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PAG - 3

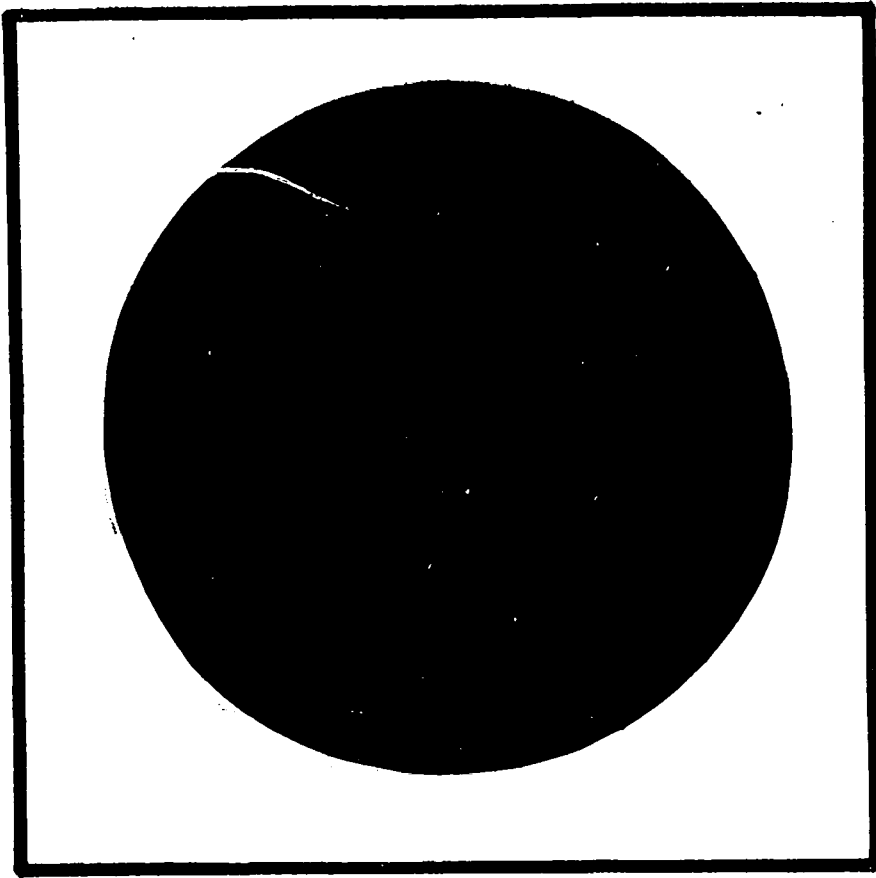
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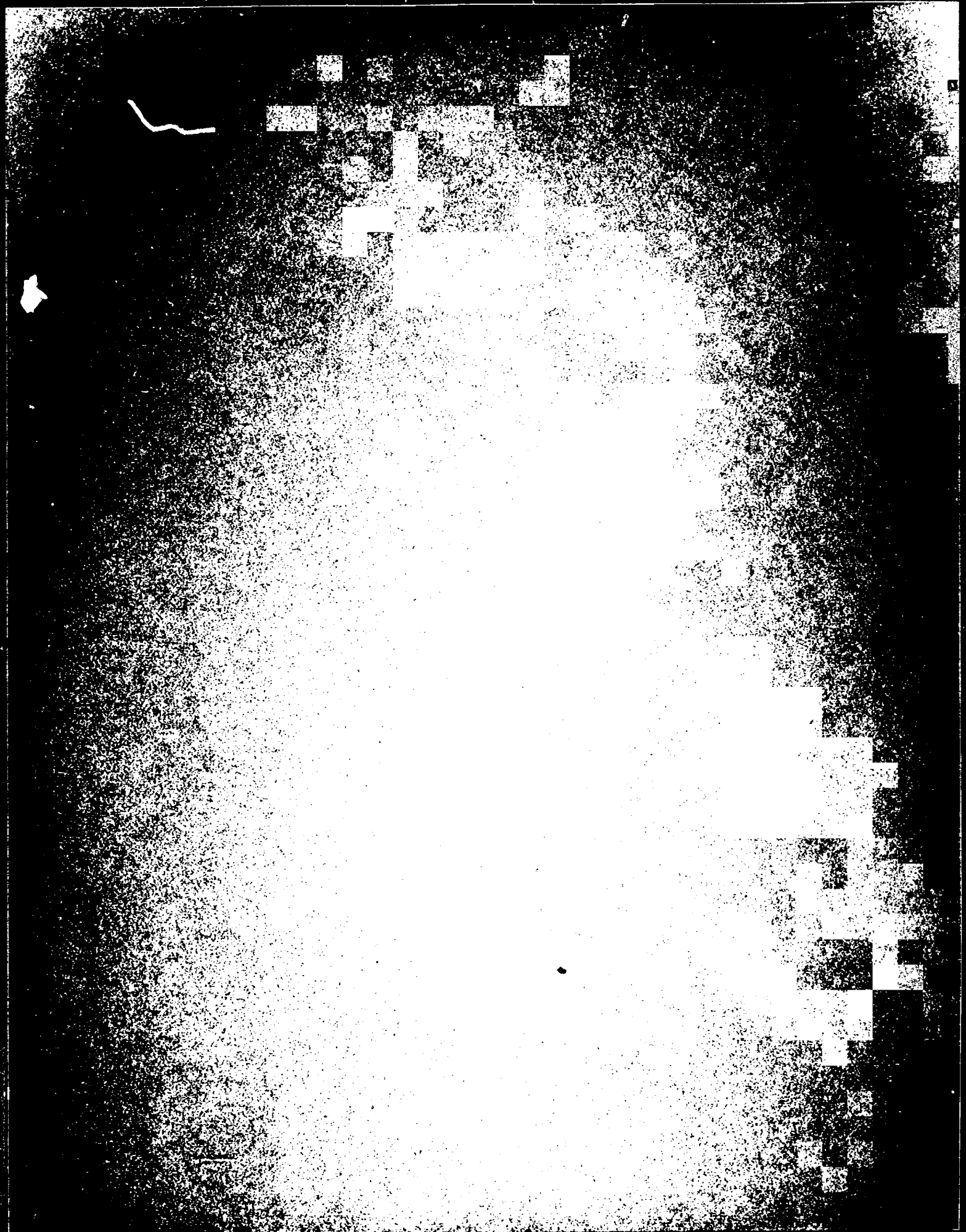
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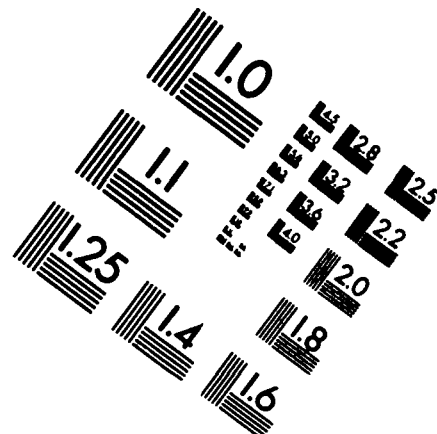
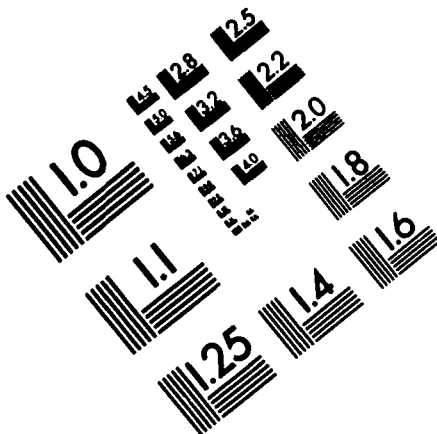
INDEXING DATA

PERIOD	
	<p style="text-align: center;">United Nations War Crimes Commission (UNWCC) Member Governments, other National Authorities and Military Tribunals</p> <p style="text-align: right;">PAG - 3/2.3.1. boxes 331 -333</p>
Jan. 1947	<p style="text-align: center;">Transcripts of proceedings and documents of the International Military Tribunal for the Far East (Tokyo Trials): Transcript</p> <p style="text-align: center;">Tables of contents generally preceded the transcript for each day</p> <p style="text-align: center;"><u>Page Nos.:</u> 14,551 - 16,910</p> <p style="text-align: center;">-</p> <p style="text-align: center;"><u>End of Reel 124</u></p>

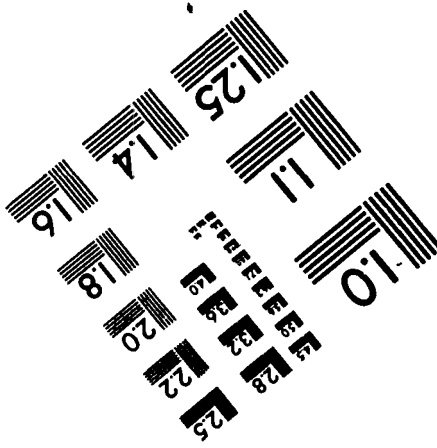
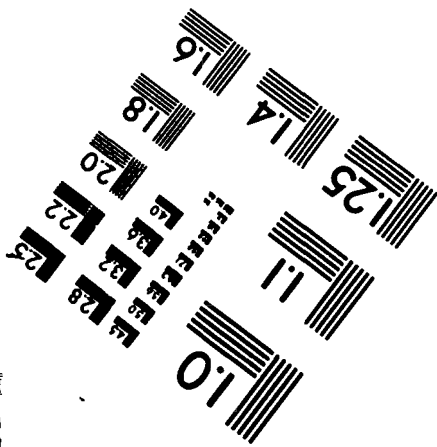
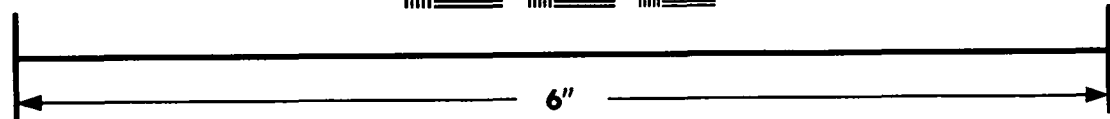
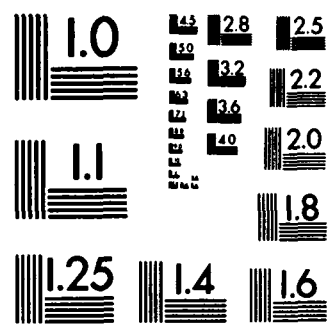
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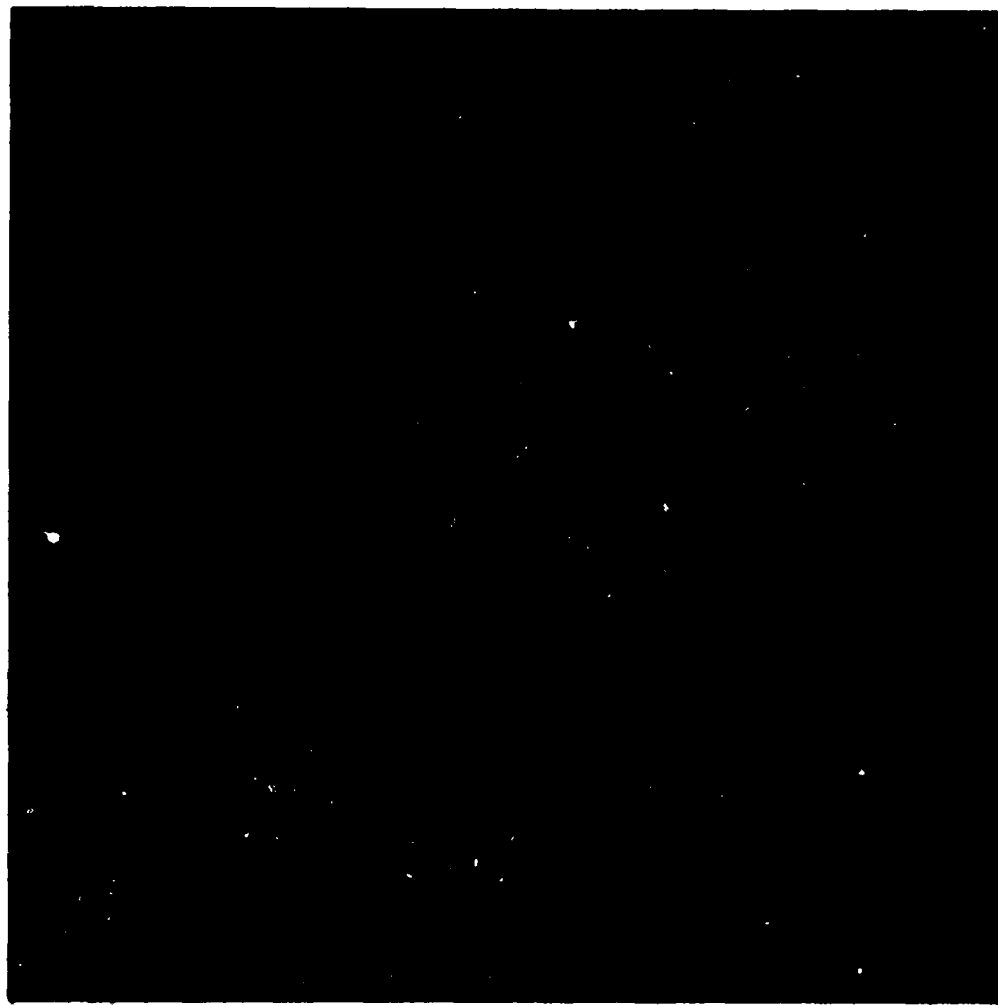




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Jan 8

8 JANUARY 1947

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1 Wednesday, 8 January 1947

2 - - -

3
4 INTERNATIONAL MILITARY TRIBUNAL
5 FOR THE FAR EAST
6 Court House of the Tribunal
7 War Ministry Building
8 Tokyo, Japan

9 The Tribunal met, pursuant to adjournment,
10 at 0930.

11 - - -

12 Appearances:

13 For the Tribunal, same as before with
14 the exception of: HONORABLE JUSTICE JU-AO MEI,
15 Member from the Republic of China, not sitting.

16 For the Prosecution Section, same as before.

17 For the Defense Section, same as before.

18 - - -

19 (English to Japanese and Japanese
20 to English interpretation was made by the
21 Language Section, IMTFE.)
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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now in session.

3 THE PRESIDENT: All the accused are present
4 except OKAWA and MUTO, who are represented by their
5 respective counsel.

6 I understand that I have no certificate
7 to that effect; that MUTO's illness prevents him from
8 attending the Trial today.

9 CLERK OF THE COURT: They stated there
10 would not be any more certificates until he came
11 back from the hospital, sir.

12 THE PRESIDENT: Colonel Woolworth.

13 MR. WOOLWORTH: If the Tribunal please,
14 I desire to have marked for identification document
15 No. 2511 and introduce in evidence excerpts therefrom,
16 2511-A, "Extract from Interrogation of Hideki TOJO,
17 14 March 1946."

18 THE PRESIDENT: Admitted on the usual terms.

19 MR. WOOLWORTH: (Reading)

20 "p. 1-2-3

21 "Q There is one thing that I am not quite
22 clear about. The Supreme Command, generally speaking,
23 is represented by the Army Chief of Staff and the
24 Navy Chief of Staff. That is not the same as Imperial
25 Headquarters, is it?"

1 THE PRESIDENT: Mr. Delaney.

2 CLERK OF THE COURT: Prosecution document
3 No. 2511 will be marked exhibit 1979 for identification
4 only and the excerpt, being prosecution document
5 2521-B, will be marked exhibit No. 1979-A.

6 (Whereupon, the document above
7 referred to was marked prosecution's ex-
8 hibit No. 1979 for identification; the
9 marked excerpts therefrom being marked
10 prosecution's exhibit No. 1979-A and
11 received in evidence.)

12 MR. WOOLWORTH: (Reading)

13 "Extract from Interrogation of Hideki TOJO,
14 14 March 1946

15 "p. 1-2-3

16 "Q There is one thing that I am not quite
17 clear about. The Supreme Command, generally speaking,
18 is represented by the Army Chief of Staff and the
19 Navy Chief of Staff. That is not the same as Imperial
20 Headquarters, is it?

21 "A Imperial Headquarters (Daihongi)
22 drew its membership from the Army and Navy General
23 Staffs and the Army and Navy Ministries. From the
24 Army General Staff the Chief of Staff the Assistant
25 Chief of Staff, all the bureau heads (bucho) and

1 nearly all the section heads (kacho) and some other
2 members of the Staff, as necessary, attended. From
3 the War Department, the War Minister, the Vice-
4 Minister, a majority of the Bureau heads (kyoku cho),
5 and a few other members, as necessary, attended.
6 I suppose that the membership from the Navy side was
7 similar, although I am not sure. As War Minister,
8 I attended in the capacity of a participant (sanka-
9 kusha), although I was not properly a member. In
10 my capacity as participant, I was assisted by the Vice-
11 Minister of War and the head of the Personnel Section.
12 The Imperial Headquarters was created to meet the needs
13 of the war and, since one of those needs was for
14 personnel, I attended for that reason, having adminis-
15 trative charge of personnel.

16 "Three things were wrong with Imperial
17 Headquarters. The first was that, although it was
18 intended to be a joint Army-Navy set-up, in practice,
19 it was divided into an Army section and a Navy section,
20 Army General Staff and War Department personnel going
21 into the Army section and Navy Staff and Navy Department
22 personnel going into the Navy section.

23 "The second thing was that there were no
24 government people in the set-up. It was all Army-
25 Navy.

1 "The third thing was that there was no
2 one in a position to hold it together. It was set
3 up on 20 November 1937 in connection with the China
4 Incident. Having been set up during the first year
5 of the China Incident, it had a great deal of
6 influence on the Government at the time preceding the
7 outbreak of the Greater East Asia War. Since its
8 utterances were not voiced as coming from the Army
9 General Staff or the Navy General Staff but from
10 Imperial Headquarters, the government had to give them
11 a great deal of importance.

12 "Q Did the Emperor have anything to do with
13 Imperial Headquarters?

14 "A The Emperor was at the head of it.
15 This chart shows the set-up. (see reproduction attached.)
16 As to the place where Imperial Headquarters met, the
17 Army part of it met in the Army General Staff offices,
18 and the Navy part of it met in the Navy General Staff
19 offices.

20 "Q Then, how was the Army part of Imperial
21 Headquarters different from the Army General Staff?

22 "A The people in the General Staff were
23 there in the capacity of bureau chief, section chief,
24 or what not, but they also had a capacity as a member
25 of the Army section of Imperial Headquarters. Actually,

1 the two bodies were very much the same in fact, except
2 that the members of the War Department also came
3 under the Chief of Staff when acting in the capacity
4 of members of Imperial Headquarters.

5 "Q You mean, then, that after Imperial
6 Headquarters was set up in 1937, the Chief of Staff
7 held more power than he had held previous to that time?

8 "A Yes, because he came to have control
9 over members of the War Department as well as control
10 over the members of the General Staff which he had had
11 before.

12 "Q How often did Imperial Headquarters
13 meet?

14 "A I am not too sure, since it was pretty
15 much run by the Army and Navy Chiefs of Staff. However,
16 I think that it met once or twice a week.

17 "Q Was the Emperor present at every meeting?

18 "A No. Usually he was not there, only
19 on special occasions.

20 "Q When a full meeting of Imperial Head-
21 quarters of both Army and Navy sections was held,
22 where was it held?

23 "A In the Palace.

24 "Q How often were those joint ones held?

25 "A As I said before, once or twice a week.

1 "Q You mean the joint meetings?

2 "A Yes. Of course when there was more
3 business, there were more meetings.

4 "Q What was the difference in function
5 between Imperial Headquarters and the Supreme War
6 Council?

7 "A They were completely different. Imperial
8 Headquarters was concerned with operations and
9 tactics (sakusen yohai) in which secrecy was necessary
10 and, therefore they did not consult the Supreme War
11 Council on these matters. The Supreme War Council
12 was concerned with many matters, such as research,
13 inspections, military education, military training,
14 and, in general, with advice on military matters."

15 Prosecution desires to have marked for
16 identification document 2514, introduced in evidence
17 document 2514-B, excerpts therefrom.

18 THE PRESIDENT: Admitted on the usual terms.

19 CLERK OF THE COURT: Prosecution document
20 No. 2514 will be given exhibit No. 1980 for identifi-
21 cation only and prosecution's document No. 2514-B
22 will be given exhibit No. 1980-A.

23 (Whereupon, the document above
24 referred to was marked prosecution's ex-
25 hibit No. 1980 for identification; the

1 marked excerpts therefrom being marked
2 prosecution's exhibit No. 1980-A and
3 received in evidence.)

4 MR. WOOLWORTH: (Reading)

5 "Extract from Interrogation of Hideki TOJO,
6 25 March 1946, p. 1

7 "Q As Minister of War, from 7 December
8 1941 on, were you not responsible for the treatment
9 received by American and British prisoners of war?

10 "A Yes. I was responsible for their treat-
11 ment."

12 Prosecution desires to introduce in evidence
13 document No. 2514-C, extracts from document No. 2514.

14 THE PRESIDENT: Admitted on the usual terms.

15 CLERK OF THE COURT: Prosecution document No.
16 2514-C will be given exhibit No. 1980-B.

17 (Whereupon, the document above
18 referred to was marked prosecution's ex-
19 hibit No. 1980-B and received in evidence.)

20 MR. WOOLWORTH: (Reading)

21 "Extract from Interrogation of Hideki TOJO,
22 25 March 1946, p. 2-4.

23 "Q When was the Prisoner of War Bureau
24 set up?

25 "A This was organized immediately after the

1 outbreak of war.

2 "Q Which war?

3 "A The Greater East Asia War.

4 "Q Why was it necessary to organize such
5 a bureau?

6 "A This is according to international law.

7 "Q Why had not such a bureau existed during
8 the China War or Incident?

9 "A It was not necessary during the China
10 Incident.

11 "Q Was there any bureau at all set up in
12 connection with the China Incident on the treatment
13 of prisoners?

14 "A There was no organization set up to deal
15 with Chinese prisoners.

16 "Q Who ordered this new bureau to be set up?

17 "A The order for the formation of this
18 bureau was issued by the War Minister.

19 "Q This was during the time that you were
20 War Minister and Premier?

21 "A Yes.

22 "Q Were you, from 7 December 1941 on,
23 familiar with the provisions of the Hague and Geneva
24 Conventions with respect to the treatment of prisoners
25 of war?

1 "A I knew of these at the time.

2 "Q At that time did you, as Premier and
3 War Minister, believe that the provisions of those
4 conventions applied to Japan and should be followed
5 by her in war?

6 "A Naturally.

7 "Q In addition to the provisions of those
8 conventions, there are also other recognized rules
9 and customs of war followed by civilized nations, are
10 there not?

11 "A As a civilized nation, we would follow
12 the principles of humanism.

13 "Q I suppose by humanism, you mean that
14 prisoners would be treated humanely, as by civilized
15 nations?

16 "A Yes.

17 "Q So that, in general, from 7 December
18 1941 on, you, as Premier and War Minister, felt that
19 Japan was bound by the Hague and Geneva Conventions
20 with respect to the treatment of prisoners of war
21 and also bound by the rules and customs of civilized
22 nations with respect to treating prisoners of war
23 humanely, did you not?

24 "A Yes."

25 Prosecution desires to introduce in evidence

1 document No. 2514-D, excerpts from document 2514.

2 THE PRESIDENT: Admitted on the usual terms.

3 CLERK OF THE COURT: Prosecution document
4 No. 2514-B will receive exhibit No. 1980-C.

5 (Whereupon, the document above
6 referred to was marked prosecution's ex-
7 hibit No. 1980-C and received in evidence.)
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MR. WOOLWORTH: (Reading)

1
2 "Extract from interrogation of Hideki TOJO,
3 25 March 1946, p. 5-6.

4 "Q When did you first learn of the complaints
5 concerning or facts indicating that there had been
6 mistreatment of American and British prisoners of war?

7 "A The only complaints that ever came to
8 my notice were in connection with food and so forth.
9 Atrocities were not brought to my notice at all. I
10 am astounded at the truth regarding atrocities that
11 is now being revealed in the newspapers. If the
12 Japanese had followed the Emperor's instructions,
13 these atrocities would never have happened.

14 "Q But you, as Minister of War during the
15 period when those atrocities were committed, are the
16 responsible party for their commission, are you not?

17 "A Yes.

18 "Q What explanation can you give for the
19 fact that you did not learn of them when they were
20 so widespread and of such a serious nature?

21 "A I was always under the impression that
22 army commanders in the field who were responsible
23 for the treatment of prisoners understood what was
24 required of them in this connection.

25 "Q During this entire period from 7 December

1 1941 on, you were aware of the fact, were you not,
2 that the United States and Great Britain, through
3 friendly nations, had warned the Japanese Government
4 that Japanese officials and the Japanese Government
5 would be held responsible for violations of the
6 Hague and Geneva Conventions and for violations of
7 the rules of war with respect to the treatment of
8 prisoners of war?

9 "A Yes, and if these atrocities are true,
10 treaties have been violated.

11 "Q During this same period, were you not
12 aware that the United States and Great Britain,
13 through friendly nations, had made numerous and
14 repeated complaints, giving specific data and charging
15 that there had been, in each instance, violations of
16 the Hague and Geneva Conventions and of the rules of
17 war in connection with the mistreatment of prisoners
18 of war?

19 "A I do not remember details, but I think
20 these came through the Prisoner of War Information
21 Bureau.

22 "Q Such complaints would first come to the
23 Foreign Ministry and then be routed to the Minister
24 of War's office, would they not?
25

"A Yes.

1 "Q How many of these complaints were made,
2 that you recall, of your personal knowledge?

3 "A I cannot recall just now how many were
4 received.

5 "Q What, if anything, did you do with respect
6 to those which were received?

7 "A These were passed on to the various
8 army commanders through the Prisoner of War Informa-
9 tion Bureau.

10 "Q Were reports then made back by those
11 bureau heads or individuals to you, as Minister of
12 War, relative to these complaints?

13 "A No, no replies or reports were sent back.
14 These complaints were sent to the various people con-
15 cerned calling the matter to their attention."

16 Prosecution desires to introduce in evidence
17 document No. 2514-E, excerpts from document No. 2514.

18 THE PRESIDENT: Admitted on the usual terms.

19 CLERK OF THE COURT: Prosecution's document
20 No. 2514-E will receive exhibit No. 1980-D.

21 (Whereupon, the document above
22 referred to was marked prosecution's exhibit
23 No. 1980-D and received in evidence.)

24 MR. WOOLWORTH: (Reading)

25 "Extract from interrogation of Hideki TOJO,

1 25 March 1946, p. 7.

2 "Q Were these complaints, which were made
3 during this period by the United States and Great
4 Britain through friendly nations with respect to
5 the mistreatment of their prisoners by the Japanese
6 Government, taken up at the weekly meetings of the
7 Prisoner Bureau that you have referred to?

8 "A Yes. These matters were taken up at the
9 bi-weekly meetings."

10 Prosecution desires to introduce in evidence
11 document No. 2514-F, excerpts from document No. 2514.

12 THE PRESIDENT: Admitted on the usual terms.

13 CLERK OF THE COURT: Prosecution's document
14 No. 2514-F will receive exhibit No. 1980-E.

15 (Whereupon, the document above
16 referred to was marked prosecution's exhibit
17 No. 1980-E and was received in evidence.)

18 MR. WOOLWORTH: (Reading)

19 "Extract from interrogation of Hideki TOJO,
20 25 March 1946, p. 8 - 14.

21 "Q Did you or anyone for you go to the
22 scene where the mistreatment of the prisoners (of war)
23 was alleged to have taken place to make an investiga-
24 tion of any of these complaints?

25 "A Yes, there are many instances. There was

1 a case of mistreatment of prisoners of war during the
2 building of the Burma-Thai Railway and I ordered a
3 court martial in this connection.

4 "Q Was there any other personal investiga-
5 tion made of complaints made by the United States and
6 Great Britain after 7 December 1941 with respect to
7 the mistreatment by the Japanese Government of their
8 captured American and British prisoners other than
9 the one that you have just mentioned?

10 "A I myself heard rumors of mistreatment of
11 prisoners of war at Bataan and when I was in the
12 Philippines, I inquired of the Chief of Staff who
13 informed me that the 'march' was due to the lack of
14 transportation and there were no cases of atrocities.

15 "Q Who was the Chief of Staff at that time?

16 "A Lieutenant General WACHI.

17 "Q What was the approximate time that you
18 were in the Philippines and made this inquiry of the
19 Chief of Staff?

20 "A This was 5 May 1943.

21 "Q What was the approximate date that the
22 'Bataan March' took place?

23 "A I do not remember the date, but it was in
24 the early part of 1942.

25 "Q How long after the 'March' was it that

1 you heard of the mistreatment of American troops?

2 "A These rumors came to my notice late in
3 1942 or early in 1943.

4 "Q Through what sources did you hear these
5 rumors of the mistreatment of American troops at Ba-
6 taan?

7 "A It would be difficult to say from whom
8 I heard these rumors.

9 "Q Where did you hear these rumors?

10 "A I heard these in Tokyo.

11 "Q Regardless of what the sources of
12 these rumors were, from how many sources did you
13 hear them -- how many occasions did you hear them?

14 "A It would be difficult to say how many
15 times I have heard these rumors.

16 "Q What was the nature of the rumors that
17 you heard in this connection?

18 "A The rumors were to the effect that pris-
19 oners from Corregidor and Bataan had been mistreated.

20 "Q In what respect had they been mistreated,
21 according to the rumors?

22 "A They had been made to walk long distances
23 in the heat. Deaths due to mistreatment were usually
24 referred to as death by sickness.

25 "Q Did not the rumors also state and indicate

1 that many of the troops who were forced to march in
2 the heat were in no physical condition to march at
3 all and should not have been forced to march because
4 of their physical condition?

5 "A No. The rumors mentioned nothing of
6 this:

7 "Q According to the rumors, what was the
8 cause of the death of the American prisoners in this
9 connection?

10 "A All deaths were ascribed to sickness.

11 "Q What kind of sickness caused the death
12 of the men on that march?

13 "A These details did not come to my notice.

14 "Q But it did come to your notice from
15 the rumors that deaths occurred as a result of the
16 march, did it not?

17 "A Yes.

18 "Q How many deaths had occurred, according
19 to the rumors?

20 "A This was not mentioned in the rumors.

21 "Q Did not the rumors indicate that the
22 deaths were caused by the physical condition of the
23 troops who had been requested or forced to march?

24 "A The rumors only stated that the prisoners
25 were marched long distances in the heat.

1 "Q How long before you discussed this
2 matter while you were in the Philippines with the
3 Chief of Staff was it that you had heard these rumors?

4 "A Perhaps two or three months before
5 this date, but I do not recall.

6 "Q How much time did you spend discussing
7 this march and this matter with the Chief of Staff
8 while you were in the Philippines?

9 "A This was not the main subject of my
10 meeting with the Chief of Staff. I had many other
11 important matters to discuss with him and this was
12 one subject that was involved.

13 "Q How much time was spent discussing this
14 matter with the Chief of Staff?

15 "A I cannot say definitely how long we
16 discussed this as it was one of many subjects.

17 "Q Have you no idea whatsoever as to the
18 amount of time you spent discussing it with the Chief
19 of Staff?

20 "A I am unable to say definitely how long.

21 "Q Prior to the time that you discussed it
22 with the Chief of Staff, had not the American Govern-
23 ment made a written complaint through a friendly nation
24 to the Japanese Government about this very matter,
25 setting forth the details in connection with this

1 march and in connection with the deaths of several
2 hundreds of American troops?

3 "A I do not remember well but perhaps a
4 complaint was received.

5 "Q Was that matter discussed at all at
6 any of the bureau meetings that were held weekly or
7 bi-weekly, that you recall?

8 "A I do not remember, but if a complaint
9 was received, it would be discussed at the meeting
10 of bureau chiefs.

11 "Q Had this matter of the 'Bataan March'
12 and the deaths of American prisoners as the result
13 thereof been taken up with the Chief of Staff prior
14 to the occasion when you discussed it with him in the
15 Philippines, as you state?

16 "A It was the first time that I took it up
17 with him, but if a complaint was received from the
18 United States, I am sure it must have been sent to
19 the Chief of Staff through the Prisoner of War Informa-
20 tion Bureau.

21 "Q Do you know, of your personal knowledge,
22 that this matter was taken up with the Chief of Staff
23 on any other occasion than when you took it up with
24 him during your visit to the Philippines?

25 "A I was acting as Prime Minister and War

1 Minister and I was not able to attend to details of
2 this sort. These are left to the discretion of the
3 chiefs of departments concerned.

4 "Q Do you know, of your personal knowledge,
5 that the matter had ever been taken up with the Chief
6 of Staff other than the time you took it up with him?

7 "A I have no recollection of this having
8 been transmitted.

9 "Q Did the Chief of Staff indicate whether
10 it had been taken up with him before when you dis-
11 cussed it with him?

12 "A No, as I asked him about this.

13 "Q But just what do you mean by that -- it
14 had been taken up with him?

15 "A The Chief of Staff said nothing about
16 this matter ever being taken up with him before I
17 mentioned it.

18 "Q So that, as far as you knew personally
19 or he indicated to you, this is the first time it
20 had been taken up with him by any official of the
21 Japanese Government?

22 "A I am not able to state definitely if
23 this is so or not.

24 "Q Was there anything said by him to indicate
25 to the contrary?

1 "A I am not able to answer this definitely
2 and I cannot speak for the Chief of Staff.

3 "Q Just what did you say to the Chief of
4 Staff in connection with this 'Bataan March' and
5 the mistreatment of American prisoners?

6 "A I mentioned that there were rumors of
7 this description and wanted to have his explanation.

8 "Q What explanation did the Chief of Staff
9 give?

10 "A The Chief of Staff explained that due
11 to lack of transport facilities, the prisoners of
12 war had to march long distances in the heat and that
13 there was some suffering, and deaths resulted.

14 "Q Did the Chief of Staff state during
15 this conversation with you what distance the prisoners
16 had been forced to march?

17 "A General WACHI was not there at the time
18 of the march and did not give me any details. He was
19 not responsible for this march.

20 "Q Who was responsible for the march?

21 "A General HOMMA would naturally be responsible.

22 "Q Did you see General HOMMA while you were
23 in the Philippines?

24 "A No. HOMMA had returned to Japan.

25 "Q Had you seen General HOMMA in Japan at

1 any time after the war started and before you went
2 to the Philippines and spoke to the Chief of Staff
3 on this matter?

4 "A No, I did not meet him when he returned
5 to Japan.

6 "Q How long prior to the time you discussed
7 this matter with the Chief of Staff in the Philippines
8 was it that HOMMA had returned to Japan?

9 "A I do not remember when he returned to
10 Japan.

11 "Q Were you aware of the fact that HOMMA
12 was in Japan during the period that he came to Japan
13 and remained here?

14 "A Yes.

15 "Q Did HOMMA report to the War Department
16 here in Tokyo during the time he was in Japan after
17 the beginning of the war with the United States?

18 "A Perhaps he did report at the War Office,
19 but I did not meet him.

20 "Q Did you or anyone else discuss with HOMMA
21 while he was here or at any other time, the rumors of
22 the deaths of the American soldiers in the 'Bataan
23 March'?

24 "A I did not know of these rumors at the
25 time he returned to Japan and I do not know of anyone

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The prosecution desires to have marked for identification document 2515 and to introduce in evidence document 2515B, extracts therefrom.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Prosecution document No. 2515 will be given exhibit No. 1981 for identification only, and the excerpt therefrom, prosecution document 2515B, will be given exhibit No. 1981A.

(Whereupon, document No. 2515 was marked prosecution's exhibit No. 1981 for identification, and the excerpts therefrom, document No. 2515B, was marked prosecution's exhibit No. 1981A and received in evidence.)

MR. WOOLWORTH: (Reading) "Extract from Interrogation of Hideki TOJO, 26 March 1946, p. 1 - 3.

"A Yesterday there was some interrogation about prisoners and there is something I would like to say about that.

"A I was about to bring that question up and ask if you didn't have something you wanted to say.

"A Since the end of the war, I have read about the inhumane acts committed by Japanese army and navy personnel. These were certainly not the intention of those in authority, that is, of the General Staffs, or the War or Navy Departments, or myself. We did

1 not even suspect that such things had happened. The
2 Emperor especially, because of his benevolence, would
3 have had a contrary feeling. Such acts are not per-
4 missible in Japan. The character of the Japanese
5 people is such that they believe that neither
6 Heaven nor Earth would permit such things. It will be
7 too bad if people in the world believe that these in-
8 humane acts are the result of Japanese character.
9 (The preceding portion of the answer was read back to
10 the witness who agreed as to its correctness.)

11 "The second point with regard to prisoners:
12 The treatment of prisoners is the responsibility of
13 various army commanders, hence I relied upon them to
14 have regard for humane considerations and to follow
15 the terms of international treaties and rules. Of
16 course, since I was the supervisor of military ad-
17 ministration, I am completely responsible.

18 "The third point is that Japanese manners
19 and customs are different from those of Europe and
20 American and the standard of living is also different.
21 These things affected the treatment of prisoners.
22 There are some things I want to explain about this.

23 "a) In regard to inhumane acts, these are
24 not permitted under Japanese manners or customs
25 either.

1 "b) In regard to the difference in the
2 standard of living, the treaties provide that prisoners
3 are to be given the same rations as the troops of the
4 detaining nation. That was also directed in orders
5 that were issued. Because of the difference in the
6 standard of living, the American and European prisoners
7 thought when they were given the same rations as
8 Japanese troops that the rations were very very un-
9 appetizing. Particularly, on the battlefields, this
10 feeling was very strong, I believe. In regard to life
11 in the barracks /shosha/ the barracks, for example,
12 at Omori, which are field barracks / yaeichi/, they
13 would not be thought bad by the Japanese troops, but
14 the European and American prisoners thought they were
15 very poor.

16 "c) The Japanese idea about being taken
17 prisoner is different from that in Europe and America.
18 In Japan, it is regarded as a disgrace. Under Japanese
19 criminal law, anyone who becomes a prisoner while
20 still able to resist has committed a criminal offense,
21 the maximum punishment for which is the death penalty.
22 In Europe and America, it is different. A person who
23 is taken prisoner is honored because he has dis-
24 charged his duties, but in Japan, it is very different.

25 "d) I want to say something now about the

1 feeling with regard to slapping on the side of the
2 face. In Japanese families where the educational
3 standard is low, slapping is used as a means of train-
4 ing. In the Japanese army and navy, although this
5 is forbidden, it continues in fact because of the
6 influence of the customs of the people. This, of
7 course, is a custom that ought to be corrected; it
8 ought to be stopped; but I don't think it is a crime.
9 It is something that comes from custom. That is all
10 I want to say on this.

11 "There is a correction I would like to make
12 regarding yesterday's interrogation. Yesterday,
13 I was asked if I had met Lieutenant General HOMMA.
14 I said that I had not met him, but this year when
15 I was in Omori Prison, I met him. One other point.
16 When an army commander came back to Japan during the
17 war, he would make a situation report to the Emperor.
18 On such occasions, he would be accompanied by the
19 Chief of Staff and the War Minister. I do not well
20 remember, it may be that I met HOMMA on such an
21 occasion since he was an army commander. That is all
22 I wanted to say."

23
24 The prosecution desires to introduce in
25 evidence document 2515C, excerpts from document 2515.

THE PRESIDENT: Admitted on the usual terms.

1 CLERK OF THE COURT: Prosecution's document
2 No. 2515C will receive exhibit No. 1981B.

3 (Whereupon, the document above re-
4 ferred to was marked prosecution's exhibit
5 No. 1981B and received in evidence.)

6 MR. WOOLWORTH: (Reading) "Extract from
7 Interrogation of Hideki TOJO, 26 March 1946, p. 4 - 5.

8 "Q Do you not recall that the Japanese Govern-
9 ment informed the United States, through the Swiss
10 Government on or about 30 January 1941, what Japan
11 would follow, in the war then pending: (1) The
12 various international conventions, including those
13 signed at The Hague and Geneva; (2) International
14 law; (3) The rules and customs of law as to prisoners
15 and civilians?

16 "A I don't recall it, but I think it is very
17 likely.

18 "Q You state that you are now aware of the fact
19 that that promise was not kept or carried out. Why
20 was it not complied with or kept? Do you understand
21 the question?

22 A I understand it as regards the inhumane acts
23 towards prisoners that we have talked about. It was
24 the Government's intention to follow these conventions,
25 and it was mine. The fact that these things happened

1 is very much to be regretted. The responsibility
2 for them is mine.

3 "Q You mentioned today that you did not even
4 suspect the occurrence of these atrocities and the
5 inhumane treatment of prisoners. How can you say
6 this when the United States and Great Britain,
7 through the Swiss and other governments, made numerous
8 written and detailed complaints to your Foreign Office
9 about these very matters?

10 "A The matter of responsibility for humane
11 considerations and the following of treaty provisions
12 was the responsibility of the various army commanders.
13 I believed that they were following them. That is my
14 answer.

15 "Q So that, although these numerous complaints
16 were made on these matters, you still trusted the
17 commanders in the field and did not believe the com-
18 plaints. Is that true?

19 "A As I said before, when a protest would come
20 in, I would forward it to the responsible army
21 commander involved for action which I thought was
22 taken. I could not tell whether the protest was
23 appropriate or not, and I presumed that investiga-
24 tions were made, followed by courts martial or other
25 suitable action.

1 "Q Did you hear of any courts martial or
2 suitable action taken in connection with the atroc-
3 ties and inhumane acts against American prisoners in
4 the 'Bataan March' that we spoke about yesterday and
5 today?

6 "A I think that the commanding officer took
7 legal measures.

8 "Q On what do you base that statement?

9 "A The facts of that case would have gone to
10 the commanding officer who had the responsibility for
11 taking appropriate action.

12 "Q Then, it is only your speculation that such
13 action was taken?

14 "A Yes, but I think it was taken because it was
15 his responsibility."

16 The prosecution desires to introduce in
17 evidence document No. 2515E, excerpt from document
18 2515.

19 THE PRESIDENT: Admitted on the usual terms.

20 CLERK OF THE COURT: Prosecution's document
21 No. 2515E will receive exhibit No. 1981C.

22 (Whereupon, the document above re-
23 ferred to was marked prosecution's exhibit
24 No. 1981C and received in evidence.)

25 MR. WOOLWORTH: (Reading) "Extract from

Interrogation of Hideki TOJO, 26 March 1946, p. 6 - 7.

1 "Q You state that when complaints were made by
2 the United States and Great Britain about the inhumane
3 treatment of their prisoners of war, the complaints
4 would come to the Foreign Ministry and then to the War
5 Department. Were copies of these complaints sent to
6 the Emperor, or was the Emperor informed in any way
7 of them?
8

9 "A No, he was not. I handled them on my own
10 responsibility.

11 "Q Why was not the Emperor, as Commander-in-
12 Chief of the Japanese Army and Navy, advised of these
13 complaints?

14 "A I thought it was all right to handle them on
15 my own responsibility, I sent these protests to the
16 responsible field commanders for investigation as to
17 the facts. The Emperor was busy and had a great deal
18 of work so I did this on my own. Consequently, the
19 Emperor is not responsible in connection with this
20 matter. I am responsible."

21 The prosecution desires to have marked for
22 identification prosecution document No. 4181 and to
23 introduce in evidence excerpts therefrom, 4181B.

24 THE PRESIDENT: Admitted on the usual terms.

25 CLERK OF THE COURT: Prosecution's document

1 No. 4181 will be given exhibit No. 1982 for identi-
2 fication only, and the excerpt therefrom, prosecution
3 document 4181B, will be given exhibit No. 1982A.

4 (Whereupon, document No. 4181 was
5 marked prosecution's exhibit No. 1982 for
6 identification, and the excerpt therefrom,
7 document No. 4181B, was marked prosecution's
8 exhibit No. 1982A and received in evidence.)

9 MR. WOOLWORTH: (Reading) "Extract from
10 Interrogation of Hideki TOJO, 27 March 1946, p. 3 - 7.

11 "Q What was the purpose of your visit to the
12 Philippines, that you have referred to, when you
13 spoke to the Chief of Staff in connection with the
14 'Bataan March'?

15 "A Let's see, the independence of the Philip-
16 pines was on 14 October 1943. It was in connection
17 with the independence of the Philippines and condi-
18 tions in the Philippine Islands. The purpose of it
19 was chiefly in regard to matters related to the in-
20 dependence of the Philippines. I principally wanted
21 to talk to important Filipinos in connection with
22 independence matters.

23 "Q How long were you in the Philippine Islands
24 at this time?

25 "A About three days, I think.

1 "Q During the war, that is, from 7 December
2 1941 until the end of the war, was that your only
3 visit, or were you there on other occasions?

4 "A No, I went twice during the war.

5 "Q What was the approximate date and purpose
6 of that visit?

7 "A I arrived in Thai on 4 July 1943, I believe,
8 and stayed there, I think, for three days -- the 4th,
9 5th, and 6th. That was the principal objective of the
10 visit, but on the way back, I spent two or three days
11 in Malaya, one night in Sumatra, one night in Java,
12 and one night in Manila; then I came back by plane
13 via Formosa to Japan.

14 "Q How many times were you in Formosa and Thai
15 from 7 December 1941 until the end of the war?

16 "A I was only in Thai the one time that I
17 have mentioned. I was in Formosa twice, that is,
18 going and coming, on the trip to the Philippines in
19 May 1943; and again twice going and coming on the
20 trip to Thai in July 1943.

21 "Q What was your purpose in speaking to the
22 Chief of Staff, on your visit in May to the Philip-
23 pines, about the 'Bataan March'?

24 "A There were various matters in connection
25 with the independence of the Philippines. They were

1 the principal things. I spoke to the Chief of Staff
2 about this other matter, but it was not a principal
3 matter of discussion.

4 "Q Why did you discuss this matter at all with
5 the Chief of Staff?

6 "A As I said before, there were various rumors
7 of the sufferings that prisoners had experienced and
8 I inquired of the Chief of Staff because I wanted to
9 find out the facts about it.

10 "Q Just what did you ask him in this connection?

11 "A I said, 'I have heard these rumors about
12 the sufferings of the prisoners. What are the facts?'
13 He replied that it was in the broiling sun, and that
14 means of transport were lacking and so they walked
15 them a long ways, and that it was a fact.

16 "Q What was a fact?

17 "A That it was a fact that they had walked them
18 this long distance.

19 "Q Did you ask him or did you find out how
20 long the distance was that the men were marched?

21 "A I have an impression about the main conversa-
22 tion, but I don't remember the details beyond that.

23 "Q Were you not interested in finding out what
24 distance the men had been marched in the broiling sun?

25 "A It is difficult for me now to recall to just

1 what degree of detail the conversation extended.

2 "Q Do you know how far it is from Bataan to
3 San Fernando?

4 "A I don't remember.

5 "Q Do you recall whether you learned from the
6 Chief of Staff how many men had either fallen out,
7 being unable to finish, or died during the March?

8 "A No, I don't remember details like that, but
9 I got the impression that the responsible commander,
10 who was Lieutenant General HOMMA, did what he could
11 under the circumstances then prevailing.

12 "Q What led to your belief that General HOMMA
13 had done what he could under the circumstances pre-
14 prevailing?

15 "A It is a problem of responsibility. As
16 Supreme Commander in the Philippines at that time,
17 he had a great responsibility to the Emperor. This
18 responsibility was, on the one hand, to conduct the
19 fighting and, on the other, to establish peace and
20 order; as to prisoners, I think that, as the re-
21 sponsible commander, he did what he could. It is
22 Japanese custom /tatemae/ for a commander of an
23 expeditionary army in the field to be given a
24 mission in the performance of which he is not
25 subject to specific orders from Tokyo, but has

1 considerable autonomy. (This is called the heavy
2 responsibility of an expeditionary force commander
3 /kongai no junin/." In parentheses, reading "Missing
4 from Japanese."

5 "Q The protest of the United States Government
6 which was made to Japan, charged that the prisoners
7 in the 'Bataan March' were beaten, bayoneted, and
8 shot. Did you discuss that with the Chief of Staff
9 during your visit?

10 "A No, I didn't talk to him about those things.
11 I thought that if the responsible army commander
12 knew about those things, he would take proper action.
13 I thought that the responsible army commander would
14 take appropriate measures if things contrary to
15 international law had happened.

16 "Q Did you inquire on either of your trips to
17 the Philippines to find out if any action whatsoever
18 had been taken in these matters?

19 "A No. As I said before, since the responsible
20 commander had the authority I relief upon him in this
21 matter. I only asked about the main points. Every-
22 one thought that the Japanese character would not
23 permit acts of an atrocious nature. This little
24 booklet which I have here was issued on 8 January
25 1941 in connection with the China Incident. The

1 title of it is 'Teachings for the Battlefield' (Senjin
2 Kun). It was issued by me as War Minister and at the
3 time of the Greater East Asia War, officers and men
4 had the same instructions. I will quote only briefly.
5 Properly, it is a book on fighting, but if you will
6 translate the pages I have marked in blue pencil, I
7 will appreciate it. I thought that these were carried
8 out. (The booklet was given to the interpreter with
9 the pages marked which will be translated and in-
10 serted in the record. See attached translation of
11 booklet which is being made a part of this interroga-
12 tion.)

13 "Q During your two visits to the Philippines,
14 that you have referred to, did you visit and inspect
15 either Camp O'Donnell, or any other prison camp?

16 "A No, I didn't. I had no time for it. The
17 only one I visited was Omori Prison Camp, here in
18 Japan.

19 "Q While you were in the Philippines on those
20 two occasions, did you visit any camp where civilians
21 were interned?

22 "A No, I didn't. I am not too sure, but it
23 seems to me I visited one camp for civilians in
24 Malaya, I think it was. I am not sure about it.

25 "Q During either of those visits to the

1 Philippines, did you look into or inspect the treat-
2 ment that wounded American soldiers and Filipinos
3 were receiving?

4 "A. I visited a hospital where there were
5 wounded Japanese, but I don't know whether there
6 were wounded Filipinos or Americans in it or not.

7 "Q. And your purpose in going there was to visit
8 the Japanese wounded, was it not?

9 "A. Yes, that was the main thing.

10 "Q. And you did not go to that hospital looking
11 for either Filipinos or American wounded, did you?

12 "A. No, not specially. As I said, I did visit
13 the hospital, but I don't know whether there were
14 any wounded Americans or Filipinos there or not.

15 "Q. During your visits to Thai and Formosa,
16 did you visit any prison camps at which American
17 and British prisoners were interned?

18 "A. No, I didn't. In Formosa, I stopped at
19 Taihoku. I think the prison camp was at Karenko,
20 which was a long distance away. But I went to Taihoku.

21 "Attachment: Partial translation of booklet
22 entitled 'Teachings for the Battlefield.' (Senjin Kun).

23 "NOTE: The witness produced a 32-page
24 pamphlet entitled 'Teachings for the Battlefield'
25 (Senjin Kun), issued on 8 January 1941, over his own

1 name, several passages of which were underlined.

2 The underlined passages are translated as follows:

3 "Page 2 and 3: 'When within the surround-
4 ings of the battlefield, one is apt to be absorbed
5 by what is immediately before one's eyes and stray
6 from principles and occasionally these acts may be
7 contrary to one's duty as a soldier. Much discretion
8 is needed.'

9 "Page 5 and 6: 'To obey Imperial commands,
10 to be brave as well as just, to be humane as well
11 as brave, and to realize the grand harmony of the
12 world -- such is the spirit of the Emperor Jimmu,
13 (first Emperor of Japan). Bravery must be stern and
14 charity must be far-reaching. If there is any enemy
15 resisting the Imperial troops, we must destroy him
16 with our tempestuous military power. Even if we
17 succeed in subduing our enemy with our unrelenting
18 power, if we lack the grace of refraining from
19 attacking those who have laid down their arms and of
20 treating kindly those who obey us, we can hardly be
21 called perfect (soldiers).'

22 "Page 24 and 25: 'Care must be taken in
23 the protection of property and materials owned by
24 the enemy. Requisition, confiscation and destruction
25 of materials, etc., must always be effected in

1 accordance with regulations and invariably in
2 conformity with orders by commanding officers. In
3 view of the basic principles of the Imperial Army,
4 we must be magnanimous of heart and treat innocent
5 inhabitants with kindness."

6 The prosecution desires to have marked
7 for identification document No. 4182 and to introduce
8 in evidence document 4182A, the excerpts therefrom.

9 THE PRESIDENT: Admitted on the usual terms.

10 CLERK OF THE COURT: Prosecution's document
11 No. 4182 will receive exhibit No. 1983 for identifi-
12 cation only, and the excerpt therefrom, document No.
13 4182A, will receive exhibit No. 1983A.

14 (Whereupon, document No. 4182 was
15 marked prosecution's exhibit No. 1983 for
16 identification, and the excerpt therefrom,
17 document No. 4182A, was marked prosecution's
18 exhibit No. 1983A and received in evidence.)

19 MR. WOOLFORTH: (Reading) "Extract from
20 Interrogation of Hideki TOJO, 28 March 1946, p. 1 - 4.

21 "Q Within a month after the war with America
22 started, was not the Prisoner of War Information
23 Bureau set up?

24 "A Yes, it was. It was set up on a basis of
25 treaties.

1 "Q Within two or three months thereafter, there
2 was set up, was there not, the Prisoner of War Ad-
3 ministrative Section? I am not sure if this is the
4 correct Japanese title for it, however.

5 "A All the work dealing with military prisoners
6 was handled by the Prisoner Information Bureau, I
7 think. Was this a public body?

8 "Q Yes, I think it was part of the War Depart-
9 ment and very similar to the Prisoner Information
10 Bureau.

11 "A I believe it was handled by the Prisoner
12 Information Bureau. There was a separate body under
13 the Home Ministry, however, to deal with civilians.
14 I don't know what the name of that was.

15 "Q What organizations, in addition to the
16 Prisoner of War Information Bureau, were set up by
17 the War Department for dealing with prisoners?

18 "A Besides the Prisoner of War Information
19 Bureau, there were the Prisoner Reception Centers
20 (shuyojo).

21 "Q Were there a number of these?

22 "A Yes.

23 "Q And the number and locations of these
24 were fixed by the Minister of War, were they not?

25 "A Yes, as the number of prisoners increased

1 the number of centers increased in the same way.

2 "Q And regulations and orders with respect
3 to prisoners of war were either made or approved
4 by the War Minister, were they not?

5 "A Yes, of course.

6 "Q So that certain clerical work with respect
7 to prisoners of war was done here in Tokyo, but
8 the actual handling of prisoners in the field was
9 performed by the heads of the centers under the
10 regulations and orders received from the War Depart-
11 ment, was it not?

12 "A Yes, of course. About the orders, there
13 was one other thing. The War Minister issued the
14 orders, but the army commanders could issue further
15 orders on the basis of those issued by the War
16 Minister.

17 "Q Did those orders have to be consistent in
18 principle with the orders issued by the War Minister?

19 "A Yes, of course. They were issued on a
20 basis of the War Minister's orders.

21 "Q And the clerical work, which was done with
22 respect to the prisoners in Tokyo, was directly under
23 the Military Affairs Bureau, was it not?

24 "A It was done by the Military Affairs Bureau.
25 The rules were the result of conferences between the

1 Chief of the Military Affairs Bureau and the General
2 Staff.

3 "Q You mean the Chief of the General Staff?

4 "A No, someone under him.

5 "Q How many members of the General Staff did
6 the Chief of the Military Affairs Board confer with
7 in connection with these matters, and who were they?

8 "A The head of the Military Affairs Bureau
9 was a member of the War Department, of course.
10 Depending on the nature of the problem, he would
11 confer with any one of the four General Staff Sec-
12 tions, that is to say, with the first section, Opera-
13 tions; second section, Intelligence; third section,
14 Transport; or with the General Affairs Section.

15 "Q Who was head of the Military Affairs Bureau
16 within a short time after the war with America
17 started?

18 "A Akira HUTO. At that time he was a major
19 general.

20 "Q How long did he remain Chief of the Military
21 Affairs Bureau?

22 "A I don't remember well, but I think he
23 remained in that position until August or October
24 of 1942.

25 "Q Who was head of the Prisoner of War

1 Information Bureau at the beginning of the war and
2 after?

3 "A Lieutenant General UMIURA. I don't know
4 his first name.

5 "Q Was it Kikio?

6 "A I think so.

7 "Q Do you remember telling Lieutenant General
8 UMIURA that the prisoners of war must be used to
9 increase Japan's production?

10 "A I permitted their use in factories. This
11 was based on treaties.

12 "Q Do you recall also stating, in early 1942,
13 that in order to show the might of Japan, it would
14 be necessary to establish prisoner of war camps in
15 Korea, Formosa, Manchuria and China and have the
16 prisoners undergo compulsory labor?

17 "A Do you mean that I said that?

18 "Q Didn't you say that in substance if not in
19 the same words?

20 "A No. The location of the camps was determined
21 by transport considerations and labor considerations.
22 One other thing I would like to say. You spoke of
23 forced labor /kyosei rodo/. It was not that. This
24 was based on international law which enables prisoners
25 of the rank of petty officer and below to be employed

1 as workers. Commissioned officers can be employed
2 at their own request. I think that was specified
3 in the rules which I issued as Minister of War and
4 to which I referred a moment ago.

5 "Q Who succeeded HUTO as head of the Military
6 Affairs Bureau?

7 "A Kenryo SATO. At that time he was a major
8 general."
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1 Prosecution desires to introduce in evi-
2 dence document No. 4182-D, excerpt from document
3 No. 4182.

4 THE PRESIDENT: Admitted on the usual
5 terms.

6 CLERK OF THE COURT: Prosecution's docu-
7 ment No. 4182-A will receive exhibit No. 1983-B.

8 (Whereupon, the document above
9 referred to was marked prosecution's ex-
10 hibit No. 1983-B and received in evidence.)

11 MR. WOOLWORTH: "Extract from Interrogation
12 of Hideki TOJO, 28 March 1946." Pages 7 to 8.

13 "Q Had you heard at any time that the treat-
14 ment received by prisoners of war in the Philippines,
15 Formosa, and Thailand was not only inhumane, but was
16 below the standard given to Japanese prisoners of
17 war?

18 "A I supposed that the treatment being given to
19 prisoners was on the same level as that given to our
20 own troops. However the conditions under which
21 Japanese troops lived were bad and to that extent the
22 treatment given to prisoners of war was bad too. In
23 regard to Thailand, I do know that I heard that
24 prisoners had been mistreated by officers in the
25 building of the railroad between Thai and Burma, that

1 prisoners were made to work when they were sick, and,
2 on the basis of this, I ordered a court martial.

3 "Q Other than at Bataan and the building of
4 this railroad that you refer to, did you hear of
5 any other mistreatment of American or British
6 prisoners of war?

7 "A I have told you about the Thai-Burma
8 thing just now. Aside from these two, I haven't
9 heard much of that sort of thing. In connection
10 with China, two or three cases came to my atten-
11 tion. Of course the authorities on the spot con-
12 ducted courts martial, the results of which were
13 forwarded to me for information as War Minister. On
14 two or three occasions I was not satisfied with the
15 results of the courts martial since the cases had
16 been dropped, and I sent them back for reconsidera-
17 tion.

18 "Q You have stated that you knew complaints
19 came into the Foreign Office and were sent to your
20 office in connection with the mistreatment of
21 prisoners and civilians. Did you or did you not
22 acquaint yourself with the nature and content of
23 these complaints?

24 "A These matters were usually brought up at
25 the meetings of the bureau chiefs of the War

1 Department. These meetings were held twice a week.
2 Either the Chief of the Prisoner of War Informa-
3 tion Bureau or the Military Affairs Bureau would
4 bring them up. They were referred by the bureau
5 chief meetings to the commander in the field who
6 had the authority to act. If there was inhumane
7 treatment, he would take measures accordingly, and
8 the report would probably come back to me as War
9 "Prisoner."

10 Prosecution desires to have marked for
11 identification document 4183 and will introduce in
12 evidence document No. 4183-A, excerpt therefrom.

13 THE PRESIDENT: Admitted on the usual
14 terms.

15 CLERK OF THE COURT: Prosecution's docu-
16 ment No. 4183 will receive exhibit No. 1984 for
17 identification only, and the excerpt therefrom,
18 document No. 4183-A, will receive exhibit No. 1984-A.
19

20 (Whereupon, the document above re-
21 ferred to was marked prosecution's exhibit
22 No. 1984 for identification, and the excerpt
23 therefrom was marked prosecution's exhibit
24 No. 1984-A and received in evidence.)

25 MR. WOOLWORTH: "Extract from Interrogation
of Hideki TOJO, 29 March 1946." Pages 1 to 4.

1 "Q Were you not responsible for the rules, the
2 orders and the action taken which led to the sentences
3 of execution or imprisonment of American fliers since
4 7 December 1941?

5 "A Of course I am responsible for army orders
6 and regulations.

7 "Q You mean for such orders and regulations?

8 "A Well, I am not just sure what ones you
9 refer to. I don't remember any regulations par-
10 ticularly directed against fliers before 18 October
11 1942 when Japan was raided by American fliers.
12 There may have been some before that, but I don't
13 remember clearly. I do remember that there were
14 some after that.

15 "Q For what actions taken at that time or
16 afterwards in this connection were you responsible?

17 "A The raid on 18 October 1942 was contrary
18 to international law. It was not against troops but
19 against non-combatants, primary school students, and
20 so forth. We knew this and, since this was not
21 permitted by international law, it was homicide
22 (satsu-jin). Japan acted on this concept and I
23 ordered (kaketa) courts martial (gunritsu kaigi), or
24 at least they were just about like courts martial.
25 You probably won't be able to understand this

1 unless you understand something about Japanese
2 feelings at this time. This was the first time
3 Japan had been bombed, and it was a great shock.
4 Public feeling ran very high. Now, of course, since
5 the indiscriminate bombing of medium and small
6 cities which were undefended and the use of the
7 atom bomb, all things which are not permitted under
8 international law, the tragic spectacle of this
9 country today makes this first raid look like a
10 very small thing, but it was a great shock to the
11 people at the time.

12 "Q And the extreme punishments meted out to
13 these first fliers were mainly given as a deterrent
14 to prevent future raids, were they not?

15 "A Yes, they were for that reason. There was
16 a demand from Imperial Headquarters. The Army
17 Chief of Staff came to me directly and demanded
18 severe punishment for the fliers.

19 "Q Who was the Army Chief of Staff?

20 "A SIGIYAMA.

21 "Q What did you say in reply, and what did
22 you do as a result of this request?

23 "A I issued this order. It was an order for
24 military administration. As to the form, I am not
25 positive whether the order was issued over my name

1 or by Imperial Headquarters, but no matter who
2 issued it, I am responsible for it.

3 "Q Who else from Imperial Headquarters was
4 the Chief of Staff speaking for when he made the
5 request that he did of you for this punishment?

6 "A He came on his own responsibility, not
7 representing anyone else. I remember this because
8 the Chief of Staff didn't often come to me directly
9 about things.

10 "Q Did you receive any order from the Emperor
11 in this connection, or discuss the matter with him
12 or report to him before taking the action that you
13 did?

14 "A The Emperor is not related at all to this
15 problem. When the report of the court martial
16 came from China to the Chief of Staff and to myself,
17 the verdict, as I recall it, was that all eight men
18 were to be executed. The Chief of Staff came to
19 me and demanded that the findings of the court be
20 carried out. I knew, however, of the Emperor's
21 benevolence and, with that in mind, and because of
22 his feelings, wished to have only the minimum
23 number of men executed. Therefore, it was decided
24 that only the three who had killed primary school
25 students would receive the death penalty. This was

1 discussed with the Emperor, since the Emperor in
2 Japan is the only one who can commute a sentence,
3 and it was decided that way. That one point was
4 the Emperor's only relation to the thing.

5 "Q So the Emperor reviewed all eight cases and
6 commuted the death penalties from eight to three?
7

8 "A No, he didn't review them. In Japan,
9 courts martial have only one hearing. That is be-
10 cause of their military character. Ordinary
11 trials have three hearings.

12 "Q On what basis did the Emperor take this
13 action? Did you propose it?

14 "A Yes, I did. It was on my responsibility as
15 adviser to the Throne, but the commutation was the
16 Emperor's because of the fact that the Emperor is
17 invariably benevolent.

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1 "Q Was not this order, which was issued by
2 you for the trial and punishment of these fliers, an
3 ex post facto law?

4 "A Yes, it was.

5 "Q Then the order of occurrences was as follows:
6 the raid, the capture of the fliers, the order which
7 you issued, the trial, and the executions? .

8 "A Yes.

9 "Q And the order that you issued provided for
10 the trial and punishment?

11 "A Yes, it was the basis. However, the order,
12 in turn, was based on the fact of the raid. Of course
13 the order was not an order to execute eight men, it
14 was an order whereby trials could be held based on
15 the fact of the raid.

16 "Q So that, as the result of the raid, this
17 order or law was promulgated by you and made retro-
18 active to the date of the raid?

19 "A Yes."

20 Prosecution desires to introduce in evidence
21 document No. 4183-B, excerpts from document 4183.

22 THE PRESIDENT: Admitted on the usual terms.

23 CLERK OF THE COURT: Prosecution's document
24 No. 4183-B will receive exhibit No. 1984-B.

25 (Whereupon, the document above

1 referred to was marked prosecution's exhibit
2 No. 1984-B and received in evidence.)

3 MR. WOOLWORTH: (Reading) "Extract from
4 Interrogation of Hideki TOJO, 29 March 1946. Pages 6-7.

5 "Q Did not the heads of the various prison
6 camps have to make a monthly report to the Military
7 Bureau with respect to the prisoners under their
8 care in connection with food, health, labor, and so
9 forth?

10 "A I think they did on a basis of regulations.
11 This is a routine matter.

12 "Q And those reports were consolidated, were
13 they not, and sent to the War Minister?

14 "A The War Minister received a stack of papers
15 about a foot and a half high each day, and I suppose
16 that was among them.

17 "Q You do know, do you not, that those reports
18 were compiled and forwarded to the War Minister?

19 "A The extracts were probably reported on at
20 the meetings of the bureau chiefs which took place twice
21 weekly.

22 "Q Was the matter of the death rate from mal-
23 nutrition, and other causes, shown by those reports
24 discussed at these meetings?

25 "A Yes, it was, and I paid particular attention

1 to it. The responsibility for these matters belongs
2 to the army commanders in the field. However, when
3 they couldn't fulfill their responsibilities, they
4 would make requests of the War Ministry. Those
5 requests came to the chief of the Military Affairs
6 Bureau and, after consultation between the latter and
7 the commanders in the field, the War Ministry would
8 take action either by sending food, or some other
9 means."

10 Prosecution desires to introduce in evidence
11 document No. 1632-W(95), extract from entry from
12 Marquis KIDO's diary.

13 THE PRESIDENT: Admitted on the usual terms.

14 CLERK OF THE COURT: Prosecution's document
15 No. 1632-W(95) will receive exhibit No. 1985.

16 (Whereupon, the document above
17 referred to was marked prosecution's exhibit
18 No. 1985 and received in evidence.)

19 MR. WOOLWORTH: (Reading) "Extract from Entry
20 from Marquis KIDO's diary. 13th March 1942.

21 "I went to the office at 10.00 a.m.

22 "At 3 o'clock the Imperial Household Minister
23 came to the office and told me about Eden's address
24 in Parliament concerning our soldiers' atrocities at
25 Hong Kong, and we exchanged opinions."

1 Prosecution desires to introduce in evidence
2 document No. 1632-W(96), extract from entry from
3 Marquis KIL0's Liary.

4 THE PRESIDENT: Admitted on the usual terms.

5 CLERK OF THE COURT: Prosecution's document
6 No. 1632-W(96) will receive exhibit No. 1986.

7 (Whereupon, the document above
8 referred to was marked prosecution's exhibit
9 No. 1986 and received in evidence.)

10 MR. WOOLWORTH: (Reading) "Extract from
11 Entry from Marquis KIL0's Liary. 21st May 1942.

12 "Chief aide-de-camp came to my room and
13 related to me about the manner in which the American
14 POWs taken in the /T.N. Loolittle/ air raid were dealt
15 with."

16 THE PRESIDENT: We will recess for fifteen
17 minutes.

18 (Whereupon, at 1045, a recess was
19 taken until 1100, after which the proceedings
20 were resumed as follows:)

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1 THE PRESIDENT: Colonel Woolworth.

2 COLONEL WOOLWORTH: If the Tribunal please,
3 the prosecution desires to introduce in evidence
4 document No. 1632W(98), being an extract from entry
5 from Marquis KIDO's diary.

6 THE PRESIDENT: Admitted on the usual terms.

7 CLERK OF THE COURT: Prosecution's document
8 No. 1632W(98) will receive exhibit No. 1987.

9 (Whereupon, the document above re-
10 ferred to was marked prosecution's exhibit
11 No. 1987 and received in evidence.)

12 MR. WOOLWORTH: (Reading) "Extract from
13 Entry from Marquis KIDO's Diary, 3 October 1942.

14 "At 11:30 Premier TOJO came to see me in my
15 room and requested me to inform the Emperor regarding
16 the details of the treatment of American prisoners
17 who participated in the /T.N. Doolittle/ raid last
18 April 18th. From 1:05 to 1:15 I reported to the
19 Emperor as Premier TOJO requested. The Chief of
20 Staff will report on this in the near future."

21 The prosecution desires to introduce in
22 evidence document No. 2732-A, which is monthly report
23 from the Prisoner of War Camps Commandant in Thailand.

24 THE PRESIDENT: Admitted on the usual terms.

25 CLERK OF THE COURT: Prosecution's document

1 No. 2732-A will receive exhibit No. 1988.

2 (Whereupon, the document above re-
3 ferred to was marked prosecution's exhibit
4 No. 1988 and received in evidence.)

5 MR. WOOLWORTH (Reading): "BA-98

6 "Military Secret

7 "Telegram Translation

8 "Place of Dispatch: Kanburi

9 "Sent: 12:10 a.m. (p.m.) on September 3, 1943

10 "Arrived: 9:00 a.m. (p.m.) on September 4, 1943

11 "From: POW Camps Commandant in Thailand.

12 "To: Chief of POW Information Bureau.

13 "Telegram No. Tai-Fu-Shu-Den 715.

14 "The gist of the monthly report for August
15 is as follows (?):

16 "1. Prisoners of War - 40,314 (including
17 7,328 enroute (?) to Japan Proper).

18 "2. Sick Prisoners: 15,064 (6 words under
19 inquiry) main diseases are malaria, malnutrition,
20 'gaihi' disease, beri-beri, etc.

21 "3. Thirty-seven have died, thirteen of them
22 from malaria, four from beri-beri, three from pneumonia (?),
23 three from pellagra, and fourteen from other diseases.

24 "4. The number of prisoners who were engaged
25 in indoor (?) work was 12,361 (?) a day on the average.

1 "Work directly collaborating with the rail-
2 road - 1,395 men.

3 "Work collaborating with the unit - 4,772 men.

4 "5. Special labor corps (?) - 814 men
5 (patients - 88, average number of laborers per day -
6 734) no death.

7 "6. POW mail - 90,427 received. No dis-
8 patch. Four messages addressed to POW's.

9 "7. No relief money (?) or goods for POW's
10 received.

11 "8. Strict precautions are being made and
12 also, concentration principle was taken to intensify
13 the collaboration between the railroad unit. Five
14 divisions and three detachments were organized.

15 "9. Both POW's and special laborers are quiet.

16 "10. 2,800 POW's waiting at Singapore are
17 scheduled to get on board on the 5th of September.

18 "Telegram sent to: 'I'; POW Information
19 Bureau.

20 "Telegram received: POW Information Bureau-
21 5 September 1943.

22 "SEAL FUJIKURA No. 10.
23
24 - - -

25 "BA-98

"Military Secret

14,611

1 "Telegram Translation

2 "Place of Dispatch: Kanburi

3 "Sent 2350 (11:50 p.m.) on September 7, 1943

4 "Arrived: 2000 (8:00 p.m.) on September 8,
5 1943.

6 "From: POW Camps Commandant in Thailand

7 "To; Chief of POW Information Bureau

8 "No. 1.

9 "We request you to insert the following in
10 the obscure part of the main sentence in Telegram
11 No. Tai-Fu-shu-Den 715, distributed on September 5th:

12 "'Ratio to the total number - 37.06%.'

13 "NOTE: * The sick POW's are reported to be
14 15,064 (ratio for the total number is 37.06%), but
15 37.06% of the total number 40,314 is 14,940. There
16 seems to be some mistake in the calculation of the
17 ratio to the total number. However, this figure has
18 not been calculated by the POW Information Bureau;
19 the figures in the original document from the actual
20 place have been copied as they stand.

21 * (T.N. Added in ink on original document).

22 "Received POW Information Bureau 11 September
23 1943.

24 "SEAL FUJIKURA No. 33

25 This contains the usual statement of

1 authenticity.

2 THE PRESIDENT: We note a number of interro-
3 gation marks on the first page. Do they suggest a
4 doubt as to whether the preceding word is the right
5 word or not?

6 MR. WOOLWORTH: The question marks were on
7 the original Japanese document.

8 THE PRESIDENT: Mr. Justice Mansfield.

9 MR. JUSTICE MANSFIELD: If the Tribunal please,
10 the prosecution now produces for cross-examination
11 OGIYA, Yorio, whose attendance was ordered by the
12 Tribunal on the application of the defense. His affi-
13 davit is exhibit 1925-A.

14 MARSHAL OF THE COURT: Is the witness to
15 be sworn?
16

17 THE PRESIDENT: He is already on his former
18 oath. This man has not been sworn before?

19 MR. JUSTICE MANSFIELD: No, if the Court
20 pleases.

21 THE MONITOR: Mr. Prosecutor, what is the
22 prosecution number of 1925-A, sir?

23 MR. JUSTICE MANSFIELD: Exhibit 1925-A.

24 THE MONITOR: Yes, sir. What is the prose-
25 cution number for it, please?

MR. JUSTICE MANSFIELD: 8223.

OGIYA

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1 Y O R I O O G I Y A, called as a witness on behalf
2 of the prosecution, being first duly sworn,
3 testified as follows:

4 DIRECT EXAMINATION

5 BY MR. JUSTICE MANSFIELD:

6 Q What is your full name?

7 A OGIYA, Yorio.

8 Q And you are at present confined in Sugamo
9 Prison?

10 A Yes.

11 Q You are a deponent of an affidavit dated
12 the 8th of February, 1946?

13 A Yes.

14 MR. JUSTICE MANSFIELD: The defense may
15 cross-examine this witness now. I have no further
16 questions.

17 CROSS-EXAMINATION

18 BY MR. KUSANO:

19 Q Mr. Witness, is what you have written in
20 this affidavit true and correct?

21 A Yes, no mistakes.

22 Q What schools have you attended, Mr. Witness?

23 A To what extent, sir?

24 Q From middle grade school about?

25 A In March, 1938, graduated the Third -- the

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CROSS

1 Tokyo Third Prefectural Middle School; and in April
 2 of that year entered the College Division of Chuo
 3 University in the Department of Law; graduated the
 4 Law Department of that college in March, 1941;
 5 April, 1941, entered the University Division of the
 6 Law College; graduated the same school in 1943, March.

7 Q In one of the questions put to you in this
 8 affidavit it is said: "When were you assigned to
 9 the Central Army Area Headquarters?" Well, that
 10 is a question as written in your affidavit -- as
 11 found in your affidavit. Now, does that mean --
 12 does the Central Army Area Headquarters here mean
 13 the headquarters of the Eastern Army -- Eastern
 14 District Army?

15 A Yes.

16 Q In other words, when you refer to this
 17 Central Headquarters, that is the one based in Osaka,
 18 is it not?

19 THE INTERPRETER: The answer was "yes."

20 A Yes.

21 Q What position did you occupy -- what was
 22 your occupation at the Central Army -- Central
 23 District Army Headquarters?

24 A I was assigned to the Legal Affairs Section
 25 and handled general business matters.

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1 Q Were you ever engaged in duties as a
2 prosecutor?

3 A Yes.

4 Q In your affidavit the word "public pro-
5 curator" is used -- is the word as used -- the word
6 written is "public procurator" as used. Now does
7 that mean that you are a procurator -- prosecutor?

8 A That is a procurator who attends to another
9 prosecutor and should be translated as "presenting
10 prosecutor."

11 THE MONITOR: Perhaps that should be
12 "attending procurator."
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1 Q Now, turning to the question on the--the
2 last question on page 5 of the Japanese text of
3 your affidavit, "Who gave you the order to demand
4 the death penalty for Nelson and Auganus?"-- Now,
5 to that question you have answered, according to
6 your affidavit, as follows:

7 "After Major General OTAHARA completed his
8 investigation, he wrote an opinion based on his
9 investigation and forwarded this opinion to Lt.
10 Gen. Eitaro UCHIYAMA, Commander of the Central Army
11 Headquarters to get an approval of the death sentence.
12 Then, after obtaining the approval of General
13 UCHIYAMA, Major General OTAHARA took his opinion
14 to General HATA, who was in command of the Second
15 General Army, and also got his approval of the
16 death penalty."

17 Well, now, in this testimony you testified
18 that-- you said, "After obtaining the approval of
19 death" -- correction, please--approval of General
20 UCHIYAMA -- after obtaining the approval of General
21 UCHIYAMA, Major General OTAHARA took his opinion to
22 General HATA, who was in command of the Second
23 General Army."

24 You answered in those words. Now, are you
25 sure of your answer here?

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1 A The obtaining of the approval of the
2 death penalty may be a mistake in translation.
3 In the light of his office, it is not imaginable
4 that a Procurator could receive an approval of the
5 death penalty. It would be possible, however, for
6 a Procutator to obtain the approval of the method
7 of execution. It is possible for the Procurator to
8 obtain approval of a demand for a death penalty.

9 Q Well, then, I will reframe my question and
10 ask you the same question in different words by
11 saying "demanded the approval of the death sen-
12 tence, et cetera." You meant-- You didn't mean to
13 say that this penalty was demanded, or approval for
14 the indictment was demanded, or approval for passing --
15 delivering sentence was demanded --

16 THE MONITOR: Slight correction: When you
17 said that the approval of the death penalty was
18 received, you didn't mean that -- by that you didn't
19 mean the approval of the indictment or the sentence
20 of the trial? You meant by that approval of -- by
21 that you meant to put these people on trial?

22 THE INTERPRETER: Correction of the whole
23 passage: When you spoke of receiving the approval
24 of the death penalty, you meant asking for approval
25

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1 for -- asking the death sentence rather than the
2 approval of an indictment or approval of a sentence,
3 isn't that so? Will you answer my question?

4 Yes, I will. Of course. With respect to
5 that matter, whether the case should -- the indict-
6 ment should be made or not, the Procurator prepares
7 an opinion report and this opinion report, having
8 been approved by General UCHIYAMA, it may be said
9 that with respect to this -- in accordance with
10 this opinion report the indictment was made.

11 I think the main problem is after receiving
12 the agreements to the indictment. In other words,
13 this being an important international problem,
14 requiring in respect of such question as the death
15 penalty the utmost caution and the most careful
16 consideration, I think that approval for the demand
17 or request for the death penalty was submitted in
18 advance, and therefore on that basis OTAHARA sub-
19 mitted as his opinion to request the approval of
20 UCHIYAMA -- the demand of the supreme penalty --
21 to ask for UCHIYAMA'S approval; and I have heard
22 that it was then thereafter that the approval for
23 the Commander of the Second General Army, General
24 HATA, was requested, and I have heard then there-
25 after that the approval of the War Minister in
Tokyo was requested.

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1 Q Well, then am I allowed to understand that
2 passage to mean that approval of requesting the penalty
3 was requested, is that what you meant by that passage?

4 A I think it was the request for approval for
5 the request for the death penalty with the indictment
6 as the premise.

7 Q Then, a military tribunal, like other trials,
8 means the judicial independence, does it not?

9 A Yes.

10 Q Then, as far as the trials are concerned no
11 interference was made either by the War Minister or
12 the commander of the army or any other persons?

13 A Of course, there is no interference of the
14 trial itself.

15 Q What I am asking was that no interference
16 was made as to the trials, proceedings of the trials,
17 or the delivery of the sentence?

18 A As you say.

19 MR. KUSANO: That is all.

20 DR. KIYOSE: Mr. President, I should like to
21 say a word regarding the translation at the moment.
22 There was something said about the independence of the
23 trial, but that I think should be translated as "inde-
24 pendence of the findings and the sentence." I think
25 it is a very highly important matter. If the

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1 prosecution has any objections to make, we would like
2 to submit the matter to the Language Arbitration Board.

3 MR. JUSTICE MANSFIELD: The prosecution has
4 no objection to the matter being submitted to the Lan-
5 guage Officer.

6 THE PRESIDENT: It will be referred to the
7 board.

8 Captain Lazarus.

9 DR. KIYOSE: I should like to ask also to the
10 witness, because the witness seems to understand Eng-
11 lish, whether he prefers to have the word "saiban" in
12 Japanese translated into "proceedings of trials" or
13 "findings and proceedings" -- "finding and judgment?"

14 THE WITNESS: I approve of the purport of that
15 question.

16 THE PRESIDENT: The less we say at this stage
17 the better. We leave it to re-examination to clear
18 this mess up.

19 CROSS-EXAMINATION (Continued)

20 BY MR. LAZARUS:

21 Q Mr. Witness, you stated that you heard that
22 the approval of General HATA was requested. Do you
23 have any more concrete information than that to give
24 this Tribunal?
25

A The matters to which I have testified did

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1 not come to my knowledge directly. They are based on
2 what I heard from my chief, OTAHARA.

3 Q Then you, yourself, do not know whether or
4 not General HATA ever approved or ever heard of this
5 trial?

6 A No, I have heard of it. There is no mistake
7 about that.

8 Q What is it that you have heard?

9 A That is what I have stated in answer to ques-
10 tions by the defense counsel previous to you.

11 Q Then, let me understand you, please. You
12 have heard that General HATA's approval was sought,
13 but you do not know of your own knowledge whether Gen-
14 eral HATA ever gave his approval or ever heard of the
15 case?

16 A I have heard from General OTAHARA that there
17 was no mistake; there was no mistake to the fact that
18 Field Marshal HATA gave his agreement to the request
19 for the death penalty -- request for approval for the
20 death penalty.

21 Q Then, the only information you have as to
22 General HATA's knowledge of this case is the fact
23 that General OTAHARA told you that General HATA had
24 approved?
25

A Yes.

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CROSS

1 Q Now, this trial was held under the jurisdic-
2 tion of the 15th Area Army under the command of Lieut-
3 enant General OCHIYAMA, isn't that so?

4 A Yes.

5 Q The Second General Army, of which General HATA
6 was commanding general, had nothing to do with admin-
7 istrative matters of the 15th Area Army, isn't that
8 correct?

9 A I am not familiar with that matter.

10 Q Isn't it a fact that the Second General Army
11 had been created to prepare for the defense of the
12 Japanese homeland, and that was its only duty?

13 A I have heard of that.

14 Q After the decision was rendered condemning the
15 American flyers to death, was the approval of General
16 HATA for the execution of the sentence sought?

17 A No.

18 Q Was the approval of anyone sought before the
19 sentence was executed?

20 A Commander OCHIYAMA.

21 Q And that was because OCHIYAMA was commanding
22 general of the 15th Area Army which had complete charge
23 and sole charge of this trial, isn't that so?

24 A Yes.

25 Q Did you ever see any documents relating to

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1 this trial that had been signed by General HATA per-
2 sonally?

3 A No, I have not.

4 Q Then, I ask again for the last time, as far as
5 you know the only connection that General HATA had with
6 this trial is General OTAHARA's statement to you that
7 he, OTAHARA, had gotten General HATA's approval for
8 requesting the death sentence at the trial?

9 A Yes.

10 MR. LAZARUS: Thank you. No further questions
11 from me, Mr. President. Thank you, sir.

12 THE PRESIDENT: Counsellor SHIMANOUCI,

13 CROSS-EXAMINATION (Continued)

14 BY MR. SHIMANOUCI:

15 Q When and where did Second Lieutenant Nelson
16 and Sergeant Auganus attack -- bomb?

17 A They bombed Tokyo on March 10, 1945, Osaka
18 March 14 of the same year, and Kobe March 17 of the
19 same year.

20 Q Where -- what places did they bomb in Tokyo
21 on the 9th of March?

22 A Regarding that point any area outside of the
23 military munitions area. May I repeat, regarding that
24 point this particular matter was not given much im-
25 portance at the trial proceedings.

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1 Q What parts did they attack or bomb?

2 A As you can see for yourself, the central part
3 of Tokyo.

4 Q Did they bomb residential quarters of civil-
5 ians in general?

6 A That is included.

7 Q Were Sergeant Auganus and Second Lieutenant
8 Nelson aware of the fact that they were bombing resi-
9 dential quarters?

10 A Regarding Tokyo there was not much of a prob-
11 lem, but Osaka--

12 Q I am asking about Tokyo.

13 A I do not know much with respect to that mat-
14 ter, that point.

15 Q Then, by this bombing to what extent Tokyo
16 was damaged?

17 A I do not know the details. I am not familiar
18 with the details.

19 Q Are you aware of the fact that a large number
20 of non-combatant citizens of Tokyo died or were killed
21 or wounded as a result of the bombing?

22 THE PRESIDENT: If we are to apply our rule,
23 he can tell you only what he learned in the course of
24 inquiry from the evidence. That evidence may or may
25 not be available to the defense.

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1 Q Then, I will ask you a question concerning
2 the air raid of Osaka on the 14th of March. What parts
3 of Osaka were attacked by that raid?

