Australians at War Film Archive

Athol Moffitt - Transcript of interview

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Tape 1

00:37 **Good morning Athol.**

Good morning now.

I'd like to start off today by asking you if you could tell me a little bit about where you were born and where you grew up?

Yes. I was born in Lismore, NSW in 1914, six weeks before

01:00 the First World War started. That now puts me in my 90th year. But from about 5 onwards I came to Sydney and I've been in Sydney all my life and, well, lots of things have happened since then.

And what did you know of WW1 growing up as a young boy?

Nothing much, only a funny story. My mother – it's funny how you remember back to those years - I remember my mother

01:30 taught us our prayers. They used to be, 'God bless mummy and God bless daddy and God bless the Belgians'. That must have been the time when Germany was doing dreadful things to the Belgians, and I used to think the Belgians were sheep. That's mainly my memory during WW1 actually. And then we came to Sydney in 1919, and I've been here ever since.

02:00 And then I just grew up and went to school. You want to know a bit more?

I went to university and got a couple of degrees. In the early stages I had an enormous interest in maths and got a very top level in maths. I got two first class honours in my leaving in Maths 1 and Maths 2 and then did the honours course in mathematics and as

02:30 you'll see later on, when the war started I got mixed in with all sorts of scientific things. But from there I switched and got a law degree. First class honours.

Can I ask you...

And then I went to the Bar just before the war. Yeah?

I was going to ask you what drew you to a law degree?

Well, my father had a strange history.

03:00 I won't go into that, but it's an extraordinary history. Uneducated, left school at twelve and finished up with three university degrees. And finished up himself as a lawyer. And I didn't think I'd follow him into law, I thought I was going to become a great scientist and then I switched at the end and I became a lawyer. And despite that, I found in years to come my great knowledge of mathematics came

03:30 to all sorts of uses. So I went to the Bar just a year before the war started. And then from there on I left the law when I went into the army. I was artillery then, didn't have anything with the law until I got to some law things in Boulia, which we'll talk about later. And then, and after

04:00 the war I went back to the Bar, became QC [Queen's Council], Supreme Court Judge and in the end, in the last ten years, I was president of the NSW Court of Appeal. And got a few other things along the way too. Such as a CMG [Companion of the Order of St. Michael and St. George] and an AM [Order of Australia].

Well going back to 1938 when you were admitted to the Bar, I'm wondering what you knew of the impending Second WorldWar?

Oh yes, well...

04:30 The shadow as I was going through Law. I went through the Depression and after we came out of the Depression, then there was the shadow of WW2 arriving, and in fact, I first joined the army, the militia [Citizen Military Forces, CMF], when Chamberlain [Neville Chamberlain, Conservative Prime Minister of Great Britain, 1937-1940] went to Munich and said there was 'peace in our time'. We didn't believe him and a group of myself and four others decided we'd get in to something, so we went down and joined the militia…

05:00 … that happened to be the coast gunners [Australian Coast Artillery Brigade] down at North Head. And so then, I was there well before the war. And then, of course, when the war came, we'd been trained on the big guns and we were called in. As soon as the war happened we had these 9.2 guns ready for action in the morning, as though the German fleet was going to be off Sydney Heads. And there it is.

05:30 From there it went on and so I got anchored actually there. When the war came – declared - I joined the AIF [Australian Imperial Force], but for reasons I could never get out of Australia. I got mixed into some scientific stuff and I refused removal, but just as the war came, almost towards the end, I got on a horse going to Borneo and was attached as part of the military government in North Borneo with the 9th Division.

06:00 … We'll come to that a bit later.

Yes we will talk about that a bit later, but to begin with, perhaps before we go on and talk about your service, you could tell me what you recollect of the Depression.

Well, it really hit us badly. Well, my father was not well off and it was touch and go - he'd just gone to the Bar.

06:30 There was no work at the Bar. A young man at the Bar. There was no work there. The work dried up completely at the Bar during the Depression. And so, of course, I finished the leaving in 1931, with the Depression looming, and I was very lucky. I got an exhibition [a scholarship], which in those days meant that you didn't pay any university fees for five years and that was a bit of a help. I did a bit of work during the way through and got through. But the Depression was

07:00 really something that hit people and I saw the picture of that. So, in my early years I lived through the Depression and fought through there. And then we just got out of that and we got into WW2. Makes you realise you're alive.

And I'm wondering whether you joined up in the militia with any friends?

07:30 Oh yes. The group that first went, we were five members of Killara Golf Club and we all went down and joined together and there it is. And well, of course, soon after there, in the army you really get friends and it was a good thing for me. Instead of going in as an officer I started from the ranks and worked my way up. I came really to know, understand them then. The war taught me a whole lot of things in understanding people.

08:00 And I think that stood me in good stead in the years to come. When I approached law I didn't approach it as some academic dry thing, I saw it as a thing about people. And I saw – I'm in the process of writing something about it – I saw in the law all sorts of cases, the human side behind them. That's a very interesting side and I think that army experience told me a lot. Made me grow up and understand men.

08:30 Particularly if you start in the ranks. I learnt how to swear in a couple of days. How you could use the "f" word in one sentence with the infinitive in the process of doing it.

What makes a young lawyer join up?

09:00 I think it was just the atmosphere then. In the 'floor' I was, when I first went to the Bar and that was just about the year before the war started. But when the war came, that was an old set of chambers, the Oxford Chambers in Philip Street. Well, everybody in that 'floor' joined the army and that 'floor' was closed back, and I

09:30 came back and those chambers ceased to exist. So everybody in that little building there, the barristers' chambers, they all joined the army. One of them was the famous Victor Winyard, who became a head man and a general, as you know. So that's what happened. Well the war was on, there it was, and of course, as it transpired there was an enormous threat to

10:00 Australia in 1942. I can tell you a little bit later, more about that. But I also then got caught up in this experimental work while still in artillery. I didn't do the actual experimental work but because of my knowledge, I provided the practical background and I did all sorts of things, particularly when

10:30 radar started to develop and I got involved with some tests. First of all, radar, when the war started; as you know in Britain, they had the early warning and that was an enormous help to Britain in the early days when the Germans didn't have it and the Brits did. But we had it in Australia, it was very hush-hush. And we had it – I think it was at North Head – and we had early warnings there. Enormous screams and we only knew that it

11:00 was very, very highly secret and not allowed to be talked about, but they called them'bat catchers'[radar receiving dishes]. But as it developed of course, eventually radar, they got that it could

measure the distance of things away, instead of early warning. And so it was used for range finding, it was very accurate. And a little kind of radar signal went out to the target and was reflected back, and by measuring the time they got the distance of it. Well,

11:30 it then was useful because it could be used at night. And I got into a lot of work in experimenting, well, not so much experimenting; I was the practical one, helping behind the scenes at the School of Radio Physics, which was part of Sydney University. It came in and contributed lately and there was a piece of special [equipment]– it was like a mechanical computer, there were no electronic computers in that day, but it worked on

12:00 mechanical means in a servo electrical field, and there was a wonderful man, Professor David Myers, he was the one. The Commonwealth Government put 750,000 pounds into it. That'd be many millions of dollars and eventually it cut out all the operatives and all the human factor. Where there'd be 35 people before, there'd be only one. And when we tested it out I was the one operator, but unfortunately it took so long that by the time

12:30 that'd been perfected, the war had passed. It would have been a wonderful thing if Britain could have had it in the days that the Germans were in the 'Channel'. It would have been just a miracle. But like a lot of experiments it was too late. And then I got in with another thing– they tried to see whether radar would be useful with the navy and also coast artillery, if they could pick up the splash.

13:00 The splash of the shell. And when artillery, navy as well, they're firing at the target, they have to go, plus the target, minus the target, and eventually they get [the bearings], and they cut the bracket [range finder], and they go to gunfire. This young scientist had developed a radar which he found he could pick up the splash of a shell. And so I set up the experiment to see whether or not that splash, whether it would meld with the target,

13:30 or how close you could get before it melded. So we set up cross observation posts and then measuring devices. But you could pick up the blip of the shell, but unfortunately by the time you get close to the target, it would merge with the target. So unfortunately it didn't work. But we did that by setting up a gun and firing at an island off Wollongong known as Toothbrush Island [Flinders Island].

14:00 It was about the same size as a ship. Side on. And we fired shells at this island, plus or minus. Unfortunately as soon as it got close to the target, it merged with the target. It was an experiment that didn't fail. They had to take it back to the drawing board. I don't know what happened about it since. But I got mixed in with those things and I got mixed in when they took the field artillery, I was eventually transferred to the school of artillery and co-operated

14:30 with school of coast artillery because it made me more available for experimentation and we worked with the 25 pounder guns. The standard field artillery gun, that was a 25 pounder, but they weren't much good in the jungle, they couldn't move them. So somebody invented what they call a 'short 25', cut the barrel right back and made them into pieces

15:00 and you could drop them in by parachute, which they eventually did into the Markham Valley. It wasn't a great success because in the jungle, they couldn't find most of the parts. But the thing was to find out how accurate they were and I set up the tests to see how accurate they were because the shorter they were, of course, the accuracy was less and we had to find out exactly what the accuracy was before we put them into action. So that's another one I got involved in.

15:30 And then, as the war came to an end they let me go, so I got to Borneo.

It's very interesting to hear you talk about your experiments, in what way do you think you of it as - the war in Europe, did you see that as Australia's war?

Yes, in those positions I used to get all the

16:00 intelligence material from Britain, and so I got a better picture. No, we were working in co-operation with them. Of course you see, the British got the radar, we got it here and we were interchanging things like that. And when we fired this mechanised-'computer' which was too late, and we did an experimental fire and all the 'brass' [military high command] from Europe came out to have a look at it - but it was too late. It was very good and very accurate. In one

16:30 piece of equipment, you could take all the information: radar or visual observation, day or night and you'd make the best selection. I was the operator who decided what it should be, where the target was, and there were observational radar posts from the Hawkesbury River down to Botany Bay. It was quite interesting, but too late. Well, then I got involved, of course here while still in the coast artillery. I don't know if you want me to tell you about that,

17:00 some experiences I had in 1942, would you like me to tell you about that?

Well perhaps before we get on to slightly later in the war, I'm just keen to pursue why or in what way you felt like it was Australia's duty to put funding towards experiments that were for a war on the other side of the world?

Well they weren't really for that purpose.

17:30 They were for Australia's defence. Australia, there's no doubt about it, from the point of view of WW2 and particularly since the Japanese came in, it was very much an Australian war, and what I've got to tell you in a moment is about the war in Australia and how close things came in 1942. Australia was very close to invasion. It was very real, it wasn't just a thing we joined in just to join in with Britain. I think we saw it as a threat to Australia. Even those who went to the earlier

18:00 stages in the Middle East. But certainly come the Japanese after Pearl Harbor, oh dear, dear, dear. I'll tell you the story in a minute about 1942 in Australia with the coast artillery.

Yes I understand that when Japan finally entered the war the threat changed, but to begin with the war was in Europe. I'm wondering if there was a sense for you of fighting for the Empire?

No.

18:30 No, I don't think that I always saw it was a thing with which Australia would be involved sooner or later. If you really had a look – it was a bit different from WW1. When Hitler started to move, you see, it had been going for quite some time, you have a look back. When he went and invaded the Rhineland

19:00 that was well before. That was all the news, and then he was over-running one country after another. And I think the whole world was at threat from Germany then, I think it was different from WW1. It wasn't just, 'they're the colours, we go and defend the Empire'. I think we were in it from the beginning. It was obvious to me anyhow. That was how I saw it. And that we would be involved. And of course that was right when the Japanese came in.

19:30 **We mentioned that you learned quick smart when you joined the militia, how to get on and relate to other men. Can you just tell me what your specific role was to begin with as a gunner?**

You shouldn't as me that question. When I joined there when the war, well you called it the war,

20:00 I thought, you know, having these university degrees and being a smart young barrister, I was the youngest barrister at the NSW Bar at that time, and I thought "Oh well, I'll get a good job". I was really cut down to size. The first job I was given was being a mess orderly in the gunners' mess. So that's part of learning. But then, of course, I gradually graduated up through the ranks

20:30 And I – oh it wasn't until 1942 - I had a Commission. In early '42 when these events, just before the Japanese invaded Sydney Harbour with their submarines.

And can you tell me what the process of being cut down to size was like for you?

Quite easy. I think when I look back,, I got on well with people from

21:00 the time I was little. I didn't have any trouble. But you get a bit conceited, you think that, you know, you're the youngest barrister at the Bar, and you got first class honours in maths, and you're going to be a great scientist, but after a while life adjusts you. And that's what happened.

And I'm wondering in those early days, what you learned about artillery

21:30 **that stood you in good stead?**

I don't know. I think that what I'd done in mathematics made me very good in that and it gave me great ability. And at one stage after I became an officer, I was known as the 'Plotting Officer' and that's an underground thing that they had both at North Head and Cape Banks, in which all the information comes in to the nerve brain

22:00 and the things are worked out in cross observation, and really the whole action of long range artillery is controlled from there. And so I fitted pretty naturally into that.

Well I'm wondering how you reacted to handling weaponry and artillery?

I don't know. We practised with guns

22:30 but we never fired them. But if there had been an attack on Sydney they'd have been terribly important because they had these - 9.2 are long range and you could reach out to the horizon virtually and then they had an even later brand, you could – which was Wollongong, up in the hills there and they could go 35,000 yards.

23:00 We could, not like the Singapore guns, we could turn inland and we had the exact co-ordinates of the north and south pylons of the Sydney Harbour Bridge. We could've fired at that if necessary. I hoped that that would never come.

Were you, in Sydney, I understand, based on North Head, I'm wondering

23:30 **where else you were based?**

Oh no, after a while I became based on Cape Banks. Now Cape Banks is the other 9.2 battery, virtually on the North Head of Botany and right opposite the Bunnerong Power Station. And those two batteries,

each of two guns firing 380 pound shells, big shells, those were for the defence of Sydney.

24:00 But in particular, of course, Cape Banks was straight opposite what was then the whole power supply of Sydney that was Bunnerong Power Station. But so far as actual service, I spent most of my time, so far as actually serving, in the coast artillery. That's after the war had started, that was at Cape Banks. And I was there at the times that the subs, the midget subs entered Sydney Harbour.

24:30 **Can you tell me about that?**

Yes. Well, you had two posts. They were essentially what you called counter-bombardment. They were long range and you could only use them in the daytime. We didn't have radar then, we didn't have searchlights. A searchlight wouldn't have been any good anyhow. And so you had to have the guns ready to go into action at dawn. So you had the duty officer at the battery command

25:00 post, which, being Botany, was low down and it had to be high up, so there was a big hill at the back of the fort, outside the fort, which was the command post and the observation post where the telescopes were, measuring and all the rest of it. And I happened to be Duty Officer, it was only soon after I joined the commission. Everybody had to take their turn to be the Duty Battery Commander and when the emergency came

25:30 they'd have to run the show until the Battery Commander came. So you were really in charge of the battery in an emergency. You'd go up there the night before, ready for dawn. But during the night after the subs, as you know they shelled Sydney from the sea, and I saw the actual gun flashes of the shells which were fired on Sydney. They weren't for very long, I could tell you the location.

26:00 It was Awelter Sea (?) which would be about off Malabar Heads. At that same time, I was Intelligence Officer down there, they put me up into that position straight away. It covered both Botany, the battery and also the surrounds. And we were a coast-watching thing, we watched for lights at sea and they all had to be reported, and any signal flare

26:30 … light signal on land. And then we were also given all shipping and air movements. They were all what they called estimated times of arrival – that's E.T.A. or estimated times of departure, and anything that was out of that, they were sent up urgently. And we heard the plane which turned out to be the spotter plane, and it flew over our area

27:00 flying north. I didn't know it was the spotter plane, but I worked out afterwards that it was. We reported it but we never heard anything further about it. But in later times, since then, there have been a lot of revelations of Japanese. It appears that there was a spotter plane and it saw the ships in the harbour including the Chicago.

27:30 It flew in, not over where we were at all, but it flew in, as the report now shows, over the heads from a mother ship, and it flew in right over Garden Island and saw the ships, and flew over the Harbour Bridge inland, and then went down to the equivalent of Mascot and then it turned around north. So I'm sure that it was the plane that we heard and reported, it was when it was taking its turn to come back north. But of course, in those days

28:00 nobody thought anything would ever happen in Sydney and nobody did anything about it, I don't think. And then, of course, came the submarine attack. But there was a further incident that I should tell you about, which I got deeply involved in, that has never been known much. After that there was a real panic in Sydney.

28:30 People left the eastern suburbs. You couldn't let a place, particularly Dover Heights and there was a bit of a panic. So we had an order then in respect of any warship approaching Sydney, if we didn't have an estimated time of arrival or departure, we were to fire on sight. Now that was on the close defence. What we did, these big guns, they weren't equipped with searchlights, but in poor visibility,

29:00 there was a similar command post, the close defence command post. And you'd be there from the early light where you couldn't see, poor visibility and you in the same position, you went into action. So, the instructions were to fire on sight of any war ship that approached Sydney. That seemed to be a bit of a silly order, but I found out in later years

29:30 from Japanese material and elsewhere, that the Japanese mother ship had done a reconnaissance well before this, both over Sydney Harbour, and flown inland and nobody interrupted it. They did the same thing in Tasmania, they did the same thing in Port Phillip Bay, and they did it also in New Zealand, just to find out where the allied warships were. And it was spotted as Japanese

30:00 in the Melbourne airstrip, but they had orders they couldn't fire until they got permission to fire. And by the time they got permission to fire it was gone. So that may have been the background to this. Anyhow that was the orders. So, I was Duty Officer, it was just dim light and there's a big fog that bowls in off Botany Bay at that time of the

30:30 year, and this was not long after the submarine attack. And out of the fog, at close distance, only about 7,000 yards, came a warship flying at full speed. We had no warning, my orders to fire on sight. I didn't, I recognised it as of the class of the tribal class warship we had – the [HMAS] Arunta.

31:00 Arunta was one of the earlier ones we had. And so, taking that, despite the orders I had, I didn't fire. Or give the order to fire. In fact as it turned out, it was the [HMAS] Warramunga, Australia's newest warship just hastening to come to Sydney. And for some reason there was no warning signal and the order would have been to fire. And if I had've carried out the orders, we'd have sunk it for sure.

31:30 At that distance was point blank range, a barrage of two 380 armour piercing high explosive cells, we'd have sunk the Warramunga. I look back and wonder what would've happened if I'd obeyed orders. Here we'd have had, I don't know whether (UNCLEAR) sunk our newest warship. Then, I often wondered then too,

32:00 "What if I was wrong?" But we didn't even have a silhouette of the Warramunga at that stage, but we had one of the others and it looked the same. That's a story that hasn't been told much. And then as an intelligence officer, some interesting things that followed then. We used to receive intelligence things and some

32:30 little time after, I can't recall the date, I've never ever seen any record of the signal, but I received it all right, it was an intelligence signal and I remember almost the exact words, and this'd be 1942, "It is considered the invasion of Australia is imminent, with the main attack on the east coast of Australia with a feint attack on Darwin". This was well after the Darwin raid.

33:00 "All batteries will go to alert". 'Alert' meant that everybody had to sleep at their quarters and be ready to go. 'Alarm' is when you actually got ready to fire at an instant, so, that was the order. But its origin or reason I don't know because we didn't know what the Japanese intentions were, but that's what the order was so soon after that

33:30 everything was a bit trigger happy. We got the message, "A flight of Japanese planes have crossed the Queensland coast heading south", and then only about 5 minutes later, "Cancel message". And then, later on, it turned out there were what they called 'old and bold coast watchers'. Those were very valuable people here and in England, who were WW1 serviceman, civilians who did various

34:00 coast watching, and they'd been coast watching somewhere off the Queensland coast, sent this message and it turned out they weren't Japanese planes, but a flight of geese flying in formation. So, trigger happy days. That was 1942, then, of course, came the Coral Sea battle [May, 1942], but the real turning point was Midway [June, 1942] when the

34:30 American fleet defeated the Japanese navy. The biggest armada of Japanese battle ships ever in history. And they defeated the Japanese and at that point, as I always said, that was the turning point. America regained naval superiority of the Pacific which they lost at Pearl Harbor.

35:00 **Well you've mentioned a few interesting points there. I have heard that you could sell Bondi for 20 cents virtually because everybody wanted to leave. As somebody who was in Sydney at that time, was that panic, I'm wondering why it was so easy in a way for the Japanese to get so close to Sydney?**

35:30 Well I think, myself, there was the kind of attitude that we're so remote. Australia's never been attacked and you couldn't imagine it would be. You had to have a password to get into the batteries, but that was only a bit of a laugh and we all used to make a bit of fun. We'd have a password, one of the nouns the Japanese wouldn't be able to pronounce. But it was only

36:00 a laugh, nobody ever really took it seriously. Nobody ever thought that anything would happen and when it did, everybody was surprised and then there was - I think there was panic. Well, I think that order that we had was a bit of a panic order itself. But I don't know, was or wasn't it justified? We'd sat and let things happen. And then suddenly went the reverse and said "Come on, shoot them straight up". They're not there.

36:30 But then this is the great trouble with a lot of these coast things. Mistakes made. You assume that it's a friendly ship and it's a hostile ship.

And up until that point Australia had been concentrating its efforts in Europe.

Oh I don't - I think Australia wasn't alert you see, when you read now, there'd been the Darwin attack and that was

37:00 minimised from the public point of view. It's now come out, I can't give the details, you know as well as I, that they didn't let the public into what was happening and therefore there was a complacency in Australia. I think they still had some wharfie [dock worker] strikes and Randwick [Racecourse] was on every weekend still.

As somebody who was living in Sydney, how seriously did you take the

37:30 **blackouts?**

I don't remember that. Well, you see, I was in the army then. When we were called up. There was a phoney war for a while, as you know, in Britain. Neither Britain nor Germany did anything because you couldn't – Britain couldn't put a military assault into Poland, where the war started, when they invaded Poland. And simply, both Britain and Germany stockpiled their arms.

38:00 That was for a year, and it was a bit of a phoney war here. And after we'd been in North Head for a while, we were released on leave for a while, and then we were called back in again, certainly well before 1942. Certainly after the Japanese were in the war with (UNCLEAR). But it's a bit hard to recapture. I don't even remember the blackouts. There were some, were there?

Well I'm

38:30 **just trying to get a picture of what it might have been like for you during that time.**

No, I just think people went about their affairs. You always think that if any bullets are flying around they'd hit the other fellow and not you. You know what I mean?

