

EXHIBIT NO. 3134

(41)

INTERNATIONAL MILITARY TRIBUNAL FOR THE FAR EAST

THE UNITED STATES OF AMERICA, et al

-vs-

ARAKI, Sadao, et al

Sworn Deposition (Translation)

Deponent: OYAMA, Ayao

Having first duly sworn an oath as on attached sheet and in accordance with the procedure followed in my country I hereby depose as follows.

I was examined as a witness at the court of the I.M.T.F.E. on May 7, this year. On that occasion, I was asked by Prosecutor Comyns Carr about the original formal record of the statistics list entitled "the List of the POW's punished by Army Court-Martial from December 8, 1941 to August 15, 1945" (Exhibit No. 1998) which I had produced on July 17, 1946, at the request of Prosecutor Monaghan.

In replying to the question, I said that the list was compiled according to a list of statistics which was in custody of my Division, that is, the Legal Investigation Division of the First Demobilization Bureau. But a subsequent investigation showed that this was utterly a misunderstanding on my part.

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This statistics list was compiled by my subordinate officials by consulting the copies of written findings Army Court-Martials which were submitted by various Army commanders to the War Ministry. I wish to correct my answer regarding this point.

In the above questioning, I replied to the prosecutor that I supposed the copies of written findings of Army Court-Martials which had been submitted by the Army Commanders to the War Ministry and which had furnished the basis for the statistics list then in our custody had been destroyed by fire. This was also an error due to my misunderstanding. Later I found that these copies of the written findings for POW's had been preserved. I wish, consequently, to correct this point, too.

I found later also the copy of the written verdict for the Wells case about which I was specifically questioned by the prosecutor. That was a report of the NADA 9801 Unit or Headquarters of the 37th Army to the War Ministry.

At that time I had no remembrance about the details of the findings in the Wells case, and could therefore not answer Prosecutor Comyns Carr's question: "Do you think it was just that Mr. Wells was sentenced to 12 year's imprisonment and hard labor merely for spreading rumors?"

When I discovered and read the copy of the written findings in the Wells case I found that the crime of the same Wells was not merely an act of spreading rumors. Actually, Wells was

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sentenced to 12 years of penal servitude for having committed a set of concurrent offences prescribed in Art. V-1, and the latter paragraph of Art. XI, of the POW Penal Code, and Art. XCVIII of the Army Criminal Law or Art. C of the Navy Criminal Law.

Art. V-1 of the POW Penal Code provides, "Whoever resists or disobeys the order of persons who are responsible for supervising, watching, or guarding prisoners of war shall be punished with death or penal servitude or imprisonment for life or for not less than 1 year."

In Art. XI of the same Code.

"Whoever forms a group with the purpose of committing disobedient acts shall be punished with penal servitude or imprisonment for not less than 6 months and not more than 5 years; the ringleaders shall be punished with penal servitude or imprisonment for not less than 1 year and not more than 10 years."

Both in Art. XCVIII of the Army Criminal Law and in Art. C of the Navy Criminal Law.

"Whoever spreads rumors about military affairs in time of war or of an incident shall be punished with penal servitude or imprisonment for not more than 7 years."

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I wish to make it clear that I believe that the verdicts sentercing Wells to 12 years of penal servitude on the basis of these provisions are just.

On this 17 day of June, 1947,
at Tokyo.

DEPONENT /s/ OYAMA, Ayao (seal)

I, BANNO, Junkichi, hereby certify that the above statement was sworn by the Deponent, who affixed his signature and seal thereto in the presence of this Witness.

On the same date,
at the same place.

Witness: /s/ BANNO Junkichi (seal)

OATH

In accordance with my conscience I swear to tell the whole truth withholding nothing and adding nothing.

/s/ OYAMA, Ayao (seal)

Decision

War prisoner Captain Lionel Collins Mattuce. Thirty one years old. Born at Stepny, Suburb of Adelaide, South Australia, Australia. Formerly attached to the Communication Corps of the 8th Division of the Australian Army.

