

RENUMBERED

FROM

NO. 041

TO

NO. 042

SOURCE:

CASE DOCKETS OF FAR EAST WAR CRIMES TRIALS

RECORD GROUP 153
ENTRY 1021
BOX 0001

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

Yokohama, Japan
 18 September 1946
 Case No. 41

UNITED STATES OF AMERICA VS YOSHIO KAMEOKA

Review of the Staff Judge Advocate

1. The attached record of trial of Yoshio Kameoka at Yokohama, Japan, from 15 June 1946 to 26 June 1946, by a Military Commission appointed by paragraph 1, Special Orders No. 153, Headquarters Eighth Army, United States Army, dated 13 June 1946, having been referred to the Staff Judge Advocate this review is submitted to the Commanding General.

Personal Data Concerning Accused

NAME: Yoshio Kameoka
 AGE: Forty-one (41)
 RESIDENCE: No. 14 e-chome, Shoagtan-cho, Misubo-ku, Nagoya City.
 MARITAL STATUS: Married
 RELATIVES: Wife, one boy and two brothers.
 EDUCATION: Grammar School
 VOCATION: Bellhop (Royal Hawaiian Hotel)
 MILITARY CAREER: Not shown.

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

<u>Charge and Specifications</u>	<u>Pleas</u>	<u>Findings</u>	<u>Legally Sustained</u>
Charge: Between 19 April 1944 and 1 September 1945, at Osaka Area prisoner of War Camp No. 11, accused, then a civilian interpreter, did willfully and unlawfully commit cruel and brutal acts, atrocities and other offenses against certain American PW's, in violation of the Laws and Customs of War.	NG	G	Yes
Sp 1: On numerous occasions during the period of time between 1 May 1945 and 17 July 1945, accused with others, willfully and unlawfully, brutally beat, kicked and mistreated Doyle W. Waggoner, an American PW, thereby contributing to the death of said PW on or about 17 July 1945.	NG	Guilty, except the words "thereby contributing to the death of said PW on or about 17 July 1945", and of the excepted words, Not Guilty.	Yes
Sp 2: In the month of June or July 1945, accused with others, willfully and unlawfully, brutally mistreated and beat Charles H. Weston, E. J. White, Vincent "Micky" Owen, Samuel Moody and Joseph L. Dube, American PW's.	NG	Guilty, except the Names "E. J. White", and "Vincent 'Micky' Owen", of the excepted named, Not Guilty.	No
Sp 3: In the month of June 1945, accused with others, willfully and unlawfully, brutally beat and mistreated Walter P. Holt, an American PW.	NG	G	Yes

Sp 4: Between 19 April 1944, and 1 September 1945, accused, willfully and unlawfully, brutally mistreated and beat numerous American PW's.

NO

G

Yes

Sentence Imposed: Confinement at hard labor for life.

Maximum Legal Punishment: Death.

3. Summary of Evidence:

a. For the prosecution:

As to Specification 1: The accused was employed as an interpreter and was serving at the Osaka Prisoner of War Camp at Marumi, Honshu, Japan. One night between 1 May 1945 and 17 June 1945, Doyle W. Waggoner, an American prisoner at the camp, entered into the kitchen to steal some food. He remained there for two days concealed on the rafters. Upon discovery he was found to be bleeding from his neck, which was caused by his having tried to commit suicide. After medical attention was given to him the accused and others beat him with clubs and fists, knocked him to the ground and kicked him in the head. After this he was tied in a crouching position when he was forced to remain for 72 hours. During this time accused and others beat him on numerous occasions (Ex. 3-5, 8, 9, 13, 15, 16, 18-22, 25, 26).

As to Specification 2: The affidavits supporting this specification are somewhat confusing but are here set forth as introduced in evidence:

