, Honshu, Japan, is the appropriate place of confinement.

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:

/s/ Allan R. Browne

ALLAN R. BROWN

Lt. Col., JAGD

Staff Judge Advocate

HEADQUARTERS EIGHTH ARMY

United States Army

APO 343

Yokohama, Japan

26 July 1946

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

R. L. Eichelberger

R. L. EICHELBERGER

Lieutenant General, U. S. Army,

 Commanding

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