

DECLASSIFIED

Authority: NND 760050 (1945-1949)

By: NARA NARA Date: 1976

KATSUMI, Seishi

(20 SEP 1948)

(166095)  
PART 4 OF 3

0187

ADDRESS REPLY TO

NAVY DEPARTMENT

WASHINGTON 25, D. C.

JAG:I:JIL:lmh  
Katsumi, Seishi/A17-10 OQ  
(9-28-49) 166095

10/6

56 OCT 1949

The proceedings, findings and sentence in the foregoing military commission case of Seishi Katsumi, former civilian employee, Imperial Japanese Navy, and the actions of the convening and reviewing authorities thereon, are approved.

*Dan A. Kimball*  
DAN A. KIMBALL  
Under Secretary of the Navy.

FINISHED FILE

57 OCT 1949

*Smith*

0188



C O P Y

OFFICE OF NAVAL OPERATIONS

914P22

24 September 1949

From: Chief of Naval Operations  
To: Judge Advocate General

Subj: Cases of KATSUMI, Seishi; INOUE, Sadae and  
TADA, Tokuchi.

Encl: (A) File of proceedings of cases of KATSUMI, Seishi;  
INOUE, Sadae and TADA, Tokuchi.

1. Enclosure (A) is returned with contents noted.

P.G. HALE,  
By direction

*Original in ~~Seishi~~ ~~Katsumi~~ ~~Inoue~~  
record 168346  
ful*

0189

KATSUMI, Seishi/A17-10 OQ  
(5-18-49) WCK:bem 166095

MEMORANDUM IN THE MILITARY COMMISSION CASE OF:

Seishi KATSUMI,  
former civilian employee,  
Imperial Japanese Navy.

Place Tried:  
Guam, Marianas.

Date of Trial:  
20 Sept. 1948

Date Received:  
3 Feb. 1949

CHARGE

VIOLATION OF THE LAW AND CUSTOMS OF WAR

PLEA FINDINGS  
NG G  
NG P in P

Spec 1 - Wilfully and unlawfully, force, compel, require, and use American POWs, then held captive by the armed forces of Japan, to perform unhealthful and dangerous work, as follows:

- (a) Wake Island, 24 Feb. 42 - did force and compel four American POWs to fight fire aboard burning dredge during an air raid.
- (b) Same place, same date - did force and compel six American POWs to repair an aircraft runway during an air raid.
- (c) Same place, same date - did force and compel eight American POWs to repair anti-aircraft runway during an air raid.
- (d) Same place, 23 Mar. 1942 - did order and compel four American POWs to dive for and remove a live torpedo.
- (e) Same place, 23 Dec. 1941 to 30 Sept. 1942 - did compel one American POW to discharge, unload and transport ammunition and bombs.

Spec 2 - Wilfully and unlawfully, force, compel, require, and use American POWs, then held captive by the armed forces of Japan, to perform work directly related to war operations, as follows:

NG P in P

- (a) Wake Is., 24 Feb. 1942 - did force and compel six American POWs to repair an aircraft runway.
- (b) Did force and compel eight American POWs to repair anti-aircraft guns. (Same time and place)
- (c) Same place, 23 Dec. 1941 to 30 Dec. 1942 - did compel one American POW to discharge, unload and transport ammunition and bombs.
- (d) Same place, 1 Mar. 1942 to 30 Apr. 1942 - did compel two American POWs to remove and install guns.
- (e) Same place, 23 Dec. 1941 to 30 Sept. 1942 - did compel three American POWs to make parts for and convert machine guns.
- (f) Wake Is. 23 Dec. 1941 to 30 Sept. 1942 - Compel three American POWs to construct gun emplacements.
- (g) Same place and date - did compel two American POWs to construct trenches and barbed wire entanglements.

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KATSUMI, Seishi/A17-10 OQ  
(5-18-49) WCK:bem 166095

Spec 3 - Did wilfully, unlawfully, cruelly and inhumanely abuse and mistreat American POWs, then held captive by the armed forces of Japan, as follows:

NG P in P

- (a) Wake Is., 23 Dec. 1941 to 12 Jan. 1942 - Abuse and mistreat one American POW.
- (b) Same place, 24 Feb. 1942 - Assault with a pistol four American POWs.
- (c) Same place and date - Assault with a pistol six American POWs.
- (d) Same place and date - Assault with a pistol eight American POWs.
- (e) Same place, 23 Dec. 1942 - Assault with a pistol four American POWs.
- (f) Same place, May 1942 - Assault with a pistol one American POW.
- (g) Same place, May 1942 - Assault with a sword scabbard one American POW.
- (h) Same place, May 1942 - Torture and abuse one American POW.
- (i) Same place, 15 June 1942 - Assault with a pistol one American POW.
- (j) Same place, 15 June 1942 - Assault with a club three American POWs.

SENTENCE: To be confined for a period of five (5) years.

C.A. ACTION: PF&S approved. Confinement reduced to three years and one month in view of fact that accused was held in confinement under investigation and awaiting trial since 14 January 1947.

CinCPAC ACTION: PF&S as mitigated, approved.

FACTS:

Prosecution - The evidence showed that during the period from 23 Dec. 1941 to 30 September 1942, the accused, a civilian interpreter in the employ of the Japanese Navy on Wake Island. As to the incidents alleged in (a), (b), (c) and (e), alleged under Specification 1 of the charge, the evidence showed that Wake Island was attacked by U.S. forces early on the morning of 24 Feb. 1942 but was contradictory as to whether or not the incidents alleged in the specification occurred while the island was still under attack. (The court found the allegations as to such incidents not proved) As to the incident alleged in (d) under specification 1 and that alleged in (e) under specification 3, the evidence showed that on 23 March 1942, the accused came to the prisoners' compound and ordered the boat crew out to get an American torpedo. A tug took the crew to the place where the torpedo was lodged on the beach. There the accused ordered Edwin Mang Sook Lee, Adam Kapale, Robert Kapehi and Patrick K. Aki, American prisoners of war, over the side to secure a wire cable to the torpedo which was in about three feet of water. On observing that the warhead was still in the torpedo, the prisoners objected to performing the work whereupon the accused drew his pistol and threatened to shoot. After the cable was secured to the torpedo, the cable broke several times and the prisoners were compelled to dive to a depth of 20 feet without diving equipment in order to secure the cable again.

As to the incident alleged in (a) under specification 2 and that alleged in (c) under specification 3, the evidence showed that on 24 Feb. 1942, the accused came into the air raid shelter and ordered a group of prisoners including Swede Hokanson, William Ray, Miles R. Wardle, Porter Wardle, Leonard

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Ward Theodore Granstedt, out of the shelter to repair the aircraft runway damaged in the American raid. When members of the group protested to leaving the shelter before the all-clear signal, the accused drew his pistol and threatened to shoot them. As a result, the group left the shelter and began repairing the damaged runway.

As to the incident alleged in (b) under specification 2 and that alleged in (d) under specification 3, the evidence indicated that on 24 Feb. 1942, the accused received orders to assemble a group of civilians to repair the recoil system of a 3-inch gun. The accused thereupon ordered a group of prisoners including Albert S. Freese, Frank Hastings and Frank Migusch, from the air raid shelter to perform the task. While en route, the group protested that they were not supposed to work on military installations. The accused then drew his pistol, pointed it at the group and threatened to shoot them if they did not do what he ordered. Upon arrival at the location of the gun, it was found that the gear case and recoil cylinder had been damaged. The group was put to work repairing the damage.

As to the incident alleged in (c) under specification 2, the evidence (record, p.12) indicated that in March 1942, Edwin Mang Sook Lee and other prisoners were compelled by the accused to unload ammunition and bombs from Japanese vessels and bring such cargo into the water front.

As to (d), under specification 2, the evidence (p. 15, Record, and Exh. 2) indicated that Lee, Barnett and others were assigned by the accused to remove 5-inch guns from a Japanese destroyer and install them ashore as coastal guns. This work occurred in March and April 1942.

As to (e) under specification 2, the evidence indicated that Barnett, Freese and Rogge were during the period from December 1941 to September 1942 employed in such tasks as making parts for and converting machine guns (Exhs. 2, 3, and 6). The accused gave the orders for such work.

As to (f) under specification 2, the evidence indicated that American prisoners of war during the period from December 1941 to September 1942 were used in such work as gun installations, positions or emplacements (Exh. 3, 6 and 7). The accused gave orders for such work.

As to (g) under specification 2, the evidence indicated that Rogge, McDonald and other prisoners were employed on such work as construction of trenches and barbed wire entanglements. The accused gave orders for such work (Exh. 6 and 12).

As to (a) under specification 3, the evidence indicated that during the period from 23 December 1941 to 12 January 1942, a prisoner known as "Red" was beaten by the accused with fists, feet and club, the blows being administered to the head, face, shoulders and back. (Exhs. 12, 14 and 15).

As to (b) under specification 3, the evidence indicated that on 24 February 1942, the accused came down into the air raid dugout and ordered the prisoners out to fight the fire on the dredge "Columbia". The prisoners refused to go whereupon the accused drew his gun and threatened to shoot anyone who refused to do as he ordered. The prisoners were then herded on trucks, taken to the waterfront, put aboard a tug and sent out to fight the fire. After fighting the fire approximately one hour and a half, they were returned to the compound. Among those who fought the fire were Lee, Kapale, Aki, Kapehi, Chung, Sullivan, McKay and McGill. Shells were still hitting the island at the time the prisoners were ordered out. (p.10, Record; Exhs. 5 and 10).



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P As to (f) under specification 3, the evidence indicated that in May 1942, Theodore Granstedt was working on a runway using a five-ton Diesel Roller. The spark plug for the starting engine was cracked and the machine would not start. The accused came along and told Granstedt to get work. When told that the engine would not start because of a cracked plug, the accused pulled his pistol and threatened to shoot if Granstedt did not get the equipment going. Granstedt was able to get another vehicle to push him. (Exh. 11)

As to (g) under specification 3, the evidence indicated that in May 1942, Franklin R. Wise was struck on the forehead with a sword scabbard by the accused causing a bad bruise. Wise was struck while handcuffed and chained to a tree. (Exh. 9)

As to (h) under specification 3, the evidence indicated that in May 1942, the accused beat Julius M. Hofmeister, an American prisoner of war. He forced Hofmeister to run up and down the beach while handcuffed and beat him with a pickhandle until Hofmeister collapsed. While Hofmeister was tied and handcuffed to a post, the accused on three occasions directed the application of a water treatment on Hofmeister. This consisted of holding a high pressure water hose close to Hofmeister for a half hour to an hour until he collapsed. (Exh. 9).

As to (i) under specification 3, the evidence indicated that in the early part of June 1942, two Japanese scouting boats had sprung leaks. One had run aground and Edwin Mang Sook Lee was ordered to dive down and work under the hull. While doing this diving which started at six o'clock in the morning, Lee became weak and dizzy and informed the accused. The accused ordered Lee to dive again. When Lee came up again, he spit up some blood. The accused slapped him on the back, drew his gun and ordered Lee to go on diving. Lee dived for twelve hours on that day. (p. 13, Record)

As to (j) under specification 3, the evidence indicated that on or about 15 June 1942, three prisoners including Glenn Fontes and Joe Dunn had just come off their regular shift when the accused ordered them to go out on a work party. When they refused, the accused called in three guards and while the three were under guard, the accused beat them for twenty minutes on the back with a six foot two by four. One man fell unconscious and one was unable to get up. (Exh. 2)

Defense - The accused testified as follows: His tour of duty on Wake was from 24 December 1941 to about November 1943. He was assigned duties as interpreter, monitoring radio broadcasts and translation work. His work as interpreter involved work with the prisoners of war. The officer in charge of prisoners was Lt. (jg) Nomoto. He admitted that prisoners were used in such tasks as stevedoring, dredging and mechanical work in repair shops. He denied that he had anything to do with assigning work to prisoners. He recalled the attack on 24 Feb. 1942 and stated that he remained at the command post air shelter until the "all clear" sounded around one o'clock in the afternoon. Thereafter, the accused received an order that work on the airstrip was to begin. The order came from the executive officer. The accused went to the air raid shelter where one Ray had already received orders from the executive officer. Five or six prisoners went with the accused to the airstrip where work on the runway was begun. The prisoners made no protests. The accused admitted that he was armed when he went to the air raid shelter but denied that he drew his gun at that time or at any other time. The accused denied knowledge of any prisoners being used to fight fire aboard the dredge on 24 February 1942. He denied any knowledge as to an anti-aircraft gun having been damaged in the raid or using any prisoners to repair it. He admitted having received orders from the executive officer that he take prisoners to remove a torpedo lodged between some rocks but stated the fuse had been removed when he arrived and they were unable to move the torpedo due to inability to get in close range. He denied

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any knowledge of prisoners of war being used for diving in connection with a scouting boat. He did not remember using Lee for any work. He denied connection with unloading of transports but was aware that prisoners had been used for unloading cargo. He denied any connection with removal of guns from a Japanese destroyer but admitted that he was present when the guns were installed ashore by order of the executive officer. He did the necessary interpreting for picking up the guns by the crane and placing them on gun emplacements. He admitted knowledge of conversion of aircraft machine guns for the making of parts in March or April 1942, but denied that he was connected with such work. He admitted that prisoners were used for making gun emplacements but stated his only connection with the work was as an interpreter. He denied any knowledge as to construction of barbed wire entanglements or digging of trenches by prisoners. He admitted recollection of a five-ton roller being out of order and recalled that he had another vehicle push it to make it start. He denied threatening the driver in any way. He denied ever striking a prisoner with the scabbard of a sword. He admitted that he was present when Hofmeister was interrogated concerning the stealing of some cigarettes. He admitted that Hofmeister was mistreated by a guard by beating and pouring water on him. The accused protested to the investigating officer and the treatment ceased. He denied ever mistreating Hofmeister in any way. He denied knowing Fontes and Dunn and further denied any knowledge of the incident in which they were involved. He denied recollection of beating three prisoners of war in the vicinity of the barracks. He denied any knowledge of "Red" or the incident with which the latter was connected, and denied ever beating a prisoner in the vicinity of the galley. He specifically denied ever threatening Campbell, Lee, McGill, and Aki with a pistol. He denied knowledge of anyone being used to dive for a torpedo.

A deposition of the Japanese executive officer on Wake was introduced in which the latter stated that the accused had no authority to assign prisoners to work, nothing to do with decisions concerning this matter and no responsibility relative to treatment of prisoners. The accused's duties were those of an interpreter and he worked under Lt. (jg) Nomoto who was in charge of prisoners. A number of character testimonials were placed in evidence indicating the good character of the accused. Such testimonials were from both Americans and Japanese. The accused had lived in the United States for approximately 20 years prior to the war.

APPLICABLE LAW AND DISCUSSION:

The accused objected to the charges and specifications and interposed pleas to the jurisdiction of the court, in bar of trial and in abatement, and made motions for change of venue and for a bill of particulars. Such objections to the charges and specifications, pleas and motions were made on several grounds in most instances and the replies or answers thereto are set forth in detail in the record. Such replies or answers are concurred in with one exception which will be discussed hereinafter.

The accused objected to the incorporation of several offenses in one specification as was done in all three of the specifications under the charge. The first specification alleged five offenses of the same type, the second specification alleged seven offenses of the same type, and the third specification alleged ten offenses of the same type. In the opinion of the undersigned reviewing officers, the reply of the judge advocate to this objection, i.e., that the accused "errs in assuming that the count in criminal proceedings is analogous to the charge in our form of pleading, whereas its counterpart is the specification," is ~~considered~~ inappropriate. A single specification should only allege a single offense (WC&B, sec. 27), and in the trial of any accused which is conducted strictly in accordance with Naval Courts and Boards, such duplicity of pleading in a specification has been held to be ground for setting aside the proceedings, findings and sentence, if objected to. C.M.O. 141, 1918, 26. See also C.M.O.'s 8, 1948, 235; 1, 1940, 47; 5, 1938, 7. Under SCAP regulations governing the trials of accused war criminals, dated (continue next page).

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KATSUMI, Seishi/A17-10 OQ

5 December 1945, however, broad rule-making powers concerning procedure have been vested in convening authorities and military commissions respecting the trials of war criminals. The only limitation placed upon such powers is that they not be inconsistent with the SCAP regulations. Such regulations make no reference to rules of pleading other than to say that the accused in advance of trial shall be entitled to a copy of the charges and specifications clearly worded so as to apprise the accused of each offense charged. The precept in the instant case provides that the proceedings of the military commission will be governed by the provisions of Naval Courts and Boards, except that the commission is permitted to relax the rules for naval courts to meet the necessities for any particular trial, and may adopt such other rules and forms, not inconsistent with SCAP regulations, as it considers appropriate. In view of the foregoing, it cannot be said that the commission committed error in overruling the objection in question and finding the charges and specifications in due form and technically correct.

The evidence, adduced in accordance with SCAP regulations, supports those allegations of the specifications under the charge which were found proved by the commission.

CONCLUSION AND RECOMMENDATION:

That the case be passed as legal in accordance with the standards prescribed by SCAP regulations.

*W. C. Kiracoff*  
W. C. KIRACOFF  
LT., USN

I have reviewed subject case and concur in the above recommendation.

*H. T. Marshall*  
H. T. MARSHALL  
Major, USMC

*ful*


NAVY DEPARTMENT  
Office of the Judge Advocate General

22 SEP 1949

From: The Judge Advocate General.  
To: The Chief of Naval Operations (Op-22)

The proceedings, findings and sentence in the foregoing military commission case, and the actions of the convening and reviewing authorities thereon, in the opinion of the Judge Advocate General, are legal.

Referred for information.

  
G. L. RUSSELL  
Judge Advocate General of the Navy.



PRESENT OFFENSES - Cont'd.

- (f) Wake Island, 23 Dec. 1941 to 30 Sept. 1942 - Compel three American POWs to construct gun emplacements.
- (g) Same place and date - Compel two American POWs to construct trenches and barbed wire entanglements.

Spec 3 - Wilfully, unlawfully, cruelly and inhumanely abuse and mistreat American POWs, then held captive by the armed forces of Japan, as follows:

- (a) Wake Island, 23 Dec. 1941 to 12 Jan. 1942 - Abuse and mistreat one American POW.
- (b) Same place, 24 Feb. 1942 - Assault with a pistol four American POWs.
- (c) Same place and date - Assault with a pistol six American POWs.
- (d) Same place and date - Assault with a pistol eight American POWs.
- (e) Same place, 23 Dec. 1942 - Assault with a pistol four American POWs.
- (f) Same place, May 1942 - Assault with a pistol one American POW.
- (g) Same place, May 1942 - Assault with a sword scabbard one American POW.
- (h) Same place, May 1942 - Torture and abuse one American POW.
- (i) Same place, 15 June 1942 - Assault with a pistol one American POW.
- (j) Same place, 15 June 1942 - Assault with a club three American POWs.

Plea

NG to all charges and specifications.

Findings

G (specs proved in part)

Sentence

Confinement for a period of five (5) years.

C.A. Action

PTAS approved, subject to remarks. Conf. red to 3 years and 1 mo. Will be trans. to the custody of the 8th U.S. Army via the (over)

Reviewing Authority Action

PTAS as mitigated, and the action of the C.A. thereon, approved. The record is, in conformity with Appendix D-14, HQAS, 1937, and CNO's ser. OLF22 of 28 Nov. 1945, trans. to the JAG of the Navy.

G.A. Action - Cont'd.  
first available transportation to serve his sent. of cons in Sugamo Prison, Tokyo, Japan.

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED  
DATE 08-01-2001 BY 60322 UCBAW/SJS

CONFIDENTIAL FOR & BELONG TO LIAISON (2) LIAISON  
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- (3) same place, 12 June 1943 - present map & other one  
underlying BOM.
- (4) same place, 12 June 1943 - present map & other one  
underlying BOM.
- (5) same place, 32 Dec. 1943 - present map & other  
underlying BOM.
- (6) same place and date - present map & other one  
underlying BOM.
- (7) same place and date - present map & other one  
underlying BOM.
- (8) same place and date - present map & other one  
underlying BOM.
- (9) same place, 32 Dec. 1943 - present map & other  
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COLLEGE OF AGRICULTURE, ST. LOUIS:

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BRITISH COLUMBIA - 604,9



MILITARY COMMISSION REFERRAL

5-4-49 dem

CASE NO. 166095

NAME

KATSUMI, Seishi

Civilian

DATE RECEIVED

3 Feb 1949

Place of Trial

Guam, Marianas

Date of Trial

20 Sept. 1948

PRESENT OFFENSES

VIOLATION OF THE LAW AND CUSTOMS OF WAR

Spec 1 - Wilfully and unlawfully, force, compel, require, and use American POWs, then held captive by the armed forces of Japan, to perform unhealthful and dangerous work, as follows:

- (a) Wake Island, 24 Feb. 42 - Force and compel four American POWs to fight fire aboard burning dredge during an air raid.
- (b) Same place, same date - Force and compel six American POWs to repair an aircraft runway during an air raid.
- (c) Same place, same date - Force and compel eight American POWs to repair anti-aircraft guns during an air raid.
- (d) Same place, 23 Mar. 1942 - Order and compel four American POWs to dive for and remove a live torpedo.
- (e) Same place, 23 Dec. 1941 to 30 Sept. 1942 - Compel one American POW to discharge, unload and transport ammunition and bombs.

Spec 2 - Wilfully and unlawfully, force, compel, require, and use American POWs, then held captive by the armed forces of Japan, to perform work directly related to war operations, as follows:

- (a) Wake Island, 24 Feb. 1942, - Force and compel six American POWs to repair an aircraft runway.
- (b) Force and compel eight American POWs to repair anti-aircraft guns. (Same time and place)
- (c) Same place, 23 Dec. 1941 to 30 Dec. 1942 - Compel one American POW to discharge, unload and transport ammunition and bombs.
- (d) Same place, 1 Mar. 1942 to 30 Apr. 1942 - Compel two American POWs to remove and install guns.
- (e) Compel three American POWs to make parts for and convert machine guns. (Same place, 23 Dec. 1941 to 30 Sept. 1942)

## MILITARY COMMISSION REFERRAL

S-4-43 bon

CASE NO. 166095

NAME	KATHUNI, Seichi	Civilian	DATE RECEIVED
			3 Feb 1948

Place of Trial	Date of Trial
Guam, Marianas	20 Sept. 1948

## PRESENT OFFENSES

## VIOLATION OF THE LAW AND CUSTOMS OF WAR

Spec 1 - Wilfully and unlawfully, force, compel, require, and use American POWs, then held captive by the armed forces of Japan, to perform unwholesome and dangerous work, as follows:

- (a) Wake Island, 24 Feb. 42 - Force and compel four American POWs to fight fire aboard burning dredge during an air raid.
- (b) Same place, same date - Force and compel six American POWs to repair an aircraft runway during an air raid.
- (c) Same place, same date - Force and compel eight American POWs to repair anti-aircraft guns during an air raid.
- (d) Same place, 23 Mar. 1942 - Order and compel four American POWs to dive for and remove a live torpedo.
- (e) Same place, 23 Dec. 1941 to 30 Sept. 1942 - Compel one American POW to discharge, unload and transport ammunition and bombs.

Spec 2 - Wilfully and unlawfully, force, compel, require, and use American POWs, then held captive by the armed forces of Japan, to perform work directly related to war operations, as follows:

- (a) Wake Island, 24 Feb. 1942, - Force and compel six American POWs to repair an aircraft runway.
- (b) Force and compel eight American POWs to repair anti-aircraft guns. (Same time and place)
- (c) Same place, 23 Dec. 1941 to 30 Dec. 1942 - Compel one American POW to discharge, unload and transport ammunition and bombs.
- (d) Same place, 1 Mar. 1942 to 30 Apr. 1942 - Compel two American POWs to remove and install guns.
- (e) Compel three American POWs to make parts for and convert machine guns. (Same place, 23 Dec. 1941 to 30 Sept. 1942)

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PARENT OFFENSES - Cont'd.

- (f) Wake Island, 23 Dec. 1941 to 30 Sept. 1943 - Compel three American POWs to construct gun emplacements.
- (g) Same place and date - Compel two American POWs to construct trenches and barbed wire entanglements.

Spec 3 - Wilfully, unlawfully, cruelly and inhumanely abuse and mistreat American POWs, then held captive by the armed forces of Japan, as follows:

- (a) Wake Island, 23 Dec. 1941 to 12 Jan. 1942 - Abuse and mistreat one American POW.
- (b) Same place, 24 Feb. 1942 - Assault with a pistol four American POWs.
- (c) Same place and date - Assault with a pistol six American POWs.
- (d) Same place and date - Assault with a pistol eight American POWs.
- (e) Same place, 23 Dec. 1942 - Assault with a pistol four American POWs.
- (f) Same place, May 1942 - Assault with a pistol one American POW.
- (g) Same place, May 1942 - Assault with a sword scabbard one American POW.
- (h) Same place, May 1942 - Torture and abuse one American POW.
- (i) Same place, 15 June 1942 - Assault with a pistol one American POW.
- (j) Same place, 15 June 1942 - Assault with a club three American POWs.

Findings

SG to all charges and specifications.

Findings

3 (spec proved in part)

Sentence

Confinement for a period of five (5) years.

S.A. Action

Specs approved, subject to remarks. Conf. red to 5 years and 1 mo. Will be trans. to the custody of the US. S.A. S.A. (over)

Reviewing Authority Action

Specs as mitigated, and the action of the S.A. thereon, approved. The record is, in conformity with Appendix A-14, NODS, 1957, and GDS's sec. 01P22 of 20 Nov. 1945, trans. to the JAG of the Navy.  
C.V. 101105 - Cont'd.





NAVY DEPARTMENT  
Office of the Judge Advocate General

22 SEP 1949

From: The Judge Advocate General.  
To: The Chief of Naval Operations (Op-22)

The proceedings, findings and sentence in the foregoing military commission case, and the actions of the convening and reviewing authorities thereon, in the opinion of the Judge Advocate General, are legal.

Referred for information.

G. L. RUSSELL  
Judge Advocate General of the Navy.

0203

MILITARY COMMISSION REFERRAL

5-4-49 ben

CASE NO. 166095

NAME	KATSUKI, Seishi	Civilian	DATE RECEIVED
			3 Feb 1949

Place of Trial	Date of Trial
Guam, Marianas	20 Sept. 1948

PRESENT OFFENSES

VIOLATION OF THE LAW AND CUSTOMS OF WAR

Spec 1 - Wilfully and unlawfully, force, compel, require, and use American POWs, then held captive by the armed forces of Japan, to perform unhealthful and dangerous work, as follows:

- (a) Wake Island, 21 Feb. 42 - Force and compel four American POWs to fight fire aboard burning dredge during an air raid.
- (b) Same place, same date - Force and compel six American POWs to repair an aircraft runway during an air raid.
- (c) Same place, same date - Force and compel eight American POWs to repair anti-aircraft guns during an air raid.
- (d) Same place, 23 Mar. 1942 - Order and compel four American POWs to dive for and remove a live torpedo.
- (e) Same place, 23 Dec. 1941 to 30 Sept. 1942 - Compel one American POW to discharge, unload and transport ammunition and bombs.

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- (a) Wake Island, 24 Feb. 1942, - Force and compel six American POWs to repair an aircraft runway.
- (b) Force and compel eight American POWs to repair anti-aircraft guns. (Same time and place)
- (c) Same place, 23 Dec. 1941 to 30 Dec. 1942 - Compel one American POW to discharge, unload and transport ammunition and bombs.
- (d) Same place, 1 Mar. 1942 to 30 Apr. 1942 - Compel two American POWs to remove and install guns.
- (e) Compel three American POWs to make parts for and convert machine guns. (Same place, 23 Dec. 1941 to 30 Sept. 1942)

0204



**PRESENT OFFENSES - Cont'd.**

- (f) Wake Island, 23 Dec. 1941 to 30 Sept. 1942 - Compel three American POWs to construct gun emplacements.
- (g) Same place and date - Compel two American POWs to construct trenches and barbed wire entanglements.

**Spec 3 - Wilfully, unlawfully, cruelly and inhumanely abuse and mistreat American POWs, then held captive by the armed forces of Japan, as follows:**

- (a) Wake Island, 23 Dec. 1941 to 12 Jan. 1942 - Abuse and mistreat one American POW.
- (b) Same place, 24 Feb. 1942 - Assault with a pistol four American POWs.
- (c) Same place and date - Assault with a pistol six American POWs.
- (d) Same place and date - Assault with a pistol eight American POWs.
- (e) Same place, 23 Dec. 1942 - Assault with a pistol four American POWs.
- (f) Same place, May 1942 - Assault with a pistol one American POW.
- (g) Same place, May 1942 - Assault with a sword scabbard one American POW.
- (h) Same place, May 1942 - Torture and abuse one American POW.
- (i) Same place, 15 June 1942 - Assault with a pistol one American POW.
- (j) Same place, 15 June 1942 - Assault with a club three American POWs.

**Plea**

NG to all charges and specifications.

**Findings**

G (specs proved in part)

**Sentence**

Confinement for a period of five (5) years.

**C.A. Action**

PFAS approved, subject to remarks. Conf. red to 3 years and 1 mo. Will be trans. to the custody of the CG, 8th U.S. Army via the (over)

**Reviewing Authority Action**

PFAS as mitigated, and the action of the C.A. thereon, approved. The record is, in conformity with Appendix B-14, NCAS, 1937, and CNO's ser. OLF22 of 28 Nov. 1945, trans. to the JAG of the Navy.

0205

**C.A. Action - Cont'd.**

first available transportation to serve his sent. of Conf. in Sugamo Prison, Tokyo, Japan.

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**NAVY DEPARTMENT**  
**Office of the Judge Advocate General**

**22 SEP 1949**

**From: The Judge Advocate General,**  
**To: The Chief of Naval Operations (Op-22)**

The proceedings, findings and sentence in the foregoing military commission case, and the actions of the convening and reviewing authorities thereon, in the opinion of the Judge Advocate General, are legal.

Referred for information.

**G. L. RUSSELL**  
**Judge Advocate General of the Navy.**

## MILITARY COMMISSION REFERRAL

S-4-49 Don

Case NO. 166095

NAME	KATSUKI, Seichi	Civilian	DATE RECEIVED
			3 Feb 1949
Place of Trial	Guam, Marianas		Date of Trial
			20 Sept. 1948

## PRESENT OFFENSES

## VIOLATION OF THE LAW AND CUSTOMS OF WAR

Spec 1 - Wilfully and unlawfully, force, compel, require, and use American POWs, then held captive by the armed forces of Japan, to perform unhealthful and dangerous work, as follows:

- (a) Wake Island, 24 Feb. 42 - Force and compel four American POWs to fight fire aboard burning dredge during an air raid.
- (b) Same place, same date - Force and compel six American POWs to repair an aircraft runway during an air raid.
- (c) Same place, same date - Force and compel eight American POWs to repair anti-aircraft guns during an air raid.
- (d) Same place, 23 Mar. 1942 - Order and compel four American POWs to dive for and remove a live torpedo.
- (e) Same place, 23 Dec. 1941 to 30 Sept. 1942 - Compel one American POW to discharge, unload and transport ammunition and bombs.

Spec 2 - Wilfully and unlawfully, force, compel, require, and use American POWs, then held captive by the armed forces of Japan, to perform work directly related to war operations, as follows:

- (a) Wake Island, 24 Feb. 1942, - Force and compel six American POWs to repair an aircraft runway.
- (b) Force and compel eight American POWs to repair anti-aircraft guns. (Same time and place)
- (c) Same place, 23 Dec. 1941 to 30 Dec. 1942 - Compel one American POW to discharge, unload and transport ammunition and bombs.
- (d) Same place, 1 Mar. 1942 to 20 Apr. 1942 - Compel two American POWs to remove and install guns.
- (e) Compel three American POWs to make parts for and convert machine guns. (Same place, 23 Dec. 1941 to 30 Sept. 1942)

0208



**PRESENT OFFENSES - Cont'd.**

- (f) Wake Island, 23 Dec. 1941 to 30 Sept. 1942 - Compel three American POWs to construct gun emplacements.
- (g) Same place and date - Compel two American POWs to construct trenches and barbed wire entanglements.

**Spec 3 -** Wilfully, unlawfully, cruelly and inhumanely abuse and mistreat American POWs, then held captive by the armed forces of Japan, as follows:

- (a) Wake Island, 23 Dec. 1941 to 12 Jan. 1942 - Abuse and mistreat one American POW.
- (b) Same place, 24 Feb. 1942 - Assault with a pistol four American POWs.
- (c) Same place and date - Assault with a pistol six American POWs.
- (d) Same place and date - Assault with a pistol eight American POWs.
- (e) Same place, 23 Dec. 1942 - Assault with a pistol four American POWs.
- (f) Same place, May 1942 - Assault with a pistol one American POW.
- (g) Same place, May 1942 - Assault with a sword scabbard one American POW.
- (h) Same place, May 1942 - Torture and abuse one American POW.
- (i) Same place, 15 June 1942 - Assault with a pistol one American POW.
- (j) Same place, 15 June 1942 - Assault with a club three American POWs.

**Plan**

NO to all charges and specifications.

**Findings**

0 (spec proved in part)

**Sentence**

Confinement for a period of five (5) years.

**C.A. Action**

PMAS approved, subject to remarks. Conf. set to 5 years and 1 mo. Will be trans. to the custody of the US. S. S. A. via the (over)

**Reviewing Authority Action**

PMAS as mitigated, and the action of the C.A. thereon, approved. The record is, in conformity with Appendix H-14, PMAS, 1947, and GAO's cov. OLP22 of 28 Nov. 1945, trans. to the JAG of the Navy.  
C.V. 10410-1-1002, 10

0209

**NAVY DEPARTMENT**  
**Office of the Judge Advocate General**

**22 SEP 1949**

**From: The Judge Advocate General.**  
**To: The Chief of Naval Operations (Op-22)**

The proceedings, findings and sentence in the foregoing military commission case, and the actions of the convening and reviewing authorities thereon, in the opinion of the Judge Advocate General, are legal.

Referred for information.

**G. L. RUSSELL**  
**Judge Advocate General of the Navy.**



MILITARY COMMISSION REFERRAL

5-4-49 ben

C. NO. 166098

NAME

KATSURI, Seichi

Civilian

DATE RECEIVED

3 Feb 1949

Place of Trial

Guam, Marianas

Date of Trial

20 Sept. 1948

PRESENT OFFENSES

VIOLATION OF THE LAW AND CUSTOMS OF WAR

Spec 1 - Wilfully and unlawfully, force, compel, require, and use American POWs, then held captive by the armed forces of Japan, to perform unhealthful and dangerous work, as follows:

- (a) Wake Island, 24 Feb. 42 - Force and compel four American POWs to fight fire aboard burning dredge during an air raid.
- (b) Same place, same date - Force and compel six American POWs to repair an aircraft runway during an air raid.
- (c) Same place, same date - Force and compel eight American POWs to repair anti-aircraft guns during an air raid.
- (d) Same place, 23 Mar. 1942 - Order and compel four American POWs to dive for and remove a live torpedo.
- (e) Same place, 23 Dec. 1941 to 30 Sept. 1942 - Compel one American POW to discharge, unload and transport ammunition and bombs.

Spec 2 - Wilfully and unlawfully, force, compel, require, and use American POWs, then held captive by the armed forces of Japan, to perform work directly related to war operations, as follows:

- (a) Wake Island, 24 Feb. 1942, - Force and compel six American POWs to repair an aircraft runway.
- (b) Force and compel eight American POWs to repair anti-aircraft guns. (Same time and place)
- (c) Same place, 23 Dec. 1941 to 30 Dec. 1942 - Compel one American POW to discharge, unload and transport ammunition and bombs.
- (d) Same place, 1 Mar. 1942 to 30 Apr. 1942 - Compel two American POWs to remove and install guns.
- (e) Compel three American POWs to make parts for and convert machine guns. (Same place, 23 Dec. 1941 to 30 Sept. 1942)

**PRESENT OFFENSES - Cont'd.**

- (f) Wake Island, 23 Dec. 1941 to 30 Sept. 1942 - Compel three American POWs to construct gun emplacements.
- (g) Same place and date - Compel two American POWs to construct trenches and barbed wire entanglements.

**Spec 3 -** Wilfully, unlawfully, cruelly and inhumanely abuse and mistreat American POWs, then held captive by the armed forces of Japan, as follows:

- (a) Wake Island, 23 Dec. 1941 to 12 Jan. 1942 - Abuse and mistreat one American POW.
- (b) Same place, 24 Feb. 1942 - Assault with a pistol four American POWs.
- (c) Same place and date - Assault with a pistol six American POWs.
- (d) Same place and date - Assault with a pistol eight American POWs.
- (e) Same place, 23 Dec. 1942 - Assault with a pistol four American POWs.
- (f) Same place, May 1942 - Assault with a pistol one American POW.
- (g) Same place, May 1942 - Assault with a sword scabbard one American POW.
- (h) Same place, May 1942 - Torture and abuse one American POW.
- (i) Same place, 15 June 1942 - Assault with a pistol one American POW.
- (j) Same place, 15 June 1942 - Assault with a club three American POWs.

**Plea**

NG to all charges and specifications.

**Findings**

G (spec proved in part)

**Sentence**

Confinement for a period of five (5) years.

**C.A. Action**

RRAS approved, subject to remarks. Conf. red to 5 years and 1 mo. Will be trans. to the custody of the CG, San U.S. Army via the (over)

**Reviewing Authority Action**

RRAS as mitigated, and the action of the C.A. thereon, approved. The record is, in conformity with Appendix B.14, MCM, 1957, and GNO's ser. OLP22 of 28 Nov. 1945, trans. to the JAG of the Navy.



G.A. Action - Cont'd.  
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first available transportation to solve his case at home in Japan.  
Prison, Tokyo, Japan, and the nation of the U.S. system working.

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED  
DATE 10/10/2001 BY 60322 UCBAW

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2. J. M. J. N. L.

DO NOT WRITE ON THIS CARD

7134

УВЕЛИЧЕНЪ СЪДЪРЖАНИЕ

(7) SWAN BYWOS IN JUNE 1943 - YOUNGSTERS WITH 6 CYCLES

WDEZ-GUN 5.000\*

(1) These books, in June 1945 - were not at all a display one

БСН.

(U) Same as above, but TANS - 40,110 and 40,110 are 40,110

ONE WHOLE SHEET

(2) *same as above*. *not used - present after a short interval*

WALTON 104

(U) zamestnanec štátnej bezpečnosti - pracovník v oblasti vnútornej

1972-1973

(9) 2000 87000 30 600 7000 - 20000 87000 30 600 7000

1975

WASHINGTON 1944

(4) *Statewide average*

УНОДТОМ БОМ!

(c) These books may

LOAN. UNRECOVERED LOAN.

(9) James Byrnes 34

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(b) (5) DPP, (b) (5) ACP

TABLE 1. *Continued*

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Price: 100.00

(3) Age 19 years, 32 Dec. 1947 40 20 years, 1949 - combat

LEWIS & CLARK - 1804, 5'

**NAVY DEPARTMENT**  
**Office of the Judge Advocate General**

22 SEP 1949

**From:** The Judge Advocate General.  
**To:** The Chief of Naval Operations (Op-22)

The proceedings, findings and sentence in the foregoing military commission case, and the actions of the convening and reviewing authorities thereon, in the opinion of the Judge Advocate General, are legal.

Referred for information.

**G. L. RUSSELL**  
Judge Advocate General of the Navy.



## GENERAL COURT MARTIAL DATA SHEET

KATSU  
(Last Name)SEISHI  
(First Name)

(Middle Initial)

(Rating)

(Service)

B  
(Review Panel No.)A. C. Dira  
(Reviewing Officer)164095  
(Docket No.)

	Yes	No	Remarks
1. Was the court convened by proper authority?	<input checked="" type="checkbox"/>		
2. Are the precept and any modifications thereof in letter form certified as true copies by the judge advocate?	<input checked="" type="checkbox"/>		
3. If there have been modifications by despatch, and no confirming letters attached to the record, are the despatches signed by the convening authority (not the judge advocate)?	<input checked="" type="checkbox"/>		
4. Are all letter modifications to the charges and specifications, including authority for "nolle prosequi", signed by the convening authority?	<input checked="" type="checkbox"/>		
5. Did the court have jurisdiction of the <u>person</u> of the accused?	<input checked="" type="checkbox"/>		
6. Did the court have jurisdiction of the <u>offenses</u> charged?	<input checked="" type="checkbox"/>		
7. Does each specification state an offense?	<input checked="" type="checkbox"/>		
8. Does each specification support the charge under which laid?	<input checked="" type="checkbox"/>		
9. Does the record show place and date of initial meeting of the court and any subsequent meetings?	<input checked="" type="checkbox"/>		
10. Were the members and judge advocate, shown to be present when the court met, named in the precept or its modifications?	<input checked="" type="checkbox"/>		
11. Were any members legally assigned <u>not</u> present or accounted for?		<input checked="" type="checkbox"/>	
12. Were there five members or more present at every meeting?	<input checked="" type="checkbox"/>		
13. Was the accused asked whether he desired counsel?	<input checked="" type="checkbox"/>		
14. Was the accused extended the right of challenge as to members?	<input checked="" type="checkbox"/>		
15. Were the judge advocate, the members, the reporter and the interpreter sworn?	<input checked="" type="checkbox"/>		
16. Did the accused acknowledge receipt of a copy of the charges and specifications?	<input checked="" type="checkbox"/>		
17. Was the accused asked if he had any objection to the charges and specifications?	<input checked="" type="checkbox"/>		
18. Did the accused object to the charges and specifications or to any of them?	<input checked="" type="checkbox"/>		
19. Is the Statute of Limitations involved?	<input checked="" type="checkbox"/>		
20. Did the accused state that he was ready for trial?	<input checked="" type="checkbox"/>		
21. Does the record show that no witnesses not otherwise connected with the trial were present?	<input checked="" type="checkbox"/>		

0215

	Yes	No	Remarks
22. Was the accused properly arraigned?	<input checked="" type="checkbox"/>		
23. Was the accused warned as to the effect of his pleas of guilty?	<input checked="" type="checkbox"/>		
24. Was the accused's response recorded?	<input checked="" type="checkbox"/>		
25. Were the witnesses sworn?	<input checked="" type="checkbox"/>		
26. Was the accused afforded opportunity to make a statement?	<input checked="" type="checkbox"/>		
27. Was the accused's statement consistent with his pleas? (Applicable only to 'Guilty' plea).	<input checked="" type="checkbox"/>		
28. Was the accused afforded opportunity to make an argument?	<input checked="" type="checkbox"/>		
29. Are the findings properly recorded as prescribed by Naval Courts and Boards?	<input checked="" type="checkbox"/>		
30. If the finding includes exceptions and substitutions, does the specification, as amended, support original or lesser included offense?	<input checked="" type="checkbox"/>		
31. Is the evidence in mitigation consistent with plea of accused? (Applicable only to 'Guilty' plea).	<input checked="" type="checkbox"/>		
32. Is the evidence of previous convictions admissible?	<input checked="" type="checkbox"/>		
33. Is the sentence in proper form and not excessive? (NC&B, secs. 451-457)	<input checked="" type="checkbox"/>		
34. Was the sentence authenticated by the signature of all members of the court and of the judge advocate?	<input checked="" type="checkbox"/>		
35. Was clemency recommended by any members of the court?	<input checked="" type="checkbox"/>		
36. Was the record authenticated by the signature of the president of the court and of the judge advocate?	<input checked="" type="checkbox"/>		
37. Are all copies of appended documents signed by proper authority or correctly certified by the judge advocate?	<input checked="" type="checkbox"/>		
38. Was the accused's receipt for a copy of the proceedings appended to the record?	<input checked="" type="checkbox"/>		
39. Does the action of the convening authority: (a) Have a date and signature? (b) Expressly approve the proceedings, findings and sentence? (c) Is the action otherwise legal?	<input checked="" type="checkbox"/>		
40. Was there loss to the government?	<input checked="" type="checkbox"/>		
41. Is the GCM card properly made out?	<input checked="" type="checkbox"/>		
42. Additional Remarks:			

25 Apr 1949  
(Date)

J. C. Kincaid  
(Signature of reviewing officer)

0216



FF12/117-19  
02-701-fsk

9 DEC 1946



MEMORANDUM TO: Commander in Chief Pacific and United States Pacific Fleet.  
Commander Naval Forces, Marianas.

Subject: Review of the Record of Trial by a Military Commission  
of KATSUMI, Seichi, Japanese Civilian. #166095

Reference: (a) CinCPac/POA Rest. Desp. 170150 Dec. 1945.  
(b) CinCPac and U.S. PacFlt Staff Instructions 1947,  
paragraph 2 H 3 (c).

Enclosure: (A) Record of subject case (original and three copies; one  
copy for CinCPacFlt; one copy for SecNav for delivery to  
United Nations War Crimes Commission; and one copy for  
Commander Naval Forces, Marianas.  
(B) Proposed action to be taken by Commander Naval Forces,  
Marianas on subject case.  
(C) Proposed action to be taken by Commander in Chief, U.S.  
Pacific Fleet, on subject case.

1. In accordance with references (a), (b) and verbal instructions  
of Commander Naval Forces, Marianas, this brief, which contains my comments and  
recommendations, is submitted.

2. TRIAL:

a. Offense.

CHARGE - VIOLATION OF THE LAW AND CUSTOMS OF WAR

Specification 1

In that KATSUMI, Seichi, 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 unhealthful and dangerous work, in violation  
of the law and customs of war, as follows:

(a) On or about February 24, 1942, when Wake Island was under actual  
attack by a United States of America Task Force and before the all clear was  
sounded, force from an air raid shelter Francis G. Campbell, Edwin Mang Seck  
Lee, Warren Oscar McGill, Patrick Kahanawa Aki, and other American prisoners

↓

0217

BEST COPY AVAILABLE

9 DEC 1948

Subject: Review of the Record of Trial by a Military Commission  
of KATSUKI, Seichi, Japanese Civilian.

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of war, names to the relator unknown, and compel them, the said American prisoners of war, to fight fire aboard a burning dredge then anchored, moored, and secured in a combat area at Wake Island.

(b) On or about February 24, 1942, when Wake Island was under actual attack by a United States of America Task Force and before the all clear was sounded, force from an air raid shelter Swede Hokanson, William Ray, Miles R. Wardle, Porter Wardle, Leonard Ward, Theodore Granstedt, Jr., and other American prisoners of war, names to the relator unknown, and compel them, the said American prisoners of war, to repair an aircraft runway in a combat area at Wake Island.

(c) On or about February 24, 1942, when Wake Island was under actual attack by a United States of America Task Force and before the all clear was sounded, force from an air raid shelter Ackley, first name to the relator unknown, Albert S. Fresse, Frank Hastings, James Hesson, W.T. Kennedy, Frank Higuchi, A.J. Paskovitch, Henry Stanley Wilson, and other American prisoners of war, names to the relator unknown, and compel them, the said American prisoners of war, to repair antiaircraft guns in a combat area at Wake Island.

(d) On or about March 23, 1942, order and compel Edwin Mang Book Lee, Adam Kapale, Robert Kapahi, and Patrick Kahamasa Ahi, American prisoners of war, to dive for, without proper diving equipment, and remove a live torpedo from its position on or near the beach of Wilkes Island at Wake Island, by securing a wire cable to said torpedo submerged in water varying in depth from three (3) to twenty (20) feet.

(e) During the period indicated, exact dates unknown, compel Edwin Mang Book Lee and other American prisoners of war, names to the relator unknown, to discharge, unload, and transport ammunition and bombs from Japanese vessels.

#### Specification 2

In that KATSUKI, Seichi, 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, as follows:

-2-

0218

BEST COPY AVAILABLE

FF12/AL7-19  
02-JUN-fsk

DEC 1948

Subject: Review of the Record of Trial by a Military Commission  
of KATSUMI, Seishi, Japanese Civilian.

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(a) On or about February 24, 1942, when Wake Island was under actual attack by a United States of America Task Force and before the all clear was sounded, force from an air raid shelter Swede Hokanson, William Ray, Miles R. Warile, Porter Warile, Leonard Ward, Theodore Granstedt, Jr., and other American prisoners of war, names to the relator unknown, and compel them, the said American prisoners of war, to repair an aircraft runway used for Japanese military operations at Wake Island.

(b) On or about February 24, 1942, when Wake Island was under actual attack by a United States of America Task Force and before the all clear was sounded, force from an air raid shelter Ackley, first name to the relator unknown, Albert S. Freese, Frank Hastings, James Henson, W.T. Kennedy, Frank Migusch, A.J. Paskewitch, Henry Stanley Wilson, and other American prisoners of war, names to the relator unknown, and compel them, the said American prisoners of war, to repair antiaircraft guns for use by the Japanese in the defense of Wake Island.

(c) During the period indicated, exact dates unknown, compel Edwin Wang Sook Lee and other American prisoners of war, names to the relator unknown, to discharge, unload, and transport ammunition and bombs from Japanese vessels.

(d) During the period March 1, 1942 to April 30, 1942, compel Ryland Francis Barnett, Edwin Wang Sook Lee, and other American prisoners of war, names to the relator unknown, to remove guns from Japanese destroyers and install them ashore as coastal defense guns.

(e) During the period indicated, exact dates unknown, compel Ryland Francis Barnett, Albert S. Freese, Warren O. Rogge, and other American prisoners of war, names to the relator unknown, to make parts for and convert machine guns.

(f) During the period indicated, exact dates unknown, compel Ryland Francis Barnett, Bill Hayns, Al Smith, and other American prisoners of war, names to the relator unknown, to construct gun emplacements.

(g) During the period indicated, exact dates unknown, compel Warren O. Rogge, Harry Leland McDonald, and other American prisoners of war, names to the relator unknown, to construct trenches and barbed wire entanglements.



9 DEC 1948

Subject: Review of the Record of Trial by a Military Commission  
of KATSUMI, Seichi, Japanese Civilian.

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Specification 3

In that KATSUMI, Seichi, 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, as follows:

- (a) During the period December 23, 1941 to January 12, 1942, wilfully, maliciously, and without justifiable cause, assault, strike, and beat with fists, feet, and a club one American prisoner of war, known as "Red", further name and description to the relator unknown.
- (b) On or about February 24, 1942, feloniously and forcibly, assault with a dangerous weapon, to wit, a pistol, Francis C. Campbell, Edwin Mang Cook Lee, Warren Oscar McGill, Patrick Kahaumea Aki, and other American prisoners of war, names to the relator unknown, with intent to force them, against their wills, to fight fire on a burning dredge during an actual attack by a United States of America Task Force, and did force and compel said American prisoners of war, during the aforesaid attack by a United States of America Task Force, to board said burning dredge.
- (c) On or about February 24, 1942, feloniously and forcibly, assault with a dangerous weapon, to wit, a pistol, Swede Hokanson, William Ray, Miles R. Wardle, Porter Wardle, Leonard Ward, Theodore Granstedt, Jr., and other American prisoners of war, names to the relator unknown, with intent to force them, against their wills, to work on an aircraft runway, during an actual attack by a United States of America Task Force, and did force and compel said American prisoners of war, during the aforesaid attack by a United States of America Task Force, to work on said aircraft runway.
- (d) On or about February 24, 1942, feloniously and forcibly, assault with a dangerous weapon, to wit, a pistol, Ackley, first name to the relator unknown, Albert S. Freese, Frank Hastings, James Hesson, R.T. Kennedy, Frank Migusch, A.J. Paskodites, Henry Stanley Wilson, and other American prisoners of war, names to the relator unknown, with intent to force them, against their wills, to repair antiaircraft guns during an actual attack by a United States of America Task Force, and did force and compel said American prisoners of war, during the aforesaid attack by a United States of America Task Force, to repair said antiaircraft guns.

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(e) On or about March 23, 1942, feloniously and forcibly, assault with a dangerous weapon, to wit, a pistol, Edwin Mang Book Lee, Adam Kapoala, Robert Kapahi, and Patrick Kahumawa Aki, American prisoners of war, with intent to force them, against their wills, to dive for, without proper diving equipment, and remove a live torpedo from its position near a beach of Wilkes Island at Wake Island, by securing a wire cable to said live torpedo submerged in water varying in depth from three (3) feet to twenty (20) feet, and did force and compel said American prisoners of war to dive for, without proper diving equipment, and remove said live torpedo from its said position by securing a wire cable to said live torpedo submerged in water varying in depth from three (3) feet to twenty (20) feet.

(f) During May 1942, wilfully, maliciously, and without justifiable cause, assault with a dangerous weapon, to wit, a pistol, Theodore Granstedt, Jr., an American prisoner of war.

(g) During May 1942, wilfully, maliciously, and without justifiable cause, assault, strike, and beat upon the head with a sword scabbard Franklin Roosevelt Wise, an American prisoner of war.

(h) During May 1942, wilfully, maliciously, and without justifiable cause, strike, beat, torture, and abuse Julius "Babe" Hoffmeister, an American prisoner of war.

(i) On or about June 15, 1942, feloniously and forcibly, assault with a dangerous weapon, to wit, a pistol, Edwin Mang Book Lee, an American prisoner of war, with intent to force him, against his will, to dive continuously without proper diving equipment for a period of approximately twelve (12) hours, and did force and compel said American prisoner of war to dive continuously without proper diving equipment for said period of time.

(j) On or about June 15, 1942, wilfully, maliciously, and without justifiable cause, feloniously assault, strike, and beat with a six (6) foot, two (2) inch by four (4) inch, club Glenn Fonten, Joe Dunn, and one other American prisoner of war, name to the relator unknown.

b. Plaza:

To the Charge

- Not guilty

(R.p. 7)

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To Specification 1 - Not guilty	(R.p. 7)
To Specification 2 - Not guilty	(R.p. 7)
To Specification 3 - Not guilty	(R.p. 7)

c. Findings:

On the Charge	- Guilty	(R.p. 106)
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On Specification 1 - Proved in part (R.p. 105, 106)

Proved except the words: "(a) On or about February 24, 1942, when Wake Island was under actual attack by a United States of America Task Force and before the all clear was sounded, force from an air raid shelter Francis C. Campbell, Edwin Mang Sock Lee, Warren Oscar McGill, Patrick Kahanama Aki, and other American prisoners of war, names to the relator unknown, and compel them, the said American prisoners of war, to fight fire aboard a burning dredge then anchored, moored, and secured in a combat area at Wake Island.

"(b) On or about February 24, 1942, when Wake Island was under actual attack by a United States of America Task Force and before the all clear was sounded, force from an air raid shelter Guede Hokanson, William Ray, Miles R. Hardie, Porter Hardie, Leonard Ward, Theodore Granstedt, Jr., and other American prisoners of war, names to the relator unknown, and compel them, the said American prisoners of war, to repair an aircraft runway in a combat area at Wake Island.

"(c) On or about February 24, 1942, when Wake Island was under actual attack by a United States of America Task Force and before the all clear was sounded, force from an air raid shelter Askey, first name to the relator unknown, Albert S. Freese, Frank Hastings, James Heeson, W. T. Kennedy, Frank Mignach, A. J. Pachowitch, Henry Stanley Wilson, and other American prisoners of war, names to the relator unknown, and compel them, the said American prisoners of war, to repair antiaircraft guns in a combat area at Wake Island." and the words:

"(e) During the period indicated, exact dates unknown, compel Edwin Mang Sock Lee and other American prisoners of war, names to the relator unknown, to discharge, unload, and transport ammunition and bombs from Japanese vessels.", which words are not proved.

