Office of the Judge Advocate General
Washington, D. C.
3 April 1945.

Statement of Thurgood Marshall, Esq.:

I want to make two or three statements before I get to the case itself. When I was there, which was for a period of ten or twelve days, I had perfect freedom of access to the defense counsel, and I also contacted Lt. Comdr. Coakley on several occasions. I was permitted to talk to the men, in a group, one day in the presence of defense counsel and the guards. At that time I tried to impress the men with the fact that they had to rely upon defense counsel. I do not know whether you have had that experience in courts martial, but usually the enlisted men are afraid of everybody. I tried to explain that the defense counsel were there to help them, and they loosened up considerably after that. I talked to every member of the defense staff and gave them what little help I could.

I suppose you have the record of the court martial with respect to the USS MANILA, which happened back in 1901. Everybody out there had heard of it, but no one knew where the record was. I have not been able to find it in any civilian library. They were met at the beginning, as I have been met in other cases, with the fact that there is no set rule as to what is mutiny. We have the same difficulty in the army with mutiny cases.

One day, sitting in at that trial, would convince you that there was something wrong. For example, when you talked to the men or listened to them testify, you immediately discovered that they are far apart in everything, including intellect, respectfulness, if you please, and capability of making up their own minds. They are all different. There is no group with any cohesion. A couple of them are just plain "kids". ~~Bordenay~~, for example, is one.
Bordenave

I took the position, even after reading the opening argument of the defense counsel and their motion to quash the charge and specification, that that was not a place where either the charge of mutiny or conspiracy should be used. In both the Army and the Navy there are many cases of disobedience of orders. Out there they have at least two courts sitting. I can't understand, then, why, whenever more than one Negro disobeys an order, it is mutiny.

If you take the record in this case and all the evidence at its face value, and agree at the beginning that all of it is admissible and that all of it is credible testimony, drawing whatever inferences you like, you can't get mutiny out of it, even under the Navy rules. Every prosecuting witness stated that during the entire time these men were completely respectful of all lawful authority, with the one exception,

and at this point I admit, for the sake of argument, that all the orders were given. They were all perfectly clear, but there was no mutinous attitude on their part. They repeatedly said, "We are afraid," but they obeyed every other order. They assembled on the ball park, went to and from the lighter, and went to eat. All these orders were carried out. It is my understanding that if a man takes the attitude "the devil with the Navy" and does not obey orders, that is mutiny. However, everyone said that these men showed no resentment of any kind. They obeyed all other orders and did everything they were requested to do, and the attitude was altogether perfect with the one exception of loading ammunition. If you take everything in the record at its face value, you don't get mutiny. At best, it is refusal to obey an order.

I now get to the question which I consider to be the meat of the whole case. I take the position--and I think it is clear in our brief--that Lt. Comdr. Coakley did what amounted to a complete violation of Navy Courts and Boards. He misled the court--deliberately. I do not think it is outside the record to say that he is a former prosecutor. He knows evidence, and he knows what type of evidence is admissible. There is no question about it. As a matter of fact, he would not hold this position if he did not. If you read the record, you will find that when the motion is made to quash the charge and specification, a ruling is made on that in his favor, which, I still believe, is where the mistake was made in this case. I think that their motion was well drawn and perfectly valid. The charge and specification should not have been allowed to stand; but after that he deliberately sets upon a course of getting into the record evidence that he himself knows is inadmissible. I speak specifically of testimony ~~evidence~~ of unidentified third parties, who are not only outside the record but outside the so-called conspiracy. In that group there is another division there that has not been in this thing at any time. Lt. Tobin said that division was mixed up with his division when it was being mustered, and he testifies as to a statement made by somebody who can either be in the division responsible for this trial or in the division that had nothing to do with the trial. Even if it is in the division mixed up with the trial, there is nothing to show that they were one of the fifty involved in this case. The defense not only objected but explained to the court the grounds for the objection. The objection was overruled.

