MOTION TO STRIKE OUT EXHIBITS 2, 3, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 and 15 FROM THE RECORD.

Delivered by

Martin E. Carlson,
Commander, USNR,
A Counsel For The Accused.

On the fifth day of the trial there was admitted into evidence fourteen affidavits. Since Section 217 Naval Courts and Boards prohibits the use of affidavits in evidence for the purpose of proving the subject matter with which the affidavit deals, and in view of the testimony of Walter Thomas Kennedy while on the witness stand and subject to cross-examination whereby he denied his affidavit of December 3, 1946 (Exhibit 4 which has already been stricken from the record), and in view of the interrogatories and the answers thereto by the following affiants: Ryland F. Barnett, Warren O. McGill, Warren O. Rogge, Frank R. Wise, and Theodore Granstedt, Jr., it is hereby moved that the affidavits admitted into evidence as Exhibits 2, 3, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 and 15 be stricken from the record and therefore not to be considered by the commission in arriving at its findings.

Respectfully,

Martin E. Carlson

0451

陳述書目

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未ダ	未ダ
誰一人	誰一人
モ	モ
知ラナカッタノデアリマス。	知ラナカッタノデアリマス。
引返ス気ハ	引返ス気ハ
少シモ	少シモ
無カッタノデアリマス。	無カッタノデアリマス。
其ノ代リニ	其ノ代リニ
トンダ	トンダ
アルキロ	アルキロ
地点ニ	地点ニ
派遣サレマシタ。	派遣サレマシタ。
私ハ	私ハ
戦況	戦況
見ノ	見ノ
旨ヲ	旨ヲ
伝エ	伝エ
帰ル	帰ル
途中	途中
敵ノ	敵ノ
飛行機ニ	飛行機ニ
襲ワレ	襲ワレ
私ハ	私ハ
負傷シ	負傷シ
倒レ	倒レ
又	又
何ヲ	何ヲ
知ラナイ	知ラナイ
間ニ	間ニ
敵ノ	敵ノ
手ニ	手ニ
落チ	落チ
捕虜ト	捕虜ト
相成リマシタ。	相成リマシタ。
私ハ	私ハ
日本ガ	日本ガ
銃ニ	銃ニ
決メテ	決メテ
居タ	居タ
進路ヲ	進路ヲ
辿ラネバ	辿ラネバ
ナラナイ	ナラナイ
一ツノ	一ツノ
島ノ	島ノ
病床ニ	病床ニ
居タ	居タ
時	時
私ハ	私ハ
其ノ	其ノ
捕虜ト	捕虜ト
共ニ	共ニ
居タ	居タ
米国	米国
人ニ	人ニ
会ッテ	会ッテ
話ヲ	話ヲ
聞キマシタ。	聞キマシタ。
私ハ	私ハ
米国	米国
人ガ	人ガ
日本人ニ	日本人ニ
対スル	対スル
態度ニ	態度ニ
驚イテ	驚イテ
居タ	居タ
事ヲ	事ヲ
知リマシタ。	知リマシタ。
米国	米国
人ガ	人ガ
日本人ニ	日本人ニ
対スル	対スル
態度ハ	態度ハ
実ニ	実ニ
驚クベキ	驚クベキ
モノデアリマス。	モノデアリマス。
私ハ	私ハ
米国	米国
人ガ	人ガ
日本人ニ	日本人ニ
対スル	対スル
態度ヲ	態度ヲ
見テ	見テ
日本人ハ	日本人ハ
実ニ	実ニ
野蛮ナ	野蛮ナ
国民デアル	国民デアル
ト	ト
思ッテ	思ッテ
居リマシタ。	居リマシタ

スルヨウナコトハ、殺ビマセンデシタ。

ミンナガ、勉メスグセンデシタ。

私ハアメリカ、行ク、実ノタメニ出来ル限リ物ヲ吹ク

ミンナ、私ハ彼等ニ対シ正直具ヲ出ス、ヨウニ努メマシタ。

スル事ハ、断ジテ、私ハ操縦ガ、段ノレバーヲ、ソノ位置ニ、保ツヨウニ、努メ、一度ア、ト操縦ヲ、交ヘマシタ。

タ、ソレダケ全然、関係ナイ、私ハ、彼等ト、ソノ瞬間、此等ノ人々ト、共ニ、ダイアリ限リ、私ハ、タメニ、

指サヲ全然、関係ナイ、私ハ、彼等ノ、ソバニ、イマセンデシタ。

私ハ、彼等ニ、ソノ身体ノ、一部ト、ナッテ、イマシタ。

ソノ、ソバニ、イマセンデシタ、私ハ、彼等ノ、ソバニ、イマセンデシタ。

ガ理解スルヨウニ、ソノ事実ヲ、説明シヨウト、努メマシタ。

者トシテ、私ハ、仕事ヲ、スルコトヲ、ソノ事ガ、理解スルヨウニ、ソノ事実ヲ、説明シヨウト、努メマシタ。

ガ日本人ノ、理解スルヨウニ、ソノ事実ヲ、説明シヨウト、努メマシタ。

ガ

旅ナルカ身ノ生涯中、ヨク此等ノ言葉ヲ記憶シテ居ル事ト思ヒマス。

楊セラレンタメニトニヨク此等ノ言葉ヲ記憶シテ居ル事ト思ヒマス。

其建物、玄関ニハ偉大ナル彫刻ガ有リマシテ、同ジク此等ノ言葉ガ記サレテ居リマス。

親ヲ危ク永ラヘ生ムコトヲ学ビマシタ。

今日ノ目的ヲ御存知ノ通リ、此処デ私ハ理

ガ其間ニ私ハ米国ノ婦人ト結婚シマシタ。

私ハ妃ト共ニ英国ノ市ニアル国際会館ニ、宗教的、哲学的ノ講演ヲ聞キニ参リマシタ。

私達ガ米国ニ参リマシタ時ニ、ソノ講演ヲ聞キニ参リマシタ。

会場ニ着キマシテ私ハ驚キマシタ。

ソレハ私達ガ今迄聞イタ講演トハ全ク異ッタ講演デアッタカラデアリマス。

私達ハ自分ノ信ジテ居ル事ヲ話シマシタ。

ソレハ私達ガ

次ニ私ハウエーキ島ニ居タ米民間人及軍人俘虜ニ関シ陳ベテ見タイト思ヒマス。

一九四一年十二月二十四日カラ一九四二年一月十一日マデウエーキ島ハ占領直後デ混乱状態ニアリマシタ。其故私ト米國人トノ接觸ハ殆ンド公的性格ヲモツタモノニ限ラレマシタ。ソコデ私ハ彼等ト個人的ニ親シムヨウニナリアウ迄モ知レマセンガ彼等ト話ヲスル機會ガ得マセンデシタ。私ハ以下特定ノ仕事ニアタ時ノ人々ノ記憶シテ居ル二過ヤマセン。

俘シ乍ラ私ハ彼等ト接觸シタ時友誼的デアルヨウ勉メタコトヲ証言スルコトガ出来マス。私ハジェームス、デベルー少佐ガ日本ヘ送還サレントシタ際彼ハ彼ノ家系圖ヲ含ム書類ガ没收サレルコトヲ恐レテ私ニ終戦後彼ニ返スヨウ其ノ保管方ヲ委托セラレタコトヲ提ヒ出シマス。

米民間人ニ関シテハ私ハ少人数ノ姓名ト顔ヲノミ覚エテ居リマス。然シ、彼等ガ日本ニ送ラレル際私ハ彼等ニ持テル大沢山ノ私有物ヲ持ツテ行クヨウ勸メマシタ。コレ関シテハ非常ニ混雑ガアリマシタ。誰モ俘虜ガヲ知ツテ居ルヨウニモ見エズ或ハ俘虜ニ語ラウトシナカツタモアリマセンデシタ。私ハ亦彼等ガ最善ナ衣服ヲ着ルヨウニ話シマシタガ其ノ理由ハ彼等ガ此処ウエーキ島デ体驗シタコトヨリ遙カニ悪イダラウト思ハレル俘虜收容所ニ於テ俘虜トシテノ困難ナ生活ガ待チ受ケテ居ルカモ知レヌト私ハ感ジマシタガ彼等ガ日本ニ於テ彼等米國人ノ誇リヲ保持セントヲ心カラ希望シタガタメデアリマス。

私ハ一九四二年一月十二日カラ一九四二年九月三十日マデウエーキ島ノ各種施設及建築物ノ改築及修繕並ニ

0456

防備作業ガ着々ト進捗シテ居リマス
併シ乍ラ 俘虜ハ日本内地ニ送ルト云フノガ方針デアッタ
ト聞キマシタ. 私ハ島ニ残ッタ俘虜ノ數ガ逐次減
少シタノデ彼等ト交ハルモタクサリマシタ. 然シ其当
時デサヘ俘虜ハ彼等ノ経験ト熟練ニ従ヒ俘虜ノ
係将校ニヨッテ種々ノ班ニ割当テラレ又各班ニハ班長
ガ居マシタ. ソシテ彼等ノ仕事ハ此等ノ班ノ指導者
或ハ職工頭ノ統率ノ下ニ行ハレテ居マシタ. 更ニ或種
ノ仕事ニ特別ノ才能ヲ持ッテ居タ俘虜ノ班ハ種々
ノ日本軍ノ科ノ監督下ニアリマシタ. 其故私ガ親シク
ナッタ俘虜ハ大抵職工頭ト班ノ指導者デアリマシタ.
私ハ来ル俘虜ニ対シ私ノ身分ヲ最モ詳シク述ベタト
信ジテ居リマスケレドモ或場合ニハ私ノ努力ハ功ヲ奏
シマセンデシタ. 併シ乍ラ私ハ思ヒ出ス儘ニ彼等ノタメ
ヤッタ私ノ努力ヲ枚挙シテ見タイト思ヒマス.

(イ) 私ハ度々俘虜係将校ニ慰安ノタメ俘虜ニ
映畫ヲ見ニ行カシメルヨウ斡旋シマシタ.

(ロ) 私ハ俘虜ノ慰安ノタメニ演藝會ヲ催スヨウ
俘虜係将校ニ暗示シマシタ. 然シ実演ニ至ラ
加シタ俘虜ノミガ日本人ノ眼ニヨッテ演ゼラレタ
演芸競會ニ列席スル特典ヲ與ヘラレタノミデシタ.

(ハ) 私ハ俘虜係将校ニ休日毎ニ宗教的集會ヲ
催スルヨウ要求シマシタ. 併シ大集會ハ禁止サレ、
僅カニ少人數ノ集會ガ黙認サレマシタ.

(ニ) 俘虜係将校ノ許可ヲ得テ私ハ俘虜候補
佐ノ助力デ圖書室ヲ設ケマシタ. 私ハ自費デ
日本カラ英文デ書カレタ二十冊ノ本ヲ買ヒ上等ノ
俘虜ノ慰安ノタメニ提供シマシタ.

(ホ) 私ハ屢々入院中ノ米市民及軍人俘虜ノ慰

者ヲ訪問シマシタ.

(ヘ) 修虜ガ日本ヘ送還サレタ際彼等ハ彼等ノ私有物ガ没収サレルト恐レテ或ル書類ニ署名ヲスルヨウ私ニ求メマシタ. 私ハ多分デモ彼等ニ殺ス立ツト考ヘタガ故ニ私ハ其等ノ書類ニ署名シマシタ.

(ト) 私ハウエーキ島ガ日本軍ニヨッテ占領サレタ後「レイ」「ラフセル」及他ノ米人ト共同シテ日本軍ガ全島ヲ占領スル以前ニ米人ノ埋葬サレタ場所ヲ探索シテ其処ニ墓標ヲ建テマシタ.

(私ハコレヲスルタメニ副長カラ許可ヲ得マシタ.)

私ハ二ツノ墓標ノアルコトヲ思ヒ出シマスガ其レニ私ハ十字架ト日附ト次ノ如キ文句ヲ日本語デ記シマシタ.

「米軍無名戦没者ノ墓」

(チ) 私ハ青茱萸ノ足ヲ補フタメ司令カラ許可ヲ得テ修虜ノタメ約一エーカーヲ開拓シマシタ.

(リ) 私ハ彼等ノ作業場ニ飲料水ヲ多量ニ持参スルヨウ奨メマシタ. 私ハ彼等ノ作業現場ヲ訪ヘル機会ノアッタ時ニハ自分ノ日本製煙草ヲ與ヘマシタ.

(ヌ) 修虜ノ事実、私ニハ修虜取扱ニ関スル何等ノ権限モ職與サレテヰマセンデシタ. 私ハ司令、副長、各科ノ科長及修虜係将校ノ命令ニ従ヒ機械ノヨウニ常時働イテヰリマシタ. 私ハ或ル日本ノ当局者カラ私ハ士官ニ準ジテ待遇サレルダラウト語ラレマシタガ、私ハ準士官ヨリ以上ノ特典ヲ与ヘラレタコトガアリマセン. 私ハ

ス。
主が
ア) 細心ノ注意ヲ
タ) 翻訳ニ
チ) 訴訟ヲ
ツ) 取引ニ
テ) 契約ヲ
ト) 条件ニ
ナ) 申込ガ
ニ) 承諾セラレ
ヌ) 決定ニ
ネ) 計画ヲ
ノ) 実行ニ
ハ) 予算ヲ
ヒ) 提出シ
フ) 審議ニ
ヘ) 付シ
ホ) 可決シ
マ) 法律ニ
ミ) 定メル
ム) 権利ヲ
メ) 有スル
モ) 者ニ
ヤ) 対シ
ユ) 損害ヲ
ヨ) 賠償スル
ラ) 義務ヲ
リ) 負フ
ル) 場合ニ
レ) 於テハ
ロ) 其ノ
ワ) 責ニ
ヰ) 任ズル
ノ) 外ナシ
オ) 但シ
ク) 不可抗力ニ
ヤ) 因リ
マ) 生ジタル
ケ) 損害ニ
フ) 付テハ
コ) 此ノ
エ) 限リニ
テ) 在ラズ
ア) 前項ノ
サ) 規定ニ
キ) 拘ラズ
ユ) 次ノ
メ) 事由ニ
ミ) 因リ
シ) 生ジタル
ヱ) 損害ニ
ヒ) 付テハ
モ) 亦
セ) 賠償ノ
ス) 責ニ
ン) 任ゼザルモノトス
(1) 天災地変
(2) 戦争、暴動、内乱
(3) 法令ノ改廃
(4) 主務官庁ノ命令又ハ行政指導
(5) 労働争議
(6) 運輸機関ノ事故
(7) 原料、燃料、動力ノ供給ノ途絶又ハ不足
(8) 火災、爆発、盗難
(9) 伝染病ノ流行
(10) 検疫ニ因ル荷物ノ滞貨
(11) 官憲ノ臨検、捜査、差押、仮差押、仮処分又ハ強制執行
(12) 前各号ノ外、当事者ノ責ニ帰スベカラザル事由
(13) 前各号ノ事由ニ因リ履行ガ遅滞シタル場合ニ於テハ、其ノ遅滞中ニ生ジタル損害ニ付テハ、当事者ハ賠償ノ責ニ任ゼザルモノトス。
(14) 前各号ノ事由ニ因リ履行ガ不能ト為リタル場合ニ於テハ、当事者ハ債務ヲ免レ、既ニ履行シタル部分ニ付テハ、相手方ニ対シ不当利得ノ返還ヲ請求スルコトヲ得ズ。
(15) 本条ノ規定ハ、当事者ガ特ニ之ヲ排除スル旨ノ合意ヲ為シタル場合ニハ、適用セラレザルモノトス。
(16) 本条ノ規定ハ、商慣習法ニ反スル場合ニハ、適用セラレザルモノトス。
(17) 本条ノ規定ハ、公序良俗ニ反スル場合ニハ、適用セラレザルモノトス。
(18) 本条ノ規定ハ、強行法規ニ反スル場合ニハ、適用セラレザルモノトス。
(19) 本条ノ規定ハ、任意法規ニ反スル場合ニハ、適用セラレザルモノトス。
(20) 本条ノ規定ハ、解釈ニ疑義ヲ生ジタル場合ニハ、適用セラレザルモノトス。
(21) 本条ノ規定ハ、当事者ノ意思ニ反スル場合ニハ、適用セラレザルモノトス。
(22) 本条ノ規定ハ、当事者ノ利益ニ反スル場合ニハ、適用セラレザルモノトス。
(23) 本条ノ規定ハ、当事者ノ権利ニ反スル場合ニハ、適用セラレザルモノトス。
(24) 本条ノ規定ハ、当事者ノ義務ニ反スル場合ニハ、適用セラレザルモノトス。
(25) 本条ノ規定ハ、当事者ノ責任ニ反スル場合ニハ、適用セラレザルモノトス。
(26) 本条ノ規定ハ、当事者ノ損害賠償ニ反スル場合ニハ、適用セラレザルモノトス。
(27) 本条ノ規定ハ、当事者ノ債務免除ニ反スル場合ニハ、適用セラレザルモノトス。
(28) 本条ノ規定ハ、当事者ノ不当利得返還ニ反スル場合ニハ、適用セラレザルモノトス。
(29) 本条ノ規定ハ、当事者ノ履行遅滞ニ反スル場合ニハ、適用セラレザルモノトス。
(30) 本条ノ規定ハ、当事者ノ履行不能ニ反スル場合ニハ、適用セラレザルモノトス。
(31) 本条ノ規定ハ、当事者ノ契約解除ニ反スル場合ニハ、適用セラレザルモノトス。
(32) 本条ノ規定ハ、当事者ノ危険負担ニ反スル場合ニハ、適用セラレザルモノトス。
(33) 本条ノ規定ハ、当事者ノ瑕疵担保責任ニ反スル場合ニハ、適用セラレザルモノトス。
(34) 本条ノ規定ハ、当事者ノ消滅時効ニ反スル場合ニハ、適用セラレザルモノトス。
(35) 本条ノ規定ハ、当事者ノ管轄合意ニ反スル場合ニハ、適用セラレザルモノトス。
(36) 本条ノ規定ハ、当事者ノ仲裁合意ニ反スル場合ニハ、適用セラレザルモノトス。
(37) 本条ノ規定ハ、当事者ノ準拠法合意ニ反スル場合ニハ、適用セラレザルモノトス。
(38) 本条ノ規定ハ、当事者ノ言語合意ニ反スル場合ニハ、適用セラレザルモノトス。
(39) 本条ノ規定ハ、当事者ノ通貨合意ニ反スル場合ニハ、適用セラレザルモノトス。
(40) 本条ノ規定ハ、当事者ノ支払方法合意ニ反スル場合ニハ、適用セラレザルモノトス。
(41) 本条ノ規定ハ、当事者ノ秘密保持義務ニ反スル場合ニハ、適用セラレザルモノトス。
(42) 本条ノ規定ハ、当事者ノ競業避止義務ニ反スル場合ニハ、適用セラレザルモノトス。
(43) 本条ノ規定ハ、当事者ノ知的財産権ニ反スル場合ニハ、適用セラレザルモノトス。
(44) 本条ノ規定ハ、当事者ノ著作権ニ反スル場合ニハ、適用セラレザルモノトス。
(45) 本条ノ規定ハ、当事者ノ特許権ニ反スル場合ニハ、適用セラレザルモノトス。
(46) 本条ノ規定ハ、当事者ノ商標権ニ反スル場合ニハ、適用セラレザルモノトス。
(47) 本条ノ規定ハ、当事者ノ意匠権ニ反スル場合ニハ、適用セラレザルモノトス。
(48) 本条ノ規定ハ、当事者ノ実用新案権ニ反スル場合ニハ、適用セラレザルモノトス。
(49) 本条ノ規定ハ、当事者ノ回路配置利用権ニ反スル場合ニハ、適用セラレザルモノトス。
(50) 本条ノ規定ハ、当事者ノ育成者権ニ反スル場合ニハ、適用セラレザルモノトス。
(51) 本条ノ規定ハ、当事者ノ営業秘密ニ反スル場合ニハ、適用セラレザルモノトス。
(52) 本条ノ規定ハ、当事者ノ限定提供データニ反スル場合ニハ、適用セラレザルモノトス。
(53) 本条ノ規定ハ、当事者ノ技術的制限手段ニ反スル場合ニハ、適用セラレザルモノトス。
(54) 本条ノ規定ハ、当事者ノ電子署名ニ反スル場合ニハ、適用セラレザルモノトス。
(55) 本条ノ規定ハ、当事者ノ認証業務ニ反スル場合ニハ、適用セラレザルモノトス。
(56) 本条ノ規定ハ、当事者ノ特定商取引ニ反スル場合ニハ、適用セラレザルモノトス。
(57) 本条ノ規定ハ、当事者ノ消費者契約ニ反スル場合ニハ、適用セラレザルモノトス。
(58) 本条ノ規定ハ、当事者ノ割賦販売ニ反スル場合ニハ、適用セラレザルモノトス。
(59) 本条ノ規定ハ、当事者ノ宅地建物取引ニ反スル場合ニハ、適用セラレザルモノトス。
(60) 本条ノ規定ハ、当事者ノ借地借家ニ反スル場合ニハ、適用セラレザルモノトス。
(61) 本条ノ規定ハ、当事者ノ農地ニ反スル場合ニハ、適用セラレザルモノトス。
(62) 本条ノ規定ハ、当事者ノ森林ニ反スル場合ニハ、適用セラレザルモノトス。
(63) 本条ノ規定ハ、当事者ノ鉱業ニ反スル場合ニハ、適用セラレザルモノトス。
(64) 本条ノ規定ハ、当事者ノ漁業ニ反スル場合ニハ、適用セラレザルモノトス。
(65) 本条ノ規定ハ、当事者ノ海運ニ反スル場合ニハ、適用セラレザルモノトス。
(66) 本条ノ規定ハ、当事者ノ航空運送ニ反スル場合ニハ、適用セラレザルモノトス。
(67) 本条ノ規定ハ、当事者ノ鉄道ニ反スル場合ニハ、適用セラレザルモノトス。
(68) 本条ノ規定ハ、当事者ノ自動車運送ニ反スル場合ニハ、適用セラレザルモノトス。
(69) 本条ノ規定ハ、当事者ノ倉庫ニ反スル場合ニハ、適用セラレザルモノトス。
(70) 本条ノ規定ハ、当事者ノ運送取扱ニ反スル場合ニハ、適用セラレザルモノトス。
(71) 本条ノ規定ハ、当事者ノ代理商ニ反スル場合ニハ、適用セラレザルモノトス。
(72) 本条ノ規定ハ、当事者ノ仲立ニ反スル場合ニハ、適用セラレザルモノトス。
(73) 本条ノ規定ハ、当事者ノ問屋ニ反スル場合ニハ、適用セラレザルモノトス。
(74) 本条ノ規定ハ、当事者ノ匿名組合ニ反スル場合ニハ、適用セラレザルモノトス。
(75) 本条ノ規定ハ、当事者ノ合同運用ニ反スル場合ニハ、適用セラレザルモノトス。
(76) 本条ノ規定ハ、当事者ノ信託ニ反スル場合ニハ、適用セラレザルモノトス。
(77) 本条ノ規定ハ、当事者ノ保険ニ反スル場合ニハ、適用セラレザルモノトス。
(78) 本条ノ規定ハ、当事者ノ共済ニ反スル場合ニハ、適用セラレザルモノトス。
(79) 本条ノ規定ハ、当事者ノ年金ニ反スル場合ニハ、適用セラレザルモノトス。
(80) 本条ノ規定ハ、当事者ノ恩給ニ反スル場合ニハ、適用セラレザルモノトス。
(81) 本条ノ規定ハ、当事者ノ退職金ニ反スル場合ニハ、適用セラレザルモノトス。
(82) 本条ノ規定ハ、当事者ノ賃金ニ反スル場合ニハ、適用セラレザルモノトス。
(83) 本条ノ規定ハ、当事者ノ労働時間ニ反スル場合ニハ、適用セラレザルモノトス。
(84) 本条ノ規定ハ、当事者ノ休憩ニ反スル場合ニハ、適用セラレザルモノトス。
(85) 本条ノ規定ハ、当事者ノ休日ニ反スル場合ニハ、適用セラレザルモノトス。
(86) 本条ノ規定ハ、当事者ノ休暇ニ反スル場合ニハ、適用セラレザルモノトス。
(87) 本条ノ規定ハ、当事者ノ育児休業ニ反スル場合ニハ、適用セラレザルモノトス。
(88) 本条ノ規定ハ、当事者ノ介護休業ニ反スル場合ニハ、適用セラレザルモノトス。
(89) 本条ノ規定ハ、当事者ノ看護休暇ニ反スル場合ニハ、適用セラレザルモノトス。
(90) 本条ノ規定ハ、当事者ノ子の看護休暇ニ反スル場合ニハ、適用セラレザルモノトス。
(91) 本条ノ規定ハ、当事者ノ介護休暇ニ反スル場合ニハ、適用セラレザルモノトス。
(92) 本条ノ規定ハ、当事者ノ時間外労働ニ反スル場合ニハ、適用セラレザルモノトス。
(93) 本条ノ規定ハ、当事者ノ休日労働ニ反スル場合ニハ、適用セラレザルモノトス。
(94) 本条ノ規定ハ、当事者ノ深夜業ニ反スル場合ニハ、適用セラレザルモノトス。
(95) 本条ノ規定ハ、当事者ノ妊産婦ニ反スル場合ニハ、適用セラレザルモノトス。
(96) 本条ノ規定ハ、当事者ノ年少者ニ反スル場合ニハ、適用セラレザルモノトス。
(97) 本条ノ規定ハ、当事者ノ女性ニ反スル場合ニハ、適用セラレザルモノトス。
(98) 本条ノ規定ハ、当事者ノ障害者ニ反スル場合ニハ、適用セラレザルモノトス。
(99) 本条ノ規定ハ、当事者ノ高齢者ニ反スル場合ニハ、適用セラレザルモノトス。
(100) 本条ノ規定ハ、当事者ノ外国人ニ反スル場合ニハ、適用セラレザルモノトス。
(101) 本条ノ規定ハ、当事者ノ派遣労働者ニ反スル場合ニハ、適用セラレザルモノトス。
(102) 本条ノ規定ハ、当事者ノ短時間労働者ニ反スル場合ニハ、適用セラレザルモノトス。
(103) 本条ノ規定ハ、当事者ノ有期雇用労働者ニ反スル場合ニハ、適用セラレザルモノトス。
(104) 本条ノ規定ハ、当事者ノ高年齢雇用継続ニ反スル場合ニハ、適用セラレザルモノトス。
(105) 本条ノ規定ハ、当事者ノ定年ニ反スル場合ニハ、適用セラレザルモノトス。
(106) 本条ノ規定ハ、当事者ノ解雇ニ反スル場合ニハ、適用セラレザルモノトス。
(107) 本条ノ規定ハ、当事者ノ雇止ニ反スル場合ニハ、適用セラレザルモノトス。
(108) 本条ノ規定ハ、当事者ノ再就職援助ニ反スル場合ニハ、適用セラレザルモノトス。
(109) 本条ノ規定ハ、当事者ノ職業訓練ニ反スル場合ニハ、適用セラレザルモノトス。
(110) 本条ノ規定ハ、当事者ノ能力開発ニ反スル場合ニハ、適用セラレザルモノトス。
(111) 本条ノ規定ハ、当事者ノ職業紹介ニ反スル場合ニハ、適用セラレザルモノトス。
(112) 本条ノ規定ハ、当事者ノ労働者派遣ニ反スル場合ニハ、適用セラレザルモノトス。
(113) 本条ノ規定ハ、当事者ノ労働組合ニ反スル場合ニハ、適用セラレザルモノトス。
(114) 本条ノ規定ハ、当事者ノ団体交渉ニ反スル場合ニハ、適用セラレザルモノトス。
(115) 本条ノ規定ハ、当事者ノ労働協約ニ反スル場合ニハ、適用セラレザルモノトス。
(116) 本条ノ規定ハ、当事者ノ就業規則ニ反スル場合ニハ、適用セラレザルモノトス。
(117) 本条ノ規定ハ、当事者ノ個別労働関係紛争ニ反スル場合ニハ、適用セラレザルモノトス。
(118) 本条ノ規定ハ、当事者ノ労働委員会ニ反スル場合ニハ、適用セラレザルモノトス。
(119) 本条ノ規定ハ、当事者ノ不当労働行為ニ反スル場合ニハ、適用セラレザルモノトス。
(120) 本条ノ規定ハ、当事者ノ争議行為ニ反スル場合ニハ、適用セラレザルモノトス。
(121) 本条ノ規定ハ、当事者ノ労働関係調整ニ反スル場合ニハ、適用セラレザルモノトス。
(122) 本条ノ規定ハ、当事者ノ労働関係ニ反スル場合ニハ、適用セラレザルモノトス。
(123) 本条ノ規定ハ、当事者ノ労働契約ニ反スル場合ニハ、適用セラレザルモノトス。
(124) 本条ノ規定ハ、当事者ノ労働条件ニ反スル場合ニハ、適用セラレザルモノトス。
(125) 本条ノ規定ハ、当事者ノ労働基準ニ反スル場合ニハ、適用セラレザルモノトス。
(126) 本条ノ規定ハ、当事者ノ労働安全衛生ニ反スル場合ニハ、適用セラレザルモノトス。
(127) 本条ノ規定ハ、当事者ノ労働者災害補償ニ反スル場合ニハ、適用セラレザルモノトス。
(128) 本条ノ規定ハ、当事者ノ雇用保険ニ反スル場合ニハ、適用セラレザルモノトス。
(129) 本条ノ規定ハ、当事者ノ労災保険ニ反スル場合ニハ、適用セラレザルモノトス。
(130) 本条ノ規定ハ、当事者ノ健康保険ニ反スル場合ニハ、適用セラレザルモノトス。
(131) 本条ノ規定ハ、当事者ノ厚生年金ニ反スル場合ニハ、適用セラレザルモノトス。
(132) 本条ノ規定ハ、当事者ノ国民年金ニ反スル場合ニハ、適用セラレザルモノトス。
(133) 本条ノ規定ハ、当事者ノ確定拠出年金ニ反スル場合ニハ、適用セラレザルモノトス。
(134) 本条ノ規定ハ、当事者ノ確定給付企業年金ニ反スル場合ニハ、適用セラレザルモノトス。
(135) 本条ノ規定ハ、当事者ノ中小企業退職金共済ニ反スル場合ニハ、適用セラレザルモノトス。
(136) 本条ノ規定ハ、当事者ノ建設業退職金共済ニ反スル場合ニハ、適用セラレザルモノトス。
(137) 本条ノ規定ハ、当事者ノ清酒製造業退職金共済ニ反スル場合ニハ、適用セラレザルモノトス。
(138) 本条ノ規定ハ、当事者ノ林業退職金共済ニ反スル場合ニハ、適用セラレザルモノトス。
(139) 本条ノ規定ハ、当事者ノ港湾労働者退職金共済ニ反スル場合ニハ、適用セラレザルモノトス。
(140) 本条ノ規定ハ、当事者ノ特定退職金共済ニ反スル場合ニハ、適用セラレザルモノトス。
(141) 本条ノ規定ハ、当事者ノ小規模企業共済ニ反スル場合ニハ、適用セラレザルモノトス。
(142) 本条ノ規定ハ、当事者ノ個人型確定拠出年金ニ反スル場合ニハ、適用セラレザルモノトス。
(143) 本条ノ規定ハ、当事者ノ企業型確定拠出年金ニ反スル場合ニハ、適用セラレザルモノトス。
(144) 本条ノ規定ハ、当事者ノ厚生年金基金ニ反スル場合ニハ、適用セラレザルモノトス。
(145) 本条ノ規定ハ、当事者ノ国民年金基金ニ反スル場合ニハ、適用セラレザルモノトス。
(146) 本条ノ規定ハ、当事者ノ国民年金付加保険料ニ反スル場合ニハ、適用セラレザルモノトス。
(147) 本条ノ規定ハ、当事者ノ国民年金保険料ニ反スル場合ニハ、適用セラレザルモノトス。
(148) 本条ノ規定ハ、当事者ノ厚生年金保険料ニ反スル場合ニハ、適用セラレザルモノトス。
(149) 本条ノ規定ハ、当事者ノ健康保険料ニ反スル場合ニハ、適用セラレザルモノトス。
(150) 本条ノ規定ハ、当事者ノ介護保険料ニ反スル場合ニハ、適用セラレザルモノトス。
(151) 本条ノ規定ハ、当事者ノ雇用保険料ニ反スル場合ニハ、適用セラレザルモノトス。
(152) 本条ノ規定ハ、当事者ノ労災保険料ニ反スル場合ニハ、適用セラレザルモノトス。
(153) 本条ノ規定ハ、当事者ノ一般拠出金ニ反スル場合ニハ、適用セラレザルモノトス。
(154) 本条ノ規定ハ、当事者ノ石綿健康被害救済法ニ反スル場合ニハ、適用セラレザルモノトス。
(155) 本条ノ規定ハ、当事者ノ特別拠出金ニ反スル場合ニハ、適用セラレザルモノトス。
(156) 本条ノ規定ハ、当事者ノ石綿健康被害救済基金ニ反スル場合ニハ、適用セラレザルモノトス。
(157) 本条ノ規定ハ、当事者ノ石綿健康被害救済給付ニ反スル場合ニハ、適用セラレザルモノトス。
(158) 本条ノ規定ハ、当事者ノ石綿健康被害救済法施行令ニ反スル場合ニハ、適用セラレザルモノトス。
(159) 本条ノ規定ハ、当事者ノ石綿健康被害救済法施行規則ニ反スル場合ニハ、適用セラレザルモノトス。
(160) 本条ノ規定ハ、当事者ノ石綿健康被害救済法ニ反スル場合ニハ、適用セラレザルモノトス。

私ノ知ル限リ俘虜ノ作業ニ関聯シテ私ハ一人ノ俘虜カラ
或ハ俘虜ノ團体（グループ）カラ抗議ガ爲サレタコトヲ聞
イタコトモ無ク、又私ハ抗議文トカガ如キモノヲ翻訳
シタコトガアリマセン（ム宮ノタメニ）。其ノ反対ニ私ハ彼
等ガ勤勉ニ働イテ呉タノヲ絶エス目撃シマシタ。
私ハ尚ビ私ニ対シ提出サレタ起訴狀及罪狀項目ヲ
讀ミマシタ。ソレデ多數ノ人々ガ私ハ実ニ滑稽ナ恰好ヲ
シテ居タトカ云ッテ居ル時何故私ノ携帶シテ居タ筆記ガ俘
虜ニ恐レヲ起サセメタカ不可思議デナリマセン。私ハ彼等ノ
誰モガ私ヲ恐レテ居タト意識シタコトガ無イ故本当ニ
ソレハ理解ニ苦シム所デアリマス。更ニ告訴ハ私ガ拳
銃ヲ用ヒテ俘虜ヲ作業ニ強制、強要及使用シタト主
張シテ居リマス。証據及私ノ証言ハ此点ニ就テ判然シ
テ居リマス。

私ガ多數ノ宣誓ノ口供書並ニ証人達ノ數々ノ証言ノ中デ
告訴サレテ居ルガ如ク俄カニ私ガ常習的犯則者デアッタ
トシ又俘虜ニ親切デアッタノハ日本軍人デアッタトシタナ
ラバ俘虜ガ違ッタ作業現場ニ居タ日本陸軍解放或ハ俘虜
係長或ハ他ノ俘虜ノ口頭或ハ筆頭ヲ以テ、或ハ司令ヲ
通シテサヘ私ノ證責シ得タ筈デアリマス。当時ウエーキ
島ニハ二千名以上ノ陸軍関係ノ日本人ガ居マシタ。私ハ彼等ノ
誰一人トシテ私ガ俘虜ヲ虐ヲ罵詈シ、拷問シ、或ハ虐待シタ
ノヲ目撃シナカッタコトヲ確信シテ居リマス。
私ノ運命ハ神ノ摂理ト諸賢ノ公平ナ判決ニアリマス、
諸賢ノ判決ノ如何ヲ問ハズ、私ハ私ノ証言ガ真実デ
アッタトニヲ純粋ナ良心ヲ以テソレニ臨ミマス、願ハバ
諸賢ガ私ノ陳ベ来ッタコトヲ信ゼラレンコトヲ。

昭和二十三年十月十三日

勝見精史

27 (9)

0460

STATEMENT OF KATSUMI, SEISHI

1. Although I took the witness stand and testified in my own behalf, I would like to make this personal declaration at this time.

2. I lived in the United States for twenty-one years, from 1919 to 1941. I am thankful that I was treated as if I were an American citizen during all those years. I was influenced greatly during those years I lived in a society which taught brotherhood and peace. I bear in mind that it is because of the grace of God and the generosity of your people that I could have lived that way. Needless to say because I am a Christian and believe in the teachings of Christianity, I believe in peace not war.

3. However, the relationship between the United States and Japan became strained and serious in the latter part of 1940 or at the beginning of 1941. As I was enjoying my life in your country and had been enjoying American for many years, I was greatly worried as to what to do at this time. I was then an employee of the Japanese American Trade Bureau. On account of the freezing of Japanese assets announced in July, 1941, the business of the bureau stopped and the employees were dismissed or repatriated one by one. I asked my Japanese friends what to do. Taking the advice of Japanese friends who had been living in the United States, as I had for many years, I decided to return to Japan. I embarked on the SS HIKAWA MARU which left Seattle on November 3, 1941.

Japan was war-minded. I did not know what to do.

I knew I was a Japanese citizen and knew I must be loyal to my native land, Japan. However, I felt I knew America and what America stood for. However, there was but one path. I must travel the road on which Japan had set her course. While I was sick in bed on an island in the Marshalls, an officer-patient near me told me that war had been declared.

The position I was promised I did not get. Instead I was sent out to the Fourth Fleet Headquarters at Truk.

I was in the war and in the front lines. You members of the Commission are professional military officers and war may not be frightening to you. However, I was a civilian. I must admit that I was not too brave. So when a friend of mine said, "Here, wear this pistol when you go ashore with the troops," I gladly took the pistol and wore it. I don't know what I would have done with it if I had had to use it because I have never fired such a pistol as long as I wore it, but it just gave me a little courage and I needed courage. Since no one told me I couldn't wear that pistol, I continued to wear it. I must say that it also made me feel rather important. The evidence shows the Americans laughed at me and called me "Garters." I didn't know this then but I did have some sort of feeling that I was less important than the military and my own countrymen made me realise this. I didn't want to be a militarist but I wanted a certain respect and my own self respect. I hope you understand just what my feelings were in this regard because I feel it is most important.

I didn't want to as you say "strut" and be pompous. All I wanted to do was to do my job as an interpreter. I wanted the Americans to be able to understand the Japanese and the Japanese to understand the Americans.

4. I recall the day when I was ordered to read a proclamation of the occupation of Wake Island before a great many American prisoners who were assembled beside the air strip. I had to take such a part before many

0461

persons among whom I had enjoyed the past half of my life. Should I have been moved by the excitement of our victory over the Americans? Maybe I should, but I felt, on the contrary, an inexplicable self-contradiction. Even in war there are moments like this. When I finished reading the proclamation I heard sporadic clapping among the Americans who had during my reading of the proclamation maintained a dead silence. I saw from their countenances and gestures that they were entirely freed from exhaustion, worry, and fear, and I felt that I was being given an opportunity to do as best as I could for these persons while I was with them. Thus I exchanged greetings with some of the prisoners of war. I tried to be honest and faithful to them. I tried to make things as pleasant as possible for the American prisoners and I did not make things tough for them.

5. Now I wish to say a few words about my spiritual background, which guided me all through my life and also here on Wake Island.

Not only I myself, but also all our nine brothers and sisters are thankful for the fact that we had an affectionate mother who was a devout Christian. The religious influence of my mother upon us was so deep that we all became Christians. We are now fathers and mothers of twenty odd children. Seven out of nine of us spent our school life in the Doshisha, an institution which was founded on the principles of Christianity. We either studied in the middle school, girl's high school, women's college, or university of the Doshisha. Being one of the seven, I graduated from the Economics Department of the Doshisha University. I am convinced that I cultivated during that time the spirit of freedom, self-government, respect of personality, humanity and justice.

After graduating from the Doshisha University, I went to the United States to study economics and to learn American democracy. My class-mate Mr. Shichiro Matsui joined me and together we went to America.

6. Unfortunately, I became ill while I was a student and I could not finish my studies, and because of that I stayed a long time in the United States, but during that time I exerted myself in the search and attainment of the American spirit. I became a member of the International House at New York City. You know the purpose of this International House established by the Rockefeller Foundation. Here I pursued my ideal and learned to live with peoples of all lands.

At the entrance hall of that building were the words "That Brotherhood May Prevail" engraved in granite and I remembered these words all during my life in the United States.

7. Then I would like to discuss the American civilian and military prisoners of war on Wake Island.

a) From December 24, 1941 to January 11, 1942, Wake Island was in a state of confusion immediately after the occupation. Therefore, my contacts with Americans were mostly limited to those of official character. So, though I may have had opportunities to talk with them, I could not become personally acquainted with them. I only remember certain people who were in certain positions.

However, I can affirm that I tried to be friendly when I came in contact with them. I recall that when Major James Devereux was to be transferred to the Japanese homeland, he was afraid that a document containing his family lineage might be confiscated and he entrusted me to keep it in my custody to be returned to him after the end of the war.

0462

As regards American civilians, I remember only a few of their names and faces. But when they were sent to Japan, I advised them to carry as many of their belongings as they could. There was much confusion regarding this. No one seemed to know or would tell the prisoners anything. I also told them to wear their best suits because I sincerely hoped that they keep their American pride in Japan although I felt that theirs was to be a hard life as prisoners at prison camps which would be far worse than what they had been through here on Wake.

b) I knew that from January 12, 1942 to September 30, 1942 the reconstruction and repair of various installations and buildings and defense works of Wake Island were progressing quite steadily. However, I heard that the policy was to send the prisoners to the homeland so that the number of prisoners who remained on the island diminished and I came to associate with them more frequently. But in those days prisoners were assigned by the officer in charge of them to various groups according to their experience and skill and there was a chief in each of the groups and their work was performed under these group leaders or foremen. Moreover the groups of prisoners who had special talents in certain kinds of work were under supervision of various Japanese sections. Therefore the prisoners with whom I got acquainted were mostly foremen and group leaders.

8. Although I believe I did my best in my capacity toward the American prisoners, in some cases my exertions did not bear fruit. However, I would like to enumerate my efforts in their behalf as I recall:

a) I repeatedly pleaded with the officer in charge of prisoners to let the prisoners go to the movies for recreation.

b) For the recreation of the prisoners I suggested a variety show to the officer in charge of the prisoners. But only the prisoners who participated were given the privilege of attending the show performed by the Japanese personnel.

c) I requested the officer in charge of prisoners to hold a religious meeting every holiday. However, large group meetings were not permitted and only meetings of small groups tacitly permitted.

d) By permission of the officer in charge of prisoners, I established a library with the assistant of the officer in charge of prisoners. At my own expense I bought 20 books written in English from Japan and offered them for the recreation of the prisoners.

e) I frequently visited the patients among American civilian and military prisoners who were at the hospital.

f) When the prisoners were to be transferred to Japan, they asked me to sign certain papers because they were afraid that their personal belongings might be confiscated. I signed the papers because I thought that might be of some help to them.

g) After Wake Island was captured by the Japanese, with Ray, Russel and others, I searched for the places where Americans had been buried before the Japanese occupation and I set grave posts there. (I got permission of the executive officer to do this.) I recall there were two grave posts on which I marked the cross, the date and the following words: "The grave of unknown American soldiers who were killed in action."

0463

h) In order to supplement the shortage of vegetables, I got permission from commanding officer Kawasaki to cultivate about one acre for the prisoners.

i) I advised them to bring plenty of drinking water to their working place. When I had opportunities to visit the scene of their work, I gave them my Japanese cigarettes.

9. Now, as a matter of fact, I was not vested with any authority to handle prisoners of war. Therefore, I had always worked like a robot in accordance with orders of the commanding officer, executive officer, Heads of Sections and officers in charge. Although I was told by certain Japanese authorities that I would be treated like a commissioned officer, I was never accorded any greater privileges than a warrant officer.

Prisoners might have had bad feelings toward me without knowing from whom the orders came because I was acting as an interpreter and translated for these officers who issued the orders and the prisoners understood only the English language spoken by me. For instance I would:

a) translate the regulations for the prisoners and read them.

b) go to call the prisoners who were late in coming to work at certain required times.

c) relay an order to them that they should not keep their working tools in their quarters.

d) tell them by order of the officer in charge of prisoners that some of them had been discovered red-handed gambling at cards.

e) relay an order that no one was permitted to smoke in bed when some of them were found smoking that way.

f) relay to them that no one was permitted to go out from his quarters at night to smoke when some of them were found so doing.

g) relay to them that they should not be absent from their work without getting permission from the officer in charge and that they should follow a certain procedure for getting that permission.

h) by order of the chief paymaster go to admonish prisoners who were eating in the galley after they had already eaten their regular meal.

These were of course my duties ordered by my superiors. I also believed that prisoners of war could only be secure and safe if they obeyed the regulations which were put into force by the Japanese military. It must be absolute obedience on their part. I knew that some of the intelligent prisoners well understood this because I could ascertain that from their whispers. In connection with the works of prisoners, so far as I knew, I had never heard any protest made by a prisoner or group of prisoners nor did I translate any such protests (for my superiors). On the contrary, I always observed that they were working very diligently.

0464

I have read again the charge and specifications preferred against me and wonder why the pistol which I was carrying made the prisoners so afraid when so many said I was such a ridiculous figure. It is really hard to understand because I never felt that any of them were afraid of me. The charge further alleges that I forced, compelled, required, and used prisoners of war on work by using a pistol. The evidence and my testimony is clear upon this point.

If I had been a habitual offender as I am accused in many affidavits and much testimony of witnesses, and if it was the Japanese military personnel who were good to the prisoners, the prisoners could have accused me verbally or by written statement to the Japanese officers who were at the scene of their working or to the officer in charge of the prisoners, or other persons in charge of prisoners or even through the commanding officer. At that time, there were more than 2,000 military Japanese on Wake Island. I am quite sure that none of them witnessed any time that I abused, tortured or mistreated prisoners of war.

My fate is in the Providence of God and your fair judgment.

Whatever your judgment I await it with a clear conscience that my testimony has been true. I pray that you believe me in what I have said.

Respectfully,

KATSUMI, Seishi.

I hereby certify that the above is a true and complete translation of the original in Japanese, to the best of my ability.

EUGENE E. KERRICK, JUNIOR,
Lieutenant, U. S. Naval Reserve,
Interpreter.

0465

最終弁論

元日本国籍喪失被告人勝見精史

弁護人　高野純二郎

軍法委員會委員長並ニ委員各位

私は被告人勝見精史の弁護人として茲ニ最終弁論を爲すニ当リ本件の審理が終始公平且厳粛ニ行はれたることニ深甚の感謝の意を表するのである。

第一編　總　論

第一章　序　説

第一　本件の起訴と罪状項目

本件の起訴罪名は戦争法規並ニ慣習法の違反であって罪状項目其の一は被告人勝見は日本の民間人として日本海軍ニ雇傭せられウエーキ島の日本軍事施設ニ勤務シ居リしものであってアメリカ合衆国連合諸国及其の属領ニ対し日本帝国と戦争状態ニあリし昭和16年12月23日より同17年9月30日ニ至る間ウエーキ島ニおイて故意を以て本法ニ同ジ同ジ如ニおよび日本軍隊ニ抑留中のアメリカ人俘虜ニ不健康且危険ある作業を爲すことを強制強要ニ使用し以て戦争法規並ニ慣習法ニ違反したと言ふニある。

罪状項目其の二は被告人勝見は日本の民間人として日本海軍ニ雇傭せられウエーキ島の日本軍事施設ニ勤務シ居リしものであってアメリカ合衆国連合諸国及其の属領ニ対し日本帝国と戦争

LL (1)

0466

犯意に基づき昭和16年12月23日より同17年9月30日に至る間ウエーキ島において故意を以て予謀の同時同処において日本軍隊に抑留されておったアメリカ人捕虜に作業行動に直接関係ある作業をなすことを強制強要手段使用し以て戦争法規慣例に違反したと言われている。

罪状次目某のとは被告人勝矢は日本の民間人として日本海軍に徴用されウエーキ島の日本軍事施設の建築に当りし者であってアメリカ合衆国連合諸国及其の属領が日本帝国と戦争状態にありし昭和16年12月23日より同17年9月30日に至る間ウエーキ島において当時同処に抑留中のアメリカ人俘虜を故意を以て予謀に基き非人道なる酷使及虐待を以て戦争法規慣例に違反したと言われている。

本件起訴状を看るに罪状次目三個の中には同一事件が二重若は三重に記載にある。即ち

罪状次目一の(a)は罪状次目三の(a)と；
罪状次目一の(b)は罪状次目二の(a)及罪状次目三の(b)と；
罪状次目一の(c)は罪状次目二の(b)及罪状次目三の(d)と；
罪状次目一の(d)は罪状次目三の(c)と；
罪状次目一の(e)は罪状次目二の(c)と

夫も全く同一の事件であって此等の事件はそれ自体五個である可きはずが二個の事件として起訴せられてある。然くして本件は五個の事件が重複起訴せられてあることを茲に指摘せねばならないのである。

第二、不健康又は危険な作業

0467

本件罪状次目其の一は被告人暗見が従廣を強制して不健康及危険ある作業に就かしめたと言ふのである。之は1929年のGeneva従廣條約第32條第一次「従廣ヲ不健康又ハ危険ナル労役ニ使役スヘカラス」の規定に違反するものであると言ふ検察官の主張である。此の禁止規定の目的とするところは作業それ自体が性質上不健康或は危険なることを意味するものであつて其の当時の状況又は周囲の状況の不健康なること又は危険なることを言ふのではない。当時の状況又は周囲の状況の不健康又は危険なることは偶発的な事柄であつて此等の條件は随時任意に回避し得るのである。併し作業自体が性質上不健康又は危険なるものは回避し得ない。それが故に條約は仕事自体が性質上不健康であるか又は危険なるものは之を禁止すると言ふ意味である。

然るに罪状次目其の一に列挙せる事件中には其の作業の性質上不健康又は危険でないものを左の如く記載してある。例へば(a)事件飛行場の滑走路の修理作業及(c)事件高角砲の修理作業の如きそれである。此等の作業はそれ自体性質上不健康又は危険なる作業と言ふのは妥当ではない。

尚ほ(a)事件後深船上の清大作業、(c)事件魚雷引揚作業、~~(d)事件魚雷引揚~~(第一信書の取除かれた魚雷なることが立証せられた)(e)事件兵器弾薬の荷卸及運搬作業は常に必ずしも不健康又は危険なる作業とは限らないのである。されば此の最後の(e)事件兵器弾薬の荷卸又は運搬作業は上掲第31條の「作戦行動に直接関係ある作業」として禁止もしくはこれより見れば此のGeneva條約も此の作業は必ずしも不健康又は危険なる作業とは看做してゐないのである。該條約31條の條文は下に掲げる。

第三 作戦行動に直接関係を有する作業

第二項目其の二は被告人日本は従虜を強制して作戦行動に直接関係を有する作業に就かしめたと云ふのである。之は上と同様1929年のGeneva條約第31條「従虜しより為すべき命令は作戦行動に直接関係なきものに限る。特に従虜を各種兵器弾薬、製造及運搬並に軍事施設に於ても又材料、運搬又は使役に之を禁止す」の規定に違反するものであるとの主張である。然しながら従虜の命令(labor)使用禁止に関する此のGeneva従虜條約の規定は一般的且抽象的であつてそれが為に実際上の事実問題に関しては其の解釈は色々に岐れてゐるのである。殊に「作戦行動に直接関係ある作業」に付ては事実問題としては極めて困難なる事項であつて種々の論争の余地が含まれてゐるのである。Oppenheimの国際法も次の如く説いてゐる。

「禁止作業に関して第31條(note: 1929のGeneva従虜條約を指す)は次の通り規定してゐる。即ち『従虜の為す作業は戦争の作戦に直接関係を有すべからず。殊に各種兵器又は弾薬の製造、或は実戦部隊に向けられる資材の運搬に従虜を使役せざることを禁止する』と。此等の禁止事項は必ずしも明確ではない…のである」(Lauterpacht, Oppenheim's International Law, Vol. II 6th ed., Warfare on Land, §126 b, p298)

而して其の脚註には

「従虜を強制して要塞又は之と同様のものを構築

0469

せしむることを得るや否やの問題は敵国の住民人をして
制して其の為す作業を為さしむることを得るや否やの問
題と同様に全く論議せられつゝある所である」と。
論じておるのである。(同上)

仍て此の罪状次目其の二の各事件に付て果してそれ
が上記條約の禁ぜる作業に該当するや否やを検討に見
る。一

(a)
(a) 事件即ち飛行場の滑走路の修理
(b) 事件即ち高角砲の修理
(c) 事件即ち大砲の取外し及据付け
(d) 事件即ち砲架の製造
(e) 事件即ち鉄条網の建設

此等の作業は「作戦行動に直接関係ある作業ないや否
や」と言ふことを基準とせる之を決するときは Oppenheim の上
に引用せる時宜に説く通り多くの論議ある余地のあるところであつて私は此の「作戦行動に直接ある」と言ふ意
義を厳かく之れに解釈すべきものではないとの説を採り
従つて上に掲げた事件は罪状次目其の二に謂ふ「作戦
行動に直接関係ある作業」には該当しないと主張するものである。

第四条の上官と雖ども適訳

通常通訳と言ふのは或る人が発表せる言語を他の
言語に翻訳せしむる為め之に関する人を謂ふのであつて通訳

0470

が他の人の言語を翻訳したことを伝達するに当っては異なれば通訳自身の意思は些も添加することはないのである。若し仮に通訳が他人の為す通訳を為すに当って少しにても通訳自身の意思又は意見を添加することありとすれば通訳の与うる言葉は最早通訳ではないのである。換言すれば通訳は単なる言葉の作造者に過ぎないのである。

軍属たる通訳も通常の通訳と何等異って性質を有するものではない。矢張軍属という上官の指揮下にあって上官又は其の他の者の言葉を他の言語に翻訳したことを或手段に依る任務を担当するものである。軍属たる通訳も亦上に述べた如く其の通訳に当っては自己の意思又は意見は一切之に附加しないのが当然であって又附加してはならないのである。

軍属たる通訳は等の一員であるが故に上官の指揮下にあって上官に対しては命令服従の関係にあるのである。従って其の服従は他の部下と同様絶対服従であって上官の命令に対しては絶対に服従する義務を負はされたものである。

第二章　等の通訳と犯罪処罰

第五　等の通訳と俘虜及俘虜の作業就役

等が俘虜を取扱える場合に於ける軍属たる通訳の主なる任務は日本に属する等と俘虜の中間に介在して相互交換する言葉を他の言語に翻訳したことを其に伝達するに在る即ち通訳は上官又は其の他の等の者の命令指示其

地の用件を俘虜の国法に基次に之を俘虜例に俘虜し
国対し俘虜例の言は人とする用務を事例に俘虜するもの
である。

俘虜の作業就役は素より全の捕獲官の意思に基くもの
であることは多く言を俟たざるであろう。随って其の俘虜
の就役によっての責任の帰属するところ其の捕獲官に在る
ことも当然の帰結である。

本件において被告人勝久が俘虜達を強制的に不
健康又は危険ある作業及作戦行動に直接関係ある作
業に就かしめたと言われてあるが各俘虜次回の冒頭に明
記せられてある通り勝見は日本国家に一時的雇傭せられ
たる一民間人であり又彼が全の遂次であったことも当法廷
に於ける多くの証拠の示すところである。然るに1907
年のHague条約(Annex Art. 4)にも亦1929年のGeneva
俘虜条約(Art 2)にも俘虜は敵国政府の権内に属し
且つ之を捕えた個人又は部隊の権内に属す
べきものと規定してある。第一に1907のHague条約では「敵
の政府の権内」とあるを1929のGeneva俘虜条約では「政
府なる語を削除して「俘虜は敵国の権内に属す」と
規定しているのである。更に1929 Geneva俘虜条約(Art. 18
¶1)には「各俘虜収容所は責任ある将校の管下に置かる
べしと明記している。此等の条約の規定は依れば日本
国に於ける俘虜達は日本国の権内に属したのであって此
等俘虜達が国家に代って收容せられておりし間は責任ある
日本国家の将校即ち国家の捕獲官の管下にあったとは
云え多い。それかあらぬ為め日本国家に一時的に
雇傭せられておりし一民間人通訳に過ぎない被告人勝

