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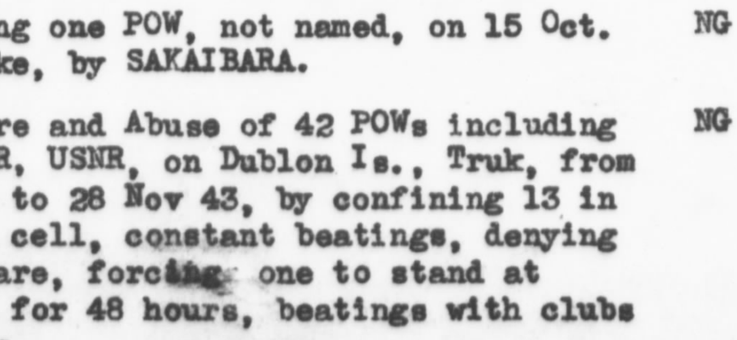
00-KOBAYASHI, Masashi/A17-10 OQ
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MEMORANDUM IN THE MILITARY COMMISSION CASE OF: KOBAYASHI, Masashi,
Former Vice Admiral,
Imperial Japanese Navy.

Place Tried:	Date Tried:	Date Received:
Guam, Marianas Is.	13 May 1948	29 December 1948

CHARGE:	PLEA:	FINDING:
I VIOLATION OF THE LAW AND CUSTOMS OF WAR.	NG	G
Spec 1 - Did, from 5 April 1943 to 23 Feb. 1944, while C-in-C of the Fourth Fleet, IJN, during a state of war unlawfully disregard and fail to discharge his duty to control the operations of members of his command and persons subject to his control and supervision, permitting them to torture, abuse, inhumanely treat and kill American POWs held captive by the armed forces of Japan, in violation of the law and customs of war, as follows:	NG	Proved in part
(a) Unlawful killing of one unarmed American POW, not named, in July 1943, on Wake, by beheading, by SAKAIBARA, Shigematsu, Captl, IJN.	NG	Proved
(b) Torture, abuse and inhumane treatment of two American POWs, named, from 16 July 43, to 27 Aug. 43, on Kwajalein, by experimenting with intravenous injections of coconut juice, confinement for 43 days in small unsanitary cells, denying bedding and medical care, beatings, throwing boiling water in face, etc.	NG	Proved
(c) Killing by shooting of 96 POWs on Wake on 7 Oct. 43 by SAKAIBARA, Shigematsu, Capt., IJN, TACHIBANA, Soichi, Lt., IJN, HORIE, Kiroku, WO, IJN, and others not named.	NG	Proved
(d) Killing one POW, not named, on 15 Oct. 43, at Wake, by SAKAIBARA.	NG	Proved
(e) Torture and Abuse of 42 POWs including named LCDR, USNR, on Dublon Is., Truk, from 20 Nov 43 to 28 Nov 43, by confining 13 in one small cell, constant beatings, denying medical care, forcing one to stand at attention for 48 hours, beatings with clubs and rifles.	NG	Not Proved
(f) Torture and abuse of seven POWs including one named Army captain and others unknown from 15 Dec. 43 to 28 Dec. 43, by keeping them trussed without food or water for 12 hours;	NG	Proved



CHARGE

VIOLATION OF THE LAW AND CUSTOMS OF WAR

Specification 1

In that KOBAYASHI, Masashi, then a vice admiral, IJN, Commander in Chief of the Fourth Fleet, Imperial Japanese Navy, and while so serving as the Commander in Chief of the said Fourth Fleet, did, at Wake Island, the Marshall Islands, the Caroline Islands, and other places within the area of his command, during the period from April 5, 1943 to February 23, 1944, at a time when a state of war existed between the United States of America, its allies and dependencies, and the Imperial Japanese Empire, unlawfully disregard and fail to discharge his duty as the Commander in Chief of the said Fourth Fleet, to control, as it was his duty to do, the operations of members of his command and persons subject to his control and supervision, permitting them to torture, abuse, inhumanely treat and kill American prisoners of war held captive by the armed forces of Japan, in violation of the law and customs of war, as follows:

(a) The unlawful killing of one (1) unarmed American prisoner of war, name to the relator unknown, in July 1943, on Wake Island, by beheading, by SAKAIBARA, Shigematsu, then a captain, IJN, Commanding Officer of the Sixty-fifth Naval Guard Unit, Wake Island.

(b) The unlawful torture, abuse and inhumane treatment of two American prisoners of war, namely Louis Silvie Zamperini, captain, United States Army Air Forces, and Russell Allen Phillips, captain, United States Army Air Forces, during the period from July 16, 1943 to August 27, 1943, at Kwajalein Atoll, Marshall Islands, by experimenting upon them with intravenous injections of coconut juice, confining them for about forty-three (43) days in small unsanitary and unhealthful cells, refusing and denying them bedding and sufficient food or water, denying them adequate medical care, subjecting said Zamperini to repeated beatings, forcing said Zamperini to dance on numerous occasions when he was in an extremely weak and exhausted condition, and throwing boiling water in the face of the said Zamperini on five (5) occasions, by naval members of the armed forces of Japan at Kwajalein Atoll, names to the relator unknown.

(c) The unlawful killing of ninety-six (96) American prisoners of war, names to the relator unknown, on or about October 7, 1943, on Wake Island, by shooting, by SAKAIBARA, Shigematsu, then a captain, IJN, Commanding Officer of the Sixty-fifth Naval Guard Unit, Wake Island, TACHIBANA, Soichi, then a lieutenant, IJN, HORIE, Kiroku, then a warrant officer, IJN, and other persons, names to the relator unknown, all attached to the military installation of the Imperial Japanese Navy, Wake Island.

(d) The unlawful killing of one (1) unarmed American prisoner of war, name to the relator unknown, on or about October 15, 1943, on Wake Island, by beheading, by SAKAIBARA, Shigematsu, then a captain, IJN, Commanding Officer of the Sixty-fifth Naval Guard Unit, Wake Island.



Specification 2

In that KOBAYASHI, Masashi, then a vice admiral, IJN, Commander in Chief of the Fourth Fleet, Imperial Japanese Navy, and while so serving as the Commander in Chief of the said Fourth Fleet, did, at Wake Island, the Marshall Islands, the Caroline Islands, and other places within the area of his command, during the period from April 5, 1943 to February 23, 1944, at a time when a state of war existed between the United States of America, its allies and dependencies, and the Imperial Japanese Empire, unlawfully disregard and fail to discharge his duty as the Commander in Chief of the said Fourth Fleet, to take such measures as were within his power and appropriate in the circumstances to protect, as it was his duty to do, American prisoners of war, held captive by the armed forces of Japan under his command and subject to his control and supervision, in that he permitted the unlawful torture, abuse, inhumane treatment, and killing of said prisoners of war, by members of the armed forces of Japan, in violation of the law and customs of war, as follows:

(a) The unlawful killing in July 1943, on Wake Island, by SAKAIBARA, Shigematsu, then a captain, IJN, Commanding Officer of the Sixty-fifth Naval Guard Unit, Wake Island, of one (1) unarmed American prisoner of war, name to the relator unknown, then and there held captive by said Sixty-fifth Naval Guard Unit, by beheading.