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On Specification 2 - Proved in part (R.p. 106)  
Proved except the words in paragraph (a) "when Wake Island was under actual attack by a United States of America Task Force and before the all clear was sounded," and the words in paragraph (b) "when Wake Island was under actual attack by a United States of America Task Force and before the all clear was sounded," and the words in paragraph (b) "Ackley, first name to the relator unknown," and the words in paragraph (b) "James Henson, W.T. Kennedy," and the words in paragraph (b) "A.J. Paskowites, Henry Stanley Wilson," and the words in paragraph (f) "Ryland Francis Barnett, Bill Haynes, Al Smith, and other" which words are not proved.

On Specification 3 - Proved in part (R.p. 106)  
Proved except the words in paragraph (b) "Francis G. Campbell," and the words in paragraph (b) "during an actual attack by a United States of America Task Force," and the words in paragraph (b) "during the aforesaid attack by a United States of America Task Force," and the words in paragraph (c) "during an actual attack by a United States of America Task Force," and the words in paragraph (c) "during the aforesaid attack by a United States of America Task Force," and the words in paragraph (d) "Ackley, first name to the relator unknown," and the words in paragraph (d) "James Henson, W.T. Kennedy," and the words in paragraph (d) "A.J. Paskowites, Henry Stanley Wilson," and the words in paragraph (d) "during an actual attack by a United States of America Task Force," and the words in paragraph (d) "during the aforesaid attack by a United States of America Task Force," which words are not proved.

d. Sentence.

Five (5) years confinement (R.p. 108).

e. Maximum Sentence.

Death.

f. Convening Authority.

Rear Admiral C. A. Fennell,  
United States Navy,  
The Commander Marianas Area.

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g. Place of Trial.

The auditorium, Headquarters, Commander Naval Forces,  
Marianas, Guam, Marianas Islands (R.p. 1).

h. Date of Trial.

20 September 1948 to 18 October 1948.  
Arraignment: 21 September 1948 (R.p. 7).  
Sentences: 18 October 1948 (R.p. 108).

3. FORMAL MATTERS:

a. Authority for the commission to act.

The authority was the same as that used in previous trials.

b. All members of the commission with the exception of Lieutenant  
Commander Bradner W. Lee, Jr., U.S. Naval Reserve (see para. 3 c. below) were  
present throughout the trial.

c. The accused challenged Lieutenant Commander Bradner W. Lee,  
Jr., U.S. Naval Reserve, on the ground that he had personally investigated the  
charges against the accused and had formed a positive and definite opinion as to  
the guilt of the accused (R.p. 1).

Lieutenant Commander Lee replied and acknowledged the truth  
of the statements made by the accused (R.p. 2).

The commission properly sustained the challenge (R.p. 2; Sec.  
388(e), N.C. & B., 1937) and excused the challenged member from sitting as a  
member in the pending case (Sec. 391, N.C. & B., 1937; R.p. 2). The accused did  
not object to any other member (R.p. 2). The judge advocate did not object to any  
member. The five remaining members constituted a legal quorum and were authorized  
to act and continue the trial (Prefix "A(1)"; Art. 39, Articles for the Government  
of the Navy; App. B-41, N.C. & B., 1937).

d. Each remaining member of the commission, judge advocates,  
reporters, interpreters and witnesses were sworn (R.p. 1, 2, 3, 9, 39, 48, 53, 66).

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- e. The accused was represented by counsel of his own choice (R.p. 1).
- f. The charge and specifications were shown to have been served on the accused on September 3, 1948.
- g. The accused objected to the charge and specifications (R.p. 2; Prefix "F", "G") in effect upon the following grounds:

Objection 1: Many of the alleged incidents are set forth in duplicate and triplicate in the three specifications.

Comment: While each of these offenses were of the same nature (a violation of the law of war), they were separate and distinct offenses in that in each instance they violated a particular duty imposed on the accused by the law of war (the prohibition against using prisoners of war at unhealthful or dangerous work; work directly related to war operations; the duty to treat prisoners of war humanely). "Different offenses, however, of the same nature, should be included in separate specifications under the same charge" Sec. 23, M.C. & B., 1937).

Objection 2: It was legally impossible for the accused, a civilian interpreter, to violate the law and customs of war.

Comment: The law of war as embodied in the Hague Convention and the Geneva Prisoners of War Convention imposes duties upon the "enemy" into whose hands prisoners of war fall and does not limit the term "enemy" to the military.

Objection 3: Specification 1 does not set forth an offense because the incidents alleged therein cannot be construed as "unhealthful and dangerous work."

Objection 4: The allegation of Specification 2 that prisoners of war performed work "directly related to the war effort" is ambiguous and difficult of interpretation.

Comment: The above two objections are not, in my opinion, well founded. The terminology, while not definite, cannot be said to be vague or ambiguous. Sufficient facts were alleged in Specifications 1 and 2 to constitute a violation of the law of war (M.C. & B., 1937, Sec. 27).

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Objection 5: The mere allegation "this in violation of the law and customs of war" is not sufficient; the law and customs alleged to have been violated should be set forth.

Comment: The objection is similar to Objection 1 made to the specifications in the case of former Captain Hiroe KOICHI, IJA, et al, and is commented upon in my memorandum on that case dated 20 March 1948.

The action of the commission (R.p. 3) in overruling all objections was, in my opinion, correct.

h. The charge and specifications were found in due form and technically correct (R.p. 3).

i. The accused was properly arraigned (R.p. 7).

A. MOTIONS AND PLEAS:

a. The accused made a plea to the jurisdiction (R.p. 4, 5; App. "J", "K") in effect upon the following grounds:

(1) Prisoners of war are in the power of the hostile Power or government (Geneva Prisoners of War Convention of July 27, 1929, Chapter 1, Art. 2; Annex to the Hague Convention of October 18, 1907, Chapter 2, Art. 4) and therefore the accused, a civilian interpreter, cannot be held responsible for any crimes which might have been committed against prisoners of war.

(2) The commission lacks jurisdiction because at the time the alleged offenses were committed, their situs, Wake Island, was in the possession of Japan and therefore that country was exercising temporary sovereignty.

(3) To try the accused before this commission would be to apply Ex Post Facto law as neglect of duty was not a crime recognized in the laws and customs of war.

(4) The commission lacks jurisdiction because the accused is not legally before the commission as he was not legally extradited from Japan.

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The plea to the jurisdiction was denied (R.p. 5). The action of the commission in denying the plea was, in my opinion, proper for the reasons stated in paragraph 6 a. below.

b. The accused made a motion for a change of venue (R.p. 5; App. "H", "O") in effect upon the following grounds:

(1) The alleged crimes were committed on Wake Island and that island was not at the time under the command of the convening authority, nor is it now under the command of his successor, Commander Naval Forces, Marianas.

(2) Witnesses, expected to be called by the accused, reside in Japan and therefore this trial should be held in that country.

Comment: The ground stated in (1) above relates to jurisdiction and does not relate to venue. It was raised as an objection to jurisdiction in the case of former Vice Admiral Masashi KOBAYASHI, IJN, and is commented upon in my memorandum on that case dated 9 November 1948 (p. 25).

Anglo-Saxon jurisprudence does not recognize any rule of convenience to the accused as a factor in deciding venue in a criminal proceeding (Underhill's Criminal Evidence, Fourth Edition, Sec. 447). The Sixth Amendment to the Constitution of the United States provides for the right of trial of a criminal offense in a district where the offense was committed.

The action of the commission in not sustaining the motion for a change of venue (R.p. 6) was, in my opinion, proper.

c. The accused made a plea in bar of trial (R.p. 6; App. "H", "S") in effect upon the following grounds:

(1) Wake Island, at the time of the alleged offenses, was occupied by the Japanese military forces and any crimes which occurred during the period of the occupation were subject to the sovereignty of Japan and her laws.

Comment: This is not proper matter for a plea in bar but rather relates to the jurisdiction of the commission to try the case. As was pointed out above, this subject was commented upon in my memorandum in the case of former Vice Admiral Masashi KOBAYASHI, IJN, dated 9 November 1948 (p. 13).

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(2) The alleged offenses took place almost six years before the charge and specifications were drawn and were, therefore, barred by the statute of limitations.

Comment: This plea was commented upon in my memorandum in the case of former Vice Admiral Masashi KOBAYASHI, IJN, dated 9 November 1948 (p. 13).

The action of the commission in not sustaining the plea in bar of trial (R.p. 6) was, in my opinion, properly denied.

d. The accused made a plea in abatement (R.p. 6, App. "U") on the ground that no notice was given the protesting power of the trial of this accused as provided for in Article 60, Geneva Prisoners of War Convention of July 27, 1929.

Comment: This plea was commented upon in my memorandum in the case of former Vice Admiral Masashi KOBAYASHI, IJN, dated 9 November 1948 (p. 14).

The plea in abatement was, in my opinion, properly denied (R.p. 6).

d. The accused made a motion for a bill of particulars (R.p. 6, App. "W").

Comment: This motion was commented upon in my memorandum in the case of former Vice Admiral Masashi KOBAYASHI, IJN, dated 9 November 1948 (p. 15).

The motion was, in my opinion, properly denied (R.p. 7).

e. The accused pleaded "not guilty" to the charge and specifications (R.p. 7).

f. The defense objected (R.p. 9, 52; App. "BB") to the prosecution's request that the commission take judicial notice: (1) That Wake Island, Wilkes Island, and Peale Island have been possessions of the United States of America since July 4, 1898; (2) That Wake Island and Wilkes Island are part of the area under the command of the Commander in Chief Pacific and U.S. Pacific Fleet; (3) The Geneva Prisoners of War Convention of July 27, 1929 and of the fact that, although Japan has not formally ratified this convention, it agreed through the Swiss Government to apply the provisions thereof to prisoners of war under its



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control, and also, as far as practicable, to interned civilians; and (4) The Hague Convention No. IV of October 18, 1907 and the Annex thereto, and of the fact that the same was signed and ratified by Japan.

Comment: The commission announced it would take judicial notice of all items requested by the judge advocate (R.p. 9, 52). The action of the commission was, in my opinion, legal for Section 309, Naval Courts and Boards, 1937, provides: "Courts shall take judicial notice of: (a)....(c) Matters which the court is bound to know as a part of its own special duty and function, such as the United States Constitution, treaties...."

5. EVIDENCE: Briefly summarized the competent evidence is to the following effect:

a. For the prosecution.

A state of war existed between the United States of America, its allies and dependencies, and the Imperial Japanese Empire, during the period from December 23, 1941 to September 30, 1942 (R.p. 7). Wake Island and her sister islands, Wilkes and Peale, had been possessions of the United States of America since July 4, 1898 (R.p. 7, 52). On December 23, 1941 these islands were invaded and occupied by the military forces of the Imperial Japanese Empire (R.p. 7, 9; Exh. 2) and the occupation continued through September 30, 1942 (R.p. 7, 9). The accused was a civilian interpreter serving with the Japanese forces during that period (R.p. 39; Exh. 2, 8, 10, 11) and acted in a supervisory capacity over the American prisoners of war (R.p. 16, 17, 26, 31, 39, 40, 41; Exh. 2, 6, 8, 9, 12). An American Task Force attacked Wake Island on or about February 24, 1942 (R.p. 10, 40, 56; Exh. 2, 3, 8, 9, 10). The islands were shelled by the attacking ships and bombed by planes of the Task Force for about two hours (R.p. 10; Exh. 2, 5, 8, 9, 10). About 350 American POW's took cover in air raid shelters (R.p. 18, 56). Before the all clear was sounded the accused, at gun point, ordered Edwin Mang Seok Lee, Warren Oscar McGill, Patrick Kahanuma Aki, and other American prisoners of war from the shelter for the purpose of fighting a fire aboard a dredge (R.p. 10, 40; Exh. 7, 10). The prisoners refused (R.p. 10, Exh. 7, 10; R.p. 29, Exh. 7). Edwin Mang Seok Lee, Warren Oscar McGill, Patrick Kahanuma Aki, and other American prisoners of war were compelled by the accused, at gun point, to board the burning dredge and fight the fire (R.p. 10, 19, 29, 40; Exh. 5, 6, 7, 10). The island was under actual attack when the prisoners were forced from the shelter (Exh. 7, 9, 10). The island was under attack during the time the prisoners were fighting the fire aboard the dredge (Exh. 5, 9). The "all clear" was not sounded until long after the completion of this task (R.p. 10, 11, 20, 41; Exh. 10). The prisoners fought the fire for about one and a half hours (R.p. 11). The accused gave the orders for the fire

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fighting about 9 a.m. (R.p. 11, 18); about 10:30 (R.p. 40). The attack began about 6, 6:30, 7, 7:20 a.m. (R.p. 10, 55; Exh. 2, 3). The accused was present at the scene of the fire, issuing orders (R.p. 11). The burning dredge was located in the lagoon off Wake Island (R.p. 12). The shelling on that day ceased about 9 a.m. (R.p. 18). The attack by the American Task Force had ceased when the fire fighting began (R.p. 38).

On this same day the accused ordered Swede Hokanson, William Ray, Miles R. Wardle, Porter Wardle, Leonard Ward, Theodore Granstedt, Jr., and other American prisoners of war, from the air raid shelter for the purpose of repairing an aircraft runway that had been damaged by the American bombing (Exh. 7, 9, 11, 13). The prisoners protested (Exh. 7, 11, 13). The accused, at gun point, forced these prisoners to leave the air raid shelter and repair the runway (Exh. 7, 13). The island was under actual attack during the time the prisoners were working on the runway (Exh. 7, 9). The all clear was not sounded until after the completion of this work (Exh. 11). This incident occurred about 45 minutes after the attack started (Exh. 11, 13).

On this same day (on or about February 24, 1942), the accused ordered Ackley, first name unknown, Albert S. Fresse, Frank Hastings, James Henson, W.T. Kennedy, Frank Higuchi, A.J. Paskowitch, Henry Stanley Wilson, and other American prisoners of war to repair antiaircraft guns (R.p. 54, 55, 57; Exh. 2, 3). The island was under actual attack when these prisoners of war were forced from the shelter (R.p. 56, Exh. 2, 3). The island was under actual attack during the time the prisoners were repairing the guns (Exh. 2, 3, 8). The all clear was not sounded until after the completion of this work. The order for this work was given about 11 a.m. (Exh. 2).

On or about March 23, 1942 the accused ordered Edwin Mang Book Lee, Adam Kapeala, Robert Kapehi, and Patrick Kahaumea Aki, American prisoners of war, to dive for and remove a live torpedo from its position at or near the beach of Wilkes Island (R.p. 11, Exh. 10). The prisoners refused (R.p. 11, 15). The accused, at gun point, compelled these prisoners to dive for and move the torpedo (R.p. 11, Exh. 10). The prisoners secured a wire cable to the torpedo in water varying in depth from three (3) to twenty (20) feet (R.p. 11, Exh. 10). The torpedo was moved from its original position (R.p. 11, Exh. 10). The prisoners were not supplied with the necessary diving equipment (R.p. 11, Exh. 10).

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The accused, during the period from December 23, 1941 to September 30, 1942, compelled Edwin Mang Sook Lee and other American prisoners of war to discharge, unload and transport ammunition and bombs from Japanese vessels (R.p. 12, 23; Exh. 12).

The accused, during the period from March 1, 1942 to April 30, 1942, compelled Hyland Francis Barnett, Edwin Mang Sook Lee, and other American prisoners of war to remove guns from Japanese destroyers (R.p. 15, 25; Exh. 2) and install them ashore as coastal defense guns (R.p. 15; Exh. 2, 3).

The accused, during the period from December 23, 1941 to September 30, 1942, compelled Hyland Francis Barnett, Albert S. Freese, Warren O. Rogge, and other American prisoners of war to make parts for and convert machine guns (Exh. 2, 3, 6).

The accused, during the period from December 23, 1941 to September 30, 1942, compelled Hyland Francis Barnett, Bill Hayne, Al Smith, and other American prisoners of war to construct gun emplacements (R.p. 41; Exh. 3, 7, 9).

The accused, during the period from December 23, 1941 to September 30, 1942, compelled Warren O. Rogge, Harry Leland McDonald, and other American prisoners of war to construct trenches and barbed wire entanglements (R.p. 41; Exh. 6, 7, 12).

The accused, on or about January 1, 1942, assaulted and struck with his fists, feet, and a club Lloyd "Red" Kent, an American prisoner of war (Exh. 12, 14, 15).

The accused, in May 1942, assaulted with a pistol Theodore Granstedt, Jr., an American prisoner of war (Exh. 11).

The accused, in May 1942, assaulted and beat upon the head with a sword scabbard Franklin Roosevelt Wise, an American prisoner of war (Exh. 9).



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During May 1942, the accused struck and beat Julius "Babe" Hoffmeister, an American prisoner of war with pickhandles (Exh. 2, 5, 9). The accused tortured and abused the same prisoner by playing a high pressure water hose on him for a period of from one to one and a half hours (Exh. 9).

The accused, in the early part of June 1942, ordered Edwin Mang Book Lee, an American prisoner of war, to dive for a period of about twelve (12) hours (R.p. 13). When Lee remonstrated (R.p. 13), the accused assaulted him with a pistol and forced him to continue (R.p. 13, 14). Lee was forced to dive without proper diving equipment (R.p. 14).

The accused, on or about June 15, 1942, assaulted and beat with a six (6) foot, two (2) inch by four (4) inch, club Glenn Fontes, Joe Dunn and one other American prisoner of war (Exh. 2). The beatings lasted about twenty (20) minutes (Exh. 2).

b. For the defense.

The accused was an interpreter, attached to the Fourth Naval Fleet, Truk (Exh. 16(5)). He was assigned to the Sixty-fifth Naval Guard Unit, Wake Island, under the command of Captain Susumu KAWASAKI, IJN (Exh. 16(5)). Lieutenant (jg) NOMOTO was in charge of the treatment and care of prisoners of war (Exh. 16(6), 17(4)). NOMOTO was in charge of assigning prisoners of war to various tasks (Exh. 16(6)). Captain KAWASAKI never issued any orders to have prisoners of war assigned to convert, repair, make over, or transport arms (Exh. 16(6)). He did not order the accused to use prisoners of war to repair the air strip (Exh. 16(7)). KAWASAKI had no knowledge of prisoners of war being used to unload arms and ammunition from Japanese transports (Exh. 16(8)). KAWASAKI had no knowledge of prisoners of war being used for the construction of gun emplacements, digging of trenches or setting up of barbed wire (Exh. 16(9)). The "all clear" was sounded about 0700 Japanese time or 0900 local time (Exh. 16(9)). The surface bombardment of Wake Island began at 0742 (local time) and lasted a little under a half hour (R.p. 68). The air attack by bombers then began and lasted about forty (40) minutes (R.p. 68). During this period the air strip was bombed (R.p. 68).

The accused took the stand in his own defense (R.p. 70). He testified that Lieutenant (jg) Tadayuki NOMOTO, IJN, was in charge of the prisoners of war and was assisted by Petty Officer OKAZAKI and Seaman First Class SHIMIZU.

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(R.p. 71). The accused testified that he had nothing to do with the assignment of prisoners of war to work (R.p. 72) but only worked in the capacity of an interpreter (R.p. 72). During the entire period of the raid on February 24, 1942, he was at the headquarters command post (R.p. 73) and did not go to the prisoners of war air raid shelter until after the all clear was sounded (R.p. 73). After the all clear had sounded, at the direction of the executive officer, he took some prisoners of war to work on the air strip (R.p. 74). The air strip had not been damaged (R.p. 76). The accused denied any knowledge of prisoners of war being used to fight a fire aboard a burning dredge on February 24, 1942 (R.p. 76). He denied any knowledge of prisoners of war being used to repair an antiaircraft gun on that day (R.p. 77). He denied having anything to do with the removal of a torpedo from the beach at Wilkes Island in the latter part of March, 1942 (R.p. 77). He denied any knowledge of prisoners of war being used in diving operations in June 1942 (R.p. 78). He denied any connection with the use of prisoners of war for the unloading of cargo from transports (R.p. 78, 79). He denied any connection with the work of removing guns from the Japanese destroyer (R.p. 79) but stated that he was present at their installation ashore by Japanese military personnel and prisoners of war (R.p. 79). He testified that he acted in the capacity of an interpreter at this work (R.p. 79).

The accused testified that he knew prisoners of war were used to make parts for submachine guns (R.p. 79) and had seen prisoners working on machine gun mounts (R.p. 80). He denied any connection with the use of prisoners for this work (R.p. 80). He stated that he acted in the capacity of an interpreter during the construction of gun emplacements by prisoners of war (R.p. 80). He denied any knowledge of prisoners of war being used to construct barbed wire entanglements or dig trenches (R.p. 80).

The accused denied assaulting Theodore Granstedt, Jr., in May 1942 (R.p. 81). He denied ever having struck a prisoner of war with a sword scabbard (R.p. 81). He denied ever having beaten or mistreated Hoffmeister (R.p. 82). He denied ever having beaten any prisoners of war. He denied any knowledge of the beating of a prisoner of war about December 31, 1941 (R.p. 83).

The accused denied ever having assaulted or threatened any prisoner of war with a pistol (R.p. 84).

6.

DISCUSSION:

a. As to jurisdiction.

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02-JOK-fek

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of KATSUMI, Seishi, Japanese Civilian.

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Express authority to appoint military commissions to try war criminals was delegated to the Commander Marianas Area by the Commander in Chief, United States Pacific Fleet, in his confidential serial 0558, dated 8 March 1946. Further, it appears that such authority is inherent in a military commander (App. D, H.C. & B., 1937; In re Yamashita, 327 U.S. 1). By Commander in Chief Pacific and U.S. Pacific Fleet ltr. serial 2682, dated 11 June 1948, Subject: Pacific Fleet Letter 2L-47; Third Revision to., the Commander in Chief, Pacific and U.S. Pacific Fleet, changed the title "Commander Marianas Area" to "Commander Naval Forces Marianas" effective 1 August 1948. By letter dated 1 August 1948 (Prefix "D"), CinCPac serial 2955 and CinCPacFlt serial 3490, the Commander in Chief Pacific and U.S. Pacific Fleet vests in the Commander Naval Forces, Marianas all authority in connection with war crimes heretofore vested in the Commander Marianas Area, by virtue of his authority as Commander in Chief, U.S. Pacific Fleet and Pacific Ocean Areas, and now as Commander in Chief, Pacific and U.S. Pacific Fleet. The letter further provided that Commander Naval Forces, Marianas is vested with authority 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.

It is well established that a military commission convened by authority of the Commander in Chief, United States Pacific Fleet and/or any military commander has jurisdiction to try war crimes and accused war criminals (Yamashita v. Styer, 327 U.S. 1); App. D, H.C. & B., 1937; SecNav ltr. re war crimes dated 13 Jan. 1945; and CinC U.S. Fleet ltr. serial 2612, dated 6 April 1945).

The accused made a plea to the jurisdiction, on the grounds set forth in paragraph 4 a. above. The first ground of objection was that the state and not the individual is responsible for war crimes. This contention is without merit. The principle of individual responsibility for war crimes is well established and has been recognized in the war crimes trials that followed both world wars.

The ground of objection set forth in subparagraph 4 a. (2), (3) and (4) are similar to objections made in the case of former Vice Admiral Masahito KOBAYASHI, IJN, and are commented upon in my memorandum on that case dated November 9, 1948.



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b. As to procedure.

(1) Selection of the commission followed the approved practice of including Army, Navy and Marine Corps officers as members of the commission (see my memorandum dated 20 February 1946 in the case of Colonel OISHI, IJA, et al). Prosecution and defense personnel were duly authorized and appointed by the convening authority.

(2) The proceedings of the commission, as authorized in the precept, were governed by the provisions of Naval Courts and Boards, except that the commission was permitted to relax the rules for naval courts and use the rules of evidence and procedure, issued and promulgated by the Supreme Commander for the Allied Powers (APO 500, 5 Dec. 1945 AG 000.5), where necessary to obtain justice.

(3) The accused was advised of and accorded all rights prescribed.

(4) The sentence is legal.

c. As to evidence.

Referring to Specification 1 of the Charge, there is sufficient competent evidence to support the commission's finding of proved in part as to that specification. The commission's finding as to paragraphs (a), (b) and (c) of Specification 1, can be supported. There was conflicting evidence as to whether or not the attack was still in progress when these alleged incidents occurred. The commission evidently resolved this question in the negative. This was properly within the prerogative of the commission in performing its duty to weigh the evidence (Naval Courts and Boards, Sec. 304, 305). The commission's finding as to paragraph (c) of Specification 1 is not understood as the evidence seems to clearly support the allegation therein. However, the commission's finding as to paragraph (c) was favorable to the accused and accordingly did not detrimentally affect him. Specification 1 as proved in part by the commission still supports the Charge and the commission's finding of guilty thereon.

The commission found Specifications 2 and 3 proved with the exception of the allegations therein as to the attack being in progress during the incidents of February 24, 1942 and exceptions as to particular named prisoners of war. The commission's findings of "proved in part" as to these specifications do not affect the finding of "Guilty" as to the Charge, inasmuch as the exceptions made by the commission leave the specifications still supporting the charge (Sec. 429, M.C. & B., 1937).

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There were, as was to be expected, numerous conflicts in the evidence throughout the record. It was the duty of the members of the commission in their capacity as jurors, to weigh the evidence (Sec. 304, M.C. & B., 1937). There is nothing contained in the record to establish that any member failed to apply the recognized rules governing the weighing of evidence (Sec. 304 and following, M.C. & B., 1937), or exceeded their allowed discretion in this matter.

d. As to sentence.

The accused was sentenced to confinement for a period of five (5) years. The sentence is legal.

The accused was placed in confinement at Shinagawa Police Station, Kyoto, Japan on January 14, 1947. He has been continuously held in close custody and confinement from that date to the date of trial which commenced on September 20, 1948. It is my opinion that the period of confinement of more than twenty (20) months while under investigation and awaiting trial, justifies reduction of the sentence by the convening authority, and that the action of the convening authority should affirmatively evidence that such reduction is based upon the period of confinement of the accused while awaiting trial.

e. Generally.

During the trial the defense made many objections to the admissibility of documentary evidence. The judge advocate also made certain objections. Each of these objections and the rulings of the commission have been considered. Based on the authorized procedure for the commission and the rules of evidence, which were properly adopted (JAG Desp. 062125 March 1946), it is my opinion that the commission's rulings were in all instances legal and without material prejudice to the interests of the accused. By the precept the commission was authorized to use the rules of evidence and procedure contained in SCAP Regulations Governing the Trials of Accused War Criminals, dated 5 December 1945, as necessary to obtain justice.

While many of the incidents enumerated in the three specifications of the Charge are identical, the specifications are not duplicative for the offense charged in each specification is separate and distinct from the offenses charged in the other specifications. Specification 1 arises out of violation of the prohibition in the Geneva Prisoners of War Convention of July 27, 1929 (Chapter 3, Article 32) wherein it is stated, "It is forbidden to use

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02-JUN-fsk

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Subject: Review of the Record of Trial by a Military Commission  
of KATSUMI, Seichi, Japanese Civilian.

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prisoners of war at unhealthful or dangerous work....." Specification 2 arises out of a violation of the prohibition of Article 31 of Chapter 3 of this same Convention, wherein it is stated, "Labor furnished by prisoners of war shall have no direct relation with war operations.....", and a similar provision in the Annex to the Hague Convention No. IV of October 18, 1907 (Chapter 2, Art. 6). Specification 3 arises out of a violation of the provisions in the Annex to the Hague Convention No. IV (Chapter 2, Art. 4), wherein it is stated that "Prisoners of war are in the power of the hostile Government, but not of the individuals or corps who capture them. They must be humanely treated.....", and a similar provision in the Geneva Prisoners of War Convention (Chapter 1, Art. 2).

In accordance with the Judge Advocate General's action (OO-Tachibana, Yoshio, et al/AL7-20 I(3-19-47 HJHines 154578) approved by the Secretary of the Navy 18 July 1947 (JAG:I:RAS:Fla AL7-20/00 (6-25-47) 154578) and the Judge Advocate General's action (OO-INOU, Fumio/AL7-10 OQ(1-22-48) I:HEM:ves 159116) approved by the Acting Secretary of the Navy 12 February 1948 (JAG:I:RAS:bun OO-INOU, Fumio/AL7-10 OQ(2-20-48) 159116), the findings on either Specification 1 or portions of Specifications 2 and 3 could be set aside. It is my opinion that any action with a view to setting aside the findings on these specifications should be taken by the final reviewing authority if such action is considered warranted by that authority, and not by the Commander Naval Forces, Marianas or the Commander in Chief, Pacific and U.S. Pacific Fleet.

7. OPINION: It is the opinion of the undersigned that:

- a. The military commission was legally constituted.
- b. The commission had jurisdiction of the person and offenses.
- c. The evidence supports the findings of "guilty".
- d. The record discloses no errors materially prejudicial to

the accused.

8. RECOMMENDATION is legal.

It is recommended: (1) that the proceedings, findings, and sentence be approved by the convening and reviewing authorities; (2) that in



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02-17-19

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Subject: Review of the Record of Trial by a Military Commission  
of KATSUMI, Seishi, Japanese Civilian.

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view of the fact that the accused has been confined while under investigation and awaiting trial since January 14, 1947, the convening authority accordingly reduce the sentence of the accused a period equal to the time already served in confinement; (3) that the record, in conformity with Appendix D-14, Naval Courts and Boards, 1937, be transmitted to the Judge Advocate General of the Navy for revision and record.

9. **ACTION:**

Actions designed to carry the above recommendations into effect, should they meet with your approval, are submitted herewith as enclosures (B) and (C).

JOHN D. MURPHY,  
Rear Admiral, USN (Ret.),  
Director War Crimes, Pacific Fleet.

cc: JAG, USN.

7712/117-10(2)  
02-100-100

THE PACIFIC COMMAND  
AND UNITED STATES PACIFIC FLEET

HEADQUARTERS OF THE COMMANDER NAVAL FORCES MARIANAS  
NAVAL FORCES MARSHALLS-CAROLINES AND MARSHALLS-CAROLINES AREA

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 0598 of 8 March 1946; ComMarianas Dep. 292334Z Sept. 1947; CinCPacFlt Dep. 020203Z Oct. 1947; SecNav Dep. 081946Z Oct. 1947; CinCPacFlt Dep. 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 117-10 Serial 2955 and CinCPacFlt File 117-10 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 6th U.S. Army via the first available transportation to serve his sentence of confinement in Sugamo Prison, Tokyo, Japan.

G. A. FOWELL,  
Rear Admiral, U.S. Navy,  
The Commander Naval Forces Marianas.

ENCLOSURE (2)

0239

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**THE PACIFIC COMMAND  
AND UNITED STATES PACIFIC FLEET**

**Headquarters of the Commander in Chief**

**CinCPacFlt File**

**c/o Fleet Post Office,  
San Francisco, California.**

**Serial:**

**The proceedings, findings, and sentence as mitigated in the foregoing case of KATSUKI, Seichi, 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 OLP22 of 28 November 1945, transmitted to the Judge Advocate General of the Navy.**

**DEWITT C. RAMSEY,  
Admiral, U.S. Navy,  
Commander in Chief Pacific  
and United States Pacific Fleet.**

**ENCLOSURE (C)**

0240

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02-JDM-hn

THE PACIFIC COMMAND  
AND UNITED STATES PACIFIC FLEET

HEADQUARTERS OF THE COMMANDER N.V.L FORCES MARIANAS  
N.V.L FORCES MARSHALLS-CAROLINES AND MARSHALLS-CAROLINES AREA

Serial: 17432

9 DEC 1948

MILITARY COMMISSION ORDER NO. 47  
(In the case of K.TSUMI, Seishi)

1. During period 20 September 1948 to 18 October 1948, K.TSUMI, Seishi, was tried by a United States Military Commission, convened by order of the Commander Marianas Area, dated 27 July 1948, at the Headquarters, Commander Marianas, Guam, Marianas Islands, on the below listed charge and specifications.

CHARGE: VIOLATION OF THE LAW AND CUSTOMS OF WAR (three specifications)

<u>Spec.</u>	<u>Nature of Offense</u>	<u>Place and Date of Offenses</u>	<u>Name of Accused</u>
1.	Wilfully and unlawfully, force, compel, require, and use American POWs, then held captive by the armed forces of Japan, to perform unhealthful and dangerous work, as follows:		K.TSUMI
(a)	Force and compel four American POWs to fight fire aboard burning dredge during an air raid.	Wake Island 24 Feb. 1942	
(b)	Force and compel six American POWs to repair and aircraft runway during an air raid.	Wake Island 24 Feb. 1942	
(c)	Force and compel eight American POWs to repair anti-aircraft guns during an air raid.	Wake Island 24 Feb. 1942	
(d)	Order and compel four American POWs to dive for and remove a live torpedo.	Wake Island 23 Mar. 1942	
(e)	Compel one American POW to discharge, unload and transport ammunition and bombs.	Wake Island 23 Dec. 1941 to 30 Sept. 1942	
2.	Wilfully and unlawfully, force, compel, require, and use American POWs, then held captive by the armed forces of Japan, to perform work directly related to war operations, as follows:		K.TSUMI
(a)	Force and compel six American POWs to repair an aircraft runway.	Wake Island 24 Feb. 1942	
(b)	Force and compel eight American POWs to repair anti-aircraft guns.	Wake Island 24 Feb. 1942	
(c)	Compel one American POW to discharge, unload and transport ammunition and bombs.	Wake Island, 23 December 1941 to 30 Sept. 1942	

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02-JDM-Bn

THE PACIFIC COMMAND  
AND UNITED STATES PACIFIC FLEET

HEADQUARTERS OF THE COMMANDER N.V.L. FORCES MARSHALLS  
N.V.L. FORCES MARSHALLS-CAROLINES AND MARSHALLS-CAROLINES ARE.

MILITARY COMMISSION ORDER NO. 47

17432

9 DEC 1948

(In the case of KATSUMI, Seishi)

- (d) Compel two American POWs to remove and install guns. Wake Island  
1 Mar. 1942 to  
30 Apr. 1942.
- (e) Compel three American POWs to make parts for and convert machine guns. Wake Island  
23 Dec. 1941 to  
30 Sept. 1942
- (f) Compel three American POWs to construct gun emplacements. Wake Island  
23 Dec. 1941 to  
30 Sept. 1942
- (g) Compel two American POWs to construct trenches and barbed wire entanglements. Wake Island  
23 Dec. 1941 to  
30 Sept. 1942.

3 Wilfully, unlawfully, cruelly and inhumanely abuse and mistreat American POWs, then held captive by the armed forces of Japan, as follows:

KATSUMI

- (a) Abuse and mistreat one American POW. Wake Island  
23 Dec. 1941 to  
12 Jan. 1942.
- (b) Assault with a pistol four American POWs. Wake Island  
24 Feb. 1942.
- (c) Assault with a pistol six American POWs. Wake Island  
24 Feb. 1942.
- (d) Assault with a pistol eight American POWs. Wake Island  
24 Feb. 1942.
- (e) Assault with a pistol four American POWs. Wake Island  
23 Mar. 1942.
- (f) Assault with a pistol one American POW. Wake Island  
May 1942.
- (g) Assault with a sword scabbard one American POW. Wake Island  
May 1942.
- (h) Torture and abuse one American POW. Wake Island  
May 1942.
- (i) Assault with a pistol one American POW. Wake Island  
15 June 1942.
- (j) Assault with a club three American POWs. Wake Island  
15 June 1942.

0242



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THE PACIFIC COMMAND  
AND UNITED STATES PACIFIC FLEET

HEADQUARTERS OF THE COMMANDER NAVAL FORCES MARSHALLS  
NAVAL FORCES MARSHALLS-CAROLINES AND MARSHALLS-CAROLINES AREA

MILITARY COMMISSION ORDER NO. 47

17432

9 DEC 1948

(In the case of KATSUMI, Seishi)

FINDINGS: The Commission on 18 October 1948 made the following findings:

"The first specification of the charge proved in part; proved except the words:

"(a) On or about February 24, 1942, when Wake Island was under actual attack by a United States of America Task Force and before the all clear was sounded, force from an air raid shelter Francis C. Campbell, Edwin Mang Sook Lee, Warren Oscar McGill, Patrick Kahaumea Aki, and other American prisoners of war, names to the relator unknown, and compel them, the said American prisoners of war, to fight fire aboard a burning dredge then anchored, moored, and secured in a combat area at Wake Island.

"(b) On or about February 24, 1942, when Wake Island was under actual attack by a United States of America Task Force and before the all clear was sounded, force from an air raid shelter Swede Hokanson, William Ray, Miles R. Wardle, Porter Wardle, Leonard Ward, Theodore Granstedt, Jr., and other American prisoners of war, names to the relator unknown, and compel them, the said American prisoners of war, to repair an aircraft runway in a combat area at Wake Island.

"(c) On or about February 24, 1942, when Wake Island was under actual attack by a United States of America Task Force and before the all clear was sounded, force from an air raid shelter Ackley, first name to the relator unknown, Albert S. Freese, Frank Hastings, James Hesson, W.T. Kennedy, Frank Migushh, A.J. Paskowicz, Henry Stanley Wilson, and other American prisoners of war, names to the relator unknown, and compel them, the said American prisoners of war, to repair anti-aircraft guns in a combat area at Wake Island."

"and the words:

"(e) During the period indicated, exact dates unknown, compel Edwin Mang Sook Lee and other American prisoners of war, names to the relator unknown, to discharge, unload, and transport ammunition and bombs from Japanese vessels."

"which words are not proved.

"The second specification of the charge proved in part, proved except the words in paragraph (a) 'when Wake Island was under actual attack by a United States of America Task Force and before the all clear was sounded,' and the words in paragraph (b), 'when Wake Island was under actual attack by a United States of America Task Force and before the all clear was sounded,' and the words in paragraph (b) 'Ackley, first name to the relator unknown,' and the words in paragraph (b) 'James Hesson, W.T. Kennedy,' and the words in paragraph (b) 'A.J. Paskowicz, Henry Stanley Wilson,' and the words in paragraph (f) 'Ryland Francis Barnett, Bill Hayns, Al Smith, and other' which words are not proved.

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02-JDM-hn

THE PACIFIC COMMAND  
AND UNITED STATES PACIFIC FLEET

HEADQUARTERS OF THE COMMANDER N.V.L FORCES MARIANAS  
NAVY FORCES MARSHALLS-CAROLINES AND MARSHALLS-CAROLINES AREA

MILITARY COMMISSION ORDER NO. 47

17432

9 DEC 1948

(In the case of KATSUMI, Seishi)

"The third specification of the charge proved in part, proved except the words in paragraph (b) 'Francis C. Campbell,' and the words in paragraph (b) 'during an actual attack by a United States of America Task Force,' and the words in paragraph (b) 'during the aforesaid attack by a United States of America Task Force,' and the words in paragraph (c) 'during an actual attack by a United States of America Task Force,' and the words in paragraph (c) 'during the aforesaid attack by a United States of America Task Force,' and the words in paragraph (d) 'Ackley, first name to the relator unknown,' and the words in paragraph (d) 'James Hesson, W.T. Kennedy,' and the words in paragraph (d) 'A.J. Paskowicz, Henry Stanley Wilson,' and the words in paragraph (d) 'during an actual attack by a United States of America Task Force,' and the words in paragraph (d) 'during the aforesaid attack by a United States of America Task Force,' which words are not proved.

"And that the accused, Katsumi, Seishi, is of the charge guilty."

SENTENCE: The Commission on 13 October 1948 sentenced the accused as follows:

"The commission, therefore, sentences him, Katsumi, Seishi, to be confined for a period of five (5) years."

2. On 9 December 1948 the convening authority (Commander Naval Forces Marianas), subject to certain remarks not herein quoted, took the following action:

"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. POWELL,  
Rear Admiral, U.S. Navy,  
The Commander Naval Forces, Marianas.

cc: CinCPacFlt (3)  
JAG, USN (3)  
SCAF (3)  
ComGen U.S. 8th Army, Japan (3)  
National War Crimes Officer, Wash. D.C. (3)  
CO, Marine Barracks (3)  
ComMarianas Liaison Officer, Tokyo, Japan (3)

AUTHENTICATED:

H.D. VANSTON,  
Flag Secretary.

0244

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 1

RECEIVED  
8 FEB 1949

OFFICE OF JUDGE  
ADJUTANT GENERAL  
O.C.M. SECTION

FINISHED FILE

7 OCT 1949

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0245

# KATSUMI, Seishi

Trial by military commission at the Headquarters,  
Commander Naval Forces, Marianas  
September 20, 1948

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UNITED STATES PACIFIC FLEET  
COMMANDER MARIANAS

Serial: 12703

27 JUL 1948

From: The Commander Marianas Area.  
To : Rear Admiral Arthur G. ROBINSON, U. S. Navy.  
Subject: Precept for a military commission.

1. Pursuant to the authority vested in me by virtue of my office as The Commander Marianas Area and further by the specific authority vested in me by the Commander in Chief Pacific and U. S. Pacific Fleet and High Commissioner of the Trust Territory of the Pacific Islands (CinC U.S. Pac. Flt. serial 0558 of 8 Mar. '46; ComMarianas Desp. 292336Z Sept. '47; CinCPacFlt Desp. 020103Z Oct. '47; SecNav Desp. 081946Z Oct. '47; CinCPacFlt Desp. 092353Z Oct. '47), a military commission is hereby ordered to convene at the Headquarters Commander Marianas on Guam, Marianas Islands at 10 o'clock a.m., on Wednesday, July 28, 1948, or as soon thereafter as practicable, at the call of the President, for the trial of such persons as may be legally brought before it.

2. The military commission is composed of the following members, any five of whom are empowered to act, viz:

Rear Admiral Arthur G. ROBINSON, U. S. Navy, President.  
Lieutenant Colonel Victor J. GARBARINO, Coast Artillery Corps,  
United States Army.  
Lieutenant Colonel Kenneth E. BALLIET, Cavalry, United  
States Army.  
Lieutenant Commander Bradner W. LEE, junior, U. S. Naval  
Reserve.

Lieutenant Commander Wallace J. OTTOMEYER, U. S. Navy.  
Captain Albert L. JENSON, U. S. Marine Corps, and of  
Lieutenant Commander Joseph A. REGAN, U. S. Navy, Lieutenant James P. KENNY,  
U. S. Navy, and Lieutenant David BOLTON, U. S. Navy, as judge advocates, any  
of whom is authorized to act as such.

TAKANO, Junjiro, furnished by the Japanese Government, and  
Commander Martin E. CARLSON, U. S. Naval Reserve, both of whom are lawyers,  
and SANAGI, Sadamu, a former captain, Imperial Japanese Navy, furnished by  
the Japanese Government, are available and authorized to act as defense  
counsel. This authorization does not preclude as defense counsel others  
who are available and are desired by the accused.

In trials of accused charged with offenses against nationals  
of foreign governments and natives of islands of the Trust Territory of the  
Pacific Islands duly accredited representatives of the governments and  
natives concerned are authorized to participate as observers.

3. This military commission is hereby authorized and directed  
to take up such cases, if any, as may be now pending before the military  
commission of which Rear Admiral Arthur G. ROBINSON, U. S. Navy, is  
president, appointed by my precept of November 8, 1947, except such cases

FF12/A17-10(1)  
02-JDM-ro

UNITED STATES PACIFIC FLEET  
COMMANDER MARIANAS

Serial: 12703

27 JUL 1948

Subject: Precept for a military commission.

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the trial of which may have been commenced.

4. The military commission shall be competent to try all offenses within the jurisdiction of exceptional military courts, including offenses referred to in the Commander Marianas despatch cited in paragraph 1 above. It shall have jurisdiction over all Japanese nationals and others who worked with, were employed by or served in connection with the former Japanese Imperial Government, in the custody of the convening authority at the time of trial, charged with offenses committed against United States nationals, persons referred to in the Commander Marianas despatch cited in paragraph 1 above and white persons whose nationality has not prior to ordering of the trial been established to the satisfaction of the convening authority. Nothing herein limits the jurisdiction of the military commission as to persons and offenses which may be otherwise properly established.

5. The military commission upon conviction of an accused is empowered to impose upon such accused any lawful punishment including the death sentence, imprisonment for life or for any less term, fine or such other punishments as the commission shall determine to be proper.

6. The proceedings of the military commission will be governed by the provisions of Naval Courts and Boards, except that the commission is permitted to relax the rules for naval courts to meet the necessities for any particular trial, and may use such rules of evidence and procedure, issued and promulgated by the Supreme Commander for the Allied Powers (Letter General Headquarters, Supreme Commander for the Allied Powers, APO 500, 5 December 1945 A. G. 000.5 (5 Dec. 45) LS, Subject: "Regulations Governing the Trials of Accused War Criminals", and modifications thereof), as are necessary to obtain justice. The commission may adopt such other rules and forms, not inconsistent herewith, as it considers appropriate.

7. Detachment of an officer from his ship or station does not of itself relieve him from duty as a member or judge advocate of this commission. Specific orders for such relief are necessary.

8. Power of adjournment is granted the commission, and adjourned sessions may be held at such times and at such places as the commission may determine.

/s/ C. A. POWNALL  
C. A. POWNALL,  
Rear Admiral, U. S. Navy,  
The Commander Marianas Area.

Copies to:  
Members of the Commission.  
Judge Advocates.  
Judge Advocate General, U. S. Navy.

A true copy. Attest:

*James P. Kenny Jr. USN*

- 2 -

"A (2)"

0249



FF12/A17-10(1)  
02-JDM-fsk

UNITED STATES PACIFIC FLEET  
COMMANDER NAVAL FORCES, MARIANAS

Serial: 13218

10 AUG 1948

From: Commander Naval Forces, Marianas.  
To : Rear Admiral Arthur G. Robinson, U. S. Navy,  
President, Military Commission, Guam.  
Subject: Change in Membership of Military Commission.

1. Lieutenant Colonel Newton L. CHAMBERLAIN, Signal Corps,  
United States Army, is hereby appointed a member of the military commission  
of which you are president convened by precept dated 27 July 1948, vice  
Lieutenant Colonel Victor J. GARBARINO, Coast Artillery Corps, United States  
Army, hereby relieved, except in event of revision of cases already tried.

C. A. FOWNALL,  
Rear Admiral, U. S. Navy,  
Commander Naval Forces, Marianas.

cc:  
Lieutenant Colonel Newton L. CHAMBERLAIN.  
Lieutenant Colonel Victor J. GARBARINO.  
Judge Advocate, Military Commission.  
Judge Advocate General, U. S. Navy.  
Commanding General, Marianas Bonins Command.

A true copy. Attest:

*James P. Kenney*  
James P. Kenney,  
Lieutenant, U. S. Navy,  
Judge Advocate.

B

0250

FF12/A17-19(1)  
02-JDM-hn

THE PACIFIC COMMAND  
AND UNITED STATES PACIFIC FLEET

HEADQUARTERS OF THE COMMANDER NAVAL FORCES MARIANAS  
NAVAL FORCES MARSHALLS-CAROLINES AND MARSHALLS-CAROLINES AREA

Serial: 14239

11 September 1948

From: The Commander Naval Forces, Marianas.  
To: Rear Admiral Arthur G. ROBINSON, U. S. Navy,  
President, Military Commission.  
Subject: Change in Membership of Military Commission.

1. Lieutenant Commander Ralph I. GERBER, U. S. Navy, is hereby appointed a member of the military commission of which you are president, convened by my precept of 27 July 1948, vice Lieutenant Commander Wallace J. OTTOMEYER, U. S. Navy, hereby relieved, upon the completion of trials already begun, and except in event of revision of cases already tried.

/s/ C. A. Pownall  
C. A. POWNALL,  
Rear Admiral, U. S. Navy,  
The Commander Naval Forces, Marianas.

cc: LCDR Ralph I. GERBER, U. S. Navy,  
LCDR Wallace J. OTTOMEYER, U. S. Navy,  
CO, NAS Orote,  
CNOB, Guam,  
Judge Advocate, Military Commission,  
Judge Advocate General, U. S. Navy.

A true copy. Attest:

*James P. Kenny*  
James P. Kenny,  
Lieutenant, U. S. Navy,  
Judge Advocate.

CinCPacFLT File

THE PACIFIC COMMAND

CinCPac File

A17-10

AND UNITED STATES PACIFIC FLEET

A17-10

Serial 3490

HEADQUARTERS OF THE COMMANDER IN CHIEF

Serial: 2955

1 August 1948

From: Commander in Chief Pacific and U. S. Pacific Fleet.  
To: Commander Naval Forces, Marianas.  
Subject: War Crimes and related matters; authority in connection with.

1. All authority in connection with war crimes and crimes occurring during the course of the war charged against Japanese nationals and others who worked with, were employed by or served in connection with the former Japanese Imperial Government, heretofore vested in The Commander Marianas Area by virtue of my authority as Commander in Chief U. S. Pacific Fleet and Pacific Ocean Areas, and now as Commander in Chief Pacific and U. S. Pacific Fleet, is vested in Commander Naval Forces, Marianas.

2. In connection with the above, Commander Naval Forces, Marianas is vested with authority 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.

3. Nothing in this letter limits the inherent authority of a military commander to convene military commissions.

/s/ D. C. Ramsey  
D. C. RAMSEY

Copy to:  
JAG

A true copy. Attest:

*James P. Kenny*  
James P. Kenny,  
Lieutenant, U. S. Navy,  
Judge Advocate.

D

0252



起訴及罪状次日に於ける異議

被告人 勝久精史

弁護人 高野雄二郎

被告人勝久精史は下記の理由により本件起訴及罪状次日に於ける異議を申立てる。

第一、罪状次日に於ける全般的異議

本件罪状次日三角の四は同一事件の二室若は三室の室級指定にある。即ち

罪状次日其の一	罪状次日其の二	罪状次日其の三
a		b
b	a	c
c	b	d
d		e
e	c	

此等の事件は夫々全く同一の事件を重複列挙に於てあるとして事件それ自体は五角である拘らば二箇の事件として起訴されてゐるのである。上記横列の二室若は三室の事件は夫々唯一の事件であつて其の犯罪たる行為は夫々唯一である。一箇の行為に二箇又は三箇の罪名に當つたものあるときは其の内の最も罪名のものは全き罪名のものの中へ吸収されるところは Naval Courts & Boards の Section 19 の規定の精神から判断に當るであり又刑法上の確立した原則でもある。それ故に唯一の行為を複数の教團の罪名を以て起

許すことは被告人の実体的権利を侵害するものである。

### 第二 罪状次日其の一及其二に於ける異議

罪状次日其の一は被告人勝久の労働を強制し、  
不健康且危険なる作業に就かめしと謂ひ、罪状次日其の二  
は勝久の労働を強制作業に直接関係ある作業に就かせし  
と謂ふことと謂われ、あるが各罪状次日の冒頭に明記  
せられてある通り、勝久は日本海軍に雇はれてわが国  
人であった。然るに1907のHayne條約に於て1929のGeneva  
Prisoners of War Conventionに於て労働は主として捕虜の  
福利と明かに規定にあるし、又後者の41年条には收容中の  
労働は責任ある者たる将校の官下と置かれしとを規定し  
てある。それ故 Wake 島の收容せられてわが労働は日本海  
軍の責任ある将校の官下と置かれてゐたのである。一民間人であ  
る被俘虜人に過かたがた勝久の官下と置かれたことは明白の  
理である。其の指揮官から特別の指令を以て勝久は  
労働を作業に就かせる権限はない。其の指令を以て  
せざる限り收容中の労働を罪状次日其の一及其二の目的に  
違反行為とあることは勝久には不承知である。然るに本  
件起訴状には勝久の其の労働の労務使用の特別指  
令を附与せられたことは記載に於てない。然るに勝久は  
従つて之を以て戦争法規に於ては慣習法を以てして起訴  
することは明かに被告人の实体的権利を侵害するものである。

### 第三 罪状次日其の一に於ける異議

指揮官は「不健康又危険なる作業」と謂ふ語を正  
誤用に於てしを指摘せねばならぬ。Geneva條約の禁止

1) の「不健康又は危険ある作業」といふのは作業それ自体が不健康あるか或は危険あることを意味する。であつて其の時の状況又は周囲の状況が不健康あると又は危険あることを意味するのではない。

第二答報解除条と関係するものは必ずしも現実の危険の行はれてゐる時間を意味するものではない。吾等の裁判中の争點上答報の撤せられしよりそれの解除に至る間十時間十五時間以上を過ぎるものと認められた。其の間始終吾等は改定条の中に過酷にわたるのではない。答報の解除は其の時の状況の100%の安全を要するに過ぎない。而してそれは必ずしも留めざる危険がその過剰にあることを意味するものではない。

山事件 上記の理由に依り飛行場道路の修築は「不健康又は危険ある作業」ではない。

10) 事件 同様に高角砲の修築も「不健康又は危険ある作業」ではない。

11) 事件 之も前掲の理由に因り兵隊の乗る積卸又は荷役は必ずしも「不健康又は危険ある作業」とはなへない。

本章の事件を以て戦争法大罪に罰方法の違ひ行為として起訴することは被告人の实体権利の侵害である。

第三、罪状次日果の二に於ける異議

1) 此の罪状次日の下に列挙せられた事件はどれも戦

(3)

E(3)

0255



争法規定に慣習法違反行為であると横断は主張するのである。

然し作戦の準備の禁止使用禁止に関する Geneva 11 条の規定は一般明であるため主として事実問題に関するは其の解釈がさかさまである。殊に「作戦行動の直接関係にある作業」については事実問題とには相違ない困難な事柄であつて戦争の元凶が胎されてゐるのである。Oppenheim の国際法にも通じ方々である。

禁止作業に関しては第 31 条 (1929 年 Geneva POW's Convention を指す) は次の通り規定にある。即ち「作戦の直接関係にある戦争の作戦の直接関係にあるものから各種兵器又は作業の製造に或は交戦部隊の何れか一方の資材の運搬に作戦を便せしむることを禁止する」と此の禁止事項は「12-5」も明確では無いのである」 (Lauterpacht, Oppenheim's International Law, Vol II 6th Ed. Warfare on Land, § 126b p 298)

而して其の解釈としては

「作戦を制限しに要する又は之と同様のものを構築せしむることを得るや否やの内部又は外部の民間人を制限しに及ぼす作業をなさしむることを得るや否やの内部又は外部の民間人を交渉せしめらるるのである」と

論じらるるのである。

仍て各事件の如何に果して之が上記 11 条の禁止作業に

(4)

E(4)

0256

該するや否やを検討に欠る

- (a) 事件 即ち飛行場施設の修繕
- (b) 事件 即ち高角砲の修繕
- (c) 事件 即ち大砲の取付け及据付
- (d) 事件 即ち機関銃の部品の製作及改造
- (e) 事件 即ち砲架の架設
- (f) 事件 即ち望遠鏡及鉄條網の建設

之等は何等の修繕の禁止作業には該当してゐないのである。従つて此等を修繕するに起訴することは被告人の実際の権利の侵害である。

(2) 罪状次目某の二は修繕を修繕行部へ直接関係のある作業に就かせるに起訴の理由となつてゐる。然るに(a)及(b)は「...アメリカ合衆国海軍部隊により現実に攻撃せられ且修繕の解除せられたる時...」と書き添へてあり、然とも其の字句は此の次目にも全く不必要である。此の罪状次目の下を在りては此の字句は起訴理由の曖昧を與へたるものでありて被告人の実際の権利の侵害と言はねばならぬ。

第五 罪状次目某の三に於ては要了

(1) 此の罪状次目の下各事件は修繕の指示及管理であるといふが起訴の理由となつてゐるが、(a)各事件は「...砲臺上の武器 即ち拳銃を以て... 攻撃の威嚇を示し...」と記載してある。それと同時に事件(b)(c)(d)(e)は「...を強制的に意図を以て...」と書き加へてある。

(5)

E(5)

Naval Courts and Boards に依れば此等各事件に就  
裁せられたる行爲が犯罪を構成するか否かは特に故意の存在  
を必要條件とし、このため assault のみで犯罪とふるので  
ある。

(2) 尚ほ 1) の事件 - 飛行場滑走路の修築 1) 事件 - 高  
角砲の修築は右罪状次目の謂ふ如く艦使虐待といふことは  
あるまいのである。

仍て是等から犯罪及罪状次目の記載は被告人の實際  
の権利を侵害するものである。

譯 言

高野純一郎



## OBJECTIONS TO THE CHARGE AND SPECIFICATIONS

Delivered by Mr. Junjiro Takano  
Counsel for the accused Katsumi, Seishi.