0472

又の答えた生き音がなかったことは余りにも明白すぎる事実である。其等の俘虜を作業に就かしめたのは当なうとした島に生じた日本陸軍であって俘虜の使役に関する一切の命令及指示は悉く同島における日本陸軍指揮官から発せられたものであることも言を俟たない。而て被告人時次は一般俘虜人として唯此の等の命令又は指示を俘虜達に伝達したにすぎないのであって当時の時次は多くる命令の伝達者若は意志のない伝達機関に過ぎなかったのである。若し時次に此の権限があったと仮定すれば其の権限の結果時次は俘虜使役の責任は自ら負はねばならぬであろう。時次に若し動かす権限のあったことは検事自ら何等主張をしないのである。それであるから時次の関する限りにおいては本件訴状次旦其の一及其の二に列挙された各事件は不起訴である訳で検事自ら訴状次旦其の一及其の二に関する限り時次としては犯すことの出来ない不可能である犯罪を犯したと言う廉で起訴したことになるのである

第六　法の適訣と犯意

戦争犯罪は本質的に普通刑法上の犯罪と何等異るものではないのであって矢張戦争犯罪も其の構成要件の一つとして犯意を必要とするのである。犯罪の成立に犯意を必要とすることに付ては American Jurisprudence も之を明にしてある。今之を下に引用する:-

「§23. 普通法上犯罪意思の必要. - 普通法の下に於ては犯罪は二つの要素を成立要件とする。即ち故意と違法なる行為とである。法律格言には "Actus non facit reum nisimes sit rea", と言ってある。違法なる行為を為す人の心

0473

にて若しそれが罪を犯す積りでふーちがは其の行為を以て犯罪をおこすと仮定を得ふいのである。即ち動く事が出来ないのは犯罪を犯す意思が必要欠くへからざるものであるからである。斯かる意思は違法ふる行為を為す事は勿論するこを要する。蓋し最後の犯罪意志を以て其の行為を犯罪行為なりと仮定を得ふいからである。犯罪意思は必ずしも其の行為が違法せらるることはあり得るけれとも原則としてはそれが特意に於いて下さるる事実の認識であって裁判所に依って適用せらるる法の意義ではない。…

特定の意思が犯罪の一要素である場合には尚ほ其の特定の意思は主張されることを要する。一般的悪意又は犯意の主張のみでは充分ではない。…特定の意思が成文法に依って犯罪構成上必要とせらるる場合には斯かる意思は行為自体の性質の一部分となるのであるから之は主張せられ且立証せられねばならないのである。」と説いてある。(Am Jur Vol 14, Criminal Law, p783). 更に同書は成文法上の犯罪の構成要素として犯意を必要とすることを次の如く説いてある:

「§24 成文法上の犯罪における犯罪意志の必要。一普通法上犯罪の要素的部分であるところの重要ふる意思又は犯罪の認識は或る場合には一但しその場合はそうではないか一成文法又は命令を以て創設せらる犯罪の要素とせらるるのである。

犯意又は犯罪の認識が成文法上の必要ふる要素なりや否やは成文法に表明せられたる目的及意図から観て其の成文法の字句より決定せらるへき解釈上の問題である。

0474

意志を以て犯罪の要素たがしむることを排除せんとするには新くすることが主張する意見であると言わんことを明瞭に表はさねばならぬ。新かる成文法は須らく機善通法に基いて之を解釈せねばならない」と論じてある。(同書 p784-5)

上述せる如く米国たる通訳時又は指揮官の命を承ける軍の命令又は指示を修得給ふ俘虜に俘へ同時に後者の軍又は其の他彼等の言は人とするところを示唆し俘へて居た言語の作造者に過ぎなかったのであって其の作造に当っては時又は自己の意志は些と雖も其の間に介入せしむるところはなかったのである。俘虜の作業就役に俘ても上官の命令指示を俘へたるのみにて之が決定等には一切関与することがなかった。時又が俘虜の行事かの作業に立会ったとしてもそれは上に述べたる通訳としてであって之が為に時又が俘虜を就役せしめたと言わんことにはならない。時又には俘虜を使役する意思は毫もなかった。即ち時又には犯意はなかったのである。随って時又が通訳として俘虜の作業に立会ったことは犯罪を構成しない。換言すればそれは戦争犯罪とはならないのである。因って罪状次旨其の二に関しては時又は戦争俘虜条に違反する違法行為を犯したと言わんことを得ないのである。

第七 米国通訳の通訳行為と国際法違反

国際法上如何なる行為が国際法違反であるかは之を明示しおかねばならないことは刑法上又は其他の処罰法規上如何なる行為が犯罪或は処罰せらるべき行為であるかを明記することを絶対に必要とすることと全く同じ理由に基くものである。実際上各種条約、宣言、取極、等として或は

0475

規律的な或は見伝的な国際法違反と看做しておるものは一つもないのである。更に従来の先例に依する通訳行為を以て戦争犯罪おりとしたるものもなく又学説も此の問題を論じたるものは或は之を国際法違反おりと説いておるものもないのである。

第三章　訴えたる通訳と国際法違反の責

第八　軍の通訳の国際法違反に対する責任。

茲の通訳が通訳として俘虜の使役禁止作業の就役に当ったとするも其の行為それは何等戦争犯罪とするものではないことは上に詳述したところである。

今検察官の主張する如く被告人勝又が俘虜の使役禁止作業の就役に関連して残虐行為其の一及其の二の国際法違反行為をなしたとすれば其の場合勝又の責任は如何と言うことを考察にみよう。尤も茲に断っておかなければならないことは上に述べて来た勝又が俘虜との関係において通訳という通訳行為をなしたる其の事実をこの仮定の下におくのではないことを明確にしておくことである。

前述せしが如く勝又は一らの軍属であった。彼には常の上官があり且軍属という厳格なる指揮命令系統の中に入の部下として上官の指揮命令には絶対服従の義務を負うべき者である。彼が俘虜の作業就役に関係するのも悉く上官の命令指揮に従って行動したのである。彼に勝又が俘虜をして使役禁止の作業に就役せしめたとすればそれは上官の命令指揮に基いてのである。斯かる場合勝又に

0476

は上官の其の命令に絶対服従するの外はないのである。外は我がしてあった。部下が上官の命令指揮に従って行動した場合仮令それが違法なる行為であっても当該部下はそれに対し責任を負はないと言ふのが多くの学説の是認する処であり旦各国の軍の法規の明示的に採用するところである。

此の原則を肯定する学説並に他の国の軍の法規は皆アメリカ合衆国の最近の軍の法規中此の問題に関する部分をそのまま引用することを本件の弁護に採用せんとする。

「Rules of Land Warfare of 1940
第十一章 戦争法規の違反に対する刑罰
第347節 軍隊の犯したる犯罪 — 此の種類の主なる犯罪次の如し:
…; (俘虜の虐待); …; 平和の標章及標章の濫用並にエネーヴ條約の其の他の違反; …

軍隊の或の個人は其の政府又は指揮官の命令或は認許により犯したる上掲犯罪行為に対しては処罰せらるることなし。斯かる行為を命令したる指揮官或は部下軍隊が此等の行為を為すことの権限を与へたる指揮官は交戦者に捕へられたるとき処罰せらるることあるべし」(同書 pp 86-87)

此の規定に従へば部下たる時次が上官の命令指揮に従ひ為したる国際法違反行為に対しては責任を問はる、ことなく処罰を受くる理由はないと言ふ結論に達するのである。

0477

第四章 Assault と弾丸を発射せる拳銃

第九 Assault

本件事件決定書の示せる被告人勝矢の日本国内に於ける行為を故意を以て違法に而も使者待ち以て戦争の法規慣習に違反したと云ふのである。此の事件決定中特に吟味を要する事項は Assault と勝矢の携帯したる拳銃の事項である。

Assault とは如何なる行為を謂ふのであるかに付ては American jurisprudence の定義を借りることゝいやう。同書に依れば:

「多数の裁判官は以ては Assault は成文法を以て定義してゐる。然しながら成文法上の定義も大した差異はないのであって通常 Assault とは他人の身体に対し暴行の意志を加へんとする現実の実力を伴ふ未遂罪を謂ふ」と説いてゐる。(同書 Vol. 4 Assault §2 Definitions, p125)

上の定義に依れば Assault には其の成立要件として現実の実力が伴はなければならないと言ふことを吾々は知るのである。而て若し present or actual ability を欠くときは Assault は成立しないのである。之れは同書は更に下の通り説いてゐる。

「犯罪としての Assault が行はれる為には犯行者が

0478

対手方に対し危害を加へんとする現実の実力を有し、それはふだんから行使は差し支えない。多数の裁判所はAssaultを以て人を脅迫するには常に異の犯行者が他人の身体に危害を加へんとする意志が表はれ、それはふだんのみならず常に加害の現実の実力がそれはふだんと判決している。

刑事法においてもAssaultの成立要件として加害者は加害の現実の実力と言っているのを要すると規定しているものもある。(中略) 我々は上記の定義に照して見て脅迫を包含せる銃を他人に突付けた場合がAssaultとするや否や一般には疑問がない訳ではないが多くの例を取る時実際犯行者が異の犯罪行為遂行の実力を有しまた一般犯罪としてのAssaultは成立しないというのである」(同書, Assault, In Criminal Assault, p14 Actual Ability, p135)

又は脅迫を包含せる銃

罪状該当異のごとく列挙された事件を取る時異の大部分が被告人腕力が必要即ち拳銃を突付けてAssaultしたと言う事件である。

Assaultが犯罪とするには犯行者に対手方に対し危害を加へる現実の実力がそれはふだんあるからで脅迫を包含せる拳銃を以てしては異の行為はAssaultとはふだんないのである。此の問題に関しては我国あるAm Jurの所論を最も採用する。

「人を脅す方法として脅迫を包含せる銃を突付け

0479

3行為は凶器を以てするassaultとはふさわしくと言うのが判例の一致する処である。凶器を以てするassaultの成立要件として其の使用せられた銃が弾丸を発射したものとふれればよい。実際上多数の判例に於ては弾丸を発射させる銃を他人に実射する行為は之を刺すと言わば成文法上の明文のごとく解釈されてはいないと説くのである。但し斯かる行為が民事訴訟上損害賠償の請求の原因となることは別個の問題である」(同書 Vol 4 Assault §35 Unloaded Firearm - When pointed at Person.)

被告人勝久の携帯していた拳銃は実弾には言い弾丸が装填されておかったことは勝久の証言したところであって他方検察官側は之ら弾丸が装填してあったとは主張していないのである。之が立証責任の問題に付ては後に論及することとする。

第二編 証拠ノ基イテ事実ニ関スル弁論

第一章 前言

本件ハ金属ヲ過失被告人勝矢ガ作業ヲ怠リ必要ナル作業ヲ終ラズシテ之ヲ放置シ作業ヲ為サズ作業ヲ為シタルコトヲ理由トシテ起訴セラレタル業務上失事件デアル。而テ本件ノ如キ特異ナル点ハ被告人ハ主同ノ第弐次目ニ掲ゲタル事件（実際ノ件数十五件）全部ヲ全面的ニ否認シテヲル点デアル。以下被告人ノ為シ又ハ為サザル具体的注意義務ヲ証明スベキ事項ニ就テ被告人ノ人格ヲ証拠ニヨリ之ヲ明カニシタル後証拠ノ表ヨリ第弐次目ノ各事件ノ検討ニ移ルコトトスル。

第十一 被告人ノ具体的注意義務

被告人勝矢ハ昭和16年12月3日ヨリ海軍ニ徴集セラレ次ニ海軍ニ入隊ヲ命ゼラレ第65警備隊ニ配属シ昭和16年12月24日ヨリ同18年11月ニテWake島ニ陸戦ヲ以テ勤務シテヲル。（被告人ノ証言 又Exhibit 16 ノ提出・Deposition Q&A 5. Exhibit 36）

勝矢ハ金属ヲ以テ最初ハ其ノ直上ノ上官ナル数珠玉ノ指揮下ニ入リ昭和17年1月以降ハ第65警備隊司令ノ指揮下ニ入ッタノデアル（Ex. 16 Q&A 5）従ッテ被告人ハ一切ノ指揮命令ハ最初ハ数珠以後ニハ司令カラ受ケタ。然シ実際ノ手続トシテハ副長ノ長カ佐ヨリ其ノ命令ヲ受ケタコトガ多カッタト被告人ハ証言シタ。（被告人ノ証言）

0481

時定の Wake 島における任務は通訳が主たるものであって其の他に翻訳及び庶務係であった。（被告人の証言）而て修潭の取扱は彼の任務とは全く唯一の通訳として事と修潭との間に生じて言葉の伝達に當ったのである。（被告人の証言 Ex 16 Q & A 5 Ex 17 番同の Deposition Q & A 7）と言われは事の命令指示を修潭側に主を英語に依て修へ修潭側の要求見地彼等の言はんとするところを日本語に訳して先方に伝達に止まるのである。其の事実は修潭側にても之を認めている。（Ex 3 Treece's Affidavit p.1, Ex 6 Rogge's Affidavit p.1, Ex 12 McDonald's Affidavit 1, 検察官証人 Kennedy の証言 Q & A 48, 49）

時定が Wake 島に在住中修潭取扱には全任の特技野手中佐より之を担任し困境矢萬及清水一等水兵の二名に於て修潭取扱の事務を補佐していた。（被告人の証言 Ex 16, 山崎 Dep. Q & A 4, 6; Ex 17 番同 Dep. Q & A. 15）それであるから山崎司令及番同も時定には修潭取扱に関する責任はない又修潭を作業に供従していた仕事の割当て等は総て修潭係特技野手中佐又は小川大尉の実施に之を為したのであると口供書に供述している（Ex 16, Q & A 7, 8; Ex 17）

更に本件修潭局の Deposition に依れば修潭を作業に就ては次の如き主旨の責任者は現場に於ける指揮官の作業上の直接監督の責任は其の作業現場における指揮官又は責任指揮官が之を負うことになっておった。而て修潭の作業就役における指揮官は命令を発する権限は通訳にはないことが明かである。（Ex 16）時定の Wake 島在任当時の副長も Deposition において修潭係は野手中佐であって

修養の取扱い関しては勝又は分寺の責任もち、且勝又は修養を作業に就かしむる決定又は命令をなす分寺の取扱もおく且又は分寺の関係も有しおかった（Ex 3の）

加之修養係に於ても上記の事実を認めておることを証言にある者もある。例へばWilsonは修養を事業作業に使用することは日課法違反であるが故に司令に抗議したと言い（Ex 8番）、Roggeは勝又は命令をうけたがそれは多分上官からの命令であろうと言い（Ex 1）、証人Kennedyは勝又の修養に作業の命令をする為同行に来た日本人の一修技が勝又に分が話して居ったと法廷にふれこを言っておる。又Barnettは修養係はCaptain Aokiで修養係修技の通訳はOkazaki Hesoであったと従の Deposition述べておる。（Ex 32）

比喩的に言わばWake島における勝又は一ら。意思のない言葉の作造機関に過ぎなかったことが明にされたのである。

第十二被告人の人格

Naval Courts and Boards の§164に規定せられた被告人勝又の人格証言に関しては15人の従の友人知己より Statement が提出せられた。（Ex 18－31）其の半数は勝又が米国在留中長く交友を持続した何れも社会的に有力ある米国人であって他の半数は彼の若き日本人の友人又は学友である。

比等の Statement の作製者は皆異口同音に勝又幸雄

LL (18)

0483

史の正義・公正の観念に従し誠実にして当法廷の信ずる性格の人物である。彼は人に接するに温情を以てし他人にもよくしてはおるのと変りである。彼の性格が判断すれば彼の宣誓証言がされこれた同僚者を偽言又は非人道的に両者供又は両告待するが如きことはあり得ないことであると小生は信ずるのである。予米 Mr. John H MacGregor は日米両国の百年来平和を目的として交際を続けた人であって彼女の性格をよく熟知している人である。此の人は二三異体的の実例を挙げて彼女の good character を証し最近日本に於て彼女に接触し彼女に遭遇し彼女の百年来の彼と何等異るところなく正義・公正誠実敦厚の性をしてあることを再確認したと述べているのである。

立証の15人の Statement の作製者は何れも立会の上自から記して且信用ある人々であって其の供述は充分信拠するに足ることを強調したいのである。

尚は立号の Statement の取書の詳細については之に反復することを避け Exhibits 18-31 の記載それ自体に譲ることとする。

第二章 罪状項目に列挙せられたる事件

第十三 珠湾攻撃事件（罪状項目1の事件）

立は1941年12月24日に発生した事件である。此の事件並に下記の二つの事件を同時に生起した事件と主張せられているのであって此等三つの事件には高日米事務部隊に依って

0484

Wake島に加へられたる飛行機による爆撃及機動部隊の砲撃の時刻及時間が本訴に緊要なる関係を有するが故に茲に彼我の主張を明確にしておく。証拠として採用せられたCommander Walter Karig USNR及Lieutenant Walborne Kelley, USNR著のBattle Report に依れば当日未明機動部隊のWake島に加へたる砲撃特攻の時刻は午前七時四十分に始まり約30分間足らず続き飛行機による爆撃は其の時刻より40分間続いたとある。(pp 274-276) 此の時刻はWake島のlocal timeと解するを適当とする。

(a) McGill の affidavit (Ex 5) は本事件発生の日は1942年12月12日であって砲撃の継続にある間に勝久に引率せられ来た苦力に依ってdredge及日本の飛行機の大破消火作業に従事することを強制されたとあり、勝久が参統を実施して強制したとは言っておらない。

(aa) 同人のDeposition (Exh 33) には空襲は前午前六時半頃開始され作業を始めたのが前午前九時頃であった。空襲警報も解除も発せられず、他の苦力が作業より帰ったのは正午過ぎであった。勝見に強制されてdugoutを出たのは前午前八時半頃で消火作業の現場に着いたのは前午前九時頃である。消火作業中は勝見も苦力も終始現場に居て指揮はしていなかった。又消火作業中は米国艦船又は飛行機よりの砲爆撃の爆音も実際には行われていなかった。消火作業は約二時間續いた。現場で燃っていたのはdredgeの外に飛行機もあった。彼等が收容所(quarters)に帰ったのは前午後4時頃であった。此の消火作業の命令は勝見自身の命令か彼の上官の命令かは知らぬと述べている。

0485

(bb) 同人の Deposition (Exh 34) には米軍の攻撃が行はれ始めたのは 1942年 2月24日 午后3時であった。同人は dugout から出ることを強要されなかったし消火作業にも参加しなかった。当日・火災のあったのは dredge 丸けであったと思ふ。勝見が俘虜達を連れ出しに来たのは午后3時頃であって dugout に来たのは彼単独であって dugout の唯一の入口の屋外に2人の日本の兵が立っていた。彼の知れる限りでは勝見は消火作業の現場に終始居て指揮していた。消火作業の終ったのは夜の十時または十一時頃であって俘虜達が消火作業から宿舎へ帰ったのは当日夜の十二時頃であったと述べている。

(cc) Stewart の Affidavit (Exh 7) には 1942年 Feb. 24日の米軍の砲撃は約2時間続いた。此の砲撃開始后約一時間の後勝見が dugout へ中央の入口から入って来て俘虜の中の六/七名の名前を呼んで彼と一緒に来るやうにと強要したと述べている。

(dd) Wise の Affidavit. (Ex. 9) には 1942年2月24日の米軍の砲撃中勝見は俘虜に dredge の消火作業に当ることを要求した。それは米軍爆撃機の爆撃中であって勝見が其の命令を下している場所に居たと述べている。

(ee) 同人の Deposition (Exh. 35) には Feb 24日の爆撃は午前九時に始まり約45分間続いた。勝見が俘虜に消火作業を要求したのは翌午前六時頃であってこの作業に従事した俘虜は約15名であった。勝見は dugout へ来た時 pistol と刀剣を手に持って居て此の目撃者は其の現場に居た。併し目撃者は勝見が其の要求をするとき pistol を俘虜に突付けたとは言っていない。消火作業が終了したのは午前10時頃だと述べている。

(e) Aki の Affidavit (Exh 10) には 1942年2月24日 朝 米国艦船及び飛行機よりの猛爆撃のあった際 勝見か他の一人 日本の民間人たる foreman と一緒に傷病達の防空壕に来て dredge と tug の乗組員は dredge の消火作業に就くことを命令した。傷病達はこれを拒んだので 勝見と其の foreman の両人は共に彼等の pistol を取出し傷病達に向けて振り回はした 傷病達が壕より出ることを命ぜられた時は 丁度 飛行機が飛び 爆攻撃が続いていた。消火作業は一時間半程 行はれ傷病が収容所へ帰えってから all clear が発せられた と述べている。

(f) Lee 証人は法廷に於て証言して 1942年2月24日 勝見は 二人の foreman と一緒に 傷病達の dugout に来た。米軍の攻撃は午前6時頃から午前九時頃であった。勝見が dugout へ来たのは午前九時頃で消火作業の命令を下すときは傷病の名は呼ばなかった。彼は消火作業の現場で傷病全体に命令を下していた。其の作業は約1時間半程続き、傷病達が宿舎へ引揚げたのは午前11時から11時半迄の間であった。其の日 all clear が発せられたのは彼等が宿舎へ帰ってからで午后おそくであった。此の証人及他の傷病達が dredge の消火作業に行く為 dugout を出た後 丁度 水平線上に米軍の機動部隊を認めたが 此の機動部隊からの砲火は最早見られず 静かであった。と供述している。

(g) Campbell 証人は法廷に於て証言して此の日 朝10時半頃 勝見が一人の銃剣附の衛兵と伴れて傷病達の居る dugout へ来て dredge の消火作業に行く party を called for したが 誰人で直ちにこれに応ずる者はなかった。此の証人は其の作業には行かなかったが 他の約7人の者が召された行った。其の頃 siren の short blasts の警報が出て all clear は午后2時

0487

か2時半頃鳴った。消火作業に就く者が出て行った後約30分程してから勝見が再びdugoutへ来たと述べている。

此の証人は勝見がdugoutへ来た時pistolに手をかけたかそれを抜かなかったと言い。勝見がpistolを俘虜に突付けたとはそれを見たとは証言していない。尚ほこの証人は勝見が最初dugoutへ来た時はshellingは既に止んでいたと証言している。

(h) 川崎進のDeposition (Exh 16)には1942年2月24日米国の機動部隊のWake島に対する攻撃は日の出約十分前、日本標準時刻で3時50分即ちWAKE島のlocal timeで午前5時50分頃で約1時間続いた。此の供述者の知る限りではdredgeの消火作業に俘虜は使用されなかった且・自分は其の命令を下さなかったと述べている。

(i) 被告人勝見は法廷に於て証言して1942年2月24日朝6時半か7時頃米国機動部隊の攻撃が始まった。其の時彼は空襲であると気付いたので近くの第一中隊、第一小隊の戦斗指揮所の防空壕へ中隊長宮崎海軍大尉及その他7/8名の下士官と共に入り、其処に引続き午后1時前后All clearが鳴る迄居った。米軍の実際の砲爆撃は一時間か一時間半であったと思ふ。All clearの発せられた後自分の部屋に帰って其処に居ったと供述した。而して勝見は当日何れの時刻に於ても俘虜のdugoutに行ったこと俘虜に消火作業を命じたこと、俘虜を此の作業に就役せしめたこと、此のpistolを俘虜に突き付け脅かしたこと等は全然ないと否認している。

上記のAffidavits並に検察官証人の証言を検討するにAffidavits相互の間に多くのdiscrepancyがあり、

Affidavits と証人の証言及証言相互間にも多くの inconsistency が存在しているのである。斯かる証拠を以てしては準確の真相を確定することは出来ない。検察官は何人も合理的疑念を超さるまでに此の事件を立証していないのである。他方被告人は検察官の主張事実を全然否認しているのである。

第十四. 飛行場滑走路修理作業事件 (罪状次目1(a); 罪状次目2(a); 罪状次目3(a) 事件)

本事件は1942年2月24日又は其の次末米陸軍部隊の Wake 島攻略の最中に被告人勝又が修理を強要して飛行場滑走路の修理作業に就役せしめたと言う事件である。

(a) Barnett の Affidavit (Ex 2) には1942年2月24日午前7時次米軍砲台より砲火が開始せられ午前11時次勝又は修理達の指揮隊へ来て dirt-moving crew 全員に対し米軍の砲火に依り破壊した飛行場滑走路の修理に行く様に命令した。修理達は shelling が継続して居るので行くことを躊躇したが。其の時勝又は Hokanson を pistol を以て脅した。其の crew は午前11時頃迄から夜の9時次迄其の修理作業を行った。米軍の shelling は午後の三時次止んだと供述して居る。

(aa) 同人の Deposition (Ex 32) には其の日朝11時次勝又が修理の指揮隊へ来て数回 Hokanson の名を呼び同人に滑走路修理の作業隊を作る様命じた。勝又は直接此の修理の指揮は執らなかった。Hokanson, Bill Bo Raye, Tex Lancaster, Joe Dunn 其の他の者が之等に従事した。の て勝又は pistol を以て Hokanson を脅した。其の日此の修理作業に使用された修理は Hokanson, Bill Raye, Tex Lancaster, Joe Dunn 及此の如き人を60名であったと述べ

123。

(b) Stewart の Affidavit (Ex 7) には 1942年2月24日 米艦の攻撃が頭上から行はれた。此の攻撃は約二時間続いた其の開始後約一時間程の後 勝男が従廣達の dugout の中央入口へやって来て、7人の従廣の名前を呼んだ。勝男が従廣達の dugout の中央入口にやって来て 6/7人の従廣の名前を呼んだ。勝男は其等の従廣に自分(勝男)と一緒に来るよう強要した後其等の従廣と一緒に去った。其の後約半時間の後再び dugout で勝男は来て今度は 20/25人の従廣の人名を呼んだ。而て其等の人々に東京から回航飛行機が応援の為到着するから滑走路の修理に行くべう命じたが従廣達は之を拒絶したのでpistolを取出し武装せる番兵を呼んで其等の人々を連て行かしむる様にしている

(c) Wise の Affidavit (Exh. 9) には 1942年2月24日 米国軍艦からの砲撃があった。此の時勝男は従廣の William Ray 及その construction crew に対し飛行場に赴き滑走路を修理するよう要求した。此の供述者は勝男の此の要求を為す時其の場に居た。同人の記憶している其等の従廣の名は William Ray, Miles R. Wardle, Porter Wardle であると述べている。此の供述者は勝男が其の時 dugout で pistol を振り回したとか之を突き付けて従廣達を脅したと少しも供述していることは注意に値する。

(d) 同人の Deposition (Exh) には2月24日の砲撃は午前九時頃開始され約45分間程続いた。勝男が Ray 及その construction crew に命令した時は裸になっていた勝男は一方の手に力を持ち他方の手に gun を持っていて其の刀を振り回した此の滑走路の修理作業は午前9時頃に始められ午後4時頃終了したと述べている。

0490

(d) Grunstedt の Affidavit (Exh 11) には 1942年2月24日の朝食頃 sirenが鳴ったのでそれが米軍の攻撃であることを知った。修虜達が最寄の防空壕へ逃げ込んだ。それから約45分程してから日本人通訳の勝見が其処へやって来て airport crew に飛行場滑走路の修理に出掛けるよう命令した。All clear の鳴る前に其の壕を出ることを拒んだので pistol を手に持って脅した。それで其の人々は飛行場へ出掛けて行った。

(e) Ward の Affidavit (Exh 13) には1942年2月24日朝日米軍の空襲警報が鳴った。俘虜者達が shelter に入ってから約45分してから勝見が其処へ来て彼等一団の者 (a group of us) に飛行場の修理を命令したが俘虜達が拒んだので勝見は pistol を彼等に突付けた そして彼等に行くよう告げた と述べている。

(f) Campbell (Witness) は法廷に於て証言して当日朝勝見は dredge のついを伴に来てから約30分後に彼が再び dugout へ来て飛行場で作業する人々を asked for した。そして dugout の一方の端の方で此の作業に行く人々を選んだ。其の時勝見は俘虜の氏名は呼ばなかったと述べている。

併しその証人は再び勝見が dugout へ来た時俘虜達が勝見の其の命令を拒んだとか勝見が dugout で pistol を俘虜達に突き付けて脅したとかそれを振り回したとは全然証言していないのである。

(g) Kennedy (witness.) は法廷に於て証言した1942年2月24日米軍機動部隊の爆撃のあったことを記憶している。その朝6:00か6:30 Sirenが鳴ったので証人は dugout に入って、其の後其処にいた。其の時民間人設営隊の人々が先ず出掛けるよう要求された。それは多分飛行場滑走路の作業が必要であった

0491

からであらう。勝見は出たり入つたりしていた。勝見は最初から学廣達と共にdugoutに居た。証人はAll clearは聞かない。勝見が爆弾継続中学廣を作業に就かしめる為dugoutに来たのは証人が知つているのか3回或は4回であつたかも知れぬ。現実にshellingの止初たのは何時か知らぬと述べている。

(h) GraustadtのDeposition(Exh.39)には勝見は自分が防空壕に避難したとき其処に自分と一緒に居った。此の作業(飛行場滑走路修理)を始めたのは午前11時頃で、勝見は現場へ午后2時まで其の日引続き其の現場いた。此の作業は其の後も引続き行い自分がWAKE島に居る間のregular jobであつて勝見は此の日以前にも飛行場へ来て居つたと供述している。

(i) 川崎証人のDeposition(Exh.16)には飛行場の修理作業はWAKE島Construction Companyの責任の下に在つたと述べている。

(j) 被告人勝見は法廷に於て証言して当日朝空襲と気付いたので戦斗指揮所の防空壕へ入りall clearが鳴るまで其の中に居りall clear発令後自分の部屋に帰つて其処に居たら間もなく副長の傳令が「今日も飛行場の作業を続行せよ」との命令を伝えて来たのを受けた。其の作業というのは二月上旬以来長副官が飛行場作業長Rayに命じて続行して居た作業である。そして勝見は其の連絡員をしていたのである。長副長の其の命令を持つて学廣の防空壕に到りRayに其の命令を伝へ同人他5/6名の学廣を伴れて飛行場へ行つた。其の防空壕へ行つたときは学廣が300名位全部いた。勝見が防空壕へ行つて西の入口から入り、入口に居るguardに警戒警報が解除になつた。長副長から今日も飛行場の作業を続行せよとの命令を受けた旨を告げ西の入口からRayを呼ぶRayが来たのでall clearが発令された。そして副長から作業・続行の

0492

命令が出たことを伝へたらRayは其のことを他の従僕に伝へた。此の作業の続行に対してRayはげ手の抗議をしたかつた。勝見は単独其の防空壕へ行つた。その時勝見は海軍の拳銃は携帯していたが決して之を取出さぬ。此の拳銃にはボタンがかけてある。當てpistolを取外したことがない。此のpistolには常に弾丸の装填してない。此の日飛行場へ伴れて行つた従僕はWilliam Ray, Chambers, Smithの3名であつた。作業は手帝通り午後3時まで為に飛行場には投弾はなかつた。従僕は其の日の作業中には自論警戒配備中も作業に使役されたことはない。勝矢は当日又は其の以外の場所におてもpistolを取出し又は之を実包して従僕を脅かし又は従僕を作業に就かしめたことはないと述べてゐる。

上掲のAffidavitsと検事局側証人の証言相互の間には多数の喰違ひがあり其の如き証拠を以ては決して事件の真相は確定出来るものではない。検事局事件の主張はbeyond a reasonable doubtに立証せられたといふことは出来ない。他方被告人は検事局の主張事実を全く否認してゐるのである。

第十五 高商強制労働作業事件（罪状次目1(c)；罪状次目2(a)；罪状次目3(a)）。

本事件は1942年2月24日又は其の次末年秘密部隊のWalk島強制集中従僕を高商強制労働作業に使役したと言ふ事件である。

(a) Freese a Affidavit (Ex 3)には1942年2月24日午前7時20分次末官暗号電文が開かれた。供述書及従僕

0493

達は直ち防空壕に入って其処にる30分間程居た。勝又も修慶達と一緒に其の壕の中に居った。其処で勝又はPeale島の3吋砲を修理する為民間人修慶を集めて命令を受けた。そこで勝又はmachine shop の crew に其の作業を命じた。Frank Mignach, Frank Hosting と此の供述者は防空壕をおてtruck に乗せられた。此Peale島へ行く途中彼等は民間人であるから危険施設の作業はさせるべきでないと抗議したがそれは命令だそれに従はないれば牢獄だと言ってpistolを取おして其はれたと供述してゐる。

(b) Stewart の Affidavit (Ex 7) には1942年2月24日頃集合止む迄勝又が再びdugout へ来てCapt Wilson と Wt/Sgt. Paskowicz 2名を呼んだ。其の時ピストルを持ってゐた。此の修慶達はPeale島へ連れて行かれ未だのる時高角砲の修理するやうに言はれた。其の砲は大破されたものであって日本人が之を使用しやう試みたものであったと述べてゐる。此の供述者は修慶のうち抗議した又勝又が修慶達をPeale島へ連れて行ったことは供述にみない。

(c) Wilson の affidavit (Ex 8) には日附を書かれて勝又がshelling の最中此の供述者とWt/Sgt Paskowiczを海上陣地へ連れて行き此の供述書に其の旨を述べて誓いた注意に後する事告げた。此の間未曾有の shell は落下し飛行機は此の陣地に大量爆弾をかけ機銃掃射をやったと供述してゐる。

併し勝又がpistol をおして脅したとも勝又に抗議したとも述べてゐないのである。

0494

(d) McDonald の affidavit (Ex 12) には多人及氏同人が多の group の係であった Marine Corporal Paiche を指揮して大砲及其の装備を修理せしめたとの事が述べてある。

依し其の日時を明示にあらわしのみならず 時久の従事をとの作業に於けたとは書いてあらわれ。又時久の名は列記されながらが 時久が修理の指揮に来たとか pistol を発射したとかを抵抗して殺したとかは一切述べてあらわれ。

(e) Kennedy (witness) は法廷に於て証言して 1942年2月末機動部隊の爆撃のあった直後修理の中なる者は3時間及機関銃の修理作業に当たねばならなかった。此の作業に行ったのは Wilson, Parkowitz, Harmon であった。此の作業に当ることを言はれた此の証人は拒絶した。其のは時久は手に pistol を持ってわたので これ以上拒むことは無用と思った。それて其等の人々は行くの絶えなかった。其等の人々は主て行ったか此処て特に明かにしておきたいことは時久が此等の人々に行くことを強要したのは一人の日本官の将校と一緒に来ておったことである。此の証人は上記の作業に行かなかった。此の作業に此しの証人も加って行ったと書いてある此の証人の1946年12月6日附の affidavit は間違である。時久が上述の命令をおいた時 其の同行の将校が先きに時久に対して話をした後に時久が其の命令をした。此の機関銃の修理作業の group の編成したのは dredge の指た作業の group の前であったか後であったかは知らぬ。Shelling の始まったのは朝6時が6:30であったか 其後それの止んだのは何時であったか知らぬ。と供述してある。然るに此の証人の証言中 其の affidavit に至るまでに何等の間違があること並に時久が命令する前に同行の将校が時久に何か告げたことを明かにした

0495

とは特に注意を要する点である。

(c) 被告人自来文は注連川にて証言に 2月24日新斗半高角砲に故障を生じたことは知らぬ。其の日修復が高角砲の射撃作業に使役されたことも自分は斯かる命令を上官から受けず又其の現場に行かなかったから全く知らぬ。其の日又は其の次修復を finish と聞いたこともないと供述している。

上掲の Affidavit 及検察官証人の証言相互の間には多くの discrepancy が存することを発見する。斯かる事故を以てしては事実の真実性を発見出来ない。検察官は何人を合理的疑を挟さまるまでに立証しておらない。之れ被告人は此の検察官の主張事実を全く否認しておるのである。

第十六 集音取除き作業事件 (罪状次目 1 (d); 罪状次目 3 (d))

(a) Aki の Affidavit (Ex 10) には 1942年3月下旬次男秀男は此の供述書者, Lee, Kapale, Kapehi に集音 Wire Cable を結い付けるよう命じたが秀男は操業は既に取除かれてあると言ったが猶 Whead はないてみたので秀男にも手伝えと言った。此の供述書は其の集音の附近で作業をするのを嫌であったが秀男が集音 wire cable を結び付けられれば直ぐと言った。其の作業中 cable は数回切れた。それ故 20呎の下まで潜水夫は水中を潜らされれはならなかったと供述している。

(b) Lee (witness) は法廷に於て証言して 1942年3月23日

0496

勝見が俘虜のcompoundへ来てboat crewは魚雷を取除けよと命じそれを肯なければ射つと云つてpistolを突付けた。現場で勝見はwarheadは既に取除いてあり危険はないと云つた。併しそれはなは付いてゐた。Wire cableは切れたので20呎の下へ落ちた。其の作業に当つた者は此の証人の外6人であつて此等6人全部が水中に潜つてwire cableを魚雷に結び付けた。其の時勝見は潜らなければ射つと云つた。現場のtugには日本軍の士官が一人居たと供述してゐる。

(c) 長副長のDeposition (Exh. 37)には自分は其の魚雷のfuseとwarheadは海岸波に洗はれ損壊してゐるので最早危険はないと聞いて居たと供述してゐる。

(d) 岩間忠一のDeposition (Exh. 38)には其の魚雷はcoral reefと引掛つてゐて其の一部は干潮の時は見へた。此の引揚作業にtug boatが用ひられ大体自分は現場に居つたが魚雷と深いまへ引張る為ropeは用ひた事は覚へてゐるけれともそれが為水中に人が潜水しはれはならなかつたか否かは覚へてゐない。Tugを用ゐる分会は本部から来た。多分小川大尉がうたつたと思ふ。俘虜を此の作業の一部に使用することに関係したか否かは覚へない。自分が最初此の魚雷を見た時は其の頭部は破砕され殆んど頭部の見分けがつかない程であつた。弾薬のあると思はるる部分は完全に崩壊し内には弾薬はなかつた。自分は3 metres位の処から之を実際に見たつてあると述へてゐる。

(e) 被告人勝見は法廷に於て証言して3月下旬頃Wilkes島で日本軍が一本の魚雷を発見したので或る日長副長がWilkes島の海岸の岩間に魚雷が挟つてゐるから俘虜と共にcraneを以つて引揚に行けとの

0497

命令を受けたので勝見は Chambers 一人を伴れて Crane truck で出掛け現場に着いたのは夕方であった。それから Wilkes 島の派遣隊本部で魚雷の在る場所を尋ねた其の時兵隊が其の魚雷の信管は既に取除いたと告げた。魚雷の在る場所へ行ったが途中岩が多く又金糸條網のあったので crane が使用出来ないから crane を道の途中におきたまゝ帰って来た。其の後再び其処へは行かぬ。其の後其の作業が行はれたか否か誰に依って何時行はれたか知らぬ。自分は其の命令は其の後受けず又現場にも行かないから全然知らぬ。

勝見は現場に行ったのは通訳即ち連絡係として行ったのである。帰ってから長副長に報告をした。隊長の Lee が其の作業に加はったか否か全然見受けなかったから知らぬ。誰か dive したか自分は其の現場に居なかったから知らぬ。Lee か勝見が pistol で撃したという証言をしたのも聞いた。それとも勝見はそんなことを為したことがない。Affidavit に同様のことが書いてあることを此の法廷で聞いたけれども勝見は全然そんなことをやったことはないと供述しておる。

上記 Affidavit も検察官側証人の証言との間には不一致の点があり此等の証拠を以ってしては検察官が beyond a reasonal doubt に立証したとは云ふことは出来ない。他方被告人は検察官主張の本事件を全然否認しておるのである。

0498

第十七、弾薬爆弾の陸揚運搬作業事件(罪状項目I(e)；罪状項目II(e))

本件は1942年3月23日頃の俘虜を弾薬及弾爆の陸揚運搬作業に使役したと主張せられた事件である。

(a) Lee (witness)は法廷に於て証言して1942年3月頃日本船が入港した際其度毎に弾薬取扱艀、爆弾の陸揚作業をさせられた。此の作業には日本のmilitary personnelも参加し此の作業中終始勝見が現場に居たか否やは知らぬ。此の作業は5/6回せうたと供述している。

(b) Roggeの Deposition (Exh. 34)には此の口供者はWalsh-front で deck hands として日本の運送船から弾薬、軍需品を陸揚することに従事した。共従者の働いたのは Goldie Akiyama の下で働いたと供述している。

(c) 川崎進の Deposition (Exh. 16)には自分の知る限りでは俘虜は誰も兵器弾薬の荷揚に使はれたことはない。此の作業は Harbor Master の管轄であるとのべている。

(d) 岩間忠一の Deposition (Exh. 17)には俘虜は兵器弾薬の陸揚に従事したことは覚えぬ。食糧の荷揚には使われた。此の荷揚作業の命令は小川大尉か長副長から下されたものと思ふ。通常直接の命令は小川大尉の事務室から出て居た。勝見が俘虜を兵器弾薬の作業に使ふことの命令を自分又は他の者に傳へたことは覚えぬ。又勝見が俘虜を仲仕作業に伴れて来たか否や覚えぬと供述している。

(e) 長副長の Deposition (Exh. 37)には俘虜が日本の

0499

輸送船よりの兵器弾薬の荷卸して使用されたことを聞いたことがあり
此の種の作業は施設部の管轄である。勝見が此の作業に當て
參加したことは覚えぬと供述している。

(f) 被告人勝見は法廷にて証言して日本の輸送船の到
着して荷揚作業を為すことに全然関係したことはない。俘虜が荷揚
作業に使われたであうに思うけれどもそれに立会ったことはない又
通訳をやったこともないし右様な命令を受けたこともないと供述している。

上述の如く俘虜を荷揚作業に使役した直接の責任者或は担当者
は勝見以外の者であって又勝見が此の作業に一切関係した事実
がないことが明かにされた。勝見は検察官主張の事実を否認
しているのである。

第十八　大砲の撤去及据付作業事件(罪状項目・2(d))

本件は1942年3月一日頃勝見の俘虜を強制して日本軍艦船より
大砲を撤去しこれを沿岸防備砲として海岸に据付ける作業に就役せしめ
たと主張せらるる事件である。

(d) Banuett の Affidavit (Exh2) には此の供述者は屢々日本軍
の艦船より5"砲の撤去する作業及これを沿岸防備砲として海岸に据
付ける作業に使われたと供述している

(dd) 同人の Deposition (Exh32) には此等の作業は日本海軍
大佐 Sasaki Taicho が監督した。此の将校は数の上官から
此の作業に配置された。と述べている。併し此の両方の供述中には
日時の記載なく勝見が此の作業を命令したとか勝見が其の現
場に居たということは一切述べられていないことは注目に値する。

(b) Lee (witness) は法廷に於て証言して1942年3/4月頃此の証人は他の俘虜と共に日本駆逐艦へ行って5"口径の砲4門を取り外し彼等はそれを水際迄搬んで来た。此の作業は勝見が割当した。其の後他の俘虜が此の大砲を島の諸所に据付けた。此の作業は3月より4月下旬迄約3週間かかった。此の命令はHakamoriが勝見より受けた。勝見はbargeに居たが一回も駆逐艦へは行かない。此の証人は此の作業に従事したというよりもtugの乗組員の一人であった、と述べている。

(c) 川崎氏のDeposition (Exh 16) には確かな月日は言っないが大砲が取り外して海岸に据付けたとはある。併し其の大砲というのはそれに用ふる弾薬が日本軍に揃合せがなかったので使用出来ないものであった。それ故此の"install"という語は妥当でないというのは其の大砲を単に駆逐艦から撤去して之を海岸に置いたというだけのことであるから

(d) 長副長のDeposition (Exh 37) には大砲を日本の駆逐艦から撤去して之を海岸に設置したが此の作業は川崎司令せった、俘虜は此の撤去作業には使用されなかったが、其の設置作業には使はれた。但しそれは土木作業に使はれたのである、と供述している。

(e) 被告人勝見は法廷に於て証言して1942年3/4月頃日本の駆逐艦から大砲が撤去されたこと及それが据付けられたことを知っているけれども、此の撤去作業に俘虜が使われたか否か全然知らない。其の駆逐艦に行ったことがない。併し其の据付け作業に俘虜が使われたことは知っている。之は長副長が命令したもので勝見は副長の命令で、それを通訳する為に立会ったことがある。此の作業には日本の兵隊が主となって当り俘

0501

虜に之に手伝つた式けである。作業の現場には終始ではないが日
本軍の士官が屢〻来て作業の監督をしておつた。此の作業には
日本軍の下士官兵隊及俘虜が従事したと供述している。

此の「作業の性質」に関し検察官側提出の
Affidavit (Exh.2)の作成者Barnettも作業監督者は海
軍大佐 Sasak Taichiであると証言している。而も勝見
が作業命令した点という証拠は少しも挙つていない。之に反し
勝見は本予件に関しては検察官主張の事実を全然否認
しているのである。

第十九 機関銃砲の部分品の製造及其の改造作業の件
(罪状項目2(e))

本件は1942年3月一日の頃、勝見が俘虜を強制して機関銃
砲の部分品の製造及其の改造作業に就役せしめたと主張せら
るる事件である。

(a) Freeseの Affidavit (Exh.3)には自分はWAKE島
に収容されていた間発ぺす機関銃の部分品を製造すること
に使はれたと供述している。併し何等勝見がこの作業を命令又
は指図或は監督したとか言つていない又勝見がその作業に
関係してかつたとか其の現場に居つたとは供述していない。

(b) Roggeの Affidavit (Exh.6)には吉等俘虜虐の作業
はいつもGrumman fighterの機関銃を定着砲に改造す
ることであつたと供述している。此のAffidavitにもこの作業に
勝見が関係したことは些も述べていない。全然勝見の名は表れ
ていないのである。

0502

(c) Barrett の Affidavit (Exh. 2) には此の作業に関して述べてあるけれども勝見の名前は全然表はれていない。

(d) 長副長の Deposition (Exh 37) には自分は當て序屢か校関銃を地上校関砲に改造又は其の部分品の製造する作業に使はれたことを聞かない。此の作業の監督又指図は鈴木中尉がした。勝見がこの作業に関与したことは決して聞いたことのないと供述している。

(e) 被告人勝見は法廷に於て証言して1942年3/4月の頃工作部へ行った時序屢が校関銃の架台の製造に従事しているのを見たことがある。その作業の命令は恐らく校関長が下したものと思う。勝見はこの作業に一切関係したことはないと供述している。

上掲 3 Affidavit には勝見が名さへ表はれていないのみならず勝見がこの作業に関係したと述べていない。かかる証拠を以ては本予件に據て勝見を起訴することは不可能である。勝見は本件を張る実を全然否認しているのである。

十二 砲床構築作業予件 (罪状項目2(f))

本予件は1942年3月1日頃勝見が俘虜を強制して砲床を構築する作業に就役せしめたことを證せらるゝ予件である。

(g) Freese の Affidavit (Exh 3) には極めて簡単に"自分はWAKE島に收容されている間又日米駆逐艦から取外された4"砲の砲床を造らねばならなかった。又自分は

0503

A L Smith B Bill Haynes が決えず新らしい砲の据付け作業をしかうのを見たと供述しているが信ぜられない。これは全く時久の名をへもぼべてない。

(c) Barnett の Affidavit (Ex 2) B Deposition (Ex 32) には此の供述者は指令防衛砲の据付けをやった。此の作業の監督者は日本側当局者 ✱ Susaki Taicho であった。此の Susaki は其の上官から此の任務を命ぜられたのであると供述している。併し此の Affidavit も Deposition には此の作業に関連して全く時久の名はあらわれない。

(d) Wilson a Affidavit (Ex 8) には多く従業員が日本側機関銃 pill-boxes を築造することを要求されたので之は国際法違反であるとして 日本側当局者に抗議をしたと述べているに過ぎない。之にも全く時久の名は表はれておらないし且其の作業を何れ年月日さへも書かれておらないのである。

(d) Campbell (witness) は法廷において証言して此の証人は machine gun nest 及機関銃 pill-boxes の構築作業に手伝はせられた。此の作業は時久から命ぜられたと述べている。

(e) 長副長 の Deposition (Ex 30) には多く未構築作業に従事を使用したことを聞いたが此の作業は終未中村かうと思ひ指図したと思ふ。併し或は当番は施設部隊やったかも知れぬ。時久は自ら此の作業に関与したことは見へぬと供述している。

(f) 被告人時久は法廷において証言に多く作業は絶

0504

の指令に関連したもので副長が隊員の技師長 Zensen に基の設計を命じ勝久は基の退去を迫った。勝久は基の作業中も副長の命じ通訳連絡をやかましすぎたいと供述した。

基の如く勝久は検察官主張の本件事実を全く否定している。

第二十一 新嶺又鉄條網建設作業事件（罪状認否以外）

本事件は1942年3月旧次勝久が隊員を強制して堅嶺又鉄條網を構築する作業に就かしめたと主張せらるる事件である。

(a) Rogge の Affidavit (Ex 6) には「初めて両名が「吉寺の作業は第一 gun position 及塹壕に関連してであった… 吉寺は此等の作業区域の全部に亘って鉄條網を張った」と供述している。

(aa) 同人の Deposition (Ex 34) には「他の両名が「吉々の箇所だけ全部が終了された。第一の作業は四本に鉄條網を張り回らすことであった」と述べている点が異なる。此の双方には作業の年月日も又全く勝久の名が記されていない。

(b) Mc Donald の Affidavit (Ex 12) には「此の供述者は二回目の鉄條網を張る作業に就かされ基地に入らねばならなかった。之が彼と共に珊瑚礁の為に危険であったので作業中悪口つく杯るが聞えてきたときは guards 又は勝久から脅された。勝久は何々との作業にまることを指令したと供述している。

(c) Campbell (witness) は証言して証言に曰く「自分は Wake 島で型枠構築の手伝をした。此の作業の為、今は膝又の分全くない」と供述している。然し膝又の骨折をさせたとか膝又が骨折したとは言っておらない。

(d) 川崎進の Deposition (Ex 16) には「自分は決して作業の型枠堰及鉄筋組張を命じたことおく又作業がこれの作業に使はれたのを目撃したことはない」「自分は各部隊が各自各々の型枠を造り又は鉄筋組を張ったと思ふ。此の種の作業即ち型枠堰鉄筋組張は夫々の各部隊が実行した」と供述している。

(e) 長副長の Deposition (Ex 37) には自分は作業の一型枠堰及鉄筋組張作業に使はれたことを聞いたことはないのみならず作業がこれの作業に使はれなかったということは確実である。これの作業は各々隊の部隊長の自己の担任として夫々で実行した。膝又がこれの作業に関与したとは思はぬと供述している。

(f) 被告人膝又は証言して証言に「自分は鉄筋組を張ることに従事した人が作業が行はれたか否か全然知らない。型枠堰は自分の部隊が作業をしたのを見たことがある。作業が型枠堰に使用されたか否かは全然知らない。又作業がこれの作業をやっておるのを見たことも聞いたこともない」と供述している。然し膝又は本件主張事実

0506

を全く否認しておるのである。

第二十二 棍棒等い依る"Red"殺打事件（罪状次目3(a)）

第二十三 Pistol を以てせる"Gramstedt" assault 事件（罪状次目3(f)）

第二十四 刀の鞘を以てせる"Wise"殺打事件（罪状次目3(f)）

第二十五 Hoffmeister 殺打傷害事件（罪状次目3(f)）

第二十六 "Lee" 潜水強要事件（罪状次目3(g)）

第二十七 棍棒による Fontes and Dunn 殺打事件（罪状次目3(g)）

此等い関の主張事実い関しては他の主張事実と同様い被告人勝矢は当法廷い於ける彼の証言い於て絶対いこを否認しておることは委文会と承認された通りである。唯上記事件中 Hoffmeister 事件い関しては被告人は彼の知るところとしては Hoffmeister が刺刀い向かれそれが為抗闘を交えておる間い突進が同人を殴倒しておるのを見て之を救う為殴倒をしは取調の過程がお来ぬから止めるやう取調の任い当れる士官い要請しそれを止めさせたと証言しておるのである。

上い本件起訴各事件い付縷述しておる通り被告人勝矢は之等訴次目い列挙せられた主張事実は全部之を否認しておるのである。

0507

第三章 証拠の一般的原則, Alibi, Unbounded gun
の立証責任

第二十八 立証方法

本件における検察官側の証拠は3人の証人と13通の Affidavit であつて其の主証の方法の大部分は Affidavit である。Affidavit は ex parte に作製せらるる書のであるから其かかる証拠書類を以てしては起訴事実は到底確立し得ないのである。一方の提出する証拠は他方の cross-examination にかけられて初めて或る程度の事実の真実性を証明するものである。現に本事件においても検察官側の証人 Kennedy は法廷において最も自己の作製にる Affidavit は誤謬のあることを明かに証言した。之も反対側の cross-examination に依つて初めて発見し得たのである。若し cross-examination が行はれなかつたならば此の事実は発見未来なかつたのである。其の他多くの Affidavit により明確を欠く個所は相当にある。それ故 Affidavit 自体は其の儘では決して事実の真相を確立する証拠とはなり得ないのである。此等の実例に鑑みて Naval Courts and Boards が§217において Affidavits は之を証拠とみなすことを得ないと規定にある Admiral が明瞭に了解出来るのである。かゝる故に本件において検察官は如何に多数の Affidavit を提出するも之を以て本件に主張せらるる事実は到底確立出来ないのである。

尚は他の多くの事件において被告人自身の statement が検察官に依つて提出せらるるを通例とするに拘らず本件においては被告の statement は一通も検察官側からは提出されなかつたことは吾々の注意を惹くものである。

第二十九　一般的各論と其の立証責任

上記第二章第十三以下第二十七の各主張事件の検討に於て述べたる通り被告人陳文は事件起訴当時及犯罪後次回到来の主張事実は全面的に争う旨を否認したるのである。検事は立証責任の原則に依つて此等主張事実を立証しなければならない。

アメリカ法律学は次の通り説いてゐる。

"Criminal Prosecutions. Para 149. Generally -- The general rule as to the burden of proof in criminal cases requires the prosecution to prove beyond a reasonable doubt the essential elements of the offense with which the accused is charged; and if the proof fails to establish any of the essential elements necessary to constitute a crime, the defendant is entitled to an aquittal. The rule imposes upon the prosecution the burden of proving the existence of every element necessary to constitute the crime charged. The burden of proof as understood in criminal law is never on the accused to establish his innocence or disprove the facts necessary to establish the crime charged nor is the burden ever upon the defendant to show that he did not commit the crime. The necessity of adducing evidence to meet the case made by the prosecution may devolve upon the accused, and he is required to assume the burden of proving affirmative defense upon which he relies; but the burden of establishing his guilt rests on the prosecution from the beginning to the end of the trial, even when the defendant offers an affirmative defense. Nonaction of the defendant in a criminal case cannot be substituted for action on the part of the state as to any matter required to

0509

to be established as a part of the state's case. This rule obtains not only from the well-established principle that the presumption of innocence is to stand until it is overcome by proof, but also from the form of the issue in all criminal cases. The defense, being a general denial of the crime charged, necessarily imposes on the government or state the burden of showing affirmatively the existence of every material facts or ingredient which the law requires." (American Jurisprudence, Vol. 20, Criminal Prosecutions, para. 149., pp. 153-154).

然る㆑檢察官は果㆓本件主張の各罪狀次目引用の事実を何人も合理的疑㆟を胎さざるまで㆑主証し得たであらうか。No!