Well it's interesting also to hear you

39:00 **speak about having orders and then not following those orders through and then being very relieved in hindsight that you didn't.**

Well, I think that I was right. We were trained pretty well by that stage on ship recognition and we had silhouettes of all our own ships and so forth. And I think I'd been a bit of a mug if I hadn't realised –

39:30 recognised it was very similar to other similar Australian warships. But the fact is that the order was not to consult your own memory, but the circumstances - we didn't have a signal. That was on the basis, well you know, of other mistakes that had been made, like I find out after the war, had been made in Melbourne on the Japanese scout plane. By the time they got the order to fire

40:00 it had gone.

And I'm also wondering what you knew of the subs entering the Harbour? Sydney Harbour.

I didn't know much about it really. I think I did at some stage, being on the intelligence side. I didn't know any more than I think anybody else knew. I did have a look at the destroyed sub at one stage. I've forgotten

40:30 the little bit of it, it was a pretty tiny thing. And the interesting thing there was, they found on it some maps for the Hawkesbury Bridge and the pylons of the Hawkesbury Bridge. That may have been that. If they had been successful here, they'd have gone on and tried to destroy the railway bridge there. But I don't know much about that really, only what everybody else would have read.

41:00 **And how different do you think it would have been had the Japanese been successful?**

I think it the most terrible. I say that not just out of the imagination but when I got to Borneo, I saw what had happened there with the Japanese occupation. What they'd done.

41:30 They came there on the basis of the South East Asia Co-Prosperity Sphere and they published the message that they'd like to relieve all the different countries from the oppression of Britain and America. And that was the message they sent to all different places including Borneo, to the indigenous

42:00 and other people there.

Tape 2

00:31 **Athol, can you tell me how you progressed through the ranks to become…?**

I went through as a gunner and then as a sergeant and then a lieutenant in early 1942, and eventually as a captain and that's as far as I got.

Can you just tell me a little about those responsibilities and how you found that transition

01:00 **through the ranks?**

I don't know, it just seemed a natural progression. A group of people who all knew each other and we did a little bit of study before we became an officer and there it was. And as I say, I became an officer – that incident which occurred when I didn't sink the Warramunga, I was a pretty young officer then, I'd only been a

01:30 lieutenant for a couple of months, I don't know how my future would've been if I'd done the wrong thing then. Anyhow, I progressed and eventually became a captain before I went to Borneo.

Well perhaps I could ask you what was the most difficult thing about taking up positions of rank?

I don't think any. We were all friends in the army, that's how it is. And

02:00 some of us changed and some went, some had managed to get away. Some very, very distinguished

careers. I remember some. One man, John Sax, became a ‘miracle man’ - he was executed by the Japanese in the end. And then various others, some got into the

02:30 8th Division. Into some of the battles before 8th Division. Some of them became prisoners. All went in different directions but that’s how it went.

And I’m wondering how anxious you had been yourself to serve overseas?

I had applied for transfer. I’ve forgotten what it was. I

03:00 think, as a matter of fact, if it had succeeded, I’d have finished up as a prisoner of war in Singapore, but that was refused. I don’t know why but I think it was because of the work I’d been engaged in. But then I was selected to attend the military academy in Britain.

03:30 I didn’t do that and instead, when this Borneo opportunity came up, I volunteered for that and I got selected. And so I was off to Borneo, but that was in 1945 when the war was getting to its later stages, and it was to participate in the military government under the 9th Division in the areas where the

04:00 9th Division was in occupation. Before the war had finished, because the 9th Division in North Borneo captured quite a lot of territory, and of course when the war is on, the occupying army administers government, military government. And so I was selected to go up there to join the military government in Britain – in

04:30 North Borneo. That consisted of all sorts of things of course. It was bringing law and order in the areas that had been recaptured; meeting matters of starvation and food supply; and all sorts of things. And then eventually it also turned out to be taking some legal action. I didn’t realise when I started off, I’d finish up doing some legal work, but I did,pretty soon.

05:00 So, I volunteered there. We trained up. I learnt the lay [of the land] at Ingleburn. And then we got ready to move. We were on the way up, they dropped the bomb, and then there was the general Japanese surrender. So by the time we got to Borneo, which was well into ’45 of course, the Japanese there in most of the areas, hadn’t surrendered and they didn’t surrender

05:30 for two to three months in some areas. And so in some areas where I did some work the Japanese were still active. I didn’t ever have to fire at them or anything like that.

Given that you’d spent the war in Australia, what was your view before you went to Borneo, of the Japanese as an enemy?

I don’t

06:00 remember, quite frankly. I don’t remember except that I knew that they had, like Germany, been successful in occupying one country after another. And of course as you know, they came very close to Australia. There came a stage in

06:30 about ’42 when they were in occupation in practically all countries north of Australia and Australia and New Zealand stood out. They’d occupied the Solomons, they’d occupied New Britain and Rabaul and large parts of New Guinea, and then of course came the Coral Sea, when they were intending to occupy Moresby and from there, of course, they would’ve

07:00 bombed Australia. Well they had actually. Not only did they bomb Darwin, there was some bombing elsewhere in Australia. There was some in North Queensland, there was some in Western Australia. So we were right on the brink then. That’s ’42. A lot of us forget ’42, but I think that ’42 was the one period in Australia’s history, over all the years since settlement, we were ever in danger of being

07:30 invaded by a foreign power, and we were very close I think. And I think we all realised that. I certainly realised that and I realised how efficient and ruthless the Japanese had been. I think we didn’t have any doubt about that. When I went to Borneo I knew that.

Given that you understood the seriousness

08:00 **of the Japanese invasion, what were your impressions when you first got to Borneo?**

We arrived there and we arrived at Labuan, which was the headquarters of the 9th Division. A lot of that was all smashed up, of course, there’d been a lot of fighting there. But very soon we were posted out to different areas.

08:30 My first area was Brunei and I went there. Very early after my arrival Brunei was in a terrible mess. The whole place was all bombed out and there were ships around the Brunei Bay there, all beached and blown up. And big bomb craters all near the township of Brunei.

09:00 We had some quarters a little bit inland. A big bomb crater in the backyard you know. So it was a mess. But of course I was to come and see some of it later down at Miri, which we will come back to in a minute. It was a tangled mass of wreckage and all the rest of it. That was during the fighting Japanese retreat. Our people had bombed a lot of it but the Japanese had destroyed so many things

too, when they retreated.

And you've mentioned that the atomic bomb was dropped on your way over?

Yes. Well, I've forgotten exactly where it was but it was there before we were on the way. We went over in the hold of the Liberty ship which later on after it dropped us, it went on to the Philippines and it hit a mine and was blown up and everybody on

board was lost. That was after the war. But certainly I arrived just after the bomb had been dropped. But the war was still on there. As you'll see, a couple of things I show, three months after, I was present up in the jungle when the last of the Japanese had surrendered. I'll tell you about that when

you're ready.

I'm wondering then, even though the atomic bomb was dropped, how the news of the official end of the war got through?

Well, I think and I know now, that from what I've learned afterwards, I think, well the everywhere else had saved, the lives had saved, if there

hadn't have been an invasion of Japan, I think most of the prisoners of war would've perished. I think the Sandakan prison, which we'll come to later, I think they were all destroyed because they were too close to the firing line that Japan couldn't hold. And I think that if the war had gone, step by step, the prisoners of war, in many, many other areas including Changi and

elsewhere, I think they'd have met something of a similar fate to what happened to the Sandakan people. So I think if you talk to any surviving prisoners of war, some I know now, they all think they're alive today because of the atomic bomb. They don't believe they would've survived if it had to be, as soon as the enemy got close. Well that was what happened at Sandakan. They were cut off by land and sea and they,

the prisoners of war, were a burden then and they just got rid of them.

What was your unit's first task when you arrived?

We had various tasks, when I got to Brunei we had to meet[do?] something about poverty. There was a lot of starvation and poverty over in Brunei in those seaward towns.

And so we had to get the food supply. Now one thing I did, I went with a British officer, he was a medical man, an Indian medical sergeant, and we went inland into Sarawak, from Brunei, right up the Limbang River well into the jungle, to make contact with the Dyaks.

The Dyaks, they were the old head-hunters, used to produce hill rice, and they brought that down in supply and that had all ceased. Well, my job was to go up there and see some of the head men of the inland Dyaks to get them to come back into the food chain. And I went up there and the medical man went up, because there was a lot of illness and sickness among the Dyaks,

to bring them relief. So we went up, way up the Limbang River, well into the jungle of Borneo and then we went across with some Dyak guides through the jungle to some of these Dyak long houses [traditional communal housing]. And I spent a week there staying in various long houses. But when we got there the Japanese were still in the area and even a little bit before we came there, there were some

Japanese who had been shot and some Dyaks who had been killed, but the Dyaks responded very well to the Japanese. The Japanese didn't understand them and they demanded they did this and that, and if they didn't, they burnt their long houses. And the Dyaks responded, they had these poisonous blowpipes and they were head-hunters anyhow, and so the first place we got to, this British doctor and I,

we got a wonderful reception. But to get in , a Dyak would climb a tree and give a signal some distance away before we were allowed to proceed. So we got there because the Japanese were still in the area - these were some of those connected with the force that didn't surrender. And we had a party when we got there. A great reception party. -Head-

hunting had been discouraged and brought to an end under the influence of the British pre-war. But when the war started and the Japanese attacked the Dyaks and burnt their long houses, they brought back the head-hunting again. And so we got there, this one long house, the first we went to, and we had a little bit of a party that evening on the level up there above the ground. There's an outside common area.

And they produced some highly spiritous spirit we had. And then the head man asked me very cautiously, would it be alright if they showed us the skulls. I think this one little longhouse had 12 Japanese skulls and they had straw coming out of the mouth to here in the head and the Dyak girls did a

song. And they only - nothing above the waist of course, and they had these skulls and they got the old head-hunting song "You were once proud Japanese but look at you now" and then they dragged the skull across the ground, "Oh the dog's come to lick you". And the dogs would come and have a lick of them, you see. Oh that was a great night. So they said to me, "Well come on, aren't you going to

16:30 put on a dance for us?". So inspiration I had. There was then a thing - which was very popular, particularly in England, called The Hokey Pokey. You know The Hokey Pokey? You put your right hand in, you shake it all around, you put your left hand in and then you put your backside in, you put your backside out, you put your backside in and you shake it all around. You put your front side in, your front – shake it all around. So we taught the Dyak

17:00 girls to do this and it was a riot, particularly when they put the backside in and then the front side in with nothing on top and they shook it all around. And so we were a great success. But we got them back into the food chain. They were very lovely people. The Japanese just didn't understand them. And when they got inland, it was after a lot of them had escaped, they did very badly because the Dyaks cut off their food supply. And

17:30 whenever they came to any villages there was no food, it had all gone. And then they struck a lot of them with their blowpipes and from a very large force inland, the Japanese once they got inland didn't do very well at all. But the Dyaks on the other hand wonderful friendly people. When we went there of course, we did the right thing, we had our rifles, we showed our confidence, we put them at the front door

18:00 to show that we weren't hostile and they weren't hostile to us either. But they were lovely people. Yeah. So that was one of the things I did earlier .I then made a request, there was the head of the legal service, he was an English colonel, he was a very good man. He suggested to me

18:30 I start to investigate in different areas, that I go from area to area, and pick out two of the worst cases and to try and bring them forth to a prosecution under a military court, but apply the local law. There'd be an Australian or British officer and I'd be the prosecutor. I'd pick out two, this was to show to the locals that law and order had

19:00 been restored. So I went as a kind of a travelling prosecutor to different parts of Borneo, into Brunei and then south from there. And some of that was quite interesting, I'll tell you a bit about the trip to Miri in due course.

I'm interested to hear, now in your

19:30 **capacity as a lawyer, so what is, when you're travelling around now, what is your main task?**

Oh, when I went into Borneo you mean? Oh, well, my main task then was, first of all, to look at what material there was and find a couple of the worst cases and then act as prosecutor and bring them forward. And then a military officer

20:00 would be there. We also used a device to (UNCLEAR), what you'd call assessors, they weren't a jury but they were local people. They'd come and sit with the court, representing different local groups. And we treated them like a jury and asked them what they thought. And then the people got to see that it was a combined thing. They weren't really jurors but we treated them as though they were jurors.

20:30 And so, we did that in a few cases in Brunei then and elsewhere and then of course, then I went down to the coast, down to a place called Miri and did two trials. I'd like to tell you about one of those in particular. It was a very interesting trial because it reveals a great deal. But, we

21:00 went to Sarawak. Sarawak, as you remember, was under British influence before the war. 'The white rajah'. And that was next to Brunei. And in Brunei, which was a very small state, there were some oil fields known as Seria, and then just over the border into

21:30 Sarawak were very large oil fields at a place called Miri and then in between Sarawak, sorry Brunei, Seria and Miri, there was a place called Lutong and they had very large refineries there. And the story I can tell you about, this trial, it was a Japanese spy who was in there,

22:00 but when the British, at the time of Pearl Harbor, were there. Unfortunately they didn't destroy their wells, they only took some steps to dismantle them, which I'll tell you about, and - but then when the Japanese left, when the 9th Division invaded Borneo, they set fire to all the wells. In Seria,

22:30 there were fires in Lutong and Miri. And when I arrived in Miri it was the most terrible mess. The fires had been put out, this was still in '45. A terrible mess, and there was a tangled mass of twisted metal everywhere. All the old derricks and everything else were there. The local populace

23:00 had been nearly all employed in the oil industry. They were unemployed, a lot of them were starving, a lot of them were homeless. Our organisations did the best we could to feed them and so forth, but it was an angry, mad, populace. It was almost dangerous. People roving around the streets. And

23:30 things were made worse just a few weeks before I arrived. There'd been an incident which enraged the local people. When Miri was attacked by our 9th Division, the Japanese retired inland. They set fire to the place inland and they took 28 hostages from

24:00 various local groups and when they were 9 miles in and they had to retreat further, they killed all the hostages, the 28. And just about a week before I arrived, the people who had been executed, they'd put them in a mass grave. They dug them up and they brought them back for burial in Miri. And they'd had

a day of mourning in Miri

24:30 in which there'd been an Australian padre, a Malaya adji, there was a Hindu Indian and some other Chinese group and they all spoke on this day of mourning and of course the anger in Miri when I arrived there, was just incredible. And it was there in the middle of that anger,

25:00 we tried this man who was the Japanese spy, which I'll tell you, when you ask me about it.

Well perhaps you could tell me now?

Yeah. It's an interesting story because it really reveals much about Japanese intentions that nobody seems to know about. And this story is really quite important in itself.

25:30 In 1933, you think of that year – 1933, that's eight years before Pearl Harbor, that's the time when the Japanese were then, I think, into parts of Manchuria or somewhere like that. That's the very early stages. They planted a spy

26:00 into the oil fields in North Borneo, in Miri. Now he was a man who became a citizen of Sarawak and so we eventually, this thing I dug out and prosecuted, we tried him as a spy in accordance with the law of Sarawak and eventually he was convicted and given the maximum sentence applicable there, which was life.

26:30 But to go back on the story, he was planted there and his job had been a kind of tally clerk, where they dealt with all the machinery. So he would get to know all the machinery and then just before Pearl Harbor when it was obvious that something was going to happen, instead of destroying the oil fields

27:00 in North Borneo, which are very rich, they decided to dismantle them. So they took all the sensitive parts, the derricks and the pumps, the machinery shops and all those things, the very sensitive and delicate parts that you couldn't reproduce and they listed them all. And there were four people who were there participating in this listing,

27:30 and then they craned them up and they sent them to a place that they thought would be absolutely safe, in a secret location in Singapore. And then one of those four was in fact the spy. Now he'd been there; he went under a Chinese name, although his father I think was nominally Chinese, he was in fact Japanese because

28:00 he had a Japanese mother; he was educated in Japan, and he spoke fluent Japanese and he had a Japanese name, but he took his father's name and he passed himself off as Chinese. So he was there in '33 and he knew all of this would happen. And when the Japanese invaded, they invaded Miri, that area that was right

28:30 on the coast. They invaded seven days after Pearl Harbor because it was so wealthier an oil centre. It was right on the coast, it was vulnerable, undefended and they occupied it. And it and Seria and Lutong was some of the richest fields. So far as Seria was concerned, which in Brunei, it was the richest oil

29:00 field in the British Empire. And there's some - I've got some statistics I'd like to read to you later which I'd taken from Brunei, which was what the wealth of these were. And so they aimed there, and of course if you look back at Pearl Harbor, Pearl Harbor was really about Japanese denial of oil. What had happened in America, when the Japanese

29:30 were invading China? Instead of attacking them there, America, who controlled the oil resources, as they so often still do a bit, they cut off all supplies to Japan so as to paralyse their action in China. Of course the Japanese still had good oil supplies but it was the lack of oil supplies that really led to [the Hawaiian attack] - the Japanese envoys were actually in Washington

30:00 over this oil embargo, at the time they invaded Pearl Harbor. So oil was behind Pearl Harbor, and 7 days after Pearl Harbor they were into Miri. And when they did, who was there to greet them but this Japanese spy, came out to greet them when they arrived and soon after he was wearing a Japanese officer's uniform complete with samurai sword. And there's no doubt that he

30:30 had a copy of that list. The list had been sent to Singapore so that there would be no other list. But he was one of the four, and I don't really know, I suspect he had a copy. And so when Singapore fell, he identified the man who previously they'd sent, who'd accompanied these things to Singapore, and they put him 'down' under his interrogation and they threatened to chop off his head. And then he took them and showed them where

31:00 these things were in Singapore. And he – the Japanese spy who was there knew where all the things went and they reinstalled them, and before that the Japanese couldn't work the wells, they tried by hand pumps and all the rest of it, so they got the fields working. And then of course, when the Japanese retired, they did the reverse. They fired the lot. But as a result of this spy,

31:30 they were able to get those valuable oil wells, the greatest in the whole British Empire, going soon after Singapore fell. And this man then of course, was put in charge as a Japanese officer, and he was very cruel. And so when he was convicted, I was telling you about this trouble in Miri, he more or less demanded that

32:00 he be given a jeep under military control to be sent back to the gaol. So we decided he couldn't have that, and the Malayan police were pretty timid, but we made them double, triple their size and they gave them fixed bayonets and they marched this man through the crowds, the Miri crowds,

32:30 back to the gaol. And they didn't interfere. We thought we had done much to restore order. It's a very interesting story and I've got a little entry in my diary if you'll bear with me, I could read you the extracts I had happened to have taken from Brunei. They were still in Brunei these records, from pre-war. As you'll appreciate,

33:00 Seria, which was the wealthiest field in the British Empire at the time, Seria now since, it's the source of wealth of the Sultan of Brunei and that's why he's the billionaire he is, it's this oil field in there. But the Japanese had control of it and they set it on fire. If it would help, would you like me to read you that bit?

33:30 **Yes.**

I might have to get you to pause until I just find that part.

Yes.

When I was in Borneo I kept a diary from the time I was there and I recorded this, I worked late into the night often on four, five, six, seven pages of what had happened during

34:00 the day, so this is a completely contemporary diary and there's the diary now, and the War Memorial by the way, have a copy of that. The original I'll probably give to the War Memorial in the end.. But I had written this, which I'd taken directly from what I had and this is a

34:30 a report, an official report in Brunei of 1938.

"The only company at present, operating in the state, that is Seria which is in Brunei, is the British Imperial Petroleum Company Limited, a subsidiary of the Shell Group which holds a prospecting license over 150 square miles,

35:00 oil mining leases over 101,000 acres, net oil production for 1938, that's after deducting water run off and various other losses, was 695,000 tons as against 566,000 tons in 1937. While the production of natural gas was approximately

35:30 3,195,000,000 cubic feet. The company is thus the largest, single producer in the colonial empire and still bigger production figures are anticipated next year. The whole of the field is exported by pipeline to the refinery at Lukon where exports during 1938 exceeded or

36:00 amounted to 685,000 tons and Seria is only one of the fields. In '38 at Seria, only 39 out of 111 wells were producing. And the potential output was much larger than that than that mentioned." So you can appreciate that the Japanese interest, and they had a spy in there and there was the greatest

36:30 oil field in the British Empire, and these parts had been hidden in Singapore and the Japanese walked in and they just got them completely intact. I think that story shows a great deal about the Japanese dependence on oil and what happened and what the great interest was in North Borneo. And the other place of course they took too was Tarakan which was also an oil field.

37:00 And so their interest in Borneo was really in oil. But of course at the same time a different part was a building of this airfield at Sandakan which was a different story, that's about the prisoners.

Well just to go back then, I understand you conducted a commission

37:30 **or an investigation into this Japanese spy?**

No. No I didn't do any thing of that, none of that. My only task later was on the war crimes. But there was a part of this about the Japanese late surrender which is of interest, I can tell you that in due course. And that that was a little bit, that's after that time to where I said the Japanese were still active and the Japanese had retired from Miri,

38:00 they'd killed the hostages. But there was a much larger force. I'm not too sure how large that force that didn't surrender and they were in the jungle, in Sarawak. And they didn't surrender until nearly three months after the war had ended. And I was present when the last of those Japanese were brought in. I can tell you that story which is an interesting story too.

38:30 If I can tell you about that now. That was at a time when I was stationed at Brunei, but I had some duties to do in different places. The detail doesn't matter. But I went to Lawas. Now Lawas is in Sarawak and it's up the Lawas River, that runs out of this enormous Brunei Bay and that leads right into the centre and the

39:00 Japanese, a large number had escaped into the centre, and they were there, I think some of them were those that escaped from Miri and elsewhere, and they were there, a larger force, but they gradually dwindled in number from starvation and fights with the Dyaks and all the rest of it, until finally the surrender was taken by four Australian SRD [Services Reconnaissance Department] people. And that

was further

39:30 up inland from this town of Lawas, although it was inland too. And I was in there at Lawas, this'd be November 1945, when we received a message that the prisoners would be arriving in Lawas and the message was from Major Blow. Major Blow was

40:00 SRD and he had three other SRD's with him and they brought the Japanese back. And he sent us a message that he'd be arriving at 1500 hours the next day, that's a note dated the 15th of November. And he asked us to send the message on to 9th Division to get water transport and it was something like this: "Arriving tomorrow,

40:30 327 Japs, many sick, no food. Blow." I remember at the end of it he said "Sorry for the note paper but I have none other," and it was written on a piece of toilet paper. So I was present when they brought the last of the Japanese in, and that was the 15th, 16th of November 1945. That'd be

41:00 3 months after the surrender. And at that stage there were only 327.

I might just have to stop you there because I know that our tape is just about to run out and I…

41:30 **End of tape**

Tape 3

00:31 **Athol, you were about to read the section from your diary.**

No I won't read that bit first, I'll tell you from memory about the time of the arrival of the Japanese; and they're marching down the main, really the only street, in this Lawas village. The Japanese in Lawas had been as they were everywhere else, very cruel. And the day they arrived it happened to be a Malay holiday.