Then, I submit, you can't do fairness to this record until you read the argument which Lt. Comdr. Coakley made to the court, which is a complete misstatement of what the law is with respect to admissibility of evidence. From then on, all of the evidence concerning the conspiracy consists of what Tobin heard. After the Admiral spoke, Tobin heard somebody behind him make a statement, and I have never heard that a statement made from a group of people behind one is admissible. I do not agree with the general law on the subject of conspiracy, but the law is clear. Although you can bring in statements made by co-conspirators, even though they are not on trial, you have to establish (1), before this evidence is admissible, that there is a conspiracy and (2) you have to identify the person making the statement. You do not have to go to the law of conspiracy to get the identification of the person making the statement. Any

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law of evidence will give you that. Repeatedly in this trial Lt. Comdr. Coakley would lead witnesses, but we do not make objections to his repeated leading of witnesses, because most witnesses do not have to be led. However, he leads these witnesses up to making statements by people who are unidentified, and that might seem unimportant, as Admiral Wright's group said who reviewed the record in San Francisco. They said that there were quite a few errors in the record but none that was prejudicial. As a matter of fact, the rulings which were wrong and prejudicial were prejudicial to the Judge Advocate and not to the defense. However, I am not being captious when I say that when the evidence which is the meat of the so-called mutiny is inadmissible testimony, then, the case has to fall. If you take that out, the only thing left is that after the Commandant ordered them, they refused to go to work--not that Lt. Tobin ordered them, because he testified that he talked to only six or seven of them. I understand that you are not bound to weigh the testimony, but I for one do not believe Lt. DeLuca at all as to what he said.

It is quite clear, from reading the record, that Lt. Morehouse was a perfect type of officer who had control over his men, and every man in Lt. Morehouse's division went to work, and they were in the same group--not according to the record--which formerly refused to go to work. You have in that record a difference between Lt. De Luca, Lt. Tobin, and Lt. Morehouse; and the record does show that Lt. Tobin had received report after report about Lt. DeLuca's men not going to work. Lt. DeLuca had a vital interest in this case, if you please, and that is why I say it is not clear in my mind as to his orders and how clear they were given. His attitude certainly does not encourage me to think too much of his testimony. He deliberately, according to his testimony, when the men refused to work, took such men as the man with his arm in a sling. In other words: I'm going to get everyone of them this time. Why, when he knows the man can't work? He takes two men with hospital records and orders them down. He takes the little boy--I have forgotten his name--who weighs 105 pounds and is too light to do anything, out of mess work. In other words: I'll put all of you in it and punish every one of you. He voluntarily admitted on the witness stand that those two men were more of a danger to the men than any value to them. They were no good for loading ammunition, but he still insisted in ordering them to load ammunition, not for the purpose of getting them to load ammunition but for the purpose of making them subject to court martial.

If there is any question about the number of errors in the record, we have those on ~~one~~ sheets of yellow paper, but we did not bother with them. If you want to see them, we will let you see them. There is only one that I remember offhand which was harmful so far as the Judge Advocate was concerned. All of the others were against the defense; for example, where evidence was admitted concerning all these happenings and statements made by other people. You gentlemen cannot say that the statement, "We have the officers by the 'balls' and we're going to hold them," would not make a board of officers angry, to say the least. It's quite natural. If anybody said it about me, I would get angry. He

deliberately put it in the record and deliberately emphasized it time and time again in the argument without ever identifying who made the statement. Moore, one of the petty officers, is supposed to have heard this statement made. If one of the men on trial had made that statement, I for one would have condemned him for making it, but I don't believe anyone made it. At least, the statement was not proved to have been made by any of the men who, according to Lt. Comdr. Coakley, were in the conspiracy.

