

PROCEEDINGS IN CHAMBERS

13 AUGUST 1947

on

- Paper 1073 - Request for Directions on Behalf of the Accused HOSHINO, OSHIMA, KAYA and SUZUKI;
- Paper 1094 - Formal Request for an Order withdrawing a Summons for the production of Eugen OTT as a witness on behalf of OSHIMA and SHIRATORI.
- Paper 1101 -- Application on behalf of the defense for leave to withdraw book entitled, "Sharing our Fate," defense exhibit No. 2589.

002091

DAVID NELSON SUTTON

Wednesday, 13 August 1947

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

PROCEEDING IN CHAMBERS

On

- Paper 1073 - Request for Directions on
Behalf of the accused HOSHINO,
OSHIMA, KAYA and SUZUKI;
- Paper 1094 - Formal Request for an order
withdrawing a Summons for the
production of Eugen Ott as a
witness on behalf of OSHIMA
and SHIRATORI.
- Paper 1101 - Application on behalf of the
defense for leave to withdraw
book entitled, "Sharing our Fate,"
defense exhibit No. 2589.

Before:

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

Reported by

Lorraine Yelden
Court Reporter, IMTFE

Appearances:

For the Defense Section:

Mr. Michael Levin, Counsel for the
Accused SUZUKI and the accused KAYA;

Mr. Charles B. Caudle, Counsel for the
Accused SHIRATORI;

Mr. George C. Williams, Counsel for the
Accused HOSHINO;

Mr. George F. Blewett, Acting Counsel for
the Accused OSHIMA;

Mr. Alfred W. Brooks, Counsel for the
Accused KOISO;

Mr. USHIBA, Nobukiko, Counsel for the
Accused OSHIMA;

Mr. SOMIYA, Shinji, Counsel for the
Accused OKA.

For the Prosecution Section:

Mr. David Sutton

For the Secretariat:

Judge Edward H. Dell, Legal Adviser
Mr. Paul Lynch, Clerk of the Court.

The proceeding was begun at 1300.

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THE PRESIDENT: This is corrected paper No. 1073, request for directions on behalf of the accused HOSHINO, OSHIMA, KAYA and SUZUKI. The direction requested by Mr. Levin on behalf of those accused is as to whether or not it is necessary for them to offer evidence in relation to Counts 53-55, inclusive; that is, the atrocity counts.

Yes, Mr. Levin.

MR. LEVIN: We feel that we would like to present that for the reasons stated in the application which constitutes our argument. There are four accused who are involved and we believe that it would save considerable time if we could get a direction from the Court in respect to these particular counts.

THE PRESIDENT: To what extent would it save time, Mr. Levin?

MR. LEVIN: It would save time as each witness, each accused, would have to make some statements in relation to those counts, probably give some detail as to his conduct.

THE PRESIDENT: We have dealt with the motions for dismissal. It would be unusual for the Court at this stage of the trial to grant an application of this

kind or even to receive one. Having entered upon the evidence for the defense and proceeded thus far, it may be that we should deal with this matter in the final judgment and not before; however, Mr. Levin, I will bring this under the notice of the other Judges.

MR. LEVIN: I might say, Mr. President, that the reason I am bringing it up at this time is that, particularly, because we are now coming to the end of the phases and the individuals are to present their evidence; therefore, I thought it was a propitious time to present it. I do believe that a dealing by the Tribunal with the motions should not preclude us from presenting this matter to the Tribunal.

THE PRESIDENT: I have no doubt the Tribunal will be prepared to take even an exceptional step if as a result much time will be saved, but I am not clear that there would be a saving of any substantial time if the application were successfully made but much time may be spent on hearing the application only to refuse it.

MR. LEVIN: I might say, Mr. President, the application in its present form would take at most ten minutes to present and I understand from Mr. Tavenner they have a very short reply which probably would not take over a few minutes to present in an argument.

I discussed this matter very fully with Mr. Williams and Mr. Cunningham before he left and they thought the matter should be presented and therefore we desire to do so.

THE PRESIDENT: I shall refer the matter to the Judges, Mr. Levin, and let you know the result.

MR. CAUDLE: May I say a word, please?

It is my understanding -- I have discussed the matter with Mr. Levin--

THE PRESIDENT: For whom do you appear in this, Mr. Caudle?

MR. CAUDLE: I appear for SHIRATORI.