(b) The unlawful torture, abuse and inhumane treatment during the period from July 16, 1943 to August 27, 1943 at Kwajalein Atoll, Marshall Islands, by naval members of the armed forces of Japan at said Kwajalein Atoll, names to the relator unknown, of two American prisoners of war, namely Louis Silvie Zamperini, captain, United States Army Air Forces, and Russell Allen Phillips, captain, United States Army Air Forces, then and there held captive by naval armed forces of Japan, by experimenting upon them with intravenous injections of coconut juice, confining them for about forty-three (43) days in small unsanitary and unhealthful cells, refusing and denying them bedding and sufficient food or water, denying them adequate medical care, subjecting said Zamperini to repeated beatings, forcing said Zamperini to dance on numerous occasions when he was in an extremely weak and exhausted condition and throwing boiling water in the face of the said Zamperini on five (5) occasions.

(c) The unlawful killing on or about October 7, 1943, on Wake Island, by SAKAIBARA, Shigematsu, then a captain, IJN, Commanding Officer of the Sixty-fifth Naval Guard Unit, Wake Island, TACHIBANA, Soichi, then a lieutenant, IJN, HORIE, Kiroku, then a warrant officer, IJN, and other persons, names to the relator unknown, all attached to the military installation of the Imperial Japanese Navy, Wake Island, of ninety-six (96) american prisoners of war, names to the relator unknown, then and there held captive by said Sixty-fifth Naval Guard Unit, by shooting.

(d) The unlawful killing on or about October 15, 1943 on Wake Island, by SAKAIBARA, Shigematsu, then a captain, IJN, Commanding Officer of the Sixty-fifth Naval Guard Unit, Wake Island, of one (1) unarmed American prisoner of war, name to the relator unknown, then and there held captive by said Sixty-fith Naval Guard Unit, by beheading.



FT12/A17-10(2)
02-JDM-fsk

THE PACIFIC COMMAND
AND UNITED STATES PACIFIC FLEET
HEADQUARTERS OF THE COMMANDER NAVAL FORCES MARIANAS
NAVAL FORCES MARSHALLS-CAROLINES AND MARSHALLS-CAROLINES AREA

Serial: 16828

10 NOV 1948

MILITARY COMMISSION ORDER NO. 45

(In the case of former Vice Admiral KOBAYASHI, Masashi, IJN)

- - - -

CHARGE

VIOLATION OF THE LAW AND CUSTOMS OF WAR

Specification 1

In that KOBAYASHI, Masashi, then a vice admiral, IJN, Commander in Chief of the Fourth Fleet, Imperial Japanese Navy, and while so serving as the Commander in Chief of the said Fourth Fleet, did, at Wake Island, the Marshall Islands, the Caroline Islands, and other places within the area of his command, during the period from April 5, 1943 to February 23, 1944, at a time when a state of war existed between the United States of America, its allies and dependencies, and the Imperial Japanese Empire, unlawfully disregard and fail to discharge his duty as the Commander in Chief of the said Fourth Fleet, to control, as it was his duty to do, the operations of members of his command and persons subject to his control and supervision, permitting them to torture, abuse, inhumanely treat and kill American prisoners of war held captive by the armed forces of Japan, in violation of the law and customs of war, as follows:

(a) The unlawful killing of one (1) unarmed American prisoner of war, name to the relator unknown, in July 1943, on Wake Island, by beheading, by SAKAIBARA, Shigematsu, then a captain, IJN, Commanding Officer of the Sixty-fifth Naval Guard Unit, Wake Island.

(b) The unlawful torture, abuse and inhumane treatment of two American prisoners of war, namely Louis Silvie Zamperini, captain, United States Army Air Forces, and Russell Allen Phillips, captain, United States Army Air Forces, during the period from July 16, 1943 to August 27, 1943, at Kwajalein Atoll, Marshall Islands, by experimenting upon them with intravenous injections of coconut juice, confining them for about forty-three (43) days in small unsanitary and unhealthful cells, refusing and denying them bedding and sufficient food or water, denying them adequate medical care, subjecting said Zamperini to repeated beatings, forcing said Zamperini to dance on numerous occasions when he was in an extremely weak and exhausted condition, and throwing boiling water in the face of the said Zamperini on five (5) occasions, by naval members of the armed forces of Japan at Kwajalein Atoll, names to the relator unknown.

(c) The unlawful killing of ninety-six (96) American prisoners of war, names to the relator unknown, on or about October 7, 1943, on Wake Island, by shooting, by SAKAIBARA, Shigematsu, then a captain, IJN, Commanding Officer of the Sixty-fifth Naval Guard Unit, Wake Island, TACHIBANA, Soichi, then a lieutenant, IJN, HORIE, Kiroku, then a warrant officer, IJN, and other persons, names to the relator unknown, all attached to the military installation of the Imperial Japanese Navy, Wake Island.

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Specification 2

In that KOBAYASHI, Masashi, then a vice admiral, IJN, Commander in Chief of the Fourth Fleet, Imperial Japanese Navy, and while so serving as the Commander in Chief of the said Fourth Fleet, did, at Wake Island, the Marshall Islands, the Caroline Islands, and other places within the area of his command, during the period from April 5, 1943 to February 23, 1944, at a time when a state of war existed between the United States of America, its allies and dependencies, and the Imperial Japanese Empire, unlawfully disregard and fail to discharge his duty as the Commander in Chief of the said Fourth Fleet, to take such measures as were within his power and appropriate in the circumstances to protect, as it was his duty to do, American prisoners of war, held captive by the armed forces of Japan under his command and subject to his control and supervision, in that he permitted the unlawful torture, abuse, inhumane treatment, and killing of said prisoners of war, by members of the armed forces of Japan, in violation of the law and customs of war, as follows:

(a) The unlawful killing in July 1943, on Wake Island, by SAKAIBARA, Shigematsu, then a captain, IJN, Commanding Officer of the Sixty-fifth Naval Guard Unit, Wake Island, of one (1) unarmed American prisoner of war, name to the relator unknown, then and there held captive by said Sixty-fifth Naval Guard Unit, by beheading.

(b) The unlawful torture, abuse and inhumane treatment during the period from July 16, 1943 to August 27, 1943 at Kwajalein Atoll, Marshall Islands, by naval members of the armed forces of Japan at said Kwajalein Atoll, names to the relator unknown, of two American prisoners of war, namely Louis Silvia Zamperini, captain, United States Army Air Forces, and Russell Allen Phillips, captain, United States Army Air Forces, then and there held captive by naval armed forces of Japan, by experimenting upon them with intravenous injections of coconut juice, confining them for about forty-three (43) days in small unsanitary and unhealthful cells, refusing and denying them bedding and sufficient food or water, denying them adequate medical care, subjecting said Zamperini to repeated beatings, forcing said Zamperini to dance on numerous occasions when he was in an extremely weak and exhausted condition and throwing boiling water in the face of the said Zamperini on five (5) occasions.

(c) The unlawful killing on or about October 7, 1943, on Wake Island, by SAKAIBARA, Shigematsu, then a captain, IJN, Commanding Officer of the Sixty-fifth Naval Guard Unit, Wake Island, TACHIBANA, Soichi, then a lieutenant, IJN, HORIE, Kiroku, then a warrant officer, IJN, and other persons, names to the relator unknown, all attached to the military installation of the Imperial Japanese Navy, Wake Island, of ninety-six (96) american prisoners of war, names to the relator unknown, then and there held captive by said Sixty-fifth Naval Guard Unit, by shooting.

