

APPENDIX A

EXCERPTS OF STATEMENTS IN THE 194x F.B.I. REPORT

On Wednesday, October 31, 194x, an F.B.I. agent boarded the XXXXXX to take statements from the crewmembers concerning the stabbing. He had already interviewed and received a signed and sworn statement from the applicant at the jail in XXXXXXX on Tuesday night, October 30, 194x. In his report, the agent included statements that he indicated were signed and sworn to by the applicant and crewmembers who were transferred from the ship to serve as witnesses and statements that he indicated were made by other eyewitnesses during their interviews with him. The agent reported that the statements were made in duplicate and that the duplicate copies were given to the United States District Attorney in XXXXX, XXXXX. The following are excerpts from the affidavits in the F.B.I. report.

194x Statement of the Applicant¹

I, [the applicant] make the following statement to ... Special Agent of the Federal Bureau of Investigation. The statement is made free and voluntary. No premise of force or threats have been made as an inducement for making this statement. I have been informed and know that this statement may be used against me in a court of law

About 12:05 a.m., 10-27-4x I was in the Mess Hall, and told a friend of mine, [J.M.] I was going to my sack. I left the mess ... and went up the ladder from the mess deck. I met [R.Y.] by the landing forced lockers on the starboard side of the ship at the top of the ladder from the mess deck. I said [R.Y.] you are drinking [sic] because he and I were drinking ashore while on liberty 10-26-4x. After I got in middle of the hatch going aft in the starboard side passageway, [L.S.] shoved me and said "go hit your sack you black cock-sucker." After [L.S.] pushed me he gripped me by my coat, in front. At that time, I stuck my right foot out and pushed him, hitting [L.S.] about his hip. Then I started down the passageway going aft in the starboard passage. [L.S.] was right behind me after me. As I got to the galley door I turned and [L.S.] made a reach for me. So I caught hold of the rail by the galley door and bulk head on the starboard side of the passageway and pushed [L.S.] with my right foot. At that time [R.W.], who was behind [L.S.], said "get him" and I started running. [R.W.] was close behind [L.S.]. I run [sic] back aft through the hatch to compartment 201,^[2] going down the middle ladder. I run to the port side of compartment 201 and aft to the hatch between compartment 201 and 202, on the port side. I went past my sack on the port side of compartment 202 around some bunks turning forward and ran to the starboard hatch between compartment 202 and compartment 203. As I was undogging the hatch between compartments 202 and 203, [R.W.] called out, "[Applicant], [L.S.] has hit his sack and I shouldn't have kicked him."

¹ The agent reported that the applicant made this statement while in the XXXXXXX jail between 9:30 p.m. and 1:30 a.m., after having been arraigned by the Commissioner at 3:15 in the afternoon. The agent reported that the applicant "was advised of his constitutional rights." The applicant's statement was also signed by the agent and the Deputy U.S. Marshal for XXXXXXX, XXXXX, as witnesses. The applicant's recent statements are excerpted in Appendix B on page B-1.

² The crewmembers refer to the same compartment as both 201 and 201L. Compartment 202 is also referred to as 202L, 203 as 203L, and so on.

A pipe was involved. Whether the pipe was on the dogs of the hatch I do not remember. I didn't pay much attention. I do not remember having the pipe in my hand. The pipe involved was one that is used in dogging the hatches. I do not remember giving the pipe to [R.W.].

I walked back around to my locker in compartment 202. I opened my locker and threw my neckerchief in my locker. And at that time a man by the name of [L.N.] walked up to me and said "[Applicant] I do not want to see you get in no trouble." At that time I heard [R.W.] yell "he is a knife man." I did not know whether he ment [sic] me or not. [R.W.] came around to my locker where I was standing. [R.W.] said "if I cut [L.S.], he, [R.W.], would bend a pipe over my head" and also said "I'll do you like they do Negroes in Texas." Then [E.G.] began talking with [R.W.] saying that they hang and beat Negroes in Texas. [L.N.] was talking to [R.W.] and [R.W.] kept repeating about the knife "if I cut [L.S.], he, [R.W.] would bend the pipe over my head." I had not seen my knife yet. That is up to that time I had not seen my knife. I told [R.W.] I had no knife. My knife was locked up.

After I told [R.W.] my knife was locked up, I was standing 1 good step forward of my locker. I step [sic] back to my locker and stooped and squatted down and raised the lid of my locker. And before I could look into my locker [B.C.] showed [L.S.] where I was. [B.C.] was standing in front of the portside hatch between compartments 202 and 201, standing in compartment 201. I also heard [L.S.] yelling "[Applicant! Applicant!]" [B.C.] said there that Negro is. That is all I could understand. [L.S.] came through the port hatch from compartment 201 to 202 charging after me. He was over me attempting to hit me. I held my hands over my face knocking his blows off with my arms. I got up and ran back around the port inboard sacks of compartment 202 and up to the forward end of the port inboard sacks. A crowd of men [was] standing around the forward end of the inboard sacks of compartment 202 and directly in front of the port hatch of compartment 202 and forward of my locker on the port side of compartment 202. I was trying to push my way through the crowd of men and somehow stumbled or fell to the deck. Someone, I do not know who, was hold [sic] me and I was pushing; they suddenly let me go or I stumbled. One or two fellows had hold of my arms. I was yelling, "Hold [L.S.], don't hold me" and repeated "Hold [L.S.], don't hold me." "You hold me but won't hold [L.S.]." By that time I was turned loose and all of a sudden I fell, stumbled or something. Anyway I was on the Deck. I was run around the inboard bunks on port side of compartment [unreadable]. As I was on the deck I could see the [unreadable] was close to it, which was also close to my locker on the port side of compartment 202. I didn't have a change [sic] to get completely up and [L.S.] gripped my neck with his arm. His arm was under my chin. [L.S.] pulled me up which brought me to my knees. I tried to make a struggle to get lose from [L.S.]. I tried to break his arm hold from around my neck. I could hardly breathe. So [L.S.] just about dro[??]ed me. That time my arm went into my locker. I raised the lid, as it was closed, for I remember telling [R.W.] my locker was locked, but in fact it was only closed. After I raised the lid I put my hand in my locker. [L.S.] pulled me up again. I was on my knee. My hand was down in the bottom of my locker. He almost dropped me again. I fell down and felt the handle of my knife with my right hand which was in my locker. I pulled my knife out of the sheath. Seeing no one was trying to stop [L.S.] or pull him off of me, and my neck was in very much pain, I got up on my feet. [L.S.] still had hold of my neck with my head bent over forward. My right arm and hand in which I was holding my knife went around over [L.S.'s] back. I can't recall anything after that. My mind went blank. I can not recall stabbing [L.S.]. The next thing I remember is the fellows were punching me and all the time they were talking

and pushing me toward the ladder in compartment 202 at that time the boys dropped me and started kicking me. [R.R.] the Officer of the Day run down the ladder into compartment 202. He had the gun and ask what was the matter.

When I had my hand in my locker I was being strangled. I didn't really know my knife was in my locker, but I was really reaching for it though.

When my hand which was hold[ing] my knife got over [L.S.'s], he was still choking me.

The applicant also signed the following addendum:

About a month ago [R.W.] ask [sic] me about where my knife was, the knife I had been wearing on my belt. I told [him] I had put my knife away. As a matter of fact I put my knife in my locker in compartment 202 about a month ago and have not had it out since.

The report also states that during the interview, the applicant asked for a pencil and paper and drew a floor plan of the berthing compartments with lines indicating where he had moved during the fight. The report states that the applicant initialed the drawing and that it would be kept on file at the F.B.I.'s office in Xxxxxxx along with the agent's photographs of the scene.

194x Statement of J.M.³

[J.M.] and [the applicant] went ashore on liberty at 5:30 p.m. on 10-26-4x. They went up-town where they stopped in a jewelry store for awhile; then went to Helen's Tavern. [J.M.] drank three or four beers while [the applicant] drank about three or four shots of whisky. Thereafter, they went across the street into another bar. [J.M.] drank two more beers and [the applicant] drank two more shots of whisky. Between 5:45 and 11:00 p.m., [J.M.] estimated that [the applicant] had drank approximately 1/2 pint of whisky, all of which was Schenleys whisky.

Between 7:30 and 11:00 p.m., [the applicant] danced with a white girl in one of the taverns one time. Around 10:00 p.m. he asked her to dance again, but she refused saying that he was too drunk. [J.M.] did not hear the white girl refuse to dance, but was informed of that fact by [the applicant]. [J.M.] stated that [the applicant] had been drinking, was feeling good, but knew what he was doing. However, had he been in the same position as the girl whom [the applicant] had asked to dance, he would have told [the applicant] the same thing that she told him.

About 11:00 p.m., [the applicant and J.M.] went to Helen's Tavern, where [J.M.] became interested in talking with the musicians for some 15 or 20 minutes. During this time [J.M.] stated he could not say whether or not [the applicant] drank any more whisky. One of the men from the ship, T.S., became drunk and [J.M.] attempted to assist him in getting back to the ship. Another man from the ship, whose identity is not known to [J.M.], did not like the way [J.M.] was handling [T.S.] and wanted to start a fight. The shore patrol broke that fracas up. About the same time that the shore patrol broke the fracas up, [the applicant] began arguing with the same individual who had been arguing with [J.M.]. [J.M.] stated that he took [the applicant] out of the bar to keep him from fighting. They walked out of Helen's Tavern and the man followed them, continuing to

³ J.M. was one of the other black sailors on the Xxxxxx. His 1996 statement appears in Appendix B on page B-4.

argue and apparently wanting to fight. [J.M.] told [the applicant] to leave the man alone and that then they would return to the ship.

About 11:50 p.m. [J.M. and the applicant] returned to the U.S.S. Xxxxxx and as they got on the ship the same man who had been arguing with [J.M. and the applicant] appeared. They went to the Mess Deck for a few minutes where they continued to argue. [J.M.] got up and went to another table leaving the unidentified man with [the applicant]. Shortly thereafter [the applicant] stated he was tired of arguing and was going to "hit the sack." ... At that time, [the applicant] walked up the ladder from the Mess Deck, leaving the man with whom he had been arguing. Shortly thereafter, [L.S.] and another man came down the ladder to the Mess Deck ... asking as to the whereabouts of [the applicant]. ... [L.S.] stated, "If I find him, I'll kill him. He kicked me in my stomach."

[J.M.] further stated that [B.C.] came down the ladder with [L.S.] and informed [J.M.] that he should get [the applicant] inasmuch as [the applicant] had kicked [L.S.] in the stomach. ... [F.R.] also told [J.M.] to get [the applicant] because four fellows were looking for [the applicant], because they "had it in for him." [J.M.] told [F.R.] that he had done his best all evening to keep [the applicant] out of trouble so that any further trouble in which he got involved would be his own neck. [J.M.] left the Mess Deck and "hit his sack." ...

[J.M.] further stated that the last time he saw [the applicant] prior to the fight with [L.S.] in compartment 202 was as [the applicant] left the Mess Deck. [J.M.] estimated the time to be between 12:15 and 12:30. He stated that [the applicant] had been drinking, was feeling good, but was not drunk and knew what he was doing. [J.M.] further stated that since he came aboard the U.S.S. Xxxxxx, he had not had any trouble with any of the white men on board ship. He readily admitted that of the four negroes, [the applicant] was liked least by everyone for the reason that [the applicant] has an independent, arrogant attitude. [J.M.] explained that the indifference toward [the applicant] is due strictly to his own personality and not against him because of his race. [The applicant] was always arguing with someone. [J.M.] did not know whether he was arguing just for the fun of it or whether he is a quarrelsome individual.

[J.M.] also stated that the four negroes felt and had even discussed the fact that they should keep to a minimum all things that would lead to a fracas between the negroes and whites on the ship. They had stated that in view of their racial differences they should not make fools of themselves. The four negroes knew that there were men on board ship who did not want them because they were negroes. However, this feeling on the part of the white men was not openly expressed, with the exception of on one occasion when a white man declined to move from one compartment of the ship into another to sleep for the reason that one or two negroes slept in the compartment.