The accused, Katsumi, Seishi, objects to the charge and specifications of the instant case on the following grounds:

I. General Objections to the charge and specifications. In the 3 specifications of the instant case the same incidents are alleged twice or three times. Specification 1(a) and Specification 3(b) are the same; Specification 1(b), Specification 2(a) and Specification 3(c) are the same; Specification 1(c), Specification 2(b) and Specification 3(d) are the same; Specification 1(d) and Specification 3(e) are the same; and Specification 1(e) and Specification 2(c) are the same.

These are duplication or triplication of identical incidents, i.e., there are really five alleged incidents as a matter of fact, while they are alleged as 12 counts. Two or three <sup>incidents</sup> alleged in the similar paragraphs enumerated above are one and the same incident and the alleged criminal act therein is only one. In the light of the intendment of Section 19, Naval Courts and Boards, it is requisite and an established principle in criminal law that where a single act falls under the categories of two or more offenses, the specification for the lesser offense should be included in the more serious charge. Therefore, it is prejudicial to the substantive rights of the accused to charge one act under several specifications.

### II. Objections to Specifications 1 and 2.

Specification 1 alleges that the accused Katsumi forces prisoners of war to perform unhealthful and dangerous work, and Specification 2 that the accused forced the prisoners of war to perform work directly related to war operations. As is expressly stated in the beginning of each specification, Katsumi was a civilian employed by the Imperial Japanese Navy. However, The Hague Convention of 1907 and the Geneva Prisoners of War Convention of 1929 clearly provide that prisoners of war are within the power of <sup>the</sup> hostile power which captured them; the latter specifically states that prisoners of war during internment should be put in the custody of a responsible military officer. Therefore, the prisoners of war who were interned on Wake Island were in the custody of a responsible officer of the Japanese Navy, not in the custody of the accused, Katsumi, who was nothing but a civilian, an employee of the Navy. Katsumi had no right to use prisoners of war for work, unless the commanding officer of the Navy unit authorized him to do so. In so far as Katsumi had no such authorization, it was impossible legally for him to have violated international law against the prisoners of war under internment, as alleged in Specifications 1 and 2. The charge and specifications in this case do not state that the accused Katsumi was given such authorization to use prisoners of war on work. Therefore, it is clearly prejudicial to the substantive rights of the accused to charge him with violation of the law and customs of war which he could not by any means have committed.

### III. Objections to Specification 1.

Counsel for the accused must point out the phrase "unhealthful and dangerous work" has been misapplied by the judge advocate. "Unhealthful and dangerous work" which is prohibited by the Geneva Prisoners of War Convention means that the work itself is intrinsically unhealthful or dangerous. It does not imply that the situation at the time or the surrounding circumstances are unhealthful and dangerous.

Furthermore, "before the all clear was sounded" does not necessarily mean "during actual air attacks." According to our experience during the war, we have at times spent more than 10 or 15 hours in a condition of alarm before the all clear was sounded. During this long alarm condition, we were not always in the air raid shelters. The signal for all clear only meant one hundred percent safety at the time when it was sounded. Therefore, it did not always mean imminent danger still impending.

In regard to the incident in paragraph (b) the repairing of air runway is not "unhealthful and dangerous work" on the foregoing grounds.

In regard to the incident alleged in paragraph (c) for the same reasons, the repairing of the anti-aircraft gun is not "unhealthful and dangerous work."

In regard to the incident set forth in paragraph (e) on the same ground, it is not always "unhealthful and dangerous work" to discharge, unload, and transport ammunition and bombs.

It is prejudicial to the substantive rights of the accused to charge him with these incidents as violations of the law and customs of war.

#### IV. Objections to Specification 2.

(1) The prosecution contends that the incidents alleged under this specification are all in violation of the law and customs of war.

However, the provision of the Geneva Prisoners of War Convention as regards prohibition of the use of labor of prisoners of war is too general in scope. As regards the application of this provision to actual problems, its interpretations are controversial<sup>and</sup> conflicting. Especially the phrase "work directly related to war operations" is actually very difficult to interpret and includes many controversial points. Oppenheim, in his "International Law" states as follows: "Works 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 on the transport of material destined for the combatant units. These provisions are not altogether free of ambiguity."

He further states in the foot-note: "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 works." (Laughterpechat, Oppenheim's International Law, Vol. II, 6th Ed., Warfare on Land, Section 126, p 298.)

Let us examine whether each of these alleged incidents falls within the category of the prohibited work which I have referred to above:

- Incident of paragraph (a), namely, the repair of air strip,
- Incident of paragraph (b), namely, the repair of anti-aircraft guns,
- Incident of paragraph (d), namely, the removing and installing guns,
- Incident of paragraph (e), namely, the making parts for and converting machine guns,
- Incident of paragraph (f), namely, the construction of gun emplacements,
- Incident of paragraph (g), namely, the construction of trenches and barbed entanglements,

are not incidents which come under the prohibitions of the Convention, whereas the accused is charged with these incidents in violation of the above mentioned Convention. This is prejudicial to the substantive rights of the accused.

(2) The ground for allegation in Specification 2 is that the accused forced American prisoners to perform works directly related to war operations. However, paragraphs (a) and (b) state "...under actual attack by a United States of America Task Force and before the all clear was sounded,..." This phraseology is entirely unnecessary for this specification. In this specification, this phraseology only serves to make the allegation ambiguous, and is prejudicial to the substantive rights of the accused.

V. Objections to Specification 3.

(1) The reason for alleging each incident under this specification is that the accused abused and mistreated American prisoners of war. It is alleged in various paragraphs, "assault with a dangerous weapon, to wit, a pistol" and in paragraphs (b), (c), (d), (e) and (i) it is further alleged, "... with intent to force them...."

According to Naval Courts and Boards, in order that these alleged incidents constitute crimes, the existence of intent is not an essential element. A mere fact of assault is sufficient to constitute a crime.

(2) Furthermore, in the incident in paragraph (c), namely, the working on an aircraft runway, and the incident in paragraph (d), namely, the repairing of anti-aircraft guns, cannot be considered to be either abuse or mistreatment as alleged.

Such descriptions in the charge and specifications are prejudicial to the substantive rights of the accused.

Respectfully,

/s/ Takano, Junjiro.

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

*Eugene E. Kerrick, Jr.*  
EUGENE E. KERRICK, JUNIOR,  
Lieutenant, U. S. Naval Reserve,  
Interpreter.



OBJECTION TO THE CHARGE AND SPECIFICATIONS IN THE CASE OF MR.  
KATSUMI, SEISHI, A CIVILIAN, DELIVERED BY COMMANDER MARTIN E.  
CARLSON, USNR, COUNSEL FOR THE ACCUSED.

The accused objects to the charge and specifications on the ground that they are vague and indefinite.

The phrase, "in violation of the law and customs of war," does not fully apprise the accused of the law or the custom of war he is charged with having violated. In 5 C.J. Assault and Battery, Section 175, the rule of law is: "In accordance with the well settled rule of federal jurisprudence that there are no common law offenses against the U.S. assaults committed in territory under the exclusive jurisdiction of the U.S. are punishable only where a punishment is provided by statute." citing U.S. v. Barnaby, 51 Fed 20 and U.S. v. Williams, 2 Fed. 61, 6 Sawy 244.

The authority of a court martial is statutory, citing the case of Runkle v. United States, 122 U.S. 543, 30 LEd 1167, 7 Sct 1141. A military commission is but another military court, an exceptional military court. According to Article D-13 Appendix D, Naval Courts and Boards, the "specification should show on its face the circumstance conferring jurisdiction." This is not done in the specifications of the charge. For this reason the specifications are further objectionable.

The rule set forth in 5 C.J. Assault and Battery, section 258 is that: "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." In Section 263 Ibid. the rule is clearly set out as follows: "An indictment for an assault and battery must show upon its face that the court has jurisdiction of the offense, otherwise it will be bad."

We further object to the specifications because the second and third specifications are but a duplicate of the first specification. The rule that only one offense can be charged in one count of an indictment is a rule that should be known to every pleader. From page 45, U.S. Code Annotated, Title 18, Pocket Part, the case of U.S. v. Runion: D.C. Ky 1942, 47 F. Supp. 594 is cited to support the rule that "Where the same transaction constitutes a violation of two distinct statutory provisions the test to be applied to determine whether there are two offenses or only one is whether each provision requires proof of an additional fact which the other does not." We hold that the second and third specifications are but a duplication of the first specification and should therefore be struck from the charge.

Section 19 of Naval courts and Boards states, "The law permits as many charges to be preferred as may be necessary to provide for every possible contingency in the evidence." We fail to find anywhere a rule which permits a duplication of the same offense under and second and third specifications to the same charge. If this were permitted an accused could be charged with the same offense ad finitum and could be found guilty of the same offense many times. The charge set forth here is but a simple assault with no injury alleged to have been sustained as a result of the battery.

The makers of our Constitution provided for this by the Fifth Amendment, which reads in part: "...nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb." Not even the ex post facto SCAP rules allow trial twice for the same offense.

The prosecution cannot blow hot and cold and therefore if there are separate offenses then it must be charged in a separate count.

In 27 Am.Jur. "Indictments and Informations," Section 124, pp 683-684 the rule is: "Duplication in criminal pleading is the joinder of two or more distinct and separate offenses in the same count of an indictment or information. (8) As sometimes stated, the rule is that offenses created by different statutes, (9) or those to which different punishments are annexed, cannot be included in the same count. (10)" citing the case of Hamilton v. State, 129 Fla. 219, 176 So. 89, 112 A.L.R. 1013, and many other cases.

One offense only can be charged in one count. We know of no navy rule of law or Federal rule which permits such pleading as is found in the present charge and specifications. Therefore, the duplicate specifications must either be struck from the charge altogether or they must be made a separate charge.

The specifications are founded upon the same incidents; and the charge as set forth in the specifications are not the basis for a war crime. It is but a simple assault by one civilian upon another civilian and no injury is alleged nor is any breach of the peace alleged.

The specifications do not follow either the common law or the statutory form of the offense of assault and battery. In 5 C.J. Assault and Battery par. 183 the case of People v. Sullivan, 4 N.Y.Cr. 193 is cited as authority for the rule that an intent to do bodily harm is a requisite of criminal assault. No such intent is alleged in any of the specifications but only an intent to have the prisoners do work is alleged. The specifications are faulty and do not set forth an offense either at common law or by statute.

Respectfully,

  
MARTIN E. CARLSON.

REPLY TO THE OBJECTIONS OF THE ACCUSED  
TO THE CHARGE AND SPECIFICATIONS  
Delivered by  
LT James P. Kenny, USN, Judge Advocate.

Commander Carlson of defense counsel objects to the charge and specifications on the ground that they are vague and indefinite in that the law and customs of war violated are not set forth. Naval Courts and Boards, Section 27 states that: "It is not essential to state in a specification that an offense was committed in breach of any Federal statute....law of the state....in which the court is sitting....as the court takes judicial notice of such....statute....State law....under which the charge is laid...." Here the law alleged to have been violated is the law of war which is common to all civilized nations; hence this or any other court can take judicial notice of it.

Commander Carlson argues that there are no common law offenses against the United States and since there is no statutory law making violation of the law of war a crime, this military commission is without jurisdiction. On this point the judge advocate quotes from the decision of the United States Supreme Court in the Yamashita case as follows: "We further pointed out (referring to decision in ex parte Querin, 317 U.S. 1) that Congress, by sanctioning trial of enemy combatants for violation of the law of war by military commission, did not attempt to codify the law of war or to mark its precise boundaries. Instead by Article 15 it had incorporated, by reference, as within pre-existing jurisdiction of military commissions created by appropriate military command, all offenses which are defined as such by the law of war, and which may constitutionally be included within that jurisdiction. It thus adopted the system of military common law applied by military tribunals so far as it should be recognized and deemed applicable by the courts, and as further defined and supplemented by the Hague Convention to which the United States and the Axis powers were parties." (In re Yamashita 327 U.S. 1).

Commander Carlson properly argues that a specification should show on its face the circumstances conferring jurisdiction. By the precept convening this commission, authority was conferred to try Japanese nationals charged with offenses committed against United States Nationals. Such requisites are complied with in the language of the specifications.

Commander Carlson further objects on the ground that the second and third specifications are a duplication of the first specification. The falsity of this contention is obvious when it is noted that under the first specification only five incidents are alleged, whereas under the second there are seven incidents, and ten under the third specification. It is true that some of these incidents are alleged under all three specifications but in each instance different elements of proof are required. The prosecution must show in order to prove its case that a different phase of the law of war was violated with reference to each of the three specifications. Naval Courts and Boards, Section 29, states: "A specification should not allege two or more offenses in the alternative or disjunctive. Even when a charge is predicated upon a statute, the words of which are in the alternative, then the alternative offenses thus provided for should, if it be desired to allege more than one offense, be set out in separate specifications." Here it is alleged that the accused violated the law and customs of war in more than one way and such violations are properly set forth in separate specifications.

The contention of Commander Carlson that the accused is being put in double jeopardy because he is being charged in more than one specification is obviously without merit. A person can only be placed in double jeopardy



when he is tried a second time for the same offense. It is not and cannot be claimed that this accused was previously tried for the alleged violations of the law and customs of war.

Commander Carlson correctly states the law on Duplication in quoting from American Jurisprudence; however, he errs in assuming that the court in criminal proceedings is analogous to the charge in our form of pleading, whereas its counterpart is the specification.

In his objection Commander Carlson relates that intent to do bodily harm is a necessary element of the crime of assault and battery and claims that the offenses under specification 3 are defective because they do not include any such allegation. The incidents referred to do not allege an assault and battery. They allege an assault with the intent to commit a felony and the offense is properly charged. It should be noted also that the accused is charged with a violation of the law and customs of war and not assault as inferred by Commander Carlson. The instances of assault set forth under the third specification are merely descriptive of the manner in which the law and customs of war were violated.

The objections raised by Mr. Takano as to duplicity have been answered in my reply to similar objections by Commander Carlson. Most of the content of the objections raised by Mr. Takano are not objections to the form or technical correctness of the charge and specifications, but consists of argument as to the merit of the charge against the accused. This is not the time for any such argument. In paragraph V he confuses the elements of simple assault with those of felonious assault.

The judge advocate believes that the offenses all being of the same nature, i. e., violations of the law and customs of war, they are properly laid under the single charge. It is further believed that the three specifications set forth in simple and concise language facts sufficient to constitute the offense charged.

It is respectfully requested that the objections of the accused be overruled.

Respectfully,

*James P. Kenny*  
JAMES P. KENNY.

FF12/A17-13(2)  
02-JDM-fsk

THE PACIFIC COMMAND  
AND UNITED STATES PACIFIC FLEET

Headquarters of the Commander Naval Forces Marianas  
Naval Forces Marshalls-Carolines and Marshalls-Carolines Area

Serial:

13555

2 SEP 1948

From: The Commander Naval Forces, Marianas.  
To : Lieutenant James P. KENNY, USN, and/or  
your successors in office as Judge Advocates,  
Military Commission, Commander Naval Forces, Marianas.

Subject: Charge and Specifications in the case of KATSUMI, Seishi.

1. The above named person will be tried before the military commission of which you are judge advocate upon the following charge and specifications. You will notify the president of the commission accordingly, inform the accused of the date set for trial, and summon all witnesses, both for the prosecution and for the defense.

Y (1)

0266

Received a true and correct copy, both in English and Japanese, of  
the Charge and Specifications thereunder on the 3 day of September,  
1943.

Katsumi, Seishi  
KATSUMI, Seishi

The above acknowledgement read to the accused in Japanese before he  
signed.

Engine J. Kerrick Jr.  
ENGINEER J. KERRICK, JUNIOR,  
Lieutenant, U. S. Naval Reserve,  
Interpreter.

0267



CHARGE

VIOLATION OF THE LAW AND CUSTOMS OF WAR

Specification 1

In that KATSUMI, Seishi, 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 unhealthful and dangerous work, in violation of the law and customs of war, as follows:

NP (a) On or about February 24, 1942, when Wake Island was under actual attack by a United States of America Task Force and before the all clear was sounded, force from an air raid shelter Francis C. Campbell, Edwin Mang Sook Lee, Warren Oscar McGill, Patrick Kahaumea Aki, and other American prisoners of war, names to the relator unknown, and compel them, the said American prisoners of war, to fight fire aboard a burning dredge then anchored, moored, and secured in a combat area at Wake Island.

NP (b) On or about February 24, 1942, when Wake Island was under actual attack by a United States of America Task Force and before the all clear was sounded, force from an air raid shelter Swede Hokanson, William Ray, Miles R. Wardle, Porter Wardle, Leonard Ward, Theodore Granstedt, Jr., and other American prisoners of war, names to the relator unknown, and compel them, the said American prisoners of war, to repair an aircraft runway in a combat area at Wake Island.

NP (c) On or about February 24, 1942, when Wake Island was under actual attack by a United States of America Task Force and before the all clear was sounded, force from an air raid shelter Ackley, first name to the relator unknown, Albert S. Freese, Frank Hastings, James Hesson, W. T. Kennedy, Frank Migusch, A. J. Paskowicz, Henry Stanley Wilson, and other American prisoners of war, names to the relator unknown, and compel them, the said American prisoners of war, to repair antiaircraft guns in a combat area at Wake Island.

✓ (d) On or about March 23, 1942, order and compel Edwin Mang Sook Lee, Adam Kapaole, Robert Kapehi, and Patrick Kahaumea Aki, American prisoners of war, to dive for, without proper diving equipment, and remove a live torpedo from its position on or near the beach of Wilkes Island at Wake Island, by securing a wire cable to said torpedo submerged in water varying in depth from three (3) to twenty (20) feet.

NP (e) During the period indicated, exact dates unknown, compel Edwin Mang Sook Lee and other American prisoners of war, names to the relator unknown, to discharge, unload, and transport ammunition and bombs from Japanese vessels.

Specification 2

In that KATSUMI, Seishi, 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, as follows:

NP (a) On or about February 24, 1942, (when Wake Island was under actual attack by a United States of America Task Force and before the all clear was sounded,) force from an air raid shelter Swede Hokanson, William Ray, Miles R. Wardle, Porter Wardle, Leonard Ward, Theodore Granstedt, Jr., and other American prisoners of war, names to the relator unknown, and compel them, the said American prisoners of war, to repair an aircraft runway used for Japanese military operations at Wake Island.

NP (b) On or about February 24, 1942, (when Wake Island was under actual attack by a United States of America Task Force and before the all clear was sounded,) force from an air raid shelter (Ackley, first name to the relator unknown,) Albert S. Freese, Frank Hastings, (James Hesson, W. T. Kennedy,) Frank Migusch, (A. J. Paskowicz, Henry Stanley Wilson,) and other American prisoners of war, names to the relator unknown, and compel them, the said American prisoners of war, to repair antiaircraft guns for use by the Japanese in the defense of Wake Island.

✓ (c) During the period indicated, exact dates unknown, compel Edwin Mang Sook Lee and other American prisoners of war, names to the relator unknown, to discharge, unload, and transport ammunition and bombs from Japanese vessels. X

✓ (d) During the period March 1, 1942 to April 30, 1942, compel Ryland Francis Barnett, Edwin Mang Sook Lee, and other American prisoners of war, names to the relator unknown, to remove guns from Japanese destroyers and install them ashore as coastal defense guns. X

✓ (e) During the period indicated, exact dates unknown, compel Ryland Francis Barnett, Albert S. Freese, Warren O. Rogge, and other American prisoners of war, names to the relator unknown, to make parts for and convert machine guns.

NP (f) During the period indicated, exact dates unknown, compel (Ryland Francis Barnett, Bill Hayns, Al Smith, and other) American prisoners of war, names to the relator unknown, to construct gun emplacements.

✓ (g) During the period indicated, exact dates unknown, compel Warren O. Rogge, Harry Leland McDonald, and other American prisoners of war, names to the relator unknown, to construct trenches and barbed wire entanglements. X

Specification 3

In that KATSUMI, Seishi, 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, as follows:

✓ (a) During the period December 23, 1941 to January 12, 1942, wilfully, maliciously, and without justifiable cause, assault, strike, and beat with fists, feet, and a club one American prisoner of war, known as "Red", further name and description to the relator unknown.

NP ✓ (b) On or about February 24, 1942, feloniously and forcibly, assault with a dangerous weapon, to wit, a pistol, (Francis C. Campbell, Edwin Mang Sook Lee, Warren Oscar McGill, Patrick Kahaumea Aki, and other American prisoners of war, names to the relator unknown, with intent to force them, against their wills, to fight fire on a burning dredge (during an actual attack by a United States of America Task Force) and did force and compel said American prisoners of war, (during the aforesaid attack by a United States of America Task Force,) to board said burning dredge.

NP ✓ (c) On or about February 24, 1942, feloniously and forcibly, assault with a dangerous weapon, to wit, a pistol, Swede Hokanson, William Ray, Miles H. Wardle, Porter Wardle, Leonard Ward, Theodore Granstedt, Jr., and other American prisoners of war, names to the relator unknown, with intent to force them, against their wills, to work on an aircraft runway, (during an actual attack by a United States of America Task Force) and did force and compel said American prisoners of war, (during the aforesaid attack by a United States of America Task Force,) to work on said aircraft runway.

NP ✓ (d) On or about February 24, 1942, feloniously and forcibly, assault with a dangerous weapon, to wit, a pistol, (Ackley, first name to the relator unknown,) Albert S. Freese, Frank Hastings, (James Hesson, W.T. Kennedy,) Frank Migusch, (A. J. Paskowicz, Henry Stanley Wilson,) and other American prisoners of war, names to the relator unknown, with intent to force them, against their wills, to repair antiaircraft guns (during an actual attack by a United States of America Task Force) and did force and compel said American prisoners of war, (during the aforesaid attack by a United States of America Task Force,) to repair said antiaircraft guns.

NP ✓ (e) On or about March 23, 1942, feloniously and forcibly, assault with a dangerous weapon, to wit, a pistol, Edwin Mang Sook Lee, Adam Kapaoe, Robert Kapehi, and Patrick Kahaumea Aki, American prisoners of war, with intent to force them, against their wills, to dive for, without proper diving equipment, and remove a live torpedo from its position near a beach of Wilkes Island at Wake Island, by securing a wire cable to said live torpedo submerged in water varying in depth from three (3) feet to twenty (20) feet, and did force and compel said American prisoners of war to dive for, without proper diving equipment, and remove said live torpedo from its said position by securing a wire cable to said live torpedo submerged in water varying in depth from three (3) feet to twenty (20) feet.

Y (4)

0270



✓ (f) During May 1942, wilfully, maliciously, and without justifiable cause, assault with a dangerous weapon, to wit, a pistol, Theodore Granstedt, Jr., an American prisoner of war.

✓ (g) During May 1942, wilfully, maliciously, and without justifiable cause, assault, strike, and beat upon the head with a sword scabbard Franklin Roosevelt Wise, an American prisoner of war.

✓ (h) During May 1942, wilfully, maliciously, and without justifiable cause, strike, beat, torture, and abuse Julius "Babe" Hoffmeister, an American prisoner of war.

✓ (i) On or about June 15, 1942, feloniously and forcibly, assault with a dangerous weapon, to wit, a pistol, Edwin Mang Sook Lee, an American prisoner of war, with intent to force him, against his will, to dive continuously without proper diving equipment for a period of approximately twelve (12) hours, and did force and compel said American prisoner of war to dive continuously without proper diving equipment for said period of time. X

✓ (j) On or about June 15, 1942, wilfully, maliciously, and without justifiable cause, feloniously assault, strike, and beat with a six (6) foot, two (2) inch by four (4) inch, club Glenn Fontes, Joe Dunn, and one other American prisoner of war, name to the relator unknown.

*C. A. Pownall*  
C. A. POWNALL,

Rear Admiral, U. S. Navy,  
The Commander Naval Forces Marianas.

cc: JAG, USN

Y (5)

0271

太平洋方面軍及  
合衆国太平洋艦隊

FOIA-713(3)  
FOIA-713(3)

太平洋方面海軍部隊 ニービー・カロン方面海軍  
部隊及びマニラ方面司令官司令部

中一三九五五号

一九四八年九月二日

後 太平洋方面海軍部隊司令官

北 太平洋方面海軍部隊司令部重法委員付  
合衆国海軍大尉ジェームズ・D・リニー 及、又は  
後事としての責任の委任者

記 勝見精史の訴訟に於ける延訴及非状項目

一 右「首」は責任者が後事たる重法委員に於て左記  
の延訴及非状項目に於て裁判せらるべし。依而責任者は其  
の日を重法委員に通報し、裁判の日時を被告に通知  
し、後事たる責任者の全責任を自己に負ふべし。

延訴

戦争法規並に慣習法の違反

非状項目 一

當時日本民間人として日本帝国海軍に留置せられた  
島の日本軍事施設に勤務し、勝見精史はアメリカ  
合衆国連合諸国及び其の属領が日本帝国と戦争状態  
に在りし昭和十六年十二月二十三日より昭和十七年九月三十日  
に在りし間、之を以て意図的に違法行為の同時同地  
に於て日本軍隊に留置せられたりしアメリカ等諸国に不健康  
且危険なる仕事を強いることを強制し、強要し、要求  
し使用し、以て左の如く戦争法規並に慣習法に違反せり。

- (1) 昭和十七年二月二十四日頃、之を以てアメリカ合衆国  
海軍部隊により現実に攻撃せられたりし且敵艦の乗組  
員を捕縛する時、フランシス・C・キャベツ、エドワード・フ  
ランクリン、マシュー・スカーマン、ボート・カバニヤ、ア  
カイ、

(ロ) 昭和二年二月二日、渡り埃のニミを以て、ガフアメリカ合衆国、我  
勤部隊にトリ現、美に攻堅セリトナリ。此等書報の末に解  
除セられ、一時、スピードボカノソ、ウィリアム・レイ、このス  
Rワード、スノーワード、シオードワード、ニキドールグレン  
スエーデンヤ、其代當局には姓名不詳、そのうち修磨  
は防三派より出づるとして、注釈し、大則、アメリカー修  
にウエー士島、戦地域内に互う航路、滑走路の修理  
を急要せり。

昭和十七年二月三日頃、アメリカ合衆国海軍部隊により、現地に攻撃せられたり且警報の未だ解除せられざる時、当局には、名不詳のアクシ、アルバート、フリス、フランク、ハスチンズ、ジョージ、ベッス、W.T. マー、ローリー、ミグス、A.T. バコ、グランド、ヘンリー、スティー、ヤン、その他、当局には、姓名不詳の、より、通常、の、海軍、隊、より、出づることとて、強制し、前記のアメリカ合衆国海軍部隊の、戦地、域、内、に、至る、方向、を、指示、し、海、軍、を、派、遣、せし。

[illegible]

正確なる時は不明なりを前記に於て工部  
官に云ふ所より其地共々同には生れざるを以て  
常に日在船より浮粟及隠れ等を捕獲す  
及捕獲する事も強要せり

當時日本民間人として日本三平国海軍に雇傭せられた工  
士島田の日本軍事務施設に勤務しありし際見積書はより力  
を以て國連合諸國及其の屬領に日本三平国と戦争状  
態に在りし昭和十六年十二月二十三日より昭和十七年九月三十日



に至る間カエを思ひに於て、意を思ひに書法的に同時同如に於て日本軍隊の抑留せらるゝありしアメリカ作戦の戦事作戦の直接関係をもつ作業をなすことも可能にして、必要し、必要し、必要し、使用し、以て左の如く戦争法規を並に扱ひて道反せり。

(イ) 昭和十三年二月二十四日、東京を以て、アメリカ合衆国、  
 朝鮮半島のより、現実に攻撃せられ、且、報告。米  
 海軍を除く。スウェーデン、ノルウェー、デンマーク、  
 ドイツ、フランス、オランダ、その他、  
 のアメリカ合衆国、防衛、より出づることを強制し、  
 作戦。の爲に、用ゐられ、  
 強要せり。

(ロ)昭和十七年二月二十四日、横濱部隊より現地の攻撃セリナリ。且、新聞の未だに解除セシヤル時、当局は姓名不詳のアムレイ、アルバート・フリス、フランク・バスケス、ジミ・ラスベクス、W.T. ケネディ、フランキニグ、A.J. パスコ、ダウ、ヘンリー・スターキー等、その他当局は姓名不詳のアムレイ修官の一三番より出づることを強執し、前記アムレイ修官の日本人が「エーサ島」の防衛を爲すに用ゐる、高岡村の修理を要せり。

(ハ) 正確なる日時 は不明なるを以て其間中に於てエド  
ワインズクリ、其地当局には姓名不詳のアメリカ人等  
僅に日本船より弾薬米及爆弾を揚陸荷却  
反撃したることを強要せり。

(二) 昭和十七年三月一日より昭和十七年四月三十日の三ヶ月間  
ライラッド・フランク・バーネ・ト・エドウィン・マクスクリー 其也  
両氏には姓名不詳のアメリカ人等に日本の配逐艦隊  
より欠陥を取上げ、一七沿岸防備を破るとして反逆する  
ことを企て強要せり。

(丙) 正確なる日時に不明なるも、前記期間中に於て、  
ランド・ランシス・バーネツト、アバート・プリース、ワレン・  
ロズ、その他当局に姓名不詳のアメリカ人等、  
一部を自作衣及改裝衣を強奪せり。

(ハ) 正確なる日時是不明なるも、前記期間中に於て、  
アムステルダム、ハーグ、ロンドン、その他諸局には、  
姓名不詳のアメリカ俘虜に、家を建設  
する事を強要せり。

(ハ) 正確なる日時是不明なるも、前記期間中に於て、  
アムステルダム、ハーグ、ロンドン、その他諸局には、  
姓名不詳のアメリカ俘虜に、斬首及絞首の建  
設を強要せり。

### 四 非人項目三

当時日本民間人として日本帝國海軍に在籍せりや、  
其島の日本軍施設に、一見、暗見、精吏は、  
全兵隊連合諸國及其の属領が日本帝國と戦争状態に  
在りし昭和十六年十二月二十三日より、昭和十七年九月三十日の  
三ヶ月間、ウエチ島に於て、合法的に、残存者の  
且非人道的に、同時に同様に、日本軍隊に、抑留せられ  
ありしアメリカ俘虜を、酷使及虐待、以て、左記の如く  
戦争法規並に慣習に違反せり。

(イ) 昭和十六年十二月二十三日から昭和十七年一月十二日の  
三ヶ月間、合法的に、正當なる理由もなく、  
と言ふ名に、知らず、以外、諸局には不明の  
一名のアメリカ俘虜を、拳銃、足及根柢にて、  
攻撃、改訂せり。

(ロ) 昭和十七年二月二十四日、合法的に、強制的に、  
武器、即ち拳銃を以て、アムステルダム、ハーグ、  
ロンドン、その他諸局には、姓名不詳のアメリカ俘虜を、  
意に反し、アメリカ合衆國機動部隊が、現実に、攻撃を  
行ひ、ある間、艦中の、渡米船上に於て、  
ことを強制的に、企圖を以て、攻撃し、且、前記、  
全兵隊連合諸國が、現実に、攻撃を行ひ、ある間、  
前記、アメリカ俘虜に、前記、艦中の、渡米船上に於  
ることを強制的に、強要せり。

(ハ) 昭和十七年二月二十四日、合法的に、強制的に、  
ある武器、即ち拳銃を以て、アムステルダム、ハーグ、  
ロンドン、その他諸局には、姓名不詳のアメリカ俘虜を、  
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ことを強制的に、企圖を以て、攻撃し、且、前記、  
全兵隊連合諸國が、現実に、攻撃を行ひ、ある間、  
前記、アメリカ俘虜に、前記、艦中の、渡米船上に於  
ることを強制的に、強要せり。

(ハ) 昭和三十七年五月中に於て、意見の相違に因りて、正當なる理由もなく一人のよりか件を常任委員のグランドスラムにエニヤ・をもて使ふ武器師を多手続にしてを棄てり。



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信安英國酒莊  
アキアア六國酒莊 信安公司

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FIRST DAY

United States Pacific Fleet,  
Commander Naval Forces, Marianas,  
Guam, Marianas Islands,  
Monday, September 20, 1948.

The commission met at 9 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,  
Lieutenant Colonel Kenneth E. Balliet, Cavalry, United States Army,  
Lieutenant Colonel Newton L. Chamberlain, Signal Corps, United States  
Army,  
Lieutenant Commander Bradner W. Lee, junior, U. S. Naval Reserve,  
Lieutenant Commander Ralph I. Gerber, U. S. Navy,  
Captain Albert L. Jenson, U. S. Marine Corps, members, and  
Lieutenant James P. Kenny, U. S. Navy, judge advocate.

Private first class Theodore J. Ferdinand, U. S. Marine Corps, entered  
with the accused and reported as provost marshal.

The judge advocate introduced Paul F. Coste, junior, yeoman first class,  
U. S. Navy, Archie L. Haden, junior, yeoman first class, U. S. Navy, and  
Elvin G. Gluba, yeoman first class, U. S. Navy, as reporters, and they were  
duly sworn.

The judge advocate introduced Lieutenant Eugene E. Kerrick, junior,  
U. S. Naval Reserve, Mr. George Kumai, Mr. Kimio Tsuji, Mr. Yoshio Akatani  
and Mr. Kan Akatani as interpreters, and they were duly sworn.

The accused requested that Commander Martin E. Carlson, U. S. Naval  
Reserve, Mr. Sadamu Sanagi, and Mr. Junjiro Takano act as his counsel.  
Commander Carlson, Mr. Sanagi, and Mr. Takano took seat as counsel for the  
accused.

The judge advocate read the precept and modifications thereof, copies  
prefixed marked "A," "B," and "C."

The judge advocate read a letter from the Commander in Chief, Pacific  
and U. S. Pacific Fleet, copy prefixed marked "D," pertaining to the juris-  
diction of this military commission.

An interpreter read the precept and modifications thereof, and the  
letter from the Commander in Chief, Pacific and U. S. Pacific Fleet pertain-  
ing to the jurisdiction of this military commission, in Japanese.

The accused objected to Lieutenant Commander Bradner W. Lee, junior,  
U. S. Naval Reserve, as follows:

The accused challenges and objects to Lieutenant Commander Bradner W.  
Lee, junior, U. S. Naval Reserve, as a member of this military commission  
on the ground that he has personally investigated the charge and that he has  
formed a positive and definite opinion as to the guilt of the accused. This  
is a valid challenge upon the grounds set forth in Section 388(b) Naval

Courts and Boards and in accordance with Sections 388 and 390, Naval Courts and Boards, if admitted by Lieutenant Commander Lee, should be sustained despite any declaration the challenged member may make.

The challenged member replied as follows:

I, Bradner W. Lee, junior, lieutenant commander, United States Naval Reserve, acknowledge the challenge of the accused and state as follows: During the latter part of 1946 and the early part of 1947, and prior to my becoming a member of the military commission ordered to convene on March 1, 1947 for the trial of certain persons to be brought before it, I had occasion to investigate certain phases of the case now before this present commission. In doing so I located and interrogated various persons and obtained sworn statements from some in the form of perpetuation of testimony, and from others in affidavit form. I also conducted correspondence with others through official channels. All of this covered a period of some four months. In thus performing my duties, as then assigned to me as a member of the War Crimes Trials office, I naturally formed an opinion to some extent prejudicial to the interests of the accused KATSUMI, Seishi, now on trial before this commission. Therefore, by reason of these things, I consider myself disqualified to sit as a member of this commission convened to try this accused.

The commission was cleared, the challenged member withdrawing.

The commission was opened. All parties to the trial entered; the commission announced that the objection of the accused was sustained and that Lieutenant Commander Lee was excused from sitting as a member in this case.

Lieutenant Commander Lee withdrew from his seat as a member.

The accused did not object to any other member.

The judge advocate and each remaining member were duly sworn. JK

The accused stated that he had received two copies of the charge and specifications preferred against him, one in Japanese and one in English, on September 3, 1948.

Mr. Takano, Junjiro, a counsel for the accused read a written objection to the charge and specifications, prefixed marked "E."

An interpreter read an English translation of the objection to the charge and specification, prefixed marked "F."

Commander Martin E. Carlson, a counsel for the accused, read a further written argument in objection to the charge and specifications, prefixed marked "G."

The accused waived the reading of this objection in Japanese in open court.

The judge advocate read a written reply to the objections to the charge and specifications, prefixed marked "H."

The accused waived the reading of this reply in Japanese in open court.

The commission was cleared.



The commission was opened and all parties to the trial entered.

Archie L. Haden, junior, yeoman first class, U. S. Navy, reporter.

The commission announced that the objections of the accused were not sustained, and that the commission found the charge and specifications in due form and technically correct.

The accused stated that he was ready for trial.

The accused, upon his own request, took the stand and was examined on his voir dire in connection with his arrest and confinement as follows:

Examined by the judge advocate:

1. Q. Are you the accused in this case?
- A. Yes.

Examined by the accused:

2. Q. Please state your address in Japan.
- A. My permanent address in Japan is 206 Seki-Machi, Mugi-gun, Gifu-ken and my present address in Japan is Takano, Kami-Kyo ku, Kyoto shi. JK
3. Q. When were you arrested?
- A. A detective came to my home in Kyoto and arrested me on about 9 January 1947.
4. Q. Were you shown a warrant of arrest when you were arrested?
- A. No, I was not.
5. Q. When you were arrested were you still employed by the Japanese Navy as a Shokutaku (Tn - a civilian employed by the Japanese Navy, ranking between a warrant officer and an ensign.)?
- A. I was not at all employed by the Japanese Navy at that time.
6. Q. At the time of the arrest, where were you working?
- A. At that time I was the manager of the Sales Department of the Fuji Dai Maru Department Store for the occupation forces.
7. Q. When were you confined at Sugamo?
- A. For two or three days I was confined at the Shimogamo Police Station in Kyoto and after that I accompanied the police and went to Tokyo and was confined at Sugamo on 14 January 1947.
8. Q. When you were confined at Sugamo, were you charged?
- A. No, I was not.
9. Q. How long did you stay at Sugamo?
- A. I was at Sugamo until 30 June 1947.
10. Q. When did you arrive on Guam?
- A. I arrived on Guam by plane on 1 July 1947.
11. Q. After arriving on Guam where were you confined?
- A. I was confined in a solitary cell at the War Crimes Stockade on Guam.

The judge advocate did not desire to cross-examine this witness.

The commission did not desire to examine this witness.

The witness said that he had nothing further to state.

The witness resumed his status as accused.

Mr. Takano, Junjiro, a counsel for the accused, read a written plea to the jurisdiction, appended marked "I."

An interpreter read an English translation of Mr. Takano's plea to the jurisdiction, appended marked "J."

Commander Martin E. Carlson, a counsel for the accused, requested that, due to his ill health, the commission adjourn until tomorrow.

The commission announced that the request was granted.

The commission then, at 11:20 a.m., adjourned until 9 a.m., tomorrow, Tuesday, September 21, 1948.

SECOND DAY

United States Pacific Fleet,  
Commander Naval Forces, Marianas,  
Guam, Marianas Islands,  
Tuesday, September 21, 1943.

The commission met at 9 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,  
Lieutenant Colonel Kenneth E. Balliet, Cavalry, United States Army,  
Lieutenant Colonel Newton L. Chamberlain, Signal Corps, United States  
Army,  
Lieutenant Commander Ralph I. Gerber, U. S. Navy,  
Captain Albert I. Jenson, U. S. Marine Corps, members, and  
Lieutenant James P. Kenny, U. S. Navy, judge advocate.  
Elvin G. Gluba, yeoman first class, U. S. Navy, reporter.  
The accused, his counsel, and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

Commander Martin E. Carlson, a counsel for the accused, read a further  
written argument in support of the plea to the jurisdiction, appended marked  
"K."

The accused waived the reading of this plea in Japanese in open court.

The judge advocate read a written reply to the plea to the jurisdiction,  
appended marked "L."

The accused waived the reading of this reply in Japanese in open court.

The commission was cleared.

The commission was opened and all parties to the trial entered.

Paul F. Coste, junior, yeoman first class, U. S. Navy, reporter.

The commission announced that the plea to the jurisdiction was not  
sustained.

Commander Martin E. Carlson, a counsel for the accused, read a written  
argument in support of the motion for a change in venue, appended marked "M."

The accused waived the reading of this motion in Japanese in open court.

Mr. Takano, Junjiro, a counsel for the accused, read a further written  
argument in support of the motion for a change in venue, appended marked "N."

An interpreter read an English translation of this motion, appended  
marked "O."



The judge advocate read a written reply to the motion for a change in venue, appended marked "P."

The commission announced that the motion for a change in venue was not sustained.

Mr. Takano, Junjiro, a counsel for the accused, read a written plea in bar of trial, appended marked "Q."

An interpreter read an English translation of this plea in bar of trial, appended marked "R."

Commander Martin E. Carlson, a counsel for the accused, read a further written argument in support of the plea in bar of trial, appended marked "S."

The accused waived the reading of this plea in Japanese in open court.

The judge advocate read a written reply to the plea in bar of trial, appended marked "T."

The accused waived the reading of this reply in Japanese in open court.

The commission announced that the plea in <sup>6</sup>bar of trial was not sustained. JK

Commander Martin E. Carlson, a counsel for the accused, read a written plea in abatement, appended marked "U."

The accused waived the reading of this plea in abatement in Japanese in open court.

The judge advocate read a written reply to the plea in abatement, appended marked "V."

The accused waived the reading of this reply in Japanese in open court.

The commission announced that the plea in abatement was not sustained.

The commission then, at 11:30 a.m., took a recess until 2 p.m., at which time it reconvened.

Present: All the members, the judge advocate, the accused, his counsel, and the interpreters.

Archie L. Haden, junior, yeoman first class, U. S. Navy, reporter.

No witnesses not otherwise connected with the trial were present.

Commander Martin E. Carlson, a counsel for the accused, read a written motion for a bill of particulars, appended marked "W."

The accused waived the reading of this motion in Japanese in open court.

The judge advocate read a written reply to the motion for a bill of particulars, appended marked "X."

An interpreter read a Japanese translation of the judge advocate's reply.

The commission announced that the motion was not sustained.

The judge advocate read the letter containing the charge and specifications, prefixed marked "Y."

An interpreter read a Japanese translation of the letter containing the charge and specifications, prefixed marked "Z."

The judge advocate arraigned the accused as follows:

Q. Katsumi, Seishi, you have heard the charge and specifications preferred against you; how say you to the first specification of the charge, guilty or not guilty?

A. Not guilty.

Q. To the second specification of the charge, guilty or not guilty?

A. Not guilty.

Q. To the third specification of the charge, guilty or not guilty?

A. Not guilty.

Q. To the charge, guilty or not guilty?

A. Not guilty.

The prosecution began.

The judge advocate read the opening statement of the prosecution, appended marked "AA."

An interpreter read a Japanese translation of the opening statement of the prosecution.

The judge advocate requested the commission to take judicial notice of the following:

1. That a state of war existed between the United States of America, its allies and dependencies and the Imperial Japanese Empire during the period from December 23, 1941 to September 30, 1942.

2. That Wake Island and Wilkes Island have been possessions of the United States of America since July 4, 1898.

3. That Wake Island and Wilkes Island were occupied by the armed forces of the Imperial Japanese Empire from December 23, 1941 to September 30, 1942. JK

4. That Wake Island and Wilkes Island are part of the area under the command of the Commander in Chief Pacific and U. S. Pacific Fleet.

5. The Geneva Prisoners of War Convention of July 27, 1929 and of the fact that although Japan has not formally ratified this convention, it agreed through the Swiss Government to apply the provisions thereof to prisoners of war under its control, and also, as far as practicable, to interned civilians.

and in particular the following portions of this convention:

Chapter 1 - Article 2

"Prisoners of war are in the power of the hostile Power, but not of the individuals or corps who have captured them.

"They must at all times be humanely treated and protected, particularly against acts of violence, insults and public curiosity.

"Measures of reprisal against them are prohibited."

Chapter 2 - Article 7

"Prisoners shall not be needlessly exposed to danger while awaiting their evacuation from the combat zone."

Chapter 3 - Prohibited Labor

Article 31

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

Article 32

"It is forbidden to use prisoners of war at unhealthy or dangerous work.

"Any aggravation of the conditions of labor by disciplinary measures is forbidden."

6. The Hague Convention<sup>no. 12</sup> of October 18, 1907 and the Annex thereto, and of the fact that the same was signed and ratified by Japan. JK

And in particular the following portions of the Annex to this convention:

Chapter 1 - Article 3

"The armed forces of the belligerent parties may consist of combatants and noncombatants. In the case of capture by the enemy, both have a right to be treated as prisoners of war."

Chapter 2 - Article 4

"Prisoners of war are in the power of the hostile Government, but not of the individuals or corps who capture them.

"They must be humanely treated.

"All their personal belongings, except arms, horses, and military papers, remain their property."

Article 6

"The State may utilize the labour of prisoners of war according to their rank and aptitude, officers excepted. The tasks shall not be excessive and shall have no connection with the operations of the war."



Commander Martin E. Carlson, a counsel for the accused, made an oral objection to the commission taking judicial notice, a brief of which is appended marked "CC."

The judge advocate made an oral reply to the objection of Commander Carlson, a brief of which is appended marked "CC."

The commission was cleared.

The commission was opened and all parties to the trial entered.

Elvin G. Gluba, yeoman first class, U. S. Navy, reporter.

The commission announced that the objection was not sustained, and that it would take judicial notice of the items as requested by the judge advocate.

A witness for the prosecution entered and was duly sworn.

Examined by the judge advocate:

1. Q. State your name, residence, and occupation.  
A. My name is Edwin Lang Sook Lee; I am an American citizen born in Honolulu, and now I am employed by the United States Army Signal Corps. I was born August 24, 1916. I reside at 548 K Road, Honolulu.
2. Q. If you recognize the accused, state as when.  
A. I do; as Mr. Katsumi.
3. Q. Were you in the employ of Contractors Pacific Naval Air Bases in the month of December 1941?  
A. I was employed by G. A. U. S. Navy, who was a contractor on Wake and worked on the tug BIONEER as a deck hand.
4. Q. Did anything unusual occur at Wake Island in the month of December 1941?  
A. Yes, on December 23, 1941 Wake Island fell to the Japanese forces.
5. Q. Were you taken a prisoner at that time?  
A. Yes, I was taken a prisoner.
6. Q. Up until what time did you remain a prisoner on Wake Island?  
A. I was prisoner on Wake from December 23, 1941 to September 30, 1942.
7. Q. During that time did you come to know the accused Katsumi?  
A. Yes. During that time I seen Katsumi mostly every day and he gave us orders to go out and work and load ships and other kind of work on Wake.
8. Q. When you say "he gave us orders," to whom do you refer?  
A. I refer to Katsumi.
9. Q. To whom did Katsumi give orders?  
A. Katsumi gave us orders.
10. Q. During the period you were a prisoner on Wake Island was there any body from the Japanese forces who was particularly in charge of the American prisoners of war?  
A. I seen only Katsumi and he was the one that gave us orders.

11. Q. Do you recall anything unusual happening in the month of February 1942 on Wake Island?
- A. Yes. On February 24, 1942 we were attacked by a United States Naval Task Force. We were shelled, bombed, and strafed by United States planes.
12. Q. At what time of day did that attack begin?
- A. I would say the attack began about six o'clock in the morning.
13. Q. Where did you go after the commencement of the attack by the American Naval Task Force?
- A. When I first saw the attack coming to Wake, we ran back to our prison compound - to a dugout in our compound.
14. Q. On what part of the island was this dugout located?
- A. The dugout was located in our compound which was on Wake.
15. Q. Were there any other prisoners of war with you in the dugout on that morning?
- A. Yes, there were 350 other prisoners of war in that same dugout.
16. Q. Did anything unusual happen during the time that you were in the dugout?
- A. Yes.
17. Q. Tell this commission about it.
- A. During that time in the dugout when the raid was on by our Task Force, we were all down below. Katsumi came down and ordered us out to fight the fire on the dredge COLUMBIA which was struck by our forces. When I first noticed Katsumi, he came down to the dugout and the first word I heard him say was "all dredge hands and boat crew out to fight fire on dredge COLUMBIA." The prisoners of war then refused to go out because the raid was still in progress. Katsumi then drew his gun and said, "This is an order," if anyone would refuse he would shoot them. I was right opposite Katsumi in the dugout when he drew his gun. He looked at me and knew I was from the boat crew and ordered me out immediately. Then we came out of the dugout we were herded on trucks and sent down to the water front. While enroute to the water front I could still see the American forces out on the horizon. Then we got to the water front, we got aboard the tug PIONEER with a load of the deck hands and went out to fight the fire. We fought the fire for about an hour to an hour and a half and then we were brought back to the prison compound. During the course of this raid and after the raid no "all clear" was given by the Japanese, not until we came back to our dugout in the later part of the afternoon.
18. Q. When you speak of "dredge hands," what dredge are you referring to?
- A. When I refer to dredge hands I mean all personnel that were connected with the dredge COLUMBIA.
19. Q. When you refer to "boat crew," what boat are you referring to?
- A. When I refer to boat crew, the boat crew consisted of myself, Adam Kapaole, Patrick Kahaumea Aki, Robert Kapehi, and Mr. Chung that were one bunch of us on the tug PIONEER.
20. Q. Do you recall the names of any of the other prisoners of war that fought this fire on board the dredge COLUMBIA on that day?
- A. Yes, Adam Kapaole, Patrick Kahaumea Aki, Robert Kapehi, Mr. Chung, Jack Sullivan, Elmer McKay and others who I don't recall now.

21. Q. For how long a period did you fight the fire aboard the dredge COLUMBIA?

A. We fought the fire for about an hour to an hour and a half.

22. Q. At about what time of day was it when you started to fight this fire?

A. I would say it was about nine o'clock.

23. Q. Do you recall at what time the "all clear" signal was sounded on that day?

A. The time is not exactly known to me, but it was late in the afternoon.

24. Q. Who from the Japanese forces on Wake was present during the time you were fighting this fire?

A. Katsuri and two other Japanese were there that were supposed to be foremen.

25. Q. Did anybody direct the fire fighting?

A. All orders came from Katsuri.

26. Q. Do you recall anything unusual happening on Wake Island about March 23, 1942?

A. Yes.

27. Q. What happened about that time?

A. On March 23, 1942 Katsuri came in our compound and ordered the boat crew out to get an American torpedo. Katsuri approached me and told me I had to dive for an American torpedo. I told him it was very dangerous. He said that the warhead and the priming cap had been taken off and it wasn't dangerous. When we went down towards the water front this torpedo was on Wilkes Island. We went out to our tug PIONEER, all my crew. It was Adam Hapule, Patrick Aki, Mr. Chung, and Robert Kapehi, Jack Sullivan, and Elmer McKay. When we approached Wilkes Island from the sea I could see the torpedo off shore which was about three feet of water, then I could see the warhead on the torpedo. I was very scared and I told Katsuri that the warhead is on the torpedo. He then told me I would have to go in and tie up this torpedo with a wire cable or else he would shoot me. This wire cable that was used had broke three or four times while pulling that torpedo out toward the deep. While this was in progress we pulled the torpedo about to five feet of water and the cable snapped. When the wire cable snapped the tug PIONEER came alongside this torpedo. Katsuri then ordered me again to tie up this torpedo. When the torpedo was tied up again it was towed out a little more and it then broke in about twenty feet of water. Katsuri then told me to go down, but I told him it was very deep and very hot and that I didn't have no diving equipment and I had to skin dive. All this time I told Katsuri it was deep and he pulled his gun and said to me, "This is an order, if you do not carry it out, I will shoot you." I then dove down twenty feet and tied the torpedo with this cable. After the cable was tied it was then late in the evening, so we returned to our compound.

28. Q. Were there any other prisoners of war who dove for this torpedo with you?

A. Yes.



29. Q. Who were they?

A. Other prisoners who were with me were Adam Kapale, Patrick Aki, Robert Kapahi, Mr. Chung, Jack Sullivan, and Elmer McKay.

30. Q. Did these people dive for the torpedo?

A. Yes, we dove for the torpedo.

31. Q. In speaking about fighting the fire aboard the dredge COLEMAN in February, you referred to going out to the dredge. Where was the dredge located?

A. The dredge was located in the middle of the lagoon.

32. Q. About this time, namely, March 1942, did you receive any other orders from the accused to perform any other work?

A. Yes.

33. Q. What were you ordered to do?

A. We were ordered from our compound anytime a Japanese ship came in and while we were out there working, we were ordered to unload ammunition, torpedo boats and we brought that in to the water front.

34. Q. What type of cargo did you handle in unloading these ships?

A. We handled ammunition, bombs, and two torpedo boats.

35. Q. Just where was this work performed by you?

A. This work was performed off shore where the ships tied up and brought in by our crew and other prisoners of war.

36. Q. What was done with the cargo when you got it to the shore?

A. It was unloaded from the water front by our crew which would be the operators - crane operators - and the riggers.

37. Q. You testified about an incident of diving for a torpedo. Were you ever ordered to do any other diving by the accused Matsuni?

A. Yes.

38. Q. During what period of time were you ordered to do this diving?

A. In April, May, and June.

39. Q. How many hours did you do this work?

A. I would dive on the average from six to seven hours a day.

This line of questioning was objected to by the accused on the ground that it was irrelevant and immaterial and went beyond the scope of the charge and specifications.

The judge advocate replied.

The commission announced that the objection was not sustained.

40. Q. You have testified that during this period you were made to dive an average of six to seven hours a day. Was there any occasion on which you were required to dive for a longer period than that?

A. Yes.

41. Q. When was that?

A. It was in the month of June.

42. Q. Do you recall approximately in what part of the month of June 1942?  
A. Yes, it was in the early part of June.

43. Q. Tell us what happened on that occasion.

A. On that occasion there was two Japanese scouting boats that had sprung a leak. One of these boats had run aground someplace and I was ordered to dive down and work under the hull. On these occasions the men on Wake were ordered out to work. On this particular boat a special rig was made to bring it up shore. It was built like a carriage. This particular month when I was doing this diving it started off at six o'clock in the morning. After diving so much I got weak and I got dizzy. I came up and I seen Katsumi and I told him I was dizzy and I felt weak. He ordered me back to dive again. When I came up the second time I told Katsumi I was getting weaker and I spit up some blood in front of him. He turned around and slapped me on the back and said I was to go on diving, I was to continue diving. He also drew his gun on me at that time.

44. Q. For how long a period did you dive on that particular day?  
A. On that day I remember it was twelve hours.

The witness was duly warned.

The commission then, at 4:25 p.m., adjourned until 9 a.m., tomorrow, Wednesday, September 22, 1943.

THIRD DAY

United States Pacific Fleet,  
Commander Naval Forces, Marianas,  
Guam, Marianas Islands,  
Wednesday, September 22, 1942.