The last thing I want to mention is the fact that the Court in reaching its decision went out close to noon and come back right after noon. Consider a case of that size with that many defendants. I submit that on the face of the record they are compelled, under any laws, to give those men individual consideration despite the fact that they are tried together. Under Navy Courts and Boards and under any procedure, elementary due process requires that each man who testified must be considered individually. The testimony of the fifty men rates all the way from zero to 100 per cent as to the difference in the men. In a case involving fifty men you can't sit down in less than an hour, or a little over an hour, and give each one individual consideration as to which one is guilty and which one is not. In the beginning, Lt. Comdr. Coakley deliberately started out to combine them all in one group and take whatever evidence he could and make it apply to the whole group and let the whole group hang together. I can't conceive of any reviewing authority approving a conviction where that little bit of consideration is given to men by the court itself, and I submit the court is to blame for not giving those men careful consideration, and they most certainly did not. The record shows it. The Supreme Court of the United States on several occasions, although not basing its opinion on the fact that the jury deliberated only a short time, has mentioned the fact that the jury deliberated only 23 minutes or 38 minutes, whatever it was. They have used that as one of the elements in considering whether to let a conviction stand or fall.

Now, as to the broad problem surrounding the case, the defense counsel, headed by Lt. Feldman, did what I consider a good job. They did as fine a job as they could within the rules of the Navy, but they, of course, could not bring out other factors that, I submit, could have been brought out, such as the background of the case, the background of what was in those men's minds. He did not bring it out and would not bring it out, and, I don't believe, as an individual officer, could have brought it out. I have never said this publicly, and I won't say it publicly now, except here. I am advised that there was a considerable amount of dissension within the group of defense counsel.

I asked for permission to talk to the Secretary of the Navy to give him certain other information which I cannot give, because it just does not work that way; but if there is any way, under your rules and regulations, that an investigation could be had concerning how this case came about, it would be interesting. For example, I was told by Navy men that the Negro witnesses who were in the group who testified for the prosecution were under arrest at the time they testified, and one of them let it slip into the record when he was asked where he was stationed. Lt. Comdr. Coakley immediately covered it up, despite the fact that those

men had on prison garb until the time they were brought into the court room. As I said before, I was told that by people who know, and it is a fact that I, as a civilian, cannot, under any circumstances I know of, investigate and yet the Navy can.

This is not an isolated case. This is a case which will break down completely all consideration of a Negro as a seaman. It is the largest court martial that has ever been held. It is the first one in this war for mutiny. That was given out in a press release by the U. S. Navy, with the pictures of the men, and sent throughout this country. The fact that they were convicted of mutiny will forever stand as a disgrace to the entire Negro personnel of the U. S. Navy. I do not know of any crime that civilians hate any more than mutiny, because over a long period of years it has been built up close to treason.

I think that my record will show that I do not take up cases unless I am convinced that the men are innocent, and we did not agree to take up this case until after I had been in San Francisco and had been at the hearing. When I requested Secretary Forrestal to let me go there, he wanted to know whether I then represented the men. I told him that I did not and did not know whether I would. However, I was never so convinced that the evidence was insufficient in a case as I was in listening to that case. I watched Lt. Comdr. Coakley, with the jackets of the men in front of him, deliberately ask each man who was from above the Mason-Dixon Line where he was from but never asked one of the boys from down South. He made only one mistake. Because he lived in California, he made the mistake of moving Baltimore, Md., above the Mason-Dixon Line. He should have left that one out. On one occasion when the man said he was from North Carolina, he said, "Oh, no, you came into the Navy from Baltimore, Md., didn't you?" The same thing happened to the man from Chicago. When he said he was born in Arkansas, Lt. Comdr. Coakley said, "You came into the Navy from Illinois." He deliberately built up in the mind of the court that these Northern boys are the ringleaders.

That type of trial is not the type of trial which should be used as a basis for discrediting not only those 50 but all of them, because it was built up as a big case, and the conviction was carried throughout the country. I think that is all I would like to say, in addition to the brief, which I think everybody has read.

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The following statement was then made by Rear Admiral F. L. Lowe, USN, the Assistant Judge Advocate General:

When the reporter has typed your statement, I shall be glad to send you a copy, so that you may make any changes you wish. I wish to assure you that we will give full consideration to everything you have said.