War prisoner Lieutenant Roderick Graham Wells. Twenty four years old. Born at Tachiyura Victoria, Australia. Formerly attached to the Communication Corps of the 8th Division of the Australian Army.

War Prisoner Sergeant Alfred Stevens. Thirty years old. Born at the City of Parth, West Australia, Australia. Formerly attached to the A Company of the 19th Machine Gun Corps of the 8th Division of the Australian Army.

War prisoner Corporal John Allan MacMillan. Thirty eight years old. Born at Caura South Wales, Australia. Formerly attached to the headquarters of the 22nd Infantry Regiment of the 8th Division of the Australian Army.

War prisoner Corporal Walter Jeffrey Roffie. Thirty years old. Born at Jones Beckslie New South Wales, Australia. Formerly attached to the 84th Automobile Repairing Corps of the 8th Division of the Australian Army.

Due to the charges of spy, pernicious designs on the country, violation of the war prisoner punishing law and fallacious rumour concoction brought upon the said Mattuce, those of fallacious rumour

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conviction and violation of the war prisoner punishing law of the said Wells and Stevens and that of violation of the war prisoner punishing law of the said MacMillan and Roffie, this court martial after the trials duly processed under Judge Captain of Legal Affairs WATANABE, Haruo pronounced its sentences as follows:

Text

Defendant Mattuce shall be put to death.

Defendant Wells shall be imprisoned with hard labour for twelve years.

Defendant Stevens shall be imprisoned with hard labour for five years.

Defendants MacMillan and Roffie shall respectively be imprisoned for one and half a year.

One six shot revolver seized (Evidence No. 1) shall be confiscated.

Reasons

The aforesaid five defendants were respectively attached to the above-mentioned corps and joined the Greater East As. War and on February 15th, 1942, they were made ^{war} prisoners by the Imperial Navy at Singapore and since then they had been kept in the First Branch of the Borneo Prisoner Camp at Sandakan East Coast State of North Borneo from July 18th of the same year.

1. The defendant Mattuce was very strong in his fighting spirit, even after his surrender. He was very reluctant to remain as a prisoner and was always on the very alert to escape from the camp.

(1) Since he arrived there and during his engagement in his farming work in the nearby fields, taking advantage of the lenient surveillance, from about August of 1941, he began to make access to Mr. Abin, a Dosun and the head of the French Police Office, situated at the 8 mile point of the Rabock road, Sandakan and his under officials, Mr. Matsop, a Dosun and keeper of the pasture belonged to the Agricultural Experimentation Station of the East Coast State, situated at the eight mile point of the said road, Mr. Alexanderfan, a Chinese farmer, residing at the 7 mile point of the above road and some others and at last he made acquaintances with them all.

In about October of the same year, in the full knowledge and against the order given by Lieutenant HOSHIJIM., Susumu, Chief of the camp, prohibiting any of their communication or contact with the outsiders of the camp, he still continued his access with outsiders and even hinted at future possibility that once the afflicted area would be regained by the hands of Great Britain, any assistance given to him would warmly be rewarded and instigated the said Abin and others. Thus, during the months from the middle of March to July of the same year, his offences were continued and

the above-noted fields and their neighbourhood were made their places of meeting. Almost once every week, he secretly met the said Abin and made the latter the intermediary to communicate with the outside. Besides, he often met the rest of the people above referred to for similar designs and purposes.

- (2) Probably for the purpose of providing for the escape some other day, in about August of 1942, he asked the above mentioned Alexanderfan to draw up one map each of the former British territories, North Borneo and Sandakan and its neighbourhood and actually received them and on that occasion, as soon as he had heard from Alexanderfan a rumour that a large number of U.S. Philippine Army staying at the Sulu Islands were going to attack Sandakan, he expected sure its realization and planned to assemble all the prisoners interned to destruct the camp in order to join the said U.S. Army upon the above supposition. Nearly at that time, he entreated Alexanderfan to let him have a revolver and six shots in the latter's possession and he further made the latter promise to come near to the fence of the camp and to blow the whistle, as soon as he learned the arrival of the U.S. Army and he further delivered the latter a letter, asking for their deliverance by the hands of the U.S. Army, attaching thereto a sketch, describing the topographical features of the camp and its vicinity and entrusted the delivery of the letter to him and