The commission met at 9:10 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,  
Lieutenant Colonel Kenneth E. Hallist, Cavalry, United States Army,  
Lieutenant Colonel Newton L. Chamberlain, Signal Corps, United States  
Army,  
Lieutenant Commander Ralph I. Gerber, U. S. Navy,  
Captain Albert L. Jensen, U. S. Marine Corps, members, and  
Lieutenant James P. Lenny, U. S. Navy, judge advocate.  
Paul F. Coste, junior, yeoman first class, U. S. Navy, reporter.  
The accused, his counsel, and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

Edwin Lang Lock Lee, the witness under examination when the adjournment  
was taken, entered. He was warned that the oath previously taken was still  
binding, and continued his testimony.

(Examination continued.)

45. Q. Mr. Lee, in testifying about the diving incident in the early part of  
June 1942, you stated that you became dizzy; at what time of the day did this  
dizziness occur?

A. I became dizzy about 11 a.m. the first time and then again at one  
o'clock in the afternoon. JK

46. Q. When did this incident of spitting up blood occur on that day?

A. I started to spit blood on the second time I came up, about one o'clock  
in the afternoon.

47. Q. You say the second time you came up; the second time for the whole  
day?

A. No, the second time that I came up was when I came up to see Katsumi,  
and that was when I spit blood for him.

48. Q. When was it that he drew the gun on you?

A. He drew the gun when I came up the second time, when I told him that I  
spat blood and was weak and dizzy.

49. Q. What did he do with the gun when he drew it on you?

A. He pointed the gun at me and told me he would shoot me if I did not obey  
his orders.

50. Q. Were you supplied with any diving equipment on this day?

A. No, I was supplied no diving equipment at any time when I was diving.



51. Q. Referring to the February 24th incident in the dugout, you stated that Katsumi drew his gun. Describe what he did with that gun at that time.

A. When he drew his gun in the dugout he waved it in front of all the prisoners that were in front of him.

52. Q. With reference to the March incident of diving for the live torpedo, were there any others present when you had the conversation with Katsumi in which you told him that the warhead was still on that torpedo?

A. Yes, there were seven other men with me and they were all against diving for that torpedo and they refused after they seen the warhead.

The accused moved to strike the words "after they seen the warhead" out of the answer on the ground that they were an ~~error~~ <sup>addition</sup> of the witness. JK

The commission announced that the motion was not sustained.

53. Q. During the period of time that you were a prisoner of war on Wake Island were you ever required to do any work in connection with a Japanese destroyer?

This question was objected to by the accused on the ground that it was leading.

The judge advocate replied.

The commission announced that the objection was not sustained.

A. Yes.

54. Q. When was this?

A. It was during the month of March and April.

55. Q. That year was that?

A. The year 1942.

56. Q. Who assigned you to work on this destroyer?

A. Katsumi assigned us to that work.

57. Q. Just what work did you perform?

A. We went out to the destroyer on the west side of Wake Island and we took out four guns; they were of five inch caliber.

58. Q. What did you do with these guns?

A. Those guns were brought in towards the water front and later on other prisoners of war installed them in various positions around the island.

59. Q. You say they were brought in to shore; by whom were they brought in to shore and in what manner?

A. They were brought in by the American prisoners of war with Swede Hokanson, the rigger, and we took out a stiffleg and barge and our tug PICKER towed those out and in.

60. Q. Over how long a period was this work performed?

A. It was done through March and the latter part of April - I would say about three weeks.

61. Q. Will you describe for the commission what a usual day's procedure was on Wake Island during the time you were a prisoner of war there?

This question was objected to by the accused on the ground that it was vague and indefinite.

The judge advocate replied.

The commission announced that the objection was not sustained.

A. Katsumi came in the morning, ordered us, by us I mean all prisoners of war to work, how to work, and where we were to go, and he divided us into working parties.

62. Q. Was the accused Katsumi known by any other names while you were on Wake Island?

A. Yes, he was called by the boys as "Katsy" and "Garters."

The accused moved to strike out this answer on the ground that it was irrelevant and immaterial.

The judge advocate replied.

The commission announced that the motion was not sustained.

63. Q. Describe the usual dress of the accused during the period when you knew him on Wake Island.

A. He wore a cap with an anchor insignia, he wore white shorts and shirt and a Sam Browne belt on which he carried his gun.

64. Q. I show you an official hydrographic chart of the U. S. Navy and ask you to indicate on it the position of the dugout in which you say you and the other prisoners of war were on February 24, 1942.

This question was objected to by the accused on the ground that the chart was not in evidence.

The judge advocate replied.

The commission announced that the objection was not sustained.

(The witness took a pencil and placed a mark on the chart.)

The chart of Wake Island was submitted to the accused and to the commission, and by the judge advocate offered in evidence.

There being no objection, it was so received and is appended marked "Exhibit 1."

65. Q. I ask you to further indicate on this chart, Exhibit 1, the spot of the dugout at that point with the letter "A."

(The witness placed the letter "A" on Exhibit 1 as requested.)

66. Q. Will you now indicate with the letter "B" on Exhibit 1 where you and the other prisoners of war fought the fire on the dredge COLUMBIA?

(The witness placed the letter "B" on Exhibit 1 as requested.)

67. Q. Will you indicate on that same chart with the letter "C" the position from where you dove for the live torpedo?

(The witness placed the letter "C" on Exhibit 1 as requested.)

Cross-examined by the accused:

68. Q. You testified that you were a prisoner of war in the hands of the Japanese forces from December 23, 1941 until 30 September 1942; during all of this period were you a member of the crew of the TIGER?

A. Yes.

69. Q. Who was the captain of the TIGER during that period?

A. Robert Kanehi.

70. Q. Do you know where this man Robert Kanehi is today?

A. He is dead.

71. Q. During the period you were held prisoner on Wake do you know who was the commandant on Wake Island?

A. No.

72. Q. During the time you were held prisoner on Wake Island was there not an office which handled matters pertaining to prisoners of war inside the compound?

A. I do not recall that.

73. Q. Was there not a room at the west end of the compound which was assigned to the matters pertaining to the handling of prisoners of war?

A. There was a building there but we never did get to go there and find out about anything. Our orders came directly from Katsumi.

74. Q. Do you recall that a lieutenant (junior grade) Nomoto was the officer in charge of prisoners of war?

A. No, I only Katsumi in charge.

75. Q. You testified yesterday that Katsumi gave you orders for your work; is it not a fact that he was merely interpreting orders given by an officer of the Imperial Japanese Navy?

This question was objected to by the judge advocate on the ground that it called for an opinion of the witness.

The accused withdrew the question.

76. Q. Was there not a Japanese officer present whenever Katsumi gave his orders?

A. No.



77. Q. Between what hours did the American attack take place on February 24, 1942?

A. When I first noticed the attack it started from six o'clock in the morning and the "all clear" wasn't given when we went around to the water front and returned to the compound, and I would say about eleven o'clock in the day. The "all clear" was never sounded.

78. Q. But I am asking is between what hours did the actual attack take place and when did it end?

This question was objected to by the judge advocate on the ground that it called for an opinion of the witness.

The accused replied.

The commission announced that the objection was sustained.

79. Q. Please state when the shells started dropping and when they ceased according to your observation. JK

A. I would say about six to nine.

80. Q. When you entered the dugout, were 350 prisoners of war in the same dugout?

A. That is right. They were all in one dugout.

81. Q. What were the dimensions of this dugout?

A. I would say that the dugout was about seventy-five feet long, eight feet wide and about five feet in depth.

82. Q. How many entrances were there to this dugout?

A. Three entrances.

83. Q. Close to what entrance were you?

A. I was close to the center entrance.

84. Q. And about what time did Katsumi come to the dugout on that day?

A. I don't recall the time exactly but it was after the raid had started that he came down.

85. Q. Approximately how many hours after the attack started did Katsumi come to the dugout?

A. I would say about two and one half or three hours. It was close to nine when he came in.

86. Q. Did anybody come along with Katsumi when he did come?

A. He came with soldiers and two Japanese foremen.

87. Q. What were these foremen? Were they military or civilian, or do you know of their status?

A. I think they were civilian Japanese.

88. Q. When Katsumi came down in the dugout, at which entrance did he appear?

A. That I do not recall but he came from a side door, not from the end.

89. Q. When Katsui came to the dugout, did he order the crew of the dredge and the tug to fall out?

A. Yes.

90. Q. Did he not call the crew each by his name?

A. All I remember him saying was dredge COMBIA crew and boat crew.

91. Q. How many persons were on the dredge and on the tug on February 24th? How many comprised the crew of the dredge and the tug around that time, that is, around February 24, 1942?

A. On our tug PIONEER I knew there were five, but on the dredge, I don't know how many.

92. Q. How many American prisoners of war fell in when Katsui came to fetch the prisoners on that day?

A. That I don't know, he just called the boat crew and dredge crew out and we just rushed out and got on the truck and I didn't count them, but five boat crew men were with us all the time.

93. Q. How far did you go on this truck?

A. It would take about twenty-five minutes to a half hour ride from the compound down to the waterfront.

94. Q. Where did you alight from the truck? Can you point to it on the chart?

(The witness indicated a point on the chart at the tip of Wake Island bordering on Wilkes Island.)

95. Q. It need not be accurate, but give me the approximate number of the crew members of the dredge on the truck when you noticed.

A. There were quite a few of them, maybe fifteen or more.

96. Q. Did Katsui ride with you on this truck?

A. No, he didn't ride with us on that truck; he had his own car, a station car he drove.

97. Q. Where was this tug boat PIONEER moored?

A. It was out on the waterfront as I indicated on the map (Exhibit 1).

98. Q. Did Katsui board the PIONEER with you prisoners?

A. I can't recall that but I know he was on the dredge with us.

99. Q. How many tons did this dredge displace?

A. That is something I can't answer, it is a very big dredge.

100. Q. If you can't give us the approximate tonnage, can you give us the dimensions and width?

A. I can't give any.

101. Q. What portion of this dredge was afire?

A. The top deck.

102. Q. And did you board the dredge from the tug to put out this fire?

A. Yes.

103. Q. When you left the compound, did you take any fire fighting equipment to put out the fire?

A. No.

104. Q. How did you go about the fire fighting?

A. They had fire fighting equipment on the dredge. The equipment was there.

105. Q. Did you definitely see Katsumi on the dredge when you were fighting the fire?

A. I seen Katsumi on the dredge when I was on the tug. He was right alongside of me on the dredge.

106. Q. Were there not many Japanese aboard the dredge engaged in fighting the fire?

A. There were some Japanese I recall.

107. Q. You testified yesterday that Katsumi gave all the orders for fire fighting; do you recall what orders he gave? If so, state them.

A. It is very hard to recall the orders but I know he is the one that ordered the American prisoners. He told us where we was supposed to go, some above deck and some below.

The commission then, at 10:15 a.m., took a recess until 10:45 a.m., at which time it reconvened. 85

Present: All the members, the judge advocate, the accused, his counsel, and the interpreters.

Archibald Haden, junior, yeoman first class, U. S. Navy, reporter.

No witnesses not otherwise connected with the trial were present.

Edwin Pang Boek Lee, the witness under examination when the recess was taken, entered. He was warned that the oath previously taken was still binding, and continued his testimony.

(Cross-examination continued:)

108. Q. Among the Japanese at the scene of the fire fighting, were there any naval officers?

A. I don't know.

109. Q. When did this fire fighting end?

A. All I know is that I recall it was about an hour and a half.

110. Q. Was Katsumi at the scene of this fire fighting until it was completed?

A. I don't know. He may have left. I just seen him that one time when he was alongside me and I didn't see him any more.

111. Q. Was the dredge the only ship or thing that was aflame in the lagoon on February 24?

A. No, there was a barge alongside the dredge with a Japanese flying boat. That had caught fire too.

112. Q. You testified yesterday that the "all clear" was sounded late in the afternoon. Can you give me an approximate time when this was sounded?

A. I'd say about three to five o'clock. Anyways near there.

113. Q. Then were you in the dugout all the time after your return to the compound until the "all clear" was sounded?

A. I can't recall if we were in the dugout or came into the barracks.



114. Q. What do you mean by the "all clear" and how were you informed of this "all clear"? By whom?

A. They had a siren. I don't know where it was located, but when that siren blew it was "all clear." A long blast.

115. Q. Do you mean you heard this long blast on the siren sometime between three and five in the afternoon?

A. That is right.

116. Q. You testified that around the twenty-third of March, 1942 you were ordered by Katsumi to work on a torpedo. At about what time of the day was it that Katsumi so ordered you?

A. It was in the morning. I'd say about nine or ten o'clock.

117. Q. To whom did Katsumi give this order to work on the torpedo?

A. He came to me and told me directly about this torpedo, that I was going out there and get it.

118. Q. Was there not a Japanese naval officer beside Katsumi at that time?

A. You mean when he gave me the order?

119. Q. Yes.

A. When he gave me the order to go down to the waterfront there was no Japanese officer.

120. Q. Please repeat the order that Katsumi gave you at that time.

A. Katsumi told me that it was an American torpedo on Wilkes Island and that the Americans were going to remove it. I told him that it would be dangerous and I was not going to move it, but he said it was an American torpedo and the Americans were going to move it, so I had to go.

121. Q. Were you the only prisoner ordered by Katsumi to go to the beach?

A. No.

122. Q. Who else was ordered to go?

A. There was Robert Mabehi, Patrick Aki, Adam Kapacle, Elmer McKay, and Jack Sullivan.

123. Q. Did Katsumi go with you to the scene of this torpedo work?

A. Yes, he boarded the tug with us.

124. Q. Were there any other Japanese on the tug?

A. Yes.

125. Q. What other Japanese were on this tug?

A. One Japanese officer. That is all I remember.

126. Q. Do you recall his name or his duty?

A. No.

127. Q. Please describe in what condition this torpedo was when you approached Wilkes Island.

A. Please state the question more clearly.

128. Q. Describe the condition of this torpedo off Wilkes Island?

A. Do you mean where the torpedo was?

129. Q. Begin with where the torpedo was.

A. Well the torpedo was off Wilkes Island, off-shore in about three feet of water.

130. Q. You testified that you were ordered to put this wire hawser around the torpedo; how big was this wire hawser?

A. I'd say about the size of my finger.

131. Q. Around which portion of the torpedo and how were you ordered to wind this wire hawser?

A. Well, we swam to the torpedo from outside the reef and I tied the hawser around the props on the back.

132. Q. How large was this torpedo - the diameter?

A. I wouldn't be correct but I'd say about a foot or a foot and a half or maybe two feet.

133. Q. After putting the wire hawser around the torpedo, how was the torpedo hauled, by hand or by machine?

A. It was pulled by a tug, the FIFTEEN.

134. Q. You testified that the wire hawser snapped several times after you started hauling the torpedo but did the wire snap after the torpedo was dislodged from its position in three feet of water?

A. The torpedo's weight alone was too much for that type of cable and that is why it snapped. We could not pull it off.

135. Q. You testified yesterday that the torpedo was in a place where the water was five feet. By that do you mean the depth of the sea was five feet?

A. Yes.

136. Q. And when you testified that the torpedo was in twenty feet of water did you mean that the torpedo was at the bottom of twenty feet of water?

A. It was on the bottom, yes.

137. Q. What did you do after you had put the cable around the torpedo in twenty feet of water?

A. It was late and it was already dark so we returned to the compound.

138. Q. What happened to the torpedo with the cable around it?

A. The Japanese had a landing boat and they went the next morning and picked it up. They had a reel in the landing boat and they just picked it up with the cable. JK

139. Q. You heard that the Japanese took care of it?

A. Yes, they did take care of it the following morning.

140. Q. Did the naval officer give Katsuni instructions before Katsuni gave you the orders?

A. I don't recall the naval officer giving him orders but I knew our orders came from Katsuni.

141. Q. When you were ordered to unload cargo from Japanese transports were there any Japanese naval officers present?

A. I did not see any Japanese naval officers.

142. Q. Were only American prisoners of war engaged in this unloading of ammunition and arms from the Japanese transports or were there Japanese military personnel engaged also?

A. There were Japanese military personnel engaged also.

143. Q. Then there were Japanese naval officers present at the scene of these unloadings?

A. When I said Japanese personnel I meant the coolies they had on the island. There were the coolies and this foreman.

144. Q. While you were engaged in this unloading of Japanese transports, was Katsumi present at the scene throughout the time you were so engaged?

A. He would be present some time but I don't recall him being present all the time.

145. Q. When I said at the scene of the unloading, I meant was Katsumi aboard the transport?

A. Well, he had come out with us in the tug and he went on the barge, but I don't recall if he went on the ship because the Japanese personnel handed these things down to us and we unloaded.

146. Q. How did you know that this cargo you were unloading from the transports was ammunition and arms?

A. You could see it. It was in crates and you could see the bombs. You could see the ammunition.

147. Q. You testified that in the early part of June 1942 a Japanese scouting boat had run ashore. Could you describe where this boat had run aground?

A. You mean when it first started to leak?

148. Q. You testified yesterday that there was a Japanese scouting boat that ran aground and you worked on this boat. I want to know the place this occurred.

A. That I don't know. It might have been in the lagoon or in the channel but I do recall that I worked on the boat.

149. Q. How big was this scouting boat?

A. I would say about eighty-five feet long or maybe longer.

150. Q. What was the draft of this boat?

A. I would estimate about five to six feet.

151. Q. What diving operations were you ordered to perform on this boat?

A. I was ordered by Katsumi to go down under the boat and find out where the leak was and when they made this special carriage for the boat I had to watch that the boat came on the middle and stayed in the middle.

152. Q. Then you were diving where a person could stand?

A. I wouldn't say that a person could stand. Not everybody could stand. It was six to seven feet and you couldn't stand in that.

153. Q. From what time did you begin to dive on that day?

A. About six o'clock in the morning.

154. Q. When did you finish?

A. I would say about six o'clock in the evening.

155. Q. You testified yesterday that you were diving for twelve hours. Does that mean that you were diving without any pauses or any rests?

A. Well, when I got dizzy I said I needed rest but I don't know why but Katsumi wouldn't let me rest. He made me keep right at it. He wanted that boat repaired quickly to go out again.



156. Q. During the whole period of this operation was Matsumi beside this boat?

A. He stayed on land at a kind of ferry slip. It was close to land and he could see it from shore.

157. Q. He was there throughout the whole time?

A. That I do not know but when I came up and asked for that rest he was there, when he pushed me back in the water he was there, and when I quit he was there.

158. Q. Were you the only person engaged in this diving on that day?

A. I was not the only one working. There were others there but I could stay down the longest. I still had to dive by myself. On work like that you could not have two men helping each other working together.

159. Q. During the time you were engaged in this work was there a Japanese naval officer beside Matsumi on this ferry slip?

A. There was a Japanese officer on this ship that was coming in but no Japanese officer beside Matsumi on land.

160. Q. You testified that you were engaged in unloading arms from a Japanese destroyer. Was there a naval officer present when Matsumi gave you the order to work on this assignment?

A. I do not think there was any officer along. There was just Matsumi that went along.

The witness was duly warned and withdrew.

The accused submitted to the commission for approval interrogatories to be propounded to Walter T. Kennedy and Jesse L. Stewart.

The judge advocate did not desire to add any cross-interrogatories.

The commission was cleared. The commission was opened and all parties to the trial entered. The commission announced that it assented to the submission of the interrogatories and directed the judge advocate to forward them to the proper authorities.

The commission then, at 11:50 a.m., adjourned until 9 a.m., tomorrow, Thursday, September 23, 1943.

FOURTH DAY

United States Pacific Fleet,  
Commander Naval Forces, Marianas,  
Guam, Marianas Islands,  
Thursday, September 23, 1948.

The commission met at 9 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,  
Lieutenant Colonel Kenneth E. Balliet, Cavalry, United States Army,  
Lieutenant Colonel Newton L. Chamberlain, Signal Corps, United States  
Army,  
Lieutenant Commander Ralph I. Gerber, U. S. Navy,  
Captain Albert L. Jenson, U. S. Marine Corps, members, and  
Lieutenant James P. Kenny, U. S. Navy, judge advocate.  
Elvin G. Gluba, yeoman first class, U. S. Navy, reporter.  
The accused, his counsel, and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

Edwin Mang Sook Lee, the witness under examination when the adjournment was taken, entered. He was warned that the oath previously taken was still binding, and continued his testimony.

(Cross-examination continued:)

161. Q. You testified that Katsumi ordered you to remove the guns from the Japanese destroyer and take them ashore, but could you give us the order that Katsumi gave you?

A. I could not remember the direct order, but the way he said it was to go out to the destroyers and take off guns.

162. Q. Which of the prisoners of war received this order?

A. You mean the direct order from Katsumi?

163. Q. Yes.

A. Swede Hokanson, general superintendent for the riggers.

164. Q. Were you present when Katsumi gave this order to Swede Hokanson?

A. Yes, we were all on the same boat and the barge together.

165. Q. Katsumi, when he gave the order was then on the barge with you?

A. He was not with me; he was with this Swede Hokanson who is the general superintendent.

166. Q. Did you actually see whether Katsumi went to the destroyer from which the guns were to be removed?

A. I seen Katsumi on the barge; he was on the barge with us then.

167. Q. Did you see Katsumi aboard the destroyer?

A. Katsumi did not go aboard the destroyer at any time.

168. Q. The only part you played in this removal of the guns from the destroyer was as a member of the crew of the tug pulling the barge; is that correct?

A. That is correct, yes.

169. Q. Were there any Japanese military personnel engaged in this operation of removing the guns from the destroyer?

A. I cannot recall any of them there.

170. Q. Did you see the officer in charge of this operation?

This question was objected to by the judge advocate on the ground that it assumed facts not in evidence.

The accused withdrew the question.

171. Q. Was there a Japanese naval officer in charge of this operation?

A. I do not recall any officer in charge of the operation, only Katsumi.

172. Q. You testified that when the American prisoners of war were assigned their daily work every morning, Katsumi gave the orders; were there no Japanese military personnel present when Katsumi gave these orders?

A. As far as I know there was none; it would always be Katsumi alone.

173. Q. Do you not recall Petty Officer Okazaki and Seaman First Class Shimizu who were assistants to the officer in charge of prisoners of war - Petty Officer Okazaki and Seaman First Class Shimizu?

A. I seen two Japanese once in a while, but I did not know they held any rank at all.

174. Q. Is it not true that these two men, Okazaki and Shimizu, did most of the assigning of jobs in the mornings?

A. To the best of my knowledge it is no. Katsumi assigned all of us to the jobs.

175. Q. You testified to the clothing that Katsumi wore; was this clothing identical with that worn by Japanese naval officers?

A. The only way I could describe the clothing was the same way I did Katsumi's - all in white, just a cap with no insignia whatsoever.

176. Q. Were there any stripes on the cap that Katsumi wore?

A. The only insignia I seen on Katsumi's hat would be the anchor, that's all.

177. Q. Did not Japanese naval officers wear caps with two stripes around them?

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

The accused replied.

The commission announced that the objection was sustained.

178. Q. This air raid of February 24th, was this the first American raid after you had been taken a prisoner?

A. As far as I can recall that was the first raid.



179. Q. What did you see when you saw this task force coming to Wake on February 24th?

A. Well, the first thing I seen was the anti-aircraft guns which were shooting at these Japanese seaplanes. Then I seen four to six fighter planes coming towards us from the east. That's when I started for the dugout.

180. Q. This anti-aircraft fire that you saw, was that from the Japanese guns on Wake?

A. No, it was from our forces.

181. Q. Guns from the American ships or from the planes?

A. Anti-aircraft fire to the best of my knowledge would be from the guns of a ship, not from a plane.

182. Q. How close were these ships on which you saw the anti-aircraft fire?

A. When I first seen the anti-aircraft fire I couldn't see the ships. You could just see the bursts where they were shooting at the Japanese planes.

183. Q. When you first saw the task force had there been an alarm by the Japanese at that time?

A. There was no alarm.

184. Q. No alarm at all that day?

A. There was no alarm when I seen the anti-aircraft fire. I can't recall if there was any alarm but the "all clear." I can remember the "all clear."

185. Q. You said you went to this dugout. Were you ordered to go to the dugout or did you and the other prisoners just go there to take cover?

A. Me and the other prisoners went there to take cover.

186. Q. Were you outside of the compound when you saw the task force and had to go inside the compound to take cover?

A. Yes.

187. Q. Were there guards with you at the time?

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

The accused replied.

The commission announced that the objection was sustained.

188. Q. Was Katsumi with you at the time when you were outside the compound?

A. No.

189. Q. Did you notice where the Japanese military went when you went to the dugout?

A. I was more concerned for myself than to think of anything else; my one thought was to get back to the dugout and fast.

The commission directed that this answer be stricken out on the ground that it was not responsive and directed the witness to answer the question.

A. No.

190. Q. Approximately how many prisoners of war were there on Wake at this time?

A. I would say about 350.

191. Q. If I remember right you said that they were all in the dugout that day; is that right?

A. Yes, I believe I said there was 350, all in the dugout.

192. Q. How did you determine that it was nine o'clock when Katsumi came to the dugout?

A. I would be just guessing on that time if I said nine o'clock.

193. Q. You didn't have your watch with you at that time?

A. No.

194. Q. What had happened to your watch?

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

The accused made no reply.

The commission announced that the objection was sustained.

195. Q. Was Katsumi wearing a steel helmet when he came to the dugout that day?

A. I cannot recall if he wore a steel helmet on that day.

196. Q. You are sure that when you got to the dugout Katsumi was not there at that time?

A. I am quite sure.

197. Q. Were there any Japanese there at that time?

A. There was none.

198. Q. So until Katsumi came, there were no Japanese with you 350 prisoners?

A. As far as I can recall there were no soldiers or Japanese with us until Katsumi came, yes.

199. Q. You said that Katsumi was in charge of the prisoners. Was that answer based on the fact that you heard that proclaimed at any time during the surrender?

A. I cannot recall anything like that.

200. Q. Then it was simply because Katsumi was with the prisoners most of the time?

A. Yes.

201. Q. Did he live in the compound with you prisoners?

A. No.

202. Q. No Japanese lived in the compound with the prisoners?

A. As far as I recall, no.

203. Q. You said Katsumi had his own car. Did he also have a chauffeur?

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

The accused made no reply.

The commission announced that the objection was sustained.

204. Q. What kind of a car did Katsumi have?

A. Katsumi had a little pick-up truck.

205. Q. You said that "we rushed out and got in the truck" after Katsumi called out the boat crew and dredge crew. Didn't you object to leaving the dugout?

A. Yes, we objected strenuously. The reason why we rushed out was because he pulled that gun; that's the reason we rushed out.

206. Q. Were you the only one that objected or did the other members object?

A. As far as I know everybody objected to coming out.

207. Q. How many of the 350 went out to fight the fire?

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

The accused made no reply.

The commission announced that the objection was not sustained.

A. I would say it was the dredge crew and boat crew, but numbers I don't recall at all. 9k

208. Q. All the rest of the prisoners remained in the dugout?

A. After we left they stayed, the rest stayed in the dugout as far as I knew.

209. Q. While you were riding down to the dock or wherever you embarked to go to the dredge, did you see any Japanese military at that time?

A. Yes, I seen some of them on the guns.

210. Q. Where were the ships at that time, the American ships?

A. As I said they were on the horizon - I could see the masts on the horizon, that would be the west side of the island.

211. Q. Would you say they were still coming toward Wake?

A. I would say they were leaving Wake.

212. Q. Then wouldn't you say the fighting was all over that day?

This question was objected to by the judge advocate on the ground that it called for an opinion of the witness.

The accused made no reply.

The commission announced that the objection was sustained.

213. Q. Can you remember about what time you were being strafed by the American planes?

A. I couldn't recall the time, but during the time we were in the dugout we were being strafed and shelled. You could hear it.

214. Q. Could you see the planes that were strafing you at that time?

A. No.



215. Q. Do you know how many Japanese military were on Wake at this time?  
A. No.

216. Q. Did they far outnumber the prisoners?  
A. I would say yes on that.

217. Q. This fire fighting equipment that you say was on the dredge, what did it consist of?  
A. It's like any you got, big fire extinguishers and they had these fire hoses on there that was runned by pumps from the dredge.

218. Q. And that's what you fire fighters did was start the pumps and manned the fire extinguishers to fight the fire that day?

This question was objected to by the judge advocate on the ground that it assumed facts not in evidence.

The accused withdrew the question.

219. Q. Did you start the pumps and man the fire extinguishers in fighting the fire?  
A. You asked me if I started the pumps. No.

220. Q. Did anybody start the pumps that day?  
A. I couldn't recall that anybody started them.

221. Q. Where did you go that day, on the upper deck or the lower deck to fight the fire?  
A. On that day, like I say, we went out there to fight the fire. We as a boat crew went out, but the men went up on the upper deck to fight the fire.

222. Q. You in the boat crew didn't actually fight the fire, you stayed in the boat; is that true?  
A. No, if you say we didn't actually fight the fire, if grabbing a water hose and passing it up to the upper deck, is that helping to fight fire?

The commission reminded the witness that he was on the stand to answer questions not to ask them.

223. Q. You were actually on the dredge then?  
A. Yes.

224. Q. Do you remember who was the master of the dredge, the American dredge?  
A. Yes.

225. Q. Who was he?  
A. Captain Andre.

226. Q. Was he there also that day?  
A. Yes.

227. Q. Did you hear Katsumi give him orders as to how to fight the fire?  
A. I don't know.

228. Q. But you do know that he gave you orders how to fight the fire; is that right?  
A. Do you mean me or do you mean everybody?

229. Q. No, just you.  
A. He didn't give only me orders, he gave everybody orders.

230. Q. Including the master of the dredge?  
A. Yes.

231. Q. You said this dredge COLUMBIA was struck by our forces; do you know what struck the COLUMBIA that started this fire?  
A. I wouldn't know that.

232. Q. During this raid do you know if any of the American crew members of the dredge remained on the dredge?  
A. You mean during the progress of the raid?

233. Q. Yes.  
A. I would say there would be no crew members on it during the raid, sir.

234. Q. You said that Katsumi drew a gun that day. How close were you to him when he drew that gun?  
A. I would say just about there (indicating a distance of approximately three to four feet). JK

235. Q. So you could clearly see the gun?  
A. Yes.

236. Q. What kind of a gun was it?  
A. Well, it was a small gun. I would say it looked like a German Luger.

237. Q. Did he pull the trigger or cock it?  
A. I do not recall that he pulled the trigger or cocked it.

238. Q. Do you remember if he had his finger on the trigger?  
A. Yes, I think he had his finger on the trigger.

239. Q. You said that Katsumi gave you orders everyday. Do you mean that at the beginning of each day he came to the compound and detailed the work to the prisoners?  
A. Yes.

240. Q. Did he have any papers in his hand when he was detailing these prisoners to work or did he just do it without any paper?  
A. Sometimes he would have paper, sometimes he wouldn't have anything.

241. Q. He did this right from the start - right after the surrender up until the time you left Wake?  
A. As far as I can remember, yes.

242. Q. At what time of the day would you start work?  
A. We would start - there would be different times on that. We on the boat crew would start any time. If a boat would come in at two o'clock we would be woke up and had to go out to work, but our usual day's work would start at seven o'clock.

243. Q. Would he make all you prisoners line up and detail you to your work for that day?

A. As far as I can recall, yes.

244. Q. About how long did it take to detail the prisoners to work that day?

A. I would say about ten or fifteen minutes is all.

245. Q. At the time of the surrender how many civilian prisoners were there, approximately?

A. I would say about over a thousand civilians.

246. Q. When Katsumi detailed you for work, were there also guards that were detailed to go with you?

A. In the beginning, yes.

247. Q. On these particular jobs that you were detailed to do, Katsumi always went with you?

A. That's right.

248. Q. You were a deck hand on the tug PIONEER. Do you know then what the draft of this ship was?

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

The accused replied.

The commission announced that the objection was sustained.

249. Q. Who took your tug to the vicinity of the torpedo? That is, who was at the wheel of the tug?

A. Robert Kapehi.

250. Q. Where were you?

A. On the same tug.

251. Q. In the vicinity of the wheel?

A. Yes, I would be right close to him.

252. Q. And Katsumi was right alongside of you?

A. I do not recall whether he was in the bow or on the stern with us, but he was on the tug.

253. Q. Do you remember whether he was giving orders to Robert Kapehi as to where to steer the tug in order to get to the torpedo?

A. I do not recall anything like that.

254. Q. Did you know where the torpedo was before you got to it?

A. Yes.

255. Q. Was that because Katsumi told you where it was?

A. Yes.

256. Q. Was the torpedo inside the reef?

A. Yes.

257. Q. How far from the torpedo did you leave the tug that day?

A. I would say the distance would be about fifty to seventy-five feet away from the torpedo.



258. Q. Did you have to swim all that day?

A. Yes.

259. Q. Were you carrying the cable with you?

A. Yes.

260. Q. This was about what time of the morning?

A. I would say it would be about nine to ten o'clock in the morning.

261. Q. Was the cable kept attached to the tug and you swam with it?

A. No, it was let out when we were going in with it until we fastened it to the torpedo.

262. Q. All the time one end of the cable was attached to the tug?

A. That's right.

263. Q. Where was Katsumi when you first saw the torpedo?

A. I would say he was on the tug with us.

264. Q. Could you see the torpedo from the tug before you started to swim toward it?

A. Yes.

265. Q. What did the warhead look like?

A. The warhead was brown - it was all copper.

The commission then, at 10:15 a.m., took a recess until 10:35 a.m., at which time it reconvened.

Present: All the members, the judge advocate, the accused, his counsel, and the interpreters.

Paul F. Coste, junior, yeoman first class, U. S. Navy, reporter.

No witnesses not otherwise connected with the trial were present.

Edwin Mang Sook Lee, the witness under examination when the recess was taken, entered. He was warned that the oath previously taken was still binding, and continued his testimony.

(Cross-examination continued:)

266. Q. On March 23, 1942 was there the regular assembly of the prisoners of war at the compound there on Wake that morning?

A. I do not recall.

267. Q. Do you recall where it was that Katsumi ordered you to recover this torpedo?

A. Yes.

268. Q. Was it at the compound?

A. Yes.

269. Q. He talked to all the members of the boat crew at the same time?

A. I do not recall if he talked to the whole bunch, but when we were brought together, he was talking to me.

270. Q. Where was Robert Kapehi at this time?

A. I do not recall where Robert Kapehi was, but where the bunkhouse was we were all together.

271. Q. Then after Katsumi told you, you went and told Kapehi that you were to recover a torpedo that day; is that right?

A. Yes.

272. Q. And when you told him, did he object to doing the job?

A. I do not recall him objecting, but I objected, I know.

273. Q. But it was Kapehi that was the tug master and not you?

A. Yes.

274. Q. Did Katsumi go down to the tug that morning?

A. You mean if he rode with us together?

275. Q. Yes.

A. That I do not recall, but he came down with us.

276. Q. Do you remember how the tide was that morning when you left to go out to work on the torpedo?

A. I don't remember.

277. Q. Where did you get the cable that you used to secure this torpedo to?

A. We got that from the Japanese.

278. Q. From what Japanese, Katsumi?

A. No.

279. Q. Did Katsumi go with you when you went to get the cable?

A. No.

280. Q. Did any Japanese guards go with you?

A. No.

281. Q. Do you speak Japanese?

A. At that time, no.

282. Q. Are you sure you got the cable from some Japanese?

A. Yes.

283. Q. How long was this cable?

A. I wouldn't say how long it was, but it was a pretty long cable.

284. Q. You would say it was at least one hundred fifty feet?

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

The accused replied.

The commission announced that the objection was sustained.

285. Q. You said that you had to dive without diving equipment, how would diving equipment have helped your work?

A. It would have helped very much - I wouldn't be so tired and it would have been a lot more easier to work under water.

286. Q. By diving equipment you mean just a helmet, or do you mean a complete diving suit?

A. I mean just a helmet.

287. Q. You said you secured this cable around the propellor of the torpedo; how did you actually secure this cable? What kind of a knot did you put in it? *JK*

A. I used a bowline.

288. Q. How long did it take you to put this bowline in the cable working under twenty feet of water?

A. I made four or five dives; it took me anywhere from five to ten minutes.

289. Q. Did you lash the running part of the bowline to the standing part; did you take the end of the cable and lash it to the standing part?

A. No.

290. Q. Would you say this cable was an inch and one half cable that you were working with?

A. No.

291. Q. How big was it then?

A. I would say like my finger (the witness indicated his small finger).

292. Q. Half an inch in diameter then?

A. I wouldn't know if that was a half inch, I know it was small though.

293. Q. How much did the torpedo weigh?

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

The accused made no reply.

The commission announced that the objection was sustained.

294. Q. You testified regarding diving on June 15, 1942; at that time did you have any diving equipment?

A. No.

295. Q. How long did you stay under water?

A. I would say I would average about one to two minutes.

296. Q. Where was Katsumi when you were doing the diving on June 15?

A. He was on shore.

297. Q. How far away?

A. I would say it to be about thirty to forty feet away from me.

298. Q. Did he always have his gun with him at that time?

A. Yes.

299. Q. How long did it take you to accomplish this work that day?

A. We did not finish the work that day.

300. Q. Katsumi stayed with you all during the day though?

A. I do not recall that.



301. Q. You remember on how many occasions you were ordered to handle ammunition?

A. I cannot recall how many times we handled ammunition distinctly, I would say I know that I remembered about five or six times.

302. Q. Katsumi gave you orders each time?

A. Yes.

303. Q. At the compound?

A. You mean on the unloading of the ammunition?

304. Q. Yes.

A. He came down to the compound and we went out; if there was any ammunition to be unloaded it was done right then.

305. Q. Was the same procedure followed with this other work - he gave you the orders and you passed them on to Robert Kapehi?

A. No.

306. Q. How then, were the orders given by Katsumi to you and the members of the boat crew when he ordered you to handle ammunition from the Japanese ships?

A. He would just call out the waterfront crew and the boat crew.

307. Q. As you remembered, it was while you were at the compound?

A. Yes.

308. Q. You and the tug crew didn't actually handle the ammunition; did you?

A. On occasions the tug crew would handle it except Robert Kapehi who would be on the wheel then.

309. Q. Did you actually leave the tug in handling this ammunition?

A. Yes.

310. Q. During the time you handled this ammunition, was Katsumi the only Japanese present from the garrison at Wake?

A. No.

311. Q. Was the ammunition taken from the ship and put on the tug and on the dredge and then taken ashore?

A. Yes.

312. Q. Do you remember who these other Japanese were that were present?

A. No.

313. Q. Katsumi was in charge of the work though?

A. Yes.

314. Q. Do you remember how many of the workers were taking those guns from the Japanese ships?

A. No.

315. Q. Approximately how many were with you?

A. I would say about twenty.

316. Q. Now when you took the guns off the destroyer where did you put them, on the tug or on the dredge?

A. I put them on the barge.

317. Q. You took four guns off the destroyer?

A. Yes.

318. Q. Did you do all this work in one day?

A. No.

319. Q. Katsumi was present all during the time you were working on these guns?

A. I don't recall that.

320. Q. Was he there at any time?

A. He was there at some times.

321. Q. Was he in charge of the work?

A. He gave us the orders.

322. Q. By that you mean he was in charge of the work then?

A. Yes.

323. Q. How big was this destroyer?

A. It was a big ship.

324. Q. Were all the war guns put on the barge at the same time?

A. No.

325. Q. Did the tug tow the barge with the guns?

A. Yes.

326. Q. So that your part of the work was as a member of the crew of the tug rather than actually taking the guns off the destroyer; is that right?

A. Yes.

327. Q. After you finished fighting the fire on the dredge February 24, did you go back to the air raid shelter or to the dugout?

A. I do not recall if we went back into the dugout or not; we went to the compound.

328. Q. You do remember what time it was, though?

A. Not the exact time.

329. Q. About what time was it?

A. I would say about eleven o'clock or eleven thirty, something like that.

330. Q. Do you remember the names of any other Japanese on Wake during the time you were a prisoner of war there except Katsumi?

A. There was only one name I know, Yoshi.

331. Q. Do you remember any other Japanese that spoke English?

A. No.

332. Q. Yesterday you located certain places on a chart and lettered these; do you remember what this letter "B" signified which you indicated yesterday?

A. No I don't remember but if I seen the chart I would know.

Reexamined by the judge advocate:

333. Q. How is it that you remembered the dates of these incidents so well?

A. I kept a diary on Wake.

Recross-examined by the accused:

334. Q. Was this against the Japanese rule to keep a diary on Wake?

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

The accused made no reply.

The commission announced that the objection was sustained.

335. Q. Do you still have that diary?

A. I have part of it.

336. Q. Have you got it with you?

A. No.

337. Q. When did you make these entries in this diary?

A. I made those entries just as soon as I got back, and what we did on the day that it was done.

338. Q. And in this diary you made entries to the effect that Katsumi was the one that ordered you to do these things you have testified to; is that correct?

A. No.

339. Q. In this diary the name of Katsumi does not appear at all?

A. I did not put anybody's name in there.

Examined by the commission:

340. Q. In order to clarify one point in your testimony, will you please tell the commission, whether after you left the dugout or air raid shelter on February 24th to go out to the dredge and you saw this American Task Force on the horizon, if you saw or heard any more firing from the American Task Force?

A. No.

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

The witness said that he had nothing further to state.

The witness was duly warned and withdrew.

The accused submitted to the commission for approval interrogatories to be propounded to Major Henry Stanley Wilson, U. S. Air Force.

The judge advocate did not desire to add any cross-interrogatories.

The commission was cleared.

The commission was opened and all parties to the trial entered.

The commission announced that it assented to the submission of the interrogatories and directed the judge advocate to forward them to the proper authorities.

The commission then, at 11:25 a.m., took a recess until 2 p.m., at which time it reconvened.



Present: All the members, the judge advocate, the accused, his counsel, and the interpreters.

Archie L. Haden, junior, yeoman first class, U. S. Navy, reporter.

No witnesses not otherwise connected with the trial were present.

A witness for the prosecution entered and was duly sworn.

Examined by the judge advocate:

1. Q. State your name, residence, and present occupation.  
A. Francis C. Campbell. I work for Vinnell Construction Company at Harmon Field, Guam, M. I.

2. Q. What is your occupation?  
A. Heavy duty mechanic.

3. Q. If you recognize the accused, state as whom.  
A. Katsumi.

4. Q. In December of 1941 were you employed on Wake Island?  
A. Yes, I was.

5. Q. By whom were you employed?  
A. I was employed by J. H. Pomeroy and Company.

6. Q. Are you an American citizen?  
A. Yes, I am.

7. Q. Was American citizenship a prerequisite of employment on that job on Wake?  
A. Yes, it was.

The accused moved to strike out this answer on the ground that it was an opinion of the witness, irrelevant, and immaterial.

The judge advocate replied.

The commission announced that the motion was denied.

8. Q. Were you taken prisoner by the Japanese forces when they invaded the island on December 23, 1941?  
A. Yes.

9. Q. Up until what time did you <sup>re</sup>gain a prisoner of the Japanese on Wake Island?  
A. September 30th, 1942. 81c

10. Q. During that time did you come to know the accused, Katsumi?  
A. Yes, I did.

11. Q. What was Katsumi on Wake Island?  
A. He was a civilian Japanese interpreter.

12. Q. What connection, if any, did he have with the American prisoners of war while you were there?  
A. He directly gave us orders for the work that we performed there for the Japanese.

13. Q. Will you describe to this commission what an ordinary day's procedure would be during the time that you were there?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. We were required to get up around six o'clock and we finished chow at about six thirty and then we were lined up on the parade ground and Katsumi would single out men that he wanted to go on designated working parties.

14. Q. Do you recall a raid by an American Task Force on Wake in February 1942?

A. Yes, I do.

15. Q. Do you recall about what part of the month that raid took place?

A. No, I can't give a definite date for the raid.

16. Q. Where did you go after the raid commenced?

A. I went to the bomb shelter.

17. Q. About what time of the day did the raid begin?

A. It commenced around six or six thirty, I'd say.

18. Q. Were there any other prisoners of war in this bomb shelter with you that morning?

A. Yes, there were.

19. Q. Did anything unusual with reference to the accused take place while you were in that bomb shelter?

A. Yes, he came through and wanted men to fight fire on the dredge after it had been set on fire during the raid.

20. Q. In what portion of this bomb shelter were you?

A. I was approximately centerways in the bomb shelter.

21. Q. Will you tell this commission in general what Katsumi said and did when you observed him on this occasion?

A. Katsumi came through and asked for a party to fight fire on the dredge and nobody immediately volunteered so when he came by he had a "Sam Browne" belt and he had a pistol and he had his hand on the butt of the pistol. He did not draw his pistol while he was by me. He had a guard with him with a bayonet and he went on toward the other end of the dugout and there was more violence down there - I mean he was storming around a bit. He finally did get his men.

22. Q. Approximately how long after the commencement of the attack by the task force did this take place?

A. I would say approximately ten thirty.

23. Q. Was any warning sounded at the commencement of the raid that morning?

A. Yes, there were several short blasts on a siren sounded.

24. Q. Was any all clear sounded that day?

A. Yes, about two thirty or three o'clock in the afternoon there was an all clear given. It was a long blast.

25. Q. While you were in that air raid shelter did any other incident take place with reference to the accused, Katsumi?

A. Yes, he came through and asked for men to work on the airport.

26. Q. Will you tell us what you observed or heard with reference to that incident?

A. He came through asking for men to go out on the airport and got all of his men for the airport from the other end of the dugout.

27. Q. You say he got them in the other end. Were you in a position where you could observe what was going on in the other end?

A. The only way I could observe what was going on was by the light that was coming in the entrance of the dugout but I could hear Katsumi talking and giving orders.

28. Q. How was Katsumi dressed that day, if you recall?

A. The best I remember about how Katsumi was dressed - he had on a khaki shirt, short trousers about knee length, and he had a "Sam Browne" belt on with a pistol in the scabbard.

29. Q. During the period when you were a prisoner of war on Wake did you ever do any work in connection with gun emplacements?

A. Yes, I was required to help build machine-gun nests and also help build pill boxes for machine guns.

The accused moved to strike out this answer on the ground that it was irrelevant and immaterial to the issues of the case.

The judge advocate replied.

The commission announced that the motion was denied.

30. Q. By whom were you detailed to do this work?

A. I was detailed by Katsumi.

31. Q. During the period you were on Wake did you ever receive orders from anyone other than Katsumi with regard to work?

A. No, I always received orders from Katsumi.

The accused moved to strike out this answer on the ground that it was irrelevant and immaterial.

The judge advocate replied.

The commission announced that the motion was denied.

32. Q. During the period that you were a prisoner of war on Wake did you ever perform any work in constructing trenches?

This question was objected to by the accused on the ground that it was leading.

The judge advocate replied.



The commission announced that the objection was not sustained.

A. Yes, I have helped construct trenches on Wake Island.

33. Q. From whom did you receive the orders to do that work?

A. I received the orders from Katsumi.

Cross-examined by the accused:

34. Q. When you were taken prisoner of war by the Japanese forces, did the Japanese forces issue any proclamation?

A. Yes, they did but I don't recall the exact wording of this proclamation.

35. Q. When this proclamation was made was everybody assembled?

A. Yes, it was made in front of the group.

36. Q. At the time of this proclamation did you notice what you thought was the senior member of the Japanese forces there?

A. There was a Japanese officer. I don't know what his rank was but he was present at the time the proclamation was given.

37. Q. When Katsumi came into the bomb shelter on 24 February did he come alone or did someone come along with him?

A. Yes, there was a Japanese soldier behind him with a gun. Otherwise Katsumi was alone.

38. Q. Did this Japanese soldier have a pistol, too?

A. No.

39. Q. When Katsumi came into the bomb shelter did he call out the names of the prisoners to come out to work or did he just ask for an amount?

A. Katsumi designated the crew he wanted by calling for the crew for the dredge.

40. Q. Did you go out and fight the fire on this dredge?

A. No, I did not.

41. Q. Did you see other prisoners go out?

A. Yes, I seen other prisoners leaving the dugout but I wasn't in the group.

42. Q. How many prisoners went out?

A. That I couldn't say. I can't recall.

43. Q. About how many? About five, six, ten - could you give an approximation?

A. Well, the crew they had for the dredge there was about ten men, so I would say about seven. *jk*

44. Q. Then you do not know whether the prisoners who left the bomb shelter actually went to fight the fire?

A. No, I couldn't swear to that. Do you mean - I know that they went and what they were ordered out for, but I wasn't on the scene so I couldn't say I saw them on the scene.

45. Q. In this prison compound on Wake wasn't there a portion in the compound where Japanese personnel stayed?

A. There was no portion in the American compound where the Japanese stayed, that I know of.

46. Q. On Wake was there any other interpreter other than Katsumi?

A. Katsumi was the only Japanese interpreter that I contacted during my stay on Wake.

47. Q. On the day of this task force raid you testified that the attack started around six o'clock; do you know at what time the shells actually commenced falling?

A. There were shells bursting in the air from anti-aircraft guns when the alarm was sounded. They came from American ships on the horizon and they were shooting at a Japanese fighter plane that was there on the island but what time they started hitting the island I couldn't give the minute but it was right after they started shooting at the plane and it wasn't too long before they started hitting the island.

48. Q. When did it cease falling?

A. That I can't give a definite answer, only that there was a lull in the shelling. When Katsumi came through and asked for the dredge crew, the shelling had ceased at that time.

49. Q. Did you stay in this bomb shelter after the others left?

A. Yes.

50. Q. Up to when did you stay in this air raid shelter?

A. We were there until approximately noon.

51. Q. About what time did Katsumi come to call for the working party for the airport?

A. I could say that it was about thirty minutes after Katsumi came after the dredge crew that he came back to get the crew for the airport.

52. Q. In this case in getting the working party for the airport, did he call for the men by name?

A. No, he did not. He designated them by crew as he did the dredge.

53. Q. Did you participate in this work?

A. No, I didn't participate.

54. Q. You testified that every morning the prisoners were assembled in the parade ground and were assigned work. What Japanese came when you assembled?

A. Katsumi was present.

55. Q. Other than Katsumi?

A. None.

56. Q. Do you know for a fact whether a prisoner laid off work on account of illness while on Wake?

A. Well, if a prisoner was sick enough he was allowed to lay off from work.

57. Q. When the prisoners were to lay off work on account of sickness, what was the procedure?

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

The accused withdrew the question.

58. Q. Do you know of a fact where a person laid off work on account of illness by obtaining permission to do so from a person in charge of prisoners other than Katsumi?  
A. No, I do not.

59. Q. Who else other than Katsumi, had contact with the prisoners?  
A. There was no one else except Katsumi that ever gave us orders.

60. Q. Did you not see anyone behind Katsumi when he gave the orders and that Katsumi only translated the orders given by that person?  
A. Katsumi was always alone when he gave orders.

61. Q. You testified that you helped dig trenches on Wake. Do you recall when this was that you helped dig the trenches?  
A. No, I don't recall a definite date.

62. Q. Where did Katsumi give you this order to dig this trench?  
A. When we were assembled in the morning for assignment to certain working parties on the parade ground after breakfast.

63. Q. Did you actually participate in this work of digging the trenches?  
A. I did.

64. Q. How many prisoners participated in digging trenches?  
A. There were various numbers engaged in it. It wasn't always the same crew each day.

65. Q. How many days did it last?  
A. I can't give a definite amount of days. We'd work at that for a while and then we'd be assigned another job.

66. Q. Was Katsumi present at the scene of this trench digging work all the time?  
A. No, he was not present all the time. He would come around occasionally during the day.

67. Q. Did any Japanese officer or warrant officer ever come around on this particular work?  
A. Occasionally the Japs would have an inspection tour around the island and they would come around at that time.

68. Q. Was the person who came to inspect a Japanese officer?  
A. Yes. Whenever they would come on the inspection tour there would be a Japanese officer.

69. Q. In these inspections did Katsumi come along too?  
A. Yes, Katsumi was present.

70. Q. Do you know for a fact whether there were persons specially assigned to care for the prisoners of war other than Katsumi?  
A. There were no persons that I know of. Do you mean to give orders to prisoners of war or take care of them?

71. Q. Without any relation to orders, were there any Japanese enlisted men or Japanese officers who were in charge of the prisoners?  
A. I hardly know how to answer that question. The Japanese commander of the island at this time would be fully in charge but Katsumi was the one that came and gave us orders.



72. Q. You testified that from December 23, 1941 until December 30 of the next year you were on Wake. During this long period did you not hear the names such as Nomoto, Okazaki and Shimizu, who were in charge of the prisoners?

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

The accused withdrew the question.

73. Q. Did you ever hear of the names of Okazaki, Nomoto and Shimizu?  
A. Yes, I remember hearing of them.

74. Q. Did you hear all three names?  
A. I recall the name Shimizu very well.

75. Q. Who was he?  
A. He was a guard.

76. Q. On February 24, 1942 when the dredge was afire, did Katsumi come into the bomb shelter only twice that day?

This question was objected to by the judge advocate on the ground that it called for an opinion of the witness.

The accused withdrew the question.

77. Q. On this date when the dredge was afire did you see Katsumi come into the bomb shelter only twice?  
A. Yes, twice is all I remember seeing him come in.

The commission then, at 3:15 p.m., took a recess until 3:35 p.m., at which time it reconvened.

Present: All the members, the judge advocate, the accused, his counsel, and the interpreters.

Elvin G. Gluba, yeoman first class, U. S. Navy, reporter.

No witnesses not otherwise connected with the trial were present.

Francis C. Campbell, the witness under examination when the recess was taken, entered. He was warned that the oath previously taken was still binding, and continued his testimony.

(Cross-examination continued:)

78. Q. You testified that you were lined up every day on the parade ground there. What time did this line-up take place in the morning?  
A. It would take place at approximately six thirty.

79. Q. These short blasts that you heard on the siren, was that before or after the line-up on the parade ground that morning of February 24th?  
A. It was before.

80. Q. Where were you when you heard these blasts?  
A. I was alongside of the mess hall at the time the air raid started.

81. Q. What did you do when you heard the blasts?  
A. As soon as I realized that it was a shelling from the American forces and I heard the siren go off, I made a run for the dugout.
82. Q. What time did you have your lunch that day?  
A. We had lunch approximately at twelve o'clock noon.
83. Q. In this bomb shelter you were in?  
A. No, we were permitted to go out of the bomb shelter and eat lunch in the barracks. The air raid shelters were just behind the barracks where we lived.
84. Q. Then you returned to the shelter?  
A. No, we didn't return to the shelter but the alarm was still on.
85. Q. But there was no firing?  
A. There was no firing.
86. Q. Was it about a half an hour before you left the shelter to go to lunch that Katsumi came and got the boat crew and the dredge crew?  
A. No, he came and got them a long time before that.
87. Q. Was this bomb shelter so crowded with prisoners that day that you couldn't see everyone that was there?  
A. The bomb shelter was dark on the inside. There was no lights in it. It was hard to pick out any specific person.
88. Q. Was this bomb shelter just a trench that was dug in the ground and dirt covered over the top?  
A. It was a trench that was dug in the ground and it had lumber - heavy planking - laid over the top of it and dirt over the top of those planks and reinforced inside with heavy timber.
89. Q. Was it built after the surrender?  
A. Yes, it was built after the Japanese had taken the island.
90. Q. Built by the prisoners?  
A. Yes.
91. Q. When you were lined up on the parade ground at these daily line-ups, was it Katsumi that lined you up?  
A. Yes, Katsumi was the one that had us line up.

Reexamined by the judge advocate:

92. Q. Do you recall where these trenches you worked on were located on the island?  
A. They were located on the main island of Wake.
93. Q. On what particular part of the island was it, on the shore or inshore or what?  
A. They were built back from the shoreline just far enough so that the high tides wouldn't get into them.