第三十 Alibi と其の主証責任

(a) 罪狀次目其の一及其の二

本件罪狀次目其の一の(a)(b)(c)其の二の(a)(b)の事件即ち dredge 大天指北作業及飛行場沿岸路修生作業並㆓高角砲修営作業は檢事官の主張㆓依れば 1942年2月24日乃至㆓本事件勃発前後より引続き連続的に行はれてゐる訳㆓して被告人陸尺が作業を強要㆓て此等の作業㆓就かしめたと言ふのである。

然る㆑檢察官側及被告人側の証拠㆓依れば此の現実の作業は大体毎日午前7時から午後5:30次から約一時間行はれた事である。然る㆑最も信頼性のある Battle Report (被告人側より証拠として提出せられた)㆓依りと此の作業は毎日午前7時40分より40分間実際㆓行はれたことが明かにされた。檢察官の主張が假㆓真なりとせば陸尺は此の40分

間の短時間ぬん作業を終って此寺ニ所の現場ん行き一切の
時間又は全時間組寺と共ん作業の現場ん居ったと言わことん
ふ、それはふびぬ。検事官吏の証人及 Affidavit の供述者中
或る者は勝矢が組寺と一緒ん現場ん行き其処ん終始居
った又は終始居って作業の監督及指図をしおったと言ひ或
る者は作業と共ん主箸の私邸より引続き附き添ってお
ったと供述にみるのである。此の詳細ん点は第二章ん於て既
ん指摘した通りである。高日勝矢は一人で数ヶ所き数個の作
業所ん同時ん執ることは全く物理学上不可能のことであって検
事官の莫かま証拠を以ってには其の日の勝矢の動静の事実
は到底確定することは出来ないのである。他方勝矢自身は証
言に主箸の私より午后一時頃 all clear が発せらるまで一
中隊銃斗指揮所ん引続き留ってみたと供述し土橋作業
達の作業のこう所ンは勿論作業達の附き添へは行った
ことなく其処ん居ったことも全然ないと証言にみる。且し
all clear 後自宅ん帰ってから約一時間の後前長の命令で
作業達の附き添へん赴いたと供述カロへて証言した。

(ロ) 罪状次目其の三

罪状次目其の三の各主張事実ん関しも勝矢は全面
ぬん否認し其の現場ん居がさりしことを証言した。但し
Hoffmeister 事件ん関しのみは其の現場ん在りしことを認
めたが検事官の主張と正反対ん無辜の方へ、あれし筆
端を止めしめたのである。

之を要するん勝矢は罪状次目其の一其の二及其の三
の夫々の事件の現場ん実際ん居る者がなく又事実其等の
現場ん居らなかったのである。Alibi の挙証ん付 proof

beyond reasonable doubt を以下とおいて下にアメリカ法律の述べるところを援用する。

"Section 174. Presence of Accused at Time of Crime; Alibi. -
Considerable confusion and conflict of authority exist upon the question of the burden of proof in a criminal case as to alibi and the degree of proof necessary to establish that defense. Some of this conflict is due to the different senses in which the term 'Burden of proof' is frequently used and in part to a misinception of the nature of an alibi which seems to be regarded in many cases as an affirmative independent defense like insanity or former jeopardy. The batter rule appears clearly to be that the burden, using the term 'burden of proof' in its proper sense, is not upon the defendant to prove alibi upon which he relies as a defense. The courts which take this position assent to the true rule that an alibi is not an affirmative defense and that evidence to prove an alibi is not to be treated as proof offered to establish an independant a firmative matter set up by the defendant, but mere evidence tending to disprove one of the essential factors, in the prosecution - namely, the presence of the defendant at the time and place of the alleged crime. According to these authorities, evidence of an alibi is competent under a defendant's plea of not guilty. The defendant may thereafter rebut the evidence of the fact of his presence by evidence of the fact that he was not present.

"Many courts on the other hand take the view that the 'burden of proof' of an alibi is upon the defendant. A study and comparision of these cases, however, lead to the conclusion that for the most

0512

part the courts laying down this rule mean only that it is the duty of the defendant to go forward with the evidence respecting an alibi if he relies upon this defense, so as to raise at least a reasonable doubt of his presence at the time and place of the commission of the alleged crime. Clearly, the apparent conflict of authority is largely due to uncertainty in the use of the term 'burden of proof'. In some cases, however, the court clearly regards as alibi as an independent affirmative defense and places upon the defendant the burden of establishing the defense. But such burden does not require proof beyond a reasonable doubt. It is sufficient if the defendant raises a reasonable doubt as to the truth of the charges against him, although there is authority requiring a greater quantum of certainty in this respect." (Am Jur Vol 20, Evidence, Para. 154, pp 157-158.)

第三十一 Unloaded Gun と其の主証責任

Assault が犯罪を構成する為には犯行者が犯意を有することが要件であること並に弾丸を発射させる銃を他人に対しても それは犯罪的 Assault とはならないことは既に上述べた処である（Chapter 4 頁 9-10）. 而して被告人自身が Assault の犯意ありしや否や及自己が信じ実行せりと主張せらるる其の当銃には果して弾丸が装填してありたりや否やは検事に於て beyond a reasonable doubt に立証しなければならない事柄である。American Jurisprudence も之と同様のことを述べている。次の如し

"Section 100. Generally. - The burden of proof is always on the state in the prosecution for assault, as in any other criminal prosecution, to establish beyond a reasonable doubt that the defendant committed the crime charged, and if the proof fails to establish any

committed the crime charged, and if the proof fails to establish any of the essential element necessary to constitute a crime, the defendant is entitled to an aquittal. This results not only from the well-established principle that the presumption of innocence is to stand until it is overcome by proof, but also from the form of the issue in all criminal cases tried on the merits, which, being always a general denial of the crime charged, necessarily imposed on the government the burden of showing affirmatively the existence of every material facts or ingredient which the law requires in order to constitute an offense. (4) ...

"Footnote (4): On an indictment for assault with intent to inflict great bodily harm, it is essential to prove the specific intent, and such intent will not be inferred or presumed from the facts that the defendant acted with gross negligence, if he did not know of the presence of the person injured or have any actual intent to injure him," (4 Am Jur "Assault and Battery" Section 100, pp. 179-180.)

更に検死の持つた拳銃が発砲されたか否やについても其の立証責任は検察官に在するのである。此の事実に関する American Jurisprudence の論ずるところを聴かんとする。

"Section 101. As to Firearms Pointed at Another Being Loaded. - The authorities are not altogether in harmony on the question whether a firearm is presumed to be loaded from the fact that it is presented, accompanied with a threat to shoot. In some jurisdictions there is a presumption that the gun was loaded, and the burden of proving that in fact it was loaded is placed on the defendant, which in other jurisdiction it is the rule that the crime is not made out

unless the prosecutor proves that the gun was in fact loaded, there being no presumption to aid him in that respect." (4 Am. Jur. Assau lt, Section 101, p. 180.)

なる検察官次例は勝又が本件各犯事件当時拳銃を携帯していたと主張せらるる拳銃が発射されていることは何等立証しなかった。故に被告人次例に此の立証責任ありとするも被告人次例に此の立証責任ありとするも被告人は該拳銃は発射されていなかったことを立証したのである。

第三点 被告人勝又の拳銃携帯について

被告人勝又は当法廷において同人がWake島に在任中携帯していた拳銃について「私はPistolを携帯する権限は無かったが川崎司令から与えられていたかそれとも私が之を携行するのを見ても無かったし川崎又は其の他の誰からも携帯してはいけないとは言われなかった」と供述している。第二復次官のDeposition (Ex 36) には通訳のPistol携帯に関し「守備部隊に所属された将兵が場合には個人は自分に割当てられた職務の遂行上明かに直接の命令の如きことあるを待って上陸部隊の各兵は武器(pistols)を携帯することを許すことが常例とされていた。上陸後各隊は作戦若しくは敵の上陸が予期せらるる場所においては個人がpistolsを貸与せられ之を携帯することを許さることは常例であった」と供述されてある。

第四点 全面的否認と弁論

被告人は一貫して不法行為、犯意の欠缺、責任を以

と defense とおい処方本件罪状次旨は全同おいとを否認するものである とは inconsistent pleadings であるとして或は論究するかも知れない。被告人は検察官の此の未必おお論旨に対し American Jurisprudence の次の用を引用する。

"Assault

"Section 144. General Denial and justification. There is a conflict of opinion as to whether a general denial and a plea of justification are inconsistent defenses in an action for assault and battery. In some jurisdictions it is held that these defenses may be joined without violating any rule against inconsistent pleadings, but in other states the contrary view is taken and the defendant is required to elect between them." (American Jurisprudence, Vol. 4, Assault, Section 144, General Denial and Justification.)

それ故被告人は被告人の上訴 defenses は両立し得るものであると主張する。

第三編　結論

第一章　罪状項目其の一及其の二

第三十四　仮主の下ん一後ん勝久ん上記二罪状項目其の一及其の二に列挙せられたる行為がありたるとしても勝久は一切日本国条ん庭備されてゐた一介の民間人通訳ん過ぎなかった。彼は決して責任ある筆の特校ではなかった。それ故彼の身分上地位上此等二罪状項目の日隊法違反行為は犯し得ないのである。即ち之は彼んとっては不能犯である。之は恰も公務員にあらざる者が收賄罪を犯し得ないのと又兵が特攻の軍機忘失の犯罪を犯し得ないのと同様である。不能犯は犯罪ではない。

第三十五　仮主の下ん一後ん勝久ん上記二罪状項目の主張行為がありたりとしても日隊法下は通訳行為が戦争法規違ん慣習法の違反であると規定されておらない。勝久の行為は通訳であった。それ故勝久の行為は戦争法規ん慣習法の違反ではない。

第三十六　仮主の下ん一後ん勝久ん上記二罪状項目の主張行為がありたりとしても彼は通訳として第ん意思即ち思惑の作違にて行ん過ぎない。而て其の作違ん対する意志は一切混へてはおらない。彼んは犯意がなかった。それ故彼の行為は犯罪とおらない。

第三十七　仮主の下ん一後ん勝久ん上記二罪状項目の主張行為がありたりとしても彼は帝の私設備人であって彼んは上官があって彼は部下であった。部下が上官の命令絶対ん従って

行動した場合 其の行動が違法なものであっても 其の部下は責任は免除せられてゐる。

第十八 勝又は上記罪状決日到着の事件家屋の者は其の現場に居り得なかった。(検察官側の証拠に依れば)のみならず事実被は其の者は現場にゐなかったことを証言し罪状決日其の二及其の三の主張事実を絶対に全面的に否認に居るのである。

第十九 本件罪状決日其の一及其の二の主張事実は検察官に依って何れも合理的疑念を容さざるまでに立証されてゐるものである。

第二章 罪状決日其の三

第二十 勝又の携帯に居った pistol には弾丸が装填してあったとは検察官は主張しなかった。被告人は該 pistol には弾丸が装填してなかったと言った。仮令の下に該弾丸の装填にない pistol を他人に突付けたとてそれは犯罪的 assault を構成しない。依て勝又は其の行為をしたことは絶対にないと証言にゐるのである。検察官側証拠の如くも勝又が pistol を突付けたと述べてゐるものを初めある。

第二十一 勝又は罪状決日其の三の主張事件の者を當時其の現場には検察官側の証拠に依れば居り得なかったのであるのみならず勝又は其の者が其の現場に居なかったと全面的に否認にゐるのである。

第四十二 前記第二項目の主張事実は検察官に於ても何人も合理的疑念を抱きうるまでに立証されなかつたのである。

第四十三 之を要するに本件前記第二項目の一乃至三及び第三項目に挙げられたる主張事件は検察官に於ても何人も合理的疑念を抱きうるまでに立証されなかつたのである。

以上の理由に依り私は被告人は本件並に他の前記第二項目の一乃至三及び第三項目については無罪であることを主張する次第である。

願はくは貴法廷は被告人被告事件に対し無罪の判決を与へられんことを

謹言

INDEX TO THE ARGUMENT IN BEHALF OF THE ACCUSED, KATSUMI, SEISHI,
FORMER SHOKUTAKU, IMPERIAL JAPANESE NAVY

Delivered by
Mr. Junjiro Takano,
Counsel for the accused

PART I - General Argument

Chapter 1 Introduction

1. The charge and specification in this case..... 1
2. Unhealthful and Dangerous work..... 2
3. Work directly related to war operations..... 2
4. Superior officers of the armed forces and an interpreter of Shokutaku status..... 3

Chapter II. An interpreter of the armed forces and war crimes.

5. An interpreter of the armed forces and POW's and use of POW's for work..... 4
6. An interpreter of the armed forces and guilty intent..... 5
7. The act of interpreting of a gunzoku interpreter and violation of international law..... 7

Chapter III An interpreter who is a subordinate and exemption of responsibility for violation of international law.

8. Responsibility for violation of international law of an interpreter of the armed forces..... 7

Chapter IV Assault and the unloaded pistol.

9. Assault..... 8
10. The unloaded gun..... 9

PART II - Arguments of the facts based on the evidence.

Chapter I. Introduction.

11. The status, rank and duty of the accused..... 10
12. The character of the accused..... 11

Chapter II. Incidents enumerated in the specifications.

13. The incident of the fire-fighting aboard the dredge..... 12
14. The incident of the repair of the airport runway..... 14
15. The incident of the repair of the AA gun..... 17
16. The incident of removal of the torpedo..... 18
17. The incidents of unloading and transport of arms and ammunition..... 20
18. The incident of the removal and installation of guns..... 20
19. The incident of the manufacture of gun and machine gun parts and converting of same..... 21
20. The incident of the construction of gun emplacements..... 22
21. The incident of construction of trenches and barbed wire entanglements..... 22
22. The incident of striking "Red" with a club..... 23
23. The incident of assault of Granstedt with a pistol..... 23
24. The incident of striking Wise with a sword scabbard..... 23
25. The incident of striking and torturing Hoffmeister..... 23

MM (1)

0520

26. The incident of forcing Lee to dive..... 23
27. The incident of striking Fontes and Dunn with a club.....23

Chapter III The Evidence and Burden of Proof Regarding General Denial, Alibi and the Unloaded Gun.

28. Evidence..... 24
29. General denial of the accused, and the burden of proof regarding same..... 24
30. Alibi and its burden of proof..... 25
31. The unloaded gun and its burden of proof..... 27
32. Concerning the carrying of the pistol by the accused Katsumi..... 28
33. General denial and defenses..... 28

PART III - Conclusion

Chapter I - Specifications 1 and 2.

34, 35, 36, 37, 38..... 29

Chapter II - Specification 3.

40, 41, 42, 43..... 29

0521

ARGUMENT IN BEHALF OF THE ACCUSED, KATSUMI, SEISHI,
FORMER SHOKUTAKU, IMPERIAL JAPANESE NAVY

Delivered by

Mr. Junjiro Takano,
Counsel for the Accused.

The Honorable President and Members of the Commission,

Before delivering this final argument as defense counsel in behalf of the accused Katsumi, Seishi, I would like to express my deepest gratitude for the fair and sincere way in which this trial has been conducted.

Part I - General Argument

Chapter 1 Introduction

1. <u>The charge and specifications in this case.</u>

The charge in the instant case is titled "violation of the law and customs of war." Specification 1 alleges that the accused, Katsumi, a civilian emplcyee of the Imperial Japanese Navy, attached to the military installations of the Japanese armed forces on Wake Island, did during the period from December 23, 1941 to September 30, 1942 at a time when a state of war existed between the United States of America, its allies and dependencies, and the Imperial Japanese Empire wilfully and unlawfully, force, compel, require, and use American prisoners of war, then and there held captive by the armed forces of Japan, to perform unhealthful and dangercus work, in violation of the law and customs of war.

Specification 2 alleges that the accused, Katsumi, then a Japanese civilian, employed by the Imperial Japanese Navy, serving at the Japanese military installations at Wake Island, did, at Wake Island, during the period from December 23, 1941 to September 30, 1942, at a time when a state of war existed between the United States of America, its allies and dependencies, and the Imperial Japanese Empire, wilfully and unlawfully, force, compel, require, and use American prisoners of war, then and there held captive by the armed forces of Japan, to perform work directly related to war operations, in violation of the law and customs of war.

Specification 3 alleges that the accused, Katsumi, then a Japanese civilian, employed by the Imperial Japanese Navy, serving at the Japanese military installations at Wake Island, did, at Wake Island, during the period from December 23, 1941 to September 30, 1942 at a time when a state of war existed between the United States of America, its allies and dependencies, and the Imperial Japanese Empire, wilfully, unlawfully, cruelly, and inhumanely abuse and mistreat American prisoners of war, then and there held captive by the armed forces of Japan, in violation of the law and customs of war.

On reading the charges of the instant case, in the 3 specifications the same incidents are repeated either two or three times, namely:

Specification 1(a) and specification 3(b);
Specification 1 (b) and specification 2(a) and also specification 3(c);
Specification 1(c) and specification 2(b) and also specification 3(d);
Specification 1(c) and specification 3(e);

0522

Specification 1(c) and specification 2(c);

are respectively identical incidents, and despite the fact that there are really only 5 incidents, they are alleged as 12 counts. Therefore we must point out that in the instant case 5 incidents are repetitiously alleged.

2. Unhealthful and Dangerous Work.

Specification 1 of the instant case charges that the accused Katsumi, made the prisoners perform unhealthful and dangerous work, and the prosecution contends that this is a violation of the regulations of the Geneva Prisoners of War Convention of 1929, set forth in article 32, paragraph 1 of the same Convention, which provides "It is forbidden to use prisoners of war at unhealthful or dangerous work." The aim of this prohibition is to forbid work which in its nature or essence is unhealthful or dangerous. It does not mean unhealthful or dangerous work made so by circumstances existing at the time or by environmental conditions. That circumstances at the time or the environmental conditions made the work unhealthful or dangerous is incidental, and these conditions may be avoided at will at all times. However, if the work is essentially unhealthful or dangerous then an unhealthful or dangerous element may not be avoided. Hence the purport of the convention was to prohibit work which in its very nature was unhealthful or dangerous.

However, Specification 1 enumerates incidents which are not in their essence unhealthful or dangerous as being essentially unhealthful or dangerous. For example:

(b) the incident of the repair of the runway at the air field and
(c) the incident of the repair of the AA gun are such instances.

It is not appropriate to say that these jobs of work were essentially unhealthful or dangerous.

Furthermore the incident of

(a) the firefighting work on the dredge, the incident of
(d) the work of removal of the torpedo (especially after it was proved that the fuse had been removed from the torpedo), the incident of
(e) the unloading and transport of arms and munitions, need not necessarily be unhealthful or dangerous work. Especially concerning this last incident (e) the unloading and transport of arms and munitions, when we observe that Article 31 of the above quoted Convention prohibits it as "work directly related to war operations," we realize that this same Geneva Convention does not necessarily consider this work as unhealthful and dangerous. I shall cite Article 31 of the same Convention below.

3. Work directly related to war operations.

Specification 2 alleges that Katsumi compelled prisoners of war to perform work directly related to war operations. It is alleged that this in the same way as the foregoing violates article 31 of the Geneva Prisoner of War Convention which provides that:

> "Labor furnished by prisoners of war shall have no direct relation with war operations. It is especially prohibited to use prisoners of war for manufacturing and transporting arms or munitions of any kind, or for transporting material intended for combatant units."

0523

However, this provision of the Geneva Prisoner-of War Convention concerning the prohibition of use of prisoner of war labor is general and abstract. Hence in actual fact interpretations in regard to concrete problems are widely varied. As a material fact it is an extremely difficult problem to interpret, especially when it comes "work directly related to war operations," and there is room for great controversy. Oppenheim on International Law states it as follows:

> "As to prohibited work Article 31 lays down as follows: 'Work done by prisoners of war shall have no direct connection with the operations of the war. In particular it is forbidden to employ prisoners in the manufacture or transport of arms or munitions of any kind, or in the transport of material destined for the combatant units.' These prohibitions are not altogether free of ambiguity. (Lauterpachat, Oppenheim's International Law, Vol. II 6th Edition, Warfare on Land #126 b, P. 298.)"

And it states in the footnotes as follows:

> "The question whether prisoners of war can be compelled to construct fortifications and the like is just as much controverted as the question whether enemy civilians can be forced to do such work." (ibid.)

Let us examine and see whether the incidents enumerated in Specification 2 correspond to the work prohibited by the above cited convention.

When we view the following incidents by the standard of whether or not they were "work directly related to war operations" it must be noted that there is much room for controversy as explained in the footnote cited above from Oppenheim. Namely,

Incident (a), Repair of the runway at the air field.
Incident (b), Repair of the AA gun.
Incident (d), The removal and installation of guns.
Incident (f), Construction of gun emplacements.
Incident (g), Construction of trenches and barbed wire entantlements.

I subscribe to the theory that the meaning of the phrase "directly connected with war operations" should not be given such a wide interpretation. Consequently I contend that it is not appropriate to term the incidnets enumerated in Specification 2 as "work <u>directly related</u> to war operations."

4. <u>Superior officers of the armed forces and an imterpreter of shokutaku status.</u>

Ordinarily, by an interpreter is meant a person who transmits a message expressed by a second person to a third person by translating the words of the second person into another language. And when an interpreter translates the words of the second party he does not in any way interpolate his own thoughts in the process. If, and this is a supposition, an interpreter interpolates even an iota of his own thoughts in the process of translating for a person, then the words of the interpreter are no longer interpretations from that moment on.

0524

In other words, an interpreter is a person who merely transmits words.

A gunzoku interpreter is essentially no different from an ordinary interpreter. Of course as a gunzoku he is under the command of his superior officers and, translating the words of superior officers or other persons, transmits them to a third party. Such is his duty. It is only natural that the gunzoku interpreter, as the interpreter mentioned above, when interpreting adds no thoughts or opinions of his own.

The gunzoku interpreter being a member of the armed forces is under the command of superior officers and in his relations with superior officers must observe obedience to orders. And this obedience as in the case of other subordinates is absolute, and he is bound by duty absolutely to obey the orders of his superior officers.

Chapter II An interpreter of the Armed Forces and War Crimes.

5. An interpreter of the armed forces and POW's and use of POW's for work.

The main duty of an interpreter of the armed forces when the armed forces capture prisoners of war is to stand between the armed forces and the POW's and to translate the words interchanged in conversation and transmit them in turn to the two parties. In other words, the gunzoku interpreter translated the orders, instructions, or other business of his superior officers or other military persons into the language of the prisoners and transmitted this to the prisoners at the same time relaying the desires of the prisoners to the military authorities.

Needless to say the assignment of work of the prisoners of war was mainly based on the design of the commanding officer. Consequently it is a natural conclusion that the responsibility of assigning prisoners of war to work revert to the commanding officer.

It is alleged in this case that the accused Katsumi compelled prisoners of war to perform unhealthful and dangerous work and work directly related to war operations. However, as clearly stated at the beginning of each specification, Katsumi was a civilian temporarily in the employment of the Imperial Japanese Navy. And it has been proved by much testimony presented in this court that he was an interpreter of the armed forces. Now, the Hague Convention of 1907 (Annex Art. 4) and also the Geneva Prisoner of War Convention of 1929 (Art. 2) state that a prisoner of war is in the power of the hostile power but not of the individual or corps who have captured them. Worthy of especial note is the fact that where the Hague Convention of 1907 states "In the power of the hostile government," the Geneva Prisoner of War Convention 1929 states, "in the power of the hostile power." Furthermore the above cited Geneva Prisoner of War Convention clearly provides (Art. 18 #1) as follows: "Every camp of prisoners of war shall be placed under the command of a responsible officer."

According to the provisions of these treaties, it is clear beyond doubt that the prisoners of war on Wake Island were in the power of Japan, and that during the time they were on that island under the supervision of a responsible Japanese naval officer, namely of the commanding officer of that island. It is therefore only too obvious a fact that they were not under the jurisdiction of the accused, Katsumi, who was only a civilian interpreter in the temporary employment of the Japanese Navy at that time. It was the Japanese Navy on Wake Island at the time which put these prisoners of war to work, and it goes without comment that all orders and

instructions regarding assignment of work for the prisoners of war were issued by the Commanding Officer of the Japanese Naval Forces on Wake Island. However, the accused Katsumi was merely relaying the orders or instructions of the military to the prisoners of war in his capacity as an employee, and in that role he was only a relayer of orders or a thought-transmitting organ. The circumstances being as above cited, Katsumi did not have any authority to assign work to prisoners of war unless specifically given this authority by the commanding officer of the naval forces. Let us presume that Katsumi was given this authority; then as a result of this investment of authority, Katsumi would have to assume responsibility for assignment of work to prisoners of war. That Katsumi was invested with such authority, the prosecution has in no way established. Therefore insofar as Katsumi is concerned, the several incidents enumerated in Specifications 1 and 2 of the charge are delits impossibles. (impossible offenses). In other words as far as Specifications 1 and 2 are concerned, the prosecution has alleged that Katsumi committed crimes which Katsumi could not possibly have committed, and indicted him for these alleged crimes.

6. An interpreter of the armed forces and guilty intent.

War Crimes, in essence, do not differ from crimes of ordinary criminal law in any way, and war crimes require criminal intent as a constitutional requisite. American Jurisprudence clarifies the necessity for criminal intent to establish a crime.

We quote as follows:

> "#23. Necessity for Guilty Intent at Common Law. -- Under the common law a crime consists of two elements -- namely, an evil intention and an unlawful action. 'Actus no facit reum, nisimens sit rea,' (An act does not make /the doer of it/ guilty, unless the mind be guilty;) in the words of the maxim. A crime is not committed if the mind of the person doing the unlawful act is innocent; a guilty intent is essential. The intent must exist at the time of the unlawful action, for no subsequent felonious intention will render the previous act felonious. A guilty intention may sometimes be inferred from the act, but this in principle is an inference of fact to be drawn by the jury, and not an implication of law to be applied by the court.
>
> "Whenever a specific intent is an element of the crime, the specific intent must be proved. Proof of general malice or criminal intent will not suffice. This is true, for instance, in the crime of burglary. If a specific intent is required by statute to constitute a crime, such intent enters into the nature of the act itself and must be alleged and proved."

(American Jurisprudence, Vol. 14, Criminal Law, pp. 782-3.)

The same book further states the necessity for guilty intent in statutory crimes as follows:

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"#24. Necessity for Guilty Intent in Statutory Crimes. -- An evil intention or guilty knowledge, which is an essential part of crimes at common law, is, in some cases, but not in others, held to be an element of crimes created by statute or ordinance. The view is taken in some cases that a criminal intent is not a necessary element of offenses which are merely malum prohibitum, or of prohibitive statutes which cover misdemeanors in aid of the police power, where no provision is made as to intention. This is especially important in that if a criminal intent is not an essential element of a statutory crime, it need not be proved in order to justify a conviction. In other words, it is immaterial that the defendant acted in good faith or did not know that he was violating the law. In some cases it is said that where a statute denounces the doing of an act as criminal, the law imputes criminal intent from the doing of the act.

"Whether a criminal intent or guilty knowledge is a necessary element of a statutory offense is a matter of contruction to be determined from the language of the statute in view of its manifest purpose and design. In order to eliminate intent as an element, it must clearly appear that such was the legislative intent. Such statutes should be construed in the light of the common law."

(American Jurisprudence, Vol. 14, Criminal Law, #24, pp. 784-785.)

As above stated, Katsumi, who was a gunzoku interpreter, merely acted as a transmitter of words by orders of his commanding officer, relaying military orders and instructions to the prisoners of war and transmitting the demands of the prisoners and whatever else that they desired conveyed to the military authorities. Katsumi who was engaged in this transmission of thoughs and words did not interpolate even a fraction of his thoughts while so doing. Concerning the assignment of work to the prisoners also, he merely relayed the orders and instructions of his superior officers and in no way participated in the decision of whether to use these prisoners of war for work. Even presuming Katsumi was present at the scene of work of the prisoners, he was there in his capacity as interpreter as above stated, and it cannot be educed from this that Katsumi used prisoners of war. There was not the slightest intention on the part of Katsumi to use prisoners of war. Katsumi had no guilty intent. Consequently the fact that Katsumi was present at the scene of the work does not constitute an element of crime. In other words it does not constitute a war crime.

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Hence it cannot be said that Katsumi violated the law and customs of war as far as Specification 1 and 2 are concerned.

7. The act of interpreting of a gunzoku interpreter and violation of international law.

The premise that international law must clearly show an act to be violation of international law rests on the identical basis as the premise that it is an absolute requirement that criminal law or some other punishment code clearly show an act to be a crime and be punished, before it is considered as such. In actual fact various conventions, manifestos, protocols have determined, some generally and others specifically, what is a violation of international law or war crimes.

However not one of the above documents has considered the act of interpreting of a gunzoku interpreter as a violation of international law. Moreover in referring to precedents there has been no case where the act of interpreting was considered a war crime. Nor do any theories exist on this theme or any which looks upon it (the interpreting act) as a violation of international law.

Chapter 3

An interpreter who is a subordinate and exemption of responsibility for violation of international law.

8. Responsibility for violation of international law of an interpreter of the armed forces.

I have just stated that if an interpreter of the armed forces was at the scene of work where prisoners of war were engaged in labor prohibited by convention, this act on his part by itself does not in any way constitute a war crime.

Now let us presume, and this is pure hypothesis, that the accused, Katsumi, violated international law as specified in Specifications 1 and 2 in regard to using prisoners of war for work prohibited by the Prisoner of War Convention. Let us examine the responsibility which would be incumbent on Katsumi under those circumstances. We take leave to point out here that it is clearly to be understood that the act of interpreting as interpreter of Katsumi in his relations with prisoners of war be not included in the above assumption.

As previously stated Katsumi was a gunzoku. He had a military superior and as gunzoku was bound by a strict chain of command relationship and was duty bound to absolute obedience to superior commands and orders. In assigning work to prisoners of war he acted in strict conformance with orders and commands of his superior officers in all matters. Even assuming Katsumi did assign prisoners of war to work prohibited by convention, he did so at the orders and commands of his superior officers. Under such circumstances there was no way open to him other than absolute obedience to superior orders.

It is affirmed by numerous theories and military regulations of various nations clearly provide, that subordinates are not responsible for their acts even when their acts are illegal if they acted in performing the commands or orders of their superiors.

Leaving the theories which affirm this principle and the military regulations of other nations for the time being, I will cite below that portion of recent military regulations of the United States of America which relate to this problem, and use it in the defense of the accused.

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"Rules of Land Warfare of 1940.
Chapter 11. Penalties for Violations of the Laws of War.
#347. Offenses by armed forces. --- The principle offenses of this class are:

.....

6. Ill-Treatment of prisoners of war;

.....

11. Misuse of the Red Cross flag and emblem and other violations of the Geneva Convention.

Individuals of the armed forces will not be punished for these offenses in case they are committed under the orders or sanction of their government or commanders. The commanders ordering the commission of such acts, or under whose authority they are committed by their troops, may be punished by the belligerent into whose hands they may fall. (Ibid. pp 86-87.) In the light of this regulation the conclusion is reached that if Katsumi who was a subordinate committed an act in violation of international law at the command or order of a superior officer his responsibility as regards the act would not be questioned nor would there be reason for his being punished for it.

Chapter 4.

Assault and the unloaded pistol.

9. Assault.

Specification 3 of the charge alleges that the accused, Katsumi, Seishi, who was employed by the Imperial Japanese Navy, while serving on Wake Island wilfully, unlawfully, cruelly, and inhumanely abused and mistreated American prisoners of war then held captive on that island, in violation of the law and customs of war. In this specification we must note in particular the matter of assault and that of Katsumi constantly carrying a pistol.

What act is meant by assault? I shall borrow the definition of that term from American Jurisprudence and cite it here: "In many jurisdictions an assault is defined by statute. The statutory definitions, however, do not vary much from those at common law, and by them assault is usually defined as an unlawful attempt, coupled with a present ability, to commit a violent injury upon the person of another." (Ibid. Vol. 4 Assault, "2 Definitions p 125.) According to the above definition, we realize that present ability is a required element for assault to be established. Where actual ability is lacking, assault cannot be established. On this matter the same book goes on to explain as follows: " #14. There is much confusion in the authorities as to whether a criminal assault can be committed where the aggressor does not have the present ability to inflict injury on the person assailed. Many courts hold that in order to convict a person on a criminal charge of assault, it must appear not only that he intended to inflict an injury on the person of another, but also that he had the present ability to inflict such injury. Indeed, it is quite frequently declared, in criminal statutes defining assault, that to constitute an assault, it must appear that the assailant had the present ability to commit the contemplated injury. It is to be doubted whether the rule that an assault is not committed where one aims an unloaded gun at another, which is the result of the foregoing general statement, is strictly in accord with principles governing assault and battery, and in most instances an examination of the statutes of the particular jurisdiction following the rule stated above will disclose that an assault cannot be committed unless the assailant has the ability to consummate the act." (Ibid. Assault, In Criminal Assault, #14 Actual Ability, p 135)

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10. The unloaded gun.

In examining the incidents enumerated in Specification 3 we observe that the majority of them deal with incidents where the accused Katsumi assailed prisoners of war with a dangerous weapon, to wit, a pistol.

As to constitute an assault, the aggressor must possess the present ability to inflict injury on the other party, an act done with an unloaded gun cannot constitute an assault. I quote from the authoritative American Jurisprudence on this matter below:

"#35. Unloaded Firearm -- When Pointed at Person. -- The authorities are unanimous in holding that pointing an unloaded firearm in a threatening manner does not constitute an assault with a deadly weapon, within the contemplation of statutes providing for the punishment of such assault. To constitute an assault with a dangerous weapon, where the weapon used was a gun, it must appear that the gun was loaded. In fact, according to many authorities, in the absence of statutory provision to the contrary, the pointing of an unloaded firearm at another cannot be punished criminally as a simple assault, though such an act may be sufficient to support a civil action for damages." (Ibid. Vol. 4, Assault, #35, Unloaded Firearm -- When pointed at Person. pp 145-146.)

Katsumi testified that the pistol he carried was actually never loaded. On the other hand the prosecution has not proved that the pistol was loaded. I shall dwell on the problem of burden of proof later.

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Part II Argument of the facts based on the evidence.

Chapter 1. Introduction

The present is a somewhat strange case where a gunzoku interpreter, the accused Katsumi, is charged for having assigned work to prisoners of war which was prohibited by convention and for having cruelly and inhumanely treated prisoners of war. The strangeness is still further enhanced by the fact that the accused completely denies all the 22 incidents (actually the incidents total 15) listed in the 3 specifications. First I shall briefly state the status, rank and duty of the accused in the armed forces on the basis of the evidence, next clarify the character of the accused by and through the evidence and lastly examine the individual incidents of the three specifications in the light of the evidence.

11. The status, rank and duty of the accused.

The accused Katsumi was employed by the Japanese Navy on 3 December 1941 was assigned to be attached to Fourth Fleet Headquarters and detached to the 65th Naval Guard Unit. He served on Wake Island from December 24, 1941 until November of 1943 as a shokutaki. (Testimony of the accused and Exhibit 16, the deposition of Kawasaki, Susumu, Q & A. # 5.)

Katsumi as a gunzoku, first was placed under the command of his direct superior officer, Commanding Officer Arase; then from January 1942 onward, under the command of the Commanding Officer of the 65th Naval Guard Unit, Captain Kawasaki, Susumu, IJN. (Testimony of accused; Exhibit 16, Deposition of Kawasaki, QQ and A 5; Exhibit 36). Consequently the accused received all command orders first from Arase, then from Commanding Officer Kawasaki, However the accused testified that as a matter of actual procedure he received these orders on most of the occasions from the executive officer, Commander Cho. (Testimony of the accused).

The main duty of Katsumi on Wake Island was interpreting, besides which he did translation and radio monitoring. (Testimony of the accused.) However, treatment of prisoners of war was not his duty and he, merely as an interpreter, was placed between the armed forces and the prisoners of war and transmitted words. (Testimony of the accused; Exhibit 16, Q&A 16, Q&A 5; Exhibit 17 Deposition of Iwama Q&A 7). In other words he merely transmitted the orders and instructions of the armed forces to the prisoners, translating them into the English language and relayed the requests and other matters which the prisoners wished to have expressed to the armed forces, translating them into the Japanese language. This fact was recognized by the prisoners themselves. (Exhibit 3 Affidavit of Freese, p. 1; Exhibit 6, affidavit of Rogge, p. 1; Exhibit 12, Affidavit of MacDonald p. 1; Testimony of the Prosecution witness, Kennedy Q&A 48, 49).

During Katsumi's tour of duty on Wake Island there was an officer whose sole duty was handling of POW's and there were Petty Officer Okazaki and Seaman First Class Shimizu under him to assist him in handling prisoners of war. (Testimony of the accused, Exhibit 16, the deposition of Kawasaki, Susumu Q&A 4, 6; Exhibit 17, the deposition of Iwama Q&A 15.) Hence Commanding Officer Kawasaki and Iwama also state in their depositions that Katsumi did not have any responsibility relative to treatment of prisoners of war, also that either Lieutenant Nomoto or Lieutenant Ogawa the officer in charge of prisoners of war actually made assignments and put the prisoners of war to work (Exhibit 16 Q&A 7 and 8; Exhibit 17.)

0531

Moreover, according to the Deposition of the Second Demobilization Bureau, the overall responsibility for assigning work to prisoners, was assumed by the commanding officer, and the responsibility of direct supervision over their work was placed upon the commanding officer or the senior commanding officer at the actual scene. It also states clearly that interpreters had no authority to take command or issue orders concerning the assignment of prisoners to work. (Exhibit 36). The Executive Officer, who was there during Katsumi's tour of duty on Wake Island, in his deposition states that, the person in charge of the prisoners was Lieutenant junior grade Nomoto, that Katsumi had no responsibility whatsoever regarding the treatment of prisoners: and states further that Katsumi had no authority whatsoever to order or decide on the assignment of prisoners to work and that he was not connected with it in any way. (Exhibit 37).

Moreover some prisoners have also testified to the above effect and admit this fact. For instance, Wilson testified that he filed a protest with the Japanese Naval Commander, because the use of prisoners for work related to war operation was a violation of the International law, (Exhibit 8) Rogge states that, Katsumi gave orders -- orders which came presumably from higher ups (Exhibit 6); Kennedy has testified before this court, a Japanese officer who came with him, was speaking to Katsumi before Katsumi ordered the POW's to work. Again Barnett in his deposition, states that Captain Aoki was the officer in charge of prisoners and that he was assisted by Okazaki, Heso.

Speaking metaphorically it is clear that Katsumi on Wake Island was only a transmitting organ and relayed words without design.

12. The character of the accused.

Fifteen persons, friends and acquaintances of the accused, have submitted statements testifying to the character of the accused Katsumi in accordance with the regulations of Paragraph 164 of Naval Courts and Boards. (Exhibits 18 through 31.) Half of them are from persons with whom Katsumi associated over long periods of time as friends during his stay in the United States and who today are in good social standing, and the other half from old friends and fellow students in Japan.

The writers of these statements and the affiants say with one voice if in different words that Katsumi was imbued with ideas of justice and fairness, that he was sincere and that he possessed a strong sense of responsibility; that in his relations with his fellow men he was warm-hearted and extremely kind; and that it is unthinkable, judging from his character, that he during the time he was employed by the armed forces cruelly or inhumanely mistreated or abused prisoners of war. Especially is Mr. John MacGregor a person who is in a position to know the character of Katsumi fully, because of the long and intimate association he and Katsumi enjoyed during his stay in the United States. This man, citing specific examples, testified to the good character of Katsumi and stated that he reconfirmed the fact that Katsumi was still the fair, just, sincere and kind man that he was in the United States, when he by chance renewed his acquaintance recently in Japan (see Exhibit number 15).

I wish to stress here the fact that the writers of these fifteen statements and affiants are without exception persons of good social standing and trustworthy, whose statements sufficiently merit trust and confidence.

I shall not, at this point, go into the details of the contents of these statements and let Exhibits 18 through 31 speak for themselves.

0532

Chapter II Incidents enumerated in the Specifications.

13. The incident of the fire-fighting aboard the dredge.

(Incident of Specification 1(a); Specification 3(b).)

This was an incident which allegedly occurred on 24 February 1942. As the time and duration of the bombing by planes and shelling by a U.S. task force on Wake Island on that day have an important bearing on this and the two other incidents which occurred on that day and which will be mentioned later, I will first clarify these points by and through the evidence. According to "Battle Report" by Commander Walter Karig USNR and Lieutenant Welbourne Kelley, USNR, evidence in this case, the bombardment of Wake Island lasted a little under half an hour beginning at 0742, and the bombing by American planes lasted for about 40 minutes. (pp. 274-276). It is appropriate to take the times above mentioned as being Wake local time.

(a) Warren Oscar McGill testified in his affidavit (Exhibit 5) that the incident occurred on February 12, 1942 and that during the time the shelling was in progress, he was forced to fight the fire aboard the dredge and a Japanese plane by a Japanese guard who came in the company of Katsumi. He did not testify that Katsumi pointed a pistol at him and used compulsion upon him.

(aa) According to the deposition of this same man the air raid commenced at about half past six and their work started at about 9 o'clock; no air raid alarm or all clear was ordered and it was past noon when the other prisoners returned to their work and it was around half past eight when Katsumi forced him out of the dug-out, and it was around 9 o'clock when they arrived at the scene of the fire-fighting. Katsumi and the guard were not present throughout the fire-fighting operations, and did not direct that work. During the time the fire was being fought American warships and planes in actual fact, were not shelling or bombing. The fire fighting work lasted for approximately 6 hours; at the scene there was a plane beside the dredge which was burning; it was around 4 o'clock when they returned to their quarters; and he did not know whether the order to fight the fire originated from Katsumi or from his superior officers.

(b) Warren O. Rogge in his affidavit (Exhibit 6) does not state the date of the fire fighting aboard the dredge, and the affiant does not clearly state whether he participated in that work. He merely states that Katsumi came to the dug-out, and forced men at the point of a gun to fight the fire.

(bb) In his deposition Rogge states as follows: that the American attack took place around 3 o'clock in the afternoon of the 24th of February 1942; that he was not forced to leave the dug-out and that he did not participate in the fire-fighting; that he believes it was only the dredge that was afire on that day; that it was around 3 O'clock when Katsumi came to the dug-out; that he came alone and there were two Japanese enlisted men standing outside the entrance of the dug-out; that, to the best of his knowledge, Katsumi was at the scene throughout the fire-fighting operations and directed it; that it was around 10 or 11 o'clock at night when the fire-fighting was finished and around 12 o'clock at night on that day when the prisoners returned to their quarters after the fire-fighting.

(c) Jesse L. Stewart in this affidavit (Exhibit 7) states that the American attack on February 24th, 1942 lasted for approximately 2 hours; that Katsumi came to the dug-out about an hour after the commencement of the attack; that Katsumi came into the dug-out from the central entrance; that he forced 6 or 7 persons, calling them by name, to go with him.

0533

(d) Frank R. Wise in his affidavit (Exhibit 9) states that Katsumi required prisoners of war to fight the fire on the dredge during the time the Americans were shelling on February 24, 1942; that it was during the bombing by American planes that he so required them; and that Katsumi was present when the order was given.

(dd) In his deposition (Exhibit 35) Frank R. Wise states as follows: that the bombing on February 24th began at 9 o'clock in the morning and lasted for about 45 minutes; that it was around 9 o'clock when Katsumi required the prisoners to fight the fire, and that there were approximately 15 prisoners who were engaged in this work; that Katsumi when he came to the dugout carried a pistol and sword in his hands, and that the affiant was present (when Katsumi came to the dugout). However, the affiant does not state that Katsumi when he required the prisoners (to fall out) pointed the gun at them. He further states that it was around 10 o'clock in the morning when the fire fighting was concluded.

(e) It is stated in Patrick Kahaumea Aki's affidavit (Exhibit 10) that when on the morning of the 24th of February, 1942 a fierce bombardment and bombing by American warships and planes took place, Katsumi with another Japanese civilian, who was a foreman, came to the dugout of the prisoners and ordered the crews of the dredge and tug to fight the fire on the dredge; that as the prisoners protested, Katsumi and the foreman drew out their pistols and waved them at the POW's; that when the prisoners were ordered out of the dugout, the planes were still in the air and the fierce attack still in progress; that the firefighting lasted for about an hour and a half and that the all clear was issued after they returned to their quarters.

(f) Edwin Mang Sook Lee testified in the court as a prosecution witness that Katsumi came to the prisoners' dugout on February 24, 1942 accompanied by 2 foremen; that the American attack lasted from about 6 o'clock in the morning until around 9 o'clock in the forenoon; that it was around 9 o'clock in the morning when Katsumi came to the dugout; that when he gave the order to fight the fire, he did not call the names of the prisoners; that at the scene of the firefighting Katsumi gave orders to all the prisoners at the scene; that the fire fighting lasted for about an hour and a half; that it was around 11 o'clock or half past 11 in the morning when they returned to their quarters; that the all clear that day was sounded late in the afternoon after they had returned to their quarters. This witness testified that when the prisoners emerged from the dugout to go to fight the fire, the American task force could still be observed on the horizon, but that there was no firing from the task force to be seen or heard. The task force had long ago turned away and were leaving Wake.

(g) The witness Francis C. Campbell testified in this courtroom as follows: that around 10 o'clock on that morning Katsumi came to the prisoners' dugout accompanied by a guard with a fixed bayonet rifle and asked for a party to fight the fire on the dredge but that nobody immediately volunteered; that although he (the witness) did not go there were some 7 prisoners who went; that the alarm was given that morning by short blasts on the siren and that the all clear was sounded around 2 or half past two in the afternoon; that Katsumi returned to the dugout about 30 minutes after those who went to fight the fire had left. This witness testified that Katsumi when he came to the dougout touched his pistol but did not DRAW it out. He did not testify that Katsumi pointed the pistol or that he saw Katsumi point it at the prisoners of war. Further this witness testified that the shelling had already ceased when Katsumi came to the dugout for the first time.

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(h) Kawasaki, Susumu, who was the military commander of Wake, in his deposition (Exhibit 16) states that the attack on Wake Island by the American Task Force started at approximately 10 minutes before sunrise or 0350 Japanese Standard Time, that is around 0550 Wake local time and lasted for about an hour; that to the best of his knowledge there were no prisoners of war used to fight the fire on the dredge; and that he, Kawasaki the military commander, did not issue orders regarding their use.

(i) The accused Katsumi testified on the witness stand that the attack by the American Task Force on February 24, 1942 began around 6 or 7 in the morning of that day; that at the time he realized it was an air raid and entered the command post which was also the air raid shelter of the 1st Platoon of the 1st Company which was close by, together with the Company Commander Lieutenant Miyazaki and 7 or 8 non-commissioned officers; that he remained there all the time until around 1 o'clock in the afternoon, when the all clear was sounded; that he believed the actual bombing and shelling by the American forces lasted for an hour or an hour and a half; that after the all clear was ordered he returned to his room and remained there. However, Katsumi absolutely denies having gone to the prisoners' dugout at any time of that day, having ordered the prisoners to fight the fire, having used prisoners for this work, having threatened the prisoners by pointing a pistol at them on that day, etc.

When we examine the affidavits above mentioned and the testimony of the prosecution witnesses, it is found that there are numerous discrepancies within the affidavits and many inconsistencies between the affidavits and the testimony of the witnesses. With such evidence the truth concerning facts cannot be established. The judge advocate has not established the facts of this case beyond a reasonable doubt. On the other hand the accused absolutely denies the facts alleged by the judge advocate, that is the charge as set forth in detail by the specifications.

14. The incident of the repair of the airport runway. (Incident alleged in Specification 1 (b); Specification 2(a); and Specification 3 (c)).

This is an incident which allegedly took place on February 24, 1942, or thereabouts, when during an attack on Wake Island by an American Task Force, the accused Katsumi forced prisoners of war to repair the runway at the airport.

(a) Ryland F. Barnett in his affidavit (Exhibit 2) states that around 7 o'clock in the morning of the 24th of February, 1942 American men of war commenced shelling, and that around 11 o'clock in the morning Katsumi came to the air raid shelter and ordered out all hands of the dirt moving crew to repair the runway which had been damaged by American shell fire; that the prisoners were reluctant to leave the shelter because the shelling was still in progress; that at this point Katsumi threatened Hokanson by pointing the pistol at him; that this crew worked on this repair work from a little past 11 o'clock in the morning till around 9 o'clock at night; that the shelling by the American forces stopped around 3 o'clock in the afternoon.

(aa) The same person in his deposition (Exhibit 32) states as follows: Katsumi came to the prisoners' air raid shelter around 1100 that day and called Hokanson by name several times and demanded that he form a working party to repair the runway; that Katsumi did not call the other prisoners directly by name; that Hokanson, Bill Ray, Tex Lancaster, Joe Dunn and others made strenuous objections; that thereupon Katsumi threatened Hokanson

with a pistol; that the prisoners numbering 50 to 60 persons besides Hokanson, Bill Ray, Tex Lancaster, Joe Dunn were used for the repair work that day.

(b) Jesse L. Stewart states in his affidavit (Exhibit 7) that the American attack on February 24, 1942 was conducted from the sea; that this shelling lasted for about 2 hours; that about an hour after the commencement of the shelling Katsumi came to one of the central entrances of the prisoners' dugout and asked for 6 or 7 prisoners of war by name; that Katsumi forced them to leave with him and that they left with him; that about a half hour later Katsumi again came to the dugout and called the names of about 20 to 25 prisoners; that he ordered these men to go to the airport and repair the runway as some Japanese planes were being dispatched from Tokyo to help the island out; that as they refused to go, Katsumi drew his gun and called some armed guards and these men were forced to go out.

(c) Frank R. Wise in his affidavit (Exhibit 9) states that Wake Island was shelled by American warship on February 24, 1942; that at that time Katsumi required William Ray and his construction crew to go to the airport and repair the runways. The affiant states that he was present when Katsumi gave these orders; that the names of the prisoners that he, the affiant remembers are William Ray, Miles R. Wardle and Porter Wardle. It is worthy of note that this affiant does not in any way state that Katsumi at that time drew out his pistol or threatened the prisoners by pointing it at them.

(cc) The same person, Frank R. Wise, in his depcsition (Exhibit 35) states that the shelling on February 24, 1942 began at around 9 o'clock and continued for approximately 45 minutes; that he was present when Katsumi gave orders to Ray and his construction crew; that Katsumi then had a sword in one hand and a pistol in the other and that Katsumi waved this sword around; that this work on the runway began around 9 o'clock in the morning and was concluded around 4 o'clock in the afternoon.

(d) Theodore Granstedt in his affidavit (Exhibit 11) states that he learned of the attack by the American forces when the siren blew around breakfast time on the 24th of February, 1942; that the prisoners of war rushed to the nearest air raid shelter; that about 45 minutes subsequent to that the Japanese interpreter, Katsumi, came to the air raid shelter and ordered the airport crew to go out and repair the runway at the airport; that as they refused to leave the air raid shelter before the all clear was sounded, Katsumi drew a pistol and threatened them; that thereupon these persons left for the airport.

(e) Leonard Ward in his affidavit (Exhibit 13) states that the air raid alarm was sounded by the Japanese forces; that about 45 minutes after the affiant had entered the shelter Katsumi came to the shelter and ordered a group of them to do repair work at the airport; that however the prisoners refused; that thereupon Katsumi pointed a pistol at them and told them to go.

(f) The witness Francis C. Campbell testified in this court room that about 30 minutes after Katsumi had come to fetch the dredge drew, Katsumi reappeared at the dugout and asked for the crew which worked at the airport; that Katsumi got these men from prisoners who were in one corner of the dugout; that Katsumi at that time did not call the prisoners by their names.

(g) The witness Walter T. Kennedy testified in this court room that he remembered the shelling by an American Task Force on February 24, 1942; that as the siren was sounded at six or half past six that morning he went

into the dugout and remained there; that at that time civilians from the construction corps were the first to be required to go out, presumably to work on the runway at the airport; that Katsumi was going in and out of the dugout; that Katsumi was in the dugout with the prisoners from the beginning; that he did not hear the all clear; that to the best of his knowledge Katsumi came to the dugout 3 times, or it may have been four times to put prisoners of war to work during the bombing; that he did not know when the actual shelling ceased.

(h) Theodore Granstedt in his deposition (Exhibit 39) states that Katsumi was in the same air raid shelter with him, when he took shelter in air raid shelter; that it was around 11 o'clock when he began work (repair of the runway.); that Katsumi came to the scene of the work around 2 o'clock and was there the rest of the day; that he (the deponent) continued at this work after that time as well, and that it was a regular job for him during the time he was on Wake Island; that Katsumi was present some times before this while he worked on the air strip.

(i) Kawasaki, Susumu, commanding officer of Wake, in his deposition (Exhibit 16) states that the repair work at the airport was the responsibility of the Construction Corps on Wake Island.

(j) The accused Katsumi testified in this court room that as he became aware of the air raid that morning he entered the air raid shelter of the command post and remained there until the all clear; that after the all clear was ordered he returned to his room; that not long after he had returned to his room an orderly of the executive officer came and relayed to him the order to "continue the work on the airport today as well"; that this work mentioned was work which was in progress from the early part of February, about which Executive Officer Cho had given orders to Ray, the head of the airport work crew; that Katsumi was acting as a liaison man in this matter; that with this order of Executive Officer Cho he went to the prisoners' shelter and relayed it to Ray and taking 5 or 6 prisoners besides Ray he went to the airport; that when he went to the air raid shelter all the prisoners totalling some 300 were present there; that arrived at the airport they went about their work of expanding the airport; that when he went to the dugout he entered it from the western entrance and told the guard there stationed, that alert stations had been secured, and that he (Katsumi) had orders from the executive officer that work on the airport was to continue that day as well; that he called Ray from the western entrance and as Ray came up (to the entrance) told him that the all clear had been ordered and that the executive officer Commander Cho had ordered that the work continue; that Ray thereupon told the other prisoners of this matter; that Ray did not in any way protest continuing the work; that he (Katsumi) entered the air raid shelter alone; that at that time he was carrying a naval pistol but that he never pulled it out; that the holster of the pistol was buttoned; that he never drew his pistol from its holster at any time; that this pistol was always unloaded; that on this day he took two or three prisoners besides William Ray, Chambers and Smith to the airport; that the work was continued until 5 o'clock in the afternoon as usual; that there was no damage done to the airport; that prisoners of war on that day were not used for work during the period of alert stations order was in effect, let alone during the bombing; that on the day at that time or during the course of the day he did not take out or point his pistol at prisoners of war and make them work during the air raid.

There are numerous discrepancies in the affidavits and testimony of the prosecution witnesses, and such evidence cannot establish the true facts of the incident. It cannot be said that the evidence of the judge advocate has

proved the incident beyond a reasonable doubt. On the other hand the accused completely denies the facts alleged by the judge advocate.

15. The incident of the repair of the AA gun: (Specification 1(c); Specification 2(b); Specification 3 (d))

This is an incident which took place on February 24, 1942, an incident in which prisoners of war were used to repair an AA gun during the bombing of Wake Island by an American Task Force around that date.

(a) Albert S. Freese in his affidavit (Exhibit 3) states that in the morning of February 24, 1942, American naval vessels opened fire on Wake Island; that the affiant and the other prisoners immediately entered the air raid shelter and that they remained there for approximately 30 minutes; that Katsumi was in the shelter with the prisoners where he received orders to assemble a crew of the civilian prisoners to repair a 3" gun on Peale Island; that thereupon Katsumi ordered the machine shop crew to do this work; that accordingly Frank Migusch, Frank Hasting, and the affiant were ordered out of the shelter and put on a truck; that on the way to Peale Island, they protested to Katsumi that they should not work on military installations due to the fact that they were civilians; that Katsumi then said it was an order and that he would shoot them if they did not obey, and pulled out his gun.

(b) Jesse L. Stewart in his affidavit (Exhibit 7) states that just before the shelling ceased on February 24, 1942, Katsumi again came to the dugout and called Capt. Wilson and MT/Sgt. A.J. Paskiewiecz, and that at that time he had a gun in his hand; that they were taken to Peale Island and told to repair an American 3" anti-aircraft gun; that this gun had been damaged and the Japanese had attempted to use it; this affiant does not state that the prisoners protested and that Katsumi took the prisoners to Peale Island.