(d) The unlawful killing on or about October 15, 1943 on Wake Island, by SAKAIBARA, Shigematsu, then a captain, IJN, Commanding Officer of the Sixty-fifth Naval Guard Unit, Wake Island, of one (1) unarmed American prisoner of war, name to the relator unknown, then and there held captive by said Sixty-fith Naval Guard Unit, by beheading.



CHARGE

VIOLATION OF THE LAW AND CUSTOMS OF WAR

Specification 1

In that KOBAYASHI, Masashi, then a vice admiral, IJN, Commander in Chief of the Fourth Fleet, Imperial Japanese Navy, and while so serving as the Commander in Chief of the said Fourth Fleet, did, at Wake Island, the Marshall Islands, the Caroline Islands, and other places within the area of his command, during the period from April 5, 1943 to February 23, 1944, at a time when a state of war existed between the United States of America, its allies and dependencies, and the Imperial Japanese Empire, unlawfully disregard and fail to discharge his duty as the Commander in Chief of the said Fourth Fleet, to control, as it was his duty to do, the operations of members of his command and persons subject to his control and supervision, permitting them to torture, abuse, inhumanely treat and kill American prisoners of war held captive by the armed forces of Japan, in violation of the law and customs of war, as follows:

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(b) The unlawful torture, abuse and inhumane treatment of two (2) American prisoners of war, namely Louis Silvie Zamperini, captain, United States Army Air Forces, and Russell Allen Phillips, captain, United States Army Air Forces, during the period from July 16, 1943 to August 27, 1943, at Kwajalein Atoll, Marshall Islands, by experimenting upon them with intravenous injections of coconut juice, confining them for about forty-three (43) days in small unsanitary and unhealthful cells, refusing and denying them bedding and sufficient food or water, denying them adequate medical care, subjecting said Zamperini to repeated beatings, forcing said Zamperini to dance on numerous occasions when he was in an extremely weak and exhausted condition, and throwing boiling water in the face of the said Zamperini on five (5) occasions, by naval members of the armed forces of Japan at Kwajalein Atoll, names to the relator unknown.

(c) The unlawful killing of ninety-six (96) American prisoners of war, names to the relator unknown, on or about October 7, 1943, on Wake Island, by shooting, by SAKAIBARA, Shigematsu, then a captain, IJN, Commanding Officer of the Sixty-fifth Naval Guard Unit, Wake Island, TACHIBANA, Soichi, then a lieutenant, IJN, HORIE, Kiroku, then a warrant officer, IJN, and other persons, names to the relator unknown, all attached to the military installation of the Imperial Japanese Navy, Wake Island.

(d) The unlawful killing of one (1) unarmed American prisoner of war, name to the relator unknown, on or about October 15, 1943, on Wake Island, by beheading, by SAKAIBARA, Shigematsu, then a captain, IJN, Commanding Officer of the Sixty-fifth Naval Guard Unit, Wake Island.

Specification 2

In that KOBAYASHI, Masashi, then a vice admiral, IJN, Commander in Chief of the Fourth Fleet, Imperial Japanese Navy, and while so serving as the Commander in Chief of the said Fourth Fleet, did, at Wake Island, the Marshall Islands, the Caroline Islands, and other places within the area of his command, during the period from April 5, 1943 to February 23, 1944, at a time when a state of war existed between the United States of America, its allies and dependencies, and the Imperial Japanese Empire, unlawfully disregard and fail to discharge his duty as the Commander in Chief of the said Fourth Fleet, to take such measures as were within his power and appropriate in the circumstances to protect, as it was his duty to do, American prisoners of war, held captive by the armed forces of Japan under his command and subject to his control and supervision, in that he permitted the unlawful torture, abuse, inhumane treatment, and killing of said prisoners of war, by members of the armed forces of Japan, in violation of the law and customs of war, as follows:

(a) The unlawful killing in July 1943, on Wake Island, by SAKAIBARA, Shigematsu, then a captain, IJN, Commanding Officer of the Sixty-fifth Naval Guard Unit, Wake Island, of one (1) unarmed American prisoner of war, name to the relator unknown, then and there held captive by said Sixty-fifth Naval Guard Unit, by beheading.

(b) The unlawful torture, abuse and inhumane treatment during the period from July 16, 1943 to August 27, 1943 at Kwajalein Atoll, Marshall Islands, by naval members of the armed forces of Japan at said Kwajalein Atoll, names to the relator unknown, of two American prisoners of war, namely Louis Silvie Zamperini, captain, United States Army Air Forces, and Russell Allen Phillips, captain, United States Army Air Forces, then and there held captive by naval armed forces of Japan, by experimenting upon them with intravenous injections of coconut juice, confining them for about forty-three (43) days in small unsanitary and unhealthful cells, refusing and denying them bedding and sufficient food or water, denying them adequate medical care, subjecting said Zamperini to repeated beatings, forcing said Zamperini to dance on numerous occasions when he was in an extremely weak and exhausted condition, and throwing boiling water in the face of the said Zamperini on five (5) occasions.

(c) The unlawful killing on or about October 7, 1943, on Wake Island, by SAKAIBARA, Shigematsu, then a captain, IJN, Commanding Officer of the Sixty-fifth Naval Guard Unit, Wake Island, TACHIBANA, Soichi, then a lieutenant, IJN, HORIE, Kiroku, then a warrant officer, IJN, and other persons, names to the relator unknown, all attached to the military installation of the Imperial Japanese Navy, Wake Island, of ninety-six (96) American prisoners of war, names to the relator unknown, then and there held captive by said Sixty-fifth Naval Guard Unit, by shooting.

(d) The unlawful killing on or about October 15, 1943 on Wake Island, by SAKAIBARA, Shigematsu, then a captain, IJN, Commanding Officer of the Sixty-fifth Naval Guard Unit, Wake Island, of one (1) unarmed American prisoner of war, name to the relator unknown, then and there held captive by said Sixty-fifth Naval Guard Unit, by beheading.



Cross-examination by the accused concerning Exhibit 13:

254. Q. Will the witness read question and answer 12?
A. The witness read question and answer 12 from Exhibit 13.

255. Q. Will the witness read question and answer 14?
A. The witness read question and answer 14 from Exhibit 13.

Neither the judge advocate, the accused, nor the commission desired further to examine this witness concerning Exhibit 13.

Examination by the judge advocate concerning prosecution document number 233:

256. Q. Does the witness have in his possession, from the official files of the Director of War Crimes, Pacific Fleet, Commander Marianas, an affidavit made by Louis S. Zamperini, dated 1 November 1945?
A. I have a photostatic copy.

257. Q. When and where was this statement made?
A. The statement was made in Los Angeles County, California.

258. Q. Is that statement sworn and subscribed to?
A. It is.

259. Q. Is that a classified document?
A. The document was originally classified confidential but was declassified by Commander Marianas letter, serial 4574, dated 24 April, 1948.