The report states that J.M. was transferred off the ship to be available to serve as a witness at the applicant's trial.

194x Statement of R.W.

R.W. told the F.B.I. agent the he had "not observed any prejudice or discrimination shown against the negroes." He stated that the other black crewmembers, F.W., M.W., and J.M., were "nice fellows" but that the applicant had "always been arrogant, quarrelsome and a 'wise guy'." He signed the following statement:

I went on liberty about 5:00 p.m., October 26, 194x, with [L.S.]; we went uptown, XXXXXX, XXXXX. We had one pint of whisky between us; we gave most of the whisky away. [L.S.] had about five drinks and I had four or five beers and 2 or 3 drinks . . . [L.S.] spent most of the evening talking to an old Indian man and his wife at one of the bars at XXXXXX, XXXXX.

To my knowledge, during the time, 5:00 p.m. to 12:00 p.m., 10-26-4x, [L.S.] was not in contact with [the applicant]. About 20 to 30 minutes between 10:00 and 11:00 p.m., I went to the hotel bar, leaving [L.S.] in the other bar. I saw [the applicant] at the hotel bar; he was with [J.M.], a negro. [The applicant and J.M.] left the hotel bar shortly before [L.S.] came into the hotel bar. I know [L.S. and the applicant] did not talk with each other while in the hotel bar.

... [L.S.] drank about five drinks of whisky between 5:00 and 12:00 p.m., he was not drunk. He was not quarreling nor fighting and was in no trouble while ashore. [L.S.] and I returned to the ship about 12:00 p.m. midnight, October 26, 194x.

We went on the board deck; I went down the ladder to the Mess Deck on the starboard side of the ship. [L.S.] was following behind me. . . . he stopped in the cross passage . . . I stopped about one-half way down the ladder in a position to see both the starboard passage and the cross passage.

Three fellows, [A.A., the applicant, and R.Y.] were in the cross passage. [R.Y.] was drunk—the three seemed to be arguing. I heard some scuffling and saw [the applicant] kick [L.S.] in the stomach. His arms were spread out and he was bracing himself against the walls of the passageway. He kicked with his right foot; I do not know what started the kicking. After kicking [L.S.] one time, [the applicant] turned around and ran out down the starboard passage-way About fifty feet down the starboard passage-way . . . , [the applicant] stopped, turned around and again kicked at [L.S.]. I can't say whether he actually kicked [L.S.] inasmuch as [L.S.] was between [the applicant] and myself. I was following [L.S.] down the starboard and said, "Forget it, [L.S.]." He stated: "He shouldn't have kicked me." . . . [L.S. and the applicant] ran on and were out of my sight. I went into compartment 201 and asked some fellows if they had seen [L.S. and the applicant]; I then walked back . . . to the starboard hatch of compartments 202 and 203. [The applicant] was standing by the starboard hatch of compartment 202 with a ten-inch pipe in his hand. The pipe is used as a wrench in dogging the hatches. . . .

[R.D.] was standing talking to [the applicant]. I talked to [the applicant] a few minutes and talked him into the notion of giving the pipe to me. I didn't threaten him and we had no trouble, and told [the applicant] I would try to keep [L.S.] away from him. [The applicant] then walked to the port side of compartment 202 . . .

I heard someone mention a knife; several of the fellows were arguing with [the applicant] about the knife, but no threats have been made. I then went around the port side of the ship and engaged [the applicant] in conversation. From that time on, practically all of the conversation was between [the applicant] and I. He had his knife. I asked him to put his knife away but [the applicant] acted like he was not going to put his knife away. I told him—"If you cut [L.S.], I will use this pipe on you." I started to walk away, and in doing so, [the applicant] hit me on the shoulder, saying—"Okay, I will put my knife away."

He opened his locker. ... [As the applicant] put his knife away, someone said something about the pipe, and I handed it to one of the fellows, but I don't know who it was.

These events took place over a period of six to eight minutes shortly after midnight (12:01 A.M.), October 27, 194x.

After [the applicant] hit me on the shoulder and stated that he would put his knife away, and after I saw him put the knife in the locker, I was standing between [the applicant] and the port hatch of compartments 202 and 201. As I turned away, [L.S.] was approximately three feet inside compartment 202 in front of the port hatch of 201 and 202. I stepped over to [L.S.], grabbed him, and told [L.S.] "[The applicant] has a knife, and he may cut you." [L.S.] broke loose and walked to [the applicant]. Both [L.S. and the applicant] swung two or three licks at each other, but neither were hit. ... No statements have been made, by either [the applicant or L.S.], that I can recall.

As [L.S.] came in compartment 203, and he and [the applicant] throwing licks at each other, both were aft of [the applicant's] locker. [The applicant] ran aft and turned to his left, going around the inboard port side bunk and up to the forward part of compartment 202 and again turned into the aisle by his locker, and on reaching a position near his locker, he went to his knees. [L.S.], with his hands, got hold of [the applicant] about his neck. I could not see just what part of [the applicant's] neck or the manner in which he had hold of [the applicant]—[L.S.] said: "Stand up and fight like a man"; simultaneously, [the applicant] said: "[L.S.], I have a knife!" [L.S.] was bent over slightly; [the applicant] instantly got up on his feet, threw his left arm around [L.S.'s] right shoulder and pulled [L.S.] close to [the applicant]. [The applicant] had his knife in his right hand and threw his right hand and arm over [L.S.'s] left shoulder, stabbing his back three times—on the third stab, the knife went in all the way to the hilt. It happened so fast, no one had time to do anything until [L.S.] was stabbed. [L.S.] did not hit [the applicant] as [the applicant] stood up. It appeared as if [L.S.] was pulling [the applicant] up. As [the applicant] struck [L.S.] the third time with his knife, [L.S.] started falling and the rest of the fellows grabbed [the applicant]. I also grabbed [the applicant] by his right arm, and one which was holding the knife. ...

[E.G.] took the knife out of [the applicant's] hand. ...

All of the fellows standing around the port side of compartment 202 started leading [the applicant] to the double ladder in compartment 202. Practically all of the men started punching [the applicant], and saying: "Why did you cut him—etc." ...

The stabbing of [L.S.] occurred about 12:20 to 12:30 a.m., October 27, 194x.

[L.S.] and I run around together, and I know he had not had any arguments nor trouble heretofore with [the applicant]. ...

The fellows on the ship were afraid of [the applicant]; it was commonly known among the fellows that he had cut a man before. ...

The report states that R.W. was transferred off the ship to be available to serve as a witness at the applicant's trial.

194x Statement of J.C.

[While on liberty, J.C.] saw [L.S.] two times and [the applicant] once or twice up town, but neither time were they together.

After returning to the ship, [J.C.] went to his bunk. ... About 12:10 or 12:15 a.m., 10-27-4x, [he] went down the double ladder in 202L and heard a number of noises on the port side of the ship. He could see three or four figures by looking through the space between the bunks. He walked through compartment 202L and into compartment 203 L, going through the starboard hatch and then over to the portside where he looked through the hatch of compartment 202L. At that time he observed [the applicant] on his right knee on the deck beside his locker. [L.S.] was kicking [the applicant] and at the same time was slightly stooped over. [L.S.] called [the applicant] a black s____ b_____. The next thing both [L.S. and the applicant] were on their feet very close to each other. [J.C.] did not see [the applicant] pull the knife out of his locker, although he did observe [the applicant] pull his arm out of the locker. As they stood on their feet [J.C.] did not hear either [man] making any remarks. He observed [the applicant's] right arm come down once or twice over [his] shoulder and back. It first appeared to [J.C.] that [the applicant] was punching [L.S.] in the back, but as he raised his hand the third time [J.C.] observed the knife in it. ...

194x Statement of A.A.

[A.A.] assisted [R.Y.] in getting back to the U.S.S. Xxxxxx. They went aboard at about 12:10 a.m., 10-27-4x. In passing through to the thwart passage ..., which is just aft of the Officers' Ward Room, [L.S.] attempted to assist [A.A.]. [The applicant] was standing in the passageway and said, "He is a c____ s____." [R.Y.] began to talk back, but [A.A.] held [R.Y.] to prevent a fight. As [L.S.] was assisting in getting [R.Y.] near the ladder to the Mess Deck, [the applicant] said, "He doesn't need your help, I'll help." at the same time pushing [L.S.]. [L.S.] did not like it and he pushed [the applicant] into the thwart passage where it intersects the starboard side fore and aft passage. [The applicant] pushed [L.S.] and stated that he would take care of [R.Y.] inasmuch as [R.Y.] was his friend. [L.S.] turned around and as he did so, [the applicant] kicked [L.S.] in the stomach. This occurred at the intersection of the thwart and starboard side passageway and in the immediate vicinity of the ladder leading to the Mess Deck. [L.S.] attempted to grab [the applicant's] foot, without success. [The applicant] then backed aft in the inboard passageway and again kicked [L.S.] in the crotch. At that time, [the applicant] braced himself with both hands on the sides of the passageway. [A.A.] stated [L.S.] did not hit [the applicant] up until the time he was kicked the second time. However, if he could have reached [the applicant], he no doubt would have. They both disappeared, running aft in the starboard side passageway. According to [A.A.], [the applicant] is a smart "wise guy," and is frequently arguing with the men on board ship, using filthy language. To his knowledge, none of the negroes, including [the applicant], had been mistreated while on board the U.S.S. Xxxxxx. [A.A.] further advised that [L.S.] apparently had been drinking, but he was not drunk and was certainly in a condition to know what he was doing. [A.A.] also stated that [the applicant] was in a sober condition.

194x Statement of F.Z.

... [unreadable] [T]hey were trying to take [R.Y.] to his bunk. The passageway where I have observed these men ...

[L.S. and the applicant] began to argue as to who was going to put [R.Y.] in his sack. [The applicant] said: "Leave him alone—I will take him down to his sack," and added—

"[R.Y.] is my buddy." [L.S.] said, "Get away, I will put him down in his sack." They were standing approximately six inches apart and [the applicant] gave [L.S.] a push on his right shoulder, at the same time saying—"leave him alone."

After [the applicant] pushed [L.S.], [L.S.] pushed [the applicant] with his right hand, pushing [the applicant] into the starboard fore and aft passage. [L.S.] again said, "Get away from here, I will take care of him as you are in the way." After [L.S.] pushed [the applicant], the latter, with his right foot kicked [L.S.] in the stomach. [The applicant] braced himself with both hands on the bulkhead and rail of the passageway. [L.S.] stopped momentarily, then went forward. [The applicant] walked backward two or three steps, and again kicked [L.S.] with his right foot. [L.S.] stopped momentarily again; [the applicant] was walking aft in the starboard passage and grabbed the wires overhead with his hand and the frame of the passage with the other, lifted both feet and kicked [L.S.] in the stomach. [L.S.] doubled up a little but did not fall to the deck.

[The applicant] ran aft through the starboard passage, while [L.S.] followed him at a fast pace. I followed [L.S.] but could not see [the applicant]. ... I went into compartment 201, going down the single ladder, and asked if anyone had seen [the applicant]. Some of the fellows answered "No." ...

... I went on top side ... but did not see [the applicant] ... and did not see [the applicant] or L.S. until after [L.S.] was stabbed. ...

I would say the scuffling in the cross passage near the Ward Room in the starboard passage, between [the applicant and L.S.], and the time I left compartment 202 to go on the Weather Deck was between 11:45 and 11:55 p.m., October 26, 194x. Approximately ten minutes later I went into compartment 202 where [L.S.] was dying.

I know that both [L.S. and the applicant] had been drinking, but neither of them were drunk, and both knew what they were doing. They were quite active, and ran and walked fast thought the starboard passage, which would have been very difficult had either of them been drunk.

[The applicant] is an arrogant wise guy; he carried a knife practically all the time

I had arguments with [the applicant] the third day after I came aboard ship, in June of 194x. On one occasion he told me: "Get the hell back in mess line." When I first met him, I would call him "Joe" he told me to call him by his right name, and if I didn't he would do something.