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talked his plan then being hatched to him and requested him to comply with him so that when the prisoners stood up in defiance, five rifles and 150 shots provided in the police office should be delivered to them. Thus every preparation possible was secretly being carried on, while in order to benefit the expected arrival of the U.S. Army and since the information to them, he endeavoured to learn and collect all possible news in general about the movement of the Imperial forces. Again, at about the end of August of the same year, he asked Alexanderfan to draw up and deliver him a drawing or local map, minutely describing the arrangements of the Imperial forces staying at Sandakan and in about December of the same year, he asked a Dosun named Maginal in the clerical service of the said Agricultural Experimentation Station to draw up and deliver him a drawing or local map of the said station and prisoner camp and their neighbourhood. Furthermore, at about the end of September of the same year, through the afore-mentioned Matsop, he made a health official named Rai Kifuku of the Sandakan Citizens' Hospital draw up a map, describing the billeting condition and the number of the Imperial troops and Japanese at Sandakan and he actually received it. Besides, on several occasions, when he met Abin, he listened to the changes of the condition of the Imperial army and the inter-nee Britishers and Americans, the condition of the incoming and

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damages by the air-raid offered by the combined forces of Great Britain and the U.S. and also that the Japanese had unfavourable results in other directions.

(b) Then from December, 1942 to July, 1943, on a more occasions, he forwarded the news in writing to a British doctor called Tailor in the service of the Sandakan Citizens' Hospital who was then confined to home to the effect that the U.S. forces attacked the Japanese transports in the sea near the Bismark islands and sunk twenty-two ships, shooting down at the same time a large number of the Japanese planes and that the Japanese forces had many damages in other fields of battles.

(c) Again, from May, 1943 to the middle of July of the same year,

Def. Doc. #1817 on several occasions, he forwarded the news in writing to a Britisher named Philips who was then confined to home situated at five mile point of the Rabock road, outside of the City of Sandakan regarding the above Solomon and New Guinea news and also the other unfavourable news toward the Japanese forces.

(4) From May, 1943, imitating the manner of the said Weinton, he himself attempted to assemble parts and make up a radio receiving set in order to listen into the news broadcast by the British and American sides and he disclosed his intention to Weinton and Wells and in collusion with them, through the said Abin, the required parts were being gradually collected and

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Japanese records and many other documents of interest.

(e) Again, from May, 1943 to the middle of July of the same year,

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outgoing ships at the port of Sandakan and also the condition of demand and supply of daily necessities of the inhabitants.

(3) In about November, 1942, when the prisoners of the same camp, named Weinton and Ricars, secretly began to listen in to the war news broadcast by the British and States sides, by making up a radio receiving set and to circulate the said news in turn to the rest of prisoners in the camp, he became gladdened, as the news contained some unfavourable things toward the Japanese forces and he secretly forwarded it on to Britishers and Americans, either detained or confined in home in the same district in order to accelerate the defying spirit. Besides, in full expectation that the similar news might easily be spread among the inhabitants at large, he asked Weinton to get one copy each of the news each time. Thus he continued his sinister practice, each time when he met Amin, through the intermediary of Weinton and Ricars.

(a) From the middle of November, 1942 to the end of February, 1943.

a dozen times, he forwarded the war news in writing to the former governor Smith of North Borneo who was then detained in Bahara island in the throat of the Bay of Sandakan and the other detained Britishers to the effect that as the result of the fierce battle between the U.S. Navy and the Japanese Navy at the Solomon islands, the Japanese had severe losses and damages and in New Guinea also, the Japanese suffered great

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evading the surveillance of the warden, in the same camp and under the direction of Weinton, up to July of the same year, he was engaged in assembling parts with the assistance of Wells, but it could not be perfected and the scheme was discovered.

2. The other defendant Wells was also very strong in his antagonistic spirit and was very much abhorring the situation of his prisoner.