260. Q. To the best of your knowledge, is the affiant of that statement within the Commander Marianas Area?
A. He is not. I believe Zamperini's home address is Torrance, California.

Prosecution document number 233, produced by the witness, was submitted to the accused and to the commission, and by the judge advocate offered in evidence.

Cross-examination by the accused concerning prosecution document number 233:

261. Q. You say you believe the home address of Zamperini to be Torrance, California. Is there any basis for that belief on your part?
A. The statement so shows.

262. Q. When was that statement made?
A. November 1, 1945.

263. Q. Where was the affiant on that date?
A. He was in the Birmingham General Hospital, Van Nuys, California.

264. Q. You say the statement shows the date of November 1, 1945. Is that the date of the original statement?
A. That was the date the certificate was sworn to.

265. Q. Doesn't the photostatic copy show the original dated 1 October was deleted and changed to another date?
A. The date originally typed on the affidavit was 1 October 1945. This appears to have been changed to November 1, 1945, when the affidavit was executed.

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266. Q. Were you present when this affidavit was made?
A. I was not.

267. Q. Was the accused Kobayashi present?

This question was objected to by the judge advocate on the ground that it was irrelevant and immaterial.

The accused replied.

The commission announced that the objection was sustained.

268. Q. Do you know if Zamperini was a mental patient in this hospital at the time he made this statement?
A. I do not know why he was hospitalized.

269. Q. Has any attempt been made to find out?

This question was objected to by the judge advocate on the ground that it was irrelevant and immaterial.

The accused replied.

The commission announced that the objection was sustained.

270. Q. Do you know if Commander Currie attempted to locate this Louis S. Zamperini the last time he was in the United States?
A. Commander Currie told me that he talked to Zamperini the last time he was in the States.

271. Q. And where was Zamperini at that time?
A. In the state of California, at Torrance, California.

272. Q. In a hospital?
A. No.

273. Q. Do you know why an affidavit was not secured from him at that time by a member of the Director of War Crimes office who could have witnessed as to the truth of that statement?

This question was objected to by the judge advocate on the ground that it was irrelevant and immaterial.

The accused replied.

The commission announced that the objection was sustained.

274. Q. Do you know if another affidavit was secured from Zamperini by Commander Currie?

This question was objected to by the judge advocate on the ground that it was irrelevant.

The accused made no reply.

Prosecution document number 232 produced by the witness, was submitted to the accused and to the commission and by the judge advocate offered in evidence.

Cross-examination by the accused concerning prosecution document number 232:

42. Q. Had you a previous acquaintance with this Mr. Phillips in this affidavit?
A. I had not.

43. Q. How did you identify this man to be the affiant?
A. His name appeared in the files of the Director of War Crimes as one who had been shot down over the Pacific, so from informers in the United States I obtained his address and visited him.

44. Q. Through that procedure you got in touch with the affiant?
A. Yes.

45. Q. Where did you take this affidavit?
A. At the Army Air Station, Albuquerque, New Mexico.

46. Q. Where there any witnesses present on that occasion?
A. There were none.

47. Q. Could you explain briefly and clearly the circumstances under which you took this affidavit?
A. After obtaining former Captain Phillips address, I went to Albuquerque, got in contact with him and we went to the Army Air Station where we would have facilities for typing any affidavit he might like to make.

48. Q. Did the affiant himself use the typewriter?
A. He did not.

49. Q. Who then used the typewriter?
A. Army personnel.

50. Q. Was the typing from something or from his dictation?
A. He was typing from notes that I had made.

51. Q. And you made up your notes from listening to the affiant?
A. I did.

52. Q. Did you tell the affiant the reason for making up the affidavit?
A. I told the affiant the affidavit he was making would be used in connection with war crime trials on Guam.

53. Q. You did not state specifically the name of the suspected war criminal for whose case this affidavit would be used?
A. I did not.

54. Q. Before making this affidavit, did you meet Mr. Zamperini?
A. I did.

55. Q. When taking this affidavit from Mr. Phillips did you mention that you had previously taken this affidavit of Mr. Zamperini?

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This question was objected to by the judge advocate on the ground that it was irrelevant and immaterial.

The accused replied.

The commission announced that the objection was not sustained.

A. Mr. Phillips asked me if I had seen and talked to Zamperini prior to talking to him. I told him that I had already seen Mr. Zamperini and that I had taken an affidavit from him.

56. Q. Didn't Mr. Phillips ask you at that point what Mr. Zamperini had said to you previously?
A. He did ask me that question and I asked him to tell me his story and we would discuss what Zamperini had told me.

57. Q. You did not at that point show the affidavit of Mr. Zamperini to Mr. Phillips before Mr. Phillips wrote out his affidavit?
A. Not before he dictated to me the affidavit he wanted under his own name.

58. Q. You then showed it to him after the dictation?
A. I did.

59. Q. Were there no corrections made in the affidavit and were there no re-typed pages of the affidavit made?
A. I made no corrections in the notes I had already made after Phillips read the affidavit of Zamperini.

60. Q. Then the army personnel who typed your notes typed them as they stood?
A. That is right.

61. Q. Was the accused, Kobayashi's, representative present at the examination and interrogation of Russell Allen Phillips on January 11, 1948?
A. No.

62. Q. What was the reason, if any, for not giving the accused, Kobayashi, notice of taking this affidavit?

This question was objected to by the judge advocate on the ground that it was irrelevant and immaterial?

The accused made no reply.

The commission announced that the objection was sustained.

63. Q. Under what authority did you take this affidavit from Phillips?
A. I was ordered by Commander Marianas to the United States to interview possible witnesses in war crimes trials in the Pacific.

64. Q. Did your authority state the reasons for taking the affidavit of Phillips?
A. My orders stated that I was to go to the United States in regard to war crimes. My oral orders stated that I was to interview possible witnesses of atrocities in the Pacific Ocean Areas.

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NINETEENTH DAY

United States Pacific Fleet,
Commander Marianas,
Guam, Marianas Islands,
Friday, June 4, 1948.

The commission met at 9 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,
Lieutenant Colonel Henry K. Roscoe, Coast Artillery Corps, United States Army,
Lieutenant Colonel Victor J. Garbarino, Coast Artillery Corps, United States Army,
Lieutenant Commander Bradner W. Lee, junior, U. S. Naval Reserve,
Lieutenant Commander Edwin M. Koos, U. S. Navy,
Captain Raymond F. Garraty, junior, U. S. Marine Corps, members, and
Lieutenant David Bolton, U. S. Navy, and
Lieutenant James P. Kenny, U. S. Navy, judge advocates.
Stewart R. Smith, yeoman first class, U. S. Navy, reporter.
The accused, his counsel, and the interpreters.

The record of proceedings of the eighteenth day of the trial was read and approved.

No witnesses not otherwise connected with the trial were present.

The judge advocate announced, for the information of the commission, that the interrogatories submitted to Louis Silvie Zamperini and the interrogatories submitted to Fred F. Garrett, both dated 7 May 1948, have been received and are herewith submitted to defense counsel. Similarly, the interrogatories submitted by counsel for defense on 18 May 1948, to be propounded to the Chief of the Liaison Section, Central Liaison Office, Japanese Government, have also been received and are herewith submitted to defense counsel.