[The applicant] slept in compartment 202 with white boys.

The report states that F.Z. was transferred from the Xxxxxx in order to be available to serve as a witness at the applicant's trial.

194x Statement of F.W.⁴

Sometime after [F.W.] had retired to his bunk, but had not going to sleep, [the applicant] came down the ladder into 201L and went around through the port side hatch into com-

⁴ W.M. was one of the other black sailors on the Xxxxxx.

partment 202L. ... A little later [L.S.] and another man came into compartment 201L and turned on all the lights, walked around all of the bunks in the middle section and asked if anyone had seen [the applicant]. [L.S.] asked, "Where is [the applicant]? I am looking for [the applicant]." He and the other man turned the lights out and went into compartment 202L, through the portside hatch.

A motor mechanic, third class, who is known to [F.W.] as "Joe" was quite intoxicated and came into compartment 201L saying, "Where is [the applicant]? Where is [the applicant]? I'll kill the s___ b___!" Several fellows were trying to get him under control and they took him out of compartment 201L. A man by the name of [F.Z.] came down the ladder into compartment 201L and stated he was looking for [the applicant]. ...

[R.W.] also came into compartment 201L, stating that he was looking for [the applicant]. ... Things were quiet for a while and then all of a sudden [F.W.] heard a racket in compartment 202L. He got up, opened the starboard hatch and walked into compartment 202L. Several men were hollering, but he could not understand what they were saying. As he opened the hatch, he observed [the applicant] lying on the deck in front of the double ladder in compartment 202L. About ten or fifteen men were kicking him and calling him s___ b___. ...

194x Statement of L.N.⁵

[L.N.] advised that he was on liberty 10-26-4x while at Xxxxxxx, Xxxxx, and returned to the ship about midnight. He then went to compartment 202L at about 12:15 a.m., 10-27-4x. He was standing in the forward part of the compartment when a person whom he did not recognize came down the ladder into compartment 202L. There was considerable yelling and talking. Someone yelled, "There goes the s___ b___. Another person said that [L.S.] was looking for [the applicant]. [L.N.] located [the applicant] in the aisle between the portside hatches of 202L and endeavored to help him by suggesting that [the applicant] go tell the Officer of the Day what was going on for his own protection. [The applicant] did not want to go to the O.D. and said something to that effect. About that time [R.W.] came up and engaged [the applicant] in conversation. [R.W.] had in his hand a pipe, 10", and stated something to the effect that he had taken it from [the applicant]. [L.N.] stated that he could not recall the exact terms, but some way or another he got the pipe in his own hands and held [it] for a few minutes.

From about 12:20 to 12:25 a.m., 10-27-4x, [L.S.] came into compartment 202L on the port-side hatch and was followed by some other men on board the ship. [L.N.] made a half-hearted attempt to get hold of [L.S.], but the latter walked on and got hold of [the applicant]. [L.N.] then started for the O.D., but stopped in the forward end of the compartment. He turned around and observed [the applicant] stab [L.S.] one time. ...

194x Statement of R.C.

He was awakened sometime about midnight by [N.S. and L.N.] talking. They were standing near his bunk, which is just across the aisle from [the applicant's] locker. [The applicant] came down the double ladder into compartment 202L and over to his locker where he began talking with [L.N. and N.S.]. [L.N.] told [the applicant] to report to the

⁵ In 1996, the applicant's attorney prepared an affidavit for L.N. which he never signed. It appears in Appendix B on page B-13.

O.D. and ask for protection. [R.C.] overheard [R.W.] or [N.S.] tell [the applicant] to put his knife in his locker and lock it up. [The applicant] said something to the effect that he would put his knife away. Shortly thereafter [L.S.] came to compartment 202L, through the forward portside hatch and chased [the applicant] around the inboard, portside bunks and lockers. They came around to about [the applicant's] locker where [L.S.] started fighting [the applicant]. The latter threw his hands up around his head to ward off the blows of [L.S.]. [L.S.] also began kicking [the applicant] as the latter went down on his knees by his locker. [R.C.] did not see [the applicant] get his knife. [The applicant] stood up with his knife in his right hand and facing [L.S.], reached over his shoulder as he stabbed [L.S.] in the back. ... [R.C.] further advised that while [R.W., L.N., and N.S.] were talking with [the applicant], [R.W.] told [the applicant] if [the applicant] used his knife on [L.S.], he, [R.W.], would bend the pipe which he had in his hand over [the applicant's] head. ...

194x Statement of N.S.⁶

I was on liberty and up town till about 12:00 p.m., 10-26-4x and returned to the ship shortly before 12:00 p.m. I had a few drinks of liquor, but was not drunk. After returning to the ship I went to the Mess Deck and ate a sandwich. Then about 12:05 a.m., 10-27-4x I went to compartment 202 and was standing by my bunk

[The applicant] came tearing by, excited. ... [I] walked to the port side of compartment 202 here I observed [R.W.] talking to [the applicant]. [R.W.] had in his hand a 10 inch pipe, which is used as a wrench in dogging the hatches [L.N.] was also talking to [the applicant and R.W.]. ... [The applicant] had his hunting knife and sheath sticking out of the top of his trousers. The knife was inside the sheath. The handle and part of the sheath was above the belt and visible while the knife end was inside his trousers. [The applicant's] jumper was also pressed inside his trousers and behind the knife and sheath, making the knife clearly visible. I would say the time was about 12:10 a.m., 10-27-4x. [R.W.] stated "he had just taken the pipe which he was holding away from [the applicant]". [The applicant] said "I had to protect myself and therefore took the pipe." [R.W.] said "You cannot use this pipe" and then "why did you kick [L.S.]?" [The applicant] replied that "[L.S.] has pushed me." [L.N.] suggested that [the applicant] should go to the Officer of the Deck for protection. We were talking to [the applicant] about putting his knife up and finally convinced him that he should put it away. [R.W.] told [the applicant] that if he, [the applicant], used the knife on [L.S.], he, [R.W.], would use the pipe on [the applicant] or words to that effect. I saw [the applicant] pull the knife and sheath out of the top of his trousers and put it inside his locker He did not say anything to [L.N.] about going to the O.D., or answer the suggestion. [The applicant] was pretty scared and excited. ...

I did not hear [R.W.] say anything to the effect that he, [R.W.] would treat [the applicant] like the people in Texas treat Negroes, by hanging and beating them.

About that time [L.S.] came tearing into compartment 202 [L.N.] grabbed [L.S.'s] right arm. [R.W.] grabbed him some way. I was [?]ing back by [L.S.] [unreadable] as the crowd followed in I was pushed back behind them. [L.N.] yelled, "[the applicant] [unreadable] is going to [unreadable]. I am going to get the O.D." I was in the forward section of Compartment 202 behind some other men and did not see anything concerning

⁶ N.S.'s 1996 statement appears in Appendix B on page B-2.

the actual cutting or stabbing of [L.S.]. I then went up the forward part of the ship to get the O.D. When I came back [E.G.] was chasing [the applicant] near the double ladders in the forward section of Compartment 202. [The applicant] ran into Compartment 201 and disappeared. ...

The report states that N.S. was transferred off the ship to be available to appear as a witness at the applicant's trial.

194x Statement of R.D.

... [L.S.] came into compartment 201, and was followed shortly by [F.Z.]. He, [F.Z.], was looking ... for [the applicant] because [the applicant] had kicked [L.S.] in the stomach.

I got up and went into compartment 202 ... and saw [R.W.] take a pipe off [the applicant]. I heard no argument between [the applicant and R.W.]. I walked out of compartment 202 and back to my sack where I was standing by, and heard someone say something about a knife. They were telling [the applicant] that he better not get his knife or words to that effect.

I walked back into compartment 202 ... and observed [the applicant and R.W.] standing in the aisle [The applicant] put his hand on [R.W.'s] shoulder and said: "I will hit my sack if you will get [L.S.] to hit his sack." I did not see a knife on [the applicant's] person or in his hand; however, [the applicant] did say he put his knife away and would not get his knife. At the time, [the applicant's] back was to me.

I have no idea of the exact time except that liberty was up at 12:00 p.m. midnight, October 26, 194x and several of the men on the ship were returning.

I went back to my sack in compartment 201.... I put on my shoes and socks and heard [L.N.], who was in compartment 202, saying - "If someone doesn't go after the O.D., I will." I did not hear any other argument; there was, however, considerable talking. Then I went into compartment 202, walking through the port hatch as I saw [the applicant and L.S.] throwing punches. As I saw [L.S.] throwing punches at [the applicant], [the applicant] had his arms up against his head, warding off [L.S.'s] blows. I saw [the applicant] followed by [L.S.] run around the forward end of the [unreadable] where [L.S.] caught up with [the applicant], who was backing down the aisle toward his locker.

[L.S.] was swinging at [the applicant] but not hitting him. [The applicant] was walking backward and went to pass his locker He began to kneel down on one knee, and in a stooping position. [The applicant] put his hand in his locker, and underneath some white clothes in his locker—I could clearly see the white clothes above [the applicant's] arm; I saw [the applicant's] hand come out of his locker with the knife in his hand. I was standing about four feet behind [L.S.].

As [the applicant] kneeled down, [L.S.] kicked him with his foot and also stooped or bent over [the applicant]. [L.S.] had his hands around [the applicant's] neck and shoulder but I could not see the exact position or nature of the hold which [L.S.] had on [the applicant]—I could not tell whether [L.S.] was choking [the applicant]. [L.S.] pulled [the applicant] up and stated: "Stand up and fight like a man!" As [the applicant] came up, he said: "[L.S.], I have a knife."

I saw [the applicant's] hand come up with the knife in it; both [L.S. and the applicant] were standing on their feet but not exactly upright. [L.S.] was facing aft and [the applicant] was facing forward—I could tell what position [the applicant's] left hand was in. [The applicant], with the hunting knife in his right hand, threw his hand and arm over [L.S.'s] left shoulder; I could see the knife clearly in his hand. The blade was protruding below his fist. [The applicant] stabbed [L.S.] three times in quick succession as fast as he could pull the knife out of his back, and again stabbed him. The knife penetrated [L.S.'s] back all the way to the hilt each time.

During the actual cutting, no statements were made by [the applicant or L.S.]. As [the applicant] got up on his feet, [L.S.] did not hit him. ...

Shortly before the cutting started, I heard [R.W.] say words to the effect that—"He is getting a knife!" Other men also said words to that effect.

A few fellows had been drinking, but none were drunk, as far as I could see. ...

After I saw [R.W.] take the pipe away from [the applicant] by the starboard hatch of compartments 202 and 203, I told [the applicant] he ought to go to the Ward Room. [The applicant] did not answer. ...

The report states that R.D. was transferred off the Xxxxxx to be available to serve as a witness at the applicant's trial.

194x Statement of R.A.

About 12:15 a.m. on 10-27-4x, [R.A.] was standing near the portside hatch of compartment 201 and 202 when [the applicant] came through the hatch and ran straight through the aisle, through the port hatch into compartment 203L. A few minutes later, [L.S.] came through the portside hatch of compartment 201L and 202L, looking for [the applicant]. On inquiries as to the whereabouts of [the applicant], [L.S.] was advised by [R.A.] that [the applicant] went through the port hatch into compartment 203L. Within a very few minutes [R.W.] came into compartment 202L, saying that [the applicant and L.S.] had a fight. After a minute or so, [R.A.] walked to the starboard side of compartment 202L and observed [R.W.] talking with [the applicant] near the starboard hatch of compartments 202L and 203L. [The applicant] had a pipe wrench in his hand. ... [R.W.] took the pipe away from [the applicant]. There was no scuffling between them and [R.A.] could hear no argument. [The applicant] then walked over to the vicinity of his locker on the port side of the compartment where he began talking with [N.S. and L.N.]. About the same time [R.W.] walked over to the portside and began conversing with [the applicant]. As [R.A.] walked to the portside, he observed [the applicant] with his hand in his locker and he noted that [the applicant] brought something out of the locker, but could not state for certain that it was a knife; however, at the same time he heard [R.W.] talking about a knife and assumed that [the applicant] had his knife in his hand. [R.A.] heard [L.N., N.S., and R.W.] talk the subject into putting the knife away and observed [the applicant] put his hand in his locker and subsequently stand up without anything in his hand. ...

