

Tribunal Order # 2.

Wednesday, 8 May, 1946

- - -

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

PROCEEDINGS IN CHAMBERS

On The Application Submitted
On Behalf of the Accused MATSUOKA, Yosuke.

- - -

Before:

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

Appearances:

For the Defense Section, Beverly M. Coleman,
Captain, USNR, Chief of Counsel and
KOBAYASHI, Shunzo, counsel for the
accused MATSUOKA, Yosuke.

For the Prosecution Section, Mr. Joseph B.
Keenan, Chief of Counsel, acting on
behalf of the United States of America
By: Mr. Frank Tavenner, Jr.,
Associate Prosecutor.

The proceedings were begun at 1047.

(HASEGAWA, Shinichi, having been duly sworn by the President of the Tribunal, acted as interpreter.)

MR. KOBAYASHI: We have already asked the Court the request into the physical condition of the defendant MATSUOKA, and that is why I came here to consult with you. The said accused, Yosuke MATSUOKA, for many years past has been seriously ill and suffering with tuberculosis and, for a long time prior to his detention and confinement at Sugamo Prison, was confined to his house under the care of duly licensed physicians. So, for that reason, I want to have Mr. MATSUOKA looked at by a doctor and hereafter, if possible, be absent from the court.

THE PRESIDENT: You say that Mr. MATSUOKA is too sick to stand trial. However, you have no medical evidence to support the application.

MR. KOBAYASHI: Mr. MATSUOKA is too sick to be present at the court, and I have certificate of Japanese doctors on MATSUOKA'S case.

THE PRESIDENT: I have no doctor's evidence before me today. For whom do you appear?

MR. TAVENNER: I am appearing for IPS.

THE PRESIDENT: You appear for the prosecution?

MR. TAVENNER: Yes, sir.

THE PRESIDENT: Could you give us any assistance?

MR. TAVENNER: Only to this extent, your Honor.

THE PRESIDENT: Take your seat.

MR. TAVENNER: I happen to know, through associates that have interrogated this man, that some weeks ago he was not in what we would term "good health". That is as far as my information goes.

THE PRESIDENT: Yes?

MR. TAVENNER: I do not --

THE PRESIDENT: You are not admitting that he is not fit to stand his trial?

MR. TAVENNER: No, sir.

THE PRESIDENT: Not at this stage at all. It would seem desirable to have him medically examined by two doctors, one representing the defense and the other the prosecution .

MR. TAVENNER: I think so.

THE PRESIDENT: If they agree, certain steps may have to be taken. If they differ, it would be necessary for the Court to, perhaps, nominate a third

doctor.

(Addressing MR. KOBAYASHI): Did you hear what I said?

MR. KOBAYASHI: Yes, sir.

THE PRESIDENT: Is he suffering only from tuberculosis, or is he suffering from any other disease besides?

MR. KOBAYASHI: Yes. MATSUOKA has been sick for long years with various diseases -- more than tuberculosis.

THE PRESIDENT: Well, I should be assured that the doctors appointed will be experts in that particular disease.

(Addressing the interpreter) Tell MR. KOBAYASHI that the doctor appointed by defense must be an expert in the particular disease.

MR. KOBAYASHI: In the certificate which was presented to the Sugama custody, the name of the disease was tuberculosis and other names.

THE PRESIDENT: Yes. Well, the person appointed by the defense to medically examine the accused MATSUOKA must be a leading practitioner. That is clear.

(Addressing the interpreter): Will you tell that to MR. KOBAYASHI?

MR. KOBAYASHI: Yes.

THE PRESIDENT: And the expert to be appointed by the prosecution must also be a leading man in his particular line or an expert practitioner. He will very likely be an Army man.

Well, I will make an order that the accused MATSUOKA will be examined by two medical practitioners, one to be appointed by the defense and the other by the prosecution, and that the reports of those medical practitioners be made to the Court. That will be the order for the time being. It may be necessary to make a further order later.

Can you suggest any further step in the matter, Mr. Tavenner?

