

Friday, 6 December 1946

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INTERNATIONAL MILITARY TRIBUNAL
FOR THE FAR EAST
Chambers of the Tribunal
War Ministry Building
Tokyo, Japan

PROCEEDINGS IN CHAMBERS

On

Paper No. 583 - Application of the
Prosecution under Rule 6 (b) (1) pertaining
to the International Prosecution Section
Document Nos. 552, 2749, 2850, 2777, 2776,
2718, 426, 2707, 428, 415, 425.

Paper No. 584 - Application of the
Prosecution under Rule 6 (b) (1) pertaining
to the International Prosecution Section
Document Nos. 2790, 2791, 2793 to 2804, 2806 to
2818, 2820 to 2841, 2843 to 2859, 2864, 2865,
2869.

Before:

HON. SIR WILLIAM WEBB
President of the Tribunal and
Member from the Commonwealth
of Australia.

Reported by:

Sam Goldberg
Court Reporter, IMTFE

Appearances:

FOR THE PROSECUTION SECTION:

MR. PEDRO LOPEZ, Associate Counsel,
acting on behalf of the Common-
wealth of the Philippines.

MR. SOLIS HORWITZ

MR. FRANK S. TAVENNER, Jr.

FOR THE DEFENSE SECTION:

MR. WILLIAM LOGAN, Jr., Counsel for the
Accused KIDO, Koichi

MR. OWEN CUNNINGHAM, Counsel for the
Accused OSHIMA, Hiroshi

MR. MICHAEL LEVIN, Counsel for the
Accused SUZUKI, Teiichi

FOR THE OFFICE OF THE GENERAL SECRETARY,
IMTFE

MR. CHARLES A. MANTZ, Clerk of the Court

MR. H. W. DELANEY, Deputy Clerk of the Court

The proceeding was begun at 0900.

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THE PRESIDENT: This is Paper No. 583.

It is an application by the prosecution under Rule 6 (b) (1) in respect of documents Nos. 552, 2749, 2850, 2777, 2776, 2718, 426, 2707, 428, 415, 425. What is the position?

MR. LOGAN: These are all atrocity documents, your Honor. No additional excerpts are requested.

THE PRESIDENT: Who appears for the prosecution?

MR. HORWITZ: Major Lopez.

THE PRESIDENT: Major Lopez. The order will be as prayed.

The next application is Paper No. 584, a similar application by the prosecution in respect of documents Nos. 2790, 2791, 2793 to 2804, 2806 to 2818, 2820 to 2841, 2843 to 2859, 2864, 2865, 2869. Who appears?

MR. HORWITZ: Major Lopez for the prosecution.

THE PRESIDENT: Major Lopez. What does the defense say?

MR. LOGAN: If the Tribunal please, I assume that these documents are the ones which were

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MR. HORWITZ: Major Lopez for the prosecution.

THE PRESIDENT: Major Lopez. What does the defense say?

MR. LOGAN: If the Tribunal please, I assume that these documents are the ones which were

mentioned in a recent motion by the prosecution for leave to file a synopsis of excerpts. We have not seen the synopses, nor have we seen the proposed affidavits or excerpts that the prosecution intends to use from these documents; and this application apparently is for leave to have all of these documents returned from the Clerk's Office to the Prosecution Section.

I would suggest that they remain in the Clerk's Office until we are served with the synopses, affidavits, and excerpts so that we can examine these documents which are filed in the Clerk's Office.

THE PRESIDENT: Well, I make the order as prayed subject to that condition, and it may be that on further representation of the defense, I will direct that further material be processed.

MR. LOGAN: That is right.

THE PRESIDENT: That will enable the defense and prosecution to get ahead.

MR. LEVIN: I was going to suggest that should apply also to the previous order on 583. There might be something there.

MR. HORWITZ: Mr. President, let me clear something up here. We could let this go, but there

is going to be a -- there is a misapprehension. These are not the documents on which Mr. Justice Mansfield filed his application.

THE PRESIDENT: I realize that.

MR. HORWITZ: These are reports made by investigators. That is the purpose. These have been on file -- these reports -- ever since last Friday a week ago with the Clerk's Office.

MR. LOGAN: Well, then I have misunderstood it, Mr. Horwitz. No motion has been made with respect to these documents, then, to serve excerpts?

MR. HORWITZ: No. This motion, if you read this motion, is this. If you will notice, these are reports. Here is one there in which they went out and took affidavits and then wrote up a report; and filed the report with the affidavits in the back. Now there are three hundred and seventy-one of these reports.

MR. LOPEZ: Three hundred and seventeen.

MR. HORWITZ: Three hundred and seventeen, my error, with some 14,750 pages. Now in this particular phase we only intend to use the summaries prepared by these investigators who have nothing to do with us. These were Judge Advocate investigators who were sent out to make these surveys; and these

are the bases on which Colonel Carpenter's Section in turn went out and drew up its cases. But, these were the reports of investigators of the Judge Advocate General's Department of the United States Army.

You see it differs in this case from Judge Mansfield's petition in that Judge Mansfield has to draw up his own synopses. We, in this particular phase, we do not have to draw up any synopses because the evidence has already been summarized and reported on as an investigator's report by people other than the prosecution. It is those reports that we are proposing to use.

Now this petition asks two things: it asks, one, that the report be allowed to use the summary from the report; and, second, for the return of the documents. There are two things asked for.

THE PRESIDENT: I am only concerned that the defense should have enough time to peruse the summary before the documents are returned.

MR. HORWITZ: That is fine.

THE PRESIDENT: So that they may ask for further material to be processed if they find it necessary.

MR. LOGAN: If your Honor please, I see no

application, no words in this application, rather, which asks that they be permitted to use the summary. This merely asks for an exemption from the provisions of 6 (b) (1) of the rules.

MR. HORWITZ: No.

MR. LOGAN: Now what that means, I don't know, because they have not set forth in their application that they want to use a summary rather than the documents themselves.

THE PRESIDENT: If you are stating the fact, it may be the rule has no application.

MR. HORWITZ: Well, as I state the facts, it says here "the particular summaries of evidence intended to be introduced as evidence are those contained in the following reports". Then the prayer says: "It is respectfully prayed that the International Military Tribunal for the Far East issue an order of exemption from the provisions of 6 (b) (1)..." Now what is 6 (b) (1)? In the absence of an order exempting us, we would have to produce this whole report as it stands. We are asking to reproduce that first part of the report, the summary of evidence. We do not wish to reproduce the thousands of affidavits in this particular case which are appended to these reports.

MR. LOGAN: That is different than what is requested in your application, Mr. Horwitz. We have had no opportunity, or, at least, they have been filed there but we have not seen anything by the prosecution of what they intend to use. Nothing has been served on us.

THE PRESIDENT: Well, how can you peruse fourteen thousand affidavits in anything like a week?

MR. LEVIN: 14,471 pages.

THE PRESIDENT: Still you must get an opportunity to see that the summaries are according to the affidavits.

MR. HORWITZ: We are perfectly willing to give them the opportunity of having them available. May we also suggest, even if these are returned to the Legal Section, ample opportunity will be given to see they may be used.

MR. CUNNINGHAM: We can't get down to the Legal Section. We don't even have enough transportation to get to the hotel.

THE PRESIDENT: They had better remain here. The order is made as prayed subject to the condition that the affidavits and summaries be made available to the defense.

(Whereupon, at 0912, the proceeding was concluded.)

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