[R.A.] further stated that about one minute after [the applicant] had placed his knife in his locker, [L.S.] came into compartment 202L, through the port hatch and started after [the applicant]. [The applicant] ran around the inboard, portside bunks and up to the forward end of the compartment, followed by [L.S.], who caught up with [the applicant]

as the latter ran through a crowd of men standing on the portside of the forward end of compartment 202L. He was lost in the crowd momentarily. The only other thing that [R.A.] observed was that [L.S. and the applicant] were scuffling near [the applicant's] locker. The next thing he observed was the other fellows holding on to [the applicant] and leading him up to the forward end of the compartment. [R.A.] saw the hunting knife in [the applicant's] right hand and observed [E.G.] knock it out of his hand. ...

194x Statement of P.V.⁷

About 10:30 p.m., 10-26-4x, I hit my sack . . . My bunk is just aft of [the applicant's] locker . . . I was awakened by a scuffle and I first saw [the applicant and L.S.] as [L.S.] caught up with [the applicant] . . . In the same general area where [L.S.] caught up with [the applicant], there were some 10 or 15 men standing around talking and hollering. No one stopped [the applicant or L.S.]. L.S. started hitting [the applicant] with his hands. [The applicant] was protecting himself with his arms, generally facing forward and also facing [L.S.], while . . . stepping backward toward his locker. [The applicant] walked aft of his locker some 3 feet. Then he took one or two steps forward, turned his back to [L.S.] and went down on one of his knees beside his locker. [L.S.] was hitting [the applicant] with his hands on [the applicant's] body and shoulder. As [the applicant] got on his knee, [L.S.] kicked [the applicant] with his right foot on [the applicant's] side, and called him a S.B. Some one said break it up while others said let him alone. . . [The applicant] came up, turned around, faced [L.S.], and leaned against the bunk on which I was lying. [L.S.] went toward him and they embraced. [L.S.'s] left hand was low on [the applicant's] body. [L.S.'s] right hand was about [the applicant's] shoulder and appeared to have hold of [the applicant's] left hand. Both [the applicant and L.S.] were standing generally upright, but stooped slightly, and in the vicinity of [the applicant's] locker. I saw [the applicant] throw his right hand and arm over [L.S.'s] shoulder, that is [L.S.'s] left shoulder, and could see [the applicant] hitting [L.S.] in the back. It looked like [the applicant] was hitting [L.S.] in the back until the 3rd blow. I then saw the knife in [the applicant's] right hand . . .

As [the applicant] was going down beside his locker [L.S.] was punching him with his hands and fist. I did not see [L.S.] have hold of [the applicant's] neck or choking him.

As the fellows grabbed [the applicant], he made a swing with the knife at [B.C.], almost hitting him in the neck.

During the fight I did not leave my bunk.

The report states that P.V. was transferred off the ship to be available to appear as a witness at the applicant's trial.

194x Statement of H.R.⁸

[H.R.] advised that he was on watch from 8:00 to 12:00 p.m. on 10-26-4x. About midnight he went to his sack in compartment 201L, which is located on the portside, against the

⁷ P.V.'s 1996 signed and unsigned statements appear in Appendix B on pages B-11 and B-14, respectively.

⁸ H.R.'s 1996 statement appears in Appendix B on page B-8.

bulkhead. He went to sleep and was awakened by some noise and confusion. ... As he entered the port hatch of compartment 202L he observed [the applicant] pass by from the starboard side of the ship. [L.S.] was following him. They went all the way around the inboard, portside bunks and lockers and back to the vicinity of [the applicant's] locker. Several of the men standing around tried to stop [L.S.], without success. So far as [H.R.] could observe, no one attempted to grab ahold of [the applicant]. [The applicant] went down on his knee and placed his hand in his locker. [L.S.] began kicking [the applicant] and stated, "Stand up and fight like a man." At the same time [L.S.] pulled [the applicant] up by holding on to [the applicant's] shoulders and jumper. At the time [the applicant] was on the deck his back was toward [L.S. and H.R.]. As [the applicant] was raised up, [H.R.] observed he had a knife in his right hand. [The applicant] turned to face [L.S.] and threw his right hand and arm over [L.S.] left shoulder, stabbing him three times, very quickly, in the back. ...

[H.R.] did not hear [the applicant] say anything. He had heard [R.W.] tell [the applicant] not to do anything more to [L.S.] and that he, [R.W.], would try to stop [L.S.] from attacking [the applicant].

194x Statement of P.B.

[P.B.] advised that he was on liberty ... on 10-26-4x. He came back to the ship about 12:20 a.m., 10-27-4x and went to the compartment 201L. He started to undress while standing by his sack on the portside of compartment 201L. He observed [R.W.] talking with [the applicant] in the vicinity of [the applicant's] locker in compartment 202L. [P.B.] could not understand what they were saying. [R.W.] had a small 10" pipe in his hand. Things were calm for a couple of minutes. [L.S.] entered compartment 202L from the portside hatch. Immediately thereafter [P.B.] heard noises and commotion and went into compartment 202L. [L.S. and the applicant] were fighting. [L.S.] was on his feet, but bending over [the applicant]. It appeared that [the applicant's] arm was caught in his locker and that he could not get up. [L.S.] appeared to be trying to pull [the applicant] up with his hands on [the applicant's] shoulder. All of a sudden [the applicant] got up on his feet facing [L.S.] and they got closer together. [The applicant's] right hand came over [L.S.'s] left shoulder and [P.B.] observed [the applicant] stab [L.S.] two or three times in the back.

[P.B.] advised he did not observe [L.S.] kicking [the applicant] and it did not appear to him that [L.S.'s] arm was around [the applicant's] neck. [L.S.] had no weapons in his hands.

... P.B. assisted the other men in getting [the applicant] near the double ladder in compartment 202L. All of them were kicking and hitting [the applicant] and asking why he cut [L.S.]. [P.B.] stated he hit [the applicant] three or four times. ...

194x Statement of B.C.

... He walked from [his berthing] compartment 203L, through 202L and into 201L and observed [L.S.] walking into compartment 202L from 201, through the portside hatch. He immediately heard a scuffling noise and walked into compartment 202L where he observed [the applicant and L.S.] throwing punches at each other. [The applicant] went down on his knees and [L.S.] began trying to lift him up by the shoulder. [The applicant] had his right hand in his locker as if it were caught. He came up on his feet, threw his left arm around [L.S.'s] body and with his right hand stabbed [L.S.] in the back three

times. Then some of the men standing around started hitting [the applicant] and [E.G.] took the knife out of [the applicant's] hand. ...

194x Statement of E.G.

I was on liberty from about 6:00 p.m. to 12:00 p.m. midnight; I came aboard ship about 12:10 a.m., October 27, 194x and went to my bunk in compartment 203. ... [I was walking through compartment 202 to go to the toilet when] I observed [L.S. and the applicant] scuffling in the aisle [The applicant] was down on his knees, and in a position aft of [L.S.] [L.S.] had his left arm around [the applicant's] neck or head. I could not see the nature of the hold which [L.S.] had on [the applicant], or the position of [L.S.'s] arm around [the applicant's] neck. [The applicant] got up about the time I saw both of them. [The applicant] was slightly stooped over. [L.S.] turned loose of [the applicant's] neck and [the applicant] was completely free from [L.S.]. [L.S.] swung his right hand at [the applicant], hitting him about his shoulder. [The applicant] threw his right hand over [L.S.'s] left shoulder and I saw [the applicant] stab [L.S.] one time with the knife. I could see the knife in [the applicant's] hand as it came over [L.S.'s] shoulder.

I did not hear [the applicant] make any remarks although I did hear [L.S.] say —“Get up and fight like a man.” After [the applicant] stabbed [L.S.], ... [R.W.] got hold of [the applicant's] right arm; I also got hold of [the applicant's] right arm, and watching my chance to get the knife out of [the applicant's] hand. I threw it on the deck under the lockers. The fellows were punching [the applicant], were kicking him and saying: “Why did you cut [L.S.]” or words to that effect.

The report states that E.G. was transferred off the ship to be available to appear as a witness at the applicant's trial.

194x Statement of Ensign R.R., Officer of the Day⁹

Ensign [R.R.] advised that he was the Officer of the Day at 12:01 a.m. until 4:00 a.m., 10-27-4x. About 12:20 a.m., 10-27-4x, one or two men came to the Ward Room and informed him that a man had been cut in compartment 202. He immediately went to compartment 202L where he observed three or four men hitting and kicking [the applicant], a negro. He had a gun in his hand and broke the fight up. He was then informed that [L.S.] had been stabbed.

194x Statement of W.M.¹⁰

On 10-26-4x, he hit his sack in compartment 205L about 10:00 p.m. and was sleeping when a man came down, awakened him, and told him to go to the Officer's Ward Room because [the applicant] had stabbed [L.S.]. [W.M.] had not seen or heard anything

194x Statement of Lt. C.S., Commanding Officer of the Xxxxxx

⁹ R.R.'s 1996 statement appears in Appendix B on page B-9. A statement he signed in 1999 for the Coast Guard appears in Appendix C on page C-1.

¹⁰ W.M. was one of the other black crewmembers of the Xxxxxx.

... [A]t about 12:30 a.m., 10-27-4x, [the applicant] ran into the Ward Room and stated to [C.S.], "They made me do it." [C.S.] inquired, "Do what?" [The applicant] replied, "I cut a man." On further inquiry, [the applicant] informed [C.S.] that he had been on the Mess Deck with [J.M.] and informed [J.M.] that he was going to "hit his sack." On his way, [the applicant] met [R.Y.] and spoke to [R.Y.]. [L.S.] called [the applicant] a cocksucker and said, "Go hit your sack." [The applicant] turned around and observed [L.S.] about to strike him. [The applicant] pushed his foot out and stopped [L.S.]. He then stated that he was in compartment 202L when [L.S.] came in the compartment and started toward him. At that time, [the applicant] refused to say anything more.

[C.S.] stated that at the time he talked to [the applicant], the latter was not drunk and knew what he was doing. [C.S.] further stated that about 9:00 a.m. on 10-27-4x he interviewed [the applicant], at which time [the applicant] stated that [L.S.] was kicking him as he, [the applicant] has his hand in his locker and as [the applicant] came up on his feet he hit [L.S.] in the back with his knife. [L.S.] then let go and the other men in the compartment got hold of [the applicant]. [The applicant] at that time stated that about 10:30 p.m. on 10-26-4x he was tight. [J.M.] took him out of a bar for a short time and he felt better after that. [The applicant] stated he knew what he was doing after that time.

... [The applicant] declined to answer the question, "What did you intend to do with the knife?" ... [The applicant] answered, "They forced me to do it." [The applicant] was then asked if he considered that the circumstances justified him in killing a man. His answer to this question was, "No, I won't say anything more."

... [C.S.] further advised that the Coast Guard held a Board of Investigation, inquiring into the death and cause thereof of [L.S.]. The Board of Investigation convened during 10-29 and 10-30-4x. Under regulations governing the Board of Investigations of this nature, the defendant has to be present during all of the proceedings. So [the applicant] had a defense counsel appointed to him, who was [Lieutenant junior grade B.S.]. [The applicant's] defense counsel requested him not to make any statements regarding the stabbing of [L.S.] before the Board of Investigation. [The applicant] was present during all of the proceedings of the Board and heard all of the testimony given by the witnesses to the Board of Investigation.

[C.S.] further advised that the U.S.S. Xxxxxx ... was under orders as of 11-2-4x to proceed to Shanghai, China, where it is to operate out of the Asiatic Fleet. In the event witnesses are necessary for the trial of [the applicant] who were not transferred to the Coast Guard Base at Xxxxxxx, Xxxxx, they can be reached by a request directed to the headquarters, U.S. Coast Guard, Washington, D.C.