The accused did not desire to recross-examine this witness.

The commission did not desire to examine this witness.

The witness said that he had nothing further to state.

The witness was duly warned and withdrew.

The commission then, at 3:50 p.m., adjourned until 9 a.m., tomorrow, Friday, September 24, 1948.

0324

FIFTH DAY

United States Pacific Fleet,  
Commander Naval Forces, Marianas,  
Guam, Marianas Islands,  
Friday, September 24, 1943.

The commission met at 9 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,  
Lieutenant Colonel Kenneth E. Balliet, Cavalry, United States Army,  
Lieutenant Colonel Newton I. Chamberlain, Signal Corps, United States  
Army,  
Lieutenant Commander Ralph I. Gerber, U. S. Navy,  
Captain Albert L. Jenson, U. S. Marine Corps, members, and  
Lieutenant James P. Kenny, U. S. Navy, judge advocate.  
Paul F. Coste, junior, yeoman first class, U. S. Navy, reporter.  
The accused, his counsel, and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

The accused submitted to the commission for approval interrogatories to be propounded to Iwama, Chuichi.

The judge advocate did not desire to add any cross-interrogatories.

The commission was cleared.

The commission was opened and all parties to the trial entered.

The commission announced that it assented to the submission of the interrogatories and directed the judge advocate to forward them to the proper authorities.

The judge advocate was called as a witness for the prosecution and was duly sworn.

Examined by the judge advocate:

1. Q. State your name, rank, and present station.  
A. James P. Kenny, lieutenant, U. S. Navy, judge advocate of this military commission.
2. Q. If you recognize the accused, state as whom.  
A. Katsumi, Seishi.
3. Q. Are you the legal custodian of certain documents pertaining to the issues of this case?  
A. I am. I have fourteen affidavits dealing with the issues of this case.



The fourteen affidavits produced by the witness were submitted to the accused and to the commission, and by the judge advocate offered in evidence.

The accused made a motion that the commission either summon or subpoena all of the affiants who were known to the judge advocate prior to the commencement of the trial.

The judge advocate replied.

The commission announced that the motion was not sustained.

Mr. Takano, Junjiro, a counsel for the accused, read a written objection to the receipt in evidence of the fourteen affidavits, appended marked "DD."

An interpreter read an English translation of this objection, appended marked "EE."

Commander Martin E. Carlson, a counsel for the accused, read a further written objection to the receipt in evidence of the fourteen affidavits, appended marked "FF."

The judge advocate replied.

The commission was cleared.

The commission was opened and all parties to the trial entered.

Archie L. Maden, junior, yeoman first class, U. S. Navy, reporter.

The commission announced that the objections were not sustained, and that the affidavits would be received and accorded their proper weight. The affidavits were so received and are appended marked "Exhibit 2," "Exhibit 3," "Exhibit 4," "Exhibit 5," "Exhibit 6," "Exhibit 7," "Exhibit 8," "Exhibit 9," "Exhibit 10," "Exhibit 11," "Exhibit 12," "Exhibit 13," "Exhibit 14," and "Exhibit 15."

(The witness read Exhibit 2.)

The accused moved to strike the words "and then I could hear Hoffmeister screaming" out of the affidavit on the ground that they were an opinion of the affiant.

The judge advocate replied.

The commission announced that the motion was not sustained.

(The witness read Exhibit 3, Exhibit 4, and Exhibit 5.)

The accused moved to strike the words "I personally saw Tatsuni on one occasion beat Julius Hoffgardner and until he was unconscious" out of the statement on the ground that they were irrelevant and immaterial.

The judge advocate replied.

The commission announced that the motion was not sustained.

(The witness read Exhibit 6.)

The accused moved to strike the words "I have heard it stated that Katsumi forced men to repair the runway, but whether under fire or not I can't truthfully say" out of the statement on the ground that they were hearsay.

The judge advocate replied.

The commission directed that the words be stricken out.

(The witness read Exhibit 7.)

The accused moved to strike the words "I later learned they had been taken out to light a fire on the dredge," and "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 the Island surrendered to the Japs" out of the statement on the ground that they were hearsay and an opinion of the affiant.

The judge advocate replied.

The commission directed that the words be stricken out.

(The witness read Exhibit 8.)

The accused moved to strike out the extracts from the diary of the affiant and the answers to questions number 3, 4, 5, 9, and 14 on the ground that they were an opinion of the affiant.

The judge advocate replied.

The commission directed that the answers to questions number 3 and 9 be stricken out.

(The witness read Exhibit 9.)

The accused moved to strike the words "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" and the words "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" and the words "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" out of the statement on the ground that they were an opinion of the affiant and hearsay.

The judge advocate replied.

The commission announced that the motion was not sustained.

The commission then, at 11:30 a.m., took a recess until 2:15 p.m., at which time it reconvened.

Present: All the members, the judge advocate, the accused, his counsel, and the interpreters.

Elvin G. Gluba, yeoman first class, U. S. Navy, reporter.

No witnesses not otherwise connected with the trial were present.

The judge advocate resumed the stand as a witness for the prosecution and was warned that the oath previously taken was still binding, and continued his testimony.

(Examination continued:)

(The witness read Exhibit 10.)

The accused moved to strike the words "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" out of the statement on the ground that they were an opinion of the witness and hearsay.

The judge advocate replied.

The commission announced that the motion was not sustained.

(The witness read Exhibit 11.)

(The witness read Exhibit 12.)

The accused moved to strike the words "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, 1142 1/2 South Normandie, Los Angeles, California, or by Ed. Connors at the same address" out of the statement on the ground that they were irrelevant and immaterial.

The judge advocate replied.

The commission announced that the motion was not sustained.

(The witness read Exhibit 13.)

(The witness read Exhibit 14.)

The accused moved to strike out Exhibit 14 on the ground that the sight of the incident as indicated in paragraph four of the exhibit was Guam and therefore irrelevant and immaterial.

The judge advocate replied.

The commission announced that the motion was not sustained.

(The witness read Exhibit 15.)

The accused did not desire to cross-examine this witness.

The commission did not desire to examine this witness.

The witness said that he had nothing further to state.

The witness resumed his seat as judge advocate.

The judge advocate requested that the commission take judicial notice of the fact that Peale Island is one of the sister islands of Wake Island and has been a possession of the United States of America since 1898.

The accused objected to the commission taking judicial notice of this fact on the ground that it was not well-known and that it should be proved that it is in issue in the instant case.

The judge advocate replied.

The commission announced that the objection was not sustained and that it would take judicial notice of the fact as requested by the judge advocate.

The prosecution rested.

The accused requested an adjournment until Saturday, October 2, 1948, in order to prepare his defense and to await the arrival of depositions from defense witnesses in Japan and the United States.

The commission announced that the request was granted, and the commission then, at 2:45 p.m., adjourned until 9 a.m., Saturday, October 2, 1948.



SIXTH DAY

United States Pacific Fleet,  
Commander Naval Forces, Marianas,  
Guam, Marianas Islands,  
Saturday, October 2, 1946.

The commission met at 9:10 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,  
Lieutenant Colonel Kenneth E. Balliet, Cavalry, United States Army,  
Lieutenant Colonel Newton L. Chamberlain, Signal Corps, United States  
Army,  
Lieutenant Commander Ralph I. Gerber, U. S. Navy,  
Captain Albert L. Jenson, U. S. Marine Corps, members, and  
Lieutenant James P. Kenny, U. S. Navy, judge advocate.  
Paul F. Coste, junior, yeoman first class, U. S. Navy, reporter.  
The accused, his counsel, and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

The judge advocate requested that he be allowed to reopen the prosecution's case on the ground that he had recently become aware of the presence on Guam of Master Technical Sergeant Walter T. Kennedy, U. S. Marine Corps, whose affidavit was already in evidence as Exhibit 4.

The commission announced that the request was granted.

The accused moved to strike out Exhibit 4 on the ground that the affiant was now available as a witness.

The commission announced that the motion was granted and directed that Exhibit 4 be stricken out.

The prosecution reopened.

A witness for the prosecution entered and was duly sworn.

Examined by the judge advocate:

1. Q. State your name, rank and present station.  
A. Walter Thomas Kennedy, Master Technical Sergeant, Ewa, Territory of Hawaii.
2. Q. If you recognize the accused, state as whom.  
A. Mr. Katsumi.
3. Q. Were you made a prisoner of war by the Japanese on December 23, 1941?  
A. Yes.
4. Q. Where were you at that time?  
A. Wake Island.

5. Q. How long did you remain a prisoner on Wake Island?

A. About six months.

6. Q. During that period did you come to know the accused Katsumi?

A. Yes.

7. Q. Do you recall a raid by an American Task Force upon Wake in the month of February 1942?

A. Yes.

8. Q. Where were you during the course of that raid?

A. We were in a dugout.

9. Q. Where was that dugout located?

A. Well it was in front of the hospital and the barracks.

10. Q. Did anything unusual occur while you were in that dugout on that particular day?

A. Yes, there was.

11. Q. What was it?

A. Well there were some men that had to go out and work during the time of the raid to fix a three inch gun and also a machine gun, I believe.

12. Q. To whom are you referring when you say some men?

A. Well, there were some civilian contractors on the island and they had to go out and also some military personnel.

13. Q. Who were the men that you recall went out to work on this three inch gun?

This question was objected to by the accused on the ground that it was leading.

The judge advocate replied.

The commission announced that the objection was not sustained.

A. Captain Wilson of the U. S. Army, Paskowitch, Aviation Machinist Mate First Class Jim Hesson, and I believe Sergeant Ackley.

14. Q. Tell us what took place in the dugout just prior to these people going to work on this gun?

A. Civilian contractors were asked first to go out. To my knowledge I believe the air strip needed work on, and then these men I referred to were asked to go out and fix a three inch and machine gun, but I refused at the time. Mr. Katsumi had a pistol in his hand and it wouldn't have done much good to refuse then. They had no choice.

The accused moved to strike out this answer on the ground that it was hearsay and an opinion of the witness.

The judge advocate replied.

The commission announced that the motion was not sustained.

15. Q. Were you present when this took place?

A. Yes.

16. Q. Did these people that you have named leave the shelter?

A. Yes, they left the shelter, but there is one thing I want to bring up, at the time these men were forced to go out, Katsumi was accompanied by a Japanese officer.

17. Q. Did you go along with them?

A. No, I didn't.

18. Q. Were you included in the group that was ordered to go?

A. Yes, I was, but the reason I got out of it was because I had just gotten out of a cast, my right arm was weak.

Cross-examined by the accused:

19. Q. During this time, were the Marine personnel separated from the American prisoners of war?

A. Referring to the dugout?

20. Q. No, referring to where you were living.

A. Well, after we were out of the hospital, yes.

21. Q. When you were hospitalized, were you hospitalized in a civilian hospital?

A. Yes, because we only had one hospital.

22. Q. And that was the civilian hospital, is that right?

A. Yes.

23. Q. At this time, wasn't Sergeant Paskowitch also hospitalized with a badly wounded leg?

A. Well yes, but he was wounded in the leg, but the sergeant could walk on it all right so that was all that was necessary at that time, when they had some work to be done.

24. Q. At this time, were you being treated by the Navy doctor or the civilian doctor?

This question was objected to by the judge advocate on the ground that it went beyond the scope of the direct examination, irrelevant and immaterial.

The accused made no reply.

The commission announced that the objection was sustained.

25. Q. How were you made aware of this American raid?

A. Well, personally I myself was aware because I seen some aircraft in the sky, but right after I saw it, the siren went off.

26. Q. Do you remember what time the siren was sounded?

A. I would say around six or 6:30 in the morning.

27. Q. When did you go to this dugout shelter?

A. When the siren was sounded.

28. Q. Did Paskowitch, Hesson and Ackley go to this shelter at the same time you did?

A. Yes.

29. Q. How many people took shelter in this dugout would you say?

A. Somewhere between 350 and 400.

30. Q. Will you describe this shelter?

A. Well, I don't know how long it was, but there was room for everybody. It took us down as deep as it could without hitting water and covered with, I think, railroad irons, sheet metal, a few boards, and covered with coral. They had twelve by twelve stanchions outside - it was pretty big.

31. Q. The only other people that took shelter besides the civilians were the hospitalized military personnel?

A. No, there were Japanese civilian engineers on the island. They were also in the dugout and Mr. Katsumi was in and out.

32. Q. But were there any American officers there?

A. I believe we only had two at that time on the island, Captain Wilson and a second lieutenant by the name of Webb, a pilot.

33. Q. Were they in the shelter?

A. Yes.

34. Q. These three inch guns that you referred to, were they American guns?

A. Yes, they were American guns.

35. Q. Do you know who the Japanese officer was who came with Katsumi?

A. No, I don't.

36. Q. When did you leave Wake Island? You said about six months after you were captured; do you know exactly when you did leave?

A. May 11th, either the 11th or 13th, 1942.

37. Q. On the day of the raid of February 24th when did the bombardment and shelling start?

A. It was around six or 6:30 in the morning.

38. Q. This time you mentioned, is this local Wake time?

A. Yes.

39. Q. You testified that three or four men went out to fix the three inch gun, did you go with them?

A. No.

40. Q. Do you recall making an affidavit on December 6, 1946?

A. Yes.

41. Q. Do you recall in this statement writing in this statement that you went with the other prisoners to fix the anti-aircraft gun?

A. No, I don't.

42. Q. Do you recall in writing in this affidavit the following clauses:

"Question - Do you recall any other mistreatment of prisoners by Katsumi?

Answer - Yes, about February 24, 1943, during an air raid Katsumi called Paskowich, a Marine, a sailor, Jim Hesson, a Marine by the name of Ackley and



me out of shelter made us try and repair their anti-aircraft 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?"

A. 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.

43. Q. You testified that other than the fellows you named, there were two other people who were called to go out to work; do you know where they went?

A. You mean the civilian contractors that were asked to go?

44. Q. Yes.

A. I didn't see them working you know. The only thing I heard was to go to work; I understood it was down at the airport and out on the lagoon that caught fire. That was as much as I know about it.

45. Q. Do you know what time it was when Captain Wilson and the rest went out of the dugout; about what time?

A. Well I don't know the time, but I know it was in the morning.

46. Q. How many hours after the siren blew?

A. I don't know, I didn't have a watch.

47. Q. Who ordered this Captain Wilson and other civilians to go and work?

A. Mr. Katsumi.

48. Q. At this time did the Japanese officer that came with Katsumi say anything?

A. I couldn't understand Japanese very well at the time - I couldn't understand.

49. Q. Then did Katsumi give you orders after this Japanese talked with Katsumi?

This question was objected to by the judge advocate on the ground that it assumed facts not in evidence.

The accused reframed the question.

50. Q. Before Katsumi gave you orders in English, was Katsumi talking with this Japanese officer?

A. No, the Japanese officer was talking to him.

51. Q. Then after that, Katsumi gave you orders in English; is that true?

A. Yes, but he also had a pistol in his hand and he forced some men to go.

52. Q. How did he go about forcing the prisoners to go out with this pistol, will you explain?

A. Like anybody else at the point of a gun - kind of waved it around quite a bit - I didn't know if it would go off or not.

53. Q. Did he point the pistol to any specific person, or to everybody in general.

A. Both.

54. Q. To whom did he point the gun - to the specific person?

A. I don't know about the civilian contractors, but Captain Wilson and Paskowitch had the gun pointed at them.

55. Q. How far was he when he pointed that gun?

A. About three feet.

56. Q. When Katsumi came to this dugout, what time was it?

A. I don't know, it was in the morning.

57. Q. Was it after the actual bombing and shelling was over?

This question was objected to by the judge advocate on the ground that it called for an opinion of the witness.

The accused made no reply.

The commission announced that the objection was sustained.

58. Q. When Katsumi came to the dugout, did you actually hear the shelling still going on?

A. Yes.

59. Q. And after these persons left the dugout, did you hear the actual shelling?

A. I heard some bombing.

60. Q. By "I heard some bombing," what do you mean; do you mean the noise, or what do you mean by that?

A. I heard the explosions of the bombs.

61. Q. Was this explosion right above Wake or over the sea?

A. I think most of it was on Wake.

62. Q. This officer that came along with Katsumi, did you often see him before?

A. No.

63. Q. Was Katsumi in the dugout with you from the beginning?

A. Yes, he was in there pretty fast.

64. Q. Until what time did you stay in this dugout that day?

A. The military personnel, they wouldn't let us out other than if we went to work. I think we stayed all day and that night because about six o'clock some Japanese airplanes landed. We watched them land.

65. Q. How many times did Katsumi leave this dugout this day?

This question was objected to by the judge advocate on the ground that it called for an opinion of the witness.

The accused reframed the question.

66. Q. How many times did you see Katsumi leave this dugout that day?

A. I don't know, he was in and out of it all the time. I don't know how many times he was in or how many times he was out.

67. Q. That day, was Katsumi with you most of the time, that is excepting leaving now and then for a little while?

A. I don't know because the military personnel were down at one end of the dugout.

68. Q. Around what time did you hear the all clear signal?  
A. I didn't hear it.

69. Q. During the six months you were at Wake, about how many civilian prisoners of war were there?  
A. There were over three hundred of them.

70. Q. And how many military prisoners of war?  
A. Only twenty I believe.

71. Q. You testified that some persons went out to fix this anti-aircraft gun, but when they went out, did Katsumi and this officer go out with them?  
A. Yes, I believe he did. He had to show them where it was.

72. Q. You testified that he went out because he had to show them where it was; isn't that your opinion?  
A. Where the three inch gun was located, put it that way.

73. Q. How do you know that Katsumi and this Japanese officer went out with the prisoners to show them where the gun emplacement was?  
A. I don't, I mean I didn't go out of the dugout, the only thing I could do was take their word for it.

74. Q. Was there an armed guard that day inside this dugout or near this dugout?  
A. Yes, I believe there were three of them.

75. Q. Where were they?  
A. In and outside both.

76. Q. Were the guards together in one bunch or each one separated?  
A. Separated.

77. Q. You testified that Katsumi ordered three or four military personnel out to work, and also about three or four civilian personnel go out to work, but other than these two incidents, do you know of any other incidents where personnel went out to work?

This question was objected to by the judge advocate on the ground that it was not in accordance with the testimony of the witness.

The accused reframed the question.

78. Q. Do you know how many times Katsumi came and ordered American prisoners to go out to work, and where did he order them to go?  
A. You speak of just this day during the bombing?

79. Q. Yes.  
A. Just three that I know of, the airport and three inch gun, and a machine gun, also out on a lagoon; it might have been four times.

Examined by the commission:

80. Q. Sergeant, will you tell the commission if you remember whether or not the group that went out to repair the machine gun left before or after the group that went out to the lagoon?  
A. After, I believe.

81. Q. We want you to be sure at this point, if you are not sure, we don't want you to answer. Were they the first group, the middle group, or the last group?

A. I don't know.

82. Q. One more question. Can you tell the commission if you recall exactly as near as you can recall, when you didn't hear any more shelling or bombing?

A. I don't know of the time, I know it started around six or 6:30 in the morning.

83. Q. You don't know when it stopped?

A. No.

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

The witness said he had nothing further to state.

The witness was duly warned and withdrew.

The prosecution rested.

The commission then, at 10:20 a.m., took a recess until 10:35 a.m., at which time it reconvened.

Present: All the members, the judge advocate, the accused, his counsel, and the interpreters.

Archie L. Haden, junior, yeoman first class, U. S. Navy, reporter.

No witnesses not otherwise connected with the trial were present.

The defense began.

Sanagi, Sadamu, a counsel for the accused, read an opening statement for the defense, appended marked "GG."

An interpreter read an English translation of the opening statement for the defense, appended marked "HH."

The accused requested the commission to take judicial notice of the following:

- (1) That, Japan lies in the 2100 hour zone (or Item Zone) of the world time zone, and Wake Island situated 19 degrees 11 minutes North latitude and 166 degrees 31 minutes East longitude is in the 2300 hour zone (or Love Zone) of the world time zone, and
- (2) consequently that there is a difference of two hours between Japanese Standard Time and the time in use on Wake Island.

The commission announced that it would take judicial notice of the matter requested.

The commission then, at 10:55 a.m., adjourned until 9 a.m., Monday, October 4, 1948.



SEVENTH DAY

United States Pacific Fleet,  
Commander Naval Forces, Marianas,  
Guam, Marianas Islands,  
Monday, October 4, 1943.

The commission met at 9 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,  
Lieutenant Colonel Kenneth E. Gallist, Cavalry, United States Army,  
Lieutenant Colonel Newton L. Chamberlain, Signal Corps, United States  
Army,  
Lieutenant Commander Ralph I. Gerber, U. S. Navy,  
Captain Albert L. Jenson, U. S. Marine Corps, members, and  
Lieutenant James P. Kenny, U. S. Navy, judge advocate.  
Elvin G. Gluba, yeoman first class, U. S. Navy, reporter.  
The accused, his counsel, and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

The judge advocate was recalled as a witness for the defense, and was  
warned that the oath previously taken was still binding.

Examined by the accused:

1. Q. Are you the judge advocate in this present trial?  
A. I am.

2. Q. Do you have in your possession the deposition of one Kawasaki,  
Susumu?  
A. I have; here it is.

The deposition of Kawasaki, Susumu, produced by the witness, was  
submitted to the judge advocate and to the commission, and by the accused  
offered in evidence.

There being no objection, it was so received and is appended, marked  
"Exhibit 16."

3. Q. Will you please read the deposition?

(The witness read interrogatories 1, 2, and 3 and the answers thereto  
and interrogatory 4.)

Interrogatory 4 was objected to by the judge advocate on the ground  
that it was irrelevant and immaterial.

The accused replied.

The commission announced that the objection was not sustained.

(The witness read the answer to interrogatory 4, interrogatory 5 and the answer thereto, and interrogatory 6.)

Interrogatory 6 was objected to by the judge advocate on the ground that it called for an opinion of the witness, that it was improper in form, and that it was irrelevant and immaterial.

The accused replied.

The commission announced that the objection was not sustained.

(The witness read the answer to interrogatory 6 and interrogatory 7.)

Interrogatory 7 was objected to by the judge advocate on the ground that it was improper in form.

The accused replied.

The commission announced that the objection was not sustained.

(The witness read the answer to interrogatory 7, interrogatory 8 and the answer thereto.)

The judge advocate moved that the answer to interrogatory 8 be stricken out on the ground that it was not responsive and that it was an opinion of the witness.

The accused replied.

The commission announced that the motion was not sustained.

(The witness read interrogatory 9 and the answer thereto and interrogatory 10.)

Interrogatory 10 was objected to by the judge advocate on the ground that it called for an opinion of the witness.

The accused replied.

The commission announced that the objection was sustained.

(The witness read interrogatories 11, 12, and 13 and the answers thereto, and interrogatory 14.)

Interrogatory 14 was objected to by the judge advocate on the ground that it called for an opinion of the witness.

The accused replied.

The commission announced that the objection was not sustained.

(The witness read the answer to interrogatory 14.)

The judge advocate moved to strike out the answer to interrogatory 14 on the ground that it was an opinion of the witness.

The accused replied.

The commission announced that the motion was not sustained.

(The witness read interrogatories 15 through 35 inclusive and the answers thereto.)

The judge advocate moved to strike out the answer to interrogatory 35 on the ground that it was an opinion of the witness.

The accused replied.

The commission announced that the motion was not sustained.

(The witness concluded the reading of the interrogatories and cross-interrogatory and the answers thereto.)

The accused moved to strike out the first cross-interrogatory and the answer thereto on the ground that it was irrelevant.

The judge advocate replied.

The commission announced that the motion was not sustained.

The commission then, at 10:10 a.m., took a recess until 10:40 a.m., at which time it reconvened.

Present: All the members, the judge advocate, the accused, his counsel, and the interpreters.

Paul F. Caste, junior, yeoman first class, U. S. Navy, reporter.

The judge advocate, the witness under examination when the recess was taken, resumed the stand and was warned that the oath previously taken was still binding, and continued his testimony.

(Examination continued:)

4. Q. Do you have in your possession the deposition of one Iwana, Chuichi?  
A. I have; here it is.

The deposition of Iwana, Chuichi, produced by the witness, was submitted to the judge advocate and to the commission, and by the accused offered in evidence.

There being no objection, it was so received and is appended, marked "Exhibit 17."

5. Q. Will you please read Exhibit 17?

(The witness read Exhibit 17.)

6. Q. Do you have in your possession the record of a trial of Kawasaki, Susumu, et al, which case was tried in this court?  
A. I have in my possession a copy of the record of the trial of Kawasaki, Susumu, et al, which was tried before a military commission.

The record of proceedings of the trial by military commission of Kawasaki, Susumu, et al, was submitted to the judge advocate and to the commission, and by the accused, so much thereof as contains the testimony of Horio, Hiroku, was offered in evidence.

There being no objection, it was so received.

7. Q. Will you please questions 1 through 5, 10, 11, 12 and 29, and the answers thereto?

The witness read from the testimony of Morio, Hiroku as follows:

"1. Q. Are you Hiroku Morio, an accused in this case?  
"A. I am Hiroku Morio, the accused.

"2. Q. What was your unit in 1942?  
"A. It was the 60th Navy Guard Unit.

"3. Q. And what was your rank at that time?  
"A. At the time I was a Warrant Officer in the Navy.

"4. Q. When did you arrive at Wake Island?  
"A. On the 23rd of December, 1941.

"5. Q. Who was your commanding officer at Wake Island in 1942?  
"A. Naval Captain Susumu Kawasaki.

"10. Q. Did you actually catch and arrest the prisoner yourself?  
"A. I actually caught him myself and after catching him, I took him to the entrance to headquarters.

"11. Q. Did any sentries or guards assist you?  
"A. The guards who were at the entrance to headquarters assisted me.

"12. Q. Did you turn the prisoner over to the executive officer at that time?  
"A. At the time I took the prisoner over to the entrance at headquarters, several people came up and we made a short investigation. I do not remember clearly whether the executive officer was among the group or not. At the entrance to the headquarters, I turned the prisoner over to someone and that is why I have said I turned him over to the executive officer.

"29. Q. Outside of this prisoner, how were the other prisoners on the island treated while Captain Kawasaki was there?

"A. Captain Kawasaki was very fair in his treatment of the prisoners and I think that their treatment was comparable to that which we Japanese troops received."

The record of proceedings of the trial by military commission of Kawasaki, Susumu, et al, was submitted to the judge advocate and to the commission, and by the accused, so much thereof as contains the testimony of Kawasaki, Susumu, was offered in evidence.

There being no objection, it was so received.



Q. Will you please read questions 1 through 7 and 49 through 51, and the answers thereto?

The witness read from the testimony of Kawasaki, Susumu as follows:

"1. Q. Are you Susumu Kawasaki, an accused in this case?  
"A. I am.

"2. Q. What was your rank in the year 1942?  
"A. Naval Captain.

"3. Q. You were on Wake Island in 1942?  
"A. I was.

"4. Q. What was your official position on Wake Island?  
"A. Commanding Officer of the 65th Navy Guard Unit.

"5. Q. How long were you commanding officer of the 65th Navy Guard Unit on Wake Island?  
"A. From the 7th of January 1942 to the 12th of December 1942.

"6. Q. About how many prisoners of war were left on Wake Island from the period May to August 1942?  
"A. About 400 prisoners were on Wake during that period.

"7. Q. Who was in charge of the prisoner of war compound at that time?  
"A. Lieutenant (jg) Tadayuki Hanota.

"49. Q. During the time when you were commanding officer on Wake Island, give us a little more of the details concerning the treatment of prisoners, attitude towards the prisoners, and such.

"A. During the time when I was commanding officer on Wake Island we had an excellent regard for the American prisoners. Also, I gave orders to my junior officers concerning treatment based on this high regard. I will give you a few specific examples of these conditions. We did as much as possible to allow the prisoners to live in their American fashion and we had the rooms divided separately, in the American style. We did as much as possible to give the American prisoners the food which came from Japan. The prisoners worked 2½ hours in the morning and 2½ hours in the afternoon and when it was especially hot, they were given rest periods. Since the physical condition of the prisoners was important, we had a special prisoner's sick bay in the compound and there were three American doctors and one American dentist. In times of combat we took special consideration of the safety of the American prisoners. Near the compound there were air raid shelters of steel construction which were the best on the island, even better than those actually provided for the Japanese soldiers. For example, when one of my prisoner friends was sent to Japan in October of that year, he especially told me goodbye. Our relationship was that of friends. Around April or May of this year the prisoners became a bit restless and fearing an incident of attempted escape, we encouraged exercise and athletic events.

"50. Q. How long after the event of the prisoner's arrest by the sentry until the trial was held?"

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

The accused replied.

The commission announced that the objection was sustained.

"51. Q. How long after the trial was the sentence of execution carried out?"

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

The accused made no reply.

The commission announced that the objection was sustained.

The judge advocate did not desire to cross-examine this witness.

The commission did not desire to examine this witness.

The witness said that he had nothing further to state.

The witness resumed his seat as judge advocate.

The commission then, at 11:20 a.m., took a recess until 2 p.m., at which time it reconvened.

Present: All the members, the judge advocate, the accused, his counsel, and the interpreters.

Archie L. Haden, junior, yeoman first class, U. S. Navy, reporter.

No witnesses not otherwise connected with the trial were present.

Mr. Sanagi, Sadamu, a counsel for the accused, was called as a witness for the defense and was duly sworn.

Examined by the judge advocate:

1. Q. Are you one of the defense counsel in the present case?
- A. Yes.

Examined by the accused:

2. Q. Have you in your possession a book relating to the raid on Wake Island on February 24, 1942?
- A. I have; here it is.
3. Q. What is the title of this book?
- A. "Battle Report, Pearl Harbor to Coral Sea."

4. Q. Who are the authors of this book and are they available as witnesses?  
A. The book states on the flyleaf as follows: "Battle Report, Pearl Harbor to Coral Sea. Prepared from official sources by Commander Walter Karig USNR and Lieutenant Welbourn Kelly, USNR." To the best of my knowledge neither of these men are here on Guam and are not therefore available as witnesses.

At the request of the accused, the book produced by the witness was marked "Number One" for identification.

5. Q. Will the witness turn to page Roman numeral five and read the first two paragraphs and paragraphs four, five, and six?

The witness read from the book marked Number One for identification as follows:

"When the authors of this book were directed by Secretary of the Navy Frank Knox to begin its preparation, a few months before his death, the instructions were brief and to the point. 'Tell the story of the Navy's part in this war,' he said. 'Particularly those early days, when the Japs were having things their own way, and when we had to examine every scrap of information with a microscope for fear it would be helpful to the enemy. Admiral King has agreed that it is now possible to release much of the information which, up to now, we have had to hold back. Tell the whole story, in a nontechnical, readable form, the good and the bad.' Before a line of this present volume was written the authors decided (and they hope wisely) to tell their story with complete objectivity, eschewing personal opinions, and confining themselves to the simple description of what happened to the Navy's men and ships and planes and bases. Thus there was avoided any discussion of strategy and tactics, any analysis or evaluation of battle plans, logistics or international diplomacy. Even when viewed from the standpoint of time and fuller knowledge, aspects of battle differ in the eyes of each new beholder. For instance, historians still find themselves unable to name with unanimity the winner of the Battle of Jutland. This then, is a simple book, told with all the honesty and integrity with which its authors have been endowed. Professional writers on naval operations in this war will naturally want to know how much factual material was removed when the manuscript received its final review for security. The answer is a very happy one: Very little was deleted, and that little left the narrative unimpaired. As commissioned officers, the authors have some knowledge of the technical information which the enemy would like to know -- technical details of armor, armament and other equipment. The authors decided in the beginning to leave out such details, not only in the interest of security but because such technical details were irrelevant to a nontechnical work. Otherwise they set themselves to tell the story in full. Professional writers on naval subjects, after viewing the information contained herein, should find it easy to understand how little has been unsaid, either by omission or by deletion from the final manuscript. Just as the authors accept full responsibility for all that has been left out of this book, they likewise are responsible for all that it contains and the manner of its presentation. (Every author tends to find one particular incident of more interest than another, and to give more space to that which interests him; and most authors, in the effort to achieve dramatic unity, select only those incidents which seem to demand inclusion in the formation of a rounded and entire picture. Without this process of selectivity, the result is often a mere catalogue of names, places and events -- a school of history writing, however, which also has its admirers.)"

6. Q. Will you please turn to page 273 and read beginning with "From a point better than 100 miles north of Wake,..." to "...and began launching her planes at 0517."?

A. "From a point better than 100 miles north of Wake, the ENTERPRISE turned her shovel-nose into a foul rain-soaked east wind and began launching her planes at 0517."

7. Q. Also on page 273, will you read the paragraph at the bottom of the page from "Meanwhile the planes in the air..." down to and including paragraph on page 274, sentence ending "...and found it to be satisfactory."?

A. "Meanwhile, the planes in the air were reporting difficulties in effecting a rendezvous, and the impossibility of achieving a formation. Admiral Halsey thereupon suspended flight operations for thirty minutes, so it was not until 0630, in a soupy gray dawn, that the attack group was finally in the air and headed for Wake. There were 36 bombers, each carrying one 500-pound and two 100-pound bombs, nine torpedo planes each carrying twelve 100-pound bombs, and an escort of six fighters. They flew into clearing weather, with just enough clouds to provide much-needed concealment now that the sun was up and the enemy probably aware of the cruiser detachment. And indeed the enemy was fully aware of the surface bombardment group, for as the airplanes sighted Wake they saw the smoke and flames of the ships' shelling rising high. Commander Howard L. Young, USN, the air group's commander, ordered the prepared plan of operations canceled forthwith and led his planes into unload their burdens upon the Japanese, the bombers diving and the torpedo planes making a horizontal attack. To the Americans' surprise, no enemy aircraft arose to give battle, although Wake possessed the finest airfield between Hawaii and Japan. They decided not to leave it that way, for sure. Only slightly hampered by the weak and erratic antiaircraft fire from the batteries that had just been pounded by the big guns of the surface ships, the fliers did a fast but unhurried 40-minute job of destruction. When they had finished they took a good, long look at the damage the bombs and the shellfire had accomplished, and found it to be satisfactory."

8. Q. Will you read the paragraph on page 275 "So ended the aerial attack on Wake..." page 275, paragraph "The Northampton..." and everything on page 276 down to and including the last sentence which ends on page 277?

A. "So ended the aerial attack on Wake..." "The Northampton, Salt Lake City, Maury, and Balch arrived at their appointed position west of Wake according to schedule, but wondering whether the surprise in which they were to participate had not been forestalled. Two hours before the bombardment was supposed to begin the air was filled with the high-pitched, monotonous drone of a Japanese reporting something of great moment over the radio. The likelihood was that the detachment had been spotted by a patrol craft, and that their arrival was being heralded. At that time the ships were only 37 miles from Wake, and Admiral Spruance decided to go ahead with the established plan. But--there were no bombers over Wake to set the signal fires which Spruance had been told to expect. Instead, three Japanese reconnaissance planes appeared, and, after some uncertain passes at the ship, dropped a splatter of light bombs in the neighborhood of the Northampton and Maury. The cruisers launched their planes, 300 Seagulls, between 0710 and 0722, to provide eyes for the bombardment, six planes in all. At 0742, and 16,000 yards from the target, the guns began to lob a pattern of 8 and 5-inch shells into the irregular dome of mist that marked where the appendix-island of Peale lay. The bombardment lasted a little under half an hour, being broken off when the Enterprise's dive bombers swarmed in. The shells set numerous fires, one towering conflagration marking the destruction of what must have been a large gasoline storage center. Some shore batteries were silenced, but not enough to satisfy Admiral Spruance. Apparently the lack of wholly satisfactory results was due to the type of ammunition with which the ships were



provided, a paucity of bombardment shells and more armor-piercing projectiles than were needed in such an operation. But those were the Navy's leanest days; the ships did the best they could with what they had, and if it was hard work to shoot rabbits with a rifle, it was all the more satisfactory when one got a bag that way. Between the dive-bombing and the high-level attacks on the island by the Enterprise group, the cruiser's SCs were permitted to enter the combat actively, and delivered eleven 100-pound bombs on a group of buildings and antiaircraft emplacements on the northwest tip of Wake. 'Dropping our puny little bombs from our obsolete aircraft was more a gesture than anything else,' one of the pilots later observed, but it was a more effective gesture than the one made by the Japanese in retaliation. The enemy sent up a fighter float-plane to attack the SCs, and although the Japanese had more power, more speed, and more maneuverability than ~~the~~ <sup>the</sup> Americans, he utilized them to keep out of range. The bombardment completed, the four ships proceeded to the rendezvous point from which they were to rejoin the Enterprise. It was during this maneuver that the Laury injected herself into the fight between the patrol boat and the carrier's bombers, obliterating the target at 3,000 yards with a two-gun salvo. The destroyer stood by in an effort to rescue some of the surviving Japanese as the disgraced Enterprise bombers flew off. 8K

9. Q. Will you read on page 276 from "The Americans, on ship or in the air ..." and ending with "...all these desirable targets were left unmolested by the raiders, to avoid killing their compatriots, if any were still there."? A. "The Americans, on ship or in the air, had to pick their targets with care, for there probably were still some of their countrymen captive on Wake. It appeared that the contractor's camp on the northwest wing of the main island, where lived the men who had been completing Pan American Airways' tremendous project at Wake, had been converted into a prisoners' stockade. It was close to many desirable targets, a shore battery, antiaircraft gun emplacements, the power plant for the islands, fuel oil storage tanks, piers, and a new causeway connecting with Peale Island. All these desirable targets were left unmolested by the raiders, to avoid killing their compatriots, if any were still there." 8K

Cross-examined by the judge advocate:

10. Q. Will the witness read from page 274 the second paragraph beginning with the words "To the American's surprise..."?

A. "To the Americans' surprise, no enemy aircraft arose to give battle, although Wake possessed the finest airfield between Hawaii and Japan. They decided not to leave it that way, for sure. Only slightly hampered by the weak and erratic antiaircraft fire from the batteries that had just been pounded by the big guns of the surface ships, the fliers did a fast but unhurried 40-minute job of destruction. When they had finished, they took a good, long look at the damage the bombs and the shellfire had accomplished, and found it to be satisfactory."

Neither the accused nor the judge advocate desired further to examine this witness.

The commission did not desire to examine this witness.

The witness said that he had nothing further to state.

The witness resumed his seat as counsel for the accused.

The accused was, at his own request, duly sworn as a witness in his own behalf.

Examined by the judge advocate:

1. Q. Are you the accused in this case?
- A. Yes.

Examined by the accused:

2. Q. State your name.
- A. Katsumi, Seishi.
3. Q. Were you ever employed by the Japanese Navy and if so, state the period and your status?
- A. Yes, I have been employed. I was first employed from December 3, 1941 to about November 1943. Next I was employed from December 30, 1943 to the end of the war. I was attached to the Combined Fleet Headquarters. My status was Shokutaku of sonin rank (TN. - a civilian employed by the Naval General Staff with the relative rank of between Ensign and Lieutenant.) OK
4. Q. Before you became Shokutaku for the Navy were you ever in the military service?
- A. No, I have never been.
5. Q. Describe briefly how you came to be a Shokutaku in the Navy.
- A. From 1919 to November 1941 I resided in the United States. Around the middle of November 1941 I returned to Japan and tried to look for a job. It was very difficult to find an opening in the business services and it happened that I had a friend in the Naval General Staff and through his offices I was able to get in as Shokutaku of the Naval General Staff.
6. Q. What duties were you assigned when you became Shokutaku of the Naval General Staff?
- A. On December 3, 1941 I received a written order from the General Staff to the effect that I should be assigned to work as Shokutaku at Fourth Fleet Headquarters and a staff officer verbally told me that I should do work as interpreter and translator in the English language.
7. Q. Will you describe briefly what happened after you were attached to the Fourth Fleet Headquarters until you assumed your duties on Wake Island?
- A. On December 3, 1941 I assumed duties at the Fourth Fleet Headquarters and I was ordered to board the YUBARI which was the flagship of the Sixth Destroyer Squadron and after that I boarded a transport and the engineering staff officer ordered me to land at Wake and I remained there after that. I landed on Wake in the afternoon of December 24, 1941 together with the engineering staff officer and the communications staff officer.
8. Q. State the period of your tour of duty on Wake.
- A. From December 24, 1941 to about November 1943.
9. Q. Who was the commanding officer on Wake Island from December 24, 1941 to September 30, 1942?
- A. At the time of the occupation, the commanding officer of the landing party died and the next in command, Junzo Arase, a lieutenant junior grade, took command until the end of December 1941. After that Captain Kawasaki, Susumu became the commanding officer of the Sixty-fifth Naval Guard Unit.

10. Q. What was the Japanese unit on Wake from December 24, 1941 to September 30, 1942?

A. The Sixty-fifth Naval Guard Unit, a construction corps, and detachment of the air corps.

11. Q. What were your duties during your stay on Wake?

A. My main duties were interpreter, monitoring radio broadcasts and translation work. Interpreting was mainly done for the Japanese armed forces and the prisoners of war. The radio monitoring was mainly listening in to American broadcasts to Japan and other miscellaneous translation work.

12. Q. Who was your immediate superior during your stay on Wake?

A. At the beginning, lieutenant junior grade Arase was my immediate superior and next, Kawasaki, Susumu; but I used to receive orders directly from the executive officer.

13. Q. What was the name of the executive officer?

A. Lieutenant Commander Cho, Hikaru.

14. Q. When you landed on Wake were there any prisoners of war? If so, state how many.

A. Yes, there were. Including both civilian and military, there were about 1200 to about 1500.

15. Q. Were there any prisoners sent back to Japan? If so, state the number of prisoners sent back at one time and state the number of prisoners that subsequently remained.

A. Yes, there were. The first large group that was sent back was on January 11, 1942 by the NITTA MARU. Those remaining were about 300.

16. Q. What kind of prisoners were left behind?

A. Besides the twenty civilian and military prisoners who were hospitalized, of those that remained the majority were carpenters and the others special technicians.

17. Q. Was there an officer in charge of the prisoners of war? If so, who was this officer?

A. There was a special officer in charge of the prisoners of war and his name was Nomoto, Tadayuki, lieutenant junior grade.

18. Q. Were there any assistants especially designated to Lieutenant Nomoto and if so, state their names and how many?

A. There were Petty Officer Okazaki and seaman first class Shimizu.

19. Q. During your tour of duty on Wake were the prisoners ever used for work?

A. Yes, they were used.

20. Q. What procedure was used in regard to their employment?

A. For using the prisoners, it was necessary for the various sections to turn in a work sheet in which they would state the kind of work and the necessary time. This was given to the assistant in charge of the prisoners and the assistant would be ordered by the officer in charge of the prisoners of war. Before January 11, 1942, due to the fact that there were numerous prisoners of war and there were too many requests for use of prisoners of war the assignments were helter skelter, but a group of technicians were



assigned specifically. After January 12, 1942, by orders from the officer in charge of the prisoners of war, the prisoners of war were classified according to their skills. For instance, stevedores were assigned to work with the surface patrol section and those skilled motor works were assigned to work as mechanics and those skilled in dredging would be assigned to work on the dredge. Mechanics would be ordered to the repair shops.

The commission then, at 3:20 p.m., took a recess until 3:35 p.m., at which time it reconvened.

Present: All the members, the judge advocate, the accused, his counsel, and the interpreters.

Elvin G. Gluba, yeoman first class, U. S. Navy, reporter.

No witnesses not otherwise connected with the trial were present.

The accused, Katsumi, Seishi, the witness under examination when the recess was taken, resumed the stand as a witness in his own behalf and was warned that the oath previously taken was still binding, and continued his testimony.

(Examination continued:)

21. Q. Were you connected in any way in the assigning of prisoners of war to work?

A. I was not connected with the assigning. I worked in the capacity of an interpreter.

22. Q. Were you present when prisoners of war were assigned everyday to the various work?

A. I was not present everyday, but whenever there was an order from the officer in charge of the prisoners of war, I was present.

23. Q. Did anything unusual occur on February 24, 1942?

A. There was an attack by the American Task Force.

24. Q. At about what time did the attack by the American Task Force begin on that day?

A. It was immediately after breakfast, and I recollect it was around 6:30 to 7:00.

25. Q. When you state that it was "around 6:30 to 7:00," what kind of time do you mean? Do you mean the Japanese standard time?

A. It is the local time.

26. Q. What did you do after the American attack began?

A. As I came out of the wardroom followed by an officer, who spotted some strange clouds in the direction northwest of Peale Island, cried out "It is an air attack" and I stood by for a moment looking in that direction and I remembered about the air shelter and made for it. JK

27. Q. To which unit did this air shelter that you mentioned belong?

A. It was the command post of the first platoon of the first company.



28. Q. Who were at this command post during the American attack?  
A. There was Company Commander Miyazaki - Lieutenant Miyazaki - and seven or eight other petty officers and enlisted men and myself.
29. Q. At that time where was your designated position during battle?  
A. This was the first time we had an American attack, and I was not assigned to a specific post at that time.
30. Q. After that were you assigned to a battle post?  
A. After that I was ordered by the Commanding Officer that during battle or air attack, I was to go to the headquarters command post.
31. Q. On that day until what hour did you remain in the command post air shelter of the first company?  
A. I was there until the "all clear" signal.
32. Q. When was the "all clear" sounded?  
A. I do not recollect clearly, but was around one o'clock in the afternoon.
33. Q. Is that one o'clock local time?  
A. Yes.
34. Q. On that day do you know until what time the naval bombardment and aerial bombing continued? If so, state until what hour.  
A. Again I do not recollect clearly, but I should think it lasted about one and a half hours or two hours.
35. Q. What was the period between the cessation of the American attack and the sounding of the "all clear"?  
A. During an attack we are in battle stations and when the alert is sounded the alert conditions are taken up.
36. Q. During what period were the alert positions taken?  
A. The period was between the time the battle stations were secured and the "all clear" was sounded.
37. Q. How do you know about what you have said just now?  
A. It was explained to me by an officer when I was in the command post.
38. Q. Were you ever outside the air shelter during the period when the attack started until the "all clear"?  
A. During the time we were at the battle stations I did not go outside, but just before the "all clear" I think I went to eat. Outside of that I was never out of the air shelter.
39. Q. What did you do after the "all clear"?  
A. I returned to my private room.
40. Q. Do you know where the prisoners of war were from the beginning of the battle under the "all clear"?  
A. As the eating time for the prisoners was the same as us and the attack must have begun during their breakfast or just after, I presume that they were not assigned to any work, but that they were naturally in the air shelter in the stockade.
41. Q. Did you ever go to the prisoners before the "all clear"?  
A. No, I did not.

42. Q. What did you do after you returned to your room after the "all clear"?

A. Sometime after I had been in the room an orderly from the executive officer came to me and said that the work on the air strip should be continued today also.

43. Q. What do you mean by to be continued?

A. As the executive officer, Lieutenant Commander Cho, ordered Ray, a prisoner who was the head of the air strip work, to work on the air strip around the beginning of February, it was meant that that work should be continued.

44. Q. What did you do after the orderly came from the executive officer?

A. I went to the air raid shelter of the stockade and there Ray with four or five others, totalling five or six, went with me to the air strip.

45. Q. Explain what sort of prisoners were still in the air raid shelter at the stockade when you went there.

A. I think that all the prisoners were in the air raid shelter - about 300.

46. Q. Explain what sort of work was done at the air strip.

A. I went to the air strip with the workers and there were two bulldozers, one carry-all, and one steam roller, and the steam roller was used for the work on the runway, and the bulldozers and carry-all were used for expansion work on the air field.

47. Q. When you went to the air raid shelter in the stockade and spoke to Ray did anyone, including Ray, raise objections against working on the air strip?

A. No, there were absolutely no protests.

The commission then, at 4:20 p.m., adjourned until 9 a.m., tomorrow, Tuesday, October 5, 1948.

EIGHTH DAY

United States Pacific Fleet,  
Commander Naval Forces, Marianas,  
Guam, Marianas Islands,  
Tuesday, October 5, 1948.

The commission met at 9 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,  
Lieutenant Colonel Kenneth E. Balliet, Cavalry, United States Army,  
Lieutenant Colonel Newton L. Chamberlain, Signal Corps, United States  
Army,  
Lieutenant Commander Ralph I. Gerber, U. S. Navy,  
Captain Albert L. Jenson, U. S. Marine Corps, members, and  
Lieutenant James P. Kenny, U. S. Navy, judge advocate.  
Paul F. Coste, junior, yeoman first class, U. S. Navy, reporter.  
The accused, his counsel, and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

The accused, Katsumi, Seishi, the witness under examination when the adjournment was taken, resumed the stand as a witness in his own behalf. He was warned that the oath previously taken was still binding, and continued his testimony.

(Examination continued.)

48. Q. How many entrances were there in the air raid shelter where the American prisoners of war stayed during the battle of February 24, 1942?  
A. There were three entrances.

49. Q. On the afternoon of that day when you went to the air raid shelter, which entrance did you go to?  
A. There were entrances on the east and the middle and the west side of the air raid shelter and I went to the west entrance.

50. Q. Did you go there alone or were you with someone else?  
A. I went there alone.

51. Q. On that day were you armed and if so explain it?  
A. I was armed. I carried a navy pistol in a holster which was about the shoulder - was attached to a belt and the belt hung on the bandoleer.

52. Q. Was that pistol loaded?  
A. No, it was not.

53. Q. When you called the airstrip workers, did you take out the pistol?  
A. I did not. I have never at any time pulled out the pistol and it was always buttoned in the holster.

54. Q. Do you know the names of persons who went with you to the airfield?

A. William Ray, Chambers or Chamber, I don't remember his first name, and I think it was Al Smith and two or three others whose names I do not recollect.

55. Q. Until what time did you work at the air field on that day?  
A. As usual until about five p.m.

56. Q. When the work was completed for that day did you go back with the prisoners to the stockade?  
A. Yes, I returned with the prisoners.

57. Q. On that day was there any damage done to the runway at the air field?  
A. As far as I could see there was no damage.

58. Q. Do you know whether on that day during the attack of the Americans, whether prisoners were used at the air field?  
A. I absolutely do not know. There were no orders and I was never at the scene. No orders were given to me nor was I ever at the scene.

59. Q. When you say that you were never there, do you mean you were not there during the attack?  
A. Of course, I was not at the air field during battle station and neither was I there during the alert.

60. Q. Around February 24, 1942 was there a dredge at Wake?  
A. I knew there was.

61. Q. Do you know whether anything unusual occurred to that dredge on that day?  
A. I do not recollect clearly whether it was on that day or a few months later, but I heard there was a fire aboard the dredge and on the following day or two days later I knew there was a fire when I accompanied either the executive officer or the commanding officer to that dredge.

62. Q. Around what day did you accompany the executive officer or the commanding officer to that dredge?  
A. I do not understand the question clearly but I went to the dredge before the fire once, and just after the fire, with the executive officer or the commanding officer, and later I went there with the representative of the construction corps together with the commanding officer and the executive officer.

63. Q. You stated that you knew of the fire when you went to the dredge afterwards, but how many days later did you go to the dredge?  
A. I do not remember clearly, but it was either on the following day or two or three days after there was a fire. 9k

64. Q. Do you know whether prisoners were used to fight the fire?  
A. I absolutely do not know. I never received any orders.

65. Q. I'll show you Exhibit 1 and will you show me where you knew that the dredge was located, by indicating on the exhibit with the letter "D"? 9k

(The witness placed a "D" on the chart as requested and stated "this is a very rough chart and I can only give a very rough position on this map. There was a slipway for sea-planes under construction by the Americans and it was close to that slipway.")



66. Q. Do you know where the dredge was on February 24?  
A. It was located at the point on the chart indicated by the letter D.
67. Q. Do you know who were the crew on the dredge?  
A. I remember the name of a Captain Andre. I do not remember clearly the other members of the crew.
68. Q. Around that time do you know whether there was a tug named PIONEER?  
A. I do not remember that name PIONEER but I believe there was a small tug.
69. Q. Do you remember the crew on that <sup>tug</sup>?  
A. I do not remember the names but I admit that the person who took the stand sometime ago here was a member of the crew of the PIONEER whose name was Lee. I remember that the crew of the tug were mostly Hawaiians or Guam natives. JK
70. Q. Do you know whether on February 24 during battle an "AA" gun was damaged or not?  
A. I absolutely do not know.
71. Q. Do you know whether or not prisoners of war were used to repair the damage on the "AA" gun?  
A. I do not know. I received no orders and I did not go to the scene.
72. Q. Do you know whether the Japanese armed forces found a torpedo in the latter part of March 1942 on the shores of Wilkes Island?  
A. I heard about it and therefore knew about it.
73. Q. Do you know whether there was work conducted to remove the torpedo from the shore or not?  
A. I knew that they had attempted to remove it.
74. Q. Did you ever go to the actual scene of the torpedo?  
A. I went to see where the torpedo was.
75. Q. On what occasion did you go to see it?  
A. One afternoon I received orders from the Executive Officer Cho that I should go with the POW's and with the help of a crane, to dislodge the torpedo which was impinged between some rocks on the shores of Wilkes Island, and I went with a prisoner of war named Chambers on a mobile crane, but due to its slow speed and the fact that it had to cross a channel, we arrived on Wilkes Island in the evening. On arrival at Wilkes Island I went to the detachment which was dispatched from the Second Company which was at the wharf and there asked the location of the torpedo. And there I heard that the military personnel had already removed the fuse of the torpedo. I went to the place where the torpedo was but due to the fact in between there were numerous rocks and barbed wire entanglement, I was unable to get in close range to the torpedo and abandoned the mobile crane on the road. We went to the headquarters.
76. Q. Do you know by whom and when the removing of the torpedo was conducted afterwards?  
A. I do not know by whom or when the removing of the torpedo was conducted. I did not receive any orders and have not been on the actual scene.
77. Q. Did you receive any directions in connection with the torpedo?  
A. Yes, I did.

78. Q. State what you know concerning it?

A. Next day Commanding Officer Kawasaki brought to me two small mechanisms and said to me that one was a fuse of a torpedo and the other an electrical mechanism and that he wanted to know what was written there in English.

79. Q. And what happened next?

A. I gave the explanation, and what I could not understand I asked Jenson who was head technician.

80. Q. You stated that it was the next day; state clearly what you mean by the next day?

A. By next day I mean the next day after we attempted to dislodge the torpedo.

81. Q. Indicate by the letter "E" on Exhibit 1 where you saw the torpedo.

(The witness placed the letter "E" on Exhibit 1 as requested and stated "the torpedo was located a little below the middle of Wilkes Island.")

82. Q. Do you know whether or not a scouting boat was at Wake Island around June of 1942?

A. I seem to recall so.

83. Q. Did you ever see this scouting boat?

A. Yes, I did.

84. Q. Do you know whether or not this scouting boat was damaged around June 1942?

A. I have neither heard about it or seen it. It was the first time I heard about it when Lee took the stand here.

85. Q. Do you know whether or not prisoners of war were used for diving in some work in connection with the scouting boat?

A. I have never heard about it or seen it.

The commission then, at 10:15 a.m., took a recess until 10:35 a.m., at which time it reconvened.

Present: All the members, the judge advocate, the accused, his counsel, and the interpreters.

Archie L. Haden, junior, yeoman first class, U. S. Navy, reporter.

No witnesses not otherwise connected with the trial were present.

Katsumi, Seishi, the accused, resumed the stand as a witness in his own behalf. He was warned that the oath previously taken was still binding, and continued his testimony.

(Examination continued.)

