

PROCEEDINGS IN CHAMBERS

12 January 1948

Request of the accused KIDO
for the return of a document; and

Application on behalf of the
Prosecution under Rule b (b) (1) pertaining
to IPS Documents.

002088

DAVID NELSON SUTTON

12 January 1948

Monday, 12 January 1948

- - -

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

PROCEEDINGS IN CHAMBERS

On

Request of the accused KIDO for
the return of a document;

and

Application on behalf of the prosecution under Rule 6 (b) (1) pertaining to the International Prosecution Section Document Nos. 3150, 3008, 3030-B, 3030-C, 3333, 3146-A, 3196-A, 3048, 3091, 3098, 3332, 3150-39-A, 3350, 3104 (2), 3217-A, 3217-B, and 3030-Q; 3354, 3030-K, 3055.

Before:

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

Reported by:

Elvira M. Whalen
Court Reporter
IMTFE

Appearances:

For the Prosecution:

Mr. F. S. Tavenner, Jr.
Mr. A. M. Comyns Carr
Mr. S. N. Crowe
Mr. A. A. Sandusky
Capt. J. J. Robinson, USNR
Cmdr. C. T. Cole, USNR
Col. Smirnov

For the Defense:

Mr. George F. Blewett
Mr. William Logan, Jr.
Mr. Owen Cunningham
Mr. Michael Levin
Mr. B. B. Blakeney

For the Secretariat:

Mr. Paul Lynch, Clerk of the Court

The proceeding was begun at 1615.

- - -

THE PRESIDENT: What is the application?

MR. TAVENNER: It is all under rule 6 (b).

CLERK OF THE COURT: Except the first one there is a request by Mr. Logan, who represents KIDO, for the return of the diary, the original diary.

THE PRESIDENT: This is a request of the accused KIDO for the return of a document, the document being his diary, exhibit No. -- it doesn't appear. However, I don't expect you to tell me the exhibit number.

Is there any objection to the return of that document?

MR. TAVENNER: Your Honor, there possibly are several excerpts that may be used during the course of the rebuttal. If we could wait a few days we could determine whether there could be any question about retaining it.

THE PRESIDENT: Mr. Logan, as counsel for the accused KIDO, what have you to say?

MR. LOGAN: Of course, the prosecution has a complete photostatic copy of it and so has the defense. So if anybody wants any other excerpts, or to check, we have it available and you have it available.

THE PRESIDENT: Yes, that is mentioned in the application.

Well, it is returned on condition that it shall be produced again if so directed by the Tribunal.

The next application is in behalf of the prosecution under rule 6 (b) (1) and pertains to the document No. 3150.

MR. COMYNS CARR: Which, your Honor, is the HARADA records, memoirs or diary, as they are variously described.

THE PRESIDENT: I should say it is prosecution's document No. 3150.

MR. COMYNS CARR: Yes.

THE PRESIDENT: What is the nature of the application?

MR. COMYNS CARR: This 6 (b) rule has been so often disregarded by the defense, with our tacit acquiescence, and even recently they put in an extract from this very diary without applying the 6 (b) (1) rule. But we don't expect to meet any opposition from them to this application, but we thought that as a matter of precaution we ought to make an application.

THE PRESIDENT: Do you propose to serve in English and Japanese only the parts you intend to use, Mr. Carr?

MR. COMYNS CARR: Yes. As your Honor knows, the whole has been, ever since last August, available for their inspection.

THE PRESIDENT: What have the defense to say? Is there any objection?

On the application of the defense, the Court may of course order further excerpts to be served in English and Japanese. Subject to that I suppose the order will be as prayed.

The third application is also by the prosecution under the same rule in relation to the same document.

MR. COMYNS CARR: Yes, some supplementary items which were omitted.

THE PRESIDENT: Is it necessary to deal with that?

MR. COMYNS CARR: Only in the same way.

THE PRESIDENT: Well, same order.

The next application is also on behalf of the prosecution under the same rule in respect of prosecution's documents Nos. 3008, 3030-B, 3030-C, 3333, 3146-A and 3196-A. This is a similar application I suppose. It appears to be.

MR. TAVENNER: Yes.

THE PRESIDENT: The same order will be made

and the same terms.

The next is also an application by the prosecution under the same rule and pertaining to documents 3048, 3091, 3098 and 3332. It is a similar application. The order will be the same.

The next is an application by the prosecution under the same rule in respect of document 3150. A similar application, and the same order.

There is a further application by the prosecution under the same rule in relation to documents 3150-39A and 3350.

MR. TAVENNER: The same.

THE PRESIDENT: A similar application, and the same order.

There is a further application by the prosecution under the same rule in respect of prosecution's documents Nos. 3104 (2), 3217-A, 3217-B and 3030-Q. Similar application, and the same order.

There is a further application by the prosecution under the same rule in respect of prosecution's documents Nos. 3354, 3030-K and 3055. A similar application and the same order.

Is that the whole of the business?

MR. CUNNINGHAM: Can we have a minute to discuss that?

THE PRESIDENT: Mr. Cunningham.

MR. CUNNINGHAM: Because it has just come up now. But there ought to be some reservations or arrangements made that the defense have the right at the same time, or a later time, to introduce such additional parts of these documents as the defense wishes to use in order to have it a fair application of the rule. And we don't want to take a chance on surrebuttal, so we ought to have the right to introduce it at the same time the prosecution introduces their excerpts and be safe.

THE PRESIDENT: Any concessions extended to the prosecution will also be extended to the defense.

MR. LOGAN: I might say, Sir William, I didn't know those motions were on. I didn't know about them until I just came in now. But I haven't had any opportunity to check just what those excerpts are. There may be sentences taken out of whole paragraphs that would distort the meaning, I don't know.

MR. LEVIN: The excerpts haven't been served on us as yet, so we don't know what they are.

THE PRESIDENT: If so you can make an application to me for additional matter.

MR. LOGAN: All right.

THE PRESIDENT: We will treat both sides

alike if the circumstances are similar. That is all I can say with regard to possible surrebuttal evidence.

MR. CUNNINGHAM: I don't depend too much on that.

THE PRESIDENT: Well, the proceedings are closed.

- - -

(Whereupon, at 1630, the proceeding was concluded.)

- - -