01:00 And they arrived in the afternoon and it was the most amazing scene I think I've ever seen. This tumultuous crowd watched the march through this street down to the wharf, where they put these people onto the boats to take them to gaol at Labuan. And when they arrived, they were divided into about a group

01:30 of about a hundred and fifty Japanese each. At the head of one of each, there was an Australian stripped to the waist, one of them; he was carrying a blowpipe as a walking stick, and there they came and behind each came a long file of the Japanese prisoners. And the reaction in that Malay crowd, in that village, on the holiday, was the most tumultuous thing I think I've ever seen.

02:00 Anyhow, that night we had a little celebration of the SRD fellows. I got to know Major Blow very well, he was a very distinguished man Major Blow. He had in fact been one of the people who had escaped in 1930, ah '43 from Sandakan before things got out of hand. He was in one of the groups, the recruiting groups, and before he got into Sandakan he and others got away to the Philippines and

02:30 he'd had a very distinguished career, promoted to major, decorated and by the way he's dead now and I wrote the obituary in the Sydney Morning Herald. But anyhow, Blow was there, and they got there and we got what 'grog' we had. I had a bottle of whisky and that went off that night. And anyhow we talked to them there and I got an account which I'd like to read to you because it's the aesthetic thing. It's a bit like on recollection, it's just an –

03:00 you know it can make a difference. And this was the account I got from the sergeant about the march and it's a very important thing, because it displays something of the Japanese character, even to their own. In the ranks particularly, the officers in the ranks, they were very cruel people. And this is the account, if I might look at it, it's written, "They said the conduct

03:30 the Japs showed, they were really only animals. Officers, when they had the sick parade in the morning", this was on this march after they had surrendered, "would give their own men who could not stand up, a mighty kick. Or who could not hold up their head, a hit across the face. No man would help another who fell down or was too sick to walk.

04:00 If they had to be ordered to help each other, the Aussies made them carry three or four who couldn't walk, and when the Australians were round a bend out of sight, they would beat them to make them walk. Once, one was missing. The Japs said he died and the sergeant went back and found him hanged on a tree.

04:30 As he said, "You have no friends in the Japanese army". Another, the Japs beat to death". When they arrived at Lawas, now this is my own account, when they were at Lawas, only one was being carried. He was known as the Rajah riding on his elephant. His spirit was such that he refused to die. He was thin and his leg looked paralysed.

05:00 The Japs beat him over the head to kill him but still he lived. I saw his face which hardly looked like a face any more. His head was battered, his cheeks were swollen up to the eyes, a bluish mass of pulp. I can understand now all that is said about the brutality of the Japs

05:30 to our people when they're – this is what they did to their own people. That by the way, was at the time when Blow told me a bit about what had happened to the Sandakan prisoners. And I didn't - little did I know at that stage that some months later I would be in fact a prosecutor in the Japanese trial. That's the story, I think was a very revealing story if you can if you can get that first hand picture that sergeant told

06:00 me as to what they'd be like to our people.

I wonder Athol, what did you know about the Japanese and the atrocities they may have committed before you went to Borneo?

Not really, I don't think anything much was known about what really happened in Sandakan for years. The story of the Burma Railway was known,

06:30 there were many, many survivors, although there were many dreadful deaths. But in Sandakan there were no survivors. Of the 2,400 people who were there in the beginning of 1945, all were dead bar six Australians who escaped into the jungle and survived. There were a bigger number who escaped, but those were the only survivors. By the way,

07:00 all those veterans are now dead. There are none alive today. So that I didn't – nothing much was known about that. Even then, even after the trials. I made some little records and sent them around 9th Division, and a couple of those filtered through to Sydney, but nothing was much known about what had happened in Sandakan for years. I had them all in this diary and I – it wasn't until after I retired as a judge, I wrote this story but

07:30 a couple of years before that a few other people had researched it, so that story really was not known about Sandakan, it was all known about the Burma railway, until many years later. It's well known now of course, but it was not known.

Hearing about this brutality to the natives in Borneo and to their own army, what were your impressions? How did you think or understand why people would behave

08:00 **like this?**

I didn't quite hear you but?

Seeing what you – or hearing what you heard about how they treated their own army and the natives, what did you understand about how people could behave like this?

Well I researched that later. But I can't tell you about the Japanese, but so far as the prisoners were concerned,

08:30 Japanese culture was such that they felt they had no duty to people who were foreigners, and strangers who were in occupied country. This was revealed by some writings of a Japanese professor after the war. The Japanese culture is based on a sense of duty - it's a very fine thing – their duty to different groups. And if you have a duty to a

09:00 group it's very wonderful, and we do too. But if you had a duty to, a higher duty to another group, the duty to the other one didn't exist. So if you had a person who was just a friend in your house you had some kind of duty to him. But if you had some higher duty such as to the Emperor, that duty to the stranger in your house ceased to exist. And for those who are complete strangers like in occupied

09:30 territory, there was no duty and in the Japanese culture, the Japanese writer, Professor Doi explained that the Christian Judaic culture of right and wrong hadn't ever got through to the Japanese. It had no sense of something being right and wrong, and to kill a person to whom you had no duty was no different to killing an animal. That's how

10:00 it was – it wasn't quite put that way by Professor Doi who wrote 20 years after the war, not about the war, but I think that explained what happened. They didn't regard themselves as having any duty. And didn't have any humane obligation to other people. That's as I saw it. I only worked it out years after.

I guess I just wonder what you were thinking at the time about …?

Well, it's

10:30 a funny thing. When I got into this case and I'll have to tell you about the first case soon. But when I got into this case, it's like anything else, when you're doing a job you get on with the job. I think I was appalled, of course. But I didn't know I was going to be on these trials until I was in Brunei for Christmas and I got a signal from headquarters of 9th Division that I was to be

11:00 prosecuting in the trials to commence on the 1st of January. So I turned up and the first case I had to do, was the trial of a commandant. And it's the most dreadful case, the most difficult case in all my long

legal history I've ever had to deal. I'd been just a year at the Bar, I'd

11:30 left the Bar and I had gone to other things and I'd just started on this legal stuff just a little bit before, and here I was with this case. I think it's – he was in effect charged with murder. It was really the main charge was killing a thousand people by deliberate starvation. It was the equivalent to murder. So it was really the greatest murder trial in Australian history.

12:00 One man, responsible for the murder of a thousand. It was an Australian court because an Australian court martial and it was constituted by Australian officers and its decision had to go back to headquarters in Melbourne, it had to confirm it. And so it was in a way, I suppose, the greatest murder trial in all of our Australian legal history.

12:30 But it was a difficult case. When I arrived I had only one witness. The only – the Japanese, I'm absolutely sure at the end, intended to kill off all the Sandakan prisoners so there'd be no witnesses. At the end they massacred the last of those – Ranau was the place to which the marches went. There were two marches,

13:00 one in January and one in May, and their destination where they were, was in Ranau and they gradually dwindled in numbers. The last of them, [Bill] Sticpewich was my witness, he got away just before the war ended. And he was the last survivor, but those who were left behind, they were all massacred, so I think the intention was that there'd be no witnesses. But there were six who escaped –

13:30 of those who escaped into the jungle, six survived and I only had one witness and he was Sticpewich. The others couldn't, they were too sick to come back from Australia but they couldn't have helped me on the main charge, on this starvation, but Sticpewich could. And so that was this first trial. It's very interesting, we were able to prove this case up to the hilt.

14:00 And it's interesting how it was done. It was done both by Sticpewich and a little bit of ingenuity I had. There's a provision in the War Crimes Act, that's the Australian one, the British and the other ones are the same, and they make a provision, whereas under ordinary civil law, if you want to call a witness on a trial you have to call the actual witness, you can't rely on his statement. But it was different where you had an enemy who had the secret there. And if you

14:30 got a statement from the enemy, you could use that without calling him to give evidence. So if the Japanese want to call him they could, but then the court could give it such weight as they thought fit. Now using this, I had the commandant's interrogation, which they had interrogated

15:00 them all before, and I knew what his defence would be. And he had his defence all ready. It was this: that Sandakan was cut off by land and sea, and the food was short and there was an order that came through from headquarters cutting out the rice. He said that was because they didn't have rice as their staple diet that they died. It wasn't his fault, it was headquarters' order and he had no control over it

15:30 and that they died. Because of that he tried to get substitutes but he couldn't and therefore he was an innocent man. There was something a bit funny about it and a bit from what Sticpewich had in his statement, he hadn't come back from Australia. So while I was waiting I went into the Japanese compound and I found that the order had been given alright. The order did exist, but it was pretty late in the piece, it wasn't until April. And I seemed to think that the

16:00 prisoners had died before then, from what Sticpewich had said. So I managed to get hold of the two quartermasters. The one in the camp is a quartermaster and there's one in the general garrison. The general garrison issued the food to the camp, then the man in the camp. I got a statement, I got it signed, I had, we had American interpreters, I had the best interpreter there and when I got the statement I

16:30 had it read through, interpreted to the Japanese. A couple of times. We made slight alterations and everybody initialled it and there it was. He gave the information, he didn't understand what [Captain] Hoshijima's defence was. But he gave the evidence. He had had orders from Hoshijima to cut out the rice and that'd been in January, that's before the order. And then

17:00 I got the other Japanese who was the quartermaster, he said "Yes it's true, the rice had been cut out", but before it was cut out, he had talked to Hoshijima about cutting out the rice to the prisoners of war, and he said the order from headquarters only came at the recommendation from Sandakan and that Hoshijima joined with him and the recommendation. So, what had done,

17:30 is that the war in Europe is just at an end and there was talk of war crimes there. Hoshijima was an intelligent university man, and he understood what was on, so he set about creating his own defence. And so I'm pretty sure he was the one that originated the order for cutting out the rice. And then he had the order already, and his defence

18:00 when the interrogators came. So I had these statements and later the Japanese called each of them. And they said, "Oh no, we just, you know, want to have the truth" but they couldn't really go back on their statements. They couldn't really say they did it under duress or anything. So and then when Sticpewich arrived, he filled in the gap. He'd been a con man a bit, along with the Australians were against him, but they

18:30 were wrong, he had conned the Japanese, he got out of all the heavy work on the on the airfield. It was very heavy work, morning til night and they were driven and – like slaves. But he got out of that work by telling the Japanese how good he was on fixing things, on mechanical and carpentry and all the rest, as he was. And so he was used by the Japanese and he had free access in

19:00 Japanese quarters, and he did all sorts of carpentry, construction and other work for the Japanese. At the same time of course he got plenty of food when the others were starving. That's why the others were a bit against him. But then he became the star witness at the trial because he was able to give this evidence: that before the order was given, the Australians, they'd been starved and they were dying, seven, eight, ten,

19:30 fifteen a night. And how they couldn't keep up with the coffins and they buried them in mass graves. And this was before the order. And then he gave the order in the evidence, that he had to do some carpentry work on Hoshijima's house and this is this period, and that under his house he counted

20:00 when he discovered, a thousand bags of rice. What had been happening was that Hoshijima had in fact cut out the rice, he procured the order as his defence, but under the house he had the rice, which wasn't

20:30 given to the prisoners. He in his own defence, he in his own statement said the prisoners had died because the rice had been cut out. But when all this evidence came, he tried to go back on his defence. He said, no the rice didn't have anything to do with their deaths, the prisoners just died. And then when I put the question to him, I said "Look, only one Japanese died in this time, when you were cut off, why did all

21:00 these prisoners die and no Japanese?" And he gave the silly reply, he said, "The prisoners were just ashamed of being prisoners. They were ashamed of being prisoners. They just died of shame." Of course his defence was cut to pieces and he was found guilty. And later he was hanged in Rabaul for his crimes. And that's the trial of Hoshijima. But Sticpewich was the key witness

21:30 and he had by the way, he'd got in with the Japanese – this is why some of the other prisoners always suspected him a bit but they were wrong. He got in with the Japanese, he learnt Japanese and he was able to hear what was happening by the Japanese. He understood Japanese, could talk Japanese. And this Japanese had taught

22:00 him, he'd become friends with this Japanese private, had become good friends with a private and when they were about to massacre the last of the prisoners in Ranau, Sticpewich was there, he'd been on the second march and survived, this Japanese private warned him of the massacre. He'd gone to the doctors, two of them there were. Bacani

22:30 and Oakshot. And they wouldn't leave there – one was too sick to have gone, he had a great ulcer on his foot, the other one could. Sticpewich tried to persuade him to come but he wouldn't leave the men. Neither would Cook. So Sticpewich escaped with one other, the other man died in the jungle and then Sticpewich

23:00 was picked up by Z Force [Services Reconnaissance Department] who were in the area and he told them some other four prisoners had escaped earlier than he. And they'd been six weeks in the jungle these others. One died but three survived and they were picked up after the war. And their story is amazing.

23:30 The Japanese wanted to get rid of all prisoners so that there'd be no witnesses, and I got this story. I've forgotten where I got this story. The Japanese, when anybody escaped, they pursued them. And when these escaped they were hiding in the jungle, where they were for six weeks, but the Japanese somehow got to

24:00 know they were in the area and they bribed some people to pursue them and capture them. And the message got out and the Dyaks got these men at night, under flare torches and moved ahead of the pursuing people trying to kill these last three. There were only three by then. But

24:30 then eventually Z Force picked them up. The first one to come across them was a man named Lofty Hodges, I've met him since, he's still alive, he's 6 feet 6. I won't tell you the rest of the story but that meeting was pretty wonderful. Sad story.

25:00 But the Japanese thought there'd be no witnesses, but I had one. The others couldn't have helped me. Mind you there were a lot of other charges against Hoshijima, of cruelty and denial of medicines, and there was evidence there that

25:30 the captain, sorry, Dr Taylor, he was an Australian, he's dead now, who the Japanese left in charge of Sandakan Hospital, public hospital it was. And he had been

26:00 trying to get medicines in to the prisoners. When the war came he had stored up, he said, enough quinine to last the whole of British North Borneo the whole of the war. But the Japanese, Hoshijima, he told, Hoshijima said "No, we're getting some ourselves." But the prisoners were denied any medicines in this period when they were dying of hunger. A lot of them of course died not of hunger

26:30 but died of related diseases and there were no medical supplies. But this had all been cut off and this Captain Taylor. But Captain Taylor was part of the underground. They had an underground in 1943 and Captain Taylor, not Captain Taylor, Dr. Taylor was participating in this underground in that Captain Matthews was setting up

27:00 escape routes and he was one who'd helped the escape of these prisoners, of reinforcements who'd got to the Philippines. And he had some liaison with the Philippines. But he had helped too in smuggling some medical supplies in to the prisoners. And when the underground collapsed,

27:30 there was a terrible thing and some locals were caught up. They tortured Matthews but never got anything out of him. He was tried by a phoney Japanese court and convicted and executed. But Taylor, they also got some of the local people who were involved and they executed about 8 of them. Taylor,

28:00 for his part, he was sent to Outram [Road] gaol, a terrible gaol in Singapore where he served out the rest of his time and his wife was sent to Kuching as a kind of a prisoner. But that of course was where the problem arose. The Japanese saw that the Australians were dangerous. They

28:30 I think suspected that they had some mass escape plan. So what they did, when this underground collapsed, is they took all the officers away from the men, on the basis that if you're Japanese you're no good unless you've got an officer. And so they took all the officers, they only left behind a couple of doctors and a padre, a couple of padres they – they were all Church of England, no Roman Catholic

29:00 padres. The Roman Catholic padre tried to persuade the Japanese to leave him but they, the Japanese, wouldn't. And he survived, he's just dead now, it was Father Rogers. He used to always conduct these memorial services, Sandakan memorial services, but he's dead now. But, so they took all the officers away, some 300 and they're still, a lot of them are still alive today. Old Sandakan society. I go to some of

29:30 their luncheons. But it was the troops, 2,400. 2,400, alive in Sandakan when the work had finished. The aerodromes were useless, and they were taken there to build aerodromes. And the aerodromes were useless because the Americans, after their victory at Leyte Gulf, had bombed them out of existence. And they were all

30:00 worth…, they filled them in and they filled them in but they were all worthless, it was useless. So the prisoners had no work and they were a burden. And then Sandakan was also cut off by sea. And so there they were. But those 2,400 prisoners, all of them were dead apart from the six that escaped 9 months later. On my Japanese version, those last died

30:30 or massacred, whatever it was, Japanese – died they claimed, in the first of August 1945. The Japanese in general surrendered, not all of them, mid August. In my material they were in fact massacred after the end of the end of the general surrender on the first of September. That comes from some Z-Force material that I had from people who'd been in Z-force. They

31:00 were, I think, massacred after the end of the war. And however, there were these ones earlier who were picked up. And they were the only survivors. That's the story.

I wonder Athol, if I can just ask you some questions about bits of that story.

Yes:

I guess just firstly, when you heard that you were to be taking this trial on,

31:30 **I just wonder how prepared you felt for?… I mean this is quite obviously**

Well it's a funny thing. You don't do that. When you're asked to do something you do it to the best of your ability. When I look back I'm amazed at my ingenuity while I was sitting there on the first trial waiting for Sticpewichto arrive back from Australia and of course I had a lot of the statements of the

32:00 earlier brutality and so forth but that – this main charge was the one that I was concerned with. But you just had a job to do and I am a bit amazed that I showed the ingenuity, I got a hold of the act and I saw the possibility, so there it was. I just had a job to do, you don't think about that. I had some description of Hoshijima. The trial was a very amazing trial.

32:30 I had against me, a man that I became good friends. A lieutenant colonel, Japanese – hang on I've forgotten his name now,- Yomado. And like barristers, you talk behind the scenes and he and I became good friends and we talked about all sorts of things behind the scenes. Yomado was a graduate strangely, in law, of Cambridge University before

33:00 the war, but he was also a graduate in law of one of the Japanese universities. But, although he never told me, I worked it out, he was not what they call a militarist. He in the finest legal tradition did do his best in respect of his defence of the Japanese. And as I say, we became friends, we talked about it. I also

33:30 conducted some other trials, one is of the first death march, the officers involved in that, which was very difficult because there was only one survivor. And that survivor didn't know anything, anyhow, because what had happened, they divided the prisoners into nine groups and they had a genuine Japanese machine gun company which was being transferred and they used them for transportation. And the fittest of the prisoners were taken.

34:00 And the Japanese weren't prepared to delay to the time that the prisoners were able to keep up and so forth and so what really happened is, when they couldn't go on the next morning, they just shot the prisoners. But no prisoner was witness to that. But anyhow they were nine separate groups. So I only had one witness, Bottrell, whom I got to know in later years and saw him back in Australia,

34:30 he couldn't help much because he hadn't seen anything. He was only in one of the nine groups and all he'd heard was here was some prisoners left behind, a few shots fired in the distance when they got away in the mountains. He didn't know what they were and who they were, they were obviously the prisoners. But the Japanese defence then - we couldn't therefore prove the killings except in respect of one. The

35:00 Japanese were all in one unit, but they had one man who wasn't in their unit and he ratted a bit on the Japanese, on the other unit, and his evidence said that the leader had given him his orders to kill the Japanese that couldn't go on. And so, eventually the leader, was in fact - the case proved against him, executed. The others were only given terms of imprisonment, but all that could happen to them is that

35:30 they were engaged in the forced march, forcing prisoners to go on when they were not capable of going on. The Japanese put out a statement as to where each of the prisoners died, of course they always had that they'd died at the rest home at night and they just died and they gave them (UNCLEAR) when they didn't recover the next morning. And so of course the Japanese had a statement, I kept a copy, and that's now in the Moffitt papers in the War Memorial. But it was an

36:00 ideal thing to cross examine them on, because you'd have that they still go on the next day, and two prisoners die the next night after the march. And so of course they knew very well they were dying but it was under false premises. In fact they'd killed [them], but Sticpewich came through on the second march, they weren't allowed to digress, but he'd counted 75 corpses from the first march along the route. So, I

36:30 said to Yomada, one day in between, I said "It's a funny thing you know, all these people had [been] given an honourable burial and so forth, and yet Sticpewich had found 75 corpses along the road". Well he looked at me and he said, "That's a secret, a lie hidden in the deep jungle lands of Borneo forever". So, anyhow, he knew

37:00 as well as I, but that's what he [said] – we didn't have the evidence, so the evidence of Sticpewich didn't point to any particular Japanese in charge, each in charge, one officer in charge of each fifty prisoners you see. So, anyhow, he was the one executed, the one in charge of – the second march. I didn't have to deal with [that], some other person

37:30 prosecuted that. It was different there because they were taken with the - the guards came with them. A lot of the guards weren't Japanese and they kind of split on the Japanese, so the story leaked out as a result from the guards. What had happened to those 2,490, six hundred British,

38:00 nothing much is known about, none of them survived. There were 1,800 Australians and only six survived. On the two marches a lot died of starvation in Sandakan. Then the two marches, but then when the second march came to leave in late May, some were too sick to go. Some were in a kind of a hospital there.

38:30 The Japanese left them behind and they burnt the hospital to the ground, and the other prisoners they left, saw the others left behind. Little is known truly about them, but none of them survived. There is some native story that 75 of the last who could walk were taken into the jungle and shot but, there's no case, nothing's known about that

39:00 that group except– those who went on the march. That's the story.

I wonder how frustrating it is for you having to try to put a case together with so few witnesses?

Well it was impossible wasn't it? But we did the best we could and strangely were able to do that but so far as the second march was concerned, of course they had the evidence

39:30 from – it'd come out and the Japanese strangely once some other person had made the statement, they were inclined to come around and not disagree with it. And so, as a result, these lot of the Formosan guards, some of them were very cruel themselves by the way, but those guards went on the second march and therefore, as the first march was concerned, they all stuck together, they were a machine gun unit. They were

40:00 a fine group actually, I was very sorry for them. They were given this job, they had nothing to do with them, but they had to get there and they just killed them off being Japanese, but, they were fine looking Japanese, they were young Japanese, a lot of university students and they'd been together right through the war in China. And there they were, they were in Sandakan and they correctly interpreted

40:30 that the landings, when they, came in Borneo would be back north in the field, near the oil fields, which they were. And when 9th Division came in, they came in in that same North Borneo area, so they were transferring this machine gun company back to the north and of course they used the Australians as carriers, you know the story there. But as far as they were concerned

41:00 I was a bit sorry, they were put in a position to do something, they'd all been together as a group and their commanding officer, he was the one who was executed because the case was proved against him quite positively, and obviously he had given the same order to the others too, but there was no evidence of that except from the one who was a foreigner, but he, before sentence was passed,

41:30 he stood up and made a statement about his men who'd been with him right through. And he made a statement about different ones, about their character and then the mess. I can remember one who had a stutter. And he said about him, he had the stutter and he was never able to give orders to his sergeant so he did the things all himself. So he gave a rundown.