86. Q. You testified that you recognized Lee; but do you remember using him for some work?

A. I do not remember using him at all. Those who worked at the wharf were used by the sea patrol section.

87. Q. Were you connected with the unloading of transports which arrived on Wake?

A. I was never connected with it.

88. Q. Do you know whether or not prisoners of war were used for the unloading of cargo from the transports?

A. Yes, I believe so.

89. Q. Please explain why you think so?

A. In assigning prisoners of war for various work, I saw either the officer in charge of the prisoners or his assistant doing the assigning.

90. Q. Were you ever present in the capacity of an interpreter at the unloading of cargo from the transports?

A. No, never. I have never been there as an interpreter. I have never voluntarily or by order been on a boat used to unload the ships - a barge or a lighter or a launch. JK

91. Q. Was there a Japanese destroyer at Wake around March and April 1942?

A. There were two destroyers aground on the south central shore of Wake Island.

92. Q. Do you know whether or not guns were removed from this destroyer and installed on land?

A. I do.

93. Q. Do you know whether or not prisoners of war were connected with the removal of the guns or the installing of the guns ashore?

A. I do not know about the removing because I never went to the destroyers but I know of the installation.

94. Q. Do you know who ordered the prisoners of war for the work of installing the guns ashore?

A. The executive officer, Cho, gave the orders.

95. Q. Were you present when these guns were installed ashore?

A. Yes, I was.

96. Q. Who ordered you to be present?

A. Executive Officer Cho.

97. Q. Explain briefly what kind of work the prisoners of war were made to do in installing the guns ashore?

A. I do not know how the guns were brought from the ship to the gun emplacements but when the guns were installed on gun emplacements, the prisoners of war were told to use the cranes and the Japanese military personnel mainly did the work with the prisoners of war assisting them.

98. Q. Who was there at the actual scene of the work of installing the guns?

A. An officer was there - not always, but frequently - to supervise the installing of the guns. Petty officers and enlisted men and prisoners of war were there.

99. Q. What did you do on the scene?

A. I did the necessary interpreting for the picking up of the guns by the crane and placing them on the gun emplacements.

100. Q. Do you know whether or not around March or April of 1942 there was work to convert aircraft machine guns or making parts on Wake Island?

A. I do know.



101. Q. Do you know whether prisoners of war were used for this work? If so explain briefly.

A. I do know they were used. When I went to the repair shop to repair automobiles and cranes which went out of order I saw prisoners of war at the repair shop working on mounts for the machine guns.

102. Q. Do you know who ordered the use of the prisoners for this work?

A. I do not know clearly but I think the orders were given by the chief engineer.

103. Q. Were you in any way connected with this work of converting machine guns or making parts?

A. I was never connected with it.

104. Q. About the same time do you know whether there was work to make gun emplacements?

A. Yes, I do know.

105. Q. Were prisoners of war used for this work?

A. Yes, they were.

106. Q. State what you know of the way prisoners were used in this work?

A. The making of the gun emplacements was related to the installing of the guns and Commander Cho had Head Technician Jensen make a plan and I did the interpreting and Jensen instructed the carpenters and mechanics and prepared the materials and the prisoners of war mainly worked on it.

107. Q. Briefly explain the circumstances in which you were connected with this work.

A. By order of the Executive Officer, Cho, I did the necessary interpreting during the construction work.

108. Q. Do you know whether or not around March and April of 1942 there was work of digging trenches to construct barbed wire entanglements on Wake Island?

A. I know nothing about the construction of barbed wire entanglements but as to the digging of trenches I saw the Japanese military personnel doing the work, so I know.

109. Q. Do you know whether prisoners of war were used for the digging of trenches?

A. I absolutely do not know. I have neither seen the prisoners digging trenches nor heard about it.

110. Q. Do you know one of the American prisoners of war by the name of Granstedt?

A. I do not recollect.

111. Q. Do you know whether a five-ton Huber diesel roller was used in the work on the air strip around May of 1942?

A. I do know.

112. Q. About that time did you ever see this roller out of order due to some trouble?

A. Yes, I have seen it.

113. Q. Did you take any measures when you saw this?

A. As I remember when I observed this I went up there and asked the reason why it was not moved and had a vehicle push this roller. This vehicle was driven by the construction corps and I asked them to push the roller and make it start.



114. Q. Did you ever threaten the driver of the five-ton roller that if he did not make it move you would shoot him?

A. I never did such a thing on that occasion nor did I ever pull out the pistol from the holster which was always buttoned. Not by words or deeds did I ever do such a thing.

The commission then, at 11:25 a.m., took a recess until 2 p.m., at which time it reconvened.

Present: All the members, the judge advocate, the accused, his counsel, and the interpreters.

Elvin G. Gluba, yeoman first class, U. S. Navy, reporter.

No witnesses not otherwise connected with the trial were present.

The accused, Katsumi, Seishi, the witness under examination when the recess was taken, resumed the stand as a witness in his own behalf. He was warned that the oath previously taken was still binding, and continued his testimony.

(Examination continued:)

115. Q. Do you know whether or not there was a Wise who was a steward in the galley?

A. I do not recollect.

116. Q. Do you know whether or not a prisoner was court-martialed for making beer around May 1942?

A. I never heard about it and I was never ordered to be present at a court martial nor was I ever at the actual scene. I do not know.

117. Q. Did you ever tie a prisoner of war to a tree who allegedly broke regulations?

A. I never did such a thing.

118. Q. About that time did you ever strike a prisoner of war with the scabbard of a sword?

A. I never did such a thing.

119. Q. Do you know a prisoner by the name of Hoffmeister?

A. I do.

120. Q. Did Hoffmeister ever commit an offense?

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

The accused replied.

The commission announced that the objection was sustained.

121. Q. Was there an interrogation conducted against Hoffmeister?

A. Yes, there was.

122. Q. Were you present at the investigation?

A. I was. One night Hoffmeister broke into the warehouse of the canteen and stole cigarettes and wine and he was caught on the actual scene.

The judge advocate moved to strike the words "One night Hoffmeister broke into the warehouse of the canteen and stole cigarettes and wine and he was caught on the actual scene" out of the answer on the ground that they were not responsive and were irrelevant and immaterial.

The commission directed that the words be stricken out.

123. Q. Who conducted this interrogation?

A. There were two interrogations. The first was conducted by the officer of the guards, Lieutenant Ogawa, and the second, I was told by an orderly from the headquarters there would be an officer from the headquarters to interrogate, and I was told to interpret.

124. Q. During the course of those two interrogations was there any case of mistreatment on Hoffmeister?

A. At the second interrogation a guard standing by mistreated Hoffmeister.

125. Q. State how Hoffmeister was mistreated.

A. The investigating officer first asked if Hoffmeister had committed any other crime than the one he confessed before. Then Hoffmeister said he hadn't committed any crime. Then suddenly one of the military personnel surrounding Hoffmeister cried, "You lie," and beat him three times on the back. The officer once again asked if Hoffmeister did not commit any other crime, and Hoffmeister said "no." Then the same officer ordered the men to make Hoffmeister lie down on his back on a bench and poured water from a jug into the nose of Hoffmeister and Hoffmeister looked as though it was difficult for him to breathe. So I protested to the investigating officer that the interpreting of the interrogation was not possible under the circumstances. So the officer stopped this and asked Hoffmeister if there were any conspirators and Hoffmeister said "no." So the officer said "this will conclude the investigation" and the guards took Hoffmeister to the detention room adjacent to the Communication Corps.

126. Q. Were you also one of those who poured water into Hoffmeister's nose?

A. I absolutely was not. This was the first time I had seen such a thing and I did not know what would happen next.

127. Q. Did you beat Hoffmeister at the place?

A. No, I did not.

128. Q. Around that time did you ever tie Hoffmeister's hands and make him run along the beach?

A. No, I did not.

129. Q. Did you ever tie Hoffmeister to one of the pillars in the stockade and spray water on him?

A. No, I did not know and I do not know. I was never present at such a scene and I have never seen such a thing. JK

130. Q. Do you know the prisoners Fontes and Dunn?

A. No, I do not recollect them.

131. Q. Around June 1942 did you ever order prisoners of war who were assigned to carrying dirt and who were coming back from a regular shift to work again?

A. No, I absolutely did not do this. I never received any orders such as this, and I have never done such a thing on my own volition.

132. Q. Did you ever beat three prisoners of war for some reason or other in the vicinity of the barracks?

A. I do not remember.

133. Q. During your tour of duty on Wake did you ever carry a stick six feet long and two by four?

A. No, I never did carry it.

134. Q. Do you know a prisoner of war named Lloyd Kent, who was usually called "Red"?

A. I do not remember.

135. Q. Do you know whether or not at about the end of December 1941 or New Years of 1942 a prisoner violated the rules by drinking saki at the galley?

A. I never saw such a thing nor did I hear of such a thing. I absolutely do not know.

136. Q. About that time did you see a prisoner of war who did not answer to the questions of the guard at the galley or in its vicinity?

A. I did not see such a thing.

137. Q. Did you ever for some reason or other beat a prisoner in the vicinity of the galley?

A. I absolutely did not.

138. Q. With what intentions did you go to the air raid shelter where the prisoners were on February 24, 1942?

A. I 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.

139. Q. With what intentions did you go to the air field together with William Ray and the other prisoners?

A. I believe I have testified before but in the beginning of February the executive officer ordered Ray for work on the air field and I went with Ray and the others to the air field with the intention of continuing that work and I went as the liaison man.

140. Q. In the morning you testified that the executive officer ordered you to take the prisoners and a crane with you to dislodge the torpedo on Wilkes Island; who was in charge of this work?

A. I am not sure of the meaning "in charge," but the executive officer ordered Chambers to take the crane to Wilkes Island and there remove the torpedo and I went with him as a liaison man.

141. Q. Did you make a report in regard to this to the executive officer, Cho, when you returned?

A. When I returned I reported to the executive officer, Cho, as I have testified previously to the effect that we could not reach the torpedo due to the numerous rocks and barbed wire entanglements, that Chambers could not remove the torpedo and I observed it.

142. Q. Do you know the prisoners Campbell, W. O. McGill, and Patrick Kahaumea Aki?

A. By Campbell do you mean the Campbell who came into this trial?

143. Q. Francis C. Campbell.

A. It is the Campbell who took the stand.



144. Q. Did you recognize Campbell who took the stand here?

A. Yes, I do. I remember him as being either a member in the repair shop or something connected with mechanics. McGill, I cannot recall unless I see his face, but I believe he was connected with the repair shop or something to do with mechanics. Aki, I do not recall his name, but he must be either a Hawaiian or Guamanian who was being used by the Sea Patrol Section on a tug as deck hand.

145. Q. Around 24 February did you threaten these three and Lee with a pistol?

A. I absolutely did not.

146. Q. Do you know these prisoners - Swede Hokanson, M. R. Wardle, Porter Wardle and Leonard Ward?

A. Swede Hokanson, I believe, was the foreman at the wharf and he was in charge of the biggest crane. M. R. Wardle and Porter Wardle were brothers who were sent to Japan. Their work was at the air field - there they had to drive vehicles and those workers there, were in one group and they used to work in shifts. By shift I mean for instance a man working on the bulldozers would then shift to work in the repair shop. Leonard Ward, I do not remember him, but I might recall if I saw his face.

147. Q. Around February 24th, did you ever threaten these four men and William Ray and Lee with a pistol?

A. Including those people mentioned here I have never pointed a pistol or pulled it out or threatened anyone with it.

148. Q. Do you know the prisoners Kapaole and Kapehi?

A. I do not remember them. I might recognize them if I saw their faces.

149. Q. Do you know the prisoners Rogge and McDonald?

A. I do not recall McDonald, but I believe Rogge was working in the repair shop.

150. Q. When did you carry a pistol?

A. I always carried a pistol.

151. Q. When did you begin carrying this pistol?

A. From the time when I landed I carried it.

152. Q. During your tour of duty did your commanding officers, Lieutenant Arase and Captain Kawasaki, Susumu authorize you to carry a pistol?

A. 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.

The commission then, at 3:10 p.m., took a recess until 3:35 p.m., at which time it reconvened.

Present: All the members, the judge advocate, the accused, his counsel, and the interpreters.

Paul F. Coste, junior, yeoman first class, U. S. Navy, reporter.

No witnesses not otherwise connected with the trial were present.



The accused, Katsumi, Seishi, the witness under examination when the recess was taken, resumed the stand as a witness in his own behalf. He was warned that the oath previously taken was still binding, and continued his testimony.

Cross-examined by the judge advocate:

153. Q. Katsumi, if this gun that you carried was unloaded, what was your purpose in carrying it around?

A. The foremost reason why I brought it with me was that it was just after the occupation and I presumed that it would be dangerous, and because of the fact that I was in the first line of battle, by carrying this gun I felt more security.

154. Q. You continued to carry this gun right during the period you were on Wake, didn't you?

A. Yes, I did continue to carry it.

155. Q. When you went to work on this torpedo, how did you go from Wake to where the torpedo was located?

A. If you could show me a chart I could explain more clearly. We carried the crane on a barge and crossed the channel by the right side where there is a sand beach and then we climbed to the road.

156. Q. Who were the prisoners of war you took along for this work?

A. His name was Chambers or Chamber, I think Chambers is right.

157. Q. How many other prisoners of war besides Chambers?

A. Just Chambers.

158. Q. Who comprised the crew of this barge on this particular day?

A. There was no crew on the barge. The barge could carry a cargo of about 500 tons and the biggest tug boat at Wake, the DREWFOSS there was, which was manned by a captain named Tom and two deckhands and a chief engineer whose name I do not remember, and this tug boat pulled the barge from the inland.

159. Q. Who were the people you were going to use in removing this torpedo?

A. By the orders of the executive officer, he told me that this torpedo should be removed by the POW's, who said that prisoners with the help of a crane be taken to remove the torpedo and I was to be the liaison man.

160. Q. Well so far, you have only mentioned one man who was to be working on this torpedo, Chambers; who were the other men you were going to use?

A. I do not know of any other prisoners. The executive officer told me to take a prisoner and the truck crane does not need so many people to operate it, and Chambers drove the truck and I went as a liaison man.

161. Q. Do you mean to say that Chambers worked the crane and also attached the cable to the torpedo?

A. As I am a civilian, I do not know the technical side involved in the operation, but I was told by the executive officer to take Chambers and I took him with me.

162. Q. Wasn't the name of this tug that pulled the barge that day the Pioneer?

A. No, it was not. I do not think it was the Pioneer because the barge was very big and there was a current there and it was hardly possible that the Pioneer could pull it.

163. Q. Who were the members of the crew of the Pioneer?  
A. I do not recollect clearly but I think the crew was made up of Guamanians and Hawaiians, and I observed four or five of them.

164. Q. And didn't you recognize Mr. Lee, who appeared here as a witness, as a member of that crew?  
A. Yes, I did recognize him.

165. Q. And wasn't he along on that job on that day?  
A. I do not know.

166. Q. You don't deny that he was along, do you?  
A. I did not see him, so I do not know.

167. Q. How many people attempted to dislodge that torpedo on that day?  
A. To the best of my knowledge, I and Chambers went with the truck up to the road on the truck crane and I do not know of others because I did not see them.

168. Q. Who went down - who dove down for the torpedo?  
A. I was never at such a place so I did not know.

169. Q. Well didn't you attempt, on that day, to dislodge that torpedo?  
A. By the orders of the executive officer, I and Chambers alone went to that place and attempted to dislodge it, but we could not dislodge it so we came back and reported to the executive officer.

170. Q. Well who went down under the water for this torpedo, did anybody do that?  
A. I have never been at such a place and I have never witnessed a scene like that.

171. Q. Didn't you see the torpedo on that day?  
A. I did.

172. Q. Did you try to dislodge it on that day?  
A. We attempted to dislodge it and Chambers went up to the barbed wire entanglements and there were many rocks there and we decided that we could not and so we returned.

173. Q. As a matter of fact, some of the crew from the tug dove for that torpedo on that day; didn't they?  
A. I do not know.

174. Q. You were there weren't you?  
A. I was not there and I do not know of such an operation.

175. Q. You heard Mr. Lee testify in this court that you pulled a gun on him and made him dive for that torpedo; didn't you?  
A. He said so and he testified to that effect but I was not there. I did not do it.

176. Q. You heard affidavits read in this court from other people, prisoners of war, that you pulled that gun and made him dive; didn't you?  
A. Yes, I did read what other people wrote but I was not there and I did not do it.

177. Q. You were the only Katsumi on Wake Island; isn't that true?  
A. Accidentally there was an orderly with the name Katsumi but I was the only one with that name as interpreter.

178. Q. Do you remember being interrogated in Tokyo in 1946 with reference to Wake, and being asked this question, "Was there a naval captain by the name of Katsumi on the island?" and giving this answer, "No, I was the only man by that name."?

A. In the interrogation it says Captain Katsumi but I have never been called a captain, I answered to that effect.

179. Q. You deny you stated that you were the only Katsumi?

A. I do not deny, but I recalled after the investigation there was an orderly by the name of Katsumi.

180. Q. Now you've testified about Hoffmeister being beaten by some Japanese soldiers during an interrogation. When did that interrogation take place with reference to the time of the arrest of Hoffmeister?

A. The interrogation occurred two or three days after the first investigation which was the day following his arrest.

181. Q. Where did it take place?

A. Adjacent to the detention room made by the Americans there is a communications corps and trees on the east side. There is a yard, trees were planted around and that was the place.

182. Q. And after this interrogation he was taken back to the place of detention; is that right?

A. That is correct, I saw the guards take him away and then I returned to my room.

183. Q. You didn't see him beaten after that time after he was taken back to the place of detention, did you?

A. I did not, absolutely not.

184. Q. This same time that you were interrogated in Tokyo in 1946, didn't you state that after the interrogation the prisoner was taken behind the wireless station, put in solitary confinement, and during that confinement he was beaten?

A. I did not say so, that must be some error.

185. Q. Weren't you interrogated as follows and didn't you give these answers: "Q. What happened then? A. My job was finished then. Commander of the guard ordered him to be taken to prison. The prison was behind the wireless station. He was put in solitary confinement." "Q. How long was Hoffmeister kept in this confinement? A. I think at least four or five days." "Q. During this time how often was he beaten? A. Once, by some soldiers." "Q. What was he beaten with? A. I think a walking stick." "Q. Did you witness this beating? A. Yes."?

A. That interrogation and answers have combined two interrogations. That is the first interrogation and the second interrogation and the first part of it is concerned with the first interrogation and they have supplemented with the interrogations of the second interrogation.

186. Q. Haven't you stated that it was during the interrogation the next day you saw these guards beat Hoffmeister, the day after the detention?

A. I did not say that. I said that after the first interrogation Hoffmeister was taken back without any mishap but during the second interrogation he was beaten.

The commission then, at 4:15 p.m., adjourned until 9 a.m., tomorrow, Wednesday, October 6, 1948.



NINTH DAY

United States Pacific Fleet,  
Commander Naval Forces, Marianas,  
Guam, Marianas Islands,  
Wednesday, October 6, 1948.

The commission met at 9 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,  
Lieutenant Colonel Kenneth E. Balliet, Cavalry, United States Army,  
Lieutenant Colonel Newton L. Chamberlain, Signal Corps, United States  
Army,  
Lieutenant Commander Ralph I. Gerber, U. S. Navy,  
Captain Albert L. Jenson, U. S. Marine Corps, members, and  
Lieutenant James P. Kenny, U. S. Navy, judge advocate.  
Archie L. Haden, junior, yeoman first class, U. S. Navy, reporter.  
The accused, his counsel, and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

The accused, Katsumi, Seishi, the witness under examination when the adjournment was taken, resumed the stand as a witness in his own behalf, was warned that the oath previously taken was still binding, and continued his testimony.

(Cross-examination continued:)

187. Q. During the time that you were on Wake, you got to know most of the American prisoners of war quite well; did you not?

A. Yes, I came to know them, but at the beginning before January 11 there were so many prisoners that I was only able to know some of them and after January 12, as they were divided into working groups, I was able to get to know the foremen and especially the prisoners working in the repair shop.

188. Q. And most of the prisoners during that period got to know you as Mr. Katsumi, the interpreter, did they not?

A. That question I cannot answer because I don't know whether I was known to them or not.

189. Q. Well, didn't the prisoners address you on occasion and speak to you in English?

A. Yes, occasionally they did speak to me in English but I do not know whether they spoke to me knowing that I was an interpreter.

190. Q. Well, didn't they call you Mr. Katsumi?

A. I was never called Mr. Katsumi except by Captain Wilson and due to the fact that I was there for a long period the rest used to call me just Katsumi.



191. Q. So that the prisoners, that is, most of them, knew you as Katsumi?

This question was objected to by the accused on the ground that it called for an opinion of the witness.

The judge advocate replied.

The commission announced that the objection was not sustained.

A. Not all knew me as Katsumi and because I did not speak to everyone, but when I spoke I spoke as an interpreter for the superior officer and translated the regulations to the prisoners frequently, but I personally did not speak many times to the prisoners. At least, not to all of them.

192. Q. You were the only interpreter on Wake Island by the name of Katsumi, were you not?

A. Yes, I believe I was.

193. Q. You heard three prosecution witnesses take the stand here and testify that you were Katsumi, the interpreter, and that you did certain things on Wake Island. Do you believe that it was a case of mistaken identity on their part?

A. That these three prisoners identified me, I admit. I also recognized them, but the matters which they said I did, I deny.

194. Q. So that you believe that these incidents never took place and are just something that exist in the imagination of these three prosecution witnesses, is that right?

A. I do not know and cannot say whether it was just the imagination on their part, but as I have just testified here on the first day, I have said what I know regarding these incidents.

195. Q. You have heard the affidavits of fourteen other prisoners of war from Wake Island read in which they say that you, Katsumi, the interpreter, did certain things on Wake Island. Do you believe that it is a case of mistaken identity there?

A. I believe that some of them were mistaken identities and I am certain as to what I have testified and, although I admit they used the name of Katsumi, I do not remember every name of the prisoners who wrote the affidavits.

Reexamined by the accused:

196. Q. You testified that the barge carrying the motor crane arrived at the sandy beach on Wilkes Island, but how far was this beach from the torpedo and in what part of Wilkes Island was this sandy beach?

A. May I see a chart and I can show you?

197. Q. I show you Exhibit 1 and please indicate with a letter "F" the sandy beach where the barge arrived?

A. I would like to make a brief explanation. According to this map there is no inlet on the channel after entering it, but when I was there, there was an inlet. On this chart part of Wilkes Island which is the inner side of the channel is jutting out but it is actually receding.

198. Q. Indicate with a letter "F" the approximate position of this place.

(The witness indicated the position of the sandy beach with the letter "F" on Exhibit 1.)

199. Q. On that day did any vessel -- tugboat or barge -- go to the place where the torpedo was from the sea?

A. I have never seen it so I do not know.

200. Q. On that day at what time did you arrive on the actual scene of the torpedo?

A. It was in the evening and between half past four to five, I believe.

201. Q. You testified that the pistol was not loaded. Did you carry bullets or not?

A. Yes, I had bullets which were in a magazine and placed beside the pistol. I believe there were six bullets.

202. Q. You testified that some prisoners knew you as Katsumi. On February 24, 1942 how many of the prisoners did you actually know by name?

A. When you say I knew do you mean how many I remember?

203. Q. How many did you know at that time?

A. I think I can recall about ten to twenty. It is very difficult.

204. Q. The affidavits of the persons that have been introduced in evidence against you -- did these affidavits contain false testimony against you?

A. Yes, I believe there were but I cannot say right here. If it is studied and compared it may be found.

205. Q. Are you sure that you and Chambers did not attempt to dislodge this torpedo by using Lee as a diver to hook a wire cable on the torpedo and use the tug PIONEER to pull on the cable?

A. Yes, that is correct. Lee had no connection whatsoever and I did not know and did not see him.

206. Q. You said you saw the torpedo that day. What did you actually see with regard to the torpedo that day?

A. The torpedo was lodged on the shore among the rocks of the coral reef about the distance of this stand to the entrance (indicating a distance of about the distance of thirty-five feet) from the barbed wires stretched across the beach.

207. Q. And when you saw the torpedo, it was submerged in the water?

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

The accused made no reply.

The commission announced that the objection was sustained.

208. Q. Was the torpedo submerged in the water when you saw it that day?

A. It was not completely submerged because I placed some stepping stones and due to the fact that the water was so clear I cannot say how deep but it could be about one to two feet.

Examined by the commission:

209. Q. Katsumi, did you visit the scene of this torpedo on any other occasion except on the evening you refer to in your testimony?

A. I went there just once. On that occasion.

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

The witness said that he had nothing further to state.

The witness resumed his status as accused.

Mr. Sanagi, Sadamu, a counsel for the accused, a witness for the defense, was recalled, and was warned that the oath previously taken by him was still binding.

Examined by the accused:

1. Q. Do you have in your possession statements testifying to the character of the accused?  
A. Yes, I have. I have nine statements.
2. Q. Do these statements relate to the accused's general reputation in the community in which he is known and to the traits which are brought into question by the charge?  
A. Insofar as I have studied them these statements relate to the general reputation of Katsumi in the community in which he was known and to the general character and traits.
3. Q. Have you shown these statements to the judge advocate?  
A. I think the judge advocate has had a cursory examination of them.

The commission then, 10:10 a.m., took a recess until 10:35 a.m., at which time it reconvened.

Present: All the members, the judge advocate, the accused, his counsel, and the interpreters.

Elvin G. Gluba, yeoman first class, U. S. Navy, reporter.

No witnesses not otherwise connected with the trial were present.

Mr. Sanagi, Sadamu, the witness under examination when the recess was taken, entered. He was warned that the oath previously taken was still binding, and continued his testimony.

(Examination continued:)

The statements produced by the witness were submitted to the judge advocate and to the commission, and by the accused offered in evidence.

The judge advocate stated that he had no objection to the receipt in evidence of these statements, but called the attention of the commission to the fact that some of them contained information in the form of a denial of the charge against the accused and requested the commission to disregard those portions of the statements in its consideration of the case.

The commission announced that it would disregard any improper matter that might be contained in the statements as requested by the judge advocate.

The statements were so received and are appended marked "Exhibit 18," "Exhibit 19," "Exhibit 20," "Exhibit 21," "Exhibit 22," "Exhibit 23," "Exhibit 24," "Exhibit 25," and "Exhibit 26."

4. Q. Will the witness please read these statements?

(An interpreter read the statements.)

The accused waived the reading of these statements in Japanese in open court.

The judge advocate did not desire to cross-examine this witness.

The commission did not desire to examine this witness.

The witness said that he had nothing further to state.

The witness resumed his seat as a counsel for the accused.

The accused requested an adjournment until Monday, October 11, 1948, in order to await the arrival of depositions from Japan and the United States and affidavits from Japan concerning the character of the accused and stated that the defense would use this time to prepare final arguments.

The commission announced that the request of the accused was granted, and the commission then, at 10:55 a.m., adjourned until 9 a.m., Monday, October 11, 1948.



TENTH DAY

United States Pacific Fleet,  
Commander Naval Forces, Marianas,  
Guam, Marianas Islands,  
Monday, October 11, 1948.

The commission met at 9 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,  
Lieutenant Colonel Kenneth E. Balliet, Cavalry, United States Army,  
Lieutenant Colonel Newton L. Chamberlain, Signal Corps, United  
States Army,  
Lieutenant Commander Ralph I. Gerber, U. S. Navy,  
Captain Albert L. Jenson, U. S. Marine Corps, members, and  
Lieutenant James P. Kenny, U. S. Navy, judge advocate.  
Paul F. Coste, junior, yeoman first class, U. S. Navy, reporter.  
The accused, his counsel, and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

Mr. Sanagi, Sadamu, a counsel for the accused, was recalled as a witness for the defense and was warned that the oath previously taken was still binding.

Examined by the accused:

1. Q. Have you in your possession certain affidavits which you desire to offer into evidence, in the nature of character evidence, relating to the offense for which the accused is being tried?  
A. Yes, I have five.

The affidavits produced by the witness were submitted to the judge advocate and to the commission, and by the accused offered in evidence.

The judge advocate stated that he had no objection to the receipt in evidence of these affidavits, but called the attention of the commission to the fact that some of them contained matter which did not pertain to character, and asked the commission to disregard such portions.

The commission announced that it would disregard any improper matter that might be contained in the affidavits as requested by the judge advocate.

The affidavits were so received and are appended marked "Exhibit 27," "Exhibit 28," "Exhibit 29," "Exhibit 30," and "Exhibit 31."

2. Q. Will the witness please read these affidavits?

An interpreter read the affidavits.

The accused waived the reading of these affidavits in Japanese in open court.

The judge advocate did not desire to cross-examine this witness.

The commission did not desire to examine this witness.

The witness said that he had nothing further to state.

The witness resumed his seat as a counsel for the accused.

The judge advocate was called as a witness for the defense. He was warned that the oath previously taken was still binding.

Examined by the accused:

1. Q. Are you the legal custodian of the depositions of Barnett, McGill, Rogge, and Wise?

A. I am, here they are.

2. Q. Are these depositions signed by all parties concerned?

A. Yes.

The witness produced the depositions of Ryland F. Barnett, Warren O. McGill, Warren O. Rogge and Frank R. Wise, and they were submitted to the judge advocate and to the commission and by the accused offered in evidence. There being no objection, they were so received, and are appended marked "Exhibit 32," "Exhibit 33," "Exhibit 34," and "Exhibit 35."

3. Will the witness read Exhibit 32?

(The witness read interrogatories one through five and the answers thereto.)

The accused moved to strike the words "No, it was not after bombing and shelling, the 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" out of the answer to the fifth interrogatory on the ground that they were an opinion of the witness.

The judge advocate replied.

The commission announced that the motion to strike was not sustained.

The witness read interrogatories six through nineteen and the answers thereto.

The accused moved to strike out the answer to the nineteenth interrogatory on the ground that it was an opinion of the witness.

The judge advocate replied.

The commission announced that the motion to strike was not sustained.

The witness read the twentieth through the twenty-fourth interrogatories and the answers thereto.

The witness read the twenty-fifth interrogatory.

The judge advocate objected to this interrogatory on the ground that it was irrelevant and immaterial.

The accused made no reply.

The commission announced that the objection was sustained.

The accused made a motion to strike out the next to last and last sentences on page three of Exhibit 2 in view of the witness' answer to the fifteenth interrogatory of Exhibit 32.

The judge advocate replied.

The commission announced that the motion was not sustained.

4. Q. Will you please read Exhibit 33?

The witness read interrogatories one through twenty-one and the answers thereto of Exhibit 33.

The accused moved to strike out the words "I did not personally witness Katsumi beating Hoffgardner but I did witness guards beating Hoffgardner under Katsumi's direction" on the ground that they were an opinion of the witness.

The commission announced that the motion was not sustained.

The witness read the twenty-second through the twenty-fifth interrogatories and the answers thereto.

The commission, then at 10:25 a.m., took a recess until 10:35 a.m., at which time it reconvened.

Present: All the members, the judge advocate, the accused, his counsel, and the interpreters.

Archie L. Haden, junior, yeoman first class, U. S. Navy, reporter.

No witnesses not otherwise connected with the trial were present.

James P. Kenny, the judge advocate, the witness under examination when the recess was taken, resumed the stand as a witness for the defense. He was warned that the oath previously taken was still binding, and continued his testimony.

(Direct examination continued:)

5. Q. Please read the interrogatories and deposition of Mr. Rogge (Exhibit 34).

The witness read interrogatories 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, and 11, and the answers thereto. 8k

The accused moved to strike the answer to the eleventh interrogatory on the ground that it was the opinion of the witness.



The commission directed that the answer to the eleventh interrogatory be stricken from the record.

The witness read interrogatories 12, 13, 14, and 15, and the answers thereto.

The accused moved to strike the answer to the fifteenth interrogatory on the ground that it was the opinion of the witness.

The commission directed that the answer to the fifteenth interrogatory be stricken from the record.

The witness read interrogatories 16, 17, 18, 19, 20, 21, 22, and 23, and the answers thereto.

6. Q. Will you please read the interrogatories and deposition of Mr. Wise?

The witness read the interrogatories and deposition of Frank R. Wise, Exhibit 35.

7. Q. Are you the legal custodian of the depositions of Iwao Kawai Chief of the Second Demobilization Bureau, Japanese Government, former Commander Cho, Hikaru, IJN and former Lieutenant junior grade Iwama, Chuichi, IJN?

A. I am and here they are.

The witness produced the depositions of Iwao Kawai, Chief of the Second Demobilization Bureau, Japanese Government, former Commander Cho, Hikaru, IJN and former Lieutenant junior grade Iwama, Chuichi, IJN, and they were submitted to the judge advocate and to the commission and by the accused offered in evidence. There being no objection they were so received, appended marked "Exhibit 36," "Exhibit 37," and "Exhibit 38."

8. Q. Will you please read the interrogatories and deposition of the Chief of the Second Demobilization Bureau, Japanese Government, marked Exhibit 36?

The witness read interrogatories 1, 2, and 3, and the answers thereto.

The judge advocate moved to strike the last paragraph of the answer to the third interrogatory on the ground that it was an opinion of the witness.

The accused replied.

The commission directed that the last paragraph of the answer to the third interrogatory be stricken vrom the record. JK

The witness read the fourth interrogatory and the answer thereto.

The judge advocate moved to strike the words "and accordingly it is inconceivable that such authority was allowed to him" from the answer to the fourth interrogatory on the ground that they were an opinion of the witness.

The accused replied.

The commission directed that the words be stricken.

The witness read the fifth interrogatory and the answer thereto.



The witness read the sixth interrogatory.

The sixth interrogatory was objected to by the judge advocate on the ground that it was irrelevant, immaterial, and called for an opinion of the witness.

The accused replied.

The commission announced that the objection was not sustained.

The witness read the answer to the sixth interrogatory.

The judge advocate moved to strike the answer to the sixth interrogatory on the ground that it was an opinion of the witness.

The accused replied.

The commission directed that the answer to the sixth interrogatory be stricken from the record.

The witness read interrogatories 7, 8, and 9 and the answers thereto.

The commission then, at 11:30 a.m., took a recess until 2 p.m., at which time it reconvened.

Present: All the members, the judge advocate, the accused, his counsel, and the interpreters.

Elvin G. Gluba, yeoman first class, U. S. Navy, reporter.

No witnesses not otherwise connected with the trial were present.

The judge advocate, the witness under examination when the recess was taken, resumed the stand as a witness for the defense. He was warned that the oath previously taken was still binding, and continued his testimony.

(Examination continued:)

9. Q. Will you please read the deposition from Cho, Hikaru, Exhibit 37?

The witness read interrogatories 1 through 4 inclusive and the answers thereto, and interrogatory 5.

The judge advocate objected to interrogatory 5 on the ground that it called for an opinion of the witness and that it was vague.

The accused replied.

The commission announced that the objection was not sustained.

The witness read the answer to interrogatory 5.

The judge advocate moved to strike out the answer to interrogatory 5 on the ground that it was an opinion of the witness.

The accused replied.

The commission announced that the motion was not sustained.

The witness read interrogatories 6 through 31, inclusive, and the answers thereto.

The judge advocate moved to strike the words "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" out of the answer to interrogatory 31 on the ground that they were not responsive and they were hearsay.

The accused replied.

The commission directed that the words be stricken out.

The witness read interrogatories 32 through 37, inclusive, and the answers thereto.

The judge advocate moved to strike the words "I heard the prisoners of war were not used when the guns were removed from the grounded Japanese destroyers" out of the answer to interrogatory 37 on the ground that they were hearsay.

The accused made no reply.

The commission directed that the words be stricken out.

The witness concluded reading the interrogatories and the answers thereto.

10. Q. Will you please read the deposition of Iwama, Chuichi, Exhibit 38?

The witness read Exhibit 38.

11. Q. Are you the legal custodian of the deposition of one Theodore Grandstedt, junior?

A. I am, here it is.

The witness produced the deposition of Theodore Grandstedt, junior, and it was submitted to the judge advocate and to the commission, and by the accused offered in evidence.

There being no objection, it was so received and is appended marked "Exhibit 39."

12. Q. Will you please read Exhibit 39?

The witness read Exhibit 39.

The judge advocate did not desire to cross-examine this witness.

The commission did not desire to examine this witness.

The witness said that he had nothing further to state.

The witness resumed his seat as judge advocate.

The accused requested an adjournment until Wednesday, October 11, 1948, in order that defense counsel might have time to finish the preparation of its closing argument and to await the possible arrival of further depositions from the United States and Japan. *JK*

The commission announced that the request was granted.

The commission then, at 3:10 p.m., adjourned until 9 a.m., Wednesday, October 13, 1948.

ELEVENTH DAY

United States Pacific Fleet,  
Commander Naval Forces, Marianas,  
Guam, Marianas Islands,  
Wednesday, October 13, 1948.

The commission met at 9 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,  
Lieutenant Colonel Kenneth E. Balliet, Cavalry, United States Army,  
Lieutenant Colonel Newton L. Chamberlain, Signal Corps, United States  
Army,  
Lieutenant Commander Ralph I. Gerber, U. S. Navy,  
Captain Albert L. Jenson, U. S. Marine Corps, members, and  
Lieutenant James P. Kenny, U. S. Navy, judge advocate.  
Paul F. Coste, junior, yeoman first class, U. S. Navy, reporter.  
The accused, his counsel, and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

The accused made a motion to strike out Exhibits 2, 3, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 and 15, appended marked "II." 9K

The accused waived the reading of this motion in Japanese in open court.

The judge advocate replied.

The commission announced that the motion was not sustained.

The defense rested.

The accused read a written statement in Japanese in his defense, appended marked "JJ."

An interpreter read an English translation of the statement of the accused, appended marked "KK."

→ The judge advocate desired to make no opening argument.

Mr. Takano, Junjiro, a counsel for the accused, commenced the reading of his argument in Japanese, appended marked "LL."

The commission then, at 10:15 a.m., took a recess until 10:35 a.m., at which time it reconvened.

Present: All the members, the judge advocate, the accused, his counsel, and the interpreters.

No witnesses not otherwise connected with the trial were present.

Mr. Takano, Junjiro, a counsel for the accused, continued the reading of his argument in Japanese, appended marked "LL."



An interpreter read a portion of the argument of Mr. Takano, Junjiro in English, appended marked "MM."

The commission then, at 11:20 a.m., adjourned until 9 a.m., Friday, October 15, 1948.

TWELFTH DAY

United States Pacific Fleet,  
Commander Naval Forces, Marianas,  
Guam, Marianas Islands,  
Friday, October 15, 1948.

The commission met at 9 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,  
Lieutenant Colonel Kenneth E. Balliet, Cavalry, United States Army,  
Lieutenant Colonel Newton L. Chamberlain, Signal Corps, United States  
Army,  
Lieutenant Commander Ralph I. Gerber, U. S. Navy,  
Captain Albert L. Jenson, U. S. Marine Corps, members, and  
Lieutenant James P. Kenny, U. S. Navy, judge advocate.  
Elvin G. Gluba, yeoman first class, U. S. Navy, reporter.  
The accused, his counsel, and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

Mr. Takano, Junjiro, a counsel for the accused, continued reading his argument in Japanese, appended marked "LL."

The commission then, at 10:10 a.m., took a recess until 10:35 a.m., at which time it reconvened.

Present: All the members, the judge advocate, the accused, his counsel, and the interpreters.

Paul F. Coste, junior, yeoman first class, U. S. Navy, reporter.

No witnesses not otherwise connected with the trial were present.

An interpreter read an English translation of a portion of Mr. Takano's argument, appended marked "MM."

The commission then, at 11:20 a.m., took a recess until 2:10 p.m., at which time it reconvened.

Present: All the members, the judge advocate, the accused, his counsel, and the interpreters.

Archie L. Haden, junior, yeoman first class, U. S. Navy, reporter.

No witnesses not otherwise connected with the trial were present.

Mr. Takano, Junjiro, a counsel for the accused, concluded the reading of his argument in Japanese, appended marked "LL."

The commission then, at 3:20 p.m., took a recess until 3:40 p.m., at which time it reconvened.

Present: All the members, the judge advocate, the accused, his counsel, and the interpreters.

Elvin G. Gluba, yeoman first class, U. S. Navy, reporter.

No witnesses not otherwise connected with the trial were present.

An interpreter concluded the reading of the English translation of Mr. Takano's argument, appended marked "MM."

The commission then, at 4:20 p.m., adjourned until 9 a.m., tomorrow Saturday, October 16, 1948.

THIRTEENTH DAY

United States Pacific Fleet,  
Commander Naval Forces, Marianas,  
Guam, Marianas Islands,  
Saturday, October 16, 1948.

The commission met at 9 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,  
Lieutenant Colonel Kenneth E. Balliet, Cavalry, United States Army,  
Lieutenant Colonel Newton L. Chamberlain, Signal Corps, United States  
Army,  
Lieutenant Commander Ralph I. Gerber, U. S. Navy,  
Captain Albert L. Jenson, U. S. Marine Corps, members, and  
Lieutenant James P. Kenny, U. S. Navy, judge advocate.  
Archie L. Haden, junior, yeoman first class, U. S. Navy, reporter.  
The accused, his counsel, and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

Commander Martin E. Carlson, a counsel for the accused, read his written argument, appended marked "HN."

The accused waived the reading of Commander Carlson's argument in Japanese in open court.

The commission then, at 9:45 a.m., took a recess until 10 a.m., at which time it reconvened.

Present: All the members, the judge advocate, the accused, his counsel, and the interpreters.

Paul F. Coste, junior, yeoman first class, U. S. Navy, reporter.

No witnesses not otherwise connected with the trial were present.

The judge advocate read his written closing argument, appended marked "OO."

The accused waived the reading of the judge advocate's closing argument in Japanese in open court.

The commission then, at 10:30 a.m., adjourned until 9 a.m., Monday, October 18, 1948.



FOURTEENTH DAY

United States Pacific Fleet,  
Commander Naval Forces, Marianas,  
Guam, Marianas Islands,  
Monday, October 18, 1948.

The commission met at 9 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,  
Lieutenant Colonel Kenneth E. Balliet, Cavalry, United States Army,  
Lieutenant Colonel Newton L. Chamberlain, Signal Corps, United States  
Army,  
Lieutenant Commander Ralph I. Gerber, U. S. Navy,  
Captain Albert L. Jenson, U. S. Marine Corps, members, and  
Lieutenant James P. Kenny, U. S. Navy, judge advocate.  
Elvin G. Gluba, yeoman first class, U. S. Navy, reporter.  
The accused, his counsel, and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

The trial was finished.

The commission was cleared.

The judge advocate was recalled, and directed to record the following  
findings:

The first specification of the charge proved in part; proved  
except the words:

"(a) On or about February 24, 1942, when Wake Island was  
under actual attack by a United States of America Task Force and  
before the all clear was sounded, force from an air raid shelter  
Francis C. Campbell, Edwin Mang Sook Lee, Warren Oscar McGill,  
Patrick Kahaumea Aki, and other American prisoners of war, names  
to the relator unknown, and compel them, the said American prisoners  
of war, to fight fire aboard a burning dredge then anchored, moored,  
and secured in a combat area at Wake Island.

"(b) On or about February 24, 1942, when Wake Island was  
under actual attack by a United States of America Task Force and  
before the all clear was sounded, force from an air raid shelter  
Swede Hokanson, William Ray, Miles R. Wardle, Porter Wardle,  
Leonard Ward, Theodore Granstedt, Jr., and other American prisoners  
of war, names to the relator unknown, and compel them, the said  
American prisoners of war, to repair an aircraft runway in a combat  
area at Wake Island.

"(c) On or about February 24, 1942, when Wake Island was under actual attack by a United States of America Task Force and before the all clear was sounded, force from an air raid shelter Ackley, first name to the relator unknown, Albert S. Freese, Frank Hastings, James Hesson, W. T. Kennedy, Frank Migusch, A. J. Paskowicz, Henry Stanley Wilson, and other American prisoners of war, names to the relator unknown, and compel them, the said American prisoners of war, to repair antiaircraft guns in a combat area at Wake Island."

and the words:

"(e) During the period indicated, exact dates unknown, compel Edwin Mang Sook Lee and other American prisoners of war, names to the relator unknown, to discharge, unload, and transport ammunition and bombs from Japanese vessels.",

which words are not proved.

The second specification of the charge proved in part, proved except the words in paragraph (a) "when Wake Island was under actual attack by a United States of America Task Force and before the all clear was sounded," and the words in paragraph (b) "when Wake Island was under actual attack by a United States of America Task Force and before the all clear was sounded," and the words in paragraph (b) "Ackley, first name to the relator unknown," and the words in paragraph (b) "James Hesson, W. T. Kennedy," and the words in paragraph (b) "A. J. Paskowicz, Henry Stanley Wilson," and the words in paragraph (f) "Ryland Francis Barnett, Bill Hayns, Al Smith, and other" which words are not proved.

The third specification of the charge proved in part, proved except the words in paragraph (b) "Francis C. Campbell," and the words in paragraph (b) "during an actual attack by a United States of America Task Force," and the words in paragraph (b) "during the aforesaid attack by a United States of America Task Force," and the words in paragraph (c) "during an actual attack by a United States of America Task Force," and the words in paragraph (c) "during the aforesaid attack by a United States of America Task Force," and the words in paragraph (d) "Ackley, first name to the relator unknown," and the words in paragraph (d) "James Hesson, W. T. Kennedy," and the words in paragraph (d) "A. J. Paskowicz, Henry Stanley Wilson," and the words in paragraph (d) "during an actual attack by a United States of America Task Force," and the words in paragraph (d) "during the aforesaid attack by a United States of America Task Force," which words are not proved.

And that the accused, Katsumi, Seishi, is of the charge guilty.

The commission was opened and all parties to the trial entered.

The commission announced its findings to the accused.

The commission then, at 11:20 a.m., took a recess until 2:20 p.m., at which time it reconvened.

Present: All the members, the judge advocate, the accused, his counsel, and the interpreters.

Paul F. Coste, junior, yeoman first class, U. S. Navy, reporter.

No witnesses not otherwise connected with the trial were present.

Sanagi, Sadamu, a counsel for the accused, was recalled as a witness for the defense in mitigation. He was warned that the oath previously taken was still binding.

Examined by the accused:

1. Q. Please state your name.

A. Sanagi, Sadamu.

2. Q. Do you have in your possession petitions for the accused, Katsumi, Seishi?

A. I have eight in all.

3. Q. Are the originals in English or Japanese?

A. All of them are written in English.

The petitions produced by the witness were submitted to the judge advocate, and to the commission, and by the accused, offered in evidence in mitigation. There being no objection, the documents were so received and are appended marked "Exhibit 40," "Exhibit 41," "Exhibit 42," "Exhibit 43," "Exhibit 44," "Exhibit 45," "Exhibit 46," and "Exhibit 47."

4. Q. Will you please read these documents?

(An interpreter read Exhibit 40, Exhibit 41, Exhibit 42, Exhibit 43, Exhibit 44, Exhibit 45, Exhibit 46, and Exhibit 47.)

The accused waived the reading of these exhibits in Japanese in open court.

The judge advocate did not desire to cross-examine this witness.

The commission did not desire to examine this witness.

The witness said that he had nothing further to state.

The witness resumed his seat as counsel for the accused.

The commission was cleared.

The judge advocate was recalled, and directed to record the sentence of the commission as follows:

*The commission, therefore, sentences him, Katsumi, Seishi, to be confined for a period of five (5) years.*

*Arthur G. Robinson*  
ARTHUR G. ROBINSON,  
Rear Admiral, U. S. Navy, President.

*Kenneth E. Balliet*  
KENNETH E. BALLIET,  
Lieutenant Colonel, Cavalry, United States Army, Member.

*Newton L. Chamberlain*  
NEWTON L. CHAMBERLAIN,  
Lieutenant Colonel, Signal Corps, United States Army, Member.

*Ralph I. Gerber*  
RALPH I. GERBER,  
Lieutenant Commander, U. S. Navy, Member.

*Albert L. Jenson*  
ALBERT L. JENSON,  
Captain, U. S. Marine Corps, Member.

*James P. Kenny*  
JAMES P. KENNY,  
Lieutenant, U. S. Navy, Judge Advocate.



The commission was opened and all parties to the trial entered.

The commission then read and pronounced the sentence to the accused.

The commission, having no more cases before it, adjourned to await the action of the convening authority.

*Arthur G. Robinson*

ARTHUR G. ROBINSON,  
Rear Admiral, U. S. Navy, President.

*James P. Kenny*

JAMES P. KENNY,  
Lieutenant, U. S. Navy, Judge Advocate.

KATSUMI, SEISHI (20 SEP 1948)

(166095)  
PART 2 OF 3

0387

## 東軍法委員会裁判管轄権に対する抗辯

被告人 勝見精史の辯護人  
高野純一郎

被告人勝見精史は下記理由により、東軍法委員会の裁判管轄権に対し抗辯を遂行せんとす。

第一、被告人勝見は本件起訴に於て彼が日本海軍に属せられており、一民間人として昭和十六年十二月廿三日より同十七年九月三十日までの間、戦争法規並びに慣習法違反行為を犯し、原告に因り起訴せられておるものである。即ち

(1) 罪状項目其の一に於ては上記の期間、WAKE島に於て日本軍隊に抑留せられており、アメリカ人俘虜と強制し、不健康又は危険な作業に就かめたと謂ふ。

(2) 罪状項目其の二に於ては上記の期間、前記俘虜を強制し、作戦行動に直接関係ある作業に就かめたと謂ふ。

(3) 罪状項目其の三に於ては上記の期間、前記俘虜を非人道的に酷使虐待したと謂ふ。

東軍法委員会に対する Precept には、東軍法委員会は格別な裁判所、権限内の一切の犯罪を裁判する権限を有するといふのであるから、東軍法委員会は戦争犯罪を裁判する権限を付与せられてゐることは疑は無い。

1907のHague條約及1929のGeneva俘虜條約

(1)

101)

は共に俘虜は敵国政府の権限内又は敵国の権内に属しえと捕  
たる個人又は部隊の権内に属するべしと規定している(1907  
年八月十八日のHague条約第4の附属書及1929年7月27日Geneva  
俘虜条)殊に1907年Hague条約附属書第4條には「敵の政  
府の権内」とありGeneva条約では「政府」なる語を削り「敵」に  
「POWは敵国の権内に属す」と規定している。

更に上掲 Geneva俘虜条約第十八條第一項には「各俘虜  
收容所は責任ある科校の管下に置かれし」と明規にある。

上記各條約の規定に依れば俘虜は敵国の権内に属するもの  
であるから本件の場合にあつてはWAKE島にありしアメリカ人俘虜は日本  
国の権内に属したのである。而して其等の俘虜が同島に於て收容せら  
れしにありし間は責任ある日本海軍科校の管理下に在つたことは疑を  
容れない。隨て其等の俘虜が当時日本海軍に属するとして一民  
間人に過ぎない。勝見清夫の管下にある等の言ひとは余りにモ  
明かである。然れども、是れ故に俘虜を便役したのは当時WAKE島  
を占領し、日本海軍の指揮官から受けたものである。勝見  
清夫は一被告人として、此の軍の命令又は指示を傳達したに過  
ぎない。当時の勝見は軍の命令傳達者若くは傳達機関に  
過ぎるだけなのである。

今日の国際法は軍に属する民間人の命令傳達  
行為を以て従軍者の保護として命令傳達の國際法違反  
としてこの傳達行為を國際法違反行為とは認めない。

俘虜の便役は海軍部隊の指揮官から命令されたものであつて  
勝見は此の命令を俘虜軍に傳達したに過ぎない。是れ故に勝見  
のこの傳達行為は今日の国際法上何等の罪ともなるものではない。



従つて本軍法委員会は上記の如き戦争犯罪を裁判する权限を有するのであるけれども本件勝見正戦争犯罪容疑者として裁判する权限はないのである。

第二、本件起訴状に記載せられた上記期間即ち昭和十六年十二月廿三日より同十七年十二月三十一日に至る間に在りて WAKE 島は日本軍の占領するところと居つてゐる而て一時的にはあるが其の間同島には日本国の主権が及び日本の法律が施行せられたのである。此等の事情は上記 1907 年 Hague 條約附屬書第 42 條第 43 條の解釋上明らかである。而て犯罪事項に關する裁判管轄権は専ら犯罪の行はれた土地の在る國の裁判所に属することは刑法學上の根本原則である。

「凡て犯罪事項に關する裁判管轄権は其の犯罪行為の行はれたる國又は州の裁判所に專屬し其の州又は國の法律が專ら犯罪の治罪を支配するといふのが根本原則である。如き場合の如きは進行者の國籍或は市民籍は重要事項ではない。其の進行者は凡そどこに於て犯罪やその國の法律而て其の犯罪當時存在したる法律に服するべき」といふのがアメリカ法理學の教へてである (American Jurisprudence Vol. 14 Criminal Law § 221. Generally ¶ 921)

1942 年 October 1 以後發布せられた法律規則・命令指示に於て既に刑法上の一般原則に確立した根本原則に反するもの又は本質的に之と異なるもの本件勝見精光に対する起訴に關する限りには凡そ EX POST FACTO LAW であつて、アメリカ合衆國憲法に於て無効であるもの何事の拘束力もない。

Clark 及 Marshall は其の犯罪論に於て Ex Post Facto LAW はアメリカ憲法違反であると次のように論じている。即ち「アメリカ合衆国憲法は Ex Post Facto LAW は国会も各州にも之を制定するからを禁止している」と (Clark and Marshall: A Treatise on the Law of Crimes § 28, Ex Post Facto laws p. 36)

他方アメリカ法理學は合衆国憲法違反の法律は無効であることに付て次の通り説いている。

憲法違反の成文法は總合として形式上及名称は法律であるが實際は法律ではない。斯る法律は何等の義務を負はねばならない何等の権利をも附与せず、又何等の保護を与へるものでもない」と (Ibid. Vol. 15 Criminal Law § 307, p. 10)

憲法違反の法律は無効であることは上の條にあるが法律以下の規則、命令、指示も憲法に違反するものは勿論解釋上其の無効であることは敢て贅言を要しない。

本軍法委員會は何れも先づアメリカ合衆国憲法を遵守せねばならぬ。

上に述べた論は犯罪の行はれたる土地の國の裁判所が該犯罪に對して裁判管轄権を有することは一般に承認せられ、刑法上の根本原則として檢察官の勝見が先だとして起訴する案件起訴する果は何れも當時日本の法律で行われていたWAKE 島に於て生じたのであつて、今日此等の事件に付勝見を裁判するとすれば日本の裁判所が本事件の裁判管轄権を有するのことは當然である。果に然りとせば本軍法委員會は本事件の裁判管轄権を有しないと言はねばならない。

上記の次才に因り本予件は本年法委員会に於て裁判する  
限りにあらずの御決定あらんことを願うものである。

謹言

高野 純二郎



PLEA TO THE JURISDICTION OF THE MILITARY COMMISSION TO TRY:  
KATSUMI, Seishi

Delivered by Mr. TAKANO, Junjiro  
Counsel for Defense.

May it please the Commission,

The accused KATSUMI, Seishi objects to the jurisdiction of this Commission to try him and hereby enters his plea to the jurisdiction on the following grounds:

(1) The accused KATSUMI, Seishi is charged in the Charge of this case with having committed acts in violation of the law and customs of war during the period from 23 December 1941 until 30 September 1942 when he was a civilian employed by the Imperial Japanese Navy. Namely:

- (a) in Specification 1 it is alleged that he forced American prisoners of war held captive on Wake Island during the above mentioned period by the armed forces of Japan, to perform unhealthful and dangerous work.
- (b) in Specification 2 it is alleged that he forced the above mentioned prisoners of war during the above mentioned period, to perform work directly related to war operations.
- (c) in Specification 3 it is alleged that he inhumanely abused and mistreated the above mentioned prisoners during the above mentioned period.