194x Statement of the Deputy U.S. Marshal

The Deputy U.S. Marshal reported that the captain of the Xxxxxx, gave him the hunting knife allegedly by the applicant used to stab L.S. He reported that the knife was 11.5 inches long, with a 7-inch blade and was covered in dried blood. He also reported that E.G. had identified the knife for him as the one E.G. had taken from the applicant after the fight.

APPENDIX B

EXCERPTS OF STATEMENTS SUBMITTED BY THE APPLICANT

The applicant submitted a number of signed and unsigned statements prepared by his counsel for himself and other crewmembers of the Xxxxxxx. His counsel prepared the statements in 1996 based on telephone interviews with the crewmembers. The following are excerpts of the signed affidavits:

1996 Statement of the Applicant¹¹

The applicant filed the following statement with his brief:

2. I was one of only four black men on board the Xxxxxxx. The black men knew to keep to themselves and did not associate with the white members of the crew, many of whom were from the South. I would often be assigned to wash dishes, even though I was a Fireman and not a cook, and while performing such duties I was often a victim of racial remarks as members of the crew would call me names such as "black sambo". Many members of the crew resented me because I was not a messman like many black sailors.

3. Just prior to Navy Day, 194x, the Xxxxxxx pulled into Xxxxxx, Xxxxx, where there was to be a celebration. On the night that we pulled into Xxxxxx, I remember that a member of the crew, [unreadable] who was drunk, fell overboard. I immediately went to get the assistance of an officer and together we were able to rescue the man.

4. The following evening, myself and [J.M.] were part of a liberty party that went ashore into Xxxxxx, Xxxxx. [J.M.] and I went into a local cocktail lounge where there was live music being played. At one point in the evening, I sat in with the band and played the drums. The place was full of dancing and everyone was having a good time. An officer later showed up with his wife. The wife of the officer saw me dancing; I believe the woman was drunk. She wanted to dance with me and so I asked permission of the woman's husband to dance with her. He gave his approval and so I proceeded to dance with the woman. She was dancing very close to me and I was very uncomfortable as it was inappropriate for her to be dancing with me in such a manner.

5. Immediately following my dance with the woman, several sailors from the Xxxxxxx approached me. They were upset because I was dancing with a white woman and stated that they were "going to do me up like they do in Oklahoma and Texas." One of these men was [L.S.], who was from Oklahoma, and another was [R.W.], who was from Texas. I believed that this meant that they were going to lynch me so I immediately told [J.M.] that we should leave the establishment. [J.M.] and I hurried back to the ship as I was afraid that there was going to be trouble from the men who had threatened me.

¹¹ The applicant's 194x statement to the F.B.I. appears in Appendix A on page A-1.

6. Upon returning to the ship, I immediately went up to the bridge and told the officer that some men had threatened to "do me up." I was told to get to my bunk, which was well below deck, and that nothing would happen to me.

7. As I was instructed, I returned to my bunk. Minutes after reporting the incident that happened ashore to the officer, I was lying in my bunk when I looked up and saw between five and ten men surrounding me. One of the men grabbed me from behind and had me in a choke hold. At the same time I felt a knee jam into my back and I felt an incredible amount of pain. I felt that my back had been cracked. I was also being severely beaten by the others and was trying my best to escape the beating. I was punched and kicked repeatedly by the men. No one ever tried to help me. As I was being beaten, I began to lose consciousness and I remember blacking out for a time. When I regained consciousness, I crawled up a ladder to the deck and sought the protection of the officers. They told me I had killed [L.S.]. I was immediately grabbed and placed in irons and taken up to the bridge.

7.[sic] Almost immediately following the beating, I was taken off of the Xxxxxxx by the United States Marshal and placed in jail in Xxxxxx, Xxxxx where I was held for over one month, possibly longer. I never returned to the USS Xxxxxxx.

8. While I was confined, I was with all kinds of sick people and as a result I contracted tuberculosis. As a result of the beating that I had taken, I had a broken back and was in terrible pain. The tuberculosis set into my back, which was already broken and made it much worse.

9. After being held in Xxxxxx I was taken by sea plane to Xxxxxx, Xxxxx where I was held in prison.

10. During the time that I was in Xxxxxx, I was never spoken to by anyone. I was never interviewed by any attorneys or investigators about the incident. I also never appeared in any proceedings before the court. I was never taken before a judge and never had an attorney to assist me in any way. I had no friends or family in Xxxxx and had never been there before. I had no money and no means to raise money. My mother ... who lived in St. Augustine, Florida, had no money to help me.

11. The only time I ever spoke with an attorney was when I was visited in prison by a man who introduced himself as [M.M.]. He told me that my case had been taken care of and that he had made a plea of guilty to manslaughter on my behalf and I was going to serve a five year sentence. He told me that this was better than the twenty years I would have gotten for murder. I never gave him permission to make a plea on my behalf. ...

Second Statement of the Applicant

The applicant submitted the following statement concerning his 194x summary court-martial in New York.

In August of 194x [C.C.] and I were at a USO dance in Brooklyn. [C.C.] had been drinking and we got into an argument. [He] attacked me with a glass bottle, striking me in the head. In order to prevent [him] from striking me again, I drew

my knife and intentionally cut him on the arm in which he held the bottle. After this point, [C.C.] broke off his attack and I took no further defensive action. He was not seriously injured. [C.C.] then went to an officer to report the incident.

1996 Statement of N.S.¹²

N.S., a retired attorney who served as a motor-machinist mate third class on the Xxxxxxx from November 14, 194x, to November 1, 194x, signed an affidavit containing the following statements regarding his service aboard the Xxxxxxx:

2. The crew of the Xxxxxxx represented a cross section of America. Most of the crewmen were decent individuals but there were some who were bigoted and racist. Some of the men would refer to blacks as "n[]" or "black bastards", however, I felt that the officers were fairminded and decent men.

3. [The victim, L.S.] was an American Indian from Oklahoma. He was a large man who liked to throw his weight around to get his own way. [The applicant], a negro, from xxxxxxxxx, was the only black member of the engine room crew. ... I knew that he was not well liked and did not mix well with his fellow watch members, all of whom were white. ...

6. [While on liberty, the applicant] danced with an Indian girl at a local cocktail bar in Xxxxxx. [L.S.] objected to [the applicant], a negro, dancing with the Indian girl and a scuffle ensued.

7. After witnessing the scuffle between [the applicant] and [L.S.], I made my way back to the ship. I was in my berthing compartment a short time after returning to the ship when I observed [the applicant] running into the compartment immediately followed by [L.S.] who was chasing him. [L.S.] was a large, well-built man, over six feet tall, who towered over [the applicant], who was frail and slender. I believe that [L.S.] was under the influence of liquor.

8. The incident took place toward the stern of the ship in a berthing compartment below deck. [The applicant] had retreated to the rear of the compartment and there was nowhere else for him to go. I next observed [L.S.] physically assaulting [the applicant]. [L.S.] was pounding [the applicant] with his fists and was savagely beating him. [The applicant] was no match for [L.S.]. I feared for [the applicant's] life.

9. No enlisted man could have stopped the beating of [the applicant] by [L.S.]; the beating was too fierce and [L.S.] was too strong. I ran to get the Officer of the Day to stop the fight. I had been gone for about four to five minutes and when I returned to the berthing compartment, the stabbing had already taken place.

10. I believe that if the fight had continued with [L.S.] pounding [the applicant], [the applicant] could have been killed. However, the fact that the beating took place near [the applicant's] footlocker probably saved [his] life. I believe that [the applicant] was knocked down and his footlocker happened to be right near where he was being beaten

¹² N.S.'s 194x statement to the F.B.I. appears in Appendix A on page A-9.

and that during the course of the beating [he] was able to reach into his footlocker for a knife to defend himself with.

11. Immediately after the stabbing, there were those who would have physically harmed [the applicant]; there was a lynching atmosphere about. If the hotheads had been able to organize, the situation would have become out of hand and [the applicant] might have been hanged.

12. The officers acted quickly to diffuse the situation. ...

14. Either the next day or the day after that, the FBI came to the ship and began questioning witnesses to the incident. I was called to a small office on the ship and was questioned about the incident. I was not threatened in any way by the agents who questioned me. I did not want to give evidence because I did not want to be taken off of the ship. However, I reluctantly told my story to the FBI. My statements to the FBI could be construed as favorable towards [the applicant's] defense. There was great hostility toward [him] as well as racism. As a result, I never discussed my view or statements to the FBI with any of my shipmates for fear that they would vent their hostility on me.

15. On October 31, 194x, the ship left Xxxxxx and arrived at Xxxxxss. Shortly thereafter the Captain called me into his office [and] told me that I had to leave the ship and remain in Xxxxxss until such time as I was to be called as a witness. I told him I wanted to remain on board and asked if he could do anything to keep me on the ship. He told me the matter was out of his hands. The ship went on to China. ...

16. On November 1, 194x, I was detached from the Xxxxxxx at Xxxxxss, Xxxxx. In January of 194x, I was sent to Xxxxxx where I stayed for a period of about one week to ten days prior to the twenty-second of January pursuant to a subpoena issued by the U.S. District Court and served on me. I stayed at the Hotel xxxxxxxx with [fellow crewmembers R.D. and R.W.] and possibly some others.

17. At no time while I was in Xxxxxx, or at any other time preceding it, had I discussed this matter with any attorneys, either for the prosecution or the defense. To the best of my knowledge, while in Xxxxxx, neither [R.D. or R.W.] spoke to any attorneys regarding this matter.

18. While in Xxxxxx, Xxxxx, I do not remember actually speaking in front of a grand jury and giving testimony, although I may have done so.

19. Although I was not friends with [the applicant] and did not particularly care for him, I think he just happened to be unlucky. ...

1996 Statement of J.M.¹³

J.M., a sonarman third class and one of four black crewmembers (out of more than 150) on the Xxxxxxx signed an affidavit containing the following statements:

¹³ J.M.'s 194x statement to the F.B.I. appears in Appendix A on page A-3.

2. The sailor's sleeping quarters were laid out as follows: there were sleeping bunks suspended on hinges from which they folded out from the wall. Each of the enlisted men had foot lockers which were kept under their beds. ... the aisle was approximately four feet wide

3. As a Sonarman Third Class, I was a petty officer and was not quartered with the other enlisted men, nor with [the applicant].

4. From my personal experience aboard the Xxxxxxx, there was a tense racial climate. The black sailors and the white sailors tended to keep to themselves and did not associate with each other. Many of the white sailors were from southern states such as Tennessee, Oklahoma, Kentucky, and Texas. As a black sailor, I knew that it was best for me to stay clear of many of the white sailors.

6. ... [The applicant] and I spent a great deal of time together and we went out all of the time. [The applicant] never had any trouble with any member of the crew, officers or enlisted men until the night of October 26-27, 194x.

7. ... [The applicant] and I went on liberty, as did most of the sailors aboard the Xxxxxxx, to celebrate the end of the war. [The applicant] and I walked from the Xxxxxxx into town, where there was to be a party at a local bar.

8. ... When we entered the bar, there were approximately fifty or sixty people present, almost all of whom were white, including several officers and their wives.

9. During the course of the evening [the applicant] danced with several women at the bar, some of whom were the wives of officers. These women were all white as there were no black women present in the bar. [The applicant] always asked permission of the officers before dancing with their wives so as not to offend them. [The applicant] had permission to dance with these women and none of the officers seemed to mind.

10. At some point in the evening, I observed [the applicant] dancing with a white woman, when a sailor, who I later learned to be [L.S.], asked the woman dancing with [the applicant], to dance with him. The woman declined and continued to dance with [the applicant]. At this time I observed some words being exchanged between [the applicant and L.S.]. At the time this confrontation between [L.S. and the applicant] occurred, I was talking with some friends in the bar and was not next to [the applicant] but I was able to observe what was happening. I feared that there would be physical violence against me and [the applicant] because of the incident as [L.S.] and his friends were Southerners and [the applicant] had danced with white women.