MR. LEVIN: He has been withdrawn. We found there was some mistake. He is not mentioned in the atrocities.

THE PRESIDENT: It would be irregular for me to hear you in a proceeding.

MR. CAUDLE: Yes, I withdraw my statements.

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THE PRESIDENT: Now the next paper, No. 1094, formal request for an order withdrawing a summons for the production of Eugen Ott as a witness on behalf of the accused OSHIMA, Hiroshi and the accused SHIRATORI, Toshi.

Who appears on this application?

MR. CAUDLE: I appear on behalf of SHIRATORI and Mr. USHIBA, on behalf of OSHIMA.

MR. BLEWETT: I agreed with Mr. Cunningham that I would look after some of his affairs and Mr. USHIBA asked me if I would come to this consultation, your Honor, in behalf of OSHIMA.

THE PRESIDENT: The ground of this application is that the summons has not been served on him, the summons directed to be issued by me on the 23d of December, 1946. Why it was not issued or the fact that it was not issued was not known to me -- not served was not known to me. The application sets out that OSHIMA is desirous of interrogating Ott by mail rather than to have him produced in person. You want the summons withdrawn; you think you can get what you need by interrogation outside the Court.

MR. CAUDLE: If it please the Court, back in April or May I discussed this matter with you, sir, in Chambers preparatory to making a trip to Peiping, China to interrogate General Ott. After discussing it with you, sir, if you will recollect, Mr. Tavenner and I entered into a stipulation as to what circumstances and conditions would control the interrogation of Ott on behalf of SHIRATORI at such time as it was to be used.

I went there and in so doing carried with me a number of questions for Mr. Cunningham to be submitted to General Ott for his answers and left them with General Ott at the time. I completed my interrogation and, pursuant to the stipulation entered into with Mr. Tavenner, before use of it, immediately upon return from Peiping, I filed with the Clerk a duplicate original -- I mean I filed the original with the Clerk of the Court of the interrogation and with Mr. Tavenner a duplicate original of the same.

With respect to the 150 questions or thereabouts that were left with General Ott on behalf of Mr. Cunningham only this morning I received through the mail from the Consulate, American Consulate in Peiping, this interrogation on behalf of Mr. OSHIMA which was conducted by the counsel of the Consulate, which is now in the hands of Mr. OSHIMA's attorneys. It came only this morning and it appears to have been mailed somewhere around July 22.

THE PRESIDENT: You still want the summons withdrawn?

MR. CAUDLE: Yes, sir.

THE PRESIDENT: Both accused do?

MR. CAUDLE: Yes, sir.

THE PRESIDENT: The application is granted.

THE PRESIDENT: The next paper is 1101, an application on behalf of the defense to withdraw the book, "Sharing our Fate," being exhibit No. 2589 for identification. There is nothing to say whether the prosecution are interested in this application.

(At this point Mr. SOMIYA, Shinji, Japanese defense counsel, and Mr. David Sutton of the prosecution section entered.)

THE PRESIDENT: Take a seat, Mr. SOMIYA. You are appearing for the applicant? Have you consulted the prosecution about this?

MR. SOMIYA: No, not yet.

THE PRESIDENT: I would like to know whether they object. They may object on some grounds or other; I do not see why they should.

MR. SUTTON: May it please your Honor, I just received a telephone call that there was a meeting being held in Chambers. Prosecution had not received any notice of this meeting. Mr. Tavenner and Mr. Horwitz have not returned from lunch. I came down to explain to your Honor we have not received any notice and I do not know what matters are to be brought up here.

THE PRESIDENT: I have directed that you should be notified.

MR. SUTTON: Yes, the Clerk just told me that she failed to understand that she was to notify the prosecution so we would ask that any matters as to which there could be controversy be held in abeyance until we could see what they are.

THE PRESIDENT: This is the only matter about which there could be any controversy, the withdrawal of an exhibit tendered for identification, "Sharing our Fate." There is hardly likely to be any objection.

Is there any objection?

MR. SUTTON: I would ask that the Court allow us until tomorrow morning if we care to file any objection. I do not know that there will be any.

THE PRESIDENT: I make the order but direct that it be held in the office pending notification from the prosecution as to whether they agree or not. If they agree the order is to issue; otherwise it is to be referred back to me.

That is the whole of the business.

(Whereupon, at 1315, the proceeding was concluded.)

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