

PWS

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

Osw # 352

Yokohama, Japan
11 June 1948

UNITED STATES OF AMERICA VS TAKEI TSUDA

Review of the Staff Judge Advocate

1. The attached record of trial of Takei Tsuda at Yokohama, Japan, from 26 April 1948 to 28 April 1948, by a Military Commission appointed by paragraph 1; Special Orders No. 32, Headquarters Eighth Army, United States Army, dated 23 April 1948, having been referred to the Staff Judge Advocate, this review thereof is submitted to the Commanding General.

Personal Data Concerning Accused

NAME: Takei Tsuda	DATE OF CONFINEMENT: 30 Aug 1947
AGE: 41	DATE OF APPRAIGHTMENT: 26 Apr 1948
RESIDENCE: 668, 6 Chome, Koinji, Suginami ku, Tokyo	PLACE OF TRIAL: Yokohama, Japan
MARITAL STATUS: Not shown	PERIOD OF TRIAL: 26 Apr 1948 to 28 Apr 1948
RELATIVES: Not shown	DATE OF SENTENCE: 28 Apr 1948
EDUCATION: Attended grade school in Sacramento, Calif., studied English at Lincoln School for six months, three years at Berkley High School, Calif., studied voice at UCLA College of Music, and Opera in Milan, Italy under Mrs. Elena Vita.	SENTENCE: CHL for six (6) mos, CEFRENCY RECOMMENDED BY COMMISSION: No
VOCATION: Vocalist and teacher of music	RELEASED FROM CONFINEMENT: 29 May 1948
MILITARY CAREER: None	

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

<u>Charge and Specification:</u>	<u>Pleas</u>	<u>Findings</u>	<u>Legally Sustained</u>
Ch: Accused, at the times and places set forth in the specification hereto attached and during a time of war between the United States and Japan, did violate the Laws and Customs of War.	NG	C	Yes
Sp: Between November 1944 and May 1945, at or near Tokyo area Prisoner of War Camp 11-D, Tsurimi, Yokohama, Honshu, Japan, the accused did willfully and unlawfully mistreat Douglas Gordon Meyers and Harold Ramsey, Australian PWs and another unidentified Australian PW, and numerous other Allied PWs, by beating and otherwise abusing them.	NG	C,	Yes

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3. Summary of the Proceedings and Evidence:

a. Motion attacking jurisdiction of the Commission: At the beginning of the trial the accused moved to dismiss the case, claiming the accused was an American citizen and the Commission had no jurisdiction to try him; and the defense submitted in substantiation of the motion a birth certificate showing accused was born in the United States on August 11, 1906 (R. 2-3, Ex. A). The prosecution introduced a letter from Consul-General Johnson indicating the accused had lost his American citizenship (R. 3). On this record the Commission overruled the motion (R. 3-5). Later the Commission held that they would hear evidence on citizenship from either side, and evidence was introduced tending to show the facts hereinafter set out (R. 41).

b. Action of Commission on the Specification: There was only one specification against the accused; and, after giving effect to the finding of the Commission, and the words excepted and substituted, the specification of which he was found guilty is as follows: "That between November 1944 and May 1945, at or near Tokyo Area Prisoner of War Camp 11-D; Tsurimi, Yokohama, Honshu, Japan, the accused, Tahei Tsuda, did, willfully and unlawfully mistreat Douglas Gordon Mayers and Harold Ramsey, Australian Prisoners of War, and other Allied Prisoners of War, by slapping them " (R. 57).

The record citations will be limited to evidence tending to prove the specification as it is now limited.:

c. Prosecution's Proof: The prosecution introduced proof tending to show: The accused, Tahei Tsuda, was the interpreter to Prisoner of War Camp 11-D, Tsurimi, Yokohama, Japan, from 1 April 1944 to the end of the war (R. 40-41). In January 1945, during a pneumonia epidemic, an order was issued at the camp that any PWS showing symptoms of pneumonia were to remain in camp three days. PW Ramsey and PW Mayers had "heavy colds" and asked accused to see Sgt. Ino about them remaining in camp for rest; on accused's return he stated Ino said no such orders had been issued, and Mayers told accused he did not believe it. Accused thereupon kicked and "punched" Mayers for about twenty minutes until he was dazed, eyes blackened and legs bruised, and then he turned on Ramsey and "punched" him over the face until his face was bruised and he felt sick (Ex. 10, 12).