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(1) As above stated, being well informed by the orders of the officer in charge of P.O.W. Camp about October 1942 that all the prisoners were strictly prohibited from having any correspondence or contact with the inhabitants outside, he, notwithstanding, communicated when he heard from the defendant Stevens in about May 1943 that the Englishman named Maver who had been detained there was now an electric engineer in Sandakan Electric Power Station. To this Maver the news of the present situation of the war broadcast^{ed} by English and American authorities. With continual criminal intent he kept contact with Maver approximately once a week towards the middle of July in order to stimulate his spirit of resistance, using as medium the aforesaid Stevens. Chen Ping, a workman and others of the electric power station attached to the camp. They had decided previously a cryptograph using numerals and Roman letters by which they exchanged messages. He communicated approximately ten times the news, which he had heard from the said Wainton and others, of the American air force that attacked a large Japanese transport fleet near the Bismark Islands, that it sank the majority of the fleet and shot down a large number of airplanes, together with a number of pieces of "news" altogether quite to the disadvantage of the Japanese Army.

(2) About May 1943, on being invited by the accused Mathius to collaborate with him to make a radio receiving set, he consented, and with mutual connection and eluding the vigilance of warders, he engaged in making the receiving set with Mattius

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until about July under Wainton's instructions.

(3) In the beginning of June 1943, when Wainton was punished and put into the Camp. prison, he used on his behalf the radio receiving set, caught the American and British broadcast for several days, and with continual criminal intent communicated orally or by letters to officer prisoners and other prisoners in the Camp the news to the disadvantage of Japanese Army; for instance, he communicated the news that the Japanese Army in Rangoon had sustained a great loss by the bombing of English and American Army and that the Japanese Army in China was fighting a hard battle everywhere owing to the resistance of Chungking side.

III. The accused Alfred Stevens had been ordered, since towards the end of November, to operate the machine in the electric power station attached to the camp situated outside the premises.

While he was engaged in his business, knowing well the instructions of the officer in charge that they were strictly prohibited from holding communication with the people outside as above stated, committed the following offences with continual criminal intent.

(1) From about January to July 1943 he communicated to Wu Ka Kuang, Chen Ping and other workmen in the station several times many pieces of information altogether to the disadvantage of

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the Japanese Army, among which was news of British and American broadcast received by the accused Wells and others, namely, the American Air force attacked a large group of Japanese transport ships near the Bismark Islands.

(2) From about May to July 1943, using Macmillan, Roffic, Chen Ping and others as medium he helped exchange of about twenty letters between the defendant Wells and the aforesaid Maver and handed to Wells several parcels sent by Maver containing Radio requisites and other articles. Toward the end of June he helped three times the communication between the prisoner Mathius and Abin the guard.

IV. The accused Macmillan from about September 1942 and Loffe from about February 1943 were engaged in collecting firewood outside the premises of the Camp. Knowing well by the orders of the Officer in charge that they were strictly prohibited from holding any contact with the people outside, they committed the following offences with continual criminal intent by taking advantage of the rather lenient surveillance.

(1) From toward the end of May to the middle of June 1943 Macmillan twice received from Stevens and Chen Ping the letters and parcels sent by Maver and delivered them secretary to Wells. He also handed the letters of Wells to Stevens and Chen Ping and made them deliver the letters to Maver.

(2) From the middle of June to the middle of July in the same

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year post received from Wells three letters for Maver. He handed them to Stevens and Chen Ping and made them deliver the letters to Maver. He received from Stevens Maver's letters and parcels for Wells and delivered them to Wells.

The court accept the above-stated fact (leaving out the point that they were committed with continual criminal intent) by putting together the following records and evidence :--

- o The deposition in this court of these five defendants.
- o The affidavit of Mattius to the questions of Military Police.
- o The deposition of Wainton to the questions of the prosecutor contained in the record of the case of Alexander Gordon Wenton and other four defendants concerning violation of War Prisoners Punishing Law and fallacious rumour concoction. (the document number 16 of the record 1943)
- o The deposition to the question of the Prosecutor of the defendants Abin Angon, Matsop bin Gungao, Alexander Fun, De. Maginal Lai-Kuei-fu, Wu Hokwang, and Chen Ping contained in the record of Arnestragon and 38 others' case of the breach of military discipline brought here from the record of Made No. 9801 unit tribunal of military discipline.
- o The deposition to the question of Military Police of the defendant Maver, James Taylor, Alfred Philips in the record

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Gerald "Aver and three others' case (Doc. No. 22 1943)
of the same source.

o Evidence No. 1 -- 4.