11. Following this confrontation between [L.S. and the applicant], a friend told [the applicant] and I [sic] that we should leave the bar immediately because there would be physical violence against us if we remained. We then made a hasty return to the ship, arriving at approximately 11:30 pm to 12:00 am. Upon returning to the Xxxxxxx, [the applicant] went to his bunk, which was located below deck. After [the applicant] returned to his bunk, I observed and heard [L.S.] and four or five other white enlisted men talking about the incident between [L.S. and the applicant] above deck.

12. [L.S.] was speaking in a loud and aggressive tone about how [the applicant] was out of line for dancing with white women at the bar, and I believed that there was going to be violence against [the applicant] at the hands of the white sailors. [L.S.] was the

instigator of the whole incident and was the most vocal of the group of white sailors. After overhearing [L.S.], I returned to my bunk in the officers' quarters.

13. ...At the time of the incident, about 12:00 am [sic], the lower bunks were likely empty as most of the sailors were on liberty celebrating the end of the war. I did not witness the events which led to the death of [L.S.].

14. On October 27, 194x, shortly after the incident, I was removed from the Xxxxxxx. Although I had not been involved in the incident between [the applicant] and the white sailors, I was still removed from the ship. I was told that I was being removed for my own safekeeping. I was relieved to be removed from the ship as I was fearful for my own life and for the lives of the other black sailors. Again, although I was not involved in the incident, I was taken to the city jail where I was incarcerated for a period of approximately one week. During this time I was not permitted to leave the jail and did not have any contact with anyone.

15. After spending approximately one week in the jail, I was taken by sea plane to Xxxxxxx, Xxxxx. I was told that I was being taken to Xxxxxxx so I could testify. Upon arriving in Xxxxxxx, I was taken to the local jail where I was held for a number of days. I spent approximately thirty days in Xxxxxxx.

16. During the thirty day period I spent in Xxxxxxx, I was never spoken to by anyone about the incident involving [the applicant]. I remember the time I spent in Xxxxxxx so well because it is during that time that I met the woman who was to become my first wife.

17. I was never called to testify, and never testified, in any judicial proceeding involving [the applicant]. I have been informed by [the applicant's counsel] that the indictment handed down against [the applicant] and dated January 26, 194x, lists my name as a witness before the Grand Jury in Xxxxxxx, Xxxxx. However, I never testified before this Grand Jury or any other Grand Jury relating to the case of [the applicant]. I am aware of what a Grand Jury proceeding consists of as I have recently served on a Grand Jury in my home state of New Jersey and I am certain that I never testified before the Grand Jury in Xxxxxxx, Xxxxx, on January 26, 194x, or at any other time.

18. After October 27, 194x, I did not see [the applicant] as a member of the Coast Guard and only learned that he had been convicted through word of mouth and not from [the applicant] himself. I did not see [the applicant] again until 1951 when we met briefly. I have not had any contact with [the applicant] since 1951.

1996 Statement of L.B.

L.B., a sonarman first class on board the Xxxxxxx from 194x to 194x, signed an affidavit including the following statements:

5. ... I was on duty that evening and did not attend the dance but I understand that a quarrel developed between [the applicant and L.S.] at this dance. I understood that [L.S.] may have been from Texas, and being from Texas, you could imagine what his attitude was like towards colored people.

6. As I understand it, [the applicant] danced with a white girl and [L.S.] did not like it. A quarrel ensued which culminated in the incident which I witnessed on board the ship late Saturday night or Sunday morning.

7. I was located in the berthing compartment when the incident occurred. The berthing compartment contains bunks that were stacked three high so that the top bunk was several feet above the deck, near the ceiling. I had the top bunk and that of [the applicant] was below me.

8. I was on my bunk and was reading when I heard a disturbance in the berthing compartment. When the disturbance moved under my bunk, I remember yelling something to the effect of "Shut up! I am trying to read!" When I finally looked down toward the disturbance, I saw that the larger man, [L.S.] had [the applicant] in a bear hug with each man facing the front of the other. [The applicant] was also holding on to [L.S.] while he reached for a knife that he had taken from his footlocker, which was under his bunk. At this point, I observed [the applicant] stab [L.S.] in the back, which was the only area of [L.S.'s] body that he could reach. After [L.S.] was stabbed he fell onto the deck and [the applicant] immediately sought the protection of the officers.

9. Following the incident, members of the crew had to stand guard over [the applicant] in the Xxxxxx jail. I did one such watch in Xxxxxx.

10. Members of the crew thought that we were originally slated to go back to the United States and that the subsequent orders to proceed to China was punishment for what had happened on board the Xxxxxxx.

11. My feeling in this matter, although I am a southerner myself, born in Selma, Alabama, was that [the applicant] was not the instigator and was merely defending himself. I had the feeling that [L.S.] had it coming.

12. When the ship pulled out of Xxxxx, I was on board, and was not asked to testify in any proceeding concerning the events that I had witnessed.

1996 Statement of M.Z.

M.Z., a crewmember of the Xxxxxxx from 194x to 194x, signed an affidavit containing the following statements;

2. On the night of the incident, it was fairly late, and I was in or around my bunk in the berthing compartment. I witnessed the black sailor running towards his bunk which was located approximately five yards away from mine. He was being chased by [L.S.]. [L.S.] was a large man, weighing over two hundred pounds. The black sailor was much smaller, weighing around one hundred and forty pounds. I saw [L.S.] catch the black sailor at the black sailor's bunk. The black sailor reached into his locker, which was under his bunk, where I believe he grabbed a knife. The two men wrestled and scuffled with each other and at some point [L.S.] was stabbed.

3. That evening following the incident, I was assigned to guard the black sailor at the Xxxxxx jail. I believe that two men were assigned to guard, including myself.

1996 Statement of R.S.

R.S., a chief pharmacist's mate on the Xxxxxxx from 194x to December 194x, signed an affidavit containing the following statements:

3. As I understand the incident, it involved a large Indian from Oklahoma who ran around the sleeping compartment chasing after a black man.

4. As I stated, I was on shore patrol that evening when a crewman located me in Xxxxxx and informed me that there had been a stabbing on board the ship. I rushed to the ship and arrived approximately ten minutes after the stabbing. [The applicant], the black sailor, had already been removed from the ship and placed in the Xxxxxx jail. An armed guard was place in front of the jail.

5. When I arrived, the body of the stabbed sailor, [L.S.], was in the sick bay. He was deceased. The Captain told us that we had to remove the body on a stretcher and make it look as if [L.S.] were still alive. We had a hot potato on our hands. Black-white feelings ran high and blacks were not tolerated too well. The reasons for the Captain's decision to remove the body in this fashion was to avoid any repercussions that would have occurred if the other sailors knew that [L.S.] was dead. I feel that there would have been repercussions as there were a lot of southern boys on board, many of whom were friends with the Indian. There was a fear for the safety of [the applicant] at the hands of these southern boys. The Captain did an excellent job of diffusing the situation.

6. The stabbing was a very hot issue on board the ship. At one point after the incident, the Captain called all of his chiefs into the ward room and stated that we were going to Xxxxxss. He asked us how we felt about bringing the prisoner on board and taking him with us. We looked at each other and thought "I don't know about this." The Captain said "we are bringing him to port and each of you guys are responsible for keeping him alive." I never saw [the applicant] get back on board the ship.

7. Myself and [the ship's doctor] had to perform the post-mortem on the fellow that got stabbed. Such a post-mortem was required by Navy regulations in order to conduct a court martial. I recall while performing the post-mortem that [L.S.] was a very large man and that there probably was not anyone big enough on the ship to stop him. After performing the post-mortem, we concluded that [L.S.] had died as a result of several stab wounds which had lacerated his internal viscera.

8. After the post-mortem, we sewed up the body and placed it in canvass. We were about to have the body flown to Xxxxxss, Xxxxx, when the U.S. Marshall arrived on the scene and asked us if anyone else had seen the body. We told him that no one else had examined the body. We were told by him that we needed to bring the body into Xxxxxx for a Coroner's Inquest so we unsewed the canvass and pulled the body out for the inquest. At the inquest, they had to unzip him since we had previously sewn the wounds shut. People examined the body and then we sewed him back up.

1996 Statement of H.R.¹⁴

H.R., a signalman on the Xxxxxxx from 194x to 194x, signed an affidavit containing the following statements:

4. On that second night in Xxxxxxx, I was on duty, and was not part of the liberty party that had gone ashore. At some point around 11:00 p.m. or 12:00 a.m. I was in my bunk, which was the second berthing compartment, and observed [L.S.] chasing [the applicant] through the berthing compartments. [L.S.] was being followed by a group of individuals. [L.S.] was a big man, almost twice [the applicant's] weight. I observed [the applicant] go down to his knees and reach into his locker, which was located under his bunk. At this point, I saw [L.S.] grab hold of [the applicant] and [L.S.] stated, "stand up and fight like a man." [The applicant] got hold of his knife while [L.S.] was holding him and stabbed [L.S.] with the knife.

5. Shortly after the incident, [the applicant] was removed form the ship for fear that there would be a race riot. At some point, I was spoken to by the FBI and my statement was taken but [I] was not one of the men taken off of the ship to testify.

6. I knew [the applicant] before we served on board the Xxxxxxx as we were both stationed in New Jersey. To my knowledge, [the applicant] never had any trouble before the incident on board the Xxxxxxx.

1996 Statement of W.R.

W.R., a crewmember of the Xxxxxxx from 194x to 194x, signed an affidavit containing the following statements, although he did not state that he had actually witnessed any particular incident:

4. ... One night while on liberty at a dance, an Indian named [L.S.], whom I worked with in the kitchen, was angered when a black man danced with a white woman. When [L.S.] returned to the ship, he told the black man not to dance with white girls. [L.S.] grabbed the black man and was going to beat the hell out of him, when the black man stabbed [L.S.] in the back.

5. Immediately, members of the crew began to beat the black man. The Officer of the Deck, who was armed with a .45, came down and took the black man out of the compartment. As he was taking him out, a crewman struck him with a foamite can, which is a fire extinguisher. The man was removed from the ship and put in the jailhouse. Members of the crew were enraged over the incident. Some of the men went to the three inch guns, loaded them, and pointed them at the jailhouse in which the black man was being held. They said they were going to blow it up. An officer, armed with a .45, forced the men off of the guns.

6. When the FBI investigated this incident, many witnesses were reluctant to come forward and state that they had witnessed the incident.

¹⁴ H.R.'s 194x statement to the F.B.I. appears in Appendix A on page A-12.

1996 Statement of R.R.¹⁵

R.R., an ensign on the Xxxxxxx who was standing watch as the Officer of the Deck on the night of the stabbing, signed an affidavit including the following statements:

1. ... I was also responsible for making entries into the ship's log during my watch and was required to sign the log following my watch. It was very important that the logs were precise and the Captain was very fussy about their accuracy.

3. ... While standing watch upon the open deck, I heard a commotion and somebody ran up to me and stated something to the effect of "come on back here, he is going to kill him."

4. Thereafter, I ran back to the berthing compartment and went down the ladder. At the foot of the ladder there was a sea of people, possibly fifteen or twenty men plus the men who would normally sleep there, milling around. Somebody then pointed to the starboard side of the ship and stated something to the effect of "he did it."

5. I then directed the man who was pointed out to me to go up to the ward room and stay there and I instructed one of the men to go up to the ward room with a pencil and paper and write down whatever the man said. I then sent somebody up to find the Captain and get him over to the ward room. I also sent one of the men to get the ship's doctor.

6. The situation in the compartment was getting chaotic and the crew was getting kind of hysterical. One of the older petty officers then came up to me and stated "we need to turn out the lights." The lights were turned off and everybody quieted down. I then went over to the starboard side of the ship and observed a man lying on a footlocker. Thereafter, I went back to where the crowd was mingling and then went to the ward room where the Captain and others were present. A short while later, I returned to the deck to try to cool things off.