PW Johnson was "punched" by accused for some unknown reason, but witness did not see the incident (Ex. 12).

Accused beat Mayers at other times, and also beat other PWS (Ex. 10).

Once in December 1944 and once in January 1945 Dr. Brouwer was beaten by the "interpreter" because he made a request for medical supplies (Ex. 15). On another occasion the "interpreter", "a big huski man", hit Sgt. Cox "with his hand" (Ex. 11). Accused carried out a number of beatings of PWS (Ex. 5, 6, 11).

d. For the Defense:

(1) Mistreatment: The accused testified under oath in his own behalf (R. 39). He admitted he struck Ramsey and Mayers once but claimed he did it to protect them from serious punishment by guards for violating camp rules (R. 40, 43). He denied striking any other PWS (R. 40, 43).

A letter from Sgt. Barlow, an American PW at the camp, was read, and it corroborated accused's statement about Ramsey and Mayers (Ex. C). There was uncontradicted testimony that accused was instrumental in getting the hours of work of PWS shortened, getting

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them additional food, and to show he was very "cooperative" with the PWs (R. 29, 36, 37, Ex. B, C). He was so nice to the PWs he was criticized by some of the Japanese (R. 32, 33, 37).

(2) Citizenship: The accused was born in the United States (R. 40). His father lived in the United States for about fifty years. His mother returned to Kyushu, Japan, and died there in 1944. Accused lived in the United States until he was seven. In 1913, he came to Japan and remained until 1925, where he was educated up to that time. In 1925 he returned to the United States and continued his education and worked until 1935. He was in Italy for four years studying music, and returned to the United States in 1939 and then came back to Japan in 1940. In Japan he studied and taught music until April 1944 at which time he became an interpreter but he was never a member of the Japanese armed forces (R. 49, 50-51).

In early childhood while he was living in the United States, his parents registered him as a Japanese citizen, but that registration was cancelled by him in 1931 (R. 44). When he came to Japan in 1940 he came as an American citizen (R. 44). He had his visitors permit renewed several times by Japanese authorities. He was being watched by the Japanese authorities. He could not return to America as he intended because of the war. The Japanese police told him to register his name in the Japanese Government. They said it would be much better for accused to do so, and accused thought it would be safest. He filed an application with the proper Japanese authorities and it was granted. The application and reply thereto are Exhibits D and E. The application shows that it was an application to be reinstated as a Japanese citizen. He never took an oath of allegiance to Japan and never intended to give up his American citizenship (R. 45).

4. Opinion:

a. Jurisdiction: Assuming, but not deciding, that the commissions do not have jurisdiction to try American citizens, yet the accused, by his acts, had expatriated himself, and he was no longer an American citizen. He was an American citizen when he arrived in Japan in 1940. His act in registering and being accepted as a Japanese national in 1942, though possibly the expedient thing for him to do under the circumstances, was not involuntarily done and same effectively expatriated him from American citizenship under the law (USCA, Title 8, Sec 601; US vs. Silvary, 178 Fed. 150; 185 Fed. 401; US vs. Wong Kim Ark, 42 L. Ed. 890, 169 US 469; USCA, Title 8, Sec. 801 (a), 801 (d); Reynolds vs. Haskins, 8 Fed. (2d), 473, In re Prack, 60 Fed. 2d, 171).

The accused was charged with war crimes and was in the custody of the convening authority at the time of the trial, and therefore the Commission correctly held that it had jurisdiction to try the accused (SCAP Rules, 2a).

b. On the Facts: The accused was guilty of the corporal punishment or cruelty charged in the specification as found by the Commission under his own testimony and testimony of Sgt. Barlow; and the reason given by him for his acts and the things he did for the benefit of the PWs were evidently taken into consideration by the Commission in mitigating his punishment, for he was only given a sentence of six months.

5. Recommendations:

The evidence was legally sufficient to support the guilty findings of the Commission. The record shows that the Commission

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was duly constituted. The record also shows the accused was ably represented by counsel and that he had a fair trial; and it is recommended the findings of the Commission be approved.

The sentence of six months was legal. As the accused had been confined since 30 August 1947, under the recognized policy of crediting all pre-sentence confinement except three months, the accused has now served his full sentence and was discharged 29 May 1948.

J. G. LACKEY
Reviewer
Judge Advocate Section

I concur in general with the views expressed in the foregoing review.

ALLAN R. BROWNE
Lt Colonel JAGD
Army Judge Advocate

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