Sergeant Samuel B. Moody, on an undisclosed date, was caught trying to get some oil and soap from the factory where he worked. The accused and others beat him with their fists and slippers and forced him to stand outside the guardhouse from 1300 to about 1700. He was severely bruised by this treatment (Ex. 7). Another affiant relates that in June or July 1945 Moody had soap from the factory in his possession and was beaten by the accused and others for about a half hour, then they forced him to stand across from the guardhouse for about 24 hours (Ex. 12). A further affiant states that in June or July 1945 Moody and Owen were beaten by the accused and others for smuggling a bottle of oil and a bar of soap into the camp. Sergeant Dube, camp Sergeant Major, was beaten at this time because he was held responsible for the prisoners. Moody and Owen were forced to stand in front of the guardhouse for two days and nights without food and water (Ex. 10). Another affidavit disclosed that in June 1945 Weston, White and Owen were beaten by the accused and others with clubs and rifle butts intermittently for 24 hours and forced to sit in front of the guardhouse for a like period. They were beaten for trading for soap with Japanese Civilians at the factory (Ex. 23). A final affidavit states that Weston, in July or August 1945, was beaten by the guards at the camp for about 15 minutes for stealing vegetables and that Owen was beaten about the same time by the guards for stealing bean oil at the factory. They used a stick to beat him, and in so doing, broke his arm (Ex. 21). (Exhibits 6, 11 and 14 in support of this Specification have to do with evidence concerning the alleged abuse of White and Owen, of which the accused was found not guilty, and are not considered herein.)

As to Specification 3: In June 1945 Walter P. Holt, an American internee at the camp, found some soya beans in the walls of a box car which had been filled with scrap iron. He was able to get about a canteen cup full of the beans and put them in a bag and tied them to his leg to hide them. The beans were discovered by the guards and the accused and others beat Holt for this act. The accused beat him in the face with a wooden

shoe two or three times. As a result of this combined beating the blood vessels inside of his mouth were broken, his nose and mouth bled profusely and his right eye was completely closed. Following treatment by the American medical officer he was ordered to stand at attention for about four hours. (Ex. 24).

As to Specification 4: One affidavit states that the accused took part in every beating and all punishment (Ex. 9). Another states that numerous beatings were meted out to other members of the camp and that the accused is one of these who was usually involved (Ex. 28). The accused, in an interrogation taken at Sugamo Prison on 13 February 1946 admitted that he beat a few prisoners for stealing food but did not beat them very hard (Ex. 29, Questions 13, 14).

b. For the Defense:

The defense introduced into evidence affidavits which described the events covered in the specifications under the charge, but do not name the accused (Def. Ex. A-W).

To support the contention of the defense that accused could not have beaten prisoners upon their return from work at 5:00 or 5:30 P.M., the wife of the accused, Itsuye Kameoka, testified under oath that the accused left home daily about 7:00 A.M., returned about 6:00 P.M., and that it took about an hour to come from the camp. Accused returned to the camp the night a prisoner of war escaped and returned about 9:00 or 9:30 A.M. the next morning. The witness and the accused lived at the same place through June, July and August 1945 (R. 39-41).

Toshio Kato, a witness for the defense, was sworn and testified that he had lived near the home of the accused since May 1945 and that the accused usually left home for work about 6:00 A.M. and returned to his home about 6:00 P.M. He presumed it would take about an hour by street car to reach the camp from the station where accused boarded it (R. 41-44).

The defense called, as its next witness, Kuronishi Tajiro who testified under oath that he had been Adjutant of Nagoya Prisoner of War Camp from April to August 1945. During the time he visited Narumi prisoner of War Camp several times. He went there at the time when Waggoner had been missing eleven or twelve hours. He did not recall whether accused was present when Waggoner was discovered but no one struck him at that time. At the dispensary Waggoner was questioned by the witness, Lieutenant Okada and the accused, who acted as interpreter. No one struck him at that time. At the time the witness left the camp, Waggoner was tied in front of the guardhouse. He did not know who tied him there and did not think it was the accused. When a group returned that had been searching for Waggoner two or three of the men ran forward and slapped him. He was unable to identify them. If Waggoner's food was reduced while he was confined in the guardhouse it was by order of the camp commander (R. 44-55).

The next witness presented by the defense was Kenzo Yamashita. He testified under oath that he was chief of the labor committee of the Japanese Rolling Stock Manufacturing Company and had held this position for one year and two months. He knew the accused and stated that he was employed by the company as an interpreter between April and August 1945. Although he was so employed he worked at the prisoner of war camp. The testimony of the witness shows that accused reported to the company and left for the camp each day before the prisoners arrived for work and returned to the company to check out after the prisoners had gone home for the day. The witness took a detail of 50 people from the factory to aid in the search for Waggoner. After he was found the witness saw him lying on the bed in the hospital and he was being questioned by Lieutenant Kuronishi and Okada and by the accused. There were no prisoners present. When he left, after about two to five minutes, they were still questioning him (R. 57-63).