7. Almost immediately after I ordered him to go to the ward room, they took the man who was pointed out as the guilty party off of the ship and held him in the local jail in Xxxxxx. The three remaining black sailors were also taken off of the ship for fear that there would be repercussions as a result of the fact that the man who was identified as having done the stabbing was a black man.

1996 Statement of R.E.¹⁶

R.E., a seaman on the Xxxxxxx from 194x to 194x, signed an affidavit containing the following statements:

¹⁵ R.R.'s 194x statement appears in Appendix A on page A-14. A statement he signed for the Coast Guard in 1999 appears in Appendix C on page C-1.

¹⁶ Summaries of two audiotaped telephone interviews between the applicant's counsel and R.E. appear on page 37 of the Final Decision on Reconsideration.

3. While ashore in Xxxxxx one evening, [L.S.] and a black sailor got into an argument over the black sailor's dancing with a white woman.

4. I was in the furthest compartment from where [L.S.] was stabbed. ...

5. I did not witness the stabbing of [L.S.] although I heard a commotion coming from the compartment furthest away from me. ...

6. Following the incident, the first thing the skipper did was to transfer all of the black men off of the ship into Xxxxxx. We had quite a few Southern crewmen on board and they might have harmed the black crewmen if they were able to get a hold of them. None of the black sailors who were taken from the ship ever returned on board the Xxxxxxx. We left Xxxxxx without them. We never had black crewmen on board the Xxxxxxx again.

1996 Statement of A.P.

A.P., a lieutenant and engineering officer on the Xxxxxxx in 194x, signed an affidavit containing the following statements:

4. Although I was not on board the Xxxxxxx on the night of the incident ..., I have spoken about the incident to several of the officers who were on board the ship that night. These officers stated to me that they felt that [the applicant] was not to blame for the incident.

5. The officers I had spoken to about the incident stated that immediately after the incident each of the colored sailors had to be placed under armed guard for their own protection, as it was feared that there would be violence against them at the hands of several of the white sailors.

6. All of the colored sailors were removed from the Xxxxxxx for their own safety. To my knowledge, we never had any colored men on board the Xxxxxxx again.

1996 Statement of W.D.

W.D., a crewmember on the Xxxxxxx from 194x to 194x, signed an affidavit containing the following statements:

3. Shortly before the confrontation between [the applicant] and the Native American sailor, I was in the mess hall drinking coffee. I observed [the applicant] in the mess hall also drinking coffee. [The applicant] was not looking for any trouble and was minding his own business.

4. I left the mess hall and went to the machine shop. [The applicant] remained in the mess hall, shortly after [L.S.] accompanied by another man, both men having just returned from liberty. The native American sailor appeared agitated and about [sic] an incident that had occurred in town involving [the applicant] in which [the applicant] had danced with a woman. The two men appeared at the machine shop door, the native

American asked, 'Do you know where [the applicant] is? to which I answered I don't know.

5. Although I did not witness it, I was shortly thereafter informed that [L.S.] eventually found [the applicant] in the bunk room where the Native American sailor, who was a bigger and stronger man, attacked [the applicant], who retreated to his bunk where he pulled out a knife and stabbed [L.S.].

1996 Statement of P.V.¹⁷

P.V., a machinist's mate on the Xxxxxxx, signed the following statements in an affidavit prepared by an attorney now working in the law firm of M.E.M., who is deceased:

1. ... There was no racial segregation shipboard and no demonstration of racial prejudice to my knowledge. ...

3. In those days the Navy did not inform the public where its ships were located, and it would have been highly unlikely for officers' wives to have met the vessel in Xxxxxx. As far as I know, no officers' wives were in Xxxxxx to meet the boat. Also there was no dance for the ship's crew in Xxxxxx. ...

5. One sailor had returned to the boat inebriated. He was still in his shoreside uniform and making noise in the foc'sle, disturbing the sleep of other crewmembers. The boatswain's mate [L.S.] who was in charge, got out of his bunk, went over to the sailor and said, "Keep quiet. There are people trying to sleep. You know that." As the boatswain turned, the inebriated sailor took a knife and stabbed him in the back several times. About six or seven of us, myself included, jumped on the sailor, disarmed him, tied him up and brought him up on deck to the deck officer. ...

7. The boatswain who was murdered was an Indian from Oklahoma. He was a very decent person and well liked by the crew. It was his responsibility to keep order in the foc'sle, and his instruction to the inebriated sailor to keep his voice down was given in the line of duty. He was only doing his duty. He did not deserve to die.

8. The murderer was turned over to the local authorities, and since I was an eyewitness I was subpoenaed to trial. I stayed in Xxxxxx 2 or 3 months waiting for the trial when suddenly I was informed that the sailor had "copped a plea" and that there would be no trial.

1996 Statement of Xxxxxx Attorney on Territorial Judicial Process

The applicant also submitted an affidavit signed by an attorney who practiced in the District Court for the Territory of Xxxxx in Xxxxxx for many years. The affidavit states the following concerning legal procedure in the territory:

¹⁷ P.V.'s 194x statement to the F.B.I. appears in Appendix A on page A-12. The applicant's counsel conducted a telephone interview with P.V. and prepared a different affidavit, which P.V. did not sign. Excerpts from that unsigned affidavit appear on page B-14, below.

In Xxxxxx, the grand jury would meet once per year unless there were circumstances requiring a special meeting of the grand jury.

If an individual was arrested outside of Xxxxxx and was to be transferred to District Court in Xxxxxx to await action by the grand jury, he would not have counsel appointed for him until after a grand jury indictment was handed down. Typically, in a felony case, counsel would have been appointed for the individual at his arraignment on the indictment.

Arraignments, and other court proceedings, were held on Saturday and the local attorneys would convene in the courthouse. The arraignments were done first thing in the morning. When an arraignment would appear on the calendar, the presiding judge would ask the defendant if he was represented by an attorney. If the defendant stated that he was not represented by counsel, the judge would appoint one of the attorneys in the courtroom to handle that individual's case.

The applicant also submitted several statements that his counsel prepared for crewmembers based on his telephone interviews with them. The following statements were sent to the crewmembers for signature but were never signed and returned by them.

1996 Unsigned Statement Prepared for R.B.¹⁸

The applicant submitted an unsigned statement that his counsel had prepared for R.B., a gunner's mate on the Xxxxxxx from 1943 to 194x. The applicant's attorney alleged that R.B. did not sign the affidavit due to an illness in the family. However, in a 1999 affidavit submitted by the Coast Guard (see Appendix C), R.B. indicated that he had refused to sign the statement prepared by the applicant's counsel because it "misrepresented" his observations. The following are excerpts of the statement R.B. would not sign:

4. I was in my berthing compartment on the night in question when I witnessed a colored sailor, [the applicant], come down the ladder into the berthing compartment. He was being chased by another sailor. [L.S.], who was from Oklahoma. [L.S.] was a big, heavy set individual. [L.S.], upon entering the berthing compartment in pursuit of the colored sailor struck the colored sailor several times with his fist causing the colored sailor to drop to his knees. While on his knees, the colored sailor reached into his footlocker, which was located in front of his bunk which was suspended from the wall. As the colored sailor reached into his footlocker, he was struck several more times by [L.S.]. The colored sailor, in an attempt to defend himself, pulled a knife from his footlocker. At this point, guys started coming out of their bunks, interested in seeing what was going on.

¹⁸ R.B.'s 1999 statement submitted by the Coast Guard is excerpted in Appendix C on page C-1. A summary of an audiotaped telephone interview between the applicant's counsel and R.B. appears on page 38 of the Final Decision on Reconsideration.

5. The colored sailor stabbed [L.S.]. I cannot recall whether [L.S.] was stabbed one or two times. After being stabbed, [L.S.] spun around and collapsed to the ground. ...

7. Following the incident, all of the colored sailors were removed from the ship. I believe that this action was the result of the officers' concern for the safety of the colored sailors and out of fear that there would be further confrontations between the white and colored crew members. ...

8. Following the incident, I never spoke to, was questioned by, or made any statements to any law enforcement agency, including the Federal Bureau of Investigation, the United States Attorneys Office, or the U.S. Marshall. Additionally, I never spoke to any attorneys regarding the incident that I had witnessed. I was not involved in any investigation.

9. When the Xxxxxxx pulled out of XXXXX, I was aboard as we headed toward the Northern Pacific, Okinawa, and China.

1996 Unsigned Statement Prepared for F.R.¹⁹

The following unsigned statements were prepared by the applicant's counsel for the signature of F.R., an electrician on the Xxxxxxx in 194x, following a telephone interview. In an audiotape of that interview, F.R. indicated that he would not sign because of the quotation about hanging the black sailors from totem poles and because he believed the men were looking for the applicant rather than chasing him (see page 35 of the Final Decision on Reconsideration).

3. Shortly after the incident on shore, I observed four or five men aboard the Xxxxxxx who were searching for [the applicant]. I believe that the men who were searching for [the applicant] "had it in for him" and that they were searching for him because of what happened between he [sic] and [L.S.] on shore. ...

5. Immediately after the stabbing, a dangerous situation ensued in which I overheard a number of sailors state that "we should take all of the blacks and hang them up from totem poles." I took immediate action to keep the situation under control by making my way to the motor room and turning off all of the lights on the ship. I reasoned that men could not get about too well if almost total darkness and as a result the situation would remain calm. Although I was slightly reprimanded by my superior for taking this action, I believe that the events proved my judgment to be correct.

6. All of the black crewmen, including [the applicant], were immediately taken off the ship for fear that there would be repercussions as a result of the stabbing. ...

¹⁹ Summaries of two audiotaped telephone interviews between the applicant's counsel and F.R. appear on page 35 of the Final Decision on Reconsideration.

1996 Unsigned Statement Prepared for L.N.²⁰

The following unsigned statements were prepared for the signature of L.N., a chief motor machinist's mate on board the Xxxxxxx from 194x through 194x:

4. I had heard that the incident between the black seaman and the white southern gentleman began with a hassle over an Indian girl. The dispute was over which one of them was to dance with the Indian girl.

5. When the two men returned to the Xxxxxxx, the incident exploded down in the berthing compartment. I believe that alcohol had a lot to do with the incident.

6. I was down in the berthing compartment at the bottom of a stairway and witnessed the incident. I saw the two men come down into the berthing compartment; first the black sailor and then the white sailor who was chasing him.

7. The white sailor was much larger than the black one and I believed that the black man was in trouble and that the black man was going to be severely beaten. I was about ten feet behind the location where the incident took place. The compartments are very close together and there is little room to maneuver down there.

8. Just prior to the stabbing, the black seaman was down on the floor, on his knees, in front of his bunk. The white seaman was standing over the black sailor. The black sailor grabbed the white sailor around the knees and was basically hanging on to this knees. I saw that the black sailor had one of those GI issued knives that he had pulled from his locker and he brought it up from the back and stabbed the white sailor.

9. In my opinion, the black man was defending himself and I believe that had the black not had the knife, the killing might have gone the other way.

10. After the stabbing, I rushed up to get the Officer of the Deck. The incident drew a crowd of men down in the berthing compartment. The men had gathered around and the black sailor was down there defending himself. ...

12. Following the incident to which I was an eyewitness, I was not spoken to by the FBI, any attorneys, or other sources outside of the ship.

1996 Unsigned Statement Prepared for P.V.²¹

The following unsigned statements were prepared for the signature of P.V., a member of the Xxxxxxx's engineering crew in 194x, based on a telephone interview with the applicant's counsel:

²⁰ L.N.'s 194x statement to the F.B.I. appears in Appendix A on page A-8. A summary of a taped interview between the applicant's counsel and L.N. appears on page 34 of the Final Decision on Reconsideration.

²¹ P.V. did sign an affidavit prepared by a living member of M.E.M.'s law firm. Excerpts from that affidavit appear on page B-11, above. Excerpts from P.V.'s 194x statement appear in Appendix A on page A-12.

3. On the night of the incident, I was on watch with [L.S.], who was a boatswain's mate and was in charge of keeping order on the ship, much like a foreman.