Nakase, Shohichi, the witness under examination when the adjournment was taken, entered. He was warned that the oath previously taken was still binding and continued his testimony.

(Examination continued.)

28. Q. Where were the submarine prisoners of war confined while they were on Truk?
A. They were confined in the brig at the Forty-first Naval Guard Unit.

29. Q. Were they all confined in that brig during the daytime?
A. Yes.

30. Q. Were they all confined in that brig during the night time?
A. No.

TWENTY-THIRD DAY

United States Pacific Fleet,
Commander Marianas,
Guam, Marianas Islands.
Wednesday, June 9, 1948.

The commission met at 9:15 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,
Lieutenant Colonel Henry K. Roscoe, Coast Artillery Corps, United States Army,
Lieutenant Colonel Victor J. Garbarino, Coast Artillery Corps, United States Army,
Lieutenant Commander Bradner W. Lee, junior, U. S. Naval Reserve,
Lieutenant Commander Edwin M. Koos, U. S. Navy,
Captain Raymond F. Garraty, junior, U. S. Marine Corps, members, and
Lieutenant David Bolton, U. S. Navy, and
Lieutenant James P. Kenny, U. S. Navy, judge advocates.
Robert Oldham, yeoman third class, U. S. Navy, reporter.
The accused, his counsel, and the interpreters.

The record of proceedings of the twenty-second day of the trial was read and approved.

No witnesses not otherwise connected with the trial were present.

The judge advocate made the following statement:

In conformance with the procedure that was permitted by the commission with regard to obtaining an affidavit from Colonel Oishi, Chisato, the judge advocate would like the commission's authority to submit an interrogatory to Oishi, Chisato, now confined in Sugamo Prison, Tokyo, Japan, and to obtain it directly with the understanding that these interrogatories will also be shown to defense counsel so that they may submit at the same time cross-interrogatories.

The commission announced that this request was granted.

Commander Martin E. Carlson, a counsel for the accused, made the following statement:

In connection with the request of the judge advocate, we would like to make a request that Colonel Oishi, Chisato be summoned as a witness in order that we might have the right of cross-examination of this witness.

We would also like to have summoned as a witness Kawamura, Torao. We do not know where he is but we would like to have an effort made by the judge advocate to summon him as a witness.

We would like also to have summoned Louis Silvie Zamperini, now residing at 2028 Gramercy Avenue, Torrance, California, and Fred F. Garratt, now residing at 6566 West 84th Street, Los Angeles, California.

0382

OBJECTION TO THE INTRODUCTION AND RECEIPT IN EVIDENCE
OF PROSECUTION DOCUMENT NUMBER 233

Delivered by

Commander Martin E. Carlson, USNR
Counsel for Accused

The accused objects to the affidavit of Louis S. Zamperini, Prosecution Document No. 233, on the grounds of hearsay. Section 204, Naval Courts and Boards, provides:

> "It is a general rule that private documents of an ex parte nature, such as affidavits, are not admissible, if objected to, as evidence of the subject matter therein contained. They are mere self-serving statements."

This affidavit was made on November 1, 1945, about two years after the events he describes took place. It was not made in due course of business.

The affidavit is not against the interest of the maker.

The document recites a story of forty-seven days at sea on a raft and being the only survivor of this ordeal. The Commission will note that the affidavit was made on November 1, 1945 at Birmingham General Hospital. Surely a witness should be available who can testify regarding the circumstances under which this affidavit was made by Zamperini. As offered, this affidavit violates all the rules of evidence set forth in Section 204, N.C. & B.

We object to the introduction of this affidavit into evidence purporting to be the affidavit of Zamperini because to admit this document as evidence in this case is a violation of the Constitutional guaranty of the right of the accused, KOBAYASHI, to be confronted in this case, a criminal case, with the witness, Louis Silvie Zamperini.

Rule 6, Hearsay Rule, is set forth in Section 201 of Naval Courts and Boards. I quote:

> "Where the author of a document does not appear as a witness, it remains only a hearsay statement and can be received only under some exception to the hearsay rule. Thus in general, ex parte affidavits, letters from members of the family of the accused, certificates from a physician that an accused has been under medical treatment, etc., the admission of which would, in effect, permit the author to testify without submitting him to cross-examination, as mere hearsay statements and are inadmissible in evidence."

In this Navy convened Military Commission it isn't enough to justify the use of hearsay evidence to say that the army commissions permit and SCAP rules permit. These SCAP rules are ex post facto rules, say what you will, try to justify them as you will they still stand as ex post facto rules. You may always find persons who can justify any procedure no matter how arbitrary and illegal. So there are persons who justify SCAP rules. But let us hear on what grounds the judge advocate justifies their use in this instance. Even the precept of this Commission doesn't authorize their use except in emergency. What is the emergency?

"PPP (1)"

0662

The document is objected to on the grounds that it is irrelevant, incompetent, and immaterial, and is hearsay as to the accused KOBAYASHI.

The Sixth Amendment of the Constitution of the United States of American provides: "In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial,...to be confronted with the witness against him;...."

The prosecution does not even have the original affidavit of Zamperini, but a copy. This violates the best evidence rule and the document on that ground is objectionable. Even the copy shows changes and deletions such as the date of the document.

This document is not an official record made by Zamperini. Zamperini is, according to the witness, Commander Ogden, in California, and yet no opportunity was given at the time the document was taken to be present or was an opportunity given defense to be present when Zamperini was questioned just recently by Commander Currie. No opportunity was given to even submit interrogatories.

It is true that we did, on May 7, 1948, submit interrogatories, but this does not in any way make this affidavit admissible. We do not even admit there is a person named Zamperini. The prosecution has not proved this fact. The witness, Commander Ogden, does not know this to be a fact; he has never seen a person named Zamperini. So that the fact that on May 7, 1948 we submitted interrogatories is begging the question of the admissibility of this document into evidence. The question is: Did the accused have an opportunity to submit interrogatories at the time this affidavit was taken? He did not. The affidavit should not, therefore, be admitted.

There is no limit to the extent to which the judge advocate goes in offering documents into evidence. Here they have a purported photostatic copy which has been altered in material parts, and they make no attempt to explain the reason for the alteration or where the original is. No witness is presented who was present when alterations were made in this photostatic copy or who can even testify there is an original.

This is a private writing. "It has never been considered safe to make letters self-authenticating." (20 Am. Jur. "Evidence," Sec. 955, citing Lundgren v. Union Indem. Co. 171 Minn. 122, 213 U. N. 553, 52 A.L. R. 580.)

This witness cannot even testify even this photostat copy is admissible in evidence in the state of California.

In 20 American Jurisprudence, "Evidence," Sec. 1036, the rule is:

> "The original of a writing, document, or record is the primary or best evidence of the matter contained in such writings, document or record. Copies are mere secondary evidence and under the general rule requiring the production of the best evidence of which the nature of the case admits, are not ordinarily admissible in evidence over the objection of the adverse party, unless a basis is laid for their reception by showing that the original document cannot be produced. This rule that copies of private documents are admissible only when the absence of the original has been satisfactorily explained is universal."

propounded. These interrogatories were immediately forwarded with the request that proper deposition be obtained for the defense. It is apparent therefor that the accused has been afforded opportunity to submit interrogatories and in fact has done so.

