

Nov 21, 1946

Proceedings in Chamber

Thursday, 21 November 1946

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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 No. 564: - An Application of the prosecution for leave to present the evidence in chief of Major K. A. deWeerd, a witness on behalf of the prosecution, in the form of a prepared statement instead of by oral examination.

Before:

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

Reported by:

JACK GREENBERG
Chief Court Reporter
IMTFE

Appearances:

FOR THE PROSECUTION SECTION:

MR. JUSTICE W. G. F. BORGERHOFF,
Associate Counsel, acting on
behalf of the Kingdom of the
Netherlands;

MR. EUGENE WILLIAMS,

MR. A. T. LAVERGE,

MR. G. OSMOND HYDE.

FOR THE DEFENSE SECTION:

MR. WILLIAM LOGAN, JR, Counsel for
the accused KIDO, Koichi

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

FOR THE OFFICE OF THE GENERAL SECRETARY, IMTFC:

MR. CHAS. 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: Application on behalf of the Dutch section of the prosecution.

Mr. Logan.

MR. LOGAN: Yes, your Honor. We received it yesterday, and I have examined it; and we wish to enter our objection because, in the first place, no reason has been submitted by the prosecution why this witness should testify by statement rather than by question and answer. The statement itself is a carefully prepared historical summary covering a period from August 1942 to September 1945, and we believe the defense is prejudiced by presentation of a careful statement such as this rather than have the witness take the stand and be asked questions.

This statement differs from some of the others where the Court has permitted the witness to testify by statement because it is not an expert opinion, it is not technical; and to permit this examination to proceed in this manner would be contrary to the spirit of a fair trial. Furthermore, the statement contains many conclusions and opinions of the witness.

THE PRESIDENT: Oh, you have seen the state-

ment?

MR. LOGAN: Yes.

THE PRESIDENT: Is it lengthy?

MR. LOGAN: It is 129 pages. It is a mass of details; so much so, that I think it would just clutter up the record.

MR. WILLIAMS: Of course, it will take from five to ten times longer to give it by question and answer.

THE PRESIDENT: This is a compendious way of putting the Dutch evidence?

MR. WILLIAMS: Yes.

MR. LOGAN: It is merely a summary of an investigator; that's all it amounts to.

THE PRESIDENT: Well, put it this way, Mr. Logan: Suppose they did not come along with any witness or affidavit but simply tendered a report by an investigator. We would be bound to admit it under the Charter, and your only remedy then would be to ask us to call the investigator for cross-examination.

MR. LOGAN: We contend, your Honor, that is contrary to the spirit of a fair trial because, if that method were adopted, all the prosecution would have to do in proving its entire case would be to

prepare a brief or a summary of the evidence they expect to prove or hope to prove or think they are proving by virtue of the investigator's report and just submit it to the Court.

THE PRESIDENT: Well, now, take this case: There is such a mass of detail here that one could not hope to be instructed on every point about it. I mean, how could you? You see, this evidence, really, is of crimes, if we may call them such, not actually committed by the accused themselves but which were done by others for whom it is claimed to hold them responsible. Of course, they may be held responsible, and in some aspects it is very necessary for them to have the fullest opportunity to question every detail of it. But, looking at it in a practical way, how would it be possible for them within a period of months or even years to investigate everything and bring witnesses along to deny what was said there?

MR. LOGAN: We believe, your Honor, if the witness took the stand, much of this matter would not be permitted by the Court.

THE PRESIDENT: Well, as a matter of fact, --

MR. LOGAN: It would not be within the issues of the case.

THE PRESIDENT: Well, we would have to be trusted to look after that for you, Mr. Logan. After all, what we want are statements of fact and not of opinion. It may be the subject matter is such that opinion is called for; I doubt it. Only in those cases would we pay the faintest attention to any opinion. But I do not suppose there will be any such cases in this dossier.

MR. LOGAN: The detailed matter that this statement goes into, it is out of all proportions.

THE PRESIDENT: It seems lengthy, 129 pages.

MR. LOGAN: Oh, yes. It goes into great detail: various religious organizations, and the Courts, schools, administration under the Japanese; and some of the details there are just amazing. I think the Court itself will lose sight of the forest because of all the trees that have grown there.

THE PRESIDENT: We won't be able to see the woods for the trees.

MR. LOGAN: That's right.

MR. WILLIAMS: Of course, this suggestion may be made, Sir William: The Netherlands Indies comprises approximately thirty per cent of the population that were taken over by the Japanese. They represent a rich and important part of East Asia.

By means of this statement and a careful selection of documents they are comprising -- they are compressing their case into a period of about a week. If we put that witness on and other witnesses to testify to these facts, we could extend the thing over a month or five or six weeks. We believe that it is in the interest of time to put on this kind of testimony in that way.

In the second place, we think that it is an advantage and not a disadvantage to the defense to have the matter before them a week or ten days before the witness actually takes the stand.

And in the third place, we are only making this application as a matter of additional precaution because we believe, for two reasons, the witness' statement is admissible without an application. The first is that it is a report.

THE PRESIDENT: Yes, an investigator's report.

MR. WILLIAMS: The second reason is that this man is not normally an English-speaking man. His own native language is Dutch.

THE PRESIDENT: But you recognize, it would not be fair just to put in a report, and he should be cross-examined.

MR. WILLIAMS: Absolutely. And we are putting him on the witness stand so that he may be cross-examined to any length that the Court permits.

MR. LOGAN: Of course, if there is a question of time --

THE PRESIDENT: I will not decide it now. I will bring it up to my colleagues and see what they think about it.

MR. LOGAN: I wish you would, Judge. I wish you would take a glance at the mass of details that is out of all proportions, I believe.

MR. WILLIAMS: The matter of the counsel for defense determining what amount of detail the prosecution will put on in the case is entirely aside from the issue. They have no right to determine whether we should go into the matter in detail or put it on in broad strokes any more than we have a right to determine how they should put on their case.

MR. LOGAN: It is a mass of detail that is not connected with any of the issues of the case.

MR. WILLIAMS: If it is not connected with the issues in the case, it will not prejudice you any. We think it is very vitally connected with the issues in the case.

MR. CUNNINGHAM: May I make an observation or two because we haven't had a chance to collaborate fully on this with just a day's digest? I suggest that if they condense this to the material facts involved in this case, it would take about twenty pages rather than 129. That's the way: a lawyer-like digest of the thing which would be material to the facts and to the issues covered by the Charter.

Now, my preparation on the thing -- twelve or fourteen objections to make to the substance of it as well as the form. And I wondered what procedure your Honor would suggest: if the objections be made at the beginning or at the end of it.

THE PRESIDENT: At the end.

MR. CUNNINGHAM: At the end.

THE PRESIDENT: I don't know whether my colleagues will allow it or not. Mind you, Colonel Wild made a very good impression. He was able to give his evidence orally; but this witness does not speak English well, and it may be different.

MR. CUNNINGHAM: But I think that, if your Honor will read this, you will agree with us that it is just cluttered with immaterial, irrelevant matters that are just for historical record and not for evidence in this case. It has no bearing on the four'

questions that are involved: the war and the crimes against peace and humanity.

MR. WILLIAMS: I am afraid that counsel has a very limited view of the scope of the issues involved in this case.

MR. CUNNINGHAM: I try to keep them confined.

THE PRESIDENT: He wouldn't admit any otherwise.

I will reserve consideration of that with a view to placing it before my colleagues.

(Whereupon, at 0920, the proceeding was concluded.)

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