COPY

Miyoroku Okada, a witness for the defense, testified that he was branch camp commander at the Harumi Camp from 25 April 1945 until the termination of hostilities. The accused used to arrive at the camp each day after the prisoners had gone to work and would leave in the afternoon before they returned. About once a week the prisoners were searched when they returned to camp from working. Owen was discovered with some oil on one of the inspections and the witness struck him with a club. Someone else struck him but he did not know who it was. Accused was not at the camp at that time. The chief prisoner of war non-commissioned officer was beaten for the acts of the other prisoners but it was not the accused who did it. He did not recall the names of Holt or Weston but remembered Waggoner. He was present when Waggoner was found in the kitchen. Accused was likewise there at that time as well as during the questioning of Waggoner in the dispensary. Lieutenant Kuranishi ordered the witness to have him tied in front of the guard house, and he remained tied there for 37 to 28 hours. He did not know of any beating of Waggoner when he was in that position, nor did he have any marks on his face when he reported to the witness after he was untied. He did not see anyone strike him (R. 65-75).

At this point in the case for the defense, at the request of the defense, the commission recessed until such a time as an affidavit would be received from Vincent Owen, which affidavit was at the time being sent by air mail from America. After a five day interval it arrived and prior to its entry into evidence counsel for the accused made the observation that the defense felt obliged to offer it since it had called for it. Further, defense did not desire to be bound by its contents. The gist of the affidavit is as follows: Owen was a prisoner at the camp. Most of the beatings administered by the accused were unjustified. He took upon himself matters of discipline that were strictly in the jurisdiction of the guards. Accused was one of those who kicked and beat Waggoner many times when he was tied in front of the guardhouse. Moody and Weston were beaten by the accused when he discovered soap in their possession during an inspection. The affiant was never beaten by accused (Def. Ex. X).

The accused, a witness in his own behalf was sworn and testified that he reported to the camp at about 8:30 A.M. to 9:30 A.M. daily. He was an interpreter at the camp and translated English to Japanese for the prisoners. He translated orders to the prisoners from the camp commandant and guards. He left the camp about 4:30 P.M. daily and arrived at the factory about 5:00 P.M. In May 1945 Waggoner tried to escape and was caught. He promised not to do it again. On this occasion a non-commissioned officer made him stand in front of the guardhouse over night. On the second occasion when they found Waggoner in the kitchen with a cut in his throat they took him to the hospital. Accused tried to assist there as an interpreter in their interrogation of Waggoner. The next time he saw him he was in front of the guard house tied in a sitting position with his hands behind his back. When the members of the search party returned he thought about three of them slapped and kicked him. He went home about 9:00 A.M. that morning. Accused did not strike him that day. The next day he slapped Waggoner twice with his open hand. On the third day Waggoner was untied and could hardly walk but was aided to the shower room where he bathed and put on clean clothes. When he came out of the shower room he walked unassisted and looked quite fit. He was taken before Lieutenant Okada where he was sentenced to 30 days in the guard house. Accused translated the sentence for him into English. He did not see Waggoner after that. He did not recall Holt, White, Weston or Moody. He was not present when Owen was beaten, but the next day he saw him "hanging his arm". He remembered both Dube and Kissel but did not strike either one of them.

On cross-examination the prosecution introduced Exhibit 39 in which accused admitted beating a "few" prisoners for stealing food. The accused, however, failed to remember answering that question (R. 79-101).

4. Opinion:

The record is not legally sufficient to support the complete findings of the commission. The commission was constituted by proper authority and had jurisdiction of the accused and of the offenses.

In Specification 2, although the commission found the accused not guilty of offenses against Owen and White, the following analysis of the testimony offered in support of the allegations in the specification is made to show its weakness and unreliability. It appears that some of the affidavits are highly contradictory. Some state that Owen was beaten by the accused. He, in his affidavit, denies that the accused ever beat him. Whether the offenses alleged happened on one or on several occasions is not shown, nor does the prosecution seem to know (R. 32). The manner in which the specification is pleaded leaves the defense in a state of confusion and in a position where it is impossible, under the evidence offered, to have a fair chance to defend it properly. It is logical for the reviewing authority to disapprove the finding of guilty of this specification.