(c) In his affidavit (Exhibit 8) Henry S. Wilson states that he (the affiant) and MT/Sgt Paskowitcz were conducted by Katsumi during the shelling to a captured Marine gun position and Katsumi informed him that he (the affiant) must repair the gun and get it back to the battery position; that during this time shells from surface vessels were falling and aircraft were bombing and machine-gunning this position.

However, he does not state that Katsumi threatened to draw out his gun or that he protested to Katsumi.

(d) Harry L. McDonald in his affidavit (Exhibit 12) states that a Marine Corporal Pacheck was in charge of a group of men, military and civilian, who were forced to repair guns and equipment.

However, not only are the dates or hours set forth, it is not stated that Katsumi put the prisoners to doing this work. Furthermore nowhere is the name of Katsumi mentioned, nor is it stated that Katsumi came to the prisoners' shelter and threatened them by waving a pistol at them.

(e) The witness Walter T. Kennedy testified in this court room that during the air raid when the American Task Force bombed Wake Island in February 1942, some of the prisoners had to repair a 3" gun and machine gun (or guns). Those who went to this work were Wilson, Paskowitz, and Hesson; that he (Kennedy) was called upon to do this work but refused; that as Katsumi had a pistol in his hand at this time, he thought it would be

useless to refuse any more; that they had then no alternative but to go; and that those prisoners left. It should be particularly noted here that Katsumi, when he allegedly came to force these men to go, came with a Japanese naval officer. This witness (Kennedy) did not go to the above work. What this witness Kennedy swore to in his affidavit dated December 6, 1946, namely that he participated in this work was a mistake. It was not the truth. Before Katsumi gave the order given above, this officer who was with Katsumi spoke to Katsumi only after which Katsumi gave the order. Kennedy testified that he did not know whether the group that went to repair the AA gun went before or after the fire fighting group that went to the dredge; that although he knew the shelling began at 6 or half past six, he did not know when it actually ceased. It should, however, be particularly noted that this witness in his testimony made it clear that there was a mistake on an important point in the affidavit, and that the military officer who accompanied Katsumi told him (Katsumi) something before Katsumi gave orders.

(f) The accused Katsumi testified in this court room that he did not know of the AA gun being put out of action during the battle on February 24, 1942. Further that he had no knowledge of whether prisoners were used to repair an AA gun on that day because he received no such orders from his superior officers or go to the actual scene of the repair work, nor did he threaten the prisoners with a pistol, or point it at them on or about that day.

We discover numerous discrepancies in the evidence in the above cited affidavits and testimony of prosecution witnesses. The truth of facts cannot be educed from such evidence. The judge advocate has not established his evidence beyond a reasonable doubt. On the other hand the accused absolutely denies the alleged facts of the judge advocate.

16. The incident of removal of the torpedo. (Specification 1 (d); Specification 3 (e))

This incident of 23 March 1942 is the incident in which Katsumi allegedly forced prisoners of war to remove a torpedo.

(a) Patrick Kahaumea Aki in his affidavit (Exhibit 10) states that Katsumi, Seishi ordered himself, Lee, Kapaole, and Kapehi to secure a wire cable to a torpedo; that although Katsumi told us that the explosive had already been removed, he (Aki) saw the warhead still on the torpedo and told Katsumi of the fact; that the affiant did not want to work around the torpedo, but Katsumi said he would shoot if he (the affiant) did not secure the cable to the torpedo; that the cable broke several times during the operation and that therefore he (and others) had to dive down in water up to twenty feet deep without any diving equipment.

(b) The witness Edwin Mang Sook Lee testified in court that Katsumi came to the prisoners' compound on March 23rd, 1942, and ordered the boat crew to remove the torpedo and said that he would shoot if they did not and pointed a pistol at them; that at the scene Katsumi said that the warhead had already been removed and there was no danger; that however it (warhead) was still attached; that as the wire cable snapped the torpedo sank into about 20 feet of water; that there were six other persons besides himself who were engaged in this operation and that they all dived in the water to secure the wire cable to the torpedo; that at that time Katsumi said that if he did not dive he (Katsumi) would shoot; that there was one Japanese naval officer aboard the tug.

0539

(c) Executive Officer Cho in his deposition (Exhibit 37) states that he heard that the fuse or warhead of the torpedo had been washed ashore and damaged and that it was therefore no longer dangerous.

(d) Iwama, Chuichi in his deposition (Exhibit 38) states that the torpedo was lodged in the coral reef and that a part of it could be observed at low tide; that a tugboat was used for its (the torpedo's) salvage; that he was for the most part present at the scene; that he recalled that a rope was used to haul the torpedo into deep water, that he did not recall whether persons had to dive into the water for securing the rope; that the order to use the tug was issued by Headquarters; that he believed it (the order) was probably from Lieutenant Ogawa; that he did not remember whether he was connected with the use of POW's for some part of the work; that when he first saw the torpedo it seemed its head part was smashed and almost beyond recognition; that the head part where the powder was supposed to be contained was smashed completely and there was no powder inside; that he was about 3 meters from the torpedo when he actually saw it.

(e) The accused Katsumi testified in court that the Japanese forces on Wilkes Island discovered a torpedo in the latter part of March and that thereupon Executive Officer Cho gave him the order to salvage this torpedo which he (Cho) said was lodged between the rocks in the reef of Wilkes Island by taking a crane to the scene with some prisoners. That Katsumi therefore took one, Chambers, with him and started out to the scene on a crane truck; that when they arrived at their destination it was evening; that after that they asked at the headquarters of the detachment on Wilkes Island where the torpedo was located; that at that time an enlisted man told him that the fuse of the torpedo had already been removed; that as there were numerous rocks and barbed wire entanglements on the way to the position of the torpedo, and as the crane could not be used because of them, he left the crane on the road (leading to the location of the torpedo) and returned home; that since then he has not returned to that place; that he did not know whether the work was subsequently done or not, and if so by whom or when; that he did not have any knowledge of the matter as he did not receive such an order at a subsequent date and as he did not go the scene after that; that he, Katsumi, went there in his capacity of interpreter, namely as a liaison man; that he reported to Executive Officer Cho on his return; that he did not know if Lee participated in the work or not because he (Katsumi) did not see him there; that he did not know who dived, because he was not present at the scene of the work; that although he heard Lee testify that he (Katsumi) threatened with a pistol, he never did do such a thing; that although he heard affidavits read in the court room which stated the same matter, he, Katsumi, never did such a thing at any time.

There are again points of discrepancy between the evidence in the affidavits cited above and that in the testimony of the prosecution witnesses. The judge advocate with such evidence cannot maintain that he has established proof <u>beyond a reasonable doubt</u>. On the other hand the accused absolutely denies the allegations of the judge advocate regarding this incident.

(e) Iwama, Chuichi in his second deposition (Exhibit 38) in answer to the interrogatory "Do you know whether Katsumi was at the scene of this work or not" states "I do not recall this." Now, this statement is made by Iwama who was at the scene throughout the operation according to his (Iwama's) statement.

0540

17. The incidents of unloading and transport of arms and munitions.

(Specification 1(e); Specification 2(e).)

This is an incident which occurred sometime around March 23rd, 1942, in which prisoners of war were used to unload and transport arms and munitions.

(a) The witness Edwin Mang Sook Lee testified in court that whenever Japanese ships entered port around March 1942, they were ordered to work in unloading ammunition and bombs for submarine chasers; that Japanese military personnel participated in this work too; that he did not know if Katsumi was at the scene of the work at all times; that this work was performed five or six times.

(b) Rogge in his deposition (Exhibit 34) states that he as a deck hand was engaged in unloading munition and war material from Japanese transports at the waterfront. He stated that it was under Goldie Akizawa that he worked.

(c) Kawasaki, Susumu in his deposition (Exhibit 16) states that to the best of his knowledge no prisoners of war were used in unloading arms and munitions; that this work came under the jurisdiction of the harbor master.

(d) Iwama, Chuichi in his deposition (Exhibit 17) states that he does not remember prisoners of war being employed in unloading arms and munitions; that they were used in unloading foodstuffs; that he believed the order for this unloading work was issued by Lieutenant Ogawa or Executive Officer Cho, that usually the direct orders came from Lieutenant Ogawa's office; that he did not recall Katsumi having relayed orders to use prisoners of war either to himself or any third person; that he did not recall Katsumo bringing prisoners of war for stevedoring work.

(e) Executive Officer Cho states in his deposition (Exhibit 37) that he never heard of prisoners of war being used in unloading arms and ammunition from Japanese transports and that this type of work was under the jurisdiction of the construction department, and that he does not remember having ever used Katsumi for this work.

(f) The accused Katsumi testified in court that he never took part in the work of unloading Japanese transports when they arrived (in port); that although he believes prisoners were used for unloading, he never was present when they were engaged in that work; that he never interpreted for such work nor received such orders.

As above stated the persons directly responsible for or in charge of use of prisoners of war in unloading work were persons other than Katsumi. And the fact was clearly shown that Katsumi was not in any way connected with this work. Katsumi denies the allegations of the judge advocate.

18. The incident of the removal and installation of guns. (Specification 2 (d).)

This is the incident in which Katsumi allegedly forced prisoners of war to remove guns from a Japanese destroyer and install them ashore as coastal defense guns, on March 1st, 1942.

(a) Barnett in his affidavit (Exhibit 2) states that he was often employed to work on the removal of five inch guns from a Japanese destroyer and in installing the same guns as coastal defense guns.

(aa) The same man, Ryland F. Barnett, in his deposition (Exhibit 32) states that a Japanese naval captain Sasaki, Taicho supervised this work; that this officer was assigned to this task by his superior officer. However in both statements there is no mention at all of time and date and no mention of whether Katsumi ordered the work or whether he was present at the scene of the work. The above fact is worthy of note.

(b) The witness Edwin Mang Sook Lee testified in court that around March or April of 1942, he with other prisoners of war went to a Japanese destroyer and removed four five inch calibre guns and moved them to the waterfront; that Katsumi assigned this job of work; that after that other prisoners installed these guns in various positions on the island; that this work took approximately three weeks from March till the latter part of April; that Hokanson received this order from Katsumi; that Katsumi once went to the barge but never went to the destroyer; that he (the witness) rather was a member of the tug than a participant in this work.

0541

(c) Kawasaki, Susumu in his deposition (Exhibit 16) states that guns were removed and installed ashore although he did not recall the exact day and month (when this was done); that these guns could not be used as the Japanese forces did not have the ammunition for them; that the term install was not appropriate as the guns were merely removed from the destroyer and placed ashore.

(d) Executive Officer, Cho, in his deposition (Exhibit 37) states that, guns were removed from the grounded Japanese destroyers and installed ashore, and that this was done by the orders of the commanding officer, Captain Kawasaki; that the prisoners were not used for the removal of guns, but for its installation work, that is for cementing work.

(e) The accused Katsumi, Seishi testified in this court-room that he knew of the removal of guns from a Japanese destroyer sometime in March or April of 1942 and of their installation but that he did not know anything about whether or not prisoners of war were used for the removal of these guns; that he did not go to the destroyer; that however he knew that prisoners of war were used for the installation of the guns; that this installation was ordered by Executive Officer Cho and that he Katsumi as interpreter was present when it occurred; that the Japanese enlisted personnel did the main part of the work, with the prisoners merely helping them; that there were officers of the Japanese armed forces very often present at the scene supervising, if not all the time; that non-commissioned officers and enlisted men of the Japanese armed forces and prisoners of war participated in this work.

Regarding this alleged incident the affiant Ryland F. Barnett of the affidavit submitted by the Prosecution (Exhibit 2), also testified that Captain Sasaki, Taicho, IJN supervised this job. Moreover there has been no proof produced to show that Katsumi ordered this job of work. On the other hand Katsumi absolutely denies the allegations of the judge advocate in regard to this incident.

19. The incident of the manufacture of gun and machine gun parts and converting of same. (Specification 2(#).)

This is the incident which occurred sometime around March 1, 1942 in which Katsumi is alleged to have forced prisoners of war to manufacture parts for and convert machine guns.

(a) Albert S. Froese in his affidavit (Exhibit 3) states that during the time he was detained on Wake Island he was constantly employed in making parts for machine guns. However he does not state that Katsumi ordered this work or directed or supervised this work. Nor does he state that Katsumi was connected with this work or was at the scene of this work.

(b) Warren O. Rogge in his affidavit (Exhibit 6) states that they, the prisoners, were always converting machine guns of Grumman fighters into emplacement guns. In this affidavit too, not even the slightest mention is made of Katsumi having been connected with this work. No sign of Katsumi's name appears in this regard.

(c) Although Ryland F. Barnett mentions this work in his affidavit (Exhibit 2), Katsumi's name does not appear in connection with it.

(d) Executive Officer Cho, in his deposition (Exhibit 37) states that he never heard, that prisoners were used to convert aircraft machine guns into ground machine guns, or to manufacture gun parts; that the supervising and directing of this work was done by Lt.(jg) Suzuki; and that he never heard of Katsumi having participated in this work.

(e) The accused Katsumi testified in court that he witnessed prisoners of war making stands for the machine guns around March or April of 1942 when he went to the machine shop; that he believed the order for this assignment was issued by the Chief Engineer; that he, Katsumi, was in no way connected with this work.

In the affidavits cited above, not only does the name of Katsumi not even appear, but no mention is made in them that Katsumi was connected with the work. On such evidence it is not possible to charge Katsumi for this incident. Katsumi denies all the allegations relative to this incident.

0542

20. The incident of the construction of gun emplacements. (Specification 2(f).)

It is alleged that in this incident which occurred sometime around March 1, 1942, Katsumi forced prisoners of war to be employed in the construction of gun emplacements.

(a) Albert F. Freese in his affidavit (Exhibit 3) states very simply that he was, during the time he was detained on Wake Island, also employed in making a mount for a four inch gun that was taken from a Japanese destroyer. Also that he saw Al Smith and Bill Hayns constantly working on the installation of a new gun. That is all he states; he does not even mention the name of Katsumi.

(b) Ryland F. Barnett in his affidavit (Exhibit 2) and deposition (Exhibit 32) states that he was employed in installing coastal defense guns; that the supervisor of this job was a Captain Sasaki Taicho IJN; that this Sasaki was ordered to undertake this duty by his superior officer. However the name of Katsumi does not appear at all either in the affidavit or the deposition in connection with this work.

(c) Henry Stanley Wilson in his affidavit (Exhibit 8) merely states that he protested the use of prisoners of war for construction of machine gun pill boxes in violation of international law to the Japanese Naval Commander. In this affidavit too, the name of Katsumi does not appear at all. Moreover, no mention is made of the year, month or day on which this work was done.

(d) The witness Francis C. Campbell testified in this court that he was made to help in the construction of machine gun nests and machine gun pill boxes, and that Katsumi ordered this work.

(e) Executive Officer Cho in his deposition (Exhibit 37) states, he heard that, prisoners of war were used for work in constructing gun emplacements; that this work, he thought, was supervised and directed by Lt.(jg) Suzuki, but it might have been supervised by the construction department; that he cannot recall Katsumi ever being connected with this work.

(f) The accused Katsumi testified in this court-room that this manufacture of gun mounts being related to installation of guns, Executive Officer Cho ordered Chief Engineer Jonson to plan, and that he, Katsumi, acted as interpreter; that he, Katsumi, under orders of Executive Officer Cho merely interpreted and maintained liaison during the course of this work.

Thus, Katsumi denies the allegations of the judge advocate concerning this incident.

21. Incident of construction of trenches and barbed wire entanglements. (Specification 2(g).)

In this incident which occurred on March 1st, 1942 or thereabouts the accused Katsumi is alleged to have forced prisoners of war to construct trenches and barbed wire entanglements.

(a) Warren O. Rogge in his affidavit (Exhibit 6) states very simply that "our work was always on gun positions, trenches, ... and we placed barbed wire entanglements in all of these operations."

(aa) The same man, Rogge, merely states very laconically in his deposition (Exhibit 34) that "the first job almost all of us had to do was putting up barbed wire entanglements on the beaches." In both documents no mention is made of the date nor of the name of Katsumi.

(b) Harry L. McDonald in his affidavit (Exhibit 12) states that he was made to set up barbed wire entanglements on the beach for two days and was forced to work in the water; that this was dangerous due to the surf and sharp coral but that if they showed signs of lagging in the work they were threatened by the Jap guards or by Katsumi himself; that Katsumi directed this detail from time to time.

0543

(c) The witness Francis C. Campbell testified briefly in court that he helped in the construction of trenches on Wake Island and that he received orders for this work from Katsumi. However he did not testify that Katsumi forced him to do this work or that Katsumi threatened him.

(d) Kawasaki, Susumu in his deposition (Exhibit 16) states as follows: "I never ordered or witnessed any prisoners of war being used for digging trenches or setting up barbed wire." and "I think that each unit carried out its own construction of trenches and setting up of barbed wire. This type of work - digging of trenches and setting up of barbed wire - was carried out by each unit in its particular area."

(e) Executive Officer Cho, in his deposition (Exhibit 37) states that he never heard prisoners of war were used for digging trenches and setting up barbed wire entanglements, not only that, he was certain that prisoners of war were not used for this work; /that he thought Katsumi was not connected with this work. /these assignments were executed by platoon commanders in their respective areas of jurisdiction

(f) The accused Katsumi testified in court that he did not know whether such work as construction of barbed wire entanglements was carried out at all, but that he saw Japanese enlisted personnel digging trenches; that he absolutely did not know whether prisoners of war were used for constructing trenches; that he never saw or heard of prisoners being used for this work. Thus Katsumi completely denies the alleged facts relative to this incident.

22. The incident of striking "Red" with a club. (Specification 3(a).)
23. The incident of assault of Granstedt with a pistol. (Specification 3(f).)
24. The incident of striking Wise with a sword scabbard. (Specification 3(g).)
25. The incident of striking and torturing Hoffmeister (Specification 3(h).)
26. The incident of forcing Lee to dive. (Specification 3(i).)
27. The incident of striking Fontes and Dunn with a club. (Specification 3(j).)

The accused Katsumi in his testimony in this court-room absolutely denied the above listed six alleged facts in the same way as he has denied the others. The commission is aware of this from having heard the accused testify to that effect. Concerning the Hoffmeister incident of the incidents above listed, the accused testified from his knowledge in regard to the punishment of Hoffmeister, and to the fact that observing the soldiers maltreating Hoffmeister during the investigation, he protested to the officer in charge of the investigation saying that he could not act as interpreter at the investigation if such mistreatment went on, and had the officer discontinue the mistreatment.

As stated according to the various incidents charged above, the accused Katsumi denies all the alleged facts enumerated in the 3 Specifications.

0544

Chapter III

The Evidence and Burden of Proof Regarding General Denial, Alibi and the Unloaded Gun.

28. Evidence

The prosecution evidence in this case was presented through the testimony of 3 witnesses and 13 affidavits. The affidavits consituted the nucleus of the means of proof. Affidavits are made ex parte and therefore such documents cannot establish alleged facts. The evidence presented by one party must always be subjected to cross-examination by the other party; only then can it corroborate the truth of facts to a certain degree. In actual fact, in the present case, a witness for the prosecution, Walter T. Kennedy, clearly testified in this court that there was an error in the affidavit he had made. This too was discovered only through the cross-examination of the other party. If this cross-examination had not been conducted, it may have not been brought to light. There are quite a number of ambiguous portions in many of the other affidavits. Thus affidavits cannot be used as evidence by themselves to establish firmly the truth concerning facts. In the light of these concrete examples we are able to understand clearly the spirit of that regulation in Naval Courts and Boards, paragraph 217 which stipulates that affidavits may not be used as evidence. Therefore, though the prosecution present numerous affidavits in this case they may not through that establish the facts which they allege.

Further, despite the customary procedure of the prosecution in numerous other trials to present statements by the accused himself in this trial not one statement made by the accused Katsumi was submitted. This fact is worthy of note.

29. General denial of the accused, and the burden of proof regarding same.

As I previously stated in Chapter II, para. 27 when examining the alleged facts, the accused firmly denies and in general all the alleged facts enumerated in the specifications of this charge. The judge advocate in conformity with the principle of burden of proof must establish these alleged facts.

American Jurisprudence states as follows and we quote:

"Criminal Prosecutions. Para. 149. Generally -- The general rule as to the burden of proof in criminal cases requires the prosecution to prove beyond a reasonable doubt the essential elements of the offense with which the accused is charged; and if the proof fails to establish any of the essential elements necessary to constitute a crime, the defendant is entitled to an acquittal. The rule imposes upon the prosecution the burden of proving the existence of every element necessary to constitute the crime charged. The burden of proof as understood in criminal law is never on the accused to establish his innocence or disprove the facts necessary to establish the crime charged nor is the burden ever upon the defendant to show that he did not commit the crime. The necessity of adducing evidence to meet the case made by the

0545

prosecution may devolve upon the accused, and he is required to assume the burden of proving affirmative defenses upon which he relies; but the burden of establishing his guilt rests on the prosecution from the beginning to the end of the trial, even when the defendant offers an affirmative defense. Nonaction of the defendant in a criminal case cannot be substituted for action on the part of the state as to any matter required to be established as a part of the state's case. This rule obtains not only from the well-established principle that the presumption of innocence is to stand until it is overcome by proof, but also from the form of the issue in all criminal cases. The defense, being a general denial of the crime charged, necessarily imposes on the government or state the burden of showing affirmatively the existence of every material fact or ingredient which the law requires."
(American Jurisprudence, Vol. 20, Criminal Prosecutions, para. 149, pp. 153-154.)

But has the prosecution proved beyond a reasonable doubt all the incidents enumerated in the specifications of the instant case? No!

30. Alibi and its burden of proof.

(A) Specifications 1 and 2.

In regard to specification 1 (a), (b), (c) and specification 2 (a), (b), that is the firefighting on the dredge, the work of repairing the airport runway and the work of repairing the AA guns, the prosecution contends that the accused Katsumi compelled the prisoners to do this work on the morning of February 24, 1942, at a time when the bombardment and aerial bombing by the American Task Force was in actual progress.

But the evidence of the prosecution and the accused shows that actually the bombardment and aerial bombing lasted about 1 hour starting from about 7 to 7:30. According to "Battle Report" (introduced as evidence by the accused) which is most reliable, it has come to light that the bombardment and aerial bombing on that day actually lasted 40 minutes, beginning at 7:40 in the morning. If we assume the contention of the prosecution to be true, we cannot but admit the fact that Katsumi during this short period of 40 minutes, must have accompanied the prisoners to three different scenes, and must have been present for the whole length or part of the time together with them at each scene of the work. Among the affiants of the affidavits and witnesses of the prosecution, one of them states that Katsumi accompanied them to the place and stayed throughout the time at the actual scene, or stayed throughout and supervised and directed the work, others say that he stayed in the airraid-shelter from the beginning of the air raid and continued to stay there. The details regarding this have already been pointed out in Part II. It was physically impossible for Katsumi to perform these several acts at the same time on that day. With this evidence the prosecution cannot possibly establish the facts as to the movements of Katsumi on that day. On the other hand, Katsumi himself testified that he remained at the command post of the 1st Company from the beginning of the air raid until 1:00 p.m. when the all clear was ordered. He also testified that not only did he not go to the above mentioned three places where the prisoners went to work, but he neither went nor stayed at the air raid shelter of the prisoners, but added that, however, after the all clear he returned to his own room and

0546

about 1 hour later with the orders of the executive officer, he went tc the air raid shelter and then to the airport.

(B) Specification 3

Katsumi in his testimony denied entirely and absclutely every allegation in Specification 3 and testified that he was not at the scene. However, he admitted that he was at the scene of the Hoffmeister incident, but quite contrary to the contention of the prosecution, he stopped the enlisted men frcm maltreating him (Hoffmeister).

In short, Katsumi could not actually have been at the scene of the respective incidents of Specification 1, 2, and 3. In fact he was not at the scene of these incidents. To establish an alibi it is not necessary to prove beyond a reasonable doubt, and I quote below, how it is explained in the American Jurisprudence.

> "Section 154. Presence of Accused at Time of Crime; Alibi. - Considerable confusion and conflict of authority exist upon the question of the burden of proof in a criminal case as to alibi and the degree of proof necessary to establish that defense. Some of this conflict is due in part to the different senses in which the term 'Burden of proof' is frequently used and in part tc a misconception of the nature of an alibi which seems to be regarded in many cases as an affirmative independent defense like insanity or former jeopardy. The better rule appears clearly to be that the burden, using the term 'burden of proof' in its proper sense, is not upon the defendant to prove alibi upon which he relies as a defense. The courts which take this position assent to the true rule that an alibi is not an affirmative defense and that evidence to prove an alibi is not to be treated as proof offered to establish an independent affirmative matter set up by the defendant, but mere evidence tending to disprove one of the essential factors, in the prosecution - namely, the presence of the defendant at the time and place of the alleged crime. According to these authorities, evidence of an alibi is competent under a defendant's plea of not guilty. The defendant may thereafter rebut the evidence of the fact of his presence by evidence of the fact that he was not present.
>
> "Many courts on the other hand take the view that the 'burden of proof' of an alibi is upon the defendant. A study and comparison of these cases, however, lead to the conclusion that for the most part the courts laying down this rule mean only that it is the duty of the defendant to go forward with the evidence respecting an alibi if he relies upon this defense, so as to raise at least a reasonable doubt of his presence at the time and place of the commission of the alleged crime. Clearly, the apparent conflict of authority is largely due to uncertainty in the use of the term 'burden of proof.' In some cases, however, the court clearly regards an alibi as an independent affirmative defense and places upon the

0547

defendant the burden of establishing the defense. But such burden does not require proof beyond a reasonable doubt. It is sufficient if the defendant raises a reasonable doubt as to the truth of the charges against him, although there is authority requiring a greater quantum of certainty in this respect."

31. <u>The unloaded gun and its burden of proof.</u>

I have already stated in the above, (Part I, Chapter 4, Sec. 9-10) that in order that an assault may constitute a crime it is a necessary condition that the criminal has a criminal intent, and moreover stated that it does not constitute a criminal assault even if the gun is pointed at someone, if that gun is unloaded. Whether the accused Katsumi had a criminal intent to assault or not and whether the pistol which Katsumi allegedly pointed at the prisoners, was loaded or not, are matters which the prosecution must prove beyond a reasonable doubt. American Jurisprudence reasons in the same way as follows:

"Section 100. Generally. - The burden of proof is always on the state in the prosecution for assault, as in any other criminal prosecution, to establish beyond a reasonable doubt that the defendant committed the crime charged, and if the proof fails to establish any of the essential element necessary to constitute a crime, the defendant is entitled to an acquittal. This results not only from the well-established principle that the presumption of innocence is to stand until it is overcome by proof, but also from the form of the issue in all criminal cases tried on the merits, which, being always a general denial of the crime charged, necessarily imposed on the government the burden of showing affirmatively the existence of every material facts or ingredient which the law requires in order to constitute an offense. (4) ....

"Footnote (4): On an indictment for assault with intent to inflict great bodily harm, it is essential to prove the specific intent, and such intent will not be inferred or presumed from the fact that the defendant acted with gross negligence, if he did not know of the presence of the person injured or have any actual intent to injure him."
(4 Am. Jur. "Assault and Battery" Section 100, pp. 179-180)

Further, in regard to whether the pistol was loaded or not, the burden of proof is upon the prosecution. Let us lend our ears to what the American Jurisprudence has to say concerning this point.

"Section 101. As to Firearms Pointed at Another Being Loaded. - The authorities are not altogether in harmony on the question whether a firearm is presumed to be loaded from the fact that it is presented, accompanied with a threat to shoot. In some jurisdictions there is a presumption that the gun was loaded, and the burden of proving that in fact it was loaded is placed on the defendant, which in other jurisdiction it is the rule that the crime is not made out unless the prosecutor proves that the gun was in fact loaded, there being no presumption to aid him in that respect."
(4 Am. Jur. Assault, Section 101., p. 180.)

0548

But the prosecution has never proved that the pistol which Katsumi had allegedly carried at the time of the occurence of each incident in the instant case, was loaded. Assuming that the burden of this proof was upon the accused, we have proved that this pistol was unloaded at the time.

32. Concerning the carrying of the pistol by the accused Katsumi.

The accused Katsumi testified before this court, regarding his carrying of the pistol during his tour of duty on Wake Island, "I was never authorized by the commanding officers, Arase or Kawasaki, to carry a pistol but although they had seen me carrying this pistol I was never told by anyone including Arase or Kawasaki that I should not carry a pistol." In the deposition of the 2nd Demobilization Bureau (Exhibit 36) regarding the carrying of pistols by interpreters it is stated "On such occasions (Note: serving with front line units) as some direct injury might be experienced to the body of Shokutaku in his execution of his assigned duties (such as accompanying the unit participating in the landing operations), it was customary that arms (pistols) to be carried by a member of an attached unit to a landing party were permitted to be carried by him."

33. General denial and defenses.

The accused on the one hand maintains that delit impossible, absence of criminal intent, and immunity as defenses, and on the other hand denies the specifications in the instant case in their entirety. But the prosecution may perhaps make the criticism that these pleadings are inconsistent. The accused will quote from the American Jurisprudence, as an answer to the eventual criticism of the prosecution, as follows:

> "ASSAULT
>
> "Section 144. General Denial and justification.
> There is a conflict of opinion as to whether a general denial and a plea of justification are inconsistent defenses in an action for assault and battery. In some jurisdictions it is held that these defenses may be joined without violating any rule against inconsistent pleadings, but in other states the contrary view is taken and the defendant is required to elect between them." (American Jurisprudence, Vol. 4, Assault, Section 144, General Denial and Jusification.)

Therefore the accused contends that the above defenses of the accused are consistent.

0549

PART III - CONCLUSION

Chapter 1 - Specifications 1 and 2.

34. Let us assume that Katsumi committed the acts enumerated in specifications 1 and 2. He was still a civilian interpreter temporarily employed by the Japanese Navy. He was never a responsible officer of the armed forces. Therefore, by nature of his very status and rank he could not have committed acts in violation of international law as are specified in these two specifications. In short they are impossible offenses (delits impossibles) insofar as he is concerned. It is the same as a situation in which it is not possible for a person who is not a public officer to commit the crime of corruption (corruption passive) or for an enlisted man to commit the crime of neglect of duty of an officer. A delits impossible or impossible offense is no crime.

35. Let us assume that Katsumi committed the acts alleged in the above two specifications still there are no regulations in international law which stipulate that the act of interpreting is a violation of the law and customs of war. Katsumi's acts were those of an interpreter. Therefore Katsumi's acts are not acts in violation of the law and customs of war.

36. Let us assume that there was commission on the part of Katsumi of the alleged acts enumerated in the above two specifications. Even so Katsumi merely in his capacity as interpreter transmitted thoughts and ideas and in the process of transmission he did not interpose any ideas of his own. He had no guilty intent. Hence his acts cannot constitute crimes.

37. Let us assume that there was commission on the part of Katsumi of the alleged acts enumerated in the above specifications,-----he was still a mere employee of the armed forces and he had superior officers above him, to whom he, Katsumi, was subordinate. Subordinates when they act in accordance with superior orders, even if the acts are in violation of law, are exonerated from responsibility.

38. Katsumi at the time of the occurrence of the incidents enumerated in the above specifications could not have been at the scene (according to the evidence presented by the prosecution). Moreover the accused testified that he was in actual fact not at the scene at the time, and he absolutely and generally denied the alleged facts of specifications 2 and 3.

Chapter II
Specification 3

40. The judge advocate failed to establish that the pistol carried by Katsumi was loaded. The accused testified that this pistol was never loaded with cartridges. Let us assume that this unloaded pistol was pointed at a third party. This cannot constitute a criminal assault. Moreover Katsumi testified that he absolutely never did such a thing. And there is much evidence presented by the judge advocate which does not state that Katsumi pointed his gun at anyone.

41. Not only could not Katsumi have been at the scene of the alleged incidents of specification 3 at the time of their occurrence, if we follow the evidence presented by the prosecution, but Katsumi makes a general denial that he was at the scene of the incidents at the time.

39. Therefore the prosecution has not established the alleged facts of specifications 1 and 2 beyond a reasonable doubt.

42. The alleged facts of specification 3 were not established beyond a reasonable doubt by the judge advocate.

43. In short, the alleged incidents enumerated in Specifications 1, 2 and 3 of the present charge were not established beyond a reasonable doubt by the judge advocate.

For the above reasons, I hold that the accused Katsumi is not guilty of Specifications 1, 2 and 3 of the charge.

I respectfully request the commission to grant a finding of not guilty to the accused Katsumi, Seishi.

Respectfully,

TAKANO, Junjiro.

I hereby certify the above to be a true and complete translation of the original in Japanese, to the best of my ability.

EUGENE E. KERRICK, JUNIOR,
Lieutenant, U. S. Naval Reserve,
Interpreter.

0551

Case of

Katsumi, Seishi

September 20, 1948

RECORD OF PROCEEDINGS

of a

MILITARY COMMISSION

convened at

United States Pacific Fleet,

Commander Naval Forces, Marianas

Guam, Marianas Islands,

by order of

The Commander Naval Forces, Marianas

VOLUME 2

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OFFICE OF JUDGE
ADVOCATE GENERAL
G.C.M. SECTION

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0552

ARGUMENT IN DEFENSE OF KATSUMI, SEISHI, DELIVERED BY COMMANDER MARTIN E. CARLSON, USNR, A COUNSEL FOR THE ACCUSED.

May it please the commission:

Members of this military commission, you have a most difficult task in deciding this case. Many incidents have been set forth and alleged as offenses. In the first specification there are alleged 5 separate offenses; in the second specification 7 offenses; and in the third specification 10 offenses are set forth. Twenty-two separate and distinct offenses, until you read them, and then you discover that many are but duplications, a word changed here and there or a few words added. Why? So far the judge advocate has not answered or tried to justify such pleading. It is certainly not the usual method of charging a crime, to set forth the same offense three different times under the one charge. Section 12 of Naval Courts and Boards states the rule: "It is requisite that a charge name an offense provided for by or within the purview of the articles for the government of the Navy or other enactment of Congress; and that a specification set forth in simple and concise language facts sufficient to constitute the particular offense charged and in such manner as to enable a person of common understanding to know what is intended." Since this was not done it is indeed the good fortune of the accused that you members of the commission are well versed and experienced in the trial of persons charged with having committed war crimes. You can readily see, having read the specifications and heard the evidence, that the prosecution have only ten offenses under specification 3 and five offenses under specification 2 or a total of 15 offenses instead of 22 offenses.

The five offenses set forth in specifications 2 (c), (d), (e), (f), and (g) are alleged to have been the forcing and compelling, by Katsumi, a civilian interpreter, the American prisoners of war to perform work directly related to war operations. On the face of it, this is ridiculous. A civilian who studied economics and worked as a clerk compelling persons to perform work directly related to war operations. It is common knowledge that in 1942 the Japanese Military were directing war operations on Wake, and not any civilian clerks like Mr. Katsumi, a civilian interpreter.

Specification 3 alleges ten separate offenses of assault and battery and you gentlemen of the commission are sufficiently versed in the law as it relates to crimes to recognize that what is being here charged is a simple assault and battery notwithstanding the argument of the judge advocate that these offenses are not offenses of assault and battery but they are only offenses in violation of the law and customs of war. Gentlemen of the commission look at this specification 3. Five of the ten offenses are charged as felonies and five are charged as offenses of simple assault and battery. Why? We would be greatly interested to hear the why and wherefore of such pleading.

Section 12 of Naval Courts and Boards as we have said requires, mind you there is no option given the pleader, that "a specification set forth in simple and concise language facts sufficient to constitute the particular offense charged and in such manner as to enable a person of common understanding to know what is intended."

We repeat, that it is indeed fortunate that the members of the commission are so well versed as jurists in the law of war crimes. Only a very learned jurist can understand such a charge as is here pleaded under three specifications of twenty-two subparagraphs.

0553

The precept dated July 27, 1948 "From: The Commander Marianas Area" convening this military commission states: "The military commission shall be competent to try all offenses within the jurisdiction of exceptional military courts." First of all there must be an offense, a criminal offense, and second the criminal offense must be within the jurisdiction of exceptional military courts.

The convening authority did not set forth the law or the customs of war alleged to have been violated and the evidence does not show that any of the alleged offenses are in violation of either the common law or the statute law of the United States or of what the prosecution refers to as International Law. There was no showing by the prosecution of any valid custom.

In section 5 of Naval Courts and Boards there is contained succinct statement of the sources of unwritten law. In order to constitute a valid custon there must be the following principal conditions:

(1) It must be long continued.
(2) It must be certain and uniform.
(3) It must be compulsory.
(4) It must be consistent.
(5) It must be general.
(6) It must be known.
(7) It must not be in opposition to the terms and provisions of a statute or lawful regulation or order.

There has been no evidence that there was any valid custom which was alleged to have been violated by the accused, Katsumi, Seishi, a civilian interpreter employed by the Japanese Navy Department on Wake Island.

Section D-13, Naval Courts and Boards states that the offense cognizable by a military commission may be either a civil crime, a violation of the laws of war, or orders of military authority. Since the offense must be a crime and since there has been no showing that the offenses charged are crimes under the definition of crime by Clark and Marshall, A Treatise on the Law of Crimes, in Section 1, you must first of all decide if there has been a crime committed. Their definition of a crime is: "A crime is any act or omission prohibited by public law for the protection of the public, and made punishable by the state in a judicial proceeding in its own name. It is a public wrong, as distinguished from a mere private wrong or civil injury to an individual."

According to this definition it isn't enough to allege that Katsumi, a civilian, did on February 24, 1942, before an all clear was sounded, force certain prisoners of war from an air raid shelter and compel them to repair an aircraft runway. (See specification 1 (b).)

In the first place, this specification presupposes a duty on Katsumi's or someone to sound an all clear signal. Since this too is put in issue by the plea of the accused there must be proof of such a duty on the part of Katsumi or some one else to sound an all clear signal. The proof is clear that the American air attack on Wake Island lasted only forty minutes. All during that time the American prisoners of war were in an air raid shelter and not a single prisoner was injured by any American bombs or gun shell fire. There is also evidence that the American planes returning to their carrier about a hundred miles north of Wake sighted a Japanese ship and proceeded to bomb it. To their chagrin, however the Japanese ship sank due, however, to the gun fire from the American destroyer Maury. With the planes rendezvousing and returning to their carrier and the surface craft also rendezvousing somewhere about 100 miles north of Wake can it be said that it was not

0554

"all clear" on Wake Island because of gun fire and bombing of a Japanese ship 100 miles away. Captain Kawasaki testified that the all clear was passed at about 0700. Two-thirds of the men were then relieved from their battle stations and one-third of the men were kept on the alert at battle stations. Continuing his answer to the 27th interrogatory he testified: "When the all clear was sounded, those two-thirds of the men were used for cleaning of weapons and repairing of battle stations. All the time I was on duty on Wake Island, one-third of the normal complement was on duty at the battle stations."

Since the prosecution have failed to prove beyond a reasonable doubt that the offenses charged were carried out before an all clear signal was sounded then the commission must first of all determine whether there was a crime committed, one of the necessary elements of the crime alleged not having been proved.

It is said that federal jurists are divided into two groups as to how a law case should be decided. Judge T. Alan Goldsborough, federal district judge for the District of Columbia, is said to decide a case on what he calls common sense methods. In a child custody case he said: "I consider the welfare of the child to be the primary consideration, not something printed in a law book."

Since it was not proved that Katsumi, a civilian, passed on the orders of his military superiors before the all clear was sounded as alleged in specification 1 (b), 2 (a) and 3 (c) common sense says that there was then no offense. Gentlemen of the commission, is this not your conviction. Supreme Court Justice Felix Frankfurter and Judge Learned Hand hold that unless a judge tempers his own opinion of a case with a liberal study of precedent, our entire legal system will descend to chaos.

Judge Goldsborough says: "The only time a judge goes against his own convictions is where the letter of the law is so plain that it is not subject to construction -- and that happens in relatively few instances."

In this case the letter of the law is not so plain that it is not subject to construction. In fact there is no law on the subject at all. We objected to the charge and to the specifications because they were vague and uncertain and we also moved for a bill of particulars as to what law and what customs of war was violated by the accused, Mr. Katsumi, a civilian employee, an interpreter, employed by the Japanese Navy on Wake Island. There just isn't any law either a statute or a valid custom, nor are the offenses alleged crimes at common law, so of course our objection and motion for a bill of particulars went unanswered and the evidence so far adduced does not show any specific law which sets out the incidents alleged to be a crime, nor have the prosecution proved that the alleged incidents are crimes at common law. All that the prosecution can say is that we allege they are crimes and that proves they are crimes. No further proof is necessary. It is a crime to repair an air strip. You, Mr. Katsumi lived in America for many years and although your job was to interpret and translate the orders of your military superiors to the American prisoners you should have refused to do so, explaining to your military superior, the commanding officer of the Japanese garrison on Wake Island, that his orders were illegal.

Common sense, gentlemen, readily convinces you that no civilian interpreter has any such duty or responsibility.

At this point it would be well to consider just what a war crime is and I shall quote what Captain James J. Robinson said in his address before the Joint Meeting of the Military and Naval Law Committees of the American Bar Association and the Federal Bar Association in Washington, D. C. on April 20, 1945. Captain Robinson said: "A war crime is an act forbidden by the law of war and committed in any place in time of war by a person who is connected or acting with a belligerent nation and who acts with intent unlawfully to injure a person or property, or government connected with an opposing belligerent nation or with a neutral nation."

0555

Clark and Marshall, on Crimes, emphasizes the necessity for Criminal Intent on pp. 56-57: "It is a general rule, applicable both to common-law and to statutory crimes, that there is no crime unless there is a so-called criminal intent, often referred to as mens rea..."

"...a crime consists in a combination of a criminal act and a criminal intent, or mens rea . The character of the criminal act will be considered in subsequent chapters; for the present, suffice it to say that it is a necessary ingredient of a crime. The other ingredient, that of intent, is likewise essential, although often thought otherwise. The maxim is 'Actus non facit reum, nisi mens sit rea.' A wrongful act and a wrongful intent must concur.(1) citing the cases of Reg v Folson, 23 QB 168; Levets Case, Cro.Car. 538, 1 Hale P.C. 474; Jordon v. State, 52 Ala. 308, 23 AmRep 575; Brown v. State, 7 Pennewill (23 Del) 159, 74 Atl. 836, 25 LRA INS) 661; Com. v. Mixer, 207 Mass 141, 93 N.E. 249, 31 LRA (NS) 467, 20 AnnCas 1152; People v. Welch, 71 Mich. 548, 39 N.W. 747, 1 LRA 385, Com. v. Weiss, 139 Pa. 247, 21 Atl. 10, 11 LRA 530, 23 AmStRep 182. "It is a sacred principle of criminal jurisprudence," said the Tennessee court, "that the intention to commit the crime is of the essence of the crime, and to hold that a man shall be held criminally responsible for an offense, of the commission of which he was ignorant at the time, would be intolerable tyranny." (2) citing the case of Duncan v. State, 7 Humph(Tenn) 148. It is because of this principle as we shall presently see at some length that the law does not punish children of tender age and insane persons, who, by reason of their mental incapacity, are incapable of understanding the nature of their acts, or of distinguishing between right and wrong, persons acting in good faith and without negligence under a mistake of fact, and persons acting under necessity or compulsion."

Even if there were a statute, or some vague and as yet unheard of law not yet at this stage of the trial brought into evidence by the prosecution, or a valid custom; any one or all of them making it a crime or a felony for a civilian interpreter acting under necessity and compulsion, to order as he was told to do, certain prisoners of war from the air raid shelter on Wake Island and compel them to repair an aircraft runway, see specifications 1 (b) and 2 (a) or in the words of specification 3 (c) feloniously and forcibly with intent to force them against their wills to work on an aircraft runway during an actual attack, it would be directly in opposition to the cardinal consideration influencing the minds of judges in deciding such an issue, that is the injustice of punishing unconscious violations of such an obscure or ex post facto law. This we hold should be your guiding principle even if you should become aware that there is some statute making the offense charged, a public crime. It is then your function to find out the intention of the makers of such a law. You members of this commission have a most difficult task in this instance. Since we hold there is no such statute and that criminal intent to injure the person of another is a necessary element of the crimes charged it is incumbent upon the judge advocate to bring out the statute under which he has laid the charge and point out to the commission wherein it is not necessary to allege or prove criminal intent to injure the person of another and the absolute need of punishing the accused, notwithstanding he had no criminal intent to injure the person of another nor was the other person injured because he was compelled to work on the aircraft runway that day.

Quoting again from Clark and Marshall on Crimes, p. 242-243, "All assaults and assaults and battery are misdemeanors at common law....the intent must be to inflict a corporal injury...the violence or force attempted or done must be unlawful."

0556

Clark and Marshall explain fully what is meant by <u>aggravated assaults</u> that is an assault with intent to kill, to do great bodily harm, to rape, to rob, etc. Even in the five instances specifications 3 (b), 3 (c), 3 (d), 3 (e), and 3 (i) where it is alleged Katsumi "feloniously," an aggravated assault is not charged, because it is alleged Katsumi only did this with intent to force the persons against their will to work. This is no aggravated felony to force a person to work.

From 5 Corpus Juris we quote further: In People v. Sullivan, 4 N.Y.Cr. 193, Justice Breedley states the rule as follows: "One and an important, element of crime is intent. To constitute a criminal assault, an intent to do bodily harm or by violence is requisite. That is a proper question for the jury, under proper instructions from the court, and it is no less so when it is involved, in the use of a weapon." This was always the rule. There must be an intention coupled with the present ability of using actual violence against the person. Hays v. Peo., 1 Hill 351. But in Peo. v. Bransby, 32 N.Y. 525, 531, it was said: "A criminal conviction for an assault cannot be upheld, where no battery has been committed, and none attempted, intended or threatened, by the party accused. It is indispensable to the offense that violence to the person be either offered, menaced, or designed." cited in footnote 62 under New York rule in 5 Corpus Juris "Assault and Battery" par. 183, p. 722, in support of rule of law "The acts done must be in preparation for an immediate injury...a mere intent to alarm has been held insufficient (citing Chapman v. State, 78 Ala. 463, 56 Am. R. 42. And in which it is held that there must be a specific intent to commit a battery." Section 286, Corpus Juris, Assault and Battery: "Where intent is an element of the offense, it must be alleged substantially in the words of the statute." 60 State v. Elborn, 27 Md. 483, footnote 60 to 286 C.J. Assault and Battery: "An indictment for assault with intention to inflict a great bodily injury is not sufficient where it alleges an "intent... to beat, strike, wound and bruise." State v. Harrison, 82 Iowa 716, 47 NW 777, (2) or "to strike and bruise" State v. Clark, 80 Iowa 517. Section 287, 5 Corpus Juris, Assault and Battery, "Where the statute defining the offense makes the infliction of an injury of a particular character an essential element thereof, an indictment or information must allege that such injury was inflicted." State v. Battle, 130 N.C. 655, 41 SE 66; Chick v. State, 7 Humphr. (Tenn.) 161; Wilks v. State, 3 Tex. A. 34. Section 332, 5 Corpus Juris, Assault and Battery: "Where the allegation is that an aggravated assault was committed by means of a deadly weapon, the evidence must show that beyond a reasonable doubt, in order to sustain a conviction on that ground. If the weapon is not per se a deadly one, and there is no proof of its deadly character, a conviction will be set aside." Footnote 27, Pistol used as a bludgeon - Pistol so used was not a deadly weapon, the evidence was not sufficient to sustain a conviction." McLendon v. State (Tex.Cr.A.), 66 SW 553. 336, Deadly character of weapon. Whether an instrument used in an assault is a deadly weapon, is a question of law, where there is no dispute about the facts, but where its character depends on the manner in which it is used, the question whether there was an assault with a dangerous or deadly weapon is to be submitted to the jury. 364, Amount of punishment. Punishment must not exceed that provided by statute as the maximum penalty (13), In re Burns, 113 Fed. 987, Ill. Peo v. Anders, 185 Ill A 343, Cal. Peop. v. Wilson, 9 Cal. 259, is it does defense is entitled to be discharged on habeas corpus. In re Burns, 113 Fed 987. 240. Since the force to constitute an assault and battery must be unlawful the relationship existing between the parties or the official capacity in which defendant acted may afford an excuse or justification if the privilege is not abused and excessive force employed."

0557

Section 243, footnote 13, U.S. v. Sweet, 1 Philippine 18, an assault committed by a soldier or military employee upon a p.o.w. is a violation of the general penal law, and as such it imposes criminal responsibility." Section 258, 5 Corpus Juris, Assault and Battery, "But a court of summary jurisdiction has no power to convict of a common assault unless the party aggrieved, or someone on his behalf, complains of the assault, with a view to the adjudication of the court upon it." Section 260, 5 Corpus Juris, Assault and Battery: "Persons Liable. A person is not guilty of an assault and battery by reason of the mere fact that he is present when it is committed (92) Schribe v. State (Tex. Cr. A.) 358 W 375, that he does not take steps to prevent it, (93) State v. Wolf, 112 Iowa 458, 84 N.W. 536; Colquitt v. State, 34 Tex. 550; Schribe v. State (Tex.Cr.A.) 35 SW 375; Reg. v. Coney, 82 QBD 534. that he has knowledge of it, (94) Smith v. State, 61 Tex. Cr. 349, 135 S.W. 152; Johnson v. State 59 Tex.Cr. 263, 128 S.W. 614. or that he approves it; (95) Com. V. Middleby, 187 Mass. 342, 73 N.E. 208, he must have done some act by way of aid or encouragement (96) Clay v. State, 75 Ark. 513, 88 S.W. 306 (Holding that one cannot be convicted of assault as a principal where it does not appear that he took any part therein, was present when it took place or that what he did after the assault had any connection therewith)." Sec. 175 in 5 C.J. Assault and Battery, p. 716 "In accordance with the well settled rule in federal jurisprudence that there are no common-law offenses against the United States, assaults committed in territory under the exclusive jurisdiction of the United States are punishable only where a punishment is provided by the federal statutes." Footnote 99 citing U.S. v. Barnaby, 51 Fed. 20 (holding that in places under the exclusive jurisdiction of the federal government there was no punishment provided by the laws of the United States for a simple assault by one private person upon another); U.S. v. Williams, 2 Fed. 61, 6 Sawy. 244 (holding that there was no punishment provided for an assault with a dangerous weapon committed within the exclusive jurisdiction of the United States, if committed on land, even if it involved an attempt to commit murder." See Criminal Law 12 Cycl. 39.

Co-counsel have covered thoroughly the law on assault and battery and have set forth the authority for the law (as found in American Jurisprudence and other well known authorities). The evidence adduced so far in this case proves there was no assault and battery. Specification 3 does allege in some instances common or simple assaults, but the evidence does not prove the incidents alleged or that the accused, Katsumi did commit the alleged offenses.

In brief the prosecution allege 15 separate instances of alleged offenses. To prove these 15 alleged offenses the prosecution could only produce three witnesses: Mang Sook Lee, Francis C. Campbell and Walter Thomas Kennedy. What these three persons testified to is evidence and is contained in the record. In addition to the testimony of these three witnesses the prosecution introduced affidavits of 13 other persons.

These affidavits were all taken ex parte without notice to the accused or his counsel. Most if not all of them were taken not to be used at this trial therefore most of the information contained in the affidavits was either stricken or was not read into evidence. What small part of these affidavits which was admitted as evidence should be carefully weighed by the commission. It isn't even necessary to mention this because the court heard what the witness Walter Thomas Kennedy said about his affidavit, Exhibit 4. This Exhibit 4 was five pages of the perpetuation of testimony of W. T. Kennedy taken on December 3, 1946 and was offered into evidence and over our objection admitted into evidence (See 5th day of trial). Although the record shows this perpetuation of testimony, taken ex parte was admitted as exhibit 4, most of it related to incidents and alleged mistreatments of prisoners of war at Zinsuge, Chicoco, Tanagawa, Honshu, Umeda,

0558

Bunshau, Osake, and Takefu, Honshu and was not read into evidence. The only three questions and answers read into evidence were the first two questions relating to name, rate, home address, and citizenship and the question on page 2 as follows: "Do you recall any other mistreatment of prisoners by Katsumi?" According to the answer in the affidavit, Kennedy under oath testified ex parte that Katsumi ordered Pascovich, Hesson, Ackley and Kennedy out of shelter and made them try and repair the Japanese anti-aircraft guns while the American planes were dropping bombs.

How different was the story of this marine, Kennedy, when on the fifth day of the trial he testified here in person. On direct examination the questions were carefully put but nevertheless the witness Kennedy now testified to Q. 16 that Katsumi was accompanied by an officer when he came to the air raid shelter that day and that he, Kennedy, didn't go out of the shelter that day to repair anti-aircraft guns or anything else. When cross-examined Kennedy testified he didn't remember saying in his affidavit that he went out with other prisoners to fix the anti-aircraft guns. Quoting from this affidavit of Kennedy's which had been in evidence as exhibit 4 he was asked if he remembered the answer he gave. (See Q. 42). Now under cross-examination we get this answer: "The fellow I told that to probably made a mistake; I was in the group who was asked to go out, but due to my right arm I didn't have to go."

According to the rule of evidence in Section 217, Naval Courts and Boards: "An affidavit differs from a deposition in that it is taken ex parte and offers the opposite party no opportunity to cross-examine the maker thereof. An affidavit, therefore, is not admissible in evidence for the purpose of proving the subject matter with which the affidavit deals." and in view of the testimony of Walter Thomas Kennedy in denying his affidavit which was admitted into evidence as exhibit 4, all the affidavits should be stricken from the record. The rule is clear and there are no exceptions to the rule: "An affidavit therefore, is not admissible in evidence for the purpose of proving the subject matter with which the affidavit deals."

However, these affidavits do remain in evidence and the court has stated these statements would be accorded their proper weight.

Our argument is that the facts brought out clearly and without exaggeration show there was no public crime committed by the accused Katsumi in the instance wherein he "went to the air raid shelter with the intention of relaying the Executive Officer's order that the work on the air field should be carried on as usual" quoting the answer given by the accused on the eighth day of the trial in answer to the question "With what intentions did you go to the air raid shelter where the prisoners were on February 24, 1942?" and when he went to the air field that day as the liaison man (See answer to next question, Q.___).

The testimony and the evidence as pointed out by co-counsel fully sustain the fact that the accused Katsumi did not commit any crimes as he is charged with having done.

We cannot know what the position of the judge advocate is in this matter because the judge advocate did not sum up the case for the prosecution, so we can only say at this time that the testimony and the evidence all refutes the charge of conduct on the part of Katsumi, Seishi, a civilian interpreter, in violation of the law and customs of war.

MN (7)

0559

For conclusion we call the commission's attention to the demeanor and bearing of the accused. It was difficult for Katsumi to believe that persons would testify that he did the things he is charged with. He doesn't deny that the incidents may have happened to the persons that they were required to fight a fire on a barge and other things but he does deny as his testimony shows any participation in the incidents except as he testified to as an interpreter. Does not common sense convince you that the Japanese military were in charge of the prisoners on Wake Island and that any rules and regulations were promulgated by the military and the punishment of prisoners for breaking such rules were made by the military.

If Katsumi had been the cruel person he is alleged to have been the prisoners would not have laughed at him and ridiculed him. They would not have nicknamed him "Garters." American prisoners would have had a different name for him. If he did the things he is charged with having done he would have been called some ugly name. Instead he was called "garters" because of the ridiculous manner of dress. By their own evidence the prosecution have acquitted Katsumi. I quote you from prosecution document 401, Exhibit 2, the affidavit of Ryland Francis Barnett: "On the afternoon of December 24, 1941 while the American personnel was grouped on the landing strip, I first saw Seishi Katsumi, who was easily distinguished from the rest of the Japanese occupation force by reason of his what appeared to the Americans to be a ridiculous dress. Katsumi at this time was wearing a Japanese naval cap, an ordinary white sport shirt, a pair of white shorts which came below his knees, white tennis shoes and socks and garters. He also was wearing an automatic pistol in a holster. Katsumi was unusually thin, and had prominent veins in his legs. He wore steel rimmed glasses, and bobbed his head much in the matter of a bird as he trotted around the landing strip carrying a handful of papers."