4 A Both targets of military importance and non-
5 military targets.

6 Q Do you mean to include in your non-military
7 targets general residential quarters of the citizens
8 other than military establishments?

9 THE PRESIDENT: This is not a serious question.
10 The prosecution cannot claim that the Americans did
11 not bomb residential areas in the course of bombing
12 Tokyo and Osaka. What does it matter whether particu-
13 lar flyers did or did not do so? Do I understand the
14 attitude of the prosecution rightly?

15 MR. JUSTICE MANSFIELD: The prosecution took
16 no objection to your Honor's statement. The prosecution
17 agrees with your Honor's statement.

18 Q What damage or damages did the city of Osaka
19 receive as a result of bombing?

20 MR. JUSTICE MANSFIELD: I object, if the Tri-
21 bunal pleases. I submit that the question is irrele-
22 vant.

23 THE PRESIDENT: The counsellor heard what I
24 said and he heard what the prosecution said. No ques-
25 tion arises about those matters. You are wasting time

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1 in putting such questions. The question is disallowed
2 in the interests of time saving.

3 MR. SHIMANOUCI: May I ask some questions on
4 other points?

5 THE PRESIDENT: I do not know what points
6 they are, and I will not know until you put the ques-
7 tion whether it is allowable.

8 Q Mr. Witness, you testified that you requested
9 for the approval of the execution of the death penalty
10 for Lieutenant Nelson and Sergeant Auganus to your
11 superior -- you requested to your superior officer
12 to give the approval for carrying out of the death
13 sentence of Lieutenant Nelson and Sergeant Auganus.

14 THE MONITOR: Mr. Witness, you testified
15 that request for approval was made to senior officers
16 with respect to granting approval of the request for
17 the death penalty in connection with Second Lieutenant
18 Nelson and Sergeant Auganus.

19 A I don't recall ever having said that.

20 Q Well now, did your superior officer, General
21 OTAHARA, ask for the approval?

22 A Whose approval?

23 Q That is, did General OTAHARA ask Commander
24 OCHIYAMA and others for granting approval for the
25 request of death for Lieutenant Nelson and Sergeant

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Auganus?

A Yes.

THE PRESIDENT: We will adjourn until half past one.

(Whereupon, at 1200, a recess was taken.)

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AFTERNOON SESSION

The Tribunal met, pursuant to recess, at 1330.

MARSHAL OF THE COURT: The International
Military Tribunal for the Far East is now resumed

Y O R I O O G I Y A, recalled as a witness on behalf
of the prosecution, resumed the stand.

MR. SHIMANOCHI: During the recess I have
conferred with the court reporters and found out that
the question which I asked immediately before the
noon recess had already been asked by some other
counsel; therefore, I should like to strike out the
question which I put to the witness prior to the noon
recess. I have no further questions, Mr. President.

DR. KIYOSE: This morning, Mr. President,
you said that a redirect examination would be advis-
able in order to clear up the mess. I wonder if I may
be permitted to help bring order out of the confusion.

THE PRESIDENT: In my judgment Captain
Lazarus dealt very efficiently with the position. He
made it plain beyond doubt that the approval was given
in advance and not after the sentence had been passed.
I cannot suggest that re-examination is necessary for
that reason.

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1 DR. KIYOSE: Thank you, sir.

2 MR. JUSTICE MANSFIELD: There will be no
3 redirect examination, if the Tribunal pleases.

4 I ask that the witness be returned to his
5 former custody.

6 THE PRESIDENT: The witness will be returned
7 to his former custody.

8 (Whereupon, the witness was excused.)

9 THE PRESIDENT: Colonel Woolworth.

10 MR. WOOLWORTH: If the Tribunal please, in
11 connection with document No. 1988, which was the last
12 document read to the Tribunal, I desire to direct the
13 Tribunal's attention to exhibits 473 and 475.

14 Will the Marshal please have the witness,
15 WAKAMATSU, Tadakazu, brought to the witness stand.
16

17 T A D A K A Z U W A K A M A T S U, called as a
18 witness on behalf of the prosecution, being first
19 duly sworn, testified through Japanese inter-
20 preter as follows:
21

22 DIRECT EXAMINATION

23 BY MR. WOOLWORTH:

24 Q Please state your name and residence.

25 A My name is WAKAMATSU, Tadakazu. My address
is No. 2977 Kichijoji, Musashino, Kita-Tama Gun, Tokyo.

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DIRECT

1 Q You have in your hands two documents numbered
2 2744. Will you please examine those two documents,
3 one in English and one in Japanese, and tell the Tri-
4 bunal if that is your signature appended to each of
5 those two documents.

6 A The signature is mine but in one respect
7 before I proceed -- there is one request I wish to
8 make before I proceed and that is on account of the
9 interpreter my true thoughts have not been sufficiently
10 expressed, and therefore I should like to be permitted
11 to append a few remarks to make some of the points
12 clear.

13 THE PRESIDENT: We had better know what is
14 in the affidavit before he starts to explain it.

15 MR. WOOLWORTH: (To witness) May I inquire
16 if you had read both the Japanese document to which
17 you appended your signature and had translated to you
18 the English document before you signed the same?

19 THE PRESIDENT: The document -- Colonel,
20 where are we? Did you tender a document?

21 MR. WOOLWORTH: I am about to tender the
22 document, sir.

23 THE PRESIDENT: What document has he in his
24 hands now?

25 MR. WOOLWORTH: The original document.

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1 THE PRESIDENT: One in Japanese--

2 MR. WOOLWORTH: And one in English.

3 THE PRESIDENT: One in Japanese?

4 MR. WOOLWORTH: Yes.

5 THE PRESIDENT: He suggested the English
6 translation was not correct. The proper course would
7 be to refer the English translation and the original
8 Japanese document to the language section for their
9 report.

10 MR. WOOLWORTH: Does the Tribunal wish this
11 to be done before the document is read into evidence
12 or after?

13 THE PRESIDENT: I do not think he ought to
14 be brought back. We ought to get rid of him today.

15 MR. WOOLWORTH: Prosecution offers in evidence
16 document No. 2744, affidavit of WAKAMATSU, Tadakazu.

17 THE WITNESS: May I be heard on a point on
18 which I should like to make some explanation?

19 What I wish to say is that, not the difference
20 in the Japanese and the English texts of my affidavit
21 but that in the Japanese text of my affidavit, on account
22 of insufficient explanation, my true thoughts are not
23 fully expressed and therefore I should like to append
24 a few remarks by way of explanation.

25 THE PRESIDENT: The witness attributed the

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1 fault to the interpreter whose intervention would not
2 be sought in connection with the Japanese, I take it.
3 He has changed his ground and his later objection will
4 not be met by any reference to the translation board.
5 He has to say now that, knowing what the Japanese
6 translation -- the Japanese document contains, he
7 signed it although it was not correct.

8 THE WITNESS: I do not say that there are
9 any errors or mistakes in the text. I only say that
10 because of insufficiency of explanation my true
11 thoughts have not been fully expressed, and that is
12 why I ask for permission to add some explanations to
13 clear the matter up.

14 MR. WOOLWORTH: If the Tribunal please, I
15 suggest that any other thoughts he has on this matter
16 may be obtained on cross-examination after the affi-
17 davit is read.

18 THE PRESIDENT: We should know what is in
19 the English version and you are tendering that document?

20 MR. WOOLWORTH: I have tendered the document.

21 THE PRESIDENT: Admitted on the usual terms.

22 CLERK OF THE COURT: Prosecution's document
23 No. 2744 will receive exhibit No. 1989. :

24 (Whereupon, the document above
25 referred to was marked prosecution's exhibit

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1 No. 1989 and received in evidence.)

2 MR. WOOLWORTH: (Reading)

3 "INTERNATIONAL MILITARY TRIBUNAL FOR THE
4 FAR EAST -- THE UNITED STATES OF AMERICA, et al. against
5 ARAKI, SADA0, et al. -- Affidavit.

6 "I, WAKAMATSU, Tadakazu, do swear on my
7 conscience that the following is true:

8 "On December 8, 1941 I was the head of the
9 General Affairs Section of the General Staff. I con-
10 tinued as such until December, 1942, when I was ap-
11 pointed head of the Third Section of the General
12 Staff, the functions of which were transportation
13 and communications, and I served as such until October,
14 1943. During the summer of 1942 the decision to con-
15 struct the Burma-Siam Railroad was made by the
16 Imperial General Headquarters in response to a re-
17 quest from the Southern Army. There were three
18 purposes for the construction of this railroad, (1)
19 to have overland communication between Siam and
20 Burma, (2) to provide a necessary supply line for the
21 Japanese armies operating in Burma, and (3) the ex-
22 ploitation of tungsten deposits along the route, which
23 were needed in munitions manufacture.

24 "Submarine and air attacks had made water
25 communication very difficult and there were no other

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1 means of communication between Siam and Burma. The
2 decision to use prisoner of war labor on this rail-
3 road was made by the Chief of Staff, SUGIYAMA; the
4 Minister of War, TOJO; and the Vice-Minister of War
5 KIMURA, (the last named through his official position,
6 though not basically responsible).

7 "I made one inspection of the Burma-Siam
8 area about the end of July or the beginning of August,
9 1943. I visited Rangoon, Bangkok, and a portion of
10 the railroad from the Siam end. It was during the
11 rainy season and the work was not progressing satis-
12 factorily. I made this inspection because I had been
13 receiving reports from time to time which showed that
14 progress of the work was not satisfactory. The re-
15 ports also contained information that the physical
16 condition of the prisoners of war working on the rail-
17 road was poor, and that the death rate was very high.
18 I had heard that cholera was epidemic and that caused
19 me considerable worry. I observed the laborers at
20 work on the railroad and saw many cases of dysentery
21 and beriberi amongst them. I also inspected the feed-
22 ing of the prisoners of war and it was not satisfactory,
23 the quantity and quality being below the required
24 standard. I orally reported the results of my inspec-
25 tion to the Chief of Staff, General SUGIYAMA and

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1 the Vice Chief of Staff, Lt. General HATA, in Tokyo,
2 and recommended a two months' extension of the dead-
3 line for the completion of the railroad. The original
4 plan of the road had called for completion date as
5 of December, 1943, and during March, 1943, orders were
6 given by the Chief of Staff to complete the road over
7 a higher grading, doing away with cuts, which would
8 be less useful but which would result in the road
9 being completed by August, 1943. I recommended,
10 after having taken this trip, that a two months'
11 extension to October be granted. Upon my return to
12 Tokyo, I recommended that Major General ISHIDA,
13 Eiguma be placed in charge of the railway construc-
14 tion outfit, as I considered that he knew railway
15 construction, and was thoroughly familiar with the
16 rear echelon function of supply.

17 "Many deaths of prisoners of war resulted
18 from the building of this road. The causes were
19 epidemic diseases and unfavorable weather. The con-
20 struction outfit did not have a proper commissary
21 service. There were not enough trucks, and the truck
22 road which was built in April parallel to the railroad,
23 suffered bridge wash-outs and could not be used for
24 some time. It was intended to be used during the
25 rainy season, but this proved to be difficult and

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1 prisoners and other workers had a very difficult time
2 as a result. Because there were not enough trucks,
3 it was thought necessary to employ more personnel,
4 and because more personnel were employed, the food
5 situation became more difficult. I recommended to
6 the Commander of the Southern Army that more trucks be
7 used and fewer men.

8 "/s/ T. WAKAMATSU
9 Tadakazu WAKAMATSU

10 "Sworn to and subscribed before me at Tokyo, Japan,
11 this 31st day of October, 1946. /s/ Eric W. Fleisher,
12 2nd Lt. AUSMI, Investigator IPS.

13 "CERTIFICATE

14 "I, Eric W. Fleisher, hereby certify that I
15 am fully conversant with the Japanese and English
16 languages and that I truly and correctly translated
17 from English into Japanese and from Japanese into
18 English the oath administered to WAKAMATSU, Tadakazu,
19 the nature and purpose of which oath was fully under-
20 stood by the said affiant.

21 "/s/ Eric W. Fleisher

22 2nd Lt. AUSMI

23 Investigator IPS."

24 In connection with this document I desire
25 to state that the Lieutenant General HATA mentioned

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1 in this affidavit is not the accused before us.

2 BY MR. WOOLWORTH (Continuing):

3 Q Are the statements in the affidavit which I
4 have just read correct?

5 A Not incorrect, sir, but as I have stated
6 before, there are certain important points on which
7 my thoughts have not been fully and sufficiently ex-
8 pressed and therefore I ask again for permission
9 to add a word of explanation.

10 THE PRESIDENT: He may explain.

11 A (Continuing) In the affidavit it is stated
12 in connection with the construction of the Burma-Siam
13 Railroad that a decision was made to use prisoners of
14 war labor in the construction of the railroad and that
15 SUGIYAMA, Chief of the Army General Staff, TOJO, War
16 Minister, and others had made the decision, but in
17 making the decision I personally took no part and
18 therefore I cannot say that they actually made the
19 decision and I only -- my point is that in accordance
20 with the system they would be responsible for the
21 decision.

22 MR. WOOLWORTH: That is all.

23 CROSS-EXAMINATION

24 BY DR. KIYOSE:

25 Q Mr. Witness, did you participate in the

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CROSS

1 preparation of a report on the conditions of prisoners
2 of war working on the construction of the Siam-Burma
3 Railroad?

4 A Yes, I did, in its early stage.

5 Q Later on did you see this document, this
6 report?

7 A Yes, I did.

8 DR. KIYOSE: With respect to the purpose of
9 the Siam-Burma Railroad I refer you, Mr. President,
10 to document -- to exhibit 475. That is this report.
11 IPS document No. 1509. I quote from page 8, page 8,
12 English text.

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1 Q In this document it is indicated that one
2 of the purposes of the Burma-Siam Railroad was for
3 purposes of trade and transit -- trade and traffic.
4 That is, one of the purposes of the Burma-Siam Rail-
5 road is the establishment of a trade and traffic
6 route. In this affidavit, however, the word "com-
7 munication" between Burma and Thailand is used. Does
8 this mean the same thing, Mr. Witness?

9 A That I meant by "communications line" in my
10 affidavit was -- in my affidavit I use the word
11 "overland communication." That is in English. I
12 meant by it a route for peaceful trade and traffic.

13 Q Am I correct in understanding that the
14 purpose of the railroad was not only for wartime use
15 but also for trade and traffic in the postwar period?

16 A You may understand that I meant by it a
17 peaceful route of communication, both in war and
18 peacetime.

19 Q In the document which I have just quoted,
20 the exploitation of tungsten is not referred to, al-
21 though that is referred to in the affidavit. May I
22 ask whether that was an important purpose?

23 A That is what I heard at the time, and it
24 wasn't as important -- so important as the two pre-
25 ceding items.

WAKAMATSU

CROSS

1 Q Was tungsten actually exploited?

2 A I am not sure about it.

3 THE PRESIDENT: This line was built in
4 territory which did not belong to Japan. Would Japan
5 have any interest in the peacetime operations of
6 that line?

7 THE WITNESS: I thought -- my idea was that the
8 railroad which was being constructed, after having ob-
9 tained understanding of the two countries concerned,
10 that is, Burma and Japan -- Siam and Japan, and would
11 be beneficial to both countries even in peacetime.

12 THE MONITOR: Both countries being friendly
13 countries.

14 THE PRESIDENT: Did Japan pay for the line
15 or did those countries?

16 THE WITNESS: Japan paid.

17 BY DR. KIYOSHI (Continued):

18 Q What kind of responsibilities did the Third
19 Section of the Army General Staff hold, the office
20 in which you were posted?

21 A The Third Section of the General Staff was
22 in charge of transportation and communications.

23 Q You have not participated in the arriving at
24 the decision to use prisoners-of-war in the con-
25 struction of the railroad, but have you heard of the

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CROSS

1 purposes -- of the purpose for which such labor --
2 the reason why such labor should be used?

3 Correction: Have you, yourself, heard the
4 reason for the decision to use prisoners-of-war in
5 the construction of the railroad?

6 A In the first place, this was the construction
7 of railroad in the territory outside -- territory far
8 from Japan, almost on the outside of the occupied
9 area. Secondly, this was not a purely military
10 installation. And third, because the interpretation
11 was placed that the construction of this railroad was
12 not an operational function or for operational
13 purposes, although I have not studied -- seen the
14 results of the detailed study of the construction
15 plan.

16 Q Was this area at that time threatened by enemy
17 attacks -- air raids?

18 A It was not a dangerous area.

19 Q Since that time was there any time when
20 danger threatened in that area?

21 A The area -- the air raids were started to
22 be launched on that area by the time the railroad
23 was going to be completed.

24 THE MONITOR: About the time the railroad
25 was being completed, air raids began.

WAKAMATSU

CROSS

1 Q In case when danger threatened, who had
2 the responsibility of moving the prisoners to safer
3 areas?

4 A The responsibility lies with those who are
5 directly in command of the PT's.

6 Q In this particular concrete case, where did
7 the responsibility rest?

8 A I believe it was the headquarters of the
9 Southern Army.

10 Q You have referred to in your affidavit,
11 Mr. Witness, that POW's were affected by cholera
12 and other epidemic diseases. Were any rest periods
13 declared as a means of preventing the spread of
14 disease?

15 A Yes. The construction work was stopped
16 for some time either in June or in July to prevent
17 the spread of cholera epidemics.

18 Q In cases of mistreatment of prisoners-of-
19 war during the construction of the railroad, were
20 courts martial held?

21 THE MONITOR: Has there been a case of
22 courts martial when there was a mismanagement or
23 mistreatment of prisoners by the Japanese?

24 A I heard that there were.
25

WAKAMATSU

CROSS

1 Q And what is your reason for transferring
2 the responsibility for the construction of the
3 railroad to ISHIDA Eiguma?

4 A In the course of the construction of the
5 railroad the commander of the construction changed
6 three times before ISHIDA Eiguma took charge. The
7 first commander, SHIMODA, while on a tour of inspection
8 of the route on which the railway was to be constructed,
9 died as the result of an air accident.

10 The second person who took command over the
11 construction of the railroad was Major General TAKASAKI
12 who, during the construction of the railroad, was
13 afflicted by malaria and about July when I went on
14 a tour of inspection of the railroad construction
15 area he was barely able to get up. General TAKASAKI
16 on account -- because of this malaria -- died shortly
17 afterwards following his transfer to another post at
18 Singapore. In other words, the transfer was necessitated
19 by reasons of health. That was one.

20 Another reason was that both Major General
21 SHIMODA and then his successor, Major General TAKASAKI,
22 were both highly versed in the railroad construction
23 technique as experts and fully qualified to handle
24 a large personnel -- correction -- However, they were
25 not qualified to handle a very large personnel or to

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1 carry out to satisfaction the very difficult job of
2 rear echelon supply, nor to satisfactorily complete
3 such a huge and gigantic job as the construction of
4 a railroad. In order to construct the railroad well,
5 as well as to reduce any losses to the barest minimum,
6 it was regarded necessary and more valuable to
7 utilize a man who had staff experience rather than a
8 technician. And therefore, at that time, Major
9 General ISHIDA who was Commander of the railroad units
10 in Malaya, as well as Staff Officer of Field Marshal
11 TERAUCHI, Commander-in-Chief of the Southern Army
12 and held in high confidence and trust by the Field
13 Marshal, the recommendation was made to appoint him --
14 that is, ISHIDA -- to the post of Commander of the
15 Construction Unit.
16

17 Q In what you have just stated am I to under-
18 stand -- am I allowed to understand this: By appoint-
19 ing a man of such character -- the appointment of a
20 man of such character, was it not only because they
21 wished to technically promote the construction of
22 the Railway, but also to obtain good results in
23 improving treatment of Japanese soldiers and -- both
24 Japanese soldiers and POWs engaged in railroad
25 construction work by improving rear echelon supply
service?

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1 THE MONITOR: May I understand it this way:
2 The fact that they used not only a man who was well
3 versed in techniques or technical side of the rail-
4 road construction, but the fact of choosing a man who
5 was well versed in the rear echelon supply communication --
6 supply function -- was that it was desired to improve
7 the lot of not only the Japanese but also of the
8 treatment of prisoners of war. May I understand
9 it that way?

10 May I have your answer?

11 A Yes, and that feeling deepened within me
12 after I made my inspection of that area.

13 Q Then, I should like to ask you the reasons
14 why you asked -- you recommended for an extension --
15 a two-months' extension of the deadline for the completion
16 of the Railway?

17 A The first reason was that in the light of
18 the health conditions of the personnel engaged in the
19 Railroad made completion of the railroad construction
20 in August difficult. That is, at the end of August
21 difficult.

22 The second reason is that when the decision
23 was first made to have the Railroad completed by the
24 end of August, it was based on a misforecast of the
25 rainy season and the general weather conditions in that

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1 area, and it was not expected that the weather
2 conditions would have been as bad as it had turned
3 out.

4 Other reasons, I might say, would be this: That
5 the completion of the Railroad was advanced to that
6 early date as a deadline because of the intense
7 counter offensive of the British Indian Army in
8 Burma, and that construction of the Railroad would
9 be rendered extremely difficult if this counter
10 offensive should extend itself further. However,
11 the difficulty did not arise as had been expected
12 and so it was decided that the prospects were -- ren-
13 dered it possible to extend the deadline to October.

14 THE MONITOR: And we had come to the conclusion
15 that the counter offensive by the British Indian Army
16 would not be dangerous until -- at least until about
17 October.

18 Q Then, may I understand that not only yourself,
19 but the central authorities far from expecting to --
20 far from desiring to maltreat the prisoners of war,
21 they expected to -- they intended to improve -- on
22 the contrary they intended to improve the treatment
23 of the prisoners of war?

24 A Yes, especially with respect to prisoners
25 of war personnel who were engaged in the construction

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CROSS

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2 conditions would have been as bad as it had turned
3 out.

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12 and so it was decided that the prospects were -- ren-
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22 the contrary they intended to improve the treatment
23 of the prisoners of war?

24 A Yes, especially with respect to prisoners
25 of war personnel who were engaged in the construction

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1 of the Siam-Burma Railroad in the construction of
2 which many prisoners of war participated. As a
3 matter of fact, not a few of the -- the majority
4 of the prisoners of war took stronger personal
5 interest in the construction of the Railroad because
6 short parts of the Railroad were being completed
7 day by day and took interest in the constructive
8 aspects of their job, and, inasmuch as the prisoners
9 of war had played such an important part and contributed
10 so much effort in the construction of this Railroad,
11 it later led Major General ISHIDA to refer to the
12 prisoners of war who worked on the Railroad as guards
13 of construction and that in respect of these constructive
14 activities, good and proper care should be given to
15 prisoners of war.

16 THE MONITOR: That was our intention.

17 Q My last question is: Were there voluntary
18 agreements between the Governments of Japan and of
19 Siam in connection with the construction of this
20 Railway?

21 A Yes, an agreement had been concluded.

22 DR. KIYOSE: That is all, your Honor.
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WAKAMATSU

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MR. SOMIYA: I am SOMIYA, Shinji.

CROSS-EXAMINATION (Continued)

BY MR. SOMIYA:

Q As there is the following passage in your affidavit, that is, the Imperial Headquarters decided upon the construction of the railway, I should like to put the question to you concerning the Imperial General Headquarters.

How many departments are there in the Imperial General Headquarters?

A Four departments constitute the Imperial General Headquarters.

Q What are the four departments?

A The General Affairs Division or Section, First Section, Second Section, and Third Section.

Q Are you speaking of the Army Section of the Imperial General Headquarters?

A Yes.

Q Then, is not the Imperial General Headquarters divided into two sections; that is, Army Section and Navy Section?

A Yes, they are divided into the Army Section and the Navy Section.

Q Did the decision for the construction of the Burma-Siam Railway -- was it made by the Army

WAKAMATSU

CROSS

1 Section or the Navy Section of the Imperial General
2 Headquarters?

3 A By the Army Section of the Imperial General
4 Headquarters.

5 Q What kind of people -- who constituted, or of
6 what kind of people was the Army Section of the
7 Imperial General Headquarters constituted?

8 A The Chief of Staff, most of the members --
9 most of the personnel of the Army General Staff office,
10 the War Minister, and his staff.

11 Q Then, was there a navy man in the Army Section
12 of the Imperial General Headquarters?

13 A Yes, there are some who hold posts concurrently.

14 Q Mr. Witness, you may have misunderstood my
15 question. My question was, what I mean was, were
16 there navy members in the Army Section of the Imperial
17 General Headquarters?

18 A I think there were some navy men in the
19 Imperial General Headquarters who had concurrent duties
20 in the Army Section of that headquarters.

21 Q Do you mean by the word "kenkin," meaning
22 concurrently -- do you mean by "kenkin," donation,
23 monetary donation, that is?

24 A I mean "kenkin," that is, holding two offices
25 simultaneously.

WAKAMATSU

CROSS

1 Q I understand. At the time this decision
2 was reached, were Shigetaro SHIMADA and Takasumi OKA,
3 both defendants in this court now, concurrently
4 members of the Army Section of the Imperial General
5 Headquarters?

6 A They were -- they did not hold concurrent
7 posts.

8 Q Then, was the construction work of the Burma-
9 Thailand Railway conducted by the army or by the navy?

10 A By the army.

11 MR. SOMIYA: That is all.
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WAKAMATSU

CROSS

THE PRESIDENT: Mr. Howard.

CROSS-EXAMINATION

1
2 BY MR. HOWARD:

3 Q General, I represent General KIMURA.

4 The order to permit the Japanese forces
5 to use prisoners of war for the construction of the
6 Siam-Burma railway was issued by the Imperial GHQ,
7 I understand. To what extent was Vice-Minister
8 KIMURA responsible.

9 THE PRESIDENT: He answered that already.
10 He says KIMURA was responsible through his official
11 position, though not basically responsible.

12 MR. HOWARD: I thought he might want to
13 expand on that, your Honor. However, if the Court
14 doesn't want him to I won't press the question.

15 THE PRESIDENT: The Court doesn't want
16 him to say the same thing twice. What weight we
17 give to what he says is another matter.

18 Q When you were in Rangoon or in the southern
19 area, was the prisoner of war camp in Rangoon
20 directed and commanded by the Southern Expedition-
21 ary Forces?
22

23 A By the statement: when I was in Rangoon,
24 does that mean when I was making a tour of that
25 region?

WAKAMATSU

CROSS

1 Q That is what I mean, General. Possibly
2 you were not in Rangoon.

3 A Yes, I visited Rangoon in the course of my
4 inspection tour of the Siam-Burma railroad and the
5 prisoners of war camps in the Burma area were under
6 the direction and command of the commander-in-
7 chief of the Southern Army.

8 Q To your knowledge was that changed at any
9 time?

10 A Yes, these camps and prisoners of war held
11 therein were brought under the command of the com-
12 mander of the railroad construction unit, but
13 prisoners of war camps in the Rangoon and other
14 areas who were unrelated with the construction of
15 the railroad, with regard to these, I do not know.

16 THE MONITOR: If there were any.

17 Q You were Vice-Minister of War at one time,
18 were you, sir?

19 A Yes, immediately before the termination of
20 this last war.

21 MR. HOWARD: Now your Honor, I had some
22 questions here similar to the ones that I had asked
23 General TANAKA, which had not been covered on direct
24 examination. If the Court permits I will examine
25 him about the duties of the Vice-Minister of War.

WAKAMATSU

CROSS

1 THE PRESIDENT: So far as they bear on
2 prisoners of war you will be at liberty to do so.

3 We will recess for fifteen minutes.

4 (Whereupon, at 1445, a recess
5 was taken until 1500, after which the
6 proceedings were resumed as follows:)

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1 MARSHALL OF THE COURT: The International
2 Tribunal for the Far East is now resumed.

3 THE PRESIDENT: Are all the accused present
4 who were here when we went into recess?

5 I want that answered.

6 MR. JUSTICE MANSFIELD: I, the Tribunal
7 please, I notice that HOSHINO is not present.

8 THE PRESIDENT: We must have an explana-
9 tion from somebody. No accused may leave the court
10 without permission and without an explanation, and
11 the explanation must be made publicly and not private-
12 ly.

13 MARSHALL OF THE COURT: Mr. President, I
14 am informed that the defendant HOSHINO has been returned
15 to Sugamo Prison, feeling unwell.

16 THE PRESIDENT: No such step should have
17 been taken without my permission, which would be
18 given, of course, on behalf of the Tribunal, if at
19 all.

20 Mr. Howard.

21
22 CROSS-EXAMINATION (Continued)

23 BY MR. HOWARD:

24 Q When was the Burma-Thailand Railway com-
25 pleted?

WAKAMATSU

~~CROSS~~

1 A The end of October, 1943.

2 Q That was before the time that General
3 KIMURA became commanding general of the Japanese
4 Army in Burma, was it not?

5 A I think so.

6 Q Did the Vice Minister of War have any power
7 of decision in matters concerning prisoners of war?

8 A He doesn't have power of decision.

9 MR. HOWARD: That concludes my cross-exam-
10 ination, your Honor.

11 MR. LEVIN: If the Court please, there will
12 be no further cross-examination of this witness.

13 MR. WOOLWORTH: If the Tribunal please, I
14 ask that the witness be excused.

15 THE PRESIDENT: He is at liberty on the
16 usual terms.

17 (Whereupon, the witness was excused.)

18 MR. WOOLWORTH: If the Tribunal please, in
19 connection with the affidavit of the witness who
20 just left the stand, I desire to invite the Court's
21 attention to exhibit 473, particularly in connection
22 with his cross-examination.

23 THE PRESIDENT: Mr. Levin.

24 MR. LEVIN: Mr. President, I don't know
25 offhand what that exhibit contains. It seems to

CROSS

The end of October, 1943.

Q That was before the time that General MURA became commanding general of the Japanese Army in Burma, was it not?

A I think so.

Q Did the Vice Minister of War have any power of decision in matters concerning prisoners of war?

A He doesn't have power of decision.

MR. HOWARD: That concludes my cross-examination, your Honor.

MR. LEVIN: If the Court please, there will be no further cross-examination of this witness.

MR. WOOLWORTH: If the Tribunal please, I ask that the witness be excused.

THE PRESIDENT: He is at liberty on the usual terms.

MR. WOOLWORTH: If the Tribunal please, in connection with the affidavit of the witness who just left the stand, I desire to invite the Court's attention to exhibit 473, particularly in connection with his cross-examination.

THE PRESIDENT: Mr. Levin.

MR. LEVIN: Mr. President, I don't know offhand what that exhibit contains. It seems to

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1 A The end of October, 1943.

2 Q That was before the time that General
3 KIMURA became commanding general of the Japanese
4 Army in Burma, was it not?

5 A I think so.

6 Q Did the Vice Minister of War have any
7 power of decision in matters concerning prisoners
8 of war?

9 A He doesn't have power of decision.

10 MR. HOWARD: That concludes my cross-exam-
11 ination, your Honor.

12 MR. LEVIN: If the Court please, there will
13 be no further cross-examination of this witness.

14 MR. WOOLWORTH: If the Tribunal please, I
15 ask that the witness be excused.

16 THE PRESIDENT: He is at liberty on the
17 usual terms.

18 MR. WOOLWORTH: If the Tribunal please,
19 in connection with the affidavit of the witness
20 who just left the stand, I desire to invite the
21 Court's attention to exhibit 473, particularly in
22 connection with his cross-examination.

23 THE PRESIDENT: Mr. Levin.

24 MR. LEVIN: Mr. President, I don't know
25 offhand what that exhibit contains. It seems to

1 me that before the witness was excused our atten-
2 tion should have been called to that exhibit.
3 Justice Mansfield informs me that the exhibit re-
4 lates to the number of deaths in the prisoner
5 of war camps in Thailand and apparently is a
6 statistical table. Under the circumstances we
7 will have no objection.

8 THE PRESIDENT: I take it that HOSHINO'S
9 counsel, or one of them, is present today.

10 MR. LEVIN: Mr. President, Mr. Williams
11 is HOSHINO'S American counsel, and when I learned
12 that Mr. HOSHINO had been taken sick I went in and
13 informed him and I was advised that he himself had
14 been ill and had left for the day. I don't off-
15 hand know who his Japanese counsel is. Mr. Howard
16 informs me that he acted on behalf of Mr. Williams
17 both while he was sick and while he was in the
18 United States and he will be glad to look after
19 his interests at this time for the afternoon.

20 THE PRESIDENT: General Cramer draws my
21 attention to the fact that Mr. Howard is listed
22 with us as one of HOSHINO'S counsel.

23 Doctor UZAWA:

24 DOCTOR UZAWA: I have been appointed counsel
25

1 for all accused. Since I have been appointed
2 counsel for all accused, I should like to act on
3 behalf of the accused HOSHINO.

4 THE MONITOR: And therefore I am entitled
5 to act as representative of HOSHINO

6 THE PRESIDENT: You are at liberty to do
7 so.

8 DOCTOR UZAWA: In order to insure satis-
9 factory progress of the proceedings here, I am here
10 daily at all times.

11 MR. WOOLWORTH: The Prosecution desires to
12 introduce in evidence document No. 2950, which is an
13 affidavit of ISHIDA, Eiguma.

14 THE PRESIDENT: Admitted on the usual
15 terms.

16 CLERK OF THE COURT: Prosecution document
17 No. 2940 will receive exhibit No. 1990.

18 (Whereupon, the document above refer-
19 red to was marked prosecution's exhibit No. 1990
20 and received in evidence.)
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1 "INTERNATIONAL MILITARY TRIBUNAL FOR THE
 2 FAR EAST.
 3 THE UNITED STATES OF AMERICA, et al.)
 4 - AGAINST -) A F F I D A V I T.
 5 ARAKI, SADAQ, et al.)

6 "I, Eiguma ISHIDA, do swear on my conscience
 7 that the following is true:

8 "I reside at KAGOSHIMA-SHI, NAGOYOSHI-CHO,
 9 No. 599, MATSUMOTO, KATA.

10 "I began my military service in 1912. I
 11 graduated from the Army War College in 1926. At the
 12 outbreak of World War II, I as Major-General was in
 13 command of transportation in INDO-CHINA on the HANOI -
 14 SAIGON Railway. After the outbreak of the war I went
 15 to BANGKOK and was in command of the 3rd Field Railroad
 16 HQ, transporting supplies to the railroad of THAILAND,
 17 MALAYA and FRENCH INDO-CHINA. In early August of 1943
 18 I received the order to command the 2nd Railway Depart-
 19 ment and 4th Special Railway Construction Command from
 20 the War Minister in TOKYO. At the time I received
 21 the order, I was at KUALA LUMPUR 400 kilometres north
 22 of SINGAPORE. I went to the headquarters of the rail-
 23 road at a place called KANCHANABURI, about 100 kilo-
 24 meters north of BAMPONG; about the middle of August,
 25 1943, where I remained until the 4th of September, 1943,

1 when I went to KONQUITA to personally command the
2 construction. The orders from the War Ministry put me
3 in command of three departments; namely: the 2nd
4 Railway Department; the 4th Special Railway Construc-
5 tion Command for the construction of the BURMA-THAI-
6 LAND Railway and the 3rd Field Railway HQ. I was
7 told the length of the railroad was 415 kilometers
8 and upon completion it was used for the transportation
9 of supplies to the Japanese troops in BURMA.

10 "The prisoners of war employed were mainly
11 British, Australian and Dutch. In July, 1943, before
12 I became commander of this railway, Lieut-General
13 WAKAMATSU and Colonel KATO visited the construction
14 work while I was in command. LIEUT-General NAKAMURA,
15 Aketo, who was the commander at BANGKOK, was in com-
16 mand of the Supply Depot for the supply of food, etc.,
17 provided to the prisoners. The BURMA-THAILAND rail-
18 road was constructed principally by the labor of
19 prisoners of war and coolies. The railroad was com-
20 pleted on the 17th of October, 1943. The direct and
21 chief cause for the speedy construction of the BURMA-
22 THAILAND railroad was principally a tactical operation.
23 The fact remains that there was a necessity for land
24 transportation between BURMA and THAILAND as no such
25 route existed. The necessity for its constructions

1 at the time and for the haste in its construction was
2 caused by the difficulty of transportation by water
3 due to attacks of Japanese shipping by submarines and
4 from the air. As a result of the fact that Japanese
5 troops in BURMA were starving and the completion of
6 the railroad meant that they would receive supplies
7 from SINGAPORE and BANGKOK.

8 "After the construction was completed I
9 was still in charge of the transportation over the
10 BURMA-THAILAND Railroad and there were still a small
11 number of prisoners of war kept employed for the
12 maintenance of work in connection with transportation.
13 I was continuously at the scene of construction from
14 September 5th until October 17, 1943, and I knew that
15 the sick and death rate amongst the prisoners was very
16 high. When I arrived at KANCHANABURI, the scene of
17 the construction of the railroad, in August, I re-
18 ceived reports from various officers under my command
19 and I learned of the fact that prisoners and workers
20 in the railroad were dying as a result of very severe
21 conditions. I worked for the betterment of conditions.
22 On my inspection trip to the hospital, I saw that a
23 number of prisoners were sick. When I was in KUALA LUM-
24 PUR in the middle of 1944 I heard that the South Army
25 had received complaints from the British and Dutch

1 Governments concerning the treatment of prisoners
2 of war employed on the BURMA-THAILAND Railroad.
3 The authorization for the employment of prisoners
4 of war on the BURMA-THAILAND Railroad must have come
5 from the General Staff in TOKYO. I remained in
6 charge of the supervisor of the BURMA-THAILAND
7 Railway, which was under the command of the 4th
8 Special Railway Construction HQ until May 1945.

9 "Sworn to and subscribed before me
10 at CHANGI GAOL, SINGAPORE,
11 this day 9th of November 1946. Eiguma ISHIDA

12 /s/ K. S. Kalsi Major

13 C E R T I F I C A T E

14 I. MIZUTA, Shigetoshi, hereby certify that
15 I am fully conversant with the Japanese and English
16 languages and that I truly and correctly translated
17 from English to Japanese and from Japanese into
18 English the oath administered to Eiguma ISHIDA, the
19 nature and purpose of which oath was fully understood
20 by the said affiant.
21

22 "MIZUTA, Shigetoshi (signed)"
23
24
25

1 MR. WOOLWORTH: The prosecution desires to
2 introduce in evidence document No. 626-A, being
3 "Regulations for Punishment of Enemy Air Crews."

4 THE PRESIDENT: Admitted on the usual terms.

5 CLERK OF THE COURT: Prosecution's document
6 No. 626-A will receive exhibit No. 1991.

7 (Whereupon, the document above re-
8 ferred to was marked prosecution's exhibit
9 No. 1991 and received in evidence.)

10 MR. WOOLWORTH: (Reading):

11 "Regulations for Punishment of Enemy Air
12 Crews.

13 "Military Ordinance /'Gunrei'/ No. 4 of
14 the Japanese Expeditionary Forces in China.

15 "The military regulations /'Gunritsu'/ for
16 the punishment of enemy flyers are hereby established
17 as follows:

18 "13 August 1942 (Showa 17)

19 "Shunroku HATA

20 "Supreme Commander of the Japanese Forces in
21 China.

22 "Military Regulations for the Punishment of
23 Enemy Flyers.

24 "Article 1.

25 "These military regulations shall be applicable

1 to enemy fliers who have raided Japanese territories,
2 Manchukuo, or our operational areas and have come
3 within the jurisdiction of the Japanese Expeditionary
4 Forces in China.

5 "Article 2.

6 "Those who have committed the following acts
7 shall be liable to military punishment:

8 "(1) Bombing, strafing, and other attacks
9 with the object of threatening or killing and injuring
10 ordinary people.

11 "(2) Bombing, strafing, and other attacks
12 with the object of destroying or damaging private
13 property of a non-military nature.

14 "(3) Bombing, strafing, and other attacks
15 against objects other than military objectives,
16 except those carried out under unavoidable circum-
17 stances.

18 "(4) Violations of wartime international
19 law.

20 "The same shall be applicable to those who,
21 with the object of carrying out the acts enumerated
22 in the preceding paragraph, have come to raid Japanese
23 territories, Manchukuo, or our operational areas and
24 have come within the jurisdiction of the Japanese
25 Expeditionary Forces in China before accomplishing this

1 object.

2 "Article 3.

3 "Death shall be the military punishment.
4 However, life imprisonment or more than ten years
5 confinement may be submitted for it according to
6 extenuating circumstances.

7 "Article 4.

8 "Death shall be by shooting.

9 "Confinement shall be effected in a detention
10 place and prescribed labor imposed.

11 "Article 5.

12 "Under special circumstances the execution
13 of military punishment shall be remitted.

14 "Article 6.

15 "In respect to confinement, the provisions
16 of the criminal law concerning penal servitude shall
17 be correspondingly applicable, in addition to the
18 provisions of these military regulations.

19 "Supplementary Regulations.

20 "These military regulations shall be enforced
21 from 13 August 1942 (Showa 17).

22 "These military regulations shall be applicable
23 also to the acts committed previous to their enforcement.

24 "Proclamation. Appendix.

25 "Enemy flyers who have raided Japanese

1 territories, Manchukuo, or our operational areas,
2 come within our jurisdiction, and violated wartime
3 international law shall be tried by court martial and
4 sentenced to either death or heavy punishment as
5 important war criminals."

6 The certificate of authenticity is duly
7 executed.

8 The prosecution desires to introduce docu-
9 ment No. 1681.

10 MR. SHIOHARA: I should like to invite
11 the Tribunal's attention to a translation matter
12 with respect prosecution's document 1681. There are
13 two serious errors in this document.

14 THE PRESIDENT: Let it be admitted first,
15 and we will deal with those later.

16 Well, you began to describe it. You have
17 got as far as the number. What is it about?

18 MR. WOOLWORTH: Document No. 1681, which
19 is a communication, Army Secret No. 2190, concerning
20 treatment of enemy air crew members.

21 THE PRESIDENT: Admitted on the usual terms,
22 which include, of course, any necessary translations
23 or corrections in the translations.

24 CLERK OF THE COURT: Prosecution's document
25 No. 1681 will receive exhibit No. 1992.

1 (Whereupon, the document above re-
2 ferred to was marked prosecution's exhibit
3 No. 1992 and received in evidence.)

4 MR. WOOLWORTH: "Communication (Army Secret
5 No. 2190)" --

6 THE PRESIDENT: Read it first, Colonel,
7 if you are going to read it.

8 MR. WOOLWORTH: (Reading):

9 "Communication (Army Secret No. 2190)

10 "Dispatched from: Vice War Minister KIMURA,
11 Heitaro.

12 "To: Each Chief of Staff Stationed in Japan
13 and Outside Japan.

14 "Re: Treatment of Enemy Air Crew Members.

15 "Dated: 28 July 1942.

16 "I request you to take note and understand
17 that the following decision was made in regard to the
18 treatment of enemy air crew members who entered our
19 jurisdiction with the object of raiding Japanese
20 territory, Manchukuo and our regions of operation:

21 "1. Those who do not violate the war-time
22 international law shall have to be treated as POW's
23 and those who showed actions of violating the said law
24 shall be treated as war-time capital criminals.

25 "2. Defense Commander-in-Chief of various

1 places (including troops stationed in Japanese territory,
2 outside Japan and the Governor of occupied HONG KONG)
3 shall send for Court Martial such enemy air crew
4 members, who entered the respective jurisdiction and
5 are suspected of deserving treatment as war-time
6 capital criminals. In regard to the above courts
7 martial, the provisions of the Specially Established
8 Court Martial stated in the Army Court Martial Law
9 shall be applied."

10 It contains the usual statement of authen-
11 ticity signed by OYAMA, Ayao.

12 THE PRESIDENT: Now Japanese counsel may
13 state his objections.

14 MR. SHIOHARA: I invite the Court's attention
15 first to the paragraph in which it is stated: "I
16 request you to take note and understand that the
17 following decision was made, in regards," et cetera.

18 THE PRESIDENT: We have not heard the
19 English translation.

20 THE INTERPRETER: I would like to have the
21 last passage crossed out.

22 MR. SHIOHARA: In determining upon their
23 handling of this matter, please understand the following:
24 that it is made -- this notification is made by order --

25 THE MONITOR: Slight correction: This first

1 part he did not read, but it has to do with this.

2 It is: "Please understand that it was
3 decided to dispose" or "to handle the matter as
4 follows: I notify you by order.

5 The word is "notification by order" -- by
6 order of someone higher.

7 This is not in the English. That is one
8 point.

9 MR. BROCKS: Mr. President, we did not get
10 over our transmission the first part of his statement.
11 I am sure the translators don't know that. There is
12 something wrong with the IBM somewhere.

13 THE PRESIDENT: We will start again.

14 Counsel, will you repeat what you have said
15 before?

16 MR. SHIOHARA: In the Japanese text the
17 following words are found. The following is a literal
18 translation from the Japanese text. "It has been
19 decided that the handling of this matter will be
20 done as follows:" Then follows "notification by
21 order." These words "notification by order" are
22 missing in the English text. That is point one.

23 Then paragraph numbered "1" has these words
24 at the end: "war time capital criminals." I consider
25 it to be a mistake to use the word "capital" in

1 describing the original Japanese term which is
2 "war time" -- which is in Japanese "senji juzai
3 han." I should like to submit that this translation
4 be rendered as just "war crimes." That is all.

5 THE PRESIDENT: The matter is referred to
6 the Language Section.

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1 MR. WOOLWORTH: Prosecution desires to
2 introduce document No. 1793B, "Notification of matters
3 pertaining to the treatment of crew members of raiding
4 enemy planes.

5 THE PRESIDENT: Admitted on the usual terms.

6 CLERK OF THE COURT: Prosecution's document
7 No. 1793B will receive exhibit No. 1993.

8 (Whereupon, the document above referred
9 to was marked prosecution's exhibit No. 1993
10 and received in evidence.)

11 MR. WOOLWORTH: (Reading):

12 "Imperial Headquarters, Army Section.

13 "Staff, Secret, No. 1 of No. 383.

14 "Notification of Matters Pertaining to the
15 Treatment of Crew Members of Raiding Enemy Planes.

16 "July 28, 1942 Scimu TANABE

17 Deputy Chief of Staff

18 "To: Mr. Jun ATOMIYA

19 Chief of Staff, China Expeditionary Force.

20 "Directions in regard to the treatment of
21 crew members of raiding enemy planes have already
22 been given by Army Secret No. 2190 of July, 1942,
23 but in regard to the proclamation and publication of
24 the articles of war and the date of execution of
25 punishment against the crew members of the recent

1 raiding American planes, it is desired that they be
2 deferred until a date to be specified later. (Ex-
3 pected to be during the middle of August.)

4 "Furthermore, since the announcement per-
5 taining to the execution of the offense of the crew
6 members of the recent raiding American planes will
7 be made by the Imperial Headquarters, I have been
8 ordered to notify you that the decision for the afore-
9 mentioned be reported to the Chief of General Staff
10 as soon as possible.

11 "In closing, please refer to the annexed
12 draft in regard to the Articles of War and the text
13 of the proclamation of the Articles of War."

14 "Annexed Reference Sheet.

15 "Articles of War of OO Army (Draft)"

16 THE PRESIDENT: Is that substantially the
17 same as the preceding exhibit? That is, exhibit 1991.
18 It may not be. It looks like it at a glance.

19 MR. HOWARD: Your Honor, I would also like
20 that this be referred to the Language Section the
21 same as the former for the same correction as point 1
22 of the former statement by Mr. SHIOHARA in which the
23 words "by order of the War Minister" or some similar
24 words were left out.

25 THE PRESIDENT: I don't see in this further

1 draft of Articles of War any reference to the need
2 for courts martial. If there is such an omission
3 it may be desirable to read this into the transcript.

4 MR. WOOLWORTH: (Reading)

5 "Article 1. These articles of war shall be
6 applicable to the crew members of enemy planes raid-
7 ing our Imperial Domain, Manchoukuo, or our zone of
8 operations and falling into the powers of OO Army.

9 "Article 2. Those having committed the
10 acts listed below shall be subjected to military
11 punishment:

12 "1. To bomb, strafe and conduct other
13 types of attacks for the purpose of threatening and
14 wounding or killing the ordinary populace.

15 "2. To bomb, strafe and conduct other types
16 of attacks for the purpose of destroying or ruining
17 private properties possessing no military character-
18 istics.

19 "3. To bomb, strafe and conduct other types
20 of attacks against targets other than military tar-
21 gets unless inevitable.

22 "4. To conduct outrageous and inhuman acts
23 ignoring humanity, besides the aforementioned three
24 paragraphs.

25 "This is also applicable to those coming to

1 attack our Imperial Domain, Manchoukuo, or our zone
2 of operations with the purpose of committing the acts
3 mentioned in the above paragraphs, but having fallen
4 into the powers of OO Army prior to having accomplished
5 them.

6 "Article 3. The military punishment shall
7 be death. However, depending on the situation, it
8 may be changed to life or imprisonment of over ten
9 years.

10 "Article 4. Death shall be by a firing
11 squad. Imprisonment shall be at a place to be
12 designated later, and they shall be subjected to
13 prescribed labor.

14 "Article 5. When specific reasons exist,
15 the execution of military punishment shall be sus-
16 pended.

17 "Article 6. In regard to imprisonment,
18 regulations pertaining to penal servitude of the
19 criminal law shall be applicable, besides those
20 stipulated in these articles of war.

21 "Supplementary Provisions.

22 "These articles of war shall become effec-
23 tive as of _____ day of _____ month of _____ year.

24 "These articles of war shall be applicable
25 against de post facto acts."

1 THE PRESIDENT: Mr. Howard, have you speci-
2 fied all the corrections you desire to be looked
3 into by the Translation Section?

4 MR. HOWARD: We have all that we have noted
5 to do, your Honor.

6 THE PRESIDENT: The matter is referred to
7 the Language Section.

8 MR. WOOLWORTH: Prosecution desires to
9 introduce document No. 1793C, Report on the Court
10 Martial for Allied Aircraft Crews Captured in the
11 Tokai District Army Area.

12 THE PRESIDENT: Admitted on the usual terms.

13 CLERK OF THE COURT: Prosecution's document
14 No. 1793C will receive exhibit No. 1994.

15 (Whereupon, the document above re-
16 ferred to was marked prosecution's exhibit
17 No. 1994 and received in evidence.)

18 MR. WOOLWORTH. (Reading)

19 "Report on the Court Martial for Allied
20 Aircraft Crews Captured in the Tokai District Army
21 Area.

22 "I. This report was prepared according to
23 a report made by the Tokai Demobilization Bureau.

24 "II. Substance:

25 "There were eleven men captured in a raid

1 on Nagoya on the 14th of May, 1945 who were executed
2 after trial by court martial.

3 "III. Facts of the Court Martial:

4 "1. The accused: (1) 2nd Lt. Kyme; (2)
5 2nd. Lt. Carrier; (3) Corporal Classety; (4) Corporal
6 Shelton; (5) Corporal Pritchard; (6) Lieutenant
7 Sherman; (7) 2nd Lt. Solomon; (8) Corporal Howell;
8 (9) Corporal Hanson; (10) Corporal Gentry; (11) Cor-
9 poral Johnson."

10 Their serial numbers are listed but some
11 unknown.

12 "2. Date of taking in charge:

13 "Taken in charge from the Kempei Tai HQ
14 at Tokai at the end of May, and imprisoned on the
15 same day.

16 "3. Place of imprisonment:

17 "District Army Headquarters.

18 "4. Investigation:

19 "After investigation at the Tokai Kempei
20 Tai HQ, these men were committed for court martial
21 at the end of May on suspicion of having violated
22 the Articles of War. Investigation by the prosecutor
23 at the court martial produced enough evidence to
24 prove that they had violated the Articles of War.

25 "5. Place and date of judgment:

1 "Court of the Tokai District Army Head-
2 quarters, 11 July 1945.

3 "6. Date of Execution:

4 "July 12, 1945.

5 "7. Place of Execution:

6 "At the Obatagahara rifle range (in the
7 suburbs of Nagoya.)

8 "8. Disposal of the corpses:

9 "Originally buried in the Obatagahara rifle
10 range, they were disinterred later and cremated,
11 and the remains have been enshrined at the Kosuji
12 Temple at Yagoto, Showa Ward, Nagoya."

13 Statement of authenticity signed by OYAMA.
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Mr. BROOKS: If the Tribunal please, on the original list document 1793-A was listed for reading, and it would have preceded 1793-G, and I was just inquiring of the prosecution why it was left out, because this document apparently provides for a military discipline council to apply the regulations with respect to a special court martial, and so forth.

Mr. WOOLWORTH: If the Tribunal please, the reason for the omission of document 1793-A is that it is substantially the same as document 1681 which has been read as exhibit 1992.

THE PRESIDENT: Does it supplement the draft of articles of war attached to exhibit No. 1993?

Mr. WOOLWORTH: It is in no way different. It is the same number, Army Secret No. 2190. There is a very slight difference in translation in that it has nothing to do with the articles of war. It refers to specially established court martial in exhibit 1992, while in 1793-A it calls it military discipline council.

THE PRESIDENT: To save time, Captain Brooks seems to be insisting.

Mr. BROOKS: If the Court please, although in substance it is quite similar, since it bears a different document number and there is a difference in the English text of this article, I think it should be left

1 to the Court to decide whether this was part of the
2 other documents. It is very short, only two or three
3 paragraphs, and the prosecution should be required to
4 put it in.

5 MR. WOOLWORTH: If the Tribunal please, the
6 Japanese documents are identical, 1793-A and exhibit
7 1992. There was a slight difference in translation.
8 The prosecution had them checked and the translation
9 of exhibit 1992 was approved after rechecking, and we
10 used that document. They both bear the same army
11 secret order number.

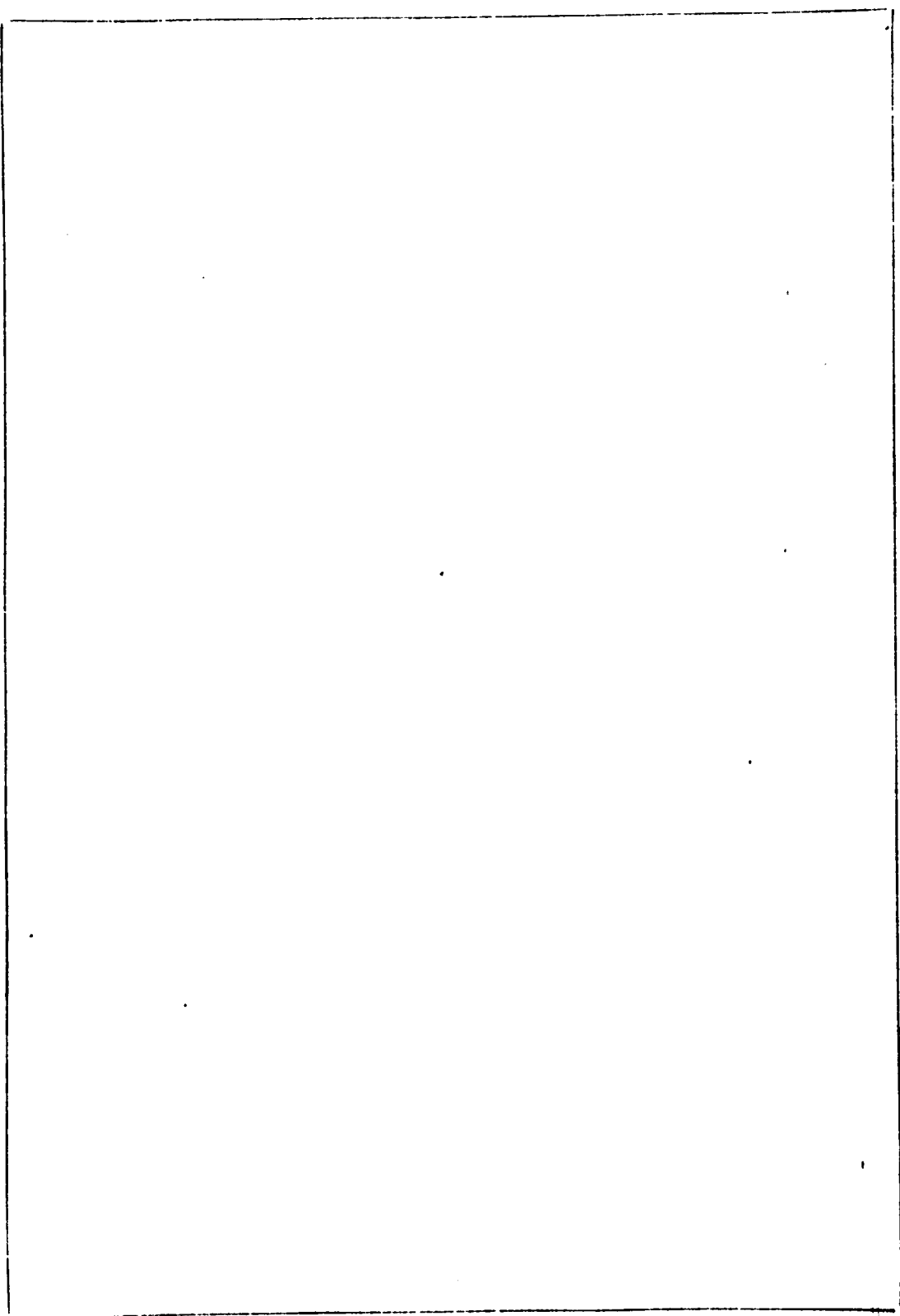
12 MR. HOWARD: I as counsel for General KIMURA
13 do not insist on that being read, and I think that
14 Mr. Brooks will agree with me on that.

15 MR. BROOKS: I do not insist on that point
16 if the Court is willing to take the prosecution's
17 statement on it. There is a difference in it, and
18 there is a difference in the source of the two docu-
19 ments and I thought it should be called to the Court's
20 attention.

21 THE PRESIDENT: Proceed, Colonel.

22 MR. WOOLWORTH: The prosecution desires to
23 introduce document No. 1793-D: "A Report on the Court
24 Martial for Allied Aircraft Crews Captured in the Cen-
25 tral Japan District Army Area."

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1 THE PRESIDENT: Admitted on the usual terms.

2 CLERK OF THE COURT: Prosecution's document
3 No. 1793-D will receive exhibit No. 1995.

4 (Whereupon, the document above re-
5 ferred to was marked prosecution's exhibit
6 No. 1995, and was received in evidence.)

7 Mr. WOOLWORTH: (Reading) "A report on the
8 court martial for allied aircraft crews captured in
9 the Central Japan District Army Area.

10 "I. This report is based on reports from the
11 Central Japan Demobilization Bureau.

12 "II. Substance:

13 "The men who were executed after trial by
14 court martial were Nelson and Augnus, who were both
15 captured after incendiary raids on Tokyo on the night
16 of March 9th, 1945, Osaka on the night of March 14th,
17 1945, and Kobe on the night of March 19th, 1945, respec-
18 tively.

19 "III. Facts of the Court Martial:

20 "1. The Accused:

21 "Second Lieutenant Robert Warson Nelson, U.S.A.
22 Sergeant Algy Stanley Augnus, U.S.A.

23 "2. Date of taking in charge:

24 "Taken in charge from the Central Japan Kempei
25 Tai Headquarters the first part of May, 1945, and

1 imprisoned on the same day.

2 "3. Place of imprisonment:

3 "Detention ward of the Kusunoki 12490 Butai
4 (inside Osaka Military Prison.)

5 "4. Investigation:

6 "The investigation ended May 31st, after de-
7 tailed investigation by the prosecutor for two days
8 on the basis of the reports from the Kempei Tai Head-
9 quarters. Under investigation, the accused frankly
10 stated the facts.

11 "5. Place and Date of Judgment:

12 "Court of the Central Japan District Army Head-
13 quarters. Sentenced to death on July 18th, 1945.

14 "6. Date of Execution:

15 "4:00 p.m., July 18th, 1945.

16 "7. Place of Execution:

17 "At the Army Manuever Grounds in Yokohama-
18 Mura, Senhoku-Gun, Osaka Prefecture.

19 "8. Disposal of Corpses.

20 "Buried on the same day (temporary burial.)
21 Cremated at the same place on August 24th. The formal
22 funeral took place at the Sanadayama Army Cemetery on
23 the 25th of the same month."
24

25 The prosecution desires to introduce document
No. 1793-E.

1 THE PRESIDENT: Admitted on the usual terms.

2 CLERK OF THE COURT: Prosecution's document
3 No. 1793-E will receive exhibit No. 1996.

4 (Whereupon, the document above referred
5 to was marked prosecution's exhibit No. 1996,
6 and was received in evidence.)

7 MR. WOOLWORTH: (Reading) "Army Secret No.
8 1437 (Army Secret Wire No. 5715) 15 August 1945

9 "Matters pertaining to Cases of Defendants
10 Against the Articles of War. Vice Minister

11 "TO: The 1st, the Entire Army (2nd), the
12 respective area Army (5th), (17th), (10th)

13 "Respective Chiefs of Staff (Kwantung Army)
14 (China Expeditionary Force) (The entire Southern Army)

15 "Hereafter defer dealing with cases of viola-
16 tors of the Articles of War under your Army's command.
17 By order."

18 Certified by OYAMA.

19 The prosecution desires to introduce document
20 No. 1793-F. "Matters Pertaining to the Releasing of POWs"

21 THE PRESIDENT: Admitted on the usual terms.

22 CLERK OF THE COURT: Prosecution's document
23 No. 1793-F will receive exhibit No. 1997.

24 (Whereupon, the document above re-
25 ferred to was marked prosecution's exhibit

1 No. 1997, and was received in evidence.)

2 Mr. WOOLWORTH: (Reading) "Army, Secret
3 No. 5776 Army, Secret Wire No. 1484

4 "Matters Pertaining to the Releasing of POWs
5 "August 23, 1945 Vice Minister
6 "TO: The Chiefs of Staff of the Respective
7 Military Districts

8 "Direct the carrying out of probationary re-
9 lease, suspension of execution of sentence and can-
10 cellation of detention of convicted and unconvicted
11 prisoners of war who are in prison. By order."

12 Certified to by OYAMA.

13 The prosecution desires to introduce document
14 No. 2483, which is a "List of the Prisoners of War
15 Punished by Military Court Martial during the Period,
16 December 8, 1941 -- August 15, 1945."

17 THE PRESIDENT: Admitted on the usual terms.

18 CLERK OF THE COURT: Prosecution's document
19 No. 2483 will receive exhibit No. 1998.

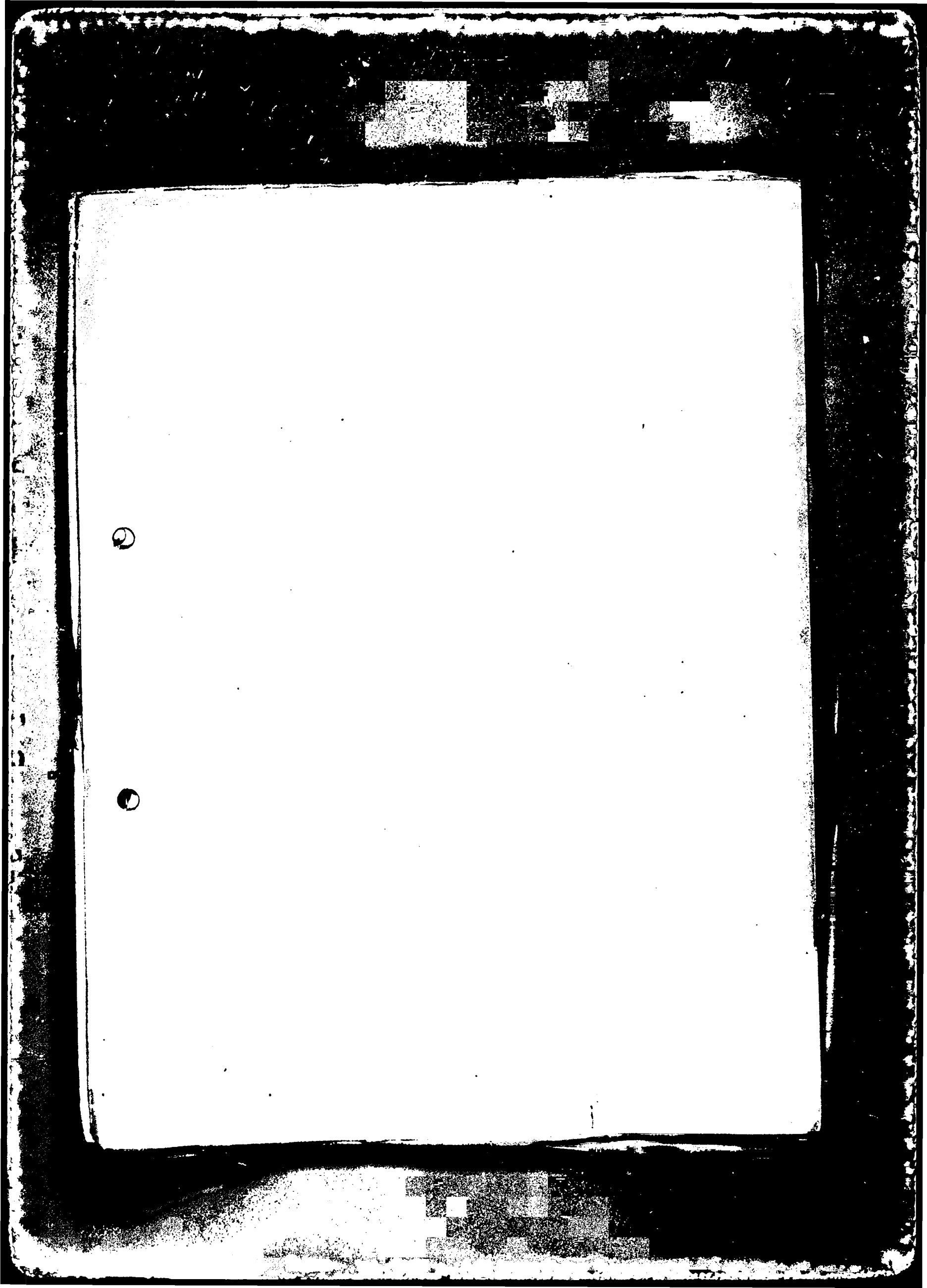
20 (Whereupon, the document above re-
21 ferred to was marked prosecution's exhibit
22 No. 1998, and was received in evidence.)

23 Mr. WOOLWORTH: There are eleven pages to
24 this document, if the Tribunal please. Do you desire
25 me to start reading it?

1 THE PRESIDENT: Not this afternoon. We will
2 adjourn until half past nine tomorrow morning.

3 (Whereupon, at 1600, an adjourn-
4 ment was taken until Thursday, 9 January
5 1947 at 0930.)

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January 9

13 January 1947

NOTE:

Attached hereto please find copy of the Daily Record for 9 January 1947. Due to an error in page numbering we ask that you destroy the previous daily record and substitute the attached copy in your files.

REPRODUCTION CENTER.

(Corrected page numbers will run from Page 14,684 to 14,848 instead of 15,848.)

9 JANUARY 1947

I N D E X

Of

WITNESSES

Prosecution's Witnesses

Page

YAMAZAKI, Shigeru

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Direct by Mr. Woolworth

14839

Cross by Dr. KIYOSE

14842

I N D E X

Of

EXHIBITS

<u>Doc. No.</u>	<u>Pros. No.</u>	<u>Def. No.</u>	Description	<u>For Ident.</u>	<u>In Evidence</u>
2734	1999		Fujo/POW-Information/No. 20, Part 51, re Supplement to Name List of POW already Punished		14698
2569	2000		Certificate from the Chief of Correspondence Section, 1st Demobilization Bureau, dated 5 August 1946		14699
2594A	2001		File of Dispatched and Re- ceived Documents by M. P. Unit of KAGOSHIMA Area, dated August 1945	14700	
2594A	2001-A		Excerpt therefrom		14700
2687	2002		Certificate authenticating documents 2689 to 2701		14707
2688	2003		Certified as Exhibit "A" in document No. 2687 - Letter to the Chief of Staff, Taiwan Army from the Chief, POW Control Bureau, dated 5 June 1942		14708

9 JANUARY 1947

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Prosecution's Witnesses

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2594A	2001-A		Excerpt therefrom		14700
2687	2002		Certificate authenticating documents 2689 to 2701		14707
2688	2003		Certified as Exhibit "A" in document No. 2687 - Letter to the Chief of Staff, Taiwan Army from the Chief, POW Control Bureau, dated 5 June 1942		14708

I N D E X

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EXHIBITS

(cont'd)

<u>Doc. No.</u>	<u>Pros. No.</u>	<u>Def. No.</u>	<u>Description</u>	<u>For Ident.</u>	<u>In Evidence</u>
2689	2004		Letter from the Chief of POW Information Office to Taiwan Army Chief of Staff, dated 2 April 1942		14710
2690	2005		Letter from the Taiwan Army Chief of Staff to Chief of POW Information Office, dated 2 April 1942		14711
2691	2006		Letter to the Chief of Staff of the Hong Kong Governor-Generalship from Taiwan Army Chief of Staff		14712
2692	2007		Letter from the Chief of Staff Hong Kong to Taiwan Army Chief of Staff, dated 2 April 1942		14713
2693	2008		Letter from the Chief of Staff Taiwan Army to Chief of Staff POW Information Office, Tokyo, dated 7 April 1942		14714
2694	2009		Letter from the Chief of POW Control Bureau, Tokyo, to Taiwan Army Chief of Staff		14715
2695	2010		Letter from Adjutant of War Ministry to Taiwan Army Chief of Staff		14716
2697	2011		Letter from the Chief of Prisoner of War Camps, Tokyo, to Chief of Staff Taiwan Army		14718

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E X H I B I T S

(cont.)

<u>Doc. No.</u>	<u>Pros. No.</u>	<u>Def. No.</u>	<u>Description</u>	<u>For Ident.</u>	<u>In Evidence</u>
2698	2012		Letter from Chief of Staff Taiwan Military Jurisdiction to Chief of Staff Taiwan POW Camps		14719
2699	2013		Enclosure to document 2698 "Summary of the Arrangements for POW's in Conformance with Transition in the Situation"		14721
2700	2014		Letter from Chief of Staff Taiwan Military Jurisdiction to the War Ministry Adjutant		14723
2701	2015		Extract from the Journal of the Taiwan Camp Headquarters in Trihoku		14724
2853A (1)-(73)	2016		Certificate of Authenticity of documents 1 to 73	14728	14734
2853B	2016-A		Synopsis of document No. 2853A(1)-(73)		14728
1432A	2017		Letter from SHIGEMITSU to the Swiss Minister		14747
1432B	2018		Verbal Note from the Japanese Foreign Office		14748
1432C	2019		Note from the Imperial Japanese Ministry to the Swedish Legation		14749

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EXHIBITS

(cont'd)

<u>Acc.</u> <u>No.</u>	<u>Pros.</u> <u>No.</u>	<u>Def.</u> <u>No.</u>	<u>Description</u>	<u>For</u> <u>Ident.</u>	<u>In</u> <u>Evidence</u>
1432D	2020		Letter from SUZUKI, Kuma (not the Accused) of the Foreign Office to the Chief of the POW Information Bureau		14751
1432E	2021		Reply of the POW Information Bureau to Letter from SUZUKI, Kuma (not the Accused) of the Foreign Office (exhibit No. 2020)		14752
2765A (1)-(22)	2022		Series of Correspondence between the Japanese Minister of Foreign Affairs and the Swiss Minister.		14754
2767A (1)-(8)	2023		Certificate of Authenticity of documents 1 to 8		14791
2767B	2023-A		Synopsis of above mentioned document		14791
2751A (1)-(6)	2024		Certificate of Authenticity and Series of documents (1 to 6)		14795
2766A (1)-(10)	2025		Certificate of Authenticity of documents (1 to 10)		14833
2766B	2025-A		Synopsis of document 2766A (1)-(10)		14833

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E X H I B I T S

<u>Dcc.</u> <u>No.</u>	<u>Pros.</u> <u>No.</u>	<u>Def.</u> <u>No.</u>	<u>Description</u>	<u>For</u> <u>Ident.</u>	<u>In</u> <u>Evidence</u>
871A	2026		Letter from Swiss Legation to the Imperial Ministry of Foreign Affairs, Tokyo, dated 16 June 1943		14836

1 Thursday, 9 January 1947

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3
4 INTERNATIONAL MILITARY TRIBUNAL
5 FOR THE FAR EAST
6 Court House of the Tribunal
7 War Ministry Building
8 Tokyo, Japan

9 The Tribunal met, pursuant to adjournment,
10 at 0930.

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12 Appearances:

13 For the Tribunal, same as before with
14 the exception of: HONORABLE JUSTICE JU-AO MEI,
15 Member from the Republic of China and HONORABLE
16 JUSTICE HENRI BERNARD, Member from the Republic
17 of France not sitting.

18 For the Prosecution Section, same
19 as before.

20 For the Defense Section, same as before.

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22 (English to Japanese and Japanese
23 to English interpretation was made by the
24 Language Section, IMTFE.)
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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now in session.

3 THE PRESIDENT: All the accused are present
4 except OKUMA, IUTO, and HOSHINO, who are represented
5 by their respective counsel. We have certificates
6 from the prison surgeon of Sugamo, stating that the
7 accused IUTO and HOSHINO are unable to attend the
8 trial today on account of illness. The certificates
9 will be recorded and filed.

10 Yesterday morning I made a remark dealing
11 with American fliers who had bombed Tokyo and Osaka.
12 My statement of the position was agreed with by the
13 learned prosecutor. During the following luncheon
14 adjournment and during the mid-afternoon recess I
15 was in contact with all my colleagues, none of whom
16 took exception to anything I said. Late last evening
17 I received from one of my colleagues a memorandum
18 referring to this particular observation of mine.
19 I read what he says to insure complete accuracy:
20

21 "If the President's remark was intended to
22 convey that a court martial could convict a particular
23 flier and sentence him to death without any proof that
24 he, that man, intentionally bombed civilian targets,
25 I, personally, dissent strongly from the statement."

My colleague proceeds:

1 "America will strongly resent such a sug-
2 gestion. I think a statement should be made contra-
3 verting any such idea."

4 America will not resent any remark I made
5 because no remark I made conveyed any such suggestion;
6 nor did that occur to anybody who heard me, including
7 all my colleagues.

8 Colonel Woolworth.
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1 MR. WOOLWORTH: If the Tribunal please,
2 reading exhibit 1998:

3 The heading of the list is divided into
4 "Division, Date, Ground, Kind, Nationality, Rank" and
5 "Name," and the reading is in that order.

6 "Korean Army Court Martial; March 25, 1943;
7 Outrage on overseers of POWs; 3 years imprisonment;
8 British; Private; Romasney David;

9 "Korean Army Court Martial; August 19, 1943;
10 Circulation of rumor; 3 years' imprisonment; British;
11 1st Lieutenant; Roger Barton Pigott;

12 "Korean Army Court Martial; September 22,
13 1943; Violation of law of punishing POWs (violation
14 of oath); 8 years' imprisonment; British; 1st Lieut-
15 enant; John Rawson Moore;

16 "Korean Army Court Martial; September 22,
17 1943; Violation of law of punishing POWs (violation
18 of oath); 6 years imprisonment; British; sergeant
19 (Army); Christopher Bosworth;

20 "Korean Army Court Martial; September 22,
21 1943; Violation of law of punishing POWs (violation
22 of oath); 2 years' imprisonment; British; Captain
23 (Army); Denis S. Carshaw;

24 "Korean Army Court Martial; September 22,
25 1943; Violation of law of punishing POWs (violation

1 of oath); 2 years' imprisonment; British; Captain
2 (Army); George Bryan Collinson;

3 "Korean Army Court Martial; September 22,
4 1943; Violation of law of punishing POWs (violation
5 of oath); 2 years' imprisonment; British; Captain
6 (Army); Francis Allan Jacob;

7 "Korean Army Court Martial; September 22,
8 1943; Violation of law of punishing POWs (violation
9 of oath); 2 years' imprisonment; British; 2nd Lieuten-
10 ant; Alfred Edward Wood;

11 "Korean Army Court Martial; September 22,
12 1943; Violation of law of punishing POWs (violation
13 of oath); 2 years' imprisonment; British; 2nd Lieut-
14 enant; Walter V. Butler;

15 "Korean Army Court Martial; September 22,
16 1943; Violation of law of punishing POWs (violation
17 of oath); 3 years' imprisonment; British; 2nd Lieut-
18 enant; Lindsay C. Harrison;

19 "Korean Army Temporary Court Martial; August
20 5, 1944; Wartime theft and violation of law of punish-
21 ing POWs (violation of oath); 6 years' imprisonment
22 with labor; British; Sergeant (Army); Griffice John
23 Henry;

24 "Korean Army Temporary Court Martial; August
25 5, 1944; Wartime theft and violation of law of punish-

1 ing POWs (violation of oath); 5 years' imprisonment
2 with labor; British; Army regular private; Broton
3 John George;

4 "Kwantung Army temporary Court Martial;
5 July 30, 1943; Theft, Murder, attempted murder; death;
6 U. S.; Sergeant, Joe Bill Chestine;

7 "Kwantung Army temporary Court Martial;
8 July 30, 1943; Theft, Murder, attempted murder; death;
9 U. S.; 3rd warrant officer (Navy); Ferdinand E.
10 Helingoro;

11 "Kwantung Army temporary Court Martial;
12 July 30, 1943; Murder, attempted murder; death; U. S.;
13 Corporal: Victor Balioty;

14 "Kwantung Army temporary Court Martial;
15 June 6, 1944; Violation of law of punishing POWs
16 (violation of oath); 7 years' imprisonment with labor;
17 U. S.; Sergeant (American Marine); William J. Lynch;

18 "Nobori 7330 Unit temporary Court Martial;
19 June 2, 1942; Violation of law of punishing POWs
20 (violation of oath); 10 years' imprisonment; U. S.;
21 Commander (Navy); Winfield Scott Cunningham;

22 "Nobori 7330 Unit temporary Court Martial;
23 June 2, 1942; Violation of law of punishing POWs
24 (violation of oath); 10 years' imprisonment; U. S.;
25 Commander (Navy); John Blackland Wooley;

1 "Nabori 7330 Unit temporary Court Martial;
2 June 2, 1942; Violation of law of punishing POWs
3 (violation of oath); 10 years' imprisonment; U. S.;
4 Lieutenant Commander (Navy); Columbus Darwin Smith;

5 "Nabori 7330 Unit temporary Court Martial;
6 June 2, 1942; Violation of law of punishing POWs
7 (violation of oath); 2 years' imprisonment; U. S.;
8 Engineer; Natan Dumme Titters;

9 "Nabori 7330 Unit temporary Court Martial;
10 June 29, 1942; Violation of law of punishing POWs
11 (violation of oath); blank years' imprisonment; U. S.;
12 Corp. (Navy); Charles Walton Brimmer;

13 "Nabori 7330 Unit temporary Court Martial;
14 June 29, 1942; Violation of law of punishing POWs
15 (violation of oath); 4 years' imprisonment; U. S.;
16 Corp. (Navy); Gerald Beace Stockoof.

17 "Nabori 7330 Unit temporary Court Martial;
18 June 29, 1942; Violation of law of Punishing POWs
19 (Breaking Parole); 4 years' imprisonment; U. S.;
20 Nav. Corp.; Connie Geenhattles;

21 "Nabori 7330 Unit temporary Court Martial;
22 June 29, 1942; Violation of law of Punishing POWs
23 (Breaking Parole); 4 years' imprisonment; U. S.;
24 Nav. Lee. Cpl.; Charles Albert Steward;

25 "Nabori 7330 Unit temporary Court Martial;

1 July 15, 1943; Violation of law of Punishing POW;
2 Injury; 2 years' imprisonment with labor; U. S.;
3 Heard Patt Howard;

4 "Nobori 7330 Unit temporary Court Martial;
5 May 12, 1944; Violation of Law of Punishing POW
6 (Breaking Parole); 2 years' imprisonment; U. S.;
7 Nav. San P.O. 2nd class; Brewer Ardest Travis;

8 "Nobori 7330 Unit Temporary Court Martial;
9 May 12, 1944; Violation of Law of Punishing POW
10 (Breaking Parole) 2 years' imprisonment; U. S.;
11 Mari. Sergeant; Coolson Raymond Leonard;

12 "Nobori 7330 Unit Temporary Court Martial;
13 August 31, 1942; Rape; 1 year 6 months imprisonment
14 with labor; British; Army Corporal; Thorendle Barsin;

15 "Nobori 7330 Unit Temporary Court Martial;
16 September 19, 1942; Injury; 3 months' imprisonment
17 with labor; British; Army Transport Sergeant; Thomas
18 Patrick Chakkson;

19 "Nobori 7330 Unit Temporary Court Martial;
20 December 1, 1943; Espionage: Aiding and Instigation
21 of Espionage; Death; U. S.; Army Colonel; L. A.
22 Newnam;

23 "Nobori 7330 Unit Temporary Court Martial;
24 December 1, 1943; Instigation of Espionage; 15 years'
25 imprisonment with labor; U. S.; Nav. Sub. Lt.; J. R.

1 Haddock;

2 "Nobori 7330 Unit Temporary Court Martial;
3 December 1, 1943; Instigation of Espionage; Death;
4 U. S.; Army Captain; G. Ford;

5 "Nobori 7330 Unit Temporary Court Martial;
6 December 1, 1943; Espionage: & Instigation of Es-
7 pionage; Death; U. S.; Army Lieutenant; H. Beegray;

8 "Nobori 7330 Unit Temporary Court Martial;
9 December 1, 1943; Instigation of Espionage; 15 years'
10 imprisonment with labor; U. S.; Army sergeant; R. J.
11 Hardy;

12 "Nobori 7330 Unit Temporary Court Martial;
13 December 1, 1943; Instigation of Espionage; 15 years'
14 imprisonment with labor; U. S.; Army sergeant; R. J.
15 Routledge;

16 "Oka Unit Temporary Court Martial; August
17 18, 1942; Violation of Law of Punishing POW (Breaking
18 Parole); 5 years' imprisonment; British; Army Corporal;
19 Joseph Percy Smart;

20 "Oka Unit Temporary Court Martial; August
21 18, 1942; Violation of Law of Punishing POW (Break-
22 ing Parole); 4 years 6 months' imprisonment; British;
23 Army Corporal; Edward Hedley Armstrong;

24 "Oka Unit Temporary Court Martial; August
25 18, 1942; Violation of Law of Punishing POW (Break-

1 ing Parole); 4 years 6 months imprisonment; British;
2 Army Sup. Pte.; John Sharp;

3 "Oka Unit Temporary Court Martial; September
4 22, 1942; Violation of Law of Punishing POW (Breaking
5 Parole); 5 years imprisonment; British; Army Ser-
6 geant; Peter John Yapp;

7 "Oka Unit Temporary Court Martial; August
8 18, 1942; Violation of Law of Punishing POW (Break-
9 ing Parole); 4 years 6 months imprisonment; British;
10 Civilian Employee; Arthur William Herricks;

11 "Oka Unit Temporary Court Martial; October
12 22, 1942; Violation of Law of Punishing POW (Break-
13 ing Parole); 5 years imprisonment; British; Pte.;
14 Charles Henry Brown;

15 "Oka Unit Temporary Court Martial; October
16 22, 1942; Violation of Law of Punishing POW (Break-
17 ing Parole); 4 years' imprisonment; British; Pte.;
18 George Laying Heins;

19 "Oka Unit Temporary Court Martial; October
20 22, 1942; Violation of Law of Punishing POW (Break-
21 ing Parole); 4 years 6 months imprisonment; British;
22 Pte.; Henry Moran;

23 "Oka Group Temporary Court Martial; November
24 7, 1944; Spreading a rumor; 4 years imprisonment with
25 labor; British; Civ. Engineer; Walter E. von Curtis;

1 "Oka Group Temporary Court Martial; November
2 7, 1944; spreading a rumor/ 6 years imprisonment with
3 labor; British; Government official; Robert Heatley
4 Scott;

5 "Oka Group Temporary Court Martial; November
6 25, 1944; Espionage: Instigation of Espionage,
7 spreading a rumor; Death; U. S.; Clerk; John Sparee
8 Long;

9 "Osamu 1602 Unit Temporary Court Martial;
10 October 31, 1942; Violence to warders; 15 years'
11 imprisonment; Dutch; Army Corporal; Van Earlsen;

12 "Osamu 1602 Unit Court Martial; April 6,
13 1943; Violation of Law of Punishing POW (Breaking
14 Parole); 1 year imprisonment; Dutch; Army 2nd Pte.;
15 Van El Sale;

16 "Osamu 1602 Unit Court Martial; July 12,
17 1943; Violation of Law of Punishing POW (Breaking
18 Parole); 2 years imprisonment; Dutch (Menado); Army
19 Sergeant; Yeapay Lempen;

20 "Osamu 1602 Unit Court Martial; June 12,
21 1944; Violation of Law of Punishing POW (listening
22 in on foreign wireless), Larceny; 10 years imprison-
23 ment with labor; Dutch; POW; A.P. Adama Farce Heltmann;

24 "Osamu 1602 Unit Court Martial; June 12, 1944;
25 Violation of Law of Punishing POW (Listening in on

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foreign wireless), Larceny; 8 years' imprisonment
with labor. Dutch; POWE; A. van der Sande;

1 "Watari 1600 Unit Temporary Court Martial;
2 March 16, 1943; Violation of Law of Punishing POW
3 (Breaking Parole); 3 years' 6 months' imprisonment;
4 U. S.; Nav. Sub. Lt.; Richard Enoch Turf;

5 "Watari 1600 Unit Temporary Court Martial;
6 March 16, 1943; Violation of Law of Punishing POW
7 (Breaking Parole); 3 years' 6 months' imprisonment;
8 U. S.; Nav. Sub. Lt.; Phillip Harvey Sunborne;

9 "Watari 1600 Unit Temporary Court Martial;
10 March 16, 1943; Violation of Law of Punishing POW
11 (Breaking Parole); 3 years' 6 months' imprisonment;
12 U. S.; Nav. Sub. Lt.; William Aeroa Berry;

13 "Watari 1600 Unit Temporary Court Martial;
14 March 16, 1943; Violation of Law of Punishing POW
15 (Breaking Parole); 2 years' imprisonment; U. S.;
16 Army 2nd Pte.; Edward Albert Puka;

17 "Watari 1600 Unit Temporary Court Martial;
18 March 16, 1943; Violation of Law of Punishing POW
19 (Breaking Parole); 2 years' imprisonment; U. S.;
20 Civ. Employee; Christian Frederick Crett;

21 "Watari 1600 Unit Temporary Court Martial;
22 March 16, 1943; Violation of Law of Punishing POW
23 (Breaking Parole); 3 years' imprisonment; U. S.;
24 Army 1st Pte.; William Ditton Cameron;

25 "Watari 1600 Unit Temporary Court Martial;

1 March 16, 1943; Violation of Law of Punishing POW
2 (Breaking Parole); 3 years' imprisonment; U. S.;
3 Army 1st pte.; Calton Toops;

4 "Wataru 1600 Unit Temporary Court Martial;

5 March 16, 1943; Violation of Law of Punishing POW
6 (Breaking Parole); 3 years' imprisonment; U. S.;
7 Army 2nd Pte.; James Embaract;

8 "Wataru 1600 Unit Temporary Court Martial;

9 March 16, 1943; Violation of Law of Punishing POW
10 (Breaking Parole); 1 year's imprisonment; U. S.;
11 Army 1st Pte.; Jack E. Thompson;

12 "Wataru 1600 Unit Temporary Court Martial;

13 March 16, 1943; Violation of Law of Punishing POW
14 (Breaking Parole); 2 years' imprisonment; U. S.;
15 Army Corp.; Robert C. Banburg" --
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1 THE PRESIDENT: Colonel Woolworth, there
2 are seven more pages, I think. It may be sufficient,
3 subject to what my colleagues think, to just refer us
4 to those in lieu of reading them.