When we refer to the precept addressed to this Military Commission we discover that it is authorized to try all crimes within the jurisdiction of Exceptional Military Courts. There is no doubt therefore that it is authorized to try war crimes.

The Hague Convention of 1907 and the Geneva Prisoners of War Convention of 1929 both provide that POW's are in the power of the hostile government or power and not of the individual or corps who capture them. (The Annex to Hague Convention No. IV of 18 October 1907; The Geneva Prisoners of War Convention of July 27, 1929). Especially, where the 4th Clause of the Annex to the Hague Convention of 1907 refers to "the power of the hostile Government" the 2nd Article of the Geneva Convention eliminated the word "Government" and provides that prisoners fall within the "power of the hostile power."

Furthermore the 1st paragraph of the 18th Article of the above Geneva Convention explicitly states that every POW camp be placed under the command of the responsible officer.

According to the provisions of the above treaties prisoners of war were in the power of the hostile power; therefore the American prisoners of war on Wake Island in this case were in the power of Japan. And it goes without saying that they were under the control of the responsible Japanese naval authorities during the time they were interned on that island.

And it is too obvious a fact that they could not have been under the control of KATSUMI, Seishi who was only a civilian employee in the service of the Japanese Navy. Consequently it was the Japanese Navy then in occupation of Wake which used these prisoners, and all orders for their use originated from the Commander of the Japanese Naval Forces. KATSUMI was merely relaying these military orders or instructions in his capacity of employee. KATSUMI at the time was a mere relayer of orders or relaying agent.



International Law today does not recognize the mere "act of relaying orders" of a civilian employee of the armed forces as an act in violation of international law, even when the order relayed may have been in violation of international law.

The use of prisoners of war was ordered by the naval commander and KATSUMI only relayed these orders to the prisoners. Hence this act of relaying on the part of KATSUMI does not constitute a war crime under presently effective international law. Consequently, although this military commission is authorized to try war crimes as stated above, it is not within its jurisdiction to try the accused in this case KATSUMI, Soishi, as a war criminal suspect.

2. The period of time mentioned in the Charge, namely the period from 23 December 1941 until 30 September 1942, was part of the time Wake Island was occupied by the Japanese armed forces, and temporarily during that period Japanese sovereignty prevailed there, and Japanese law was in use. These circumstances are clear from interpretations of articles 42 and 43 of the above mentioned Annex of the Hague Convention of 1907. And it is a fundamental principle of criminal law that jurisdiction in criminal matters rests solely in the courts of the country in which the crime is committed.

"It is fundamental that jurisdiction in criminal matters rests solely in the courts of the state or country in which the crime is committed and that the laws of each state or country exclusively govern the nature of the offense. In any case the nationality or citizenship of the offender is immaterial. He is subject in all respects to the law of the country within which the crime is committed and as that law existed at the time the crime was committed." So, American Jurisprudence states. (American Jurisprudence., Vol. 14., Criminal Law. #221 p 921.)

Now all legal regulations, orders, instructions, etc., promulgated after 1 October 1942, which are contrary to the generally established fundamental principles of criminal law or which are essentially different from them, are all ex post facto and invalid according to the Constitution of the United States of America, and have no binding power at all.

Clark and Marshall in their "Treatise on the Law of Crimes" states that ex post facto law is violation of the Constitution of the United States of America, as follows: "It is provided by the Constitution of the United States that no 'ex post facto law' shall be passed by congress or by any state." (Clark and Marshall, A Treatise on the Law of Crime, 28 EX POST FACTO Laws, p 36.)

And as to the invalidity of laws in violation of the Constitution of the United States, American Jurisprudence states as follows:

"An unconstitutional statute, though having the form and name of law, is in reality no law. It imposes no duties, confers no power, and affords no protection." (Ibid. Vol. 15, Criminal Law, 307 p 10).

The invalidity of unconstitutional statutes is as stated above. It is only too evident that regulations, orders and instructions which are of a lower category than statutes, when unconstitutional, would, a fortiori, be invalid.

This military commission must above all observe the Constitution of the United States of America.

As it is the accepted fundamental principle in criminal law that the courts of law possess the jurisdiction to try the crimes committed in that country, as stated above, and as the crimes allegedly committed by the accused KATSUMI, Seishi, so alleged by the Judge Advocate, occurred on Wake Island, which at that time was under the laws of Japan, if KATSUMI is to be tried today for these alleged crimes, then the Japanese courts of law must be said to possess this jurisdiction to try the accused. If this reasoning is affirmed, then this military commission is without jurisdiction to try this case.

Under the circumstances stated in the foregoing, we respectfully submit that the decision be returned that this case is not cognizable by this Military Commission.

Respectfully,

/s/ TAKANO, Junjiro

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

*Eugene E. Kerrick Jr.*  
EUGENE E. KERRICK, JUNIOR,  
Lieutenant, U. S. Naval Reserve,  
Interpreter.

PLEA TO THE JURISDICTION OF THE MILITARY COMMISSION TO TRY  
KATSUMI, SEISHI, A CIVILIAN CITIZEN OF JAPAN

Delivered by  
Defense Counsel,  
Martin E. Carlson,  
Commander, USNR.

The accused, Mr. KATSUMI, Seishi, a civilian, objects to being tried by this Military Commission and hereby enters this plea to the jurisdiction.

This plea to the jurisdiction is made on the grounds that he, Mr. KATSUMI, Seishi, a civilian, is not subject to this military court's jurisdiction and that the offense is not one cognizable by this Military Commission.

The accused, Mr. KATSUMI, Seishi, a civilian, was never in the military service of Japan or the United States. He is now and has always been a civilian.

The precept for this Military Commission reads that this Commission is ordered to convene "for trial of such persons as may be legally brought before it." We maintain that Mr. KATSUMI, Seishi, a civilian, was not legally brought here for trial.

Mr. KATSUMI, Seishi, a citizen of Japan, was living as a civilian at Kyoto, Japan. His address was known to all the necessary governmental authorities. When therefore the police from the Shimogamo Police Station, Kyoto were ordered to arrest him by SCAP, they immediately came to his home and without any warrant of arrest took Mr. KATSUMI to the Shimogamo Police Station on January 7, 1947. He was held at this police station without charges until January 14th when he was taken to Sugamo Prison, Tokyo, where again without a warrant of arrest and without preferring any charges against him, Mr. KATSUMI was incarcerated. He was held at Sugamo Prison until June 30, 1947.

During the time he was being held in confinement at Sugamo Prison he was questioned only two times by a LT Johnson of the U. S. Navy.

On June 30, 1947 he left Sugamo Prison Tokyo, and was put aboard a U. S. Navy plane and early in the morning of July 1, 1947, he arrived on Guam. On Guam he was immediately placed in solitary confinement. Not until September 2, 1948, more than a year later, was he told why he was to be tried as a war criminal. At the time he was served with the charges and specifications on September 2, 1948, he was told that he would be assigned defense counsel.

"It is provided by statute that at the time of arrest the person accused must be furnished with a true copy of the charges with the specifications." 36 Am. Jur. Sect. 98 "Military" citing the case of:

U.S. v. Smith, 197 U.S. 396, 49 L.Ed. 801, 25 S.Ct. 489; Johnson v. Syre, 158 U.S. 109, 39 L.Ed. 914, 15 S.Ct. 773; Dynes v. Hoover, 20 How (U.S.) 65, 15 L.Ed. 838.

In 14 Am. Jur., Cum. Supp. "Criminal Law," Sec. 167, page 74, the rule is set forth as follows:

"The rule now prevails in most if not all the States that an accused is entitled, as a matter of Constitutional Right, to the service of counsel upon his preliminary examination."



The court should remember that this accused is not a military person; as a civilian he is not subject to military rules and regulations. He is a civilian. He is, it is true, a citizen of Japan but when he is brought into this court or any United States court he has all the rights and privileges of a citizen of the United States. Military courts do not as a general rule have jurisdiction of civilians.

The Fourth Amendment of the Constitution of the United States of America was the result of the experience of the colonists who were subjected to unreasonable searches and seizure by the British military. Mr. KATSUMI is not a prisoner of war. He was a civilian who was seized by the military without warrant and is now before a Military court for trial.

Not until September 2, 1948, about two years after he was first confined was he told why he was being held under arrest and in solitary confinement. On September 2, 1948, he was for the first time served with the charge and specifications dated the same date. On September 2, 1948, for the first time he was told that he would be given the benefit of counsel at his trial by a Military court.

The charge and specifications are for assault and battery alleged to have been committed by him, as a civilian, during the period from December 23, 1941 to September 30, 1942, incidents occurring more than six years ago. The offenses charged are civil crimes.

The prosecution are attempting to try in a military court a civilian for a civilian crime. The American military commander of Wake at no time ever declared martial law on Wake. How then can a civilian be tried in a military court for an offense committed on Wake?

Even if martial law were declared in Wake today, this accused, a civilian, would not be tried in a military court because martial law is not retrospective, which means that an offender cannot be tried for a crime committed before martial law was proclaimed. Our authority for this is found in Winthrop's "Military Law and Precedents," page 837, wherein he cites footnote 95 Finalson, Coms. on Mar. Law., Clode, M.L. 189, Thring, Crim. Law of Navy 42-3, Wells on Jurisdiction 577; 12 Opins. At. Gen. 200; G.O. 26 of 1866; Do. 12 Dept. of the South 1868; Do. 9 first Mil. Dist. 1860 Digest 507. "Martial law is not retrospective. An offender cannot be tried for a crime committed before martial law was proclaimed." Pratt 216. And see Jones 12. The jurisdiction of such a tribunal is "determined and limited by the period (and territorial extent) of the military occupation." G.O. 125, Second Mil. Dist. 1867.

We further hold that the jurisdiction of this Military Commission in this case is limited by the period and territorial extent of the Military Occupation of Wake Island, by the American Naval Forces. (See Winthrop, page 837, Ibid, and footnote 95.) On September 30, 1942, Japan was still in possession of Wake Island. So the offenses charged were committed long before the United States Navy occupied the island of Wake and the United States never declared martial law or military law on Wake.

Winthrop, "Military Law and Precedents," page 836, sets forth the rule as to jurisdiction of a Military Commission:

"A Military Commission, (except where otherwise authorized by statute) can legally assume jurisdiction only of offenses committed within the field of the command of the convening commander. Thus a commission ordered by a commander exercising military government by virtue of his



occupation, by his army, of territory of the enemy, cannot take cognizance of an offense committed without such territory." Footnote (88) citing Finalson, Repression of Riot and Rebellion. 106; Franklyn, Outlines of Mar. Law; Pratt, 216; G.O. 125 Second Mil. Dist., 1867; G.O. 20, 1847 (Gen Scott).

"The place must be the theatre of war or a place where military government or martial law may be legally exercised, otherwise a military commission (unless specifically empowered by statute) will have no jurisdiction of offenses committed there. Footnote (89) citing Clode M.L. 189."

Thus the United States of America had no jurisdiction of or on Wake Island during the period from December 23, 1941 to September 30, 1942.

Wake was not within the field of command of the convening authority of this Military Commission. Wake was without Commander Naval Forces, Marianas command during the period from December 23, 1941 to September 30, 1942, and is still without the military command of Wake, particularly as it applies to alleged offenses of assault and battery committed by one civilian against other civilians.

We call the commission's attention to paragraph 273 of the Rules of Land Warfare of the War Department of the United States, which provides:

"Being an incident of war, military occupation confers upon the invading force the right to exercise control for the period of occupation. It does not transfer the sovereignty to the occupant, but simply the authority or power to exercise some of the rights of sovereignty. The exercise of these rights results from the established power of the occupant and from the necessity for maintaining law and order, indispensable to both the inhabitants and to the occupying force." (Basic Field Manual FM. 27-10, 1940, 73-74).

The necessity for maintaining law and order by the United States Navy at Wake Island only commences on the date of the reoccupation of Wake by the United States Navy. It does not go back to the period from December 23, 1941 to September 30, 1942. Crimes committed by civilians at Wake Island are not now tried in military courts and never have been tried in military courts.

There can be no jurisdiction by this Military Commission over a Japanese national, a civilian citizen of Japan, for offenses said to have been committed at Wake Island from December 23, 1941 to September 30, 1942. (See Digest of International Law, by Hackworth, Vol. VI, "Military Occupation" Sec. 587, pages 385-414).

The acts of the accused, an alien civilian and a Japanese national was not directly injurious to the United States, for the offense of assault committed against any of the victims named in the specifications. There was no breach of the peace alleged. There can be no jurisdiction to punish the accused for the alleged offense of assault and battery against the victims.

We hold that Commander Marianas cannot legally assume jurisdiction because Wake Island was not within the field of command of the convening authority at the time the offense was committed. The precept, serial 12703,

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dated 27 July 1948, states: "Pursuant to the authority vested in me by virtue of my office as the Commander Marianas Area and by the specific authority vested in me by the Commander in Chief Pacific and United States Pacific Fleet and High Commissioner of the Trust Territory of the Pacific Islands (CinCUSPacFlt serial 0058 of 8 March 1946; Commander Marianas despatch 29236Z Sept. 1947; CinCPacFlt. Despatch 020103Z of October 1947; SecNav despatch 081946Z Oct. 1947; CinCPacFlt despatch 092353Z Oct. 1947)." The specifications of the charge allege the assaults were committed during the period from December 23, 1941 to September 30, 1942. During this period Commander Marianas did not have jurisdiction of Wake Island either as Commander Marianas Area or by special authority. On September 2, 1948 the convening authority was not the Commander Marianas Area. He was then Commander Naval Forces, Marianas, and Wake Island is not included in his command if we are correctly informed.

The Commander Naval Forces, Marianas is no longer the civil administrator of Wake Island and therefore has no authority as the civil administrator of Wake Island. We ask that the prosecution prove the authority of Commander Naval Forces, Marianas over civilians employed upon Wake Island.

We deny the right of this Military Commission to try Mr. KATSUMI, Seishi, a civilian, because he was illegally brought within the jurisdiction of the Commander Naval Forces, Marianas from Japan. How Mr. KATSUMI, Seishi, a civilian, came into the custody of the United States Navy Department and the Commander Naval Forces, Marianas is important because it was highly irregular.

His arrest as a civilian without warrant, his confinement for several years without charges being preferred against him and his extradition from Japan to Guam without proper extradition papers are all highly irregular.

Not until after he was served with the charge and specifications on September 2, 1948 was he allowed the benefit of counsel.

So we see that at the time Mr. KATSUMI, Seishi, a civilian, was arrested and placed in confinement at Sugamo Prison, Tokyo, on January 14, 1947, he was never furnished with a copy of the charge. All during the time he was confined at Sugamo Prison, Tokyo, Japan, he was never furnished with a copy of the charge and even during the long period of time when in solitary confinement here on Guam, from July 1, 1947 until September 2, 1948, he was not furnished with a copy of the charge.

It was not until September 2, 1948, that Mr. KATSUMI, Seishi, a civilian, was furnished with a true copy of the charge and specifications. He had then been in solitary confinement for about two years.

What is the law in regard to the arrest of civilians without warrants and the confinement of civilians in jail without charges? I quote from 36 American Jurisprudence, "Military" section 98, page 252, which reads as follows:

"It is provided by statute that at the time of arrest the person accused must be furnished with a true copy of the charges, with the specifications. (9)."

Citing United States v. Smith, 197 U.S. 386, 49 L.Ed. 801, 25 Sup. Ct. 489, Bishop v. United States, 197, U.S. 334, 49 L.Ed. 780, 25 S.Ct. 440; Johnson v. Sayre, 158 U.S. 109, 39 L.Ed. 914, 15 S.Ct. 773; Dynes v. Hoover, 20 How (U.S.) 65, 15 L.Ed. 838.



In 14 American Jurisprudence "Criminal Law" Section 217, page 919, the rule is that there are some cases which deny the right of a court to try one who has been illegally brought within the jurisdiction from another state or country.

Annotation: 18 A.L.R. 512; 15 A.L.R. 177.

In the footnote 4 supporting this rule we have the rule that:

"One seized under a mistake as to identity by the United States soldiers in the country of his residence, and carried into the United States, not having been kidnapped, cannot be tried there for offenses committed other than that for which he was seized, until he has voluntarily submitted himself to the jurisdiction or consent to his trial by the country of his residence has been secured. (Dominguez v. State, 90 Tex. Crim. Rep. 92, 234, S.W. 79, 18 A.L.R. 503)."

In re Robinson, 29 Neb. 135, 45 N.W. 267, 8 L.R.A. 398, 26 Am. St. Rep. 378, a person accused of committing a crime in Nebraska was arrested in Kansas by the order of a Kansas justice of the peace and delivered to a Nebraska constable, who forceably, and against the will of the accused and without any warrant, requisition, or other legal process conveyed the accused out of the state of Kansas into Nebraska. Holding that the Nebraska court was without jurisdiction, the court said: "In principle there is no difference between the case at bar and where a person is held for an offense other than the one he was extradited for. In either case it is an abuse of judicial process, which the law does not allow. Ample provisions are made for the arrest and return of a person accused of crime, who has fled into a sister state, by extradition warrants issued by the executives of these states. There is no excuse for a citizen or officer arresting, without authority of law, a fugitive, and taking him forcibly and against his will into the jurisdiction of the state for the purpose of prosecution. We cannot sanction the method adopted to bring the petitioner into the jurisdiction of this state. He did not come into the state voluntarily, but because he could not avoid it. The district court, therefore, did not acquire jurisdiction of the person of the petitioner, and his detention is unlawful."

Simply because Mr. KATSUMI, Seishi, a civilian, is not a citizen of the United States does not put him outside the protection of the Constitution of the United States of America, when the military take him into custody to try him in a military court. Article IV, the Fourth Amendment to the Constitution of the United States reads:

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

This Amendment was the result of the practice of the British Military breaking into the homes of the American colonists and by military force seizing civilians. Such seizures were alleged then but the military did not respect the law but seized persons without warrant. Since the adoption of the United States Constitution the people have however been secure and the Fourth Amendment has been respected.

KATSUMI, Seishi, a civilian, was told to report to Sugamo Prison. He states that no warrant was ever served upon him. He was confined at the United States Army Prison, Sugamo, Tokyo, Japan for five months. By what military authority was he a civilian confined at Sugamo Prison without preferring any charges against him? But here he stayed in prison from January 14, 1947 until June 30, 1947, when he was put on a navy plane and sent to Guam. Arriving at Guam on July 1, 1947 he was immediately put into solitary confinement. By what right was this civilian thus imprisoned in military prison? Are the safeguards which all citizens of America enjoy to be denied to people of defeated Japan? It is enough to say that Mr. KATSUMI, a civilian, was extradited and is now in the custody of the convening authority. When it is clear that there is no proper extradition, International Extradition is governed by considerations of comity and the provisions of treaties with foreign nations. In footnote one, paragraph 1, on page 243 of Vol. 22, American Jurisprudence, "Extradition," we read:

"Since the United States cannot as a matter of comity, cannot surrender to a foreign government a citizen of the United States whose extradition is sought it does not seek the extradition, as a matter of comity, of citizens of other nations. See *infra*, para. 4, see 4 Moore, International Law Digest, p. 246, P. 580."

Mr. KATSUMI, Seishi, was a private citizen, a civilian.

In this case we hold that it is necessary for this commission in deciding whether they have jurisdiction to try Mr. KATSUMI that they decide the validity of the extradition proceedings by which Mr. KATSUMI was removed from Japan to Guam. To do so it is necessary that the judge advocate produce the extradition papers in the case of Mr. KATSUMI. We ask that such papers be made available to defense counsel in order that we may properly point out to the commission our grounds for objection. Not to produce these extradition papers at this time is most prejudicial to the substantive rights of Mr. KATSUMI and is an admission that there are no extradition papers or that such papers as there are are not in good order.

In Vol. 22, American Jurisprudence, "Extradition," page 243:

"In the United States the early cases indicated that extradition was generally declined in the absence of a conventional or legislative provision, citing *Valentine v. United States*, 299 U.S. 5, 81 L.Ed. 57 S.Ct. 100; *Factor v. Laubheimer*, 290 U.S. 276, 78 L. Ed. 315, 54 S.Ct. 101; *Terlund v. Ames*, 184, U.S. 270, 46 L.Ed. 534, 22 S.Ct. 484; *United States v. Raushner*, 119, U.S. 407, 30 L.Ed. 425, 7 S.Ct. 234."

Later cases, however, have made it clear that in the absence of such conventional or legislative provision, the Executive has no power to surrender the fugitive criminal to a foreign government. Citing *Valentine v. United States*, 5, 81 L.Ed. 5 S.Ct. 100. See also *Factor v. Laubheimer*, 290, U.S. 276, 78 L.Ed. 315, 54 S.Ct. 191."

In footnote 9, page 249 of Volume 12 of American Jurisprudence:

"Extradition proceedings being based upon an act of Congress and the Federal Courts having decided that such act must be strictly construed and that all of its requirements must be respected, courts are without the power or authority to construe such act liberally



but will be compelled to follow the rule laid down by the Federal Court and require that all the provisions of the Federal law relating to requisitions must be strictly observed and respected. Ex parte Owen, 10 Okla. Crim. Rep. 284, 136 P. 197, Am. Cas. 1916 A. 682; See also Courts Vol. iv, p. 337, para. 117."

It is well that we consider who may be extradited. On page 235 of Vol. 12 of American Jurisprudence we read:

"The person against whom extradition proceedings are directed must, of course, be fugitives from justice."

Citing Jones v. Tobin, 240 U.S. 127, 60 L.Ed. 562, 368 S.Ct. 290; Tenn. v. Jackson (D.C.) 36 Fed. 258, 1 LRA 370; Jones v. Leonard, 50 Iowa, 106, 32 Am. Rep. 116; Keller v. Butter, 246 N.Y. 240, 158 N.E. 510, 55 A.L.R. 394; Sate ex rel Lea v. Brown, 156 Tenn. 669, 645 W. (2d) 941, 91 A.L.R. 1246, writ of certiorari denied in 292 U.S. 638, 78 L.Ed. 1491, 54 S.Ct. 717; Ex parte McDaniel, 76, Tex. Crim. Rep. 184, 173 S.W. 1918, Am. Cas. 1917 B. 335.

Annotation: 7 Ann. Cas. 1076; 13 Ann. Cas. 907.

"The surrender of a person in one state for removal to another as a fugitive is expressly or by necessary implication prohibited by U.S. Rev. Sta. Par. 5278, 18 U.S.C.A. Para. 662, where it clearly appears that the person was not and could not have been a fugitive from justice of the demanding state. Jones v. Tobin, 240, U.S. 127, 60 L.Ed. 562, 36 S.Ct. 290."

We call the commission's attention to the fact that Mr. KATSUMI was living as a civilian, a citizen in Japan. Clearly, therefore, he was not a fugitive from justice nor did he flee from the custody of the United States or was he personally present at the times the crimes were committed within the demanding state, the United States.

We continue to quote from 22 American Jurisprudence "Extradition," Section 17, page 255:

"The language of the Federal Statutes seems to contemplate that the crime shall have been committed by one, who at the time, was personally present within the demanding state. Thus, it refers to a demand by the Executive of a state for the surrender of a person as a fugitive from justice to the executive of a state 'to which such person fled,' and it requires the production of a copy of the indictment found, or the affidavit made, before a magistrate, containing the necessary charges and properly certified by the executive of the state or territory from which the person so charged has fled,...."

It is a universal rule that a person to be extradited must be charged with a crime against the law of the state from whose justice he is alleged to have fled. KATSUMI did not flee; he was living as a civilian citizen in Japan. Even now he is not charged with crimes against the United States but is charged with violation of the law and customs of war in that he committed several assaults.

Page 265, Volume 22, American Jurisprudence, "Extradition" section 26:

"It is the universal rule that it must be apparent to the governor of the asylum state to whom a demand for an alleged fugitive from justice is presented, before he can lawfully comply with the demand, that the person demanded is substantially charged with a crime against the laws of the state from whose justice he is alleged to have fled, by an indictment or an affidavit certified as authentic by the governor making the demand. It is thus not only the right but the duty of the governor to determine whether a crime against the laws of the demanding state has been substantially charged." (10)

Citing many cases such as *Marbles v. Creedy*, 215 U.S. 63, 54 L.Ed. 92, 30 S.Ct. 32; *Compton v. Alabama*, 214 U.S. 1, 54 L.Ed. 885, 29 S.Ct. 605, 16 Ann. Cas. 1098; *Pierce v. Creedy*, 210 U.S. 387, 52 L.Ed. 1113, 28 S.Ct. 714 (rule recognized); *Illinois ex rel. McNicholas v. Pease*, 207 U.S. 222, 51 L.Ed. 121, 28 S.Ct. 58 (dictum); *Appleyard v. Mass.*, 203 U.S. 222, 51 L.Ed. 161, 27 S.Ct. 122, 7 Ann. Cas. 1073; *Munsey v. Clough* 196, U.S. 364, 49 L.Ed. 515, 25 S.Ct. 282; *Hyatt v. N.Y.* 188 U.S. 691, 47 L.Ed. 657; 23 S.Ct. 456; *Roberts v. Reilly*, 116 U.S. 80, 29 L.Ed. 544, 6 S.Ct. 291; *Lee Gim Bor v. Ferrari* (C.C.A. 1st) 55 F. (2d) 86, 84 A.L.R. 329; *Ex parte Spears*, 88 Cal. 640, 26 P. 608, 22 Am.St.Rep. 341; *Ross v. Crofutt*, 84 Conn. 370, 80 A. 90, Ann.Cas. 1912 C. 1295; *Chas v. State*, 93 Fla. 963, 113 So. 103, 54 A.L.R. 271; *People ex rel. Mark v. Toman*, 362 Ill. 232, 199 N.E. 124, 103 A.L.R. 379; *People ex rel. Carr v. Murray*, 357 Ill. 326, 192 N.E. 198, 94 A.L.R. 1487; *Dennison v. Christian*, 72 Neb. 703, 101 N.W. 1045, 117 Am. St. Rep. 817 affirmed in 196 U.S. 637, 49 L.Ed. 630, 25 795; *Re Waterman*, 29 Nev. 288, 89 P. 291, 11 L.R.A. (N.S.) 424, 13 Ann. Cas. 926; *Re Hubbard*, 201, N.C. 472, 160 S.E. 569, 81 A.L.R. 547; *State v. Adams*, 192 N.C. 787, 136 S.E. 116 citing R.C.L.; *State ex rel. Davey v. Owen*, 133 Ohio St. 96, 12 N.E. (2d) 144, 114 A.L.R. 686; *Word v. Corrington*, 34 Ohio St. 64, 32 Am. Rep. 345; *Ex parte Owen*, 10 Okla. Crime Rep. 284, 136 P. 197, Ann. Cas. 1916 A. 522; *Com. ex rel. Flower v. Superintendent of Phil. County Prison*, 220 Pa. 401, 69 A. 916, 21 L.R.A. (N.S.) 939; *Ex parte Murray*, 112, S.C. 342, 99 S.E. 798, 5 A.L.R. 1152; *State ex rel. Grass v. White*, 40 Wash. 560, 82 P. 907, 2 L.R.A. (N.S.) 563, Annotation: 81 A.L.R. 551, 1 L.R.A. 371, 28 L.R.A. 801; 11 L.R.A. (N.S.) 426.

Persons cannot be extradited for political crimes and most treaties expressly so provide. All crimes associated with actual conflict of armed forces are of a political character and the perpetrators of them cannot be extradited.

The specifications allege "that KATSUMI, Seishi, then a Japanese Civilian, employed by the Imperial Japanese Navy, serving at the Japanese military installation 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."

I would like to read to you what is said in Volume 22, American Jurisprudence on page 271:

"**EXTRADITION.** 31. Political Crimes. The development of extradition has evolved the principle that there shall be no international extradition for political crimes and offenses. 20 (Cite: "Annotation: 112 Am. St. Rep. 127 Sec. 1 Moore Extradition, p. 303, 205; 4 Moore International Law Digest, p. 332, 604.



"In keeping with this tenet of International Law, most extradition treaties with foreign governments expressly provide that they do not apply to charges of political crimes (1) (Cite: "Annotation: 41 L.Ed. 1047. See 1 Moore Extradition, p. 206-207.) Many of the treaties, however, between the United States and foreign countries expressly provide for extradition of persons charged as assassins or murderers of the heads of the various governments where, although such murder may be classed as one in furtherance of a political move, it is accomplished when there is no state of open revolt or war in existence. (2) (Cite: "See 1 Moore Extradition, p. 310 208 p 4 Moore, International Law Digest p. 332, 603.") While the question of what constitutes a crime of a political character has not as yet been fully determined by judicial authority, yet fugitive criminals are not to be surrendered for crimes specified in the treaty as extraditable, if such crimes are incidental and formed a part of political disturbances. (3) (Cite: "Annotation: 12 Am. St. Rep. 126.") Accordingly during the progress of a revolution crimes of an atrocious and inhuman character may be committed by the contending forces, and still the perpetrators of such crimes may escape punishment as fugitives beyond the reach of extradition. It does not devolve on the courts in extradition proceedings to determine what acts are, or are not, within the rules of civilized warfare; and, while men in heat of blood often do things which are against and contrary to reason, none the less, acts of this description may be done for the purpose of furthering a political up-rising even though the acts may be deplored as cruel and against all reason. Hence, all crimes associated with the actual conflict of armed forces are of a political character and the perpetrators of them cannot be extradited. (4) (Cite: "Annotation: 112 Am. St. Rep. 126.") An extradition magistrate has the jurisdiction and it is his duty to decide with competent legal evidence before him, whether an offense charged is a political crime. (5) (Cite: "Orneales v. Ruiz 161 U.S. 502, 40 L.Ed. 787, 16 S.Ct. 689.") And a decision by a commissioner in favor of the extradition of persons charged with murder and other crimes during a raid into an adjoining country, even though there is some evidence that their purpose was to fight against the foreign government, cannot be reviewed on the weight of the evidence and is final for the purpose of the preliminary examination unless palpably erroneous in law. (6) (Cite: Ibid.)"

We maintain Mr. KATSUMI's extradition was illegal and therefore this commission has no jurisdiction of the accused. Since we object to the jurisdiction on these grounds, we insist that the judge advocate produce the extradition papers. Unless such extradition papers and warrants are produced by the judge advocate for our inspection we hold that the burden of proof is upon the judge advocate to prove that the accused was and is legally before this commission.

We have pointed out to the commission, and the judge advocate has alleged it in the specifications that the accused, while serving as a civilian, did on Wake Island, during the period from December 23, 1941 to September 30, 1942, did certain things. We have pointed out to the

commission, during this period, the Japanese Government still held control of and occupied Wake Island. The accused was not within the United States when the alleged crimes took place and the accused should be released forthwith. I again cite for you ruling in Vol. 22 in American Jurisprudence, on page 294:

"Although if it is clearly shown that he was not within the demanding state when the crime was alleged to have been committed and his extradition is sought on the ground of constructive presence only, the court will ordinarily discharge him."

Until we see the extradition papers we cannot know for what offense Mr. KATSUMI, Seishi was extradited. The rule is now well settled that a person who has been brought within the jurisdiction of a court by virtue of proceedings under an extradition treaty can only be tried for one of the offenses described in the treaty and for the offense with which he is charged in the proceedings for his extradition until a reasonable time and opportunity have been given him after his release or trial on such charge to return to the country from which he was taken for the purpose alone of trial for the offense specified in the demand for his surrender. Both English and Canadian cases are in accord with the modern American view, the rule being that they limit the prosecution to the crime of which the fugitive was extradited. Citing *Buck v. Rex*, 55 Can. S.C. 133, 38 D.L.R. 548, Ann. Cas. 1918 D. 1023. See page 299 of Vol. 22 American Jurisprudence, "Extradition," Sec. 60.

What is the crime for which Mr. KATSUMI, Seishi, a civilian, was extradited? Unless we have the opportunity to see the extradition papers we cannot know. Not to produce the extradition papers is prejudicial to the substantive rights of Mr. KATSUMI, Seishi, a civilian, who is being tried in a military court.

According to C.M.O. 15-1917, p. 9, "The authority to convene the above mentioned exceptional military courts vests only in the military commander or military governor of an occupied territory, and all such courts may be ordered only in the name of the commander or Governor... Insofar as practicable, the employment of exceptional military courts should, as a general rule, be restricted to the trial of offenses in breach of the peace, in violation of military orders or regulations, or otherwise interference with the exercise of military authority."

We prefer to look at C.M.O. orders for the law on military commissions convened by the Navy, rather than to ex post facto rules promulgated by SCAP on December 5, 1945, addressed to Commander-in-Chief, United States Army Forces Pacific, Commanding General Sixth Army, Commanding General Eighth Army, and Commanding General XXIV Corps.

We also maintain that the offense of neglect of assault and battery alleged in the charge is one not cognizable by this commission.

Since there are no common law offenses against the United States, the crime of assault and battery must be statutory crime. In 14 American Jurisprudence, "Criminal Law," Section 15, p. 766, the rule is clear and uncontradicted: "...it is now well settled that except as to treason which is defined by the Federal Constitution, there are no common-law offenses against the United States (13)." (Citing *Donnelly v. United States*, 276 U.S. 505, 72 L.Ed. 676, 48 S.Ct. 400; *United States v. Gradwell*, 243 U.S. 476, 61 L.Ed. 857, 37 S.Ct. 407. Annotation: Ann. Cas. 1918 A 991.

"In order that an act be prosecuted as a crime in the courts of the United States, statutory authority therefore must exist." (Citing 144 U.S. 677, 36 L.Ed. 581, 13 S.Ct. 764; *United States v. Brewster*, 139 U.S. 240, 35 L.Ed. 190, 11 S.Ct. 538)."



"The courts of the United States in determining what constitutes an offense against the United States must resort to the statutes of the United States enacted in pursuance of the Constitution." Re Kollock, 165 U.S. 526, 41 L.Ed. 813, 17 S.Ct. 444.

"The courts have no right to treat an act done within a state as a crime against the United States unless Congress has declared it to be such, citing United States v. Reese, 92 U.S. 214, 23 L.Ed. 563."

If it is a statutory offense, that Mr. KATSUMI, Seishi, a civilian, is charged with having violated, we ask, what is the statute and does the statute define it as a misdemeanor or felony? What punishment does the statute provide and what courts have cognizance of the offense?

In 14 American Jurisprudence, "Criminal Law," Section 14, page 764, we find the rule that "In some states no act is to be regarded as a crime unless it is so declared by statute." Citing Bradley v. State, 79 Fla. 651; Soper v. State, 169 Ind. 177; Steward v. Jessup, 51 Ind. 413; State v. Campbell, 217 Iowa 848; State v. Koontz, 124 Kansas 216; State v. Shaw, 79 Kan. 396.

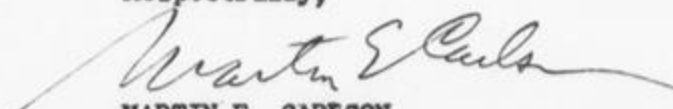
In this same footnote we find the rule?

"What is known as the higher law has no place in the jurisprudence of Oklahoma." Lickfield v. State, 8 Okla. Crim. Rep. 164, 126 P. 707, 45 LRA (NS) 153.

Since this is a military court, the offense must be one cognizable by a military court. Nowhere do we find that an assault and battery by one civilian against another civilian is a military offense triable by a military court. There was no martial law declared on Wake Island and a military court cannot therefore try a civilian.

The accused Mr. KATSUMI, Seishi, prays of judgment of the charge and specifications and prays that the charge and specifications be quashed.

Respectfully,

  
MARTIN E. CARLSON,  
Commander, U. S. Naval Reserve,  
Counsel for the Accused.

REPLY TO THE PLEA BY THE ACCUSED TO THE JURISDICTION

Delivered by

Lieutenant James P. Kenny, USN  
Judge Advocate

The early part of the argument of Mr. Takano of defense counsel is a discussion of the merits of the case on a basis of what he anticipates the evidence will be. Counsel is being rather presumptuous in anticipating the prosecution's case and in any event the matter is not relevant to the question of the jurisdiction of this commission to try the instant case.

Mr. Takano refers to certain articles of the Geneva Prisoners of War Convention and the Hague Convention of 1907 and argues therefrom that since the prisoners of war were in the custody and power of the hostile government, only the hostile government can be held responsible and not the particular individuals who participated in the wrongdoing. Such a contention has been raised many times before other military commissions and the International Tribunal at Nuremberg and has been, without exception rejected. It has long been recognized that war crimes, like any other crimes, are the result of actions by individuals and the individuals who planned or participated in the violations of law are the responsible parties.

Both Commander Carlson and Mr. Takano made the mistake of assuming that the jurisdiction of this military commission rests upon a decision as to the sovereignty of Wake Island at the time of the alleged incidents. The only requisite as to place that exists to the knowledge of the judge advocate is that the alleged crimes must have been committed within the theater of war, military government, or martial law. In modern warfare the theater of war has been expanded to include not only the area of battle but also the homelands of the belligerent nations. On this point we need only note the precedents of the Nuremberg trial and the trials held by various military commissions in Japan and Germany to try war crimes committed in the homeland of the aggressor nations. It was naturally anticipated by the drafters of the Hague Convention and the Geneva Prisoners of War Convention that if violations of the law of war occurred, their situs would be territory that was either occupied by or under the sovereignty of the enemy.

Although from what has been said it is apparent that sovereignty of the situs of the war crime is not relevant, the judge advocate wishes to correct the erroneous statements of defense counsel that Japan ever was the sovereign on Wake Island and that upon its surrender to our forces we became a mere occupant with corresponding powers. The United States has not lost sovereignty over Wake Island since 1898. The law was correctly stated by Commander Carlson when he quoted from the Rules of Land Warfare to the effect that military occupation by an invading force does not transfer sovereignty. His error was in the assumption that we, and not the Japanese, were the temporary occupant of Wake Island.

Commander Carlson argues that this military commission lacks jurisdiction because Wake Island was not within the field of command of the convening authority, The Commander Marianas Area, at the time the alleged offenses occurred. There is no requirement that it had to be. As a matter of fact Wake Island was at the time of the alleged incidents part of the area under the command of the predecessor of the Commander in Chief Pacific and U. S. Pacific Fleet, whose authority is delegated to The Commander Marianas Area by the terms of the precept (paragraph 1). It would seem that defense counsel had intended to refer to the authority of the convening authority to appoint this commission. The Commander Marianas Area by virtue of being a military commander had the inherent power to create this military commission.

Furthermore he had specific authority delegated to him by his superior, the Commander in Chief Pacific and U. S. Pacific Fleet, whose military authority extended to the whole of the Pacific area. Similar authority was delegated to Commander Naval Forces Marianas, under date of August 1, 1948.

Commander Carlson argues that this commission is without jurisdiction to try the accused because, he claims, the accused was not properly extradited from Japan and therefore is not legally before the commission. Many legal authorities and cases are cited by counsel in support of this argument. However, the laws of the respective nations relative to the extradition of criminals generally are not applicable in the case of war criminals. This is covered by the report of State-War-Navy Coordinating Subcommittee for the Far East dated 12 September 1945 and subsequently issued instructions by the Joint Chiefs of Staff to SCAP. The relative instructions to SCAP were implemented in his Legal Section Memorandum dated 22 June 1946 which in effect provides that any command outside of the Far East Theater may obtain suspected war criminals by submitting a request therefor, including in the request (a) the name and address of suspected war criminal; (b) the name of command making request; (c) information which constitutes basis for request and (d) place where suspected war criminal is to be tried. These provisions have been complied with by the Commander Marianas Area and the accused is therefore legally before this commission.

Counsel for the accused argue that we are here attempting to apply ex post facto law. There is no merit in this contention. The offenses charged against this accused have long been recognized as violations of the law of war. The Japanese Government took official recognition of the existence of this law when it signed and ratified the Hague Convention and the Annex thereto of 1907. It again recognized such law when it signed the Geneva Prisoners of war Convention of July 27, 1929, and at the outset of World War II agreed to apply the terms of this convention to military and civilians alike.

Commander Carlson argues that there is a lack of jurisdiction because the accused is a civilian. Military commissions have the power to try violators of the law of war and it matters not whether the violators were civilians or military. Paragraph 4 of the precept convening this commission conferred specific jurisdiction over "all Japanese nationals and others who worked with, were employed by or served in connection with the former Imperial Japanese Government, in the custody of the convening authority at the time of trial." The accused fulfills all those qualifications.

We respectfully request that the plea to the jurisdiction be denied.

Respectfully,

*James P. Kenny*  
JAMES P. KENNY.



MOTION FOR A CHANGE OF VENUE

Delivered by

Commander Martin E. Carlson  
In behalf of KATSUMI, Seishi.

May it please the Commission:

The accused KATSUMI, Seishi, a civilian hereby makes this motion for a change of venue on the grounds that the action is brought in the wrong place or district, and because a military court cannot legally try him because he is a civilian.

In criminal cases the proper venue at common law is the country where the crime was committed.

The crimes alleged in the specifications are said to have taken place on Wake Island. This was not within the command of the Commander Naval Forces Marianas during the period from December 23, 1941 to September 30, 1942, nor is it now in Commander Naval Forces Marianas Area.

Since the prosecution absolutely refuse to state what the law and the customs of war are which the accused violated we are at a loss to know what these vague and indefinite laws are, if any, and particularly as to what venue is provided by such laws.

It is true that the accused is in the custody of the convening authority but we strongly maintain the accused KATSUMI, Seishi, a civilian, a Japanese national, is not legally in the custody of the convening authority of this military commission.

It is also true that the accused is charged with the commission of ten offenses of assault and battery against nationals of the United States but this does not make him guilty of a war crime or of any crime. We maintain that the offenses alleged in the specifications are not war crimes.


This is a motion for a change of venue and in the case of Southern Sand and Gravel Co. v Massaponax Sand and Gravel Corporation 145 Va. 317, 133 S.E. 812, 813 it was stated that venue designated the particular county or city in which a court with jurisdiction may hear and determine the case.

We are of the opinion that Wake Island is not a part of the military command of Commander Naval Forces Marianas. There is no inherent authority in the convening authority to appoint this military commission to try a Japanese civilian for alleged offenses said to have been committed on Wake Island during the period from December 23, 1941 to September 30, 1942.

We move for a change of venue to Tokyo, Japan, Wake Island, or Honolulu, T.H.

For the convenience of witnesses and that the ends of justice may be better served the accused prays for this change of venue from this military commission.

Respectfully,

  
Martin E. Carlson

M

0409



## 裁判管轄権移送の申立

勝見晴史 辯護人  
新井 敏二 一郎

被告人勝見晴史は下記の理由に因り本事件の  
裁判管轄権の移送を申立てる

アメリカ合衆国憲法は刑事被告人に対し一定  
の権利を與へてゐる。同憲法修正條項第六は「  
總て刑事訴訟に於て被告人は自己の利益に對し  
を爲す為に強制手続を求め得る權利を享得る」と  
明記してゐる。アメリカ法學者は此の憲法の  
規定を數回に亘り説明してゐる。即ち「聯邦  
政府の憲法は各州の憲法は犯罪に因り起  
訴せられたる人には對し甚るる同意なくしては刺  
殺するを爲さざるの權利を保障してゐる。其等の  
權利といふのは大抵の裁判管轄権に於ては証  
人に直接面接する權利；自己の爲に証人と  
は交はせざるを強制手続を求め得る權利を含  
むてゐる」と説明してゐる。(American Jurisprudence  
Vol. 14, Criminal Law, Rights of Accused,  
Section 118, pp. 847-848).

本件は二箇の罪状項目よりなる。罪状項目  
は五つの事件を含む。第一罪状項目は七つの事件と  
第二罪状項目は十四个事件と掲げられてゐる。  
而して此等の五箇事件の外重複記載の事件と除外  
して猶ほ十五つの事件を以て起訴せられてゐる。又

其に被告人とこれに比する事件に關する檢察官側  
の証拠を打破するに之に對する反証を提出し  
てせば 被告の檢察官主張の事件と同数又はそれ  
以上の数の証人を提出するに必要と認めらる。被  
告人勝見は又自己の側に必要とするだけの証人を呼  
び得る權利は、アメリカ合衆國憲法に依つて保障せ  
られてゐる。

此の點に實際問題として勝見は認許せらる  
るが、その事件の事件の性質のものは、その事件に  
對する檢察官側の証拠を打破するに對する反証  
を提出するに、その點に於ては唯一の証人を  
も呼べるに必要と認めらる。

被告人が自己の側に証人を呼ぶに必要と欲する  
証人の現出に於ては、多く日本内地に居住して居  
るものと多数の証人を遠隔の土地から、實際には  
呼ぶに必要と認めらる。實際には、これに對する被  
告人もよく承知してゐる。尚ほ勝見は、實際  
に、海軍工廠に於てゐる一介の民間人に、過  
去の経験の証人を、實際に、WAKE島に於てゐる唯  
一の通譯として、絶えず多数の軍の人に接して  
居ることを、斯かる事情の下に勝見は自己の  
証人を呼ぶに必要と欲する人に、氏の名を、或は之  
を知ることがある、或は既に忘れたことを、若し  
ある。勝見の家族の人に、付して知ることが、唯此の  
代位、猶ほ、経験の証人を呼ぶに必要と認めらる。  
其の人に、探知、或は、他方、或は、有様と認めらる。此  
の事實、或は、証人の姓名を知ることが、証人の

此等情形を知らずして、数人の中間の人と  
何れも標榜して、之を二重に重なる平議を申出た  
りたる。此の方法に依ることは多数の正時を要し  
原案を以て案所願の困難なる。此に於ては  
本内地に於て此の平議を執るともは容易に目  
録相同にして能く其の目的を達するを得るの  
なり。

斯かる次第に於て故に被告人等見よ、  
本國憲法に依りて保障せられたる自己の權利を  
破壊し、殊に標榜官の私権を打破し更に之に  
對し反論を舉げ、機會を熟し、所願  
に於て裁断官の權限の移運の申立を為す

謹言

高橋 純一



MOTION FOR CHANGE OF VENUE  
Delivered by Mr. Junjiro Takano  
Counsel for the Accused.

The accused KATSUMI, Seishi makes this motion for a change of venue on the following grounds:

The Constitution of the United States grants certain right to a criminal accused. Amendment VI of the Constitution provides: "In all criminal prosecutions, the accused shall enjoy the right... to have compulsory process for obtaining witness in his favor..." American Jurisprudence, in amplification of this constitutional provision, states: "The Constitution of the Federal Government and of the various states guarantees to a person accused of crime certain rights of which he may not be deprived without his consent. These rights, in most jurisdictions, include "...to meet witnesses face to face; to have compulsory process to procure the attendance of witnesses in his behalf; ..." (14 Am Jur, Criminal Law, Rights of Accused, Section 118, pp 847 - 848)

There are three specifications in the instant case. The first specification contains five alleged incidents, the second specification seven, and the third specification ten. Even excluding the incidents which are alleged in duplication, there are still 15 incidents with which the accused is charged. The accused, therefore, in order to quash and disprove prosecution's evidence as regards these incidents, naturally needs as many witnesses as the numerousness of the alleged incidents may require. The accused is guaranteed by the United States Constitution to enjoy the right to obtain as many witness as he needs in his favor.

However, as a matter of fact, the accused KATSUMI cannot obtain even a single witness here on Guam, in order to quash and disprove prosecution's evidence as regards the alleged 22 incidents, namely 15 incidents in their substance.

All the persons whom the accused desires to have on the witness stand in his favor are now residing in Japan. The accused is fully aware that it is actually very difficult to summon many witnesses to this Military Commission (from distant places). Furthermore, the accused KATSUMI was nothing but a civilian employee in the Japanese Navy. As the only interpreter on Wake in those days he was constantly in contact with numerous military personnel. As the result of this he does not know or has forgotten the names of persons whom he wants as witnesses for him. The only knowledge he has now is the positions, ranks or duties of these persons, with which he might be able to identify them. Locating witnesses by this procedure will require complicated procedure through several intermediate persons whom the accused believes might know the addresses of these witnesses. This will waste a long time and is very hard to do. But if he uses this method in the Japanese homeland, he will be able to attain his purpose easily and in a few days.

The accused KATSUMI, therefore, makes this motion for a change of venue in order to exercise his rights granted by the United States Constitution and to have the opportunity to quash and disprove the prosecution's evidence.

Respectfully,

/s/ TAKANO, Junjiro,  
Counsel for the Accused

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

*Eugene E. Kerrick, Junior*  
EUGENE E. KERRICK, JUNIOR,  
Lieutenant, U. S. Naval Reserve,  
Interpreter.



REPLY TO MOTION BY ACCUSED FOR A CHANGE OF VENUE

Delivered by

James P. Kenny, Lt., USN  
Judge Advocate

Mr. Takano urges that the venue of this trial be changed to Japan on the grounds that the witnesses whom the accused wishes to call in his defense reside in that country. In support of this he cites the sixth amendment to the Constitution of the United States which guarantees to an accused the right ".... to meet witnesses face to face, to have compulsory process to procure the attendance of witnesses in his behalf, ...." This constitutional provision has no relevance to the question of venue. There is no constitutional provision for a trial in the place of residence of the accused (*Haas v Herkel*, 216 U.S. 462). The constitutional provision on venue is found in that part of the sixth amendment which provides for the right of trial of a criminal offense in a district where an offense is committed. Although the venue for the trial of war criminals is not limited by this provision of the constitution, it is apparent that he is now being brought to trial before the only military commission authorized to try war criminals in the area in which the alleged offenses took place. The number of witnesses available to the accused in this particular area or any other area has no bearing on the question of proper venue. Angle Saxon jurisprudence does not recognize any rule of convenience to the accused as a factor in deciding venue in a criminal proceeding. Underhill's Criminal Evidence, Fourth Edition, Section 447, states: "... as a general rule, in criminal cases, no change of venue can be procured solely for the convenience of witnesses."

In his motion for a change of venue Commander Carlson of defense counsel states that the accused is at a loss to know where the proper venue of the offense charged is because "the prosecution absolutely refuse to state what the law and customs of war are which the accused violated." Since venue is concerned solely with the sites of the offense and the same is set forth in the charge and specifications, the prosecution fails to see how enlightenment as to the particular law violated would in any way affect a consideration of this question. Of course, the prosecution has not refused to state what law and customs of war were violated. It is apparent that Commander Carlson has mistakenly included in this motion that which should be raised in an objection to the charge and specifications, viz., whether or not it was necessary for the convening authority to set forth the particular law and customs of war which were allegedly violated.

Commander Carlson also compares the question of jurisdiction with venue. If as he argues there is no jurisdiction on the part of this commission to hear this case, then it would naturally follow that it is also without power to grant his motion. Along the same line is his argument that the accused is not legally before this commission. These are questions of jurisdiction and cannot be the basis of a motion for a change of venue. Only in the concluding paragraph of his motion where he refers to the convenience of witnesses, does Commander Carlson give any reason to support his motion for a change of venue. The judge advocate has previously explained that this is not legally sufficient to support such a motion. All the other arguments of Commander Carlson concern the inherent power of this commission to try the pending case and are, therefore, questions of jurisdiction and not properly included in a motion for a change of venue.

For these reasons, the judge advocate requests that the motion for a change of venue be denied.

Respectfully,

*James P. Kenny*  
JAMES P. KENNY

P

0414

公訴期限法援用の申立て

被告人 腰見精史  
弁護人 高野純一郎

重法委員各位

被告人は下記理由により謹んで本申立てを為す。

第一 前言

本件公訴事実は一民間人たる被告人腰見精史が昭和十  
六年十二月二十三日より同十七年九月三十日に至る間 Wake 島において  
日本海軍の雇傭せられたる時同島の日本軍に捕へられておたア  
メリカ人俘虜を不健康又は危険なる作業及作戦行動に直接  
関係する作業に就せしめ且此等の作業を酷使虐待して戦  
争法規並に慣習法の違ふ行為を為したと言わのである。

上記の記載により前掲の期間 Wake 島は一時日本軍の  
占領下になつたことは明白である。日本軍の占領中は一時の  
ではあつたが日本の主権が同島に及んでゐることも言を要し  
ない。従つて其の期間内其処で施行せられたる法律は日  
本の法律に他ならない。上記の某期間 Wake 島において犯され  
た犯罪の法に日本の法律が適用されたことは当然である。  
又如何なる行為が犯罪であるかを就しては日本の法律の  
定めるところに據つたのである。

以上のことを就してアメリカ諸聖堂は次の如く説いてゐ  
る。

(1)

Q(1)

凡そ犯罪事次に關する裁判官權限は其の所轄犯罪  
行為の地とれる州又は州の裁判所の管轄し其の州又  
は國の法律が當る犯罪の性質を支配すると言ふのが  
根本原則である。如何なる場合に於ても犯罪者の口  
籍或は市民籍は主要事次では無い。其の犯罪者は凡  
ゆる處に於て犯罪地の口の法律をも其の犯罪行為の  
所在に依つて法律に服するのである」と。(14 Am Jur  
Criminal Law § 221 Generally p 921)

#### 第二 公訴期限法の援用

被告人勝久が Wake 島に於て勤務中自らの職務に  
おける海軍の処罰法規中の「字號を「不健康且危険な作  
業」(Specification 1) 又は「作戦行動に直接關係のある  
作業」(Specification 2) に就かざることを以て犯罪を  
構成するとする規定は正しいのである。唯海軍刑法第69條  
には「職權を濫用して侵害し、行為がその罪を三年以下  
の懲役又は禁錮に処す」と規定せられてゐる。

當時勝久は一民間人であつたけれども海軍軍人の準に  
て取扱はれてゐた彼の海軍刑法の適用を争ふ身分にな  
つたことは同法第44條及第11條の規定に徴して明かである。

「第44條 左に記載の如きハ海軍軍人の準に

- 一、 軍人
- 二、 海軍軍屬
- 三、 軍人

第11條 本法ハ海軍軍人に於て犯罪を犯す者ニ之ヲ

(2)

Q(2)

04 16



適用ス」

海軍軍法會議法には公訴の時効に関する規定があり、  
其の規定に依れば長期五年未満、懲役又は禁錮に就く  
犯罪に付しては三年の経過を以て公訴に関する時効を完  
成するものとあつてゐるのである。而して其の三年の期間は起算  
は犯罪行為の終了した時からである。今其の関連条文を  
下掲する。

「海軍軍法會議法 第三節 公訴

第三十四條 時効ハ左ノ期間ヲ経過スルニ因リ完成ス

一 有罪

二 有罪

三 有罪

四 有罪

五 長期五年未満、懲役若ハ禁錮又ハ罰金  
該ニ罪ニ付テハ三年

第三十六條 時効ハ犯罪行為、終了した時から進行ス

第三十七條 時効ハ公訴、提起予審、請求公判若  
ハ予審、処分又ハ第三十四條、主たる予審官、  
処分ニ至リ中断ス。

被告人藤久が従つて本件罪状項目其の三に列記せ  
らる戦時法規並に慣習法違反行為を犯したことは且此等の  
行為が上掲海軍刑法第六十九條の罪に該当するとしても其の犯  
罪行為に付しては合法的な被告人藤久を起訴する事は

(3)

Q(3)

0417



あるところである。何と云へば本件起訴状にある被告の主張せらるる最後の犯罪は1942年6月15日であつて其の日から3年後の1945年6月15日に至るまでは上場証券会議法第347条に規定せられてゐる時効中断の何等の事由もあつたからである。一旦消滅した公訴権が如何なる事情の下にあつても再び生起するとは法理上あり得ないところである。

之を要するものから日本海軍刑法並に海軍刑法会議法を適用する理由は上の記述に通りであつて同海軍刑法には

(1) Specification 其の一の條を「不健康又は危険な作業」に就かぬことを犯罪とする規定はない又

(2) Specification 其の二の條を「作戦行動に直接関係する作業」に就かぬことを犯罪とする規定はない。

(3) Specification 其の三の被告人降参の行為が依りて海軍刑法第69条に該当するとした此等の行為については上場証券会議法第343条 第346条 第347条に依りて1945年6月15日以前に公訴権は時効に依りて消滅してゐるのである。

以上の如きであるから被告人降参に對する本件起訴を却下せらるべきことを認むのである。 謹言

高橋 純

(41)

Q(4)

PLEA IN BAR OF TRIAL

Delivered by Takano, Junjiro

Defense Counsel For The Accused Katsumi, Seishi.