This is the little funny man that the prosecution would have you believe ordered all the prisoners to work in violation of the law and customs of war. He it was they say who beat the American prisoners with his bare fists; he it is who made things tough for them. He, a civilian, is responsible on Wake Island. This is quite a different story than the story of "Command Responsibility" which we have heard in every other war crimes case here tried. You members of the Commission have listened day after day to the prosecution expound upon their theory of Command Responsibility. You heard it emphasized and made a theory of "Absolute Command Responsibility" for everything that happened on all these far flung Pacific islands in the case of Admiral Kobayashi and you have heard it in great detail again in the case of Admiral Takabayashi. The prosecution is strangely silent now about command responsibility. Everything that happened to American prisoners on Wake Island during the time Katsumi was there is now the responsibility of this civilian interpreter. Why?

Let the prosecution answer why after holding Katsumi for two and one-half years in solitary confinement, during all of which time Katsumi maintained his innocence as to having committed a war crime he is nevertheless brought to trial for such things as issuing orders to prisoners and compelling them to work when he was but a minor civilian employee. We ask that you judge Katsumi, Seishi, a Japanese, in the spirit of America whose concept of liberty and justice sees beyond the years.

NN (8)

0560

GREAT AND FAIR IS SHE, OUR LAND

by William Watson

Great and fair is she, our land
High of heart and strong of hand,
.....

Power unseen, before whose eyes
Nations fall and nations rise,
Grant she climb not to her goal
All forgetful of the Soul!
Firm in honor be she found,
Justice armed and mercy crowned,
.....

.....
Let her hold a light on high
Men unborn may travel by.
Mightier still she then shall stand,
Moulded by thy secret hand,
Power Eternal, at whose call
Nations rise and nations fall!

Respectfully,

Martin E. Carlson

MARTIN E. CARLSON.

CLOSING ARGUMENT OF THE JUDGE ADVOCATE

Delivered by
James P. Kenny,
Lieutenant, U. S. Navy,
Judge Advocate.

Counsel for the accused in their arguments have made much of the fact that at the time of the alleged offenses the accused was an interpreter and argue that the law of war could not possibly be violated by one whose duty was merely to interpret for the armed forces. It is true that if the accused had kept strictly to his duty of interpreting for the Japanese forces he might not be on trial here today. However, it has been charged, and the evidence shows, that he went beyond that duty and in so doing he violated the law and customs of war. All members of the forces of the belligerents and those attached thereto, even if they are interpreters, are subject to the law of war. No one is beyond its scope.

Counsel for the defense also argue that since the accused was subject to the orders of his superiors, he cannot be held responsible even if he did the acts as alleged. Superiors orders are no longer an excuse but can be taken into consideration in mitigation. However, the judge advocate points out that the accused has made no contention that these acts were performed on the orders of his superiors. He has denied that he ever performed any of the alleged acts. He cannot therefore now contend that "even though I say I did not do it, if you should believe the contrary, I want you to believe that I could only have done it because I was ordered to do so by a superior." He cannot blow hot and cold at the same time. The defense of superior orders is an affirmative one and the burden of proving it is upon the accused. It cannot have its origin in the arguments of defense counsel. In order to have relied on a defense of superior orders it would have been necessary for the accused not only to establish that he did these things as a result of orders from his superior or superiors, but also, in those instances where force was used, that too was on the direction of a superior. This he has not done but has relied upon a complete and absolute denial of all incidents. It is obvious, therefore, that superior orders should play no part in a consideration of this case. In the course of his discussion of superior orders, Mr. Takano states that a subordinate is bound to obey the orders of his superiors. He must only obey the lawful orders of his superiors and when the order is unlawful (a violation of the law of war) both the superior and the subordinate who carries it out are accountable.

Mr. Takano argues that there can be no responsibility on the part of the accused for these incidents because by the language of the Conventions a prisoner of war is in the power of the hostile government or power. He argues from this that only the hostile government, in this instance Japan, can be held responsible for any violations of the law of war that might have occurred. Such a contention has long since been rejected and the principle of individual responsibility for war crimes, like any other crimes, recognized. The language of the Conventions referred to bear this

0562

out when they state "Prisoners of war are at the disposal of the enery government, not of the individual or corps which have captured them." This was a warning to all those concerned that prisoners of war were to be treated by their captors with humanity and with the consideration befitting them. Counsel further argues that since the Geneva Prisoners of War Convention provides (Article 18) that "Every camp of prisoners of war shall be placed under the command of a responsible officer," there cannot be any responsibility upon anyone other than the commanding officer of the island. Such an interpretation of this article is obviously incorrect. This language appears in Chapter 5 which is titled "Internal Discipline of Camps" and obviously relates to that subject and not to the matter of the responsibility under the law for mistreatment of prisoners of war.

Mr. Takano argues that the prosecution has not shown that the accused had authority to order the prisoners of war to perform the alleged acts and that, in fact, he did not have such authority. It was no part of the prosecution's case to so prove and the prosecution agrees that no such proof has been advanced. As pointed out above the accused does not admit doing any of the alleged acts and therefore cannot argue that, if he had in fact done so it would have been on superior orders. The contention of the prosecution is that he did do them and that he did so in violation of the law. If there was to be any claim that his actions were the result of superior authority or orders, that was for the accused to establish.

Defense counsel quote at length from legal references on the law of intent. Their citations are correct but their deductions therefrom are incorrect. The law on this subject is well stated in Naval Justice (Chapter 15 D 1) as follows:

> "In respect to the element of intent, crimes are distinguished as follows: Those in which a distinct and specific intent, independent of the mere act, is essential to constitute the offense, ..., and those in which the act is the principal feature, the existence of the wrongful intent being simply inferable therefrom, ... In cases of the former class the characteristic intent must be established affirmatively as a separate fact; in the latter class of cases it is only necessary to prove the unlawful act."

The acts which the evidence shows the accused performed were what is known in the law as malum prohibitum. The criminal intent is inferable from the act and need not be established separately. It is true that in sub-paragraphs (b), (c), (d) and (e) of specification 3 the convening authority has alleged that the acts were performed with a specific intent, although this was not necessary since the acts were malum prohibitum under the law. Since

0563

a specific intent was alleged, it was incumbent upon the prosecution in these instances to prove the same. This has been done and the proof of the intent of the accused in these instances appears in the testimony of the prosecution witnesses as to what was said by him at the time the acts were committed.

Defense counsel argue that it was necessary for the prosecution to prove all the elements of the crime of assault in order to sustain specification 3. Although the prosecution has done so, this was not essential. It was merely necessary for the prosecution to prove the facts as alleged in the various subparagraphs of the specification and for this commission to decide whether or not such conduct comes under the broad terms of Article 2 of the Geneva Prisoners of War Convention. However, it should be pointed out that defense counsel has quoted some conflicting opinions of authorities on the law of assault and then accepted the opinion of that authority favorable to his side of the case. This is excusable. However, the law is otherwise. This principle of law is succintly set forth in Chapter 9 - B6 of Naval Justice as follows:

> "It is the apprehension of hurt, not the real design of the offender, that constitutes the offense. ..... It is immaterial that the offender is not in a position to consummate the threatened injury, provided that the person believes there is a present ability to injure him. For example, although a weapon is pointed at a person is unloaded, this may still constitute an offense."

In the final portion of his argument, Mr. Takano makes the point that a defense of justification is not necessarily inconsistent with a defense of general denial. The prosecution is unaware that the accused at any time in his proof has contended that the acts complained of were justified. On the contrary, he has denied having anything to do with each and every incident. Defense counsel has apparently confused a plea of justification with the question of criminal intent.

In describing the first specification of the charge defense counsel tells us that when the framers of the Geneva Prisoners of War Convention used the term "unhealthful or dangerous work" (Article 32) they only meant such work which was inherently so and not the result of surrounding conditions. Counsel quotes no authority for such an opinion, so it must be presumed that it is his own. The convention itself makes no attempt to define what types of work are included in this prohibition and it would seem that the framers deliberately used this broad language. According to Webster's Collegiate Dictionary the word dangerous means: Attended with danger. It is apparent that attended refers to surrounding circumstances. All the incidents enumerated in specification 1 were attended with danger either because of the very nature of the work, such as transporting ammunition and bombs, or because of the surrounding circumstances, such as repairing an aircraft runway during an actual attack and before an all clear had been sounded. With regard to the term "unhealthful" let us also look to Webster's Collegiate Dictionary. "Healthful" is defined as: Serving to promote health of body or mind; wholesome is a synonym. Unhealthful would therefore mean that which does not serve to promote health of body or mind. It is apparent that such work as diving, without proper diving equipment, to remove a live torpedo, would not serve to promote health of body or mind; nor would the other incidents enumerated in specification 1 tend to promote

0564

health of mind in the individual performing them. The judge advocate points out that the prohibition in the Convention (Article 32) is in the alternative and that it is not necessary for this commission to find that each incident was both unhealthful and dangerous in order to find the specification proved. If the facts as proved indicate to the commission that it was one or the other, a finding should be made that the incident was proved.

Defense counsel object to the incidents listed in specification 2, paragraphs (a), (b), (d), (f) and (g), on the ground that they should not be construed as work directly related to war operations. Counsel complains that the language of the Convention concerning this prohibition is general and abstract. The judge advocate believes that the language might be con-considered general but cannot agree that it is abstract or difficult of interpretation. It is believed that the framers of the Convention deliberately used general and broad language, realizing that a decision as to whether or not work was "directly related to war operations" would depend in a large part upon the facts in each particular case. The judge advocate is of the opinion that the incidents as set forth in the seven sub-paragraphs of specification 2 all meet the test of being directly connected to the war effort. Since just prior to the time of the alleged incidents Wake Island had been occupied by the Japanese military forces and during the period when the incidents occurred they were actively engaged in offensive and defense measures against the enemy, it naturally follows that the work on the island, with few exceptions, was directly related to the operations of war. The type of work complained of in paragraph (c), viz., the transporting of ammunition is especially forbidden by the language of Article 31 of the Convention. It is obvious that all the other types of work complained of in the other paragraphs come under the prohibition of the terms of Article 31. If the commission should believe from the evidence that the actual attack had ceased and/or the all clear had been sounded at the time the incidents in paragraph (a) and (b) of specification 2 were performed, then it can properly find such portions not proved and still sustain these paragraphs of the specification. The aircraft runway on Wake Island was directly connected with the war operations of the Japanese on that island. It had to be for the Japanese were not conducting any other operations on the island during the period of their occupation. It follows, therefore, that the repair of this runway at any time during the period indicated would fall within the definition of work directly related to the war effort. It is likewise apparent that this would apply to the repair of antiaircraft guns.

Commander Carlson has made an attempt to reargue the form and technical correctness of the charge and specifications against the accused. Since this matter was disposed of in preliminary arguments, it is not the intention of the judge advocate to reargue the point at this time. Counsel once again states that he is at a loss as to what the law of war is that was violated by the accused and where it is to be found. The commission on the second day of this trial took judicial notice of the Hague Convention No. IV of October 12, 1907 and Annex thereto, and also the Geneva Prisoners of War Convention of July 27, 1929. It is in those Conventions that a good part of the written law of war is to be found and particularly the offenses with which the accused is charged. That the law is definitely not ex post facto is obvious if we compare the dates of the Conventions with the dates of the alleged offenses. Commander Carlson outlines the conditions that must be met before a practice can be recognized as a custom or usage of the U. S. Navy. It is apparent that such a discussion could have no bearing on the law and customs of the international law of war.

0565

This military commission has heard the evidence presented in the form of testimony, depositions, and affidavits. The use of affidavits was made necessary because of the unavailability of certain prosecution witnesses. If these witnesses were available, the judge advocate of course would have called them. However the rules under which this Military Commission operates authorize the use of affidavits as evidence and place no limitation upon the weight that can be given to them. They are competent evidence to prove the subject matter with which they deal.

It was encumbent upon the prosecution to prove all the essential elements of the offenses alleged beyond a reasonable doubt. The judge advocate is of the opinion that this has been done. Much of the cross-examination of prosecution witnesses was concerned with the question of whether or not the actual attack was over and/or the all clear had been sounded at the time on February 24, 1942 when the POW's were ordered by the accused to fight the fire aboard the burning dredge, repair the aircraft runway, and repair the antiaircraft guns. It is apparent from all the evidence on these incidents that at the time the POW's were forced from the air raid shelter the attack was still in progress and the all clear had not been sounded. It is not alleged in Specification 1 that the attack was still in progress when the work was performed but merely that the work was performed in a combat area. The judge advocate believes that the evidence when considered in its entirety establishes beyond a reasonable doubt that when this work on the aircraft runway and the antiaircraft guns commenced the actual attack was still in progress. The judge advocate does not believe that it has been established beyond a reasonable doubt that at the time the fire fighting on the dredge commenced the actual attack was still in progress. No such allegation is made as to paragraph (a) of Specification 1. It is merely alleged that the fire fighting took place in a combat area. This, it is believed, has been established. The area continued to possess the element of danger long after the last shell was fired or bomb dropped - even if it might not have lasted until the actual all clear was sounded much later in the day.

It was alleged in paragraph (b) of Specification 3 that the fire was fought during the actual attack. However, the judge advocate does not believe but this is an essential element of the offense of inhumane abuse and mistreatment and that this commission should find this paragraph proved except for the words relating to the fighting of the fire during the actual attack.

Other than for these incidents the judge advocate believes that the prosecution has sustained the burden of proof and established beyond any reasonable doubt that the incidents occurred as alleged. Defense counsel has outlined how the accused in his testimony has denied all the incidents and explained that at the times in question he was somewhere else. If this military commission believes the accused, then they should fully acquit him of the charge. However, in considering the credibility of the accused, his interest in this litigation should be considered. In order to believe his testimony, it must be believed at the same time that the evidence for the prosecution as given by the three witnesses and the thirteen affidavits is a conglomeration of lies against the accused. We must ask ourselves what would motivate these former POW's to lie about the accused, particularly if he had been as solicitous for their welfare as he claims in his testimony. Why would sixteen former POW's particularly remember Katsumi out of all their Japanese captors during the war unless he was an important individual in their everyday lives on Wake Island? Why would sixteen former POW's give testimony against him unless such testimony were the truth?

0566

The accused has presented evidence of his good character before the war in order to show that such a person could not possibly have committed the alleged offenses. On this score the judge advocate can only say that the evidence indicates that the Katsumi who resided in a peaceful, prewar America was not in essence the same Katsumi who stalked about Wake Island as a member of the mighty Imperial Japanese Navy in the early days of World War II. Perhaps it could be said of him that:

When the devil was sick, the devil a monk would be,
When the devil was well, the devil a monk was he.

The evidence indicates that the Katsumi of Wake Island was more than an organ to interpret the orders of his superiors, as the defense would have us believe. Commander Carlson would have us believe that he was a "funny man" because of the nickname ("Garters") which the prisoners gave him amongst themselves. The evidence does not indicate that the POW's considered the actions of the accused "funny." It evidently was a serious Katsumi who issued orders to the prisoners and it is doubtful if any levity on their part in response to his orders would have been appreciated by him.

Commander Carlson confuses the principle of command responsibility with the charge against the accused. He erroneously argues that, since other war criminals have been tried for Neglect of Duty in failing to carry out the responsibilities of command, the accused, who had no command, cannot be responsible for anything he might have done on Wake. We do not charge Katsumi with any neglect of duty - we charge him with being a principal in the performance of certain unlawful acts. It is a false accusation to say that we are charging the accused with everything that happened on Wake Island and Commander Carlson knows it. We are merely calling him to account for what he did.

Defense counsel correctly state the law when they say that the burden was upon the prosecution to establish all the essential elements of the alleged offenses beyond a reasonable doubt. However, they mistakenly assume that discrepancies among the prosecution witnesses as to the exact time when certain incidents occurred or the length of time it took to perform certain work indicates a failure to prove essential elements. It was only essential for the prosecution to prove, with reference to some of the incidents to specifications 1 and 2, that the POW's were forced from the air raid shelter during the period of the actual attack and before the all clear was sounded. The recollection of the witnesses as to just when the attack took place is not important. They would indeed have been rare witnesses, and probably very untrustworthy also, if all had remembered exactly the time when the attack started on February 24th, 1942, exactly when Katsumi came to the air raid shelter for each group, and the time when each group returned. These are unessential facts. The evidence indicates that Francis C. Campbell was not one of those who was forced from the air raid shelter to fight the fire aboard the dredge, as alleged in paragraph (a) of specification 1 and paragraph (b) of specification 2. Such portions of these specifications should not be found not proved. The same is true with reference to W. T. Kennedy in paragraph (c) of specification 1, paragraph (b) of specification 2, and paragraph (d) of specification 3.

In the summary of the evidence by defense counsel much is made of the fact that in many instances a particular affidavit or testimony of the witness does not establish the offense charged. This is not necessary. It

0567

is only necessary that the prosecution in the sum total of all the evidence prove all the essential allegations of the offense. This has been done.

In conclusion, gentlemen, if you can believe in the light of all the evidence that Katsumi is telling the truth and was not the man who did all these things the former POW's state he did, acquit him. Otherwise, he must be found guilty as charged.

Respectfully,

James P. Kenny

JAMES P. KENNY

KEY:

A - Location of dugout
B - Location of dredge COLUMBIA per witness LEE
C - Live torpedo per witness LEE
D - Location of dredge COLUMBIA per accused
E - Live torpedo per accused
F - Barge beached here per accused

No.162

Price 20 cents

WAKE ISLAND

From a survey by U.S.S. Nitro 1935
with additions from U.S.S. Tanager survey 1923

Obs. Spot ● Lat. 19°17'28"N., Long 166°34'42"E.

SOUNDINGS IN FEET

Natural Scale 1: 45,000

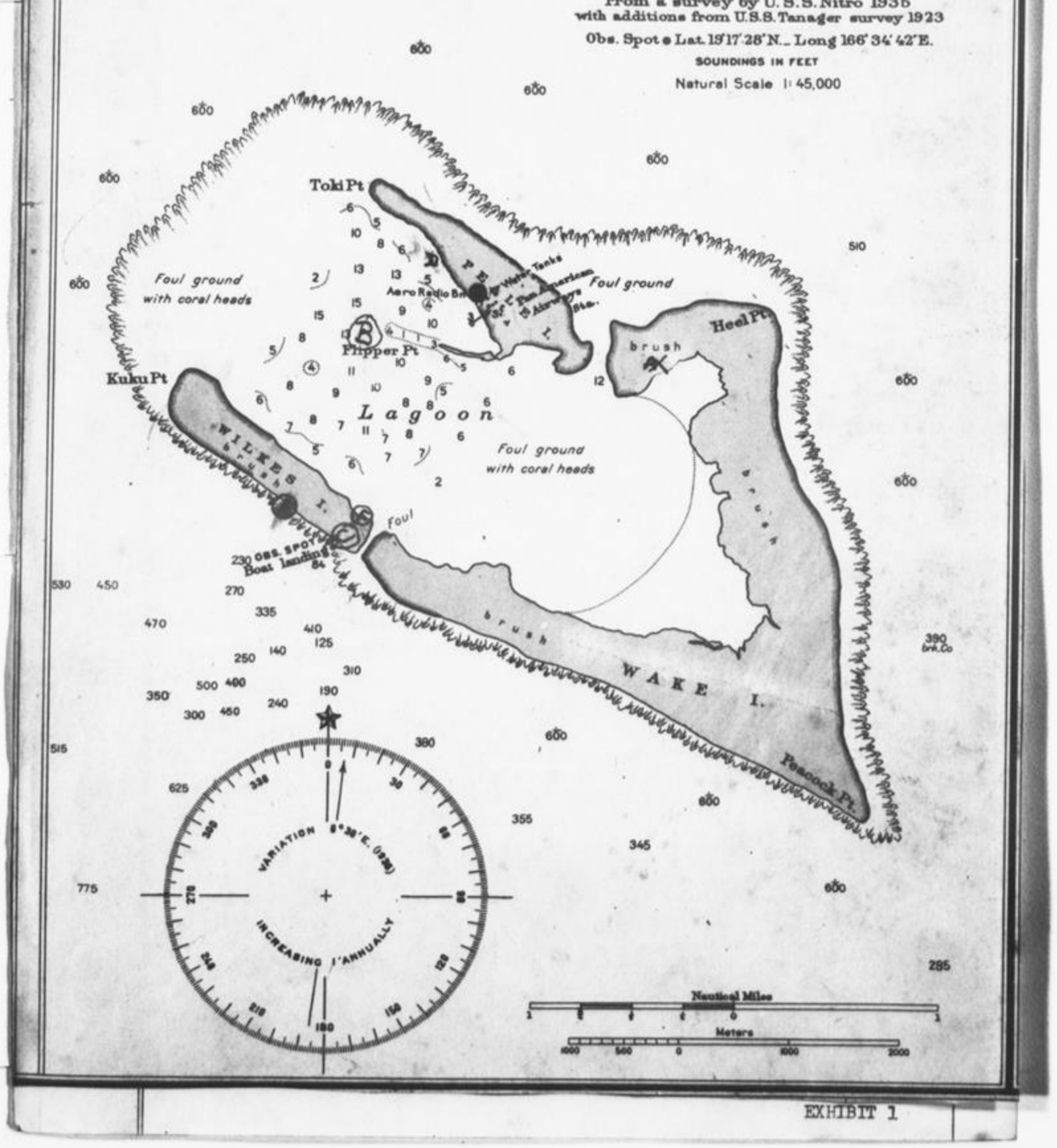

EXHIBIT 1

0569

KATSUMI, SEISHI (20 SEP 1948)

(166095)
PART 3 OF 3

050

AFFIDAVIT

STATE OF IDAHO)
) ss.
County of Ada)

RYLAND FRANCIS BARNETT, Being first duly sworn, upon oath deposes and says:

That I make this affidavit voluntarily with the knowledge that the same is to be used in connection with war crimes prosecutions in the Asiatic area. My present occupation is the contracting of landscaping and tree surgery, and my present address is 1000 Grant Street in the City of Boise, Ada County, Idaho.

In the year 1941 I was employed by the Pacific Naval Air Base Contractors as an apprentice electrician, and in the year 1941 travelled to Wake Island where, during all the times hereinafter mentioned, I was a civilian employee working for the said Pacific Naval Air Base Contractors.

On the 23rd day of December, 1941, I was on Wake Island at the time it was surrendered to a Japanese Navy Task Force. That immediately after the surrender on December 23, 1941, the first landing parties gathered the American personnel into one group on the landing strip, where they were detained until the 25th day of December, at which time they were marched back to the civilian barracks. On the afternoon of December 24, 1941, while the American personnel was grouped on the landing strip, I first saw Seishi Katsumi, who was easily distinguishable from the rest of the Japanese occupation force by reason of his what appeared to the Americans to be a ridiculous dress.

Katsumi at this time was wearing a Japanese naval cap, an ordinary white sport shirt, a pair of white shorts which came below his knees, white tennis shoes and socks, and garters. He also was wearing an automatic pistol in a holster. Katsumi was unusually thin, and had prominent veins in his legs. He wore steel rimmed glasses, and bobbed his head much in

EXHIBIT 2 (1)

0571

the manner of a bird as he trotted around the landing strip carrying a handful of papers.

About two o'clock in the afternoon, a tall Japanese naval officer stood up in front of the group of Americans, and Katsumi in English called for attention and then read us a proclamation in English of our new status as property of "The great empire of Japan." The proclamation included a long list of the penalties which would be inflicted for disobedience of orders.

Throughout the following months on Wake Island, I noticed that Katsumi gave the American personnel most of the group orders which were issued, and he appeared to take the Americans under his particular charge and was constantly with us.

On the 12th of January, a roll call was held on the parade ground under Katsumi's direction, and approximately 800 civilians and 300 marines were shipped away from Wake Island aboard the NITTA MARU. The remainder of the Americans constituted approximately 350 civilians and 30 marines, and I was one of the remaining civilians. All of us were assigned jobs on the Island, supposedly based on our previous experience, but apparently through an error in translation I was assigned work as an electric welder instead of my previous work as apprentice electrician. R.F.B.

About seven o'clock in the morning on February 24, some naval vessels, which appeared to be about six miles West of Wake Island, opened fire on a Japanese float plane which was patrolling. All of the American prisoners, including myself, ran to a large underground shelter, and immediately the Japanese posted armed guards at the entrance to the shelter. The naval vessels sailed around the Island, constantly shelling it, and carrier aircraft were bombing and strafing. About eleven o'clock in the morning,

EXHIBIT 2 (2)

0572

Katsumi came down into the shelter and ordered all men who had been assigned to the dirt-moving crew to come out and repair the landing strip, stating that the same had been damaged by shell fire. These men who had been assigned to the dirt-moving crew had been constantly employed on the landing strip ever since the remaining Americans were assigned jobs.

In view of the fact that shelling was still going on, the dirt-moving crew was reluctant to leave the shelter. Immediately Katsumi fell into a rage and drew his automatic pistol, whereupon he threatened to shoot a man named Swede Hokanson if he did not get out of the shelter and get to work. After Katsumi had brandished the pistol, the dirt-moving crew went out to the air strip and worked on it from shortly after eleven o'clock in the morning until about nine o'clock that night. The shelling ceased about three o'clock in the afternoon.

Prior to and subsequent to this incident, the American personnel were frequently employed on military installations. I was very often employed to work on the removal of two five-inch guns from a beached Japanese destroyer, which guns we got ashore and mounted as coastal defense guns. I also worked on the changeover of approximately fifty fifty-caliber aircraft type machine guns into ~~air~~water cooled, tripod-mounted machine guns, and I was also employed at making land mines which, after their completion, were taken from us by the Japanese and buried in locations which were not disclosed to the Americans. R.F.B.

Shortly after the first of May, a roofer named Babe Hoffmeister, who was one of the American civilians, was accused by the Japanese of stealing cigarettes from the Japanese naval stores. He was taken to a small sheetmetal-covered shed, where he was kept for about a week. During his confinement in this small shed, on two occasions I saw Katsumi go into the shed alone, and then I could hear Hoffmeister screaming. On the 12th of May, Hoffmeister was taken under guard to an open grave,

EXHIBIT 2 (3)

0573

forced to kneel by the grave, and was then executed by one of the Japanese sailors, who used a large sword to cut off his head. All the orders for this execution were issued by Katsumi and, on this occasion as on all other occasions when he was issuing orders, he used the phrase "I order." Whether he was the originator of the order of execution or not I do not know, as he may only have been transmitting orders received from the Japanese naval personnel.

About the 15th day of June, three men in the dirt crew, of whom two were Glenn Fontes and Joe Dunn, had just come off their regular shift and were in the barracks where I was at that time. Katsumi came in and ordered them to go out on a work party. When they refused, he called in the Japanese naval guards, who were carrying rifles with fixed bayonets, and, while these three men were under guard, Katsumi beat all three of them with a six-foot two-by-four. The beating lasted for about twenty minutes, and was concentrated on the backs of the men over the kidneys. At the conclusion of the beating, one man fell unconscious and another fell and couldn't get back up. I saw these three men later on and each of them had bruises and welts across the small of their backs.

Some time in August, while I was removing a tractor from the warehouse, acting under Katsumi's orders, I asked him to get out of the way so I could drive the tractor out of the warehouse as he had ordered, at which time he drew the automatic pistol from the holster and waved it at me, at the same time yelling at me to repeat what I had said. After a while he replaced the automatic in its holster and I went ahead and drove the tractor out of the warehouse.

I left Wake Island on the 30th of September, 1942, and at the time I left Katsumi was still there. During all the months that I knew this man, he was constantly around the American personnel, and on many occasions I heard him talk about his prior life in the United States. He was an

EXHIBIT 2 (4)

0574

unusually talkative individual, and told us in great detail that he had lived in the United States for twenty-one years, most of the time in the vicinity of Chicago, Illinois. He particularly emphasized the fact that he had been a Japanese Consular Attache, and also the editor and publisher of a Japanese-American trade paper, and was constantly bragging to us about the fact that during all his time in the United States he had been obtaining information for the Japanese Government.

I have read the foregoing affidavit, consisting of this and the preceding four pages, and it is true to the best of my knowledge.

Ryland Francis Barnett

Ryland Francis Barnett

Subscribed and sworn to before me this 7th day of February, 1947.

Notary Public for Idaho
Residence: Boise, Idaho

EXHIBIT 2 (5)

AFFIDAVIT

State of Arizona)
) ss
County of Maricopa)

Albert S. FREESE, a citizen of the United States of lawful age, being first duly sworn upon oath deposes and says:

I make this affidavit voluntarily with the knowledge that the same may be used in connection with the prosecution of War Criminals. I am presently employed by Veterans Administration Hospital, Papago Park, Phoenix, Arizona. My address is 107 N. 12th Street, Phoenix, Arizona.

I was employed on Wake Island by Hawaiian Dredging Company operating as Contractors Pacific Naval Air Bases under U.S. Navy Contract NOY 4173 when the American forces on Wake surrendered to the Japanese, December 23, 1941. I remained on Wake Island as a prisoner of the Japanese until September 30, 1942, when I was transferred to a prison camp in Sasabo, Japan.

In the morning of February 24, 1942, American Naval vessels opened fire on Wake Island and aircraft started bombing and strafing the island.

I was going to the mess hall when the attack started at about 0720 local time. We were immediately sent to an air raid shelter where we stayed for approximately 30 minutes. KATSUMI was in the shelter with us where he received orders to assemble a crew of the civilians to repair the recoil system on a 3" gun on Peale Island. He ordered the machine shop crew for the work. Accordingly Frank MIGUSCH (spelling in doubt), Frank HASTING, and myself came out of the shelter and were put on a truck. KATSUMI accompanied us. The driver of the truck was one Wattanabe HASO who indicated to KATSUMI that Frank HASTING should be selected.

On the way to Peale, we protested to KATSUMI that we should not work on military installations due to the fact that we were civilians. He stated that we should do what he ordered or he would shoot us. He took his pistol out of the holster and pointed it at us at the same time.

Albert S. Freese
ALBERT S. FREESE

W. F. Seedlock
W. F. SEEDLOCK,
Lieut. Comdr., USN.,
100426.

EXHIBIT 3 (1)

We got to the gun position, checked the gun, and found the gear case was damaged by shrapnel, and the recoil cylinder similarly damaged. We had to return to Wake to get the necessary tools to repair the damage, and then returned to the gun. During the time the trips were being made in the truck, the island was being shelled.

Shortly after we returned to the gun, the raid ended and we went to work repairing the damage. We took the damaged parts to the machine shop where we were ordered to repair them the following day.

During the time I was detained on Wake Island, I was constantly employed in making parts for machine guns. In addition I also had to make a mount for a 4" gun that was taken from a Japanese Destroyer.

On one occasion while I was making firing pins for machine guns, the Japanese guard came into the shop and announced that it was quitting time. Cleo MORSE, Nelson Leon JOHNSON, Frank HASTING, Elmer PUCETTIE and myself then went to our barracks. We were there about five minutes when all five were sent for. We were taken back to the machine shop and were made to bend over a work bench, face down, and all five of us were beaten on the back and rump with a galvanized iron pipe, 1½ inch in diameter by 5 feet long. A corporal by the name of HAWADA SAN gave us the beating. There was no explanation given for this action. As a result of this beating I was partially paralyzed for about six weeks. After the beating we were forced to work with no medical aid being given.

While I was on Wake Island, I saw Al SMITH and Bill HAYNS constantly working on the installation of a new gun located behind the Bachelor Officers Quarters.

All the time I observed KATSUMI he wore a military uniform and carried side arms, which included a pistol at all times, and on few occasions a sword about 28 inches long. He presented a military appearance at all times and required us to salute him every time we saw him if we were covered. When uncovered we had to bow to him.

Albert S. Freese
ALBERT S. FREESE.

W. F. Seedlock
W. F. SEEDLOCK,
Lieut. Comdr., USN.,
100426.

EXHIBIT 3 (2)

He was continuously coming into the barracks forcing all men, well or sick, to go to work on pill boxes. He always brandished his gun while in the barracks.

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

Albert S. Freese
ALBERT S. FREESE.

Subscribed and sworn to before me this 9th day of January 1943.

W. F. Leedlah
W. F. MEREDITH,
Lieut. Comdr., USN., 100426,
Officer-in-Charge,
U.S. NAVAL RESERVE TRAINING CENTER
Phoenix, Arizona.

EXHIBIT 3 (3)

0578

For THE WAR CRIMES OFFICE
CIVIL AFFAIRS DIVISION, WDGS
United States of America

In the matter of the mistreatment of prisoners of war at Wake Island, Kisarazu, Chiboura, Tateyama, Honshu, Omuta, Osaka, and Tokushi, Honshu.	Perpetuation of Testimony of W. T. Kennedy, Master Technical Sergeant, 2613259, USMC, (Formerly Staff Sergeant, 2613259, USMC)

Taken at: District Legal Office, U.S. Naval Training Center, Great Lakes, Illinois.

Date: 3 December 1946.

In the presence of: Lt. Cdr. C. D. McLaughlen, 101778, USNR, and Ensign Joseph P. Wenke, USNR, 488655.

Questions by: Ensign Joseph P. Wenke, USNR, 488655.

Q. State your name, rate, serial number and permanent home address.

A. W. T. Kennedy, Master Technical Sergeant, 2613259, Orange Cove, California.

Q. State the date and place of your birth and of what country you are a citizen.

A. May 20, 1916, Modesto, California, and I am a citizen of the United States.

Q. What educational institutions have you attended and for how long?

A. I finished three years of high school.

Q. What places were you employed as a civilian?

A. I worked on a ranch and after that I enlisted in the Marine Corps.

Q. What is your marital status?

A. I am married.

Q. When were you returned to the United States from overseas?

A. September 24, 1945.

Q. What unit were you with when you were captured and what was the date?

A. VMF-211, 23 December 1941, Wake Island.

Q. What places were you held captive?

A. Wake Island — Arrived 12-23-41
Kisarazu, Chiboura — Arrived 2-18-42
Tateyama, Honshu — Arrived 2-19-43
Omuta, Osaka — Arrived 2-2-43
Tokushi, Honshu — Arrived 2-9-43

Departed 2-17-42
Departed 2-18-43
Departed 2-2-43
Departed 2-9-43
Departed 9-23-45

-2-

EXHIBIT 4 (1)

0579

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(1.) [redacted]

Q. Did you work as a prisoner at this camp, and if so, what type of work did you do?

A. Not until February of 1943, and then they had us picking up the "duds" that didn't go off. The remainder was just general work.

Q. Did you see any mistreatment of prisoners at this camp?

A. Yes.

Q. By whom?

A. The Japanese Commanding Officer had a man beheaded.

Q. State as nearly as possible the date of this incident.

A. It was around March or April, 1943.

Q. Tell exactly what you saw.

A. The guards had the prisoner blindfolded and his hands tied behind him. He was on his knees and there was an open grave in front of him so that he would fall into it.

Q. Do you know who was responsible for this?

A. I believe that a Japanese interpreter, Katsumi, was responsible, and if he had talked to the camp commander he could have prevented it. Katsumi told us that he had formerly gone to school at San Francisco and had been in Honolulu and was forced to evacuate because of fear of capture by the Federal Bureau of Investigation. This information was given by Katsumi to various prisoners in the camp.

Q. Do you recall any other mistreatment of prisoners by Katsumi?

A. Yes, about February 24, 1943, during an air raid Katsumi called Pascovich, a Marine, a sailor, Jim Hansen, a Marine by the name of Ashley and me out of shelter made us try and repair their antiaircraft guns while the American planes were dropping bombs. All of the Japs were in shelter while this was going on. I had been wounded prior to being captured and I was still weak from this wound.

Q. Did you hear of any mistreatment of prisoners of war at this camp?

A. Yes.

Q. State what you heard.

A. It was about the 25th of December. They were moving us from the air park to the barracks and a couple of civilians were bayoneted because they weren't moving fast enough.

Q. Can you give the names of any former prisoners of war who could give information regarding this camp?

A. Yes. Pascovich, Jim Hansen, Ashley, also an Army captain by the name of Wilson.

EXHIBIT 4 (2)

BEST COPY AVAILABLE

(2) [redacted]

Q. Did you work as a prisoner at this camp?

A. Yes, we went to work as soon as we arrived there. We cultivated the land for growth of vegetation. We also started work as stevedores on the railroad.

Q. Did you see any mistreatment of prisoners at this camp?

A. No, we were just forced to sign a non-escape agreement. There was no additional mistreatment of prisoners.

(3) [redacted]

Q. Did you work as a prisoner at this camp?

A. Yes. We were building a dry dock.

Q. Did you see any mistreatment of prisoners?

A. Yes.

Q. By whom?

A. I believe the interpreter, Taingi, nickname - "Grease Ball" was indirectly responsible for all the shootings at this camp. It was rumored that Taingi had been mistreated by the English and mistreated Americans because of that. The commander of this camp was Nomura, a Lieutenant in the Japanese Army. They refused to offer any medical treatment for the prisoners and there was no evidence of any good reason why the men shouldn't have been cared for. The food at this camp was very poor and men died on an average of four or five a day from dysentery. The bandages that was used for the hospital was very dirty. Socks and clothing were not issued to us because Taingi said that we had no need for them.

Q. Did you see any specific mistreatment of prisoners at this camp?

A. Yes. A Korean civilian, Fujumura, didn't think I was working hard enough out in the snow and he made me stand to the waist. We were working on the water front and everyone but me had their overcoats on. Fujumura hit me with his cupped hands about 15 times. He hit me on the face.

Q. Did he give any reason for this?

A. He just told me I wasn't working hard enough.

Q. Can you give the names of any other prisoners who could give information regarding this camp?

A. Yes. I remember Jim Hanson, an American Army Major named Cox, and an Army Captain by the name of Campbell.

Q. Did you witness any other mistreatment of prisoners at this camp?

A. No, nothing particular, just general mistreatment by guards.

Q. Did you hear of any mistreatment of prisoners at this camp?

A. No, nothing definite.

EXHIBIT 4 (3)

0581

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(4) [redacted], [redacted], OSAKA

Q. Did you work as a prisoner at this camp?

A. Yes, we did stevedore work for the Manitou Railroad Company.

Q. Did you see any mistreatment of prisoners at this camp?

A. Yes.

Q. Can you give specific incidents?

A. Yes.

Q. Tell what you saw.

A. We were there for over two years. I saw them beat a fellow by the name of Turner.

Q. Do you know the names of the guards?

A. Yes. One of the guards was Cobb, called "The Dagger". There was another guard by the name of Hanajima. We called him "Brown Eyes" or "Top Head". Another guard was named Tokinaga Hisao, nickname, "Ten Cubic". He was a sergeant in the Japanese Army. We called him "Ten Cubic" because of the way he swung a club. All of these guards beat Turner. They used clubs on him. These clubs were about the same length as a baseball bat, but not quite as heavy. Some of them had clubs about the same size as a stand - only they were made of wood. They kept Turner standing at attention, and with these sticks they beat him all over the body - especially on the arms.

Q. Did they give any reason for this beating?

A. They claimed they noticed dust on Turner's breath.

Q. Did the guards do this with the knowledge of any superior authority?

A. I do not know. They often beat men while the camp commander was gone.

Q. Do you have anything further to add regarding the guards at this camp?

A. Yes. All of the guards stole Red Cross supplies. The Camp Commander, Lt. Hisao Nakao, nicknamed "The Pig" stole Red Cross gear. He refused to give Red Cross medical supplies to the men who needed them. If a man died the Japanese said he just shouldn't have died. Another guard named Cobb, nicknamed "The Baker" and the one mentioned before, Tokinaga Hisao, beat a man by the name of Hoshino, yeoman first class. We were on a working detail and had a little chunk where we had hid some food and cigarettes. These guards blamed Hoshino for this because he was in charge of the working party. They beat him with clubs and their hands or anything they could find. They beat him for about 20 minutes. They put Hoshino and six other men in the camp brig and kept them for about three weeks on half rations.

Q. Did you see any other mistreatment of prisoners at this camp?

A. Yes. I was beaten one time. Every night when we came in from working ship yard we through dublis and the guard on this particular night who was giving the orders was named Hasegawa - nickname - "Brown Eyes" or "Top Head". He thought I was shielding him. He pulled me out of ranks and had me get down on my hands and yak a stick in front of my knees so that the circulation would be cut off. He kept me there for about 30 minutes. In the winter of 1943 the prisoners were not so much all such men had for a meal while he was

EXHIBIT 4 (4)

0582

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working were 20 kilometers the size of sputer creatures. Zaimoki, third class Aerographer, was put in charge of the American camp. His nickname was "Chief". Chick (called "The Rajah") and Yamada and Maejima ("Brown Sugar") took "them" up because he was trying to help the prisoners out. The civilian coolies working for the railroad used to hate us when they thought we weren't working hard enough and they threw hooks at us. Shinichi Tanaka, a civilian medical officer nicknamed "The Head Hunter" used to hold back medical supplies. Most of the men who died in this camp had pneumonia and dysentery. Medical treatment might have saved them. I saw a Jap nicknamed "Dumpson" beat 1A. (jg) R. D. Hiday, now at Great Lakes, Illinois. "Dumpson" was a well built Jap about 6 Ft. 1 in. 1A. Hiday was sick and weak and couldn't work. "Dumpson" knocked Hiday down a couple of times, threw a bag of rice at him and hit him on the head with a hook.

Q. Did you hear of any mistreatment of prisoners at this camp?

A. Yes, I heard of a Japanese by the name of Ruba - nickname - "Sour Puss". He had charge of the Nichinanshi working details. I was told that he beat the prisoners and kicked them when they were down.

(5) YAMADA, HIROSHI

Q. Did you work as a prisoner at this camp?

A. Yes, I worked in a carbide factory.

Q. Did you see any mistreatment of prisoners, and if so, by whom?

A. Yes, by a Jap we called "Caesar", another we called "Rabbit Eye" and another we called "Pudgy Boy". They took a prisoner, made him kneel down and put a thick book of his knees and a five gallon can of water on his leg. We had to carry this man back to the camp and the doctor said if he had been in that position 15 or 20 minutes longer that it would have been necessary to amputate his legs.

Q. Can you describe these guards?

A. "Caesar" was about 5 Ft. 2 in., weighed about 140 or 150 pounds, a typical Japanese. "Pudgy Boy" was about 5 Ft. 5 in. and weighed about 155 pounds. He was of stocky build. "Rabbit Eye" was about 5 Ft. 2 in. and thin.

Q. Do you have anything further to add regarding treatment of prisoners at this camp?

A. Yes. The Camp Commander was a warrant officer named Inagaki Mitsuru. He worked in his garden and didn't pay any attention to how the prisoners were treated. Hoshino was in charge of this camp. He asked for Red Cross supplies at various times and the Japs would tell him that they would have to have a share of the supplies before they could be given to the Americans. There were 33 Americans and 367 Australians. When the American bombers came over the camp the Japs would mistreat the Americans even more than before. I saw "Caesar" stand a man at attention and then beat him with his hands and kick him in the groin and when the man bent over he would hit him to straighten him up.

Q. Can you give the names of other prisoners who could give information in regard to this camp?

A. Oliver L. Gatewright, Navy Radioman, now residing in Pittsburg, & Navy Chief named Stewart, now at Naval Island, San Diego, Calif., Taylor, now Chief Radioman at Great Lakes, Illinois.

EXHIBIT 4 (5)

0583

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Q. Do you have anything further to add?

A. No, not at this time.

W. T. Kennedy
W. T. Kennedy

State of Illinois)
County of Lake)

I, W. T. Kennedy, of lawful age, being duly sworn on oath, state that I have read the foregoing transcription of my interrogation and all answers contained therein are true to the best of my knowledge and belief.

W. T. Kennedy
W. T. Kennedy

Subscribed and sworn to before me this 6th day of December, 1946.

H. F. Holtz
(Notary Public)

My commission expires: September 1, 1949.

CERTIFICATE

We, C. D. McLachlan, Lieutenant Commander, USNR, 291790, and Joseph P. Nurle, Ensign, USNR, 468695, certify that W. T. Kennedy personally appeared before us on 3 December 1946 and testified concerning war crimes; and that the foregoing is an accurate transcription of the answers given by him to the several questions set forth.

Place Great Lakes, Illinois.
Date 6 DECEMBER 1946

C. D. McLachlan
C. D. McLACHLAN

Joseph P. Nurle
JOSEPH P. NURLE

EXHIBIT 4 (6)

0584

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WARREN OSCAR MC GILL
(Civilian captured 23 December 1941
on Wake Island)

STATE OF IDAHO)
: SS
COUNTY OF ADA)

I, WARREN OSCAR MC GILL, residing at Meridian, Idaho, being first duly sworn, deposed and say that:

My name is WARREN OSCAR MC GILL. My permanent home address is Meridian, Idaho. I was employed by the Morrison-Knudsen Construction Company as an electric welder while on Wake Island. I arrived on Wake Island on 2 August 1941, and was captured by the Japanese on 23 December 1941. I was held Prisoner of War until the latter part of August 1945 when I became free after the Japanese had left us.

During the time that I was a prisoner of the Japanese I was forced to continue welding and an several occasions helped to unload at the docks.

On 12 February 1942, I, together with eleven other American prisoners, was in a dugout behind the barracks. The Americans were shlling and bombimg the island. A dredge and a four motored Japanese plane were in the lagoon. Both of these were hit by American bombs. We were forced from the dugout by Japanese sentries led by Seichi Katsumi. We were put into a boat and rowed out into the lagoon to fight the fire on the boat and plane. We were forced to work even though there was continual fire coming from the sea.

I also was forced to ~~wled~~ weld land bombs (steel parts) while I was imprisoned on the island. I personally saw Katsumi on one occasion beat Julius Hoffgardner and until he was unconscious.

I would describe Katsumi as of the yellow race (Japanese), approximately 5'8" in height, 135 to 140 lbs in weight, comparatively long black hair, and possessing an excellent American accent.

To the best of my knowledge, there were only two other men of the eleven who survived besides myself. I do not know there exact address.

Mr. Art Price, Portland, Oregon

Chong, a Hawaiin (full name unknown)

W.O.Mc Incl 1

EXHIBIT 5 (1)

0585

I, WARREN OSCAR MC GILL, of lawful age, being duly sworn on oath, state that I have read the foregoing transcription of my interrogation, and all statements contained herein are true to the best of my knowledge and belief.

Warren Oscar McGill

Subscribed and sworn to before me this 21 day of November 1947.

at Meridian, Idaho.

George D. Ambrose

Notary Public for Idaho, residing at Meridian, Idaho. My Com. Expires Oct. 16, 1948.

Interviewed by Spec Agt Norman R. McDonald, Jr, 115th CIC Det, Sixth Army

EXHIBIT 5 (2)

0586

Name - - - - - - - - - Warren O. Rogge
Occupation - - - - - - Carpenter & Cabinet Maker
Address - - - - - - - 490 Beck Ave. Watsonville, Calif.

I was held prisoner of war on Wake Island from Dec. 23, 1941, when we surrendered, until Sept. 1942, when we were shipped to Japan proper. The living conditions were bearable, due to an amount of our own foods and clothing that were on the Island.

All of our orders were received direct from Seishi Katsumi from the time we were captured until we left the Island. I saw Katsumi on the airport where we were congregated and where we were made to stay for 5 days without clothing and with very little food. He, Katsumi, almost always wore a white military uniform with a pistol as a side arm. He often threatened to use the pistol, but I never heard of him doing anything more than slap and hit prisoners of war with a club. Katsumi was present at the execution of a fellow prisoner of war named "Babe".

Our work was always on gun positions, trenches, hauling war supplies and converting machine guns of Grumman fighters into emplacement guns on the Island. Tug boatman towed ~~xxxxxx~~ barges from freighters to the dock and towed targets around the Island, and we placed barbed wire entanglements in all of these operations. Katsumi was present giving orders - presumably from higher-ups. At the time of the shelling and bombing of the Island by American forces in which the dredge was set afire, Katsumi came to our compound dug-out and forced men at the point of a gun to fight the fire.

While we were sleeping we always had watches for night air raids of which we had several. I have heard it stated that Katsumi forced men to repair the runway, but whether under fire or not I can't truthfully say. However, men were often sent to repair guns that had been damaged.

A fellow prisoner of war named Eddie Lee, in Honolulu, recognized Katsumi where he was affiliated with a newspaper before the war. All I know about Katsumi's actions regarding rules of warfare, are that by having us there was contrary to rules and having us work on military objects was something not supposed to be done at all.

I did not give dates of incidents because I do not remember the exact time.

The State of California Before Me C. C. McPherren
County of Santa Cruz

Notory Public in and for Said County and State, on this day personally appeared Warren O. Rogge

known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this 31st day of January 1947

C. C. McPherren

Warren O Rogge

MY COMMISSION EXPIRES NOV. 30, 1949

EXHIBIT 6

0587

AFFIDAVIT

IN THE MATTER OF The Treatment) AFFIDAVIT of Master Technical Sergeant Jesse L. STEWART, 255182, United States Marine Corps.
of American Prisoners of War by)
KATSUMI at Wake Islamd) Formerly prisoner of war at Wake Island.

Taken at Room 820, Meiji Building, Tokyo, Japan.

Present: Captain James A. MORIARTY, USMC.
Lieutenant Edward L. FIELD, USNR.
Lieutenant (jg) Frederick F. TREMAYNE, USNR.
Richard H. JARVIS, Ylc, USN. Date: 29 January 1947.

I, Master Technical Sergeant Jesse L. Stewart, 255182, United States Marine Corps, being duly sworn depone and state:

I was captured on Wake Island on 23 December 1941 by the Imperial Japanese Naval Landing Forces. I remained on Wake Island until 12 May 1942 and was then transported to Yokahama, Japan on board the Asama Maru.

During my stay on Wake Island I came in constant contact with one Seishi KATSUMI, an Interpreter who came to Wake Island with the Landing Forces. Katsumi never wore any insignia or rank but was always armed with at least a pistol.

I was wounded during the bombing of Wake Island on 8 December 1941. The bones of the lower left leg being shattered by straffing from the bombing planes. About the first of February 1942 the bone splinters in this leg caused infection to set in. Dr. Shank, the American civilian doctor left on Wake Island with us, called the Japanese doctor over to the building in which we were confined and had him look at my leg in an attempt to obtain instruments and anesthetic to perform an operation and remove the infected bone splinters. The Japanese doctor said the leg would have to be amputated and told Dr. Shank to bring me to the Japanese Hospital where he would perform the operation. Dr. Shank refused to allow this operation to be performed and the Japanese doctor left the building. Katsumi had been acting as interpreter and after the Japanese doctor left, Katsumi accused Dr. Shank of being insolent and slapped him two or three times across the face.

The 12th of January 1942, all the prisoners of war left the island, except 365 civilians, some of whom were sick and wounded, and 20 wounded service men. The well men among these 365 civilians were kept there as laborers, some of them objected but were immediately reprimanded by Katsumi. Mr. "Pete" Russell, a construction foreman, was left as the "American Boss" in charge of these civilian laborers. He was ordered by Katsumi to finish the airport, build entrenchments, emplacements, and some building construction. Katsumi undoubtedly received his orders from the Island Commander, but he issued all orders in person to the prisoner laborers.

Seishi KATSUMI said he had spent 25 years of his life in the United States with the Foreign Import Bureau of Chicago. This Katsumi was a very shrewd, but extremely vicious fellow. As soon as the Island had been secured by the Japanese he began collecting all the American money of $10.00 denominations or larger. I understand he left the Island with two suitcases of this money. I do not know this, but I do know it was his intention of doing so. Sometime about the middle of March I was called down to the Japanese office to look at an aircraft camera they had found. I had told them during a previous interrogation by Katsumi, that I was an aircraft rear seat gunner and radio operator, therefore they thought I should know something about the camera. After showing them how to operate the camera, they wanted me to take their pictures but there was no film with the camera. They all left to find film, leaving me alone in the room with the camera. I was able at this time to throw away a set of filters I had not shown them when I took the camera out to set it up.

EXHIBIT 7 (1)

After about fifteen minutes Katsumi came back and said they had not found the film. He told me to wait, he again left the room and came back in about fifteen minutes with a hand bag of the type that has a zipper over the top. This handbag was about three fourths full of packages of American money. I do not know why he showed me this money unless it was merely to gloat. I asked what he was going to do with it. He told me he was going to use to get back to the United States after the war and set himself up in business. I said he would not need it as the Japanese told us they would win the war. He said no the Japanese would not win the war. I then told him I would see to it that he did not get away with the money. He said I could not do that because the war would last a long time and if I did not die the Japanese would kill me before the war ended. He said he had another suit case full of money. He described it to me as being about the size of an American Gladstone Bag.

Katsumi frequently had prisoners beaten by the Japanese Navy guards because he did not like the way they worked. I did not see any of these beatings but I did see some of the men come into the hospital for treatment after they had been beaten. They came to get medical attention from Dr. Shank and would tell us of the beatings. I do not remember any of their names at this time, as I had not known many of the civilians.

On the 24th of February 1942 we heard heavy gun fire out at sea and were immediately subjected to shelling by a contingent of American war ships. The civilians had constructed a dugout about 50 yds. from the hospital and we were able to seek cover in this before any shells hit in our area. This shelling lasted about two hours. Sometime about an hour after it had started Katsumi came to one of the central entrances to the dugout and asked for six or seven men by name. He wanted them to go with him. They refused, whereupon Katsumi drew his pistol and forced them to leave with him. I later learned they had been taken out to fight a fire on the dredge. About one half hour later Katsumi again came to the dugout and called the names of about 20 to 25 Americans. He told these men they must go to the airport and repair the runway as some Japanese planes were being dispatched from Tokyo to help the island out. They also refused to go. Katsumi again drew his gun and called some armed guards and these men were forced to go out. Luckily the shelling had moved to another section of the island from the airport area and none of these men were hurt. Just before the shelling ceased Katsumi again came to the dugout and called Capt. Wilson and MT/Sgt. A. J. Paskiewiecz, he had his pistol in his hand when he called these men. They were taken to Peale Island and told to repair an American 3" anti-aircraft gun which had exploded when the Japanese had attempted to fire it. This they could not do as many of the parts had been destroyed before Wake Island surrendered to the Japs.

On or about the 10th of May 1942, Katsumi assisted in having one "Babe" Hoeffmiester beheaded. "Babe" had been cought attempting to steal some cagarettes from the warehouse. He had entered this warehouse through the roof and was caught as he was leaving. "Babe" was placed in solitary confinement for about 10 days and each day some civilian would report sounds of "Babe" being beaten in the jail. At the end of his confinement he was given a "Mock" Court Martial, at which, I understand, Katsumi acted as prosecutor, and Babe was given the death sentence. He was beheaded by a Japanese Warrant Officer by the name of Horie or Horeio I believe. Some of the civilians were called by Katsumi to witness the trial and the beheading but I do not definitely remember any of their names at this time. I know Dr. Shank witnessed the execution but the other men I do not remember.

After the shelling of Wake Island, all the service men who were capable of working, except two officers, were put to work. They were given their orders by Katsumi. Their first job was to pick up all the unexploded shells and dump them into the ocean. There were many of these shells and most of them were marked as target or dummy ammunition. All of them were either 5" or 8". After all shells had been taken care of they were put to digging gun emplacements and trenches, cleaning and belting ammunition and many other jobs all of which dealt with military work or construction.work. All this work was done on Katsumi's orders. These men continued to work until on or about the 11th of May 1942 at which time the 20 service men were taken from the island and brought to Yokahama aboard the Asama Maru.

This constitutes all that I now distinctly remember about Wake Island.

Jesse L. Stewart

Jesse L. STEWART, 255182,
MT/Sgt., U.S.M.C.

EXHIBIT 7 (2)

0589

Subscribed and sworn to before me this 29th day of January 1947.

James A. Moriarty
JAMES A. MORIARTY,
Captain, U.S. Marine Corps.