5 My colleagues agree.

6 MR. WOOLWORTH: The prosecution desires to
7 introduce in evidence document 2734, "BA-84, Fujo/POW-
8 Information/ No. 20, Part 51, Re: Supplement to
9 Name List of POW Already Punished."

10 THE PRESIDENT: Admitted on the usual terms.

11 CLERK OF THE COURT: Prosecution document
12 No. 2734 will be given exhibit No. 1999.

13 (Whereupon, the document above re-
14 ferred to was marked prosecution's exhibit
15 No. 1999 and received in evidence.)

16 MR. WOOLWORTH: (Reading) "BA-84, Fujo/POW-
17 Information/ No. 20, Part 51, 27 July 1943.

18 "Re: Supplement to Name List of POW Already
19 Punished.

20 "From: Commanding Officer of POW Information
21 Bureau.

22 "To: Chiefs of POW Camps.

23 "Since there have been some questions in
24 regard to the above mentioned subject, we inform you
25 for your reference that management of this matter be

1 conducted as follows:

2 "1. Punishments of POW to be recorded in
3 the supplement column of the POW's name list shall
4 be limited to those who have been tried by court
5 martial or at the martial law council.

6 "2. Those cases in which the disciplinary
7 punishment of Article 6 in the POW Treatment Regula-
8 tion and the disciplinary law of Article 8 in the said
9 Regulation were applied correspondingly shall be
10 arranged and kept separately as records; and shall be
11 reported monthly as usual by means of monthly reports."

12 This is the certificate of authenticity.

13 The prosecution desires to introduce document
14 2569, a certificate from the Chief of Correspondence
15 Section, 1st Demobilization Bureau.

16 THE PRESIDENT: Admitted on the usual terms.

17 CLERK OF THE COURT: Prosecution document
18 No. 2569 will receive exhibit No. 2000.

19 (Whereupon, the document above re-
20 ferred to was marked prosecution's exhibit
21 No. 2000 and received in evidence.)

22 IR. WOOLWORTH: (Reading) "CERTIFICATE,
23 August 5, 1946.

24 "The undersigned does hereby certify that a
25 notification was issued by the name of the Adjutant

1 General under the order of the War Minister on
2 August 14, 1945, to all Army troops to the effect
3 that 'the confidential documents held by every troop
4 should be destroyed by fire immediately.'

5 "The above notification was given by tele-
6 phone to the troops in Tokyo and by telegram to
7 other troops. This telegram and its draft were also
8 destroyed by fire."

9 Signed, "Yozo MIYAMA, Chief of Correspondence
10 Section, 1st Demobilization Bureau."

11 The prosecution desires to have marked for
12 identification document 2594A, and to introduce in
13 evidence excerpts therefrom.

14 THE PRESIDENT: Admitted on the usual terms.

15 CLERK OF THE COURT: Prosecution document
16 No. 2594A will receive exhibit No. 2001 for identifi-
17 cation only, and the excerpt therefrom, bearing the
18 same document number, will receive exhibit No. 2001A.

19 (Whereupon, the document above re-
20 ferred to was marked prosecution's exhibit
21 No. 2001 for identification, and the excerpt
22 therefrom was marked prosecution's exhibit
23 No. 2001A and received in evidence.)
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25

MR. WOOLWORTH: (Reading) "/Cover page/.
1 From August 1945. File of Dispatched and Received
2 Documents. By M.P. Unit for KAGOSHIMA Area.
3 /Prepare to destroy/.

4 "Item (1). Strictly Secret. KENHISO
5 /M.P. Secret General Affairs/ No. 261.
6

7 "Instructions for the disposition of documents.
8 Dated August 14, 1945. By Chief of M.P. Headquarters.

9 "In regard to the destroying of documents by
10 fire in the event of disarmament, it should be carried
11 out according KENLEN /M.P. Telegram/ No. 1205 dated
12 14 August. But such documents as will be harmful
13 when they fall into the hands of the enemy, for
14 example, documents concerning foreign affairs, counter-
15 intelligence, thought, peace preservation, etc., and
16 materials by which national power may be estimated
17 and secret history (such as February 26th Incident)
18 must be destroyed as soon as possible.

19 "On the other hand, code books, register of
20 M.P. personnel, documents concerning undisposed
21 intendance and general affairs, etc., should not be
22 destroyed until they are of no use. Documents
23 especially desirable to preserve for future use (for
24 example, blacklist of leftists, etc.) should, as a
25 suggested plan, be ingeniously moved to another place."

* * * * *

1 "KENLEN /M.P. Telegram/ No. 1205. Telegram,
2 dated August 14, 1945.

3 "From Chief of M.P. Headquarters.

4 "In the presentsituation, special attention
5 must be paid in order to destroy large quantities of
6 documents rapidly.

7 "Documents can be destroyed rapidly in air
8 raid shelters by using the natural draft of the
9 fire and throwing them in one after another. Pouring
10 gasoline may seem to quicken the destruction but
11 actually, it retards the burning. In case of extreme
12 emergency, a decisive measure must be taken to destroy
13 all documents except the personnel register, service
14 records, etc. It must be perceived that the timing
15 of destruction will require the arbitrary and decisive
16 judgment of the various grade commanders.

17 "By orders, confidential and secret documents
18 and code books should be destroyed according to the
19 rules and instructions of destruction and they should
20 be carried out thoroughly.

21 "Furthermore, units near the coast should hide
22 and store these documents further inland and should
23 immediately be prepared to destroy them rapidly. The
24 purport and contents of this telegram should be
25 deliberated and preparations be thoroughly made for an

1 emergency.

2 "Telegram addressed to: All Unit Headquarters
3 and Area Commands."

4 * * * * *

5 "Strictly Secret. KENHISHO /M.P. Secret
6 General Affair/ No. 377.

7 "Instructions for the destruction of secret
8 documents, dated August 20, 1945.

9 "By Chief of M.P. Headquarters.

10 "In regard to the destruction of secret
11 documents, it is perceived that documents requiring
12 destruction based on instructions of KENLEN /M.P.
13 Telegram No. 1205/ and KENHISO /M.P. Secret General
14 Affairs/No. 26/ dated 14 August, KENHISO No. 262 dated
15 15 August, have been thoroughly executed. However,
16 there have been cases in past where papers were left
17 behind in the following places. Since there are many
18 examples of such blunders having been committed inad-
19 vertently, careful examination shall be made on such
20 matter. At the same time, a close interior inspection
21 should be carried out inside and outside of adminis-
22 trative buildings and barracks after destruction of the
23 documents. You are instructed to be certain that of
24 the secret documents that require destruction, not a
25 single sheet be left behind.

1 "/T.N. List of places liable to be overlooked./

2 "1. Papers stuck in rear of drawers.

3 "2. Papers inserted under the legs of desks,
4 etc., in order to stabilize them.

5 "3. Papers which have fallen in the rear of,
6 or beneath shelves.

7 "4. Papers remaining unburnt at places of
8 destruction and those scattered about in such places.

9 "5. Papers that have been filed in private
10 reference books which have not yet been put in order.

11 "6. Papers in document store rooms, and
12 supply rooms which have not yet been put in order and
13 papers scattered on the floor.

14 "In addition, a domiciliary search must be
15 considered so all documents and letters in your homes
16 must be investigated and destroyed.

17 "Appended note by Unit Headquarters.

18 "It is required that the thorough measures
19 be taken against even the most trivial matters.

20 "(Prepare to destroy.) Strictly Secret.

21 "SEIBU KENHISHO. /Western District M.P. Secret
22 General Affair/ No. 232. Instructions in the Disposition
23 of Documents. Date: 27 August 1945.

24 "From: Senior Officer of Western M.P. Unit
25 Headquarters.

1 "To: Chief of M.P. Unit of KAGOSHIMA Area.

2 "Regarding the disposition of M.P. Unit
3 documents with the termination of the war, it is per-
4 ceived that documents have been disposed in accordance
5 with JIMUSEIRI KEIKAKU /T.N. - Plans for Adjustment
6 of Business Routine/ and SEIBU KENHISHO /Western M.P.
7 Secret General Affairs/ dated 22 August. You are
8 notified that according to orders disposition of docu-
9 ments hereafter will be conducted as follows:

10 "1. Hereafter, contents of the various M.P.
11 Unit documents shall be carefully deliberated and
12 classified into three categories; namely, documents
13 to be destroyed, documents to be prepared for des-
14 truction and documents to be preserved. Documents to
15 be destroyed and documents to be prepared for des-
16 truction should be clearly marked. Documents to be
17 destroyed should be destroyed thoroughly after being
18 used and documents to be prepared for destruction
19 should be thoroughly arranged so that they can be
20 destroyed at a moment's notice in time of emergency.

21 "In the future, the disposition classification
22 of documents shall be, in general, as shown in the
23 annexed sheet.

24 "2. Hereafter, documents from Headquarters
25 to subordinate units will be marked with the disposition

1 classification of 'Prepare for destruction' or 'Destroy
2 after reading' on the right side of the dispatch file
3 number. Documents not having any marks shall be docu-
4 ments that require preservation.

5 "All units are requested to strictly observe
6 the usage of these marks.

7 "3. Documents already in possession of Head-
8 quaters and subordinate units shall be disposed of
9 immediately according the disposition instructions
10 mentioned in the previous items.

11 "Accordingly, such documents which have already
12 been destroyed and which shall be needed in future,
13 must be reproduced at once."

14 THE PRESIDENT: Well, I suggest that you
15 need not read any more of this.

16 MR. WOOLWORTH: Very well.

17 I desire to introduce document No. 2687,
18 which is a certificate authenticating documents
19 2689 to 2701.

20 Correction: This certificate applies to
21 documents 2688 to 2701.

22 THE PRESIDENT: Admitted on the usual terms.

23 CLERK OF THE COURT: Prosecution's document
24 No. 2687 will receive exhibit No. 2002.

25 (Whereupon, the document above

1 referred to was marked prosecution's exhibit
2 No. 2002 and received in evidence.)

3 MR. WOOLWORTH: (Reading) "I hereby swear
4 that exhibits A, B, C, D, E, F, G, H, I, J, K, L, M,
5 N, and O attached hereto and initialed by me are
6 original documents duly requisitioned and confiscated
7 from Imperial Japanese Army Headquarters for Taiwan,
8 Taihoku, Taiwan, (Formosa), and handed over by a
9 representative of the Imperial Japanese Army in April
10 1946 to the British-American Formosa War Crimes Team
11 of which I was then a member."

12 Signed, "James T. N. Cross."

13 Printed, "James T. N. Cross, Major, Royal
14 Artillery, Commanding, War Crimes Liaison Section,
15 (Formosa) Allied Land Forces, Southeast Asia.

16 "Sworn before me this 19th day of September
17 1946.

18 "Statement of witness sworn before me
19 (signature) signed P. A. L. Vine, Rank, Major, Royal
20 Marines, LAJAG (War Crimes) S.E.A., this 19th day
21 of September 1946.

22 "(Authority: ALFSEA War Crimes Instructions
23 No. 1, para. 7.)"

24 If the Tribunal please, I do not think it
25 essential to read the rest of the affidavits attached

1 thereto.

2 Prosecution desires to introduce document
3 No. 2688, certified as exhibit "A" in document
4 No. 2687, being a letter to the Chief of Staff, Taiwan
5 Army, from the Chief, POW Control Bureau.

6 THE PRESIDENT: Admitted on the usual terms.

7 CLERK OF THE COURT: Prosecution's document
8 No. 2688 will receive exhibit No. 2003.

9 (Whereupon, the document above
10 referred to was marked prosecution's exhibit
11 No. 2003 and received in evidence.)

12 MR. WOOLWORTH: (Reading) "To: Chief of
13 Staff, Taiwan Army. From: Chief, POW Control Bureau.
14 (Coded) Radio #2 of 4. 5th June 1942.

15 "Although the working of prisoner of war
16 officers and warrant officers is forbidden by Article
17 One of 'Rules for the Working of POW's' (10 September
18 1903, Ministry of War Instruction 139), the policy
19 of the control authorities is that under the situation
20 of our country where not one person now eats without
21 working and considering the preservation of health
22 of the POW's, they want them to set to work, volun-
23 tarily; conforming to rank, capabilities and physical
24 condition. It is desired you give proper orders on
25 this. Accordingly, work which is considered suitable

1 is given as follows for your reference:

2 "1. Work which uses technical skills and
3 science.

4 "2. Agriculture.

5 "3. The raising of domestic animals and
6 fowl.

7 "4. The protection and supervision of the
8 general working POW's.

9 "5. The recording of materials for a history
10 of the war.

11 "6. Propaganda duties.

12 "7. Other work which is considered suitable.

13 "Addressees:

14 "Zentsuji, Osaka, Korean Army, Taiwan Army,
15 Nobori (Shanghai) Unit of China Expeditionary Army,
16 and Hong Kong - each Chief of Staff.

17 "Chopped by:

18 "TANAKA, HIGUCHI, YOKOTA and HIRAI.

19 "I hereby certify that this is a true trans-
20 lation from Taiwan Army H.Q. Staff Files concerning
21 Prisoners of War, entry No. 16.

22 "Signed, Stephen H. Green."

23
24 Prosecution desires to introduce document 2689,
25 letter from the Chief of POW Information Office to
Taiwan Army Chief of Staff.

1 THE PRESIDENT: Admitted on the usual terms.

2 CLERK OF THE COURT: Prosecution's document
3 No. 2689 will receive exhibit No. 2004.

4 (Whereupon, the document above
5 referred to was marked prosecution's exhibit
6 No. 2004 and received in evidence.)

7 MR. WOOLWORTH: (Reading) "To: Taiwan
8 Army Chief of Staff. From: Chief of POW Information
9 Office, Tokyo. Radio #165, 2 April 1942.

10 "Plans are now being pushed on projects for
11 the use of POW's in production, etc., in Taiwan. We
12 think we want to apportion as many as possible to your
13 island. We want you to report immediately a gist of
14 the requisite strength. End.

15 "Chopped by: Staff Officer TANAKA of Taiwan
16 and checked by the C.G. and the C, of S."
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1 Prosecution desires to introduce document
2 No. 2690, letter from the Taiwan Army Chief of Staff
3 to Chief of POW Information Office.

4 THE PRESIDENT: Admitted on the usual
5 terms.

6 CLERK OF THE COURT: Prosecution's docu-
7 ment No. 2690 will receive exhibit No. 2005.

8 (Whereupon the document above
9 referred to was marked prosecution's ex-
10 hibit No. 2005 and received in evidence.)

11 MR. WOOLWORTH: "To: Chief of POW Infor-
12 mation Office, Tokyo. From: Taiwan Army Chief of
13 Staff. Radio #854. 2 April 1942.

14 "Reference Radio #165.

15 "Reply to POW Information Office Radio #165

16 "We will use the POW's principally as
17 laboring power for Taiwan agricultural production
18 and on another hand as material for education and
19 guidance of local islanders. For this we would like
20 for the time being about two or three thousand
21 British and American POW's. Moreover, informal con-
22 sultation has been completed on this matter with
23 the Hong Kong Governor-Generalship."

24 "(Translator's note: On the margin is
25 written, 'The Taiwan Governor-Generalship also

1 concurs')."

2 Prosecution desires to introduce document
3 No. 2691. To the Chief of Staff of the Hong Kong
4 Governor-Generalship, from Taiwan Army Chief of
5 Staff.

6 THE PRESIDENT: Admitted on the usual
7 terms.

8 CLERK OF THE COURT: Prosecution's docu-
9 ment No. 2691 will receive exhibit No. 2006.

10 (Whereupon, the document above
11 referred to was marked prosecution's
12 exhibit, No. 2006 and received in evidence.)

13 MR. WOOLWORTH: "To: Chief of Staff of
14 the Hong Kong Governor-Generalship. From: Taiwan
15 Army Chief of Staff. Radio #852. 2 April 1942.

16 "We confer with you on the fact that we
17 want to use British POW's in Hong Kong, principally
18 as agricultural labor in Taiwan and as material
19 for instruction and guidance of local islanders.
20 We want to get about two or three thousand in
21 Taiwan. Moreover, we have an inquiry from the Chief
22 of the POW Information Office on the use of POW's
23 in Taiwan and have answered them that we have in-
24 formally conferred with you on it. For your
25 reference."

1 THE PRESIDENT: Are the words, "Chopped
2 by: HIGUCHI, TANAKA and HIRAI" of no importance?

3 MR. WOOLWORTH: That is on the copy. I
4 neglected to read it, as I thought it unessential.

5 THE PRESIDENT: You omitted to read some-
6 thing of the sort on exhibit No. 2005.

7 MR. WOOLWORTH: That was: "Chopped by:
8 Chief of Staff HIGUCHI and Chief of Section in
9 Charge, TANAKA, and for the staff section by HIRAI.
10 Checked by or for the Commanding General."

11 Prosecution desires to introduce document
12 No. 2692, a letter from Chief of Staff Hong Kong, to
13 Taiwan Army Chief of Staff.

14 THE PRESIDENT: Admitted on the usual
15 terms.

16 CLERK OF THE COURT: Prosecution's docu-
17 ment No. 2692 will receive exhibit No. 2007.

18 (Whereupon, the document above
19 referred to was marked prosecution's
20 exhibit No. 2007 and received in evidence.)

21 MR. WOOLWORTH: "To: Taiwan Army Chief of
22 Staff. From: Chief of Staff Hong Kong Governor-
23 Generalship. Radio #146. 3 April 1942.

24 "As far as this department is concerned,
25 the request of the Taiwan Army that two or three

1 thousand British POW in Hong Kong be transferred
2 to the Formosan Army to supplement labor and for
3 the guidance of Taiwan islanders meets no objection.
4 We would like a directive one way or another.

5 "Chopped by: HIGUCHI, HIRAI, TANAKA,
6 YOKODA.

7 "(Army Staff) (Taiwan Army reference)"

8 Prosecution desires to introduce document
9 No. 2693, from the Chief of Staff Taiwan Army to
10 Chief of Staff POW Information Office, Tokyo.

11 THE PRESIDENT: Admitted on the usual
12 terms.

13 CLERK OF THE COURT: Prosecution's docu-
14 ment No. 2693 will receive exhibit No. 2008.

15 (Whereupon, the document above
16 referred to was marked prosecution's ex-
17 hibit No. 2008 and received in evidence.)

18 MR. WOOLWORTH: "To: Chief POW Informa-
19 tion Office, Tokyo. From: Chief of Staff Taiwan
20 Army. Radio #929. 7 April 1942.

21 "Concerning the allotment of POW's to
22 Taiwan, in Taiwan Radio #854 we wanted for the
23 time being about two or three thousand, prin-
24 cipally as agricultural laboring power. However,
25 afterwards the Governor-Generalship wanted to use

1 them in public works construction and mines, too, so
2 combining this with the substance of the last radio
3 it comes to about seven thousand (7,000), which is
4 referred for due consideration.

5 "Chopped by: HIGUCHI, TANAKA and checked
6 for the Commanding General."

7 Prosecution desires to introduce document
8 No. 2694, from Chief of POW Control Bureau, Tokyo,
9 to Taiwan Army Chief of Staff.

10 THE PRESIDENT: Admitted on the usual
11 terms.

12 CLERK OF THE COURT: Prosecution's docu-
13 ment No. 2694 will receive exhibit No. 2009.

14 ("hereupon, the document above
15 referred to was marked prosecution's
16 exhibit No. 2009 and received in evidence.)

17 MR. WOOLFORTH: "To: Taiwan Army Chief
18 of Staff. From: Chief of POW Control Bureau,
19 Tokyo. Coded Radio #17. 29 April 1942.

20 "We acknowledge your radio #929 dated 7
21 April, further please consider the following points,
22 and also report the approximate number of POW's
23 that can be confined on Taiwan.

24 "1. We want to confine as many POW's as
25 possible on Taiwan.

1 "2. For the purposes of control, the
2 number in each camp should not exceed 500.

3 "3. The army will take responsibility for
4 control and supply but the POW camp facilities with
5 the exception of repairs and additional construction
6 will be the responsibility of the Governor-General-
7 ship or the companies which use the POW's. This will
8 be the frame work.

9 "Chopped by: IGUCHI, TANAKA and YOKOTA."

10 Prosecution desires to introduce document
11 No. 2695, from Adjutant of War Ministry to Taiwan
12 Army Chief of Staff.

13 THE PRESIDENT: Admitted on the usual
14 terms.

15 CLERK OF THE COURT: Prosecution's docu-
16 ment No. 2695 will receive exhibit No. 2010.

17 (Whereupon, the document above
18 referred to was marked prosecution's ex-
19 hibit No. 2010 and received in evidence.)

20 MR. WOOLWORTH: "To: Taiwan Army Chief
21 of Staff HIGUCHI. From Adjutant of War Ministry,
22 'KAWABARA Naoichi. Riku A Mitsu 1456 Secret. 6 May
23 1942.

24 "You are notified by order of the decisions
25 made concerning the arrangements for Prisoners of

1 War which are in the attached sheet.

2 "Inclosure.

3 "Top Secret.

4 "Summary of the arrangements for POW's.

5 "The Policy:

6 "1. So that they can be used for the en-
7 largement of our production and as military labor,
8 white POW's will be confined successively in Korea,
9 Formosa and Manchuria. Those who are not suitable
10 for this purpose will be confined in Prisoner of
11 War Camps which will be built immediately on the
12 spot.

13 "2. As for other than white POW's, those
14 for whom there is no necessity for internment will
15 as much as possible be put to practical use on the
16 spot after they have been released on oath.

17 "The Outline:

18 "3. First, by the end of August, this
19 year, a part of the white POW's in Singapore will
20 be confined in Korea, Formosa and other places. The
21 number will be fixed separately.

22 "Other than those necessary on the spot,
23 superior technicians and high ranking officers
24 (Colonels and above) will be included among the
25 POW's confined in Formosa.

1 "4. The remainder will immediately be
2 confined in POW camps organized and built on the spot.

3 "5. For the purposes of control and security
4 in the POW camp organization, it is planned to assign
5 special units organized of Koreans and Formosans.
6 Moreover, the POW camps will be a lumped organiza-
7 tion in each army and each army will consider the
8 proper division it can make.

9 "First sheet chopped by: HIGUCHI, TANAKA,
10 Checked for C.G."

11 . . Prosecution desires to introduce document
12 No. 2697, from Chief of Prisoner of War Camps,
13 Tokyo, to Chief of Staff, Taiwan Army.

14 THE PRESIDENT: Admitted on the usual
15 terms.

16 CLERK OF THE COURT: Prosecution's docu-
17 ment No. 2697 will receive exhibit No. 2011.

18 (Whereupon, the document above
19 referred to was marked prosecution's
20 exhibit No. 2011 and received in evidence.)

21 MR. WOOLWORTH: "To: Chief of Staff,
22 Taiwan Army. From: Chief Prisoner of War Camps
23 Tokyo. POW Camps Radio #9 Top Military Secret.
24 20 August 1945.

25 "Personnel who mistreated prisoners of

1 war and internees or who are held in extremely bad
2 sentiment by them are permitted to take care of it
3 by immediately transferring or by fleeing without
4 trace. Moreover, documents which would be unfavor-
5 able for us in the hands of the enemy are to be
6 treated in the same way as secret documents and
7 destroyed when finished with.

8 "Addressees: Korean Army, Taiwan Army,
9 Knantung (Manchuria) Army, North China Area Army,
10 Hong Kong. (YOSHIOKA, Nadoji)

11 "Reference in Korea, Taiwan, Mukden, Borneo,
12 North China, Hong Kong, Thailand, Malaya, Java.

13 "Each POW Camp Commanding Officer."

14 Prosecution desires to introduce in evidence
15 document No. 2698, from Chief of Staff Taiwan Military
16 Jurisdiction, to Chief of Staff Taiwan POW Camps.

17 THE PRESIDENT: Admitted on the usual
18 terms.

19 CLERK OF THE COURT: Prosecution's docu-
20 ment No. 2698 will receive exhibit No. 2012.

21 (Whereupon, the document above
22 referred to was marked prosecution's
23 exhibit No. 2012 and received in evidence.)

24 MR. WOOLWORTH: "To: Chief of Taiwan POW"
25 Camps. From: Chief of Staff Taiwan Military Juris-

1 diction. Taiwan Mil. Juris. F.O., POW Sec. Top
2 Secret #4.

3 "NOTIFICATION ON DEALING WITH PRISONERS OF WAR

4 "This is to inform you that on the above
5 subject we have a notification of which the enclosure
6 is a copy and on which you are to give the fitting
7 instructions. Preparations are steadily being made
8 on methods of dealing which will conform to transi-
9 tions in the forthcoming situation, but if further
10 there are things which need urgent settlement, send
11 us your suggestions.

12 "Chopped by: Chief of Staff and HARADA.

13 "I hereby certify that this is a true
14 translation from an order filed in the Taiwan Army
15 G.O. Staff Files concerning POW's. Vol. VII, 2
16 January 1945 to 22 August 1945.

17 "Signed: Stephen H. Green."

18 * * *

19 "To: Chief of Staff Taiwan Military Juris-
20 diction. From: The Vice Minister of War. Riku A
21 Mitsu #2257 Secret. 17 March 1945.

22 "NOTIFICATION ON SUMMARY OF ARRANGEMENTS FOR
23 PRISONERS OF WAR IN CONFORMITY WITH TRANSITIONS
24 IN THE SITUATION.

25 "The handling of Prisoners of War in these

1 times when the state of things is becoming more and
2 more pressing and the evils of war extend to the
3 Imperial Domain, Manchuria and other places, is in
4 the enclosed Summary of Arrangements for Prisoners
5 of War in Conformity with Transitions in the Situa-
6 tion. We hope you follow it making no mistakes.

7 Notified by order.

8 "Chopped by the Vice Minister of War, Gen-
9 eral ANDO, FARADA, General ISAYAMA, UCAKI, HARADA,
10 ENDO.

11 "(Also stamped as received in Taiwan. 27
12 March 1945).

13 "This and enclosure are original, chopped
14 documents sent from Tokyo).

15 * * *

16 "I hereby certify that this is a true trans-
17 lation from an order filed in the Taiwan Army H.Q.
18 Staff Files concerning POW's. Vol. VII. 2 January
19 1945 to 22 August 1945.

20 "Signed: Stephen F. Green."

21 Prosecution desires to introduce in evidence
22 document No. 2699, which is the enclosure to docu-
23 ment No. 2698, "Summary of the Arrangements for
24 POW's in Conformance with Transition in the Situa-
25 tion."

1 THE PRESIDENT: Admitted on the usual
2 terms.

3 MR. WOOLWORTH: If the Tribunal please, I
4 desire to merely have document No. 2699 marked for
5 identification, as it is the same as exhibit No.
6 1978, which is already before the Tribunal.

7 If the Tribunal please, I suggest that
8 possibly I should introduce this in evidence but not
9 bother to read it, as it is already in evidence.

10 THE PRESIDENT: Admitted as already stated.

11 CLERK OF THE COURT: Prosecution's docu-
12 ment No. 2699 will receive exhibit No. 2013.

13 (Thereupon, the document above
14 referred to was marked prosecution's
15 exhibit No. 2013 and received in evidence.)
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1 MR. WOOLWORTH: The prosecution desires to
2 introduce in evidence document No. 2700, a letter
3 from the Chief of Staff Taiwan Military Jurisdiction
4 to the War Ministry Adjutant.

5 THE PRESIDENT: Admitted on the usual terms.

6 CLERK OF THE COURT: Prosecution's document
7 No. 2700 will receive exhibit No. 2014.

8 (Whereupon, the document above re-
9 ferred to was marked prosecution's exhibit
10 No. 2014 and received in evidence.)

11 MR. WOOLWORTH (Reading):

12 "TO: Chief of Staff Taiwan Military Juris-
13 diction.

14 "FROM: War Ministry Adjutant

15 "Riku A Tn #281 Routine

16 "16 March 1945

17 "NOTIFICATION CONCERNING WORK OF PRISONERS
18 OF WAR

19 "Up to now there have been directives from
20 the Central Authorities on the duty hours of Prisoners
21 of War each time the latter were dispatched, but in
22 view of the fact that the demands of the situation
23 more and more make necessary a display of the highest
24 degree of efficiency in the prisoners' service, from
25 now on the duty hours of Prisoners of War will conform

1 to the actual situation on the spot (the type of work,
2 the relative difficulty of the work, the urgency
3 of the labor, the season of the year, the health
4 of the prisoners and the working hours of local
5 laborers) and you will direct the commander, POW
6 Camps to decide or change these hours on his own
7 suitable discretion and thus maintain elasticity
8 in this matter of the working hours of Prisoners
9 of War. Notified by order.

10 "Chopped by: ANDO, HIGUCHI, TANAKA, YOKOTO"

11 The prosecution desires to introduce document
12 No. 2701. This is an extract from the journal of
13 the Taiwan Camp Headquarters in Taihoku.

14 THE PRESIDENT: Admitted on the usual terms.

15 CLERK OF THE COURT: Prosecution's document
16 No. 2701 will receive exhibit No. 2015.

17 (Whereupon, the document above re-
18 ferred to was marked prosecution's exhibit
19 No. 2015 and received in evidence.)

20 MR. WOOLWORTH: Before reading this document
21 I desire to invite the attention of the Court to a
22 mistake in translation. The year 1944 does not appear
23 in the original Japanese text. That is in the second
24 line on the first page.

25 THE PRESIDENT: The certificate says

1 "1 August 1944." Can we accept that as the fact?

2 MR. WOOLWORTH: The original Japanese text
3 does not include the year 1944.

4 THE PRESIDENT: You can point to nothing
5 else as indicating 1944 is the year?

6 MR. WOOLWORTH: It appears, if the Tribunal
7 please, that these extracts from the journal were
8 covered between 1942 and 1945.

9 THE PRESIDENT: Well, the journal is your
10 indicator.

11 MR. WOOLWORTH (Reading):

12 "From the Journal of the Taiwan POW Camp
13 H.Q. in Taihoku, entry 1 August 1944.

14 "1. (entries about money, promotions of
15 Formosans at Branch camps, including promotion of
16 Yo Yu-toku to 1st Cl. Keibiin - 5 entries)

17 "2. The following answer about the extreme
18 measures for POW's was sent to the Chief of Staff of
19 the 11th Unit (Formosa POW Security No. 10):

20 "Under the present situation if there were a
21 mere explosion or fire a shelter for the time being could
22 be had in nearby buildings such as the school, a
23 warehouse, or the like. However, at such time as
24 the situation became urgent and it be extremely im-
25 portant, the POW's will be concentrated and confined in

1 "1 August 1944." Can we accept that as the fact?

2 MR. WOOLWORTH: The original Japanese text
3 does not include the year 1944.

4 THE PRESIDENT: You can point to nothing
5 else as indicating 1944 is the year?

6 MR. WOOLWORTH: It appears, if the Tribunal
7 please, that these extracts from the journal were
8 covered between 1942 and 1945.

9 THE PRESIDENT: Well, the journal is your
10 indicator.

11 MR. WOOLWORTH (Reading):

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13 H.Q. in Taihoku, entry 1 August 1944.

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15 Formosans at Branch camps, including promotion of
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18 measures for POW's was sent to the Chief of Staff of
19 the 11th Unit (Formosa POW Security No. 10):

20 "Under the present situation if there were a
21 mere explosion or fire a shelter for the time being could
22 be had in nearby buildings such as the school, a
23 warehouse, or the like. However, at such time as
24 the situation became urgent and it be extremely im-
25 portant, the POW's will be concentrated and confined in

1 their present location and under heavy guard the
2 preparation for the final disposition will be made.

3 "The time and method of this disposition
4 are as follows:

5 "(1) The Time.

6 "Although the basic aim is to act under
7 superior orders, individual disposition may be made
8 in the following circumstances:

9 "(a) When an uprising of large numbers
10 cannot be suppressed without the use of firearms.

11 "(b) When escapees from the camp may turn
12 into a hostile fighting force.

13 "(2) The Methods.

14 "(a) Whether they are destroyed indi-
15 vidually or in groups, or however it is done, with
16 mass bombing, poisonous smoke, poisons, drowning,
17 decapitation, or what, dispose of them as the
18 situation dictates.

19 "(b) In any case it is the aim not to
20 allow the escape of a single one, to annihilate them
21 all, and not to leave any traces.

22 "(3) To: The Commanding General

23 "The Commanding General of Military
24 Police

25 "Reported matters conferred on with the

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11th Unit, the Kiirun Fortified Area H.Q., and each prefecture concerning the extreme security in Taiwan POW Camps.'

"3. (The next entry concerns the will of a deceased POW)."

1 The prosecution desires to have marked
2 for identification document No. 2853A 1 - 73, and
3 introduce in evidence the synopsis thereof, docu-
4 ment No. 2853B

5 THE PRESIDENT: Admitted on the usual
6 terms.

7 CLERK OF THE COURT: Prosecution document
8 No. 2853A 1 - 73 will be given exhibit No. 2016
9 for identification only, and the excerpts there-
10 from will be given exhibit No. 2016A, which is a
11 synopsis of those.

12 (Whereupon, the document above refer-
13 red to was marked prosecution's exhibit No.
14 2016 for identification, and the excerpts there-
15 from were marked prosecution's exhibit No. 2016A
16 and received in evidence.)

17 MR. WOOLWORTH (reading): "12 Feb. 1942 (A-1)

18 Swiss to Foreign Minister (Togo)

19 U. S. will facilitate visits by protecting
20 power to Japanese subjects. Asks for in-
21 formation as to attitude of Jap. Govt. on
22 application to civil internees of Geneva
23 Convention and visits to internees.

24 "17 Feb. 1942 (A-2) Swiss to Foreign Minister (Togo)

25 Asks if Jap. Govt. will apply Geneva Conv.

1 to civilians and also asks to be permitted
2 to visit American prisoners of war and
3 internees.
4 "3 Mar. 1942 (A-3) Swiss to Foreign Minister (Togo)
5 Asks permission to visit internees camps
6 and for list of American citizens.
7 "3 June 1942 (A-4) Swiss to Foreign Minister
8 (Togo) U. S. is disturbed as to fate of U. S.
9 Nations in Japanese occupied territories,
10 and asks for permission to visit prisoners
11 of war and internees there.
12 "5 June 1942 (A-5) Swiss to Foreign Minister (Togo)
13 Britain asks for information relating to
14 British subjects in Japanese occupied territories,
15 and also asks for permission to visit all camps
16 for prisoners of war and civilian internees.
17 "11 June 1942 (A-6) Swiss to Foreign Minister
18 (Togo). Repeats letter of 5 June as to Dominion
19 subjects.
20 "12 June 1942 (A-7) Swiss to Foreign Minister
21 (Togo). Informs Japanese that Japanese prisoners
22 of war or civilian internees in United States can
23 interview representatives of protecting power and
24 Int. Red Cross without restriction. Asks for
25

1 reciprocal facilities.

2 "29 July 1942 (A-8) Minister of Foreign Affairs
3 (Togo) to Swiss Minister. Replies to letters of
4 5 and 11 June. Japanese Govt. will not
5 recognize protecting powers in occupied
6 territory, therefore visits in those areas
7 to prisoners or internees cannot be made.
8 In Shanghai such visits may be allowed by
9 competent authorities.

10 "30 July 1942 (A-9) Minister of Foreign Affairs
11 (Togo) to Swiss Minister. Replies to letter of 3
12 June. Reply similar to 29 July letter.

13 "1 September 1942 (A-10) Swiss to Foreign Minister
14 (Togo). Reply to 30 July letter. U. S. protests
15 at Japanese decision and requests access
16 to all places of internment of American
17 nationals.

18 "2 September 1942 (A-11) Swiss to Foreign Minister
19 (Togo). Reply to 29 July letter. British protest
20 at Jap refusal to permit visits to prisoners
21 of war and civilians in territories under
22 Japanese control.

23 "3 September 1942 (A-12) Swiss to Prime Minister
24 and Minister for Foreign Affairs (Tojo). States
25 application has been made to competent

1 authorities to visit British nationals in
2 Shanghai. This has been refused because
3 only Tokyo can give consent. Asks for
4 information as to what formalities are
5 necessary in order to visit camps at Shanghai.

6 "10 September 1942 (A-13) Swiss to Prime Minister
7 and Minister for Foreign Affairs (Tojo).
8 Refers to letter of 1 Sept. to Togo. Asks
9 what is the attitude of the Japanese Govern-
10 ment on visits to camps.

11 "7 October 1942 (A-14) Swiss to Foreign Minister
12 (TANI). States Japanese Mission in Saigon
13 has refused permission to visit prisoners
14 of war camps because of the temporary nature
15 of the installations, and also because
16 some escapes had occurred. States this is
17 contrary to Japanese assurances to observe
18 Geneva Convention. Asks Japanese Govern-
19 ment to revise its decision.

20 "24 October 1942 (A-15) Swiss to Foreign Minister
21 (TANI). Repeats 7 October letter and
22 asks that decision be reversed.

23 "28 October 1942 (A-16) Swiss to Foreign Minister
24 (TANI). States that some visits have been
25 made to camps in Japan. Asks when visits

1 may be made to camps in occupied territories.
2 "6 November 1942 (A-17) Swiss to Foreign Minister
3 (TANI). Asks for information as to the
4 attitude of the Japanese Govt. respecting
5 visits to prisoner of war camps in China,
6 Indo-China, and Thailand."

7 THE PRESIDENT: We will recess for fifteen
8 minutes.

9 (Whereupon, at 1045 a recess was taken
10 until 1100.)

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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now resumed.

3 THE PRESIDENT: Colonel Woolworth.

4 MR. WOOLWORTH: If the Tribunal please,
5 prosecution desires to introduce in evidence, rather
6 than to have marked for identification, document --
7 exhibit No. 2016 which was the complete file of
8 correspondence of which the synopsis is exhibit 2016A,
9 and to have the privilege of reading the synopsis
10 rather than the full text of the letters.

11 MR. BROOKS: Mr. President, I would like to
12 inquire now if, under that, if the documents, the
13 seventy-three documents starting with document No.
14 2853A (1) to 2853A (73) are all in evidence under
15 the court exhibit No. 2016. Is that the understanding?
16

17 MR. WOOLWORTH: That was the intention of
18 the prosecution.

19 THE PRESIDENT: Well, IPS document No. 2853A,
20 1 to 73, inclusive, is marked 2016A.

21 MR. WOOLWORTH: The synopsis is marked thus.
22 The documents themselves were originally marked for
23 identification 2016.

24 THE PRESIDENT: To warrant the synopsis
25 you must have the documents which are summeried
admitted in evidence and not merely for identification,

1 and they have been so admitted according to my under-
2 standing.

3 CLERK OF THE COURT: Prosecution's document
4 (No. 2853A consists of documents consecutively numbered
5 from 1 to 73, is given exhibit No. 2016 and admitted
6 according to order of Court. And the synopsis there-
7 of bears prosecution document No. 2853B and has been
8 given exhibit No. 2016A previously admitted according
9 to the order of the Court.

10 (Whereupon, prosecution's document
11 No. 2853A (1) to 2853A (73), inclusive,
12 previously marked prosecution's exhibit No.
13 2016 for identification, was received in
14 evidence.)

15 MR. WOOLWORTH: Continuing the reading of
16 exhibit 2016A, on page 3:

17 "13 November 1942 (A-18)

18 / Swiss to Foreign Minister (TANI)

19 Protests to Swiss having been refused permission
20 to visit camps in Thailand and to send gifts in
21 kind. Asks for permission to make such visits
22 and to send such goods. Also asks Japanese
23 Government to communicate lists of names of
24 prisoners of war.
25

1 "24 December 1942 (A-19)

2 Swiss to Foreign Minister (TANI)

3 Acknowledges permission to visit certain camps
4 in Japan. Asks for same rights in Japanese
5 occupied territory.

6 "5 February 1943 (A-20)

7 Swiss to Foreign Minister (TANI)

8 Acknowledges permission to visit certain camps
9 in Japan, Korea, Shanghai and Hong Kong. Asks
10 for similar permission to visit other camps in
11 Japan and in occupied territories.

12 "16 March 1943 (A-21)

13 Swiss to Foreign Minister (TANI)

14 Asks for right of Swiss representative to converse
15 with prisoners without witnesses. States that
16 previous requests to this effect made on 12 June
17 1942 and 18 June 1942 have not been replied to.

18 "27 March 1943 (A-22)

19 Swiss to Foreign Minister (TANI)

20 Repeats request made on 13 January 1943 to be
21 permitted to visit camps in Taiwan.

22 "31 March 1943 (A-23)

23 Swiss to Foreign Minister (TANI)

24 States that several previous requests for per-
25 mission to visit camps in occupied territories

1 have not received any reply. Once more asks
2 for that permission and also for information
3 as to internees in Malaya.

4 "22 April 1943 (A-24)

5 Foreign Ministry (SHIGEMITSU) to Swiss

6 Reply to letters of 24 December and 31 March.
7 States that as was mentioned in the letter of
8 30 July 1942, visits to camps in occupied
9 territories cannot be permitted.

10 "22 April 1943 (A-25)

11 Foreign Ministry (SHIGEMITSU) to Swiss

12 Reply to letters of 16 and 19 March. Cannot
13 allow Swiss to make unrestricted visits to
14 prisoners of war and that correspondence of
15 prisoners is permitted according to the cir-
16 cumstances in each camp.

17 "12 May 1943 (A-26)

18 Swiss to Foreign Minister (SHIGEMITSU)

19 Refers to previous letters of 26 October and
20 6 November. States that no permission has yet
21 been obtained to visit camps at Shanghai in
22 spite of many requests. Requests inter alia
23 authority to visit all camps.

24 "2 June 1943 (A-27)

25 Swiss to Foreign Minister (SHIGEMITSU)

1 Repeats request for permission to visit camps
2 in occupied territories. Requests permission
3 to visit other camps in Japan. Requests infor-
4 mation as to when he may revisit camps which
5 have already been visited.

6 "4 June 1943 (A-28)

7 Swiss to Foreign Ministry (SHIGEMITSU)

8 Requests right to talk to prisoners without
9 witnesses.

10 "24 June 1943 (A-29)

11 Foreign Minister (SHIGEMITSU) to Swiss

12 Reply to 4 June. Regulations prohibit talks
13 without a guard. Therefore, request cannot be
14 granted.

15 "28 June 1943 (A-30)

16 Swiss to Foreign Minister (SHIGEMITSU)

17 Requests permission to visit Hakodate prison
18 camp.

19 "8 July 1943 (A-31)

20 Swiss to Foreign Minister (SHIGEMITSU)

21 Acknowledges letter of 24 June and asks for
22 text of regulations.

23 "16 July 1943 (A-32)

24 Swiss to Foreign Minister (SHIGEMITSU)

25 Requests permission to visit all camps and

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states that prisoners should be evacuated from
the zone of combat.

"23 July 1943 (A-33)

Foreign Minister (SHIGEMITSU) to Swiss

Reply to 2 June. Permission to visit camps in
occupied territories will be given as soon as
it is opportune. Visits to camps in Japan
already visited will be considered when specific
applications are made.

"29 July 1943 (A-34)

Swiss to Foreign Minister (SHIGEMITSU)

Repeats 10 July. Requests permission to visit
camps in Philippines.

1 "23 August 1943 (A-35)

2 Swiss to Foreign Ministry (SHIGEMITSU)

3 Request to revisit camps at Tokyo and Yokohama.

4 "4 September 1943 (A-36)

5 Swiss to Foreign Ministry (SHIGEMITSU)

6 Request to visit Hakodate. Inquires as to atti-
7 tude of Japanese Government on visits to other
8 camps.

9 "22 October 1943 (A-37)

10 Swiss to Foreign Ministry (SHIGEMITSU)

11 Asks for replies to letters of 23 August, also
12 28 June, 4th September and 29th July re visits
13 to prison camps.

14 "10 December 1943 (A-38)

15 Swiss to Foreign Ministry (SHIGEMITSU)

16 Asks for a reply to letter of 22 October re
17 visits to certain camps in Japan.

18 "12 February 1944 (A-39)

19 Swiss to Foreign Ministry (SHIGEMITSU)

20 Complaining that requests to visit camps sent
21 between August 1943 and February have received
22 no reply. Makes a formal demand to visit all
23 camps.

24 "13 March 1944 (A-40)

25 Swiss to Foreign Ministry (SHIGEMITSU)

1 Requests to visit camps. States that British
2 Government has received alarming reports of phys-
3 ical condition and work of prisoners. Asks to
4 be informed as to the physical condition and
5 work of prisoners of war.

6 "25 March 1944 (A-41)

7 Swiss to Foreign Ministry (SHIGEMITSU)

8 Requests to visit camps. Quotes statement in
9 Nippon Times that Govt. will facilitate observa-
10 tions by objective parties.

11 "30 March 1944 (A-42)

12 Swiss to SUZUKI, Tadakatsu (not accused) of
13 Foreign Ministry

14 States that from 1 Feb. 1942 to 15 March 1944
15 Swiss have intervened in writing 134 times re
16 visits to camps. There have been 24 replies.
17 In last nine months only 3 replies received.
18 Most of replies have been negative.

19 "10 May 1944 (A-43)

20 Swiss to Foreign Minister (SHIGEMITSU)

21 States visits are made by protecting power to
22 Japanese prisoners in America without restriction.
23 Requests visits to prisoner of war camps in Japa-
24 nese controlled territories.

25 "30 June 1944 (A-44)

1 Swiss to SUZUKI, Tadakatsu (not the accused) of
2 the Foreign Ministry

3 Sets out that the Japanese raise the question that
4 the Swiss have not received authority to protect
5 British and U.S. subjects in occupied territories,
6 and asks for permission to visit.

7 "1 July 1944 (A-45)

8 Swiss to Foreign Minister (SHIGEMITSU)

9 Refers to promise by SHIGEMITSU to examine the
10 question of visits to prisoners of war camps.
11 Mentions the statements of the U.S. Government
12 re atrocities. Asks for humane treatment of
13 U.S. prisoners.

14 "21 July 1944 (A-46)

15 Swiss to Foreign Minister (SHIGEMITSU)

16 Refers to Japanese statement that Swiss will be
17 authorized to visit the prisoner of war camps
18 in Japan. Asks when it can visit camps.

19 "12 August 1944 (A-47)

20 Foreign Minister (SHIGEMITSU) to Swiss

21 Sets out attitude of Japanese Government re
22 denying visits to camps in occupied territories.

23 "15 August 1944 (A-48)

24 Foreign Minister (SHIGEMITSU) to Swiss

25 Reply to 21 July. Permission to visit camps in

1 Japan will be granted when asked for.

2 "17 August 1944 (A-49)

3 Swiss to Foreign Minister (SHIGEMITSU)

4 States Swiss have never received list of prisoner
5 of war camps in Japan and, therefore, cannot under-
6 take the responsibility of making specific appli-
7 cations. Requests permission to visit all campos
8 and asks for a list of camps in Japan.

9 "12 September 1944 (A-50)

10 Swiss to Foreign Minister (SHIGEMITSU)

11 Asks that humane treatment be accorded to British
12 prisoners and asks permission to visit all camps.

13 "28 October 1944 (A-51)

14 Swiss to Foreign Ministry (SHIGEMITSU)

15 Reiterates request for permission to visit all
16 camps in occupied territories.

17 "10 November 1944 (A-52)

18 Swiss to SUZUKI (not the accused)

19 Asks for confirmation of promise made by
20 SHIGEMITSU that permission to visit camps in
21 occupied territories would be given on
22 condition of reciprocity.

23 "13 November 1944 (A-53)

24 SUZUKI to Swiss

25 Visits to Manila, Shonan and Bangkok may be commenced.

1 "16 November 1944 (A-54)

2 Swiss to Foreign Ministry (SHIGEMITSU)

3 States that only five camps in Japan have been
4 visited. Asks permission to visit others.

5 "17 November 1944 (A-55)

6 Swiss to SUZUKI

7 Asks reasons why competent authorities will not
8 permit visits in N. E. I.

9 "8 December 1944 (A-56)

10 Foreign Minister (SHIGEMITSU) to Swiss

11 Reply to 1 July and 12 September. Japanese Govern-
12 ment will allow visits to prisoners of war camps
13 in occupied territories provided they do not inter-
14 fere with military operations and on conditions of
15 reciprocity. Will commence negotiations on this
16 subject with International Red Cross re visits in
17 P.I., Shonan and Thailand.

18 "12 December 1944 (A-57)

19 Swiss to Foreign Minister (SHIGEMITSU)

20 Acknowledges 8 December.

21 "13 January 1945 (A-58)

22 Swiss to Foreign Ministry (SHIGEMITSU)

23 Asks when camps may be visited.

24 "16 March 1945 (A-59)

25 Swiss to Foreign Ministry (SHIGEMITSU)

1 Mentions visits to 2 camps in Japan. Asks when
2 others may be visited.

3 "7 April 1945 (A-60)

4 Swiss to Foreign Minister (SHIGEMITSU)

5 Reply to 8 December. States reciprocity already
6 exists and has existed for a long time.

7 "17 April 1945 (A-61)

8 Swiss to Foreign Ministry (TOGO)

9 States only 2 camps in Japan visited in 1945. Asks
10 permission to visit other camps.

11 "19 April 1945 (A-62)

12 Swiss to Foreign Minister (TOGO)

13 Asks permission for M. Rush to visit camps.

14 Mentions that many weeks have elapsed since this
15 request was first made.

16 "28 April 1945 (A-63)

17 Swiss to SUZUKI (not the accused)

18 States request made on 16 March, 3, 17 April to
19 visit certain camps in Japan, Formosa and Mukden'
20 have been unanswered.

21 "10 May 1945 (A-64)

22 Swiss to Foreign Minister (TOGO)

23 U.S. asks if Japs will allow visits to Singapore,
24 Japan, Formosa, and Manchuria.

25 "16 May 1945 (A-65)

1 Swiss to Foreign Minister (TOGO)
2 Asks for permission to visit all camps.
3 "30 May 1945 (A-66)
4 Swiss to Foreign Minister (TOGO)
5 Informs Japanese that visits to camps for Japanese
6 POW's in Tinian, Saipan, Guam and New Caledonia
7 will be authorized by the United States when the
8 Japanese have given a favourable answer to the
9 letter of 10 May.
10 "30 May 1945 (A-67)
11 Swiss to Foreign Minister (TOGO)
12 Requests to be allowed to visit all camps in Japan.
13 "5 June 1945 (A-68)
14 Foreign Minister (TOGO) to Swiss
15 Answer to 7 April. Jap. Govt. 'will lose no time
16 in having a representative of International Red
17 Cross visit prisoner of war camps, in Thailand
18 and on conclusion of negotiations with Int. Red
19 Cross committee will authorize visits in Malaya.
20 "13 June 1945 (A-69)
21 Swiss to Foreign Minister (TOGO)
22 Reiterates that U.S. has agreed to all camps being
23 visited.
24 "14 June 1945 (A-70)
25 Swiss to SUZUKI, Tadakatsu (not the accused) of

1 the Foreign Ministry

2 Asks for visits, notification of all names
3 of all prisoners of war and internees and
4 removal of camps from vicinity of military
5 objectives.

6 "13 July 1945 (A-71)

7 Swiss to SUZUKI, Tadakatsu (not the accused)
8 of the Foreign Ministry

9 Re visit to Shonan. Difficulties raised by
10 Japanese as to the person who is to visit.
11 Japanese will not allow Swiss to select their
12 representative.

13 "13 July 1945 (A-72)

14 Swiss to SUZUKI (not the accused) of the
15 Foreign Ministry

16 Reports of Swiss visitors will be sent in
17 the clear as required by the Japanese.

18 "31 July 1945 (A-73)

19 Swiss to SUZUKI (not the accused) of the
20 Foreign Ministry

21 Asks when visits to camps in Thailand and
22 Singapore will be permitted."
23
24
25

1 MR. WOOLWORTH: The prosecution desires to
2 introduce in evidence document No. 1432A which is a
3 letter from SHIGEMITSU to the Swiss Minister.

4 THE PRESIDENT: Admitted on the usual terms.

5 CLERK OF THE COURT: Prosecution's document
6 No. 1432A will receive exhibit No. 2017.

7 (Whereupon, the document above re-
8 ferred to was marked prosecution's exhibit
9 No. 2017 and received in evidence.)

10 MR. WOOLWORTH: (Reading)

11 "No. 249/Yyo. Ordinary

12 "24 July 1943

13 "To His Excellency, the Envoy Extraordinary
14 and Minister Plenipotentiary of Switzerland, Camille
15 Georges /phonetic/:

16 "With this letter I have the honor to
17 acknowledge receipt of your Excellency's letter
18 No. CC 1.3.6. DCu of the 5th July concerning the treat-
19 ment of prisoners of war in the Thailand Camp and
20 the matter of visiting this camp.

21 "The competent authorities to whom the con-
22 tents of said letter had been immediately communicated
23 inform me that the prisoners of the Thailand Camp
24 are equitably treated; furthermore, those who are
25 sick have received the best medical treatment in the

1 prisoner of war hospital. So far as the matter of
2 visiting the camp is concerned, authorization will
3 not be given for the moment.

4 "Please accept, Monsieur le Ministre,
5 renewed assurances of my high esteem.

6 "Minister of Foreign Affairs

7 "Hamoru SHIGEMITSU."

8 There is the usual certificate of authen-
9 ticity.

10 Prosecution desires to introduce in evidence
11 document No. 1432B which is a verbal note from the
12 Japanese Foreign Office.

13 THE PRESIDENT: Admitted on the usual terms.

14 CLERK OF THE COURT: Prosecution's document
15 No. 1432B will receive exhibit No. 2018.

16 (Whereupon, the document above re-
17 ferred to was marked prosecution's exhibit
18 No. 2018 and received in evidence.)

19 MR. WOOLWORTH: (Reading)

20 "No. 35/C.R.

21 "Verbal Note

22 "The Imperial Japanese Ministry of Foreign
23 Affairs has the honor to acknowledge the receipt of
24 a Note Verbale of the Royal Swedish Legation in
25 Tokyo dated the 28th June requesting that permission

1 be granted for Mr. Folke Enstedt, the Swedish Consul-
2 General at Bangkok, to visit the prisoners of war
3 camps in Thailand. The Ministry of Foreign Affairs
4 begs to state in reply that in the present circum-
5 stances it is not possible to grant the desired per-
6 mission."

7 Dated 7 July 1943.

8 The document bears the usual certificate of
9 authenticity.

10 The prosecution desires to introduce in
11 evidence document No. 1432C which is a note from
12 the Imperial Japanese Ministry to the Swedish Lega-
13 tion.

14 THE PRESIDENT: Admitted on the usual terms.

15 CLERK OF THE COURT: Prosecution's document
16 No. 1432C will receive exhibit No. 2019.

17 (Whereupon, the document above
18 referred to was marked prosecution's exhibit
19 No. 2019 and received in evidence.)

20 MR. WOOLWORTH: (Reading)

21 "No. 34/C.R.

22 "Verbal Note

23 "The Imperial Japanese Ministry of Foreign
24 Affairs has the honor to acknowledge the receipt of
25 a Note Verbale of the Royal Swedish Legation in

14,750

1 Tokyo dated the 25th June inquiring whether it
2 would be possible to permit Mr. E. Strandberg, a
3 former Danish Consul, to visit the Changi Civilian
4 Internment Camp in Syonan. The Ministry of Foreign
5 Affairs begs to state in reply that in the present
6 circumstances the desired permission cannot be granted.

7 "7th July 1943."

8 The document bears the usual certificate
9 of authenticity.
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1 Prosecution desires to introduce document
2 No. 1432-D. This is a letter from Kuma SUZUKI, not
3 the accused, of the Foreign Office to the Chief of
4 the POW Information Bureau.

5 THE PRESIDENT: Admitted on the usual terms.

6 CLERK OF THE COURT: Prosecution document
7 No. 1432-D will receive exhibit No. 2020.

8 (Whereupon, the document above
9 referred to was marked prosecution's ex-
10 hibit No. 2020 and received in evidence.)

11 MR. WOOLWORTH: (Reading)

12 "Resident Ordinary No. 459

13 "From: Kuma SUZUKI, Envoy Extraordinary
14 and Minister Plenipotentiary Office for the residents
15 in enemy countries, Foreign Office

16 "To: Chief of the POW Information Bureau

17 "Regarding the Proposal of the American
18 Government Pertaining to the Treatment of POW, dated
19 19 June 1943

20 "The Government of Switzerland has, by
21 request of the American Government, recently inquired
22 of us if it is all right for a representative of the
23 Swiss Minister to ask the questions enumerated in
24 the attached questionnaire when he visits the POW
25 camps or the civilian internec camps.

1 "Accordingly we are sending you the said
2 questionnaire and its translation.

3 "Please give us your instructions."

4 THE PRESIDENT: You do not propose to read
5 the questionnaire, do you? It seems to be directed
6 to the terms of the Geneva Convention or the Prisoner
7 of War Convention.

8 MR. WOOLWORTH: Prosecution desires to
9 introduce document No. 1432-E, which is the reply
10 of the POW Information Bureau to exhibit No. 2020.

11 THE PRESIDENT: Admitted on the usual terms.

12 CLERK OF THE COURT: Prosecution document
13 No. 1432-E will receive exhibit No. 2021.

14 (Whereupon, the document above
15 referred to was marked prosecution's ex-
16 hibit No. 2021 and received in evidence.)

17 MR. WOOLWORTH: (Reading)

18 "COPY

19 "88 (in red ink.) T.N. Figure 79 in red
20 ink crossed out)

21 "(T.N. Marked 'Finished,' implying 'Read'
22 in columns for the Chief, and bearing seals of
23 Secretaries / 'Jimu-Kan' / YASUDA, YAMAUCHI and
24 ITAGATA).

25 "POW Information No. 39 of IX

1 "Reply re Proposal of the American Government
2 Regarding the Questions to be Put to POW

3 "23 June 1943 /Howa 18/

4 "From: Chief of POW Information Bureau,
5 Taira HAMADA

6 "To: Envoy Extraordinary and Minister
7 Plenipotentiary, Kuma SUZUKI Office for the Residents
8 in Enemy Countries, Foreign Office

9 "I hereby beg to reply regarding the subject
10 under caption as per your letter of inquiry, Resident
11 Ordinary No. 459, dated 19 June, as follows:

12 "1. According to Article 13 of the POW
13 Treatment Regulations, it is stipulated that, when
14 having interviews with POW's, the Chief of the POW
15 Camp shall restrict the scope of the conversation.

16 "2. The aforesaid scope of conversation
17 shall differ according to the circumstances of each
18 POW Camp.

19 "3. Therefore, we are of the opinion that
20 the proposal of the Swiss Government cannot be accepted
21 in toto."

22 The document contains the usual certificate
23 of authenticity.

24 Prosecution desires to introduce in evidence
25 document No. 2765-A-1 to 22, which is a series of

1 correspondence between the Japanese Minister of
2 Foreign Affairs and the Swiss Minister.

3 THE PRESIDENT: Admitted on the usual terms.

4 CLERK OF THE COURT: Prosecution document
5 No. 2765-A, component parts consecutively numbered
6 from 1 to 22, will receive exhibit No. 2022.

7 (Whereupon, the document above
8 referred to was marked prosecution's ex-
9 hibit No. 2022 and received in evidence.)

10 MR. WOOLWORTH: (Reading)

11 "CC.1.2.8.-ca.

12 "Tokyo, 8 July 1942

13 "M. le Ministre,

14 "I have the honor to inform Your Excellency
15 that Sir Robert Craigie has sent me a photograph
16 published on 23 June in the 'Japan Times and Advertiser'
17 which shows British prisoners of war cleaning the
18 streets of Rangoon under the amused eyes of the public.
19 He has requested me to make the necessary representations
20 to the Imperial Government for he considers that work
21 of this kind ought not to be forced on prisoners of
22 war, above all in a country where the cleaning
23 of streets is coolie work. In his opinion the work
24 was humiliating for the soldiers and in all of these
25 cases the Japanese newspapers ought not to be allowed

1 to publish photographs of this kind.

2 "I have submitted the question to my Government
3 which has requested me to call in a friendly manner
4 the attention of the Imperial authorities to the fact
5 that the dignity of soldier prisoners has been need-
6 lessly hurt. Article 2, paragraph 2, of the Prisoner
7 of War Code of 27 July 1929 expressly states that prisoners
8 of war 'must be treated in all cases with humanity
9 and are to be protected specially against acts of
10 violence, insults and public curiosity.'"

11 Omitting the next paragraph and reading the
12 last:

13 "I would, nevertheless, be greatly obliged
14 if Your Excellency would bring the matter to the notice
15 of the competent military authorities, and in thanking
16 you in advance for your obliging intervention, I
17 take this occasion to renew, M. le Ministre, the
18 assurances of my highest esteem.

19 "Signed by the Swiss Minister

20 "To His Excellency, M. Shigenori TOGO,
21 Minister of Foreign Affairs, Tokyo."

22

23

"CC.1.2.8-ca.-

24

"Tokyo, 1 August 1942

25

"M. le Ministre,

1 "To follow my letter of 9 July I have the
2 honor to inform your Excellency, following the expressed
3 instructions of my Government, that the British
4 Government does not admit that prisoners of war should
5 be compelled to work belittling their dignity. It
6 has requested the Swiss Government to make every
7 representation on this subject, and attaches the
8 greatest importance to these matters as they were
9 shown in the photograph published by the 'Japan
10 Times and Advertiser.'"

11 I omit reading the rest of the letter except
12 that it was addressed to "His Excellency M. Shigenori
13 TOGO, Minister of Foreign Affairs."

14
15 "CC.1.2.8.-cc.

16 "Tokyo, 15 September 1942

17 "CC.1.3.8

18 "M.le Prime Minister

19 "I have the honor to bring to the notice of
20 Your Excellency the fact that the British Government
21 has requested that the following protest be sent to
22 the Imperial Government:

23 "'Information from most reliable sources
24 is that prisoners of war imprisoned in Rangoon goal
25 are subjected to the following treatment:

1 "(a) Rations are confined to bread, salt
2 and water twice daily with occasional issue of vegetables.

3 "(b) Prisoners of war sleep on floor on
4 sacking or boards only.

5 "(c) No cigarettes or tobacco are issued.

6 "(d) Their boots have been confiscated
7 and they are compelled to do heavy work while bare-
8 footed.

9 "In consequence of this inhumane treatment,
10 prisoners are weak, thin and dejected.

11 "British Government assumes that Japanese
12 Government is unaware of brutalities committed by
13 Military Authorities in a distant theater of operations.
14 Whatever excuse may be offered for (a), (b) and (c)
15 above there can be no excuse for confiscation of
16 prisoners' boots. British Government protests most
17 strongly against these breaches of Convention and
18 demand immediate redress."

19 I omit the last paragraph.

20 "Signed by the Swiss Minister

21 "To His Excellency, M. General Hideki TOJO,
22 Prime Minister and Minister of Foreign Affairs, Tokyo."
23

24 "CC.1.3.8.-cr

25 "Tokyo, 9 December 1942

1 "M. le Ministre,

2 "By my letter of 15th September addressed to
3 His Excellency, General TOJO, then Minister of Foreign
4 Affairs, I had the honor to advise the Imperial
5 Government that the Government of the United Kingdom
6 was disturbed on the subject of bad treatment accorded
7 the prisoners of war detained in the Rangoon prison.

8 "I take this occasion to recall this matter
9 to the kind attention of Your Excellency and would
10 be very appreciative if you would agree to take steps
11 to appease the fears of the British Government."

12 I omit the last paragraph.

13 "Signed by the Swiss Minister," addressed
14 to "M. Masayuki TAKI, Minister of Foreign Affairs,
15 Tokyo."

16
17 "The Gaimusho, Tokyo

18 "Translation

19 "No. 33/c.r.

20 "9 February 1943

21 "M. le Ministre," --

22 I omit the first paragraph and read the
23 second:

24 "I desire to inform Your Excellency that the
25 competent authorities have stated that after having

1 made full inquiry, the facts stated in the said letters
2 never occurred."

3 Signed "Minister of Foreign Affairs."
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1 "CC.1.3.8.-deu Tokyo 12 February 1943

2 "M. le Ministre,

3 "By letter of 15 September addressed to
4 TOJO, then Minister for Foreign Affairs, and by letter
5 of 9 December addressed to Your Excellency, I had the
6 honor to make known to the Imperial Government the
7 doubts which His Britannic Majesty's Government had
8 on the subject of the bad treatment of prisoners of
9 war in Rangoon.

10 "In the meantime the Government of the
11 United Kingdom has requested my Government to com-
12 municate to the Imperial Government additional in-
13 formation on the conditions prevailing at the same
14 time in the said prison. According to information
15 from the Foreign Office, superior officers, European
16 and Indian, were slapped until they lost consciousness;
17 they have also been beaten on the head by Japanese
18 soldiers. The injuries to their ears and eyes
19 suffered by the prisoners following the punching
20 have been aggravated by the lack of medical supplies.
21 All medical supplies are insufficient and the sanitary
22 conditions bad. Twenty or thirty men died. Many men
23 died from dysentery during the first months of cap-
24 tivity caused by insufficient water. In addition,
25 Europeans have been forced to carry out degrading

1 work. Severe punishments were inflicted on prison-
2 ers; it is also clear that some of them have been
3 deprived of all food for two days for having commit-
4 ted minor offenses and that Indian prisoners of war
5 have been deprived of food for having refused to
6 enroll in the Indian National Army. It seems also
7 that all prisoners are in need of proper clothing
8 and are in rags.

9 "The British Government is most concerned
10 that this state of things should exist. It insists
11 strongly once more that the representatives of the
12 protecting Powers and the delegates of the Inter-
13 national Committee of the Red Cross be enabled to
14 visit prisoners of war and civil internees at
15 Rangoon, also those in other camps in Burma, Malaya
16 and the Netherlands Indies.

17 "It expresses the hope that the Imperial
18 Government will not refuse to accede to this request;
19 if it should do so it will be obliged to conclude
20 that not only the reports which have been received
21 are correct, but also that at present the conditions
22 are such that the Japanese authorities do not desire
23 to admit neutral delegates to the above mentioned places.

24 "My above mentioned letters have not been
25 replied to and I recall this matter to the attention

1 take all necessary measures to send essential
2 medical supplies as soon as possible to the camps in
3 Thailand and Burma."

4 Addressed "To the Imperial Ministry of
5 Foreign Affairs, Tokyo. Tokyo, 28 February 1944."

6
7 "CC.1.3.6.-EGc CC.1.3.8.-

8 "By note of 28 February the Swiss Legation
9 had the honor to inform the Imperial Ministry of
10 Foreign Affairs that the British Government was
11 apprized that prisoners of war in Thailand and Burma
12 lacked medical supplies. It asked then that the
13 Imperial authorities take necessary measures to send
14 them as soon as possible.

15 "In a new communication, the London Govern-
16 ment expressed its desire to know if the above men-
17 tioned prisoners now have at their disposition the
18 essential medical supplies."

19 I omit the last paragraph.

20 "Tokyo 25 April 1944.

21 "To the Imperial Ministry of Foreign Affairs,
22 Tokyo."

23
24 "CC.1.3.6.-EGc. CC.1.3.8.-

25 "By notes of 28 February and 25 April the

1 of Your Excellency and would be obliged if you would
2 consent to intervene with the competent authority to
3 give, as soon as possible, permission to visit to
4 my delegates or the delegates of the International
5 Committee of the Red Cross the prisons of Rangoon,
6 prisoners and internee camps in Burma and Malaya,
7 and also in the southern island."

8 Addressed "To His Excellency, M. Masayuki
9 TANI, Minister of Foreign Affairs, Tokyo. Signed by
10 the Swiss Minister."

11 I omitted the last paragraph.

12
13 "CC.1.3.6.-EGc. CC.1.3.8.-

14 "The Swiss Legation has the honor to inform
15 the Imperial Ministry of Foreign Affairs that accord-
16 ing to information recently brought to the attention
17 of the British Government, the condition of the prison-
18 ers of war in Thailand and Burma leaves much to be
19 desired.

20 "There are, in particular, many cases of
21 beriberi, and the medical supplies to treat this
22 disease are non-existent.

23 "The Government of the United Kingdom has
24 drawn the attention of the Swiss Government to these
25 matters and insists that the Imperial authorities

1 take all necessary measures to send essential
2 medical supplies as soon as possible to the camps in
3 Thailand and Burma."

4 Addressed "To the Imperial Ministry of
5 Foreign Affairs, Tokyo. Tokyo, 28 February 1944."

6
7 "CC.1.3.6.-EGc CC.1.3.8.-

8 "By note of 28 February the Swiss Legation
9 had the honor to inform the Imperial Ministry of
10 Foreign Affairs that the British Government was
11 apprized that prisoners of war in Thailand and Burma
12 lacked medical supplies. It asked then that the
13 Imperial authorities take necessary measures to send
14 them as soon as possible.

15 "In a new communication, the London Govern-
16 ment expressed its desire to know if the above men-
17 tioned prisoners now have at their disposition the
18 essential medical supplies."

19 I omit the last paragraph.

20 "Tokyo 25 April 1944.

21 "To the Imperial Ministry of Foreign Affairs,
22 Tokyo."

23
24 "CC.1.3.6.-EGc. CC.1.3.8.-

25 "By notes of 28 February and 25 April the

1 Swiss Legation had the honor to inform the Imperial
2 Ministry of Foreign Affairs that the British Govern-
3 ment had been apprized that the prisoners of war in
4 Thailand and Burma lacked medical supplies. It
5 requested then that the competent authorities take
6 the necessary measures to send them as soon as possible.

7 "Since there has been no response to this
8 date, the Legation desires to recall this matter to
9 the kind attention of the Ministry; it attaches the
10 greatest importance to knowing if the surviving
11 prisoners have now at their disposal the essential
12 medical supplies."

13 "Tokyo, 10 June 1944."

14 Addressed "To the Imperial Ministry of
15 Foreign Affairs, Tokyo."

16
17 "CC.1.3.8.-EGf.

18 "By letter of 15 September 1942 addressed
19 to TOJO, then Minister for Foreign Affairs and by
20 letter of 9 December to TANI, the Swiss Minister
21 had the honor to make known the anxiety of the British
22 Government on the subject of the bad treatment of
23 prisoners of war in Rangoon prison. The London
24 Government furnished at the same time a number of
25 particulars relative to this treatment.

1 "By letter No. 33/C. R. of 9 February 1943,
2 the Minister for Foreign Affairs replied to the
3 Swiss Minister that the facts mentioned in the above
4 mentioned letters did not happen.

5 "The Swiss Minister transmitted the contents
6 of that letter to his Government for the attention of
7 the Government of the United Kingdom.

8 "The Swiss Legation has the honor to inform
9 the Imperial Ministry for Foreign Affairs that the
10 British Government has in a recent communication
11 requested that the following matters concerning the
12 treatment of prisoners of war in Burma be brought to
13 the notice of the Imperial Government:

14 "'1. First complaint concerns area of
15 Moulmein and falls under three headings:

16 "'A. Notifications: According to postcards
17 printed by the Japanese Authorities, about 20,000
18 British and Allied prisoners of war are detained in
19 or near Moulmein. Transfer of prisoners of war to
20 this camp has never been notified; and it is believed
21 that capture of many prisoners of war now in this and
22 other Burmese camps has also never been notified.
23 Nor has any notification been received of numerous
24 deaths that are known to have occurred there.

25 "'B. Conditions: Conditions under which

1 prisoners of war in Moulmein camp are detained are
2 known to His Majesty's Government to be at least as
3 bad as, if not worse, than those which existed in
4 Thailand. During October and November 1942 prisoners
5 of war in Moulmein itself are known to have died at
6 the rate of approximately 10 per diem, the principal
7 cause of death being dysentery. In other camps ad-
8 ministered by the Japanese Authorities in or near
9 Moulmein an even more appalling rate of mortality
10 has occurred amongst prisoners of war working on
11 that Burmese railway. These deaths are the direct
12 and inevitable result of conditions in camps and in
13 particular of the wholly inadequate rations provided
14 by the Japanese Authorities, of the latter's failure
15 to provide medicines or equipment in hospitals, of
16 almost complete lack of adequate clothing or even
17 footwear and of severity of labor exacted from prisoners
18 of war.

19 "C. Exhibition of prisoners: In February
20 of 1944, 25 prisoners of war were paraded through the
21 town of Moulmein. They were in an emaciated condition
22 and were forced to carry notices in Burmese stating
23 that they had recently been captured on the Arakan
24 front (which was not the case). They were further
25 held up to ridicule and contempt by a Japanese officer

1 who accompanied the parade. Such proceedings are
2 clearly contrary to honorable standards of warfare
3 and unworthy of a nation calling itself civilized,
4 apart from being a breach of Article 2 of the
5 Prisoners of War Convention.

6 "2. Second complaint concerns conduct of
7 Japanese troops in forward areas in Burma. In the
8 course of the first two Burma campaigns these troops
9 committed a number of atrocities on prisoners of war
10 (instances can be supplied if required). The present
11 Burma campaign has been marked by the massacre and
12 ill-treatment of British and Indian prisoners of war,
13 including wounded soldiers and medical personnel,
14 captured near Ngakyedauk on February 7, 1944.

15 "The Medical personnel were tortured by
16 tight binding of their hands for long periods and
17 deprivation of food and water for two days. No
18 medical attention whatever was given to wounded
19 prisoners of war and those patients who groaned from
20 pain were shot or bayoneted. Other patients were
21 deliberately put in line of fire which resulted in
22 at least one death and many injuries. No attempt was
23 made to evacuate prisoners of war.

24 "On February 14th, Japanese forces evacuated
25 the area. Before doing so they deliberately massacred

1 the remaining prisoners (at least 20 British and
2 Indians, many of whom were wearing Red Cross arm
3 letterings) by shooting. These facts are known from
4 testimony of eye witnesses. Further instances of
5 brutality of Japanese forward troops during the
6 present campaign are:

7 "A. Execution or beheading of wounded
8 West African lance corporal at Phoongyi Ky sung at
9 the end of January 1944.

10 "B. Bayoneting of four Indian soldiers
11 who had attempted to escape from a prisoners of war
12 camp about 5 miles east of Kalawain in January 1944.

13 "C. Massacre with swords of about 50 wounded
14 Britains and Indian prisoners of war in Manipur in
15 March 1944.

16 "D. Outrage committed on March 26, 1944,
17 at Khandok when a West African prisoner of war was
18 tied to a tree, his fingernails were cut off and his
19 heart cut out by a Japanese medical officer.'

20 "His Britannic Majesty's Government considers
21 it of great importance that the Imperial authorities
22 make a complete inquiry into the above mentioned
23 facts and take all proper measures to prevent their
24 repetition."

25 I omit the last paragraph.

1 "To the Imperial Ministry of Foreign Affairs,
2 Tokyo.

3 "Tokyo, 4 July 1944."

4 "CC.1.5.1.-EG1. CC. CC.1.3.6. CC.1.3.8.

5 "MEMORANDUM

6 "During his recent visits to prisoner of
7 war camps in Japan, the Swiss delegate learned that
8 there were still several cases of beriberi among the
9 prisoners. It appears, moreover, that they are of
10 long standing.

11 "The British Government inclines to the
12 belief that beriberi is always rampant in other camps
13 in the Far East and it requests the Swiss Legation
14 to intervene to obtain an assurance that the necessary
15 steps have been taken to combat this disease.

16 "In the Legation's letters of 28 February,
17 25 April and 10 June, to the Imperial Ministry for
18 Foreign Affairs, the London Government has already
19 requested that medical supplies be sent to camps in
20 Thailand and Burma where there is beriberi."

21 Dated "Tokyo, 9 August 1944."

22 "THE GAIMUSHO, TOKYO, Translation. No. 246/C.R.

23
24
25 "NOTE VERBALE"

1 I omit the first paragraph.

2 "The Ministry desires to inform the Legation
3 of the following matters after having had a reply
4 from the Competent Authorities to whom it had made
5 inquiry on this subject:

6 "1. In protest No. 1-A, the British Govern-
7 ment alleged that the transfer to Burma of allied
8 prisoners of war had not been made known to it. But
9 in reality the majority of British and Allied prisoners
10 of war who were then in Burma had been prisoners of
11 war attached to camps in Thailand and Malaya and had
12 been provisionally transferred to Burma. The Imperial
13 Government which specially concerns itself with the
14 communication of names of prisoners of war has already
15 notified the International Committee of the Red Cross
16 of the names of more than 10,000 prisoners of war
17 attached to camps in Thailand and Malaya. The names
18 of deceased prisoners in these regions are actually
19 in the course of communication.

20
21 "2. The reply to other questions recently
22 submitted will be communicated after an examination
23 of the alleged facts.

24 "26 August 1944."

25 "THE GAIMUSHO, TOKYO, Translation. No. 295/C.R.

"MEMORANDUM"

I omit the first paragraph.

"The Imperial Government, by exercising great vigilance as to the health and hygiene of prisoners of war, takes added measures, such as monthly medical examination in each prisoner of war camp, to enable sickness to be treated in its first stage. As a preventive measure against beriberi, the competent authorities give them, as the Minister has informed the Legation by Note Verbale No. 215/C. R. dated 29 July last, replying to that of the Legation No. CC.115.1.-deu of 9 December 1943, unpolished rice in place of polished rice, also rice bran, concentrated vitamins, etc., and in consequence, they do not lack vitamins. The number of prisoners suffering from beriberi is less than 1% in Japan, and the same in Thailand, and in Burma only a rate of under 2%. And these figures are actually diminishing on account of proper treatment being given. All of which goes to show that there is no need for any anxiety on this subject.

"As far as the food in general of the prisoners is concerned, the competent authorities are giving them, in spite of different obstacles arising in the

1 supply situation, the same food in quality and
2 quantity as that of Japanese base troops. It is
3 said that it is much superior to that of the Japan-
4 ese generally.

5 "Concerning prisoners in the camps of
6 Thailand and Burma, to which the Legation made
7 reference in the last part of its said Memorandum,
8 the same measures are taken for their health, and
9 the necessary remedies are provided for them.

10 "3 October 1944."

11 THE PRESIDENT: We will adjourn until half-
12 past one.

13 (Whereupon, at 1200, a recess was
14 taken.)
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AFTERNOON SESSION

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3 The Tribunal met, pursuant to recess, at
4 1330.

5 MARSHAL OF THE COURT: The International
6 Military Tribunal for the Far East is now resumed.

7 THE PRESIDENT: Colonel Woolworth.

8 MR. WOOLWORTH: If the Tribunal please,
9 in connection with the last letter read before ad-
10 journment, I desire to invite the Court's attention
11 to exhibit Nos. 473, 475, 1989, and 1990.

12 The prosecution desires to introduce in
13 evidence document No. 2765A-14. I beg your pardon.
14 That has already been introduced.

15 "On the 26th August" -- omitting the first
16 paragraph: "On the 26th August the Ministry in-
17 formed the Legation that many prisoners of war in Burma
18 had temporarily transferred there, and that they were
19 attached to camps in Thailand and Malaya. The
20 Imperial Government, which was trying to accelerate
21 the transmission of names of prisoners of war in its
22 power, had already notified the International Committee
23 of the Red Cross of more than 10,000 names of prisoners
24 in the said camps. The Minister added that he would
25 reply to the other points set out in the British

1 communication after an examination of the alleged
2 facts.

3 "The Legation has informed its Government of
4 the preceding matters, to be forwarded to the Govern-
5 ment of the United Kingdom.

6 "It is set out in a recent communication from
7 London that the British Government considers it of
8 great importance to know, as soon as possible, the
9 result of the inquiry made by the Imperial authorities
10 on the subject of the treatment of prisoners in Burma
11 and of the tortures which they suffered. The compe-
12 tent authorities have had more than three months --
13 since the Legation's note of 4th July -- to make the
14 necessary investigations in this matter.

15 "Also, the London Government has requested
16 that the attention of the Japanese Government be drawn
17 to the case of a further atrocity in Burma. It states
18 that it has learned of the following case from an eye-
19 witness:

20 "About a year after British withdrawal
21 from Tavoy (sometime in 1943), I witnessed execution
22 of six British soldiers who I was told were officers.

23 "On the morning previous to the execution,
24 a town crier went around the town of Tavoy beating a
25 gong and inviting townspeople to be present on an open

1 field near the postoffice. Many went to witness the
2 execution. I saw the six British soldiers each tied
3 to a cross and opposite them were three Japanese sol-
4 diers and three Burmese civil policeman. When the
5 order was given, the three Japanese soldiers charged
6 at three of the British soldiers with fixed bayonets
7 and killed them. A few minutes later, the three
8 Burmese civil policemen bayoneted the remaining three
9 British soldiers. The six English soldiers were bare-
10 footed, they were Khaki shorts and vests. They were
11 not blindfolded.'

12 "The Government of the United Kingdom desires
13 to know the names of the six British soldiers and has
14 demanded that an inquiry be opened and that the cul-
15 prite be punished. It refers to the letter of the
16 Swiss Minister to SHIGEMITSU dated 21st October in
17 which it was stated that the British Government had
18 learned of the putting to death of four Indians in
19 the camp at Moteik (Burma) and raises a very strong
20 protest against the manner in which they were treated.
21 It further demands that an inquiry be made and that
22 the culprit be punished.

23 "Finally, the Government of the United
24 Kingdom has requested that the Imperial Government
25 be notified that it has received reports that

1 conditions in Rangoon Central Gaol are extremely
2 had. This prison is used as a camp and in it are
3 about 700 British, Americans and Indians. These
4 prisoners are ill-treated and measures must be taken
5 immediately for proper medical supplies to be sent
6 to them."

7 I will omit the last paragraph.

8 Dated "Tokyo, 18 November 1944.

9 "To the Imperial Ministry of Foreign Affairs,
10 Tokyo."

11 "Tokyo, 4 December 1944.

12 "CC. 1. 7. 63. - FGC.

13 "CC. 1. 3. 6. -

14 "CC. 1. 3. 8. -

15 "H. le Ministre,

16 "I have the honor to inform Your Excellency
17 that the British and Australian Governments have
18 requested my Government to send the following commu-
19 nication to the Japanese Government:

20 "Some 100 Australian and United Kingdom
21 survivors from the Japanese transport S. S. "Rakuyo
22 Maru" torpedoed in South China Sea on September 12th
23 have reached Australia and Great Britain. Following
24 is a brief summary of the knowledge which has con-
25 sequently come into the possession of His Majesty's

1 Government in the United Kingdom and Australia re-
2 garding treatment of British and Australian prisoners
3 of war by Japanese military authorities; all available
4 prisoners of war in Singapore and Java were moved
5 early in 1942 to Burma or Thailand. Australians were
6 sent by sea to Burma crowded into ships' holds which
7 had been horizontally sub-divided so that ceilings
8 were no more than 4 feet high. Prisoners from the
9 United Kingdom were sent by rail to Thailand so
10 crowded into steel cattle trucks that they could not
11 even lie down during the journey. They were then
12 marched some 80 miles. All were sent to work on the
13 construction of a railway through primitive disease-
14 infected jungle in Thailand and Burma. Conditions
15 under which all these men lived and worked were in-
16 human; such accommodation as was provided gave little
17 or no protection against tropical rains or blazing
18 sun. Worn out clothing was not replaced and soon
19 many lacked clothing, boots and head covering. The
20 only food provided was a pannikin of rice and a small
21 quantity of watery stew three times a day, but work
22 had to go on without respite whatever cost in human
23 suffering or life. The inevitable result was a
24 dreadful death rate, the lowest estimate being 20 per
25 cent. These conditions continued until the railway

1 was finished about October 1943 when those not needed
2 for maintenance work were moved to camps in Thailand
3 and later to Singapore en route to Japan.

4 "The rescued men were on a ship which left
5 Singapore early in September 1944. There were probably
6 1300 United Kingdom and Australian prisoners of war on
7 board. After she was sunk, the Japanese deliberately
8 picked up all Japanese survivors but left the prisoners
9 to their fate. Statements of our men constitute direct
10 and unimpeachable evidence of the outrageous treatment
11 by the Japanese of defenseless prisoners of war."

