

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

Yokohama, Japan
18, June 1947

UNITED STATES OF AMERICA VS TETSUO ANDO

Review of the Staff Judge Advocate

1. The attached record of trial of Tetsuo Ando, at Yokohama, Japan, from 8 May 1947 to 9 May 1947, by a Military Commission appointed by paragraph 3, Special Orders No. 96, Headquarters Eighth Army, United States Army, dated 25 April 1947, having been referred to the Staff Judge Advocate, this review is submitted to the Commanding General.

Personal Data Concerning Accused

NAME: Tetsuo Ando	DATE OF CONFINEMENT: 23 July 1946
AGE: Thirty-two (32)	DATE OF ARRAIGNMENT: 8 May 1947
RESIDENCE: Oita Prefecture	PLACE OF TRIAL: Yokohama, Japan
MARITAL STATUS: Married	PERIOD OF TRIAL: 8-9 May 1947
RELATIVES: Wife	DATE OF SENTENCE: 9 May 1947
EDUCATION: Not shown	SENTENCE: OHL for five (5) years
VOCATION: Farmer	
MILITARY CAREER: Army from 25 September 1941 to 24 September 1945.	
CLEMENCY RECOMMENDED BY COMMISSION: No	

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

<u>Charge and Specifications</u>	<u>Plea</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: On about 15 February 1945, accused, did willfully and unlawfully mistreat Private Erwin J. Kilburn, also known as Jake Kilburn, an American PW, by beating and otherwise abusing him.	NG	G	Yes
Sp 2: During the period 20 February 1945 and 20 March 1945, accused, did willfully and unlawfully mistreat Staff Sergeant Herbert H. Shoemaker and Major Kenneth R. Hagen, American PW's by beating and otherwise abusing them.	NG	Guilty, with the exception of the words "Staff Sergeant Herbert H. Shoemaker and" and the word "them" substituting therefore the word "him" of the excepted words Not Guilty, of the substituted word, Guilty.	Yes
Sp 3: On numerous other occasions during the period from 1 August 1944 to 30 June 1945, accused, did willfully and unlawfully mistreat numerous American PW's by beating and otherwise abusing them.	NG	NG	

Sentences Imposed: To be confined at hard labor for a period of five (5) years.
Maximum Legal Punishment: Death.

3. Summary of Evidence:

a. For the Prosecution:

As to Specification 1: Private Erwin J. Kilburn, prisoner of war at camp Number 23, Fukuoka, Japan had become ill with diarrhea and reported on sick call the morning of 15 February 1945. Because he had worked late the night before he was unable to go on sick call then. Accused, who was the medical orderly, became angry because he had not come on sick call the previous night and ordered him to assume the position of attention and hit him with closed fists about the face and head and knocked him down several times. He then, using judo, threw him down, ordered him to get up and continued this mistreatment for about fifteen minutes. Then he ordered him again to stand at attention, in which position he remained from 7: A.M. to about 2:30 P.M. that day. He was given fifteen minutes for lunch and allowed to go to the latrine twice during this period. At about 2:30 P.M. he collapsed and accused told him to go home. He was paralyzed from the waist down until 16 September 1945 from this abuse (Ex. 1-3, 5).

As to Specification 2: About 25 February 1945, Major Kenneth R. Hagen, medical officer and prisoner at the camp, was told by accused that Sergeant Shoemaker, his assistant, was a fool. The Major resented this statement and firmly stated that this was not so. Accused became angry, kicked a pan of instruments from the stove, seized the stove poker and beat him on his arms and shoulders (Ex. 4-8).

As to Specification 3: Not Guilty.

b. For the Defense:

Accused, after being duly sworn, took the stand. The gist of his pertinent testimony is as follows: He was a corporal in the Japanese Army. He served at the Fukuoka Branch Camp Number 23 from 15 January 1945 to 17 May 1945. Shoemaker had become quiet and meek and accused told the Major Hagen that something was wrong with Shoemaker and he did not believe he was in his right mind. Because of accused's defective English the major must have misunderstood him and thought he was calling Shoemaker a fool. Major Hagen said Shoemaker was not a fool but that accused was a fool and this started an argument. The major became infuriated and accused became angry and grabbed a poker and raised it over the major's head. At that moment he realized the rank of the major, checked his actions and refrained from hitting him with the poker. He had no further arguments with Major Hagen. He denied kicking over the medical instruments. Had he done so he would have probably been placed in the guard house or have been court-martialed (R. 7-11). Concerning Specification 1, he did not remember Kilburn. Usually prisoners went on sick call in the evening after work but there was no regulation prohibiting them from going in the morning the day they were to go to work. He did not have training in judo and did not know judo. He did not require any prisoner to stand at attention for punishment or reprimand. There were times when they were required to stand at attention during an investigation. He did not know Gramer or Fax (R. 11-13).

Masataka Shikata was next presented as a witness for the defense. Under oath he testified that he was the medical officer at the camp from August 1944 to 16 May 1945. He had no recollection of Major Hagen or the prisoners making any complaints about accused. He did not hear of accused's beating of Major Hagen until he had come before a commission on another case. If accused had broken medical instruments the main camp would have taken "proper measures". He did not recall anything about Kilburn except his name. He remembered a prisoner who was paralyzed in the legs and he and Major Hagen thought it was caused by some venereal disease. This paralysis can be caused as a result of an injury to the spinal column or by venereal disease (R. 13-16). He did not see accused strike any prisoner. He did not know whether or not accused disciplined any prisoner of war by making him stand at attention for a length of time (R. 16).

Oral arguments were made by the defense and prosecution. It was then decided to call in an American medical officer to explain the causes of paresis.

Captain Ernest Henry Taves, Medical Corps, U.S. Army, testified that paresis could only be caused by syphilis. When informed of a statement by Major Hagen that a prisoner had gotten paresis from diarrhea and weakness and from being made to stand at attention for six hours, the witness said that there was a confusion of the terms, that general paresis is caused by syphilis and that paresis ~~per se~~ can be caused by a number of things such as standing at attention for many hours, by beating and manhandling. Paresis is a simple way of saying paralysis (R. 19-21).

4. Opinion:

The record is legally sufficient to support the findings of the commission. Each allegation of the charge and specifications of which accused was found guilty was substantiated by ample and competent evidence. The commission was constituted by proper authority and had jurisdiction of the accused and of the offenses alleged.

The prosecution introduced its evidence by means of affidavits and a signed statement of former prisoners of war who were interned at the camp and were in a position to know the facts of the matters in issue. From such the guilt of the accused was firmly established.

The complete record shows that accused had a fair trial and that he was well represented by competent counsel. He took the stand and testified in his own behalf and produced witnesses in his own defense. A careful scrutiny of the entire record fails to reveal any error which injuriously affected the substantial rights of accused or any failure to accord him a fair trial in every respect. The evidence supports the findings. There is no evidence that accused was not sane at the time his alleged acts were committed and at the time of trial.

5. Recommendations:

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

The commission sentenced accused to confinement at hard labor for five (5) years. The sentence is legal.

It is believed that the sentence is adequate. Clemency is not merited. Accused has been confined since 23 July 1946, went to trial 8 May 1947 and was sentenced 9 May 1947.

It is recommended that the sentence be approved. In compliance with established policy, owing to the length of time accused spent in confinement prior to the date of sentence it is further recommended that nine and one-half (9½) months of the confinement be remitted. Sugamo Prison, Tokyo, 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

I CONCUR:

/s/ Allen R. Browne
ALLEN R. BROWNE
1st Colonel JAGD
Army Judge Advocate