Tape 4

00:36 **Athol, we're back on again, and just during the break you were telling me a little bit about what you'd remembered about the personalities.**

Oh yes, just a little bit further, about the personalities. I felt a bit sorry for these people, they were thrust in, true, they did the wrong thing, but they were thrust into a situation not of their own

01:00 making where they were being transferred and given a job to do and they did it. But then this –they had the book I wrote the ABC [Australian Broadcasting Corporation], who hadn't done the first edition, they did the second edition, and they did an hour documentary on the 50th anniversary of the end of the war. And they went to Japan to try and locate some of the

01:30 people, and in fact they did an interview of me in this very room. Only just some general comments, not much. But from Japan they had some there, one fellow, he was a dreadful (UNCLEAR) fellow, just had a bit of a laugh, they didn't catch him, "weren't they lucky", he said and all that, sort of. And somebody else thought the Japanese didn't do anything wrong, but there was one there, who was a fine person, and he was the son

02:00 of the one who was the head of the first death march. I told you, about the character, and he said, "Now, I'm a commanding officer, let my men go, I'm the one responsible, execute me". Which was pretty amazing. But then, when they did this documentary, that man's son, they had him, and he was a fine similar looking Japanese,

02:30 and he was against all the other Japanese who, you know, didn't express any shame or anything. He apologised about what the Japanese had done, and he talked of the great loss and the memory of his father. And there was the father, I remember seeing that, there was the father who'd given up so, and there was the son. And some similar apology to the father, which I found was very interesting. And

03:00 that'll be somewhere on - the ABC have got that. An hour documentary, I think.

I was wondering, you also mentioned…

Oh about – the trial of Hoshijima. There was some interesting things there about, I recorded all those in this diary and I'll do it from memory but you can take it from there. When I waited and then the time came and I saw Hoshijima for the first time,

03:30 and as I recorded in the diary, he was unusual for Japanese. He was six feet and I was six feet one; standing up I was the only person higher than he and the Japanese defending officers were all short people and here was this Hoshijima. By the way, just jumping ahead, we had

04:00 guards, the Ghurkha guards. At that stage, with the view to transfer, the Australians were pulling out (UNCLEAR) there soon, when we finished the trials and the British were taking over and they had the Ghurkha guards. And so we had a group of Ghurkha guards sitting in the back of this big tent where we had this court martial. This enormous tent that could seat a lot of people, but

04:30 the press weren't there at all, there were no press at all but while we were there, the Australian Minister for Defence, Frank Forde, came along; I didn't hear this, but he sat next to one of the legal instructing people for me and he saw these diminutive Ghurkha guards sitting in the back. He asked, he said, "What are they charged with?"

05:00 He was the Minister of Defence, we had to inform him "That fellow up there, he's the accused and those are the Ghurkha guards." Anyhow, (to?) come back, Hoshijima turned up there and, I record there 'a very impressive figure, six feet tall' with a, 'stood erect, clicked his heels and saluted.' And then he had, I noted, a very

05:30 grim, sinister kind of smile, smiled a lot, but a bit of an ugly smile, a very intent person. And then, even when this thing turned against him, he fought like a cornered tiger. He elected, as was his right, although he spoke very, very good English, he elected to be tried in Japanese, so that everything had to be interpreted back to Japanese.

06:00 Well, we had top rate American Japanese interpreters and they were pretty first class, so he then, when I used to have to cross examine, he kept on disrupting the cross examination, any questions I asked of him, because he would have long arguments that nobody would understand, between himself and the interpreters, as to whether they'd interpreted

06:30 my question to him correctly into Japanese. And then whether they interpreted his Japanese answer correctly back again. And these things went on and on and on, they'd go on for ten minutes and the court didn't understand, I didn't go on or anything, you know, and my defending officer would because he could speak perfect English as well as Japanese. So nobody knew except those people. Now that, that was one of the things we had with Hoshijima. Then

07:00 when it came to the final addresses, the Japanese defending officer who, as I told you, did very well, he made a very able address, as well as could be in the circumstances, although the evidence was so against Hoshijima at the end. So, Hoshijima asked for permission to address the court himself. And so he addressed it then in English, and he talked

07:30 for a day and a half, on and on and on it went. Everything that had ever happened. He never did a wrong thing in his life. And now this was Hoshijima there. And then when they eventually retired, and there was a long time, and they came back and they found him guilty and sentenced him to death by hanging. And I thought at this stage, recorded it there, Hoshijima stood up, still with his shiny boots,

08:00 leggings up here, immaculate, saluted, clicked his heels and marched out. And that was Hoshijima, who these prisoners had to put up with. He had said, recent trouble at one time, he said, what's it, "You are cowards", he said this to the prisoners when they got there. "You are cowards, you

08:30 surrendered. You don't deserve it but the Emperor preserved your life and now you'll work for the Emperor from dawning til dark. Until your souls rot under the jungle sun". This was his introduction to the prisoners in Sandakan. That's the kind of man he was. And that's the man that we still saw, fighting to the end. And then they,

09:00 I wasn't present, but they talked of his execution. He, as he ascended to be hanged, the man who you know, "This is for all the Aussies you killed at Sandakan." And then he yelled out "bansai, bansai" as they dropped. That's the story I did hear. That man, terrible man, he was a university graduate, Hoshijima,

09:30 in engineering and chemistry, and he was both a project manager to build these airfields, and also the commandant. But of course these airfields, the prisoners didn't know what was happening in their home country and they were building airfields which had been a jumping off spot.

10:00 (for) aircraft to move south towards their own country. And so of course, the prisoners were reluctant. There were, there are, whole lots of stories there, about the humour of the prisoners, and some things they did I think frustrated Hoshijima. It was all handwork to erect these airstrips in the jungle. They didn't have any heavy equipment. They did have a steamroller, the Australians managed to steamroll this into the swamp

10:30 and they couldn't get it out again. So all these things I think infuriated Hoshijima, I do think, I don't know the details, but I think there'd be a fair bit of slow, 'go slow' that went there. And so he built a punishment cage. It was wire, you were exposed to the elements and mosquitoes, you didn't have any protection and somebody'd be sentenced there with no food

11:00 or water for a couple of days, and they were such that you couldn't stand up and you couldn't lie down. And they used those. That was one of the things that was his idea. Some other questions?

In your time during that trial, as the commandant of the camp, how much

11:30 **direction was Hoshijima getting from other people as to how to run it, or how autonomous was his role?**

He took our things out of the control, he had this, this splendid Japanese defending officer, who I became friends with by the way. He used to ask me questions behind the scenes. I asked him a question about what happened to all those dead bodies in the jungle, and he at one time asked me, he said "Look,

12:00 if it comes to the worst, would they hang him?" He said "Hanging is the greatest disgrace ever to a Japanese." He said "Different if you chop his head off." He said "It'd be a disgrace to me." I said "But you've done the best you can". "No," he said, "it'd be a disgrace to me when I go back to Japan." It happened. He said "I hear there's a Labor government in power in Australia and they're against

12:30 the death penalty. And what'll happen? Will the Labor government carry out a hanging?" I said "That's a very good guess." I said "My guess is that any hanging won't happen in Australia. The army will be left to do it outside Australia." And that's exactly what happened. The army provos [military police] hanged Hoshijima in Rabaul, outside Australia.

13:00 So that's one… He invited me, we became friends, to come back to Japan as his guest. "Have you and I got on well?" I said "Yes we have." Oh, the other thing he said to me too, when I asked him about those, and he said, "Be hidden in the deep jungle lands of Borneo forever" he said, "There never should be a war against your country and mine again, we should be friends."

13:30 So anyhow, he invited me to come back, he talked a bit about what had happened in the jungle, about these things hidden in the jungle, but he never told me anything about what had happened to Japan. And I declined his offer, I was also offered by - the British were there- to stay on, they'd make me Chief Justice of British North Borneo and I saw all the fighting amongst

14:00 the British there, I didn't think there'd be much prospect there. Anyhow I had a girl to come back and marry here, so I didn't go to Japan and I didn't stay in Borneo, I came back here and I got married. But then I only heard later, and this Japanese lieutenant colonel never told me, he was Mayor of Hiroshima. I often wondered

14:30 what would have happened if I'd gone back and been a visitor at Hiroshima. Funny thing isn't it.

This man that you befriended was also defending someone who by the sounds of things is

Eh?

The man that you befriended, the Japanese defence solicitor or

15:00 **barrister was – I just wonder how you formed a friendship when..,**

Well, he, you see barristers are like this, you need to understand the Bar in Sydney or anywhere else too. Barristers fight a case, they fight a cast iron case for the case that they're representing. And they fight against the opponent there, the opponent does too. But then after court, they're just as likely to walk out arm in arm. I know when I

15:30 appeared at the Bar somebody said, "Now look, you're appearing for some of these Italian people who were injured in the Snowy Mountains" he said, "It's bad for them to see you talking in friendly terms with the opposition. They'll think you're selling them out. You're doing a deal behind the scene." But so, there's nothing inconsistent with people who are objective

16:00 and fight a case. This is the judiciary at the Bar, and so there's nothing inconsistent with he and I being friends and at the same time, antagonists in the actual job we were doing. And so he and I were on quite friendly terms. We talked about a lot of things. I can't remember some of the other things, but we certainly talked about that. He said, I know he used to say that a lot when I was there, "If we ever have a war again, it's a terrible thing to have a war." But I'm pretty sure he was against the militarists.

16:30 As you know, that's what happened in Japan, the militarists took control. And they really were the ones, a bit like happened with Hitler in Germany.

I wonder what difficulties did you see that he might have been having in defending Hoshijima?

I don't think he had any difficulties, I think he kind of…. he saw the evidence, he gave an open address, he saw

17:00 what had happened how the case had gone against him on this part, but there were a whole lot of other things he discussed too, and I can't remember the detail of the address but I remember I thought he did a very ably. He complimented me, he said, "You're very methodical aren't you, in your address." Yeah. So we talked about those things. But then, I

17:30 asked him too, behind the scenes, about the trial of Captain Matthews. He was the one who the Japanese executed and I asked him. He was in Kuching at the time Matthews was tried, and I wondered whether he'd been involved. "No" he said, he wasn't. He said, "What happened there, was the

18:00 kempetai" those are the [Japanese secret] police, "they took control of it." And I said, "I understand the evidence they used against him, a lot of it they used like torture to the local people in Sandakan." I said, "But how do you stand? You understand the British system now." He said, "Oh well, that was the system."

18:30 Then he said, "You know, under English law, you weren't always the same either." He said, "Do you remember the trial of Sir Walter Raleigh?" Cambridge, of course. In the trial of Walter Raleigh, I don't know whether you remember, Walter Raleigh was convicted on hearsay evidence, that's giving confessions that other people had given under torture. And despite his objections, this was received in the trial of Walter

19:00 Raleigh and he was executed. So he reminded me, he said "It wasn't always in your country either was it?" So we had some interesting talks.

I wonder if he ever said anything to you or whether he had any difficulties? I guess personally defending and trying to defend,

No, no I don't know about that. I couldn't tell you. If he did, it didn't show. He did his job,

19:30 like any do their job you know. You get a barrister, people don't understand this, you appear for a person whom you think is guilty. I'm talking the Bar now, here. Your duty is do the best you can. Your duty is

not to judge the case, the jury decides the case, you don't. And you put the best version of the facts you can in support of his case.

20:00 He's entitled to have a defence according to the law. But you do the best you can. And so, your personal feelings is not, I'm appealing for a man who is guilty, it's not for me to do that. That happened in a case years ago in the Northern Territory. Oh I can't, I forget that side. I forget, I've forgotten

20:30 the details. Somebody who forgot his duty and said that he wouldn't go on because the man was guilty. An Aborigine. And it was not possible then, because it was the Northern Territory, of ever giving him a fair trial. So the Aborigine was acquitted because of the stupid mistake the man made.

If the roles were reversed and Hoshijima had been an Australian, an Australian

21:00 **who was the commandant of a Japanese POW camp and the same atrocities had occurred. Would you have been able to defend him?**

I'd have found it very difficult. Find it very difficult. You asked me about the Japanese man. He came under a very different tradition to me although he'd had the benefit of two legal systems: Cambridge

21:30 and I think, Osaka, was the other university he'd qualified in law. So I can't answer for him.

I just wonder why, given everything you've just told me about remaining objective and leaving it to a jury, why it would have been difficult to defend someone like Hoshijima?

Well it's, that offence was such an awful offence and when the evidence came out, I'd have found it a bit difficult. I don't know.

22:00 That's a hypothetical question. Yeah. What else now? I wonder, see if I've got some other things, I don't know.

That's okay. I might just go just back to some very technical things about the actual set up of the trial of Hoshijima and how the court was structured.

I'll tell you, the position is this.

22:30 This court was conducted by an army court martial. An army court martial under law, including army law, has jurisdiction over anything that happens in its area of occupation. If for example,

23:00 an army during war captures somebody, any person or any other person, who they think is a spy, the army on the spot can deal with the case. Now they can try by army court martial, they had jurisdiction to try not only their own but anybody else that was in their jurisdiction and therefore, so long as the war

23:30 continued, legally, the army had jurisdiction over the area under its control. In fact, the war, although there'd been a general surrender, there was no legal peace treaty signed for some years afterwards. And therefore, and the same thing happened in Britain with Germany, a lot of the trials

24:00 of people or war criminals, were held by army court martials. And it was only in respect of the very leaders that you had trials otherwise. And that's the Nuremberg trials in Europe and the Tokyo trials in Japan. And those were by judges nominated by

24:30 the different allied countries. Judges, distinguished lawyers form the court. So in the Tokyo trials, the presiding judge was a judge who'd been Chief Justice of Queens at one time, and I think he was a judge of the court, high court, Mr Justice Webb. And he was the presiding judge. And there were

25:00 judges from various other allied countries, I've forgotten the other countries, Holland I think and various others, and the same thing happened in Germany and that was constituted by, I think, some Americans but there were British and other judges. But in the other period while the war was on, legally on, most of the trials were conducted here and elsewhere by army courts martial. And that

25:30 consisted of three officers usually. The senior officer had to be not less in rank than any person being charged. We had I think the top officer either colonel or major, certainly senior in the rank to Capt Hoshijima. The

26:00 general who was in charge of Borneo, the 37th Japanese, Imperial Japanese Army in Borneo, he was tried and executed eventually. But he couldn't be tried by us. We went fishing for evidence when we were there in the course of the other trials, that might be used to implicate him, in the end, and he was implicated by, I'll tell you if you need, in a moment, but that couldn't be tried

26:30 in Borneo. It was tried later in Rabaul, the reason being there had to be a presiding officer of at least equal rank. So there had to be a general sit in the trial of General Barba. And that happened in Rabaul. I've forgotten which general it was, Australian general, sat on that trial and he was convicted and executed. The reason he was, and I have the transcript of the trials afterwards was,

27:00 that he was the one who ordered the second death march. He already knew, it was proved, what had happened on the first march, to the people who died. And he knew because we had an officer from his head quarters, came to give evidence in Hoshijima's trial,

27:30 and he had come and seen the condition of the prisoners. Now Hoshijima was a smart fellow, he got out from under before the last part. He wasn't present when the last prisoners died at Sandakan, he'd handed over to somebody else. He wasn't present and didn't order the marches. The marches were ordered from outside from headquarters, and Barba was the one that ordered

28:00 the marches. And it was able to be proved that he already knew from the report from this Japanese major who had come and seen the condition of the prisoners, that they weren't fit to go on the march. And he was put in the position, I cross examined him: Did he tell Barba this? Did he kind of keep it to himself, if so, he'd be implicated. Or was he going to implicate Barba? Eventually he implicated, he said he told Barba.

28:30 And so that evidence was used on Barba's trial. We fished for the evidence on the trial. And so Barba was triedfor ordering the second march when he knew the people would all die on the second march. And he was tried and executed in a later trial. Yeah.

I wonder given the set up of the court you were in, the Australian, I mean, it was an army court martial as you said, what

29:00 **expectation or level of objectivity was there within that court considering you were trying…**

Well you could ask that, too. I looked back afterwards and as I've written as a lawyer long standing, and I've got the evidence. I kept the evidence of those trials and I had a look back afterwards, and I am satisfied now, as a lawyer of long standing, looking

29:30 back right over my career, having looked and I read back, and I'm satisfied that there was evidence to prove that Hoshijima was guilty beyond reasonable doubt and we proved it there at that trial. So I can't ever tell how objective they would be. They were there, they were human beings doing their job. How objective is any jury?

30:00 How objective any judge who has to try a case? We can't answer those questions but I think there was the evidence there on those trials. There was certainly the evidence in respect to the second march because there was direct evidence from some of the guards who split on the Japanese.

30:30 From the Formosans. They fell out a bit with the Japanese in the end.

I wonder, given the climate of fear and often prejudice that had been in Australia in the last years of the war, toward the Japanese, how great was the pressure from Australia to get convictions in these trials?

I don't think there was any pressure. Lawyers were involved in

31:00 them, I was a lawyer there, lawyer defending, lawyers were involved in each. I've known some of the other lawyers who were involved, both there and also in that other place, forgotten where, and they were, I don't know, people of legal independence. I think the pressure as I said to him, would be to have carried out those executions.

31:30 They dared not, because there was some policy against execution in the present Labor government, I think I was right, they dared not, after all that had happened, they dared not commute, the sentence of Hoshijima for example, to life imprisonment. They, as a matter of interest, in the trials they had, I investigated this afterwards, they had trials

32:00 after WW1, but a lot of the atrocities committed by the Germans in WW1, as you know particularly in Belgium, and so the question of trials arose there and the German army was a – always had very high standards against the Japanese army, they had very high standards, and so the German army were allowed to conduct the trials of the Germans in the

32:30 First World War, known as the Leipzig trials, but they gave light sentences and acquitted a few and quite a few who were given terms of imprisonment then managed to escape. So after WW1, a decision was made that the trials should be conducted not by the enemy, but by the victors. And so a lot of people

33:00 said this was 'victor's justice', and a lot was written about that. But I don't think that in the legal system that in fact happens. But there certainly was pressure, there would have been pressure in Australia, who knew all the terrible things that had happened to the prisoners, eventually not to have carried out those executions. Which were carried out in Rabaul, outside Australia.

You mentioned that during the trial of Hoshijima there were no press or journalists.

33:30 No.

Why was that? Were they not allowed or were they….?

No, there was no interest or no knowledge. I don't know. There were some in some of the trials being conducted in the Singapore area. And the only thing anybody ever knew about these were in the little notes I put for information around 9th Division. And some of those got back to Sydney, I saw afterwards. They were just a little tiny report, but that's all there was. And so nothing was known about these trials for years

34:00 and years afterwards. And I, I didn't get in first, but I wrote the book in, I retired in 1984 from the Bench and I've written four books since. One of the books, this was 1989, but there was the first one, was only written in the '80s by a man named Ferkins[?], he died recently in Western Australia, air force man who'd researched it. But they had gone through I found, a fair bit of the material which

34:30 I'd had from the trials. But it wasn't known until then at all. But it's known now I think.

Why wasn't there the interest at the time?

I don't know. I don't know why. Mainly, see there was nobody to tell the story. My principal, which was Sticpewich,

35:00 who knew the story better than anybody else, he came back to Australia- Melbourne, and not long after that he was knocked over by a car and killed. He'd been through what? He'd been through Sandakan prison camp, he'd been through the second march and the last to escape and he'd been through the jungle and the other man who was with him had died, and he'd given evidence. And then he was killed. And then of

35:30 the other five, one of them committed suicide after the war, not long after the war. And then two that I got to know, I only say here, not to put too much value on it, weren't that right. And their story wasn't kind of told. And then there were two others

36:00 who'd escaped during the march and the last one of them, Owen Campbell, he died in Queensland only a few months ago. So they're all gone now. But they didn't tell the story for a little while. I didn't tell the story. I came back and got on with the job. I don't know why the story wasn't told. I didn't take any action myself, perhaps I should've. But I went

36:30 and came back and got married, went to the Bar. Straight into life again.

I wonder, you've mentioned that the six survivors and where they ended up I guess, but what condition were they in at the end of the war when they were finally found?

Oh they weren't too good. They weren't well enough to come back at the time of the first trial. But they couldn't have helped me on the main thing about Hoshijima.

37:00 Only one of them gave evidence, Bottrell, he wasn't very well on the first death march. He was, he's dead now, and I met him. I had them all one time, the one thing I got to know in Australia, came down and we had a meal here at one time and they've endorsed my book, but he was

37:30 never very bright and Short never spoke up much, and Campbell got in – I don't know much about him, never met him, but the story never got out. Why, I don't know. When I wrote it, it was too late. It was long after the war.

The five that couldn't go to Borneo for the trial,

38:00 **what were they suffering from?**

Oh I don't know. Oh they would be see, there were, four of them who escaped, quite a while before the general surrender. And they were in the jungle for six weeks. They were hidden one place by the Dyaks (they) were very good, they helped all these people.

38:30 They were hidden by them. One of them died. They'd all been starved originally. They'd survived the death march. One the first death march, the others the second. They'd survived Ranau. And then they'd escaped and they'd been in the jungle for six weeks

39:00 and when they were finally brought out they were all brought out to the hospital in the jungle, but where they were rescued by Z-Force, they were carried by stretcher. So that was their condition finally. One of them, Short who'd claimed he was a bit better than the others, he insisted on walking but he was hanging on to the stretcher. But all the others were carried by stretcher. Of the three,

39:30 the two that were in the jungle, I don't know about them. Campbell, there were four of them escaped, and the other three, they'd perished in the jungle. And he (Campbell) survived. So none of them were – they couldn't have been in any shape or form. They were, shadow men. One of them that committed suicide, he got married and threatened his family with a gun and then turned it on himself. So…

40:00 I think they were just, you now, they were wrecked men. I saw Short, he kind of, oh they were a bit obsessed about the Japanese. Short said to me, "I could never forget or forgive." That was his attitude right to the end, Short. I think his second wife is still alive too.

40:30 But Blow was a survivor and he survived everything, but he hadn't been ever in the Sandakan. He escaped to the Philippines. And they joined the guerrillas there, and then he turned back in Z-Force. And he brought in the last of the Japanese. So I don't know. The story was lost.

Tape 5

00:30 **Athol, you were just mentioning some more detail about the trial of Hoshijima.**

Yeah. There was an incident which should be referred to. In the course of the trial and soon after evidence had been given about Hoshijima's not only starving the prisoners but denying them medical supplies.