One six-shot revolver impounded.

One receiving set of radio with 13 requisites, also
impounded.

One diary, impounded.

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The continuation of the criminal intent can be perceived
by the fact that similar crimes were committed successively
within comparatively short duration of time. According to law,
the act of the defendant "athius stated in I(1) falls within
the purview of Art. 5, Clause 1 of the War Prisoners Punishing
Law. The act of spy in (2) comes within the purview of Art.
35, Clause 1 and Art. 60, of the Criminal Code. The act of
preparation with pernicious designs on the country fall within
the purview of Art. 83, and Art. 86, of the Criminal Code.
The act stated in (3) falls within the purview of Art. 99, of
the Military Criminal Code and Art. 100, of Navy Criminal Code.
The act stated in (4) falls within the purview of the latter
part of Art. 11, of the War Prisoners Punishing Law. The
offences of (1) (2) and (3) being committed by one act which
falls within the purview of several Articles of crime, and the
offences (1) and (3) being committed with one continual

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criminal intent, we apply Art. 54, clause 1, 1st part, Art. 55 and Art. 10, of the Criminal Code and decide the punishment to be that of spy, which being the gravest among the said offences, and sentence the capital punishment. The offence of (4) which is violation of War Prisoners Punishing Law, and the above stated offences are the concurrent offences that come within purview of Art. 45, 1st part, of the Criminal Code. But since the capital punishment is chosen for the said act of spy, it is not necessary, according to Art. 46, Clause 1 of the Criminal Code, to condemn to the other punishments.

The act of II (1) of Wells comes within purview of Art. 5, Clause 1, Art. 99, of the Military Criminal Code and Art. 100 of the Naval Criminal Code, and the offence (1) and (5) have been committed by one act which comes within purview of several articles and altogether committed with one continual criminal intent. So, by applying Art. 54, first part of Clause 1, Art. 55, and Art. 10 of the Criminal Code the court sentence penal servitude for a term owing to violation of War Prisoners Punishing Law, it being the gravest among his offences. For his offence stated in (2) penal servitude is chosen. The above stated offences are concurrent offences in Art. 45, part 1., so the court apply Art. 47, Art. 10, Art. 14 of the Criminal Code, and sentence Wells to penal servitude of twelve years owing to violation of War Prisoners Punishing Law with increase of punishment according to the Criminal Code. The act of Stevens in III (1) and (2) comes within purview of

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Art. 5 Clause 1st of the War Prisoners Punishing Law. His fallacious rumour concoction falls within purview of Art. 99, of the Military Criminal Code and Art. 100 of the Naval Criminal Code. The above stated offences were committed by one continual criminal intent and by one act which falls within purview of several articles. So, by applying Art. 54, Clause 1, Art. 55, and Art. 10, of the Criminal Code, penal servitude for a term is sentenced owing to violation of War Prisoners Punishing Law which is the gravest offence that has been committed by these people; and according to the law, the court sentence Stephens to five years penal servitude, Macmillan and Loffe to one year and a half penal servitude, as their act stated in IV comes respectively within purview of Art. 5, Clause 1, of the War Prisoners Punishing Law according to which penal servitude for a term should be sentenced. One six shot revolver (Evidence No. 1) that has been seized should be confiscated according to Art. 19, of the Criminal Code because the accused Mathius gained it through the said preparation of pernicious act on the country, and because it does not belong to anybody but the defendant. So the court decides as stated in the text.

2nd March 1944

Nade 9801 unit Special Military
Tribunal.

The presiding judge. Lieutenant Colonel
EGAMI Sobei

The Judge, Major
NISHIHARA Shuji

The judge, Captain
TSUTSUI Yoichi