12 "The Governments of the United Kingdom and
13 Australia make a strong protest against the inhuman
14 treatment inflicted on those prisoners.

15 "I add that I have informed his excellency
16 M. le Ministre SUZUKI in a personal letter of 18th
17 November that the survivors of the 'Rakuyo Maru'
18 have, according to British information arrived in
19 England and Australia and that a public statement
20 will be made in these two countries, following the
21 statement of the above mentioned on the ill-treatment
22 inflicted upon prisoners of war in Thailand and Burma.

23 "Please accept, M. le Ministre, the assurances
24 of my highest esteem.

25 "Signed by the Swiss Minister.

1 "To His Excellency, H. Mamoru SHIGEMITSU,
2 Minister of Foreign Affairs, Tokyo."

3 The SUZUKI mentioned in the last document
4 is not the accused in this case.

5 "CC. 1. 3. 8. -FGc.

6 "The Swiss Legation has the honor to inform
7 the Imperial Ministry for Foreign Affairs that accord-
8 ing to a communication from the British Government
9 there has been found in Burma a mimeographed booklet
10 entitled: 'Notes for the interrogation of prisoners
11 of war,' and marked 'Very secret.' It was put out
12 on 6th August 1943 by the 'HAYASHI Division Staff'
13 and bore the signature of FUJIMURA. This booklet
14 was to be used as a guide to interrogate British,
15 American and Dutch prisoners and contains the following
16 passages:

17 "I. Care must be exercised when making use
18 of rebukes, invectives or torture (gomon) as it will
19 result in his telling falsehoods and making a fool
20 of you.

21 "II. The following are the methods normally
22 to be adopted:

23 "a. Torture (gomon) which includes kick-
24 ing, beating and anything connected with physical
25 suffering. This method to be used only when everything

1 else fails as it is the most clumsy one. (Note: In
2 the text, the passage is specially marked.) Change
3 the interrogating officer when using violent torture,
4 and good results can be had if the new officer ques-
5 tions in a sympathetic manner.

6 "b. Threats:

7 "1. Hints of future physical discomforts,
8 for instance: torture, murder, starving, solitary
9 confinement, deprivation of sleep.

10 "2. Hints on future mental discomforts,
11 for instance: he will not be allowed to send letters,
12 to inform his home he is a war prisoner, he will not
13 be given the same treatment as the other prisoners of
14 war, he will be kept till the last in the event of an
15 exchange of prisoners, etc.'

16 "The Government of the United Kingdom has
17 requested that the attention of the Japanese Govern-
18 ment be drawn to the foregoing. It recalls that the
19 Japanese Government has recently strongly denied
20 that Imperial authorities make use of torture (see
21 letter No. 135/C.R., from SHIGEMITSU to the Swiss
22 Minister of 1st July last.

23 "The London Government presumes that the
24 above mentioned instructions have been given unknown
25 to the Imperial Government and it requires not only

1 that the Japanese Government revoke these instruc-
2 tions, but that it will punish the persons who save
3 them.

4 "In asking the Ministry to make known as
5 soon as possible the response of the Imperial Govern-
6 ment to the present communication, the Legation takes
7 this occasion to renew its assurances of high esteem.

8 "Tokyo, 5 December 1944.

9 "To the Imperial Ministry of Foreign Affairs,
10 Tokyo."

11 "CC.1.3.8.-FGd

12 "CC.1.7.57.

13 "CC.1.7.60.

14 "By notes of 4th July and 18th November,
15 the Swiss Legation had the honor to inform the
16 Imperial Ministry of Foreign Affairs that the Govern-
17 ment of His Britannic Majesty had complained of the
18 ill-treatment to which the prisoners of war in Burma
19 had been subjected. It cited many cases of torture
20 which had been inflicted upon these prisoners. Also
21 it advised that the conditions in the 'Rangoon Central
22 Jail,' where 700 prisoners of war were confined, were
23 very bad, and that medical attention ought to be
24 dispensed quickly to those above named prisoners.

25 "The Ministry will remember that on 26th

1 August it had particularly notified the Legation that
2 it would respond, after examination of the alleged
3 facts, to the points listed in the British communication
4 transmitted by the above mentioned note of 4th July.

5 "No response having been received to this
6 date, the Legation desires to recall this matter to
7 the kind attention of the Imperial Ministry. The
8 Government of the United Kingdom was in effect very
9 desirous to know as soon as possible the results of
10 the inquiries undertaken by the Imperial authorities
11 on the subject of the matters referred to in the above
12 mentioned notes."

13 Omitting the last paragraph.

14 Dated, "Tokyo, 23 January 1945.

15 "To the Imperial Ministry of Foreign
16 Affairs, Tokyo."
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1 "CC..1.3.8. - FGc.

2 CC. 1.7.57 --

3 CC. 1.7.60 --

4 "By notes of 4th July, 18th November and
5 23rd January, the Swiss Legation had the honor to
6 inform the Imperial Ministry of Foreign Affairs that
7 the Government of His Britannic Majesty had complained
8 of the ill-treatment to which the prisoners of war in
9 Burma had been subjected. It cited many cases of
10 torture which had been inflicted upon these prison-
11 ers. Also it advised that the conditions in the
12 'Rangoon Central Jail' where 700 prisoners of war were
13 confined, were very bad, and that medical attention
14 ought to be dispensed quickly to those above named
15 prisoners.

16 "The Ministry will remember that on 26th
17 August it had particularly notified the Legation that
18 it would respond, after examination of the alleged
19 facts, to the points listed in the British communica-
20 tion transmitted by the above mentioned note of 4th
21 July.

22 "No response having been received to this
23 date, the Legation desires to recall this matter to
24 the kind attention of the Imperial Ministry. The
25 Government of the United Kingdom was in effect very

1 desirous to know as soon as possible the results of
2 the inquiries undertaken by the Imperial authorities
3 on the subject of the matters referred to in the
4 above mentioned notes."

5 Dated "Tokyo, 19 March, 1945.

6 "To the Imperial Ministry of Foreign Affairs, Tokyo."

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8 "CC. 1.7.63. - FGd.

9 CC. 1.3.6./3.8.

10 By letter of 4 December the Swiss Minister
11 had the honor to bring to the attention of His
12 Excellency M. Mamoru SHIGEMITSU a protest of the
13 British and Australian Governments against the ill-
14 treatment inflicted on prisoners of war in Thailand
15 and Burma, as well as against the conditions under
16 which a certain number of prisoners had been trans-
17 ported from Singapore on the 'Rakuyo Maru.' The
18 Swiss Legation would be very much obliged to the
19 Imperial Ministry of Foreign Affairs if it would
20 communicate the reply of the Japanese Government to
21 this protest, and it takes this occasion to renew
22 to the Ministry the assurances of its high esteem.

23 "Tokyo, 23 April 1945.

24 "To the Imperial Ministry of Foreign Affairs, Tokyo."

25 The last paragraph omitted.

1 "THE GAIMUSHO
TOKYO

2 "Translation
3 No. 116/C.R.

4 "N O T E V E R B A L E

5 "Referring to Notes. Nos. CC.1.3.8. - EGf.
6 and CC.1.3.8. - EGc./CC.1.7.57/CC.1.7.60., of the
7 Swiss Legation under dates of 4th July and 18th
8 November, 1944, and following the Note. No. 246/C. R.
9 of 26th August, 1944, the Imperial Ministry of
10 Foreign Affairs has the honor to inform the Legation
11 as follows, based on the report of competent authori-
12 ties:

13 "1. As regards notification of transfer of prison-
14 ers of war (paragraph 1-A of the British Government's
15 protest transmitted by note No. CC.1.3.8. EGf of 4th
16 July 1944), it was replied to by letter No. 246/G. R.
17 of 26th August, 1944.

18 "2. As regards the treatment of prisoners of war
19 (paragraph 1-B of the British protest), the authori-
20 ties concerned regret that the situation of prisoners
21 of war in Moulmein camps and in the outskirts of that
22 city are such that the concentrated efforts of all the
23 sanitary services of the Japanese troops cannot pre-
24 vent the spread of diseases of the digestive system,
25

1 etc., cases of which have increased, caused not only
2 by the very bad conditions due to the climate, but
3 also by the frequent interruption, in the rainy season
4 of 1943, of communications with these localities. The
5 prisoners are not the only ones who suffer from this
6 difficult situation; the Japanese troops stationed in
7 the same region were themselves obliged to face the
8 same situation. But by the extraordinary efforts of
9 the troops in those places, in the autumn of the same
10 year, necessary sanitary installations were completed,
11 and in consequence the number of sick and deaths was
12 considerably lessened.

13 "3. The inquiry made into the subject of the
14 exhibition of prisoners of war (paragraph 1-C of the
15 British protest) discloses that no such thing ever
16 occurred.

17 "4. The full inquiry made by competent authori-
18 ties has shown that it is impossible to accept the
19 allegation of the British Government that atrocities
20 were committed by Japanese troops in Burma (paragraph
21 2 of the British protest and the last part of the
22 letter of 18th November, 1944.)

23 "The competent authorities, who are just as
24 concerned about the treatment of prisoners of war now
25 as they have been in the past, continue to guide the

1 Japanese troops accordingly at these places.

2 "15 May 1945"

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4 "CC 1.7.63. - EGc.

5 (CC. 1.3.6./1.3.8.)

6 "By letter of 4th December the Swiss
7 Minister had the honor to bring to the attention
8 of His Excellency M. Mamoru SHIGEMITSU, a protest
9 from the British and Australian Governments against
10 the ill-treatment inflicted on prisoners of war in
11 Thailand and Burma, as well as against the condi-
12 tions under which a certain number of prisoners had
13 been transported from Singapore aboard the 'Rakuyo'
14 Maru.'

15 "By note of 23rd April the Swiss Legation
16 expressed to the Imperial Ministry of Foreign Af-
17 fairs its desire to be acquainted with the point of
18 view of the Japanese Government on this protest.

19 "Without response to this date, the Legation
20 desires to recall this matter to the kind attention
21 of the Ministry.
22

23 "It takes this occasion to renew the
24 assurances of its high esteem.

25 "Karuizawa, 2 July 1945

"To the Imperial Ministry of Foreign Affairs, Tokyo."

1 "CC. 1.3.8. - Ffg.

2 "The Swiss Legation has the honor to inform
3 the Imperial Ministry of Foreign Affairs that His
4 Britannic Majesty's Government has requested the
5 Federal authorities to address in its name the follow-
6 ing note to the Imperial Government:

7 "1. The following signed statement has been made
8 by a British soldier captured by Japanese Forces near
9 Undaw on the 24th January 1945. This soldier had
10 been wounded during the night by a bullet which had
11 entered the left side of his back and emerged through
12 his right buttock.

13 "At daybreak the Japanese appeared (about
14 15 of them) and the first one took off my cap com-
15 forter and hit me across the head with the flat of his
16 bayonet. Another Japanese took my wrist watch and
17 others went through my pockets taking a purse,
18 cigarette case, fountain pen, pencils and my parti
19 and 11 army pay book, also my identity disk. Two
20 Japanese then took hold of me to try and stand on
21 my feet, but I collapsed to the ground. They then
22 took hold of my wrists and dragged me approximately
23 200 yards to a temple in Undaw where a Burmese was
24 tied up, and taking me inside, they wired my ankles
25 and attached the wire to a bolt on a door, leaving

1 me hanging with my shoulders resting on the ground.
2 One Japanese officer and two other ranks then pro-
3 ceeded to question me reference tanks, artillery,
4 planes and the disposition of our battalion. (I
5 asked to see the medical officer about my wounds. He
6 was brought in. My shirt and trousers were cut with
7 scissors. He looked at the wound but no dressings were
8 applied.) I replied that I did not know anything and
9 only told them my name, number and rank. They then
10 left me, but were in and out asking the same ques-
11 tions. I asked for water but was refused. They
12 then brought in Fusilier Dodd who was in my section
13 into the temple. His hands were tied behind his back.
14 He did not appear to be wounded. He remarked to me,
15 'I don't half feel dry.' As soon as he spoke they
16 took him away and the last I saw him he was being
17 taken round a small hill. They appeared again and
18 asked me some questions as before, throwing my Ab 64
19 down by the side of me. Next thing recollected was
20 them cutting me down and placing me on an improvised
21 stretcher. A bottle of water was placed outside my
22 reach and on trying to get hold of it I knocked it
23 over; I just managed to get a mouthful. During the
24 night our artillery started a bombardment and an
25 officer took my rifle and rounds and went out. That

1 is the last I saw of the Japanese. The following morn-
2 ing I saw two men passing the door and on calling out
3 to them found they were Royal Scots. They gave me
4 some water and sent for a stretcher. I was taken
5 back to the field ambulance.

6 (Signed) "J. E. Thomas Fus!"

7 "2. The British officers who were present when
8 Fusilier Thomas (and the body of the Burmese civilian)
9 were recovered state that outside the temple they
10 discovered the body of another prisoner who had been
11 buried with only his head out of the ground.

12 "The Government of His Britannic Majesty
13 demands that the Imperial Government take the neces-
14 sary measures to prevent a recurrence of like things
15 and desires also to be informed of the punishment in-
16 flicted on the official and the Japanese soldiers re-
17 sponsible for the ill-treatment inflicted on these
18 British prisoners of war.

19 "In asking the Ministry to kindly communicate
20 the response of the Imperial Government to the present
21 notification, the Legation takes this opportunity to
22 renew the assurances of its high esteem.

23 "Karuzawa, 5 July 1944.

24 "To the Imperial Ministry of Foreign Affairs, Tokyo."
25

1 The prosecution desires to introduce in
2 evidence document 2767A 1-8.

3 THE PRESIDENT: Admitted on the usual
4 terms.

5 CLERK OF THE COURT: Prosecution document
6 No. 2767A, consisting of documents thereof 1 to 8,
7 inclusive, will be given exhibit No. 2023.

8 (Whereupon, the document above re-
9 ferred to was marked prosecution's exhibit
10 No. 2023 and received in evidence.)

11 MR. WOOLWORTH: And synopsis of same
12 document, document No. 2767B.

13 THE PRESIDENT: Admitted on the usual terms.

14 CLERK OF THE COURT: Prosecution document
15 No. 2767B, being a synopsis of the aforesaid docu-
16 ment, will be given No. 2023A.

17 (Whereupon, the document above re-
18 ferred to was marked prosecution's exhibit
19 No. 2023A and received in evidence.)
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MR. WOOLWORTH: (Reading)

"5 July 1943 (A-1) Swiss Minister to Foreign Minister (Shigemitsu). Forwards protest from the British Government that reports indicate that British prisoners of war in Thailand are being ill-treated through lack of food, clothing, and medicines and condition aggravated by heavy work on railroads and road building. Requested authority to be given Swiss Consul at Bangkok to visit camps and report upon conditions.

"24 July 1943 (A-2) Minister of Foreign Affairs (Shigemitsu) to Swiss Minister. Answering letter of 5 July 1943 states that prisoners of war in Thailand are equitably treated; all sick have received proper medical treatment at prisoners of war hospital. Denies permission to visit the camps.

"30 Aug 1943 (A-3) Minister of Switzerland to Foreign Minister (Shigemitsu). Forwards further protest from United Kingdom re treatment of British prisoners of war in Thailand; states that they have been living in the jungle under extreme hardship, insufficient food, numerous diseases such

1 as beriberi, dysentery, diarrhea, malaria
2 and cholera; with deaths in excess of 3000;
3 with no proper medicines. Swiss Minister
4 requests Foreign Minister to help ameliorate
5 the conditions.

6 "29 Sept 1943 (A-4) Swiss Minister to Imperial
7 Ministry of Foreign Affairs (Shigemitsu).
8 Forwards protest by British against prison-
9 ers of war being employed in Thailand in
10 violation of Article 27 of Geneva Conven-
11 tion and again demanded authority to visit
12 prisoners of war camp in Thailand be granted
13 Swiss Consul at Bangkok.

14 "1 Oct 1943 (A-5) Minister of Foreign Affairs
15 (Shigemitsu) to Swiss Minister. States
16 that British prisoners of war received same
17 treatment as Japanese soldiers in Thailand;
18 further states that Japanese government
19 believes that British attitude is based on
20 information from unreliable sources. Per-
21 mission to visit prisoner of war camps for
22 military reasons can not yet be given.

23 "20 Oct 1943 (A-6) Imperial Ministry (Shigemitsu)
24 to Swiss Legation. Answering protest for-
25 warded Sept 29 states that there is no such

fact as referred to in the protest.

1
2 "6 April 1944 (A-7) Swiss Legation to Foreign
3 Ministry (Shigemitsu). States that Jap-
4 anese Ambassador at Bangkok informed Swiss
5 Consul at Bangkok that:

6 1. Commandant of prisoner of war camps in
7 Thailand does not recognize the Swiss Con-
8 sulate's mandate to protect American and
9 British interests in Thailand. In conse-
10 quence, the Swiss Consul is not allowed to
11 make gifts of necessaries and money to
12 prisoners of war.

13 2. The receipts for goods and funds are
14 only signed by the Japanese authorities.
15 As to (1) the Swiss Legation stated it could
16 not see why it should not act as protecting
17 power in Thailand and occupied countries.
18 As to (2) observes that the Japanese au-
19 thorities in preventing the signing of re-
20 cepts by prisoners of war for goods sent
21 them, as such attitude is in violation of
22 the Geneva Convention. The Swiss Legation
23 reserves the right to make a formal protest
24 against the incomprehensible attitude of
25 the commandant of the prisoners of war camps

1 in Thailand.'

2 "20 July 1944 (A-8) Japanese Minister (Shigemitsu)
3 answering memorandum 6 April 1944. States
4 as to the first subject of said memorandum
5 that it would be a mistake to assume that
6 the right of Swiss to visit prisoners of war
7 camps was established by the recognition of
8 the Thailand government of the Swiss as pro-
9 tecting power. As to the second point that
10 'it is always possible, as a gesture of
11 good will to have the receipts signed by the
12 prisoners' representatives.'"

13 Prosecution desires to introduce document
14 No. 2751-A-1 to -6.

15 THE PRESIDENT: Admitted on the usual
16 terms.

17 CLERK OF THE COURT: Prosecution's document
18 No. 2751-A, with the inclusive documents 1 to 6,
19 shall be given exhibit No. 2024.

20 (Whereupon, the document above
21 referred to was marked prosecution's ex-
22 hibit No. 2024 and received in evidence.)

23 MR. WOOLWORTH: A-1 of exhibit No. 2024 was
24 presented by Mr. Lopez, in another phase, and is
25 known as exhibit No. 1477.

1 If the Tribunal please, I desire to dispense
2 with the reading of that document.

3 A-2 of exhibit No. 2024 was presented by
4 Mr. Lopez, and is known as exhibit No. 1479. The
5 reading of that document will be dispensed with, if
6 you will have no objection.

7 A-3 of exhibit No. 2024 is as follows:

8 "THE GAINUSHO

9 "TOKYO

10 "Translation

11 "No. OR/C.R. 24 April 1944

12 "M. le Ministre,

13 "To follow my letter of 26 May 1943 reply-
14 ing to Your Excellency's letter of 23 December 1942,
15 relative to a protest of the Government of the United
16 States of America on the subject of the treatment of
17 American citizens in the power of Japan, I have the
18 honor to communicate in the annexed statement the
19 result of the inquiries which have been carefully as
20 well as minutely made on each of the cases enumerated
21 in the said protest.

22 "I will be obliged if Your Excellency will
23 transmit this reply to the Government of the United
24 States of America.

25 "Please accept, M. le Ministre, the renewed

1 assurances of my high esteem.

2 "(U.S.) Minister of Foreign Affairs"

3 * * *

4 "Reply on the Individual Cases Cited in the
5 Protest of the American Government.

6 "As was stated in the Japanese Government's
7 reply dated on the 26 May, 1943 addressed to the Swiss
8 Minister in Tokyo, the individual cases cited in the
9 protest of the U.S. Government as examples of the
10 treatment accorded American civilians in detention,
11 all relate, with one or two exceptions, to persons
12 charged with criminal offences, including those who
13 after having been duly tried and convicted, are now
14 actually serving their prison terms.

15 "It is unnecessary to explain the improp-
16 priety of expecting the application of the stipulations
17 of the Convention of 1929 relative to the treatment
18 of prisoners of war to those criminally accused per-
19 sons who under the laws of Japan are treated alike
20 regardless of whether they are Japanese subjects or
21 foreigners. Nevertheless, the Japanese authorities
22 concerned have accorded to the American accused,
23 nationals of an enemy country, a treatment as gener-
24 ous as permitted by law, by taking into consideration
25 the mode of their daily life, and their respective

1 social positions and ages, for which they have often
2 expressed their gratitude, as is described hereunder.

3 "That the American Government's protest
4 has been made by distorting and exaggerating the
5 facts which are contradictory for instance, by com-
6 plaining at one place of the placing of Americans
7 in common jail and remonstrating, at another, against
8 their solitary confinement.

9 "In the following pages are given the
10 description of the actual conditions as regards the
11 individual cases, excepting those to which answers
12 have already been given.

13 "A. CIVILIANS

14 "(a) Conditions in Prisons and Internment Camps.

15 "I. The Bridge House, Shanghai.

16 "All the cases in Shanghai cited by the
17 American Government are concerned with the violators
18 of military regulations. Such criminals in detention
19 are subject to restrictions as provided for by law,
20 which are applied to all without discrimination
21 between Japanese subjects and foreigners. Needless
22 to say, they are not to be considered as being on the
23 same footing with those civilians interned under
24 civil procedure.
25

"The Military Police Detention House in

1 Shanghai is used for prisoners of all nationalities,
2 Japanese nationals, nationals of enemy countries
3 and those of third countries.

4 "As regards health, all the inmates, being
5 allowed to take proper exercise, and given proper
6 medical attention by army doctors, there is nothing
7 to be considered unsatisfactory. Food is rationed
8 alike to all, no distinction being made. However,
9 in consideration of their mode of living, Europeans
10 and Americans are permitted to eat such articles of
11 food as they may receive from outside or they may
12 choose to purchase at their own expense. As to
13 wearing apparel they are allowed to use those of their
14 own, besides those supplied by the institution,
15 including blankets.

16 "As it indicated above, the American inmates
17 of the House, were accorded an unusually good treat-
18 ment through the special considerations by the
19 authorities. There existed no impropriety nor
20 negligence in the manner or method of their detention.
21 Nor did there occur any case of diseases due to deten-
22 tion, such as are mentioned in the American note.

23 "II. Army Prison, Peking.

24 "The six persons, Floyd F. Spielman, R.E.
25 McCann, C.J. Eskeline, J.B. Sherwood, E.Y. Mills

1 and P.H. Benedict, mentioned in the American note,
2 were arrested under the warrant issued on March 7,
3 1942, by the Procurator of the Military Court of the
4 Japanese Army in North China on account of their
5 violation of military regulations.

6 "They were taken into the North China Army
7 Prison in Peking on March 11, at 6:30 o'clock p.m.
8 On the following day at 4:30 o'clock p.m. they were
9 ordered to detention in accordance with the warrant
10 issued on the same day by the Military Procurator.

11 "The agreement for the exchange of diplo-
12 matic officials and residents between Japan and the
13 United States was concluded while their cases were
14 being investigated. Accordingly, the proceedings
15 were dropped, and by order of the Military Procurator
16 they were released on June 8, 1942, at 8 o'clock a.m.
17 "(1) Conditions of health during detention.

18 "Eskeline was ordered to rest for twenty-
19 three days because of an internal malady and a
20 sprain of the left leg, and Benedict for three days
21 because of inflammation of the bladder, but both
22 recovered, owing to a timely treatment. McCann was
23 examined by an army doctor, and was allowed to wear
24 glasses. The remaining three men maintained good
25 health throughout the period of their detention.

1 "(2) Food.

2 "All those in detention -- Japanese and
3 foreigners -- are alike given the soldier's rations.
4 But in view of their mode of daily life and their
5 ages, and as a special caution against any adverse
6 effect a sudden change of diet might have upon their
7 health, mental as well as physical, these men were
8 served Western meals with bread for breakfast and
9 dinner, and the soldier's food only for lunch, dur-
10 ing the first month. It was then discovered that
11 they became gradually accustomed to, and began to
12 prefer the soldier's food. In fact, one of the six
13 men, Sherwood, indicated his preference for the
14 soldier's food from the outset, while after the lapse
15 of about two months all the men were asking for it.

16 "The daily ration per capita consisted of
17 for main food 600 grammes of cleaned rice, and 187
18 grammes of cleaned barley or 900 grammes of wheat
19 (bread); and for subsidiary food 21 grammes of beef,
20 or 42 grammes of fish, with 480 grammes of vegetables,
21 having in all 3,500 calories of nutritive value. All
22 meals were served warm.

23 "(3) Bathing.

24 "A hot bath was regularly provided for all
25 twice a week, on Sundays and Wednesdays, while a

1 shower bath was substituted on occasion during the
2 summer months. Eskeline on account of his malady
3 was ordered to refrain from bathing for twenty-
4 three days, from the day of his incarceration until
5 April 2. To the rest of the men bathing was neither
6 prohibited nor suspended at any time throughout the
7 entire period.

8 "(4) Physical Exercise.

9 "The men were ordered to take outdoor exer-
10 cises for half an hour to one hour, and to do free
11 exercises indoors in bad weather. Save that for some
12 twenty days Eskeline was ordered to stop exercising
13 upon the doctor's advice, the others were never pro-
14 hibited for any reason from taking physical exercise
15 for any extended period as is alleged in the American
16 note.

17 "(5) Detention Cells.

18 "Each detention cell has a floor space
19 15.75 square metres, being 3.34 metres high. It is
20 provided with one window and equipped with ventila-
21 tion, electric lights, and toilet facilities. The
22 walls being plastered, and the floor and ceiling
23 covered with wooden boards, the cell is of per-
24 manent construction. All cells are always kept
25 clean. While two to five persons are usually put

1 in one cell, the Americans in question were allotted
2 one cell for two persons, so that they might have
3 more room. Moreover, their cells were selected from
4 among the best situated and most quiet in the entire
5 prison.

6 "(6) Clothing and Beddings.

7 "The six men were all too big and tall for
8 the regular prison clothes. Accordingly, for the
9 sake of their comfort, they were allowed to use
10 their own clothes which they were wearing, or had
11 brought with them, or those which were presented to
12 them by friends.

13 "As to beddings, the articles in general
14 use were supplied. Although the rule proscribes
15 one cotton quilt, one woolen blanket and one pillow
16 for each person and two mats for three persons, the
17 Americans were provided each with 2 quilts, 2
18 blankets, a pillow and a mat. And all these articles
19 were regularly laundered and always kept clean.
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1 "It may be added that because at the time
2 they were brought to the orison, the weather was still
3 cold, they were permitted to wear their overcoats
4 they had with them.

5 "(7.) Gains and losses in weight.

6 "The six men were weighed when they were
7 taken into the prison, and when they were released.
8 The figures for their respective weights in grammes
9 are as follows:

10	Names	When taken in	When released	
11	Spielman	71.900	71.800	-100
12	McCann	83.100	83.000	-100
13	Eskeline	78.800	78.500	-300
14	Sherwood	83.500	82.300	-1.200
15	Mills	62.800	62.850	+ 50
16	Benedict	70.000	70.100	+100

17 "The American note alleges that these men
18 lost an average of about 18 kilogrammes in weight,
19 but their actual loss, as shown above, amounts to no
20 more than to 258 grammes. It should be noted, more-
21 over, that the men were incarcerated in March, while
22 they were released in summer when all persons
23 generally lose in weight, in view of which an average
24 loss of 258 grammes is of no significance.

25 "(8.) Special considerations.

1 "The Army prison had no one who could speak
2 English fluently, and the Americans did not know the
3 Japanese language. Accordingly, a Japanese, who had
4 long resided in America, was employed on April, 1942,
5 and was assigned exclusively to the duty as inter-
6 preter for the Americans. They all greatly appreciated
7 the devoted service of this man and thanked the prison
8 authorities for the special considerations in this
9 regard. Especially at the time of their departure
10 from Peking for Tientsin the said interpreter proved
11 so helpful in every respect that the Americans were
12 profuse in expressing their gratitude. The alleged
13 maltreatment of these prisoners, mentioned in the
14 American note is utterly groundless.

15 "III. Tsingtao.

16 "The seven persons mentioned in the American
17 note, namely, Frank G. Keefe, Cady Cooper, Frank
18 B. Halling, Charles Liebgold, C. J. Meyer, N. H. Mills,
19 and H. J. Zimmerman -- were all suspected of espionage
20 and taken to the Military Police headquarters on
21 December 8, 1941 and placed in detention in the Assem-
22 bly Hall of the Tsingtao Municipal Police Bureau for
23 the purpose of examination until the 27th of the same
24 month, on which date Meyer and Mills were released
25 while the others were transferred on the following day

1 to the residence of the Manager of the E Wo Company.
2 Here the five men were held while on the basis of the
3 preliminary investigations the authorities were pro-
4 ceeding with the examination of the evidences on hand.
5 In the meantime with the operation of the Exchange
6 Agreement they were set free. The conditions under
7 which they lived during the period of their detention
8 are as follows: The conditions of the detention quar-
9 ters.

10 "The Assembly Hall of the Tsingtao Municipal
11 Police Bureau in which the Americans were first
12 detained, is a large room, about 250 square meters in
13 size, which is used as a classroom and for holding
14 ceremonial functions. Here two large stoves were
15 installed, and the temperature of the hall was main-
16 tained at 15 - 20 degrees, Centigrade. The detainees
17 were provided with improvised beds, while they were
18 allowed to use, as they wished, their own clothing and
19 beddings. As to food, they were allowed, according
20 to their wish, to have it sent from their respective
21 homes, and no restriction of any kind was imposed.
22 Daily outdoor exercises for an hour were also permitted,
23 and everything was done to look after their health.

24 "The Manager's residence of the E Wo Company
25 to which the five men were transferred is one of the

1 best houses to be found in the City of Tsingtao with
2 complete equipments and facilities. They were allowed
3 to use their own beds, beddings, clothes, and to have
4 their meals sent from their homes, and to use freely
5 the piano and the ping-pong on the premises. Besides,
6 they were permitted to meet friends and the members
7 of their families in the presence of an official.

8 "All in all, these Americans were accorded as
9 generous a treatment as possible. All allegations made
10 in the American note, such as that 'they were confined
11 in an unheated common jail for a period of three
12 weeks' have no foundation on facts.

13 "IV. Fort Santiago, Manila.

14 "Of the two men, Roy Bennett and Robert
15 Abbott, who are mentioned in the American note as
16 having been imprisoned in Fort Santiago, Manila,
17 Roy Bennett was placed in the Internment Camp at
18 Santo Thomas on April 20, 1943, where he has been
19 since and is well. As for Robert Abbott, although
20 he had participated in the battles of Bataan and was
21 later captured, he concealed the fact on being
22 admitted in the Philippine National Hospital toward
23 the end of May, 1942; and by pretending to be an
24 engineer so as to evade the treatment as a prisoner
25 of war he entered the Santo Thomas Internment Camp

1 following his discharge from hospital on November 23
2 of the same year and continued to remain there until
3 January 12, 1943. On the discovery of his fraudulent
4 act, he was sentenced to minor imprisonment for
5 three months, and upon the expiration of the term he was
6 put in the Prisoners of War Camp, where he has since
7 been and is well. In the light of these facts the
8 protest of the American Government is irrelevant, and
9 its insistence upon Abbott's release from prison is
10 wide of mark.

11 "V. Camp Stanley, Hong Kong.

12 "All the nationals of the enemy countries
13 interned at Fort Stanley are being well treated, for
14 which they are grateful. There has never existed,
15 nor exist, such a situation as is described in the
16 American note. The internees are all doing well, being
17 given special permission to use their own things and
18 to purchase whatever articles of food they prefer.

19 "VI. Santo Thomas, Manila.

20 "The Japanese army entered the city of Manila
21 on January 2, 1942, and opened the Internment Camp at
22 Santo Thomas on the 4th of the same month, and let
23 the internees to take charge of management of the camp.
24 The internees were notified in advance to bring with
25 them their personal effects and daily necessities, so

1 as to render their life in the camp as comfortable
2 as possible. In spite of this advance notice given,
3 there were some who failed to bring mosquito nets,
4 clothes, and beddings. In the face of the disruption
5 of communication immediately following the Japanese
6 occupation of the city and the immense number of the
7 internees to be dealt with, which reached 3,000 at the
8 end of January, the military authorities speedily
9 granted them permission and facilities to send for
10 their personal belongings. That the Japanese army,
11 while pursuing the retreating enemy on the one hand,
12 went about earnestly on the other hand to take American
13 civilians under protection and placed at their disposal
14 the transportation facilities and men they could ill
15 afford to spare, was source of general gratitude on
16 the part of all Americans on the spot. It should be
17 noted that the actual situation was totally different
18 from what is alleged to have been in the American note.

19 "The protest regarding food is also in
20 contradiction with facts. At the beginning, in com-
21 pliance with the wishes of the internees and with a
22 view to avoiding a sudden change of diet and
23 respecting personal preferences, each internee was
24 allowed to obtain his meals at his own expense. But
25 as time passed, it was feared this arrangement might

1 prove unfair to those who did not have much money.
2 Therefore, beginning with the last day of February,
3 1942, in accordance with the general desire of the
4 internees, a ration system was adopted, the Philippine
5 Red Cross Society, which was then in the process of
6 organization, being authorized to pay the cost, while
7 those who so wished, were permitted to purchase supple-
8 mentary food at their own expense. This system proved
9 satisfactory and convenient to the internees. The
10 Red Cross responsible only for the distribution of
11 the daily rations at the camp as a whole, did not,
12 of course, undertake to loan money to individuals
13 separately. The purchase and preparation of the food
14 was left entirely to the self-governing body of the
15 camp, and the army helped to obtain such commodities
16 as were difficult to find on the market. Never on any
17 occasion, the cost of the ration was limited to 25
18 centavos. The Philippine Red Cross which was formally
19 established in April, 1942, continued to distribute
20 rations until June. Since then the Japanese Military
21 authorities have borne all the cost of the rations
22 and all other expenditures for the maintenance of the
23 camp, while the management of the camp is left as
24 before in the hands of the self-governing body organized
25 by the internees themselves. The food served at the

1 camp has been ever since its opening quite satisfactory
2 both in quality and quantity-- so much so, in fact,
3 that it is even criticized as being too good as com-
4 pared with the food available to the people of the
5 city in general. Within the camp, order is maintained
6 and various activities are carried on by the above-
7 mentioned self-governing body in accordance with the
8 Code of Regulations formulated by itself and through
9 the respective officials appointed by itself. For
10 this magnanimous treatment the internees are all grate-
11 ful.

12 "VII. Davao and other internment camps in
13 the Philippines.

14 "The 'first six weeks' mentioned in the Ameri-
15 can note refer to the period during which American
16 residents in the city were housed for protection in
17 the American Club without being required to do abso-
18 lutely no work. Later some persons for the sake of
19 their health requested to be allowed to do some light
20 outdoor work, and they were assigned the work of
21 removing objects which were lying on the streets and
22 obstructing traffic. On the other hand, the Santa
23 Anna area where the warehouses of Davao for provisions
24 were situated had been set on fire and reduced to
25 ashes by the fleeing American soldiers, and the

1 provisions in the shops within the city had been
2 carried away and secreted also by American soldiers,
3 so that the people of the city were faced with an
4 extreme scarcity of food. They had practically
5 nothing to eat but corn and millet, and even these
6 were difficult to obtain. That at such a time those
7 Americans at the club were provided with meals contain-
8 ing with certain amounts of corn was due entirely to
9 the generous efforts of the Japanese army, who more-
10 over supplied them with cleaned rice, fish, and
11 canned foods out of their own none-ample stock.
12 Indeed, those Americans were being fed far better than
13 the average Japanese residents and the Philippines at
14 that time.

15 "By April 1942 the situation at Davao had
16 gradually improved, and supplementary articles of
17 food such as vegetables began to appear on the market.
18 Accordingly, in compliance with the wishes of the
19 internees, they were permitted to purchase their food
20 on their own account, while rice, sugar, salt, condi-
21 ments, etc., that were not easily obtainable were
22 distributed by the military authorities.

23 "At first all Americans were interned for
24 protection in view of the situation which rendered it
25 impossible for them to secure food if they had lived

1 by themselves, and the military authorities used their
2 good offices in enabling them to procure the provisions,
3 for which they were required to pay. But since
4 September 1942, when the persons to be interned were
5 decided upon, the cost of provisions for these
6 internees has been borne by the Military authorities,
7 while the matters of purchase, cooking, etc., have
8 been left to the self-governing body organized by the
9 internees themselves.

10 "Americans at other camps in the Philippines
11 have been given a treatment similar to that accorded
12 the American internees at Lavao as described above.

13 "B. Maltreatment and Torture.

14 "I. Torture and physical violence.

15 "(1.) R. A. Reiner and Edwin W. Koons.

16 "Beginning with February 8, 1942, Edward
17 Hughes Mills, an American, was being examined at the
18 Ryuzan Police Station, Keijo, as a suspect for
19 espionage. In the course of the said examination it
20 was established from his statements and as the result
21 of the search of his house that Reiner was involved in
22 the crime. He was therefore taken to the Ryuzan Police
23 Station and an examination of his case was commenced.
24 It was found that Reiner beside being charged with the
25 aforesaid crime, was also guilty of an infringement upon

1 the Foreign Exchange Control Ordinance. During the
2 examination, though he appeared to be in good health,
3 he was segregated from other criminals and allowed to
4 occupy a solitary cell in view of his rather advanced
5 age. Moreover, he was asked several times to state
6 his wishes, which were taken into consideration in
7 order to afford him the best possible treatment.
8 Whereas his crime was clearly established, the case was
9 dropped with the coming into force of the Exchange
10 Agreement, and he was set free on May 25, 1942. On
11 the occasion of his release, Reiner while thanking
12 the police authorities on behalf of the Americans who
13 had been similarly held at the police station, stated
14 to the effect that as he was being examined as an enemy
15 national suspected of acts of benefiting the enemy, he
16 had anticipated a most severe and rigorous examination,
17 but he had been dealt by police authorities always in
18 the kindest manner; that he deeply admired the Japanese
19 spirit thus manifested:

20 "In the American note of protest it is stated
21 that Reiner was tortured six times between May 1 and
22 May 6, and that he was kicked by a gendarmerie employee
23 named Syo in such a manner that his rib was broken,
24 and that a vicious blow was struck over his broken
25 rib by another gendarmerie employee named Kin. As a

1 matter of fact no gendarmes, to say nothing of their
2 employees, were ever permitted to frequent the
3 premises of the Ryuzan Police Station, while the station
4 itself has no employee named either Syo or Kim. It
5 must be concluded the story is a fabrication. Further-
6 more, the records of the medical examination made on
7 Reiner at the time of his release established the fact
8 that he was sound and healthy and nothing unusual was
9 to be noted on his person. That a man, 59 years of
10 age, who had his rib broken and received 'half-inch deep
11 cuts' on his arms and legs should have so quickly and
12 so completely recovered within several days as to re-
13 tain no trace thereof, is unbelievable. It only
14 proves the careless and groundless character of the
15 American protest.

16 "From the statement of Mills and as the result
17 of the search of his house it was established that Koons
18 was also an accomplice, and he was taken to the Ryuzan
19 Police Station on May 11, 1942. He was examined and
20 treated like Reiner. His case was also dropped, and
21 he was released for repatriation. Here the note of the
22 American Government is equally perfunctory and careless.
23 Koons has left a record of his 'Impressions' (see
24 Annex A) which proves further how unwarranted is the
25 American protest.

1 "(2:) Beating at Ichang.

2 "The allegation that Elsie W. Riebe and Walter
3 P. Morse in Ichang were beaten is entirely unfounded.
4 It is plain to common sense whether or not any man can
5 remain alive after having been 'beaten for two hours
6 with an iron rod, one-half inch thick.'

7 "The above-mentioned two persons were allowed
8 to remain in their respective houses, the only
9 restriction they were subjected to being that they
10 were required to obtain permission for going out to
11 town - excepting to the portion of the city between
12 Ma-lu and Kang Chiang-lu. The Japanese authorities
13 prohibited Chinese connected with church to visit the
14 residences of Riebe and Morse, but the two were
15 afforded special facilities for obtaining food and
16 daily necessities. Neither of them, except on errands
17 of their own regarding the matters of housekeeping, did
18 ever visit the authorities. Nor did the latter ever
19 take them out anywhere. The atrocities cited in the
20 American note have no foundation on fact."

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1 "(3) Joseph F. MacSparran.

2 "Joseph F. MacSparran was arrested on
3 December 8, 1941, as a suspected violator of the
4 National Defense and Security Ordinance in accordance
5 with the criminal procedure as provided for under
6 the same ordinance. He was placed in the Yokohama
7 Penitentiary for examination. On February 21, 1942
8 he was indicted on charge of violation of the National
9 Defense and Security Ordinance and the Foreign Exchange
10 Control Ordinance. He was accused on April 21 with
11 an additional offense of violating the Police Peace
12 Regulations. It was while the examination by a
13 preliminary judge was in progress that with the con-
14 clusion of the Exchange Agreement the prosecution was
15 cancelled and he was set free.

16 "At the penitentiary MacSparran was accorded
17 a specially favorable treatment, being placed in the
18 best western-style cell, well-lighted and well venti-
19 lated and provided with desk and chair, a bed, a
20 washroom with flush toilet.

21 "Immediately upon his incarceration he was
22 given a medical examination, and thereafter was
23 visited daily by a physician. On December 20, 1941,
24 he said he had a stomach trouble and requested medical
25 examination. It was found he was suffering from no

1 particular malady, but he was given a medicine.
2 He returned the medicine saying that it was ineffective.
3 Since then special attention was paid to the state of
4 his health. However, he ate, exercised, and bathed
5 as usual, and appeared entirely normal in every respect.
6 Never once did he request medical attention for
7 hemorrhages from duodenal ulcers. Altogether twenty-
8 one times during his incarceration he was questioned
9 by the procurator and the preliminary judge, and on
10 every occasion he seemed to be in high spirits and
11 cheerfully answered the questions put to him. The
12 procurator came to the penitentiary for the questioning,
13 but whenever it was necessary to take him to the court
14 for preliminary examination light handcuffs were used
15 in conformance with the law of Japan. It was the
16 proper measure to take in the handling of any criminal-
17 ly accused person. That while undergoing questioning
18 he was unable, on account of internal hemorrhages, even
19 to stand up is an allegation without a vestige of
20 truth.

21 "II. Solitary Confinement.

22 "(1) H. W. Mayers.

23 "Suspected of violating the National Defense
24 and Security Ordinance, H. W. Mayers was arrested on
25 December 8, 1941 according to the criminal procedure

1 as prescribed by the said Ordinance. He was taken
2 to the Kobe Detention House where as the result of
3 examination he was acquitted. On the other hand, it
4 was established that he was guilty of violating the
5 Army Criminal Code and the Foreign Exchange Control
6 Ordinance. Accordingly, while released on March 5,
7 1942, as a suspected violator of the National Defense
8 and Security Ordinance, he was indicted afresh on the
9 same day before the Kobe District court on the charge
10 of violations of the Army Criminal Code and the
11 Foreign Exchange Control Ordinance, and remanded to
12 the Kobe Detention House under the warrant issued by
13 the judge of that court. On April 5 he was sentenced
14 to imprisonment for 7 months counting the 20 days
15 pending the trial. While he was serving his sentence,
16 he was removed to the Osaka Prison on May 1st, and
17 was granted a ticket of leave on June 7. During that
18 period he was for a time, January 4 - February 5, 1942,
19 transferred to the temporary jail belonging to the
20 Kikusui-bashi Police Station of Kobe.

21 "At the Kobe Detention House, in consideration
22 of his advance age and with a view to avoiding any
23 adverse effect that confinement in common jail might
24 have upon his health and especially to enabling him
25 to sleep well, the best and newly furnished cell in

1 the institution was assigned to Mayers for his
2 exclusive occupancy. During his detention pending
3 the trial he was permitted to use the private beddings
4 and clothes of his own choice. He was provided with
5 a chair, which is not a part of the regular furniture
6 for ordinary cells. As regards meals, he was per-
7 mitted in compliance with his wishes to obtain them
8 from outside. During his penal servitude after con-
9 viction he was furnished with the regular prison
10 bed, clothing and meals, but at the same time he was
11 given special permission to wear shoes, and special
12 care was taken in the preparation of his meals. As
13 for books, he was allowed to read those sent to him
14 after they had been duly censored.

15 "During his incarceration in the Osaka
16 Prison, he was shown similar consideration, and given
17 a single cell for solitary confinement. He was per-
18 mitted to receive the Bible, the Japanese National
19 Reader, etc. from outside. His wife, Grace, visited
20 him in the middle of May, under the prison regulations
21 which permit the visit of a relative once a month.
22 He was grateful especially as he was not put in
23 common jail but given a single cell; it is strange
24 that the American Government should make that very
25 fact an object of protest.

1 "(2.) William Mackesy

2 "William Mackesy was given special permission
3 to remain in his own house until he was interned in
4 the civilian camp in Kobe. He appreciated fully
5 the good will of the authorities concerned, and by
6 avoiding contact with outsiders as much as possible,
7 he endeavoured not to give any cause for misunder-
8 standing on the part of the authorities to whom he
9 frequently expressed his sense of gratitude. He
10 lived in a room he had rent in a building attached
11 to his church. With the privilege of remaining in
12 his own residence, he was free to regulate his daily
13 life as he liked and enjoyed special comforts and
14 conveniences.

15 "(3.) Alice C. Grube

16 "Suspected of violation of the National
17 Defense and Security Ordinance, Alice C. Grube was
18 arrested on December 8, 1941, and taken to the
19 temporary jail belonging to the Tamatsukuri Police
20 Station in Osaka where she was first examined. On
21 the 25th of the same month she was transferred to
22 the Osaka Detention House for further questionings
23 by the Procurator, as the result of which she was
24 cleared of the suspicion, and set free on April 9,
25 1942.

1 "The authorities of the Osaka Detention
2 House, in deference to her position and prestige,
3 did not confine her in common jail. Instead, she
4 was allowed to occupy exclusively a sunny and
5 healthy cell in the women's section of the insti-
6 tution. Under the house regulations the cells are
7 not equipped with stoves, and the use of fire for
8 any purpose is prohibited. Special permission was
9 granted Grube to use a hot-water bottle, which she
10 declined, saying it was unnecessary, as she had a good
11 sunny room.
12

13 "Accordingly, she was allowed to wear an
14 overcoat in her cell. The rule prohibiting a detainee
15 to bring in any personal effects or other articles,
16 was waived in her case, and she was allowed to
17 bring with her a large number of articles including
18 23 books, a bed, 3 cotton quilts, 2 blankets, a
19 complete wardrobe, and toilet requisites. She was
20 always given the first turn for bathing, and provided
21 with such food as she desired, besides tea and coffee,
22 cakes and fruits which she was allowed to purchase
23 as she pleased. Generosity to the maximum degree
24 was shown in her treatment."
25

1 THE PRESIDENT: Colonel Woolworth, do you
2 submit that this material you have been reading
3 establishes breaches of the Convention by way of
4 admission or otherwise?

5 MR. WOOLWORTH: This is a reply --

6 THE PRESIDENT: Or that it implicates the
7 accused in any such breach? I knew what the docu-
8 ment is, but I would like to know why you are read-
9 ing it to the extent that you are reading it.

10 MR. WOOLWORTH: If the Tribunal please, the
11 sole purpose in reading this reply by SHIGEMITSU,
12 who is in the dock, is that it has been proven
13 before in this case that the facts which he denies--
14 the matters which he denies in this reply of his
15 were, as a matter of fact, true, that those atroci-
16 ties had been committed, and I believe it implicates
17 him.

18 THE PRESIDENT: What he says by way of ex-
19 culpation does not tend to prove his guilt unless
20 in the course of excusing himself he makes ad-
21 missions. No doubt you are saving the defense
22 the trouble of reading this document. To that
23 extent the time is not wasted.

24 MR. WOOLWORTH: If the Tribunal please,
25 it is not the desire of the prosecution to conceal

1 anything in connection with this diplomatic corres-
2 pondence.

3 THE PRESIDENT: You are not concealing it,
4 because you have tendered it in evidence. My point
5 is -- and it may not be well taken -- why read all
6 these details as part of the prosecution's case?
7 I am seeking an explanation; not telling you what
8 to do but seeking an explanation to which I think
9 I am entitled.

10 Mr. WOOLWORTH: If the Tribunal please, it
11 appears to the prosecution that the sending of this
12 letter over the signature of the Japanese Foreign
13 Minister, in which statements are contained which
14 have been shown to be absolutely false, carries the
15 imputation of intent on his part and guilty knowledge
16 of the offences which had been committed.

17 THE PRESIDENT: That would be clear if this
18 could be shown to be a pure fabrication on the part
19 of the defendant SHIGEMITSU. But it is otherwise
20 if he was passing on information he had obtained
21 from others, his subordinates included. However,
22 I am not conducting the prosecution; I am endeavor-
23 ing to carry out my duty to shorten the trial where
24 I think it may be shortened.

25 Proceed with your reading.

1 MR. WOOLWORTH: I only went to say one word
2 more. It seems to the prosecution that it was his
3 responsibility to know the truth of these allega-
4 tions which he made and that he is responsible for
5 any misinformation he passed on.

6 In the interest of brevity, I will pass
7 to page 16 of this same document.

8 (Reading) "d. Prisoner of war" --

9 THE PRESIDENT: I understand that some of
10 the judges want to hear it, and of course I will
11 have to take the wishes, the views of each judge.
12 By a majority we agree to allow you to cut down the
13 amount of material you intend to read. We will
14 leave it to you.

15 We will recess for fifteen minutes now.

16 (Whereupon, at 1445 a recess was
17 taken until 1500.)
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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now resumed.

3 THE PRESIDENT: Colonel Woolworth.

4 MR. WOOLWORTH: Prosecution will read from
5 page 16 of exhibit 2024, sub-paragraph E, Prisoners
6 of War:

7 "B. PRISONERS OF WAR

8 "The American Government states that it has
9 received reports of inhuman treatment accorded American
10 prisoners of war by the Japanese authorities, which
11 is inconsistent with the provisions and spirit of
12 the Geneva Convention, and proceeds to cite instances
13 alleged to have occurred in the Philippines and the
14 punishment of Americans for an attempted escape at
15 Shanghai.

16 "1. The Philippines.

17 "The American Government is reminded of
18 the situation in the Philippines during those days
19 immediately following the Japanese occupation of the
20 Bataan Peninsula. Order had not yet been restored;
21 traffic facilities had been destroyed; the American
22 soldiers prior to their retreat and surrender had
23 burned food and medical supplies in accordance with
24 their 'Scorched-earth' tactics; the Japanese armies
25 themselves were finding it difficult to replenish

1 their stock of provisions and medical supplies; and
2 furthermore, the number of American prisoners of war
3 were far greater than anticipated. It was inevitable
4 that under these circumstances the American war
5 prisoners should have suffered temporarily from scar-
6 city of food and inadequate medical attention. Never-
7 theless, the Japanese military authorities, in the
8 face of insuperable difficulties, did their best to
9 feed the Americans and to care for the sick and wounded.
10 The Americans captured in Bataan were obliged to go
11 on foot when they were being taken to Camp O'Donnell,
12 because owing to the destruction of the means of
13 conveyances it was impossible to send them in auto-
14 mobiles.

15 "However, as regards the alleged instances
16 of mistreatment of the prisoners on their way to and
17 after their arrival at the Camp, cited in the American
18 note, are groundless according to the investigations
19 that have been made under the difficult circumstances."

20 The prosecution desires to introduce in
21 evidence -- it is already in evidence, 2751-A-4
22 which is a letter from The Gaimusho dated 28 April
23 1944.

24 THE PRESIDENT: Admitted on the usual terms.

25 MR. WOOLWORTH: I will read from page 3,

1 the center of the second paragraph, beginning "The
2 Japanese Government."

3 THE PRESIDENT: It is already admitted,
4 isn't it? The document you ask to admit is already
5 part of 2024.

6 MR. WOOLWORTH: (Reading)

7 "The Japanese Government are, however,
8 dealing, from a humanitarian point of view, with
9 matters relating to prisoners of war and civilian
10 internees, on the basis of the 1907 Convention re-
11 lating to the Law and Custom of Land Warfare and
12 the 1929 Convention for the Amelioration of the
13 Conditions of the Wounded and Sick of Armies in the
14 Field, taking moreover into consideration the pro-
15 visions of the 1929 Convention relating to the Treat-
16 ment of Prisoners of War. These intentions of the
17 Japanese Government have already been made known to
18 the United States Government."

19 THE PRESIDENT: What page are you reading
20 from?

21 MR. WOOLWORTH: I was reading on page 3,
22 middle of the second paragraph. I now read from
23 page 4, the second paragraph:

24 "The United States Government state that the
25 representatives of the Swiss government in Japan are

1 entrusted with the protection of American interests
2 in Japanese occupied territories, whereas, as already
3 communicated to the United States Government through
4 the intermediary of the Swiss Government, the policy
5 of the Japanese Government is not to recognize rep-
6 resentation of enemy interests in Japanese occupied
7 territories and, therefore, is not permitting visits
8 to the War Prisoner Camps and Civilian Internee Camps
9 in those territories. Furthermore in view of the
10 needs of military operations, visits of the representa-
11 tives of relief societies and others also are not
12 permitted for the time being."

13 I now read A-5 of the same document, same
14 exhibit:

15 "'KYO' - 'HI' /Confidential/No. 224.

16 "To His Excellency,

17 "Camille Gorges,

18 "Envoy Extraordinary and Minister Pleni-
19 potentiary for Switzerland.

20 "Excellency:-

21 "I hereby have the honour of addressing you
22 in writing.

23 "Following my letter No. 97/C.R. --"

24 THE PRESIDENT. Page 5, you said?

25 MR. WOOLWORTH: A-5 of exhibit No. 2024.

1 The extracts just read were from 2024-A-4.

2 "Excellency:-

3 "I hereby have the honour of addressing you
4 in writing.

5 "Following my letter No. 97/C.R. dated
6 April 28th whereby, in reply to the protest of the
7 United States Government in regard to the treatment
8 of U. S. POWs and Internees within the jurisdiction
9 of the Empire (the Imperial Government duly replied
10 to you in detail on the basis of the results of their
11 investigations) we are now in receipt of the follow-
12 ing additional data regarding conditions at the POW
13 and Internment Camps at Shanghai, Canton, Hong Kong,
14 Java, and the Philippines, and beg to send same to
15 you herewith with the request that same be kindly
16 transmitted to the United States Government.

17 "I beg to take this opportunity of reassuring
18 Your Excellency of my respects.

19 "Dated the 16th day of August 1944.

20 "Mamoru SHIGEMITSU, Minister for Foreign
21 Affairs."

22 In the interest of brevity I will omit
23 reading the full text of the reply.
24
25

A-6 of document 2024.

1 "Tokio, 1 March 1945 CC.1.5.1. - FGc. CC.2.1.2.

2 "m. le Ministre,

3 "By letter No. 98/C.R. of 24th April last Your
4 Excellency made known to me the response of the Imper-
5 ial Government to the protest of the Government of the
6 United States of America on the subject of treatment
7 of American citizens within the power of Japan.

8 "As I informed you by letter of 5th May, I
9 communicated this response to my Government for the
10 attention of the Washington Government.

11 "The Government of the United States has
12 asked to have the following communication addressed to
13 the Japanese Government:

14 "The Japanese Government's reply of 24th
15 April 1944 to the United States Government's protest
16 of 23rd December 1942 states that the United States
17 Government's protest was "made by distorting and
18 esaggerating the facts." The United States Government
19 cannot accept a statement by the Japanese Government
20 impugning its veracity. The United States Government's
21 protest concerning treatment accorded by Japanese Au-
22 thorities to American nationals in Japan and Japanese
23 occupied territory is based on documentary evidence
24 which cannot be refuted in such an arbitrary fashion
25

1 by the Japanese Government. The statements contained
2 in the Japanese Government's reply of 24th April 1944
3 are so far removed from the facts as known to the
4 United States Government that it can only conclude
5 that the Japanese Government has permitted itself to
6 be misled by fabricated reports of local officials and
7 has not made an independent investigation of the mat-
8 ters protested in the United States Government's note
9 of 23rd December 1942. The United States Government
10 therefore considers the reply unsatisfactory and will
11 continue to hold the Japanese Government answerable.
12 The Japanese Government has referred to section IV of
13 the United States Government's protest of 23rd December
14 1942 making certain charges against the United States
15 Government. The reply to this reference will be the
16 subject of a separate communication from the United
17 States Government. Minister of Switzerland To
18 His Excellency M. Mamoru SHIGEMITSU Minister of Foreign
19 Affairs Tokio"

20 The prosecution desires to introduce in evi-
21 dence document 2766-A, 1 to 10, together with document
22 No. 2766-B, a synopsis of the same documents.

23 THE PRESIDENT: Admitted on the usual terms.

24 CLERK OF THE COURT: Prosecution's document
25 No. 2766-A, with inclusive documents 1 to 10, is given

1 exhibit No. 2025. The synopsis thereof, prosecution's
2 document No. 2766-B, is given exhibit No. 2025-A.

3 (Whereupon, prosecution's document
4 No. 2766-A, with inclusive documents 1 to 10,
5 was marked prosecution's exhibit No. 2025, and
6 prosecution's document No. 2766-B was marked
7 prosecution's exhibit No. 2025-A, and were
8 received in evidence.)

9 MR. WOOLWORTH: (Reading) "Synopsis of
10 Document No. 2766-A, 1 to 10. 15 December 1942 (A-1)
11 Swiss Legation to Foreign Minister (TANI) Inquiry in
12 behalf of United States asking if Japan is applying
13 Articles 27 to 34 of the Geneva Convention of 27 July
14 1929 re labor of prisoners of war.

15 "28 January 1943 (A-2) Japanese Foreign
16 Ministry (TANI) to Swiss Legation answering letter of
17 15 December, and states: 1. Japanese Government
18 employs prisoner of war labor in spirit of Geneva Con-
19 vention. 2. Prisoners are employed in labor which is
20 not dangerous. 3. Daily hours of labor of prisoners
21 same as civil workers in Japan. 4. Paid same as non-
22 commissioned officers and men of Japanese Army.

23 "4 February 1943 (A-3) Swiss Legation to
24 Foreign Ministry (TANI) Swiss requests statement that
25 Japan will not assign prisoners of war to labor in the

1 manufacture or transportation of material to be used
2 in warfare or having direct connection with operations
3 of war.

4 "20 February 1943 (A-4) Foreign Minister
5 (TANI) to Swiss Legation states labor of prisoners of
6 war has no direct connection with operation of war.

7 "4 March 1944 (A-5) Swiss Legation to Minis-
8 try of Foreign Affairs. Complains that prisoners of
9 war in Yokohama area compelled to perform humiliating
10 work in public (namely, sweeping streets), and were
11 searched in public before re-entering their enclosure
12 in violation of Article 2 of the Geneva Convention.

13 "22 April 1944 (A-6) Japanese Foreign Ministry
14 to Swiss Legation. Foreign Minister SHIGEMITSU answer-
15 ing letter of 4 March re treatment of prisoners of war
16 states: 1. Japanese Government is not bound by the
17 prisoner of war convention of 1929 but it is policy
18 of Japanese government to protect prisoners of war
19 against insults as provided in Article 2 of the Japan-
20 ese rules for treatment of prisoners of war. 2. Denies
21 prisoners of war forced to clean streets but cleaning
22 done within camp and seen through fence.

23 "27 April 1944 (A-7) Swiss Minister to Jap-
24 anese Ministry of Foreign affairs (SHIGEMITSU) An-
25 swering note of 22 April 1944 remarks statement that

1 Japanese Government would not be bound by Geneva Con-
2 vention does not coincide with previous declarations
3 in which Japan agreed to apply provisions of the con-
4 vention mutati mutandis. Requested full particulars as
5 to the articles thereof Japanese government considers
6 inapplicable by reason of internal legislation.

7 "9 June 1945 (A-8) Swiss Legation to the Im-
8 perial Ministry of Foreign Affairs (TOGO) Swiss Lega-
9 tion transmitted protest from United States against
10 labor of American prisoners of war held in Japan as
11 (1) working excessive hours having direct connection
12 with the war operations within the fortifications of
13 Shinagawa and at Navy docks at Tokyo Bay. (2) Being
14 humiliated and beaten by guards and demands that con-
15 ditions be rectified and stated that the Japanese gov-
16 ernment as well as the individuals concerned be held
17 responsible to insure that the provisions of the Hague
18 and the Geneva prisoners of war convention will at all
19 times be applied to the treatment of prisoners of war.

20 "5 July 1945 (A-9) Swiss Legation to the Min-
21 istry of Foreign Affairs (TOGO) Forwarding protest
22 by United States re Japanese authorities in Thailand
23 quartering prisoners of war in warehouses at the port
24 of Bangkok in an area close to docks, railroad yards
25 and other military objectives and their employment on

1 labor having direct relation with war operations.
2 United States warned the Japanese Government they will
3 hold government responsible for failure to protect
4 lives and health of Americans in Japanese custody.

5 "1 August 1945 (A-10) Japanese Foreign Minis-
6 try (TOGO) to Swiss Legation. Answering protest of
7 United States sent by Swiss 9 June 1945 denies fact
8 of subjecting American prisoners of war to the labor
9 pointed out by the United States."

10 The prosecution desires to introduce in evi-
11 dence document No. 2781-A-1.

12 THE PRESIDENT: Admitted on the usual terms.

13 CLERK OF THE COURT: Prosecution's document
14 No. 2781-A, with inclusive documents 1 and 2, will be
15 given exhibit No. 2026.

16 (Whereupon, the document above re-
17 ferred to was marked prosecution's exhibit
18 No. 2026, and was received in evidence.)

19 MR. WOOLWORTH: (Reading) "CC.1.5.1.-dcu

20 "The Swiss Legation has the honor to inform
21 the Imperial Ministry of Foreign Affairs that according
22 to a communication from the Federal Political Depart-
23 ment, the British Government is greatly concerned about
24 the food supply of POW and it believes in effect that
25 the prisoners, being accustomed to a different diet,

1 suffer from certain under-nourishment. The Government
2 of the United Kingdom proposes that additional food in
3 the form of soya products, such as soya milk, soya
4 flour and soya butter, be distributed to POW and thus
5 augment the nutritive value of their food. It believes
6 in effect that Japan has a large quantity of these
7 products.

8 "The Legation would be obliged to the Imper-
9 ial Ministry if it would take up with the competent
10 authorities the matter of this request of the British
11 Government.

12 "In thanking the Ministry in advance for its
13 kind response, the Legation takes this occasion to
14 renew the assurances of its high esteem. Tokyo, 16
15 June 1943 To the Imperial Ministry of Foreign Affairs
16 Tokyo."

17 "The Gaimusho Tokyo No. 187/C.R. NOTE
18 VERBALE.

19 "The Imperial Ministry of Foreign Affairs has
20 the honor to acknowledge receipt from the Swiss Lega-
21 tion of a note, No. CC.1.5.1.-deu., dated 16 June,
22 informing the Imperial Government of the request made by
23 the British Government for soya bean products to be
24 supplied to British prisoners of war.

25 "As regards this matter, the British Government

1 had previously made the same proposal through the Inter-
2 national Red Cross Committee, to which the Imperial Gov-
3 ernment had given a reply as per attached copy.

4 "The Ministry requests the Legation to be ad-
5 vised of the particulars from the said copy. 23 June
6 1943 attachment."

7 "Copy. Foreign Office 10th June 1943

8 "Dear Dr. Paravicini, With reference to your Memoran-
9 dum of the 21st May addressed to this Ministry con-
10 cerning an increase in the quantity of soya bean
11 products supplied to British prisoners of war, I beg
12 to inform you that the authorities concerned, who have
13 been and are paying the best possible attention to the
14 quantity and the nutritive value of the food given to
15 prisoners of war, do not see the necessity of increas-
16 ing the supply of any particular foodstuff. Yours
17 sincerely, E. SUZUKI." Addressed to: "Dr. F. Para-
18 vicini, Representative in Japan of the International
19 Red Cross Committee, No. 254, Yamasita-cho, Naka-ku,
20 Yokahama."

21 If the Tribunal please, I desire to call as a
22 witness Shigeru YAMAZAKI.
23
24
25

YAMAZAKI

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1 S H I G E R U Y A M A Z A K I, called as a
2 witness on behalf of the prosecution, being first
3 duly sworn, testified through Japanese inter-
4 preter as follows:

DIRECT EXAMINATION

BY MR. WOOLWORTH:

5
6 Q Please state your name, residence and occupa-
7 tion.
8

9 A YAMAZAKI, Shigeru; no profession; Miyagi,
10 Tamazukuri, Iwadeyama, Nino Kamae 3.

11 Q Are you a former officer of the Japanese
12 Imperial Army?

13 A Yes.

14 Q From January 1942 to March 1943 were you
15 an officer in the Imperial Japanese Army?

16 A Yes, I was.

17 Q During that period where was your station and
18 what was your duty?

19 A I served in the Prisoner of War Information
20 Bureau and the Prisoner of War Control Bureau in the
21 War Ministry at Tokyo. My position was that of a
22 high official.

23 Q What was your rank at that time?

24 A I was a colonel.

25 Q At the outbreak of the war between Japan and

YAMAZAKI

DIRECT

1 the United States what bureau of the War Ministry
2 handled prisoner of war matters?

3 A The Prisoner of War Information Bureau and
4 the Prisoner of War Control Bureau acted according to
5 the orders of the Military Affairs Bureau.

6 Q Prior to the time the Prisoner of War Informa-
7 tion Bureau was established, what bureau handled
8 prisoner of war matters, if you know?

9 A I believe it was the Military Affairs Bureau.

10 Q In the work of the Prisoner of War Information
11 Bureau and the Prisoner of War Control Bureau, or
12 Management Bureau, did these two bureaus have the
13 same officer at the head of them simultaneously,
14 concurrently?

15 A Yes, they were.

16 Q Did the chief of the Prisoner of War Manage-
17 ment Bureau and concurrently chief of the Prisoner of
18 War Control Bureau have control over the policies in
19 regard to the treatment of prisoners of war?

20 A Yes.

21 Q Were his policies controlling on all matters
22 affecting the management of prisoners of war and their
23 control?

24 MR. BLEWETT: If the Court please, I think
25 the question has been fully answered.

YAMAZAKI

DIRECT

1 MR. WOOLWORTH: Are you objecting to the
2 question?

3 MR. BLEWETT: Yes, I object, sir. The
4 question has been fully answered and the question
5 in this other form is leading and is an effort to
6 have the witness explain his answer.

7 THE PRESIDENT: It would require a very
8 strict application of the rules of evidence to hold
9 it was leading. The witness may answer; I am not
10 sure that he has already answered. I doubt it.

11 MR. WOOLWORTH: The witness has been in-
12 structed to answer, I believe.

13 THE PRESIDENT: Objection overruled.

14 MR. BLEWETT: If you please, sir, may I be
15 permitted to suggest what the last question was prior
16 to this one?

17 THE PRESIDENT: Rightly or wrongly we have
18 decided to overrule your objection and to allow the
19 question.

20 MR. WOOLWORTH: May I ask that the question
21 be read to the witness?

22 (Whereupon, the last question was
23 read by the Japanese court reporter.)

24 A The chief of the Prisoner of War Information
25 Bureau, and concurrently the chief of the Prisoner of

YAMAZAKI

DIRECT

1 War Management Bureau, was given the power of decision
2 only to a very limited extent and on important matters
3 he had to receive his orders from the Military Affairs
4 Bureau.

5 Q Do you recall the matter of protests filed
6 by the Swiss Legation in connection with the protests
7 against the treatment of the Doolittle flyers?

8 A I do recall it.

9 Q Do you know why those protests were not answer-
10 ed by the Japanese Government?

11 A I do not recollect whether the reply was
12 actually sent during my tenure of office or not but
13 I do recall that the feeling within army circles at
14 the time was strongly against sending any such reply.

15 MR. WOOLFORTH: I think that is all.

16 THE PRESIDENT: Dr. KIYOSE.

17 CROSS-EXAMINATION

18 BY DR. KIYOSE:

19 Q In your testimony you mention the Prisoner
20 of War Information Bureau. Do you know whether the
21 Prisoner of War Information Bureau is an office supposed
22 to be established as a result of international conven-
23 tions?

24 A I wish to have the question repeated.

25 Q When you referred to the Information Bureau,

YAMAZAKI

CROSS

1 you were referring to the Prisoner of War Information
2 Bureau, weren't you?

3 A Yes.

4 Q Do you know whether it was a special organ
5 which our country was supposed to make in accordance
6 with international treaties?

7 A I do know.

8 Q Then, do you know that this bureau was not
9 simply a bureau within the War Ministry, such as the
10 Military Service Bureau or the Military Affairs
11 Bureau, but was a special bureau known as an outside
12 bureau?

13 A Yes, I do know that.

14 Q Then, do you also know that this Prisoner of
15 War Information Bureau, as well as the Prisoner of War
16 Management Bureau, which is related to it, were not
17 under the control of the Military Affairs Bureau --
18 that is, they did not belong under the Military Affairs
19 Bureau?

20 A At that time the Prisoner of War Information
21 Bureau was under the guidance of the War Minister and
22 the Prisoner of War Administration Bureau cooperated
23 more positively with the War Minister.
24
25

YAMAZAKI

CROSS

1 Q Then, when you testified recently -- when you
2 testified a moment ago that the Prisoner of War
3 Information Bureau and the Prisoner of War Control
4 Bureau had to receive orders from the Military
5 Affairs Bureau, did you not mean simply that it had
6 to receive orders from the War Ministry and that the
7 Military Affairs Bureau was a bureau in the War
8 Ministry?

9 A All important matters had to go through the
10 Military Affairs Bureau and without going through the
11 Military Affairs Bureau nothing could be done. There-
12 fore, I stated to that effect. Correction: Almost
13 nothing could be done.

14 Q I can not quite understand. When you say
15 that all matters had to go through the Military Affairs
16 Bureau, do you mean that the Director of the Military
17 Affairs Bureau himself gave the orders or that the
18 documents simply were routed through the Military
19 Affairs Bureau?

20 A By that I mean that rather than going through
21 the Military Affairs Bureau, it had -- Correction: My
22 meaning was that I meant something far stronger than
23 simply going through the Military Affairs Bureau.

24 Q Are you aware that the Director of the
25 Prisoner of War Information Bureau at the time was

YAMAZAKI

CROSS

1 Lieutenant General UEMURA?

2 A Yes.

3 Q Was Lieutenant General UEMURA also Director
4 of the Prisoner of War Control Bureau or the Management
5 Bureau?

6 A Yes.

7 Q Was not the Director of the Military Affairs
8 Bureau Major General MUTO?

9 A At first it was His Excellency General MUTO,
10 then, later on, it was General SATO.

11 Q You mean Major General, don't you? You
12 said "Major General," did you not?

13 A General SATO was at that time Lieutenant
14 General -- Major General.

15 Q What about General MUTO?

16 A He was Lieutenant General.

17 Q At the time?

18 A Yes.

19 Q You are sure?

20 A I am sure. I repeat: General MUTO was
21 Lieutenant General, and, at the beginning, General
22 SATO was Major General. However, he was promoted to
23 Lieutenant General. However, I do not know when he
24 was promoted.

25 Q Accepting your testimony as true then, do

YAMAZAKI

CROSS

1 you believe it possible, in the light of the organization
2 of our Army, that General MUTO, a Major General,
3 could give orders to General -- Lieutenant General
4 UEMURA?

5 A By rank such a thing was not possible.
6 However, in so far as the actual work was concerned,
7 the Chief of the Military Affairs Bureau as the assistant
8 to the Chief of the General Staff could do that.
9 Correction: The Director of the Military Affairs
10 Bureau was a kind of Chief of Staff to the War Minister
11 so far as the work was concerned and thus was able to
12 give orders.

13 Q When you say that he was a kind of Chief of
14 Staff, does that not mean that he simply communicated
15 the orders which came from the War Minister; that he
16 was simply the channel through which orders from the
17 War Minister himself came?

18 A The Director of the Military Affairs Bureau
19 could transmit the order -- transmitted the orders
20 as a kind of Chief of Staff.

21 Q Have you ever seen the rules of organization
22 of the Prisoner of War Information Bureau or of the
23 Prisoner of War Management Bureau?

24 A Yes, I know.

25 Q Do not the rules of that bureau state that

YAMAZAKI

CROSS

1 the Prisoner of War Information Bureau is under the
2 direct supervision of the War Minister?

3 A In form it was so, namely, it was directly
4 under the director of the Military Affairs -- directly
5 under the War Minister. However, in so far as actual
6 work was concerned, nothing could be done without
7 going through the Director of the Military Affairs
8 Bureau.

9 Q When you say, "going through the Director of
10 the Military Affairs Bureau," do you think that means
11 the same thing as by order of the Military -- Director
12 of the Military Affairs Bureau?

13 A The Director of the Military Affairs Bureau
14 had no authority to issue orders, but the Director
15 received the orders of the War Ministry -- of the
16 War Minister -- and was in a position to enforce them
17 emphatically. In other words, he was a kind of
18 supervisory organ.

19 Q Did the Director of the Military Affairs Bureau
20 also have the right of giving orders to the Chief
21 of the Prisoner of War Management Bureau?

22 A The Director of the Military Affairs Bureau
23 had no authority to control the Director of the
24 Prisoner of War Information Bureau -- Administration
25 Bureau.

YAMAZAKI

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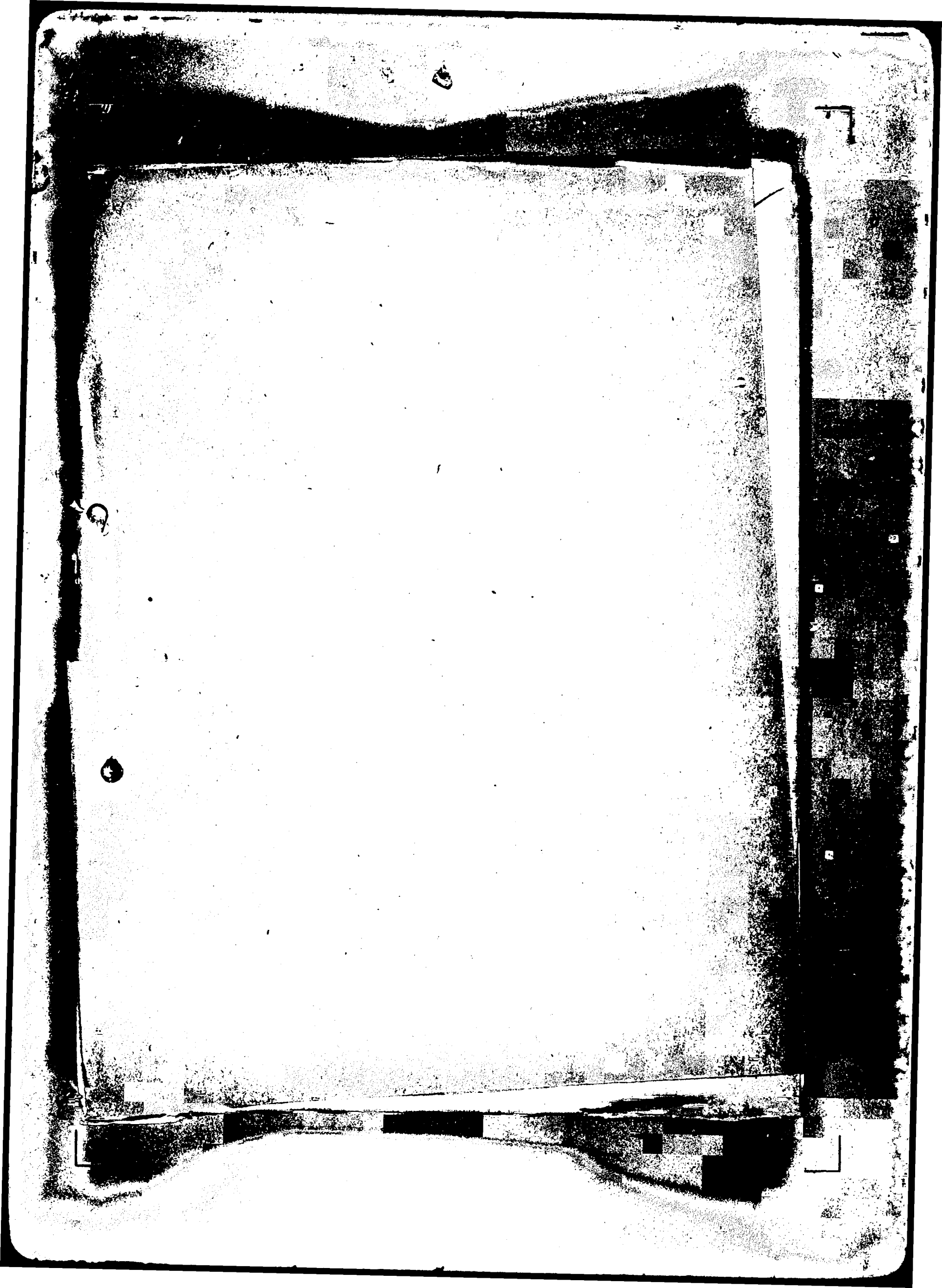
1 Q Thank you, I understand. Now, concerning
2 the protests which were made through the Swiss
3 Government about which was the last part of your
4 testimony, you testified that the feeling in Army
5 circles was strongly against a reply. Since you were
6 in the Army at the time, were you also one of those
7 who was against -- correction: Leave out the word
8 "strongly."

9 A As a member of the Prisoner of War Information
10 Bureau I thought then that a reply should be sent.
11 However, the atmosphere within the War Ministry was
12 such that they were reluctant to send any reply. That
13 is how I took it.

14 THE PRESIDENT: We will adjourn until half-
15 past nine tomorrow morning.

16 (Whereupon, at 1600 an adjournment
17 was taken until Friday, 10 January 1947 at
18 0930.)

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Jan 10 ✓

6

10 JANUARY 1947

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Of
WITNESSES

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2407A	2027		Certificate of E. Tomlin Bailey, of the Department of State, United States of America		14891

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2702A	2028		Official Record of Army Headquarters Melbourne "Australian Prisoners of War (RAN, AMF, RAAF) in the Far East"		14901
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1 Friday, 10 January 1947

2 - - -

3
4 INTERNATIONAL MILITARY TRIBUNAL
5 FOR THE FAR EAST
6 Court House of the Tribunal
7 War Ministry Building
8 Tokyo, Japan

9 The Tribunal met, pursuant to adjournment,
10 at 0930.

11 - - -

12 Appearances:

13 For the Tribunal, same as before with
14 the exception of: HONORABLE JUSTICE JU-AO MEI,
15 Member from the Republic of China.

16 HONORABLE JUSTICE HENRI BERNARD, Member
17 from the Republic of France, now sitting.

18 For the Prosecution Section, same as
19 before.

20 For the Defense Section, same as before.

21 - - -

22 (English to Japanese and Japanese
23 to English interpretation was made by the
24 Language Section, IMTFE.)
25

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MARSHAL OF THE COURT: The International
Military Tribunal for the Far East is now in session.

THE PRESIDENT: All the accused are present ,
except OKAWA, MUTO, HOSHINO and ARAKI, who are rep-
resented by their counsel. We have certificates from
the prison surgeon of Sugamo prison, certifying that
MUTO, HOSHINO and ARAKI are too ill to attend the
trial today. The certificates will be recorded and
filed.

THE PRESIDENT: Dr. KIYOSE.

- - -

S H I G E R U Y A M A Z A K I, called as a
witness on behalf of the prosecution, resumed
the stand and testified as follows:

CROSS-EXAMINATION

BY DR. KIYOSE (Continued):

Q Where are you residing at present? Where do
you lodge at present, Mr. Witness?

A I reside at Number 3, Nino Kamae, Iwadeyama,
the town of Iwadeyama, Tamazukuri county, Miyagi
prefecture.

Q Mr. Witness, have you ever gone to Sugamo
prison?

A No.

Q Have you ever been investigated by the

YAMAZAKI

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1 International Prosecution Section in connection with
2 prisoners of war?

3 A Yes, I have.

4 C Can you state on what points you were
5 questioned?

6 MR. JUSTICE MANSFIELD: I object, if the
7 Court please. I submit that this is irrelevant.

8 THE PRESIDENT: Objection upheld.

9 DR. KIYOSE: Then I'll ask the question this
10 way:

11 C What you were asked was what your position
12 was with respect to the question.

13 I will withdraw that question.

14 The points on which you were investigated
15 about, Mr. Witness, pertain to whether or not the
16 Prisoners of War Information Bureau received orders
17 from the War Ministry, or other organizations --
18 Prisoners of War Information Bureau, in which you
19 worked.

20 MR. JUSTICE MANSFIELD: I object to this
21 question also, if the Tribunal please, as I submit
22 it is the same question in another form.

23 THE PRESIDENT: If you are suggesting, Dr.
24 KIYOSE, that he made a statement inconsistent with
25 his present testimony, you are entitled to bring

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1 International Prosecution Section in connection with
2 prisoners of war?

3 A Yes, I have.

4 C Can you state on what points you were
5 questioned?

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7 Court please. I submit that this is irrelevant.

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10 way:

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12 was with respect to the question.

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15 about, Mr. Witness, pertain to whether or not the
16 Prisoners of War Information Bureau received orders
17 from the War Ministry, or other organizations --
18 Prisoners of War Information Bureau, in which you
19 worked.

20 MR. JUSTICE MANSFIELD: I object to this
21 question also, if the Tribunal please, as I submit
22 it is the same question in another form.

23 THE PRESIDENT: If you are suggesting, Dr.
24 KIYOSE, that he made a statement inconsistent with
25 his present testimony, you are entitled to bring

YAMAZAKI

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1 that out.

2 DR. KIYOSE: That is my intention, sir.

3 THE PRESIDENT: You may examine him, if so.

4 A I don't think there are any inconsistencies
5 between what I have stated already to the Internation-
6 al Prosecution Section and what I said here.

7 Q At that time did you reply
8 that the Prisoners of War Information Bureau receiv-
9 ed directions from the Military Affairs Bureau of
10 the War Ministry?

11 A What I meant -- what I answered was not
12 that the Prisoners of War Information Bureau receiv-
13 ed directions from the Military Affairs Bureau of
14 the War Ministry, but that the former couldn't do
15 anything without receiving directions from the
16 latter.

17 THE MONITOR: That the Prisoners of War
18 Information Bureau could not do anything unless all
19 matters were routed through the Military Affairs
20 Bureau.

21 Q But you did not testify that it received --
22 that is, the Prisoners of War Information Bureau re-
23 ceived instructions or orders from that bureau?

24 A Yes, instructions were received from the War
25 Minister.

YAMAZAKI

CROSS

1 Q Then not from the Military Affairs Bureau?

2 A No orders were ever received directly from
3 the Military Affairs Bureau.

4 DR. KIYOSE: That is all, sir.

5 MR. KUSANO: Counsel KUSANO.

6 THE PRESIDENT: Counsel.

7

- - -

8 CROSS-EXAMINATION (Continued)

9 BY MR. KUSANO:

10 Q At what period did you graduate from the
11 Military Academy?

12 A Twenty-fifth period.

13 Q That means that you were in the same class
14 as Lieutenant General MUTO.

15 A Yes.

16 Q Do you know what period SATO belongs to?
17 At any rate--

18 THE INTERPRETER: The witness' reply was,
19 "I think around the twenty-ninth period."

20 To this the counselor replied, "You were
21 a senior of SATO's? Is that right?"

22 To which the witness replied, "Yes."

23 Q What branch of the army did you belong to,
24 the infantry, artillery or what?

25 A Before the revision of the organizations of

YAMAZAKI

CROSS

1 the army was effected I belonged to the infantry
2 branch. Before the revision of the branches of
3 service was effected I belonged to the infantry
4 branch.

5 Q What about after the reorganization or the
6 revision?

7 A I belonged to the -- after the revision I
8 belonged to the main -- was an officer in the main
9 branch, by which I mean the branch including the
10 artillery, infantry, gendarmerie and so forth, as
11 distinguished from the army surgeon's office and
12 intendance office.

13 Q Mr. Witness, have you graduated the War
14 College?

15 A No, I have not.

16 Q Have you ever served as a staff officer?

17 A I have never served as a staff officer.

18 Q Then can you briefly state your career
19 prior to your entry into the Prisoners of War Infor-
20 mation Bureau? Will you, please?

21 THE PRESIDENT: Why do you want that?

22 MR. KUSANO: I want to know what qualifi-
23 cations he has with respect to the position he
24 occupied in the Prisoners of War Information Bureau.

25 MR. JUSTICE MANSFIELD: I object, if the

YAMAZAKI

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1 Court please, as I submit that is irrelevant. We
2 only asked him the facts while he was there.

3 THE PRESIDENT: No special qualifications
4 were necessary for him to depose to what he did
5 depose to.

6 Q Then I ask you, Mr. Witness, in this
7 fashion: You know, Mr. Witness, that the business
8 in the War Ministry is conducted in accordance with
9 the regulations governing the organization of the
10 War Ministry, as well as the regulations governing
11 the handling of business in the War Ministry?

12 A Yes, of course.

13 Q Then, Mr. Witness, are you familiar with the
14 regulations governing organization of the Prisoners
15 of War Information Bureau, the regulations govern-
16 ing POW camps, and the regulations governing the
17 treatment of prisoners of war?