01:00 In fact there had been some evidence given by Sticpewich that when the Red Cross supplies arrived, that the Japanese put them on their own shelves and gave practically nothing to the prisoners. And then also, Dr Taylor had given evidence that he had enough quinine there to supply British North Borneo for two years which he put in store just as the war was coming,

01:30 and that he offered that to Hoshijima and he declined it. Somewhat after that evidence was given, Hoshijima suddenly asked for an adjournment. He said he had malaria. There was almost like an electric shock went around the court and I think it also hit the defending officer. You know, here was this man after that, and he was after this for this concession.

02:00 And certainly I think the court did, there was a silence and then the court said, "If the Australian doctor confirms it, yes." So there was a short moment, he was examined and the court was adjourned. As I say this, the contrast was quite startling. That was one little bit that I was going to add. And then some other fun bits in due course I'll tell you about – not necessarily concerning Hoshijima's trial but generally.

02:30 **But I'd also like to ask, you mentioned earlier this morning that Hoshijima elected to have the trial conducted in Japanese. I'm wondering what kind of difficulties that posed for an Australian.**

It was very difficult. It meant that everything has to be interpreted into Japanese. It was given in English but then it meant that Hoshijima, who was the accused person,

03:00 or anybody else for that matter who was accused, and they used Japanese, he would have anything that the English witness said, translated into Japanese. So that was it. It didn't matter so much so far as Hoshijima was concerned because he spoke quite good English. And in a lot of the things that he said to the prisoners, he spoke in English. And even when one of

03:30 the senior prisoners made a speech at Christmas, in English, he was there listening. He would know. No I don't, it didn't seem to me that it caused much of a problem but it was just that he then, only when it came to my cross examination at that stage, started to disrupt the whole thing, deliberately, obviously. He knew what was going on but he just wanted to start an argument. And then before my questions there, he had lots of time to think about

04:00 the answer because he'd been arguing for five or ten minutes what the English and the Japanese were. It was part of his tactics of course.

Well I'm wondering if there was any resentment that built up on behalf of the Australians, because it was being conducted in Japanese.

I wouldn't think so. I think, I mean that we were conducting something and we were trying to be fair. It's very unfair

04:30 if you try a person in Australia who speaks little English, and a foreign language and can't really understand what's going on. You put yourself in the same position, if you were suddenly being tried in Austria or something. Or another country – you may speak Austrian I don't know.

And how long did the trial go on for?

It, most of the trials you can't compare with

05:00 present day trials – usually trials in those days weren't very long. Most of other trials were very short. I think it went for a fortnight. It was, oh maybe two or three times longer than any other trial. On and on and on, particularly then when he took over and made the long speech at the end. Came the adjournment, still talking. Next day, talked all day.

Can you share with us

05:30 **some of what he was saying?**

No, except that, he was only going over the evidence although it had been all gone over, and just saying this wasn't right, I didn't do this, I didn't do that, I never did anything wrong. He at one stage of course, he had paraded out how kind he was to the prisoners because he had killed his own favourite horse and he fed the prisoners on it, this is what he said. Sticpewich never gave him any change. When

06:00 this question was asked of Sticpewich, Sticpewich said, "Yes, he did kill his horse, he had this white horse, he used to ride around where the prisoners were working on the airfield, watched what was doing, he'd ride around on this horse and so forth." He said, "When the work was finished he did the

same to the horses that he did to the prisoners. He was no more any good so he killed him" and then he said, "What did he do?" He said, "We only got the hooves, we didn't even get the heart or the liver.

06:30 We only got the entrails, that's all we got." So this was the kind of the contest which went on. He was talking about this great horse but of course, everything was exaggerated, he changed the evidence, he just said this, he never did a bad thing in his life, he was a wonderful bloke, you know. It wasn't any reason kind of addressing the evidence, it's just that he'd never done a wrong thing in his life. He might've believed it, I don't know.

07:00 **We've mentioned a little bit about the structure of the court room and that you were the prosecutor. I'm wondering at the end of that fortnight, at the end of the trial, how long passing sentence took and whose responsibility that was?**

Oh I don't know. What happened there is they'd start on the first of January (1946) and they went through into February and then so far as that was concerned, that's the last of the trials

07:30 we did. What happened to any of the others, to be frank, in respect to the Japanese who massacred the hostages, I don't know about that, I was just there, I went there and did my job and I tried the cases they gave me. I had no control of what they were doing. A lot of the others were tried elsewhere. I heard afterwards that there had been a request higher up

08:00 from Tokyo that I be transferred to Tokyo to engage in the war trials there. But fortunately they said, "No", I was too busy in there and they knocked them back and I was very glad they did. I wanted to get home. We all did.

Well I just asked because I was wondering whether Hoshijima got any chance to appeal his..

Yes. there was an appeal process and

08:30 the appeal process was; first of all you appealed and that went through to army headquarters and there was a very top lawyer person there, I've forgotten his name now, of fairly high rank in the legal services and they went right through all these trials. And there were some of them, they did revise the sentences in respect of the first death march because the evidence wasn't

09:00 murder in most of them, and they slightly revised some of the term of the sentences. But that's the first thing and in there also was, I understand, there was a kind of petition, which probably went to the Governor General, I'm not too sure about that. So both of those, that's what happened there. And I think as far as I gathered, I didn't know the name of the colonel in the legal field, he was a very reputable man

09:30 and I'm sure that they would've looked at them very carefully. Of course there were no appeals at all in respect of the Nuremberg or Tokyo trials, those were decided and that was it. But these were subject to appeal.

We've mentioned that the trial of Hoshijima was your most difficult.

Oh yeah. It's the most difficult trial I've ever had in my life. I saw some

10:00 enormously difficult things. I did some very difficult cases in my life at the Bar. I in fact conducted the Royal Commission into Organised Crime and I know all the ins and out of all that. There's never been a case of such difficulty as that one. Nor a worse murder.

As Hoshijima's?

Yes. Well it was straight murder. He intended to kill the prisoners to get rid of them. In a moment,

10:30 I'll come a little bit back to something he said about that, but there's no doubt it was straight murder. It was intended to get rid of them. They were baggage, hostage. They were considered dangerous to Japanese, and he decided he'd kill them, instead of by direct execution, it was by indirect means of starving them to death. At that stage

11:00 of the time, the Japanese and I'm sure including Hoshijima, with the war in Europe finished or almost finished and there was great deal of talk about war crimes, they were very concerned about war crimes, and Hoshijima, there's no doubt, started to kind of fix up things to protect himself and one thing of course was this false headquarters order. And so he was very conscious I think,

11:30 of the war crimes in what he did at the end. And you see, if he'd just deliberately got them up on the wall and shot them, he'd sufficiently know he'd be on the spot and then after what had happened, it was realised not only by him but the others that they were on the spot, and Hoshijima. And the instructions in respect of those who were in charge of the death marches, none were to escape.

12:00 None were to escape. And then of course…

I'm wondering if you got to the bottom of why the POWs were such a liability to the Japanese.

I'll do a bit of that on… why - I can talk about that now. Hoshijima, without really going in to explain it very much, talked a great deal about the Sandakan incident, he called it 'the Sandakan incident', that's

12:30 the actual words he used. He was referring to what happened in 1943, when the officers were separated from the men and the underground was discovered. And he had some kind of thoughts about that and he thought there was some conspiracy and he referred to that in conjunction

13:00 with the Jesselton massacre. Now Jesselton is in North Borneo but right up near the coast. Virtually the capital I think. Now there, in 1943, almost about the same time, was an uprising by the Chinese. The Chinese gained control of Jesselton and then there was the retribution of the Japanese and it was a terrible

13:30 retribution. There were 800 Chinese executed. They chased a lot of people who'd been in Jesselton on(to) one of the islands off Borneo and there was a massacre there of women and children, all attached they thought and they were refugees from Jesselton and there were trials in Singapore

14:00 over that massacre, in which the Japanese who were, you know, on that island, were sentenced to death and executed. So it was a big thing and it coincided in time with this other. And it was quite clear that Hoshijima connected the two. And I think that Hoshijima considered then, when the work was finished and they were cut off in Sandakan, that they were at risk and that the prisoners were a

14:30 danger, rising up and overthrowing the Japanese as it happened in Jesselton. That's what he had in his mind. He never quite said that and there was quite a bit of material that I saw, some that I got from Sticpewich. Now Sticpewich, as I said was a bit of a con-man and the prisoners didn't quite trust him and but he certainly kept his eyes open and he knew what went on behind the lines. But he told me a fair bit

15:00 and I think most of it might be right. He said that there were plans the time that Matthews was helping people to escape. And Matthews was the one, through Dr Taylor and some of the local people, (who) got through and warned the incoming contingent, that's the second – the prisoners at Sandakan came in two lots. The second lot came in 1943 and they were

15:30 stationed on the island, just off of Sandakan, ready to move in. And then there was 6 of them escaped, and then one from Sandakan who'd been at large (previously escaped), got with them too, with the assistance of the local people, and also Taylor's underground organisation, and they escaped to the Philippines. And one of those was Rex Blow who later became the major who I referred to. And he was he was a very outstanding man and they waged war

16:00 very successfully against the Japanese in Tawitawi that's part of the Philippines, nearby Philippines. And in fact the Japanese had a price on his head, advertised in the Philippines. So, this was Blow, that's a different story, but as of that time, according to Sticpewich, there was also a plan when the time came for a general escape from the Japanese, for the prisoners to perhaps rise up

16:30 and take Sandakan. Now I think that Hoshijima himself thought that. According to Sticpewich they had from the old British constabulary, before the Japanese arrived, they hid a whole lot of arms and rifles in a secret place in Sandakan, it would be some five miles from the prison camp. And according to Sticpewich there was some plan to rush the guardhouse, get the rifles and

17:00 then hold the place against the Japanese on the basis that although they were unarmed, they'd be superior in numbers to the Japanese. Now this is a shadowy area that I don't know anything about, but whether it's right or wrong, I think that Hoshijima really thought that they were in danger, it wasn't just where he got rid of the prisoners, it was also because they thought they'd be a danger.

17:30 And that's the point I was rather making, that the prisoners, once the enemy, that's our forces, got back near them again, the Japanese would be scared that the prisoners would rise up. And that's what I think, that if the bomb hadn't been dropped, many, many more prisoners would have perished. Though in fact, I researched some bit later, and there was an order that came out

18:00 telling the Japanese prison Commandants and Commanders, that came from headquarters in Tokyo, as to what they were to do with the prisoners. But if the time came and they had to surrender, to give them a good meal and hand them over. But then they also said, those who are considered to be a danger, they should be suitably dealt with, which means execute them. This was the thing that came through from head

18:30 quarters in this 1945 period. So a view I'd always had, is that in addition to what actually happened, behind it all and Hoshijima's talk of the Sandakan incident, he connected the breakout in - of the Chinese, at the same time as what was going to happen there and that really he was saying, "Well you know, even if I did it, it's

19:00 because they were a threat." He didn't quite say that but I think that was certainly what was in his mind. How true it is? Nobody'll ever know.

It does seem a little surprising given the condition of the POWs.

Well he, you see, they had been in reasonable condition up til the end of '45. Their ration wasn't

19:30 high but it was reasonable and not that many died in actual Sandakan up until '45. You see there were 2,750 originally and there were 1,400 still there in January '45 and those who'd gone to Kuching and so

that it was really only in ’45 when the workers finished and they were a liability, the Japanese were cut off. And that’s why

20:00 Hoshijima’s smart move had been to get, I think he inspired that order from headquarters and he would’ve known all about that in Belsen, there’d been talk, the Belsen Commander had for starving the people in Europe ,and so that he manufactured it, I’m pretty sure. And he had that already, straight away gave them off. And of course although the –

20:30 I could never get the quartermaster, he just said, “No, the order originated by recommendation from Sandakan and that before we did, Hoshijima and I consulted and he agreed.” That’s as far as he went, but I think probably I think he instigated it as being his defence. That’s you know, a bit of theorising and a great tragedy.

21:00 **And still it goes back to the question of who was ultimately responsible and whether…**

Well there was, no it was quite clear, no Japanese ever… there was no evidence ever given of superior orders to Hoshijima. They did raise some of the question of superior orders eventually at the last bit of the, and what happened, it ran out. But never ever raised,

21:30 never, ever claimed, he acted on superior orders. Never, no reference, I only found this signal after some research, a man who’d written a book years afterwards, about this order, but this was from Tokyo to all prison commanders. It didn’t say to kill prisoners, it said those who are regarded as a danger to the Japanese should be suitably dealt with. It was the Japanese way.

22:00 I found in the signals, they never, as the war came to an end, they never ever gave direct orders unless headquarters – the Japanese at headquarters might be at blame. All they did when there was something to be done, they hinted. And those who received the messages understood the hints and I think that that message really meant that they should be executed or killed. But they didn’t say that. And no, that was never raised by Hoshijima, that’s only something I - found out

22:30 30 years later. In the research I did.

Well there’s certainly no denying that Hoshijima the individual, was responsible but

Oh yes. He didn’t claim that anybody told him to do it. He was only, flirting around with this ‘Sandakan incident’, he talked a lot about it, but he never ever came to the point about it. He talked about it and the breakout co-inciding

23:00 in Jesselton. The Chinese breakout.

Well I’m wondering whether there was any thought or questions or discussion about prosecuting at a higher level.

Oh yes. Well there was. I told you there was a prosecution eventually of Barba. See Barba, he was he was a top ranking – he was a lieutenant general, very high and he was in charge of the whole operation.

23:30 And there was no doubt from that man, I cross examined a major from headquarters, he came back when he knew the condition of the prisoners before they were put on that second march. And he finally admitted he told headquarters. But there’s no doubt that he knew. He however, wasn’t responsible for the order of the first march because he hadn’t at that time come and taken over command in

24:00 Borneo. But he knew about the first march, he knew what had happened and he certainly was (on?) the second march. It was on the basis of the second march that he was convicted. So that’s, I only know that because I read the transcript. And that transcript of that which I dug out of archives after a great deal of research, it’s now with my papers in the War Memorial, in the Moffitt Papers in the War Memorial.

Well I’m wondering

24:30 **if you felt like the trial of Hoshijima and indeed others, ever really got to the bottom of explaining the psychology behind why POWs were treated so poorly.**

I don’t think that was relevant. Strictly speaking, the ‘superior orders’ was not regarded as being a defence. It could

25:00 be a mitigating circumstance if it’s relied on. That was my understanding under the war trials. But no, there was no point. We were looking at the objective thing that happens. What the intention was. There’s no doubt about that when Hoshijima starved the prisoners and he stored the rice under his house, he intended to kill them. And then to make it worse, as soon as they got

25:30 sick they had no medicines. And the Japanese had them, and some of them they’d trade the ordinary soldiers, they’d trade the Quinine or something for a watch. So the Japanese had them but the prisoners didn’t get them. So it was like everything else, you look at the end, if you if you want to get an impression

26:00 of the thing and say well look, these are the thing. I’ll take this and when it comes to the penalty it’s up to the Japanese to raise. But they didn’t raise that. Yomada didn’t raise that.

And who ultimately decided on the sentence or passed sentence?

I made the submissions, I often do. I submit that he should be executed by hanging. But that's only my submission.

26:30 I'm against the death penalty but I just thought here, that you have here, , there's no question of reformation, there's no question of rehabilitation and there was very much a question of retribution. Here it is, the most awful murder of Australian people and that retribution carried the day. But I didn't make that decision, the three officers did, and that had to be

27:00 confirmed by a very top level headquarters in Australia. So headquarters in Australia could revise that, and they did in fact, as I mentioned earlier, just in respect of one. So it was a decision confirmed at the highest level.

Well this case is very, very early on in your career, and understandably given the nature it would've stood out as one of the

27:30 Yes, it did, it does. It still stand out.

But I'm just wondering, can you elaborate a little bit more about for you, why that was?

Well I just, as I told you at the beginning, I went over there and that was the job. I was a bit surprised, the first one I got the most difficult one. But they probably said, "Oh well this fellow's a this and that barrister," I'd only had one year, "And first class honours in law, whatever he did, give him that one." So I walked

28:00 over, I didn't choose it, there it was on the plate. "You have a witness; he'll be coming back from Australia soon. And here are the papers, there they are." So it's one of those things in life, that's it, you do it. I didn't have a say. They didn't ask me would I like to do that particular case or would I like an easy one first. Not that any of them were easy because of the lack of witnesses. You see even at the end there, what happened at the end in

28:30 Ranau, was never really known, because there were no witnesses alive. What occurred? Everyone's dead. But in the Ranau one at the end there, the things were different there because there was some difference of opinion of the revolt,

29:00 even by one of the Japanese. One of the Japanese shot one of the Japanese officers. The thing went out of control at the end in Ranau, so there was evidence about what happened. And they raised a silly defence there of military necessity. That they had to get rid of the prisoners and therefore it was a matter of military necessity to defend themselves.

And what was constituting

29:30 **military necessity?**

They never described it. There was no military necessity, they just killed them. And this Japanese private that warned Sticpewich, he knew the massacre was on. But I think the prisoners didn't think it really happened. Though there'd been threats of a massacre before

30:00 and it didn't occur, but then it did. And they found that doctor fellow who wouldn't go with them, Bekani, they found his stethoscope along side the mass grave. Yeah. I only know that indirectly of course. There we go.

Well I'm wondering how many trials you ended up being prosecutor for?

30:30 Well they'd prosecute, they picked out the worst cases in respect of the officers. Now there were many, many cases where you might say that Japanese could have been prosecuted, but, Mountbatten, who was the head, Lord Louis Mountbatten, who was later

31:00 assassinated in Britain, Lord Louis Mountbatten. Borneo came under his command just as the surrender. Previously it'd been under the South West Pacific Command, under MacArthur but it came under his control. Well now, he had to say something about, he thought the worst case should be picked out, there's an actual statement, the worst cases should be picked out in which there is clear proof

31:30 and those cases prosecuted, and then after all that having been demonstrated, they should come to an end. I wrote a lot of material later, much against the Australian prosecutions, years and years and years after, they said, "It's too late, you couldn't conduct trials." And therefore coming now to Lord Louis Mountbatten, what we did there, we picked out the worst ones, the officers that were in charge and didn't

32:00 pick on the privates. You might say, "Well they didn't have to obey superior orders", you get into a great field of argument there, because the Japanese are very much into obeying orders. Although there's one case I got there from Sticpewich, where the Japanese was told to shoot one of the prisoners towards the end there, and he didn't want to, and he was given an order.

32:30 So what's he do? He said, "Go on shoot, shoot." So he deliberately missed the prisoner, he missed him

again, until the sergeant grabbed the rifle out of his hand and shot the prisoner himself. So that's kind of one instance of what some of the Japanese privates (would do), they weren't, they weren't all kind of, you know, the same. There must have been a great turmoil amongst some of the Japanese, but we never took any action against them. About some of the other cases,

33:00 I frankly don't know. About those that killed the hostages, if they ever were able to identify them, but when those last Japanese came in at Lawas, I told you about earlier, we had a list, a long list, people wanted as war criminals. And we saw them, we found some of them by name and they got loaded on to barges. Now what happened to them? I don't know whether they were ever able to prove a case of those who killed the hostages outside Miri, I don't

33:30 know. But so far as I was concerned, I did the job I was given and I came home. That's how the army works.

So effectively you did the Hoshijima trial and that was it?

Oh no, no, no, no. I also did the first death march, I did that. I haven't got into detail about that one. But that was a very difficult case because there were no witnesses. There was only one survivor and he was

34:00 in one of the nine groups and he hadn't, couldn't, give any direct evidence as to what had happened anyhow. So that only turned on some admissions that (were) originally and very unwisely given or statements made by this man who didn't belong to the unit, who ratted on them. So that was a very difficult case.

Well I'm wondering…

But they undoubtedly in that first march

34:30 didn't bring them into the rest places and they just died and gave them all a burial and they, if they couldn't go on they just shot them. In the first march, if they couldn't go on, it seemed they shot them. In the second march, when they decided that they wouldn't be able to stand up much longer, they shot them then and there. But in all

35:00 the Japanese were very, a bit like the Germans, they were very good on, meticulous on detail. In respect of all the prisoners they issued death certificates. But, all the death certificates were false in the sense that nobody ever died other than from illness. So all the death certificates issued, and a lot of things had been written as to when the people died, but those dates are not reliable. In for example, in respect of the last prisoners who were

35:30 massacred at Ranau, they all ,coincidentally show, I think they died by illness or something, on the 1st of August. Everyone just died on the 1st of August. But on the material I had from Z-Force, some of the stuff they had when they were coming through later, they were still alive after the 1st of August and they were massacred I think, on the 1st of September, but those certificates, originally,

36:00 they were charged originally, not knowing otherwise, on their admission that they died on the 1st of August. But in my book, it was after the war that they then killed them, and then came in and surrendered that's from Ranau. But that was their methodical way. But a lot of things were done, where people died and what date, but I never said very much, but I don't think that it's necessarily reliable. It's some indication perhaps.

36:30 **Well how difficult is it without reliable evidence or witnesses, I image it must be very difficult to prove a case?**

Well, we didn't have to prove when people died anyhow, that was irrelevant, but you needed direct evidence and there was direct evidence in respect of the second march. There was quite a lot of it.

Well how difficult was it then to back up after

37:00 **your first trial with Hoshijima, how difficult was it for you as an individual human being to front up and conduct?**

We had a job to go on with. You ask anybody in the services, you ask - I know [Sir] Roden Cutler very well, he's a friend of mine. You ask Roden Cutler about his VC [Victoria Cross]. He'll tell you, I just did it, I didn't think about it at the time. And that's the army, you've got a job to do,

37:30 you do it. A lot of the people who do very bad things in war, they don't think about it at the time. Not like the old story where they said you couldn't get a VC at any time unless you had two witnesses. There was the old cartoon from WW1 of a soldier jumping out of the trenches said, he said, "You two fellows watch, I'm going to have a fly at the VC." Old story.

38:00 So that's the position. You don't, you just do what you have to do. And these people they really will tell you, a lot of people who do brave things in civilian life, they just do them without asking and you don't think about them until afterwards. You just do it. The same thing happened there, it didn't, I don't know, I sometimes feel a bit emotional, I look back at some of those things but it was a job and it consumed

38:30 a lot of time and concentration. And then at night time, I had a bit of a sense of history about it because there is a personal account, written just at the time, of what people looked like and what they did,

drawings of the people involved. My father being a bit of an artist, I was never an artist but I was able to sketch a bit, so I did the drawings and the, but then I used to go til late at night sometimes

39:00 four or five pages, have a few drinks in between time and write up the diary. So there it is, three or four hundred pages.

You've described a bit of Hoshijima's personality and the first trial. With the second trial that you conducted, can you describe the personality of the person you were...