May it please the Commission,

The accused respectfully makes this plea in bar for the following reasons:

1. Introduction

The Charge of this case alleges that the accused Katsumi, Seishi, a civilian employed by the Imperial Japanese Navy, did at Wake Island during the period from December 23, 1941 to September 30, 1942, use American prisoners of war, then and there held captive by the armed forces of Japan, to perform unhealthful and dangerous work and work directly related to war operations and also abuse and mistreat the same American prisoners of war, in violation of the law and customs of war.

From the foregoing it is obvious that Wake Island was temporarily under occupation for the period of time mentioned above. Although the occupation of Wake Island was of a temporary character, it goes without saying that Japanese sovereignty prevailed there during that period. Hence the law that was in use there during that period was the law of Japan. It is only natural that Japanese Law applied to crimes committed on Wake Island during the above mentioned period, and also that the provisions of Japanese law decided what acts would be criminal.

American Jurisprudence states as follows on the subject:

"Section 221. Generally. - It is fundamental that jurisdiction in criminal matters rests solely in the courts of the state or country in which the crime is committed and that the laws of each state or country exclusively govern the nature of the offense. In any case the nationality or citizenship of the offender is immaterial. He is subject in all respects to the law of the country within which the crime is committed and as the law existed at the time the crime was committed." (American Jurisprudence Vol. 14, Criminal Law #221, Generally, p 921)

2. The Application of Statute of Limitations.

During the period of time the accused Katsumi, Seishi served on Wake Island, the Naval Punishment Regulations which were then in effect did not embrace regulations which stated that to use prisoners of war "to perform unhealthful and dangerous work" (Specification 1) or "to perform work directly related to war operations" constituted a crime.

Article 69 of the Naval Criminal Code merely provides as follows: "Those who commit inhuman acts by abusing their authority shall be condemned to penal servitude or imprisonment not exceeding three years" (Article 69, Naval Criminal Code.)

At that time Katsumi was a civilian but he was being treated as naval personnel mutatis mutandis and consequently the Naval Criminal Code would have applied to him because of this status. This is clear from the provisions of Articles 9 and 1 of the same Code.

Article 9. The following personnel will be treated mutatis mutandis as naval personnel:

1. (omitted)
2. Naval Gunzokus
3. (omitted)

Article 1. This code will apply to naval personnel who have committed a crime.

There are provisions for a period of time during which an individual is amenable to trial in the Naval Court Martial Law, and according to these provisions, crimes which are punishable with a maximum penal servitude of confinement not exceeding 5 years, are barred by the statute of limitations after 3 years. And the point of time from which this period is reckoned is from the time of the conclusion of the criminal act. The relative articles are cited below:

Naval Court Martial Law Chapter 3 Arraignment.

Article 343: The period during which a person is amenable to trial expires with the passage of time given below.

1. (omitted)
2. (omitted)
3. (omitted)
4. (omitted)

5. For crimes which are punishable by maximum imprisonment or confinement not exceeding 5 years or by fine, 3 years.

Article 346: The period during which a person is amenable to trial shall begin from the time the criminal act is concluded.

Article 347: The period during which a person is amenable to trial shall be suspended by presentation of a formal charge, by a request for preliminary examination, by the disposition of a public trial or preliminary examination, or by the disposition of a judge at a preliminary hearing as set forth in Article #304.

According to the provisions of the above law, the accused Katsumi cannot be indicted with the above criminal acts, even presupposing that Katsumi did commit the acts in violation of the law and customs of war enumerated in the specifications of the present case, and presupposing that Article 69 of the above mentioned Naval Criminal Code applied to these acts, because the last act allegedly committed by the accused in the specifications was committed on the 15th of June 1942, and in the three year interim until 15 June 1945 no reason was presented for suspension of the period during which he was amenable to trial as set forth in Article 347 of the above mentioned Court Martial Law.

A right of arraignment, once lapsed, cannot legally be brought to life under any circumstances.



It was for the above reasons that I referred to the Japanese Naval Criminal Code and the Naval Court Martial Law. In the same Naval Criminal Code it is stated:

(1) There are no provisions that use of prisoners of war to perform "unhealthful and dangerous work," the allegation of Specification 1, constitutes a crime.

(2) There are no provisions that use of prisoners of war to perform "work directly related to war operations" constitutes a crime.

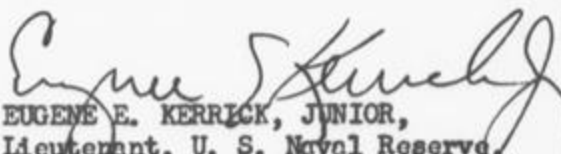
(3) Even presupposing that Article 69 of the above mentioned Naval Criminal Code applied to the alleged acts of the accused Katsumi as enumerated in Specification 3, the period during which he was amenable to trial for the above acts expired on 15 June 1945 in accordance with Articles 343, 346 and 347 of the above cited Court Martial Law.

We pray therefore that the Charge and specifications be quashed as to the accused KATSUMI, Seishi.

Respectfully,

/s/ TAKANO, Junjiro.

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

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

R(3)

0421



PLEA IN BAR OF TRIAL  
of  
KATSUMI, Seishi, a Japanese civilian.  
Delivered by  
Commander Martin E. Carlson, USNR.

May it please the commission:

The accused KATSUMI, Seishi, a Japanese civilian, makes this plea in bar of trial on the grounds of the statute of limitations.

The offense, assault and battery, is alleged to have been committed during the period from 23 December 1941 to 30 September 1942. The charge and specifications are dated 2 September 1948, almost six years after the alleged offenses were committed.

Appendix B, Naval Courts and Boards, Articles for the Government of the Navy, has this to say regarding the laws governing the administration of justice in the Navy:

"The Articles for the Government of the Navy.

"The laws governing the administration of justice in the Navy are codified in section 1200, title 34 of the United States Code under the title of 'Articles for the Government of the Navy'."

"Codification.

"On June 30, 1926, Congress enacted the Code of Laws of the United States of America, referred to as the U. S. Code and cited as 'U.S.C.' The present code is the 1934 edition of the United States Code and is the official restatement in convenient form of the general and permanent laws of the United States in force January 3, 1935. It is composed of 50 titles. Title 34 contains the laws relating to the Navy and section 1200 of that title contains the Articles for the Government of the Navy. In enacting the U. S. Code, Congress did not enact any new laws, nor was any law repealed. To provide for any errors that might be made the enacting clause contains the following:

'The matter set forth in the code....shall establish prima facie the laws of the United States, general and permanent in their nature, in force....; but nothing in this act shall be construed as repealing or amending any such law, or as enacting as new law any matter contained in the code. In case of any inconsistency arising through omission or otherwise between the provisions of any section of this code and the corresponding portion of legislation heretofore enacted effect shall be given for all purposes whatsoever to such enactments.'

"The code is presumed to be the law..."

"Articles established:

"The Navy of the United States shall be governed by the following articles (R.S., sec. 1624):

"Article 61. Limitation of trials; offenses in general. No person shall be tried by court martial or otherwise punished for any offense, except as provided in the following article which appears to have been committed more than two years before the issuing of the order for such trial or punishment, unless by reason of having absented himself or of some other manifest impediment he shall not have been amenable to justice within that period (R.S. sec. 1624, Art. 61; Feb 25, 1895, c. 128, 28 Stat. 680)."

This we maintain is the statute of limitations which is applicable in this present case.

It isn't enough for the prosecution to say that this only relates to trials by court martial and it is therefore not applicable to offenses triable before exceptional military courts. We call the commission's attention to Section D-12, Appendix D of Naval Courts and Boards wherein it is explained that exceptional military courts are employed by the Naval establishment in order to exercise the power conferred upon it when its duty is such as to place under it a wider jurisdiction. An exceptional military court such as this military commission is charged with the administration of naval law.

Section D-15 reads: "A military commission should, in general, correspond to a general court martial both as to its constitution and as to its proceedings."

Section 33 NC&B enumerates the persons subject to the naval jurisdiction of the United States. It specifically mentions prisoners of war stating: "Under the laws of war and the provisions of the Geneva (Prisoners of War) Convention of 1929, prisoners of war are subject to the jurisdiction of a naval court martial. We believe this is in accordance with Article 45 Geneva Prisoners of War Convention of 1929."

Clearly therefore the accused, Katsumi, Seishi, is entitled to the benefits of Article 61 and other articles for the government of the Navy. Katsumi, Seishi was not an enemy combatant. He was a civilian, a Japanese civilian. There can be no citing of the Yamashita case as authority to deny to this accused, a civilian, and not an enemy combatant the rights of the statute of limitations.

Section 582 of the Criminal Code of the United States sets a three year limitation on criminal offenses.

Title 18 Criminal Code United States Code Annotated. Criminal Code and Criminal Procedure. Sec. 582 reads "No person shall be prosecuted, tried, or punished for any offense, not capital, except as provided in section 584 of this title, unless the indictment is found, or the information is instituted, within three years next after such offense shall have been committed." (R.S. pp 1044; April 13, 1876, c 56, 19 Stat. 32; Nov 17, 1921, c 124, pp 142 Stat. 220.)

Even under this section the offenses which Katsumi, Seishi, a civilian, is being tried for are barred by this Statute of Limitations.

The specifications do not allege a capital offense. The commission is only authorized to impose lawful punishment (see par. 5 of receipt). The death sentence is clearly not a lawful punishment for a simple assault where no injury is alleged.

There is in war crimes a statute of limitations but we know of no case where such trivial offenses have been charged as a war crime. There is no justification for overruling the statute of limitations because of the ex post facto SCAP Regulations.

The case of U.S. v White (GC Dist Col 1836) Fed Cas Nos 16675, 16676, holds, "The statute of limitations runs in favor of an offender, although it was not known that he was the person who committed the offense." (See 138 USC Annotated, Title 18 Criminal Code and Criminal Procedure.)

The criminal charge in this case was not made until the formal written accusation was made on September 2, 1948 of the charge and specifications dated September 2, 1948.

"In the eyes of the law a person is charged with crime only when he is called upon in a legal proceeding to answer to such a charge. Mere investigation by prosecution officers or even inquiry and consideration by examination magistrates of the propriety of instituting a prosecution do not of themselves create a criminal charge." Citing U.S. v. Patterson, 150 U.S. 65, 37 LEd 999, 14 S.Ct. 20." 14 American Jurisprudence Criminal Law, Sec. 7, page 753.)

This statute of limitation is regarded with favor by the courts and it is the consensus of the authorities that the defense of the statute of limitations stands on the same plane as any other legal defense." (citing Wheeler v. Castor 11 N.D. 347, 92 N.W. 381, 61 L.R.A. 620) "and is one to which, in proper circumstances, all men are entitled as a right. (citing Anaconda Min. Co. v. Scile, 16 Mont. 8, 39 P. 909, 50 AmStRep 472; Carter v. Collins, 174 Okla 4, 50 P. (2d) 203, 34 Am.Jur. Limitation of Actions Sec. 12, p. 23 also states: "The Defense is not technical (citing U.S. v. Oregon Lumber Co. 260 U.S. 290, 67 LEd 261, 43 S.Ct. 100) but is deemed to be legitimate (citing O'Malley v. Sims, 51 Ariz. 155, 75 P. (2d) 50, 115 ALR 634) substantial, and meritorious." (Citing Guaranty Trust Co. v. U.S., 304 U.S. 126, 82 L.Ed. 1224, 58 S.Ct. 785 and many more cases.

In 15 Am. Jur. Criminal Law Section 342, page 32 it is stated: "Statutes of limitation in criminal cases differ from those in civil cases. In civil cases they are statutes of repose, while in criminal cases they create a bar to the prosecution (citing State v. Steensland 33 Idaho 529, 195 P 1080, 13 ALR 1442; People ex rel Reibman v. Warden, 242 App. Div. 282, 275 NYS 99 citin RCL.)"

A judgment for the defendant on a plea of the statute is necessarily an acquittal of the charge, and not a mere abatement of the action. Therefore it has been universally classed as a plea in bar and not in abatement (citing U.S. v Oppenheimer 242 U.S. 85, 61 L.Ed. 161, 37 Sct 68, 3 ALR 516; U.S. v. Barber, 219 U.S. 72, 55 LEd 99, 31 Sct 209. 15 Am. Jur. Criminal Law, pp 342, p. 32.

Since we have raised the issue of the statute of limitations in this case it is incumbent upon the judge advocate to affirmatively prove the commission of the offenses charged within the statutory period. We cite from 15 Am. Jur. "Criminal Law" section 343, page 32: "Where the issue of the statute of limitations is raised, the state must affirmatively prove the commission of the offense within the statutory period." In many jurisdictions, if the state relies upon an exception to remove the bar of the statute, it is incumbent upon the state to prove the exception.



The case of *Hogoboom v. State*, 120 Neb. 525, 234 NW 422, 79 ALR 1171 holds that statutes of limitation as applied to criminal procedure, are to be liberally construed in favor of the defendant.

Wharton says this same thing in speaking about statutes of limitation in criminal cases as being different than in civil cases. Yet we know that even at common law pleas of limitation were allowed long before there was any statute on the subject. (See 34 Am.Jur. "Limitation of Actions", Section 2, page 14.)

But let us hear what Wharton says. In Wharton's "Criminal Procedure, Volume I, section 376, is headed: "Statute of limitations construction to be liberal to defendant." On page 45 we read this regarding such statutes in criminal cases:

"But it is otherwise when a statute of limitation is granted by the state. Here the state is the grantor, surrendering by act of grace its right to prosecute, and declaring the offense to be no longer the subject of prosecution. The statute is not a statute of process, to be scantily and grudgingly applied, but an amnesty, declaring that after a certain time oblivion shall be cast over the offense; that the offender shall be at liberty to return to his country, and resume his immunities as a citizen; and that from henceforth he may cease to preserve the proofs of his innocence, for the proofs of his guilt are blotted out. Hence it is that statutes of limitation are to be liberally construed in favor of the defendant, not only because such liberality of construction belongs to all acts of amnesty and grace, but because the very existence of the statute is a recognition and notification by the legislature of the fact that time, while it gradually wears out proofs of innocence, has assigned it and positive periods in which it destroys proof of guilty. (2)" Footnote (2):

O "This is well exhibited in a famous metaphor by Lord Plunkett of which it is said by Lord Broughman (Forks, etc., Edinb. ed. of 1872, IV 341) that 'It cannot be too much admired for the perfect appropriateness of the figure, its striking and complete resemblance as well as its raising before us an image previously familiar to the mind in all particulars, except its connection with the subject for which it is so unexpectedly but naturally introduced.' 'Time' so runs this celebrated passage, 'with his scythe in his hand, is ever mowing down the evidence of title; wherefore the wisdom of the law plants in his other hand the hour glass, by which he metes out the periods of that possession that shall supply the place of the maniments his scythe has destroyed.'"

In other words, the defense of the statute of limitations is one not merely of technical process, to be grudgingly applied, but of right and wise reason, and therefore, to be generously dispensed. The same thought is to be found in another great orator, Demosthenes, pro Phorm. ed. Reiske, p 952.

Independently of these views, it must be remembered that delay in instituting prosecutions is not only productive of expense to the State, but of peril to public justice in the attenuation and distortion even by mere natural lapse of memory, of testimony. It is the policy of the law that prosecutions should be prompt; and that statutes enforcing such promptitude should be vigorously maintained. They are not merely acts of grace but checks imposed by the State upon itself, to exact vigilant activity from its subalterns, and to secure for criminal trials the best evidence that can be obtained.

In U.S. Code Annotated Title 18 Sec 582, page 138 in note 6, the case of U.S. v. Watkins (cc Dist. Col. 1829) Fed. Case No. 16649 is cited and the rule set forth:

"The time of finding the indictment will appear by the caption, and, where it appears therefrom that the offense was committed beyond the time limited, judgment will be rendered for defendant."

Mr. Katsumi, Seishi, a civilian, was arrested on 9 January 1947 and held at the Shimogamo Police Station until January 12, 1947. On January 14, 1947 he was taken to Sugamo Prison, Tokyo and there imprisoned without warrant of arrest nor were any charges preferred against him.

He was incarcerated in Sugamo Prison, Tokyo on 11 January 1947 without warrant of arrest or charges being preferred against him.

Then, on 30 June 1947 he was sent to Guam without extradition papers and where he was put in solitary confinement. He has been in solitary confinement at the Far Criminal Stockade since 13 July 1947. For more than 1 year the prosecution have held Mr. Katsumi in solitary confinement and without benefit of counsel. Now the prosecution come before this court and ask that you deny the accused Mr. Katsumi the benefit of the statute of limitations because they have delayed for no good reason instituting this trial. They know full well that the long delay in instituting this trial is not only productive of expense to United States Government but that it is a peril to public justice in the attenuation and distortion by natural lapse of memory of testimony they will introduce. The prosecution ask that you approve their action in keeping Mr. Katsumi in solitary confinement here on Guam for more than one year without preferring charges against him or giving him the benefit of counsel when "The rule now prevails in most if not all the States that an accused is entitled, as a matter of constitutional right, to the services of counsel upon his preliminary examination" from 14 American Jurisprudence. Cum Supp Criminal Law Sec. 167 p. 74 add new par p. 884.

And "It is provided by statute that at the time of arrest the person accused must be furnished with a true copy of the charges with the specifications." 36 Am. Jur. Military, section 98, Citing United States v. Smith, 197 US 386, 49 LEd 801, 25 S.Ct. 489 and other cases.

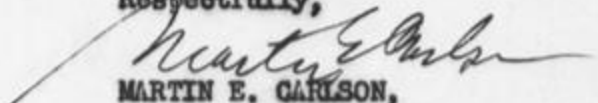
The statute of limitations has run in this instance because the prosecution deliberately refrained from bringing the accused, Mr. Katsumi, Seishi, to trial. We ask that the law be applied.

The Federal case of U.S. v. Watkins (CC Dist Col 1829) Fed Cas. No. 16649 held "The time of finding the indictment will appear by the caption and where it appears therefrom that the offense was committed beyond the time limited, judgment will be rendered for defendant."

The accused, Mr. Katsumi, Seishi, pleads the statutes of limitations as a bar to his trial for the alleged offenses committed during the period from December 23, 1941 to September 30, 1942 and charged under date of September 2, 1948.

The accused Mr. Katsumi, Seishi prays of judgment of the charge and specifications and prays that the charge and specifications be quashed.

Respectfully,

  
MARTIN E. CARLSON,  
Commander, USNR.



REPLY TO PLEA IN BAR  
Delivered by  
Lieutenant James P. Kenny, USN.

The accused's plea in bar rests upon two cited statutes of limitations. The first statute cited by the accused is Article 61, of the Articles for the Government of the Navy. This article is completely inapplicable to the instant case. Article 61, AGN, reads in part: "No person shall be tried by court martial...for any offense...committed more than two years before the issuing of the order for such trial..." By its specific terms therefore this statutory limitation relates only to trials by court martial, and is not applicable to offenses triable before exceptional military courts such as the instant military commission. The distinction between a naval court martial and an exceptional military court such as the instant military commission is specifically noted in NC&B Appendix D-12. Article 61, since it relates to trial by court martial, is limited therefore to persons and offenses triable by court martial. In general the persons so triable are members of the naval forces, personnel accompanying the Navy, and spies, as set forth in NC&B Sec. 333. The accused does not fall within any of these categories, and is therefore not entitled to the benefits of Article 61 or other Articles for the Government of the Navy. The similar question of the applicability of Articles of War to accused war criminals was specifically considered by the United States Supreme Court in the Yamashita case (In re Yamashita, 327 U.S. 1). The court there said, p. 13: "By thus recognizing military commissions in order to preserve their traditional jurisdiction over enemy combatants unimpaired by the Articles, Congress gave sanction, as we held in Ex parte Quirin, to any use of the military commission contemplated by the common law of war. But it did not thereby make subject to the Articles of War persons other than those defined by Article 2 as being subject to the Articles, nor did it confer the benefits of the Articles upon such persons."

Commander Carlson makes an attempt to bring the accused under the provisions and protection of the Articles for the Government of the Navy by claiming that he is a prisoner of war. The accused is not and never has been a prisoner of war. He was taken into custody and confined as a war criminal suspect long after the close of hostilities.

It is apparent from the wording of Appendix D-15, Naval Courts and Boards, quoted by defense counsel, that reference is made to procedural and not substantive law. It was obviously not the intent of this section to bring persons not enumerated in Section 333, NC & B under the protection of the Articles for the Government of the Navy.

The limitations set forth in Article 61 of the Articles for the Government of the Navy apply solely to court martial proceedings against naval and related personnel, and therefore have no application to the military commission proceedings against war criminals.

The second statute argued by defense counsel as pertinent, is equally inapplicable. Counsel cites 18 USC 582. This provision is clearly limited to noncapital cases. It does not apply to cases where the death penalty is authorized. Section 582 reads in part: "No person shall be prosecuted, tried, or punished for any offense, not capital...unless...indictment is found...within three years..."

Since Military Commissions in the trial of war crimes cases are authorized to impose the capital sentence for the crime this accused is charged with (see NC&B App. D-15), 18 USC 582 is inapplicable.



18 USC 581a specifically provides that "An indictment for any offense punishable by death may be found at any time without regard to any statute of limitations."

With regard to the field of war crimes, there is no applicable statute of limitations. The consistent undeviating line of precedent in decisions of military commissions in this and other military areas, denying the plea of statute of limitations in bar of trial, is adequate confirmation of the law in regard to this question. Similarly, note the "Regulations Governing the Trials of Accused War Criminals," SCAP AG 000.5 (5 Dec. 1945) 2 b (2), which reads: "The offense need not have been committed after a particular date to render the responsible party or parties subject to arrest, but in general should have been committed since or in the period immediately preceding the Mukden incident of September 18, 1931."

Mr. Takano in making his plea in bar argues first that this military commission is without jurisdiction to hear this case. He then argues that jurisdiction lies in the courts of Japan and makes a plea in bar to any action brought in these courts. A plea in bar is based upon an argument that no cause of action exists or that, if it did exist, it is now barred by some impediment, such as the statute of limitations, former jeopardy, or pardon. It is apparent from this that this commission cannot concern itself with what might be a bar to the action if brought in a Japanese court. Since the contentions of the accused as to jurisdiction were argued and decided by the commission when the plea to the jurisdiction was made, the judge advocate will refrain at this time from reargument.

The judge advocate respectfully requests that the defense plea in bar be overruled.

*James P. Kenny*  
JAMES P. KENNY  
Judge advocate.

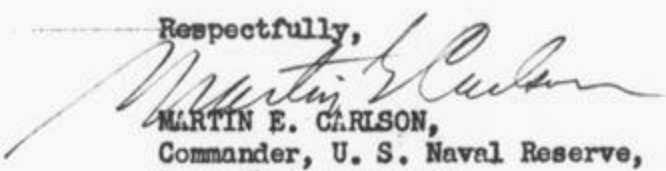
PLEA IN ABATEMENT  
in the case of  
KATSUMI, Seishi

The accused KATSUMI, Seishi interposes this plea in abatement on the ground that there has not been any notice to the protecting power of the opening of this judicial proceeding against this accused, a Japanese national.

Article 60, Geneva (Prisoners of war) Convention of July 27, 1929, provides: "At the opening of a judicial proceeding directed against a prisoner of war, the detaining power shall advise the representative of the protecting power thereof as soon as possible, and always before the date set for the opening of the trial."

The accused prays that Article 60 of the Geneva Convention of 1929 be complied with before this trial proceeds and before issue is joined.

Respectfully,

  
MARTIN E. CARLSON,  
Commander, U. S. Naval Reserve,  
Counsel for Accused.

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0429

REPLY TO PLEA IN ABATEMENT

Delivered by

James P. Kenny, Lt., USN  
Judge Advocate

The accused Katsumi, Seishi is not and never has been a prisoner of war. He was arrested long after the surrender of Japan and the close of hostilities. He was arrested and confined not as a prisoner of war but as a suspected war criminal. Never having been a prisoner of war, the provisions of Article 60 of the Geneva Prisoners of War Convention would not be applicable to him.

This same question was raised in the Yamashita case and the United States Supreme Court disposed of it in these words: "Petitioner relies on the failure to give the prescribed notice to the protecting power to establish want of authority in the commission to proceed with the trial. For reasons already stated we conclude that Article 60 of the Geneva Convention, which appears in part 3, Chapter 3, Section V, Title III of the Geneva Convention, applies only to persons who are subjected to judicial proceedings for offenses committed while prisoners of war." In Re YAMASHITA 327 U.S. 1, 16.

The accused is charged with offenses committed by him in the course of the war while he was employed by and serving with the Japanese armed forces.

The plea in abatement should be denied.

Respectfully,

*James P. Kenny*  
JAMES P. KENNY



MOTION FOR A BILL OF PARTICULARS

Delivered by  
Commander Martin E. Carlson, USNR  
Defense Counsel.

The accused makes a motion for a more definite statement of the charge and for a bill of particulars in order to enable the accused to prepare for trial. We refer the Commission to Rule 12(e) Federal Rules of Civil Procedure for the District Courts of the United States and the case of Herman v. Mutual L. Ins. Co. (C.C.A. 3d) 108F (2d) 678, 127 ALR 1458.

The accused prays that Specifications 1, 2 and 3 of the charge set out the law and customs of war which it is alleged the accused violated.

The object of this motion is to make more definite and certain the charge and the specifications thereunder. We refer the Commission to the case of Tilton v. Beecher, 59 N.Y. 176, 17 Am.Rep. 337 and 41 Am. Jur. "Pleading" section 276.

It is necessary that the accused definitely know with a certainty just what law and what customs of war he is charged with having violated.

The accused knows of no international law or customs of war which justifies such a charge as is set forth against KATSUMI, Seishi, a civilian employee of the Imperial Japanese Navy.

The accused cannot properly prepare a defense to a charge based upon vague and indefinite references in certain of the Hague Conventions and Geneva Red Cross Convention No. IV of October 18, 1907. We call the Commission's attention to the case of Gross v. Big Creek Development 75 W. Va. 719, 84 S.E. 75, LRA 1915 E. 1057.

According to the ruling in 41 Am Jr. "Pleading" Section 271: "As a general rule bills of particulars will be ordered in every case in which the party can satisfy the court that it is necessary to a fair trial that he should be apprised beforehand of the particulars of the charge which he is expected to meet." The following cases are cited in support of this rule. May v. Ill C.R. Co. 129 Tenn. 521, 167 S.W. 477, LRA 1915 A. 781, Ann Cas. 1916 A. 213.

"A bill of particulars should be granted in furtherance of justice." All these cases are cited: Tilton v. Beecher 59 NY 176, 17 Am. Rep. 337; Hawkins v. Lassell, 43 S.D. 191, 178 NW 731 citing RCL; May v. Ill C.R.C. 129 Tenn 521, 167 S.W. 477, LRA 1915 A 781, Ann Cas 1916 A 213; Richmond and D. R. Co. v. Payne, 86 Va. 481, 10 S.E. 749, LRA 849; Turner v. Great Northern R. Co. 15 Wash 213, 46 P 213, 55 Am.St.Rep. 883.

"A bill of particulars should be granted for purposes of effectuating justice and in order not to impose an undue burden upon the accused." These cases are cited: Williams v. Chattanooga Iron Works 131 Tenn. 683, 176 S.W. 1031, Ann Cas. 1916 B 101; and May v. Ill C.R. Co. 129 Tenn 521, 167 S.W. 477, LRA 1915 A 781, Ann Cas 1916 A 213.

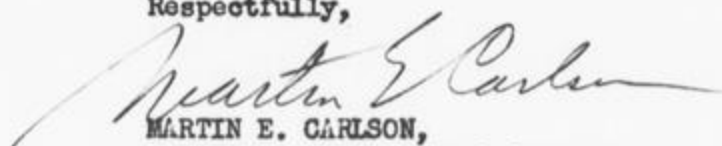
Although there are three specifications, specification one containing five paragraphs each a separate assault, specification 2 containing 7 paragraphs each a separate assault; and specification 3 containing 10 paragraphs each a separate assault; there is but one charge and at the most ten cases of assault and battery charged and set forth under the one charge.

This is a federal court and "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." citing 5 Corpus Juris Section 175 "Assault and Battery" wherein is stated the case of 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." and the case of 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 also 12 Cyc. 139 Criminal Law.

It isn't enough therefore in a case where assault and battery is charged to simply allege that the offense was "in violation of the law and customs of war." So in this case the statute must be set out.

This motion is not interposed for delay but to make the charge and specifications more definite and certain and in order to effectuate justice and to insure a fair trial to the accused, KATSUMI, Seishi, a civilian employed by the Imperial Japanese Navy at Wake Island during the period from December 23, 1941 to September 30, 1942.

Respectfully,

  
MARTIN E. CARLSON,  
Commander, U. S. Naval Reserve,  
Defense Counsel.



REPLY TO MOTION BY ACCUSED FOR

A BILL OF PARTICULARS

Delivered by

Lieutenant James P. Kenny, U. S. Navy.

The right to make a demand for a Bill of Particulars is one that is familiar to civil courts but for which there is no provision in the procedure under which this military commission operates. 27 American Jurisprudence, Indictments and Informations, Section 112, states that "the office of a Bill of Particulars is to supply the accused and the court additional information concerning an accusation that the accused has committed an act or acts constituting a criminal offense." It is a remedy that is used in civil courts where the indictment does not inform the accused of the crime with which he is charged sufficiently to enable him to prepare his defense. In a naval court the charges and specifications are the indictment. The right to make a timely objection to the charges and specifications takes the place of the right to demand a Bill of Particulars. It will be noted by the commission that the accused has recognized this since in his objections to the charge and specifications he raises the same point on which this demand for a Bill of Particulars is founded, viz, that the specifications of the charge should set forth the law and customs of war which it is alleged were violated by the accused. Since the merit of this claim will be argued at the time the objections to the charge and specifications are made, the judge advocate will refrain from comment at this time.

The granting or refusing of a Bill of Particulars, in any event, would be a matter resting in the sound discretion of a court (27 American Jurisprudence, Indictments and Informations, Section 111). Because of this and the fact that the accused is provided with a substitute remedy in his right to object to the charge and specifications, the judge advocate requests that the motion for a Bill of Particulars be denied.

*James P. Kenny*  
JAMES P. KENNY,  
Lieutenant, U. S. Navy,  
Judge Advocate.

0433



OPENING STATEMENT FOR THE PROSECUTION

Delivered by

James P. Kenny, Lt., USN  
Judge Advocate

The judge advocate will call to the stand during the course of this trial two witnesses who were prisoners of war on Wake Island at a time when this accused was a civilian interpreter there with the forces of the Imperial Japanese Empire. These witnesses will tell how this accused violated the law and customs of war by forcing them and their fellow prisoners of war to perform work directly related to the war effort, abused and mistreated them, and forced them to perform unhealthy and dangerous work. The judge advocate will then take the stand and offer into evidence approximately seventeen affidavits from other Wake prisoners of war which will confirm the testimony of the two witnesses and further relate concerning other violations of the law and customs of war set forth in the charge and specifications.

The prosecution does not intend and will not attempt to prove that this accused had the sanction or authority of his superiors in doing what he did. That is no part of the prosecution's case. We will show that he did, in fact, exercise authority over the prisoners of war. We will prove that it was he who, very often at gun point, forced these American prisoners of war to perform work in violation of the law of war.

The details as to the alleged violation of the law and customs of war on the part of the accused are incorporated in the charge and specifications and were heard by this military commission when the accused was arraigned. These are the matters the prosecution will prove.

Evidence adduced will indicate that the accused was one who had been in close contact with Americans for the twenty-two years immediately preceding the outbreak of war and availed himself during that period of the advantages offered by American institutions of higher learning. In this light his handling and treatment of Americans when he became one of their captors will appear all the more culpable.

Respectfully,

*James P. Kenny*  
James P. Kenny

OBJECTION TO THE COMMISSION TAKING JUDICIAL NOTICE OF THE MATTERS REQUESTED  
BY JUDGE ADVOCATE, DELIVERED BY COMMANDER MARTIN E. CARLSON, DEFENSE COUNSEL

The accused objects to the commission taking judicial notice of Item 2. We object particularly to the word "possession" and we ask that the judge advocate prove the word "possession." This court is sitting at Guam, not at Wake Island and the court is therefore not bound to know such matter. Let the judge advocate furnish the court with an official document attesting to this matter. We object to Item 4 on the ground that it is irrelevant and immaterial. The precept for the commission is signed by Commander Marianas Area and the charge and specifications are signed by The Commander Naval Forces, Marianas. The question of jurisdiction was put in issue by the plea of the accused and the judge advocate should be required to prove item 4. It is prejudicial to the rights of the accused for the court to take judicial notice of item 4. We object to the Geneva Prisoners of War Convention of July 27, 1929 in Item 5 and that although Japan has not formally ratified this convention, it agreed through the Swiss government to apply the provisions thereof to prisoners of war under its control and also as far as practicable to interned civilians. We take exception to the phrase "so far as practicable to interned civilians." This is not at issue here. It is nowhere alleged in the charges and specifications that these victims were interned civilians or that Katsumi violated this convention or even that Katsumi was bound by this convention. It is alleged in the charge that the victims, the prisoners of war, were held captive by Japan. The inference is that the prisoners of war were under the control of Japan and since the point is in issue we ask that the judge advocate be called upon to prove it. This is one of the points at issue that these victims were prisoners of war and were under control of Japan and that Katsumi had control of them and that Katsumi was bound to observe this convention. Did the Geneva Prisoner of War Convention require Japan and require not only Japan but this particular civilian, Katsumi, to observe the provisions of the convention. We object to "measures of reprisal against them are prohibited". It is not alleged that reprisals were taken. It is highly irrelevant and the court should not take judicial notice of this. Chapter 2 Article 7 Geneva Prisoner of War Convention "Prisoners shall not be needlessly exposed to danger while awaiting their evacuation from the combat zone." The point that is at issue since it is alleged or rather inferred that these prisoners of war were needlessly exposed to danger. The judge advocate should be required to prove that Mr. Katsumi, a civilian, was bound by these requirements. The judge advocate should be required to prove that a Japanese civilian, Mr. Katsumi, Seishi, was bound by the alleged agreement which Japan made with the Swiss government. Every fact put in issue must be proved and not by taking judicial notice of it since it is at issue. As to article 31, chapter 3 the judge advocate should be required to prove this and so with article 32. Article 31 is at issue. The question is whether the facts alleged are proved and if the allegations violate this article 31 and if Katsumi is bound. No such allegation is alleged in the charge and specifications as set forth in article 32 so it is irrelevant to take notice of this article 32.

Item 6, the Hague Convention and the Annex is objected to. We ask that the commission do not take judicial notice of this. The Hague convention as it relates to Japan in view of the action taken by the United States during the war, Circular No. 136, War Department, 7 May 1942, must of necessity set a precedent. Japan too can as well as the United States declare any convention will not be observed by them. In the U. S. War Department Circular No. 136 War Department 7 May 1942, the United States stated it would not be bound by the Hague Declaration number XIV of 18 October 1907. Certain pertinent parts of the circular are set forth in the Foreword of Army Technical Manual 27-251 dated 7 January 1944. We quote as follows: "the Hague Declaration No. XIV of 18 October 1907 prohibiting the discharge of projectiles and explosives from balloons (The United States has stated it will not observe this declaration.) It will be noted that the French text is the only official text so far as the international relations of states are concerned, and accordingly, in case of dispute as to the meaning of any

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provision, it is the French text which must be accepted as controlling. Though the English translation is, in general, believed to be correct, no translation can always give the meaning of the original with entire accuracy."

If the United States can make a Hague Convention not binding upon them then this proves that Japan can also make some sort of a declaration in which she can state that certain parts of the Hague Convention or Geneva Prisoners of War Convention is not binding. Japan did not ratify or formally adhere to the Prisoners of War Convention. The prosecution should be required to prove that Japan was bound by Hague Convention and Geneva Prisoners of War Convention. The circular of 7 May 1942 clearly states that "Although all of the conventions...are not binding on all the countries with which the United States is at war." We say that any or all parts of the Hague Convention and Geneva Prisoners of War Convention are null and void as to Mr. Katsumi, in that they nowhere say that he, a civilian, is bound to observe these conventions or may be punished if he does not.

We ask the judge advocate be required to prove that these conventions hold Mr. Katsumi responsible for any violation thereof and set up a punishment for their violation on his part.

It is clear to see that the judge advocate has been vague in alleging the law violated and instead of proving the law violated he will only ask the commission to take judicial notice of certain Articles in the Hague convention and Geneva Prisoners of War Convention and that having been done will say that is all I am required to do. Again we say this is not the way to prove a case. In effect it is alleging something and then asking the commission to take judicial notice of what is alleged. This then makes it possible to only allege an offense and even if put in issue by the accused pleading not guilty he must be found guilty if you take judicial notice that what is alleged in the charge is true. We call the commission's attention to article 3 of Naval Courts and Boards:

"A court may not take judicial notice of a foreign law (the Hague Convention being in French is certainly a foreign law)... the existence of such law being a question of fact which must be proved by competent evidence the same as any other fact, i.e., the purport or the actual wording of the law must be introduced into the evidence and it must be further shown that the law or regulation was in force at the time when the alleged act in violation thereof took place."

No such procedure is here being followed by the judge advocate and we object to the commission taking judicial notice of the above items, items 2, 4, 5, and 6, objected to by the accused.

Respectfully,

  
MARTIN E. CARLSON,

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REPLY TO OBJECTIONS ON JUDICIAL NOTICE

Delivered by

Lt. James P. Kenny, USN,  
Judge Advocate

That Wake Island and Wilkes Island have been possessions of the United States since July 4, 1898 is a fact which is easily ascertainable by reference to the World Almanac and therefore a proper subject for judicial notice by this Military Commission. The area of command of the Commander in Chief Pacific and U. S. Pacific Fleet is a matter which this Military Commission, sitting in that area, is bound to know as part of its function. The Hague Conventions and the Geneva Prisoners of War Convention, which contain a good part of the law of war, are also matters which this Military Commission is bound to know. The fact that the original text of the conventions is in French does not affect the power or propriety of this commission taking judicial notice of an official English translation. Nor does the fact that the original text was in French make the conventions foreign law. They contain the law of war and as such are the law of all nations.

The accused argues that since many of these matters are in issue, the commission cannot take judicial notice of them and the prosecution must prove them. This is not true. Evidence can be supplemented by facts of which the court takes judicial notice (Section 309, Naval Courts and Boards, 1937).

*James P. Kenny*  
JAMES P. KENNY

CC

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検事例書款第408号を証拠書款  
として提出するに對する異議の申立

被告人 時久 精次  
弁護人 高野 純一郎

被告人は下記の理由により検事例書款第408号 Mr.  
W. O. McGill の宣誓供述書を証拠書款として提出するに對  
し異議を申立てる。

本宣誓供述書は本件起訴の罪状項目には何等の関  
係なく本件に關する程次要のものではない。何と云へば

1. welding 及 する unloading of the docks は本  
件には關係なし。

2. Feb 12 の事件は本件起訴の無關係であるのみならず  
之の時久が關係せしとの記載なし。

3. Welding land bombs の記載はあるけれども之の時  
久が關係せしとの記載なし。

4. 時久が Julius Hoffmeister を殴打したとの記載は  
あるけれども其の日付とか場所の記載がない。

5. 更に Julius Hoffmeister は本件起訴の無關係なし。

仍て斯かる Affidavit を以て被告人に對する起訴事  
實を確定する証拠とするには出来ない。

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横事別書款第409号証拠書款  
とて提出するに於ける異議の申立

被告人 藤久 精史  
弁護人 高野 伸一郎

被告人は下記の原因により横事別書款第409号 Mr.  
W. O. Rogge の供述書を証拠書款とて提出するに於ける  
異議を申立る。

第一、本供述書は本件起訴及罪状次日に於て irre-  
levant and immaterial である。

1. 大連湾中の Dredge の浚渫作業に於ける日誌の記  
載より。

2. Gun position, trenches, converting machine  
guns into emplacement guns, barbed wire en-  
tanglements 等。記載はありけれども此等は藤久日  
誌の命令ではなく彼の上官からの命令であると記載に  
あるから直接藤久の本件起訴とは関係がない。

第二、Hearsay である。海軍路の修築に強制力  
を行使せしむる記載にありけれどもこれは hearsay である。

第三、1. 国際法違反のこの記載にありけれどもこれは  
本供述書作成者の知る事実に過ぎない。

2. この国際法違反行為に藤久の関係にあるとは記載



いふ。

検事録書款第410号を証拠書款  
として提出するに附する異議の申立

被告人 藤久精史  
弁護人 高野地二郎

被告人は下記の理由により検事録書款第410号 Mr.  
J. S. Stewart の宣誓供述書を証拠書款として提出するに  
附する異議を申立てる。

(1) 本宣誓供述書は 1942 年 2 月 24 日の出来事に関し  
記載があるけれども、此の記載の根拠は本 Affidavit の同  
書中の記載と同一日の何れの作業の日付に従事したと記載  
されている。此の記載は hearsay に過ぎない。

(2) 此の Affiant は其の他長々と記載にあるけれども  
もて本件起訴状及罪状項目には何等の關係もないので  
ある。

斯かる Affidavit は証拠とするには出来ぬ。

検事録書款第412号を証拠書款  
として提出するに附する異議の申立

被告人 藤久精史  
弁護人 高野地二郎

被告人は下記の理由により換筆官制書款第412号  
Major H. S. Wilson の宣誓供述書を証拠書款として提  
出するとの異議を申立てる。

本宣誓供述書には作業者の作業就後の一とを記載し  
てあるけれども彼自身全く作業には従事してゐない。それ  
であるから彼のこの記載は hearsay に過ぎない。

尚ほ此の Affiant は略々のやうな brutality は日々  
は日々で実質にはないといふと記載にある。

其の他の記載は本件犯罪及び罪状認明には何等の関  
係がない。従つてこの宣誓供述書は之を証拠とする事は  
出来ない。

謹言

高野 次郎

OBJECTION TO INTRODUCTION IN EVIDENCE OF PROSECUTION  
DOCUMENTS #408, #409, #410 AND 412.

Delivered by

Mr. TAKANO, Junjirō  
Counsel for the Accused.

The accused objects to the introduction in evidence of Prosecution Document #408, the sworn affidavit of Mr. W. O. McGill, on the following grounds:

This sworn affidavit is completely irrelevant and immaterial in relation to the charge and specifications, and not of sufficient importance to affect the case.

For example:

1. Welding and simple unloading at the docks have no relation to this case.
2. The incident of February 12, 1942 had no connection with this case. Moreover there is no mention of KATSUMI's connection with the incident in the affidavit.
3. Although welding land bombs is mentioned, there is no mention of KATSUMI's connection with that work.
4. Although it is noted that KATSUMI beat Julius HOFFMEISTER, the time and place of this beating (or these beatings) are not given.
5. Furthermore Julius HOFFMEISTER has no relation to the charge of this case.

Hence such an affidavit cannot be received as evidence to establish the alleged facts of the charge against the accused.

The accused objects to the introduction in evidence of Prosecution Document #409, the statement of Mr. F. O. Rogge, on the following grounds:

A. This statement is irrelevant and immaterial in relation to the charge and specifications.

For example:

1. It does not note the day and hour of the fire-fighting aboard the burning dredge.
2. Although mention is made of gun positions, trenches, converting machine guns into emplacement guns, and barbed wire entanglements, it is stated that work on such were conducted under orders from KATSUMI's superior officers and not from KATSUMI himself. It has therefore no direct bearing with the charge brought against KATSUMI in this case.

B. It is hearsay.

Although it is stated that they were forcibly put to work to repair the run-way, this statement is hearsay.

- C. 1. Mention is made of violation of international law. However this is mere opinion on the part of the maker of this statement.
2. It is not stated that KATSUMI was connected with these acts in violation of international law.

D. This statement was not made upon oath.

Such a simple statement cannot be made evidence.

The accused objects to the introduction in evidence of Prosecution Document #410, the sworn affidavit of Mr. J. S. Stewart on the following grounds:

1. Although mention is made of the incidents of February 24, 1942 in this sworn affidavit, nowhere in the same document does the affiant mention of his participation in any of the work performed that day. Hence the statements in regard to work are hearsay.
2. The affiant goes into great lengths of description, but they have no relevance to the charge and specifications of this case.

Such an affidavit cannot be introduced as evidence.



The Accused objects to the introduction in evidence of Prosecution Document #412, the sworn affidavit of Major H. S. Wilson, on the following grounds:

Statements are made in this sworn affidavit of prisoners of war being put to work, despite the fact that the affiant himself never performed any work. Therefore his statements on this point are merely hearsay.

Further the affiant states that he personally did not witness any brutality on the part of KATSUMI.

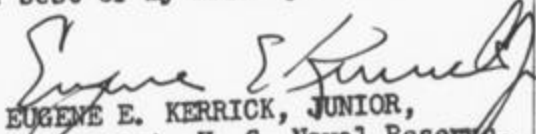
All other matters in the affidavit have no bearing on the charge and specifications of this case.

Hence such an affidavit cannot be introduced as evidence.

Respectfully,

/s/ TAKANO, Junjiro.

I certify that the foregoing is a true and complete translation of the original document in Japanese to the best of my ability.

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

OBJECTION TO THE RECEIPT IN EVIDENCE OF THE STATEMENTS OF RYLAND FRANCIS BARNETT, ALBERT S. FREESE, W. T. KENNEDY, WARREN O. MC GILL, WARREN O. ROGGE, JESSE L. STEWART, HENRY STANLEY WILSON, FRANKLIN R. WISE, JOHN A. GLENNING, PATRICK K. AKI, THEODORE GRANSTEDT, JR., HARRY L. MC DONALD, LEONARD WARD, AND EDWARD A. CONNORS, DELIVERED BY COMMANDER MARTIN E. CARLSON, USNR, COUNSEL FOR THE ACCUSED.

The accused objects to all the prosecution documents here offered into evidence, affidavits, perpetuation of testimony, sworn statements on the ground that these documents are all ex parte affidavits taken without notice to the accused or his defense counsel.

These affidavits are hearsay evidence. They are not exceptions to the hearsay rule. Sections 68 to 172 inclusive, Naval Courts and Boards, sets forth the rule "Why hearsay evidence is objectionable," regarding hearsay evidence. On all three points set forth in Section 169, these affidavits are hearsay as to the crime with which KATSUMI is charged and are objectionable.

The judge advocate has not shown that these documents are exceptions to the hearsay rule.

Rule six, Hearsay Rule, is found in Section 201, Naval Courts and Boards, and I quote: "Where the author of a document does not appear as a witness, it remains only a hearsay statement and can be received only under some exception to the hearsay rule."

Again the rule as found in Section 217, "Affidavits," Naval Courts and Boards, states that an affidavit 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." We hold that this affidavit is hearsay and inadmissible in evidence to prove the criminal negligence of KATSUMI. 16 American Jurisprudence, Section 38, on "Depositions," "The general rule is that the adverse party must have reasonable notice of the taking of depositions so as to be afforded an opportunity to be present at the examination or to file cross-interrogatories, and that the failure to give the required notice renders the depositions vulnerable to a motion to suppress. (6)" We cite all cases cited in this footnote (6).

No notification was given the accused and not until this morning were we notified that there were such affidavits. To admit such affidavits would be prejudicial to the substantive rights of the accused KATSUMI, and we object to these affidavits being admitted into evidence.

The judge advocate may say, citing the Yamashita Case, that the accused has no right of confrontation of witnesses. But the Yamashita case was the trial of a prisoner of war, a military officer, a general of the Imperial Japanese Army, and governor of the Philippines. This is the trial of a civilian. We call the commission's attention to an article in the May 27, 1948 issue of Stars and Stripes, "Misci Treason Trial Draws 45 witnesses." Under date of Los Angeles, May 26 (INS) "Forty-five former war prisoners will be brought to Los Angeles from over half the world to testify at the treason trial of Tomoya Kawakita, California-born Japanese accused of brutalities and sadistic practices in a Japanese prisoner of war camp." "----Five witnesses are Japanese nationals who will be brought from Japan." The daily newspapers are daily carrying news items to the effect that Tokyo Rose who has been duly extradited from Japan to the United States will be confronted by witnesses who will be summoned or subpoenaed to appear against her. So, too, with other persons who are to be tried for treason and other offenses in American courts. They are to be confronted with witnesses.

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So an accused tried in an American court does have the right of confrontation of witnesses and is being given this right.

No evidence has been offered as to the execution of any of the documents. There is no showing that they were made voluntarily.

We move that these affidavits be suppressed.

Respectfully,

  
MARTIN E. CARLSON.



## 弁護側冒頭陳述

弁護人 佐藤 毅

被告勝久精史の弁護側証拠を提出するに当り先ず最初  
に海軍嘱託としての彼の身分 日本海軍に於ける履歴及び彼の作  
業を指揮命令する権限があったか 或は無かったかに関し日  
本政府の Deposition を提出したいと思ふ。

次に被告勝久が Wake 島の勤務中実際の任務に服  
した状況及び彼が作業を遂行に従事していたことは何等の責任  
の無かった事実を就て全島の指揮官たる元日本海軍大佐  
の崎進の口供書に依り之を明かにしようと思ふ。

次に被告勝久は起訴及罪状状目に於て十五個の事件  
に於て戦争法規及慣習に違反したと同様とせられて居り、換言  
すれば十二人の証人と十四個の口供書により、被告に不利  
なる多数の証拠を提出された。

之に対し被告勝久は後刻彼自身の為の証人台に立  
つて主張される事件の大部分に就て関係をいひ及ぶことが  
或は斯かる事件の起る事を全然知らなかったかの何れ  
かであること又彼の関係に於て一々の事件に於て彼は字の通り  
としての仕事をなして過ぎたにその原因を述べなかったこと  
及び作業の遂行を加へるが如き行為の全然なかったことを  
証言するのである。

茲に本軍法委員会各位の注意を喚起したいことは被  
告勝久の本案に関する全容の極めて浅い為と主張される

事件に直接関係した当事者らが誰であったかを充分に知  
らず、又誤名と知つておきながら関係者の氏名を既に忘れて  
居り、短時間の採りおめ得ず、従つて被害の同族に就いて事  
件に關係に居るか、或は非行を犯して居るかと言ふ彼の証言  
を追証する證據を充分に得られぬ不利な立場に在ると  
言ふことである。

斯うな状態であるから被害者の姓名を記憶にのこした  
人の元日本海軍将校からの Deposition (これは後刻到着す  
るべき要約するものを含む) は時久に於いて主張される全事件  
に就いて彼の証言を追証し得ないのである。然し乍ら是等の De-  
position と時久自身の本法庭に於ける証言とを綜合して仔  
細に検討する必要がある。

第一罪状項目に同族にされし不健康且危険な仕事に未  
だ PW を従事せしむることを強制、強要又は要求し仕事させ  
られたこと

第二罪状項目に同族にされし他の作戦行動に直接関  
連した仕事に従事せしむることは一部通訳として主合して居  
たが通訳が未だ PW に之を強制、強要又は要求し仕事させ  
られたこと

第三罪状項目に列挙されし事件に就いては唯一つの  
ミスターの案内に主合し通訳をして之を以て金銭的関  
係におきか未だ PW を酷使又は虐待し仕事させられた事

が明瞭に示されて居る。

以上述べた以外に米口PWホフミスター・園崎12川崎進下伍の戦利記録の一部を証拠に提出し、又昭和17年2月24日米海軍機動部隊のWake島に対する攻撃の際の実際の砲撃及爆撃の間に就て公式記録の基に編輯したと云ふ書籍の中から関係部分を抜粋し証拠に提出しようと思ふ。

更に又後刻到着した55号機車制り証人として Affidavit を提出し Wake 島のPWに米口人に対し55号の Interrogatories の回答を提出するであらう。

佐 藤 毅



OPENING STATEMENT FOR THE DEFENSE, DELIVERED BY MR. SANAGI, SADAMU,  
COUNSEL FOR THE ACCUSED.

May it please the commission:

At the beginning of the case for the defense in behalf of the accused Katsumi, Seishi, counsel intended to introduce a deposition of the Japanese Government to show his status as a naval "Shokutaku", his record in the Japanese Navy and whether or not he had authority to command and order prisoners of war. However, since this deposition has not yet arrived, we shall produce it later during the presentation of our case.

Hence, we shall clarify, by a deposition of KAWASAKI, Susumu, former Captain, Imperial Japanese Navy, how the accused Katsumi actually performed his duty during his tour of service on Wake Island and the fact that he had no responsibility for the assignment and use of prisoners of war on any working party.

In the charge and specifications, the accused Katsumi is alleged to have violated the law and customs of war by participating in 15 incidents. The prosecution has introduced much evidence against him through the testimony of three witnesses and fourteen affidavits.

Counter to the prosecution's evidence, the accused Katsumi will later take the stand in his own behalf and will testify that he either did not participate in, or did not know about most of these alleged incidents. He will also testify that in a very few cases in which he took part, he simply acted as the interpreter and did not exceed that capacity and further that he did not commit any act of mistreatment in regard to prisoners of war.

At this point, counsel would like to bring to the attention of this military commission the following facts: that since the accused Katsumi had little experience in military service, he does not remember who the responsible person among the military in connection with the alleged incidents was; further that although he vaguely recalls some of these persons, he has already forgotten their names. He is in such disadvantageous situation that he can not locate these persons within a short period and, therefore, that he can not get enough evidence to corroborate his testimony.

Under such circumstances, we are afraid that the four depositions of the ex-Japanese navy officers (including those which we shall produce later) whose names the accused does remember might not be sufficient to corroborate the testimony of the accused as regards all the incidents alleged against him. However, if a close examination of these depositions and the testimony of Katsumi in this court is made it will be definitely established:

That there was no such fact that American prisoners of war were forced, compelled, required and used to perform unhealthful and dangerous work as alleged in Specification 1. Also we will prove that the accused was merely present as an interpreter at a few of the incidents in which prisoners of war performed work directly related to war operations and that there was no fact that he forced, compelled, required and used these American prisoners of war to perform such work and that he had no connection with incidents alleged in specification 3 except that he was present as an interpreter at the interrogation of Hoffmeister, and that there was no fact that he abused or mistreated American prisoners of war.

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Other than what we have referred to above, we intend to introduce into evidence portions of the record of the trial of KAWASAKI, Susumu in connection with an American prisoners, Hoffmeister, and portions of a book which was edited from official records as regards the actual period of bombardment and air raid when an American task force attacked Wake Island on February 24, 1942.

We shall further produce, if they arrive in time, the answers to the interrogatories propounded to ex-American prisoners of war on Wake Island who executed affidavits as prosecution witnesses.

Respectfully,

SANAGI, Sadamu

I certify that the foregoing 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.

HH (2)

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