



THE ABSENT MINDED WITNESS AND THE THREE ABSENT ONES

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Today, during the trial of prison chief Kaing Guek Eav (alias Duch), the Trial Chamber finished its questioning of Lach Mean, former interrogator and prison guard at S-21, and made further progress in its adoption of written witness evidence in lieu of oral testimony as a means of expediting trial procedures.

Inconsistent Testimony

The Chamber came into session slowly with visitors receiving a crude introduction to the sometimes tedious and administrative nature of justice. Once the questions were firmly underway it became apparent that Lach Mean, the witness, was not going to be forthcoming with information relating to his previous testimony. All three of the parties questioning him repeatedly introduced statements that he had made in previous interviews but which he often was unable to verify.

Lach Mean was asked about his role at S-21 and his interrogation of prisoners there. He responded that he was taught how to handle unresponsive prisoners and their weaker points, but denied that he had ever used violence in an interrogation. He stated that he had “no right” to beat up or torture prisoners and only threatened or scolded them instead. Such assertions were oddly juxtaposed with previous statements he had made in which he alleged that if a senior officer was unable to elicit a confession from a prisoner, the prisoner would be sent to him and he or she would confess immediately. Lach Mean denied ever having made such a statement and stood by his previous claim that he had interrogated only four prisoners “at most.”

Sympathy for the Guards and the “Boredom” of S-21

The witness, contradicting himself at times, offered little information about the treatment of the prisoners. Instead, he focused on the difficulties faced by the guards. The Chamber was visibly interested in the witness’ recollection of a fellow guard named Douch who raped a female prisoner, then became frightened of punishment and attempted to jump to his death, only to land on the electric fence and be carried away still alive. Lach Mean remained impassive as he discussed the actual suicide of a prisoner who grabbed a guard’s gun and shot himself. The main moral that he seemed to have drawn from that story was that guards should take better care of their weapons.

The Defense Counsel's questioning was characteristically forceful but especially on point today as he posed Lach Mean questions about his attitude towards S-21. When asked if he enjoyed his work as a guard and an interrogator, Lach Mean stated that it was difficult to say, as his job was boring, there was no freedom to move around, they had to work very hard, and they lived in fear of making a mistake. Defense Counsel François Roux pushed further on the point about his boredom, asking if he knew how many people died at S-21. Lach Mean referred back to the guards again. He said that all he knew was that his chiefs disappeared. He did not know anything about the prisoners and had he had not attempted to find out. Asked if he regretted his time at S-21, Lach Mean stated that he did because it was horrendous and exhausting. The long hours meant he lost touch with friends and family. He did not know where they were sent.

Duch's Role

During Lach Mean's testimony defendant Duch sat alert and watchful as usual. But as the camera zoomed in on him at one point, he appeared almost bemused by Lach Mean's answers. The public gallery was two-thirds full and fairly active, audibly reacting to the sight of Duch and some of the Defense Counsel's more piercing questions. When Duch rose at the end of the questioning, he once again proved his value by bringing to the Chamber's attention a list of prison guards from S-21, which included Lach Mean's name. Duch then proceeded to read out the names and details of three prisoners that Lach Mean had interrogated, including one female detainee. This was a significant detail as Lach Mean had repeatedly denied ever interrogated any female prisoners.

Witness Statements Introduced in Lieu of Oral Testimony

The afternoon session saw the Chamber implement expediting measures with the inclusion of witness testimony into evidence pursuant to the Graffier's oral presentation. The transcript of the witness' interviews with the Office of Co-Investigating Judges was considered sufficiently reliable, evincing the need for the witnesses to be present to testify. This approach was not as interesting as live testimony, but it was certainly much faster as three witness transcripts were read out in a single afternoon.

At the end of the first witnesses' testimony, which only took 25 minutes to read out, Prosecution Co-Counsel, Anees Ahmed, raised a procedural point relating to Internal Rule 87.2. This stipulates the requirement that "any decision made by the Chamber is to be based on evidence that has been put before the Chamber and subjected to examination." This led to the adoption of an approach where the witness transcript was first read out and then the parties variously asserted their support or their objection. The Defense expressed their desire to permit the Accused to comment after each witness transcript. Their request was granted.

The Chamber ran into some difficulty with this new system after the lengthy testimony of Nhem En. Although the Chamber assured the parties that they had carefully chosen the statements to be presented via this method, the first half hour of Nhem En's interview testimony was not even remotely related to the Accused and the activities of S-21. It was later described as fabricated fact by Duch. Furthermore, the Defense challenged the credibility of the witness, although not the introduction of the testimony itself, by accusing

Nhem En of having courted journalists before the trial and attempting to sell paraphernalia from the Pol Pot era.

Certainly the new approach towards witness testimony is much faster and most likely will be utilized to a greater extent in the coming months and the trials beyond. However, there still remain procedural issues that the Chamber will need to address. The introduction of witness statements in lieu of oral testimony is a well established procedure in other internationalized courts. Although the ECCC is not strictly bound to follow such procedural precedent, if the Chamber wishes to continue using written witness testimony the judges may wish to introduce the procedure into the ECCC's Internal Rules before they find themselves mired in ultimately unworkable *ad hoc* measures.