In so far as the so-called correction of date on the offered affidavit is alleged as a ground of objection to this affidavit, examination of the document shows that when the form of certification was prepared the month was typed in as October, but the date was not typed in. When the oath was administered the blank for the day was filled in with the written number "1st", and the typed word October was stricken and the word "November" was written in above it. This very correction, instead of being an indication of irregularity or objectionable nature of the affidavit, is on the contrary a clear and striking illustration of the authentic nature of the document because the very nature of this change marks it as the work of an honest and conscientious individual who would not ever permit the affidavit sworn to in his presence to bear a date other than the one on which it was actually sworn to in his presence.

The fact that this document is a phottostatic copy of the original should not cause any difficulty with regard to its admissibility. Authentic photostatic copies of documents are admissible inevidence. Use of photostats in ordinary court procedure is evidence from the following from Wharton's Criminal Evidence, Eleventh Edition, Vol. 2, p. 1327 "Photostatic copies of documents, duly authenticated, are accepted instrumentalities of introducing official records." Under the SCAP rules which this comission is authorized to apply, there is a specific provision which authorizes the use of such evidence. SCAP rule 5d (1) (e) authorizes the use of "a copy of any document or other secondary evidence of its contents, if the original is not immediately available." The whereabouts of the original affidavit taken in November 1945 by the United States Army, in California is completely unknown to the judge advocate and under SCAP rule 5d (1) (e) this photostatic copy is therefor admissible.

With regard to the questionof relevance of the offered document, paragraph (b) of specifications 1 and 2 of the charge against the accused Kobayashi, allege that the accused is guilty of neglect of duty in connection with the unlawful torture, abuse, and mistreatment of two American prisoners of war, namely, Louis Silvie Zamperini, and Russell Allen Phillips, during the period from July 16, 1943 to August 27, 1943, at Kwajalein Atoll. It is advious therefor that the affidavit of Zamperini dealing with such mistreatment at Kwajalein is relevant and material to the issues before this Commission.

In reply, to the objections delievered by Mr. Sanagi, to the receipt of prosecution Document # 233, the judge advocate wishes to state the following:

(see attached reply.)

-.-

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A deposition may be taken only before some person who is duly authorized to act, citing De Rezes v. His Wife (De Renzes v. Palestine) 115 La. 675, 39 So. 805, 2 L.R.A. (N.S.) 1089, 5 Ann. Cas. 893, and See sec. 103, "Depositions," 16 Am. Jur.

We further object to this deposition on the ground that it is incompetent, irrelevant, and immaterial, and that the witness is incompetent. We object because the document is hearsay as to the accused, Kobayashi. Nowhere in the deposition is the accused, Kobayashi, mentioned, or is he accused of neglect of duty or of failure to protect the affiant, George Estabrook Brown, Jr.

Most of the interrogatories relate to a period of time outside of the time during which Kobayashi was accused of neglect of duty.

Much of the interrogatories relate to his treatment aboard a Japanese auxiliary carrier, former NYK converted liner, at Ofuna Prison Camp, Omori Prison Camp, Tokyo Camp No. 1, Mitsushima Prison Camp, and Tokyo Detached Camp No. 2. This is all immaterial and irrelevant as to the neglect of duty charged against the accused, Kobayashi, as Commander in Chief of the Fourth Fleet, Imperial Japanese Navy, from April 5, 1943 to February 23, 1944.

For the above enumerated reasons and for all the reasons we advanced against the introduction of Prosecution Documents 261, Oishi Statement; Document 271a, the statement of Tanaka; and the Prosecution Document 233, the affidavit of Zamperini, we object to this Prosecution Document No. 206, the perpetuation of testimony of George Estabrook Brown, Jr., into evidence.

We reserve all our rights to object and to appeal the ruling of the Commission on this our objection when we did submit cross-interrogatories on or about May 7, 1948.

The use of this deposition by the prosecution limits the punishment which can be imposed. (See Sec. 454, N.C.&B.)

Respectfully,

MARTIN E. CARLSON,
Commander, USNR.,
Counsel for Accused.

0674

BRIEF OF AN ORAL REPLY TO THE OBJECTIONS TO THE RECEIPT IN EVIDENCE OF PROSECUTION DOCUMENT NUMBER 232.

Delivered by

LT DAVID BOLTON, USN
Judge Advocate

22 May 1948

In reply to defense counsel's objections to the admission of this document in evidence, the judge advocate will first direct himself to the much abused reference by defense counsel to the solitary confinement of Admiral Kobayashi. The judge advocate does not know what security or other reasons require the accused to be confined in an individual cell without cellmates, nor does he consider this matter pertinent to the admissibility of this offered document in evidence.

The affiant, Russell Phillips, who is in New Mexico, was not confined or under any duress to make or swear to the truth of this affidavit, and it is difficult to see how the confinement of the accused Kobayashi is relevant to the admissibility of that document, but as a matter of information the judge advocate wishes to point out that defense is in serious error as to the nature of such confinement. The accused, while confined as a war criminal suspect, has not been held incommunicado. He was permitted, and is permitted, to receive and send letters; clearly therefore he has been in communication with those persons he desires to communicate with. The nature of his confinement should be apparent when we note that among his other activities he is permitted to play baseball, which is a group, and not an individual, sport. That, as I say, however, is not relevant to the question of the admissibility of the prosecution document, but is offered in view of the misinterpretation by the defense counsel.

Defense counsel contends that the affidavit of Phillips does not charge the accused with the commission of any crime because it does not even mention the accused by name. The accused has been charged with the commission of the crime of neglect of duty with regard to the mistreatment which Phillips and Zamperini received. It is not pertinent or material whether Zamperini or Phillips themselves charged Kobayashi with neglect of duty. It is incumbent upon the prosecution to establish that this mistreatment of Zamperini and Phillips, which they allege in their respective affidavits, and which Phillips refers to in the offered document, is the result of the neglect of duty by the accused Kobayashi and it is not necessary that the judge advocate, by virtue of this document alone, prove the guilt of the accused with regard to that portion of the specifications. The relevance of the affidavit of Phillips, with regard to mistreatment he received, is apparent by the most cursory examination of the charge and specifications against the accused, for paragraph (b) of Specifications 1 and 2 deal with the mistreatment which was received by Phillips and Zamperini during the period from July 16, 1943 to August 27, 1943, at Kwajalein Atoll, Marshall Islands.

The judge advocate will, in the course of the remaineder of the prosecution's case, establish the responsibility of the accused in his neglect of duty with regard to the commission of these incidents.

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CONFIDENTIAL

AFFIDAVIT

RECORDED AND INDEXED

STATE OF California)
)SS:
COUNTY OF Los Angeles)

I, LOUIS SILVIE ZAMPERINI, Captain, Air Corps, O-663341, being duly sworn depose and say that:

I am an American citizen, having been born in Olean, New York on January 26, 1917. My permanent home address is 2028 Gramercy Avenue, Torrance, California, and I am presently stationed at Birmingham General Hospital, Van Nuys, California. I was attached to the 11th Bomb Group, 42nd Squadron, 7th Air Force when the B-24 on which I was bombardier crashed into the ocean north of Palmyra on the 27th of May 1943. The raft on which I and the other survivors of the crew took refuge, drifted for 47 days and eventually beached on one of the western most islands of the Marshall Islands. On the 14th of July 1943 we were picked up by a Japanese fishing boat and taken to Maloelap where we were held for two days. Then Lt. Russell A. Phillips and I were taken to Kwajelein where we were held for 43 days. On the 27 of August 1943, we were moved by ship to Japan, arriving in Yokohama on the 15th of September. I was immediately taken to Ofuna Prison Camp where I remained until the 29th of September 1944. On that date I was moved to Omori Prison Camp, remaining there until the 1st of March 1945. From then until we were released on the 5th of September 1945, I was held at Camp 4B, Hacetsu. I returned to the United States on the 2nd of October 1945 at San Francisco, California.