CERTIFICATE

We, James A. MORIARTY, Captain, U.S. Marine Corps; Edward L. FIELD, Lieutenant, U.S. Naval Reserve; Richard H. JARVIS, Yeoman First Class, U.S. Navy, certify that on the 29th day of January 1947, personally appeared before us, Jesse L. STEWART, Master Technical Sergeant, U.S. Marine Corps, and gave the foregoing affidavit set forth above; that after his affidavit had been transcribed, the said Jesse L. STEWART, Master Technical Sergeant, U.S. Marine Corps read the same and affixed his signature thereto in my presence.

James A. Moriarty
JAMES A. MORIARTY,
Captain, U.S. Marine Corps.

Edward L. Field
EDWARD L. FIELD,
Lieutenant, U.S. Naval Reserve.

Richard H. Jarvis
RICHARD H. JARVIS,
Yeoman First Class, U.S. Navy.

TOKYO, JAPAN,
29 January 1947.

0590

WAR DEPARTMENT

WAR CRIMES OFFICE — NAVY DIVISION

Washington 25, D. C.

The Pentagon

Room 4B-915

In the matter of the mistreatment and employment of American Civilian Prisoners of War on Military Operations and the Exposure thereof to Hazards of War on Wake Island, by Seishi KATSUMI, Imperial Japanese Navy, Civilian Interpreter.	Perpetuation of Testimony of Henry Stanley Wilson, Major, U. S. Army.

STATEMENT

The following are extracts from a diary now in my possession kept by me during the period that I was a prisoner of war:

December 8, 1941 -

"Wounded in right leg just above knee by bomb splinters during bombing of PAA area. Wound dressed by U S Naval surgeon Kahn. Minor wound, no complications".

December 23, 1941 -

"Captured by Japanese Naval Forces after surrender of Wake Island by U.S. Naval commandant. Previously had destroyed all codes and deciphering devises by burning, and radio transmitters were rendered inoperative by burning out transformers and destroying meters."

March 11, 1942 -

"Ordered to labor by Japanese constructing roads. Refused, claiming officers' exemption under provisions of international law. Upheld."

March 12, 1942 -

"Protested in writing to the use of U.S. Naval and Marine Corps Enlisted Men prisoners of war for construction of machine gun positions as a direct violation of international law. Protest rejected and prisoners' labor continued on military project."

EXHIBIT 8 (1)

0591

1. State your name, occupation, and present address.

   Answer: Henry Stanley Wilson, Major US Army, Hq 5 AACS Wing, APO 633 c/o Postmaster, New York, New York

2. Were you formerly a prisoner of war, held by the Japanese Occupation Forces, on Wake Island, If so state the dates and conditions under which you were so held.

   Answer: Yes, captured December 23 1941 upon the fall of Wake Island. Released September 7, 1945.

3. During your stay on Wake Island as a prisoner of war, did you know a Japanese by the name of Seishi KATSUMI, civilian interpreter? If so state what you know about him and his activities on Wake Island giving dates of specific incidents.

   Answer: I knew a Japanese interpreter for the Japanese Navy by the name of "Katsumi". I have no knowledge of his first name. The Japanese authorities consulted him almost entirely before taking any action in dealing with American civilian and/or military personnel. Almost without exception he used his influence to make things tough in general for the prisoners.

4. Were any American prisoners of war (give names if known) required to work on dangerous and hazardous missions by Japanese authorities (name authorities) on Wake Island?

   Answer: Yes. Master Sergeant Paskowitcz, U S Marine Corps, Aviation Machinist Mate James Hesson, U S Navy, a Corporal Johnson, U S Marine Corps, Pfc Connors, U S Marine Corps, and other prisoners were required to construct machine gun pill boxes on the beach. As the senior American officer on the Island I formally protested in writing to the Japanese Naval Commander stating that this was in violation of all international laws on warfare. My protest was rejected and I was informed that Japan did not recognize any convention either Hague or Geneva and would live up to them only as far as it was convenient.

5. Were any American prisoners of war required to work on military installations? If so state the circumstances, describing the nature of the work.

   Answer: Yes. (See No. 4).

6. Was Wake Island shelled by American forces while you were on Wake Island? If so what were the American prisoners of war required to do during such times?

   Answer: Yes. On February 23, 1942 for about two hours the Island was shelled, dive bombed and machine gunned by US Naval Forces. American prisoners in barracks at the time were placed in dug-outs under guards armed with machine guns.

EXHIBIT 8 (2)

0592

Cont'd

7. What acts of mistreatment of American prisoners of war, if any, did you actually see this man, KATSUMI, commit?

   Answer: I personally saw no acts of brutality actually committed by Mr. Katsumi.

8. What do you know about KATSUMI, or anyone else, forcing American prisoners of war to work on a dredge which was afire, while the island was being shelled by American warships?

   Answer: I was informed by many of the American prisoners that they were forced to labor on the dredge which was on fire during the time the island was actually under attack.

9. What do you know about KATSUMI, or anyone else, forcing American prisoners of war to repair an airplane runway, while the island was being shelled by American warships?

   Answer: I was informed by many of the American prisoners that they were required to fill up shell craters on the air field while the shelling was underway and new craters were appearing.

10. What do you know about KATSUMI, or anyone else, forcing American prisoners of war to help repair a gun, while the island was being shelled by American warships?

    Answer: During the height of the shelling Mr Katsumi conducted me and Master Sergeant Paskowitcz to a captured Marine gun position, which gun had been used in repelling the attack. This was situated on a point of land jutting out into the water. The gun had been fired and remained in the recoil position. Mr. Katsumi informed me I must repair the gun and get it back to the battery position. During this time shells from surface vessels were falling and aircraft were bombing and machine gunning this gun position.

11. How did KATSUMI usually dress?

    Answer: He usually wore a khaki shirt, shorts, and socks with suspension-type garters. Due to his peculiarity of dress the American prisoners used to refer to him as "Garters".

12. Did he have a military appearance?

    Answer: At times he wore an officer's uniform, sword and pistol.

13. Did he carry any sidearms, and if so what?

    Answer: A sword and pistol.

EXHIBIT 8 (3)

0593

Cont'd

14. If he carried a pistol did he threaten to use it?

Answer: Yes, during February 23 attack he was obviously very frightened and he waved about threatening everybody.

15. Did he threaten you with any weapon? If so what kind of a weapon?

Answer: No.

16. What else do you know about KATSUMI, and his actions in vblation of the rules of land warfare?

Answer: Katsumi stated that he had been in the United States and spent quite some time in North Carolina. He also informed me and 2nd Lt H G Webb, U S Marine Corps that he had spent twenty years in the United States.

17. Do you have anything to add to your testimony regarding KATSUMI?

Answer: No.

****

A F F I D A V I T

89th AAF BU (Hq 5 AACS Wing)
APO 633, c/o Postmaster N.Y., N.Y.

Subscribed and sworn to before me this 25th day of February, 1947

by HENRY STANLEY WILSON personally known to me.

Henry Stanley Wilson

89TH AAF BASE UNIT (HQ 5 AACS WING) OFFICIAL

VERNON C KING
Captain, Air Corps
Wing Adjutant

(Authorized to administer oaths in matters of this kind.)

EXHIBIT 8 (4)

0594

WAR DEPARTMENT

WAR CRIMES OFFICE -- NAVY DIVISION

Washington 25, D. C.

The Pentagon

Room 4B-915

In the matter of the mistreatment and employment of American Civilian Prisoners of War on Military Operations and the Exposure thereof to Hazards of War on Wake Island, by Seishi Katsumi, Imperial Japanese Navy, Civilian Interpreter.	Perpetuation of Testimony of Frank R. Wise, Civilian Employee

STATE OF CALIFORNIA)
) ss
COUNTY OF SAN FRANCISCO)

A F F I D A V I T

I, Franklin Roosevelt Wise, now employed as a chef at Bell's Department, Crystal Palace Market, San Francisco, California, and presently residing at 549A Castro Street, San Francisco, California, being first duly sworn according to law, do depose and say:

That, from December 1941 to the time of my transfer to a Japanese prison camp on Kyushu, Japan, in September 1942, I was confined as a prisoner of war by the Japanese Occupation Forces on Wake Island. At the time of my capture, I was employed as a steward by the "Contractors Pacific Naval Air Bases". The prison camp on Wake Island consisted of five barracks surrounded by a barbed wire fence, and it was patrolled by Japanese naval armed guard. In general, the prisoners worked about various tasks on Wake Island during the day, and were confined to the prison camp barracks each night. During the period from December 1941 to September 1942, this prison contained about three hundred fifty prisoners, the great majority of whom were

0595

American civilian employees. While confined at this prison camp, I knew one Seishi KATSUMI who, as near as I could tell, was the officer in charge of the prison camp and general supervisor of all the work performed by the prisoners. His nickname was "The Junkman", and he usually dressed in a Japanese naval officer's uniform of a captain or lieutenant, I am not sure exactly which. As far as I knew, he was a Japanese naval officer as I never saw him dressed in civilian clothing and I saw him at least once a day everyday during the period between December 1941 and September 1942. He always wore a "Sam Browne" belt, and carried a Luger pistol and a sword.

About three or four times a week during the period from December 1941 to September 1942, KATSUMI required one Drew Foss, an American civilian prisoner, to operate a tug which was towing targets in order that the Japanese shore guncrews could conduct firing practice. Foss told me this himself. During the months of December 1941 to September 1942, KATSUMI ordered the American civilian prisoners who were concrete workers to build foundations for the Japanese guns and pill-boxes. He also ordered the welders to build frames for the guns, and the carpenters to build forms for the pill-boxes. I don't know the names of any of the above concrete workers, welders or carpenters. However, their superintendent was William Ray.

In February 1942, Wake Island was shelled by an American warship which I was later informed was the U.S.S. ENTERPRISE. At that time, KATSUMI required William Ray and his construction crew, all of which were American civilian personnel, to go to the airport and repair the runways which were damaged by the American shelling. They were required to do this while the airport was under fire. I was present when KATSUMI gave these orders. The only names I can remember other than William Ray are Miles R. Wardle and Porter Wardle who were caterpillar operators. During this same shelling, KATSUMI required the American prisoners on the dredge crew, whose names are unknown to me, to work on the dredge while it was afire and while it was under attack by United States dive bombers. I was present when KATSUMI gave the orders to the dredge crew.

0596

In May 1942, I saw KATSUMI beat Julius M. Hofmeister, an American civilian prisoner. He forced Hofmeister to run up and down the beach while handcuffed and KATSUMI and other Japanese whose identities are unknown to me beat Hofmeister with pickhandles. They would start at the back of his ankles and beat him all the way up to his back until he would collapse. Then they would carry him to the building designated for solitary confinement which we prisoners called the "doghouse". I only saw them do this once, but other prisoners who saw it, but whose names I cannot remember now, told me that the beatings during this May 1942 continued for about eight days, and that when Hofmeister revived, that KATSUMI and the other Japanese would repeat the beating, and that in all they did it about four or five times a day for about eight days. About the same time in May 1942, I saw Hofmeister three different times when he was handcuffed and tied to a post inside the prison camp while a high pressure water hose was turned on him for a period of about one-half hour to one hour. The nozzle of the hose was held at a distance of about three to ten feet away from him. KATSUMI was present all three times and directed the application of this "water treatment". At least twice I saw KATSUMI personally hold the nozzle and direct the water on Hofmeister. This "water treatment" would continue until Hofmeister would collapse. A day or two after I witnessed the last "water treatment", I was required to witness the beheading of Hofmeister. KATSUMI required forty American civilian prisoners to witness the execution of Hofmeister. The names of other United States civilian prisoners who witnessed this execution are Chester A. Riebel, William Ray, Miles R. Wardle, Porter Wardle, James A. Cunha, and Dr. Shank. We were informed by KATSUMI that his execution was the result of the sentence of a Japanese court martial for his alleged theft of articles from a storeroom in May of 1942.

During the entire period from December 1941 until September 1942, KATSUMI carried his pistol in his hand or had his hand on his pistol whenever he was near the American civilian prisoners. Practically every order he gave us he threatened to shoot us if we did not obey promptly. This

EXHIBIT 9 (3)

0597

occurred so frequently that it was commonplace and I cannot remember the date of any particular occurrence except the following. In February 1942, during the shelling of Wake Island by the American warship, he ordered us all to go to work at our assigned tasks about the island. He stood at the entrance of the "dugout" which was located in the prison camp and where we went for protection during the shelling. As we left the "dugout" in obedience to his orders, he punched almost all of us with his pistol. He punched me with his pistol as I left.

In May 1942, KATSUMI had me handcuffed and chained to a tree at the Japanese headquarters on Wake Island for about eight hours before I was tried by a Japanese court martial for my alleged violation of the prison camp rules against making beer of which I was acquitted. While I was so chained, KATSUMI walked up to me and struck me once on the forehead with his sword scabbard while the sword was in the scabbard. I did not lose consciousness but suffered a bad bruise. I was given no medical treatment.

All the above incidents happened while, as a prisoner of war, I was confined by the Japanese Occupation Forces in the prison camp on Wake Island.

Franklin Roosevelt Wise

FRANKLIN ROOSEVELT WISE

Subscribed and sworn to before me this fifteenth day of January, 1948, at Treasure Island, San Francisco, California.

Roger L. Burum Lt. USN

ROGER L. BURUM
Lieutenant, USN

EXHIBIT 9 (4)

0598

AFFIDAVIT

Territory of Hawaii }
County of Honolulu } ss

Patrick Kahaumea Aki, a citizen of the United States of lawful age, being first duly sworn upon oath, deposes and says:

I make this affidavit voluntarily with the knowledge that the same may be used in connection with the prosecution of war criminals. I am presently employed by the City and County of Honolulu. My address is Nuuanu YMCA, Honolulu, T. H.

I was employed on Wake Island by Contractors Pacific Naval Air Bases when the American forces on Wake Island surrendered to the Japanese on December 23, 1941. I remained on Wake Island as a prisoner of the Japanese until the latter part of September, 1942, when I was transferred to a Japanese prison camp at Yokohama, Japan.

During the morning of February 24, 1942, U. S. Navy ships started shooting at Wake Island and airplanes started to bomb and strafe the island. While this shooting was going on, I and other prisoners of war were in the prisoner compound in a trench, which we had built for protection during attack. During this shooting by U. S. Navy ships and airplanes, an American dredge which had been taken over by the Japanese, was set afire. The name of this dredge was the COLUMBIA. Seishi Katsumi, a Japanese civilian interpreter, along with another

EXHIBIT 10 (1)

0599

Japanese civilian, name to me unknown, but who was foreman of the waterfront, came to the trench where we prisoners of war were located and ordered the American crews of the dredge COLUMBIA and the tugs FOSS and PIONEER to go down to the waterfront and fight the fire aboard the COLUMBIA. At first we refused to go and informed Seishi Katsumi and the foreman we were civilians. Katsumi and the foreman pulled out their pistols and waved them at us. I heard Katsumi say he would shoot anyone who did not go and fight the fire. Shells from the U. S. Navy ships were still hitting the island and the Navy planes were flying around shooting and strafing and dropping bombs when we were ordered from our trench. We were ordered into trucks and carried down to the waterfront about two miles away, and then ordered into boats and taken out about a half a mile to the COLUMBIA. We were aboard the COLUMBIA about an hour and a half fighting the fire, and then we returned to the prisoner of war compound. It was after we were returned to the prisoner of war compound that the Japanese sounded the "all clear" signal.

During the latter part of March, 1942, an American torpedo was located on the beach of Wilkes Island. I was a crew member aboard the tug PIONEER which was ordered to go over and pull the torpedo away from the beach. Seishi Katsumi ordered several of us crew members over the side to secure a wire cable to the torpedo. Among the men ordered over the side by Katsumi, in addition to myself, were Edwin Lee, Adam Kapaole, and Robert Kapehi. Katsumi told us the Japanese had removed

the explosive from the torpedo, but I saw the warhead was still on the torpedo, and told Katsumi it had not been taken off. Some of the others also informed Katsumi the warhead had not been removed. Katsumi then told us it was an American torpedo and we Americans were going to have to take it away from the beach. I didn't want to work around the torpedo, but Katsumi pulled out his pistol and told us if we didn't secure the cable to the torpedo he would shoot us. During the time we were moving the torpedo away from the beach, the cable broke several times and we had to dive down in water up to twenty feet deep and secure the cable to the torpedo. We had no breathing apparatus, and it was necessary to skin dive to do this.

As Katsumi was an interpreter for the Japanese, I observed him practically every day during the time I was a prisoner of war on Wake Island. He wore a Japanese naval officer's uniform and always carried his pistol. Part of the time, in addition to the pistol, he carried his sword.

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

Patrick Kahaumea Aki

Patrick Kahaumea Aki

Subscribed and sworn to before me this 13th day of January 1948.

Richard J. Selman

Richard J. Selman,
Lieutenant Commander, U. S. Navy,
File No. 234563

EXHIBIT 10 (3)

AFFIDAVIT

City and County of San Francisco)
) SS
State of California)

Theodore Granstedt, Jr., a citizen of the United States, of lawful age, being first duly sworn upon oath deposes and says:

I make this affidavit voluntarily setting forth details of incidents that occurred on Wake Island during the time I was a prisoner of war of the Japanese. My present address is 520 Taylor Street, Apartment 306, San Francisco.

I was employed on Wake Island by Contractors Pacific Naval Air Bases when the American Forces surrendered on Wake in December, 1941. I remained on Wake Island as a prisoner of the Japanese until September, 1942, when I was transferred to a prison camp in Japan. I was released from prison September 6, 1945, and arrived in San Francisco October 16, 1945.

On February 24, 1942, we prisoners assembled in the Mess Hall very early for breakfast. We looked out of the Mess Hall and over to the east and we saw puffs of white smoke. At that time we thought that it was target practice. However, the siren on the water tower sounded and we knew it was a real American attack. Looking to the northwest I saw six planes coming over the horizon. The Japanese opened up with all of their guns.

We prisoners ran into nearby air raid shelters. After about 45 minutes, Sershi Katsumi, a Japanese interpreter, came into the air raid shelter where I was and ordered the airport crew out of the shelter to repair the runway which had been bombed and shelled by the Americans. I was a member of the airport crew as a roller operator. We protested about going out of the shelter before the all clear signal was sounded, but Katsumi had his pistol in his hand and ordered us out or he would shoot us. I and many other American prisoners of war went to the airport on Katsumi's orders, many hours prior to the all clear signal, and started repairing the damage done by the American raid.

I knew Katsumi very well and talked to him many times. He carried a pistol and often threatened to shoot any American who did not or could not do what Katsumi wanted him to do. I remember about May 1942 I was working on the runway on Wake Island with a Huber five ton Diesel Roller. The spark plug for the small starting engine was cracked and wouldn't start. Katsumi came along and told me to get to work. When I told him I couldn't get the small engine going because of a cracked plug he pulled his pistol and told me if I didn't get that equipment going he would shoot me. Fortunately some other vehicle came along and gave me a push that got me started.

Theodore Granstedt Jr.
Theodore Granstedt, Jr.

Subscribed and sworn to before me this 31st day of December 1947

M. E. Cuffie
M. E. Cuffie
Commander, U. S. Naval Reserve
File No. 122500

EXHIBIT 11

0602

A F F I D A V I T

STATE OF CALIFORNIA)
) ss
COUNTY OF SANTA BARBARA)

I, Harry L. McDonald, of Santa Barbara, California, being first duly sworn according to law, do depose and say: that my full name is Harry Leland McDonald and I am employed as a Jewelry Salesman for Gensler-Lee, Jewelers, at 1015 State Street. I can be best contacted through our head office, the address is 278 Post Street, San Francisco, California. My resident address is still temporary.

I was a prisoner of war, held by the Japanese Occupational forces on Wake Island from December 23, 1941 to January 12, 1942, at which time I was moved to Shanghai, China, and was then held by the Japanese Army for the duration of hostilities, was released at the close of the war in Tokio, Japan, August 23, 1945.

During the period I was held on Wake Island, a period of about three weeks, I knew the above named Seishi Katsumi and witnessed his brutal action on different occasions in regard to prisoners of war.

One act by the man Katsumi, a beating administered to name unknown . This prisoner had been employed as a painter on the island prior to the war. He was about 5 ft. 3 in. in height. He was known as "Red" due to his red hair and florid complexion. "Red" was severely beaten by Katsumi with a club (a pool cue cut to a length of about 3 ft.) and he was also beaten by the fists of Katsumi, the blows being administered to the prisoners head, face, shoulders and back. He was further kicked in the stomach and back after he had been knocked down. This beating was given due to the prisoner failing to understand an order issued to him by a Jap guard, spoken in Japanese, which, of course, the prisoner was unable to understand, and when he failed to respond quickly enough, he was attacked by Katsumi who was standing near and, being an interpreter, could have transmitted the order in English to the prisoner. This incident can be further verified by John Glenning, 1142½ South Normandie, Los Angeles, California, or by Ed. Conners at the same address.

I also witnessed another beating administered by Katsumi on the person of Chester Reible (or Rieble) of Grants Pass, Oregon, who was employed as Kitchen Steward on Wake Island. Mr. Reible had been authorized by Katsumi to feed a large number of prisoners late on the night of January 10th, (approximate date) when a Jap guard interfered and Mr. Reible appealed to Katsumi who, for no apparent reason, flew into a wild rage and began beating Mr. Reible. He also threatened Mr. Reible with a pistol which he, Katsumi, was wearing. Mr. Reible was beaten about the head and face by Katsumi who did the beating with his balled fists.

Practically all the P.O.W. 's were forced to work on hazardous jobs while on Wake Island. Seishi Katsumi directed most of the activities.

George Samms of Spokane, Washington, was forced to help in loading Explosives from the Island to a ship and he was also forced to help in the de-mining of the landing strip. William Ray of Boise, Idaho, was also used on this job.

Marine Corporal Pacheck (or Pachecek) was in charge of a group of men, military and civilian, who were forced to repair guns and equipment which had been wrecked during the war prior to the date of surrender.

I worked on one detail for two days, setting up barb wire entanglements on the beach in the area of Peacock Point and was forced to work in the water, this being dangerous due to the surf and sharp coral

EXHIBIT 12 (1)

0603

but if we showed signs of lagging in the work we were threatened by the Jap guards or by Katsumi himself who directed this detail from time to time. William Smith, a civilian nurse, was also on this same detail.

I was not present on Wake Island at any time that it was bombed or shelled by our own forces.

Seishi Katsumi dressed sometimes in a faded green grey uniform, similar to that worn by the Jap marines. He wore an insignia designating his rank as civilian, but he also was armed with a pistol and occasionally a sabre. He always carried a leather field case containing (I assume) books, papers and other writing equipment. His main weapon was a club, made from a pool cue, about three feet in length.

His uniform and general appearance was that of the military although at times he wore a checked sport coat.

I was beaten on the night of December 30th, (approximate date) by a Jap officer, name unknown to me, but I believe Mr. Reible, mentioned above, could supply the name. This man was the Mess Officer for the Occupational forces. This beating occurred when said officer ordered me to do certain work in the Jap officers kitchen and I attempted to explain to him that I had been assigned a job by another Jap officer (name etc. unknown). The Mess officer became angry and began beating me after first threatening me with his sabre. He beat me on the head and face and about the body and stopped only after I was nearly unconscious and my nose and mouth were bleeding. I proceeded to do the job he wanted done and then he attempted to make up for his unwarranted attack by offering me cigarettes and cider, which I refused, and he again threatened me with his sabre, saying that to refuse a gift offered by a Jap was an insult. (These conversations were carried on with gestures, a few words of English and a few words of Japanese.) We were able to make ourselves understood.

There are many stories about Seishi Katsumi and other officers on Wake Island, some of which I have substantiated, others I have heard of and after spending almost four years as a prisoner of the Japanese, I feel that they are capable of any atrocity that may be laid to them.

I know that on many occasions, Katsumi did deliberately misinterpret orders or requests and that he failed to communicate one request by our Doctors for medicine for our sick and wounded. This information came to me from the Jap Doctor in charge so I feel it is true. Katsumi hated Americans above and beyond the normal war bred hatred of an enemy. He did all in his power to make our lives miserable and stated on many occasions that he would do everything in his power to make life as miserable as possible.

He was primarily responsible for our long stay on the air strip, immediately after capture, without food, water or clothing. We had been stripped down to nothing but shoes and held for two days and two nights in this manner, from December 23rd to December 25th.

This is my statement of facts, as I remember to be without error on my part. Dates and places are not accurate but approximations.

Henry L. McDonald

Subscribed and sworn to before me this 17th day of February 1948, at Santa Barbara, California.

Frances L. Georgey
Notary Public
My commission expires Jan. 16, 1952

EXHIBIT 12 (2)

0604

AFFIDAVIT

County of Riverside))
SS
State of California)

Leonard Ward, a citizen of the United States, of lawful age, being first duly sworn deposes and says:

I make this affidavit voluntarily relative to incidents that occured on Wake Island during the time I was a prisoner of war of the Japanese on Wake.

My present address is 1471 El Alemeda Street, Palm Springs, California. I am self employed as a contractor.

I was employed on Wake Island by Contractors Pacific Naval Air Bases, When the American Forces surrendered on Wake Island in December 1941. I remained on Wake Island as a prisoner of the Japanese until September 1942 when I was transferred to Japan.

On the morning of Februagy 24, 1942 I was going to breakfast in a Mess Hall which was a little distance from where we prisoners slept. On the way I noticed guns firing out to sea and white puffs of smoke around the horizon. Then the Japanese sounded the air-raid alarm. I saw a small Japanese reconnaissance plane trying to land on the a ir field. Then I saw six American planes coming over the island.

I ran for the air-raid shelter. After I had been in the air-raid shelter for forty-five minutes or an hour, a Japanese civilian interpreter, Sershi Katsumi, came into our shelter and ordered a group of us out of the shelter to work on the airport that had been shelled by the Americans. We all protested vigorously as we were scared of the American shelling and no all clear signal had been given by the Japanese.

Katsumi pointed his gun around at us and told us to get out. I, along with many other American prisoners, went out and worked on the airport the rest of the day.

Sershi Katsumi spoke English very well as he had lived in Hawaii and the United States. He stayed with the American prisoners on Wake much of the time and we all know him very well. He carried a pistol and would often threaten to kill us if we didn't do things he was wanting us to do, however, I never saw him actually shoot anyone.

I have read the foregoing statement consisting of this one page and it is true and correct to the best of my knowledge.

Leonard Ward

Leonard Ward

Subscribed and sworn to before me this 6th day of January 1948.

M. E. Currie

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

EXHIBIT 13

STATE OF CALIFORNIA)
)SS AFFIDAVIT
COUNTY OF LOS ANGELES)

AFFIDAVIT OF JOHN A GLENNIE

I, John A. Glennie, of 1142½ South Normandie Avenue, Los Angeles, California, telephone number Fitzroy 3657, being first duly sworn, do depose and say:

I went to Wake Island about the middle of 1941 as a civilian employee of the Pacific Naval Air Base Company. I did painting work. I remained on the Island until removed by the Japanese after its siege and capture. I was removed on the NITTA MARU on or about January 12, 1942. This ship put into Yokohoma where some prisoners were removed and then went on to Shanghai where I was sent to the Kang Wan Prison Camp sometime in January 1942. I remained there for approximately three years, being moved on to Peiping, China, for about thirty days then to a camp in Mukden, Manchuria, for about two days, then to Fusan, Korea in another camp for approximately two weeks and thereafter to Neogato, Japan, where I remained then at a prison camp until liberated.

I desire to state that my recollections of events on Wake Island are somewhat dimmed by the passage of time and my long experience in prison camps. However, the substance of my statements herein are completely accurate, although details such as dates and locations may be approximate.

On December 23, 1942, when the Island was captured, all personnel, both civilian and military, were taken into custody by the Japanese. On the first day the group that I was in were kept on the air field and the following day we were kept in an airplane hangar. About the third day we were moved into a compound where we remained until removed from the Island. One of the men in my painting crew was named "Red" Kent. After we had moved to the compound, Red was assigned work in the galley. Somewhere between December 29, 1941, and New Years Day 1942, inclusive, Red was caught doing something contrary to the Jap's orders. As I recall the incident, Red had obtained some drinks and was intoxicated. The Japs accused him of stealing saki or some other supplies. There were about four Japanese of which one of them was named Katsumi. Of course, all Japanese names sound somewhat alike but this spelling is the way it sounded to me. The incident began in the galley and Katsumi was the leader of the Japanese group and at the time was stripped down to his waist. I was never able to find out just what Katsumi's job was but he seemed to be in charge of messing the prisoners and he also might have been acting as an interpreter. Katsumi and the other Japs took Red from the galley into a screened corridor between this galley and a storage place. I do not recall whether or not this was a refrigerator storage place. However, as soon as they got him into the passageway, they commenced to beat him. Katsumi was doing most of the beating and the other Japs just filled in from time to time. I do not recall whether or not Katsumi used a club of any sort but I do know that he used his fists on Red unmercifully and that the beating was extremely vicious and brutal. Red was knocked down many times and when he was down Katsumi would kick him in the face and body and particularly in the groin. Red wore a

EXHIBIT 14 (1)

partial plate and that was knocked out right away, followed later by most of Red's remaining teeth. This beating, to the best of my recollection, lasted for from 20 to 25 minutes. I do not believe that Red possibly could have taken the beating unless he had been intoxicated. To the best of my recollection, after the Japs had tired of beating Red they took him off somewhere and brought him back to the compound some two or three hours later. He had received no medical treatment, and along with some of the other prisoners I helped clean him up. Although he acted pretty drunk at this time, I could not tell whether this was from being intoxicated or from the shock of the brutalities he had suffered. His mouth was bleeding profusely. There were bruises all over his body and some of his ribs were broken. One of the prisoner doctors, a Dr. Shank, who remained on Guam as part of the Maintenance Crew after I had been shipped out, helped Red. I understand this doctor was later executed by the Japs. No attempt was made at any time by the Japs to give any medical assistance to Red until the time I left Wake in the middle of January. This was the only time I witnessed brutalities on the part of Katsumi and it was about the only time that I recall definitely seeing him while I was on the Island. It seemed clear to me at the time that the beating was a result of Red's refusal to tell the Japs where he had received the liquor. It is my understanding that Red Kent later died in a prison camp, but since we did not leave Wake together, I do not know whether or not it was from this beating. Other persons who might have some knowledge of this event are Chester Reeble in Grants Pass, Oregon, who was head steward at the time and an eye witness to all of the facts; William Young in Parma, Idaho, c/o the Workers of Wake, who is the Secretary of that organization and who, I believe, has retained a record of the names and the events while we were on Wake; Edward A. Connors of Los Angeles, California, and John Pace, who was a civilian male nurse stationed in the Island. There are several Navy corpsmen now stationed at San Diego who have knowledge of Katsumi's treatment of prisoners during this time, and though I have no personal recollection of their names, it is entirely possible that William Young or Chester Reeble would have this information.

John A. Glenning
John A. Glenning

Subscribed and sworn to before me this 1st day of September, 1948, at Los Angeles, California.

Leonard J. Davis
Leonard J. Davis
Lieutenant (JG), U.S.N.R.

EXHIBIT 14 (2)

0607

STATE OF CALIFORNIA)
) SS AFFIDAVIT
COUNTY OF LOS ANGELES)

I, Edward A. Connors, of 4817 West 130th Street, Hawthorne, California, telephone No. Osborn 65711, being first duly sworn depose and say:

I was on Wake Island at the time of its siege and capture by the Japanese as a civilian employee of the Pacific Naval Air Base Company. My work was with the painting crew. Another of the civilian employees for this company was Lloyd Kent, known by the nickname of Red. He was captured at the same time I was. To the best of my recollection, on New Years Day of 1942 Red, myself, and several other men were assigned by the Japs to a galley detail. The Japanese cook was very friendly and brought out some Jap wine and whiskey which some of the men drank, although I took none myself. I believe Red had a few drinks. Some of the Jap authorities found out of this and came into the galley where we were. There was a group of about three or four men led by a particular vicious character named Katsumi, at least that is approximately the way his name sounded. This Katsumi immediately went up to Red and commenced to berate and abuse him apparently about the whiskey. I did not understand the language so I do not know exactly what was said, however, I do know it was about the drinking. The group of Japs forced Red out of the galley along a passageway down to a big portable reefer and there worked him over. At times during this working over Katsumi spoke some English and tried to question Red about what was going on but he refused to talk. This reefer was located about 150 feet away from where I was and I saw the Japs there abuse him. Most of the abuse was accomplished by Katsumi and the others just filled in from time to time. They started out beating Red with their fists but this had little effect on him and Katsumi had some kind of a stick. It appeared to look like a two by four which he used. This beating lasted 30 or 40 minutes. He was knocked down innumerably times and while he was down Katsumi would hit him with the stick and kick him all about his face and body. When Red would get up to avoid this he would be knocked down again. The entire incident was particularly depraved and brutal. After they got through with him he was turned loose and he came back to the compound where we were. Some of the prisoners, including myself, helped to clean him up and try to make him comfortable. The Japs never gave him any medical assistance. One of the men who helped out was a John Nelson from Omaha, Nebraska. He may know some additional facts respecting this incident. Also John A. Glenning has knowledge of the occurrence. I saw no other acts of brutality or atrocities committed by Katsumi while I was on the Island as that is about the only time that I saw him for any length of time. About January 12, 1942, I was removed from Wake Island along with a number of other prisoners on the NITTA MARU and sent to the Woosong Prison Camp where I stayed for about nine months and then was sent to Kang Wan Prison Camp for seven or eight months. After that I was sent to a prison camp at Osaka, Japan where I remained until liberated.

EXHIBIT 15 (1)

"Red" Kent did not leave Wake Island when I did but remained as part of a galley detail. I later learned that he died from pneumonia in a Japanese prison camp, but to the best of my knowledge it was not the effects of the above-related beating that caused his death, although it may have contributed to it somewhat by weakening him physically.

There are two other men who were on Wake who witnessed "Red's" beating:

William Young of Parma, Idaho, c/o Workers of Wake, who probably has the names of all our group, and Chester Reeble of Grants Pass, Oregon, who was head steward for our group, and witnessed the beginning of the incident of the beating.

This statement of facts is the best of my recollection and without error on my part, except that the dates and places set forth may be approximate due to the passage of time since they occurred.

Edward J. Connors

Subscribed and sworn to before me this 1st day of September, 1948, at Los Angeles, California.

Leonard J. Davis
Leonard J. Davis
Lieutenant (jg), U.S.N.R.

EXHIBIT 15 (2)

UNITED STATES
v.
KATSUMI, Seishi

INTERROGATORIES

16 September 1948

The following interrogatories are requested to be propounded to KAWASAKI, Susumu, former captain, I.J.N., presently confined in Sugamo Prison, a witness for the defense in the above entitled case now pending and to be tried before the Military Commission convened by authority of Commander Marianas Area (by precept dated 27 July 1948 as modified), are agreed upon by both parties in advance of the assembling of the Military Commission and subject to exceptions when read in court, in accordance with the authority of paragraph 6 of said precept, and the authority contained therein and the rules of evidence promulgated by the Supreme Commander for the Allied Powers, SCAP ltr AG. 000.5 (5 Dec. 1945) LS Subject "Regulations Governing the Trials of Accused War Criminals," especially Section 5 d (1) (c) thereof, which authorizes the use in evidence of affidavits, depositions or other signed statements.

These interrogatories are respectfully forwarded to the Supreme Commander for the Allied Powers, Legal Section, Tokyo with the request that some suitable officer may be assigned to take, or cause to be taken, the deposition of the said witness thereon:

1st Interrogatory: Please state your name and former rank in the Imperial Japanese Navy.

2nd Interrogatory: Please state the period of your tour of duty and duty station on Wake Island.

3rd Interrogatory: What was the extent of your responsibility as Commanding Officer of the 65th Naval Guard Unit to the POW's on Wake Island?

4th Interrogatory: What was your policy regarding treatment of POW's on Wake Island?

5th Interrogatory: Did you know Katsumi, Seishi on Wake Island? If so, please state his duty station and duties on Wake Island.

6th Interrogatory: During your tour of duty as Commanding Officer of the 65th Naval Guard Unit, who was directly responsible for the custody, treatment and care of POW's?

7th Interrogatory: Was Katsumi vested with any responsibility relative to treatment of POW's? If so, please state by what authority he thus became responsible.

8th Interrogatory: What procedure was followed when POW's were assigned various tasks on Wake Island during the period from December 23, 1941 until September 30, 1942?

Exhibit 16(1)

9th Interrogatory:	During the period from December 23, 1941 until September 30, 1942 were POW's assigned to work such as converting, repairing, making over or transporting of arms? If so, who ordered these assignments?
10th Interrogatory:	Did Katsumi, Seishi have anything to do with deciding or ordering the use of POW's for work mentioned in the above interrogatory?
11th Interrogatory:	Did anything unusual occur on Wake Island around the 24th of February, 1942? If so, state what occurred.
12th Interrogatory:	Where were you and what were your duties that day?
13th Interrogatory:	Do you recall if there was a fire aboard the dredge COLUMBIA on that day? When did the fire occur and how?
14th Interrogatory:	Were POW's used to extinguish the fire aboard the dredge? If POW's were used, who issued this order for their use and why?
15th Interrogatory:	If POW's were used, at what time were they ordered to fight the fire and how long did it take to put out the fire?
16th Interrogatory:	Did Katsumi issue this order to use POW's for this work?
17th Interrogatory:	Do you know if Katsumi went to the actual scene of the fighting on the dredge?
18th Interrogatory:	Were there any AA guns put out of order on that day? If so, where were these guns and when were they put out of order?
19th Interrogatory:	Were some POW's used to repair the damaged AA guns? If so, who issued the order that they be used and why?
20th Interrogatory:	If POW's were used for repair of the AA guns, between what hours were they so used?
21st Interrogatory:	Do you know if KATSUMI was present at this repair job on the AA guns? Were you present?
22nd Interrogatory:	Was the air-strip damaged by the American attack on that day?
23rd Interrogatory:	Were POW's used on work to repair the air strip that day? If so, who ordered that they be used and why and when were they ordered?
24th Interrogatory:	Did you on that day order Katsumi to repair the air strip through the use of POW's? If so, at about what time was this? Was anyone else also ordered to do the job?

Exhibit 16(2)

0611

25th Interrogatory:	Was Katsumi connected with the use of POW's for the air-strip damage repair work about this time? If so, who gave Katsumi such an order?
26th Interrogatory:	Between what hours did the American raid last on February 24, 1942?
27th Interrogatory:	Please state at what hours the all clear was sounded to secure from battle stations and to secure from the alert stations on that day?
28th Interrogatory:	Where were the American POW's during the time the personnel were at battle stations and at the alert stations on that day? Do you know how long they were at these stations?
29th Interrogatory:	Do you recall a torpedo being washed ashore on Wilkes Island in the latter part of March, 1942?
30th Interrogatory:	If you recall this incident, please state what type of torpedo it was. Did you see the torpedo yourself?
31st Interrogatory:	Were some POW's used in removing this torpedo? If so, who ordered that they be used, and why?
32nd Interrogatory:	Do you know if Katsumi was present when and if POW's were used to remove the torpedo?
33rd Interrogatory:	Do you know if the fuse and war head of the torpedo were removed before the torpedo was removed? If so, who removed the fuse and war head and at whose orders?
34th Interrogatory:	Do you know who supervised and directed this work on the spot?
35th Interrogatory:	Were POW's used in the unloading of arms and munitions from Japanese transports and in the transportation of same? If so, who issued the order that they be used and why?
36th Interrogatory:	Who supervised and directed such work?
37th Interrogatory:	Did Katsumi participate in the work mentioned in the above interrogatory? If so, who ordered him and why?
38th Interrogatory:	Were guns ever removed from a grounded Japanese destroyer and installed ashore around March or April of 1942? If so, who ordered their removal and installation?
39th Interrogatory:	Were POW's used for this work? If so, who issued the order that POW's be used for this work?
40th Interrogatory:	Who supervised and directed this work?

Exhibit 16(3)

0612

41st Interrogatory: Did Katsumi participate in this work? If so, why and who ordered him?

42nd Interrogatory: About this time, was work such as converting aircraft machine guns into ground machine guns and manufacture of gun parts carried out?

43rd Interrogatory: Were POW's used for this work? If so, who issued the order that they be employed and when and why?

44th Interrogatory: Who supervised and directed this work?

45th Interrogatory: Did Katsumi participate in this work? Did you see Katsumi participate?

46th Interrogatory: Were POW's used in constructing gun emplacements about this time? If so, who ordered that they be used and why?

47th Interrogatory: Who supervised and directed this work?

48th Interrogatory: Do you know if Katsumi participated in this work? If so, who ordered him to be present?

49th Interrogatory: Did you personally go to the scene of the work? If so, when was this?

50th Interrogatory: Were POW's used about this time for digging trenches and setting up barbed wires? If so, who ordered they be used and when and why?

51st Interrogatory: Who supervised and directed this work? Were you ever present?

52nd Interrogatory: Do you know if Katsumi participated in this work? If so, who ordered him to do so and why?

53rd Interrogatory: What dress was Katsumi required to wear by regulations during his tour of duty on Wake Island? Who so ordered him?

54th Interrogatory: What were the regulations relative to the arms he was to carry?

55th Interrogatory: Was he permitted to carry a pistol at all times? If so, by what regulation was he authorized to do so?

1st Cross-interrogatory: Were you convicted by a Military Commission of the murder of an American prisoner of war on Wake Island in the year 1942?

Dated at the Headquarters, Commander Naval Forces, Marianas, Guam, Marianas Islands, September 16, 1948.

James P. Kenny

JAMES P. KENNY,
Lieutenant, U. S. Navy,
Judge Advocate.

Martin E. Carlson

MARTIN E. CARLSON,
Commander, U. S. Naval Reserve,
Counsel for the Accused.

Exhibit 16(4)

06 13

Deposition

Susumu Kawasaki, the witness above named, having been first duly sworn by me, Commander Maurice E. Currie, United States Naval Reserve, the Commander Naval Forces Marianas Liaison Officer for War Crimes, Tokyo, Japan, doth depose and say for full answers to the foregoing interrogatories, as follows:

To the 1st interrogatory: Kawasaki, Susumu, former captain, Imperial Japanese Navy.

To the 2nd interrogatory: I was on Wake Island from January 7, 1942, until December 13, 1942. I was the commanding officer of the Sixty-fifth Naval Guard Unit.

To the 3rd interrogatory: I was commanding officer of the Sixty-fifth Naval Guard Unit and commanding officer of the island, and as such I had jurisdiction over the prisoners.

To the 4th interrogatory: Fundamentally, the treatment of the prisoners was based on "Regulations for the Treatment of Prisoners of War" issued by the navy, and I applied that to the prisoners of war on Wake Island. I selected an officer for the sole purpose of treatment of these prisoners and had him look after these prisoners. First I selected an officer suitable to be responsible for the treatment of these prisoners and I instructed the men under this officer in charge of the prisoners to give the prisoners fair and impartial treatment. The daily life of the prisoners was provided with the most comfort--that is, I tried to make them comfortable within the scope of my power. Medical treatment was provided accordingly; and whenever these prisoners were put to work, the guards were instructed not to abuse their power and authority; and concerning food for the prisoners, it was provided according to what they liked; and the feelings between the Japanese navy personnel and the prisoners were more or less friendly. Those were the circumstances.

To the 5th interrogatory: Yes, I knew Katsumi. He was the man attached to the Fourth Naval Fleet Headquarters on Truk and was assigned to the Sixty-fifth Naval Guard Unit as an interpreter. Actually, the Fourth Naval Fleet Headquarters was responsible for Katsumi; and while he was on Wake Island, he was under my command.

Exhibit 16(5)

06 14

To the 6th interrogatory: Lieutenant (junior grade) Nomoto was in charge of the treatment and the care of the prisoners. I have heard that Nomoto died toward the end of the war.

To the 7th interrogatory: I did not give Katsumi any responsibility for the treatment of prisoners of war.

To the 8th interrogatory: All the procedure for the assignment of prisoners of war to the various tasks was carried out by the officer in charge of these prisoners of war, Lieutenant Nomoto.

To the 9th interrogatory: During my tour of duty on Wake Island, I never issued orders to have prisoners of war assigned to convert, repair, make over, or transport arms; and I have never heard of any such assignments during this period.

To the 10th interrogatory: Katsumi was just an interpreter, and he had nothing to do with deciding or ordering the use of prisoners for work.

To the 11th interrogatory: In the early morning of February 24, 1942, an American task force bombarded us and American planes bombed us.

To the 12th interrogatory: I was in the battle station on Wake Island commanding the entire defense operation.

To the 13th interrogatory: Yes, I remember that. The fire was caused by the American bombardment during the battle.

To the 14th interrogatory: There were no prisoners used to extinguish the fire on board the dredge, to my knowledge.

To the 15th interrogatory: This dredge was burning for a long time, and since I did not give any orders to use prisoners for the extinguishing of the fire on this dredge, I cannot tell you.

To the 16th interrogatory: I do not know.

To the 17th interrogatory: I do not know whether Katsumi went to the actual scene. I did not go there either.

To the 18th interrogatory: I do not recall any antiaircraft guns being damaged.

To the 19th interrogatory: Since I could not tell you whether any antiaircraft guns were damaged that day, I cannot answer this question.

Exhibit 16(6)

To the 20th interrogatory: I do not know.

To the 21st interrogatory: I do not know whether Katsumi was at the scene of the repair of antiaircraft guns. I did not go there.

To the 22nd interrogatory: I do not recall how much damage was done to the air strip, but many bombs were dropped on the airfield.

To the 23rd interrogatory: I do not know if prisoners of war were used to repair the damage caused by the American raid on February 24, 1942.

To the 24th interrogatory: No, I did not order Katsumi to use prisoners of war to repair the air strip. The repairing of the airfield was under the responsibility of the construction company on Wake Island.

To the 25th interrogatory: Katsumi was an interpreter, and I do not know whether Katsumi had any connection with the use of prisoners for the repair work of the air strip.

To the 26th interrogatory: At that time, Wake Island was using Japanese standard time. I recall this American raid of Wake Island started about ten minutes before the sunrise and continued about an hour. It started about 0350 hours, Japanese standard time.

To the 27th interrogatory: About 0700 hours, the all clear was passed on to each unit by telephone and by messenger. I do not recall whether or not the siren was used on this day; however, after the all clear was passed, two-thirds of the men were relieved from their battle stations, and one-third of the men who were always kept on the alert at battle stations remained on duty. When the all clear was sounded, those two-thirds of the men were used for cleaning of weapons and repairing of battle stations. All the time I was on duty on Wake Island, one-third of the normal complement was on duty at the battle stations.

To the 28th interrogatory: American prisoners were in the air raid shelter during the time the battle stations were fully manned. All the Japanese were at their battle stations from the time of the alert until 0700 hours, when two-thirds of them were relieved from battle stations.

To the 29th interrogatory: Yes, I remember it..

To the 30th interrogatory: Yes, I saw this torpedo. It was a torpedo used by American submarines.

To the 31st interrogatory: I did not see the removing of this torpedo, so I do not know whether prisoners of war were used for this work.

To the 32nd interrogatory: Not knowing that prisoners were used, I cannot answer this question.

To the 33rd interrogatory: Since I was not present at the scene, I cannot answer this question.

To the 34th interrogatory: I do not know.

To the 35th interrogatory: To my knowledge, no prisoners of war were used in unloading of arms and ammunition from Japanese transports.

To the 36th interrogatory: I think the details of this type of work were under the jurisdiction of the harbormaster.

To the 37th interrogatory: I do not know whether Katsumi participated in the work mentioned in the above interrogatory; therefore, I cannot answer this question.

To the 38th interrogatory: I could not tell the exact date or month; however, there was a case that guns were removed and installed ashore. The guns were useless as we had no ammunition for them. The word "install" is not the proper term, as the guns were only taken off the destroyer and placed ashore. I do not know who ordered this work done.

To the 39th interrogatory: Since I did not see the removing of the guns from the destroyers, I cannot tell you whether prisoners were used.

To the 40th interrogatory: The reason is the same as I answered you on the number thirty-nine interrogatory: I do not know who supervised and directed this work. I did not hear which unit carried out this work.

To the 41st interrogatory: I do not know whether Katsumi participated in this work.

Exhibit 16(8)

0617

To the 42nd interrogatory:	I do not know if such work as converting aircraft machine guns into ground machine guns and the manufacture of gun parts was carried out.
To the 43rd interrogatory:	Since I do not know if such work was carried out, I cannot answer this question.
To the 44th interrogatory:	Since I do not know if such work was carried out, I cannot answer this question.
To the 45th interrogatory:	Since I do not know if this type of work was carried out, I cannot tell you whether Katsumi participated in this work.
To the 46th interrogatory:	I do not know whether prisoners of war were used in constructing gun emplacements.
To the 47th interrogatory:	I do not know. During my time on Wake Island there was no particular unit assigned to the construction of gun emplacements.
To the 48th interrogatory:	I do not know whether Katsumi participated in this work.
To the 49th interrogatory:	I witnessed the construction of gun emplacements supervised by the men sent directly from Japan--that was sometime during August or September, 1942; but I have never seen any prisoners of war being used for the construction of gun emplacements.
To the 50th interrogatory:	I never ordered or witnessed any prisoners of war being used for digging trenches or setting up barbed wire.
To the 51st interrogatory:	I think that each unit carried out its own construction of trenches and setting up of barbed wire. This type of work--digging of trenches and setting up of barbed wire--was carried out by each unit in its particular area.
To the 52nd interrogatory:	I do not know, so I cannot answer this question.
To the 53rd interrogatory:	Navy regulations prescribed men in the category of Katsumi wore clothes similar to the ones of the service personnel without any insignia or rank, and it was understood that he wore this clothing; but I never issued any order or regulations of the type of uniform Katsumi should wear.

To the 54th interrogatory: There were no regulations relative to arms Katsumi was to carry.

To the 55th interrogatory: There was no regulation issued whether he should carry a pistol or not.

To the 1st cross-interrogatory: Yes.

ALLIED OCCUPATION FORCES)
) SS.
TOKYO, JAPAN)

I, Susumu Kawasaki, being duly sworn on oath, state that I had read to me and understand the translation of the foregoing transcription of my testimony consisting of five and one-fourth (5¼) pages, and that the foregoing testimony is true to the best of my knowledge and belief.

川崎進

Susumu Kawasaki.

Subscribed and sworn to before me this 28th day of September, 1948.

Maurice E. Currie

Maurice E. Currie,
Commander,
United States Naval Reserve.

I, Hoshio Yokoi, sergeant, United States Army, being thoroughly familiar with the English and Japanese languages, certify that I truly translated the questions and answers given from English to Japanese and from Japanese to English, respectively; that after being transcribed, I truly translated the foregoing deposition consisting of five and one-fourth (5¼) pages to the witness; and that the witness thereupon, in my presence, affixed his signature thereto.

Hoshio Yokoi

Hoshio Yokoi,
Sergeant,
United States Army.

Exhibit 16(10)

C E R T I F I C A T E

We, Maurice E. Currie, commander, United States Naval Reserve, and Joseph Kase, junior, yeoman first class, United States Navy, certify that on the twenty-first and twenty-third days of September, 1948, Susumu Kawasaki personally appeared before us and according to Hoshio Yokoi, sergeant, United States Army, gave the foregoing answers to the several questions set forth therein; that after his testimony had been transcribed, the said Susumu Kawasaki again appeared before us on the 28th day of September, 1948, and had read to him the same by Hoshio Yokoi, sergeant, United States Army; and the said Susumu Kawasaki affixed his signature thereto in our presence.

Maurice E. Currie

Maurice E. Currie,
Commander,
United States Naval Reserve.

Joseph Kase Jr.

Joseph Kase, jr.,
Yeoman First Class,
United States Navy.

Exhibit 16(11)

UNITED STATES
v.
KATSUMI, Seishi

INTERROGATORIES

16 September 1948

The following interrogatores are requested to be propounded to IWAMA, Chuichi, former lieutenant, I.J.N., residing in Japan, a witness for the defense in the above entitled case now pending and to be tried before the Military Commission convened by authority of Commander Marianas Area (by precept dated 27 July 1948 as modified) are agreed upon by both parties in advance of the assembling of the Military Commission and subject to exceptions when read in court, in accordance with the authority of paragraph 6 of said precept, and the authority contained therein and the rules of evidence promulgated by the Supreme Commander for the Allied Powers, SCAP ltr. AG. 000.5 (5 December 1945) LS Subject "Regulations Governing the Trials of Accused War Criminals," especially Section 5 d (1) (c) thereof, which authorizes the use in evidence of affidavits, depositions or other signed statements.

These interrogatories are respectfully fowarded to the Supreme Commander for the Allied Powers, Legal Section, Tokyo with the request that some suitable officer may be assigned to take, or cause to be taken, the deposition of the said witness thereon:

First Interrogatory:	State your name and former rank in the Imperial Japanese Navy.
Second Interrogatory:	Did you serve with the 65th Naval Guard Unit on Wake Island? If so, state the period of service with the same unit.
Third Interrogatory:	State your rank during your tour of duty with the 65th Naval Guard Unit and your duty station.
Fourth Interrogatory:	Did you know KATSUMI, Seishi on Wake Island? If so, what was his post and duty on Wake Island?
Fifth Interrogatory:	Were you connected with unloading of transports and transportation, etc., during your tour of duty with the 65th Naval Guard Unit?
Sixth Interrogatory:	Do you know if POW's were used in unloading of arms and munitions from transports and in transporting same?
Seventh Interrogatory:	If POW's were used in stevedoring work who ordered that they be put to this work?
Eighth Interrogatory:	Did KATSUMI ever pass on any orders that POW's be used in unloading arms and munitions? If so, who ordered him to pass on these orders?
Ninth Interrogatory:	Was KATSUMI present when prisoners of war were engaged in unloading arms and munitions? If so, when and for what periods?

EXHIBIT 17 (1)

0621

Tenth Interrogatory: Do you recall a fire aboard the dredge COLUMBIA during an attack by American forces on February 24, 1942?

Eleventh Interrogatory: Do you know if American POW's were used to help fight this fire? If you know please describe the circumstances.

Twelfth Interrogatory: Do you know if KATSUMI was present at the scene of the fire fighting with the POW's?

Thirteenth Interrogatory: During what hours was this fire fighting work carried out?

Fourteenth Interrogatory: Between what hours did the American attack last on that day?

Fifteenth Interrogatory: Who was the officer in charge of POW's at the 65th Naval Guard Unit?

Sixteenth Interrogatory: What procedure was followed when POW's were used for various kinds of work?

Seventeenth Interrogatory: Did KATSUMI participate in the decision to use prisoners of war for various kinds of work?

Dated at the Headquarters, Commander Naval Forces, Marianas, Guam, Marianas Islands, September 16, 1948.

James P. Kenny.

JAMES P. KENNY,
Lieutenant, U. S. Navy,
Judge Advocate.

Martin E. Carlson

MARTIN E. CARLSON,
Commander, U. S. Naval Reserve,
Counsel for the Accused.

EXHIBIT 17 (2)

Deposition

Chuichi Iwama, the witness above named, having been first duly sworn by me, Commander Maurice E. Currie, United States Naval Reserve, the Commander Naval Forces Marianas Liaison Officer for War Crimes, Tokyo, Japan, doth depose and say for full answers to the foregoing interrogatories, as follows:

To the first interrogatory: Iwanama, Chuichi, lieutenant (junior grade), Imperial Japanese Navy.

To the second interrogatory: Yes, but I was not attached to the Sixty-fifth Naval Guard Unit on Wake Island; I was there on temporary duty. I was on Wake Island from 28 December 1941 until 4 May 1942.

To the third interrogatory: I was a warrant officer then. I was on duty with the naval transportation unit on Wake Island.

To the fourth interrogatory: Yes. I cannot tell what his duty was on Wake Island since my unit was separated from the headquarters, but I heard he was an interpreter assigned to the headquarters.

To the fifth interrogatory: Yes, I was connected with unloading of transports and transportation.

To the sixth interrogatory: Yes, I knew that the prisoners were being used; however, I do not recall whether prisoners were used in unloading arms and ammunition, but they were being used for unloading food.

To the seventh interrogatory: I think the order was issued either by Lieutenant Ogawa or Executive Officer Cho. Usually, the direct orders came from Lieutenant Ogawa's office.