18 A At the time I was in service I knew them,
19 but most of them I believe I have forgotten now.
20 Most of those rules I have forgotten now, I think
21 I have forgotten now.

22 Q Mr. Witness, you testified yesterday that
23 the chief of the Prisoners of War Control Bureau
24 was given power of decision on non-important matters.
25 Did you not?

YAMAZAKI

CROSS

1 A Yes, as you say.

2 Q What you referred to as power of decision
3 on the part of the Prisoners of War Control Bureau
4 is the delegated powers as mentioned in the adju-
5 tant's notification to the Prisoners of War Control
6 Bureau?

7 A Yes, as you say.

8 Q Then I shall read points 1, 2, 3 and 4 of
9 the adjutant's notification, so will you please
10 listen?

11 Number 1 is general items pertaining to
12 the internment, regulation and control, exchange,
13 release, utilization, punishment and treatment of
14 prisoners of war and other internees in the combat
15 zone under army control.

16 Do you recall this point?

17 A I should like to ask you a question.

18 THE INTERPRETER: To which the counsel said,
19 "I am asking the question. Will you please answer?"

20 A It is necessary for me to ask you a question
21 before answering.

22 Q Then I will listen to your question after
23 I have finished reading these pages.

24 A It is a very simple matter. Then please
25 ask.

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1 THE INTERPRETER: The witness asked, "Are
2 you referring to the regulations governing the
3 organization of the POW Information Bureau, or the
4 Control Bureau?"

5 To which the counsel said, "No, I am speak-
6 ing of the adjutant's notification."

7 Q Mr. Witness, are you familiar with the
8 regulations governing the treatment of prisoners of
9 war, army secret 10345, issued in March 1942?

10 THE INTERPRETER: Correction. 1034.

11 MR. JUSTICE MANSFIELD: I object, if the
12 Tribunal please, on the ground that this does not
13 arise out of examination in chief, and it is ir-
14 relevant.

15 THE PRESIDENT: Well, this witness came here
16 to fix the responsibility on the War Minister for
17 the operations of these boards concerning prisoners.
18 Whether these regulations throw any light on that,
19 I don't know.

20 Counsel, what is your purpose in putting
21 these regulations to the witness?

22 MR. KUSANO: That is because I want to
23 ascertain whether the business handled by this wit-
24 ness in the Prisoners of War Information Bureau and
25 his testimony are in accord with these regulations.

YAMAZAKI

CROSS

1 THE PRESIDENT: No, that doesn't justify
2 the question. The objection is allowed.

3 MR. KUSANO: Then I shall turn to another
4 question.

5 Q Do you know, Mr. Witness, how the duties
6 of the Prisoners of War Control Bureau are stipulat-
7 ed in the regulations governing the treatment of
8 prisoners of war?

9 A Although I don't recall exactly the details
10 of the stipulations, I believe that rules concern-
11 ing control of the prisoners of war in general, in-
12 cluding accommodations, transportation, or supplies
13 -- wages of the prisoners of war, and rations of the
14 prisoners of war, were included among those stipula-
15 tions.

16 Q Then, in other words, some of the things
17 have been clarified by your testimony -- but, in
18 other words, items of a non-important nature with
19 respect to the treatment, internment and control of
20 prisoners of war, were stipulated in the regulations,
21 was it not?

22 MR. JUSTICE MANSFIELD: I submit, if the
23 Court please, that the regulations speak for them-
24 selves, and I therefore object to this line of
25 questioning on the ground that it is irrelevant.

YAMAZAKI

CROSS

1 THE PRESIDENT: There are provisions in the
2 Convention dealing with the obligation to see that
3 they are carried out. You may cross-examine along
4 those lines. I thought you might be doing so, but
5 you are not.

6 The objection is allowed.

7 Q Then, Mr. Witness, you testified yesterday
8 that items of a not important character were --
9 correction -- Mr. Witness, you testified yesterday
10 that the chief of the business of War Control
11 Bureau was given power of decision on items of a not
12 important nature. Did you not? With regard to
13 treatment of prisoners of war?

14 A Yes, the reason for it is as the counsel
15 stated a while ago, within the limits of items
16 delegated by the adjutant's notifications.

17 Q And in your testimony yesterday you stated,
18 did you not, that directions on important matters
19 were received from the Military Affairs Bureau?

20 A I used -- although I used the word
21 "directions," I should like to explain it more
22 fully -- the meaning of it more fully. I meant by
23 it that the opinion of either the War Minister or
24 Vice-Minister were conveyed through the Military
25 Affairs Bureau.

YAMAZAKI

CROSS

1 Q Then, Mr. Witness, the chief of the Prison-
2 ers of War Control Bureau carries out the duties
3 assigned to him by order of the War Minister. Is
4 that not so?

5 A Will you repeat that question again, please?

6 Q The chief of the Prisoners of War Control
7 Bureau carries out the duties of that particular
8 bureau by order of the War Minister, does it not?

9 A Yes, as stipulated in the regulations
10 governing the organization.

11 Q Yesterday, in your testimony, Mr. Witness,
12 did you not state that the chief of the Military
13 Affairs Bureau of the War Ministry, as one of the
14 staff officers of the War Minister, transmitted the
15 directions of the Minister and also supervised the
16 Control Bureau? Did you not?

17 A Yes.
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1 Q Then, are there any regulations providing
2 for supervision of the prisoners of war control
3 bureau by the chief of the Military Affairs Bureau
4 as a staff officer of the War Minister?

5 A I should like to explain more fully the
6 meaning of the word "supervision." It simply means
7 that orders of the War Minister or the Vice War
8 Minister are to be conveyed. I should like to
9 enlarge on the meaning--interpretation of the
10 meaning of "supervision," if I may; that is, that
11 this bureau receives the orders from the Vice War
12 Minister or the Vice Minister and transmits that
13 order to the bureau concerned. I should like to
14 have you interpret this in that strong meaning.

15 Q Could you give a few concrete examples with
16 respect to that?

17 THE MONITOR: In explaining that.

18 A I don't recall just now any concrete ex-
19 amples.

20 Q The chief of the Control Bureau -- Prisoner
21 of War Control Bureau at that time was Lieutenant
22 General UEMURA, was it not?

23 A Yes.

24 Q Then, Lieutenant General UEMURA did not
25

YAMAZAKI

CROSS

1 receive directions or was placed under the super-
2 vision of SATO, Chief of the Military Affairs
3 Bureau, is that not so?

4 A My interpretation is that he did not re-
5 ceive the supervision or direction in the legal
6 sense or in the sense of the regulations governing
7 the organization of the Bureau.

8 Q Then, with respect to the personnel ques-
9 tions pertaining to the Control Bureau, this was
10 under the charge of the Personnel Bureau of the
11 War Ministry, was it not?

12 THE PRESIDENT: If Lieutenant General
13 UEMURA -- Is that his name? --

14 THE INTERPRETER: Yes.

15 THE PRESIDENT (continuing): did not
16 receive directions, what did he receive? There
17 were some communications to him, were there?

18 Answer, please, Witness.

19 THE WITNESS: I was not listening to it
20 carefully.

21 THE INTERPRETER: I will repeat.

22 THE PRESIDENT: You said that Lieutenant
23 General UEMURA did not receive directions in the
24 legal sense or in the sense of the regulations.
25

YAMAZAKI

CROSS

1 Did he receive any requests or any communications
2 of that kind?

3 THE WITNESS: There may have been requests
4 or recommendations from the Chief of the Military
5 Affairs Bureau, but I don't -- I have no direct
6 knowledge of it.

7 THE PRESIDENT: What was their form of co-
8 operation, if they did cooperate?

9 THE WITNESS: I remember that important
10 matters were communicated -- discussed or communi-
11 cated among the different -- various bureaus con-
12 cerned at the time of the conference -- weekly con-
13 ference of chiefs of bureaus, departments or sec-
14 tions, which was held once per week.

15 THE MONITOR: As I recall, I think these
16 matters were generally handled at a weekly confer-
17 ence of chiefs of bureau, whereat important matters
18 were discussed and information exchanged. I make
19 a correction. I should have said questions of
20 bureau chiefs instead of conference of department
21 chiefs.

22 THE INTERPRETER: The English remains the
23 same; there is a difference in the Japanese termin-
24 ology.
25

YAMAZAKI

CROSS

1 THE PRESIDENT: Well, the bureaus dealing
2 with prisoners of war did not act independently
3 but cooperated with the War Ministry?
4

5 THE WITNESS: Yes.

6 BY MR. KUSANO (Continued):

7 Q Then, the person who supervised the bureau
8 chiefs is the Vice Minister, is it not?

9 A I believe so.

10 Q You are aware, Mr. Witness, of the existence
11 of general regulations covering various government
12 departments?

13 A As a matter of common sense I know of the
14 existence of such a regulation, but I never studied --
15 investigated it personally.

16 Q Then, are you familiar with the fact that
17 these general regulations governing the various
18 government departments are also stipulated in the
19 regulations governing the handling of business in
20 the War Ministry?

21 A That may be so.

22 Q Is this not so, Mr. Witness? That Lieuten-
23 ant General UEMURA, Chief of the Prisoner of War
24 Control Bureau, at the regular conference of bureau
25 chiefs or at other meetings asked directly for the

YAMAZAKI

CROSS

1 orders of the War Minister or the Vice Minister
2 and made reports thereon?

3 A As you say.

4 Q Then, the Prisoner of War Information
5 Bureau handled the information regarding prisoners
6 in accordance with the duties of that bureau as
7 stipulated in the regulations governing the organi-
8 zation, is that not so?

9 A Yes.
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1 Q Then protests from enemy countries and
2 communications from the Red Cross with respect to
3 the treatment of prisoners of war were sent by
4 Mr. SUZUKI of the Foreign Office to Lieutenant
5 General UEMURA, were they not? Mr. SUZUKI is of
6 ministerial rank.

7 A Now, as I recall, those important matters
8 as protests were directly sent to the Minister --
9 War Minister or to the Vice-Minister and copy
10 thereof being sent to the Chief of the Prisoners of
11 War Information Bureau through Foreign Office. As
12 I recall, if I remember correctly, I think items of
13 a non-important nature, or a less important nature,
14 were sent directly to Lieutenant General UEMURA.

15 THE PRESIDENT: On receipt of those com-
16 munications, the two bureaus, or the bureau concerned
17 and the War Ministry would consult, I take it?

18 THE WITNESS: In the case of documents arising
19 from the Foreign Office, those documents were -- first
20 were sent to the Military Affairs Section of the
21 Military Affairs Bureau of the War Ministry through
22 the Secretariat of the War Ministry, and then the
23 matter was taken up and the matter was discussed.
24

25 THE PRESIDENT: Discussed between the War
 Ministry and the bureau concerned?

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CROSS

1 THE WITNESS: Discussion with bureaus
2 concerned, the conference of all bureaus concerned.

3 THE PRESIDENT: Would the War Ministry be
4 represented at the conferences?

5 THE WITNESS: What I mean is various bureaus
6 and sections within the War Ministry and the section
7 of the general staff concerned.

8 THE PRESIDENT: That means that there would
9 be discussion with the Army?

10 THE WITNESS: Within the Army.

11 THE PRESIDENT: Would the Military Affairs
12 Board be present at the discussions?

13 THE WITNESS: That depends on the nature of
14 the question.

15 THE PRESIDENT: If it related to prisoners
16 of war and was a communication from another government?

17 THE WITNESS: Yes.

18 THE PRESIDENT: Would the bureaus act
19 contrary to the decision of the Military Bureau --
20 Military Affairs Board?

21 THE WITNESS: I do not understand.

22 THE MONITOR: I don't know.

23 THE PRESIDENT: Would the bureaus dare to
24 make a decision not approved by the Military Affairs
25 Board?

YAMAZAKI

CROSS

1 THE WITNESS: I cannot judge either.

2 BY MR. KUSANO (Continued):

3 Q Then, at any rate, there are no communi-
4 cations addressed directly by the Foreign Office
5 to the Chief of the Military Affairs Bureau?

6 A Matters or documents emanating from the
7 Foreign Minister himself or the Vice-Minister and
8 letters sent by officials under -- of lower level
9 of the Foreign Office were generally sent -- or in
10 some cases were sent to the Bureau of Military Affairs.

11 THE PRESIDENT: Well, to shorten it, can
12 you tell us who would necessarily be responsible
13 for any action taken on a letter from a foreign
14 government about prisoners of war?

15 THE WITNESS: The addressee of the letter
16 should take the responsibility. That is my view.

17 MR. KUSANO: Mr. President, in order to
18 clarify this point, may I have your permission,
19 Mr. President, to show to this witness Court exhibits
20 2021 and 2020?

21 THE PRESIDENT: You may.

22 (Whereupon, some documents were handed
23 to the Witness.)

24 THE MONITOR: Mr. President, we have a slight
25 correction to make.

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CROSS

1 Mr. Goldberg, will you read the President's
2 statement?

3 (Whereupon, the official court reporter
4 read as follows:)

5 "THE PRESIDENT: Well, to shorten it, can
6 you tell us who would necessarily be responsible
7 for any action taken on a letter from a foreign
8 government about prisoners of war?"

9 BY MR. KUSANO (Continued):

10 Q Mr. witness, I ask you about the form.
11 It is addressed to the Chief of the Prisoners of War
12 Information Bureau and the sender is Minister SUZUKI
13 of the Foreign Office, is it not?

14 A Yes.

15 Q All letters exchanged followed that form,
16 did it not, and the addressee was Chief of the Prisoners
17 of War Information Bureau, was it not?

18 A Yes. Is this an official communication?

19 Q Yes.

20 THE INTERPRETER: Rather, is it an original
21 or a transcript of it?

22 A No, it is a copy.

23 THE INTERPRETER: The last statement by counsel.

24 A On its face it is a letter from -- sent by
25 Minister SUZUKI of the Gaimusho to the Chief of the

YAMAZAKI

CROSS

1 Prisoners of War Information Bureau. I am not sure
2 whether this letter contains word for word the
3 content of the protest from the United States con-
4 cerning the treatment of prisoners of war. Which
5 is it?
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1 Q Are there any communications addressed
2 directly by a foreign country to the Prisoner of
3 War Information Bureau?

4 A Protests from foreign countries are sent
5 in general to the ministers concerned.

6 Q Then, communications addressed to the Chief
7 of the Prisoner of War Information Bureau is channeled
8 through the adjutant's office of the secretariat of
9 the War Ministry, is it not?

10 A Yes, pertaining to those addressed to the
11 Chief of the Prisoner of War Information Bureau.

12 Q How about communications addressed to the
13 Minister and the Vice-Minister?

14 A Letters addressed to the Minister or Vice War
15 Minister, Vice-Minister, are generally channeled
16 through the Military Affairs Bureau and if it con-
17 cerns the Prisoner of War Information Bureau then
18 a copy is sent to this bureau.

19 Q It is rather by way of the adjutant's office
20 for the secretariat rather than the Military Affairs
21 Bureau, is it not?

22 A If I said adjutant's office I made a mistake
23 so I should like to say that those letters were
24 channeled through the secretariat of the War Ministry
25 and the letters addressed to the Minister or

YAMAZAKI

CROSS

1 Vice-Minister were channeled through the Military
2 Affairs Bureau.

3 Q That is, are routed by way of the secretariat
4 and not necessarily through the Military Affairs
5 Bureau, is it not?

6 A That matter concerns bureaus with which I
7 was not connected. Therefore, I do not know exactly.
8 However, I believe that in view of the situation
9 prevailing at that time those documents, letters,
10 passed through the Military Affairs Bureau. I recall
11 that they were channeled through the Military Affairs
12 Bureau generally.

13 Q When protests were received with respect
14 to the treatment of prisoners of war in various
15 localities, was it not a fact that the Prisoner of
16 War Information Bureau passed the information on to
17 the various commands or camps related to this ques-
18 tion?

19 A In order to ascertain whether the substance
20 of the protest is consistent with the actual facts,
21 the Prisoner of War Information Bureau would, as
22 business routine, communicate with the various commands
23 concerned with the prisoners of war and obtain the
24 facts.
25

Q Then the Prisoner of War Information Bureau

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CROSS

1 has the authority to demand or ask reports of various
2 army field commanders, is that so -- has the authority
3 to request various armies to provide information?

4 A In asking for investigation concerning
5 prisoner of war matters -- correction: concerning
6 matters concerned under the jurisdiction of various
7 departments, the Chief of the Prisoner of War Infor-
8 mation Bureau had no right to ask directly for
9 investigation of the army commanders and others.
10 In that case drafts were made in the first place and
11 then they were made into notes, notifications,
12 issued by the Vice-War Minister, and then conveyed --
13 transmitted -- to the commanders of armies in the
14 field through chiefs of bureaus concerned.

15 Q Then with respect to medicines and sanita-
16 tion, hygiene, the matters would be sent by way of
17 the Chief of the Medical Affairs Bureau, those with
18 respect to questions relating to the gendarmerie
19 would be routed through the Chief of the Military
20 Service Bureau, and those relating to matters per-
21 taining to clothing and food would be routed by way
22 of the Chief of the Intendance Bureau, is that not
23 so?
24

25 A Yes, that was customary.

Q Then, where is the reply prepared following

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1 a conference on these matters?

2 A Concerning medical matters, by the Medical
3 Bureau; and concerning matters pertaining to the
4 Intendance Department, by the Intendance Bureau;
5 and concerning other matters, bureaus concerned with
6 those matters were responsible for drafting reports
7 on those matters and, after having obtained -- after
8 having affixed signatures of all bureaus concerned
9 with the question on hand, the replies were sent.

10 THE PRESIDENT: Did you attend any meetings
11 of the bureau chiefs at which protests were con-
12 sidered?

13 THE WITNESS: No.

14 Q Then these replies are sent out after
15 receiving the approval of the War Minister, is that
16 not so?

17 A Approval was given either by the War Minister
18 or Vice War Minister according to the importance of
19 the problem and then sent out. That is what I
20 believed.

21 Q Then is the name of the particular bureau
22 concerned or its seal affixed on the draft of the
23 reply?

24 A As I recall, yes.

25 Q Then I will ask with an example. Then

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1 protests addressed to the Chief of the Prisoner of
2 War Information Bureau are sent to the Prisoner of
3 War Information Bureau by way of the secretariat of
4 the War Ministry, is that not so -- addressed to the
5 Prisoner of War Information Bureau by the Foreign
6 Office?

7 THE MONITOR: By way of.

8 THE INTERPRETER: The secretariat of the
9 War Ministry.

10 A If there was any protest addressed directly
11 to the director of the Prisoner of War Information
12 Bureau that would be the case.

13 THE INTERPRETER: From the foreign govern-
14 ment.

15 Q There seems to have been some misunderstand-
16 ing, Mr. Witness. Might I ask again, were not letters,
17 protests, documents sent by the Foreign Office to
18 the Chief of the Prisoner of War Information Bureau,
19 were these documents not routed through the secretariat
20 of the War Ministry?

21 A Yes, that is the normal procedure.

22 Q Then, as a second step, the Prisoner of
23 War Information Bureau would request necessary
24 investigation of the question on hand to the army
25 in the field concerned or to the camp concerned?

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1 A As a whole, yes.

2 Q Then, as a third step, the Prisoner of War
3 Information Bureau would assemble the reports or
4 replies received from the various field armies as
5 well as camps and then prepare the reply upon con-
6 sultation with other bureaus concerned, is that not
7 so?

8 A Depending on the content or nature of the
9 problem.

10 Q And then, as a fourth step, depending on
11 the importance of the subject on hand, the reply
12 would be sent to the Foreign Office after receiv-
13 ing the approval of the War Minister or Vice-Minister
14 of War or the Chief of the Prisoner of War Informa-
15 tion Bureau, is that not so?

16 A As I stated before, depending on the
17 importance of the matter replies are sent after
18 having consulted with chiefs of bureaus inside and
19 outside of the ministry or with the -- after having
20 obtained approval of the Minister or the Vice-Minister.

21 THE PRESIDENT: We will recess for fifteen
22 minutes.

23 (Whereupon, at 1045, a recess was
24 taken until 1100, after which the proceed-
25 ings were resumed as follows:)

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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now resumed.

3 CROSS-EXAMINATION

4 BY MR. KUSANO: (Continued)

5 Q Mr. Witness, I shall ask you questions on
6 some other point.

7 Mr. Witness, do you recall that a conference
8 of Camp Commandants was held under the auspices
9 of the Prisoner of War Control Bureau in June or
10 July 1942?

11 MR. JUSTICE MANSFIELD: If the Tribunal please,
12 I object on the ground that this does not arise out
13 of the examination in chief.

14 THE PRESIDENT: Do you want to be heard on
15 that? The objection is upheld.

16 THE INTERPRETER: The witness replied, "I
17 know."

18 MR. KUSANO: Mr. President, may I continue
19 questions on this point? Is it alright for me to
20 continue questions on this matter?

21 THE PRESIDENT: Put your questions and then
22 I will be able to answer you, if objection is taken.

23 Q What was the purpose for which this conference
24 was called? I ask you because you say you recall the
25 conference.

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1 MR. JUSTICE MANSFIELD: I object, if the
2 Tribunal please, on the ground that this does not
3 arise out of the examination in chief.

4 THE PRESIDENT: Objection upheld.

5 MR. KUSANO: This concludes my cross-examination,
6 your Honor.

7 MR. SOMIYA: Counsel SOMIYA, Shinji.

8 THE PRESIDENT: Counsel SOMIYA.

9 CROSS-EXAMINATION (Continued)

10 BY MR. SOMIYA:

11 Q Were there Prisoners of War Information
12 Bureau and the Prisoner of War Control Bureau in the
13 Navy?

14 A There were no Prisoners of War Information
15 Bureau nor Prisoner of War Control Bureau in the
16 Navy. Prisoners of war which entered jurisdiction
17 of the Navy were transferred to the jurisdiction
18 under the Prisoner of War Information Bureau or the
19 Army as well as the Control Bureau. However, concerning --
20 as to the treatment of the prisoners of war before they
21 were transferred to the jurisdiction -- into the
22 jurisdiction of the Prisoner of War Information Bureau
23 and the Prisoner of War Control Bureau, commanders --
24 Navy commanders -- in the fields were responsible.

25 Q Then, the treatment of prisoners of war by

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1 the Navy, that is, the Navy's control or administration
2 of prisoners of war is provisional pending the time
3 they enter -- they are transferred -- under the command
4 of the Army?

5 MR. JUSTICE MANSFIELD: I object, if the
6 Tribunal please, on the ground that this does not
7 arise out of the examination in chief.

8 MR. SOMIYA: I am directing this question
9 to the witness, Mr. President, because it arises from
10 the fact that in -- It arises from the examination in
11 chief relating to the administration or control of
12 prisoners of war.

13 THE PRESIDENT: Objection overruled.

14 Q Will you reply, Mr. Witness?

15 A There are no such bureaus as Navy's Prisoner
16 of War Information Bureau. There is no such thing as
17 the Army's Prisoner of War Information Bureau or the
18 Navy Prisoner of War Information Bureau. As a bureau
19 outside the Cabinet -- As an outside Bureau of the
20 Cabinet, prisoners of war which were held both by
21 the Army and the Navy were treated equally, under
22 supervision and directions of the Prime Minister, I
23 think, and, I think, that the Minister of War became
24 the Director of the Information and Control Bureaus
25 by that authority delegated to him by the Cabinet.

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2 of prisoners of war is provisional pending the time
3 they enter -- they are transferred -- under the command
4 of the Army?

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6 Tribunal please, on the ground that this does not
7 arise out of the examination in chief.

8 MR. SOMIYA: I am directing this question
9 to the witness, Mr. President, because it arises from
10 the fact that in -- It arises from the examination in
11 chief relating to the administration or control of
12 prisoners of war.

13 THE PRESIDENT: Objection overruled.

14 Q Will you reply, Mr. Witness?

15 A There are no such bureaus as Navy's Prisoner
16 of War Information Bureau. There is no such thing as
17 the Army's Prisoner of War Information Bureau or the
18 Navy Prisoner of War Information Bureau. As a bureau
19 outside the Cabinet -- As an outside Bureau of the
20 Cabinet, prisoners of war which were held both by
21 the Army and the Navy were treated equally, under
22 supervision and directions of the Prime Minister, I
23 think, and, I think, that the Minister of War became
24 the Director of the Information and Control Bureaus
25 by that authority delegated to him by the Cabinet.

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1 Q Then, is the control or administration of
2 prisoners of war captured by the Navy treated provi-
3 sionally by the Navy pending their transfer to other
4 authorities -- Army authorities?

5 A As I said before there is no such thing as
6 Army's Prisoner of War Information Bureau.

7 Q What I am inquiring, Mr. Witness, is about
8 the control and administration of prisoners of war
9 and not about the Prisoners of War Information Bureau.

10 A Before the prisoners of war are transferred
11 under the command of the Prisoners of War Information
12 Bureau, Prisoner of War Control Bureau, or to various
13 prisoner of war camps under the command -- under the
14 jurisdiction of the War Minister, Navy is temporarily
15 responsible for the treatment.

16 Q Then, I will ask you again, Mr. Witness,
17 generally speaking the control and administration of
18 prisoners of war is done by the Army, and the Navy
19 handles matters with respect to prisoners of war
20 temporarily or provisionally, pending the time they
21 are prisoners of war in the Navy's hand are transferred
22 to the Army authorities.

23 A I think you can interpret it in that way.

24 Q Is this the same whether in Japan -- the
25 Japanese mainland -- that is, Japan proper or in

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1 occupied areas?

2 A Yes.

3 Q What kind of work were you, Mr. Witness,
4 engaged in after March 1943? That is my next question.

5 A In March 1943 I was transferred from the post
6 of a member of the Prisoner of War Information Bureau
7 to -- and transferred from that position and transferred
8 to the Headquarters of the North China Expeditionary
9 Forces.

10 MR. SOMIYA: Thank you, that is all.

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1 MR. LOGAN: No further cross-examination,
2 your Honor.

3 MR. WOOLWORTH: If the Tribunal please, I
4 request the witness be excused.

5 THE PRESIDENT: He is excused on the usual
6 terms.

7 MR. WOOLWORTH: There will be one more.

8 THE PRESIDENT: I thought he said there
9 would be no further cross-examination.

10 Remain there, witness, please.

11 MR. SHIOHARA: Counsel SHIOHARA.

12 THE PRESIDENT: Counsel SHIOHARA.

13 Mr. SHIOHARA: I should like to ask a few
14 simple questions of the witness.

15 CROSS-EXAMINATION (Continued)

16 BY MR. SHIOHARA:

17 Q Mr. Witness, you said that the Prisoners of
18 War Information Bureau was established in accordance
19 with international treaty and was under the supervision
20 of the Prime Minister as an outside bureau of the
21 Cabinet; is that so?

22 A As I recall, yes.

23 Q Then, documents relating to protest with
24 regard to the treatment of prisoners of war were, as
25 a matter of course, transmitted by the Foreign Office

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1 to the other organs concerned, that is, the War
2 Minister, but is it not a violation of the regula-
3 tions for these documents to go to the War Minister
4 and important bureaus within the War Ministry rather
5 than directly to the chief of the Prisoners of War
6 Information Bureau; should it not be proper that
7 these documents be addressed directly to the chief
8 of the Bureau of Prisoners of War Information?

9 A As I recall the Prisoners of War Information
10 Bureau was a bureau outside the Cabinet and matters
11 pertaining to the prisoners of war were relegated by
12 the Prime Minister to the Minister of War; and, as
13 TOJO was concurrently Prime Minister holding the port-
14 folios of Prime Minister and the War Minister, the
15 Prisoners of War Information Bureau was closely
16 directed -- was under the close supervision and direc-
17 tion of the Prime Minister. That is my interpretation.

18 Q Then, may I take it this way: because
19 General TOJO was concurrently Prime Minister and War
20 Minister he directed and supervised the Prisoners of
21 War Information Bureau as one of the members of the
22 Cabinet?

23 A I do not know such about the content of
24 the regulations governing the organization of the
25 ministry.

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1 Q At any rate, although the same man was Prime
2 Minister and War Minister concurrently, I take it
3 from your remark the Prisoners of War Information
4 Bureau was not an organ belonging to the War Ministry?

5 THE MONITOR: Japanese court reporter --

6 (Whereupon, the last question was
7 read by the Japanese court reporter.)

8 Q (Reinterpreted) At any rate, Mr. Witness,
9 the Prime Minister and War Minister was held concur-
10 rently and the Prisoners of War Information Bureau
11 was under his control, but from your statement the
12 Prisoners of War Information Bureau did not belong
13 to the War Ministry; may I take it that way then?

14 A From a strict legal point of view it may be
15 so; however, actually the Prisoners of War Information
16 Bureau and the Prisoners of War Control Bureau con-
17 sisted chiefly of members of the army and of only one
18 member from the navy. Therefore, chiefly members of
19 the army with the exception of only one who was a
20 member of the navy so I believe it may be said, as a
21 whole, that it was chiefly run by men who hailed from
22 the army, but that is a very delicate point of that
23 matter.

24 Q I am asking you about the regulations govern-
25 ing the organization of the organ and I am not speaking

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1 about where the personnel was drawn from. I now
2 ask you another question.

3 A while ago you testified, Mr. Witness,
4 that the addressee of protests with respect to treat-
5 ment of prisoners of war was responsible. There is
6 no mistake about that statement.

7 THE PRESIDENT: It could not always be true.

8 A Yes, he would have the responsibility in so
9 far as the communication or letter itself is concerned,
10 but with respect to the substance of the protest or
11 with respect to those who committed any infringement
12 of regulations the responsibility for these would
13 rest elsewhere.

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1 Q Mr. SUZUKI, Tadakazu -- his first name is
2 sometimes read "Kyuman" -- of the Foreign Office has
3 testified or has stated that he determined the
4 addressees of various diplomatic notes on his own.
5 That would mean that SUZUKI would determine, himself,
6 what party would be the responsible authority, and
7 that would be a little funny -- that is strange.

8 A It is a matter belonging to the Foreign
9 Office and of which I will not be able to answer.

10 Q You stated, Mr. Witness, that the Prisoner
11 of War Information Bureau, in handling the actual
12 protests themselves, could not handle it on its own
13 but had to act through the various bureaus concerned
14 of the War Ministry. But Article 5 of the regulations
15 governing the Prisoner of War Information Bureau
16 states that the Chief of the Bureau may ask for re-
17 ports and information from various military forces
18 concerned -- that is, various forces, both of the
19 Army and Navy, concerned. Do you mean to say that
20 this regulation was not carried out, or this stipu-
21 lation?
22

23 A It is merely a matter of interpreting letters
24 of the regulations governing the organization of the
25 Ministry; but, actually, it was difficult not to
pass those orders through the chain of command of the

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1 Army.

2 Q What is the relation of the various bureaus
3 of the War Ministry with the military chain of com-
4 mand?

5 A Concerning the treatment of prisoners of
6 war, commanders of armies in the field were directly
7 supervising and directing the matter of prisoners --
8 handling of prisoners of war; and, therefore, mat-
9 ters must be referred to the Army General Staff.
10 These matters must be passed through the Army
11 General Staff.

12 Q That means, then, my question was wrong, and
13 you are referring to the General Staff, is that it?

14 A Whether it was in Japan or outside Japan,
15 all matters pertaining to prisoners of war in the
16 field were directed and supervised by commanders of
17 the armies or commanders of divisions -- independent
18 divisions. Therefore, if those matters were not
19 passed through them, we were reprimanded.

20 Q Then I understand that these matters have
21 to be passed through the Army chain of command --
22 of the High Command. The Chief of the Prisoner of
23 War Information Bureau had certain powers delegated
24 to him. Were there other organs to which powers
25 were delegated?

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1 A Concerning questions pertaining to hygiene --
2 the Medical Bureau, and matters pertaining to the
3 Intendance Bureau -- I recall that certain powers were
4 delegated in connection with prisoners of war matters
5 to the Medical Bureau of the War Ministry and to the
6 Intendance Bureau of the War Ministry in so far as these
7 questions of intendance and medical affairs were con-
8 cerned.

9 Q You are not mistaken, are you? We have not
10 been able to discover anything like that in spite of
11 some study.

12 A I don't know whether those matters were
13 written in the regulations provided in the regula-
14 tions -- by the regulations governing the organization
15 of the Ministry; but, actually -- of the Bureau. But,
16 actually, it was done.

17 Q What I am asking you, Mr. Witness, is whether
18 these things are written down. I am not speaking of
19 the regulations.

20 A I do not remember.

21 Q Do you recall whether the Vice-Minister had
22 certain powers delegated to him with respect to
23 prisoner of war matters?

24 A Yes. I think he had, because there are
25 matters which had to be authorized by him.

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1 THE PRESIDENT: What were they?

2 (No response)

3 Q Then let me say something first: As a
4 matter of fact, in my own investigation, the Vice-
5 Minister of War had no powers delegated to him with
6 respect to matters pertaining to prisoners of war.
7 That is clear on paper, and I am asking you whether
8 you know of that or not.

9 A I do not remember that.

10 Q Then you do not recall?

11 A No.

12 MR. SOMIYA: That is all, sir.

13 THE PRESIDENT: He is again excused on the
14 usual terms.

15 (Whereupon, the witness was
16 excused.)

17 Somebody ought to be able to tell us, and
18 I think we ought to know, just what happened to a
19 letter when it came from Britain or America to Japan
20 protesting the treatment of prisoners. I am unable
21 to say that this witness has made the position clear.
22

23 MR. WOOLWORTH: There will be a witness
24 produced --

25 THE PRESIDENT: We should know what steps
were taken on the letter and by whom so that we might

1 fix the responsibility so far as it rests on that
2 procedure. It may not.
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1 MR. WOOLWORTH: If the Tribunal please,
2 the prosecution desires to introduce in evidence
3 document, 2407A, which is a certificate of E. Tomlin
4 Bailey, of the Department of State of the United
5 States.

6 THE PRESIDENT: Admitted on the usual terms.

7 CLERK OF THE COURT: Prosecution document
8 No. 2407A will receive exhibit No. 2027.

9 (Whereupon, the document above
10 referred to was marked prosecution's ex-
11 hibit No. 2027 and received in evidence.)

12 MR. WOOLWORTH: This document is duly
13 certified by the Acting Secretary of State.

14 (Reading): "INTERNATIONAL MILITARY TRIBUNAL
15 FOR THE FAR EAST.

16 "THE UNITED STATES OF AMERICA" -- I will omit
17 the title, if I may.

18 "City of Washington,)
19 "District of Columbia,) ss.
20 "United States of America.)

21 "I, E. Tomlin Bailey, being duly sworn, on
22 oath depose and say:

23 "I am Assistant Chief of the Special Projects
24 Division of the Department of State of the United States,
25 in charge of Prisoners of War Branch of that Division,

1 in which I have served since November, 1942. Since
2 its organization in 1942 and up to the present time,
3 The Prisoners of War Branch has been charged with the
4 duty of initiating and coordinating State Department
5 policy and action in all matters pertaining to
6 civilian internees and prisoners of war and inter-
7 national conventions relating to their status.

8 "The statements hereinafter made are based
9 upon official records of the Department of State,
10 and in particular of the aforesaid Prisoners of War
11 Branch, and relate to matters coming under my
12 cognizance or to my attention in connection with
13 the carrying out of the functions of the Prisoners
14 of War Branch.

15 "Immediately after the Japanese attack on
16 Pearl Harbor, the Department of State took up with
17 Japan the matter of according proper treatment for
18 American nationals in Japanese hands. Although
19 Japan was not a party to the Geneva Prisoners of War
20 Convention, the Department of State obtained from
21 the Japanese Government a commitment to apply the
22 provisions of that convention to American prisoners
23 of war, and, so far as adaptable, to civilian in-
24 ternees held by Japan.

25 "This commitment was made in a communication

.1 by the Japanese Government to the Swiss Minister at
2 Tokyo in Charge of American Interests in Japan. The
3 message was received through the American Legation
4 at Bern in a telegram dated February 4, 1942, and
5 stated that the Japanese Government informed the
6 Swiss Minister that, 'although not bound by the
7 Convention relative to prisoners of war, Japan will
8 apply mutatis mutandis provisions of that Convention
9 to American prisoners of war in its power.' In a
10 telegram dated February 24, 1942, it was reported
11 that the Ministry of Foreign Affairs declared to
12 the Swiss Minister in Tokyo that Japan would 'apply
13 on condition of reciprocity Geneva Convention for
14 treatment of prisoners of war and civilian internees
15 in so far as convention shall be applicable.'

16 "Thereafter, the State Department by
17 repeated protests and representations, through the
18 Swiss Government, again and again called to the
19 Japanese Government's attention failures on the
20 part of Japanese authorities to live up to their
21 Government's undertakings, and warned the Japanese
22 Government in unequivocal terms that the American
23 Government would hold personally and officially
24 responsible for their acts of depravity and barbarity
25 all officers of the Japanese Government who had

1 participated in their commitment and, with the con-
2 clusion of the war, would visit upon such Japanese
3 officers the punishment they deserved for their un-
4 civilized and inhumane acts against American
5 prisoners of war.

6 "These protests, representations and warn-
7 ings originated in the Prisoners of War Branch, and
8 I personally prepared many of them. They were based
9 upon information obtained from representatives of the
10 Swiss Government in charge of American interests in
11 Japan and in Japanese controlled territory, from the
12 International Red Cross Committee, from repatriates
13 and from recovered military personnel.

14 "On January 27, 1944, the State Department
15 dispatched to the Japanese Government, via the Swiss
16 Government, two telegrams which were personally
17 drafted by me, summarizing the protests and repre-
18 sentations which had theretofore been submitted to
19 the Japanese Government and demanding amelioration
20 of the treatment being accorded American nationals
21 in Japanese custody. The first of these telegrams
22 listed the principal categories of deprivations of
23 rights, cruelties, wanton neglect and mistreatment
24 and referred to the specific Article of the Geneva
25 Prisoners of War Convention, or other undertaking,

1 violated; the second recited specific instances com-
2 ing under each category."

3 Exhibit 1479 is quoted in toto in this
4 document; so I will not again read it to the Tribunal.

5 Turning to page 15 of this affidavit --

6 THE MONITOR: Mr. Prosecutor, from what line
7 on page 15? We would like to check with the Japanese
8 copy.

9 MR. WOOLWORTH: Beginning with the phrase,
10 "From January 27, 1944."

11 "From January 27, 1944 until the end of
12 hostilities the State Department made to the Japanese
13 Government numerous additional protests and repre-
14 sentations concerning instances similar to these
15 hereinabove set forth. A few of these instances were:

16 "On June 14, 1944 further representations
17 were made regarding visits to prisoners of war camps.

18 "On July 7, 1944 a protest was made against
19 the inadequate housing facilities and medical care
20 given to the aged, ill and helpless American civilian
21 internees at Shanghai.

22 "On August 25, 1944 a further protest was
23 made regarding the inadequacy of food, clothing and
24 medical supplies accorded American civilian internees
25 in China.

1 "On August 31, 1944 a protest was made
2 against the torture and decapitation of an American
3 airman by the Japanese in New Guinea.

4 "On September 11, 1944 a protest was made
5 against the removal of certain civilians from the
6 internment camp at Los Banos, Philippine Islands,
7 to Fort McKinley near Manila, where the Japanese
8 maintained an ammunition dump.

9 "On September 15, 1944 a protest was made
10 against the Japanese order issued to their armed
11 forces in Siam that enemy air personnel were not
12 to be treated as prisoners of war.

13 "On September 26, 1944 a protest was made
14 concerning the torture and execution of an American
15 soldier near Arayat, Pampanga, Philippines, on
16 September 21, 1943.

17 "On November 1, 1944 a protest was made
18 against the failure of the Japanese Government to
19 report promptly information necessary to enable
20 the United States Government to keep up to date
21 individual records for each prisoner of war. This
22 protest cited the case of an American who was shot
23 the Japanese and the incident reported one and a
24 half years later.

25 "On January 23, 1945 a protest was made

1 against the treatment and conditions of internment
2 of American prisoners of war at Camp Kawasaki No. 2.

3 "On February 20, 1945 messages were dis-
4 patched to the effect that the United States Govern-
5 ment did not consider that the reply made by the
6 Japanese Government to early protests were satisfac-
7 tory and that the American Government would continue
8 to hold the Japanese Government responsible.

9 "On March 9, 1945 another protest was made
10 against the continued action of the Japanese Govern-
11 ment in locating prisoner of war camps in close
12 proximity to military objectives.

13 "On March 10, 1945 a protest was made
14 regarding the conditions of captivity of American
15 prisoners of war being held at the Lasang Air Field,
16 Philippine Islands, and the inhumane treatment
17 characterizing the administration of prisoner of
18 war camps in the Philippines. On the same day,
19 another protest was made, this time relating to
20 the cruel treatment of American prisoners of war who
21 were aboard a Japanese freighter sunk off Mindanao,
22 Philippine Islands, on September 7, 1944, and the
23 savage behavior of the Japanese after the vessel
24 was torpedoed.

25 "On April 6, 1945 a protest was made

1 concerning the murder of Messrs. Calkins, Grinnell,
2 Duggleby, and Johnson, who had been held at the
3 Santo Tomas Internment Camp.

4 "On May 12, 1945 a protest was made against
5 the orders issued by the Japanese 14th Army Head-
6 quarters and Kaki Forces Headquarters attached to
7 the Ishibashi Unit, to the effect that persons
8 captured by or surrendering to Japanese armed
9 forces in the Philippines would be murdered in cold
10 blood.

11 "On May 19, 1945 a protest was made against
12 the brutal massacre on December 14, 1944 of 150
13 prisoners of war at Puerto Princesa, Palawan,
14 Philippine Islands.

15 "On May 29, 1945 the Swiss Government was
16 requested to make a strong protest to the Japanese
17 Government against the forced labor of prisoners of
18 war in the fortification of Shinagawa and on the
19 naval docks at Tokyo Bay, and the brutal treatment
20 of these prisoners.

21 "On June 23, 1945 a protest was made against
22 the location of prisoner of war camps in Siam in
23 close proximity to piers, railroad yards, and other
24 military objectives and the employment of prisoners
25 of war labor on projects having a direct relation

1 concerning the murder of Messrs. Calkins, Grinnell,
2 Duggleby, and Johnson, who had been held at the
3 Santo Tomas Internment Camp.

4 "On May 12, 1945 a protest was made against
5 the orders issued by the Japanese 14th Army Head-
6 quarters and Kaki Forces Headquarters attached to
7 the Ishibashi Unit, to the effect that persons
8 captured by or surrendering to Japanese armed
9 forces in the Philippines would be murdered in cold
10 blood.

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15 "On May 29, 1945 the Swiss Government was
16 requested to make a strong protest to the Japanese
17 Government against the forced labor of prisoners of
18 war in the fortification of Shinagawa and on the
19 naval docks at Tokyo Bay, and the brutal treatment
20 of these prisoners.

21 "On June 23, 1945 a protest was made against
22 the location of prisoner of war camps in Siam in
23 close proximity to piers, railroad yards, and other
24 military objectives and the employment of prisoners
25 of war labor on projects having a direct relation

1 with war operations.

2 "Virtually all of the protests filed with
3 the American Government by the Japanese Government
4 during the period herein covered related to alleged
5 mistreatment of Japanese nationals who had been
6 evacuated from the West Coast areas of the United
7 States. In none of the instances covered by the
8 Japanese Government's representations was the
9 alleged mistreatment of Japanese nations comparable
10 even in a remote degree to the mistreatment of
11 American nationals which formed the basis for the
12 American Government's protests. In the State Depart-
13 ment's telegram of January 27, 1944 the Japanese
14 Government was advised as follows:

15 "The Government of the United States also
16 desires to state most emphatically that, as the
17 Japanese Government can assure itself from an
18 objective examination of the reports submitted to
19 it by the Spanish, Swedish, and International Red
20 Cross representatives who have repeatedly visited
21 all places where Japanese are held by the United
22 States, the United States has consistently and fully
23 applied the provisions of the Geneva Prisoners of
24 War Convention in the treatment of all Japanese
25 nationals held by it as prisoners of war or (so far

1 as they are adaptable) as civilian internees,
2 detainees or evacuees in relocation centers.
3 Japanese nations have enjoyed high standards of
4 housing, food, clothing, and medical care. The
5 American authorities have furthermore freely and
6 willingly accepted from the representatives of the
7 protecting Powers and the International Red Cross
8 Committee suggestions for the improvement of
9 conditions under which Japanese nationals live in
10 American camps and centers and have given effect
11 to many of these suggestions, most of which, in
12 view of the high standards normally maintained, are
13 directed toward the obtaining of extraordinary
14 benefits and privileges of a recreational educational
15 or spiritual nature.'

16 "/s/ E. Tomlin Bailey.

17 "Sworn to before me this 28th day of June,
18 A. D., 1946.

19 "David H. Scull, Notary Public."

20 The prosecution desires to introduce in
21 evidence document 2702A, official record of Army
22 Headquarters, Melbourne, "Australian Prisoners of
23 War (RAN, AIF, RAAF) In the Far East."

24 THE PRESIDENT: Admitted on the usual terms.

25 CLERK OF THE COURT: Prosecution document

1 No. 2702A will receive exhibit No. 2028.

2 (Whereupon, the document above re-
3 ferred to was marked prosecution's exhibit
4 No. 2028 and received in evidence.)

5 MR. WOOLWORTH: If the Tribunal please, I
6 will read only the totals of these figures.

7 "AUSTRALIAN PRISONERS OF WAR (RAN, AIF,
8 RAAF) IN THE F.P. EAST.

9 "Known Prisoners of War, 21,726;

10 "Returned to Military Control, 14,314;

11 "Died whilst Prisoners of War, 7,412."

12 This is certified as a true copy of the
13 official record by E. A. Griffin, Colonel, Director
14 of Prisoners of War and Internees, Army Headquarters,
15 Melbourne.

16 The prosecution desires to introduce in
17 evidence document 2297A, which is a report on
18 prisoners of war, Dominion of Canada.

19 THE PRESIDENT: Admitted on the usual terms.

20 CLERK OF THE COURT: Prosecution document
21 No. 2297A will receive exhibit No. 2029.

22 (Whereupon, the document above re-
23 ferred to was marked prosecution's exhibit
24 No. 2029 and received in evidence.)

25 MR. WOOLWORTH: (Reading) "DEPARTMENT OF

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NATIONAL DEFENCE, ARMY, OTTAWA, CANADA" --

THE PRESIDENT: Just read the totals.

MR. WOOLWORTH: "Known Prisoners of War, 1691; Returned to Military Control, 1418; Died While Prisoners of War, 273."

THE PRESIDENT: We will adjourn until half-past one.

(Thereupon, at 1200, a recess was taken.)

AFTERNOON SESSION

The Tribunal met, pursuant to recess, at 1330.

MARSHAL OF THE COURT: The International Military Tribunal for the Far East is now resumed,

THE PRESIDENT: Colonel Woolworth.

MR. WOOLWORTH: Prosecution desires to introduce in evidence document No. 2448, strength and casualty reports of the United Kingdom, 1939 to 1945.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Prosecution's document No. 2448 will receive exhibit No. 2030.

(Whereupon, the document above referred to was marked prosecution's exhibit No. 2030 and received in evidence.)

MR. WOOLWORTH: (Reading) "Presented by the Prime Minister and the Minister of Defence to Parliament by Command of His Majesty, June 1946.

"Total Number of Prisoners of War of the Armed Forces of the United Kingdom Captured by the Enemy as Reported to 28th February 1946. Table 9.

"Captured by Germany and Italy: Total reported captured, 142,319. Killed or died in

1 captivity, 7,310.

2 - "Captured by Japan: Total reported captured,
3 50,016. Killed or died in captivity, 12,433."

4 Prosecution desires to introduce in evidence
5 document No. 1804-A.

6 MR. LOGAN: If the Tribunal please, the
7 defense moves to strike out the document which has
8 just been admitted, 2030, on the ground that it is
9 an unfair comparison.

10 THE PRESIDENT: The application is refused.

11 MR. WOOLWORTH: Prosecution desires to
12 introduce in evidence document No. 1804-A, United
13 Kingdom and Colonial prisoners of war in the Far East
14 reported to 31 December 1945.

15 THE PRESIDENT: Admitted on the usual terms.

16 CLERK OF THE COURT: Prosecution's document
17 No. 1804-A will receive exhibit No. 2031.

18 (Whereupon, the document above
19 referred to was marked prosecution's exhibit
20 No. 2031 and received in evidence.)

21 THE PRESIDENT: Do you know what these figures
22 include? Do they include Indians but not Australians?

23 MR. WOOLWORTH: As far as I know, they
24 include only Colonial Forces under Colonial Forces
25 and United Kingdom Forces under them. That is as far

1 as I am informed.

2 THE PRESIDENT: The description is not
3 appropriate for Indian figures.

4 MR. WOOLWORTH: As I understand it, there is
5 Colonial as opposed to--

6 THE PRESIDENT: Crown Colonies?

7 MR. WOOLWORTH: Members of the Forces of the
8 Dominions.

9 (Reading) "Total United Kingdom Forces reported
10 captured, 51,103. Reported killed or died in
11 captivity, 10,873.

12 "Colonial Forces, total reported captured,
13 3,224. Reported killed or died in captivity, 190.

14 "Total reported captured, 54,327. Total
15 reported killed or died in captivity, 11,063."

16 Prosecution desires to introduce in evidence
17 document No. 1502-A, schedule showing the numbers of
18 New Zealanders reported as prisoners of war in
19 Japanese hands.

20 THE PRESIDENT: Admitted on the usual terms.

21 CLERK OF THE COURT: Prosecution's document
22 No. 1502-A will receive exhibit No. 2032.

23 (Whereupon, the document above
24 referred to was marked prosecution's exhibit
25 No. 2032 and received in evidence.)

1 MR. WOOLWORTH: (Reading) "Total number of
2 prisoners of war, 121. Total number liberated, 87.
3 Died while POW, 31. Not accounted for, 3.

4 "Civilians, merchant seamen, and volunteer
5 forces personnel: Total prisoners of war, 238. Total
6 liberated, 215. Died while prisoners of war, 22. Not
7 accounted for, 1."

8 Prosecution desires to introduce in evidence
9 document No. 2942.

10 MR. LOGAN: If the Tribunal please, the
11 defense also objects to this document, on the ground
12 it is grossly unfair. There is no showing as to con-
13 ditions on which the various armies operated in so far
14 as these men were acting in their official capacities.

15 There is no showing that the climatic con-
16 ditions under which the various prisoners were interned
17 were the same in all instances. And, furthermore,
18 the document on its face shows that "the figures have
19 not been verified or checked and names have been
20 added since this last compilation of figures; however,
21 as of 1 June 1946 these are the figures reported to
22 this office by the enemy detaining powers."

23 There is no evidence as to the accuracy of
24 reports of the evidence submitted by the Balkans,
25 Germany and Italy.

1 THE PRESIDENT: The objection is overruled.

2 MR. WOOLWORTH: This is the report on United
3 States prisoners of war. Germany and Italy officially--
4 Prosecution offers in evidence--

5 THE PRESIDENT: I am asked to have some
6 point elucidated. To what country does 2033 refer?

7 MR. WOOLWORTH: If the Tribunal please, I
8 did not understand the question.

9 THE PRESIDENT: We do not know what country
10 suffered the losses referred to in the exhibit last
11 admitted.

12 MR. WOOLWORTH: New Zealand.

13 THE PRESIDENT: We know the enemy countries,
14 but we don't know the Allied countries concerned.

15 MR. WOOLWORTH: The document which I have
16 just offered in evidence refers to the United States
17 prisoners of war. It came from the Provost Marshal
18 General's Office, American Prisoner of War Information
19 Bureau.

20 THE PRESIDENT: Well, we see initials that
21 might suggest that, but we didn't know what the
22 interpretation was.

23 MR. WOOLWORTH: Prosecution has offered in
24 evidence document No. 2942. I haven't heard the
25 exhibit number as yet.

1 THE PRESIDENT: Admitted on the usual terms.
2 I overruled the objection.

3 CLERK OF THE COURT: Prosecution's document
4 No. 2942 will receive exhibit No. 2033.

5 (Whereupon, the document above
6 referred to was marked prosecution's exhibit
7 No. 2033 and received in evidence.)
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1 MR. WOOLWORTH: Provost Marshal General's
2 office, American Prisoner of War Information Bureau,
3 Restricted Master Index Report, Prisoners of War.

4 Detaining power: Germany and Italy, total
5 officially reported interned, 93,154.

6 Returned to military control, 90,139.

7 Died, 2,038.

8 Repatriated prior to VE-Day, 975.

9 Unrecovered prisoners of war, 2.

10 Japan: Total officially reported interned,
11 21,580.

12 Returned to military control, 14,473.

13 Died, 7,107.

14 Unrecovered POW, 1.

15 Balkans: Total officially reported interned,
16 1,270.

17 Returned to military control, 1,270.

18 May it please the Tribunal --

19 THE PRESIDENT: Have you any separate
20 figures for India?

21 MR. WOOLWORTH: The prosecution has no
22 separate figures for India.

23 THE PRESIDENT: Are they included in United
24 Kingdom and Colonial figures?

25 MR. WOOLWORTH: It was impossible to get

1 separate figures for India.

2 THE PRESIDENT: That is not what I asked.
3 I asked you whether they were included in the figures
4 already tendered as United Kingdom and Colonial
5 figures.

6 MR. WOOLWORTH: I am advised they are not
7 so included,

8 THE PRESIDENT: The Indian forces in the
9 Pacific were very large. That is a matter of which
10 we can take judicial notice. And I am reminded we
11 have no Dutch figures. Why not do the job thoroughly,
12 Colonel Woolworth. if you have the figures?

13 MR. WOOLWORTH: An effort has been made but
14 so far it has proven unsuccessful.

15 May it please the Tribunal; After the pre-
16 sentation of the evidence of sea atrocities by
17 Captain Robinson, and certain evidence as to Class
18 B offenses by the associate prosecutor for France
19 and the associate prosecutor for the USSR, further
20 evidence will be presented to show the responsibility
21 of certain defendants for Class B offenses. At that
22 time the witness SUZUKI, Tadakuzu will be recalled,

23 MR. JUSTICE MANSFIELD: If the Tribunal
24 please, Captain Robinson will now proceed with the
25 case for the prosecution,

1 THE PRESIDENT: Captain Robinson.

2 CAPTAIN ROBINSON: Mr. President and Members
3 of the Tribunal. It is now proposed to present evi-
4 dence to show offenses against prisoners of war and
5 civilians committed on Pacific islands and at sea,
6 as charged in the indictment, particularly in Counts
7 53, 54 and 55, and Appendix D, particulars of breaches
8 of the Laws of War, Sections 1, 2, 3, 4, 5, 7, 8,
9 10, 13 and 14.

10 First, offenses connected with Wake Island
11 will be presented.

12 May the witness Sergeant Jesse L. Stewart,
13 United States Marine Corps, be called to the witness
14 stand.

15
16 J E S S E L. S T E W A R T, called as a
17 witness on behalf of the prosecution, having
18 first been duly sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY CAPTAIN ROBINSON:

21 Q State your name, rank and present station.

22 A Jesse L. Stewart, Master Technical Sergeant,
23 United States Marine Corps, 255482. Stationed at
24 Corpus Christi, Texas, Marine Aviation Detachment.
25 Now on tdy with Legal Section, GHQ, Senior Commander

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1 Allied Powers, Tokyo.

2 Q You intended to say Supreme Commander,
3 Sergeant?

4 A Yes, sir.

5 Q Allied Powers. The record will be so
6 corrected.

7 What is your age and your permanent home
8 address?

9 A I am thirty-one years old; my home address is
10 McKinnon, Wyoming.

11 Q How long have you been in the United States
12 Marine Corps?

13 A Continuous service since October 19, 1936.

14 Q Were you a prisoner of the Japanese?

15 A Yes, sir.

16 Q What dates?

17 A I was captured December 23, 1941, at Wake
18 Island.

19 Q And liberated when?

20 A Liberated September 11, 1945, at Tsuruga,
21 Honshu, Japan.

22 Q At what places and during what periods were
23 you held a prisoner?

24 A Wake Island, from December 23, 1941 until
25 May 12, 1942. Then Zentsuji, Shikoku Island, May

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18, 1942 until January 17, 1943. Tamagawa, Honshu,
Japan, from 17 January 1943 until 21 May 1943. Umeda
Camp, Osaka, from 21 May 1943 until 21 May 1945. At
Tsuruga, from 21 May 1945 until 11 September 1945.

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1 Q Were you wounded in the course of the
2 Japanese attack on Wake in December, 1941?

3 A Yes, sir.

4 Q What wounds did you receive, and what
5 medical attention did you receive from the Japanese
6 or from American prisoners?

7 A On 7 December 1941, I was wounded in the
8 head, shoulder and arm. On 9 December or 8 December
9 1941, my left leg was shattered by strafing from
10 aeroplanes. Medical attention to me from then until
11 23 December 1941 was taken care of by Dr. Shank, a
12 civilian doctor attached to Pan-American Airways.

13 Q Dr. Shank, then, also was -- he was a prisoner,
14 but a civilian prisoner?

15 A Yes.

16 Q Will you go ahead?

17 A After my capture I received no medical
18 attention for three days. On 26 December 1941, we
19 were moved into an old barracks building. There the
20 Japanese allowed Dr. Shank a slight amount of bandage
21 and some mercurochrome. About the middle of January
22 my leg began infecting. Dr. Shank asked the Japanese
23 doctor, Lieutenant KITAJIMA, for instruments and
24 medical supplies to perform an operation. Dr. KITAJIMA
25 came to the prisoner-of-war hospital and looked at my

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1 leg. He told Dr. Shank it would have to be ampu-
2 tated. Dr. Shank refused for this operation to be
3 accomplished. After Dr. KITAJIMA left the hospital,
4 the Japanese interpreter, KATSUMI by name, slapped
5 Dr. Shank for being -- for what he said was being
6 insolent to Dr. KITAJIMA. Dr. KITAJIMA would not
7 allow Dr. Shank to have instruments in the American
8 hospital. Dr. Shank attempted to obtain instruments
9 and anesthetics from the Japanese for about two weeks.
10 About the first of February, 1942 my leg became
11 discolored and swollen from above the knee. Dr.
12 Shank told me it would have to be operated on. He
13 had in his possession a pair of bandage scissors and
14 a pair of tweezers which he had retrieved from the
15 American hospital when it was bombed out. Two civilian
16 nurses, Samuel Kerr and Milton Dreyer, one sat on
17 my legs, another on my shoulders, and Dr. Shank per-
18 formed the operation on my leg with the scissors and
19 tweezers. This operation was successful, and the leg
20 began to heal after it was completed.

21 Q Did the Japanese doctor and hospital staff
22 have anesthetics and medical supplies which could
23 have been provided so far as you know?

24 A At the time of the surrender of Wake Island
25 there were two semi-underground magazines improvised as

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1 hospitals. The equipment and medical supplies from
2 these hospitals were moved to the Japanese hospital
3 after the surrender. About the middle of February,
4 1942, Dr. MIYAZAKI came to Wake Island. He supplied
5 Dr. Shank with a case of instruments and the necessary
6 medical supplies with which to perform operations.
7 After that date Dr. Shank performed at least four
8 appendectomies and many minor operations with these
9 supplies furnished him by Dr. MIYAZAKI.

10 Q Had there been other American prisoners like
11 yourself who had been in need of medicine which the
12 Japanese had refused to supply?

13 A Yes, sir. There were about forty American
14 prisoners, both service and civilians, who were wounded
15 and in bad condition on Wake Island.

16 Q And did you or did you not hear the American
17 prisoner doctor civilian asking for medical supplies
18 for use with these other prisoners?

19 A During the time between 23 December 1941 and
20 the middle of February, 1942, at which time Dr.
21 MIYAZAKI came to Wake, Dr. Shank requested medical
22 supplies and instruments from many Japanese. Among
23 them were KATSUMI, the interpreter, OGASAKI, a naval
24 Chief Petty Officer in charge of prisoners, a Japanese
25 lieutenant who was over OGASAKI, and a Japanese doctor.

STEWART

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1 Q And what did these Japanese do or say in
2 response to the doctor's request?

3 A Dr. Shank was always refused the use of
4 any instruments whatsoever and was never supplied with
5 any medicine that he needed.

6 Q How long did he remain on Wake Island?

7 A Dr. Shank remained on Wake Island until he
8 was later executed.

9 Q On what date?

10 A 7 October 1943.

11 Q Did you talk to him at any time in regard
12 to his leaving Wake Island?

13 A On 12 January 1942, approximately 1235
14 American prisoners were taken from Wake. Dr. Shank
15 could have left at this time, but somehow contrived
16 to remain there. I asked him why he had stayed. He
17 answered that he could not leave with the prisoners
18 who left Wake and leave us remaining on Wake Island
19 without proper medical attention.

20 Q The prisoners taken on Wake on December 23,
21 1941 consisted of how many American service personnel
22 and how many American civilian personnel?

23 A About 1200 civilians and about 400 service
24 personnel.
25

STEWART

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1 Q You as one of the 400 service personnel
2 were told what with respect to your status by the
3 Japanese?

4 A We didn't know what our status was until
5 about noon the 25th of December, 1941, at which
6 time KATSUMI read to us an Imperial Rescript, in
7 substance as follows:

8 "By the kindness of His Imperial Majesty,
9 the Emperor of Japan, you have been granted the
10 right to live. Until such time -- You will be
11 interned as prisoners of war until such time as you
12 have proven by your actions that you are ready to
13 become loyal subjects of the Greater East Asian
14 Empire."

15 On 12 May 1942, about noon, as we service
16 personnel were ready to leave the island, Captain
17 KAWASAKI, of the Japanese Navy, made a speech to
18 us in front of his office. In substance he said,
19 "You are now being transferred to Japan, where
20 you will be interned. Until now you have been
21 missing in action. Upon reaching your new camp
22 your government and your families will be notified
23 of your status and whereabouts."

24 Upon my arrival at Zentsuji the camp com-
25 mander of Zentsuji Prisoner of War Camp made another

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1 speech to us. In substance he said, "You are now
2 to be interned as prisoners of war. Your govern-
3 ment and your families will be notified that you
4 are here."

5 Q What was the date of that speech?

6 A The 18th of May 1942.

7 Q Do you know whether or not your families
8 and the government were notified of your pres-
9 ence at that time?

10 A The first notification my wife had of my
11 capture was about 15 December 1943. This was in
12 the form of a recording which I had made at Zentsuji
13 in October 1942. It wasn't until after this time
14 that the United States Government notified her that
15 I was a prisoner of war.

16 Q While you were on Wake as a prisoner there
17 did you inquire about notice to your family and to
18 the United States Government?

19 A During the time I was on Wake both the
20 civilians and the servicemen requested many times
21 that they be allowed to write letters to their
22 families at home. We were always told we would
23 have to wait until proper arrangements could be
24 made until our government had been notified of our
25

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1 capture.

2 Q Do you know whether there were lists of
3 names of the American prisoners of war on Wake in
4 the hands of the Japanese there?

5 A Yes, sir, they had two lists of all priso-
6 ners who were held on Wake, one list in which each
7 man was given a number. My number was 382. This
8 list was used as a muster list. One other list
9 was made up about the middle of January, 1942.

10 Mr. Cormier, a clerk for Mr. Teeter on Wake Island,
11 came around and got the name, address of the family,
12 and the next of kin, and when asked what this list
13 was for he said, "This list is requested by the
14 Island Commandant to be used as notification to
15 your government" -- or to our government by way of
16 Tokyo of our capture.

17 Q And that was at about what date?

18 A About 15 January 1942.

19 Q Do you know whether or not Tokyo, the Japa-
20 neze Government, was in radio touch with Wake?

21 A At that time each night we could hear a
22 motor running. When we looked out the window of
23 the hospital, we could see a light. We asked the
24 Japanese guard what the light was. He replied,
25 "That is the radio station. They are talking to

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Tokyo."

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2 Q What is your specialty or technical field
3 in the Marine Corps, Sergeant?

4 A I am a radio radar technician.

5 Q Will you continue your answer to the ques-
6 tion?

7 A Also there was a 4-engine patrol plane that
8 landed at Wake about once each week. This plane
9 brought mail and official documents from Tokyo
10 to Wake Island.

11 On the 24th of February 1942 we were shelled
12 by a contingent of American cruisers. Mr. KATSUMI
13 came to our air-raid shelter and ordered twenty-five
14 or thirty American civilians to go out and work dur-
15 ing this raid. He told them they must repair the
16 airport, because they had radioed Tokyo for help
17 and some 2-engined bombers were coming to their aid.
18 These planes landed at Wake Island at about 2130
19 that evening.
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Q Did you have any radio communications your-
self from Wake with Tokyo?

A During the time I was a prisoner on Wake Is-
land we had some receivers set up which were used in
picking up news broadcasts. We received news from
Tokyo, JOAK, from San Francisco, KGEI, from Honolulu,
AHRO.

Q Moving on to your treatment as prisoners,
what threats, if any, were made by Japanese to you or
to other American prisoners so far as you know?

A The first threats were made on Wake Island.
We were told if we did not obey all orders we would be
executed. I was threatened with death many times during
questionings. About November 1944 the B-29's began
raiding Japan. After this time we were told about once
a month that we would be killed if the American forces
landed on the Japanese Islands. About the first of
August 1945 we were told we would be killed if any more
super-bombs were dropped on Japan.

Q By whom were you told -- by whom were these
threats made?

A They were usually made by the interpreter who
stated they came from the camp commanders.

Q What is the interpreter's name?

A On Wake Island, KATSUMI, Zentsuji, ATSUBUKI,

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1 Umeda I do not remember the name of the interpreter,
2 Tsuruga, Bunsho IMURA, at Tanagawa, TAKAGI.

3 Q You speak of threats while they were question-
4 ing you. On what subjects would the questioning be
5 concerned with?

6 A I was questioned about nine times on radio and
7 radio locators.

8 Q That is, on United States military secrets on
9 that subject, is that what you mean? Or what was the
10 subject?

11 MR. LOGAN: If the Tribunal please, I think
12 that counsel should be directed not to ask such leading
13 questions of this witness.

14 CAPTAIN ROBINSON: I would be glad to withdraw
15 the question, sir.

16 THE PRESIDENT: Leading on serious aspects
17 should not be indulged in, and this is a serious aspect.

18 Q I withdraw the question and frame it this way:
19 On what subjects connected with radar were you ques-
20 tioned?

21 THE PRESIDENT: It can be put in two simple
22 questions: Did the Japanese interrogate you? If so,
23 what about?

24 MR. LOGAN: I object to questions along this
25 line, your Honor, on the ground that counsel has

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1 suggested the answer to the witness.

2 THE PRESIDENT: That objection is overruled.

3 Q On what subjects did they interrogate you,
4 Sergeant?

5 A Twice on Wake Island I was interrogated on
6 aircraft radio and radio locator equipment which the
7 Japanese said Pan Air had on Wake Island. On the Asama
8 Maru in Yokahama Harbor on the 17th day of May 1942 I
9 was questioned on radio locators. This dealt strictly
10 with military installations in military airplanes. At
11 Zentsuji and Tanagawa I was questioned on any radio or
12 radio locator knowledge I might have had. During the
13 two years at Umeda I was questioned four different
14 times, three of these on radio and radio locator. The
15 last questioning at Umeda, about March of 1945, I was
16 questioned on radar. The Japanese lieutenant told me
17 he had definite information that I had been to school
18 on radar equipment.

19 Q And did they say: "Please answer these ques-
20 tions," or just what did they say with respect to
21 answering questions?

22 A In all questionings I was told that refusal
23 to answer questions or lying would be punishable by
24 death.

25 Q You mentioned the civilian personnel on Wake,

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1 Do you know what their status was as stated by the Jap-
2 nese in your presence or hearing?

3 A I don't know what the status of those civilians
4 were. They separated the servicemen and the civilians
5 on 24 December 1941. On 12 January 1942 when the main
6 detachment of prisoners left Wake Island K-TSUMI called
7 out the names of 365 American civilians. He lined them
8 up alongside the hospital building. I heard him say:
9 "You are to remain here as a labor battalion. When
10 you have completed the airport and fortified the island
11 to our satisfaction you will be released by the Japanese
12 Government and returned to your homes." Some of these
13 men objected to staying on Wake Island. They were imme-
14 diately reprimanded by K-TSUMI and told they must
15 remain there.

16 THE PRESIDENT: We will recess for fifteen
17 minutes.

18 (Whereupon, at 1445, a recess was taken
19 until 1500, after which the proceedings were
20 resumed as follows:)
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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now resumed.

3 THE PRESIDENT: Captain Robinson.

4 CAPTAIN ROBINSON: Mr. President.

5 DIRECT EXAMINATION

6 BY CAPTAIN ROBINSON: (Continued)

7 Q Directing your attention, Mr. Witness,
8 to the date when you left Wake, how many civilians
9 were on Wake at that time, American civilians held
10 there?

11 A 362.

12 Q Do you know when these civilians, any more
13 of these civilians left Wake?

14 A About 262 left Wake in September of 1942.
15 About 100 did not leave Wake.

16 Q What became of the 100?

17 A Of this 100 civilians about 97 were executed
18 by light machineguns on the 7th day of October 1943.
19 One man was executed in July of 1943, and one man
20 executed on 13 October 1943.

21 Q You may tell us how you learned of these
22 executions?

23 A I learned of these executions when --

24 Q Pardon me, will you tell them in order
25 according to the date?

STEWART

DIRECT

1 A The first execution of a civilian on Wake
 2 Island was on 10 May 1942. He was executed for having
 3 attempted to break into a warehouse. I saw this
 4 execution. The other execution took place after
 5 I left Wake Island.

6 THE PRESIDENT: What form of execution did
 7 you witness?

8 Q Give the details on the execution which you
 9 witnessed.

10 A The morning of 10 May 1942 one, Julius
 11 Hoffmeister, was sentenced to death.

12 Q By whom?

13 A By Captain KAWASAKI, Imperial Japanese Navy.

14 Q His position then was what?

15 A Island Commander.

16 Q Go ahead.

17 A About 9 o'clock in the morning I saw
 18 Hoffmeister and KATSUMI with two Japanese guards
 19 in the back of a pick-up. He was taken to an area
 20 directly behind the hospital where I was at. The
 21 Staff -- the Commanding Staff of the Island was in
 22 this area, also all the Japanese soldiers who were
 23 not actually on duty.

24 Q Any other American civilians present?

25 A There were 20 American civilians ordered

STEWART

DIRECT

1 by Captain KAWASAKI to witness this execution. I
2 could not see the actual execution, but I could see
3 these civilians standing in two ranks and I could
4 see the Japanese soldiers clustered around on top
5 of the lumber yard which was in that area. I heard
6 them cheering and saw them clapping their hands.
7 Shortly after this, Doctor Shank, who had been ordered
8 to witness this execution, came back to the hospital.
9 He told me the following: Hoffmiester had been taken
10 from the pick-up truck, had been made to kneel at
11 the end of a grave which had been dug for him. He
12 was blindfolded and then Captain KAWASAKI read the
13 order of execution. This was repeated in English
14 by KATSUMI. Then Doctor KITAJIMA performed the
15 execution, after which KATSUMI told the American
16 witnesses the following: "You will return to your
17 compound and there describe this incident to the rest
18 of the prisoners."

19 THE PRESIDENT: Well, we do not want all
20 these details.

21 Was the man Hoffmiester, whatever his name
22 was, shot, bayoneted, decapitated or otherwise
23 disposed of?

24 THE WITNESS: He was decapitated, your Honor.

25 THE PRESIDENT: Get on to the other executions.

STEWART

DIRECT

1 Q Go ahead.

2 A The fate of the other civilians on Wake
3 Island I learned from interrogating KATSUMI and from
4 the confessions of Admiral SAKAIBARA and other members
5 of his command on Wake Island.

6 Q When did you --

7 A In room 804 of the Meiji Building, Tokyo,
8 Japan about the middle of October I interrogated
9 KATSUMI.

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STEWART

DIRECT

1 Q Describe the executions as you learned them.

2 A KATSUMI told me that one man had been executed
3 in July 1943.

4 Q How -- by what means?

5 A He had been decapitated by a Japanese
6 lieutenant. Ninety-six of the other civilians had
7 been executed by rifle fire on 7 October 1943.

8 Q Did KATSUMI say that he had had any part in
9 that?

10 A KATSUMI told me he did not witness this
11 execution but that prior to the execution he had went
12 to the barracks where the civilians were being held
13 and told them to put on their best clothes as they
14 were going to the States. On 13 October 1943 one
15 American civilian who had evidently escaped the
16 execution of 7 October 1943 was executed by decapita-
17 tion at Admiral SAKAIBARA's hands.

18 Q And that was the last of the Americans on Wake?

19 THE PRESIDENT: What position did the Admiral
20 have?

21 CAPTAIN ROBINSON: I beg your pardon, sir?

22 THE PRESIDENT: I do not have to repeat myself
23 for your benefit if you do not wear your earphones. Ask
24 the court reporter if you do not hear me.

25 Q What position did Admiral SAKAIBARA hold on

STEVART

DIRECT

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24 the court reporter if you do not hear me.

25 Q What position did Admiral SAKAIBARA hold on

STEWART

DIRECT

1 Wake?

2 A Admiral SAKAIPARA was island commander.

3 CAPTAIN ROBINSON: If the Court please,
4 prosecution wishes to introduce a document in con-
5 cluding the direct examination of the witness in
6 order that I may question him on statements made by
7 the defendant TOGO in a letter to the Swiss Minister.8 I offer in evidence this letter, prosecution
9 document No. 8431.10 THE PRESIDENT: Why were those persons
11 executed on the 7 and 13 October?

12 THE WITNESS: That is correct, sir.

13 BY CAPTAIN ROBINSON:

14 Q Why?

15 A The reason why, only from KATSUMI, was that
16 they expected the American forces to land on Wake
17 Island.

18 THE PRESIDENT: They were not tried?

19 THE WITNESS: No, sir.

20 Q Were they accused of any offense so far as
21 you know?

22 A No, sir.

23 THE PRESIDENT: Did KATSUMI tell you that?

24 THE WITNESS: KATSUMI did not tell me that
25 they were not accused of any offense.

STEWART

DIRECT

1 THE PRESIDENT: Did he tell you they were
2 shot because an American landing was expected?

3 THE WITNESS: Yes, sir.

4 THE PRESIDENT: This document you have
5 tendered is admitted on the usual terms.

6 CAPTAIN ROBINSON: May I ask one question
7 further, sir?

8 CLERK OF THE COURT: Prosecution's document
9 No. 8431 will receive exhibit No. 2034.

10 (Whereupon, the document above
11 referred to was marked prosecution's exhibit
12 No. 2034 and received in evidence.)

13 BY MR. ROBINSON:

14 Q One further question on Wake. Do you know
15 of other American prisoners removed from Wake who lost
16 their lives at the hands of the Japanese?

17 A Yes, sir. Five American service personnel
18 were executed on board the Mita Maru, 23 January 1942.

19 Q How were they executed?

20 A By decapitation.

21 Q What reason was given for their execution?

22 A The reason for this execution was stated as
23 the attempted landing of the Japanese forces on Wake
24 Island of 12 December 1941 met with failure. "For this
25 crime against the Imperial Japanese Navy you men must

STEWART

DIRECT

lose your lives."

1 Q You were on Wake at that time?

2 A Yes, sir.

3 Q How did you learn of their execution?

4 A I learned that three of my buddies had not
5 been reported from Wake Island by the Japanese Govern-
6 ment. On my return to Japan I met Lieutenant Getty
7 and together we held an investigation on the Nita Maru
8 and discovered the execution of these five men.

9 Q Lieutenant Getty was an investigator con-
10 nected with the Legal Section, SCAP, as you were?

11 A Yes, sir.

12 Q And how did you and he learn of the execution?

13 A We learned of this execution through sworn
14 statements from Japanese eye witnesses of the execution.

15 Q How many eye witnesses?

16 A About sixteen.

17 Q Where did you talk to them?

18 A Some of them in the Meiji Building; others at
19 Sugamo Prison.

20
21 CAPTAIN ROBINSON: If the Court please, some
22 of these affidavits will be put in evidence later in
23 regard to details that have been testified to here.

24 I wish to offer in evidence--

25 THE PRESIDENT: Are you going to read exhibit

STEWART

DIRECT

No. 2034?

1 CAPTAIN ROBINSON: No. 8431. I would like
2 to read the document which I just introduced.

3 THE PRESIDENT: That is exhibit No. 2034.

4 CAPTAIN ROBINSON: (Reading)

5 "April 20, 1942

6 "To the Minister Extraordinary and Pleni-
7 potentiary of Switzerland:

8 :I
9 "I acknowledge receipt of your letter dated
10 March 11 in which you asked for information concerning
11 some Americans on Wake Island.

12 "As a result of investigation by the author-
13 ities concerned, of the American prisoners of war
14 still on this island, there are quite a number who
15 cannot be transferred at present because of wounds
16 and illnesses and also those who of their own wish
17 are engaged in peaceful labor. The sick and wounded
18 are receiving kind medical treatment at our hands and
19 as for the laborers, they are engaged in pleasant labor
20 under an agreement of work with the Japanese authorities.
21 The number and names of these people are now being in-
22 vestigated. I shall be grateful if you will communicate
23 this to the Government of the United States.

24 "I take this opportunity of expressing my
25 highest respects to you.

STEWART

DIRECT

1 "Minister for Foreign Affairs

2 "Shigenori TOGO."

3 Now I wish to ask this witness nine concluding
4 questions based on this document.

5 Q On 20 April 1942 were you held by the Japanese
6 on Wake Island?

7 A Yes, sir.

8 Q How many Americans then held by the Japanese
9 on Wake were wounded and ill so that they could not
10 be removed from the island?

11 MR. LOGAN: If the Tribunal please, it is
12 quite obvious what counsel is doing. He is cross-
13 examining this witness as to the truth or falsity of
14 another document which he has offered in evidence.
15 We object to this method of procedure and believe
16 that counsel should be restricted to asking this
17 particular witness as to conditions which existed
18 there and, as I understood it, his testimony has
19 already covered that.
20

21 THE PRESIDENT: If there are any particulars
22 referred to by accused TOGO that the witness has not
23 testified about you can get them in a proper way but
24 do not lead. There is no need to lead.

25 Q How many American civilians or service
personnel were remaining on Wake Island of their own

STEWART

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wish on that date?

MR. LOGAN: Object to that, your Honor, on the same grounds.

THE PRESIDENT: That is unobjectionable.

A None at that time.

STEWART

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wish on that date?

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THE PRESIDENT: That is unobjectionable.

A None at that time.

STEWART

DIRECT

Q Was any peaceful labor being conducted on Wake, or was all labor connected with military operations?

MR. LOGAN: Same objection, your Honor. It is highly improper for counsel to ask these questions.

THE PRESIDENT: How were the people still on Wake employed?

THE WITNESS: I was still on Wake Island at this time.

THE PRESIDENT: What were the people still on Wake Island doing? Were they working?

THE WITNESS: Yes, sir.

THE PRESIDENT: What kind of work?

THE WITNESS: They were completing the airport, building entrenchments, entanglements around the replacements, and belting and cleaning ammunition.

BY CAPTAIN ROBINSON (Continued):

Q May I ask, sir, whether they were working under a voluntary agreement of work at that time or otherwise?

A They were not working voluntarily.

CAPTAIN ROBINSON: I believe that is all I have, sir.

THE PRESIDENT: Mr. Logan.

STEWART

CROSS

MR. LOGAN: If the Tribunal please:

CROSS-EXAMINATION

BY MR. LOGAN:

Q Sergeant, do you know what report was given to Minister for Foreign Affairs TOGO by his investigation committee?

A I do not.

Q Do you know the date that this investigation committee reported back to Minister TOGO?

A Which investigation committee do you mean?

Q This investigation that is referred to in prosecution document 2037, which the prosecution just read.

CAPTAIN ROBINSON: The prosecution objects, sir, to that question on the ground that it is not covered in the direct examination. It is new matter.

THE PRESIDENT: It certainly is an allowable question. Was there an investigation held? But that is not the way you put it, Mr. Logan.

MR. LOGAN: If the Tribunal please, this document, 2034, was read by the prosecutor while this witness was on the stand. He attempted to ask some questions with respect to it, and my objections were overruled, and the questions were directed to it; and the questions he asked involved this document.

STEWART

CROSS

1 THE PRESIDENT: I did not prevent you from
2 asking questions on the last exhibit, 2034; but you
3 are assuming that the investigation TOGO refers to
4 was made.

5 MR. LOGAN: Well, the prosecution must have
6 assumed that, because they asked this witness as to
7 conditions that existed on April 20, and that is the
8 investigation that TOGO is referring to.

9 THE PRESIDENT: Are you aware of any investi-
10 gation made by the Japanese on the Island about
11 April, 1942, relating to the conditions of the
12 Americans then on the island?

13 THE WITNESS: No, sir.

14 BY MR. LOGAN (Continued):

15 Q So you don't know whether or not an investi-
16 gation was made; is that it?

17 THE PRESIDENT: He would hardly know; they
18 wouldn't consult him.

19 Q Assuming that there was an investigation
20 made and a report made to Minister TOGO, you wouldn't
21 know as of what date the report referred to, would you?

22 THE PRESIDENT: We do not need his help on
23 that.

24 Q How long were you in the hospital?

25 A I was in the hospital throughout the time I

STEWART

CROSS

1 was held on Wake Island.

2 Q How many were still in the hospital on
3 May 12 when you left?

4 A About four civilians and three servicemen.

5 Q So that there were some people in the
6 hospital down there on April 20 and prior thereto;
7 is that correct?

8 A That is correct.

9 Q Were you able to get out of the hospital
10 prior to May 12?

11 A Yes, sir, I began moving about on crutches
12 around the first of March.

13 Q And when did you first get out of the
14 hospital on crutches?

15 A I first left the hospital on crutches about
16 the first of March.

17 Q Is it possible, Sergeant, that there were
18 some people down there engaged in peaceful labor at
19 the time, April 20, 1942?

20 A About three men were engaged in the laundry.
21 Other than that all men were doing military work.

22 Q You were receiving medical treatment con-
23 tinuously up to May 12 while you were there?

24 A After about the first of March the only
25 medical attention I required was dressings.

STEWART

CROSS

1 Q Did you get the dressings?

2 A Yes. Dr. Shank had two bandages for my
3 leg. He would put one on while the other was being
4 washed out.

5 Q And were the other sick and wounded in the
6 hospital receiving medical attention up to April 20,
7 1942?

8 A They were.

9 Q You said after -- I believe it was March 15,
10 was it, that one of the doctors, Japanese doctors,
11 brought drugs, medicines, bandages, and so forth
12 to the hospital; is that correct?

13 A Fifteenth of February.

14 Q Prior to that time were there any supplies
15 available on Wake, medical supplies?

16 A All the medical supplies which were in the
17 two semi underground hospitals which we had there
18 before our capture were transferred to the Japanese
19 hospital.

20 Q Did you have many supplies in these under-
21 ground hospitals in December, 1941?

22 A Yes, we did.

23 Q How did it happen that this doctor, LIYAZAKI,
24 gave you all these supplies and instruments on February
25 15th? Was there any reason why he did not or could

STEWART

CROSS

not give them to you before that date?

1 A I was not on the island before that date.

2 Q Do you know if he brought these supplies
3 with him?

4 A I don't think so. He came in an airplane.

5 Q He could have brought medical supplies in
6 an airplane, couldn't he?

7 A He could have, except these were American
8 medical supplies.

9 Q And the entire period of time you were in
10 the hospital you really received good treatment,
11 didn't you, Sergeant?

12 A I received as good treatment as it was
13 possible for Dr. Shank to give me.

14 Q What was the operation he performed on your
15 leg?

16 A Without anesthetic, he opened up the front
17 of my leg about four inches and removed about seven
18 bone splinters which were causing the infection.

19 Q And after February 15 did you have a
20 plentiful supply of drugs in the hospital after
21 this doctor brought them in?

22 A After 15 February Dr. Shank had enough
23 medical supplies and instruments that he could perform
24 apendectomies.
25

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Q And other operations?

A Other minor operations, yes.

Q Did you get good food while you were in the hospital on Wake Island?

A I received sufficient food while I was in the hospital at Wake Island, yes.

Q This KATSUMI, he was commander of the island, was he?

A KATSUMI was the interpreter.

Q He was the one that read this Imperial Rescript, as you said, on December 25, 1941?

A That is correct.

Q Did he come in the hospital and read this specially to you and the other people in the hospital?

A At this time we were still held on a coral strip alongside the air strip. All of us were within a small group.

Q Weren't you in the hospital on December 25?

A We were moved to the hospital late in the evening of December 25.

Q Where were you between December 8 and December 25?

A On December 8 until December 23 I was in a semi underground magazine, which had been improvised as a hospital.

STEWART

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Q Do you know on whose behalf KATSUMI was reading this document?

A Will you repeat that question, please?

Q Do you know on whose behalf KATSUMI, the interpreter, was reading this document?

A Only that he stated that it was an Imperial Rescript.

Q Did you see the document?

A I could see it in his hand, yes.

Q Did he use the words, "Imperial Rescript," or did he say "command"?

A He used the words, "Imperial Rescript."

Q You are positive of that?

A I am.

Q Where is KATSUMI now?

A I do not know.

Q When did you see him last?

A About the first of November, in the Meiji Building, at Major Schaefer's office.

Q 1946?

A That is correct.

Q Has he been indicted?

A His arrest has been ordered at this time.

Q Has he been apprehended?

A Not as yet.