When I was picked up by the Japanese after I had been 47 days at sea on a raft existing on birds and fish and whatever else we could get, I weighed only 79½ pounds when my normal weight is 160. I was physically and mentally a wreck. Lt. Russell A. Phillips, the only other survivor of this ordeal was in the same condition. Instead of receiving any medical treatment and care by the Japanese as would have been given by the United States Forces, we were taken to Kwajelein and thrown into a dungeon where we remained in solitary confinement for the next 43 days.

The room in which I was thrown was 2 feet 3 inches wide, 6 feet long, and 7 feet high. No light entered from any source. Only a crack in the ceiling let in some air. The small doorway entered into a hallway so that no light or air came into the room. The door was locked from the outside so that we could not have left if we had wanted. Although the floor was wooden it had gravel and dirt on it. I was not given a blanket or anything on which to sleep. For a latrine there was a hole cut in the floor in which a can was inserted. I was forced to sleep with my head near that open can

CONFIDENTIAL

Exhibit 14 (1)

because there was no other room available.

When I was thrown into the dungeon, I was given a couple pieces of hardtack. After that I was fed three times a day, each meal consisting of a rice ball, the size of which was half way between a golf ball and a tennis ball. In addition I was given a mouth full of soup with some of my meals to wash it down. I was not given any eating utensils and had to eat the rice with my hands. During these 43 days I was never allowed to smoke. One time the Japanese in charge came by and flipped a cigarette butt in my face but that was as close as I came to smoking except for cigarettes which one of the friendly guards would smuggle in to me.

I had continual diarrhea and dysentery and could hardly sit still for more than 5 minutes. The refuse pail filled up with blood and mucous and maggots were crawling everywhere. The odor was so bad that the Japanese guards could not stand it themselves and would only come in for a minute. As I had no flesh on my bones, they cut through the skin and it was impossible for me to sit or stand or lie in any way that was comfortable. Every day I tried to get a blanket so that I would have some padding on which to lie, but they refused to give me one.

The guards did not give me enough water to quench my thirst and I constantly kept asking for more water. At least 5 different times the following incident happened: I would crawl to the little hole in the door and ask for water. The guard went away and came back with a glass of boiling water and threw it through the open slit in my face. I can remember this very well because my face peeled because of the burns.

Although I had dengue fever, dysentery, diarrhea, and was suffering from malnutrition, they did not give me any satisfactory medical treatment. I called for the doctor every day and one time I can recall he came in, looked at me, laughed, and went out of the room. I think the Japanese used both Phillips and myself as guinea pigs in an experiment. They realized that we had undergone untold hardships in remaining alive after 47 days on a raft, so they were apparently trying to find something which would help their own airmen if a similar situation existed for them. We were taken out into the open yard and laid on our backs. The milk or juice from a green coconut was injected into us intravenously. About 100 or 200 Japanese gathered around to watch the results. They asked me how I felt and I told them that it felt like pins and needles shooting through me. In addition it was a similar feeling to that you experience when you're pulling out of a power dive in an airplane. Another

Exhibit 14 (2)



result was that within 10 or 15 minutes after the injection a rash broke out all over my body similar to hives. A few days after this first experiment they tried it again doing this about 4 or 5 times. By the final experiment they had worked up the amount of the injection to one pint. Other than the above, I did not receive any medical treatment by the Japanese at Kwajelein.

The guards constantly irritated me. One day one of them came inside my cell with a drawn pistol and told me to dance for him. I was so weak I could hardly move and I refused. He cocked the pistol and so I danced. It apparently amused him because he told some of the other guards and I was made to do this almost every day. The guards also threw little pebbles at me through the slit in the door and they took apparent pleasure in swatting me with a long stick which they thrust through this slit. I remember one time I got so mad and irritated at this constant jabbing with a stick that I grabbed it away from the guard. I fully expected then for him to kill me, but I didn't care. However, he didn't do anything, I think, because he knew he was violating his own orders. During the time that I was confined in this cell, I was not given one bath or shower. The only time I was even permitted to wash my hands was one day before a meal. I never shaved and my beard was down to my chest. Although my clothes were ripped and nearly off me when I arrived at Kwajelein I was not given any others and had to hold my pants on with fishing line. When I left Kwajelein on the 27th of August 1943, I had not gained any weight and still was around 80 pounds.

At Kwajelein we were imprisoned by Japanese Navy officials. The man in charge of the prison camp held the rank equal to a warrant officer in the U.S. Navy. He was about 35 or 40 years old, 5'8", 140 to 145 pounds, slender, drawn thin face, mean look. I never heard his name mentioned . At that time I did not know any Japanese, so I did not remember any of the names I heard. I cannot recall the description of any of the guards there.

Lt. Phillips is presently on leave at his home, Princeton, Indiana. He will be able to verify the above circumstances.

To the best of my knowledge, the testimony I have given herein covers all pertinent details of this incident.

LOUIS SILVIO ZAMPERINI, Captain
O-663341.

Subscribed and sworn to before me this day of October 1945 at

Exhibit 14 (3)



CERTIFICATE

STATE OF California)
)SS
COUNTY OF Los Angeles)

I, Norman J. Wiener, Agent, SIC, 9SC, certify that Captain Louis Silvio Zamperini personally appeared before me on the 1st day of ~~October~~ November 1945 at Birmingham Gen Hospital and made the foregoing statement concerning war crimes.

Norman J. Wiener
Agent, SIC, 9SC

Exhibit 14 (4)

AFFIDAVIT

City of Albuquerque)
County of Bernalillo) SS
State of New Mexico)

Russell Allen Phillips, Reserve Captain, United States Air Forces, O-27-6463, first being duly sworn deposes and says:

I am an American citizen, born in Green Castle, Indian, August 1, 1916. My present home address is 422 South Yale Street, Apartment 1, Albuquerque, New Mexico. I am presently employed by the Santa Fe Railway.

In 1943 I was a pilot attached to the 7th Air Force stationed on Oahu Island, Teritory of Hawaii. The B-24 of which I was pilot was forced down off Palmyra Island May 27, 1943. The members of the crew who were not killed took to a life raft and drifted with the ocean currents for forty-seven (47) days. We were picked up by the Japanese on the 14th of July and taken to a small island and held for two (2) days. Then Lt. Louis Silvie Zamperini, the bombardier on the plane and the only other survivor and I were taken to Kwajalein Island, where we were then held for fortythree (43) days. We were moved to Truk Atoll by ship and thence to Japan. We arrived in Japan on 15 September, 1943 and taken to Ofuna Prison Camp. Here I stayed until 15 March 1944. I was then moved to the Ashio Mining Village Camp, and then on 25 August, 1944, I was moved to the Sensuji Prison Camp on the Island of Shikoku. In June 1945 I was moved to the Rokuroshi Camp and stayed there until the end of the war.