As for Specification 3 and 4, the most that can be said is that the prosecution made its case with the very minimum of evidence.

5. Recommendations:

The Commission sentenced the accused to confinement at hard labor for life.

The accused should have been found guilty of only three of the four specifications. He was found not guilty of contributing to the death of Waggoner. This leaves him guilty only of beating him. Apparently reliable witnesses testified that the accused went home after Waggoner was apprehended. The defense produced many affidavits which described the occurrence and did not mention the accused as one who participated in it. Accused admitted slapping him the next day. However, the evidence supporting this specification is weak.

For the reason set out in the Opinion above the finding of guilty of Specification 2 should be disapproved.

Specification 4 seems to be amply supported by proper and sufficient evidence, although by only three affidavits.

When one looks at the record as a whole, the entire charges against the accused are not well supported.

The sentence to life imprisonment is unjust. It is not desirable to establish a rule for punishments in war crime cases because of the difference in the types of crimes and the degree of brutality in each case, but it might be well to consider sentences in other commission trials to show the injustice of the punishment in the present case. By that measure the sentence is too severe. In other war crimes cases before the commission there have been accused who have been found guilty of many specifications of horrible atrocities, which are conspicuously absent in the present case, and have received as punishment greatly lesser sentences. A more just and proper sentence in the present case would be confinement at hard labor for ten years. It is, therefore, recommended that only ten years of the sentence to confinement at hard labor be approved. Sugamo Prison, Tokyo, Honshu, Japan, is the appropriate place of confinement.

6. 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

COPI

I do not concur entirely with the foregoing opinion nor do I believe the sentence should be so drastically reduced. It is my view that Specification 1 was amply proved with the exception found by the Commission. Positive identification was established by many affidavits (Reference in par 3a above, plus Ex. 29 and Defense Ex. T.) that the accused participated in the cruel and remorseless beatings administered to Waggoner, a defenseless prisoner of war.

Specification 2 was supported by five witnesses as to prisoner Moody (Ex. 7, 10, 11, 12, and Defense Ex. X), as to prisoner Dube by two witnesses (Ex. 10 and 11) and as to prisoner Weston by three (Ex. 21, 23 and Defense Ex. X).

Facts alleged in Specification 3 were testified to by two witnesses (Ex. 24, Defense Ex. X.); those in Specification 4 by three (Ex. 28, 29 and Defense Ex. X).

Defense affidavits concerning the Waggoner event did not name accused as participating but neither did they purport to mention all involved. None excluded accused from the beatings of this prisoner of war. Minor inconsistencies appear in affidavits in evidence with respect to each specification. None appears of sufficient importance to destroy or weaken the probative value of the subject matter. Experienced jurists regard unimportant differences in testimony ordinarily as of no moment and often as the earmark of evidence which has not been prearranged. No reason appears for specific accusations by such prisoners of war as Holt (Specification 3, Ex. 24) unless such charges were based on fact.

Notwithstanding the sufficiency of the proof, it is felt that the sentence is excessive. The beating of Waggoner was particularly vicious and bullying. The commission's finding that the prisoner's death was not contributed to by the accused's violence is to be respected, yet the evidence to the beating alone (accused's part) revealed an aggravated offense much worse than the ordinary type encountered in War Crimes Trials. That accused, possessed a sadistic nature to which he gave full vent is best set forth in Defendant's Exhibit X. The excuse that he was trained in the brutal atmosphere of the Japanese Imperialists is not available to him for he has lived under the American flag and knows democratic ways.

A sentence of twenty-five years at hard labor is believed adequate. Proposed action to reduce the term to this level is attached.

/s/ Allan E. Browne
ALLAN E. BROWNE
Lt. Colonel, JAGD
Army Judge Advocate

REF I

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

Yokohama, Japan

In the foregoing case of Toshio Kameoka only so much of the sentence as provides for confinement at hard labor for a period of twenty-five (25) years is approved and will be duly executed. Sugamo Prison, Tokyo, Honshu, Japan, or elsewhere as the Supreme Commander for the Allied Power or other proper authority, may direct, is designated as the place of confinement.

**R. L. EICHELBERGER
Lieutenant General, U. S. Army
Commanding**