To the eighth interrogatory: I do not recall Katsumi ever relaying any orders to me or to anyone else that prisoners of war be used in unloading arms and ammunition, but I do recall Katsumi bringing the prisoners for stevedoring work.

To the ninth interrogatory: I do not recall whether this was in unloading of arms and ammunition, but during the duty I do recall Katsumi was present from time to time while ships were unloaded.

To the tenth interrogatory: I do recall the fire on the dredge Columbia, but I did not see the fire.

To the eleventh interrogatory: No, I do not know if American prisoners of war were used to fight this fire.

To the twelfth interrogatory: No, I do not know if Katsumi was present.

To the thirteenth interrogatory: I do not know.

To the fourteenth interrogatory: The American attack started sometime between four and five o'clock in the morning and lasted approximately two hours. Wake Island was on Japanese standard time at this time.

EXHIBIT 17 (3)

0623

To the fifteenth interrogatory: I think it was Lieutenant Nomoto.

To the sixteenth interrogatory: I think whenever prisoners of war were needed for work they were requested the night before they were needed. I think this request was submitted to the officer in charge of these prisoners; however, I never requested prisoners myself because whenever a ship was coming in, headquarters would send prisoners over for stevedoring work.

To the seventeenth interrogatory: I do not know whether Katsumi participated in the decisions relating to prisoners of war.

ALLIED OCCUPATION FORCES)
) SS.
TOKYO, JAPAN)

I, Chuichi Iwama, being duly sworn on oath, state that I had read to me and understand the translation of the foregoing transcription of my testimony consisting of one and one-fourth (1¼) pages, and that the foregoing testimony is true to the best of my knowledge and belief.

岩間忠一

Chuichi Iwama.

Subscribed and sworn to before me this thirtieth day of September, 1948.

Maurice E. Currie

Maurice E. Currie,
Commander,
United States Naval Reserve.

I, Hoshio Yokoi, sergeant, United States Army, being thoroughly familiar with the English and Japanese languages, certify that I truly translated the questions and answers given from English to Japanese and from Japanese to English, respectively; that after being transcribed, I truly translated the foregoing deposition consisting of one and one-fourth (1¼) pages to the witness; and that the witness thereupon, in my presence, affixed his signature thereto.

Hoshio Yokoi

Hoshio Yokoi,
Sergeant,
United States Army.

EXHIBIT 17 (4)

0624

C E R T I F I C A T E

We, Maurice E. Currie, commander, United States Naval Reserve, and Joseph Kase, junior, yeoman first class, United States Navy, certify that on the thirtieth day of September 1948, Chuichi Iwama personally appeared before us and according to Hoshio Yokoi, sergeant, United States Army, gave the foregoing answers to the several questions set forth therein; that after his testimony had been transcribed, the said Chuichi Iwama had read to him the same by Hoshio Yokoi, sergeant, United States Army; and the said Chuichi Iwama affixed his signature thereto in our presence.

Maurice E. Currie
Maurice E. Currie,
Commander,
United States Naval Reserve.

Joseph Kase
Joseph Kase, jr.,
Yeoman First Class,
United States Navy.

EXHIBIT 17 (5)

JOHN M. MACGREGOR
ATTORNEY-AT-LAW
70 PINE STREET
NEW YORK 5, N.Y.
WH. 4-0534

December 24, 1947

TO WHOMEVER IT MAY CONCERN:

I wish to present to any American handling the case of Seishi Katsumi, whom I understand is under arrest and presently at Wake Island awaiting trial, a statement of what I know about him.

In order that you may have some idea of my identity, please let me say that I am an attorney at the address shown at the top of my letter, teach law at New York University, served in the United States Navy in World War I and in the Army during World War II. For a time after our forces went into Japan, I was on duty in the Chemical Section, GHQ, AFPAC, in Tokyo.

I originally knew Katsumi when we were students at Columbia University in New York City, about 1926, 1927, 1928. At that time we were both student residents living at International House, 500 Riverside Drive. Although I do not believe I was Chairman of the Admissions Committee, in which capacity I served for two years, at the time Katsumi was admitted, I do know the policy of that Committee at the time he was admitted. Great care was taken to admit only those foreign students of character and capacity, with the idea that they would return to their native countries, after completing their education in the United States, to become leaders and advocates of world peace. I know that Katsumi passed this test, that he was considered highly by all of us in those days and that we thought him to be honorable in every way.

Realizing that he might have voluntarily turned against his American friends between the time I knew him here in New York and the time of Pearl Harbor, I would not venture to speak for him now were it not for the fact that I had opportunity to see him many times in Kyoto while I was on duty with the Army in Japan. I would have been uncertain as to what the fortunes of war had done to him. However, I was pleased to find, upon our renewed acquaintance, no evidence that he was anything but the reliable man I had known him to be before the war. He was one of the managers of the Fujii Daimaru Department Store, the largest in Kyoto, when I looked him up.

EXHIBIT 18

0626

My duty was in military intelligence for Chemical Warfare, and I found him most useful in my work, although I was careful not to entrust any specific task to him or any other Japanese.

A specific incident, which I think is significant of his integrity, occurred on one of my trips to Kyoto. A Colonel on temporary duty in Japan (also in military intelligence) accompanied me on a trip from Tokyo to Kyoto and was anxious to purchase a couple of kimonos for his wife and daughter. I took the Colonel to see Katsumi, expecting that the latter could sell him kimonos. I recall that Katsumi flatly refused to deal with us, in spite of our long friendship and in spite of the fact that a month before he had told me that he would be pleased to find any souvenirs that I might wish, because he had been engaged by the P X Officer in Kyoto within that month as the exclusive buyer for kimonos for the P X and considered it a breach of faith to deal with anybody, including us, other than the P X Officer. It was not until we had obtained permission from the P X Officer that Katsumi would sell to the Colonel and then he did so at P X prices rather than the price at which he had purchased them for the P X. I know that the Colonel and I were both impressed with his business ethics, and it served to confirm my estimate of his integrity. In my talk with the P X Officer that day, he expressed high regard for Katsumi. If he is still on duty in Japan, you might, in all fairness, ask him about his dealings with Katsumi.

There are Japanese in Kyoto and Tokyo who knew Katsumi in the states and of course in more recent years, who would give you a statement about him. I would especially refer you to Dr. Tetsutaro Ariga, Dean of Theology, Doshisha University, Kyoto, and others whom he could name. I knew Ariga when we were students at Columbia and I know that he is a graduate of the Union Theological Seminary in New York City. Ariga can point out, for example, that not only Katsumi but his wife as well, are devout and practicing Christians.

I am very hopeful that this statement reaches the proper person and that it may shed some light on your case. I have no doubt but what justice will be done, for I observed the handling of war crimes cases with a good deal of interest while I was in Japan. I submit this statement because I know how difficult it is to find the facts in a good many of these cases. I commend to your good offices my estimate of Katsumi for whatever it may be worth.

Very truly yours,

R. M. MacGregor

EXHIBIT 18

0627

Jan. 18 th, 1947.

To whome it may concern,
International Military Tribunal,

Sir,

I was a professor of Applied Botany in Taihoku University, Formosa, and after the war, remained on the same post by the desire of the Chinese Government. Several days ago, I returned from Formosa to Japan, and to my great astonishment, I was told that Mr. Seishi Katsumi was caught as a war criminal suspect.

He and I are close friend with each other since we lived in a same room in N. Y. City, when I was a student sent by the Japanese Government abroad in U. S. A. As I know his character very well, I can not believe that he has done some bad deed during the war. He is a devout Christian. He has always warm heart. And in every case he is a supporter of weak men and a helper of poor students.

I believe you will soon find his honesty and his lovely character through the examination of him. And I also believe that the suspection will soon set at rest.

Yours very truely,

Sadao Yasuda

Prof. Dr. Sadao Yasuda.

EXHIBIT 19

Feb. 2, 1947
Kyoai Girls' School
Mayebashi, Gunma.

To whom it may concern;

I beg to say in regard to SEISHI KATSUMI's character. This man has been a friend of mine for more than forty years. From my experience he has been always kind, courteous and sympathetic toward others especially to those who are weak. I do not knows the real reason of his being suspected, but I can say that he has no habit of cheating or telling a lie.
I met him more than once since he came back from Wake island. From his talks I got the impression that he was a good interpreter. And he did neither cruelty nor ill-treatment to the war prisoners. As a matter of fact he had no authority of so doing. He was not thoroughly trusted by the Japanese soldiers for he had been in the United States for so many years. I certainly believe that he has the spirit of humanity which was cultivated during his long stay in America. I hope he will soon be completely cleared of the charge and that he did no wrong be certified.

Truly Yours,

Saishi Shine

An ordained minister and
principal of Christian girls' school.
(The Kyoai Girls' High School)

20

EXHIBIT 20

0629

DOSHISHA UNIVERSITY
KYOTO, JAPAN.

Jan. 12, 1947

To whom it may concern:

This is to certify that I have been a good friend of Mr. Seishi Katsumi for nearly thirty years ever since when we were both students of Doshisha University, Kyoto, Japan.

Mr. Katsumi is a man of honest and upright character. He loves justice and he is not the man who does cruelty. I sincerely hope that equitable judgement should be given upon him.

With best wishes, I remain

Yours very truly,

Shichiro Matsui
Professor of Economics

EXHIBIT 21

Kyoto, Japan,

Jan. II, 1947.

To Whom it may concern,

Dear Sir:-

Please let me write a few words for Mr. Seishi Katsumi, as a dear friend of his. I know him very well, all the points good or short, but I can surely say, he is honest and warm-hearted.

Though he was oblized to work as an interpretator under the Japanese Navy, he was always just and faithful to his conscience. About the cruel treatment of the American prisoners under the circumstances, or doing unjust things, I can certainly assure, he is perfectly blameless.

Believing that he will be set free very soon under your just and merciful judjment,

I remain, Yours Gratefully,

Tokuzo Sugemiya

Principal of
the Doshisha
Girls' High School

EXHIBIT 22

0631

DENISON UNIVERSITY
FOUNDED 1831
GRANVILLE, OHIO

DEPARTMENT OF
MATHEMATICS

Sept. 22, 1948

To Martin E. Carlson, Com. U.S.S.M.R.
ComNavFor Marianas
Box 13 F.P.O. San Francisco Cal.

Re Katsumi, Feishi.

Dear Sir:

Word has come to us that the above, Katsumi,Feishi , is under arrest on a charge of assult and battery. Knowing him as we did when he was a student in Denison University some years ago,we feel that there must be some mistake in the situation.

We wish to vouch for the excellent character,the high ideals, and the pleasing personality of Mr.Katsumi during his stay with us here. We are sure that you will see that the most careful investigation is made to be sure that he is not made the victim of unfair charges.

Very truly yours,
Forbes B. Wiley
Forbes B. Wiley
Head Dept. Mathematics, Denison Univ.

Ora S. Wiley
Mrs. Forbes B. Wiley

EXHIBIT 23

0b32

September 21, 1948
State College, Pa.

To Whom It May Concern:

Katsumi Seishi, while a student at Denison University, Granville, Ohio, lived with my father, Dr. W. C. Ebaugh, Professor of Chemistry. Katsumi aided my mother in the preparation of meals and did most of the general housecleaning as payment for his room and board. This occured during several years in the early 1920's. As I was just a small boy during that period my memory of Katsumi is necessarily somewhat sketchy. However, I can positively state that both my mother and my father held him in the highest regard. To the best of my knowledge, Katsumi, as an oriental student at Denison, entered into the spirit of a small American college and won many friends among the students.

My parents still tell stories of our family life during that period in which Katsumi is the central figure. He was apparently a very serious minded and dignified young man and his reactions to American customs and household furnishings were the subject of many humorous incidents.

Paul Ebaugh.

Paul Ebaugh
Prof. of Engineering Research
The Pennsylvania State College
State College, Pa.

EXHIBIT 24

Granville Ohio
Sept. 22, 1948

Martin E. Carlson
Commander, U. S. N.

Sir:-

Katsumi Seishi lived in our home while attending Denison University. I think it was about 1920-21. Am not sure of the date.

He was most considerate and kind in helping care for my husband's father who was ill.

We listed him as one of the family and we all liked him.

EXHIBIT 25

0634

As far as I know he was liked by the Students. He was a member of the Commons Club.

Am indeed sorry Lee is in trouble and do most sincerely hope he will be exonerated.

Dr. Eblaugh has been ill for the past four years, as I am writing this for him as well as for myself.

I have talked with Dr Wiley and Mrs Kato (nee Komoriya) they will write also

Most sincerely

(Mrs W. C.) Grace K. Eblaugh
Box 98
Granville Ohio

My son Paul is now living in State College Pa. I sent on to him your letter, and he in turn sent it back to me, hence the delay.

EXHIBIT 25

DENISON UNIVERSITY
FOUNDED 1831
GRANVILLE, OHIO

DEPARTMENT OF
MATHEMATICS

September 23, 1948

Commander Martin E. Carlson
Com Nav For Marianas
Box 13, F. P. O.
San Francisco, California

Dear Sir:

Mrs. W. C. Ebaugh tells me that Mr. Seishi Katsumi is on trial for some kind of offense. Mrs. Kato (formerly Miss Komoriya) and I knew Katsumi as a fellow student while we were at Denison University. Katsumi and I exchanged several letters after he left Denison in 1922 or 1923.

I remember him to be exceedingly friendly although he did not go out to win many close friends. He was working for the Ebaughs as a schoolboy and perhaps he did not have much time for social activities. At any rate he never appeared to me to be capable of any mean or cruel act.

A few years ago, while I was clearing up my old file, I came across some of his letters. I am sorry that I have destroyed them. However, I remember distinctly that he was not very well physically although I understand he was an excellent runner and a very good tennis player while he was a student at Doshisha university. From what I knew of him, I can hardly believe that he is the type to commit atrocity or brutality. I am very sorry that he is in this difficulty.

Vry truly yours,

Chosaburo Kato

Chosaburo Kato
Associate Professor of Mathematics
Denison University
Granville, Ohio

EXHIBIT 26

0636

JOHN M. MACGREGOR
ATTORNEY AT LAW
70 PINE STREET
NEW YORK 5, N.Y.
WH/4-0534

27

STATE OF NEW YORK :
: SS:
COUNTY OF NEW YORK :

JOHN M. MacGREGOR, being duly sworn, deposes and says:

That I am an Attorney at Law, with offices at 70 Pine Street, New York, N. Y., and teach Law at New York University, New York City. During World War I, I served in the United States Navy, and during World War II with the Army. For a time after our forces went in to Japan, upon the surrender of the Japanese, I was on duty in the Chemical Section GHQ AFPAC in Tokyo.

I knew Seishi Katsumi first during the years 1926, 1927 and 1928, when we were students and living at International House, 500 Riverside Drive, New York City. At that time he was one of the leaders in the student group composed of foreign students living at International House. Approximately one-third of the students living there were Americans and two-thirds from some sixty different nations. The entire group consisted of 525 students. Katsumi had been selected because of his interest in world peace, and took an active part in the serious affairs of the House. He was considered highly by members of the staff, headed by Harry E. Edmonds, the founder and director of the House, as well as by the students who knew him.

I thought well enough of him to maintain contact until the war and to look him up the first occasion I had while with the Army in Japan. I found him to be one of the managers of the Fujii Daimaru Department Store in Kyoto. I saw him a number of times during the succeeding months and found him substantially unchanged in his attitude toward life from the time I knew him as a student in New York.

On December 24, 1947, when I first learned of Katsumi's arrest with a possible charge, I wrote a letter to "WHOMEVER IT MAY CONCERN" in the hope that no injustice be done him and to state my candid opinion of his character. I attach a copy of that letter to this affidavit and ask that

EXHIBIT 27

0637

JOHN M. MACGREGOR
ATTORNEY AT LAW
70 PINE STREET
NEW YORK 5, N.Y.
WH. 4-0534

it be considered as a part of this sworn statement.

I recall well that Katsumi told me, when I visited him in Kyoto, that he had been a civilian interpreter with the Japanese Military Forces and that he had been impressed into this service because of his ability to speak English. I gained the impression, from what he told me, that his sole activity with the Japanese Military consisted of that of interpreter for the Military. He told me this before he had ever been arrested and charged with anything by the United States Forces. I therefore know that he had no expectation of being accused of the violation of any code of ethics or customs of war. His mind was free from any sense of guilt, as far as I could ascertain. I feel certain that he was talking to me as an old friend at the time and would have asked my advice had there been any occasion to do so.

I know that he served the Post Exchange Officer of the American Army in Kyoto as a trusted and faithful employee, and know, from talking with that officer on one occasion, that he regarded Katsumi highly.

Over this long period of knowing him, I have always thought of him as a peaceful man, honorable in every respect, and a devout Christian. I do not recall whether he told me that he was a Methodist or a Congregationalist, but I feel certain that he did state that he was a member of one of these two churches.

While I was in Japan, I knew that both he and his wife, because of their western training and experience, were interested in helping those of us on duty there in every way.

Reflecting back to the time in the 30's when Katsumi was debating whether he should return to Japan, he expressed his reluctance to do so, but at the same time recognized his family responsibilities. He had become imbued with our democratic way of living, often expressed his dislike for the military control in Japan and hoped the day would come when that influence would be eliminated. Although I do not know the true facts, I have the suspicion that he would have been a conscientious objector, as far as being able to do so in Japan, and suspect that his civilian capacity with the Japanese forces was the result.

EXHIBIT 27

0638

JOHN M. MACGREGOR
ATTORNEY AT LAW
70 PINE STREET
NEW YORK 5, N.Y.
WH. 4-0534

Because of his attitude of mind, method of living and demeanor, which I have known these twenty-five years, it is most difficult for me to visualize that he would be guilty of assault or any forde against the person of another. All the things I have known about him would lead me to the conclusion that he would not be that sort.

Moreover, I am convinced that whatever he did as an interpreter would have been honestly done as a Christian, and that nothing short of the fear of serious consequences would have caused him to do any harm to an American, because he has shown in every way his faith in his American friends and his belief in our way of life.

John M MacGregor

Sworn to before me this

1st day of October, 1948.

Elsie Edelstein

ELSIE EDELSTEIN
Notary Public in the State of New York
Residing in New York County
N.Y. Co.Clk's No. 50, Reg. No. 51-E-0
Commission Expires March 30, 1950

EXHIBIT 27

0639

28

HIGH GREEN
REDDING
CONNECTICUT

Sept.30, 1948.

To Wom It May Concern:

My old friend and colleague, Col.John M.Macgregor, has written me of the plight of our old student friend, Seishi Katsumi, and I hasten to send a word in his behalf.

First as to my own identity: I live at the above address. In 1935 I retired as Director of International House, of which student movement I was the head from its inception in the early nineteen hundreds. In those days I conceived the idea of an International House, aroused the interest and support of John D. Rockefeller, Jr to the extent of his contribution of about $3,000,000 for the House in New York, which succeeded so well that Mr.Rockefeller made gifts amounting all told to about $12,000,000 for the four Houses...New York, Chicago, Paris, and Berkeley, California I enjoyed Mr.Rockefeller's confidence, being commissioned by him to build, organize and head the work in these several places, until my retirement.

I recall Katsumi as one of the Japanese student leaders in the early days of the New York House. He was of an unusually high type, personally and intellectualy. He impressed me and others of my staff as being a man of excellent character, and I cannot believe he would be likely to commit assault on anyone.

As a citizen of the U.S.A., born here in 1883, I swear that the above statements are true to the best of my knowledge and belief.

Sincerely Yours,

Harry Edmonds

Harry Edmonds

Subscribed and sworn to before me this 30th day of September, 1948.

Emma Rider
Notary Public

EXHIBIT 28

0640

29

STATE OF NEW YORK)
COUNTY OF NEW YORK) SS:

WILLIAM J. McWILLIAMS, being duly sworn, deposes and says:

I am an attorney-at-law, duly licensed to practice in the State of New York, and I am the Corporation Counsel for the Municipality of Larchmont, in Westchester County, where I reside at 99 Willow Avenue, Larchmont, New York.

While completing my law studies, I came to New York City about 1926 and lived at International House for approximately three years. At that time I met and became well acquainted with Mr. Seishi Katsumi.

After I was admitted to the Bar in 1927, Mr. Katsumi recommended me to his employer, a Mr. Senso Kuwayama, who needed legal advise from time to time in the operation of his general grocery store and import and export business in New York City. Mr. Katsumi was assistant manager and right hand man to Mr. Kuwayama, taking care of the office work and correspondence and acting as cashier. During the depression times, Mr. Kuwayama leaned heavily upon Mr. Katsumi for advice in his business difficulties. I was always impressed by the fact that Mr. Katsumi never advised dishonest or underhand dealing. This fact stands out in my mind over the years in which I acted as legal adviser for Mr. Kuwayama and Mr. Katsumi was in effect his executive manager.

Because of our previous acquaintance at International House, I often discussed philosophy, religion, social problems and particularly matters of international peace with Mr. Katsumi. He had developed an attitude and view point of a world citizen. I recall especially the absence of any nationalistic or militaristic point of view or attitude.

As time went on he began to talk to me about the fact that he wished to marry but that economic conditions were such that he could not support a wife here in the United States and he asked my opinion as to whether he should return to Japan where he hoped that his knowledge of English and his business experience here might open the door to a job which would permit him to use his abilities and to have a family and a normal life. It was obvious that he was reluctant to leave the United States but that the economic hardships which he faced here made his prospects unattractive. When he finally arrived at the decision to go, I know that it was with a greatly divided mind.

After my long and close acquaintance with Katsumi, I can state positively that he constantly displayed an unusually quiet, calm, and reasoned attitude in all his activities and duties. He was definitely of the studious side and not athletic in the least. His pleasures were along the intellectual line. His moral character was certainly above reproach. While we both had a very liberal religious point of view, I would say that he definitely had a life philosophy based on the general Christian democratic principles.

EXHIBIT 29(1)

The charges which I have been advised are now brought against him in his present trial are completely contrary and alien to his character and activities as I knew him.

William J. McWilliams

Sworn to before me this

1st day of October, 1948

Elsie Edelstein

ELSIE EDELSTEIN
Notary Public in the State of New York
Residing in New York County
N.Y. Co.Clk's No. 50, Reg. No. 51-E-0
Commission Expires March 30, 1950

EXHIBIT 29(2)

0642

30

STATE OF NEW YORK :
: SS:
COUNTY OF NEW YORK :

SENZO KUWAYAMA, being duly sworn, deposes and says:

I reside at 3219 - 60th Street, Woodside, County of Queens, City and State of New York.

I have been a resident of the United States for the last forty-eight years, during which time I have raised a family of four children. ~~Both~~ of my sons served in the United States Army during World War II.

From 1915 to 1931, I owned and maintained an art and curio store at 114 East 59th Street, in New York City. From 1931 to 1941, I operated my store at 76 West 47th Street, in New York City. I am now retired from business.

In 1927 and 1928, Seishi Katsumi worked for me part time, usually during the Christmas season. He was then a student at Columbia University. After that he worked for me at various times, but he was with me as a full time employee during 1938 and 1939, for about two years.

His work was that of a bookkeeper, salesman and cashier. I found him to be very honest, a quiet, efficient young man whom I trusted in every way. I was sorry to lose him at the time he returned to Japan.

I liked him to the extent that I invited him to my home, where he visited on many occasions. I know that he often went to church and had a religious turn of mind. He was a Christian himself and I understand that all members of his family were likewise. I knew Dr. Ariga and knew that he and Katsumi had married sisters. Dr. Ariga was a student at Union Theological Seminary. I recall that Katsumi and I attended the graduation exercises at Union at the time Dr. Ariga received his degree. I understand that he is now a Professor of Religion at Doshisha University in Kyoto.

Sworn to before me this
2nd day of October, 1948.

Elsie Edelstein

ELSIE EDELSTEIN
Notary Public in the State of New York
Residing in New York County
N.Y. Co.Clk's No. 50, Reg. No. 51-E-0
Commission Expires March 30, 1950

Senzo Kuwayama

EXHIBIT 30

Japanese Methodist Church and Institute

323 WEST 108TH STREET
New York 25, New York

31

ALFRED S. AKAMATSU, MINISTER
KIYOJI OKUBO, CHURCH SECRETARY

PHONE ACADEMY 2-9774

Clark

STATE OF NEW YORK :
: SS:
COUNTY OF NEW YORK :

ALFRED S. AKAMATSU, being duly sworn, deposes and says:

That I reside at 300 West 107th Street, in the City, County and State of New York; that I am an ordained Minister of the Methodist Church; a graduate of Union Theological Seminary of New York City in 1936, and hold the degree of Doctor of Education from Teachers College of Columbia University; the pastor of the Japanese Methodist Church, located at 323 West 108th Street, New York, N. Y.; and a member of the New York Annual Conference of the Methodist Church.

That I have known Seishi Katsumi since 1934, and during the time he was in the United States considered myself a close friend of his.

I knew that he had been a student at Columbia University before I knew him and that he lived at International House, 500 Riverside Drive, New York, N. Y., during his student days. We had many mutual friends in the Columbia University neighborhood.

I knew that he was employed for a time by Mr. Kuwayama, now the proprietor of the Miyako Restaurant at 20 West 56th Street, New York, N. Y., and that he was highly regarded and trusted by his employers.

I know that he was thoroughly Americanized, believed in the democratic way of life to the point that he was most reluctant to return to Japan and that he finally did so partly because he felt that there was no opportunity for an educated Japanese to make his way in a vocation or profession in the United States and partly because of the urging of his family, especially Rev. Dr. Ariga, his brother-in-law, whom I knew as a fellow student at the Union Theological Seminary in 1935 and 1936.

EXHIBIT 31 (1)

0644

Japanese Methodist Church and Institute
323 WEST 108TH STREET
New York 25, New York

ALFRED S. AKAMATSU, MINISTER
KIYOJI OKUBO, CHURCH SECRETARY

PHONE ACADEMY 2-9774

I am convinced that Katsumi was a devout Christian and that his general reputation among his American and Christian Japanese friends was that enjoyed only by a man of high integrity and peaceful motives.

It is difficult for me to visualize that a man of the quiet habits and friendly attitude of Katsumi would be likely to commit any acts of violence against any person. Especially is it impossible for me to think that he would do physical harm to helpless captive Americans, because I know that he cherished his associations and friendships with Americans very highly. I recall well that it was the economic obstacles which convinced him that he could not be successful in the United States rather than the treatment which had been accorded him by Americans.

Sworn to before me this

2 day of October, 1948.

Alfred S Akamatsu

Harry Scharff

HARRY SCHARFF
Notary Public in the State of New York
Qualified in New York County
N. Y. Co. Clk's No. [illegible] Reg. No. 1937-S9
Commission Expires March 30, 1950

EXHIBIT 31 (2)

0645

INTERROGATORIES

UNITED STATES
v.
KATSUMI, Seishi

The following interrogatories to be propounded under article 68 of the Articles for the Government of the Navy (34 U. S. Code 1200, art, 68), to Ryland F. Barnett, residing at 1000 Grand Street, Boise, Idaho, a witness for the defense in the above-entitled case now pending and to be tried before the Military Commission convened by an order of the Commander Marianas Area, dated July 27, 1948, as modified, are agreed upon by both parties in advance of the assembling of the Military Commission and subject to exceptions when read in court, and are respectfully forwarded to the Commandant of the Thirteenth Naval District with the request that some suitable officer may be designated to take, or cause to be taken, the deposition of the said witness thereon:

First Interrogatory: Who was the Japanese military commander at Wake?

Second Interrogatory: Where were you on February 24, 1942 when Wake Island was subjected to bombing and shelling by American forces?

Third Interrogatory: Near which entrance of the air raid shelter assigned for use by prisoners of war were you?

Fourth Interrogatory: Was Katsumi, Seishi with you in this air raid shelter?

Fifth Interrogatory: Was it not after the bombing and shelling was over that Katsumi came to the air raid shelter and told you to work as a member of the landing strip crew?

Sixth Interrogatory: Was the air raid shelter you went to on February 24 designated as the civilian POW air raid shelter? If so, by whose orders was it so designated?

Seventh Interrogatory: Did you work on the air strip that day, February 24, 1942?

Eighth Interrogatory: Did any members of the dirt moving crew object to working on the air strip?

Ninth Interrogatory: How many civilian POW's remained in the air raid shelter while the dirt moving crew worked on the air strip? How long did you and the others remain in the air raid shelter after the dirt moving crew left to work on the air strip?

Tenth Interrogatory: Who were the members of the dirt moving crew?

Eleventh Interrogatory: Who assigned them this duty?

Twelfth Interrogatory: Was the air strip an American air strip?

EXHIBIT 32 (1)

0646

Thirteenth Interrogatory: Who of the American POW's were assigned the job of repairing the air strip on February 24, 1942?

Fourteenth Interrogatory: Do you know during what time repair work on the air strip was carried on?

Fifteenth Interrogatory: How do you know of the working hours mentioned in the above interrogatory?

Sixteenth Interrogatory: You stated in your affidavit of 20 February 1947, that you were often employed to work on the removal of five-inch guns from a beached Japanese destroyer and that you worked to mount them as coastal guns, and also were employed convering aircraft type machine guns into watercooled machine guns. Who supervised this work?

Seventeenth Interrogatory: Was Katsumi present when you were working on these jobs?

Eighteenth Interrogatory: Where was the sheetmetal covered shed in which Hoffmeister was allegedly confined?

Nineteenth Interrogatory: You testified that you saw Katsumi enter this shed, but from what vantage point did you observe this?

Twentieth Interrogatory: Was not the area around this shed a restricted area?

Twenty-first Interrogatory: You testified that Glenn Fontes and Joe Dunn who had just come off their regular shift were ordered by Katsumi to go out on a working party. What jobs were Glenn Fontes and Joe Dunn assigned? And what work did Katsumi order these men at that time?

Twenty-second Interrogatory: Was Katsumi constantly carrying a six foot two by four about this time?

Twenty-third Interrogatory: At what place did Katsumi allegedly strike Fontes and Dunn?

Twenty-fourth Interrogatory: Where were you when the beating took place? Who else were present at this beating?

Twenty-fifth Interrogatory: Have you filed a claim for injuries sustained as a POW? If so, state the details and basis for your claim.

Twenty-sixth Interrogatory: Give the names of the Japanese Naval officer in charge of POW's and of the officer who assisted him during the time you were held prisoner by the Japanese forces on Wake Island.

Dated at the Headquarters, Commander Naval Forces, Marianas, Guam, Marianas Islands, September 17, 1948.

James P. Kenny

JAMES P. KENNY,
Lieutenant, U. S. Navy,
Judge Advocate.

Martin E Carlson

MARTIN E. CARLSON,
Commander, U. S. Naval Reserve,
Counsel for the Accused.

EXHIBIT 32 (2)

0647

DEPOSITION

Ryland Francis Barnett, the witness above named, having been first duly sworn by me, Commander Donald E. Selby, U. S. Naval Reserve, Officer in Charge of U. S. Naval Reserve Training Center, Spokane, Washington, in Coeur d'Alene, Idaho where the witness has moved from Boise, Idaho, on 15 August 1948, now residing at 622 Coeur d'Alene Avenue, Coeur d'Alene, Idaho, doth depose and say for full answers to the foregoing interrogatories as follows:

1st Interrogatory: Was known to me as Fuka Cho, Japanese Naval Rank.

2nd Interrogatory: On the way to the mess hall to eat breakfast just after sunrise, when the attack started, and immediately thereafter the rest of the day until three o'clock in afternoon in dugout which was built by prisoners.

3rd Interrogatory: Approximately 10 feet west of center entrance.

4th Interrogatory: About eleven o'clock in the morning he came down for a short while and demanded that a working party be formed in order to repair damage by shell fire and bombs in the air strip.

5th Interrogatory: No, it was not after bombing and shelling, the U.S. American ships were still firing on the Island and were being answered by Japanese batteries when Katsumi entered the dugout to order the formation of a working party. He called for Swede Hokanson by name several times, when Hokanson reported to him at dugout entrance he said "You will take your crew and repair the damage that your ships have done to the airport". He did not directly address any other prisoner to my knowledge.

6th Interrogatory: Yes, it was the air shelter was designated as civilian POW air raid shelter, it was built under supervision of Katsumi, and he gave us orders at reveille on the parade ground to go into the air raid shelter whenever the alarm was sounded.

7th Interrogatory: No, I did not.

8th Interrogatory: Yes, Hokanson, Bill Raye, Tex Lancaster, Joe Dunn, and others whose names I cannot remember made strenuous objections but they were overruled when Katsumi drew his gun, a Japanese service pistol, and threatened to shoot Hokanson unless he immediately took the men to the airport, by his orders trucks were provided for their transportation. They did not return from work till after nine o'clock in the evening.

9th Interrogatory: Between 200 and 300. About four hours.

Encl: (F)

EXHIBIT 32 (3)

0648

10th Interrogatory: Hokanson, Bill Raye, Tex Lancaster, Joe Dunn and 50 or 60 others were called out whose names I do not remember.

11th Interrogatory: Seishi Katsumi

12th Interrogatory: Yes.

13th Interrogatory: Hokanson, Bill Raye, Tex Lancaster, Joe Dunn and 50 or 60 others.

14th Interrogatory: Only by heresay, when the crew returned to the compound, they made many references to the work they had accomplished and their experiences during and after the raid.

15th Interrogatory: I judged the time by the angle of sunbeams coming thru the entrance of the dugout, when they were ordered to work, they returned shortly after night bed check which usually was at nine o'clock.

16th Interrogatory: Sasaki Taicho, a Japanese Naval Captain assigned by his superiors to this duty.

17th Interrogatory: Yes on many occasions.

18th Interrogatory: About 350 feet Northwest of the compound assigned to the prisoners.

19th Interrogatory: From a position in the road about 100 feet east and slightly south, I saw Katsumi enter the metal shed. Immediately thereafter I heard Hoffmeister's voice raised in a cry as though he were being beaten, this continued for sometime.

20th Interrogatory: Yes it was, the immediate area up to approximately 10 yards was kept clear by guards.

21st Interrogatory: Joe Dunn was a Caterpiller Tractor operator, Glen Fontes and the other man were pick and shovel laborers on the dirt crew. Katsumi ordered the men back to another work detail, not stating the nature of the job.

22nd Interrogatory: No, he was not, after he posted the Guard on the men, he went outside of the Barracks and obtained a 2x4 from a pile of building wreckage nearby, and returned into the barracks to where the men were being held.

EXHIBIT 32 (4)

0649

23rd Interrogatory: The beating took place in a clear space in the center of the Barracks, Katsumi ordered the men to stand at attention an proceeded to beat them on their backs, and around their kidneys.

24th Interrogatory: I was in my assigned bed space between 10 and 15 feet from where the beating was administered. Fred King, is the only man now living that I can remember as being present. Bill Reynolds who slept on the bunk above me and Harry Froberger who slept across the aisle from me were also present, they are presumed dead now.

25th Interrogatory: Yes, I have. On approximately January 7, 1945 I received a crushing injury to my right thumb infection developed, which spread to my wrist in the course of treatment the main flexor tendons of the right hand were removed. The injury was caused by an overzealous Japanese Foreman in the Nagasaki shipyards who gave me a shove while I was carrying a heavy load of scrap steel, this caused me to lose my balance and the steel fell from my shoulder and onto my hand as it lay on the ground. Later about February 22, a Guard at the Nagaski Camp 2, took me to the Guard House at eleven o'clock at night. He and two others beat me unconcious three times and revived me by dousing me with buckets of sea water taken from Nagasaki Harbor, the next morning the tendons which were previously exposed in my wrist had turned black. Dr. Wiczfish a Dutchman captured in Surabaya and assigned to surgical duty for the prisoners at this camp, operated on my wrist removing the tendons and scraping all exposed bone and flesh surfaces. My right hand remains useless after numerous operations by competent American Surgeons since the war.

26th Interrogatory: Captain Aoki, Prisoner Officer.
Okazaki, Heso (Petty Officer) Assistant to Prisoner Officer.

I, RYLAND FRANCIS BARNETT, residing at 622 Coeur d'Alene Avenue, Coeur-d'Alene, Idaho, of lawful age and being duly sworn on oath state that I have read the foregoing transcription of my interragation, and all statements contained herein are true to the best of my knowledge and belief.

Ryland Francis Barnett

Ryland Francis Barnett.

Subscribed and sworn to before me this 1st day of October 1948.

D. E. Selby

D. E. SELBY, CDR USNR
Officer in Charge,
USNR Training Center,
Spokane, Washington

EXHIBIT 32 (5)

0650

INTERROGATORIES

UNITED STATES
v.
KATSUMI, Seishi

The following interrogatories to be propounded under article 68 of the Articles for the Government of the Navy (34 U. S. Code 1200, art. 68), to Warren O. McGill, residing at Meridian, Idaho, a witness for the defense in the above-entitled case now pending and to be tried before the Military Commission convened by an order of the Commander Marianas Area, dated July 27, 1948, as modified, are agreed upon by both parties in advance of the assembling of the Military Commission and subject to exceptions when read in court, and are respectfully forwarded to the Commandant of the Thirteenth Naval District with the request that some suitable officer may be designated to take, or cause to be taken, the deposition of the said witness thereon:

1st Interrogatory: In your affidavit of November 21, 1947 you stated there was an air raid on February 12, 1942. Around what time did the air raid of February 12, 1942 on Wake Island start, and around what time did it end?

2nd Interrogatory: Was any air raid alarm sounded and if so, around what time was the air raid alarm sounded that day, and if an all clear was sounded around what time was the all clear sounded?

3rd Interrogatory: Around what time of the day was it that Katsumi came to the dugout with sentries to take the prisoners out? Was Katsumi a civilian interpreter?

4th Interrogatory: Around what time did the prisoners arrive at the scene of the fire fighting work?

5th Interrogatory: How far from the beach was the dredge? Was it an American dredge?

6th Interrogatory: Were Katsumi and the sentries at the scene directing all the time during the fire fighting work?

7th Interrogatory: At that time, were the bombardments made by American planes or by American ships?

8th Interrogatory: While they were working on the fire fighting were any of the prisoners or Japanese military men wounded or killed by the bombardment? Were there any casualties caused by the shelling on the part of the POW's or the Japanese at the scene?

9th Interrogatory: How long did the fire fighting last?

EXHIBIT 33 (1)

10th Interrogatory: As the prisoners arrived at the scene to work on fire fighting, did the boat and the plane just start burning, or more than a half of them were burnt?

11th Interrogatory: In what part of the island of Wake were this boat and plane?

12th Interrogatory: As the result of the fire fighting, to what extent did they check the fire, for instance was the fire extinguished when one third or a half of them were burnt?

13th Interrogatory: Who rowed you out to the scene of the fire? How many prisoners went to the scene? Please state the names of these prisoners? Did you go?

14th Interrogatory: Did they try to extinguish the fire of both the boat and the plane? How many men went to fight the fire of the boat and how many to the plane?

15th Interrogatory: What was the distance between the burning boat and the burning plane?

16th Interrogatory: When was it that the prisoners finished the fire fighting and came back to the quarters?

17th Interrogatory: Who took the prisoners back to their quarters?

18th Interrogatory: How was Katsumi dressed at the time? Was he dressed in military uniform or in ordinary civilian suit?

19th Interrogatory: Katsumi used the prisoners on fire fighting. Do you know if this was by order of Katsumi himself or the order of his superior?

20th Interrogatory: Was Katsumi a Navy personnel or a civilian?

21st Interrogatory: You stated in the affidavit that you witnessed Katsumi beating Hoffgardner. At what time of what day of what month in what year and where did you see him beating? From what place did you see it?

22nd Interrogatory: You stated that Hoffgardner became unconscious by the beating? Did Katsumi take any measures at that time?

23rd Interrogatory: At that time, was there any person other than yourself who witnessed the beating by Katsumi?

24th Interrogatory: At that time, did you do anything for Hoffgardner?

EXHIBIT 33 (2)

25th Interrogatory: You testified in your affidavit of November 21, 1947 that only two other men of the eleven American POW's in a dugout on Wake during an attack February 12, 1942 survived. Were the other 8 POW's killed by American bombs that day?

Dated at the Headquarters, Commander Naval Forces, Marianas, Guam, Marianas Islands, September 18, 1948.

James P. Kenny

JAMES P. KENNY,
Lieutenant, U. S. Navy,
Judge Advocate.

Martin E Carlson

MARTIN E. CARLSON,
Commander, U. S. Naval Reserve,
Counsel for the Accused.

EXHIBIT 33 (3)

0b53

DEPOSITION

Warren O. McGill, the witness above named, having been first duly sworn by me, Lieutenant Commander Ralph E. Sandvigen, U. S. Naval Reserve, Officer in Charge of U. S. Naval Reserve Training Center, Boise, Idaho, doth depose and say for full answers to the foregoing interrogatories as follows:

1st Interrogatory: Approximately 6:30 the air raid started and were returned to work approximately 9:00 AM

2nd Interrogatory: To the best of my knowledge there was no air raid alarm souded. To the best of my knowledge no all clear alarm was sounded however it was observed that the remainder of the prisoners returned to work shortly after 12:00 noon.

3rd Interrogatory: A portion of the prisoners including myself were forced from the dugout at approximately 8:30 AM. Katsumi was a civilian interpreter.

4th Interrogatory: We arrived at the scene of the fire fighting work at approximately 9:00AM

5th Interrogatory: We traveled approximately 1 mile by water to reach the dredge which was 60 yards from the nearest land. It was an American dredge.

6th Interrogatory: Katsumi and the sentries were no at the scene directing all the time during the fire fighting work.

7th Interrogatory: At the time of the fire fighting there were no actual bombardments by American Planes or American ships.

Enclosure (E)

EXHIBIT 33 (4)

0654

8th Interrogatory: While working on the fire fighting neither of the prisoners or Japanese military men were wounded or killed by the bombardment. To the best of my knowledge no causualties were caused by the shelling to either the POWs or the Japanese at the scene.

9th Interrogatory: The fire fighting lasted approximately 6 hours.

10th Interrogatory: As we arrived at the scene to work on fire fighting the boat and the plane had been burning for approximately 30 minutes and were about 1/3 consumed.

11th Interrogatory: The boat and plane were in the lagoon off of Peal island.

12th Interrogatory: When the fire was checked I would say 2/3 of the plane was burnt and about 1/2 of the boat.

13th Interrogatory: We were taken to the scene of the fire on ~~the Tub~~ a Tug Boat ~~PIONEER~~ which was operated by Francis St. John and Vandenburg. To the best of my knowledge thirteen prisoners went to the scene. The names of the prisoners that I recall were,1. a Hawiian named Chong,2. a Hawaiin Kapi,3. Francis St. John,4. Vandenburg, 5. Jack Sherman, 6. a brother in law of Jack Sherman's named Eddy. Yes I went to the scene.

14th Interrogatory: Yes we attempted to extinguish the fire of both the boat and the plane. The boat and the plane were attached and the thirteen men fought both fires simutaneously.

15th Interrogatory: There were three peice of buring equipment the dredge, the bardge which was attached to the dredge, and the plane which was resting on the bardge. There was approximately 20 feet between the dredge and the plane.

EXHIBIT 33 (5)

16th Interrogatory: To the best of my knowledge we came back to our quarters at approximately 4:00 PM.

17th Interrogatory: A civilian Japanese engineer who we called Goldie Ockazowi told us to secure and when we returned to our quarters to the best of my knowledge we were not under guard.by military personnel but were undoubtably accomplanied by coolies armed with clubs.

18th Interrogatory: Katsumi at the time was dressed in an ordinary civilian suit but wore Sam Brown belt with side arm.

19th Interrogatory: I do not know.

20th Interrogatory: I do not definitely know whether Katsumi was a Navy personnel or a civilian, it was generally believed that Katsumi was a civilian and we had been told by numerous Japanese that Katsumi was a civilian.

21st Interrogatory: I did not personally witness Katsumi beating Hoffgardner but I did witness guards beating Hoffgardner under Katsumi's direction. To the best of my knowledge this incident occured in the year 1942 in either the month of March or April at approximately 7:00 PM. I witnessed this incident from the front door of the prison compound.

22nd Interrogatory: Yes, Hoofgardner did become unconsiuos by the beating. Katsumi did not take any measures at this time.

23rd Interrogatory: At the time of the beating there were approoimately 100 prisoners of war in the compaund who witnessed the incident amoungst whom were Jack Wolf, Lou Unger, Fred Gibens, Tex Lancaster.

EXHIBIT 33 (6)

0656

24th Interrogatory: At that time I did not no& could not do anything for Hoffgardner

25th Interrogatory: The eight other prisoners of War were not killed by American bombs on that day, February 12th, 1942 but to the best of my knowledge were executed by the Japanese in the month of October 1943.

I, WARREN OSCAR MCGILL, residing at Meridian, Idaho, of lawful age and being duly sworn on oath state that I have read the foregoing transcription of my interragation, and all statements contained herein are true to the best of my knowledge and belief.

Warren O McGill.

Warren O. McGill

Subscribed and sworn to before me this 30th day of September 1948.

Ralph E. Sandvigen

Ralph E. Sandvigen
Lieutenant Commander,
U. S. Naval Reserve
Officer in Charge, U. S. Naval Reserve
Training Center, Boise, Idaho.

EXHIBIT 33 (7)

0657

INTERROGATORIES

UNITED STATES
v.
KATSUMI, Seishi

The following interrogatories to be propounded under article 68 of the Articles for the Government of the Navy (34 U. S. Code 1200, art. 68), to Warren O. Rogge, residing at 490 Beck Avenue, Watsonville, California, a witness for the defense in the above-entitled case now pending and to be tried before the Military Commission convened by an order of the Commander Marianas Area, dated July 27, 1948, as modified, are agreed upon by both parties in advance of the assembling of the Military Commission and subject to exceptions when read in court, and are respectfully forwarded to the Commandant of the Twelfth Naval District with the request that some suitable officer may be designated to take, or cause to be taken, the deposition of the said witness thereon:

1st Interrogatory:	In your affidavit of January 31, 1947, you stated you were held a POW from December 23, 1941. How did you become a POW? Were you ever told what rules and regulations you had to follow as a POW?
2nd Interrogatory:	At what time of what day of what month in what year was the dredge set aflame by bombardment?
3rd Interrogatory:	Were you forced out of the dugout?
4th Interrogatory:	Did you take part in the fire fighting?
5th Interrogatory:	How many prisoners took part in the fire fighting, and what are their names?
6th Interrogatory:	How many dredges were set aflame at that time? In what part of the island of Wake were those dredges? And what was the distance between the dredges and the prisoner's air raid shelter?
7th Interrogatory:	Were only dredges set afire at that time?
8th Interrogatory:	Around what time did Katsumi come to take the prisoners out?
9th Interrogatory:	Did Katsumi come alone? If not who came with him?
10th Interrogatory:	Around what time did the prisoners arrive at the scene of the fire? Were you also there?
11th Interrogatory:	Was Katsumi at the scene of the fire fighting all the time? Was he giving directions to the prisoners?
12th Interrogatory:	Was that bombardment made by American planes or by American ships?

Exhibit 34 (1)

13th Interrogatory: Was there an air raid alarm and if so, when was the air raid alarm sounded? Was there an "all clear" sounded and what time was "all clear" sounded that day?

14th Interrogatory: While fire fighting, were any of the prisoners or the Japanese military personnel wounded or killed by the bombardment?

15th Interrogatory: When was the fire fighting finished?

16th Interrogatory: When you arrived at the dredge, what progress had the fire made?

17th Interrogatory: Was the fire completely extinguished? Was the fire on an American dredge?

18th Interrogatory: When did the prisoners return to their quarters after finishing the fire fighting?

19th Interrogatory: Who took the prisoners to their quarters?

20th Interrogatory: How was Katsumi dressed at that time?

21st Interrogatory: What kind of work was assigned to you when you were interned on Wake Island?

22nd Interrogatory: Who was the Japanese in charge of supervising your work?

23rd Interrogatory: Were you ever sent to repair a gun?

Dated at the Headquarters, Commander Naval Forces, Marianas, Guam, Marianas Islands, September 18, 1948.

James P. Kenny
JAMES P. KENNY,
Lieutenant, U. S. Navy,
Judge Advocate.

Martin E Carlson
MARTIN E. CARLSON,
Commander, U. S. Naval Reserve,
Counsel for the Accused.

0659

DEPOSITION

Mr. Warren O. Rogge, the witness above named, having been first duly sworn by me, Lieutenant Commander Ralph T. Moloney, U. S. Navy, Legal Officer, U. S. Naval School, General Line, Monterey, California, doth depose and say for full answers to the foregoing interrogatories, as follows:

To the first interrogatory: I signed on with Morrison and Knudsen, Contractors, out of Boise City, Idaho. I went to the Alameda Air Base to get the contract. I went as a union carpenter. Then from there to San Francisco on the Matsonia, and from there to Pearl Harbor and thence to Wake, on the U. S. S. Regulus, arriving about April 13, 1941. They did have some rifle practice, and they asked the fellows if they wanted to sign up for the course on rifle practice. Some of the boys did. But I was never told what rules and regulations to follow as a prisoner of war, not by the United States. The Japanese had their rules and regulations of what we could and couldn't do there on the Island. But neither the United States nor Japan told me the rights of a prisoner of war under International Law.

To the second interrogatory: It was set fire on the return voyage of some destroyers and cruisers, including the U. S. S. Salt Lake, and they had sent, I believe, six planes. We were shelled by the Americans. It was at about 3:00 p.m. on the 24th day of February, 1942.

To the third interrogatory: No, I was not.

To the fourth interrogatory: No.

To the fifth interrogatory: I would say about eight or ten. As to their names, I can't tell you now. It has been quite a while, but there was quite a bunch. Mostly dredge crews. I believe if I am not mistaken that Captain Andre, the civilian captain of the dredge, was one of them.

To the sixth interrogatory: One. Just about opposite the Pan-American landing field, off of Peale Island, in the lagoon. It was just south of Peale Island. I would say half a mile was the distance between the dredge and the prisoners' air raid shelter.

To the seventh interrogatory: Yes, I believe so. That was all the damage that was done.

To the eighth interrogatory: Along about 3:00 o'clock in the afternoon.

To the ninth interrogatory: He came into the dugout alone. Two Japanese soldiers were standing outside of the entrance. They were Japanese soldiers, but I don't know their names.

To the tenth interrogatory: It wouldn't have taken them over half an hour at the most, so they arrived about 3:30 or a quarter until 4 in the afternoon. No; I was not there.

To the eleventh interrogatory: To the best of my knowledge, Katsumi was at the scene of the firefighting all the time. He was giving directions to the prisoners. Oh, yes; he naturally would be giving directions to the prisoners. He always was.

To the twelfth interrogatory: By both.

To the thirteenth interrogatory: I don't know. There was no air raid alarm or "all clear" sounded, to my knowledge.

To the fourteenth interrogatory: Not on the dredge; but one of the bombs killed two Japanese on Wake Island. This was the same attack, but it happened on Wake Island and not on the dredge. There was nobody killed or wounded on the dredge.

To the fifteenth interrogatory: It was along around 10:00 or 11:00 o'clock at night, the same date.

To the sixteenth interrogatory: I went there after it was all over. A day or so after. The fire was all out.

To the seventeenth interrogatory: Yes; when I arrived. It was on an American dredge. I believe it was the Columbia, and I think it came out of Portland, Oregon.

To the eighteenth interrogatory: It was around 12:00, midnight, when they got in, on the same date.

To the nineteenth interrogatory: Katsumi and his two Japanese soldiers.

To the twentieth interrogatory: He had a little white uniform on, with the regular sun or pith helmet. He drew his revolver to force some of the boys out. He generally wore little white socks. He had his forty-five in his belt. I believe he wore an insignia on his uniform. It was something on his jacket. It probably gave him some rank. He acted as an interpreter all the time he was there. As near as I have ever found out, almost anybody with the service in Japan had some kind of rank. I thought he was in the Army and that his insignia indicated a rank in the Japanese Army.

To the twenty-first interrogatory: About January 12 they took most of the boys and left about 360 men there. We worked for 9 months on the island. The first job almost all of us were forced to do was putting up barbed wire entanglements on the beaches. Three or four days after we were brought back into the compound. That was our first job. Then we were more or less assigned to our different trades. Being a carpenter, they took me to the waterfront and I repaired one of the American tugs, the Pioneer, and from then on I repaired some of their boats, military, and then I acted as deck hand, helped bring in barges loaded with ammunition and supplies from the Japanese freighters. Then I was sent to the kitchen and acted as mess detail for American working parties.

Exhibit 34 (4)

0661

To the twenty-second interrogatory: Katsumi was more or less over all of the Japanese engineers, but the one I worked under at the water front was Goldie Akisawa. I forget the names of the ones in the kitchen.

To the twenty-third interrogatory: No. The machinists were the ones who did that.

Warren O Rogge

Warren O. Rogge

Subscribed and sworn to before me this 1st day of October, 1948.

Ralph T. Moloney

Ralph T. Moloney,
Lieutenant Commander, U. S. Navy,
Legal Officer,
U. S. Naval School, General Line, Monterey,
California.

0662

12

MILITARY COMMISSION OF THE UNITED STATES, COMMANDER NAVAL FORCES MARIANAS, GUAM, MARIANAS ISLANDS

UNITED STATES
v.
KATSUMI, Seishi
} Subpoena

The President of the United States to Warren O. Regge :

You are hereby commanded to appear as a witness for the defense on October 1, 1948, at 2:00 o'clock P .m., before LCDR. Ralph T. Moloney, U. S. Navy, detailed to take your deposition for use before a Military Commission of the United States, convened at the Headquarters, Commander Naval Forces, Marianas, by an order of the Commander Marianas Area, dated July 27, 1948.

And herein fail not under penalty of five hundred dollars fine or imprisonment for six months, or both.

Bring with you this precept, and depart not without leave.

Witness: Rear Admiral Arthur G. Robinson, U. S. Navy, president of the said Military Commission, this 18th day of September, 1948.

James P. Kenny

JAMES P. KENNY,
Lieutenant, U. S. Navy,
Judge Advocate.

Exhibit 34 (6)

UNITED STATES
v.
KATSUMI, Seishi

U. S. Naval School, General Line,
Monterey, California,
October 1, 1948.

I certify that I made service of the within subpoena on Warren C. Rogge, the witness named therein, by personally delivering to him a duplicate of the same at 544 Main Street, Watsonville, California, on the 1st day of October 1948.

Ralph T. Moloney,
Lieutenant Commander, U. S. Navy,
Legal Officer.

STATE OF CALIFORNIA
ss:
COUNTY OF MONTEREY

Ralph T. Moloney, being duly sworn, on his oath states that the foregoing certificate is true.

Ralph T. Moloney.

Subscribed and sworn to this 1st day of October 1948, before me.

C. W. Schoenweiss,
Commander, U. S. Navy.

Exhibit 34 (7)

0664

INTERROGATORIES

UNITED STATES
v.
KATSUMI, Seishi

The following interrogatories to be propounded under article 68 of the Articles for the Government of the Navy (34 U. S. Code 1200, art. 68), to Frank R. Wise, residing at 549A Castro Street, San Francisco, California, a witness for the defense in the above-entitled case now pending and to be tried before the Military Commission convened by an order of the Commander Marianas Area, dated July 27, 1948, as modified, are agreed upon by both parties in advance of the assembling of the Military Commission and subject to exceptions when read in court, and are respectfully forwarded to the Commandant of the Twelfth Naval District with the request that some suitable officer may be designated to take, or cause to be taken, the deposition of the said witness thereon:

1st Interrogatory: In your affidavit of January 15, 1948 you stated you were a POW. Did you become a POW when the Japanese occupied Wake Island on December 23, 1941?

2nd Interrogatory: What was your main work after you became a POW of the Japanese forces?

3rd Interrogatory: In February 1942, when the American forces attacked Wake Island, when did the attack begin and when did it end?

4th Interrogatory: About what time of that day did Katsumi require William Ray and his construction crew to do repair work at the airport? Were you present?

5th Interrogatory: At that time did Katsumi relay someone else's order, if so, whose order did he relay?

6th Interrogatory: When Katsumi made this requisition, did he force William Ray and the others to work? If so, what methods did he use to do this?