4. At approximately midnight, a man came back from shore leave and he was inebriated. I could tell by the way he walked that he was drunk. The man went down into the foc'sle and was creating a disturbance. Some of the men were in their bunks at this time and so [L.S.], who was in his bunk as well, told the man to quiet down so as not to disturb the men who were sleeping.

5. I then saw the inebriated man stab [L.S.].

6. After the incident at Xxxxxx, I was taken off of the Xxxxxxx where I waited for the Xxxxx Xxxxxxx Company to send a freighter out of xxxx to take me to Xxxxxx as I was a witness to the incident.

7. When I arrived in Xxxxxx, I stayed in the Hotel xxxx and the Hotel xxxxxxx with the other witnesses. Our meals were paid for and we had to report to the hotel every day so that the authorities knew where we were. I stayed in Xxxxxx for over one month but I was never called to testify at any court proceeding such as a trial or a grand jury. To my knowledge, none of the other witnesses were called to testify. All of the proceedings were done in secret and none of the attorneys on either side bothered with the witnesses. We later received word by courier that the case had been settled out of court between the lawyers and that the murderer received a five year sentence.

8. I believe that the murderer was cut a break by the powers that be and that he did not receive the punishment that he deserved.

APPENDIX C

EXCERPTS OF STATEMENTS SUBMITTED BY THE COAST GUARD

In his advisory opinion to the BCMR, the Chief Counsel of the Coast Guard submitted affidavits signed by crewmembers in 1999. The following are excerpts from those affidavits.

1999 Statement of R.B.²²

... I directly observed the incident between [the applicant and L.S.]. ... I refused to sign the affidavit [the applicant's counsel] prepared for my signature because I felt it misrepresented by observations and opinions regarding the incident. ...

... I was resting in my bunk in after-berthing when I saw [the applicant] enter the compartment and approach his bunk. A little while later, I observed [L.S.] enter the compartment and approach [the applicant]. Both crewmembers started to throw punches at each other. I would estimate that [L.S.] hit [the applicant] with 4 to 5 punches before [the applicant] dropped down on one knee next to his footlocker. It was clear that [the applicant] had dropped to his knee to retrieve something from inside his footlocker. While [the applicant] was reaching inside his footlocker, [L.S.] continued to hit him a few more times. Almost immediately, [the applicant] pulled a knife from his footlocker and stood up and, with the knife in his right hand, he lunged over [L.S.'s] left shoulder and quickly stabbed him three times in the back. The entire altercation from the time [L.S. and the applicant] started fighting to the time [the applicant] stabbed [L.S.] lasted no more than 45 seconds. For this reason, I did not feel at any point that the fight was out of control or that I or any of my other shipmates needed to separate the two combatants for their own safety. The knifing of [L.S.] happened so quickly, no one could have taken action to prevent it. Additionally, at no point in the altercation between the two crewmembers did I observe [L.S.] choking [the applicant] with both of his hands around [the applicant's] neck.

I did not know either [the applicant or L.S.] very well. I do recall that [the applicant] had a reputation as a bad actor within the crew and it was known that he had previously cut someone with a knife and that we should stay away from him for that reason. As far as their fight went, I had observed other scraps aboard the Xxxxxxxxx during my extended tour of duty and did not feel that the [applicant-L.S.] altercation was any worse or better than any of those fights until the moment [the applicant] withdrew his knife and stabbed [L.S.].

As to race relations aboard the Xxxxxxxxx, I would state, without hesitation, that all crewmembers were treated equally and that there were no overt acts of racism that I could discern.

²² An unsigned statement prepared for R.B. by the applicant's counsel appears in Appendix B on page B-12. A summary of R.B.'s audiotaped telephone interview with the applicant's counsel appear on page 38 of the Final Decision on Reconsideration.

1999 Statement of Ensign R.R., the Officer of the Day²³

3. ... Other than the fact that [the applicant] was standing up and able to walk to the wardroom after the incident, I was unaware of any injuries [the applicant] may have sustained as a result of his fight with [L.S.]. After I entered the compartment, I did not observe any crewmember inflict harm on [the applicant] nor did any crewmember hit [the applicant] as he left the compartment to go to the wardroom.

4. As to matter immediately preceding and after the incident, [the applicant] never reported to me prior to the incident to address any concern he might have had regarding alleged threats to his physical safety made by other crewmembers while ashore on liberty. As the In Port OOD, I would have been the appropriate official to inform if a crewmember had such a concern. I was available to any crewmember during that period and, as a crewmember familiar with the ship's organization and routine, [the applicant] would have known to contact me, as the OOD, to resolve such a situation if it had occurred.

5. As to the deck gun incident that allegedly took place after [the applicant] was handed over to the custody of the U.S. Marshall in xxxxxx, xxxxx, I have absolutely no recollection of such an incident. ... I can unequivocally state that I would have been aware of the matter. An incident of that nature would have resulted in disciplinary action that would have been logged, which it was not.

1999 Statement of P.M.²⁴

... I was a Lieutenant assigned as the ship's Gunnery Officer ... and was very familiar with its crew...

... I was asleep in my stateroom I also later learned that the stabbing and the events leading up to the stabbing had taken place very quickly with no opportunity for any other crew members to intervene between the two individuals.

I was well acquainted with [L.S.] as he was a member of the deck force [L.S.] was a very good man who was very attached to his work and performed in a superior manner. I was not acquainted with [the applicant] as he worked in the engineering spaces After the incident and subsequent to the Board of Investigation, the Executive Officer ... stated that had he known about [the applicant's] past misconduct, he would have prohibited him from possessing a knife while assigned to the USS XXXXXXX.

Regarding the alleged deck gun incident that supposedly took place after [the applicant] was handed over to the custody of the U.S. Marshall in xxxxxx, xxxxx, I can state that that allegation is a pure fabrication. As the Gunnery Officer, I would have been intimately aware of any unauthorized attempt to use a deck-gun in the manner alleged. There is just no possibility that this incident occurred

²³ R.R.'s 194x statement to the F.B.I. appears in Appendix A on page A-14. The affidavit he signed in 1996 appears in Appendix B on page B-9.

²⁴ A summary of an audiotaped telephone interview between the P.M. and the applicant's counsel appears on page 36 of the Final Decision on Reconsideration.

As to race relations aboard the XXXXXXXX, I can state that there were no adverse incidents or occurrences that would lead me to believe that the Black crewmembers were being treated unfairly or with disregard for their rights. ... The Black crewmembers worked, ate, and slept alongside their white shipmates without problem or incident. I would refute any suggestion that the crew had it in for their Black shipmates.

APPENDIX D

EXCERPTS OF MEDICAL AND AUTOPSY REPORTS

The F.B.I. report states that L.S. was 5' 10" tall, 200 pounds, and "stout." His military personnel record indicates his race was white, but in fact he was Native American.²⁵ The applicant, an African American, was 5' 7" tall, 138 pounds, and "slim."

Report of the Ship's Doctor to the F.B.I. Concerning L.S.'s Wounds

[The ship's doctor] advised that he observed [L.S.] immediately following the stabbing on board the U.S.S. XXXXXXXX on 10-27-4x. He was lying supine, moderately cyanotic, with labored respiration, imperceptible radial pulse and in [unreadable] On turning him to a prone position and wiping the excess blood from his back, three widely separated, gaping wounds were seen. One of the three wounds was located over the right scapula, the second in the mid-posterior, left thorax, near its base, the third in the mid-posterior, right thorax, near its base. ...

[The ship's doctor] further advised that he and Dr. A.N., of xxxxxx, xxxxx, performed an autopsy on [L.S.]

Report of the Ship's Doctor to the F.B.I. Concerning the Applicant's Injuries

[The ship's doctor] furnished a copy of the medical history report which he prepared concerning [the applicant], beginning at 3:00 a.m., 10-27-4x. The report is as follows: ...
Diagnosis: (1) Alcoholic intoxication, moderate. (2) Contusions, left ankle, left hip, right lower leg, lumbar area, right lower arm. ...

Physical Examination: Patient stands with difficulty because of pain in the left ankle and hip. He is handcuffed.

Head and Scalp—Normal.

Ears, Eyes, Nose & Throat--Negative

Neck—Normal.

Thorax—Negative.

Upper extremities—There is a "brush burn" contusion on the medial surface of the mid right forearm. It is slightly tender. Upper extremities otherwise negative.

Back—There is tenderness in the paravertiberal muscles on both sides of the lumbar vertebrae. Flexion of the back is limited approximately 50% by apparent pain in this area. No other evidence of contusion found.

Abdomen—Negative. No evidence of contusions found.

Lower extremities—The patient limps, favoring the left leg. There is tenderness on palpation in the left hip about the greater trchanter of the femur. There is no visual evidence of contusion in this area. There is an area on mid-anterior of left ankle from which the superficial layers of skin were avulsed, measuring one and a half by one centimeter. This is a fresh contusion and the surrounding area is quite tender on palpation.

²⁵ Although L.S.'s enlistment papers indicate that he was white, fellow crewmembers apparently knew him to be Native American. The Coast Guard recently contacted a relative of L.S., who stated that L.S. was a member of the Xxxx Indian Nation.

There are two recently contused areas on the upper anterior right lower leg, showing "brush burns" one to one-and-a-half centimeters in diameter, which are non-painful. There is an additional brush burn over the left patella.

Report of the Autopsy by Dr. A.N., Coroner

REPORT OF AUTOPSY OF [L.S.] (xxx-xxx) SEAMAN, FIRST CLASS, U.S. COAST GUARD RESERVE

1. General Examination: The body was that of a young white adult male, well developed and well nourished, height 5' 10", weight 200 pounds. ...

Thorax—Inspection of the anterior thoracic was negative. On the posterior thorax were three wounds. The first was a transverse wound over the spine of right scapula. It measured two inches in depth, two and a half inches in width and did not extend through the scapula. ... The second wound was three and one-fourth inches to the left of the spine of the sixth thoracic vertebra. It penetrated the thoracic cavity between the eighth and ninth ribs, admitting an examining finger to the thoracic cavity. ... The wound measured one and one half inches in width. The third wound was located three inches to the right of the fifth thoracic vertebral spine. It measured two inches in width. The examining finger entered the thoracic cavity between the seventh and eighth ribs.

5. Course of weapon inflicting the wounds found by autopsy.

The [first wound] was caused by a blow delivered approximately at right angles to the surface. Degree of angulation was difficult to determine in this wound.

The [second wound] was caused by an instrument ... passing downward at an angle of approximately 25 degrees, anteriorly at an angle of approximately 45 degrees, and radially at an angle of approximately 20 degrees.

The [third wound] was caused by an instrument which entered between the seventh and eighth ribs in mid posterior thorax and passed downward at an angle of approximately 45 degrees and anteriorly at an angle of 45 degrees. There was no apparent medial or lateral deviation in its course.

Applicant's Medical Records

The applicant submitted many medical records indicating that he has suffered from xxxx, xxxxxx, and deafness and that he underwent a spinal fusion.

1999 Medical Opinion on Applicant's Physical Examination by the Ship's Doctor

The Coast Guard submitted a doctor's analysis of the report of the ship's doctor to the F.B.I. concerning the applicant's physical condition after the incident. The doctor is the Chief of the Office of Health Services at Coast Guard Headquarters. He previously served as the consulting physician to the Albemarle County jail in Virginia and stated that he is therefore "familiar with the aftermath of physical assaults and their attendant injuries." The doctor made the following analysis:

3. [The description in the report] is consistent with a history of assault. No bruising of the neck is documented. This could be from the fact that no injury to the neck occurred, or that in individuals with dark skin coloration such as bruises caused by gripping or choking are very difficult to see. However, that conclusion is contradicted by the lack of any swelling or documented skin injury in the neck area.

4. The "brush burns" mentioned above are more consistent with a friction/scraping injury than a strike injury.

5. In summary, there is no objective evidence from the report of [the applicant's] injuries that lead me to believe that his life was in jeopardy or that he had suffered a near fatal choking just three hours prior to this examination on 27 October 194x.