MR. TAVENNER: Your Honor, we are in the position of not knowing the nature of the other disease as referred to. That would almost be prerequisite to our suggestion of a person to perform that service.

THE PRESIDENT: Yes. Tuberculosis is the only thing alleged here, as far as I can see, and we must be sure that the doctor who examines him understands that disease. That will be the order for the day.

That is all I can do today, unless you suggest something else.

MR. TAVENNER: There is one other suggestion I would like to make. That is, the adopted procedure seems to be that the Tribunal, or someone acting for the Tribunal, requests the Surgeon General's office to cooperate with the 361st Hospital in having the examination made and must be informed, of course, of the nature of the examination. I believe that is the procedure.

THE PRESIDENT: That was done in the case the other day.

MR. TAVENNER: That was followed the other day.

THE PRESIDENT: I did not give those directions. But, apparently, they are satisfactory. Nothing has been done so far except that OKAWA has entered a hospital -- I do not know which hospital -- for examination by the two psychiatrists.

MR. TAVENNER: I thought that the suggestion, coming from the Tribunal, would obtain very prompt action for us.

THE PRESIDENT: Yes. That is the best way to go about it, as far as we know. We are wholly in

the hands of the Army, of course, in those matters.

MR. TAVENNER: Yes; and I have here the name of the Executive Officer in the Surgeon General's office who should probably be called about the matter.

THE PRESIDENT: Yes. Have you any doctor in mind to conduct the examination?

MR. TAVENNER: No, sir. I think the doctor would have to be designated by the Surgeon General's office under his direction.

THE PRESIDENT: Yes, I see.

MR. TAVENNER: And it would be the Executive Officer whose name is Colonel Currey. His telephone number is 23305. If he would be asked to coordinate with Hospital 361, that would seem to fill the bill.

THE PRESIDENT: I see.

MR. TAVENNER: And then, possibly there is one other matter I would like to suggest, and that would be that the Provost Marshal be directed by the Tribunal to deliver this man to Hospital 361. I think it would probably require those two things: the direction of the Provost Marshal --

THE PRESIDENT: Yes.

MR. TAVENNER: (continuing) and the calling of Colonel Currey at the instance of the Tribunal. In any way that our office could be of assistance, of

course, we will be glad to do so.

THE PRESIDENT: I take it that the Provost Marshal is in charge of the accused --

MR. TAVENNER: Yes, sir.

THE PRESIDENT: (continuing) and that if I direct him to deliver him into custody to that particular hospital, that would be sufficient?

MR. TAVENNER: Yes, sir.

THE PRESIDENT: Well, I give that direction. It would be necessary for him to go to a hospital; you are sure of that, Mr. Tavenner?

MR. TAVENNER: Yes, sir.

THE PRESIDENT: I was assuming, of course, it might be done in the jail.

MR. TAVENNER: I imagine, in view of the contention that is made, it will require some observation tests of a laboratory character as well as other examinations --

THE PRESIDENT: Yes.

MR. TAVENNER: (continuing) which could not well be done at Sugamo.

THE PRESIDENT: I direct the Provost Marshal to deliver him into custody of the hospital you named, to be kept in custody there pending the completion of the examination and then returned to

Sugamo Prison.

MR. TAVENNER: Yes.

THE PRESIDENT: That is all, thank you.

I might tell you, Mr. Tavenner, whenever an application is made to you for any order or any other direction, it might ordinarily be an application that could be dealt with ex parte. I propose to let the prosecution section know. Also, if an application is made by the prosecution, I propose to give notice to the particular accused or his counsel. So, in the future, all these matters will be dealt with in the presence of both parties.

MR. TAVENNER: May I ask one further question in regard to that? In making a motion, shall we give a copy of the motion, we propose to make, to counsel for the defendant concerned?

THE PRESIDENT: I have already given instructions to Colonel Walbridge, the General Secretary, that when he receives a notice of motion or any request or other applications, to immediately send a copy to Mr. Keenan, Chief of Counsel.

MR. TAVENNER: Yes, sir.

(Whereupon, at 1102 the proceedings were concluded.)

- - - - -