Yes. I didn't describe a bit on the second trial. The man who was the commanding officer, who

39:30 got up at the end and he made a reference to, he said, "Now, I'd like to tell you about the men, they've been with me for years and I want to tell you about my men." And he described the bit about each their different idiosyncrasies, the man who stuttered, they called him 'Stuttering Stan' or something and the different things – he was very good in the mess, and did this and that, gave a personal picture of all. He said, "They're my men, they've been with me for years. Anything that happened, it was me, execute me but let them go,"

40:00 you know. But so he gave a very, very human picture of those people. And I as I say, I felt sorry for them because they were put in a position not of their own doing, not like the others who had been cruel to these prisoners for years. They just had to take them and they had to move them through the jungle. They were victims of events.

40:30 **And I'm wondering about what your thoughts are on the kind of precedence that those trials might've set.**

Well it's a great difficulty and I dealt a bit with it in this book, what do you do, why do

41:00 you punish? Do you let crimes go unpunished? Now there are international treaties, which if you go back to (UNCLEAR) on which these are based, and there's a Hague treaty of 1907 I think and it agrees that in respect of armed forces,

41:30 in respect of in occupied area or other prisoners, that there is an obligation that they will act humanely. So there is an international, a recognised international obligation to act humanely to those people in occupied countries. There was a leading case at the highest court in America, the American Supreme Court is the very top court.

Tape 6

00:31 **Athol, you were just talking about why it set a precedent.**

No, what I was saying is that one needs to understand the basics of what a war trial is. The war trial doesn't set the precedent. The position is that the international agreement agreed to (by) practically all the nations of the world, known as the Hague Treaty of 1907, and that agreed in the way I've just indicated, that

01:00 nations who are party to it, would observe these rules of acting humanely to people under their control in occupied countries or other prisons. And then there was a decision which has long since been accepted all over the world, by the American Supreme Court, that's the very highest court in America, that that wasn't a useless thing just placing an

01:30 obligation on particular nations, but it placed it on individuals so that if it was broken, a crime has been committed against international law, or in other words it became a war crime. Now, that was the one on which we relied, or I relied always then, in what I did. There was a later one which was known as the Geneva Convention against prisoners of war and it laid down a lot of

02:00 rules about what things could be done, could not be done about prisoners of war. Now, when that was made, it was agreed to by various nations, but it was ratified, Australia, Britain, America and so forth, but Japan had a party to it but hadn't ratified it, so Britain and America, Australia said to Japan, "we

02:30 propose unilaterally to observe that treaty." And then Tojo had supposedly come out and said, "We will too." But we didn't, it wasn't quite legally applicable the same as the other way so when we - any trials I was on, I always based them on the 1907 convention. There were quite a lot of things the Japanese did which they totally broke that prisoner of war convention, for example, it's against the prisoner of war

03:00 convention, agreed to, but not ratified by Japan, it's agreed that prisoners of war would not be used on work on military installations or military work for the opposing nation, and therefore the Japanese broke that by getting the Australians to construct a military aerodrome. And so they did on the Burma railway because it was to invade Burma and India. The officer who was in

03:30 charge of the prisoners when they first came to this work on these military aerodromes in Sandakan, the senior officer protested to Hoshijima. He was the commander right through, he said, "we know nothing about international agreements, you're under Japanese law, you'll tell us what we (UNCLEAR)

to do.” So they broke that convention, many other things they did too but we didn’t, because of those doubts, we

04:00 never – I never anyhow, did this accept under it. So the law was there, that was the international law which applied to the Japanese, they had ratified it. And in any event, it becomes international law when it is recognised the world over. It’s now recognised the world over, that’s not just whether you’re party to it. But that agreement about treatment of people in occupied countries, you’ve got to treat them humanely, it’s international,

04:30 and if an army breaks it, they’re a bit guilty of, or anybody in an armies break it, they’re guilty of a breach of international law and a crime. So it’s not a precedent.

I just wonder, I don’t want this to be an obtuse question but it is a war, and people die, so why is what the Japanese did to the former soldiers of Sandakan wrong?

No but you see these weren’t killed in action. If you take.....

05:00 there’s a distinction too, prisoners. Now that’s a very difficult question. In the heat of an action, you’re still fighting. If you take a prisoner, who’s going to look after them? And this great question, if we capture a Japanese that’s still in the middle of fighting, he’s just as likely explode a bomb on you. So it’s different to killing a person in the heat of action as

05:30 against them paying retribution afterwards, because you’ve opposed their forces. One is a part of the war, the other is not, in the sense that he’s taken a prisoner, you’ve undertaken to take a prisoner and under international law you’ve got a treaty with a prisoner. That’s the distinction and of course in a lot of places, the Japanese didn’t take prisoners. A lot of places we didn’t.

06:00 There’s a great question arose on the Kokoda Trail, what happened there, what happened in the heat of the jungle and so forth. You’ll say now, “I surrender”. “Okay, you come with me.” Next time you got, another Japanese is going to kill you, so it’s a question of that; if a prisoner’s there, he’s bayoneted at the time, he’s put out of action. You can’t take prisoners, it’s all part of the war. There’s a distinction. It’s a very fine distinction,

06:30 very difficult at times. And a lot of allegations about what happened at Kokoda, I won’t go into those.

We’ve talked a lot today about the trial of Hoshijima and the starvation of the prisoners after January 1945, but I wonder if you can tell me what you heard of the day to day life in the camp before 1945?

07:00 **And how Hoshijima behaved toward prisoners before the starvation?**

The prisoners you see were allotted a ration. Rice was very important because it’s the staple diet. Even if you don’t get other things it keeps you going, it’s got energy. So the prisoners, although they got a reduced ration, they got it and it was given to the prisoners and the prisoners then

07:30 used it. But Hoshijima had always taken a view that sick prisoners are not working for the Japanese, they’re no use, what’s the good of feeding them. And so therefore even before this earlier time, he would not allow for the sick who were in hospital and so forth, to be taken into account in the rice ration. So the rice ration which the Australians got, they had to share it amongst those who were not included

08:00 in the ration. So that they got the ration, the ration was sufficient to keep them going because they were a working horse, you have to feed a working horse and so they continued, they worked under very dreadful conditions and they didn’t have sufficient treatment and most of them survived. There was a great deal of cruelty and there were a great deal of ill treatment by the Japanese, I can give you some of those examples, but

08:30 they kept going, but then Hoshijima said something about “There’s no ration for the sick, they’re no good.” And they were very often there, they would say the prisoners were pretending to be sick and they’d come in and prisoners with ulcers or something, they’d kick them on the ulcer to see if they were shamming or not. You know all that kind of thing. And then they’d belt them up and all the rest of it but they continued on, there was a great deal of cruelty there

09:00 , that punishment cage was put on early in the piece, as a means of punishment. And then, every now and then to make them work, there’s some evidence, that he’d get the troops up, line them all up and then with great sticks, they beat them on the back to make them work harder. And then they did that to the officers at one stage, Japanese officers are not supposed to work and they didn’t expect

09:30 the officers here, but they’d get the officers up and belt them for not making their troops work hard enough. So all that went on, but life survived, but it was a very cruel life. That’s a lot of the evidence but, and then even in Kuching, things were very bad, even the officers sent there, quite a lot of them died in Kuching and a whole lot of the other people, a lot of the civilians died there too, simply because they didn’t look after them properly. But,

10:00 they had to keep them going because they were his work horses. Albeit with a great deal of cruelty. And

a lot of interesting incidents, I'll tell you a couple of them later if you want to. There was a bit of a sense of humour amongst the prisoners amongst all of that you know. I've got a few stories there.

I just wonder if you ever came to a personal conclusion about what drove that

10:30 **cruelty, what I mean it wasn't a point of saving themselves at that stage from any witnesses. What drove that cruelty in the beginning.**

Well I think to some degree, there was contempt for the prisoners. The Japanese always regarded as dishonourable to ever surrender. And from

11:00 Hoshijima's opening speech that I referred to earlier, where he told them "You're cowards 'cause you surrendered." Well the Australians had not much chance, didn't have a say there was a wholesale surrender in Singapore as you know. But he regarded them as cowards, and even in the later stage where he said that he'd give an explanation as to why the prisoners

11:30 just died, to try and excuse himself, "No" he said, "They just died out of shame." So it was part of their attitude I think, but then I never asked Hoshijima about this. I often thought after, I should, if this is the Japanese edict, why didn't you commit suicide? I didn't get around to asking him that though. He fought til the end.

Do you think he thought he'd somehow get away with it?

12:00 I don't know. I can't get into his mind. And then of course as I mentioned to you earlier, there was this Japanese attitude about - there's no duty, because they were bypassed. You see Japan was an island not like Great Britain mixed in with all of Europe, Japan lived as an island separate even from Asia for centuries. And they came down the tradition

12:30 and although the Judeo/Christian influence came there according to this professor, it never reached Japan. And if anybody came to Japan, even shipwrecked in the early times, they would execute them as being foreigners. And then they resented the nations, Britain and America because they intruded and started to exercise sovereignty in Japan and they had utter contempt for the

13:00 British and the Americans, they were very, kind of angry with them and America. America had intruded and they had taken possession and exercised sovereignty over Japan before the war. There was a lot of resentment.

You mentioned earlier some funny incidents or some incidences of humour that…

Oh there were a few, I'll just tell you a few.

13:30 There was one, the Japanese as I told you are very meticulous on numbers, and they had to get the numbers. So before you got your group out, the Australian sergeant had to get them up in number. So the sergeant gets the group up there and there's a Japanese sergeant or other there along side, so the Australian sergeant says "Number."

14:00 They say, "One, two, three, four, five, six, seven, eight, nine and ten, jack, queen, king, ace." And then the Japanese got in and bashed up the sergeant. And then from the ranks came "The little bastard can speak English." That's one of them. And there's another one there, they tell a story that they tried to con the Japanese you see, some of them, they'd say now,

14:30 "Oh, Japanese better jungle fighter than we. You show us how you fight in the jungle." So the Japanese gets conned and he gets down and he squirms on his stomach and all the service sit down, they don't have to work then, so they can watch, up comes the sergeant. Well they're just laughing watching the Japanese squirm and he gives the Japanese private a great kick and he orders the soldiers back to work. Those are just a few,

15:00 a few of the incidents. And I'll tell you, did I tell you the names of some of the - that they had for the prisoners? It'll take me a minute but I'll do it. And some of these were used afterwards to identify them. These were the names the Australians had for the various guards: 'Black panther', 'King' – 'Ming the Merciless',

15:30 "Intercourse', 'Intercourse Henry', 'The Ghost', 'Flannel Foot', 'The Weirdo', 'Weasel', 'Junior Ball Kicker', 'Little Marmite', 'Scar-Face', 'Red Eyes', 'Gold Tooth', 'Joe-Louis', 'Fish Face', 'Goldfish', 'Silent', 'The Big Cook', 'Frenchy', 'Wrestler', 'Tick', 'Quick Quack', 'Big Annie', 'Whispering Bear', 'Big Marmite', 'Lecarse Annie',

16:00 'Warthog', 'Stuttering Sam', 'Sword Swallower', 'Black Bone', 'Pig Boy', 'Rastus', 'Village Blacksmith', 'Little Gentleman', 'Pimples', 'Pockface', 'The Bear', 'Banjo Bill', 'King Kong', 'Pig', 'Bunny Lynch', 'Little Pig', 'Roman Nose', 'Parker Nose', 'Jalan Jalan', 'Mulligatawny'.

16:30 I'll just read a few more: 'Moon Face', 'Woman Beater', 'Myrna Loy', 'Doll', 'Shito', 'Piano legs', 'Clark Gable', 'Papaya Legs', 'Mackanwalla', 'Machan Basher''Little General' 'Little Colonel', 'Moon Rat' 'Bushey' and so it goes on and on - .'Mr Middleton Jnr', 'Bullfrog', 'Maggots', 'Ball Kicker', 'Little Ball Kicker'. Those are some of the

17:00 things they had there. I might just see if there's another one I had here. Oh the Japanese were good and bad. There was one there, there was one - a case they told where a Japanese was told by a sergeant to bash or hit some prisoner. He didn't hit him hard enough he said, so he kicked the private the Japanese

17:30 private and said, "Go on bash him." So he got stuck into him and that evening the Japanese private came and apologised for having done it and brought him some food. So you know. And then there was some others who I've told you who fired and missed and then there were other ones who

18:00 according to Sticpewich got, they had them there, they were quite good people and of course one that Sticpewich had become friends with and taught him Japanese and gave him a warning. So there. And I don't know if I've got any others, let me see. Oh some time I can – I told you about the 'Sandakan incident' didn't I? Yes

18:30 Oh and then, some got badly treated, there was a man who I think his name was, no I can't remember his name now. He'd been in the Sydney Show in one of those boxing tents. You know they used to get up and have a boxing thing, so he was there and he was

19:00 working in the cook house for the prisoners you know, and the Japanese came and just took one of his dixies to wash his underpants in. And he objected, and the Japanese punched him in the face. So he being the champion boxer automatically did a counter punch and knocked the Japanese out. So, the retribution was terrible. They got him,

19:30 they put him on a piece of sharp bayonet, knocked him about, broke his arm and then they put him in the cage. No food or nobody could go near him for a couple of days or put water in this cage. And there was one of the Japanese who at night-time sneaked in and gave him some water. So you know. It was a mixed up kind of thing wasn't it?

20:00 Yeah.

I wonder Athol, how much of a defence it could be, I mean you mentioned that there were some Japanese that were obviously compassionate toward hurt POWs.

Well I think that might be so but you see the Japanese had so much amount of order, the, if you look at the history of Japan, the ordinary soldier was nothing.

20:30 It was an officer class kind of soldier, the tradition of the samurai and all the rest of it you know, and the ordinary private he had nothing. And it didn't necessarily follow that he didn't have the compassion. I don't know one way or the other but certainly there were some there that did show compassion. And then on the marches, on that first march, I got

21:00 from the Japanese themselves, some of the stories they had of the prisoners. And they got on quite well with the prisoners, but then comes the order, they'd always obey order, and they'd forget that they'd been friendly with the prisoners, they'd been quite friendly with the prisoners. There was one of them on his trial there, on the first march, he said "I was quite friendly with the prisoners, there was one time there, there was a – I was having a guessing competition with one of the prisoners."

21:30 He said "W#hat's the longest word in the English language?" And he said – "He had something to do with chemistry" and the prisoner, the Australian gave him some long name. He said "You're wrong," he said. "Smiles, it's a mile between the two s's." This is a fellow that giving evidence, and that's probably right too and yet the next day, if he was told to bash him or do something else, he'd do it. In the meantime they'd be quite, he didn't seem to find it inconsistent so there was quite a degree

22:00 of friendliness there between them even on the marches. And one time, one said that he was starving a bit, and "I managed to catch – one place we passed, a WAS DOUBLE QUOTE CHOOK and I cooked it up and I gave it to one of the prisoners." Well that probably was right too. And yet, they were just nothing to the Japanese. And if you look at Japanese history, at the time there was a great deal of contention. Japanese, when

22:30 they some way a long time back they introduced conscription, they regarded it as interfering with the very superior class of the samurai, to have just ordinary soldiers thrust on them. And this distinction was very much so, that's why the bit that I read you about what the officers did to the prisoners, they treated them as nothing. And in the morning they'd get them going, they give them a kick or a hit or anything.

23:00 And so the prisoners, the ordinary soldier was regarded as nothing from the Japanese officers' point of view. We had a little bit of that you know, if you go right back to the early times of the Crimean War, British kind of race, superior class, only the superior people

23:30 were allowed to be officers and all the others were just privates and they were nothing. And so during the Crimean War you'll find that while the ordinary soldiers are doing this that and the other the officers were just out enjoying themselves.

Given the nature of the inconsistency for many of the privates of the Japanese privates,

24:00 **how much of a defence was it to say that they were just following orders?**

I don’t know. Except that I know the tradition was very much that you had to follow orders in the Japanese, you were nothing if you were a private. You see it’s a little different to the Australian tradition. As you know the Australians were very much an individual and every private is his own individual personality,

24:30 well it doesn’t follow that everybody’s the same. That’s a very Australian trait, Australian is his own personality and he’s got a great independence, but that certainly didn’t happen amongst the Japanese, they were an inferior class and they did what they were told, I think. It didn’t mean that some of them didn’t have their own feelings about things, but once again, their whole

25:00 kind of culture, was one in which you had a duty and you had a duty to your group and therefore if you were a member of a group, you had to support the group, right and wrong. And if the group failed, well you failed too. You might have been very brave in that army group before the group failed, you didn’t say, “Well I was as brave as I could

25:30 be, the group failed, it was my failure”. And you could have a Japanese commit suicide, not because of anything that he did, but because his group failed. It is entirely different to (Australia), at the time I didn’t, I still don’t quite understand it now, I’ve read a great deal of it, it’s a different culture entirely to what we had. Whether Japan’s changed now, but cultures don’t change, they take centuries to change usually.

I wonder Athol you’ve

26:00 **told me about the trial and about some of the funny moments that you heard from inside the camp, but I guess what were some of the worst things that you heard that had gone on? Either to the natives or in Sandakan.**

Well I think I’ve told you the worse thing is that they’d inflicted this gratuitous cruelty. They even had this Dr Bakoni, who as I told you about,

26:30 the discipline there. He had a patient and had some burst duodenum ulcer or something like that, this was way back, and he had injected the patient and was about to operate and he hadn’t got permission from Hoshijima. So he was seized

27:00 and - for disobeying orders, but he was about to start this operation and he was made to stand for hours, his hands up in the air, looking straight into the sun. I know, hard to understand isn’t it? While the patient was injected, I don’t know what happened to the patient. But that’s one of the things, that’s Bakoni who later died. Yeah.

27:30 **As a young man prosecuting this case, how did you manage to switch off from the gravity of what you were hearing?**

I don’t know, - - when you knocked off, you went down there. Then very often you were there, you’d write up your diary, you’d go down to the mess and have a few drinks.

28:00 And I was in a tent there and we had under the floor board, I found there was a snake under there. Well we had co-tenants. I was mainly troubled when I came back at night, I saw that I had a mosquito net that he couldn’t get in. I was mainly frightened I’d come back and having a few drinks, you know, I’d step on the snake. But we lived there, we, I didn’t bother, it’d be too much trouble pulling out the floorboards. There it is. So you just kind of

28:30 took things as they went. You know -, I don’t think I was any different to anybody else.

How much of a comfort was it to be able to write your thoughts in your diary.

I think that’s a bit of a help. I wrote, I think that’s quite right. I wrote a whole lot of thoughts there too, some theories I had about this ‘Sandakan incident’. I wrote a fair bit about that, as to what might’ve been, and some things

29:00 that Sticpewich told me and some things I was a bit doubtful. Something I wrote, revealed there was a great controversy about some prisoner who kept a diary and because I’d never heard any proof, I don’t talk about that one. But and so I had a lot of theorising in there. If I had a doubt about a thing I say so. And I made some description of the personality of people there.

29:30 The Japanese- what they were like. And I made a description of Sticpewich, who was a bit of a con man. Typical Australian really, really he was amazing man. But even now, the prisoners today, they’re not too sure about him, whether he was pro-Japs. I think the Japanese even thought he might be their way, but they made a big mistake when we called him.

I wonder you’ve mentioned the different personalities in the courtroom, but

30:00 **what did you bring to that courtroom? What was your personality throughout the trial?**

I don’t know - let somebody else say that. I was just growing up. Oh well, how old I was, …1946, I was 22. No hang on, no ’46, I was 32. I was grown up.

30:30 You're grown up at 32 aren't you? Well why not.

I guess I just wonder as a prosecutor what were you like? What would you….?

I don't know. I was always a very thorough worker and I prepared what I did and I'd -

31:00 well I saw, while I was waiting for Sticpewich to arise, was I saw what the defence was and I suspected was wrong and I worked hard to have it broken. And the work I did, did break them and I saw these two quartermasters and solved the whole problem. And that when Sticpewich came along, that was curtains. But some you couldn't,

31:30 you didn't have the evidence. But that provision in the crimes act where you could use the statement from some member of the enemy, it was quite fair there because, there they were in the prison camp. We'd lost all our witnesses and they had the whole lot there. They could get there and they could call them if they didn't like what he said. It worked quite fairly

32:00 I think. Otherwise you'd never get behind because in both, particularly in Japan and Germany, there was a great secrecy of what happened behind the lines and you couldn't penetrate the truth unless you had this means of relying upon what you might say, statements and the court could give it such worth as they thought. In this case the worth was a hundred percent because they had the Japanese and they called them.

32:30 And the Japanese are very simple in these things, they said "Oh, no, no, that's, I now want to tell the position" and they'd explain, but "this is what was read through during the time there, and you initialled it here and these little changes," and so they never explained it away you see.

You've mentioned that you cross examined all of the witness, but I wonder what were some of the

33:00 **tougher questions you asked?**

Oh well, then of course what they did, they then called a lot of people to support Hoshijima. More character things, so that the more they called, the worse they got in, from things I was able to ask in cross-examination. They called the Japanese

33:30 equivalent of Governor General of British North Borneo, he'd been an ambassador of Japan pre-war into I've forgotten, Iran or Iraq, Persia or something like that. A very distinguished old man, I've done a drawing of him in the book here, and he came to in effect, give some support to Hoshijima. But then you could, I could ask him questions

34:00 about things which only put Hoshijima further into the into the mess, because when the war came on there came an Australian offer to pay local people to feed the prisoners. And he had to acknowledge this and

34:30 it turned out eventually, although the local people, he said, "Yes the local people were all in favour of the prisoners against us, they would've supplied the food, yeah." But Hoshijima knocked it back. So he came to help Hoshijima but eventually we turned him against it. And two or three other witnesses, you got something, this man who came from headquarters saw the prisoners, to try and say what a great

35:00 fellow this Hoshijima had been and then what appeared really was that Hoshijima knew the position, he saw the prisoners and he had some idea of what the condition of the prisoners was. And he was trying to say that Hoshijima was very humane. He didn't take any part in the sending of the prisoners on the marches, and he didn't, but what Hoshijima did - he's a very smart fellow, he knew what would have to happen and

35:30 he managed to shed his office, and this turned up, shed his office just before the prisoners were sent on the march. He wasn't responsible for the march, somebody else was and then, he wasn't commandant, somebody else had taken over, a new man, by the time that the march had left. So it wasn't his responsibility that the last of the prisoners were massacred. So those who left some three, four, five hundred sick patients, it was after his time, he'd just handed over, then

36:00 the little hospital burnt down and they were put out in the open and they all perished. It was after his time and then he had his excuse about the rice. So all this came out, what a smart alec Hoshijima was. That all kind of came out, these people came to support him. Eventually, the things we got out of them, who came to support him in fact turned against him. And it was amazing the support he had, that's why I often wondered whether Hoshijima wasn't taking the burden,

36:30 he never claimed anybody else told him what he had to do. Maybe they came along and thought they'd kind of help him out. But I don't know, that's only a guess.