STEWART

CROSS

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STEWART

CROSS

1 Q Have you testified in any other trials
2 on atrocities?

3 A I have.

4 Q What was the result of the trial at which
5 you testified?

6 A The trial is not finished as yet.

7 Q Where is it pending?

8 A In the Superior Court at Yokohama.

9 Q Whose trial is it?

10 CAPTAIN ROBINSON: If the Court please, I
11 object to that on the ground of relevancy.

12 THE PRESIDENT: Objection upheld.

13 Q Do you know if Admiral SAKABARA has been
14 brought to trial?

15 A He has.

16 Q Where is he now?

17 A I do not know.

18 Q Do you know the result of the trial?

19 CAPTAIN ROBINSON: The same objection on the
20 ground of relevancy, if the Court please.

21 THE PRESIDENT: Objection upheld.

22 Q Did you testify at his trial?

23 CAPTAIN ROBINSON: If the Court please, the
24 same objection.

25 THE PRESIDENT: Objection upheld.

STEWART

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24 same objection.

25 THE PRESIDENT: Objection upheld.

STEWART

CROSS

1 Q Do you know if any of the other Japanese
2 who were in control down at Wake Island have been
3 brought to trial for any offenses committed down
4 there?
5

6 CAPTAIN ROBINSON: The prosecution objects,
7 your Honor.

8 THE PRESIDENT: Objection upheld.

9 Q Now, of all these executions you have
10 testified about, Sergeant, actually you never saw
11 one of them; isn't that so?

12 THE PRESIDENT: We know what he said,
13 Mr. Logan, and we can appreciate it. He did not
14 actually witness any person being shot, decapitated,
15 or otherwise disposed of.

16 Q Are you employed as an investigator of
17 the Legal Section of G. H. Q.?

18 A I am.

19 Q How long have you been so employed?

20 A I have been employed as an investigator
21 and war crimes trial witness with Legal Section since
22 27th of September, 1946.

23 MR. LOGAN: That is all.

24 THE PRESIDENT: Mr. Levin.

25 MR. LEVIN: Mr. President.

STEWART

CROSS

1 CROSS-EXAMINATION (Continued)

2 BY MR. LEVIN:

3 Q When did you get to Wake Island?

4 CAPTAIN ROBINSON: I object on the
5 ground that the question has already been answered,
6 your Honor.

7 THE PRESIDENT: I think that was answered,
8 Mr. Levin.

9 MR. LEVIN: I don't recall it.

10 THE PRESIDENT: When did you get there?

11 THE WITNESS: I landed at Wake Island on
12 1 December 1941.

13 BY MR. LEVIN (Continued):

14 Q And how many accompanied you when you
15 arrived?

16 A About forty-five.

17 Q And what work were you assigned after you
18 arrived?

19 A I was NCO in charge --

20 CAPTAIN ROBINSON: The prosecution objects,
21 if the Court please, on the ground of relevancy.

22 THE PRESIDENT: Objection upheld.

23 MR. LEVIN: It seems to me, your Honor,
24 that that ~~question~~ would be entirely relevant to
25 the issues involved.

STEWART

CROSS

1 THE PRESIDENT: What is the purpose of it?

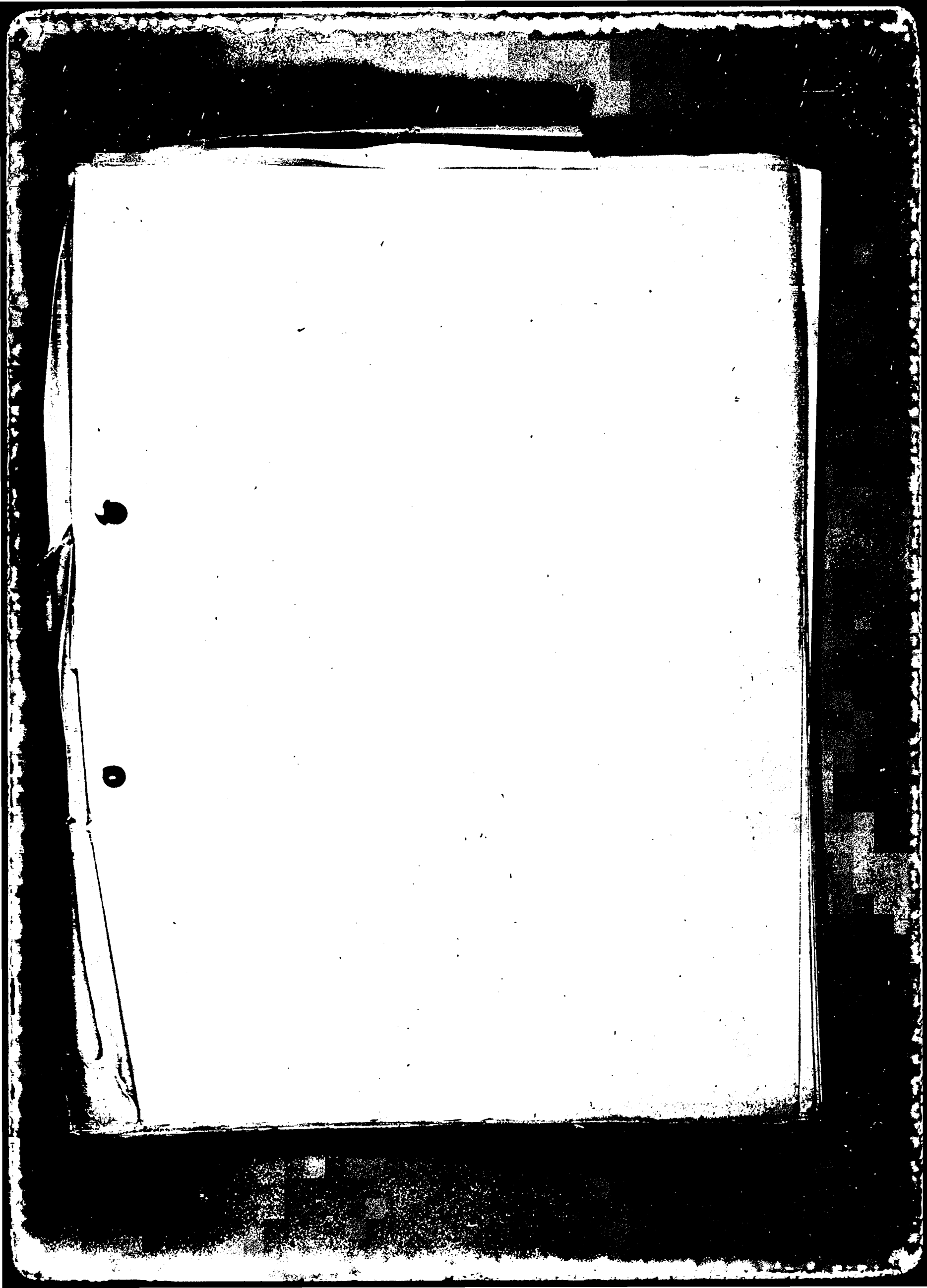
2 MR. LEVIN: Sir?

3 CAPTAIN ROBINSON: Probably counsel wishes
4 to keep the witness here until Monday morning.

5 THE PRESIDENT: If that is his purpose, we
6 will assist him.

7 We will adjourn now until half-past nine
8 on Monday morning.

9 (Whereupon, at 1600, an adjourn-
10 ment was taken until Monday, 13 January,
11 1947, at 0930.)
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January 13

13 JANUARY 1947

I N D E X

Of

WITNESSES

Prosecution's Witnesses

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(Witness excused)	14967

I N D E X

Of

EXHIBITS

<u>Doc. No.</u>	<u>Pros. No.</u>	<u>Def. No.</u>	<u>Description</u>	<u>For Ident.</u>	<u>In Evidence</u>
8036	2035		Affidavit of Robert Hugh Lancaster		14968
8478	2036		Record of proceedings of a Military Commission convened at U. S. Naval Air Base, Kwajalein Island, Kwajalein Atoll, Marshal Islands, by order of Commander Marshalls-Gilbert area on 21 December 1945 re SAKIBARA, TACHIBANA and ITO.	14972	
8439	2036-A		Excerpts therefrom		14972
8440	2036-B		Excerpts therefrom		14972
8441	2036-C		Excerpts therefrom		14973

I N D E X

Of

EXHIBITS

(cont'd)

<u>Doc. No.</u>	<u>Pros. No.</u>	<u>Def. No.</u>	<u>Description</u>	<u>For Ident.</u>	<u>In Evidence</u>
8482	2037		Affidavit of Lt. Col. Rudisill, Chief of the Investigation Division of Legal Section GHQ, SCAP and affidavit of Captain John Hamas, U. S. Marine Corps		14983
8480	2038		Affidavit of KOHARA, Yauso		14992
8433	2039		Letter from the Swiss Minister to the Defendant TOGO dated 26 May 1942 at Tokyo		15001 15001
8432A	2040		Letter from the Defendant TOGO to the Swiss Minister dated 10 August 1942		15001 15002
8445	2041		Letter from the Swiss Minister to Foreign Minister TANI dated 21 September 1942		15001 15003
8427	2042		Letter from the Swiss Minister to the Japanese Minister of Foreign Affairs dated 7 October 1942		15001 15007
8436	2043		Letter from the Swiss Legation to the Japanese Foreign Ministry dated 8 April 1943		15001 15008
8437	2044		Note Verbale from the Japanese Foreign Office to the Swiss Legation dated 19 April 1943		15001 15008
8438	2045		Letter from the Swiss Legation to the Japanese Foreign Ministry dated 21 August 1943		15001 15009

I N D E X

Of

EXHIBITS

(cont'd)

<u>Doc. No.</u>	<u>Pros. No.</u>	<u>Def. No.</u>	<u>Description</u>	<u>For Ident.</u>	<u>In Evidence</u>
8428	2046		Letter from the Swiss Legation to the Japanese Foreign Ministry dated Tokyo, 8 October 1943		15001 15010
8430	2047		Note from the Swiss Legation to the Japanese Foreign Ministry dated 10 December 1943		15001 15011
8429	2048		Note from the Swiss Legation to the Japanese Foreign Ministry dated 14 February 1944		15001 15012
8424	2049		Note from the Swiss Legation to the Japanese Foreign Ministry dated 25 September 1944		15001 15012
8423	2050		Note from the Swiss Legation to the Japanese Foreign Ministry dated Tokyo, 1 November 1944		15001 15013
8426	2051		Note from the Swiss Legation to the Japanese Foreign Ministry dated 9 March 1945, Tokyo		15001 15013
8425	2052		Note from the Swiss Legation to the Japanese Foreign Ministry dated 15 May 1945		15001 15014
8422	2053		Note from the Swiss Legation to the Japanese Foreign Ministry dated 27 July 1945		15001 15016
8483	2054		Certificate of Authenticity re letters and notes from the Swiss Legation to the Japanese Ministry of Foreign Affairs		15001

I N D E X

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E X H I B I T S

(cont'd)

<u>Doc. No.</u>	<u>Pros. No.</u>	<u>Def. No.</u>	<u>Description</u>	<u>For Ident.</u>	<u>In Evidence</u>
8467	2055		Record of Proceedings of a Military Commission convened at United States Pacific Fleet, Commander Marianas, Guam, Marianas Islands by order of Commander Marianas Area on 15 May 1945 re ABE, OBARA and WAIKI	15018	
8447	2055-A		Excerpts therefrom (exhibit 2055)		15018 15018
8446	2055-B		Excerpts therefrom (exhibit 2055)		15018 15023
8449	2055-C		Excerpts therefrom (exhibit 2055)		15018 15025
8444	2055-D		Excerpts therefrom (exhibit 2055)		15018 15029
8448	2055-E		Excerpts therefrom (exhibit 2055)		15018
8466	2056		Record of Proceedings of a Military Commission convened at United States Pacific Fleet, Commander Marianas, Guam, Marianas Islands, by order of Commander, Marianas Area on 15 August 1946 re TACHIBANA, MORI, YOSHII, MATOBA and others	15032	
8463	2056-A		Excerpts therefrom		15032 15033
8462	2056-B		Excerpts therefrom		15032 15041

I N D E X

Of

EXHIBITS

(cont'd)

<u>Doc. No.</u>	<u>Pros. No.</u>	<u>Def. No.</u>	<u>Description</u>	<u>For Ident.</u>	<u>In Evidence</u>
3405	2057		Report of Captain John L. Murphy, USN, Director of War Crimes, Pacific Areas		15042
8435	2058		Protest from the United States Government by way of the Swiss Legation to the Japanese Foreign Minister, dated Tokyo 29 January 1945		15048
8398	2059		Note from the Swiss Legation to the Japanese Foreign Ministry dated Tokyo, 23 April 1945		15051
8399	2060		Memorandum from the Foreign Office, Tokyo, to the Swiss Legation, dated 12 May 1945		15052
8421	2061		Protest from the Swiss Legation to the Japanese Foreign Ministry, dated 23 May 1945		15053
8470	2062		Letter from the Commander-in-Chief, the United States Pacific Fleet, Admiral C. W. Nimitz to Commander-in-Chief, the United States Fleet, dated 19 May 1945		15055
8469	2063		Report of the attack on the USS Comfort, dated 2 May 1945		15059
8434	2064		Protest from the Swiss Legation to the Japanese Foreign Minister, dated 23 June 1945		15062
8471	2065		Report re the Adventures of the Netherlands Military Hospital Ship "OP ten NOORT"		15065
8471F	2066		Certification of the above		15066

I N D E X

Of

EXHIBITS

(cont'd)

<u>Doc. No.</u>	<u>Pros. No.</u>	<u>Def. No.</u>	<u>Description</u>	<u>For Ident.</u>	<u>In Evidenc</u>
8471B	2067		Letter from the Captain of the "OP ten NOORT" to the Japanese Navy Minister, dated 22 February 1942		15070
8471C	2068		Letter from the Captain of the "OP ten NOORT" to the Japanese Prime Minister		15073
8471D	2069		Speech by the Prefect at Hiroshima to the personnel of the "OP ten NOORT"		15075
8471E	2070		Letter from the Chief Medical Officer of the "OP ten NOORT" to the Japanese Prime Minister, dated 29 June 1944		15077
8475	2071		Protest addressed to Accused TOGO dated 28 May 1942		15081
8473	2072		Letter from the Japanese Minister of Foreign Affairs to the Swedish Minister, dated 9 June 1942		15081
8474	2073		Note Verbale from the Swedish Legation to the Japanese Foreign Ministry, dated 28 September 1942		15081
8477	2074		Note Verbale from the Swedish Legation to the Japanese Foreign Ministry dated 10 September 1945		15081

I N D E X

Of

EXHIBITS

(cont'd)

<u>Doc. No.</u>	<u>Pros. No.</u>	<u>Def. No.</u>	<u>Description</u>	<u>For Ident.</u>	<u>In Evidence</u>
8476	2075		Letter from the Swedish Ministry to the Netherlands Minister of Foreign Affairs, dated 30 October 1945		15081
8401	2076		Protest transmitted by the Swiss Legation from the United States Government to Foreign Minister SHIGEMITSU, dated 19 June 1944		15088
8396	2077		Note from the Swiss Minister to the Japanese Foreign Minister, dated 15 September 1944		15091
8415	2078		Letter from the Accused SHIGEMITSU to the Swiss Minister dated 28 November 1944		15092
8412	2079		Letter from the Swiss Minister to Foreign Minister SHIGEMITSU, dated 21 February 1945		15093
8402	2080		Protest transmitted by the Swiss Legation from the United States Government to the Japanese Government, dated 29 December 1944		15095
8403	2081		Note by the Swiss Minister to the Japanese Foreign Minister, dated 28 December 1944		15100
8404	2082		Acknowledgement by the Japanese Foreign Ministry of the receipt of the preceding document or protest		15101

I N D E X

O f

E X H I B I T S

(cont'd)

<u>Doc. No.</u>	<u>Pros. No.</u>	<u>Def. No.</u>	<u>Description</u>	<u>For Ident.</u>	<u>In Evidence</u>
8409	2083		Letter from the Swiss Legation to the Japanese Foreign Ministry, dated 19 April 1945		15102
8411	2084		Memorandum by the Swiss Legation to the Japanese Foreign Minister, dated 28 April 1945		15103
8413	2085		Letter from the Swiss Legation to the Japanese Foreign Minister dated 20 February 1945 (offered as a supplement to the preceding document)		15104
8414	2086		Note Verbale from the Japanese Foreign Minister to the Swiss Legation, dated 15 May 1945		15105

Monday, 13 January 1947

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

The Tribunal met, pursuant to adjournment,
at 0930.

Appearances:

For the Tribunal, same as before with
the exception of: HONORABLE JUSTICE JU-AO MEI,
Member from the Republic of China.

For the Prosecution Section, same as
before.

For the Defense Section, same as before.

(English to Japanese and Japanese
to English interpretation was made by the
Language Section, IMT/FE.)

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1 MARSHAL OF THE COURT: The Military Tribunal
2 is now in session.

3 THE PRESIDENT: All the accused are present
4 except OKAWA, ARAKI, HOSHINO, MATSUI, MUTO and TOGO,
5 who are represented by their counsel. We have a cer-
6 tificate from the prison surgeon at Sugamo, stating
7 that ARAKI, HOSHINO, MATSUI, MUTO and TOGO are ill
8 and unable to attend the trial today. The certificate
9 will be recorded and filed.

10 Major Moore.

11 MAJOR MOORE: Mr. President. With the Tri-
12 bunal's permission, we present the following language
13 corrections:

14 . Exhibit 686-A, record page 8,906, line 14, sub-
15 stitute "open hostilities" for "declare war."

16 Line 16, substitute "cause" for "make," and
17 "enmity" for "hostilities."

18 Record Page 14,289, line 7, substitute "inten-
19 dence" for "security."

20 Record page 14,290, line 19, substitute "the
21 Minister" for "War Minister TOJO."

22 Record page 14,619, line 8, substitute "maintains"
23 for "means."

24 Line 10, after "concerned" insert "there can be."

25 Line 11, delete "was made."

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23 for "means."

24 Line 10, after "concerned" insert "there can be."

25 Line 11, delete "was made."

1 Line 15, delete from "was that" to the end of the
2 sentence and substitute "is that there can be no in-
3 terference saying do this or do that in passing
4 judgment?"

5 The above four corrections answers Dr. Kiyose's
6 objections found on record page 14,619 following.

7 Exhibit 1992, record page 14,666, line 16, sub-
8 stitute "by order you are notified" for "I request
9 you."

10 Line 24, substitute "having committed major war
11 crimes" for "war-time capital criminals."

12 Mr. Howard's objection found on record page
13 14,671 concerned a document which was not presented
14 to the Tribunal and not to exhibit 1993.

15 THE PRESIDENT: Mr. Logan.

16 MR. LOGAN: If the Tribunal please, there
17 have been four language questions submitted with
18 respect to entries of KIDO's diary. They have been in
19 the hands of the prosecution since approximately
20 December first. I have been trying to get the pro-
21 secution to make these corrections and three of them,
22 I understand, are now ready, and I ask that they be
23 made at this time.

24 THE PRESIDENT: Mr. Comyns Carr.

25 MR. COMYNS CARR: If the Tribunal please, we

1 are ready; we are prepared to make the three cor-
2 rections my friend desires if the Tribunal desires
3 that they should be interposed at this stage, in the
4 middle of another phase. It was our intention to
5 make them when we present further KIDO diary entries
6 at the conclusion of the case.

7 THE PRESIDENT: That, in your judgment, is
8 a more appropriate place?

9 MR. COMYNS CARR: In our view, yes.

10 THE PRESIDENT: The Tribunal will leave it
11 to you Mr. Comnys Carr.

12 Mr. Logan.

13 MR. LOGAN: May I be heard on that, if your
14 Honor please?

15 THE PRESIDENT: This can't be a vital matter,
16 Mr. Logan.

17 MR. LOGAN: It isn't necessarily a vital
18 matter, but it means something in processing our
19 documents with respect to motions to dismiss. In
20 other words, we want -- I would like to have this in
21 the record at this time, so that we can use these
22 references on our motion. If we leave it to the last
23 few days we will be unable to have it processed
24 properly, and as far as bringing in in the middle of
25 proceedings, Major Moore has done that right along;

1 he even done it this morning, with respect to making
2 corrections. What is more important to me is that I
3 can't understand why the prosecution has been holding
4 this up for a month and a half.

5 THE PRESIDENT: Major Moore comes to the
6 lectern without any contention as to the time he should
7 come. Here there is a contention as to when these
8 corrections should be received. You will know what
9 the corrections are when you come to move your motion
10 before the Court and you can process your documents on
11 that clear assumption.

12 MR. COMYNS CALL: The documents are in the
13 hands of the defense, have been for some time.

14 THE PRESIDENT: Mr. Levin.

15 MR. LEVIN: Mr. President, at the close of
16 the session on Friday you inquired, after objection
17 was made, as to what was the purpose of the question
18 and "what work were you assigned after you arrived?"

19 THE PRESIDENT: That means before the war?

20 MR. LEVIN: Yes. He arrived on December 1,
21 1941, as I understand, although he did not testify
22 directly on that subject. It seems to me that in
23 cross-examination it is perfectly proper to inquire as
24 to the nature of the work that he did, in view of what
25 took place subsequently. In other words, if he was

1 doing some work in preparation, either for defense or
2 for war, it would be a very important factor in con-
3 nection with the plans for defense.

4 THE PRESIDENT: How can it be relevant to
5 the treatment of him and others by the Japanese?

6 MR. LEVIN: I must agree with the Court
7 that it isn't directly relevant on that subject, but
8 it does seem to me that cross-examination is not al-
9 ways limited to a categorical inquiry as to the -- a
10 categorical inquiry in relation to the testimony that
11 the individual gave.

12 THE PRESIDENT: But cross-examination, like
13 examination in chief and re-examination, must always
14 be relevant and material. This isn't even relevant.

15 MR. LEVIN: All right, Mr. President, I shall
16 not pursue the matter further.

17
18
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25

STEWART

CROSS

1 J E S S E L. S T E W A R T, called as a witness
2 on behalf of the prosecution, resumed the
3 stand and testified as follows:

CROSS-EXAMINATION (Continued)

BY MR. LEVIN:

6 Q Did anything occur immediately before
7 Dr. Shank was slapped to cause the interpreter
8 KATSUMI to slap him?

9 A Only that Dr. Shank had refused to let
10 Dr. KITAJIMA amputate my leg.

11 Q And immediately thereafter, without
12 assigning any reason, he just slapped him, is that
13 it?

14 A As soon as Dr. KITAJIMA left the hospital
15 he accused Dr. Shank of being insolent and slapped him.

16 Q Did KATSUMI merely act as an interpreter
17 or was he also a guard?

18 A As far as I know, KATSUMI was nothing but
19 an interpreter.

20 Q Did he carry arms?

21 A He did.

22 Q Did you see slappings of other civilians
23 or military personnel?

24 A I had very little opportunity to see other
25 slappings or punishments due to the fact that I was

STEWART

CROSS

1 confined to the hospital.

2 Q Then I take it your answer is no?

3 A That is correct.

4 Q When Dr. MIYAZAKI came to Wake Island in
5 February, 1942, was Dr. KITAJIMA still there?

6 A He was.

7 Q Did they work together?

8 A I cannot say as to that. Dr. MIYAZAKI
9 was an aviation doctor. Dr. KITAJIMA belonged to
10 the troops that were on Wake Island.

11 Q Do you know what brought about the differ-
12 ence in treatment of American personnel by Dr.
13 MIYAZAKI as against the treatment by Dr. KITAJIMA?

14 A No, sir.

15 MR. LEVIN: That will be all.

16 THE PRESIDENT: Mr. Blewett.

17 MR. BLEWETT: If the Court please:

18 CROSS-EXAMINATION (Continued)

19 BY MR. BLEWETT:

20 Q Sergeant, were there any Marine or Navy
21 doctors with your outfit on the island?

22 A Yes, sir. Dr. Kahn was there.

23 Q How was it that you were treated by a
24 civilian doctor?

25 A When the American hospital was bombed out on

STEWART

CROSS

1 8 December 1941, they moved the patients into two
2 magazine hospitals. Dr. Shank had one of these.
3 Dr. Kahn had the other. It happened that I was
4 placed in Dr. Shank's hospital.

5 Q Well, now, did Dr. Shank have the use of
6 the appliances and the equipment that was contained
7 in the underground hospital?

8 A During the time before the fall of the
9 island, he did.

10 Q How long had Dr. Shank been on the island
11 before the surrender, if you know?

12 A I do not know.

13 Q How long had the 1200 civilians been on
14 Wake before the surrender?

15 A I do not know that. Some of them had been
16 there since the beginning of fortification of the
17 island. Others had come at recent dates.

18 Q Now, were these civilians engaged in the
19 Pacific naval air base by the Pacific Naval Air Base
20 Contractors?

21 A Most of them were. There were a few
22 Pan-Air men there.

23 Q Well, now, the work that the Japanese had
24 these men doing after the surrender, was it the same
25 type of work that they had been doing previously?

STEWART

CROSS

1 A The airport work was the same. Prior to
2 the war the civilians had not been required to build
3 fortifications.

4 Q Was there a hospital maintained for the
5 employees of the Pacific Naval Air Base Contractors?

6 A There was only one hospital there. It was
7 used both by civilians and service personnel. We
8 had a small sick bay at the camp where the servicemen
9 were, but no hospital facilities.

10 Q Was this hospital taken over by the Japanese,
11 or was that the hospital to which you were confined?

12 A That is the hospital which I was in on
13 8 December, but it was bombed out on that date.

14 Q Well, you said something about the equipment
15 in the underground places being removed to the
16 Japanese hospital. Do you mean that there were two
17 hospitals on the island?

18 A During the time between 8 December and
19 23 December two magazines had been improvised as
20 hospitals. These were equipped with the instruments
21 and medicine which had been taken from the bombed-out
22 hospital. It was the equipment from these two
23 hospitals which was later moved to the Japanese
24 hospital.
25

STEWART

CROSS

1 Q What type of hospital were you confined in?
2 I don't think I got that quite clear?

3 A Do you mean during the time I was in the
4 hands of the Japanese on Wake?

5 Q Subsequent to December 25th.

6 A On the 7th of November when I was first
7 wounded I was placed in the contractor's hospital.
8 On the 8th of December this hospital was bombed out.
9 I was then placed in the improvised hospital in the
10 magazine. I stayed in this hospital until the 23rd
11 day of December, 1941, when the Japanese took over
12 the island. On the 23rd I was moved to a coral
13 strip alongside the airport and held there until the
14 evening of the 25th of December. We were then
15 moved to the contractor's camp. On the morning of
16 the 26th all patients were in the hospital in a
17 contractor's barracks which was used as a hospital
18 thereafter.

19 Q Are you correct, Sergeant, that you were
20 wounded on November 7, or was it December?

21 A If I said November I was wrong. It was
22 December.

23 Q Was this Dr. Kahn, was it, a marine doctor?

24 A Dr. Kahn was a lieutenant (jg) in the Navy
25 Medical Corps.

STEWART

CROSS

1 Q Do you know whether or not he is now on
2 Iwo Jima?

3 A I do not know.

4 Q Did the Marines have barracks on the island
5 prior to the surrender?

6 A No, sir, they were billeted in tents.

7 Q Now, was Dr. Shank under guard and confined?

8 A Dr. Shank was confined in the same buildings
9 and compound as the rest of the prisoners.

10 Q When did Lieutenant Kahn leave the island?

11 A Dr. Kahn left on January 12, 1942.

12 Q Now, these two civilian nurses, I assume they
13 were in the employ of the contractors, were they not?

14 A That is correct.

15 Q Now, where were the 40 U.S. Marines that were
16 wounded and sick confined?

17 A There were only twenty servicemen that were
18 wounded and sick. I stated forty hospital patients;
19 about half of them were servicemen. We were confined
20 in the same barracks and in the same compound as the
21 other prisoners.

22 Q Were there not on Marcy 11, 1942, some
23 wounded and ill prisoners of war on Wake?

24 A What was that date again, please?

25 Q March 11.

STEWART

CROSS

1 A Yes, there were.

2 Q Now, you yourself, of course, had not been
3 fully restored to health, had you?

4 A No, sir. At the time I left the island on
5 May 12 I will required crutches.

6 Q Well, therefore, was not Foreign Minister
7 TOGO correct in his statement of April 20, 1942, which
8 was brought to your attention?

9 A At that time none of us were still so bad that
10 we could not move under our own power.

11 Q But you were receiving some treatment,
12 weren't you?

13 A Yes, we were receiving dressings.

14 Q Now, do you know personally whether or not
15 the list of prisoners of war was ever forwarded to
16 Tokyo?

17 A I do not know. A list was prepared for
18 that purpose.

19 Q From whom did you secure the information
20 that the prisoners of war were asked to get out of
21 the shelters and work during the shelling by the
22 U.S. Cruisers?

23 A I was in the same shelter and I heard KATSUMI
24 order them out.

25 Q Well, that was before the 25th of December

STEWART

CROSS

1 apparently then, was it not?

2 A That was the 24th day of February, 1942.

3 Q You are referring to other shelters other
4 than the place where the medical equipment was kept?

5 A That is correct. This shelter was a dugout
6 which had been built in the compound where we were
7 held prisoners.

8 Q Do you know how many prisoners of war left
9 Wake on January 12, 1942?

10 A 1235.

11 Q Now, how many left when you departed in May?

12 A Twenty.

13 Q Twenty?

14 A Yes, sir.

15 Q Who was it that questioned you on Wake con-
16 cerning radio locators and radar?

17 A I do not know the name of the Japanese
18 officer. KATSUMI acted as interpreter.

19 Q Were you physically harmed in any way during
20 that questioning?

21 A I was not.

22 Q Who was it that questioned you on these
23 matters on the ship at Yokohama?

24 A It was a naval officer. I do not know his
25 name.

STEWART

CROSS

1 THE PRESIDENT: What rank?

2 THE WITNESS: I do not know the rank, your
3 Honor.

4 Q Were you physically harmed at any time at
5 that interrogation?

6 A I was not physically harmed at any interroga-
7 tion.

8 MR. PLEWETT: That is all, Sergeant. Thank
9 you. Apparently that is all the cross-examination.

10 THE PRESIDENT: Captain Robinson.

11 REDIRECT EXAMINATION

12 BY CAPTAIN ROBINSON:

13 Q Were you interrogated at Zentsuji?

14 A Yes, sir.

15 Q What was done to you there, if anything,
16 with regard to physical interference?

17 MR. LOGAN: If the Tribunal please, that
18 isn't proper redirect.

19 THE PRESIDENT: We can give him permission.
20 It isn't, really, because it relates to an entirely
21 different episode. It doesn't explain anything, but
22 we can give him permission and we do so.

23 CAPTAIN ROBINSON: It is intended to follow,
24 sir --

25 THE PRESIDENT: This is a new matter and you

STEWART

REDIRECT

1 must not lead. You are leading now.

2 CAPTAIN ROBINSON: If the Court please, I
3 am merely trying to follow the last question of cross-
4 examining counsel to ask whether physical violence
5 had been visited upon this witness at any time during
6 questioning.

7 THE PRESIDENT: He had two questionings, if
8 I remember rightly. But you have permission to ask
9 about this but you must not lead. It is new matter.

10 Q Will you state what, if anything, the Japanese
11 authorities did to you in connection with the question-
12 ing at Zentsuji Camp?

13 A At the Zentsuji Camp I was questioned why
14 I had refused to sign an escape oath. For refusing
15 to sign this oath I was confined. There were about
16 thirty officers and eleven enlisted men confined at
17 the same time I was for the same reason. We were
18 held in confinement from about 14 June until
19 23 September 1942, at which time we were called before
20 the camp commandant and threatened with death if we
21 did not sign this oath.

22 Q Referring to the execution of Hoffmeister,
23 did you learn whether the Japanese government at
24 Tokyo either authorized or was informed of the exe-
25 cution?

STEWART

REDIRECT

1 MR. LOGAN: Object to that, your Honor, on
2 the grounds it is improper redirect and leading.

3 THE PRESIDENT: I don't regard it as lead-
4 ing. It is new matter and it should have been brought
5 out on the examination in chief, but we will give you
6 permission. We are not bound by strict technical
7 rules of procedure. Of course, you may have heard
8 it only today or since the examination in chief. I
9 don't know. Answer the question, witness.

10 A In regard to Hoffmeister's beheading, he
11 was apprehended about 1 May 1942 and held in jail
12 until 10 May, at which time he was executed.
13 Mr. Russell came to Dr. Shank in the hospital and
14 told him it was impossible to have Hoffmeister re-
15 leased until word was received from Tokyo. Dr. Shank
16 had examined Hoffmeister and requested that he be
17 released due to physical condition.

18 Q Do you have any further information on that
19 subject?

20 A Nothing at present, sir.

21 Q With regard to the death certificate of
22 Hoffmeister, do you have any information on that?

23 MR. LOGAN: If the Tribunal please, this
24 man's death was gone into on direct examination. If
25 this is just an oversight I submit it is improper

STEWART

REDIRECT

1 re-examination.

2 THE PRESIDENT: We permit it. We have a
3 discretion to do so even in a national court and we
4 certainly have the discretion here. The defense may
5 further cross-examine.

6 A In regards to that, at the time I left Wake
7 Island it was known by us that we had never been
8 reported to our government. I had with me a list of
9 names and addresses of 362 civilians who were on Wake.
10 Mr. Cormier and Dr. Shank had helped me make this list
11 up. I had added the address of Hoffmeister to this
12 list. It was my intention to include these names and
13 addresses in letters to my wife which I might be allowed
14 to write after I arrived in Japan. We were worried
15 for fear the Japanese may not allow me to include an
16 execution in this information. As I got on the truck
17 about noon May 12, 1942, in front of the Japanese
18 office, Mr. Cromier came out to the truck and said,
19 "Don't worry. Don't worry about Hoffmeister; I have
20 made his death certificate. It is going to Tokyo."

21 Q A final question, Sergeant. You mentioned
22 word to your wife. On what date did the Japanese
23 deliver to you the first word you had received from
24 your wife?

25 A On or about 11 November 1944.

STEWART

REDIRECT

1 Q In that word did you receive word of special
2 interest in regard to your family?

3 THE PRESIDENT: You should explain why it
4 was --

5 CAPTAIN ROBINSON: That concludes the redirect,
6 sir.

7 MR. LOGAN: I would like to ask a few ques-
8 tions on recross.

RECROSS-EXAMINATION

9
10 BY MR. LOGAN:

11 Q Do you know what was included in that death
12 certificate that was sent to Tokyo?

13 A No, sir.

14 MR. LOGAN: That is all.

15 CAPTAIN ROBINSON: That concludes the ques-
16 tioning of this witness and, if the Court please, we
17 would like to ask permission of the Court that he
18 be excused on the usual conditions.

19 MR. LEVIN: No further cross-examination,
20 Your Honor.

21 THE PRESIDENT: He is excused on the usual
22 terms.

23 (Whereupon, the witness was
24 excused)

25

STEWART

REDIRECT

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2 interest in regard to your family?

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4 was --

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9
10
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12 certificate that was sent to Tokyo?

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17 would like to ask permission of the Court that he
18 be excused on the usual conditions.

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20 Your Honor.

21 THE PRESIDENT: He is excused on the usual
22 terms.

23 (Whereupon, the witness was
24 excused)
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1 CAPTAIN ROBINSON: May it please the Court,
2 prosecution document No. 8036 is now offered in
3 evidence. It is the affidavit of Robert Hugh Lancaster,
4 sworn to on 18 October 1945.

5 THE PRESIDENT: Admitted on the usual terms.

6 CLERK OF THE COURT: Prosecution document
7 No. 8036 will receive exhibit No. 2035.

8 (Whereupon, the document above
9 referred to was marked prosecution's ex-
10 hibit No. 2035 and received in evidence.)

11 CAPTAIN ROBINSON: In this statement at page
12 1, answers 2 and 3, the affiant states:

13 "2. What is your occupation, by whom have
14 you been employed, and where?

15 "A. I am an excavating foreman by occupation,
16 and on 4 June 1941 I was employed by Pacific Naval
17 Air Base Contractors to work at Wake Island. I
18 arrived at Wake Island on 2 August 1941.

19 "3. Were you ever held as a prisoner of
20 war by the Imperial Japanese Government?

21 "A. Yes. I was held in custody as a prisoner
22 of war by the Imperial Japanese Government from 23
23 December 1941 to 14 September 1945. I was taken
24 prisoner when the Japanese Marines invaded Wake
25 Island."

1 At page 2, reading from answer 7:

2 "A. At Wake Island, in about April or May
3 1942, an American civilian employee of Pacific Naval
4 Air Base Contractors was beheaded by a Japanese Officer
5 using a two-handed sword. I do not know the victim's
6 full name, but I can locate it when I get my personal
7 effects, which were shipped back with me by plane.
8 I recall his first name was 'Babe', that he was
9 employed as a roofer, and his home was in San Francisco,
10 California. 'Babe' had been apprehended stealing
11 cigarettes and other commodities from the warehouses
12 at Wake Island and, aside from this, had been very
13 belligerent and uncooperative with the Japanese guards,
14 who seemed to have a particular dislike for him. I
15 do not know that he had any sort of a trial. He was
16 held a prisoner in the contractor's main office for
17 about a week, where the guards made him walk back and
18 forth continuously until he was totally exhausted.
19 When exhausted, they would beat him and make him
20 continue walking. After he had been held for about
21 a week, we understood that the Commanding Officer
22 received orders or permission from Tokyo to execute
23 him. A grave was dug and a board placed across it.
24 'Babe' was led out blindfolded and tied and made to
25 assume a kneeling position on the board over the grave.

1 The Japanese Commanding Officer, his entire staff,
2 and a great number of Japanese Marines and soldiers
3 were present to witness the execution. Several other
4 prisoners who had also been supervisors and foremen
5 were required to witness the execution. I was standing
6 in the front row about eight or nine feet from 'Babe'
7 when he was executed. I recall that just before the
8 execution, the Japanese officer in charge read a long
9 indictment in Japanese, and the interpreter repeated
10 the substance of most of it. I do not recall exactly
11 what was said, but in substance it was to the effect
12 that the Japanese are honorable people, that they do
13 not believe it is necessary to keep locks on warehouses,
14 and that 'Babe' had been found guilty of breaking
15 into an unlocked warehouse and stealing material."

16 At page 3, reading from question 10:

17 "10. What type of work were you required to
18 do while you were held as a prisoner at Wake Island?

19 "A. There were 350 civilian American citizens
20 held for nine months at Wake Island, and they were
21 required to finish the runway at the airport, digging
22 a ditch wide enough to drive an automobile through
23 completely around the island, where machine guns
24 were mounted, and also to build pillboxes.

25 "11. Do you recall that any other American

1 citizens were tortured or beaten at Wake Island?

2 "A. Yes. All of the prisoners were slapped
3 or beaten practically every day. I recall that 'Swede'
4 Holson, a rigger superintendent, was beaten severely
5 with a crowbar until the ligaments in his legs were
6 torn, and he has been unable to walk without a cane
7 or crutches since that time. I understand he is
8 enroute back to the United States at this time. I
9 also recall that Chisholm, first name unknown, from
10 Boise, Idaho, was so severely beaten with clubs that
11 he was unable to walk for four or five days."

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1 Prosecution document No. 8478 is offered
2 for identification. This document is the record of
3 proceedings of a military commission convened at
4 United States Naval Air Base, Kwajalein Island,
5 Kwajalein Atoll, Marshall Islands, by order of
6 Commander Marshalls-Gilbert area on 21 December 1945
7 in the case of Rear Admiral SAKIBARA, Lieutenant
8 Commander TACHIBANA and Lieutenant ITO. Three ex-
9 cerpts from this document are offered in evidence.
10 The excerpts are statements made by the accused
11 SAKIBARA, TACHIBANA and ITO. These statements were
12 introduced at their trial before the military com-
13 mission for offenses on Wake Island. The excerpts,
14 prosecution documents No. 8439, No. 8440 and No. 8441
15 are now offered in evidence.

16 THE PRESIDENT: Admitted on the usual terms.

17 CLERK OF THE COURT: Prosecution's document
18 No. 8478 will receive exhibit No. 2036 for identifica-
19 tion only and the excerpts therefrom bearing document
20 No. 8439 will receive exhibit No. 2036-A, document
21 No. 8440 will receive exhibit No. 2036-B, document
22 No. 8441 will receive exhibit No. 2036-C.

23 (Whereupon, prosecution's document
24 No. 8478 was marked prosecution's exhibit
25 No. 2036 for identification only; the excerpts

1 therefrom, documents Nos. 8439, 8440 and 8441
2 were marked prosecution's exhibits Nos. 2036-A,
3 2036-B and 2036-C, respectively, and received in
4 evidence.)

5 CAPTAIN ROBINSON: Prosecution's document
6 No. 8439, exhibit No. 2036-A, statement by Admiral
7 SAKIBARA, reads as follows:

8 "(1) October 7, 1943.

9 "I gave the following order to Lt. (SG)
10 TACHIBANA (at present a Lieutenant Commander) who was
11 the Commanding Officer of the headquarters company
12 as well as my acting executive officer: 'Using the
13 men of the headquarters company appropriately and at
14 a place which will not interfere with our positions,
15 execute by firing squad all prisoners of war.' I
16 remember it was about one hour after sunset (not
17 definite). Although my recollection of the hour of
18 execution is not definite, I remember that there was
19 a report made by Ensign NAKAMURA, command platoon
20 leader under Lt. (SG) ITO, more than an hour and a
21 half after my issuance of the order. Ninety-six (96)
22 prisoners were executed and one escaped.

23 "(2) (a) Around July 1943--

24 THE PRESIDENT: That is dated October 7, 1943.

25 CAPTAIN ROBINSON: Shall I proceed, sir?

(Reading continued): "(2) (a) Around

1 July 1943 an unknown person frequently broke into the
2 headquarters company's food stores and this person
3 was captured in the food stores. His name is Jack.
4 Previously a warning was given that since the food
5 meant life and death on the island any person stealing
6 food will be severely punished. In order to maintain
7 military discipline it was necessary that the man
8 be executed, so Lt. (jg) NONAKA (transferred to Japan
9 in October, 1943, at present a Lt. (SG) executed the
10 said person on Hajima (Peale Island) by decapitation.
11 Before the execution was carried out, I wrote a
12 statement giving the reason for the execution and had
13 this translated, and it was read to the person to be
14 executed by Lt. (SG) NOMOTO (injured on October 7 and
15 later sent back to Japan).
16

17 "(b) I believe it was about October 15, 1943.

18 "The prisoner who escaped on October 7 when
19 the executions were held was discovered and captured
20 near the vicinity of the food stores, located near the
21 shrine, where he obtained his food. At that time, we
22 frequently received situation reports and orders
23 from the fleet (6th based). One of them being that,
24 'A new and powerful task force was organized and has
25 departed from Hawaii, therefore the Marshalls Area will

1 go into their first defensive positions. Wake Island
2 will prepare for an attack force.' Thus we were in
3 the midst of an alerted condition. In order to
4 suppress any danger arising from him, I was forced
5 to execute the said person on Hajima (Peale Island)
6 about thirty minutes after sunset on the same day.
7 (execution by decapitation). The officer in charge
8 of prisoners, Ensign NAKAMURA, and several other
9 enlisted men were also present at the scene.

10 "(3) According to the news broadcast from
11 San Francisco regarding the war criminal trials of
12 Germans by the Allied nations, it was said that the
13 issuer of the orders as well as the executors of
14 the orders will be persecuted. In case the various
15 actions which were carried out to my orders because
16 the source of any trouble, it will mean that my sub-
17 ordinates too will be involved. There is no greater
18 grief for the commanding officer whose subordinates
19 had to suffer because they had to carry out his abso-
20 lute orders. Therefore in all cases I would like to
21 shoulder the responsibility for my subordinates.

22 "(4) I voluntarily and without consulting
23 any other officer called all company commanders involved
24 and department heads to a meeting in the conference
25 room, and ordered that a false story be made, saying,

1 'I have an idea so just do as I say.' I had made up
2 this false story beforehand and then I issued the
3 order. Note: at the second meeting I cannot recol-
4 lect if Petty Officer MIYAKI and the others were
5 present,

6 "(5) After the end of the war, it was
7 impossible for me to obtain the contents of the
8 Potsdam proclamation, and thereafter I began to
9 realize that Japan was about to surrender uncondition-
10 ally. I then realized that we had to obey United
11 States orders. And in considering that in the
12 Imperial rescript it said, 'Not to lose faith in
13 the Allied nations,' I reconsidered and decided to
14 confess the truth without hesitation.

15 "(6) I appreciate the good treatment I am
16 receiving.

17 "The above statement is true to the best
18 of my knowledge and recollection. I have given it
19 freely and voluntarily and without being threatened
20 and forced to do so.

21 "SAKIBARA, Shigematsu."

22 THE PRESIDENT: We will recess for fifteen
23 minutes.

24 (Whereupon, at 1045, a recess was
25 taken until 1100, after which the proceedings
were resumed as follows:)

1 MARSHAL OF THE COURT: The Tribunal is
2 now resumed.

3 THE PRESIDENT: Captain Robinson.

4 CAPTAIN ROBINSON: Prosecution document
5 No. 8440, exhibit No. 2036B, a statement by Lieutenant
6 Commander TACHIBANA, Shoichi, Imperial Japanese Navy,
7 reading from the fourth paragraph, beginning ten lines
8 from the bottom of that paragraph:

9 "On the 7th, just after sundown, (I don't
10 know the time), the Commanding Officer and I were
11 at the command post. Then, all of a sudden, he
12 ordered, 'The headquarters company leader is to use
13 his men and shoot to death the prisoners of war on
14 the northern shore.' It was so sudden that I was
15 startled but I knew that the Commanding Officer was
16 a careful man and I knew he wouldn't come to a con-
17 clusion unless he gave it plenty of consideration.
18 (When I was a cadet at the Naval Academy he was my
19 instructor). I didn't have a bit of doubt and
20 thought it was justifiable to execute the prisoners
21 of war according to the situation that night."

22 Reading from the next paragraph, the last
23 sentence:

24 "About an hour after Lieutenant ITO took
25 over the command of the headquarters company, a

1 soldier came and reported that he heard volleys
2 on the northern shore so I went out to investigate.
3 On the way to the northern shore I met the execu-
4 tion party returning so I returned to the command
5 post. Later a report came to the Commander from
6 headquarters company that the execution was
7 carried out. Later on I heard that the headquarters
8 company leader had a headache from dengue fever so
9 he did not go to the Commander personally to report
10 the carrying out of the execution."

11 I omit the rest of the paragraph and the
12 first two sentences of the next paragraph:

13 "At about the 20th a report came in about
14 someone seeing a caucasian in blue clothing near
15 the woods by the shrine. An order was given to
16 search the area but he couldn't be found so we
17 gave it up. The next day he was found in the
18 First Lieutenants Department warehouse and was
19 taken to headquarters. We found out that he was
20 hiding in the supplies storeroom.

21
22 "On the same day just before sundown the
23 Commander ordered him to be executed. He said he
24 would do the execution personally by cutting his
25 head off. After sundown the Commander executed him
personally with his sword on the eastern end of

1 Peale Island and the body was buried on the spot.
2 When I went there the execution was over and they
3 were almost through burying the body. There were
4 five or six men but it was dark and no moon was out
5 so I wasn't able to recognize anyone. To make sure
6 there wasn't anymore American prisoners we checked
7 up the remains of the prisoners of war that were
8 buried.

9 "On the night of August 15, 1945 we heard
10 of the surrender from a radio newscast but we did
11 not get any dispatch from Naval General Staff in
12 Tokyo so we did not believe it. On the 16th an
13 Imperial Rescript was received and we found out the
14 truth.

15 "It was on the 18th or 19th at about 8:00
16 p. m. The Commander ordered all officers above
17 chiefs of sections near the headquarters area to
18 muster at his quarters. He said, 'I just heard over
19 the radio from Melbourne that all criminals of war
20 whether they were ordered or were the officers who
21 gave the orders will be punished.' After he said
22 this he just stared at the floor and said nothing
23 else. He seemed to be excited. About ten minutes
24 later the meeting was dispersed. We wondered why
25 the Commander ordered us to muster. Lieutenant

1 Commander TACHIBANA, Lieutenant Commander MIYAZAKI,
2 Lieutenant TOKUDA, and Lieutenant OGAWA were present."

3 Omitting the next two lines:

4 "On the 20th or 21st of August all
5 company leaders were ordered to muster. The Com-
6 mander said, 'The case concerning the prisoners
7 of war will be like this. I have thought up a good
8 idea so we are going to make it this way: Half of
9 the prisoners of war died in the bombardment on the
10 6th of October 1943. The rest of the prisoners of
11 war escaped on the night of the 7th of October and
12 resisted with gunfire so a fight ensued and they
13 all died.' He put in a lot more details and said
14 to be prepared according to his fabricated story."

15 I omit the names and begin with the next
16 paragraph:

17 "On the 22nd or 23rd of August 1945, the
18 remains of the prisoners of war were moved to the
19 eastern shore. The headquarters company took
20 charge of the excavating and Ensign HIRATA took
21 charge of the burying party. It took us two days
22 to dig out the remains.

23 "On the 25th or 26th of August (maybe it
24 was before), an inquiry came from the Bureau of
25 Military Affairs concerning the prisoners of war on

1 Wake. On the same day all officers above the
2 chiefs of sections, including the Executive Officer
3 and all men who took part in the invasion were or-
4 dered to muster to give the Bureau of Military
5 Affairs their information. The number shipped to
6 Japan, day's schedule, the kind of work they did,
7 living quarters, food, etc., and also the events
8 that took place on Wake were sent to the Bureau of
9 Military Affairs. It took about two hours. Those
10 present were:

11 "TACHIBANA," already mentioned, and I will
12 omit the rest of the names.

13 "ARIYASU stayed only for awhile. On the
14 night of September 8th all officers above company
15 leader and men involved in the case were ordered to
16 muster. More detail was given concerning the fabri-
17 cated story and ordered that all his subordinates to
18 be thoroughly familiar with the fabricated story.
19 During the conference, MIYAKI, BANGUCHI, KIDO and
20 SHIBATA were called and the details were told to
21 them. The details are the same as the testimony from
22 MIYAKI and the other three. This conference lasted
23 about 8 hours."

24 I will omit the rest of the statement.

25 Prosecution document No. 8441, exhibit

1 No. 2036C, reads as follows:

2 "STATEMENT OF ITO TORAJI

3 "On the 7th of October 1943 at about 5:30
4 p. m., I arrived from Kwajalein by plane and was
5 assigned as Commanding Officer of headquarters company.
6 Then Lieutenant TACHIBANA passed me an order saying
7 that the headquarters company was ordered to shoot
8 the prisoners of war to death."

9 Omitting the next paragraph:

10 "When I arrived at the northern beach I saw
11 the prisoners of war sitting side by side in a single
12 file facing the beach, with their hands tied and
13 blindfolded. About five or six meters behind each
14 of them stood the riflemen. There were about one
15 hundred but I couldn't see the men in the right flank
16 distinctly. A platoon leader came up to me and said
17 that everything was all set. So I said, 'Go ahead as
18 ordered.'
19

20 "A platoon leader came over to me and said,
21 'It is over,' so I ordered him to report to Head-
22 quarters and then to go back to his post immediately.
23 I went back to the command post (it was about 7 p. m.).

24 Omitting the next paragraph:

25 "All that I stated on Wake Island is false.

"(a) I think it was the day of surrender that

1 we were ordered to give the false statement.

2 "(b) All officers above Company Commander
3 were ordered to muster at the Commanding Officer's
4 quarters in the evening.

5 "(c) After the muster, the Commanding
6 Officer said, 'Half of the prisoners of war died in
7 the bombardment and the rest were executed because
8 there were signs of a riot.' He further stated
9 that he had sent a dispatch to the homeland, and
10 ordered us to testify within this scope.

11 "December, 1945. Lt. ITO, Teraji."

12 Offenses against prisoners of war and
13 civilians taken from Wake Island on the NITTA MARU on
14 12 January 1942, are described in the two following
15 affidavits. Prosecution document No. 8482 is the
16 affidavit of Lieutenant Colonel Rudisill, Chief of
17 the Investigation Division of Legal Section, GHQ,
18 SCAP. This statement, sworn to on 2 January 1947,
19 is offered in evidence.
20

21 THE PRESIDENT: Admitted on the usual terms.

22 CLERK OF THE COURT: Prosecution document
23 No. 8482 will receive exhibit No. 2037.

24 (Whereupon, the document above re-
25 ferred to was marked prosecution's exhibit
No. 2037 and received in evidence.)

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1 "I, Richard E. Rudisill, Lt. Colonel, QMC,
2 upon oath, make the following statement:

3 "1. I am on duty as Chief of the Investi-
4 gation Division, Legal Section, General Headquarters,
5 Supreme Commander for the Allied Powers,
6 Room 823, Meiji Building, Tokyo, Japan.

7 "2. My official duties include the direction
8 of investigating officers engaged in the investiga-
9 tion of the treatment of prisoners of war and other
10 Allied nationals during the course of the war.

11 "3. Captain John Hamas, United States
12 Marine Corps, has been serving as investigating officer
13 under my direction in the Investigation Division. On
14 1 October 1946, Captain Hamas filed a report based
15 upon investigation made by him and also upon his
16 personal experiences as a prisoner of war. This
17 report presents the following statements of fact on
18 the subject indicated:

19 "(1) SUBJECT: Improper transportation on
20 high seas, clubbings, stealing of valuable personal
21 property, starving of about eleven hundred (1100)
22 prisoners of war, from Wake Island to Woosung (Shanghai)
23 China aboard the NITTA MARU from 12 January to 24 Jan-
24 uary 1942.

25 "(2) Upon embarkation on NITTA MARU I was

1 brutally clubbed across my back with a heavy club,
2 slapped in the face by the Jap Guards who searched my
3 small bag, containing, one book, one undershirt, and
4 some toilet gear.

5 "(3) The guards clubbed and slapped Colonel
6 J. P. S. Davereux, Commanding Officer, Wake Island
7 Detachment, U. S. Marines, too.

8 "(4) Marines, Navy and Army Enlisted Men,
9 Civilian Defense Workers, were forced to run through
10 a gauntlet, they were barbarically clubbed, with
11 baseball bats, kicked, slapped, by Captain SAITO's
12 guards and NITTA MARU Captain OGAWA Kiyoshi's ships
13 crew until many of the men were badly hurt and fell
14 ill.

15 "(5) They were herded like cattle to holds,
16 so crowded, that there was not enough room to stretch
17 or lie down. Existing in dark, damp holds for two (2)
18 weeks; humiliated, clubbed, starved, thirsty, forced
19 to live dirty during the whole trip.

20 "(6) PFC Trefansky, USMC, who was seriously
21 wounded in combat, was clubbed until the stitches on
22 his back ripped and the poor man fell unconscious.

23 "(7) PFC Phillip Burford, Pvt. Todd, PFC
24 Eugene Richter, Sgt. 'Peepsight' Hassig, Seaman Doke,
25 USN, Joe O'Neill, John Pollock, Harry L. McDonal,

1 Red Topham, civilians, and countless others clubbed
2 terribly.

3 "(8) As the result of this horrible night-
4 marish mistreatment many of our young and husky
5 Marines contracted tuberculosis, and other serious
6 ailments. Amongst them was John Gutrio, Sgt. Bertel,
7 and others, who all passed away during our internment
8 in KIANGWAN Camp.

9 "(9) I also have information concerning two
10 very sick men aboard NITTA MARU (Name not remembered)
11 who were seen removed from one of the holds by the
12 Japs, to the 'sick-bay' but never returned.

13 "(10) Aviation Machinist Mate, 3rd Class
14 Franklin, U. S. Navy, and two other young American
15 servicemen, who were detailed to help the officers
16 never disembarked with us at Woosung, Shanghai. They
17 disappeared too. It is very obvious that three (3)
18 of the five (5), (perhaps all five) U. S. servicemen
19 were beheaded, and their bodies thrown overboard.

20 "(11) Beheadings, clubbings, stripping the
21 prisoners of all belongings such as watches, rings,
22 money, pens, pencils, toilet gear, clothing, even
23 personal papers, letters and photographs.

24 "(12) Colonel DEVEREUX, after a repeated
25 request, was denied the possession of his old 'family

1 papers.' Perhaps some of these articles could be
2 recovered yet.

3 "(13) Wounded and sick aboard were absolutely
4 refused medical care by the Jap doctor. I personally
5 requested treatment for Captain Freuler who was suf-
6 fering from infected shoulder wound and was refused.
7 We tore up a towel and bandaged him up the best we
8 could.

9 "(14) There was also a big, well-built,
10 loud-talking Nip Petty Officer, who clubbed Captain
11 Wesley Platt, until he collapsed from possible internal
12 injury. I witnessed the clubbing.

13 "(15) Great many others, service personnel
14 and civilians alike were clubbed to insensibility.

15 "(16) During the voyage, Captain SAITO and
16 his staff interrogated officers and men concerning
17 military installations on Midway, Palmyra, Johnson
18 Islands and, in many cases, they threatened prisoners
19 with beheading, unless the questions properly answered.

20 "(17) On or about 18 January 1942 the NITTA
21 MARU anchored in Yokohama Harbor. The weather was
22 freezing, none of us had warm clothing. The looting
23 of our clothing and valuables caused our very
24 destitute appearance, and not having adequate protec-
25 tion against the inclemencies of weather, great many
of us fell sick from exposure.

1 *(18) All the prisoners were robbed of all
2 their personal possessions. They imposed capital and
3 corporal punishments, kept prisoners in cold, damp
4 holds without light. They imposed unhealthy starva-
5 tion. They failed to allow prisoners to stay in the
6 open air, or exercise.

7 "(19) In addition to all the above, the
8 doctor failed to give medical aid to our wounded and
9 ailing. And to all this: 'The Commander of the
10 Prisoner Escort NAVY OF THE GREAT JAPANESE EMPIRE'
11 published the following: 'Regulations for Prisoners.'

12 "(20) '1. The prisoners disobeying the
13 following orders will be punished with immediate death.

14 "'a. Those disobeying orders and instructions.

15 "'b. Those showing a motion of antagonism
16 and raising a sign of opposition.

17 "'c. Those disordering the regulations by
18 individualism, egoism, thinking only about yourself,
19 rushing for your own goods.

20 "'d. Those talking without permission and
21 raising loud voices.

22 "'e. Those walking and moving without order.

23 "'f. Those carrying unnecessary baggage in
24 embarking.

25 "'g. Those resisting mutually.

1 "h. Those touching the boat's materials,
2 wires, electric lights, tools, switches, etc.

3 "i. Those climbing ladder without order.

4 "j. Those showing action of running away
5 from the room or boat.

6 "k. Those trying to take more meal than
7 given to them.

8 "l. Those using more than two blankets."

9

10 Paragraph 21 of these regulations, still
11 quoting:

12 "(21) 6. Navy of the Great Japanese Empire
13 will not try to punish you all with death. Those obey-
14 ing all the rules and regulations, and believing the
15 action and purpose of the Japanese Navy, cooperating
16 with Japan in constructing the 'New Order of the Great
17 Asia' which lead to the world's peace will be well
18 treated.

19 "The End

20 "/s/ J. A. Jr."

21 "(22) Correspondence, food, clothing,
22 packages were stolen.

23 "(23) My wife did send me some twenty-four
24 (24) packages. Each was worth about fifty (50) dollars.
25 I never received a single one. Most of the letters were

1 held back in Japan, much destroyed. During three
2 (3) years and nine (9) months in the hands of Japs
3 I received one (1) letter, one (1) Christmas card and
4 two (2) short radio messages at the end of the war
5 from my wife, who wrote to me faithfully every
6 chance she had. Many of her letters and postal
7 cards were written in 1942-43-44-45 and just been
8 returned as 'undelivered' from somewhere.

9 "(24) During the early part of 1945, just
10 before our departure from China (Kiangwan Camp) a
11 tall, slender, 60 year old Jap Prince of the royal
12 blood inspected us. He was the General Chairman of
13 the Jap Red Cross from Tokyo. He did not bother to
14 talk to our senior Marine officer, Colonel W. W.
15 Ashurst, who could tell him plenty. The Jap Colonel
16 OTERA just rushed him through the camp, he looked us
17 over and departed.

18 "(25) I still have a good size lump in my
19 back, and a small hole in my skull. My head, left
20 ear and leg is still aching at nights from the
21 clubbings. Both of my legs are still sore and swel-
22 ling from malnutrition, beri-beri, pelagra and other
23 unpleasant complications forced upon me by the Japs,
24 even after a year of good American living."
25

Prosecution document No. 8480, the affidavit

1 of Yasuo KOHARA, sworn to on 19 November 1946, is
2 offered in evidence.

3 THE PRESIDENT: Admitted on the usual terms.

4 CLERK OF THE COURT: Prosecution document
5 No. 8480 will receive exhibit No. 2038.

6 (Whereupon, the document above re-
7 ferred to was marked prosecution's exhibit
8 No. 2038 and received in evidence.)

9 CAPTAIN ROBINSON: On page 1 of this docu-
10 ment, the fourth and fifth paragraphs read as follows:

11 "I joined the Imperial Japanese Navy in
12 June 1929. At the outbreak of the Pacific War, I
13 held the rank of Chief Petty Officer and was stationed
14 at the Kure Naval Training Station.

15 "From 25 December 1941 until the end of
16 January 1942, I was assigned as a prisoner of war
17 guard aboard the liner NITTA MARU. The NITTA MARU
18 called at Wake Island on 13 January 1942 and took
19 aboard some 1200 American prisoners of war who had
20 been captured at the time Wake Island surrendered to
21 Japanese military forces in December 1941. From Wake
22 Island the NITTA MARU went to Yokohama, Japan, and
23 put ashore some fourteen American prisoners of war.
24 From Yokohama the NITTA MARU sailed to Shanghai,
25 China, arriving there about 22 January 1942. All the

1 prisoners of war remaining on the NITTA MARU were put
2 ashore at that time. Then the NITTA MARU went to
3 Kure, Japan, and I went ashore and took up my regular
4 duties at the Kure Naval Training Station."

5 Omitting the next paragraph and continuing
6 at the bottom paragraph, same page:

7 "In the afternoon of the second day after
8 the NITTA MARU had departed from Yokohama, Japan,
9 for Shanghai, China, with about 1200 American
10 prisoners of war from Wake Island on board, Captain
11 SAITO called me into his cabin aboard the NITTA MARU.
12 At this time he showed me a piece of paper which was
13 an execution order for executing five American
14 prisoners of war aboard the ship. After I had read
15 this order over, Captain SAITO told me that he was
16 ordering me to kill one of these American prisoners
17 of war. I was astonished that he would order such
18 a thing, and I flatly refused to carry out his order.
19 When I refused, Captain SAITO told me that since I
20 was the senior 'GOCHO' of the guard I had to carry
21 out his order. I refused again. But Captain SAITO
22 explained to me that he was giving me a direct order
23 and to use my Japanese sword. I was confused. I
24 didn't know what to say. However, I reasoned to
25 myself that the order from my Commanding Officer,

1 Captain SAITO, was also an order from the Emperor of
2 Japan. I must obey it. I also realized that if I
3 refused this order I would be the one who would be
4 executed. Therefore, I could do nothing but carry
5 out the order of Captain SAITO to execute by my own
6 hand an American prisoner of war. After receiving
7 this order I returned to my cabin as I was feeling
8 ill.

9 "Sometime later, someone came to my cabin,
10 called me, and told me that the execution was ready to
11 take place. I left my cabin and went up on deck.
12 When I reached the quarterdeck, I saw five American
13 prisoners of war lined up on the port-side portion
14 of the deck. Many of the prisoner of war guards and
15 the crew of the NITTA MARU were standing around the
16 American prisoners of war and on the decks above the
17 deck on which the prisoners of war were standing.
18 I noticed that it was late afternoon. Very soon
19 Captain SAITO got up on a small platform near the
20 American prisoners of war and started to read the
21 execution order. I cannot remember exactly how the
22 execution order went, but it sounded something like
23 this:

24
25 "(First the names of the five American
prisoners of war to be executed were read off.)

1 "Then Captain SAITO read:

2 "Since you have committed -- a crime,
3 it will do no good to the world to let you people
4 live. I hope you will find happiness in the next
5 world. When you are born again, I hope you will
6 become peace-loving citizens."

7 "After reading this execution order, Captain
8 SAITO left his platform and proceeded to have the
9 executions carried out. Captain SAITO ordered
10 Warrant Officer YOSHIMURA to carry out the first
11 execution.

12 "The first American prisoner of war was
13 blindfolded and his hands were tied behind his back.
14 He was made to kneel down on a small straw mat on the
15 deck. Warrant Officer YOSHIMURA stepped out by the
16 American prisoner of war, raised his sword, and
17 struck the American prisoner of war heavily across
18 the side of the neck. The head was not severed.
19 Therefore, Warrant Officer YOSHIMURA struck the
20 American prisoner of war again with his sword. I
21 cannot remember where this second blow landed, but I
22 do know that the head still was not severed from the
23 body, and the American prisoner of war did not die
24 immediately.
25

Next, Captain SAITO ordered P. S. 3/c

1 Tokuichi TAKAMURA to execute an American prisoner
2 of war. P. O. 3/c TAKAMURA stepped up to the second
3 American prisoner of war who was kneeling on the
4 deck. I was so sick from the sight of the execution
5 of the first American prisoner of war that I closed
6 my eyes. When I opened my eyes, P. O. 3/c TAKAMURA
7 was standing, sword lowered, over the sprawled out,
8 headless body of the American prisoner of war.
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1 "Next, Captain SAITO called out, 'Senor
2 "GOCHO".' I answered, 'Yes!' I was scared and
3 shaking. I stepped out to where the third American
4 prisoner of war was kneeling on the deck. I raised
5 my sword to strike the American prisoner of war.
6 However, being unable to bring myself to deliver
7 the sword stroke, I lowered my sword. I opened my
8 eyes, and I saw the red hair above the blindfold of
9 this American prisoner of war. Since Captain SAITO
10 was standing right beside me and since he had
11 ordered me to do this duty, I raised my sword and
12 attempted to strike. Again, I could not strike. I
13 lowered my sword.

14 "Then realizing that I was acting on orders
15 from the Emperor of Japan, I closed my eyes, raised
16 my sword, and swung it forcefully downwards. When
17 I opened my eyes, the body of the American prisoner
18 of war was lying at my feet. His head was severed
19 from his body. I had carried out Captain SAITO's
20 orders.

21 "Next, Captain SAITO called out CPO
22 ASAKAWA. CPO ASAKAWA stepped out and stood beside
23 the fourth American prisoner of war. As CPO
24 ASAKAWA raised his sword over the head of the
25 American prisoner of war, I closed my eyes. When I

1 opened my eyes the American prisoner of war was
2 lying dead on the deck, and CPO ASAKAWA was standing
3 over him and shaking with excitement.

4 "Next Captain SAITO called out CPO TAKEZOE.
5 When CPO TAKEZOE was called out I left the deck and
6 returned to my cabin. I felt so badly that I could
7 not bear to witness any further executions. I did
8 hear later, however, that CPO TAKEZOE had executed
9 this fifth American prisoner of war.

10 "After the executions were finished I heard
11 that the bodies of the five executed American
12 prisoners of war were thrown over the side of the
13 NITTA MARU. I never heard of these five bodies
14 being mutilated by the guards of the Prisoner of
15 War Guard Detachment.

16 "The morning after the execution, the
17 NITTA MARU reached Shanghai, and the American
18 prisoners of war were put ashore. My duties as a
19 prisoner of war guard were over.

20 "While the NITTA MARU was en route from
21 Shanghai to Kure, Captain SAITO called all the
22 prisoner of war guards into his cabin and presented
23 each of them several rings and watches which had
24 been gotten somehow from the American prisoners of
25 war. I got a wrist watch and a gold ring. I lost

1 this ring when my home in Kure was burned down dur-
2 ing the American air raids on Japan during the war.
3 I left the watch with my wife when I left home to
4 come into Sugamo Prison.

5 "When I got ashore at Kure, I discovered
6 that the original execution order that Captain SAITO
7 had read aboard the NITTA MARU was in the pocket
8 of my coat. Along with this execution order was
9 a picture of an American civilian by the name of
10 'Tepas' or 'Teter' who had been aboard the NITTA
11 MARU and who was called 'governor' by all the
12 Japanese. I took this order home and kept it in my
13 home until it was burned in the air raids. Captain
14 SAITO never asked me for this order. Therefore, I
15 am sure that Captain SAITO did not report the exe-
16 cution of the five American prisoners of war aboard
17 the NITTA MARU in January 1942 to his superiors at
18 the Kure Naval Training Station. If Captain SAITO
19 had reported the execution, he would have needed
20 the execution order to substantiate the charge and
21 sentence in this execution.

22
23 "I have nothing further to add at this
24 time." Signed YASUO KOHARA.

25 The efforts of the United States government
to obtain from the Japanese government officials

1 information and thereby protection for the American
2 civilians and the American prisoners of war on Wake
3 Island are shown by the documents now to be intro-
4 duced.

5 These documents are copies of the communi-
6 cations by which the Swiss Minister brought the
7 requests of the United States government to the
8 personal and official attention of the defendant
9 TOGO and of other defendants. A document on this
10 subject, bearing date of 20 April 1942, has already
11 been introduced as prosecution document No. 8431,
12 exhibit No. 2034. These documents are duly certified
13 by prosecution document No. 8483 with respect to
14 source and authenticity. They are offered in evidence
15 as prosecution documents bearing the following
16 numbers:

17	8433	8436	8430	8426
18	8432-A	8437	8429	8425
19	8445	8438	8424	8422
20	8427	8428	9423	8483

21 THE PRESIDENT: Admitted on the usual terms.

22 CLERK OF THE COURT: The respective prose-
23 cution documents will be given the following exhibit
24 numbers:

25 No. 8433, exhibit No. 2039;

1 No. 8432-A, exhibit No. 2040;

2 No. 8445, exhibit No. 2041;

3 No. 8427, exhibit No. 2042;

4 No. 8436, exhibit No. 2043;

5 No. 8437, exhibit No. 2044;

6 No. 8438, exhibit No. 2045;

7 No. 8428, exhibit No. 2046;

8 No. 8430, exhibit No. 2047;

9 No. 8429, exhibit No. 2048;

10 No. 8424, exhibit No. 2049;

11 No. 8423, exhibit No. 2050;

12 No. 8426, exhibit No. 2051;

13 No. 8425, exhibit No. 2052;

14 No. 8422, exhibit No. 2053;

15 No. 8483, exhibit No. 2054.

16 (Whereupon, the documents above
17 referred to were marked as indicated by
18 the clerk of the court and received in
19 evidence.)

20 CAPTAIN ROBINSON: Prosecution document No.
21 8433, exhibit No. 2039, a letter from the Swiss
22 Minister to the defendant TOGO, dated 26 May 1942,
23 at Tokyo, reads as follows:

24 "Mr. Minister,

25 "As I had the honor of informing Your

1 No. 8432-A, exhibit No. 2040;
2 No. 8445, exhibit No. 2041;
3 No. 8427, exhibit No. 2042;
4 No. 8436, exhibit No. 2043;
5 No. 8437, exhibit No. 2044;
6 No. 8438, exhibit No. 2045;
7 No. 8428, exhibit No. 2046
8 No. 8430, exhibit No. 2047;
9 No. 8429, exhibit No. 2048;
10 No. 8424, exhibit No. 2049;
11 No. 8423, exhibit No. 2050;
12 No. 8426, exhibit No. 2051;
13 No. 8425, exhibit No. 2052;
14 No. 8422, exhibit No. 2053;
15 No. 8433, exhibit No. 2054.

16
17 (Whereupon, the documents above
18 referred to were marked as indicated by
19 the clerk of the court and received in
20 evidence.)

21 CAPTAIN COLEMAN: Prosecution document No.
22 8433, exhibit No. 2039, a letter from the Swiss
23 Minister to the defendant TOGO, dated 26 May 1942,
24 at Tokyo, reads as follows:
25 "Mr. Minister,

"As I had the honor of informing Your

1 Excellency by my letter of 21 April, I did not fail
2 to transmit to my government, for the attention of
3 the government of the United States of America,
4 the contents of the letter, No. 144/T3, dated 20
5 April last, concerning the situation with respect
6 to the American nationals on the island of Wake.

7 "According to a telegram which I have just
8 received, the government of the United States would
9 appreciate knowing the name /sic/ of the prisoners
10 of war and civilian internees that the Japanese
11 military authorities may have removed from the
12 island as well as the place where they are interned.
13 It would also like to have information on the fate
14 of the American nationals, prisoners or otherwise,
15 remaining on the island."

16 Prosecution document No. 8432-A, exhibit
17 No. 2040, a letter from the defendant TOGO to the
18 Swiss Minister, dated 10 August 1942, reads as
19 follows:

20 "Envoy Extraordinary and Minister Plenipotentiary
21 from Switzerland

22 "His Excellency,

23 "Camille Gorge,

24 "I have the honor to acknowledge the receipt
25 of Your Excellency's letter, (No. CC.1.2.1./EE 4.6.

1 9.7.--ce-) dated 26 May, which, at the request of
2 the American government, inquires about names of
3 the prisoners of war and civilian internees trans-
4 ferred from Wake Island to other places and their
5 camps; and about the Americans remaining on the
6 island.

7 "Regarding the prisoners of war, the
8 Imperial government has sent to Your Excellency a
9 list of their names, through the International Red
10 Cross Committee, and thereby please be informed as
11 to the conditions of those Americans taken prisoners
12 of war on Wake Island.

13 "Regarding the American civilian internees,
14 we are ready to reply to every individual inquiry
15 after the fullest possible investigations; therefore
16 please arrange to convey our intention to the Govern-
17 ment of America as you see fit.

18 "I avail myself of this opportunity to
19 renew to Your Excellency the assurances of my high-
20 est consideration.

21 "Minister of Foreign Affairs

22 "Shigenori TOGO (Seal)"

23 Prosecution document No. 8445, exhibit No.
24 2041, a letter from the Swiss Minister to Foreign
25 Minister TANI, dated 21 September 1942, fourth and

fifth paragraphs read as follows:

1 "The American government is unable to
2 accept as a satisfactory reply the statement of the
3 Japanese Foreign Office that lists of civilian
4 internees and prisoners of war are communicated as
5 in the past as prepared to the International Com-
6 mittee of the Red Cross and urges both the Swiss
7 government and the International Red Cross Com-
8 mittee to impress upon the Japanese authorities the
9 great importance that the American government
10 attaches to prompt fulfilment by the Japanese
11 government of the obligations it has assumed under
12 article 77 of the prisoners of war Convention and
13 4 of the Red Cross Convention. It desires that the
14 Swiss government and the International Red Cross Com-
15 mittee call on the attention of the Japanese govern-
16 ment that the American Information Bureau transmits
17 to the Central Red Cross Information Bureau weekly
18 lists of all Japanese nationals interned, released,
19 paroled, detained, taken prisoner of war, transferred
20 from one camp to another, etc. that are based on
21 official information regularly and promptly furnished
22 to the bureau by the government agencies concerned
23 and point out that the American government has a
24 right under the Geneva Conventions to expect Japanese
25

1 agencies concerned to furnish the Japanese Informa-
2 tion Bureau promptly with like information for
3 transmission through the Central Information Bureau
4 to the United States. In this connection it desires
5 that the Japanese government be reminded of its
6 agreement that such lists shall be transmitted by
7 cable to the Central Information Bureau at the
8 expense of the state of origin of the prisoners of
9 war or internees.

10 "The American government would like to
11 know at the earliest possible moment whether American
12 prisoners of war held by the Japanese have been
13 allowed to prepare and post the capture cards which
14 paragraph 2 of article 36 of the Prisoners of War
15 Convention specifies may be written by each prisoner
16 of war "within a period of not more than a week
17 after his arrival at the camp" and which "shall be
18 forwarded as rapidly as possible and may not be
19 delayed in any manner." If American have been
20 permitted to prepare and post such cards the
21 American government would like to know urgently how
22 the cards are being forwarded to the United States.
23 If they have not already been forwarded by some
24 other route it is urgently suggested that they, as
25 well as complete lists of prisoners and internees

1 containing information supplementary to that fur-
2 nished by telegraph be forwarded on future trips
3 of the exchange vessels.'"
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1 Prosecution document No. 8427, exhibit
2 No. 2042, a letter from the Swiss Minister to the
3 Japanese Minister of Foreign Affairs, dated 7 October
4 1942, reads as follows:

5 The date stamped is October 7, 1942. Above
6 that, the date 6 October 1942.

7 "My dear Minister,

8 "I have the honor to inform Your Excellency
9 that in reply to letter number 366/T3, of the 10th of
10 August last, on the subject of the American prisoners
11 of war and civilian internees from Wake Island, the
12 Government of the United States of America has asked me
13 to notify the Imperial Government as follows:

14 "'United States Government is still without
15 report on approximately 400 American civilians from Wake
16 Island. While United States Government welcomes offer
17 Japanese Government to report on welfare of individuals
18 upon request it expects Japanese Government to report
19 all names promptly in accordance with Article 77 of the
20 Geneva Prisoners of War Convention through International
21 Red Cross Information Bureau or protecting power.'

22 "I must add that contrary to what His Excellency
23 Mr. TOGO thought in the aforementioned letter, I have
24 not received any individual slips on American citizens
25 captured at Wake Island by the Japanese forces."

1 Prosecution document No. 8436, exhibit
2 No. 2043, a letter from the Swiss Legation to the
3 Japanese Foreign Ministry, dated 8 April 1943, third
4 paragraph reads as follows -- I will begin with the
5 second paragraph. Well, the second paragraph is
6 virtually a repetition of what I just read, so I will
7 proceed to the third paragraph.

8 "The Government of the United States of
9 America insists therefore on receiving immediately
10 notification of these 400 names. In addition it would
11 attach importance to knowing the reasons for the delay
12 accorded this notification."

13 Prosecution document No. 8437, exhibit
14 No. 2044, a note verbale from the Japanese Foreign
15 Office to the Swiss Legation, dated 19 April 1943,
16 paragraphs numbered one and two read as follows:

17 "1. As regards the Americans on the Island of
18 Wake, all the information to be furnished have been
19 already communicated to the Legation by the Note
20 Verbale No. 366/T.3 of August 10, 1942 and by the Note
21 Verbale No. 36/C.R. of February 25, 1943.

22 "2. As regards the approximately 400 American
23 civilians whose names are allegedly not included in
24 the list attached to the above-mentioned communication,
25 the Ministry begs to be informed of the names,

1 addresses, occupations, etc., thereof, as such infor-
2 mation is necessary for investigation."

3 Prosecution document No. 8438, exhibit
4 No. 2045, a letter from the Swiss Legation to the
5 Japanese Foreign Ministry, dated 21 August 1943,
6 paragraphs one and two read as follows:

7 "Referring to your note No. 106/C.R.
8 dated 19 April last, the Swiss Legation has the honor
9 to forward herewith to the Imperial Ministry for Foreign
10 Affairs the list of 432 American civilians who ought,
11 according to the latest information received by the
12 Government of the United States of America, to have been
13 on Wake Island at the moment of the Japanese occupation,
14 but whose names, however, are not found on the lists
15 sent by the Imperial Government to the International
16 Red Cross Committee.

17 "The Government of the United States of
18 America attaches the greatest importance to knowing as
19 soon as possible what happened to these persons and
20 where they actually are now. It believes that inves-
21 tigation undertaken in this regard would be facili-
22 tated if a delegate of the Swiss Minister were to be
23 authorized to talk to Mr. William Fairey who is
24 believed, according to a message of the International
25 Red Cross Committee at Washington, held as a prisoner

1 of war in the Far East. In the opinion of the State
2 Department, Mr. Fairey, whose name appears on the list
3 attached, might be able to furnish indications regard-
4 ing Mr. Leonard Ward and the other persons mentioned
5 in this list."

6 Prosecution document No. 8428, which is
7 exhibit No. 2046, a letter--

8 THE PRESIDENT: It is sufficient to read the
9 exhibit number.

10 CAPTAIN ROBINSON: Beg pardon, sir?

11 THE PRESIDENT: At this stage it is sufficient
12 to state the exhibit number.

13 CAPTAIN ROBINSON: Sufficient -- yes, sir.

14 It is a letter from the Swiss Legation to the
15 Japanese Foreign Ministry, dated Tokyo, 8 October
16 1943. The first and second paragraphs read as follows:

17 "To the Imperial Ministry for Foreign Affairs,
18 Tokyo.

19 "By note of 21 August the Swiss Legation had
20 the honor of submitting to the Imperial Ministry a
21 list of 432 American civilians and of informing it
22 that the United States Government attaches the greatest
23 importance to obtaining information on their present
24 situation. According to the last news received at
25 Washington, they are supposed to have been on Wake

1 Island at the time of the Japanese occupation; however,
2 their names did not figure on the lists sent by the
3 Imperial authorities to the International Red Cross
4 Committee..

5 "Lacking a reply to this day, the Legation
6 takes the liberty of recalling this matter to the kind
7 attention of the Ministry: the Government of the
8 United States is indeed earnestly desirous of receiving
9 this information as soon as possible."

10 THE PRESIDENT: You may mention the prosecu-
11 tion's document number if that is necessary for the
12 guidance of the translators.

13 CAPTAIN ROBINSON: Thank you, sir.

14 The date of this last message, 8 October
15 1943, is to be considered in connection with its
16 nearness to the date of 7 October 1943, which already
17 has appeared in evidence.

18 Prosecution document No. 8430, exhibit
19 No. 2047, a note from the Swiss Legation to the
20 Japanese Foreign Ministry, dated 10 December 1943,
21 reads as follows. The second paragraph:

22 "Meanwhile, the Legation has received from
23 the Prisoner of War 'Information Bureau' a list
24 No. F.M. 27 of 205 Americans from Wake who are at the
25 present moment prisoners of war in the Fukuoka camp.

1 About 15 names found on the Prisoners of War Bureau
2 list are not found on the list transmitted to the
3 Ministry by the above-mentioned note, hence the Lega-
4 tion now knows the situation of about 190 of the 432
5 Americans from Wake as to whose fate the Washington
6 Government has asked to be informed. It /the Legation/
7 is very desirous of receiving as soon as possible de-
8 tailed information as to the whereabouts of the other
9 Americans mentioned in the list of 21 August."

10 Prosecution document No. 8429, exhibit
11 No. 2048, a note from the Swiss Legation to the Japanese
12 Foreign Ministry, dated Tokyo, 14 February 1944, the
13 third paragraph reads as follows:

14 "Lacking a reply up to this day, the Legation
15 takes the liberty of again calling this matter to the
16 kind attention of the Imperial Ministry and takes this
17 opportunity to renew assurances of its high regard."

18 Prosecution document No. 8424, exhibit
19 No. 2049, a note from the Swiss Legation to the
20 Japanese Foreign Ministry, dated 25 September 1944,
21 is substantially repetition of the preceding document
22 dated seven months earlier.

23 Prosecution document No. 8423, exhibit
24 No. 2050, a note from the Swiss Legation to the
25 Japanese Foreign Ministry, dated Tokyo, 1 November 1944,

1 reads as follows. The first two paragraphs:

2 "Referring to its notes of 10 December,
3 14 February and 25 September last on the subject of
4 the Americans from the Island of Wake under the control
5 of Japan, the Swiss Legation has the honor of informing
6 the Imperial Ministry of Foreign Affairs that the
7 Government of the United States of America has trans-
8 mitted to the Swiss Government the list of its
9 nationals from Wake who have not yet been the subject
10 of any official communication from the Imperial
11 Authorities. The Ministry will find a copy of this
12 list attached herewith.

13 "The Washington Government is very desirous
14 of obtaining a report of the actual residence and the
15 condition of these individuals as soon as possible in
16 order to be able to reassure their families."

17 Prosecution document No. 8426, exhibit No.
18 2051, a note from the Swiss Legation to the Japanese
19 Foreign Ministry, dated 19 March 1945, Tokyo, reads as
20 follows:

21 "To the Imperial Ministry for Foreign Affairs,
22 Tokyo.

23 "By the note of November 1st, the Legation
24 had the honor of informing the Imperial Ministry of
25 Foreign Affairs that the Government of the United States

1 of America would like to get news of her nationals
2 on Wake under the control of Japan who have never been
3 the subject of any official communication of the
4 Imperial Authorities. A list of the interested was
5 attached to the said note.

6 "No answer being made to this day, the Legation
7 takes the liberty of calling this matter to the kind
8 attention of the Ministry."

9 Prosecution document No. 8425, exhibit No.
10 2052, a note from the Swiss Legation to the Japanese
11 Foreign Ministry, dated 15 May 1945, reads as follows.

12 THE PRESIDENT: You can read it after the
13 adjournment. We will adjourn until half-past one.

14 (Whereupon, at 1200, a recess was
15 taken.)

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AFTERNOON SESSION

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The Tribunal met, pursuant to adjournment,
at 1330.

MARSHAL OF THE COURT: The International
Military Tribunal for the Far East is now resumed.

THE PRESIDENT: Captain Robinson.

CAPTAIN ROBINSON: Mr. President and Members
of the Tribunal.

Prosecution Document No. 8425, a note from
the Swiss Legation to the Japanese Foreign Ministry,
dated 15 May 1945, reads as follows:

"By the notes of 1 November and 19 March last,
the Swiss Legation had the honor of informing the
Imperial Ministry for Foreign Affairs that the Govern-
ment of the United States of America had expressed
its desire of receiving news of its nationals from
Wake who have not been the subject of a single offi-
cial communication from the Imperial authorities
since they have been under the control of Japan. A
list of the persons concerned containing 173 names
was annexed to the above cited note of 1 November.

"No answer having been received to this day,
the Legation takes the liberty of calling this matter
to the kind attention of the Imperial Ministry.