When we were first picked up by the Japanese we were in an extremely weakened condition. When taken to Kwajalein I was placed in a cell about three or four feet wide and six or seven feet long. I was given nothing to lie on all the time I was there, and in my emaciated condition the dirty floor was extremely uncomfortable. I weighed about one-hundred and fifty (150) pounds prior to my crash in the ocean, and at the time I arrived at Kwajalein I weighed about eighty (80) pounds. I was given just enough food to survive and did not gain any weigh the entire time I stayed in Kwajalein. I was not taken out of the cell to relieve myself but had to excrete into a can in a hole in the floor. The filth was indescribable.

The Japanese gave us no medical aid but did use us in some medical tests. On several occasions Lt. Zamperini and I were taken out into the open, and the juice of green coconuts was injected into our veins. I broke out in a rash all over my body, I was told by the Japanese that after they tried it on us they also tried it on some Japanese personnel with about the same results as on Zamperini and I.

While in Kwajalein I was held in custody of and questioned by Japanese navy officials.

I have read the foregoing affidavit, consisting of this page, and it is true and correct to the best of my knowledge and belief.

Russell Allen Phillips
RUSSELL ALLEN PHILLIPS.

Subscribed and sworn to before me this 11th day of January 1948.

M. E. Currie
M. E. CURRIE,
Comdr., U.S.Naval Reserve,
File No. 122500

Exhibit 17

10 14

Thirty-eighth Interrogatory:	How much did you weigh when you first entered the army, and when did you enter the army?
Thirty-ninth Interrogatory:	How often did the doctor or a hospital corpsman see you during the 43 days you were on Kwajalein?
Fortieth Interrogatory:	Did the doctors ever tell you why you did not gain any weight during 43 days on Kwajalein?
Forty-first Interrogatory:	How do you know you weighed about 80 pounds?
Forty-second Interrogatory:	How do you know you didn't gain any weight while on Kwajalein?
Forty-third Interrogatory:	While on Kwajalein, why didn't you clean up your own cell?
Forty-fourth Interrogatory:	Who did clean the cell you were in?
Forty-fifth Interrogatory:	Where was Lieutenant Zamperini during the 43 days you were on Kwajalein?
Forty-sixth Interrogatory:	How did you keep count of the days while on Kwajalein?
Forty-seventh Interrogatory:	Were you ever present when Zamperini was questioned?
Forty-eighth Interrogatory:	Did he refuse to answer questions?
Forty-ninth Interrogatory:	What happened, if you know of your own knowledge, to Lieutenant Zamperini?
Fiftieth Interrogatory:	How much did you weigh when you were moved from Kwajalein to Truk?
Fifty-first Interrogatory:	What date was this?
Fifty-second Interrogatory:	When did you arrive at Truk?
Fifty-third Interrogatory:	Were you confined in a cell while on Truk?
Fifty-fourth Interrogatory:	How big was this cell?
Fifty-fifth Interrogatory:	What kind of food were you given while on Truk?
Fifty-sixth Interrogatory:	How long did you stay on Truk?
Fifty-seventh Interrogatory:	How did your living conditions on Truk compare to those on Kwajalein?
Fifty-eighth Interrogatory:	Who else, if anyone, was transferred to Truk at the time you were transferred? Was Lieutenant Zamperini with you?
Fifty-ninth Interrogatory:	When did you leave Truk for Japan?

"Exhibit 36 (3)"

1116

DEPOSITION

Deposition of Russel Allen Phillips, United States Army Air Force, witness in case of United States vs. KOBAYASHI, Masashi.

Russel Allen Phillips, the witness above named, having been first duly sworn by me, Lieutenant William H. P. Robertson, U. S. Navy, Assistant Professor of Naval Science, Naval Reserve Officers' Training Corps Unit, University of New Mexico, Albuquerque, New Mexico, doth depose and say for full answers to the foregoing interrogatories, as follows:

To the first interrogatory:	Three. Captain Louis S. Zamperini, Sergeant McNamara and myself.
To the second interrogatory:	Somewhere in Marshalls group.
To the third interrogatory:	Two (Zamperini and myself).
To the fourth interrogatory:	He died on 33rd day.
To the fifth interrogatory:	McNamara.
To the sixth interrogatory:	At Wotje (I think).
To the seventh interrogatory:	Navy.
To the eighth interrogatory:	Very poor.
To the ninth interrogatory:	On rations we started with, fish and birds.
To the tenth interrogatory:	Our original ration (12 half-pint tins) plus what rainwater we caught.
To the eleventh interrogatory:	Approximately 80 pounds.
To the twelfth interrogatory:	Approximately 70 pounds.
To the thirteenth interrogatory:	Depressed.
✓ To the fourteenth interrogatory:	Fairly good.
✓ To the fifteenth interrogatory:	Three meals each day, and as much water as we needed.
✓ To the sixteenth interrogatory:	No - I think one looked me over, but, except for feeding, nothing was done.
To the seventeenth interrogatory:	It took us about a day and a half to get there by boat.
To the eighteenth interrogatory:	By boat.
✓ To the nineteenth interrogatory:	I'm pretty sure it was the Army.
To the twentieth interrogatory:	Don't think there were.

ENCLOSURE (B) "Exhibit 36 (5)"

To the twenty-first interrogatory:	No answer.
To the twenty-second interrogatory:	Naval officers it seemed - they seemed to speak English themselves.
To the twenty-third interrogatory:	No.
To the twenty-fourth interrogatory:	4 or 5.
To the twenty-fifth interrogatory:	I pretty much answered everything as long as it didn't give away anything.
To the twenty-sixth interrogatory:	Very meager rations.
To the twenty-seventh interrogatory:	No.
To the twenty-eighth interrogatory:	Quite a bit smaller.
To the twenty-ninth interrogatory:	No.
To the thirtieth interrogatory:	We were given two or three intravenous injections while we were there. Don't know whether it was food.
✓ To the thirty-first interrogatory:	That was Zamperini's statement. I don't know what it was, but it didn't help us any.
To the thirty-second interrogatory:	The arm.
To the thirty-third interrogatory:	Four or Five times during whole period. Just one injection (about a pint) each time.
To the thirty-fourth interrogatory:	Four or Five.
To the thirty-fifth interrogatory:	Four or Five.
✓ To the thirty-sixth interrogatory:	No.
To the thirty-seventh interrogatory:	Small frame building.
To the thirty-eighth interrogatory:	145, November 7, 1941.
✓ To the thirty-ninth interrogatory:	Four or Five (If it was a doctor who gave the injection).
To the fortieth interrogatory:	No.
✓ To the forty-first interrogatory:	They weighed us and told us later on.
To the forty-second interrogatory:	My physical shape didn't improve. I was weak.
✓ To the forty-third interrogatory:	No interest.
To the forty-fourth interrogatory:	No one.
To the forty-fifth interrogatory:	There were three cells in building. He was in first, I was in third.

"Exhibit 36 (6)"