With all these people supporting him, had you, I mean we've talked a lot about his cruelty, I just wonder if you'd perceived any redeeming features anything positive or…?

I don't think there was any redeeming feature ever about Hoshijima. From the beginning

37:00 he made it very clear as to what had happened. And then he wouldn't let the prisoners communicate. He was a completely rigid, horrible man, there's no doubt. But that personality came through when he

was in the witness box. Intent, right to the very end. Running everything and so forth and barked his answers in a really vicious way. And various other things he did,

37:30 he used to have, somebody who'd offended, he used to hit him, make him stand to attention then bash him in the face. And the people'd drag him up, stand to attention and he'd do it again. That's him personally.

I wonder given, given that kind of personality, were you quite intimidated to be questioning him or having to question him?

No. No, no. He didn't have much option except that he'd try to interrupt the

38:00 conversation by big arguments, but nobody knew what was going on, except he and the interpreters and the defending officer. That good man. Yeah. No it's, oh, there were other bad ones there. I didn't have anything much to do with it

38:30 but there was a Colonel Suga, he was in charge of all the prison camps and in Borneo, and he was stationed in Kuching, he used to visit there. But, he as a result of control, he never intervened in what Hoshijima did. But he came there one day,

39:00 he said, "The prisoners, you've been doing very, very well. I'll give you three days holiday, the day before yesterday, yesterday and today." And that was the end of the day. Well he was responsible for a lot of things that not only happened there but generally, and he would've been tried. Now he was a prisoner and he had done some other things too.

39:30 When he was about to be questioned, he committed suicide. Not at the time but later. But Hoshijima didn't. That was Suga. And then who else, I don't know.

You mentioned something about the similarities between the Germans and the Japanese in

40:00 **some ways.**

They're very meticulous. They were very meticulous in everything they did. The Japanese were very meticulous, they kept records of things and they falsified, they kept these death certificates.

I just wonder, some of the evidence I've seen in the German camps, there was the same sort of sadistic cruelty that you've sort of described of the Japanese but

Well no, I don't know whether that's right,

40:30 you see I have the statistics and the prisoners of war, this was from some official records, I think I've got them pretty right, the number of people, prisoners of war, who died in Japanese custody were over 30%, of Australians, 35%. 35% didn't survive the

41:00 prison camps. In Germany it was only about four, 4 or 5%. And the German officers were an entirely different class to the Japanese officers. I was only making the comparison about being very meticulous people. The Germans had a very high code of honour of the officer class. And I think if an officer,

41:30 a general or someone is taken prisoner, they treated him with the dignity of the forces because I think there'd been a great deal of similarity between the German and the British army.

I was actually, I was I was going to try and talk a little bit about I guess the Nazis in the concentration camps.

Yeah well I don't know much about that.

But the tapes just about to come to an end so I won't ask any more questions now and I'll leave that for my next tape.

Tape 7

00:31 **Athol, one of the things we haven't talked about yet is your impressions, at the time, of either the support or conversely the interference of the Australian Government throughout the trials.**

No, I can't think anything at all. There was no interference.

01:00 It wasn't that they were trying to publicise it, I've been surprised now, that although we had these hearings which were open to anybody to walk in, a large tent, headquarters of 9th Division at Labuan, and the seats available if you wanted to come in, the press never came there. And the Australian government never tried to do that.

01:30 That didn't quite happen in respect of some of the trials in the Singapore area. It was a more kind of, as it were, place that was open and accessible to all others, but Borneo was too, you couldn't fly a plane –

oh yes, wait til I see, could you? Not too sure about that, because we came in by ship. But certainly there was publicity in some of the

02:00 trials in Singapore. But none and I don't know, I've got no idea of the Australian input, government input at all. Except that they didn't interfere with what the army did. It must have been of course with their approval or maybe they just left the army to do it. I don't know.

I was just wondering how important it was

02:30 **from the army's point of view I guess, to be left alone as it were?**

Oh well, we had a job to do. There was international law, I understood that, I understood what the evidence was and I understood legal principals, even though I'd left the law for 4 or 5 years. And that was it. But no I don't think there was any government

03:00 interference in any shape or form. But they didn't, strangely give any publicity and there was no publicity given to that for years afterwards. There was some publicity given some years after the war about the failure to attempt to rescue the prisoners, but that's a different subject altogether. That was debated in Federal Parliament.

Well I would like to talk about that issue but before we

03:30 **do, I'm just wondering, you've talked a lot about the details about the trial of Hoshijima and also how you felt towards him during the trial, I'm wondering then, once sentence had been handing down, what was the process and did you follow it?**

Well, all that happened as far as I was concerned, I was prosecutor, after an adjournment, I've forgotten how long now, they came back

04:00 and the army, the court martial found him guilty and sentenced him to death by hanging. He then, I think I told you, he saluted, clicked his heels and marched out. The last I saw of Hoshijima. That was the end of the case, period. Next case please.

Well, I'm wondering, given the difficulties that you'd had during the trial,

04:30 **whether you stopped to mark his passing on the day he was executed.**

No, I was back in Australia. That was, that would be I think late in '46. He was hanged on the same day as the man who was responsible for the second march

05:00 where all the worst things were clearly proved, and then at Ranau. He was sentenced to be hanged and they were hanged on the same day. And of course, I was well and truly back in Australia, I only heard about him indirectly later on. I was finished then. I'd been, I think I'd been discharged from the army, back in civilian life again. I certainly didn't want to

05:30 go and see an execution.

No, and I understand there might've been, you know, a need for you to separate yourself, but I'm wondering how you felt at the end of that.

I don't remember. Well I had another case to work on, which was also difficult because of only one witness and I did some work on that and I can't remember how long it was between

06:00 one case and the next. It was a difficult one too. They gave me the two difficult ones I thought, with no witnesses, or one witness in each.

Well you mentioned earlier on the project or possibility of rescuing the prisoners and whether that was ever conceived or not. Can you describe Operation Kingfisher?

Yes, well, what happened was,

06:30 I heard from the evidence and I knew what happened at the time of the trials, that the Japanese garrison in Sandakan had been much reduced before

07:00 the second march. Some units had been taken out of Sandakan because they anticipate there and therefore they only had a small garrison and they had the prison camp 8 or 9 miles from the Sandakan Harbour where the army was. There was

07:30 a large area there, flat area where the useless aerodromes were and I often wondered why there hadn't been some attempt at rescue. That's only in my mind and that's all that happened. And so when I started to write my book, and that's 1989, I came to wonder, and I was going to write, why there hadn't been some attempt to rescue them.

08:00 It was only then, with my researchers in 1989, that's right, that I came to examine a bit further and Short, who I got to know here back in Sydney, he was living in Sydney, he had a cutting from a newspaper

08:30 that was a cutting from not long after the war in which the question was raised about a rescue. And then I found that that resulted from a speech that General Blamey had made, at about that period of time amongst other things it was

09:00 a kind of a dinner speech in respect of some units. I've forgotten what units they were, but he raised this question and said that in fact there had been a plan to rescue the prisoners

09:30 and it had been abandoned through lack of aeroplanes. Or when the time came, something – I've forgotten the exact wording, whatever it was, he made this speech. The press got in touch and the result of that, the question was raised in Federal Parliament as to why the prisoners hadn't been rescued. Now from there I got it and I made some researchers through the newspapers

10:00 cuttings from years and years and years ago and it had been subject to a committee who had examined why there hadn't been a rescue and I got hold of some of the papers. Some from Cabinet. First of all they claimed privilege and I pointed to some reasons why they couldn't claim privilege. So I eventually got the cabinet papers. And that had been killed, virtually politically.

10:30 So after that I made a bit further research and found there had been a plan and there was a fellow judge who'd been in the paratroops. And even at that time, they seemed to regard it as a secret, he wouldn't tell me about it. He put me on to Colonel Overall, at that time, Sir John Overall,

11:00 who was by that time long since retired and he had been a distinguished Middle East man, a decorated man, and he was in command of the first parachute battalion and they were in Australia. And so I eventually saw him and got him, got the story. I wrote it all down and have all the details. And

11:30 now, that led me to looking back through archives and I found there had been some investigation and that the Z-Force people had earlier examined the situation and they'd looked at the feasibility of there being a rescue by air of the battalion. But that had been put off and then eventually,

12:00 a plan had evolved which I then got from Colonel Overall, Sir John Overall as he then was. And he told me then and gave me the details and said, yes, there had been a plan and that he didn't know all the details, but he knew them pretty well indirectly. The plan had been raised

12:30 when Sandakan was cut off and the garrison was still all there and this was before the second death march, a plan of whether they could do a parachute rescue. And he came to the view and the plans were raised as to whether they could do so, and he told me all the details. And then, he then found out, and they made a survey

13:00 of how they'd do it. They had a thousand parachutes in their battalion. All very experienced Middle East people and parachute people are not just people who can land by parachute; they've got to be people who are very experienced infantry fighters, so when you get onto the ground you're prepared to mount a fight and so they were experienced, a lot of them middle east infantry people. And they were trained up

13:30 and so the plan was to land virtually the whole battalion, nearly a thousand, and then to gain possession from the air and then to be prepared as the garrison was far away, to make a faint attack on

14:00 them to distract attention and then to do a rescue. You realise there was a lot of sick prisoners there too, the plan was to get them and bring them to the coast and pick them up at sea. And that was the plan. Well, according to him, he then worked out how many planes they needed, and they needed,

14:30 I've forgotten now, but they had to be what they called Dakotas, they were equivalent to the old… what we used to have, the DC3s in which they'd carry the parachutes and the equipment. A lot of them would need to be equipment to fight the guerrilla war and so forth and then the paratroops. And I've forgotten the number but it was a fairly large number of aeroplanes they needed. And so, they made a survey and found that

15:00 these were used, a good deal in the island still and on island mercy things and all the rest of it, and were only available in a very small number in Australia. So they needed them from the Americans, and according to him, he put in the request for them from the Americans. He consulted the heads of navy,

15:30 army and air force and they thought the thing was feasible and so it was only a question of having the planes and going ahead. And they trained for it. The paratroops didn't know, and I met one of them afterwards. He knew they trained for a prisoner of war rescue, but they weren't told where it was, it was very secret. And then he then wanted the planes from the Americans. Now he got a message back.

16:00 It was only a message from headquarters, that MacArthur had declined the supply of the planes, the American supply of the planes and therefore the rescue didn't go ahead. And so he contended that they could've mounted a parachute battalion, navy or sea could've been picked up by sea,

16:30 but they needed the drop planes, and because they didn't have the drop planes it didn't go ahead. And he was of the view, he expressed to me, it would've been successful. I made all the notes, I've still got them somewhere. And anyhow, there it was. So, Blamey however, said there was a plan to rescue, this is in the speech he made, there was a plan to rescue them

17:00 but when the time came the planes were required for other purposes. Well I made an enquiry in my research and so forth and found through military history and so forth, there was no other operation where America had a large number of these planes, including in those Honolulu areas, why they

17:30 had any other project on at the time (I don't know). Anyhow, they weren't supplied. So there it was. And the project never went ahead. A later writer claimed that the story had been made up, wrote a book which I criticised, said it was all wrong, she said it was all wrong, in fact the plan had been abandoned because

18:00 they thought all the prisoners had gone. Well there was a bit of a false message, but the prisoners, that was only the prisoners of the first march. The prisoners were still there. And she then wrote a book which was a bit sensational and said the story was all made up by Blamey after the war because when she found out what had happened, felt that he was to blame not

18:30 having done something and he made up the story about the parachute rescue and it was really false. So, she wrote the book, I then criticised it and I wrote a criticism to show why it was false, and there's a whole lot there and that now is in the Moffitt Papers in the War Memorial.

19:00 She threatened to sue the War Memorial for defamation if they put this in their papers and they said, "You jump in the lake." So there it is, but it can't be right because, before the war, it couldn't be made up after the war because before the war this very distinguished Australian, who was a decorated man from the Middle East at the head of it, he told me the story

19:30 about how they'd prepared for it before the war ended. And so forth, so I think his version is right. But whatever happened, the planes weren't provided and the rescue never went ahead. He claimed that they could've saved at least a thousand lives if they had put that rescue on before the second march, but it never went ahead. And that's the story. It's still a contentious story.

20:00 The story, written by another author, she went on radio and she made this claim and I then went on radio and said it can't be correct and then she said that in due course she'd brought all the authorities to prove it was right,

20:30 and when the book was written, none, no footnotes at all supported it and I've always claimed it was wrong. There it is. So there was never a rescue, but according to Sir John Oliver who died recently and I knew him very well, but all that was recorded back at the time. There was no doubt there was a plan before the war for a parachute rescue which never went ahead, they didn't have the planes. Australia

21:00 didn't have the planes, they needed a large number to have not only to drop all the paratroopers, but they need a lot of planes to take supplies and all the rest of it to fight an infantry war against the Japanese who might've been there, so there's the story. So there was no rescue. But that's the name of the (game), the code name of the rescue

21:30 was called Project Kingfisher. The kingfisher being a bird that flies down and rescues something and the kingfisher was supposed to be the parachutes. That was the name given, of course, to that book of mine, Project Kingfisher. That's the rescue that never was. That's all in the book.

And why do you think it was important for you as an individual to establish that there might've been such a rescue plan.

I decided to write

22:00 a book and then Short had this cutting, he showed me. I had originally been writing, I'd written and I knew from the Japanese evidence in the trials, I was surprised that there'd been no attempt to rescue: they were cut off, their garrisons reduced, they were separated from the other; why there hadn't been an attempt to rescue. And I had originally

22:30 been going to write that it was a pity there'd been no attempt to rescue them. It would've been an opportunity on what I had learnt from the trials. And then the person who was my editor on the book said, "Why don't you look to see whether there might've been?". Then I started to look at his suggestion, and I found this material by doing research and I got eventually I got back, right back to what happened in the in the Commonwealth

23:00 Government and I had these secret files, including Cabinet papers which I eventually got. It all being talked about and there'd been some claims there in the Federal Government, they started to blame the Federal Government for not having put this rescue on. And so there was a great controversy. Years and years ago. It was only this newspaper cutting that I followed up from there. I hadn't intended, I wasn't going to tell the story

23:30 until I had this bit ,'Why wasn't there a rescue?' My editor said why don't you take a bit of research and I found it. I got this newspaper cutting that Short had, he was one of the survivors.

I'm just wondering why the significance of Sandakan above or rescuing POWs from Borneo...

What's that?

Well why the significance of rescuing prisoners from Borneo as opposed to other camps

24:00 **elsewhere?**

Well it was a question, it was a very difficult question too, which the authorities would have to consider, but it was not rejected on that basis, that if you put a rescue on there, there'd be great danger that prisoners in other prison camps might get massacred. Unless there's a parachute rescue. But that was a matter that was considered and they thought that they should go ahead. But it didn't

24:30 go ahead because they didn't have the planes to drop the paratroops and all the large amount of equipment. They thought they might have to fight an infantry action there because they still had the garrison in Sandakan nine miles away, and they were nine miles from the garrison. The plan had been to make a faint attack on the

25:00 garrison, and then at the same time make the main landing on, and secure a foothold on which the flat ground where the airfields had been prepared, but they'd all been bombed out. That was the plan. I think that's true, I think what, it couldn't be true, there's no way that Blamey'd made it up after the war, that was stupid. Because…

25:30 this is what, the colonel in charge of parachute battalion told me, he told me it happened before the war finished. There was going to be a rescue certainly before the war finished and– before the second march. And they'd had the, it's true, they did have intelligence and Blamey said we had people on the ground

26:00 there who knew what was happening. And they'd seen the marches. And Rex Blow who'd escaped, he was flown back from the Philippines and he joined Z-Force in Borneo. I know one of his jobs had been to get in to Sandakan camp before the parachute rescue

26:30 and to warn the prisoners so they'd be prepared for when the time came and when the rescue happened. So it was on alright. Blow's dead now too, I told you that. So he was not only an escapee of the Philippines, - he'd been landed and he was in Z-Force in Borneo and he was the one who'd walked in the last of the Japanese prisoners

27:00 I referred to earlier in Lawas.

I guess this is a hypothetical question but, how do you think the Government saved face I guess, from embarrassment, back then?

The government had an answer in effect. It said that,

27:30 there was a project but it was shelved and there was never really a (plan?), it tended to be an operational thing, it was only just a project. But when I eventually got it, I got some of the papers and I found on the papers in support of what they'd done, had been destroyed. And that they, first of all I couldn't even get them, they said they were Cabinet papers, but I

28:00 reminded them after a length of time they wouldn't be, so they eventually disclosed what it was. But some of those had been destroyed too. I've forgotten the detail of that now, but.

It's interesting that that became significant for you later on in your life.

It's only when I came (home?), , I put all this behind me, I had this diary, I had that

28:30 diary which really could've been revealed years earlier what happened at Sandakan, because I knew. But I then got back, I went back into law. It was only when I retired from the law I felt, as a judge, it wasn't my job to get into current affairs things and so I never did any writing. Since I've retired I've written four books and now I'm halfway on to a fifth one.

29:00 But I didn't start writing until I retired. The first one was in 1965 and that was, I had been the Royal Commissioner into organised crime way back in 1971 and that was a very kind of spectacular enquiry into the infiltration of organised crime into this country. And I wrote, "A Quarter to Midnight" the year I retired from the bench.

29:30 I couldn't have written it earlier because it was very critical of governments that despite the warnings I'd given, and suggestions I'd made to government about organised crime and they'd done absolutely nothing. "A Quarter to Midnight" meant that things had got worse and worse and they had still, they're still getting worse too in the drug area. So I wrote that book first and then it was only after I'd written

30:00 that book, I turned to this second one. And it's only when I took the second one, I went back to the diary and I thought I'd tell the story of Sandakan. And so there it was, I had originally, because I had all the trials and copies of stuff and everything else, I was going to tell the story of Sandakan. But before I did, there were a couple of books, only about two years before, they had got the story, but they didn't have it quite the way I did. And so I wrote this second book

30:30 about the war trials. In fact the whole experience in Borneo, in that it also deals with that case I mentioned to you about the Japanese spy and all those kind of things. Those were all covered in that book. Then the end of the book, it deals with the trials. And then it also deals with the rescue. And there it was. I didn't,

31:00 it wasn't my, I took a very scrupulous view as a judge, I shouldn't engage in any current affairs. Particularly when you think current affairs are critical of governments like, "A Quarter to Midnight" was. But when I had finished I regard that I was still a citizen and I still do now. And so I just go under the term Athol Moffitt, I've been on air a few times on different things.

Well you've mentioned that the rescue operation or rescue plan was a

31:30 **controversial one, I'm wondering in your mind, whether it is still open to controversy?**

Oh no. Only in this sense, they had to make some decision about it. To form a rescue, they wanted to be sure it's successful. It could have resulted in the massacre of the prisoners and there was the question of the sick prisoners. they knew there were sick prisoners out there. And so it's a question of the

32:00 rescue of the (sick?) – because there had been a lot of underground Z-Force things in the area before this had happened, as Blamey himself said, "we knew a lot about what was happening from our Z-Force underground forces there." And so there was a question, if it wasn't properly mounted, it could have finished – they weren't to know what was going to happen to the balance of the prisoners. It could have led to the massacre of the prisoners.

32:30 And so it was important to be able to get in and warn the prisoners and get them prepared and to do it with a lightning strike. And then of course, there's the other question which obviously got dismissed, whether it'd have any effect on prison camps elsewhere. MacArthur had rescued the prisoners in the Philippines, but that was only by a lightning infantry dash. He never used paratroops there,

33:00 although he used some other thing. Paratroops, this would have been a very spectacular Australian operation. It's a speculation whether that affected what MacArthur's said to have done or not done. But, it wasn't contentious except that a decision had to be made in which they had to weigh up different things. But the thought and the plan had been on for quite a time before this final rescue proposition was made.

33:30 But…

And yet, given that you say there was a plan, indicates government awareness of the situation.

Well, no it doesn't mean – the army doesn't tell the government necessarily everything. It was what they called- , the government defence was it was only 'a project', it never resolved to a plan. Well that's only playing with words. It

34:00 would be a plan once the movement order was on, before that it was 'a project'. It was only playing with words and the government excuse when this question was raised, it was never really a plan, but in fact there's no doubt according to the Colonel in charge, it would've gone ahead if they'd got the planes.

34:30 Everything was ready to go and they'd trained and I've had that afterwards from one of the paratroops whom I know well now, he's still alive, and he had a very distinguished career himself and came, was a top guerrilla fighter who'd been right through everywhere: Greece and Crete, Bali and Tobruk and Kokoda Trail and he was one who was

35:00 in the office of the parachute battalion. He said, "Oh yeah, they trained alright and it was supposed to be a prisoner rescue," and he said, "but they never told us where it was. So I didn't know until I read your book, it was Borneo." So they trained, they were there ready to go if they had the planes. And according to Overall who was a very distinguished man, he was an MC [Military Cross] in (UNCLEAR) and the Middle East, according to him it would've

35:30 succeeded if they'd had the planes and gone ahead. But he'd said, they couldn't safely do it without really going for battalion strength, they wanted to use a whole thousand paratroopers.

And I guess also, a plan like that would've required solid intelligence.

Oh yes. Well they did have and they did in fact put in, they in fact landed the intelligence group,

36:00 it went up by, it was landed in a river just north of Sandakan in, I think it was an island in a river, and they were taken by American submarine and landed there under cover of night. They established headquarters and radio headquarters back here. And the plan over there was

36:30 that, unfortunately that was messed up a bit, I won't go into detail but one section was the rescue section and there was an officer there whose job was to get into the Sandakan place, make communication with the prisoners and to let them know the plan and to let them know what they were going to do and how they were going to drop some arms into the compound for the prisoners,

37:00 and to get themselves ready to arms and how, what was to happen. So the prisoners would be ready. And so that went by submarine, and was in fact landed just north of Sandakan. And they were there but they made a mistake because they combined another operation which were underground guerrillas who were going to work north, so they combined the two

37:30 which was a bit of a mistake and the thing got mixed up in the command, I won't go into the detail there, but the plan was on alright. And the one plan was the communication with the prisoners to let

them know what was happening. It was on alright. They actually went there by this submarine from Western Australia with these people and landed just north of Sandakan. But never went ahead.

38:00 They had a dual capacity, they had others being put in which were trained in the local dialect of the people and all the rest of it, to act as guerrilla fighters against the Japanese. To attack them in the north. So there was a combined operation. The combined operation was one of the things which was a bit unfortunate.