1 "The Government of the United States of America
2 has in effect asked the Federal Authorities to press
3 the Imperial Government in order that information
4 concerning the actual residence and the conditions of
5 these Americans may be sent to it /the Government of
6 the United States/ as soon as possible. Strongly
7 desirous of being able to put the families of these
8 concerned at rest, the /Government of the United
9 States of America/ remarks moreover that the Im-
10 perial Government has had 3 years now to compile the
11 report requested and that consequently nothing ought
12 to prevent its immediate transmission.

13 "While asking the Ministry to be kind enough to
14 communicate, for the sake of the Washington Govern-
15 ment, the reply of the Imperial Government on this
16 subject, the Legation takes this opportunity to renew
17 the assurances of its high consideration. KARUIZAWA
18 15 May 1945."

19 Prosecution document No. 8422, exhibit No.
20 2053, a note from the Swiss Legation to the Japanese
21 Foreign Ministry, dated 27 July 1945, is substantially
22 a repetition of the preceding document dated two
23 months earlier. It will be observed that the date
24 of this protest is nearly two years after the exe-
25 cution of the American civilians by the Japanese on

1 Wake Island.

2 This concludes the evidence on the atrocities
3 on Wake Island. Offenses connected with Kwajalein
4 will next be considered.

5 May it please the Court, prosecution document
6 No. 8467 is offered for identification. This is the
7 record of proceedings of a military commission con-
8 vened at United States Pacific Fleet, Commander
9 Marianas, Guam, Marianas Islands, by order of Com-
10 mander Marianas Area on 15 May 1946 in the case of
11 Vice Admiral ABE, Captain OBARA, and Lieutenant
12 Commander WAIKI. Four excerpts from this record are
13 offered in evidence. The excerpts are statements
14 made by the accused, Captain OBARA, and Admiral ABE
15 at their trial before the Military Commission for
16 offenses at Kwajalein. These statements were made a
17 part of the official transcript of the trial. The
18 excerpts are prosecution documents No. 8447, 8446,
19 8449, and 8444. Also, prosecution document No. 8448
20 is offered as an affidavit of source and authenticity.
21 Those excerpts are now offered.

22 THE PRESIDENT: Admitted on the usual terms.

23 CLERK OF THE COURT: Prosecution document
24 No. 8467 will receive exhibit No. 2055 for identifi-
25 cation only. Excerpts therefrom, prosecution's

1 document 8447 will receive exhibit No. 2055-A;
2 document No. 8446 will receive exhibit No. 2055-B;
3 document 8449, exhibit No. 2055-C; document No. 8448,
4 the affidavit of authenticity, will receive exhibit
5 No. 2055-C.

6 (Whereupon, prosecution's document No.
7 8467 was marked exhibit No. 2055 for identifica-
8 tion, excerpts therefrom, prosecution's document
9 No. 8447, was marked exhibit No. 2055-A; document
10 No. 8446 was marked exhibit No. 2055-B; document
11 No. 8449 was marked exhibit No. 2055-C; document
12 No. 8444 was marked exhibit No. 2055-D, and
13 document No. 8448 was marked exhibit No. 2055-E
14 and received in evidence.)

15 CAPTAIN ROBINSON: Document No. 8447, exhibit
16 No. 2055-A, statement of OBARA, reads as follows,
17 at page 1, under the heading "Facts," paragraphs 1
18 and 3:

19 "1. 2 September 1942 - nine (9) prisoners of
20 war arrived at Kwajalein from Makin. Before this I
21 had received a directive from the 6th Base Unit Com-
22 manding Officer to the effect that the prisoners
23 were to be sent to TOKYO by first available trans-
24 portation. Upon their arrival, I was ordered to
25 arrange for their temporary incarceration."

1 I propose to read, omitting next paragraphs,
2 down to page 3, paragraph 2 in parenthesis:

3 "Around 10 October I was ordered by the Com-
4 manding Officer to execute the nine (9) prisoners
5 (this order was known to the Senior Staff Officer.)
6 I expressed my opinion.

7 "The Commanding Officer said: 'In accordance
8 with a directive received from Central Headquarters,
9 it has been decided to execute the Makin prisoners
10 here and not send them back to Japan. You will take
11 charge of carrying out this /execution/. '

12 "I said: 'What! Now more than ever, executing
13 /them/ is a terrible thing, don't you think?' 'Not to
14 mention international law, the fact that they have
15 been our guests for forty (40) or fifty (50) days
16 makes it even more distasteful to execute them.
17 Isn't there something that can be done about it?'

18 "The Commanding Officer; 'It's the intent of
19 Central Headquarters, and there's nothing we can do
20 about it.'

21 "I accepted the execution order, there being no
22 help for it.

23 "(2) Means of execution. Principal means -
24 Swords. Auxiliary means - Pistols.
25

1 "(Explanation:) In a forward area execution
2 where the emphasis is placed on proper form, it is a
3 custom of the Japanese Armed Forces to behead /the
4 victim/ with a Japanese sword, so as to render death
5 instantaneous and minimize pain. Hanging was not
6 employed because it is not in general use by the
7 Japanese; death before a firing squad involves wastage
8 of ammunition, and the supply difficulties at that
9 particular time also argues against the use of that
10 method. Nevertheless, in the /unlikely event of a
11 failure/ of the sword method/ preparations were made to/
12 use pistols also."

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1 Next, reading on page 7, continuing with
2 the reading of the paragraph numbered 3, at the top
3 of page 7:

4 "At the time in question, when forty (40)
5 days had already passed since the prisoners' incar-
6 ceration, our social intercourse had reached a high
7 degree of intimacy, and they were looking forward
8 with eager impatience to sightseeing in TOKYO, over-
9 coming language difficulties by means of signs and
10 gestures. They evinced a deep interest in the
11 appearance of TOKYO, Japanese customs, and particu-
12 larly in the likes and dislikes of Japanese women.
13 This, and the question-and-answer sessions which
14 were held on all subjects, show the perfect accord
15 which existed. Frequently the men in my unit would
16 give their own cigarettes, candy, and hardtack to
17 the prisoners."

18 Dropping to the third paragraph below that:

19 "Under these circumstances, it is not to
20 be wondered at that I was surprised when the
21 Commanding Officer (Translator's Note: ABE) ordered
22 me to carry out the execution. Aside from the
23 question of the infraction of international law,
24 then more than ever I could not find it in my heart
25 to kill the prisoners, and expressed my opinion to

1 that effect. My opinion, however, was not accepted,
2 since the policy of Central Headquarters was con-
3 sidered inviolable.

4 "There were no grounds upon which to alter
5 the inflexible decision of the Commanding Officer
6 (Translator's Note: ABE) and I was forced to obey
7 his command. I am sure /the reader/ will not fail
8 to understand my dilemma in accenting this order.

9 "4. My opinions; the Commanding Officer's
10 attitude towards them.

11 "Whether the basis for the Commanding
12 Officer's decision to execute /the prisoners of war/
13 was a directive from the Central Office brought down
14 by Lieutenant Commander OKADA, General Staff Officer,
15 whether it was the then policy of Central Headquarters,
16 or whether it was the personal view of OKADA, I
17 cannot say: at that time I received the impression
18 that it was a statement of policy -- not Lieutenant
19 Commander OKADA's private opinion.

20 "This is why I did not repeat my opinions.
21 If the order had been based on the Commanding Officer's
22 own idea I ought to have stated my objections again
23 and again. About some things the Commanding Officer's
24 resolve was unshakable. It was only natural that I
25 should have been unable to make my opinion heard,

1 in view of the attitude of the Commanding Officer.
2 He seemed determined to comply with (or more than
3 comply with) Central Headquarters policy by executing
4 the prisoners of war. He was particularly inclined
5 to adhere to the wishes of his superiors. For me,
6 understanding as I did the character of the Com-
7 manding Officer, to have persisted in the expression
8 of my opinions would have been tantamount to rejecting
9 his orders, and I would have been guilty of insub-
10 ordination in time of war. Thus there was no way
11 out but to accept the execution order."

12 Turning to document 8446, exhibit No. 2005-B,
13 2055-B, beg your pardon, sir, 2055-B. This statement
14 of Captain OBARA reads as follows, page 1 to the
15 bottom of the page:

16 "STATEMENT OF CAPTAIN OBARA

17 "When I held the nine American prisoners in
18 my unit on September, 1942, I thought that they were
19 respectable and honorable soldiers who had fulfilled
20 their duty, and since they had been captured by us,
21 were no longer but persons who did not differ from
22 our neighbors and fellow countrymen, and they were
23 truly merely unhappy fellows with the status of
24 prisoners.
25

Dropping to the second paragraph following:

1 "But you could hardly imagine my surprise
2 when all of a sudden, I was ordered by the Commanding
3 Officer ABE, who used to be always very prudent,
4 to kill the prisoners in the middle of October. Even
5 when taking into consideration that it was issued
6 so peremptorily and its nature was such that from
7 the standpoint of my private feelings, I could not
8 bear it. Moreover, from the standpoint of common
9 sense, it could not be easily comprehended, since
10 it ran utterly counter to my belief of the justice
11 and humanity which I had firmly believed in all my
12 life.

13 "But now, the order was issued, and its
14 solemnity could not be offended, because it was
15 based on the directive from the Central Headquarters,
16 having the reasons behind it which we were not in a
17 position to know. I as a military man know well that
18 orders must be obeyed absolutely."

19 Omitting the next paragraph:
20

21 "So I made up my mind, and expressed my
22 opinions to the Commanding Officer ABE, to reconsider
23 the matter, and make necessary arrangements to send
24 them back to Japan, as had been decided by us, but
25 because of the order from Central Headquarters, this
also was not accepted. Thus the path that I would

1 follow was absolutely decided. Now I could do nothing
2 but to execute the order merely as his tool."

3 Prosecution's document 8449, exhibit No.
4 2055-C, the interrogation of ABE, Koso, former
5 Vice Admiral, reads as follows on page 3, the top
6 paragraph:

7 "Q In what form did you give the order to
8 Admiral SAKAIBARA at WAKE to execute the ninety-six
9 (96) American prisoners there in 1943?"

10 "A I didn't issue any such order.

11 "Q Was Admiral SAKAIBARA under you?

12 "A Yes.

13 "Q Did Admiral SAKABARA report the deaths
14 of these people to you about this time?

15 "A Yes, I received a report."

16 I believe that the translators have certain
17 other places marked here, if the Court please, and
18 I would like to read those other parts also. Is
19 that correct?

20 THE MONITOR: That is right, sir.

21 CAPTAIN ROBINSON: Starting then on page 1:

22 "Q What is your full name?

23 "A ABE, Koso.

24 "Q Were you ever stationed on KWAJALEIN?

25 "A Yes.

1 "Q What date did you arrive on KWAJALEIN?

2 "A On the 8th of February 1942.

3 "Q When did you leave KWAJALEIN?

4 "A Around the end of November 1943.

5 "Q What was your position on KWAJALEIN?

6 "A I was the commanding officer of the
7 6th Base Unit.

8 "Q Who were the officers immediately
9 inferior to you by office?

10 "A There was a Captain OBARA who was com-
11 manding officer of the guard unit."

12 Then turning to the next page at the middle
13 of page 2:

14 "Q Who was in charge of the execution of
15 the American flyers on or about January 1943 on
16 KWAJALEIN?

17 "A There was no execution.

18 "Q We have the first hand evidence, that
19 is a witness, to the beheading of nine (9) American
20 flyers in January 1943 on KWAJALEIN.

21 "A There was no execution.

22 "Prisoner took oath at this time.

23 "Q Do you know the seriousness and the legal
24 effect of answering questions under oath?

25 "A Yes, I understand.

1 Then the excerpt which I read first comes
2 in at page 3, and then, turning to page 4, tenth
3 to twelfth line from the bottom of that page:

4 "Q You are reminded that you are under
5 oath and if you are caught telling a lie while under
6 oath, it is a crime of International Law and you
7 can be charged with perjury. Do you understand that?

8 "A Yes.

9 "Q Were any American prisoners of war
10 brought from other islands in the MARSHALLS to
11 KWAJALEIN?

12 "A Yes.

13 "Q What was done with American prisoners
14 of war that were brought to KWAJALEIN?

15 "A They were returned to JAPAN."

16 Turning then to page 8, a little above the
17 middle of the page:

18 "Q Have you heard of any executions in the
19 MARSHALLS or TRUK, outside of WAKE?

20 "A I don't remember of hearing of any.

21 "Q We have witnesses that a Navy Unit on
22 KWAJALEIN beheaded nine (9) American flyers early
23 in 1943 or about that time. If you persist in telling,
24 what to us is apparently a lie, we will have to charge
25 you with perjury. It is not common sense that nine

1 (9) prisoners of war could be executed on an island
2 so small as KWAJALEIN without the knowledge of the
3 Commanding Officer. Now either tell us the truth,
4 or commit the crime of perjury.

5 "A I know what you are talking about.
6 I don't think they were flyers.

7 "Q Tell us the circumstances of what you
8 know about the executions.

9 "A They were prisoners taken in the MAKIN
10 battle.

11 "Q American prisoners?

12 "A I believe they were.

13 "Q Continue with the story.

14 "A These prisoners were sent up to KWAJALEIN
15 from MAKIN and originally I intended to ship them
16 back to JAPAN. I intended to put them on a ship
17 and send them back to JAPAN but the Navy Ministry
18 informed me that they could not divert a ship to
19 KWAJALEIN. The ship was a destroyer. I was in-
20 tending to ship them back to JAPAN and a while passed
21 and then a staff officer from the General Staff in
22 TOKYO came down to KWAJALEIN and said I was not to
23 ship the prisoners back to Japan, but to dispose
24 of them on the spot. This being the case, in
25 accordance with Navy policy, I disposed of the

1 prisoners there.

2 "Q In accordance with the Navy policy
3 brought down by the Navy staff officer -- is that
4 what you mean by policy?

5 "A The staff member did not bring back
6 orders and he did not order me to carry out the
7 execution on the spot, but he expressed the opinion
8 which I took to be the Navy policy that that would
9 be the thing to do and I agreed.

10 "Q Who was this staff officer?

11 "A Lieutenant Commander OKADA, Sadatomo.
12 From my present viewpoint, I cannot definitely say
13 whether the personal opinion expressed by Lieutenant
14 Commander OKADA was the policy of the Navy, but at
15 the time I believed that it was the policy of the
16 Navy and that is why I did it.

17 "Q Give us the general details of the
18 execution -- where they were killed and how many.

19 "A As for the actual killing, I issued
20 orders for that to the Guard Unit Commander.

21 "Q Who was he?

22 "A Captain OBARA."

23 Prosecution's document 8444, which is
24 exhibit No. 2055-D, reads as follows:

25 THE PRESIDENT: That evidence was obtained

1 by a threat, of course, but what the attitude of
2 the members of the Tribunal will be to evidence
3 obtained by threat, of course, is a matter for them
4 entirely.

5 CAPTAIN ROBINSON: "STATEMENT OF ABE, Koso.

6 "Because the Japanese Military Forces are
7 directed to be in strict order, by the rigorous
8 command which originates in the supreme prerogative
9 of command of His Majesty the Emperor and penetrates
10 from the Emperor on the top down to a private at
11 the bottom, the primary and supreme duty of a mili-
12 tary man is absolute submission to an order."

13 "It is natural enough that throughout my
14 long naval career, 'not to disobey an order' has
15 been my primary commandment, and I have never tried
16 to deviate from this obligation for a moment.

17 "As for the nine American prisoners concerned
18 in this case, as I've already stated, I tried in
19 every way to send them to Japan as soon as possible.
20 However, a directive was issued to me from the Highest
21 Naval Central Headquarters to dispose of them on my
22 island, and I had nothing to do but obey it without
23 question. Up to that moment never had an idea flashed
24 through my heart and mind to dispose of them. Yet,
25 now that a directive came to me which had been pondered

1 and discussed prudently by the Highest Naval Central
2 Headquarters, what path was left for me but to
3 observe the directive subserviently?

4 "Among hundreds and thousands of Japanese
5 military men, since the Japanese forces were estab-
6 lished, has there been or is there even one person
7 who thinks he can be charged with his own acts,
8 which he does pursuant to an order that he is merely
9 following? It is above the understanding of the
10 Japanese that such things must be peralized.

11 "From the Japanese point of view, for
12 instance in this case there is absolutely no doubt
13 I am completely responsible for the acts which
14 Captain OBARA and Lieutenant Commander NAIKI did
15 pursuant to my order and Captain OBARA and Lieutenant
16 Commander NAIKI are free from any responsibility.
17 By the same token, the Highest Naval Central Head-
18 quarters is completely responsible for the acts
19 which I and the other two did pursuant to its di-
20 rective, and I and the other two are free from any
21 responsibility."

22 This concludes the consideration of offences
23 on KWAJALEIN Island.

24 I now proceed to offences connected with
25 Chichi Jima which will now be considered.

1 Prosecution document No. 8466 is offered
2 for identification. This document is a record of
3 proceedings of a military commission convened at
4 United States Pacific Fleet, Commander Marianas,
5 Guam, Marianas Islands, by order of Commander,
6 Marianas Area, on 15 August 1946 in the case of
7 Lieutenant General TACHIBANA, Vice Admiral MORI,
8 **Captain** YOSHII, Major MATOBA, and others. Excerpts
9 from this document are prosecution's document 8463,
10 Record of the Proceedings of the 18th day and the
11 19th day and the prosecution's document No. 8462,
12 Order regarding execution of American prisoners of
13 war. These two excerpts are now offered in evidence.

14 THE PRESIDENT: Admitted on the usual terms.

15 CLERK OF THE COURT: Prosecution's document
16 No. 8466 will receive exhibit No. 2056 for identi-
17 fication only, and the excerpts therefrom, to wit,
18 prosecution's document No. 8463 will receive exhibit
19 No. 2056-A, and document No. 8462 will receive exhibit
20 No. 2056-B.

21 (Whereupon, the documents above re-
22 ferred to were respectively marked prosecution's
23 exhibit No. 2056 for identification; and the
24 excerpt therefrom were marked prosecution's
25 exhibits Nos. 2056-A and 2056-B respectively,
and received in evidence.)

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1 CAPTAIN ROBINSON: Prosecution document
2 No. 8463, exhibit 2056A, reads as follows, page 4
3 middle to middle of page 5 -- a little below the
4 middle of page 4:

5 "Major Sueo MATOBA, a witness recalled by
6 the recorder, entered. He was warned that the oath
7 previously taken was still binding, and declared as
8 follows:

9 "1 Q Relate the circumstances of the first case
10 of cannibalism on the island.

11 "A The first case of cannibalism occurred between
12 the 23rd of February, and the 25th of February, 1945.
13 On that day I went to the Divisional Headquarters,
14 and I personally reported to General TACHIBANA that
15 the flyer would be executed at the Suyeyoshi Tai. At
16 the general's headquarters, sake was served and the
17 conversation turned to the Japanese forces stationed
18 on Bougainville and on New Guinea, and it was mentioned
19 that the troops that lacked provisions and supplies
20 had to eat human flesh. While I was still at the
21 Divisional Headquarters, a telephone call came through
22 from the 207th Battalion Headquarters, and it was said
23 that we should come to a party which Colonel KATO pre-
24 pared for General TACHIBANA and myself. We walked to
25 Colonel KATO's quarters, and when we arrived, we found

1 that Colonel KATO did not have enough drinks and things
2 to go with the drinks. On account of this fact, the
3 general was not satisfied and the question came up
4 where to get something to eat in line of meat and more
5 'sake. The general asked me about the execution and
6 about getting some meat. Therefore, I telephoned
7 personally to my headquarters that meat and ten sho
8 of sugar cane rum be delivered to the 307th Battalion
9 Headquarters. I do not recall now if the sugar cane
10 rum was delivered or not, but I know that the meat
11 was. The meat was cooked in Colonel KATO's room,
12 and everyone present had a taste of it. Of course,
13 nobody relished the taste.

14 "2 Q They all knew that it was human flesh?

15 "A Yes."

16 Page 8:

17 "20 Q Did General TACHIBANA say that this
18 should happen to all of the prisoners of war, follow-
19 ing their executions?

20 "A Yes, at a conference at the division head-
21 quarters in February, 1945, General TACHIBANA said
22 that supplies would diminish and ammunition would run
23 short, and in the end men would have to fight even
24 with rocks, and they would be forced even to eat their
25 own comrades killed in combat, and the flesh of the

1 enemy should be eaten.

2 "21 Q You personally heard this?

3 "A Yes.

4 "22 Q Who do you remember was present, who also
5 heard this?

6 "A Every battalion commander. Not only once
7 or twice, but several times the general said this."

8 Dropping down to the 26th question:

9 "26 Q Did General TACHIBANA, at this confer-
10 ence, mention the fact that all prisoners of war would
11 be executed?

12 "A Yes, and that the flesh would be eaten."

13 Turning to page 11:

14 "A I do not remember the exact words, but the
15 outline of the general's policy, which he told every-
16 body at the conference, is what I previously told you.
17 The general said the invasion of this island is
18 imminent and probably that this would be the last
19 battle prior to the invasion of Japan, and we must
20 fight even though we had no supplies and no food, and
21 that we should fight and live on the flesh of our
22 comrades and that of the enemy. He said 'kichiku',
23 meaning beastly, and that was used in regard to the
24 Americans. It was also said that the enemy is a beast.
25 In all orders and all decrees from the Imperial

17,020

—headquarters this word was always used, and all of
1 the military heads in Japan used the word in speeches,
2 and so General TACHIBANA used it.

3 "42 Q Did you see it in any orders from the
4 Imperial Headquarters, or hear it in any speeches
5 made?

6 "A Yes, Prime Minister SUZUKI used it in his
7 speeches over the radio. It was a byword in any
8 orders or any speeches. This came from the higher
9 command and for all of the personnel it was sort of a
10 byword, and was used in speeches by anyone and every-
11 one. This includes Prime Ministers SUZUKI and TOJO.
12 I do not know about the Navy. Admiral MORI and
13 General TACHIBANA agreed that all flyers would be
14 executed as soon as Major HORIE was through with them,
15 and as Major HORIE was in the higher command, he must
16 have approved of the plan. Therefore, when Major
17 HORIE was through, he turned the flyers over and then
18 they were executed."

19 I next read from page 14:

20 "63 Q When Admiral MORI thanked you for giving
21 the flyer to the Suyeyoshi Tai, did he mention any-
22 thing about the liver?

23 "A No. After the party at the 307th Battalion
24 where human flesh was served and eaten, on my way
25

1 back I talked to Admiral MORI, and told Admiral MORI
2 of the party. It was then that he told me to bring
3 down a little human liver from the body of the next
4 flyer to be executed by the 308th Battalion.

5 "64 Q Who was present, when you held this
6 conversation with the admiral?

7 "A The staff officers were present."

8 I read next from page 16:

9 "72 Q How many executions were there at the
10 Yoake wireless station?

11 "A I do not know, either one or two. The
12 execution was performed by an officer who was present
13 with his sword. I also heard that human flesh from
14 this flyer was served in soup. This was in the soup
15 for both the officers and the enlisted men. I only
16 heard this, so I am not sure. Staff Officer MIYAZAKI
17 was present."

18 Then the 73rd question:

19 "73 Q Did you hear that he was present, or do
20 you know that he was present?

21 "A I do not know if Staff Officer MIYAZAKI
22 actually witnessed the execution or not. However, I
23 am definitely sure that MIYAZAKI was present at the
24 party that night at which time human liver was eaten
25 in the officers' mess. I also heard that MIYAZAKI

1 returned to the naval headquarters with a portion of
2 the liver. I am absolutely positive about this."

3 I next read from page 26:

4 "128 Q By whose order was Doctor TERAHI to
5 cut out the liver and deliver it to you?

6 "A By my order.

7 "129 Q If you did not order the execution, why
8 did you order Doctor TERAHI to be there?

9 "A Sergeant Major WADA or Captain SATO came
10 and reported the execution to me. I then ordered
11 Doctor TERAHI to go and cut out the liver of the
12 flyer. I gave the order after I received the report
13 that the flyer was executed. That is, the order for
14 the removal of the liver."

15 I turn next to page 27:

16 "131 Q Do you know Sergeant FURUSHIKA?

17 "A Yes.

18 "132 Q Why was it that Sergeant FURUSHIKA was
19 scheduled to perform the execution?

20 "A Out of the personnel there were some who
21 volunteered and wanted to perform the execution, and
22 FURUSHIKA must have been one of them. Sergeant
23 FURUSHIKA was sharpening his sword and polished it up
24 and was expecting to execute Hall, when he was returned
25 to the 308th Battalion. It was not the custom of the

1 Japanese to order an execution. Therefore, only
2 volunteers could do the job. The responsibility lies
3 with me, and I am willing to take full responsibility
4 for what happened. If evidence points to the fact
5 that I ordered the removal of the liver previous to
6 the execution, or if the evidence points to the fact
7 that it was after, I will take full responsibility."

8 I turn to the next page, bottom:

9 "143 Q Exactly what instructions did you give
10 to Doctor TERAKI, regardint the disposition of the
11 flyer's body?

12 "A I ordered Surgeon TERAKI to hurry up and
13 remove the liver because I wanted to take it to the
14 naval headquarters.

15 "144 Q Who brought the liver to you? --

16 "A Doctor TERAKI reported to me that the liver
17 was brought and left in my orderly's room. As I could
18 not go to the naval headquarters due to air raids, I
19 had it sliced and dried.

20 "145 Q Wasn't there a party at your headquarters,
21 the night of Hall's execution?

22 "A It wasn't exactly a party, but they ate the
23 liver at the 308th Battalion headquarters that night.
24 It was Hall's liver."

25 I turn to page 31:

1 Japanese to order an execution. Therefore, only
2 volunteers could do the job. The responsibility lies
3 with me, and I am willing to take full responsibility
4 for what happened. If evidence points to the fact
5 that I ordered the removal of the liver previous to
6 the execution, or if the evidence points to the fact
7 that it was after, I will take full responsibility."

8 I turn to the next page, bottom:

9 "143 Q Exactly what instructions did you give
10 to Doctor TERAOKI, regarding the disposition of the
11 flyer's body?

12 "A I ordered Surgeon TERAOKI to hurry up and
13 remove the liver because I wanted to take it to the
14 naval headquarters.

15 "144 Q Who brought the liver to you? --

16 "A Doctor TERAOKI reported to me that the liver
17 was brought and left in my orderly's room. As I could
18 not go to the naval headquarters due to air raids, I
19 had it sliced and dried.

20 "145 Q Wasn't there a party at your headquarters,
21 the night of Hall's execution?

22 "A It wasn't exactly a party, but they ate the
23 liver at the 308th Battalion headquarters that night.
24 It was Hall's liver."

25 I turn to page 31:

1 "159 Q Then, did you see the men you named,
2 actually eat the liver?

3 "A Yes, definitely they ate it. While we were
4 eating the human liver, Admiral MORI mentioned the
5 fact that during the Chinese-Japanese war human
6 flesh and liver was eaten as a medicine by the
7 Japanese troops. The medicine made from the liver
8 was named Seirogan.

9 At the bottom of that page:

10 "165 Q What did Admiral MORI, Lieutenant
11 Commander SHINODA, and the rest of the officers
12 think of the idea of eating the flesh of prisoners
13 of war?

14 "A They were all saying that liver was good
15 medicine for the stomach.

16 "166 Q In what other cases of cannibalism did
17 you participate?

18 "A These are the three times that I ate human
19 flesh; at the 307th Battalion, 308th Battalion head-
20 quarters, and at the Navy base. Other than these,
21 I ate a small pill made from human liver in Singapore."

22 I Will not read any more from this record.
23
24
25

1 I have another document here, No. 8462. What
2 is the number of that document, Mr. Clerk?

3 CLERK OF THE COURT: 2056-B.

4 CAPTAIN ROBINSON: Exhibit No. 2056-B, at page
5 3, reads as follows:

6 "ORLER REGARDING EATING OF FLESH OF AMERICAN
7 FLYERS

8 "I 'The Battalion wants to eat the flesh
9 of the American Aviator, Lieutenant (junior grade) Hall.

10 "II First Lieutenant KANMURI see to the
11 rationing of this flesh.

12 "III Cadet SAKABE (medical corps) attend the
13 execution and have the liver and gall-blader removed.

14 "Battalion Commander: Major MATOBA, Suso

15 "Date: Marsh 9th, 1945

16 "Time: 9 a.m.

17 "Place: Mikazuki Hill Headquarters.

18 "METHOD OF ISSUING ORLERS: Called to my
19 presence First Lieutenant KANMURI and Cadet SAKABE and
20 gave verbal order.

21 "PLACE TO REPORT AFTER COMPLETION OF ORLER:

22 "Brigade Commander: Major General TACHIBANA

23 "Also informed: Detached Divisional
24 headquarters: Major HORIE.

25 "The 308th Independent Infantry Battalion.

1 "I wrote the above freely, believing it to be
2 the truth.

3 "MATOBA Suso, Major, IJA 16 April, 1946."

4 Prosecution document No. 8405 is the report
5 of Captain John D. Murphy, USN, Director of War Crimes,
6 Pacific Ocean Areas. Captain Murphy reports the results
7 of his official activities in charge of investigation
8 and prosecution of war crimes cases in Pacific Islands.
9 This document is offered in evidence.

10 THE PRESIDENT: Admitted on the usual terms.

11 CLERK OF THE COURT: Prosecution document No.
12 8405 will receive exhibit No. 2057.

13 (Whereupon, the document above re-
14 ferred to was marked prosecution's exhibit
15 No. 2057, and was received in evidence.)

16 CAPTAIN ROBINSON: Exhibit 2057. This document
17 reads as follows at pages 1 and 2:

18 "Affidavit of Captain John D. Murphv. U. S.
19 Navy, Director War Crimes, Pacific Ocean Areas.

20 "This is to certify that the undersigned, is
21 and has been since 2 October 1945 the Director of War
22 Crimes, Pacific Ocean Areas. In this capacity he has
23 been the direct representative of the Commander-in-Chief,
24 U. S. Pacific Fleet and Pacific Ocean Areas, and the
25 Military Governor of the Pacific Ocean Areas, in all

1 matters pertaining to the investigation and prosecution
2 of war crimes in the Pacific Ocean Areas.

3 "In carrying out the above indicated duties
4 the undersigned has caused investigations to be con-
5 ducted in the following atolls and islands: Marianas
6 Islands, Marshall Gilberts Area, Truk Atoll, Peleliu
7 Island, Koror Island, Babelthuap Island, Anguar Island,
8 Wake Island, Bonin Islands, Yap Island.

9 "As a result of the above investigations war
10 crimes were discovered to have been committed at: Koror
11 Island, Palau Islands; Wake Island, Kwajalein Atoll,
12 Mili Atoll, Aineman Island, Jaluit Atoll; Guam, Marianas
13 Islands; Dublon Island, Truk Atoll; Chichi Jima Island,
14 Bonin Islands; Maloelap Atoll, Marshall Islands.

15 "The nature of the established crimes were
16 (a) Mistreatment of Prisoners of War, native inhabi-
17 tants, and civilian non-Japanese nationals of various
18 countries in violation of the Laws and Customs of
19 War, and included murder, assault and battery, and
20 cannibalism (b) Neglect of duty in violation of the
21 Laws and Customs of War (unlawfully failing to protect
22 prisoners of war and failing to control members of the
23 Japanese Armed Forces) and (c) Violation of the Laws
24 and Customs of War (unlawfully preventing the honorable
25 burial of American prisoners of war.)

1 "In so far as my investigations are concerned
2 it is established that a large number of American mili-
3 tary personnel, the exact number unknown, were captured
4 alive by the Japanese in the Pacific Ocean Areas. There
5 is attached to and hereby made a part of this affidavit
6 lists, in part, of six hundred ninety-eight (698) per-
7 sons that are known to have been lost in the areas. Of
8 course many of the persons listed were undoubtedly
9 killed in battle, but on the other hand many were cap-
10 tured by the Japanese. It is significant that not one
11 of the persons listed or any other American or Allied
12 prisoners of war were found alive in any of the islands
13 or atolls of the Pacific Ocean Areas at the time of the
14 Japanese surrender and subsequent thereto. How many
15 were transported to Japan prior to the surrender has not
16 been determined but from the results of attempts to es-
17 tablish this number it appears that only a relatively
18 few and insignificant number ever reached Japan or were
19 subsequently repatriated to the United States and Allied
20 Powers. Investigations show that one hundred forty-nine
21 (149) Americans were illegally executed by the Japanese
22 military authorities while being held as prisoners of
23 war in the Pacific Ocean Areas.

24 "All records concerning prisoners of war cap-
25 tured by the Japanese in the Pacific Ocean Areas were

1 destroyed by the Japanese authorities and in every
2 instance investigators have been confronted with false
3 information by the Japanese Commanding Officers as well
4 as the deliberate intention on the part of the Japanese
5 to conceal any and all information concerning persons
6 who were known to have been captured alive. Accordingly
7 it has been impossible to determine the specific dis-
8 position of each individual concerned. In cases where
9 it has been possible to determine the disposition of
10 specific individuals it has been found that they were
11 unlawfully killed by Japanese authorities.

12 "The following is a brief of war crimes cases
13 which were tried by orders of (a) Commander Marshall
14 Gilberts Area and (b) Commander of Marianas Area. This
15 brief shows the names of the principle accused, offenses,
16 place and date of offenses, place and date of trial,
17 evidence for prosecution, basis of defense, and reports
18 made by various persons concerning the disposal of
19 prisoners of war in various places throughout the Pacif-
20 ic Ocean Areas."

21 Without reading further I turn to page 22, the
22 copy of a memorandum from Admiral Manning, Chief of the
23 Bureau of Yards and Locks, Navy Department, reads as
24 follows, paragraphs 1, 2 and 3:

25 "The attached list of Pacific Naval Air Base

1 contractors' employees with their home addresses and
2 occupations is certified to be a true copy of the
3 records available in this Bureau. This list represents
4 the names of those employees who are unaccounted for at
5 the expiration of hostilities with the Japanese.

6 "2. As a result of an investigation conducted
7 by a representative of this Bureau, the Commander Mar-
8 shalls Gilberts Area in a letter dated 19 December
9 1945 (Confidential), Serial O2641, stated in part,
10 '(a) Ninety-eight (98) American prisoners of war re-
11 maining on Wake Island were deliberately executed on
12 the order of the Japanese Commander Rear Admiral
13 SAKAIBARA, ninety-six (96) of whom with hands tied and
14 blindfolded were shot the night of 7 October 1943 on
15 order of Rear Admiral SAKAIBARA. Previous to that date
16 one was decapitated on order of Rear Admiral SAKAIBARA.
17 On or about 15 October 1943 he personally decapitated
18 the last remaining American on Wake.'

19 "3. As a result of the above, this Bureau
20 notified the next of kin, the U.S. Employees' Compensa-
21 tion Commission and other interested parties that in
22 view of the fact that all other Pacific Naval Air Base
23 contractors' employees have been accounted for with
24 the exception of ninety-eight, it must be presumed that
25 the ninety-eight employees executed on Wake Island were

1 those that were unaccounted for."

2 In the list of American civilians killed on
3 Wake Island, as listed at pages 23 to 28, the right-
4 hand column, with the heading "Occupation," shows
5 that these civilians were principally carpenters,
6 about 27 in number, and operators of machinery, such
7 as tractors, cranes, shovels and tugs, and other skilled
8 and unskilled workers for construction work. Attention
9 is directed also to the absence of any occupations of a
10 military nature, and to the presence, at page 27, line
11 75, of the name of the physician, Dr. Lawton E. Shank.

12 This concludes the evidence to be offered on
13 the offenses committed on Pacific Islands.

14 It is now proposed, if the Court please, to
15 show violations of the treaty provisions for hospital
16 ships. First, the attack on the USS COMFORT will be
17 considered.

18 Prosecution document No. 8435, a protest from
19 the United States Government by way of the Swiss Lega-
20 tion to the Japanese Foreign Minister, dated Tokyo
21 29 January 1945, is offered in evidence.

22 THE PRESIDENT: Admitted on the usual terms.

23 CLERK OF THE COURT: Prosecution's document
24 No. 8435 will receive exhibit No. 2058.

25 (Whereupon, the document above referred to

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was marked prosecution's exhibit No. 2058,
and was received in evidence.)

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and was received in evidence.)

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1 CAPTAIN ROBINSON: This document reads as
2 follows:

3 "The Swiss Legation has the honor of in-
4 forming the Imperial Ministry of Foreign Affairs
5 that the Government of the United States of America
6 has requested that the following notification be
7 addressed to the Japanese Government:

8 "The Japanese Government acknowledged
9 receipt of notification that the U.S.S. "Comfort"
10 was designated as United States hospital ship (see
11 note No. 188/T2 from the Ministry to the Legation
12 dated 6 July). On the 24th October 1944 at 02.00
13 local time in the vicinity of latitude 0850 north
14 longitude 12850 east, the "Comfort" was attacked by
15 a Japanese aircraft. The vessel was conventionally
16 painted as hospital ship and fully lighted with two
17 illuminated crosses on deck and four on the stack.
18 During this attack upon the "Comfort", three bombs
19 were dropped, two of which landed close aboard.

20 "On the 14th July 1944 (see note No. 200/T2
21 from the Ministry to the Legation dated 14 July),
22 the Japanese Government acknowledged receipt of the
23 notification that the U.S.S. "Hope" was designated
24 United States hospital ship. On the 3rd December 1944,
25 at 16.00 local time, at latitude 0936 north longitude

1 12821 east, the "Hope" was attacked by a Japanese
2 torpedo plane. This attack was made in daylight on
3 a conspicuously marked hospital ship. Following
4 this deliberate attack, the attacking Japanese air-
5 craft retired to Mindanao.

6 "The United States Government emphatically
7 protests against above described attacks upon the
8 hospital ships "Comfort" and "Hope" such attacks
9 representing flagrant violation of the tenth Hague
10 Convention of 1907 as well as those principles,
11 customs and usages of international law attached to
12 hospital ships. The United States Government insists
13 that the Japanese Government give its assurances
14 that attacks by Japanese armed forces upon hospital
15 ships will not be repeated in future and that those
16 persons responsible for the above-mentioned attacks
17 on the "Comfort" and "Hope" have been punished.'

18 "In begging the Ministry kindly to acknow-
19 ledge receipt of the present notification and to
20 communicate to it /the Legation/ the reply of the
21 Imperial Government to the American protest, the
22 Legation takes this occasion to renew to it the assur-
23 ances of its high consideration.

24 "Tokyo, 29 January 1945

25 "To the Imperial Ministry of Foreign Affairs, Tokyo."

1 Prosecution document 8398, a note from the
2 Swiss Legation to the Japanese Foreign Ministry,
3 dated Tokyo, 23 April 1945, is offered in evidence.

4 THE PRESIDENT: Admitted on the usual terms.

5 CLERK OF THE COURT: Prosecution's document
6 No. 8398 will receive exhibit No. 2059.

7 (Whereupon, the document above
8 referred to was marked prosecution's exhibit
9 No. 2059 and received in evidence.)

10 CAPTAIN ROBINSON: This document reads as
11 follows:

12 "By its note of 29 January the Swiss
13 Legation had the honor of transmitting to the Imperial
14 Ministry of Foreign Affairs a protest from the Govern-
15 ment of the United States of America on the subject
16 of attacks carried out by Japanese planes against
17 the hospital ships 'Comfort' and 'Hope'.

18 "The Washington Government has requested
19 assurances from the Japanese Government that those
20 responsible have been punished and that such attacks
21 will not be repeated in the future.

22 "No reply having been received to this day
23 the Legation ventures to bring this matter again
24 to the kind attention of the Ministry.

25 "It takes this occasion to renew to the

1 Prosecution document 8398, a note from the
2 Swiss Legation to the Japanese Foreign Ministry,
3 dated Tokyo, 23 April 1945, is offered in evidence.

4 THE PRESIDENT: Admitted on the usual terms.

5 CLERK OF THE COURT: Prosecution's document
6 No. 8398 will receive exhibit No. 2059.

7 (Whereupon, the document above
8 referred to was marked prosecution's exhibit
9 No. 2059 and received in evidence.)

10 CAPTAIN ROBINSON: This document reads as
11 follows:

12 "By its note of 29 January the Swiss
13 Legation had the honor of transmitting to the Imperial
14 Ministry of Foreign Affairs a protest from the Govern-
15 ment of the United States of America on the subject
16 of attacks carried out by Japanese planes against
17 the hospital ships 'Comfort' and 'Hope'.

18 "The Washington Government has requested
19 assurances from the Japanese Government that those
20 responsible have been punished and that such attacks
21 will not be repeated in the future.

22 "No reply having been received to this day
23 the Legation ventures to bring this matter again
24 to the kind attention of the Ministry.

25 "It takes this occasion to renew to the

1 Ministry the assurances of its high consideration.

2 "Tokyo, 23 April" 1945

3 "To the Imperial Ministry for Foreign Affairs, Tokyo."

4 Prosecution document No. 8399, a memorandum
5 from the Foreign Office, Tokyo, to the Swiss Legation,
6 dated 12 May 1945, is offered in evidence.

7 THE PRESIDENT: Admitted on the usual terms.

8 CLERK OF THE COURT: Prosecution's document
9 No. 8399 will receive exhibit No. 2060.

10 (Whereupon, the document above
11 referred to was marked prosecution's exhibit
12 No. 2060 and received in evidence.)

13 CAPTAIN ROBINSON: (Reading)

14 "The Foreign Office, Tokyo, No. 113/T2

15 "Memorandum

16 "The Imperial Minister for Foreign Affairs
17 has the honor to acknowledge receipt of Note No. CC.
18 3.1.43-FGc./ CC.3.1.46, dated 29th January last from
19 the Swiss Legation by which the Legation was good
20 enough to transmit to the Minister a protest from the
21 Government of the United States of America against
22 attacks which might have been made by Japanese planes
23 on the American hospital ships 'Comfort' and 'Hope'.

24 "The Minister hastens to inform the Legation
25 that the competent authorities are now actually enquiring

into the matter."

1 Prosecution document No. 8421, a protest from
2 the Swiss Legation to the Japanese Foreign Ministry,
3 dated 23 May 1945, is offered in evidence.
4

5 THE PRESIDENT: Admitted on the usual terms.

6 CLERK OF THE COURT: Prosecution's document
7 No. 8421 will receive exhibit No. 2061.

8 (Whereupon, the document above
9 referred to was marked prosecution's exhibit
10 No. 2061 and received in evidence.)

11 CAPTAIN ROBINSON: This protest reads as
12 follows:

13 "By Note No. 113/T2 of 12 May last the
14 Imperial Ministry for Foreign Affairs was pleased to
15 inform the Swiss Legation that the Japanese authorities
16 had commenced an investigation of the matter of attacks
17 carried out by Japanese planes against the American
18 hospital ships 'Comfort' and 'Hope'.

19 "The Legation has the honor to inform the
20 Ministry that in the meantime the Government of the
21 United States of America has called upon the Federal
22 Government to address to the Imperial Government the
23 following notification relative to a second Japanese
24 air attack against the 'Comfort':

25 " . . . On the afternoon of 28th April 1945, the

1 U.S.S. "Comfort", a United States hospital ship, left
2 Okinawa at about 20.50 local time. On the same day,
3 at latitude 25/30 north, longitude 127/30 east, when
4 observing full hospital ship procedure, the "Comfort"
5 was attacked and seriously damaged by an aircraft
6 positively identified as Japanese. As a result of
7 this unlawful attack on the hospital ship, 39 persons
8 including nurses were killed and 33 persons were ser-
9 iously injured.

10 "The notification from the United States
11 Government that the "Comfort" had been designated as
12 a United States hospital ship was acknowledged by the
13 Japanese Government on 6th July 1944.

14 "The United States Government emphatically
15 protests against this deliberate attack on the "Comfort"
16 a flagrant violation of the tenth Hague Convention of
17 1903 -- it should be "seven," I take it -- as well as
18 those principles, customs and usages of international
19 law relating to hospital ships.

20 "The United States Government insists that
21 the Japanese Government take positive measures to
22 punish those responsible for this attack and to pre-
23 vent the recurrence of attacks by Japanese forces upon
24 United States hospital ships."
25

1 Prosecution document No. 8479, a letter from
2 the Commander-in-Chief, the United States Pacific
3 Fleet, Admiral C.W. Nimitz, to Commander-in-Chief,
4 the United States Fleet, dated 19 May 1945 is offered
5 in evidence.

6 THE PRESIDENT: Admitted on the usual terms.

7 CAPTAIN ROBINSON: It is a recommendation
8 of a protest to the Japanese Government based on
9 a second attack on the USS Comfort.

10 It reads as follows:

11 "From: Commander-in-Chief --

12 CLERK OF THE COURT: Prosecution document
13 No. 8470 will receive exhibit No. 2062.

14 (Whereupon, the document above
15 referred to was marked prosecution's ex-
16 hibit No. 2062 and received in evidence.)

17 CAPTAIN ROBINSON: Exhibit No. 2062 reads
18 as follows:

19 "From: Commander-in-Chief, U.S. Pacific
20 Fleet.

21 "To: Commander-in-Chief, United States
22 Fleet.

23 "Subject: U.S.S. COMFORT, Attacked by enemy
24 aircraft.

25 "Reference: (a) CO US: COMFORT serial

1 AH 6/A16-3/C-68 of 1 May 194" -- It is omitted here
2 from this copy. I suppose "1945."

3 "(b) CO USS COMFORT serial AH 6/A16-3/70
4 of 7 May 1945.

5 "Enclosure: (A) Copy of reference (b).
6 (B) Translation of Japanese
7 document taken from body of suicide plane pilot.

8 "1. It is noted that reference (a) was submitted
9 direct to the Chief of Naval Operations without the
10 prescribed routing through intermediate commands.
11 This report is being submitted therefore in lieu of
12 the usual endorsement.

13 "2. Attention is particularly invited to
14 the fact that on the night of the attack, the weather
15 was clear, visibility unlimited, the Comfort was fully
16 illuminated and was carrying out full hospital procedure.
17 It will also be noted that the attacking plane flew
18 over the ship in 3 successive passes, once at masthead
19 height and twice at 500 feet; there can be no doubt
20 therefore as to recognition by the pilot of the character
21 of the hospital ship.

22 "3. The ship carried no passengers and was
23 complying in every respect with the provisions of the
24 Geneva Convention.

25 "4. There were no other naval vessels nearer

1 to the Comfort than 20 miles at the time of the
2 contact, thus there can be no question as to her
3 being escorted or in company with combatant ships.

4 "5. Enclosure (A) is submitted as an
5 indication that attacks of this nature may be premeditated
6 by the Japanese Government and not simply the irrational
7 act of a single pilot. Enclosure (B) is translation
8 of a document taken from the body of the pilot of the
9 suicide plane, from which it is evident that the
10 pilot had been briefed on the presence of U.S.
11 vessels off Okinawa, among which were two hospital
12 ships.

13 "6. It is recommended that the strongest
14 possible protest be addressed to the Japanese
15 Government for this deliberate attack on a ship
16 load of defenseless battle casualties in violation
17 of existing treaties.

18 Signed "C.W. Nimitz"

19 Page 3 of the exhibit:

20 "U.S.S. COMFORT (AH-6)

21 "c/o Fleet Post Office

22 "San Francisco, California

23 "7 May 1945

24 "From: Commanding Officer.

25 "To: Commander-in-Chief, U.S. Pacific Fleet.

1 "Subject: Tokyo Broadcast re: Bombing
2 Hospital Ships - Reporting of.

3 "Reference: (a) CO USS Comfort's conversation
4 of 6 May 1945 with Vice Admiral McMorris.

5 "1. In compliance with your order, reference
6 (a), I wish to report that on 9 April 1945 at approximately
7 1500 Item, I heard Tokyo broadcast as follows:

8 "Quote, We are justified in bombing hospital
9 ships as they are being used for repair ships for
10 returning wounded men back to the fighting front,
11 unquote.

12 "The broadcast also stated at length the
13 fact that their own 'Mercy Ship' was long overdue.

14 "2. This broadcast is reported from memory
15 and may not be quoted verbatim. However, its meaning
16 was unequivocal.

17 "3. The subject broadcast was heard by
18 several members of the crew of this vessel.

19 Signed "A. Tooker"
20

21 - - - -

22 "(ENCLOSURE (B) - Translation of Japanese
23 document taken from body of the suicide plane pilot
24 which crashed into the U.S.S. Comfort.)

25 "Flight Intelligence Despatch #2

 "1. Shipping situation at 1700 on the 27th.

1 "Off Kadena: 2 battleships, 3 cruisers,
2 15 destroyers, about 40 transports, 2 hospital ships,
3 about 80 small craft. Landing continues off Itoman:
4 one battleship, 1 cruiser, 1 destroyer, 5 transports,
5 1 small craft, 7 assault craft.

6 "Off Kiyabu: 2 cruisers, 23 destroyers,
7 2 unidentified, 4 small craft, 7 assault craft.

8 "_____ (TN; illegible) - 3 cruisers,
9 3 battleships, 20 small craft. Unclear because of
10 fog at present.

11 "2. On the 28th at 0200 at Makagusuku Bay:
12 One battleship, 5 cruisers, 7 destroyers, 27 small
13 craft."

14 Prosecution document No. 8469, a report of
15 the attack on the Comfort is offered in evidence.

16 THE PRESIDENT: Admitted on the usual terms.

17 CLERK OF THE COURT: Prosecution document
18 No. 8469 will receive exhibit No. 2063.

19 (Whereupon, the document above
20 referred to was marked prosecution's ex-
21 hibit No. 2063 and received in evidence.)

22 CAPTAIN ROBINSON: This report reads as
23 follows: --

24 THE PRESIDENT: Are you going to read much
25 of it, Captain?

1 CAPTAIN ROBINSON: No, sir, just the first
2 2 paragraphs and about ten words from page 4. (Reading):

3 "Army Service Forces

4 "205th Hospital Ship Complement

5 "U.S.S. Comfort AH-6

6 "Fleet Post Office, San Francisco, Calif.

7 "2 May 1945

8 "Subject: Report of Dead and Wounded
9 Personnel.

10 "To: Adjutant General, United States Army,
11 Washington 25, D.C.

12 "1. The Hospital Ship U.S.S. Comfort
13 was proceeding on its way to Guam with a load of
14 patients from Okinawa, Ryuku Islands, on the 28th
15 April 1945 when at 2042 that evening the ship was
16 bombed by a suicide Japanese airplane. The position
17 of the ship was about seventy (70) miles from Okinawa
18 at latitude 25°- 28 ' N and longitude 127°-39 ' E.
19 The plane dove into the ship hitting into the outboard
20 bulkhead on the starboard side of the superstructure
21 deck. When the explosion occurred all normal activities
22 of the hospital were being carried on.

23 "2. The following is a summary of all personnel
24 killed and wounded, with type and extent of wounds
25 received.

1 "A. The personnel named on the attached
2 list as killed in action were so badly burned and
3 mutilated that it is impossible to determine just
4 what killed them. The direct cause of death as far
5 as can be determined was due to 'the explosion."

6 And finally, turning to page 4 of this
7 report, I call attention simply to the fact that in
8 the second and third column, under the "Killed in
9 Action," at the top of the page is to be observed
10 that there were 4 doctors and 6 army nurses among
11 those killed in action under the circumstances just
12 described.

13 THE PRESIDENT: We will recess for fifteen
14 minutes.

15 (Whereupon, at 1446, a recess was
16 taken until 1500, after which the proceedings
17 were resumed as follows:)
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1 MARSHAL OF THE COURT: The Tribunal is now
2 resumed.

3 THE PRESIDENT: Captain Robinson.

4 CAPTAIN ROBINSON: Mr. President:

5 Prosecution document No. 8434, a protest
6 transmitted by the Swiss Legation to the Japanese
7 Foreign Minister, dated 23 June 1945, is offered in
8 evidence.

9 THE PRESIDENT: Admitted on the usual terms.

10 CLERK OF THE COURT: Prosecution document
11 No. 8434 will be given exhibit No. 2064.

12 (Whereupon, the document above re-
13 ferred to was marked prosecution's exhibit
14 No. 2064 and received in evidence.)

15 CAPTAIN ROBINSON: This document reads as
16 follows:

17 "Pursuant to its note of 23 May relating
18 to the Japan's second air attack upon the American
19 hospital ship 'Comfort,' the Swiss Legation has the
20 honor to make known to the Imperial Ministry for
21 Foreign Affairs that the Government of the United
22 States of America has requested the Swiss Government
23 to present to the Japanese Government the following
24 notification:

25 "'In regard to attack by a Japanese aircraft

1 upon United States hospital ship 'Comfort' on evening
2 of 29th April, 1945, following supplemental informa-
3 tion is set forth for attention of the Japanese Govern-
4 ment:

5 "On the night of this attack, weather was
6 clear and visibility was unlimited. There were no
7 other naval vessels within twenty miles. The attack-
8 ing aircraft flew over the 'Comfort' on three successive
9 occasions one at masthead height and twice at an
10 altitude of . . . feet. There can be no doubt there-
11 fore of the ability of the pilot to recognize hospital
12 ship character of the 'Comfort' before he crashed
13 his plane on board the vessel.

14 "There was found in the wreckage of the
15 crashed aircraft a flight intelligence document
16 which listed two hospital ships among other ships
17 present off Okinawa on afternoon preceding attack
18 upon the 'Comfort.' The fact that two hospital
19 ships were included in a list of combatant ships in
20 that area indicates that no effort was made to impress
21 attacking Japanese pilots with immunity of hospital
22 ships.

23 "On 9th April, 1945, at approximately 15.00
24 local time, a Tokyo broadcast announced that Japanese
25 are justified in bombing hospital ships inasmuch as

1 they are being used to repair ships and for purpose
2 of returning wounded men to fighting fronts. The
3 United States Government states emphatically that
4 its hospital ships are not being used for repair or
5 any other purposes not permitted by strict interpre-
6 tation of terms of Geneva Convention relative to use
7 of hospital ships.

8 "The United States Government reiterates its
9 insistence that the Japanese Government take positive
10 measures to punish those responsible for attack on
11 the 'Comfort' and other hospital ships and to prevent
12 further attacks.'

13 "The Ministry will confirm that this note
14 lacks one word in the sixteenth line of the first
15 page," and so forth.

16 "While requesting the Ministry to be good
17 enough to receive this notification and to inform it
18 of the response of the Imperial Government, the Legation
19 takes this opportunity to renew the assurances of its
20 high consideration."

21 Dated, "Karuzawa, 23 June 1945."

22 In further consideration of violations of
23 treaty provisions with respect to hospital ships,
24 evidence will now be presented on the case of the
25 Netherlands hospital ship, OP ten NOOHT.

1 Prosecution document No. 8471A, a certified
2 official report on the Op ten NOORT, with document
3 No. 8471F, the certification, are offered in evidence.

4 THE PRESIDENT: Admitted on the usual terms.

5 CLERK OF THE COURT: Prosecution document
6 No. 8471A will receive exhibit No. 2065, and document
7 No. 8471F will receive exhibit No. 2066.

8 (Whereupon, document No. 8471A was
9 marked prosecution's exhibit No. 2065, and
10 document No. 8471F was marked prosecution's
11 exhibit No. 2066, and were received in evidence.)

12 CAPTAIN ROBINSON: This report reads in part
13 as follows:

14 Page 1, first four paragraphs:

15 "REPORT REGARDING THE ADVENTURES OF THE
16 NETHERLANDS MILITARY HOSPITAL SHIP 'OP ten NOORT.'

17 "Above-mentioned Hospital Ship went to sea
18 on February 12, 1942, Captain: 'G. TUIZINGA.'
19 Head Medical Staff: M. O. 1st Cl. 'A. M. MELLEMA,'
20 P. M. N.

21 "The ship was provided with the appropriate
22 markings of a hospital ship, as arranged at the
23 Geneva Convention of 1906.

24 "According to a verbal communication of the
25 then Naval Commander, Rear Admiral 'van Staveren,'

1 to me on February 25, 1942, a message had been
2 received that said ship had been acknowledged as a
3 hospital ship by the Japanese Government, just as
4 the N. E. I. Government had acknowledged 3 Japanese
5 hospital ships, viz: the 'HIKAWA MARU,' the ASAKI
6 MARU' and the 'TAKASAGO MARU.'

7 "Notwithstanding this acknowledgment the
8 ship was attacked in the 'Westervaarwater' near
9 SOERABAJA on February 21, 1942, by Jap planes drop-
10 ping explosive bombs from a height of about 3000
11 metres. By three near-misses 3 persons were killed
12 (M. O. 2nd Cl. 'to Velde' and the Sisters 'Strik' and
13 Brasser.') Moreover about 20 persons were more or
14 less seriously wounded and the ship incurred severe
15 material damage."

16 Page 5, beginning with the second paragraph
17 and continuing to the middle of the following page:

18 "Suddenly on October 16th, all patients had
19 to leave the ship together, with the native medical
20 orderlies and the greater part of the ship's crew.
21 A Japanese captain and other members of a crew em-
22 barked, whereon the following statement was read to us
23 as answer to a protest handed in by the captain,
24 copy of which I am unable to enclose.
25

"1. The ship had not been 'captured,' but

1 'occupied' by the Jap authorities and had been directed
2 to Japan.

3 "2. This official detainment was to be
4 continued.

5 "3. Directing the ship to Japan was ordered
6 by the Japanese Navy and was to be carried out to
7 explain some affairs that could not be solved at
8 MAKASSAR.

9 "4. The ship's crew and staff were not to
10 to be interned or made P. W.'s, neither was it the
11 intention of the Japanese Government to do so in the
12 future.

13 "5. Japan will always fulfil the obligations
14 forthcoming from International treaties.

15 "6. For safety's sake it is necessary to
16 place a Japanese crew on board the ship and to sail
17 under the Jap flag.

18 "7. A guard detachment, armed with rifles
19 and machine-guns, is placed on board during the trip,
20 in order to protect the ship against illegal attacks
21 of American submarines.

22 "8. Sabotage or opposition will be most
23 severely punished.

24 "I never saw a written confirmation of this
25 statement. When the statement had been read to us,

the captain answered with a short protest.

1 "November 22nd the ship left for Japan with
2 an 'occupation-force' of about 100 armed marines.
3 Escape was out of the question although the course
4 took us East of the Philippines.
5

6 "December 5th we reached Yokohama. We
7 suffered greatly from the cold on the totally un-
8 heated vessel. Many of us had only tropical clothes
9 and much had been given to the first group of P. W.'s,
10 many of whom had embarked almost without any clothes.

11 "On December 17th and 18th the captain
12 addressed some letters to authorities at Yokohama, con-
13 tents of which are unknown to me.

14 "On December 19th the whole personnel had
15 to disembark; we had to unload our heavy luggage our-
16 selves in bitterly cold weather. It was strictly
17 forbidden for the native servants to assist us.

18 "After a railway journey of about 24 hours,
19 we arrived at a camp at Myoshi (75 Kilometres N. W.
20 of Hiroshima), where the Dutch team consisting of
21 44 persons, was detained until the surrender.

22 "Several protests were sent from this camp,
23 viz:

24 "On February 22, 1943 (Encl. 3).

25 "On October 27, 1943 (Encl. 4).

"On February 23, 1943 (Encl. 5).

1 "On February 23," 1944, I take it that
2 should be. Mistake. It is '43. "(Encl. 6) to the
3 Swiss Ambassador at Tokyo.

4 "August 21, 1943 (Encl. 7), whereas several
5 times we tried to improve our conditions by personal
6 talks with Mr. 'KAMAY," who would visit our camp
7 irregularly as representative of the prefect of
8 Hiroshima.

9 "This man's behavior was always very correct.
10 In my opinion, he did his utmost to improve our con-
11 ditions. Unfortunately his attempts had not much
12 success, probably owing to opposition to higher authori-
13 ties.

14 "On the occasion of one of these visits the
15 captain directed a letter to the Superintendent of
16 Police at Mijoshi on June 13, 1943 (Encl. 8).

17 "We never received a written answer to these
18 protests and letters."

19 Signed at "Soerabaja, May 8, 1946.

20 "The M. O. 2nd Cl. R. M. N., Head Naval
21 Hospital. A. W. MELLEMA."

22 Prosecution document No. 8471B, a letter
23 from the Captain of the CP ten NOORT to the Japanese
24 Navy Minister at Tokyo, is offered in evidence.
25

1 THE PRESIDENT: Admitted on the usual terms.

2 CLERK OF THE COURT: Prosecution document
3 No. 8471B will receive exhibit No. 2067.

4 (Whereupon, the document above re-
5 ferred to was marked prosecution's exhibit No.
6 2067 and received in evidence.)

7 CAPTAIN ROBINSON: This letter reads as
8 follows:

9 "Enclosure 3.

10 "Mijoshi, February 22, 1942," which apparently
11 should be "3," as the context shows.

12 "Excellency,

13 "1. I have the honour to submit the following
14 to Your Excellency's kind attention:

15 "2. On December 19, 1942 the entire personnel
16 of the Netherlands Hospital Ship, 'Op ten Noort,'
17 were forced to disembark at Yokohama. The etat-Major,
18 N. C. O.'s, together with the whole medical staff,
19 were interned in a house at Nijoshi, where conditions
20 left much to be desired, whilst the Indonesian crew
21 was taken to a place unknown to me.

22 "3. Referring to my letter, directed to
23 Your Excellency on December 17th and 18th, I take the
24 liberty to make the following remarks:

25 "c. That the Netherlands Hospital Ship,

1 'Op ten Noort,' was officially acknowledged by the
2 Imperial Japanese Government according to the Treaty
3 for the Application on the War at sea of the principles
4 of the Geneva Convention of July 6, 1906;

5 "b. That when directing the ship to Japan
6 the Imperial Japanese Navy guaranteed that the ship
7 was not to be seized and the personnel was not to be
8 interned or made P. W.

9 "4. Therefore, I strongly protest against
10 the measures mentioned in para. 2.

11 "5. I kindly request Your Excellency to
12 inform me:

13 "a. Whether the Imperial Japanese Government
14 adheres to its acknowledgment of the S. S. 'Op ten
15 Noort' as a hospital ship.

16 "b. What the reason is of the actual intern-
17 ment of Mijoshi.

18 "c. How long the present conditions are to
19 be maintained.

20 "6. Further I kindly request Your Excellency
21 to take all possible measures to permit the personnel
22 to reembark as soon as possible, so that the ship can
23 carry out its task to the benefit of our fellowmen.

24 "7. Expressing my thanks for your Excellency's
25 willingness.

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"I remain

"Respectfully yours,

"G. TUIZIN&A," Captain.

"To: His Excellency, the Minister of the
Imperial Japanese Navy in Tokyo."

1 Prosecution document No. 8471C, a letter
2 from the Captain of the "Op ten Noort" to the
3 Japanese Prime Minister, is offered in evidence.

4 THE PRESIDENT: Admitted on the usual
5 terms.

6 CLERK OF THE COURT: Prosecution's document
7 No. 8471C will receive exhibit No. 2068.

8 (Whereupon, the document above re-
9 ferred to was marked prosecution's exhibit
10 No. 2068 and received in evidence.)

11 CAPTAIN ROBINSON: This letter, paragraphs
12 one, two, three and seven, reads as follows:

13 "ENCLOSURE 5.

14 "Excellency "Mijoshi, February 23rd 1944.

15 "1. On October 27th of the previous year a protest
16 was handed in by me in my function of Captain of
17 the Netherlands Military Hospital Ship 'Op ten
18 Noort,' against the prolonged detention of this ship
19 and the internment of the ship's crew and further
20 personnel, As such a detention and internment are
21 entirely contrary to the Geneva Convention of 1906
22 for the Application of the War at Sea, I am con-
23 vinced, that Your Excellency is not acquainted with
24 this internment and detention, nor with the incidents
25 leading to these circumstances.

1 Prosecution document No. 8471C, a letter
2 from the Captain of the "Op ten Noort" to the
3 Japanese Prime Minister, is offered in evidence.

4 THE PRESIDENT: Admitted on the usual
5 terms.

6 CLERK OF THE COURT: Prosecution's document
7 No. 8471C will receive exhibit No. 2068.

8 (Whereupon, the document above re-
9 ferred to was marked prosecution's exhibit
10 No. 2068 and received in evidence.)

11 CAPTAIN ROBINSON: This letter, paragraphs
12 one, two, three and seven, reads as follows:

13 "ENCLOSURE 5.

14 "Excellency "Mijoshi, February 23rd 1944.
15 "1. On October 27th of the previous year a protest
16 was handed in by me in my function of Captain of
17 the Netherlands Military Hospital Ship 'Op ten
18 Noort,' against the prolonged detention of this ship
19 and the internment of the ship's crew and further
20 personnel, As such a detention and internment are
21 entirely contrary to the Geneva Convention of 1906
22 for the Application of the War at Sea, I am con-
23 vinced, that Your Excellency is not acquainted with
24 this internment and detention, nor with the incidents
25 leading to these circumstances.

1 "2. To my increasing astonishment I have neither
2 received any answer to this letter of protest nor
3 to my earlier protests, directed to lower authori-
4 ties.

5 "3. It surely cannot be the intention of the Imper-
6 ial Japanese Government to waive the rules of the
7 Geneva Convention, because Japanese Military Hospi-
8 tal Ships are still sailing under protection of
9 International markings, as prescribed by said
10 Treaty, as observed by me at Makassar (Celebes).
11 Moreover, cancelling the Treaty would be contrary
12 to the definite assurances and promises given by
13 responsible Japanese Naval authorities at Makassar
14 and Yokohama and mentioned in my protest.

15 "7. At the same time I beg to request Your Excellency
16 to order a neutral instance to investigate the de-
17 plorable internment conditions of the ship's crew
18 and medical staff.

19 "Meanwhile I remain,

20 "respectfully Yours,

21 "The Captain of the
22 "Netherlands Hospital Ship,
23 "'Op ten Noort'.

24 "w.s. 'G. TUIZINGA.'

25 "Encl.: 1
"His Excellency the Prime Minister of His Imperial
Highness, the Emperor of Japan."

1 Prosecution document No. 8471D, a speech
2 by the Prefect of Hiroshima to the personnel of the
3 "Op ten Noort," is offered in evidence.

4 THE PRESIDENT: Admitted on the usual terms.

5 CLERK OF THE COURT: Prosecution's document
6 No. 8471D will receive exhibit No. 2069.

7 (Whereupon, the document above re-
8 ferred to was marked prosecution's exhibit
9 No. 2069 and received in evidence.)

10 CAPTAIN ROBINSON: This document, page 1,
11 first paragraph, heading, reads as follows:

12 "SPELCH DELIVERED AT MAJOSHI by the
13 PREFECT OF HIROSHIMA:

14 "Today you are not going to hear any par-
15 ticular news from me. As Superintendent of this
16 camp I regularly visit this place in order to keep
17 myself informed of your conditions. I am the repre-
18 sentative of the Japanese Government."

19 Page 2, second paragraph. No. Top of
20 page 2, the first three paragraphs:

21 "You pretend to have treated the Japanese
22 internees decently, but you know fully well that this
23 is a lie. The Japanese are filled with indignation
24 at this treatment. You always refer to International
25 Law, but it was America, as leader of the Allies, who

1 violated this Law.

2 "Under what 'gentleman treatment' we might
3 be if we should be in your circumstances!:" ---

4 "It is no use comparing your present condi-
5 tions with your former glorious way of living. We
6 are convinced of doing our utmost under the present
7 circumstances.

8 "Hostile feelings are so bad here, that it
9 is disapproved that Japanese food is withdrawn for
10 your nourishment,"

11 Omitting the rest of that page to the next
12 to the bottom paragraph on that same page which
13 reads as follows:

14 "Attempts to escape will be severely punished.
15 We do not want such a thing to happen. Such an at-
16 tempt will be strictly punished. I informed the
17 Government of your interests regarding correspondence
18 with your country and your relatives. I stated that
19 correspondence about your good health and well being
20 will be sent to your relatives."

21 The next page, page 3, last paragraph,
22 reads as follows:

23 "My personal opinion is that your intern-
24 ment here will not be of long duration because
25 hostilities will soon be over.

1 "I repeat that every attempt to escape will
2 be strictly punished."

3 Prosecution document No. 8471E, a letter
4 from the Chief Medical Officer of the "Op ten Noort"
5 to the Japanese Prime Minister is offered in evi-
6 dence.

7 THE PRESIDENT: Admitted on the usual terms.

8 CLERK OF THE COURT: Prosecution document
9 8471E will receive exhibit No. 2070.

10 (Whereupon, the document above re-
11 ferred to was marked prosecution's exhibit
12 No. 2070 and received in evidence.)

13 CAPTAIN ROBINSON: This letter reads as
14 follows:

15 "MIJOSHI, June 29th 1944.

16 "I have the honour to submit the following
17 to Your Excellency:

18 "On October 27th of the previous year the
19 Captain of the Netherlands Military Hospital Ship
20 'Op ten Noort' submitted a protest against the de-
21 tention of this ship. In this protest he gave a com-
22 plete survey of all incidents which had occurred on
23 board the ship and what was done to her crew and staff.
24 He finally applied to Your Excellency expecting You
25 to be able to stop the injustice inflicted upon us.

1 "To my great disappointment neither this
2 protest nor the repeated protest of February 23rd
3 1944 had any success and were not even answered.

4 "It is obvious now that Naval and Civil
5 authorities acted by orders of the Japanese Govern-
6 ment and consequently we hold this Government respon-
7 sible for our treatment. Notwithstanding the fact
8 that Japan signed the Geneva Convention of 1906, the
9 Japanese Navy detained our Hospital Ship, occupied
10 her with armed forces and used the ship for her own
11 benefit. As her own organization fell short in this
12 respect I cannot but qualify this act as a serious
13 proof of unreliability of the Japanese Government,
14 the more conspicuous through the fact that the
15 hospital ship 'Op ten Woort' was acknowledged by the
16 Japanese Government less than three months prior to
17 the outbreak of the war. From her side the Japanese
18 Government gave evidence of relying on the loyalty
19 of her enemies with regard to above-mentioned Treaty.
20 We could perceive -- be it said to the shame of the
21 Japanese Government -- that our ship sailing under
22 the markings (among others, being illuminated at
23 night), protecting Hospital Ships against intentional
24 attacks of the enemy, with a cargo of contraband,
25 among others, mines, with armed military on board,

1 safely reached Japan. It was declared by Naval
2 authorities by name of the Japanese Government that
3 our ship had not been seized, only detained.

4 "Even after the ship had arrived in Japan
5 in the dishonourable manner described in this re-
6 port, sailing under the Jap flag, under the command
7 of a Japanese captain, and after the crew and staff
8 had been interned in a remote corner of Japan, the
9 Japanese Government persisted in her untruthful
10 declarations.

11 "I accuse the Japanese Government of dis-
12 loyalty on the following grounds:

13 "a. Having instructed high-ranking authorities
14 to make misleading statements.

15 "b. Not having properly answered any protest.

16 "c. Not having permitted the captain of the
17 ship to contact the International Red Cross.

18 "d. Not having permitted the captain to
19 guard the interests of the hospital ship, not even
20 through the intermediary of a non-belligerent nation,
21 representing the interests of the Netherlands sub-
22 jects in Japan.

23 "I may finally add here that -- where all
24 over the world Red Cross work in wartime is watched
25 with interest and respect -- the Japanese Government

1 paralyzed the performance of our hospital ship with
2 one blow, without any reason, without any urgency of
3 war, without any official procedure."

4 Signed "The Chief Medical Officer
5 of the Hospital Ship 'Op ten
6 Noort'"

7 "To: The Prime Minister of Japan."

8 Diplomatic protests by the Netherlands
9 Government transmitted by the Swedish Legation to
10 the Japanese Government were numerous and emphatic.
11 Among those protests and related examinations are
12 the following documents, of which only the last two
13 will be read, although I wish to offer them all in
14 evidence.

15 Prosecution document No. 8475, a protest
16 addressed to the accused TOGO, dated 28 May 1942;

17 Prosecution Document No. 8473, a letter from
18 the Japanese Minister of Foreign Affairs to the
19 Swedish Minister, dated 9 June 1942;

20 Prosecution document No. 8474, a Note
21 Verbale from the Swedish Minister to the Japanese
22 Foreign Minister, dated 28 September 1942;

23 Prosecution document No. 8477, a Note
24 Verbale from the Swedish Legation to the Japanese
25 Foreign Ministry, dated 10 September 1945; and

1 Prosecution document No. 8476, a letter
2 from the Swedish Minister to the Netherlands
3 Minister of Foreign Affairs, dated 30 October 1945
4 are now offered in evidence.

5 THE PRESIDENT: Admitted on the usual terms.

6 CLERK OF THE COURT: Prosecution's document
7 No. 8475 will receive exhibit No. 2071; document
8 8473 exhibit No. 2072; document No. 8474, exhibit
9 No. 2073; document No. 8477, exhibit No. 2074; and
10 document No. 8476, exhibit No. 2075.

11 (Whereupon, the documents above re-
12 ferred to were marked prosecution's exhibits
13 Nos. 2071 to 2075, inclusive, as indicated
14 and received in evidence.)

15 CAPTAIN ROBINSON: I have marked some
16 extracts from these documents, reading only two in
17 full. Exhibit 2071 reads as follows:

18 "Tokyo, May 28th, 1942.

19 "Monsieur le Ministre:

20 "With reference to previous communications
21 regarding the bombing and seizure by the Japanese
22 Armed Forces of the Netherlands Hospital Ship 'Op
23 ten Noort,' which I have had the honour to address
24 to Your Excellency in my capacity as entrusted with
25 the protection of the Netherlands interests in Japan,

1 I now beg to bring to Your Excellency a knowledge
2 the following additional details in this matter, based
3 on reports received from the Royal Netherlands Govern-
4 ment.

5 "According to these informations the 'Op
6 ten Noort' on February 21st, last, was navigating
7 near Sembilangan when it was bombed by Japanese air-
8 planes, and received damages which necessitated
9 repairs. These repairs completed, the hospital ship
10 sailed out again on the first of March with the
11 purpose of searching for survivors of a naval
12 battle. On this occasion a Netherlands' reconnai-
13 sance plane reported that the vessel was captured by
14 Japanese torpedo boats. Since then no further infor-
15 mation has been received by the Netherlands' Govern-
16 ment regarding the ship which, at both the above
17 mentioned occasions, was clearly marked in accordance
18 with the prescriptions of international law.

19 "In this connection it may be mentioned that
20 the Royal Netherlands Government has recognized the
21 Japanese vessels 'Hikoen Maru' and 'Takasago Maru' as
22 being hospital ships.

23 "As to the incident of the bombing of the
24 'Op ten Noort,' which was brought to Your Excellency's
25 attention with my note of March 2nd, I should much

1 appreciate to be informed of the result of the
2 investigation which was to be carried out.

3 "Furthermore, I have the honour again to
4 request the Imperial Government to release the ship
5 according to the stipulations of the Convention of
6 the 18th of October 1907 which Convention has been
7 signed and ratified by the Japanese Government. On
8 behalf of the Netherlands Government, I beg to ask
9 for the favour of a reply as to the intentions of
10 the Imperial Government in this respect.

11 "I avail myself of this opportunity,
12 Monsieur le Ministre, to renew to Your Excellency
13 the assurance of my highest consideration.

14 "W. BAGGE

15 "His Excellency
16 Monsieur Shigenori TOGO, Minister for Foreign
17 Affairs," et cetera.
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1 Exhibit 2072, I read extracts from. Date
2 9 June 1942.

3 "My dear Minister

4 "I have the honor to acknowledge receipt to
5 Your Excellency of your three letters dated 2 March,
6 13 April, and 28 May, last, relative to the bombard-
7 ment and detention of the Netherlands hospital ship
8 'Op Ten Noort'."

9 Dropping down to the third following para-
10 graph:

11 "The fact that this ship was used for
12 a military purpose and that it attempted to escape
13 when it was bound to follow the order of the bel-
14 ligerents constitutes an express violation of
15 Article 4 of the Convention of 18 October 1907 for
16 the application of the principles of the Geneva
17 Convention to maritime warfare."

18 Turning to the next page, the top paragraph:

19 "As to the bombardment of the 'Op Ten Noort'
20 which was supposed to have been carried out on 21
21 February by Japanese planes, investigations by the
22 competent authorities have revealed that absolutely
23 no such bombardment was directed against this ship
24 by Japanese planes. Moreover, the Japanese Army and
25 Navy having received formal orders not to attack

1 hospital ships, the Imperial Government underlines
2 that such a thing could never take place."

3 Signed: "Minister for Foreign Affairs."

4 Exhibit No. 2073, transmitted to the Imperial
5 Ministry for Foreign Affairs, Tokyo, by the Swedish
6 Legation, the second paragraph reads as follows:

7 "The Dutch government to which the Lega-
8 tion has transmitted the contents of the above-
9 mentioned note, points out that it maintains the
10 exactness of the information on the movement of
11 the ship--communicated by the Legation in its note
12 of May 28 last--and that the supposition that the
13 'Op Ten Noort' would be employed for reconnoitering
14 of the Japanese fleet's movement is without any
15 foundation."

16 Exhibit No. 2074, document No. 8477, reads
17 as follows:

18 "Note Verbale

19 "The Royal Swedish Legation, in charge of
20 Netherlands interests, have the honour to request
21 information concerning the present whereabouts of
22 the Netherlands Hospital Ship 'Op ten Noort' which
23 has been detained by the Imperial Navy since 19th
24 December 1942. It is also requested that immediate
25 arrangements be made for the return of the ship to

1 the Netherlands authorities.

2 "Tokyo, September 10th, 1945

3 "The Imperial Ministry of Foreign Affairs,

4 "Tokyo."

5 And I read finally exhibit No. 2075, which
6 is document No. 8476:

7 "Tokyo, October 30th, 1945..."

8 "To His Excellency the Minister of Foreign Affairs.

9 "With reference to above cited cable and to
10 a number of subsequent cables concerning the Nether-
11 lands Military Hospital-ship 'Op ten Noort' I have
12 the honour to state that the Captain, his officers,
13 the medical staff and the Indonesian crew had been
14 interned in Japan since December 1942 without the
15 Legation receiving any information to that effect.
16 After the surrender of Japan a member of the Legation
17 visited the camp at Miuoshi, Hiroshima-ken, where
18 the officers and the medical personnel were interned
19 and obtained from Captain TUIZINGA a written report
20 on the capture of the 'Op ten Noort' and on the
21 conditions in the internment camp. A copy of this
22 report is annexed hereto and it should be mentioned
23 that another copy has already been forwarded by the
24 Legation to the Netherlands East Indies Government.

25 "As informed by cable early in October, the

1 'Op ten Noort' is reported as sunk. The Legation
2 was informed hereof by a memorandum from the
3 Imperial Ministry of Foreign Affairs, dated September
4 27th, and reading as follows:

5 "The Imperial Ministry for Foreign Affairs
6 has the honour to acknowledge receipt of a Note
7 Verbale, dated September 10th, 1945, request-
8 ing information concerning the present where-
9 abouts of the Netherlands Hospital Ship "Op
10 ten Noort" and in reply wish to state the
11 following:

12 "1. Nothing has been heard from the s.s.
13 'Op ten Noort' since she sailed from
14 the Maizuru port on September 10th.
15 We believe that she was sunk by a mine.

16 "2. The ship in question being under
17 detention, the Japanese Government
18 agree to replace the ship by a similar
19 vessel.'

20 "I should appreciate if Your Excellency
21 could kindly cause the above information, as well
22 as Captain TUIZINGA's report, to be communicated to
23 the Netherlands Government.

24 "Erik von Sydow"
25 the Swedish Minister.

1 This document, if the Court please, con-
2 cludes the evidence presented on hospital ships.

3 Evidence will now be presented on atrocities
4 at sea committed by Japanese submarine crews against
5 survivors of torpedoed Allied merchant ships. This
6 evidence will include testimony on the witness stand
7 by a survivor, affidavits by American, British and
8 Dutch merchant seamen who survived such attacks, and
9 protests made to the accused SHIGEMITSU and other
10 Japanese government officials by the American govern-
11 ment and by the government of the United Kingdom.

12 Prosecution document No. 8401, a protest
13 transmitted by the Swiss Legation from the United
14 States government to Foreign Minister SHIGEMITSU,
15 dated 19 June 1944, is offered in evidence.

16 THE PRESIDENT: Admitted on the usual terms.

17 CLERK OF THE COURT: Prosecution's docu-
18 ment No. 8401 will receive exhibit No. 2076.

19 (Whereupon, the document above
20 referred to was marked prosecution's ex-
21 hibit No. 2076 and received in evidence.)

22 CAPTAIN ROBINSON: This protest reads as
23 follows:

24 "June 20, 1944 /stamp/

25 "Tokyo, June 19, 1944."

1 This document, if the Court please, con-
2 cludes the evidence presented on hospital ships.

3 Evidence will now be presented on atrocities
4 at sea committed by Japanese submarine crews against
5 survivors of torpedoed Allied merchant ships. This
6 evidence will include testimony on the witness stand
7 by a survivor, affidavits by American, British and
8 Dutch merchant seamen who survived such attacks, and
9 protests made to the accused SHIGEMITSU and other
10 Japanese government officials by the American govern-
11 ment and by the government of the United Kingdom.

12 Prosecution document No. 8401, a protest
13 transmitted by the Swiss Legation from the United
14 States government to Foreign Minister SHIGEMITSU,
15 dated 19 June 1944, is offered in evidence.

16 THE PRESIDENT: Admitted on the usual terms.

17 CLERK OF THE COURT: Prosecution's docu-
18 ment No. 8401 will receive exhibit No. 2076

19 (Whereupon, the document above
20 referred to was marked prosecution's ex-
21 hibit No. 2076 and received in evidence.)

22 CAPTAIN COLEMAN: This protest reads as
23 follows:

24 "June 20, 1944 /stamp/
25

"Tokyo, June 19, 1944."

1 And beginning with the second paragraph:

2 "The United States steamship 'Richard Hovey'
3 carrying cargo and one passenger was at 11.20 G.C.T.
4 on 29 March 194__"-- There should be a "four" there,
5 apparently -- 1944. "...torpedoed by a Japanese
6 submarine in latitude 16 degrees 40 minutes north
7 and longitude 64 degrees 30 minutes east. After
8 torpedoing the 'Richard Hovey,' the submarine
9 attacked the personnel who escaped from the ship.

10 "Reports from the survivors, including the
11 chief officer, disclose that subsequent to releasing
12 three torpedoes and obtaining two hits, the submarine
13 surfaced, opening fire on the ship itself and then
14 proceeded in the direction of the lifeboats, opening
15 fire on them from about one thousand feet with her
16 forward gun and continuing to fire as she circled
17 around the lifeboats. The survivors in the lifeboats
18 took to the water, keeping the boats between them
19 and the submarine. The submarine approached the
20 number 2 lifeboat and proceeding slowly rammed and
21 capsized it. She cruised slowly among the other
22 boats taking pictures and firing with rifles, machine
23 guns and other small arms. The submarine then made
24 another circle around to the starboard side of the
25 number 4 lifeboat at which she fired her big gun,

1 soling (?) the boat on the starboard side above the
2 water line, smashing thwarts, puncturing the engine
3 casing, the fuel tanks and one water tank so
4 seriously that half of its contents were lost. The
5 submarine finally approached the master boat, took
6 on board the master and three others and took the
7 boat in tow.

8 "The United States government protests most
9 emphatically against this inhuman form of warfare
10 practiced by Japanese forces in brutally attacking
11 helpless survivors of a torpedoed vessel and demands
12 effective assurances from the Japanese government
13 that such criminal acts, which are contrary to all
14 standards of civilized conduct will not be repeated
15 in the future. It is expected that the Japanese
16 government will at the same time punish those persons
17 who with premeditation and full knowledge of their
18 actions have so flagrantly violated the primary
19 humanitarian concept of maritime warfare."

20 Signed by the Swiss Minister, directed to
21 His Excellency, Mr. Mamoru SHIGEMITSU, Foreign
22 Minister, Tokyo.

23 Prosecution document No. 8396, a note from
24 the Swiss Minister to the Japanese Foreign Minister,
25 dated 15 September 1944, is offered in evidence.

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THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Prosecution's document No. 8396 will receive exhibit No. 2077.

(Whereupon, the above document was marked prosecution's exhibit No. 2077 and received in evidence.)

CAPTAIN ROBINSON: This document reads as follows:

"September 16, 1944..."

"By letters of 19 and 30 June, the Swiss Minister had the honor of transmitting to His Excellency Mr. Mamoru SHIGEMITSU a protest of the government of the United States of America on the subject of the attack on the survivors of the American ship 'Richard Hovey' by a Japanese submarine.

"The Swiss Legation will be obliged to the Foreign Office if the Foreign Office will communicate the answer of the Imperial Government to the said protest.

"The Legation avails itself of this opportunity..." and so forth. Dated Tokyo, September 15, 1944. To the Imperial Foreign Ministry, Tokyo.

Prosecution document No. 8415, a letter from

1 THE PRESIDENT: Admitted on the usual
2 terms.

3 CLERK OF THE COURT: Prosecution's docu-
4 ment No. 8396 will receive exhibit No. 2077.

5 (Whereupon, the above document
6 was marked prosecution's exhibit No. 2077
7 and received in evidence.)

8 CAPTAIN COLEMAN: This document reads as
9 follows:

10 "September 16 1944..."

11 "By letters of 19 and 30 June, the Swiss
12 Minister had the honor of transmitting to His
13 Excellency Mr. Mamoru SHIGEMITSU a protest of the
14 government of the United States of America on the
15 subject of the attack on the survivors of the
16 American ship 'Richard Fovey' by a Japanese sub-
17 marine.

18 "The Swiss Legation will be obliged to the
19 Foreign Office if the Foreign Office will communicate
20 the answer of the Imperial Government to the said
21 protest.

22 "The Legation avails itself of this oppor-
23 tunity..." and so forth. Dated Tokyo, September
24 15, 1944. To the Imperial Foreign Ministry, Tokyo.