7th Interrogatory: About how many POW's were there who went to the airport with Ray at that time?

8th Interrogatory: Did Katsumi go together with these POW's to the airport?

9th Interrogatory: Do you know how long this work at the airport was conducted on that day?

10th Interrogatory: About what time of that day was it when Katsumi required the POW's to go to fight the fire on the burning dredge? What kind of a dredge was it?

11th Interrogatory: About how many of the POW's went to work on the dredge? Did the POW's protest the work?

EXHIBIT 35 (1)

12th Interrogatory: Did Katsumi force these prisoners to go to fight the fire? If so, what methods did he use to do this? Were you present?

13th Interrogatory: Did Katsumi go to the dredge with the POW's?

14th Interrogatory: Do you know about what time this fire fighting on the dredge ended? Were you there?

15th Interrogatory: In your affidavit of January 15, 1948, you testified that in May 1942, Hoffmeister was handcuffed and tied to a post inside the prison camp. By the prison camp do you mean the so-called "doghouse," where he was kept in solitary confinement? Did you actually see Hoffmeister tied to this post?

16th Interrogatory: Was not the location of the doghouse, off limits to POW's?

17th Interrogatory: Where did this "water treatment" on Hoffmeister which you mention in your affidavit of January 15, 1948, take place? From where did you see this?

18th Interrogatory: Who were the Japanese present at this water treatment? Were they armed?

19th Interrogatory: How was this water treatment administered? Were you present? How many other POW's were present?

20th Interrogatory: What day of May 1942 were you tried by a Japanese court martial, and who tried you?

21st Interrogatory: How do you remember Katsumi chained you to a tree and struck you with his sword scabbard?

22nd Interrogatory: Did Katsumi customarily wear a sword whenever you saw him?

23rd Interrogatory: You testified in your affidavit of January 15, 1948 that in February 1942 while the Americans were shelling Wake that Katsumi ordered all POW's to leave the dugout and work on your assigned tasks about the island. Do you mean Katsumi turned all POW's loose during the bombardment?

24th Interrogatory: Isn't it true that all during the bombardment the POW's were closely guarded by armed Japanese guards?

Dated at the Headquarters, Commander Naval Forces, Marianas, Guam, Marianas Islands, September 18, 1948.

James P. Kenny

JAMES P. KENNY,
Lieutenant, U. S. Navy,
Judge Advocate.

Martin E. Carlson

MARTIN E. CARLSON,
Commander, U. S. Naval Reserve,
Counsel for the Accused.

EXHIBIT 35 (2)

UNITED STATES v. KATSUMI, Seishi

DEPOSITION

Frank R. Wise, the witness in the above entitled case, having been first duly sworn by me, Lieutenant Charles A. Gearhart, USN, attached to the District Legal Office, Twelfth Naval District, Treasure Island, San Francisco, California, doth depose and say for full answers to the foregoing interrogatories, as follows:

To the first interrogatory: Yes

To the second interrogatory: Carrying cement, shovelling dirt, working on drainage for airport waist deep in mud. Was also baker for a short while.

To the third interrogatory: Attacked 24 February. It began about 9:00 a.m. and lasted about 45 minutes.

To the fourth interrogatory: Ray and his construction crew did repair work at the airport during the raid. I was present. Ordered out.

To the fifth interrogatory: Orders came directly from Katsumi.

To the six interrogatory: Yes. He, Katsumi, had a sword in one hand and a gun in the other hand and would swing the sword around.

To the seventh interrogatory: Approximately 20 or 25.

To the eighth interrogatory: No. He would go in his own car.

To the ninth interrogatory: Began around 9:00 a.m. and stopped about 4:00 p.m.

To the tenth interrogatory: About 9:00 a.m. during the raid. It was a channel dredge and it came from the Columbia River.

To the eleventh interrogatory: About 15 of dredge crew. Yes.

To the twelfth interrogatory: Yes. Had pistol and sword in his hands. I was present.

EXHIBIT 35 (3)

0667

To the thirteenth interrogatory: I do not know.

To the fourteenth interrogatory: About 10:00 a.m. No.

To the fifteenth interrogatory: I mean the jail where he was kept in solitary confinement. Yes, I saw Hoffmeister tied to the post.

To the sixteenth interrogatory: Yes.

To the seventeenth interrogatory: Inside enclosure. I was inside the enclosure about ten feet away.

To the eighteenth interrogatory: Katsumi did it and other Japanese soldiers were present, names unknown to me. Yes, they were armed.

To the nineteenth interrogatory: Hoffmeister was tied to post along the enclosure and hose under high pressure played water in his face and over his stomach for 10 or 12 minutes from 3 to 5 feet away. There were about 30 present.

To the twentieth interrogatory: I was tried about 5 May, a week before Mothers Day. Japanese High Command tried me, Katsumi was present.

To the twenty-first interrogatory: Katsumi ordered his men to chain me to the tree and he struck me with his sword scabbard.

To the twenty-second interrogatory: Yes. He always carried his sword and pistol.

To the twenty-third interrogatory: Ray and his crew were turned loose while shells were still dropping. The rest of us were turned loose after the shelling ceased but the alert was still on.

To the twenty-fourth interrogatory: Yes.

Frank R. Wise

FRANK R. WISE

Subscribed and sworn to before me this 28th day of ~~September~~ 1st October, 1948.

Charles A. Gearhart

CHARLES A. GEARHART
Lieutenant, U. S. Navy
Serial 154927
District Legal Office
Twelfth Naval District

EXHIBIT 35 (4)

UNITED STATES
v.
KATSUMI, Seishi

INTERROGATORIES

16 September 1948

The following interrogatories are requested to be propounded to the Chief of the Second Demobilization Bureau, Liquidation Division, Japanese Government, a witness for the defense in the above entitled case now pending and to be tried before the Military Commission convened by authority of Commander Marianas Area (by precept dated 27 July 1948 as modified) are agreed upon by both parties in advance of the assembling of the Military Commission and subject to exceptions when read in court, in accordance with the authority of paragraph 6 of said precept, and the authority contained therein and the rules of evidence promulgated by the Supreme Commander for the Allied Powers, SCAP ltr AG. 000.5 (5 Dec. 1945) LS, Subject "Regulations Governing the Trials of Accused War Criminals," especially Section 5 d (1) (c) thereof, which authorizes the use in evidence of affidavits, depositions or other signed statements.

These interrogatories are respectfully forwarded to the Supreme Commander for the Allied Powers, Legal Section, Tokyo with the request that suitable officer may be assigned to take, or cause to be taken, the deposition of the said witness thereon:

First Interrogatory: Outline the brief history of KATSUMI, Seishi, former Shokutaku attached to the Naval General Staff in the Japanese Navy.

Second Interrogatory: State the general duties and authority vested in a naval Shokutaku attached to a naval unit.

Third Interrogatory: State the post and duties of KATSUMI, Seishi during his tour of duty with naval units on Wake if they are known. Did he have any privileges because of the position he held?

Fourth Interrogatory: State whether the authority to command or use for various purposes prisoners of war interned by a unit was vested in a Shokutaku whose duties were those of an interpreter.

Fifth Interrogatory: Who was the responsible person in the unit when prisoners of war interned at a naval unit were put to work?

Sixth Interrogatory: State whether authority to command or supervise work such as construction of naval installation (including air field), repair and conversion of arms, transporting arms and munitions, construction of defense installations, etc., was vested in a Shokutaku who was an interpreter.

Seventh Interrogatory: What type of dress were Shokutaku (of sonin rank) on duty with front line units around 1942 required to wear by regulations?

Exhibit 36 (1)

0669

Eighth Interrogatory: What type of arms did regulations require that a Shokutaku of sonin rank serving with front line units carry?

Ninth Interrogatory: Were they permitted to carry pistols?

Dated at the Headquarters, Commander Naval Forces, Marianas, Guam, Marianas Islands, September 16, 1948.

James P. Kenny

JAMES P. KENNY,
Lieutenant, U. S. Navy,
Judge Advocate.

Martin E. Carlson

MARTIN E. CARLSON,
Commander, U. S. Naval Reserve,
Counsel for the Accused.

0670

Deposition

Iwao Kawai, the Chief of the Second Demobilization Bureau, Japanese Government, the witness above named, having been first duly sworn by me, Commander Maurice E. Currie, United States Naval Reserve, the Commander Naval Forces Marianas Liaison Officer for War Crimes to Legal Section, General Headquarters, Supreme Commander for the Allied Powers, in Tokyo, Japan, doth depose and say for full answers to the foregoing interrogatories, as follows:

0671

Answer to the 1st Interrogatory:

According to his original curriculum vitae kept in custody at the Second Demobilization Bureau Liquidation Division, the brief history of KATSUMI Seishi during his service in the Japanese Navy is as set forth in the separate sheet..

Answer to the 2nd Interrogatory:

No special regulations existed as regards the general duties and the authority vested in a naval Shokutaku attached to a naval unit excepting that he should carry out the specific affairs entrusted to him under the orders of the commanding officer of the unit to which he was attached.

There were two kinds of Shokutaku attached to naval units; the one was such a Shokutaku who had been entrusted with specific affairs by the Navy Ministry or the Naval General Staff and was dispatched to a naval unit, while the other was entrusted with specific affairs directly by a naval unit.

Such Shokutaku on both occasions were either war-painters, literary and newspaper men dispatched to the front (war-correspondents) or interpreters etc. who were employed with a view to making full use of their special abilities.

Accordingly, any duties other than those entrusted to them could not be assigned to them, nor any authority more than that necessary for their carrying out their entrusted affairs must have been vested in them.

Answer to the 3rd Interrogatory:

Besides the fact that KATSUMI Seishi was attached to the Wake Island Capturing Forces as an interpreter in English, it is

Exhibit 36 (4)

0672

not known what post and duty did he actually assume and take on the spot. It is also unknown whether or not he was vested with special privileges by the commanding officer of the unit to which he was attached.

However, as KATSUMI being well skilled in English conversation due to his long stay in U.S.A., became a Shokutaku of the Naval General Staff with English interpreting as his main duty and alloted to the front line unit at the time of the capture of the Wake Island, judging by common sense, his personal history and the nature of the duties of a Shokutaku, it is inconceivable that any important duty and authority concerning military matters more than those of an interpreter were invested in him.

Answer to the 4th Interrogatory:

As to the actual situation on the spot, it is unknown. However, generally speaking, the authority to command or use for various purposes prisoners of war interned at a naval unit was not to be vested in such a person as a Shokutaku whose main duty was interpreting, and accordingly, it is inconceivable that such authority was allowed to him.

Answer to the 5th Interrogatory:

The general responsibility for putting to work prisoners of war interned at a naval unit rested with the commanding officer of the said unit and the responsibility for direct supervision over the work of prisoners of war interned at a naval unit rested with the commanding officer on the spot of the work and his senior commanding officer.

Exhibit 36 (5)

0673

Answer to the 6th Interrogatory:

It is inconceivable that the authority to command or to supervise the various works as mentioned in your interrogatory was vested in a Shokutaku who was an interpreter.

Answer to the 7th Interrogatory:

As to the dress required to be put on by a Shokutaku (treated as sonin rank official) on duty with front line units, it was stipulated in the Naval Uniform Regulation (Naval Regulations Vol. 4--this was formally delivered to the Defense Counsel on the Guam Island). There existed no special regulation concerning this matter other than that which stipulated that the uniform for naval civilian official at the front might be worn by a Shokutaku.

As the uniform for naval civilian official at the front was not suitable for those of the front line units to wear and moreover this uniform was made by the owner's own expense, there were only a few persons who always wore this uniform.

It is believed likely that in the tropical area including the Wake Island, for convenience' sake, either anti-heat uniform or landing party uniform for the use of the servicemen were borrowed and worn by Shokutaku at their request, or their own private civilian suits were put on by them.

Answer to the 8th Interrogatory:

There existed no regulation concerning the arms to be carried by a Shokutaku (treated as sonin rank official) serving with front line units.

On such occasions as some direct injury might be expected

0674

to the body of a Shokutaku in his execution of his assigned duties (such as accompanying the unit participating in the landing operations), it was customary that the arms (pistols) to be carried by a member of an attached unit to a landing party were permitted to be carried by him.

Answer to the 9th Interrogatory:

In the landing battle, clear-up operations or such a place where the enemy attack might be expected, it was customary that Shokutaku were lent pistols and permitted to carry them.

0675

Curriculum Vitae

Name:	**KATSUMI Seishi.**
Permanent Domicile:	**No.206, Hon-cho, Seki-machi, Mugi-gun, Gifu-ken.**
Date of Birth:	**26 May 1895.**
Social Status:	**Commoner.**

3 Dec. 1941	Shokutaku entrusted with the affairs in the Naval General Staff, with emoluments, 2,150 yen a year, and treatment as sonin rank official within the Navy.
8 Dec. 1941	Great East Asia War broke out.
23 Dec. 1941	Participated in the Wake Capturing Operation.
1 Apr. 1942	Relieved of Shokutaku entrusted with the affairs in the Naval General Staff. Shokutaku entrusted with the affairs in the 4th Fleet with emoluments, 2,150 yen a year, and treatment as sonin rank official within the Navy.
"	Ordered to serve under the orders of Commandant of 65th Naval Guards.
21 Mar. 1942	Granted cigarettes with Imperial Crest on the occasion of the dispatch of the Aide-de-Camp to H.I.M. the Emperor to the 4th Fleet.
16 Feb. 1943	Granted cigarettes with the Imperial Crest on the occasion of the dispatch of the Aide-de-Camp to H.I.M. the Emperor by H.I.M. the Emperor and Empress.
10 Sept. 1943	Relieved of Shokutaku entrusted with the affairs in the 4th Fleet.
10 Dec. 1943	Shokutaku entrusted with the affairs in the Naval General Staff with emoluments, 2,300 yen a year, and treatment as sonin rank official within the Navy.
1 Apr. 1945	Granted the emoluments, 2,420 yen a year.
1 Sept. 1945	Granted the emoluments, 2,770 yen a year.
"	Relieved of Shokutaku entrusted with the affairs in the Naval General Staff.

Exhibit 36 (8)

0676

ALLIED OCCUPATION FORCES)
) SS.
TOKYO, JAPAN)

I, Iwao Kawai, the Chief of the Second Demobilization Bureau, Japanese Government, being duly sworn on oath, state that I have read and understand the foregoing transcription of my testimony consisting of FIVE pages, and that the foregoing testimony, obtained from competent authorities of the Second Demobilization Bureau of the Japanese Government, is true to the best of my knowledge and belief.

I. Kawai

Iwao Kawai,
Chief, Second Demobilization Bureau,
Japanese Government.

Subscribed and sworn to before me this first day of October, 1948.

Maurice E. Currie

Maurice E. Currie,
Commander,
United States Naval Reserve.

CERTIFICATE

We, Maurice E. Currie, commander, United States Naval Reserve, and Hoshi Yokoi, sergeant, United States Army, certify that on the first day of October, 1948, Iwao Kawai, the Chief of the Second Demobilization Bureau, Japanese Government, appeared before us and gave the foregoing answers to the several questions set forth therein; that after the said Iwao Kawai, the Chief of the Second Demobilization Bureau, Japanese Government, read his testimony, the said Iwao Kawai affixed his signature thereto in our presence.

Maurice E. Currie

Maurice E. Currie,
Commander,
United States Naval Reserve.

Hoshio Yokoi

Hoshio Yokoi,
Sergeant,
United States Army.

Exhibit 36 (9)

0677

UNITED STATES
v.
KATSUMI, Seishi

INTERROGATORIES

16 September 1948

The following interrogatories are requested to be propounded to CHO, Hikaru, former commander, I.J.N., residing in Japan, a witness for the defense in the above entitled case now pending and to be tried before the Military Commission convened by authority of Commander Marianas Area (by precept dated 27 July 1948 as modified) are agreed upon by both parties in advance of the assembling of the Military Commission and subject to exceptions when read in court, in accordance with the authority of paragraph 6 of said precept, and the authority contained therein and the rules of evidence promulgated by the Supreme Commander for the Allied Powers, SCAP ltr. AG. 000.5 (5 Dec. 1945) LS Subject "Regulations Governing the Trials of Accused War Criminals," especially Section 5 d (1) (c) thereof, which authorizes the use in evidence of affidavits, depositions or other signed statements.

These interrogatories are respectfully fowarded to the Supreme Commander for the Allied Powers, Legal Section, Tokyo, with the request that some suitable officer may be assigned to take, or cause to be taken, the deposition of the said witness thereon:

1st Interrogatory: Please state your name and former rank in the Imperial Japanese Navy.

2nd Interrogatory: Please state the period of your tour of duty and duty station on Wake Island.

3rd Interrogatory: Did you know Katsumi, Seishi on Wake Island? If so, please state his duty station and duties on Wake Island.

4th Interrogatory: During your tour of duty as Executive Officer of the 65th Naval Guard Unit, who was directly responsible for the custody, treatment and care of POW's?

5th Interrogatory: Was Katsumi vested with any responsibility relative to treatment of POW's? If so, please state by what authority he thus became responsible.

6th Interrogatory: What procedure was followed when POW's were assigned various tasks on Wake Island during the period from December 23, 1941 until September 30, 1942?

7th Interrogatory: During the period from December 23, 1941 until September 30, 1942, were POW's assigned to work such as converting, repairing, making over or transporting of arms? If so, who ordered these assignments?

8th Interrogatory: Did Katsumi, Seishi have anything to do with deciding or ordering the use of POW's for work mentioned in the above interrogatory?

EXHIBIT 37 (1)

0678

9th Interrogatory: Did anything unusual occur on Wake Island around the 24th of February, 1942? If so, state what occurred.

10th Interrogatory: Where were you and what were your duties that day?

11th Interrogatory: Do you recall if there was a fire aboard the dredge COLUMBIA on that day? When did the fire occur and how?

12th Interrogatory: Were POW's used to extinguish the fire aboard the dredge? If POW's were used, who issued this order for their use and why?

13th Interrogatory: If POW's were used, at what time were they ordered to fight the fire and how long did it take to put out the fire?

14th Interrogatory: Did Katsumi issue this order to use POW's for this work?

15th Interrogatory: Do you know if Katsumi went to the actual scene of the fighting on the dredge?

16th Interrogatory: Were there any AA guns put out of order on that day? If so, where were these guns and when were they put out of order?

17th Interrogatory; Were some POW's used to repair the damaged AA guns? If so, who issued the order that they be be used and why?

18th Interrogatory: If POW's were used for repair of the AA guns, between what hours were they so used?

19th Interrogatory: Do you know if Katsumi was present at this repair job on the AA guns? Were you present?

20th Interrogatory: Was the air-strip damaged by the American attack on that day?

21st Interrogatory: Were POW's used on work to repair the air strip that day? If so, who ordered that they be used and why and when were they ordered?

22nd Interrogatory: Did you on that day order Katsumi to repair the air strip through the use of POW's? If so, at about what time was this? Was anyone else also ordered to do the job?

23rd Interrogatory: Was Katsumi connected with the use of POW's for the air-strip repair work about this time? If so, who gave Katsumi such an order?

24th Interrogatory: Between what hours did the American raid last on February 24, 1942?

25th Interrogatory: Please state at what hours the all clear was sounded to secure from battle stations and to secure from the alert stations on that day.

EXHIBIT 37(2)

0679

26th Interrogatory: Where were the American POW's during the time the personnel were at battle stations and at the alert stations on that day? Do you know how long they were at these stations?

27th Interrogatory: Do you recall a torpedo being washed ashore on Wilkes Island in the latter part of March, 1942?

28th Interrogatory: If you recall this incident, please state what type of torpedo it was. Did you see the torpedo yourself?

29th Interrogatory: Were some POW's used in removing this torpedo? If so, who ordered that they be used, and why?

30th Interrogatory: Do you know if Katsumi was present when and if POW's were used to remove the torpedo?

31st Interrogatory: Do you know of the fuse and war head of the torpedo were removed before the torpedo was removed? If so, who removed the fuse and war head and at whose orders?

32nd Interrogatory: Do you know who supervised and directed this work on the spot?

33rd Interrogatory: Were POW's used in the unloading of arms and munitions from Japanese transports and in the transportation of same? If so, who issued the order that they be used and why?

34th Interrogatory: Who supervised and directed such work?

35th Interrogatory: Did Katsumi participate in the work mentioned in the above interrogatory? If so, who ordered him and why?

36th Interrogatory: Were guns ever removed from a grounded Japanese destroyer and installed ashore around March or April of 1942? If so, who ordered their removal and installation?

37th Interrogatory: Were POW's used for this work? If so, who issued the order that POW's be used for this work?

38th Interrogatory: Who supervised and directed this work?

39th Interrotatory: Did Katsumi participate in this work? If so, why and who ordered him?

40th Interrogatory: About this time, was work such as converting aircraft machine guns into ground machine guns and manufacture of gun parts carried out,

41st Interrogatory: Were POW's used for this work? If so, who issued the order that they be employed and when and why?

42nd Interrogatory: Who supervised and directed this work?

EXHIBIT 37(3)

43rd Interrogatory: Did Katsumi participate in this work? Did you see Katsumi participate?

44th Interrogatory: Were POW's used in constructing gun emplacements about this time? If so, who ordered that they be used and why?

45th Interrogatory Who supervised and directed this work?

46th Interrogatory: Do you know if Katsumi participated in this work? If so, who ordered him to be present?

47th Interrogatory: Did you personally go to the scene of the work? If so, when was this?

48th Interrogatory: Were POW's used about this time for digging trenches and setting up barbed wires? If so, who ordered they be used and when and why?

49th Interrogatory: Who supervised and directed this work? Were you ever present?

50th Interrogatory: Do you know if Katsumi participated in this work? If so, who ordered him to do so and why?

51st Interrogatory: What dress was Katsumi required to wear by regulations during his tour of duty on Wake Island? Who so ordered him?

52nd Interrogatory: What were the regulations relative to the arms he was to carry?

53rd Interrogatory: Was he permitted to carry a pistol at all times? If so, by what regulation was he authorized to do do?

Dated at the Headquarters, Commander Naval Forces, Marianas, Guam, Marianas Islands, September 16, 1948.

James P. Kenny

JAMES P. KENNY,
Lieutenant, U. S. Navy,
Judge Advocate.

Martin E. Carlson

MARTIN E. CARLSON,
Commander, U. S. Naval Reserve,
Counsel for the Accused.

EXHIBIT 37(4)

0181

Deposition

Hikaru Cho, the witness above named, having been first duly sworn by me, Commander Maurice E. Currie, United States Naval Reserve, the Commander Naval Forces Marianas Liaison Officer for War Crimes, Tokyo, Japan, doth depose and say for full answers to the foregoing interrogatories, as follows:

To the first interrogatory: My name is Cho, Hikaru. At the time of demobilization, I was a commander, Imperial Japanese Navy.

To the second interrogatory: From the middle of January, 1942, until the first part of October, 1942. At that time, I was a lieutenant commander. I was land defense commander of Wake Island, and also I was executive officer to Kawasaki, the commanding officer of the island.

To the third interrogatory: Yes, I knew him. Katsumi was attached to Lieutenant (junior grade) Nomoto, the officer in charge of the prisoners of war on Wake Island, as an interpreter.

To the fourth interrogatory: Lieutenant (junior grade) Nomoto.

To the fifth interrogatory: He had no responsibility whatsoever relative to treatment of prisoners of war.

To the sixth interrogatory: I do not know anything before January, 1942. During my time on Wake Island, prisoners of war were first requested by the construction section on Wake Island from the officer in charge of these prisoners of war. No other units used any prisoners. I remember that prisoners were assigned to the dredge for maintenance and other matters. First, requests were submitted to the officer in charge of the prisoners of war, and he assigned the prisoners to the work. There were cases when the officer in charge of the prisoners of war himself used these prisoners for various work.

To the seventh interrogatory: Yes, I recall that prisoners of war were used for making over and transporting arms, but I do not know whether prisoners of war were used for converting or repairing of arms. It was ordered by Captain Kawasaki, the commanding officer of Wake Island.

To the eighth interrogatory: He may have relayed the orders of Lieutenant Nomoto or it might have been possible Captain Kawasaki relayed his orders to Nomoto through Katsumi, but Katsumi had no authority or nothing to do with deciding or ordering the prisoners for work.

To the ninth interrogatory: I believe this date was the attack of the American Task Force.

To the tenth interrogatory: I was at the command post supervising the counter-firing against the attacking force.

EXHIBIT 37(5)

To the eleventh interrogatory: After the battle I heard that a fire had occurred aboard the dredge. I do not know when this fire occurred or how it occurred.

To the twelfth interrogatory: I do not know whether prisoners were used to extinguish the fire.

To the thirteenth interrogatory: Since I do not know the details, I cannot answer this question.

To the fourteenth interrogatory: I cannot answer this question either.

To the fifteenth interrogatory: I do not know where Katsumi was at that time. I did not go to the scene.

To the sixteenth interrogatory: Yes, I recall that antiaircraft guns were put out of order, but I do not know which ones. I do not know the locations of the guns that were put out of order, nor do I know exactly when they were put out of order.

To the seventeenth interrogatory: I do not recall whether prisoners of war were used to repair the damage to the antiaircraft guns. I don't think they were used.

To the eighteenth interrogatory: I don't think the prisoners of war were used for repair of antiaircraft guns.

To the nineteenth interrogatory: In the first place, I do not know where Katsumi was during the time of battle, so I cannot answer this question. I was not present during the repair of the guns.

To the twentieth interrogatory: I do not recall whether the air strip was damaged on that day. During that time there were no army planes; there was not much use for the air strip. The air interception was by navy float planes.

To the twenty-first interrogatory: I cannot answer this question since I do not know whether the air strip was damaged.

To the twenty-second interrogatory: No, I did not order Katsumi to repair this air strip through the use of prisoners of war. If it had to be done, the order must have come from the commanding officer, Captain Kawasaki; but I do not know whether the air strip was repaired on that day or not.

To the twenty-third interrogatory: The repair work of the air strip was under the jurisdiction of the construction department; and, if the prisoners of war were used for repairing of this kind of work, Katsumi might have been there as interpreter.

To the twenty-fourth interrogatory: The American raid began sometime about three o'clock in the morning (Japanese standard time) and lasted approximately an hour and a half to two hours.

EXHIBIT 37(6)

0b83

To the twenty-fifth interrogatory: I do not recall exactly when the all clear was sounded. I think the all clear was not sounded until about three or four hours after the end of the bombardment. I do not know exactly what is meant by "alert stations"; but some men (from one-fourth to one-third of the personnel) were always kept on duty at alert stations. In time of battle, the alert stations automatically became the battle stations and all the personnel were on duty then at their stations.

To the twenty-sixth interrogatory: I do not recall where the prisoners of war were kept during the time the Japanese personnel were on battle stations and alert stations. The Japanese were at their battle stations as described in my answer to question twenty-five.

To the twenty-seventh interrogatory: Yes, I recall that.

To the twenty-eighth interrogatory: No, I did not see this torpedo, so I cannot tell what type of torpedo it was. I recall that Captain Kawasaki drew the details of this torpedo. He was a specialist in torpedoes.

To the twenty-ninth interrogatory: I do not know whether prisoners of war were used in removing this torpedo.

To the thirtieth interrogatory: Since I did not go to the scene, I do not know whether Katsumi was present when and if prisoners of war were used to remove the torpedo.

To the thirty-first interrogatory: I heard the fuse and war head of the torpedo were already damaged at the time it washed ashore and there was no danger of explosion. I do not know whether the fuse and the war head were removed.

To the thirty-second interrogatory: Since I was not present at the time this work was carried out, I do not know.

To the thirty-third interrogatory: I never heard that prisoners of war were used in unloading of arms and munitions from Japanese transports. This type of work was under the jurisdiction of the construction department.

To the thirty-fourth interrogatory: I cannot answer this question as I do not know if prisoners of war were being used.

To the thirty-fifth interrogatory: I do not recall whether Katsumi ever participated in the work mentioned in the above interrogatory.

To the thirty-sixth interrogatory: Yes, guns were removed from the grounded Japanese destroyers and installed ashore. This was done by the order of the commanding officer, Captain Kawasaki.

To the thirty-seventh interrogatory: I heard the prisoners of war were not used when the guns were removed from the grounded Japanese destroyers, but prisoners of war were used for the installation of these guns. (Prisoners of war were used in the cement work of the installation of gun emplacements.)

EXHIBIT 37(7)

0b84

To the thirty-eighth interrogatory: I do not know who supervised and directed this work.

To the thirty-ninth interrogatory: I never heard of Katsumi participating in this work.

To the fortieth interrogatory: Yes.

To the forty-first interrogatory: No, I never heard that prisoners of war were used for the above work.

To the forty-second interrogatory: Yes, Lieutenant (junior grade) Suzuki was supervising and directing the converting of aircraft machine guns into ground machine guns and manufacturing of gun parts.

To the forty-third interrogatory: I never heard of Katsumi participating in this work.

To the forty-fourth interrogatory: Yes, I heard prisoners of war were used in constructing gun emplacements about this time. As I indicated in answer number thirty-seven, prisoners of war were used to install guns taken from the grounded Japanese destroyers. Captain Kawasaki, the commanding officer, ordered this. I heard the prisoners of war were used for cementing the gun emplacements. That is the only time that I heard of prisoners of war being used for the construction of gun emplacements.

To the forty-fifth interrogatory: I think Lieutenant (junior grade) Suzuki supervised and directed this work, but it might have been supervised by the construction department.

To the forty-sixth interrogatory: I do not recall whether Katsumi ever participated in this work.

To the forty-seventh interrogatory: No, I did not go to the scene of this work.

To the forty-eighth interrogatory: I never heard whether prisoners of war were used for digging trenches and setting up barbed wire. I am certain that prisoners of war were not used.

To the forty-ninth interrogatory: The work of digging trenches and setting up barbed wire was conducted by the various platoon commanders in their own areas. I never went to the scene of the work.

To the fiftieth interrogatory: I do not know whether Katsumi ever participated in this work. I do not think he did.

To the fifty-first interrogatory: He was more or less wearing the officers dress without any insignia. Since Katsumi was not a soldier, he was not required by regulation to wear a uniform, but I think he was wearing a uniform approved by the commanding officer, Captain Kawasaki.

EXHIBIT 37(8)

To the fifty-second interrogatory: I do not know; however, when I first arrived there, Katsumi was already carrying a pistol with him.

To the fifty-third interrogatory: Since he was carrying a pistol all the time, I took it for granted that he was authorized to do so. I do not know under what regulation he was authorized to do so.

ALLIED OCCUPATION FORCES)
) SS.
TOKYO, JAPAN)

I, Hikaru Cho, being duly sworn on oath, state that I had read to me and understand the translation of the foregoing transcription of my testimony consisting of four and one-fourth (4¼) pages, and that the foregoing testimony is true to the best of my knowledge and belief.

長 光

Hikaru Cho.

Subscribed and sworn to before me this fourth day of October, 1948.

Maurice E. Currie

Maurice E. Currie,
Commander,
United States Naval Reserve.

I, Hoshio Yokoi, sergeant, United States Army, being thoroughly familiar with the English and Japanese languages, certify that I truly translated the questions and answers given from English to Japanese and from Japanese to English, respectively; that after being transcribed, I truly translated the foregoing deposition consisting of four and one-fourth (4¼) pages to the witness; and that the witness thereupon in my presence affixed his signature thereto.

Hoshio Yokoi

Hoshio Yokoi,
Sergeant,
United States Army.

EXHIBIT 37(9)

CERTIFICATE

We, Maurice E. Currie, commander, United States Naval Reserve, and Joseph Kase, junior, yeoman first class, United States Navy, certify that on the fourth day of October, 1948, Hikaru Cho personally appeared before us and according to Hoshio Yokoi, sergeant, United States Army, gave the foregoing answers to the several questions set forth therein; that after his testimony had been transcribed, the said Hikaru Cho had read to him the same by Hoshio Yokoi, sergeant, United States Army; and the said Hikaru Cho affixed his signature thereto in our presence.

Maurice E. Currie,
Commander,
United States Naval Reserve.

Joseph Kase, jr.,
Yeoman First Class,
United States Navy.

EXHIBIT 37(10)

INTERROGATORIES

UNITED STATES
v.
KATSUMI, Seishi

The following interrogatories to be propounded under article 68 of the Articles for the Government of the Navy (34 U. S. Code 1200, art. 68), to IWAMA, Chuichi, former lieutenant, I.J.N., residing in Japan, a witness for the defense in the above-entitled case now being tried before the Military Commission convened by an order of the Commander Marianas Area, dated July 27, 1948, as modified, are accepted by the Military Commission in open session, the prosecution having been given reasonable opportunity to submit cross-interrogatories, and are respectfully forwarded to the Supreme Commander for the Allied Powers, Legal Section, Tokyo, with the request that some suitable officer may be designated to take, or cause to be taken, the deposition of the said witness thereon:

First Interrogatory:	State your name.
Second Interrogatory:	Do you remember that in March 1942 a torpedo was found ashore off Wilkes Island?
Third Interrogatory:	Do you know what kind of work was performed in order to remove this torpedo? If so, tell about the work.
Fourth Interrogatory:	Do you know whether or not a tugboat, PIONEER and its crew, American prisoners of war, were used in the work to remove the torpedo from the shore to deep water?
Fifth Interrogatory:	If so, who ordered the use of the tugboat for this work?
Sixth Interrogatory:	Did you see any Japanese aboard the tugboat other than the prisoners of war who were the members of the crew? If so, who were they?
Seventh Interrogatory:	Do you know whether or not KATSUMI, Seishi took part in this work together with the prisoners?
Eighth Interrogatory:	Do you know whether or not the fuse of this torpedo had been removed before the commencement of the work?
Ninth Interrogatory:	Do you remember that a scout boat had a damage at her bottom in the beginning of middle of June 1942?
Tenth Interrogatory:	Do you know whether or not prisoners of war were used to dive to the bottom of this boat before it was salvaged?
Eleventh Interrogatory:	If prisoners were used on this work, who ordered them to work?

Exhibit 38(1)

Twelfth Interrogatory: Do you remember the name of a prisoner who was used for this diving?

Thirteenth Interrogatory: Do you know whether or not KATSUMI, Seishi was present when this prisoner was performing the diving?

Fourteenth Interrogatory: Do you know a prisoner of war named Edwin Mang Sook Lee?

Fifteenth Interrogatory: Do you know if this prisoner, Lee, was used as a diver in order to work at the damaged part at the bottom of the scout boat? If so, who ordered and supervised this work and how long did the prisoner Lee continue to dive that day?

Dated at the Headquarters, Commander Naval Forces, Marianas, Guam, Marianas Islands, September 24, 1948.

ARTHUR G. ROBINSON,
Rear Admiral, U. S. Navy,
President of the Military Commission.

JAMES P. KENNY,
Lieutenant, U. S. Navy,
Judge Advocate.

Deposition

Chuichi Iwama, the witness above named, having been first duly sworn by me, Commander Maurice E. Currie, United States Naval Reserve, the Commander Naval Forces Marianas Liaison Officer for War Crimes, Tokyo, Japan, doth depose and say for full answers to the foregoing interrogatories, as follows:

To the first interrogatory: Iwama, Chuichi, lieutenant (junior grade), Imperial Japanese Navy.

To the second interrogatory: Yes.

To the third interrogatory: When the torpedo was first discovered, it was hung up on a coral reef, and part of the torpedo became visible at low tide. I do not recall the exact details, but I recall a tugboat was used to remove this torpedo. I did not see this entire operation, but most of the time I was there. I recall that ropes were used to pull the torpedo to the deep water; however, I do not remember whether it was necessary for men to go into the water to tie this rope on to the torpedo or whether it could be done from the shore. I do not recall what personnel were used to tie the rope to this torpedo.

To the fourth interrogatory: I do not recall which tugboat was used, but a tugboat was used; and at that time I recall American prisoners of war who manned the tugboat were used in the work to remove the torpedo from the shore to the deep water.

To the fifth interrogatory: The order to use the tugboat was from headquarters. Since Lieutenant Ogawa of headquarters was in charge of all the ships on Wake Island, I presumed the order came from him.

To the sixth interrogatory: Yes, I did see Japanese aboard the tugboat, but I do not recall who they were or how many there were.

To the seventh interrogatory: No, I do not recall this.

To the eighth interrogatory: I do not know this; however, when I first saw this torpedo it seemed the head part of this torpedo was smashed and almost beyond recognition. The head part where the powder was supposed to be contained was smashed completely, and there was no powder inside. I was about three meters from the torpedo when I saw this.

To the ninth interrogatory: Since I left Wake Island on May 4, 1942, I do not know anything beyond this time. I do not remember anything like this happening during my tour of duty on Wake Island.

To the tenth interrogatory: Since I was not there at that time, I cannot answer this question.

To the eleventh interrogatory: Since I was not there at that time, I cannot answer this question.

Exhibit 38(3)

To the twelfth interrogatory: Since I was not there at that time, I cannot answer this question.

To the thirteenth interrogatory: Since I was not there at that time, I cannot answer this question.

To the fourteenth interrogatory: No, I do not know him.

To the fifteenth interrogatory: Since I was not there at that time, I cannot answer this question.

ALLIED OCCUPATION FORCES)
) SS.
TOKYO, JAPAN)

I, Chuichi Iwama, being duly sworn on oath, state that I had read to me and understand the translation of the foregoing transcription of my testimony consisting of one and one-fourth (1¼) pages, and that the foregoing testimony is true to the best of my knowledge and belief.

岩間忠一
Chuichi Iwama

Subscribed and sworn to before me this seventh day of October, 1948.

Maurice E. Currie
Maurice E. Currie,
Commander,
United States Naval Reserve.

I, Hoshio Yokoi, sergeant, United States Army, being thoroughly familiar with the English and Japanese languages, certify that I truly translated the questions and answers given from English to Japanese and from Japanese to English, respectively; that after being transcribed, I truly translated the foregoing deposition consisting of one and one-fourth (1¼) pages to the witness; and that the witness thereupon, in my presence, affixed his signature thereto.

Hoshio Yokoi
Hoshio Yokoi,
Sergeant,
United States Army.

Exhibit 38(4)

0691

C E R T I F I C A T E

We, Maurice E. Currie, commander, United States Naval Reserve, and Joseph Kase, junior, yeoman first class, United States Navy, certify that on the seventh day of October, 1948, Chuichi Iwama personally appeared before us and according to Hoshio Yokoi, sergeant, United States Army, gave the foregoing answers to the several questions set forth therein; that after his testimony had been transcribed, the said Chuichi Iwama had read to him the same by Hoshio Yokoi, sergeant, United States Army; and the said Chuichi Iwama affixed his signature thereto in our presence.

Maurice E. Currie,
Commander,
United States Naval Reserve.

Joseph Kase, jr.,
Yeoman First Class,
United States Navy.

Exhibit 38(5)

0692

INTERROGATORIES

UNITED STATES
v.
KATSUMI, Seishi

The following interrogatories to be propounded under article 68 of the Articles for the Government of the Navy (34 U. S. Code 1200, art. 68), to Theodore Granstedt, junior, residing at 520 Taylor Street, Apartment 306, San Francisco, California, a witness for the defense in the above-entitled case now pending and to be tried before the Military Commission convened by an order of the Commander Marianas Area, dated July 27, 1948, as modified, are agreed upon by both parties in advance of the assembling of the Military Commission and subject to exceptions when read in court, and are respectfully forwarded to the Commandant of the Twelfth Naval District with the request that some suitable officer may be designated to take, or cause to be taken, the deposition of the said witness thereon:

First Interrogatory: Are you presently employed, if so, where and by whom?

Second Interrogatory: What were you employed at when you were taken POW on Wake Island?

Third Interrogatory: Were you made a POW when the Japanese forces took Wake Island on 23 December 1941?

Fourth Interrogatory: At what time did you take shelter in the air raid shelter when the American Task Force attacked Wake Island on or about February 24, 1942?

Fifth Interrogatory: When you took shelter in the air raid shelter, was Katsumi, Seishi in the same air raid shelter with you?

Sixth Interrogatory: Please state the names of the POW's who were ordered to repair the runway that day. Had you worked on the air strip the day before?

Seventh Interrogatory: What types of machinery were used to repair the runway that day?

Eighth Interrogatory: At what time did you start repairing the runway that day?

Ninth Interrogatory: To what extent was the runway damaged that day by bombing?

Tenth Interrogatory: At what time was the "all clear" signal given that day?

Eleventh Interrogatory: When was the repair of the runway completed that day?

Twelfth Interrogatory: Did Katsumi, Seishi go with you and the others to the scene of the repair work? If so, during what period was Katsumi with you and the others?

Exhibit 39(1)

0693

Thirteenth Interrogatory: Did you continue to work on the runway the following day and thereafter?

Fourteenth Interrogatory: Was this your regular job during the time you were a POW on Wake?

Fifteenth Interrogatory: Was Katsumi present any time before this while you worked on the air strip?

Sixteenth Interrogatory: Have you ever filed a claim for damages for injuries sustained during the time you were a POW? If so, what was the basis for your claim?

Dated at the Headquarters, Commander Naval Forces, Marianas, Guam, Marianas Islands, September 17, 1948.

James P. Kenny

JAMES P. KENNY,
Lieutenant, U. S. Navy,
Judge Advocate.

Martin E. Carlson

MARTIN E. CARLSON,
Commander, U. S. Naval Reserve,
Counsel for the Accused.

Exhibit 39(2)

0694

U. S. NAVAL BASE
LOS ANGELES
NAVAL STATION
LONG BEACH 2, CALIFORNIA

U. S. vs. KATSUMI, Seishi) DEPOSITION

Theodore Granstedt, Junior, residing at 2141 Ivar Street, Hollywood, California, having been first duly sworn by Lieutenant Muir J. Woolley, U. S. Naval Reserve, Legal Office, U. S. Naval Base Los Angeles, Naval Station, Long Beach, California, does depose and say for full answers to the foregoing interrogatories as follows:

To the first interrogatory: I am unemployed as of last week.

To the second interrogatory: I was a carpenter.

To the third interrogatory: Yes.

To the fourth interrogatory: It was in the morning before breakfast, around 7:30, ten minutes after the attack.

To the fifth interrogatory: Yes.

To the sixth interrogatory: John Barney and Ike Wardell. Yes I had worked on the air strip the day before.

To the seventh interrogatory: Bull dozers, rollers, shovels, and trucks.

To the eighth interrogatory: Around eleven o'clock.

To the ninth interrogatory: We filled in the holes that day and made it possiblefor planes to come in later that night. I can't say off hand what the damage was. The repairs were temporary.

To the tenth interrogatory: There was no all-clear signal given.

To the eleventh interrogatory: That evening just before dark because planes landed at dark.

To the twelfth interrogatory: Yes Katsumi came to the scene of the work. He came around two o'clock and was there the rest of the day.

To the thirteenth interrogatory: Yes.

To the fourteenth interrogatory: Yes. I was road operator.

To the fifteenth interrogatory: Yes.

To the sixteenth interrogatory: No; I did receive injuries and I am registered for compensation that I understand will be given out under proposed legislation.

Theo. Granstedt Jr.

Subscribed and sworn to before me this 30th day of September, 1948.

Muir J. Woolley

Muir J. Woolley,
Lieutenant, U. S. Naval Reserve,
Legal Office,
U.S.Naval Base Los Angeles.

Exhibit 39(3)

40

Jan. 27, 1948.

To: General MacArthur, Supreme Commander for Allied Powers.

PETITION

Your Excellency,

I, most respectfully beg to present the following petition to your Excellency on behalf of

Seishi Katsumi,
Interpreter of Japanese Navy:
Now interned at the War Crimes Stockade Guam, M.I..

It is my duty and also my joy to say a few words in regard to my husband's character. Before our marriage took place I heard many things from Seishi's friends.

Practically all gave me better understanding and confidence in him. After our marriage I never saw him did anything unkind neither to his neighbor nor to anybody else. Our home always p opened to students and those who needed help as well. He told me about his life in the U.S. and a few things about that in the Wake islands.

Judging from his talks he had very little to do with the action of the Japanese Army except as an interpreter and he was not in any important position. As a matter of fact the Japanese Army officers never trusted a man who had been in America for two decades and who was a Christian. From my own experiences I absolutely believe that he was an honest man and did nothing which should reserve suspicion, So long as his career is concerned.

I also firmly believe that he would spend his remaining days interpreting American ways of life to his own people. My affirmation is based on sound judgement.

Yours Very Sincerely,

Masa Katsumi.

Enclosure to C. I. t. O. No. 1916 (3 pc.)

EXHIBIT 40

2.

ONE HUNDRED and THIRD
NAVAL CONSTRUCTION BATTALION
CARE OF FLEET POST OFFICE
SAN FRANCISCO, CALIFORNIA

IN REPLY ADDRESS:
Officer In Charge
One Hundred and Third
Naval Construction Battalion

11 October 1945

To whom it may concern:

Statement on the Character of KATSUMI, Seishi.

The above named man, Katsumi, was introduced to me on 7 August 1945 by Chaplain Buckingham, USN. Katsumi was commended most highly as a Christian man who had been most helpful and cooperative to the Chaplain in his work as spiritual advisor at the Japanese Stockade. For the past two months I have had occasion to see Katsumi each Saturday afternoon at the Stockade. By his enthusiasm and cheerful spirit he has shown himself most willing and helpful at all times. In the short time of our acquaintance he has impressed me as a sincere Christian man of honorable intentions and trustworthy character.

Arnold P. Spohn

ARNOLD P. SPOHN
LTJG ChC USN
376979

EXHIBIT 41

0697

To The President of The United States
Military Commission, Guam, Marianas Ilands

From Tomeji Abe
Subject : Petition for Seishi Katsumi,
interpreter in Wake Island

Dear Sir :-

I beg to tender my sincere compliments to the President of the United States Military Commission, Guam and would respectfully request the President for your kind consideration in regard to the following petition.

Mother of Seishi Katsumi was an ardent Christian and was a great admirer of the Doshisha University which has its foundation on the principle of Christianity. She sent her three boys and girls to Kyoto to be educated in the Doshisha. They all graduated the Doshisha and came home. Love of God and love of neighbours - the Christian

EXHIBIT 42

spirit filled her home. Indeed I was astonished at her success of educating her boys and girls. While I was working in St. Paul's University in Tokyo under Bishop C. S. Reifsnider I watched him carefully to see whether he is a true Christian gentleman or not while he came and stayed in my home for a long time. At last, I found Seishi Katsumi a lovely young man, bright and lively and warm-hearted not having a bit of sordid spirit. During war time, he was nothing but an interpreter of low class. He was not in a high position responsible of crimes committed at all.

I beg that you will give a fair and wise judgement on his case.

Tomeji Abe
Uncle of Seishi Katsumi

EXHIBIT 42

0699

Sept. 27. 1948

To whom it may concern;

This is a petition about SEISHI KATSUMI who was taken prison in January 1947 at Sugamo, and then removed to Guam Island in June, as war criminal suspected.
The undersigned are his sister and brother in-law. When as a christian preacher at rural district we suffered great difficulties, he showed us the deepest understanding and freely freely gave us both spiritual and material helps.
He used to write and encouraged us that Japan should be Christianized if her people is to enjoy freedom and happiness as that of the United States.

He returned from America right before the war and soon called by the Japanese navy to serve as an interpreter. During his stay at WAKE Island for the following reasons he did not occupy any important post and was not thoroughly trusted by the Japanese soldiers:

1) He is a graduate of Dōshisha University which being a Mission Shool,

2) He was born in a Chistian home and has the idea of peace and humanity as basic Ethecal view,

EXHIBIT 43

43

3) He been in the United States for 20 years and therefore strong influenced by American way of thinking and habits;

His own opinions were often neglected by the military leaders in the island. He has a habit of sacrifice his own in helping others, and the weak. This was shown in his personal material life.

He was faithful to righteausness. In Wake Island he insisted in giving the corpses of American soldiers polite buries which was strong opposed by the Japanese soldiers. But he pushed his insistance and made a wooden monument, which perhaps still stand today.

The American soldier had the impression of his name SEISHI KATSUMI stronger than other names of the Japanese. And it is quite possible that name be mistake as one of those who did cruelty.

We eagerly hope that he will be set free inorder to render his service in the remaining days as an correct interpreter and also to introduce American ways to the Japanese.

We heartily believe in his good characters and beg your consideration in taking out testimony as reference.

Mrs. Kayo Akama
Mr M. Akama Rev.

Pastor of Kyoai Church
& Teacher of Kyoai School.

EXHIBIT 43

0701

Omi-Hachiman, Japan
Sept. 25, 1948

Hon. Judges and Prosecutors,
American Military Court,
Guam in the Pacific

Dear Sirs,

I take the liberty of sending you this petition on behalf of my friend, Mr.Seishi Katsumi (勝見精史), who is suspected of maltreatment of American prisoners of war in Wake Island. I am not informed of the details of what he has done during the War, but I came to know him during my stay in New York City some time in the year 1930, and I know something of his social attitude and of his personality. He is a man of genial character and likes to be in company of friends. I dare say his long experience in the States must have made him a friend of America, instead of her antagonist. At least I believe he knows enough of the mentality and taste of American people.

It is a pity that he should have detained as war time culprit. I appeal to the justice and integrity of those gentlemen who are called to judge him in this case, and wish to accept this humble petition on behalf of my friend, Mr.Katsumi.

Respectfully yours,

Masashi Takahashi

Masashi Takahashi

Chief Librarian,
Omi Brotherhood,
Omi-Hachiman, Japan

EXHIBIT 44

0702

October 1, 1948.

President,
The United States Military Commission,
Guam, Marianas.

Sir:

I have heard that Mr. Seishi Katsumi, Japanese national, is at present under indictment at your Military Commission presumably for the commitment of some atrocities during the war.

I have been a friend of him since 1924 when we together spent our school days at the Columbia University and the International House of New York.

He has been always an earnest Christian and humanitarian, and I can not believe that he should commit any atrocities even during the war judging from his serious-minded personality.

I sincerely hope as one of his friends that your special consideration be taken for the fair judgement of his case.

Very truly yours,

Sakae Matsushita,
Chairman of Japan's Chapter
of
The International House
Alumni Association.

Address: Japan's Chapter of
The International House
Alumni Association,
Room 503, Chiyoda Bldg.,
2 Kyobashi Nichome, Chuo-ku,
Tokyo, Japan.

EXHIBIT 45

0703

sincere and benign personality. I am believing
that he was of such a man that Tokyo, Oct. 1, 1948.
To The President of the United States
Military Commission, Guam
Mariana Islands. of his superior orders as his
duties.

Dear Sir,

It is my ardent desire that your broad consideration be given upon the case of Mr. Seishi Katsumi, who is my one of old friends and now is now being detained for trial before your military court on charge of certain war crime.

Mr. Seishi Katsumi and his brother S. Katsumi, after their graduation of the Doshisha University, one of an old Christian School in this country, together went to America for their study. Seishi Katsumi had stayed there over twenty years, until he repatriated to his country during war time. As soon as he arrived Tokyo, he called on me to seek his job. However, his long stay in America did handicapped him for it, from several reason especially under war time circumstance, that his only way naturally was to be an interpretor of the Naval Staff Office. Then he married a Christian lady who is now a teacher in a Christian Mission School here.

From my long experience of our intimate friendships with Katsumi brothers and his wife, I know him as a very good friend with the honest,

EXHIBIT 46

0704

sincere and benign personality. I am believing that he was not such a man that he could commit any atrocity in dealing with American prisonbre anything more than a routine act construed to be an interpretor of his superior's orders as his duties.

Having heard that his trial is facing to final stage, I deeply moved to hope he may be cleared from his indictment and could return to us again after your benevolent decision with regard to his case. I am

Respectfully yours.
K. Shiina.

K. Shiina.
509. Koyamacho, Shinagawa-ku.
Tokyo, Japan.

no

EXHIBIT 46

0705

To: General Mac Arther, Supreme Commander for
Allied Powers.

Petition

Your Excellency,

I, most respectfully beg to present the following petition to your Excellency on behalf of Seishi Katsumi, Interpreter of Japanese Navy; now interned at the War Crimes Stockade, Guam, M.I.

While I was a secretary for Japanese students in American colleges and universities, of the Committee of Friendly Relations among Foreign students, International Committee of Y.M.C.As., I came to know Seishi Katsumi, then a student at the University of Chicago, in 1921. Since then I have been acquainted with him. So, I can testify that he is an honest, fine spirited Christian gentleman. He is indeed trust worthy man. Of course I do not know exactly what he has done at Wake during the war. But I can assure you that he is not a kind of man who would commit any

EXHIBIT 47

0706

cruel deeds. I can also assure you that Okeat
he says is entirely trustworthy. For he is a
good honest christian. So, please do trust
what he testifies and be generous in your
court decision.

Rev. Hagao Kashiwagi
B.A. Oberlin College.
B.D. Yale University.
Pastor of Haraichi Congregational
church, Haraichi-Machi,
Gunma-Ken, Japan.

September 22, 1948

EXHIBIT 47

0707

FF12/A17-10(2)
02-JDM-ga

THE PACIFIC COMMAND
AND UNITED STATES PACIFIC FLEET

HEADQUARTERS OF THE COMMANDER NAVAL FORCES MARIANAS
NAVAL FORCES MARSHALLS-CAROLINES AND MARSHALLS-CAROLINES AREA

Serial: 7438

9 DEC 1948

The military commission, composed of Army, Navy and Marine Corps officers, in the foregoing case, by precept dated July 27, 1948, was ordered convened July 28, 1948, or as soon thereafter as practicable by the Commander Marianas Area pursuant to his inherent authority as a military commander and the specific authorization of the Commander in Chief, U. S. Pacific Fleet and High Commissioner of the Trust Territory of the Pacific Islands (CinC U. S. PacFlt Serial 0558 of 8 March 1946; ComMarianas Desp. 292336Z Sept. 1947; CinCPacFlt Desp. 020103Z Oct. 1947; SecNav Desp. 081946Z Oct. 1947; CinCPacFlt Desp. 092353Z Oct. 1947). The commission was authorized to try this case as indicated in the precept. The order for trial (charge and specifications) was issued September 2, 1948 and served on the accused on the following day, September 3, 1948. The trial was held under authority of Naval Courts and Boards except that the commission was authorized by the precept to relax the rules of evidence and procedure promulgated December 5, 1945 by the Supreme Commander for the Allied Powers in his Regulations Governing the Trials of Accused War Criminals and modifications thereof, as necessary to obtain justice.

By letter dated 1 August 1948, CinCPac File A17-10 Serial 2955 and CinCPacFlt File A17-10 Serial 3490, the Commander in Chief, Pacific and U. S. Pacific Fleet, vested authority in Commander Naval Forces, Marianas to act as convening authority relative to military commissions convened by the Commander Marianas Area including required action on cases now pending and, in event of revision, on cases already tried.

The proceedings, findings, and sentence in the foregoing case of KATSUMI, Seishi, Japanese civilian, are approved. In view, however, of the fact that the accused has been held in confinement under investigation and awaiting trial since January 14, 1947, the period of confinement is reduced to three (3) years and one (1) month.

KATSUMI, Seishi, Japanese civilian, will be transferred to the custody of the Commanding General of the 8th U. S. Army via the first available transportation to serve his sentence of confinement in Sugamo Prison, Tokyo, Japan.

C. A. Pownall

C. A. POWNALL,
Rear Admiral, U. S. Navy,
The Commander Naval Forces, Marianas.

0708

THE PACIFIC COMMAND
CinCPacFlt File AND UNITED STATES PACIFIC FLEET
A17-25 Headquarters of the Commander in Chief

Serial 193

c/o Fleet Post Office
San Francisco, California.
18 JAN 1949

The proceedings, findings, and sentence as mitigated in the foregoing case of KATSUMI, Seishi, Japanese civilian, and the action of the convening authority thereon are approved.

The record is, in conformity with Appendix D-14, Naval Courts and Boards, 1937, and Chief of Naval Operations serial 01P22 of 28 November 1945, transmitted to the Judge Advocate General of the Navy.

DeWitt C. Ramsey

DeWITT C. RAMSEY
Admiral, U. S. Navy,
Commander in Chief Pacific
and United States Pacific Fleet.

0709