38:30 **Well I'm also curious I guess, given what you've just described whether the POWs, the ones that survived, were ever aware of…**

No they wouldn't, they wouldn't know, because they never got in. And the man who wasn't in charge of the rescue,

39:00 this was the trouble, he took command of the other one and he wanted to get on with his part, further north and he took (received) a native message, instead of doing what his other man was supposed to do, to go in himself. And he got a message, the prisoners had gone. But the prisoners hadn't gone, that was only the first march and it was a false native message. It all got mixed up there too, so there were a lot of problems there.

39:30 But there was no doubt the rescue would've been on if it had been carried out the way it was planned.

Well I'm assuming, and correct me if I'm wrong, that you were not aware of any of this at the time you were conducting…

Oh no. I had no, there was no knowledge of it at all. It was only my thoughts,– when I heard the evidence that the Japanese had given about their

40:00 garrison being reduced, that there'd been no attempt to rescue the prisoners. And I'd been writing this book on the basis, 'why didn't they make some attempt' and then I had an editor who made me do some more homework and I delved and delved and delved and found a lot more out. And that delayed the book for a year I think.

Well I guess after doing so much intensive research, after many

40:30 **years of reflection, how I guess reconciled did you feel at the end of that?**

Well I don't know. I think it was a tragedy that the attempt wasn't made. If the commander was right, a lot of lives would've been saved. He seemed to think

41:00 though that they couldn't have saved those from the first march, but they could've saved a lot – they couldn't have saved those who'd been the thousand who had died from starvation, but they could've saved those who on the second march and maybe some of those who were too sick to go. It would've been a very difficult operation because a lot depended upon how they'd get the sick out. But it wasn't far from the coast, there.

41:30 And they had all sorts of, the material, it had all been worked out. They had all the beaches surveyed, what part of the beaches things could be landed, and what the access to the beach was, and what the gradient was, and what the condition was and all the rest of it. All that had been surveyed all up the coast opposite where the prison camp was. And it wasn't that far from the coast.

42:00 And the plan was to…

Tape 8

00:31 **Throughout the trials and the time you spent in Borneo, what was your attitude towards the Japanese and what kind of…?**

Well I didn't know the Japanese, the picture we have of them is a people who are utterly different to ourselves. A different culture

01:00 and I think too, when I start to have a look at it, this idea of duty to a group is rather fine in itself. It's a rather beautiful thing that you have a good, close friendly duty and relationship, so there were a lot of very fine things about them, but when you got them into a war, they

01:30 acted terribly badly, probably worse than could be imagined, I think. So I don't know whether I had any particular attitude to them, I've got no, I hope I've got no prejudice against them. I don't think that a culture of a country changes that rapidly. How they are today? I have not had any close contact, I just know that the man I met, he was a fine man, we

02:00 were good friends over there. But he was a foot in each camp that man a bit, and I never went to Japan and I haven't been to Japan so I haven't been able to find out.

I just wonder, listening to the horrible things that you did hear in the trials, how hard was it

not to form prejudices?

Well, I don't know. What is prejudice?

02:30 There's prejudices to seeing what really happened or is it forming a more exaggerated view. You didn't need to when you have a look at that, to form some prejudiced view they were the facts. So I don't think I'm in the habit of judging everybody on what, you see, happened on one occasion, that's a bit against my outlook and certainly training.

03:00 **I wonder, you mentioned in your book "Project Kingfisher" about the differences between an unjust war and crimes against humanity, and I just wondered if you could talk to me about that?**

Yes well, that's as I told you before. War crimes

03:30 are really a breach of what is known as international law. Now, for a world to get on together, they need to have some international understanding and whether it's about where a territory ends, what's the continental

04:00 shelf, or millions of things, there's the laws of the sea and all those things, and then when you go to war, countries before hand who say, "Well we're sensible, we're not at war now, we should be a bit sensible and agree on some things." When war comes you can't restrain things but it's good to have some understanding and so we will, although war's a terrible thing,

04:30 we will have some agreements about it. And so the international law comes first of all usually, from some international agreement. And then it's acceptance, sufficient acceptance over the world, it becomes as it were, accepted international law. As I told you this, well, these trials were inhumane treatment in the way I've mentioned, it goes back to that 1907 Convention.

05:00 But there's since been later ones about the treatment of prisoners of war and I stepped to one side because of the difficulty. But there was also after WW1, which was supposed to be 'a war to end all wars', and so they entered into an agreement in the hope of ending war and therefore, they entered into what was called

05:30 The Pact of Paris or sometime known as the Kellog Pact. And it was one which was agreed to by all the nations, in effect you might say, not to start an unjust war. So then the same question arose, if you start not a defensive war but an unjust aggressive war, that's a breach of that nation. But then it's not much good just having a breach of the nation, it's question of

06:00 who makes the decisions. So therefore, if you have some leader in a nation, becomes a militarist or whatever it is and he starts an unjust war, you then are in breach of that treaty and therefore it's a war crime. And this came to be recognised as a war crime in the Nuremberg Trials. Therefore, if Hitler

06:30 had been caught alive, they could have charged him with a war crime of creating an unjust war, but he committed suicide. This hadn't been recognised in earlier times. If anybody created an unjust war, they didn't have any rule about it. And so far as Napoleon was concerned, without any trial or anything, they said he

07:00 started an unjust war so they marooned him on St Helena or Elba. When it came to, after WW1, to end all wars, they entered this Pact Of Paris and therefore the question arose about starting an unjust war and applying it to individuals. And therefore they were going to try some of the Germans. The only one they nearly might've got, I've forgotten his

07:30 name now, he also committed suicide before he was tried. But then when they got to Japan, the Tokyo trials, they followed the same precedent of what had happened at Nuremberg, and they said "Tojo." He was the head militarist and he was therefore responsible for starting an unjust war. And the same as Hitler did, he invaded one country after another, through China, Manchuria

08:00 and so forth and therefore, he was charged with starting an unjust war. Not much good my passing comment about it because that is what the international law is and what all the nations agreed to in Paris. If you pass a law and don't take any notice of it, what's the good of the law? So all the nations of the world agreed on that there'd be no unjust war, and so it was on that basis that the various charges

08:30 laid, not only against Tojo but various other ones, the militarists they're called, there's a military kind of group that got control of Japan, and so they were charged with unjust war. That's been challenged by a lot of writers since who say it's victor's justice and all the rest of it. I'm just telling you what it is. Everybody can have a different view about it I think.

09:00 **You've mentioned that during your time of prosecuting you relied on the 1907 Hague Convention rather than the Geneva Convention. But I wonder as somebody who, I guess you were still working to uphold the principles of the Geneva Convention in that work.**

Oh no, no, no, it was all based on inhumane conduct which is

09:30 the Hague Convention. The other one laid down all sorts of rules that you can't march a prisoner – you could've charged them under the prisoners of war thing of marching prisoners more than a certain distance at a certain time. A whole lot of things cover that, all the things you can do and you can't do with prisoners of war. You can't use them for this and that, well we never resorted to that simply because there was the doubt about it.

10:00 Although the Japanese weren't strictly bound to the law they said they'd observe it. So the view probably was it wasn't international law which was binding on individual Japanese at the time of WW2.

As a legal mind and as someone who's followed and been involved in this sort of thing, on a contemporary issue of – there's been a lot

10:30 **made of the United States maybe sidestepping things like the Geneva Convention on Prisoners of War with the prisoners they keep in Cuba at the moment.**

Oh I haven't thought about that. I tell you what, I've got a philosophy that I don't go in to comment on things I don't know

11:00 the fact, the circumstances. I see the media, of which I'm very critical, to make a good story, that'll come out in the next book of course, to make a good story, they only want to highlight all the spectacular part. I used to see that in the Royal Commission. There were some spectacular things that came there and there'd be 40 of the media in the media box

11:30 and as soon as something, it'd be only an allegation against some prominent person, the whole lot would disappear. And that's all you'd see of the press. The bit that came later in the day wouldn't be seen or reported, wouldn't even appear in the next day's press. So I, on that philosophy, I've always refrained to making any real comments on something where I don't know the facts. I'd be very reluctant

12:00 to get in to too many absolute comments about what's happened to this lady up in Queensland and therefore in respect to a lot of these other things such as what's happening there, I think I'd need to know more of the facts. I just keep out of commenting.

Fair enough. Athol can I just take you back to your work in Borneo,

12:30 **when you received news that you were finished with the war crimes trials and that you were coming home, if you can tell me I guess about what…**

I was very pleased that we were on the way home and we were coming home by ship and we stayed on the way back, I forget where it was,

13:00 it might've been Morotai or somewhere, the ship was there, I was dead scared they might grab me off the ship. They were still conducting some war trials in Rabaul so, but anyhow I got home and that was it, and then I got discharged.

You'd had quite a long time in the service in various roles, how hard was it settle back into civilian life?

Well, I think it wasn't easy,

13:30 but coming back on the same thing, there was a job to do and I went back to the Bar and I got pretty busy, pretty occupied there and that was another job. And then I got married and there be it, and I didn't take up that phoney offer to be Chief Justice of British North Borneo and I didn't go and visit Japan, and I came back here and I just got into things. I found very great interest in law,

14:00 I see it in a different way to looking at dull things, I see it as people in conflict. It's a very interesting view of human conduct and that's what this other book if anything, I write about it. I got involved in all sorts of cases after the war. Of all kinds. And then I got onto the court and I was there for some years and I did the Royal Commission. I was too busy to think about those things, just got on with life.

14:30 **When you came back to Australia after your time away and after your time in the service, did you talk much about what you'd seen, especially what you'd seen in Borneo?**

No I didn't. I didn't write anything. I didn't really, you see, as I told you, when I went back, particularly when I became a judge I left all those things beside and I didn't feel free to write any of those things. Some of them are not contentious or argumentative, didn't

15:00 feel free to write until I retired from the Bench. But I regarded that, once I'd retired from the Bench, that was it. I'd got a few times on TV or radio or something and they'd call me 'judge' and I'd say, "No, I'm not a judge anymore. I'm speaking as an ordinary citizen now." So then they'd say, "Alright Citizen Moffitt." Anyhow that's my philosophy. When I was in the law, it was the law and when I retired, it was only then that I came back here.

15:30 And frankly I often think that I should've at some stage, revealed some of this Sandakan material. There's so much coming out about the terrible things that happened on the Burma Railway. Of course there's a lot known there because there were so many survivors. A lot died but about 50% survived, I think and therefore a lot was known, but not so in Sandakan.

16:00 **I just wonder on a personal level if you talked to friends or your wife about what had happened and what you did?**

No, no I didn't do that. That was all behind, we went on and did other things. No, no, not really I don't think, I don't recollect. If you did it'd be just in passing, you know. That's the job you get on with the next one. I think that a lot of people take that same view too you know, not just me.

16:30 **You hear about servicemen who have been through trauma often have nightmares and relive the events. I just wonder…**

No, no I don't know. I think all those prisoners, I can't but imagine those who escaped weren't badly effected. I saw Bottrell's daughter and

17:00 she told me he was a very mixed up man and he had a very kind of worried life. And then one of the others, named Moxham, committed suicide, and I met Short and he was a bit obsessive and unforgiving about the Japanese, you know. I think it affected all them but I think if you

17:30 only come and see a bit from a distance it's a bit different. I did only see these things from a distance, you see what I mean. I think it'd make a difference if you'd been in that prison camp. I had my wife's cousin, very close to her, he was a prisoner of Japan and he was never any good afterwards, right through his life. I think he was badly affected by it.

18:00 I think that's different to just seeing and hearing about a thing. You just see and hear about a thing, you weren't being changed. I only viewed it from a distance although fairly close, some of it. But there it is.

You mentioned that you met up with the survivors of Sandakan after the war. What sense did they give you that they felt

18:30 **some justice had been done in the work that you'd done?**

I don't know whether I did that. See I met Sticpewich and I had a long talk with Sticpewich, a lot of it appears in here, but that was only in Borneo. Of course, some time after he left, not immediately he was killed in this car thing. I then only met up with Short and Bottrell, Moxham was dead, I only met up with

19:00 them years afterwards when I got up towards this book. And I saw them as men on in years and I didn't meet, never met either of the escapees, never met Bothwait or Campbell, how it affected them I don't know. You see in the case of Campbell, he escaped with five on the second march, but he was the only one who survived. And

19:30 I known it was a bit of a grim story, the survival of each he and Bothwait. Campbell's the one that survived but I never got to know him, he was in Queensland, so there it is.

What sense of, I guess any kind of satisfaction did you have when the trial of Hoshijima was finished and the guilty sentence?

I was rather pleased,

20:00 I thought "Well, that's the end of it and that's the result it should be." That's all I can say. I felt a bit frustrated on that 1st march, I didn't, we couldn't get it at the truth. We didn't know. At least we knew but you couldn't prove it. We knew it, I knew just from what Sticpewich had told me, he had counted these bodies along the track and they hadn't just died at the rest homes at night, they got shot

20:30 or something when they fell down. So on that, I just felt I never got to the story at all.

Given the gravity of the crimes, what sense of justice is there or can there be?

Well see justice in war crimes is different to in ordinary civilian life. In

21:00 ordinary civilian life, a very important thing first of all is deterrents. You can deter that person or other persons committing similar crimes. The next thing is rehabilitation which is very important and that's often overlooked by critics of what judges do. It's very important that people

21:30 be brought back into the community. Many people who commit crimes have had an unfortunate upbringing for whatever reason, family, mental, whatever. And so what's very important in those is rehabilitation. Retribution really only plays in ordinary law I think, a fairly minor part. The others should have more

22:00 you know, say "It's such a shocking, thing the community must recognise it, that you can't just let the fellow go." But in war crimes things are different, the question of, as it were deterrents, I don't think that the war crimes act

22:30 acts as much deterrent because by the time another war comes on, people forget what's happened. I don't think it deters. People are doing what happened in the circumstances. It didn't leave war crimes, they didn't, people are doing dreadful things in later wars. It still happens. And then rehabilitation isn't really a question. The war's over, what? The first rehabilitation,

23:00 you just send them home anyhow. So really it's quite different. A strong element is retribution. You're

saying, “Well now, this happened and this is such a dreadful thing that happened to this nation, the public demand retribution.” And that’s why I told the Japanese defending officer that I didn’t think that the

23:30 government there would not enforce the capital punishment, even though they might believe otherwise, because the Australian reaction would be, after what had happened, what was known, to not carry it out would be so unacceptable to the Australian community. In other words it’s retribution. So it’s quite different to ordinary law, as I see it.

24:00 **I wonder why it might be I guess, important to remember what happened at Sandakan and what came out in the trials afterwards?**

Well I think there was a bit of suppression, perhaps at official levels, as to what had happened. I think it was so bad that people didn’t

24:30 want to upset relatives in those early stages, and there was a disinclination to make it public when it wasn’t necessary. So far as the Burma Railway, it was unavoidable, there were so many people who survived, came back and told the story. And so I think, as a matter of history, I think we need to know these things and I think that

25:00 now it’s rather accepted that it should be known and they’ve got these memorials to Sandakan all around the place now. They have an annual service, for example at Burwood Park, there’s one there and they have, these are made by taking a cross section of a relief map and it shows

25:30 the ground over which they marched from the low Sandakan level, up all over these high mountains and so forth, right next to the highest mountain in Asia, Mt Kinabalu. And so this is over very precipitous country and so there they hold a memorial service there and it’s rather nice because they involve the young. And I went to the most recent one there and they had a cadet band from one of the

26:00 GPS [greater public] schools there and they had a choir from the Burwood Girls’ High School and then some other pipe band, and so they involved all the young in it. And of course so far as survivors are concerned, there are no survivors except, of course, in the office, but so far as the actual march was concerned, no survivors. So I think that to some degree it becomes a matter of history as part of our history.

26:30 I think we’ve got to know that part of history. I don’t know what else it does than that. I think we should know history. I don’t know whether we become any wiser if we do.

How do we prevent something like Sandakan happening again?

Just hope. Well you see, it all depends.

27:00 It depends on human nature. I don’t think sentencing, as I said earlier, sentencing these people has shown that it acts as any deterrent elsewhere, whether it’s Vietnam or Korea or anywhere else. Or for that matter in Iraq or Iran. So I don’t know how you prevent it happening, you just hope it won’t.

27:30 Hope we grow up. It may be that the more educated a community becomes the less chance it’ll happen. I think that by and large, there’s some savagery in things that happened there. And it’s only when you get some savage group or somebody who doesn’t understand that, perhaps as that

28:00 Professor Doi said from Tokyo University, people who haven’t got the Judeo- Christian influence, which has come through the world which is a ‘produces humanity’ thing. It’s only where there are no rules and well, savagery doesn’t matter. You’d hope it wouldn’t happen. It happened in Germany but not to the same degree, but it didn’t happen in the prison camps is the important point,

28:30 because the German army, a top general, they were a fairly high standard of morality. So it didn’t happen there, but that didn’t prevent a man who wanted to exterminate a race on racial grounds, and what happened of course, to the Jews when they got rid of them. But that was Hitler’s racial views. So when racial views come in, they’re a bit different. But I think that it may be

29:00 that you won’t see the same kind of war crimes except in a war in a more primitive area. If you find a race is less kind of, or is more primitive, I think more chance you’ll have of executions and killings. So maybe it won’t happen again. Depends on who we fight.

29:30 **I wonder just how it makes you feel, how you respond when you do, I guess having lived through the Vietnam War and wars in Indo-China?**

Well those don’t touch you, you see, much the same as everything else, they’re something which is distant and doesn’t happen to us. And this is a bit of Australia, we have got to the view, ‘It wouldn’t happen to us.’

30:00 That’s why we thought, “No, no, no, Japanese won’t come here,” and therefore this Japanese spy plane was able to fly over and nobody took any – “Oh it wouldn’t happen here, you know.” But then in 1942 as I’ve already demonstrated, it showed, it was very close to happening here. And that’s only one year in the whole

30:30 of our European settlement in Australia. We've been lucky. So we say "It won't happen to us."

Looking back over your time in Borneo on the war crimes trials, how do you think maybe it changed you or affected you?

I think that

31:00 my experience in those things gave me a more practical, down-to–earth-view of life. I think I wrote that in my diary somewhere. The very fact that I, instead of being on the highfalutin plane of the university graduate and barrister at that level, I suddenly got fixed in with men right from

31:30 the gunner level. I didn't go in as an officer and therefore I went into the bottom, worked up and then the other experience that I had, I think it gave me a better view of life as people. And I think then, when I came to the law, I think I took a – not an academic view about it, not an academic boy by any means but I saw it as a thing

32:00 affecting people. And that, if I ever get around to finishing this other book, is what it'll be about: get the picture of what happened to human beings. That's not understood by a lot of the community. Everybody is making absolute judgements, they want mandatory sentences instead of looking at the deep personal facts which are involved in each case, which is the only

32:30 way that you can do it. If you have an ultimate discretion of somebody who has had a bit of experience of life, but if you have a man who has had some experience of life I think he's better positioned to make a better judgement.

You mentioned that the trial of Hoshijima was the most memorable case you worked on. I just wonder why it stands out above all.

33:00 I don't know I said 'The most memorable.'. I think I said, "Probably the most difficult case I've ever had to handle and then probably the worst case of murder in Australia's history of any court." Because I treated it as being an Australian court. It was too and confirmed back in Australia. I don't know what's the most memorable case. I've done some amazing cases, I did a case which became very controversial and I don't want to discuss here now but

33:30 I did that McCloud-Lindsay trial which became a subject of contention here for twenty years afterwards. The man who was accused of getting an alibi and sneaking back and attempting to murder his wife. There were all sorts of theories about that. I won't go into that it's too complicated.

I wonder what lessons you learned from the war crimes trials that you took with you throughout your career.

34:00 I only just think of the things that I just mentioned. You look at the personal, human side of things I think and you take that into the law. And you have a look at some of the cases you did and some of them involved – they nearly always, particularly in the criminal field, they involved human beings in the ultimate conflict

34:30 of life, in which personalities emerge and all sorts of things.

As somebody who had a long and fairly varied role of service, what does Anzac day mean to you and what do you do on Anzac Day?

I get called on all stands at places. I've made Anzac Day speeches in many places. I think it's important

35:00 that we have remembrance. Remember people who really did go at those times because they had a sense of duty to their country. And I think we should remember those people and remember the sacrifices, many of them who never came home. And I think of course, I think Anzac Day is a bit special in that

35:30 it was perhaps the best recognition of Australian mateship kind of aspect. That very much came to the fore there. Mateship came from the trenches, for instance, digger or dig and this has become an Australian characteristic and I think Anzac Day doesn't just represent Anzac Day, it represents all the

36:00 people who've served this country in times of conflict. I always think that was a bit remote from us, really we were fighting a European war a bit, and I often think that we could equally have a Kokoda Day which was the day that was really the day Australia first succeeded in WW2 in turning the tide. That was a very heroic time. But it

36:30 should never be in substitution for Anzac Day, but it could well be a special day of remembrance, the people who fought there. That man who I told you was in the parachute battalion and trained for the rescue, he wrote a book, he was a bit of a wild character but he came right through the whole lot. And he was

37:00 on Kokoda. He said nothing was ever anything like that, he'd been through (UNCLEAR) from Greece when he lost his mates. He'd been through Crete and Bardia and Tobruk, nothing was quite as bad as Kokoda.

Given everything you've seen of war from both your service and

37:30 **your post-war service in Borneo, I just wonder what advice you would give to young men who came to you and maybe wanted to join up and go and fight a war?**

Well, I would think if he wants to go and join the permanent army, I'd tell him not. And if there was another war, I think he's got to make up his own mind. It'd depend on,

38:00 see from a personal point of view I don't like to see young men going off to fight distant wars. I'd sooner, if they're permanent army well that's the thing, they've undertaken, to do what they're told to do but… The Japanese War was different, it came very close to here, I wouldn't like to

38:30 advise somebody to go off and join the army to fight beyond – I don't want to enter into present conflict though.

Athol, we're about to finish up for the day, our tape's near the end, but I wonder if there's anything we haven't talked about that you'd like to mention, or anything you'd like to say in closing?

No, except

39:00 to compliment people who are putting these things in archives. I've done some research in archives and they're a mess. And I think that we've got to know our history, we've got to know it accurately and I only think we do that by getting as much material as possible and then having a mighty good index. And then some research person can tell us. I think you don't know

39:30 much about your present history at the present time, you're too close to it and I think it needs somebody to tell us our history. And I think we need to know our history by looking back objectively with as much material as possible available to us and well indexed. And I compliment what you people are trying to do and I'm very happy to work with you.

Well thank you very much for your time to day Athol.

40:00 Thank you very much for your very helpful and kind approach.

No problem.