25 Prosecution document No, 8415, a letter from

1 the accused SHIGEMITSU to the Swiss Minister, dated
2 28 November 1944, is offered in evidence.

3 THE PRESIDENT: Admitted on the usual
4 terms.

5 CLERK OF THE COURT: Prosecution's docu-
6 ment No. 8415 will receive exhibit No. 2078.

7 (Whereupon, the document above
8 referred to was marked prosecution's ex-
9 hibit No. 2078 and received in evidence.)

10 CAPTAIN ROBINSON: This document reads as
11 follows:

12 "I have the honor to acknowledge the receipt
13 of Your Excellency's letters NO GG.1.1.3-EGf, dated
14 June 19th, and"-- another letter -- "dated June 30th,
15 by which you transmitted to me the protest of the
16 United States government regarding the attacks on
17 the survivors of the U.S.S. 'Richard Hovey' by a
18 Japanese submarine.

19 "In connection with the above matter, I
20 have the honor of requesting Your Excellency to
21 transmit to the United States government that the
22 result of strict investigations carried out by the
23 authorities concerned shows clearly that there are
24 no facts that correspond to such attacks.

25 "I hereby again avail myself to renew to

the accused SHIGEMITSU to the Swiss Minister, dated
28 November 1944, is offered in evidence.

1 THE PRESIDENT: Admitted on the usual
2 terms.

3 CLERK OF THE COURT: Prosecution's docu-
4 ment No. 8415 will receive exhibit No. 2078.

5 (Whereupon, the document above
6 referred to was marked prosecution's ex-
7 hibit No. 2078 and received in evidence.)

8 CAPTAIN COLEMAN: This document reads as
9 follows:

10 "I have the honor to acknowledge the receipt
11 of Your Excellency's letters NO GG.1.1.3-EGf, dated
12 June 19th, and"-- another letter -- "dated June 30th,
13 by which you transmitted to me the protest of the
14 United States government regarding the attacks on
15 the survivors of the U.S.S. 'Richard Hovey' by a
16 Japanese submarine.

17 "In connection with the above matter, I
18 have the honor of requesting Your Excellency to
19 transmit to the United States government that the
20 result of strict investigations carried out by the
21 authorities concerned shows clearly that there are
22 no facts that correspond to such attacks.

23 "I hereby again avail myself to renew to
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1 Your Excellency to transmit to the United States
2 government that the result of strict investigations
3 carried out by the authorities concerned shows
4 clearly that there are no facts that correspond to
5 such attacks.

6 "I hereby again avail myself to renew to
7 Your Excellency the assurance of my high considera-
8 tion.

9 "Nov. 28th, 1944.

10 "Mamoru SHIGEMITSU

11 "Foreign Minister

12 /SEAL/"

13
14 Prosecution document No. 8412, a letter from
15 the Swiss Minister to Foreign Minister SHIGEMITSU,
16 dated 21 February 1945, is offered in evidence.

17 THE PRESIDENT: Admitted on the usual terms.

18 CLERK OF THE COURT: Prosecution's document
19 No. 8412 will receive exhibit No. 2079.

20 (Thereupon, the document above
21 referred to was marked prosecution's ex-
22 hibit No. 2079 and received in evidence.)

23 CAPTAIN COLEMAN: This document reads as
24 follows:
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I read the middle three paragraphs, beginning

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1 Your Excellency to transmit to the United States
2 government that the result of strict investigations
3 carried out by the authorities concerned shows
4 clearly that there are no facts that correspond to
5 such attacks.

6 "I hereby again avail myself to renew to
7 Your Excellency the assurance of my high considera-
8 tion.

9 "Nov. 28th, 1944.

10 "Mamoru SHIGEMITSU

11 "Foreign Minister

12 /SEAL,"

13
14 Prosecution document No. 8412, a letter from
15 the Swiss Minister to Foreign Minister SHIGEMITSU,
16 dated 21 February 1945, is offered in evidence.

17 THE PRESIDENT: Admitted on the usual terms.

18 CLERK OF THE COURT: Prosecution's document
19 No. 8412 will receive exhibit No. 2079.

20 (Whereupon, the document above
21 referred to was marked prosecution's ex-
22 hibit No. 2079 and received in evidence.)

23 CAPTAIN ROBINSON: This document reads as
24 follows:

25 I read the middle three paragraphs, beginning

1 with the second.

2 "The government of Washington has just
3 asked the federal authorities to transmit to the
4 Imperial Government the following communication /
5 quoted from original English/:

6 "Concerning United States protest regard-
7 ing the Japanese attacks upon survivors of torpedoed
8 "Richard Hovey." the United States government notes
9 that the Japanese government, after a reported
10 thorough examination of the facts involved, states
11 that no action has been revealed corresponding to
12 that set forth in the protest under reference.

13 "The evidence stated in the protest of the
14 United States government was specific. Statements
15 of the survivors who witnessed the attack are of
16 unchallenged validity. The United States government
17 therefore reserves all rights in the matter."

18 Signed by the Swiss Minister. Directed to
19 His Excellency Mr. Mamoru SHIGEMITSU, Foreign Minister,
20 Tokyo.
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1 Prosecution document No. 8402, a protest
2 transmitted by the Swiss Legation from the United
3 States Government to the Japanese Government, dated
4 29 December 1944, is offered in evidence.

5 THE PRESIDENT: Admitted on the usual terms.

6 CLERK OF THE COURT: Prosecution's document
7 No. 8402 will receive exhibit No. 2080.

8 (Whereupon, the document above
9 referred to was marked prosecution's exhibit
10 No. 2080 and received in evidence.)

11 CAPTAIN ROBINSON: Reading the first page of
12 this document:

13 "Swiss Legation in Japan. Division of
14 Foreign Affairs.

15 "Declaration.

16 "The note CC.1.8.0.-EAC, dated December 29th
17 1944, herewith enclosed, containing the protest of
18 the United States Government as communicated to the
19 Legation of Switzerland in Tokyo by the Division for
20 Foreign Interests in Berne with their cable No. 1053,
21 pertaining to the torpedoing of the American merchant
22 ship S/S 'Jean Nicolet', was handed over on Friday,
23 December 29th 1944, at 3 P.M., at the Ministry for
24 Foreign Affairs in Tokyo, to the Minister Tadakazu
25 SUZUKI, head of the section for the administration

1 of enemy interests in Japan and for the protection of
2 Japanese nationals in enemy countries.

3 "This note was handed over by Mr. Blaile,
4 attache of the Legation, together with a personal
5 letter to the Ministry SUZUKI, dated December 28th,
6 1944, in which the Minister of Switzerland laid stress
7 on the particular importance given to this protest by
8 the United States Government.

9 "Tokyo, December 30th 1944."

10 Reading page 2:

11 "By the order of its Government, the Swiss
12 Legation has the honor of sending to the Imperial
13 Foreign Office the following notification emanating
14 from the Government of the United States and addressed
15 to the Japanese Government:

16 "On July 2nd 1944 at approximately 14.07
17 hours at position 3 degrees"--there is an omission of
18 three words there, it will later be noticed--"30 minutes
19 east, the United States merchant vessel "Jean Nicolet"
20 was torpedoed by a Japanese submarine. The vessel
21 sank at approximately 02.20 hours, July 3rd. Seventy-
22 five survivors of the "Jean Nicolet" were murdered when
23 after leaving the sinking vessel between 95 and 100
24 persons from the torpedoed vessel were subjected by
25 the commander and crew of the Japanese submarine to

1 treatment which was in contravention of the laws and
2 customs of war and all humanitarian standards. The
3 United States Government most emphatically protests
4 against the criminal and inhuman treatment accorded
5 these individuals. The United States Government
6 protests that:

7 "(1) The lifeboats and life rafts were
8 machine-gunned evidently to render them unusable by
9 any of the survivors of the "Jean Nicolet"; survivors
10 of the "Jean Nicolet" who were swimming were also
11 machine-gunned.

12 "(2) The survivors upon boarding the sub-
13 marine were robbed of all life belts, papers and other
14 valuables.

15 "(3) The survivors of the "Jean Nicolet"
16 after boarding the submarine were bound either with
17 rope or wire and compelled to sit or kneel with heads
18 down in rows athwartship from bow to stern facing for-
19 ward on the forward deck.

20 "(4) Approximately half of the survivors of
21 the "Jean Nicolet" were led separately to the afterdeck
22 of the submarine and compelled to run between parallel
23 rows of Japanese sailors armed with a variety of instru-
24 ments including gun butts and bayonets. While running
25 this gauntlet, the men were subjected to severe beating

1 and still bound were forced off the submarine into
2 the water while the vessel was under way with the evi-
3 dent likelihood that they would be caught in the turning
4 propeller.

5 "(5) The submarine suddenly and with no
6 warning to the survivors of the "Jean Nicolet" submerged,
7 leaving a large number of them still on the deck of
8 the vessel with the result that they were thrown into
9 the water without means of self-preservation. D. M.
10 Nilsson and Clem Carlin, master and chief mate respec-
11 tively of the "Jean Nicolet," were made prisoners and
12 taken within the submarine, such treatment being simi-
13 lar to that accorded the master and three other survi-
14 vors of the United States vessel "Richard Hovey" the
15 Japanese attack on which was the subject of the United
16 States Government protest delivered to the Japanese
17 Government on 19th June 1944. The United States
18 Government demands to be urgently informed regarding
19 the present welfare and whereabouts of Captain Nilsson
20 and Chief Mate Carlin. The United States Government
21 most emphatically protests regarding the treatment
22 accorded the survivors of the torpedoed vessel, such
23 treatment being in violation of all humanitarian and
24 legal principles. The Government of the United States
25 demands a full and thorough investigation from the

1 Japanese Government and that the persons responsible
2 for the incredibly cruel and terrible conduct against
3 the defenseless survivors of the torpedoed vessel
4 promptly be fully punished and that it be informed of
5 the action taken. The Government of the United States
6 demands specific assurances from the Japanese Govern-
7 ment that such criminal action will not be repeated in
8 the future.'

9 "Owing to the special importance which the
10 United States Government attaches to this matter, the
11 Legation will be thankful to the Ministry if the
12 Ministry will acknowledge the receipt of the present
13 note and it gives thanks in advance for the reply which
14 the Foreign Office will have the kindness to send when
15 the investigation has been finished.

16 "The Legation avails itself of this opportu-
17 nity," and so forth.

18 "Tokyo, 29 December 1944."

19 It has been called to my attention, if the
20 Court please, that the SUZUKI mentioned in this dis-
21 patch is not the SUZUKI who is one of the accused.

22 Prosecution document No. 8403, a note by the
23 Swiss Minister to the Japanese Foreign Ministry, dated
24 28 December 1944, is offered in evidence.

25 THE PRESIDENT: Admitted on the usual terms.

1 CLERK OF THE COURT: Prosecution's document
No. 8403 will receive exhibit No. 2081.

2 (Whereupon, the document above
3 referred to was marked prosecution's exhibit
4 No. 2081 and received in evidence.)

5 CAPTAIN ROBINSON: This document reads as
6 follows:

7 "Karuizawa, 28 December 1944.

8 "My dear Minister,

9 "My Government has just sent me a notifica-
10 tion from the United States Government to be delivered
11 to the Imperial Government on the subject of the tor-
12 pedoing of the ship 'Jean Nicolet' by the Japanese Navy.

13 "Owing to the importance which the United
14 States Government attaches to this affair, the United
15 States Government would have hoped that I might be
16 able myself to hand the notification to the Foreign
17 Ministry."
18

19 Omitting down to the next to the last paragraph:

20 "The Department of State asks me to inform
21 myself personally about the fate of the rescued Nilsson
22 and Carlin, members of the crew who were taken pri-
23 soners, and I should be very glad if you could tell me
24 where they are, before the closing of the investigation.

25 "To His Excellency, Minister Tadakazu SUZUKI,

1 Imperial Ministry of Foreign Affairs, Tokyo."

2 Again, not the accused SUZUKI.

3 Prosecution document No. 8404 is the acknow-
4 ledgment by the Japanese Foreign Ministry of the
5 receipt of the preceding document or protest. It is
6 offered in evidence.

7 THE PRESIDENT: Admitted on the usual terms.

8 CLERK OF THE COURT: Prosecution's document
9 No. 8404 will receive exhibit No. 2082.

10 (Whereupon, the document above
11 referred to was marked prosecution's exhibit
12 No. 2082 and received in evidence.)

13 CAPTAIN ROBINSON: Reading only the heading
14 and the concluding paragraph:

15 "The Gaimusho, Tokyo. Translation. No. 23/T2."

16 And the last paragraph:

17 "The Ministry hastens to inform the Legation
18 that the Ministry has transmitted the contents to the
19 competent authorities.

20 "January 19, 1945."

21 Prosecution document No. 8409, a letter from
22 the Swiss Legation to the Japanese Foreign Ministry,
23 dated 19 April 1945, is offered in evidence.

24 THE PRESIDENT: Admitted on the usual terms.

25 CLERK OF THE COURT: Prosecution's document

1 No. 8409 will receive exhibit No. 2083.

2 (Whereupon, the document above
3 referred to was marked prosecution's exhibit
4 No. 2083 and received in evidence.)

5 CAPTAIN ROBINSON: This note from the Swiss
6 Legation to the Japanese Foreign Ministry, dated
7 Tokyo, April 19, 1945, reads as follows:

8 "By the note of December 29, the Swiss
9 Legation had the honor of sending to the Imperial
10 Foreign Office a protest of the Government of the
11 United States of America against the treatment alleged
12 to have been inflicted on the survivors of the American
13 merchant vessel 'Jean Nicolet' torpedoed by a
14 Japanese submarine on July 2, 1944. The Washington
15 Government asked that a rapid and complete investiga-
16 tion be made in this respect and that the guilty be
17 severely punished. It further expressed the desire
18 to receive formal assurances from the Japanese Govern-
19 ment that acts of this sort will not be repeated.
20 Finally, it /the Washington Government/ urgently
21 wished news of two members of the crew of the 'Jean
22 Nicolet,' L. M. Nilsson and Clem Carlin, who were
23 taken prisoner by the submarine.

24 "Under date of January 19, the Ministry ack-
25 nowledged receipt of the above-mentioned note.

1 "The Legation would be thankful to the Ministry
2 if it informed it whether the investigation concerning
3 the matter is now finished and if such should be the
4 case, to inform it /the Legation/ of the result. The
5 Washington Government really insists on obtaining a
6 prompt reply from the Japanese Government on the sub-
7 ject of this grave affair."

8 Prosecution document No. 8411, a memorandum
9 by the Swiss Legation to the Japanese Foreign Minister,
10 dated 28 April 1945, is offered in evidence.

11 THE PRESIDENT: Admitted on the usual terms.

12 CLERK OF THE COURT: Prosecution's document
13 No. 8411 will receive exhibit No. 2084.

14 (Whereupon, the document above
15 referred to was marked prosecution's exhibit
16 No. 2084 and received in evidence.)

17 CAPTAIN ROBINSON: This document reads as
18 follows:

19 "Memorandum. By the notes of December 29,
20 February 20 and April 19 the Swiss Legation informed
21 the Imperial Foreign Ministry that the Government of
22 the United States of America protested very keenly
23 against the treatment alleged to have been inflicted
24 on the survivors of the merchant vessel 'Jean Nicolet'
25 torpedoed by a Japanese submarine on the 2nd July, 1944.

1 The Washington Government further wished urgently to
2 receive news about two members of the crew of 'Jean
3 Nicolet,' Mr. D. M. Nilsson and Mr. Clem Carlin who
4 were taken prisoners by the submarine.

5 "The Legation would attach considerable value
6 to knowing the answer of the Imperial Government on
7 the subject of this grave affair.

8 "Karuizawa, April 28, 1945."

9 Handed to Minister SUZUKI, as stated before,
10 by Monsieur le Ministre, the Swiss Minister, on
11 April 28, 1945, afternoon.

12 Prosecution document No. 8413, a letter from
13 the Swiss Legation to the Japanese Foreign Minister,
14 dated 20 February 1945, is offered in evidence as a
15 supplement to the preceding document.

16 THE PRESIDENT: Admitted on the usual terms.

17 CLERK OF THE COURT: Prosecution's document
18 No. 8413 will receive exhibit No. 2085.

19 (Whereupon, the document above
20 referred to was marked prosecution's exhibit
21 No. 2085 and received in evidence.)

22 CAPTAIN ROBINSON: Prosecution document
23 No. 8414, a note verbale from the Japanese Foreign
24 Minister to the Swiss Legation, dated 15 May 1945, is
25 offered in evidence.

1 THE PRESIDENT: Admitted on the usual terms.

2 CAPTAIN ROBINSON: This document reads as
3 follows.

4 CLERK OF THE COURT: Prosecution's document
5 No. 8414 will receive exhibit No. 2086.

6 (Whereupon, the document above
7 referred to was marked prosecution's exhibit
8 No. 2086 and received in evidence.)

9 CAPTAIN ROBINSON: This document reads as
10 follows:

11 "The Gaimusho, Tokyo. Translation. No. 118/T2.

12 "Note Verbale.

13 "The Imperial Foreign Minister has the honor
14 to acknowledge to the Swiss Legation the receipt of
15 its Note No. CC 180-EAC, dated 29 last December by
16 which it /the Legation/ transmitted to him a protest
17 by the Government of the United States of America on
18 the subject of the attacks which were alleged to have
19 been directed against the survivors of the American
20 Ship 'Jean Nicolet' by a Japanese submarine.

21 "The Foreign Minister asks the Legation to
22 transmit to the American Government the following
23 answer of the Imperial Government on this subject.

24 "The earnest investigations made by the
25 competent authorities have not found any fact which

1 corresponds to such an accident. The Imperial Govern-
2 ment, informing the American Government of the fore-
3 going facts, avails itself of this opportunity to
4 affirm again that all Japanese warships, ships and boats
5 rigorously observe the laws of war."

6 Dated May 15, 1945.

7 THE PRESIDENT: Captain Robinson, don't
8 start to read your documents before the Judges have
9 copies, please.

10 We will adjourn until half-past nine tomorrow
11 morning.

12 (Whereupon, at 1600, an adjournment
13 was taken until Tuesday, 14 January 1947,
14 at 0930.)

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14 JANUARY 1947

I N D E X
Of
WITNESSES

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Direct by Commander Cole	15109
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Of
EXHIBITS

<u>Doc. No.</u>	<u>Pros. No.</u>	<u>Def. No.</u>	<u>Description</u>	<u>For Ident.</u>	<u>In Evidence</u>
8389	2087		Affidavit of Charles E. Pyle		15140 15141
8390	2088		Affidavit of Calvin Butler		15140 15145
8393	2089		Affidavit of Charles H. Rhodes		15140 15148
8394	2090		Affidavit of James D. Pearson		15140 15150
8485	2091		Affidavit of James J. Robinson		15140

I N D E X

O f

E X H I B I T S

(cont'd)

<u>Doc. No.</u>	<u>Pros. No.</u>	<u>Def. No.</u>	<u>Description</u>	<u>For Ident.</u>	<u>In Evidence</u>
8400	2092		Protest transmitted by the Swiss Minister from the British Government to the Accused SHIGEMITSU, Japanese Foreign Minister, dated 5 June 1944		15153
8397	2093		Note from the Swiss Legation to the Japanese Foreign Minister, the Accused SHIGEMITSU, dated 20 July 1944		15156
8380	2094		Statement of Survivor R. J. Weeks, Master SS Daisy Moller		15157 15158
8381	2095		Extract from the official log of the SS British Chivalry sunk 22 February 1944		15157 15159
8382	2096		Statement of Survivor P. H. Rees, Chief Engineer SS M. V. Sutley		15157 15159
8383	2097		Report of Attack on SS Ascot sunk 29 February 1944		15157 15163
8379	2098		Statement of Survivor S. K. Chu, 2nd Mate SS Nancy Moller sunk 18 March 1944		15157 15168
8388	2099		Statement of Survivor F. deJong, Chief Officer SS Tjisalak sunk 26 March 1944		15157 15169
8472	2100		Chart of the sinkings		15157

I N D E X

Of

EXHIBITS

(cont'd)

<u>No.</u>	<u>Pros.</u> <u>No.</u>	<u>Def.</u> <u>No.</u>	<u>Description</u>	<u>For</u> <u>Ident.</u>	<u>In</u> <u>Evidence</u>
8395	2101		Note from the Swiss Legation to the Japanese Foreign Minister, dated 16 September 1944		15175
8416	2102		Note from the Swiss Minister to the Accused SHIGEMITSU, Japanese Minister of Foreign Affairs, dated 28 November 1944		15177
8410	2103		Letter from the Swiss Minister, transmitting from the Government of the United Kingdom a communication to the Japanese Foreign Minister, dated 19 May 1945		15178
8481	2104		Official Report of the Killing of Survivors of the British SS Behar, sworn to on 30 May 1946		15182
548	2105		Top Secret Japanese Naval Order for Submarine Operations in the Indian Ocean		15184
8479	2106		Interrogation of General Hiroshi OSHIMA		15186
8454	2107		Protest and Note with a Declaration of delivery by the Swiss Legation to the Defendant TOGO, dated 3 and 4 June 1945		15200
8457	2108		Note from the Swiss Legation to the Japanese Foreign Minister, dated 7 June 1945		15202

1
2 Tuesday, 14 January 1947

3 - - -

4 INTERNATIONAL MILITARY TRIBUNAL
5 FOR THE FAR EAST
6 Court House of the Tribunal
7 War Ministry Building
8 Tokyo, Japan

9 The Tribunal met, pursuant to adjournment,
10 at 0930.

11 - - -

12 Appearances:

13 For the Tribunal, same as before with
14 the exception of: HONORABLE JUSTICE JU-AO MEI,
15 Member from the Republic of China, not sitting.

16 For the Prosecution Section, same as before.

17 For the Defense Section, same as before.

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19 (English to Japanese and Japanese
20 to English interpretation was made by the
21 Language Section, IMTFE.)
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MARSHAL OF THE COURT: The International
Military Tribunal for the Far East is now in session.

THE PRESIDENT: All the accused are present
except OKAWA, ARAKI, MATSUI, and TOGO who are
represented by their counsel. We have a certificate
from the prison surgeon of Sugamo Prison stating
that ARAKI, MATSUI, and TOGO are unable to attend
the trial today on account of illness.

Captain Robinson.

CAPTAIN ROBINSON: Mr. President, and Members
of the Tribunal, if it please the Court, Commander
Cole will examine the next witness.

THE PRESIDENT: Commander Cole.

COMANDER COLE: If it please the Tribunal,
may the witness John Alexander McDougall be called
to the witness stand.

McDOUGALL

DIRECT

1 JOHN ALEXANDER McDOUGALL, a
2 witness called in behalf of the prosecution,
3 being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY COMMANDER COLE:

6 Q Will you state your full name, present home
7 address, and occupation?

8 A John Alexander McDougall, 2400 Haste Street,
9 Berkley, California. I am employed by a printing
10 firm in Oakland, California.

11 Q How old are you?

12 A Twenty-one.

13 Q Were you a prisoner of the Japanese?

14 A Yes.

15 Q On what date?

16 A July 2, 1944.

17 Q What was your occupation on July 2, 1944?

18 A I was an Able Bodied Seaman in the Merchant
19 Marine.

20 Q What ship were you signed on on that date?

21 A The S.S. Jean Nicolet.

22 Q From what country was this ship?

23 A She left -- loaded in San Pedro, California,
24 left for Fremantle with 37 days to Fremantle.

25 Q What was the port of destination of the

McDOUGALL

DIRECT

1 Jean Nicolet?

2 A Calcutta, India, and stop for orders in
3 Ceylon.

4 Q Where was the Jean Nicolet on July 2, 1944?

5 A We were ten days out of Fremantle,
6 Australia, headed 357, three days south of Ceylon,
7 Columbia.

8 Q How many passengers and crew were on board
9 the Jean Nicolet on that date?

10 A There was exactly a hundred all told.

11 Q Will you describe the circumstances under
12 which you were made a prisoner by the Japanese?

13 A Well, I was out on deck, seven o'clock in
14 the evening. I had my cot out there. I was going
15 inside to get a pillow. I stopped by the mess hall,
16 looked in at a poker game. It was seven. I left the
17 mess hall about six minutes after seven and walked
18 around to my forecastle and was just stepping in
19 when the first torpedo struck. The first torpedo
20 hit between the 2 and 3 hold. The torpedo struck,
21 I was thrown back against the bulkhead and I hung
22 onto a rail to stand up.

23 The ship took a lurch to port and listed
24 back to starboard. General quarters was ringing so
25 I turned around and ran down the companion way, threw

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DIRECT

1 open the blackout door to the boat deck, and crossed
2 over to my boat station on the forward port. I went
3 to my boat station which was the forward boat on the
4 port side, No. 2. My job was to tend the forward
5 fall on boat 2. We got things ready and the captain
6 came out to the wing of the bridge. When the torpedo
7 struck it blew No. 3 hatch covers off and a fire started.
8 Just then the second torpedo struck on No. 5 hold,
9 starboard side. So the captain gave orders to
10 abandon ship.

11 We started lowering away. We lowered away
12 and all the boats got away safely, passengers and
13 crew. There was one broken arm getting off the ship.
14 An army lieutenant fell in one of the boats and broke
15 his arm.

16 So, after the boats left, it left six of
17 us on deck: George Kenmore Hess A.B., Lieutenant
18 Deal, Naval Gunnery Officer, two Navy gunners, and
19 the Captain and myself. Hess and I went below to
20 our forecandle which was full of water. I got a
21 pair of pants, a shirt, and my life jacket. Hess
22 took a knife, two knives, and I also secured a knife.

23 We went back on deck and the six of us
24 gathered on the forward part of the boat deck. We
25 decided to take No. 2 raft forward. I went down and

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1 checked the sea painter and let the raft go. I was
2 the first one on the raft, the two navy gunners were
3 second and third, and then the captain and Lieutenant
4 Deal decided to check the ship again to see if there
5 was anyone left on board. After they came back Hess
6 helped the lieutenant get on the raft, then he came
7 down, and the captain was the last to leave the ship.
8 When we were all on board we cut the sea painter and
9 drifted astern.

10 We sighted a man in the water and we picked
11 him up. Then we sighted another raft with one man
12 on board. We rowed over and lashed the two rafts
13 together. Shortly after this a motor launch came up,
14 No. 4 boat, with the chief mate in charge. The
15 captain went on board and took command. He thought
16 he had seen a light on the ship and he wanted to go
17 back and check again to see if anyone was on board.
18 The mate told us to stay around until morning when we
19 could all get together. He gave us the course by the
20 stars to the closest land just in case.

21 The motor launch started to return to the
22 ship. When she was about half way there the sub
23 surfaced on the starboard side and was pointing
24 their deck gun at the ship. They cut the motor in
25 the life boat for fear the sub would pick them up and

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1 they rowed back to where we were. They pulled along-
2 side our raft and we held onto each other and were
3 talking, and shortly after that the sub came up on
4 the port side and started cruising over towards us.

5 As soon as we spotted the submarine, the
6 chief mate told the fellows to throw away their white
7 hats and skivvy shirts and lay down in the life boat
8 and raft. Well, we let go, we layed down in the raft
9 and the boat drifted away. And the sub came right up
10 and spotted the boat lights on them and they hollered,
11 "What ship; what ship?" The chief mate stood up in
12 the life boat and hollered back, "SS Jean Nicolet."
13 I don't think they could hear the chief mate because
14 they got kind of mad then. They told them to pull
15 alongside or else they would shoot them and they said,
16 "No monkey business."

17 When they pulled alongside of our life raft
18 we got off the raft and got on the opposite side of
19 the raft and got in the water. Well, when the boat
20 pulled alongside, one man jumped out of the boat and
21 the chief mate told him to get back in. He was a
22 messman, William Musser, seventeen years old. The
23 men in the boat said the Japanese told him to come on
24 board first and they lashed his hands -- didn't take
25 his life jacket off -- they lashed his hands behind

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1 his back, took him to the opposite side of the sub-
2 marine, and shot him in the back of the head three
3 times.

4 THE PRESIDENT: Witness, will you speak slowly,
5 please. We are having some difficulty in hearing you,
6 or rather in understanding you. We can hear you all
7 right but we don't quite understand what you are say-
8 ing.

9 A (Continuing) We couldn't see what was
10 happening but, as I said, we were behind the life
11 raft, but the next thing we heard was machine gun fire.
12 I looked around the end of the raft and the sub went
13 astern, swung around, and came around toward us. So
14 as soon as they put a light on us we got back on board
15 the raft and when they pulled alongside they threw a
16 line to us. Hess was the first man on board and I
17 was second. They would only let us come on board one
18 at a time. That was midship by the conning tower on
19 the port side. They took me on board; they pulled
20 me underneath this rail there. I stood up and put
21 my hands up and they told me to take off my life
22 jacket. I had tied my jacket in slip knots. I pulled
23 the bottom undone and the top one had slipped into a
24 knot and I couldn't see how to get it undone. One of
25 the Japanese took a knife and swung and cut it right
off me, cut this line in two.

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1 A (Continuing) I threw my jacket down on
2 deck and I had my hands up and one of the Japanese
3 spotted my watch. He pulled my hand down, tore my
4 watch off my hand; then he saw my ring on my left
5 hand. He pulled that down and tried to take the
6 ring off but it was pretty tight. It wouldn't come
7 off. He took his knife out and I guess he was going
8 to cut my finger off. I told him to wait a second;
9 I took it off and gave him my ring. Then they searched
10 my pockets and they took my knife and they took my
11 hands and lashed them behind me. When they led me
12 from the port side in front of the conning tower
13 over the starboard side and up the starboard side
14 of the gun and made me sit down on the deck with my--

15 Q Were all the survivors of the Jean Nicolet
16 taken on board the submarine?

17 A It was all but three.

18 Q What happened to those three?

19 A They were trying to swim away in the shadows.
20 The Japanese spotted them and machine gunned them,
21 but they didn't hit any of them. Later they made
22 one of the rafts that wasn't sunk. After they led
23 us forward they made us sit with our legs crossed and
24 our chins on our chest. They told us to sit still
25 and to keep our chins on our chest. They said if we

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1 moved it would be too bad.

2 Hess was sitting on one side of me and
3 just forward of me was the captain and chief mate.
4 After they had taken us all on board they machine
5 gunned our raft and sunk it. Then they got under way
6 and started picking up the rest of the survivors.
7 After they would take all the men out of the boat
8 they would machine gun the boat or raft and sink
9 it.

10 Q Will you describe the submarine which
11 torpedoed the S.S. Jean Nicolet?

12 A It was easily 250 feet long, with double
13 barreled deck guns, five inch, had two or three
14 20 millimeters on the conning tower.

15 THE PRESIDENT: Is there some good reason
16 for describing it in detail? It had a Japanese crew.

17 COMMANDER COLE: If it please the Tribunal,
18 there was one point I wished to bring out about the
19 submarine.

20 A (Continued) It had a long raft on the fan-
21 tail and did an easy twenty knots on the surface.

22 Q What was the nationality of this submarine?

23 A It was Japanese. We were then cruising around
24 the surface. They took us back to the ship on the
25 starboard side about, oh, half a mile or so away.

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1 The Japanese officer then came out on deck. He had
2 a sword. He was swinging it over our heads and the
3 gun crew showed up and they broke the gun out and he
4 was giving orders to load and fire, I guess. I
5 couldn't understand him. He then made us watch our
6 ship. They told us to look at it and they fired
7 three rounds of ammunition into it.

8 Q Did any of the Japanese seamen say anything
9 to you at this time?

10 A Well, I was whispering to my friend Hess.
11 One came up behind me and started beating me over
12 the head with a pipe, and he beat the rest of the
13 fellows close by me because I was talking. He told
14 me to shut up and he sat down on some bitts by us.
15 He told us we were fools for letting President
16 Roosevelt lead us into war. None of us answered
17 him and then he said that we shouldn't have come
18 to the Indian Ocean because they sank every ship
19 coming through there. He also told us that we had
20 a nice battle and then a little while later the
21 captain was talking to the chief mate. He said he
22 thought he would give himself up. They had been
23 asking for him and the radio operators; and, hearsay,
24 they also said -- some of the fellows said -- they
25 heard him asking for a man who had been a Japanese

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prisoner before. He was a passenger on our ship.
1 This man's name was Alvin T. Parker; and the captain
2 said he thought he would give himself up and see if
3 he could get a settlement for the crew. So the
4 chief mate turned around to one of the Japanese
5 guards and told him that. He says, "This is the
6 captain and I am the chief officer." I guess the
7 man didn't understand him because he went and got an-
8 other seaman and came back with him and the mate
9 told him the same thing. So they jerked the chief
10 mate to his feet and they tried to lift the captain
11 up but he stumbled and fell down. I think they
12 kicked him or something. They pulled him back to
13 his feet. The man who was speaking said, "Oh, you
14 are the Finnish skipper of that ship." They took
15 them, took the captain and the mate. The second mate
16 and the third mate stood up and the radio operator
17 They also took them down to the conning tower. We
18 never saw them again. Well, then, during that time
19 that we had been captured they checked our bounds
20 two or three times. They found a few of the men
21 had been able to get theirs a little loose. Some of
22 them had been able to get free altogether. Well, the
23 men they caught had been loose and free they beat
24 pretty well with pipes and lashed them back up tighter.
25

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1 Then they started taking the men. They started up
2 the bow taking them by rows, one at a time. They
3 marched them down the port side of the sub back to
4 the conning tower there. A ship's carpenter told
5 me later he had a peek back there and saw them take
6 one man named Kine. He was an 18-year old ordinary
7 seaman. Two of the seamen held him up while another
8 one ran him through once or twice with a bayonet.
9 Then they pushed him over the side.

10 Q How long were you a prisoner on the deck
11 of the submarine?

12 A Approximately four hours.

13 Q What happened at the end of that time?

14 A We were just cruising along and all of a
15 sudden a horn blew -- I think it was a horn -- and
16 the Japs started running back out towards the conning
17 tower. All of us knew what that meant so we jumped
18 up. My friend Hess, he had been able to -- he had
19 been scratching his bonds with his fingernail for
four hours. He told me he had them pretty well worn.
He said he could break them. So he tried. So he
broke his bonds and started untying me and one of
the navy gunners there -- he had two pair of pants
on. He had a knife in his inside pair in his pocket
which they didn't find; so Hess tore his pants off and

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25 which they didn't find; so Hess tore his pants off and

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1 got this knife and cut him loose and cut myself --
2 well, he cut myself and two or three other fellows and
3 then he was kneeling down, I think untying one fellow,
4 and he gave me the knife, and I cut two or three
5 fellows. By that time the bow was pretty well under
6 water. Well, by that time the bow was under water,
7 and we got knocked down. The fellows who were still
8 tied, they lost their balance and they just got washed
9 off the side. So we stood up, and we jumped as far as
10 we could away from the sub to get clear of the pro-
11 pellers. When I came to the surface I called for
12 Hess; he called back. A conning tower was just
13 going by, just going down, so we could see the ship
14 burning on the horizon. So we started, got together
15 and took our shirts and pants off, threw them away
16 and we started swimming and we -- At that time we
17 didn't see anyone else though we heard some fellows
18 hollering; so we told them to swim toward the ship;
19 we would meet there. Hess and I, we swam all that
20 night. Early the next morning we were fairly close
21 to the ship there, and the sub surfaced again; and
22 during the night -- well, they made the sub submerge.
23 There was a PBY flew over about fifteen minutes after
24 we got off the sub. We swam all that night. Early
25 the next morning the sub came to the surface, looked

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24 we got off the sub. We swam all that night. Early
25 the next morning the sub came to the surface, looked

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1 around with their searchlights, fired a few pistol
2 shots. We couldn't see what they were firing at.
3 We just lay still in the water. After firing the
4 shots, altogether she stayed on the surface about
5 fifteen minutes, a half an hour, she cruised off and
6 submerged again. Well, after she went away we started
7 swimming again and we made the ship, climbed up the
8 nets. The ship had been burning all night. Every-
9 thing -- the guns were melted. It was pretty badly
10 damaged.

11 When we got up the boat deck Hess spotted
12 a life ring up on the wing of the bridge so he jumped
13 off the nets, took three or four steps across the
14 deck of the ship, and burned the bottom of his feet
15 off. He managed to get the ring and he threw it back
16 to me. He was so tired he couldn't jump or anything;
17 he had to go back down the net so he ran back across
18 the deck. We got back in the water and we were hanging
19 on to that when an hour or so later Lloyd B. Ruth, the
20 wiper, eighteen years old, he came swimming up.
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1 He told us he was going to swim back out -- nothing on
2 the fantail that burned, so it would be pretty cool
3 back there, and the stern was under water. I tried to
4 go with him, but I couldn't make it. He made it back
5 there to the fantail, and he went on board, and he got
6 a small navy raft, and he found a canteen of water.
7 After he got the raft he got back in the water, and so
8 we got together and we got on the raft with him.

9 A short time after that the ship sunk, and
10 there was one big raft left on the ship that had been
11 jammed in the hangar when the torpedo hit; so, when the
12 ship sunk, it floated to the surface, and we got that.
13 Then the PBY came back. She circled around us; dropped
14 three life jackets. Ruth and I -- we swam out and got
15 two of them. The one I got, it had a flare kit. And
16 there was a note and a thermos bottle of water and
17 some bread. The note told us to drop our sea anchor,
18 hold our position. "Good luck. Royal Canadian Air
19 Force."
20

21 Q After you got on this life raft, did you pick
22 up any more survivors of the Jean Nicolet?

23 A Yes. A short time later Bill Flury and Harold
24 Lee came swimming up.

25 Q Were any of these survivors among those who had
been led aft the cunnning tower on the submarine?

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1 A Yes. When Harold Lee came swimming up, the
2 back of his head was full of blood. When I asked him
3 what was wrong he said when he was taken back aft
4 there were three or four Japanese lined up against
5 the taffrail and three or four against the cunning
6 tower, and the man that was behind him, the guard,
7 would hit him over the head, give him a push through
8 the line, and the rest of the Japanese there, they
9 were holding pipes and bayonets down at their side,
10 and they raised those to strike him, but he swung
11 around and dove between two of them over the side
12 of the sub into the water.

13 Q How long did you remain on the raft?

14 A We remained all that day, all that night,
15 until the next afternoon. The H. M. S. Hoxa came out
16 and picked us up.

17 Q After you were taken on board the Hoxa did
18 you meet any more survivors of the Jean Nicolet?

19 A Altogether there were twenty-four of us that
20 survived, but I met two of the men on there. There
21 was the First Assistant Engineer; he had his head
22 split open right across the top.

23 Q Was he one of those men who had been led
24 aft the cunning tower on the submarine?

25 A Yes, he ran -- he ran all the way through the

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1 gauntlet, and they threw him into the sea.

2 Q What was his name?

3 A His first name I can't remember. Pyle was
4 his last name. He was First Assistant Engineer.

5 Q What was his physical condition at the time
6 you talked to him?

7 A He had his head split open from ear to ear,
8 and he stayed in the hospital for a week on the
9 Maldiv Islands, and then was taking treatment when
10 we hit Ceylon for about a month before he went home.
11 He was also hospitalized back in the United States.

12 Q While you were on board the Hoxa did you
13 talk to any other survivors that had been led aft
14 the cunning tower on the submarine?

15 A Yes, there was another man. He was ~~Sesman~~ l/c
16 Butler of the gun crew.

17 Q What did he tell you about his experience?

18 A Well, he was led back the same as the rest
19 of them, and someone had swung -- it was either a
20 pipe or bayonet or some other sharp instrument. He
21 ducked, and it hit him above the eye, just above his
22 left eye. I don't know how he got off the submarine,
23 but he was hospitalized on Maldiv Islands for about
24 a week, and he had a patch on his eye for a long
25 time.

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1 Q Of the one hundred passengers in the crew
2 of the S. S. Jean Nicolet, how many were led aft the
3 cunning tower on the submarine?

4 A I would say approximately sixty.

5 Q How many of these men survived?

6 A Three.

7 Q What were their names?

8 A There was Pyle, Butler, and Lee.

9 Q Approximately how many men from the Nicolet
10 were on the deck of the submarine when it submerged?

11 A Approximately thirty-five.

12 Q How many of these survived?

13 A Twenty-one.

14 Q Where did the Hoxa take you to?

15 A The Hoxa picked us up and took us into Addu
16 Atoll in the Maldive Islands.

17 Q What happened there?

18 A Well, I was about the only one that wasn't
19 put in the hospital; and a day or so later the
20 island next to us was occupied by the Royal Canadian
21 Air Force. A day or two after we arrived all the
22 pilots and crew for these three or four planes that
23 had stationed there came over and got all of us
24 together, and they questioned us on armanent of the
25 submarine, speed, how long it took it to get under

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1 water from the time she started her dive, and her
2 weak points, where to attack her from if they spotted
3 her. Well, the carpenter and myself, we were -- he
4 was out of the hospital by then; so they asked us if
5 we would like to come over and spend the day on their
6 island.

7 THE PRESIDENT: We will recess for fifteen
8 minutes.

9 (Whereupon, at 1045, a recess was
10 taken until 1100, after which the proceed-
11 ings were resumed as follows:)
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1 MARSHAL OF THE COURT: The Tribunal is now
2 resumed.

3 THE PRESIDENT: Commander Cole.

4 BY COMMANDER COLE (Continued):

5 Q What did the Canadian Air Force pilots tell
6 you that they had seen at the time of the -- or after
7 the torpedoing of the Jean Nicolet?

8 A Well, they told us that they had seen a few
9 fellows in the water who were dead, and they also
10 spotted a man that was floating on his back with his
11 hands crossed across his chest, and they made a big
12 circle -- they said they made a circle to get in
13 lower to drop the man a life preserver, and when they
14 got back the man -- either part of his head or his
15 head was gone. Then they spotted another man swimming
16 in the water. When they got back to the second man
17 part of his leg was gone.

18 Q Did they see any sharks at that time?

19 A Well, there was sharks around all of us,
20 within a few feet. But we just keep moving; they didn't
21 bother us.

22 Q When did you leave Addu Atoll?

23 A We left Addu Atoll about a week after our
24 arrival on the H.M.S. Sunavadi for Ceylon; Colombo,
25 Ceylon. When we arrived there, there was a coastguard

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1 commander, a naval commander of Intelligence, and a
2 British commander.

3 Q Before you arrived at Colombo, what happened
4 on board the Sunavadi?

5 A Well, while the planes were looking for us
6 they had spotted some survivors in other boats and
7 they had also told them to hold their position. So
8 I think the Sunavadi had gone out and picked them up.
9 And on board -- there was a British ship there that
10 had been torpedoed -- were an Indian crew, British
11 officers. They were headed towards Fremantle,
12 Australia.

13 Q While on board the Sunavadi, did you talk to
14 any of the survivors of this British ship?

15 A Yes, I talked to the chief mate. He told me
16 they had three women on board. One woman had two
17 children with her. One child she was carrying, and
18 the other one was just walking. The mate told me when
19 they were torpedoed he was in -- in the lifeboat he
20 was in there was a chief petty officer of the United
21 States Navy, which I slept next to in Ceylon. Also
22 one of the women was in their boat, and the other two
23 women were in another boat. And after the torpedoing
24 the sub came to the surface, pulled alongside the
25 second lifeboat, and took the two women out, the two

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DIRECT

1 two children and the Indian boatswain. They took the
2 babies and threw them over the side into the water.
3 They took the two women below in the submarine.
4 They questioned the boatswain, they beat him, threw
5 him into the water, and he swam back to his lifeboat
6 and the sub submerged.

7 Q After you reached Colombo, Ceylon, did you
8 talk to any other survivors of this British ship?

9 A Yes, in the billet I stayed in the chief
10 petty officer slept in the bunk next to me and we
11 stayed there for about a month until he shoved off.

12 Q What did this chief petty officer tell you
13 about the torpedoing of the British ship?

14 A He told me exactly what the chief mate had
15 told me.

16 Q While you were at Colombo, Ceylon, were you
17 interrogated as to the submarine which torpedoed the
18 SS Jean Nicolet?

19 A Yes. There was a Lieutenant Commander
20 Ritchie, of the coastguard, and another lieutenant
21 commander of Navy Intelligence; I can't remember his
22 name. They kept all of us survivors and questioned
23 us for two days, and the description that we gave of
24 the submarine, they said it was undoubtedly a German-
25 built submarine, and they also said that some of the

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L I R E C T

1 submarines operating in that area were German captain,
2 or German officers and captain and Japanese crew.

3 COMMANDER COLE: That concludes the examination
4 in chief of this witness.

5 MR. LOGAN: If the Tribunal please.

6 THE PRESIDENT: Mr. Logan.

7 CROSS-EXAMINATION

8 BY MR. LOGAN:

9 Q How long had you been going to sea before you
10 got on the Jean Nicolet?

11 A I had been in the merchant marine approximately
12 thirteen months.

13 Q And you know that this Jean Nicolet was a
14 vessel owned and operated by the United States of
15 America through the War Shipping Administration?

16 A Yes.

17 Q And you were employed by the United States
18 Government as an able-bodied seaman?

19 A I was employed by the Oliver J. Olsen Steam-
20 ship Company.

21 Q You signed shipping articles, didn't you?

22 A Yes.
23
24
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CROSS

1 Q You read the shipping articles before you
2 signed them?

3 A All the shipping articles are just about
4 the same.

5 Q No. I asked you if you read them.

6 A No.

7 Q Isn't it a fact that those shipping articles
8 you signed stated you were employed by the United
9 States of America under the War Shipping Administra-
10 tion and that the Olsen Steamship Company was merely
11 an operating agent?

12 THE PRESIDENT: He said he didn't read
13 them, Mr. Logan, What is the point anyhow?

14 MR. LOGAN: Trying to find out if this boat
15 was operated privately or by the United States
16 government.

17 THE PRESIDENT: How does it help?

18 MR. LOGAN: I think I'll bring that out in
19 a little while, your Honor,

20 THE PRESIDENT: The things he deposes to,
21 if true -- and that is a matter to be determined --
22 could not be justified by the difference between the
23 United States government and the United States ship
24 owners.

25 MR. LOGAN: Is the question disallowed,

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1 your Honor?

2 THE PRESIDENT: No objection is taken, but
3 I do want to know what the significance of the
4 question is. We want to be guided by you.

5 MR. LOGAN: Well, we will pass it, your
6 Honor.

7 Q This Jean Nicolet was an armed merchantman?

8 A Yes.

9 Q How many of a gun crew did you have on board?

10 A Twenty-eight, including the gunnery officer.

11 Q How many boat crew?

12 A I didn't get that question.

13 Q How many in the boat crew, the crew of the
14 ship?

15 A You mean -- that is -- around forty, forty-
16 five.

17 Q Were any of the passengers members of the
18 armed forces?

19 A I think there was four captains, one lieu-
20 tenant and around eight or nine, maybe a dozen, army
21 men.

22 Q Was the Jean Nicolet sailing in convoy?

23 A No.

24 Q How many of the men on board were killed
25 when these two torpedoes exploded in the vessel?

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CROSS

1 A There was no one killed in the torpedoing.
2 There was one broken arm getting off the ship.

3 Q Now, you testified one man being shot in
4 the head three times when he went aboard the sub-
5 marine. Did you actually see that?

6 A No. I stated I was behind the raft.

7 Q You just heard the shots. Is that it?

8 A Yes.

9 Q As a matter of fact, you don't know, of your
10 own knowledge, whether he was shot or where he was
11 shot?

12 A No, I didn't actually see him myself.

13 Q So that when you say he was shot in the
14 head three times you are just guessing, aren't you?

15 A All the men in that lifeboat saw him shot,
16 and there was quite a few survivors out of that boat.

17 Q Didn't you testify that when you heard those
18 shots that you and the rest of the members of that
19 life boat were hanging on the opposite side in the
20 water?

21 A I was on a lifeboat. The man who was
22 shot -- I was on a life raft. The man who was shot
23 was out of the first boat.
24

25 Q When you went aboard the submarine did the
Japanese tie your hands and the hands of everybody

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1 who went aboard, behind their backs?

2 A Yes.

3 Q How large was this pipe with which this
4 Japanese struck you?

5 A About two feet -- two and one-half feet
6 long.

7 Q How thick was it?

8 A I didn't see it that close. I just felt it.

9 Q You testified he struck you over the head
10 with it. Were you knocked unconscious?

11 A I was knocked over forward on my face. I
12 wasn't knocked unconscious.

13 Q You testified just now that you didn't see
14 it, you didn't know how thick it was, so how do you
15 know it was a pipe or how do you know how long it
16 was?

17 A I saw it when he sat down to talk to us,
18 sat in front of us.

19 Q How thick was it at that time?

20 A He was holding it across his lap.

21 Q Did you see it or didn't you see it?

22 A Yes, I saw it.

23 Q How thick was it?

24 A I can't say.

25 Q You know actually how many of the survivors

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1 of the Jean Nicolet got on the submarine?

2 A I think there was all but three.

3 Q And you say sixty of them were led aft?

4 A To the best of my knowledge I think that
5 is what there were. Around sixty.

6 Q Did you actually see what happened to any
7 of these sixty when they were led aft?

8 A No.

9 Q What time did you get off the submarine?

10 A As close as we could figure it was around
11 midnight.

12 Q When did you reach the Jean Nicolet?

13 A Oh, I would say it was around seven or
14 eight the next morning.

15 Q This seaman, this one seaman concerning
16 whom you testified, you say he dove off the submarine
17 and he told you about it later? He was one of those
18 who went aft? Was that it?

19 A Yes. That was Parold Lee.

20 Were his hands tied when he dove off?

21 A Yes.

22 Q Didn't he get them loose later?

23 A Either he got them loose or someone found
24 him and helped him get them loose.

25 Q Now, the cause of the submarine sinking,

McDOUGALL

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1 submerging, rather, while you were still on the
2 deck, was because this airplane was coming over. Is
3 that right?

4 A Yes.

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Q In other words, it was a case of necessity of the submarine sumberging at that particular time?

A Yes.

Q Then, all this testimony you have been giving us about this other British ship is all hearsay testimony, isn't that so?

A Yes.

Q And your report of the number of survivors of the Jean Nicollet -- Isn't it quite possible that there were other survivors picked up by other ships and you don't know the number of those?

A I don't think that would be possible. The airplane searched the area pretty thoroughly.

Q Did you ever make any effort or did you ever see any final report on the number of survivors of that ship?

A There was only twenty-four I know of.

Q Did you ever see any final report?

A No.

Q Now, would you mind repeating for me what you said about this? You went into one of these islands and they were talking about this ship being a German-built submarine?

A That was at Colombo, Ceylon. It was navy intelligence told us that.

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1 Q Is that the U. S. Navy?

2 A Yes.

3 Q And they told you that in their opinion
4 it was a German-built submarine and probably had a
5 German captain aboard, is that right?

6 A No, they told us it was a German-built sub-
7 marine and that some of the submarines in that area
8 were operating with German officers and German captains.

9 Q And Japanese crew?

10 A Yes.

11 Q So you don't know of your own knowledge
12 whether this was a submarine owned and operated by
13 the Japanese Navy or whether it was a submarine
14 owned and operated by the German Navy, isn't that
15 true?

16 A We only saw one officer and he was Japan-
17 ese. All the rest of the men were Japanese.

18 Q You don't know if there were any Germans
19 below or not, do you?

20 A No.

21 Q So it is quite possible that this was a
22 German submarine and not a Japanese submarine, isn't
23 that so?

24 A No, she didn't have--

25 THE PRESIDENT: We will have to form our

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1 own conclusions from what he has told us.

2 MR. LOGAN: Did he answer the question?

3 THE WITNESS: Pardon me?

4 Q Isn't there a question unanswered there?

5 A I don't remember. I didn't hear it, at
6 least.

7 (Whereupon, the last question and
8 statement by the President were read.)

9 THE PRESIDENT: Answer it, please.

10 THE WITNESS: There were no markings either
11 way. I didn't see any Germans; they were all Jap-
12 anese.

13 BY MR. LOGAN (Continued):

14 Q Do you know how many men were in the crew
15 of the submarine?

16 A No.

17 MR. LOGAN: Thank you.

18 That is all, your Honor. No further
19 cross-examination.

20 COMMANDER COLE: We ask that the witness
21 be excused from further attendance on the usual
22 terms.

23 THE PRESIDENT: We direct accordingly.

24 (Whereupon, the witness was excused.)

25 THE PRESIDENT: Captain Robinson.

1 CAPTAIN ROBINSON: If it please the Tribu-
2 nal, prosecution documents No. 8389 and No. 8390,
3 statements by other survivors of the attack follow-
4 ing; the sinking of the S. S. Jean Nicollet, prose-
5 cution documents No. 8393 and No. 8394, statements
6 by survivors of the S. S. John A. Johnson, and
7 prosecution document No. 8485, a formal certifi-
8 cate, are offered in evidence.

9 THE PRESIDENT: Admitted on the usual
10 terms.

11 CLERK OF THE COURT: Prosecution document
12 No. 8389 will be given exhibit No. 2087, document
13 No. 8390 will be given exhibit No. 2088,
14 document No. 8393 will be given exhibit No. 2089,
15 document No. 8394 will be given exhibit No. 2090,
16 and document 8485 will be given exhibit No. 2091.

17 (Whereupon, the documents referred to
18 were marked prosecution's exhibits No. 2087, 2088,
19 2089, 2090, and 2091, respectively, and received in
20 evidence.)

21 CAPTAIN ROBINSON: From document 8389,
22 exhibit 2087, brief excerpts are read, from pages
23 2 and 4, beginning on page 2, the first main para-
24 graph. This is the affidavit of Charles E. Pyle,
25

1 First Assistant Engineer of the Jean Nicollet.

2 (heading) "Shortly after he boarded our
3 boat, the submarine made its appearance in the near
4 vicinity, and the first questions that were directed
5 to us from the submarine were in good English, al-
6 though I was unable to determine who was uttering
7 them. The first questions were concerning the name
8 of the vessel and the whereabouts of the Captain or
9 ship's officers, to which we answered the Jean
10 Nicolet, but advised the Japanese that the ship's
11 officers were still aboard the vessel. Orders were
12 given to us to come aboard the submarine. They
13 threw us a line and we maneuvered up to the side
14 when they ordered us to come aboard. We started
15 going aboard and a Japanese crewman of the submarine
16 helped us over the railing alongside the conning
17 tower. After all the survivors had gained the deck
18 of the submarine, the Japanese proceeded to fire
19 upon the life boat with machine guns in an attempt
20 to sink the same, which was apparently accomplished,
21 as I never saw it again. The Japanese immediately
22 stripped us of all our possessions, with the excep-
23 tion of clothes. Each one of the twentieth-five mem-
24 bers of our boat, including Captain Nilsson of the
25

1 Nicolet, were bound with our hands tied behind our
2 backs. We were then led back. During my entire
3 stay aboard the submarine, I did not see any men
4 that I assumed to be Japanese naval officers, but,
5 instead, saw only Japanese crew members who were
6 dressed in khaki shorts with a red patch upon their
7 left sleeve, apparently designating their affilia-
8 tion with the Japanese Imperial Navy, and later, when
9 I was questioned at Colombo, I heard other members
10 of my crew state that they saw a Japanese officer
11 with a samurai sword aboard the submarine, but they
12 did not know his rank.

13 "The first man to be bound was William Mauser,
14 utility messman (phonetic), who was led forward and,
15 for no apparent reason at all, was shot and shoved
16 over the side and I watched his body float by me
17 into the sea."

18 The next excerpt is from page 4, beginning
19 at the top of the page, second line:

20 (heading) "Somewhere around midnight, I
21 was picked up and led aft, at which time I noticed
22 the deck guns being secured and that thirty or
23 thirty-five survivors of our vessel were still sit-
24 ting on the submarine deck. I learned then that the
25

1 Japanese crew were employing a tactic somewhat simi-
2 lar to the old Indian practice of running the gaunt-
3 let wherein they force survivors to pass between
4 two lines of men armed with clubs, bars and other
5 blunt objects and, when reaching the end, being
6 either shoved or knocked into the sea to drown.
7 Apparently this process had been going on for some-
8 time before I was called to take my turn and I esti-
9 mate that approximately eight men on the inboard
10 line and four or five on the outboard. When I
11 momentarily stopped to survey the situation, I was
12 struck a terrific blow at the base of my head
13 which caused me to feel a sensation similar to a
14 bouncing ball. From there on, I was shoved down
15 through the two lines of Japanese who rained blows
16 upon my body and head with various objects which I
17 was too stunned and dazed to identify, although I
18 was later advised by my doctor that I had been cut
19 with a bayonet or sword in the process.
20

21 "When I reached the end of the gauntlet,
22 I fell into what appeared to me to be a white
23 foamy sea."
24
25

1 CAPTAIN ROBINSON: From prosecution's
2 document 8390, exhibit 2088, brief excerpts are
3 read from pages 1, 3, and 4.

4 THE PRESIDENT: Captain Robinson, we
5 notice that you are omitting to quote very material
6 passages. We take it, of course, that all those
7 marked parts are in evidence. They are the excerpts.
8 You are not obliged to read all that appears in an
9 excerpt nor is it desirable in many cases to do so,
10 but you are omitting to read matters that were
11 cross-examined about. Lord Patrick has pointed out
12 to me you have not read that part where this witness
13 or this deponent explains how he kept afloat although
14 his hands were tied. I refer to Pyle's statement
15 on page 4. You stopped at the words "foamy sea" in
16 the second line of the second paragraph. The whole
17 of page 4 is in evidence; and it is desirable that
18 you should read on and explain how this man, according
19 to his testimony, kept afloat although his hands were
20 tied.

21 CAPTAIN ROBINSON: Yes, your Honor. The
22 only difficulty is the translation section and
23 if they can pick it up. Before cross-examination,
24 of course, we made our arrangements with the trans-
25 lation section about what part would be translated

concurrently.

1 Will the translation section translate
2 concurrently the second section, page 4?

3 THE MONITOR: Yes, we can, sir.

4 THE PRESIDENT: You need not worry. He
5 says that he kept afloat by treading the water.

6 Yes, proceed with the document you were
7 reading when I interposed.

8 CAPTAIN ROBINSON: From document No. 8390,
9 exhibit 2088, brief excerpts from pages 1, 3, and
10 4. At page 1 -- this is the affidavit of Robert
11 Calvin Butler -- beginning at the third sentence
12 or fourth:

13 (Reading): "On 24 April 1944 I reported
14 to Lieutenant (jg) G. V. DEAL, U.S.N.R., Armed
15 Guard Commander aboard the S. S. JEAN NICOLET, for
16 duty as a member of the U. S. Navy Armed Guard crew
17 of that vessel, which was at that time berthed at
18 Oakland, California. On 20 April 1944 the JEAN
19 NICOLET left Oakland and went to San Pedro, California,
20 and after loading at Wilmington, California, departed
21 on 12 May 1944, being routed independently to Colombo,
22 Ceylon, via Fremantle, Australia. We arrived at
23 Fremantle on 19 June 1944 and left there the next day
24 on the day after. For about ten days nothing happened.
25

1 Then on 1 July 1944 an empty lifeboat was sighted
2 drifting by."

3 Turning to page 3, slightly above the
4 middle of the page, about 15 lines from the top:

5 (Reading): "As each boat or raft came
6 alongside the Japs would ask for the Captain, but
7 none of us would tell who the Captain was. Later
8 on the First Mate revealed his identity and pointed
9 out the Captain to the Japs. They took the two of
10 them aft and we did not see either of them again.
11 They could have taken them inside the sub but I do
12 not think so. They also asked for all officers and
13 merchant marine radioman. Some of the Army officers
14 went also. I do not know what happened to them,
15 they just left. I do not think there were any prisoners
16 taken aboard the sub as I can't see what they would
17 do with them, but no one was sitting where he could
18 see the entrance to the conning tower or what went
19 on the after deck. I did not see anyone killed, nor
20 did I see anyone shot in the back or while in the
21 water. We were faced forward and when they were
22 strafing they did it aft with machine guns, and we
23 thought they might be still firing at the boats.
24 Some of the Japs spoke fairly good English and several
25 wore sabers, and we judged them to be officers. One

1 man kept telling us that 'it was a fire battle.' One
2 of us asked a Jap what they were going to do with
3 us, to which he replied that they would hit us in
4 the head and throw us over the side, but he gave
5 no reason for doing so."

6 On the next page, beginning at the top
7 of the page:

8 "After we were all sitting on the deck
9 of the sub they started picking out men and taking
10 them aft. I did not know what they were doing to
11 them as I was sitting pretty far forward and could
12 not hear anything that went on on the stern and was
13 afraid to look back. Soon they came and got me and
14 took me back aft where eight or ten Japs were lined
15 up against the conning tower holding sabers, clubs,
16 and lengths of lead pipe. One Jap stopped me and
17 tried to kick me in the stomach. Another hit me
18 over the head with an iron pipe. Another cut me over
19 the eye with a saber. I managed to break away after
20 I had gotten past the second one, and jumped overboard,
21 and although I did not lose consciousness the sub
22 was gone when I came up, but was still in sight. I
23 did not see any other men run the gauntlet, but three
24 that I know of went through it. I later found out
25 that the sub submerged with about forty men on deck,

1 some of whom were saved. I started to drift towards
2 the ship and they then opened fire on her again.
3 I was afraid they might machine gun me if they saw
4 me, so I began to swim away from the ship."

5 The next document --

6 THE PRESIDENT: Before you proceed to
7 that, Mr. Justice Northcroft points out to me that
8 on page 3 of the exhibit 2087, that is Pyle's state-
9 ment, there is a reference to the Japanese commander.

10 You will see that reference in the second
11 line of the second paragraph on page 3.

12 CAPTAIN ROBINSON: Would the Tribunal wish
13 me to read that paragraph, sir?

14 THE PRESIDENT: Yes. It is part of an
15 excerpt.

16 CAPTAIN ROBINSON: Document 8393, exhibit
17 No. 2089, brief excerpts from pages 1 and 2, the
18 affidavit of Charles H. Rhodes, first on page 1,
19 second paragraph:

20 (Reading): "I sailed aboard the S. S.
21 JOHN A. JOHNSON from San Francisco, California, on
22 Wednesday, 25 October 1944, serving aboard that ship
23 as the Second Assistant Engineer.

24 "On the night of Sunday, 29 October 1944,
25 the S. S. JOHN A. JOHNSON was torpedoed ..."

1 I pass on to page 2 -- no -- the bottom
2 of that same page, four lines from the bottom.

3 "However, at a point when the submarine
4 continued approximately amidship with respect to
5 our boat and the group that were in the water,
6 machine-gun fire was opened on us from a group of
7 men who were standing along the starboard rail on
8 the main deck of the submarine. The distance from
9 the point where the fire was opened to those of us
10 who were in the water is estimated by me to be
11 approximately thirty feet. I was hit by a bullet
12 in my left shoulder, the concussion of which caused
13 severe pain to the entire left area of my body and
14 has resulted in my hospitalization for treatment of
15 the wound."

16 Dropping down about ten lines, in the next
17 paragraph on page 2:

18 "I lay in the bottom of the boat in a position
19 as if I had been killed and was dead, and again the
20 bow of the submarine brushed the boat and when it
21 had reached a point approximately amidship of the
22 submarine with respect to our boat, a brilliant white
23 light was placed on our boat. It is my belief that
24 this light was used to take a picture. No guns were
25 fired from the submarine at this time, although

1 immediately after the light was removed, the sub-
2 marine was turned hard port, obviously in an attempt
3 to involve our boat and as many men as possible in
4 the screws.

5 "A large number of the members of the crew
6 of the submarine were standing on the deck and
7 gathered around in the conning tower and were
8 yelling and laughing at our predicament. I person-
9 ally saw five of the men from the JOHNSON who were
10 wounded as a result of the gunfire from the submarine.
11 I saw some of those men in the water and when taken
12 aboard the U. S. S. ARGUS, which ship rescued all
13 of the survivors. The submarine later disappeared
14 since approximately at that time, planes appeared
15 overhead."

16 The next document, 8394, exhibit No. 2090,
17 I read brief excerpts from pages 1 and 2 of the
18 document. At the bottom of page 1, five lines from
19 the bottom -- this is the affidavit of James Dixon
20 Pearson:

21 (Reading): "At this time, the submarine
22 opened fire with one machine-gun indiscriminately
23 at all persons and at the boat. I noted both machine-
24 gun and pistol fire coming from the submarine and
25 recall that the pistol was being fired by a figure

1 on a higher elevation than that from which the
2 machine-gun was being fired. I also observed that
3 the man who was firing the pistol was dressed dif-
4 ferently from the other figures on the deck of the
5 submarine and assumed that he was an officer.

6 "I heard at this time a great deal of what
7 I would term jabbering and which had a definite
8 Oriental sound, accompanied with considerable laughter
9 and occasional shouts of 'Banzai.'"

10 Dropping down five paragraphs, I read
11 the paragraph second from the bottom on page 2:

12 "After some interval of time, I swam back
13 to the lifeboat and was hauled aboard. After ar-
14 riving on the boat, I noticed there were five who
15 had been wounded by the gunfire of the submarine,
16 and although I did not know I had been grazed by
17 machine-gun bullets, as I discovered later, I was
18 aware that they had been splattering all around me.
19 I noticed some burns, but did not investigate the
20 matter until the next day when I discovered that
21 I had received three bullet burns, one across my
22 stomach, one across my forearm, and one across
23 the calf of my leg, which broke the skin."

24 THE PRESIDENT: Well, we have reached
25 another stage, I take it. We will adjourn until

1 half-past one.

2 (Whereupon, at 1200, a recess was
3 taken.)

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AFTERNOON SESSION

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3 The Tribunal met, pursuant to adjournment,
4 at 1330.

5 MARSHAL OF THE COURT: The Tribunal is now
6 resumed.

7 THE PRESIDENT: Captain Robinson.

8 CAPTAIN ROBINSON: Mr. President, Members of
9 the Tribunal. Attacks were made also upon survivors
10 of torpedoed British ships, prosecution's document
11 No. 8400, a protest transmitted by the Swiss Minister
12 from the British Government to the accused SHIGEMITSU,
13 Japanese Foreign Minister, dated 5 June 1944, is offered
14 in evidence.

15 THE PRESIDENT: Admitted on the usual terms.

16 CLERK OF THE COURT: Prosecution's document No.
17 8400 will receive exhibit No. 2092.

18 (Whereupon, the document above re-
19 ferred to was marked prosecution's exhibit
20 No. 2092, and was received in evidence.)

21 CAPTAIN ROBINSON: This document reads as fol-
22 lows: "5 June 1944. My Dear Minister,

23 "I have the honour of informing Your Excel-
24 lency that the Government of His Britannic Majesty has
25 asked me to hand to the Japanese Government the

1 following communication:

2 "1° His Majesty's Government have received
3 numerous reports from survivors of torpedoed merchant
4 ships which make it plain that commanders and crews of
5 certain Japanese submarines in Indian Ocean are acting
6 in complete disregard of international law and of hu-
7 manitarian principles recognised by all civilised states.
8 The following are incidents concerning British ships
9 upon which this most serious accusation is founded.

10 "2° SS 'Daisy Moller' was torpedoed and sunk
11 at 21 hours G.M.T. on 13th December 1943 in position 16°
12 21' north, 82°13' east. Ship's boats containing sur-
13 vivors were rammed by a submarine identified as Japanese;
14 survivors were afterwards fired on in boats and machine
15 gunned in water.

16 "3° SS 'British Chivalry' was torpedoed and
17 sunk at 5.30 hours G.M.T. on 22nd February 1944 in
18 position 0° 56' south, 68° east. Two boats and four
19 rafts containing survivors were subjected to deliberate
20 machine gun fire by a submarine identified as Japanese.
21 Many were killed and one of the boats was sunk. The
22 master of the ship was taken prisoner and compelled to
23 watch machine gunning of his crew from the submarine.

24 "4° SS 'Sutley' was torpedoed and sunk at
25 18.35 hours G.M.T. on 26th February 1944 in position

1 following communication:

2 "1° His Majesty's Government have received
3 numerous reports from survivors of torpedoed merchant
4 ships which make it plain that commanders and crews of
5 certain Japanese submarines in Indian Ocean are acting
6 in complete disregard of international law and of hu-
7 manitarian principles recognised by all civilised states.
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18 position 0° 56' south, 68° east. Two boats and four
19 rafts containing survivors were subjected to deliberate
20 machine gun fire by a submarine identified as Japanese.
21 Many were killed and one of the boats was sunk. The
22 master of the ship was taken prisoner and compelled to
23 watch machine gunning of his crew from the submarine.

24 "4° SS 'Sutley' was torpedoed and sunk at
25 18.35 hours G.M.T. on 26th February 1944 in position

1 8° south 70° east. A submarine identified as Japanese
2 fired with small arms upon survivors clinging to rafts
3 and to wreckage.

4 "5° SS 'Ascot' was torpedoed and sunk on 29th
5 February 1944 approximately 800 miles 72° from Diego-
6 Suarez. Ship's lifeboat was subsequently machine
7 gunned by a submarine identified as Japanese and 44
8 out of 52 survivors were killed.

9 "6° SS 'Nancy Moller' was torpedoed and sunk
10 at 8 hours G.M.T. on 18th Nat 1944 in position 2° 14'
11 north 78° 25' east. A submarine identified as Japanese
12 fired repeatedly on survivors killing a large number.

13 "7° Ships concerned in above incidents were
14 all British ships but His Majesty's Government have
15 received reports of similar incidents involving ships
16 of their allies. In particular survivors from the
17 Dutch ship SS 'Tjissalak' were treated with utmost bru-
18 tality and the incident has been made the subject of a
19 protest by the Royal Netherland's Government; a number
20 of British subjects were killed in a massacre committed
21 by this Japanese submarine and His Majesty's Government
22 accordingly associate themselves with the protest made
23 by the Royal Netherland's Government.

24 "8° His Majesty's Government make the most
25 emphatic protest against inhuman and criminal actions

1 of Japanese submarine commanders and crews involved in
2 above incidents and demand that Japanese Government,
3 while issuing most immediate instructions to prevent
4 their repetition, take disciplinary action against per-
5 sons responsible. Number and circumstances of these
6 incidents indicate that not one but several Japanese
7 submarine commanders have violated in the most flagrant
8 manner elementary humanitarian principles of maritime
9 warfare. Signed The Swiss Minister.

10 "To His Excellency Mr. Mamoru SHIGEMITSU
11 Minister for Foreign Affairs Tokyo."

12 Prosecution document No. 8397, a note from
13 the Swiss Legation to the Japanese Foreign Minister,
14 the accused SHIGEMITSU, dated 20 July 1944, is offered
15 in evidence.

16 THE PRESIDENT: Admitted on the usual terms.

17 CLERK OF THE COURT: Prosecution's document
18 No. 8397 will receive exhibit No. 2093.

19 (Whereupon, the document above re-
20 ferred to was marked prosecution's exhibit
21 No. 2093, and was received in evidence.)

22 CAPTAIN ROBINSON: This will not be read.
23 Prosecution documents are now offered in evidence as
24 statements of survivors of the British ships as indi-
25 cated, as listed in the foregoing British protest,

1 document 8400, exhibit No. 2092:

2 Prosecution document No. 8380, SS Daisy Moller;

3 Prosecution document No. 8381, SS British Chi-
4 valry;

5 Prosecution document No. 8382, MV Sutley;

6 Prosecution document No. 8383, SS Ascot;

7 Prosecution document No. 8379, SS Nancy Moller.

8 Prosecution document No. 8388 is the statement
9 of a survivor of the Netherlands ship Tjisalak.

10 Prosecution document No. 8472 is a chart of
11 the sinkings.

12 These documents are offered in evidence.

13 THE PRESIDENT: Admitted on the usual terms.

14 CLERK OF THE COURT: Prosecution document No.
15 8380 will receive exhibit No. 2094; document No. 8381
16 exhibit No. 2095; document No. 8382 exhibit No. 2096;
17 document No. 8383 exhibit No. 2097; document No. 8379
18 exhibit No. 2098; document No. 8388 exhibit No. 2099;
19 and document No. 8472 exhibit No. 2100.

20 (Whereupon, the documents above re-
21 ferred to were marked as indicated by the
22 clerk of the court and received in evidence.)

23 CAPTAIN ROBINSON: Excerpts from these docu-
24 ments are now read. Document No. 8380, exhibit No.
25 2094, reads as follows:

1 "Statement of R. J. Weeks, Master, SS Daisy
2 Moller, sunk 14 December 1943.

3 "On 0420 December 14th, the vessel was struck
4 on the starboard side between No. 1 and 2 holds by a
5 torpedo fired at the vessel without warning. Vessel's
6 position at the time of the attack being 195° 16 miles,
7 Sacramento Shoal Light House. Vessel immediately started
8 to list and sink by the head. I ordered all boats to
9 be lowered. The starboard forward boat was smashed in
10 lowering and I took the double boat's complement into
11 the port forward boat. As far as I could ascertain every
12 one got away from the vessel, which sank 3 minutes after
13 I left her. As the vessel sank the submarine appeared
14 about 100 yards to the North of where the vessel sank.
15 The sub approached my boat after firing a tracer bullet
16 at us. No words were passed and the submarine turned
17 away, but approximately three minutes later rammed my
18 boat at an approximate speed of 16 knots, opening fire
19 with machine guns directly after. I swam to a raft
20 about 1½ miles away. The submarine then rammed the
21 other two boats and machine gunned the water over a
22 large area. By this time 12 men were hanging on to the
23 raft. At daylight we saw two other rafts with one man
24 on one of them. After a struggle we got the three rafts
25 together and I placed 4 men on each of the others,

1 keeping 5 on my raft, one being R. Casson, a D.E.M.S.
2 gunner who had a badly burnt and sprained foot. I ad-
3 visec the others to rig a sail from the awning and
4 keep close to my raft and we endeavored to make westing.
5 At midnight December 17th we landed in the Krishna
6 River delta and proceeded by various methods to Masuli-
7 patam arriving there at 1400 December 18th 1943. We
8 left there at 1600 December 20th arriving Vizagapatam
9 at 1400 December 21st, 1943. Total amount of survivors
10 known being sixteen, ships complement being 69 crew
11 and 2 passengers. I should like to give a word of
12 praise for the D.E.M.S. ratings who were saved. Their
13 behavior was excellent. Signed R. J. Weeks, Master."

14 Excerpts will now be read from document 8381,
15 exhibit No. 2095, at page 2, beginning with the second
16 paragraph. This is the 'British Chivalry' log from
17 22 February 1944:

18 "After sinking the vessel the submarine then
19 opened fire on the two lifeboats with light machine
20 gun fire. A white flag of truce was displayed from
21 the Master's boat and machine gunning ceased. Attempts
22 to signal by semaphore were made. The submarine closed
23 the boats and waved us alongside. It was noted that
24 the submarine was manned by Japanese. They intimated
25 that they required the Master to board her, which he did.

1 The boats were then ordered to carry on and the sub-
2 marine moved off.

3 "After the boats had been proceeding for about
4 5 minutes in company the submarine suddenly altered
5 course and steered for them, and on passing heavy machine
6 gunning of the boats commenced. Most of the crew dived
7 into the water and some lay down inside the boats. The
8 machine gunning lasted until about 2 p.m. when one boat
9 containing radio equipment etc. had been sunk and the
10 other left in a sinking condition. The sub made off in
11 a southwesterly direction.

12 "Strenuous efforts were then made by the sur-
13 viving members of the crew to bale out the remaining
14 boat, and at about 5 p.m. had been successfully made in
15 a condition to be of use. Rafts and survivors in the
16 water were then gathered together and a consultation
17 was held amongst the officers. Another roll call was
18 made and the names of those killed by machine gunning
19 were as follows:"

20 I will omit the names of those killed and on the
21 next page the names of those wounded, and begin reading
22 at the third paragraph from the bottom of page 3:

23 "At 11:30 p.m. on 23 February 1944, Able Sea-
24 man L. Morris, suffering from wounds as described above,
25 lost his life by drowning. His wounds were such a

1 character that he had been rendered insane and efforts
2 were made by survivors on the raft to restrain him. He
3 proved to be too violent to hold and during the strug-
4 gling evaded the others, jumped overboard and disappeared
5 from view before rescue could be effected.

6 "On February 25, Friday, the engine rendered
7 useless by seawater was dumped overboard and the occupants
8 of the raft were transferred to the boat.

9 "The subsequent proceedings of this report were
10 such as might be expected during a period of great
11 hardship and suffering of 38 men cast adrift for 37 days
12 in an overcrowded boat."

13 I will read no more from that document.

14 Document 8382, exhibit 2096: "Statement of
15 P. H. Rees, Chief Engineer, M.V. Sutley, sunk 26 February
16 1944." I will read the first three sentences:

17 "Vessel left Aden on Tuesday, 15th February
18 1944, in convoy, bound for Australia. After being in
19 convoy for 5 days we split up and continued the passage
20 unescorted. Six days later (26 February) at 1820 hours
21 we were struck by a torpedo between Nos. 1 and 2 holds
22 on port side."

23 Dropping down slightly below the middle of the
24 page:

25 "The submarine now appeared on the surface and

1 stopped our efforts to save more men (about 10 minutes
2 after the sinking.) He came alongside and questioned us
3 as to whether the master was amongst us, ship's name,
4 destination and cargo. It was definitely a Japanese
5 submarine, ocean-going type, mounting 6" gun and anti-
6 aircraft armament. He attempted to ram all rafts and
7 machine gunned us at random. His aiming was poor. The
8 exhausts of the submarine were sparking badly and showed
9 up against the darkness very clearly. He appeared to
10 have good speed and maneuverability."

11 I will read no more from that document.
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1 The next document, 8383, exhibit 2097, reads
2 as follows:

3 "Report of attack of S.S. Ascot, sunk
4 29 February 1944.

5 "S.S. Ascot left Colombo 19 February, 1944,
6 bound for Diego Suarez, At 1205 (ship's time) gunners
7 on watch sighted a torpedo close on the starboard beam,
8 but before warning could be given, the torpedo struck
9 the ship on the starboard side in the fore part of the
10 engine room. The two starboard lifeboats were blown
11 away, and as the ship appeared at first to be settling
12 fast, the two port boats and a raft were got away. It
13 is believed that four people, all engine and boiler room
14 staff, were killed by first explosion. The remainder
15 of the crew, believed 52, got safely away.

16 "The ship had by this time ceased to settle
17 and ten minutes after abandoning a submarine was seen
18 to surface about 2000 yards away from the ship, on the
19 starboard quarter. The submarine circled the ship and
20 commenced shelling her, firing about 7 rounds, but no
21 effort was made to board.

22 "The submarine then approached the boats.
23 She was about 300 feet long with a high conning tower
24 which had square glass windows in the fore part, there
25 is some difference of opinion as to whether the gun,

1 which was about 6" calibre, was forward or aft, but the
2 weight of evidence tends to show that it was forward.
3 It had a large 20 mm type gun fitted in a perspex
4 blister in the side, and light machine-gun resembling
5 a Bren, on top the conning tower. It was painted dark
6 grey and was rusty and barnacled. There were no marks,
7 but the survivors, on being shown photographs and
8 silhouettes, all unhesitating picked out 1 - 121 - 124
9 of Jap submarine.

10 "The survivors stated that all the men on the
11 deck of the submarine were Japanese, dressed in khaki
12 shirts and slacks, and soft Japanese type peaked caps.
13 They also state that there was a European in the conning
14 tower, wearing a European type of Naval cap, with yellow
15 or gold wings in front.

16 "A Japanese in broken English asked for the
17 Captain, Chief Engineer and Radio Officer but nobody
18 replied. A burst of machine-gun fire was then fired.
19 The Captain then disclosed his identity and was ordered
20 on board the submarine. The Japanese who had first
21 asked for him, took the despatch case, the Captain
22 was carrying from saying, 'So you don't speak English,
23 you English swine.'" He then slashed the Master's
24 hands across the palms with a knife and threw him into
25 the water, where he was picked up by the lifeboat.

1 "Fire was then opened, with light machine
2 gun in conning tower, on boats and raft, all the sur-
3 vivors jumped into the water to avoid being hit, 10
4 men around the raft were killed, also an unknown number
5 in the boats. The submarine then left the boats and
6 recommenced shelling the ship, which was by this time,
7 blazing fiercely from stem to stern. About 30 rounds
8 were fired.

9 "The survivors at this time got back into the
10 boats and raft, buried the dead, and one lifeboat took
11 the raft in tow. At 1600 approximately ship's times,
12 the submarine returned to the boats and commenced
13 machine gunning. The men on the raft, with the ex-
14 ception of A. H. Richardson, DLMS, who was wounded in
15 the thigh and was delirious, and Gunner Walker, Maritime
16 Regt. who stayed to assist him, took to the water.
17 Gunner Walker, with great courage, attempted to shield
18 Richardson, and at the same time informed the men in
19 the water as to the position of submarine to enable them
20 to shelter behind the raft. Richardson was killed and
21 Walker was hit twice, once in the leg and once in the
22 thigh. He did not inform his mates of his wounds until
23 the following morning and though in considerable pain,
24 behaved with fortitude until picked up. I submit this
25 act of gallantry should be suitably rewarded.

1 "The submarine machine-gunned the survivors
2 intermittently until dusk, then disappeared and was not
3 seen again.

4 "There were 7 men left on the raft at this
5 time, and they cleaned, as much as possible, the blood,
6 etc. off the raft, and hoisted sail. The following
7 morning, March 1st, a lifeboat was sighted, but was soon
8 lost to sight. On March 2nd, the lifeboat was again
9 sighted, and came alongside at noon. It contained
10 A.B. Hughson, DEMS, and as it was badly damaged, he
11 transferred to the raft taking the provisions with him.

12 "At the time of the second machine gunning
13 Hughson was in the boat with the Master and a number
14 of others. He states that the other lifeboat was rammed
15 and sunk by the submarine. After machine gunning the
16 raft, the submarine approached the boat with the
17 apparent intention of ramming it. All the boat crew,
18 with the exception of Hughson, took to the water, where
19 they were machine gunned. Hughson lay in the bottom of
20 the boat and the submarine took it in tow alongside,
21 apparently to prevent anyone re-boarding it. A Japanese
22 boarded the boat, Hughson feigned death and was not
23 molested. After about 10 minutes the boat was cut
24 adrift and the submarine then rammed it on the port
25 quarter, damaging it. Hughson lay quiet all night,

1 and the following morning hoisted the foresail, and
2 though the boat was waterlogged, sailed her through the
3 day in a freshening wind and sea.

4 "The following morning, the weather moderated
5 and he hoisted the mainsail, sighted the raft and made
6 contact, as stated above.

7 "I consider that Hughson showed courage and
8 fine seamanship.

9 "The survivors were subsequently picked up
10 by M.V. Straat Soenda, at 1325, March 3, 1944, and
11 brought to Aden.

12 Signed: "L. A. Seward, Lieutenant Commander,
13 R.N.R., Staff Officer, Intelligence."

14 Document No. 8379, exhibit 2098, excerpts
15 read as follows, the top line:

16 "Statement of S. K. Chu, 2nd Mate, S.S. Nancy
17 Moller, sunk March 18, 1944."

18 The fourth paragraph to the conclusion of
19 the document:

20 "She (the submarine) approached one of the
21 rafts on which were Gunlayers Fryers, 2nd Engineer
22 H. T. Shing, Fitter Wong and three Indians. They were
23 ordered to board the sub. Fryers was taken down for
24 examination, and the remaining five were made to kneel
25 down towards the bow. The 2nd Engineer was shot twice

1 with a revolver, and was kicked into the sea. As he
2 wore no lifejacket he was soon drowned. Fitter Wong
3 received one shot, and as he was wearing his jacket,
4 he managed to struggle in the water and was finally
5 picked up. The three Indians were merely driven into
6 the water without being shot, so they were all rescued
7 later on.

8 "Afterwards the Japs turned the portable machine
9 gun towards the other rafts and opened fire. As the
10 survivors were alert enough to hide their bodies under
11 water with hands grasping the becket lines, nobody was
12 known to be hit. The sub being satisfied that no life
13 was left, drew away out of sight.

14 "Then we picked up and gathered together all
15 the survivors, amounting to 32, (4 British, 2 Chinese,
16 1 Russian, 25 Indians). The ship originally had a crew
17 of 65, so with the Gunlayer as a prisoner on the sub
18 another 32 persons (including the Captain lost their
19 lives. (6 British, 5 Chinese and 21 Indians)

20 "The survivors drifted on the 4 rafts for
21 four days, and were finally picked up on March 22nd,
22 early morning."

23 Signed: "S. K. Chu, 2nd Mate, ex s/s Nancy
24 Moller."

25 Document No. 8388, exhibit 2099, will be

1 read, excerpts therefrom, as follows; the first ten or
2 fifteen lines:

3 "Statement of F. deJong, Chief Officer,
4 S.S.Tjisalak, sunk 26 March, 1944.

5 "We sailed on the 7th March 1944 from the port
6 of Melbourne in Australia with a full cargo of flour,
7 about 6640 tons. Destination was Colombo. The ship
8 was loaded on her tropical mark and the draft upon
9 departure was --" I will omit the details here and
10 start with:

11 "The crew consisted of 76 persons. Furthermore
12 we had five first class passengers and 22 lascars as
13 tweendeck passengers. Making a total of 103 persons
14 on board. The 22 lascars being ex-crew of the M.S.
15 Tjisadane on their way home after having been paid off
16 from aforementioned ship. The first class passengers
17 consisted of one American lady Mrs. Brittan. She was
18 on the way to her husband who is living in Calcutta.
19 Her husband is a Britisher and is apparently working
20 for the Intelligence Service."
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1 We omit and read beginning at page No. 3,
2 about the middle of the page -- just below the
3 beginning of the middle paragraph:

4 "In the meantime the sub came closer and
5 closer. From the conning tower they started to shout
6 for the captain. When they asked a second time where
7 the Captain was I saw the Master stand up in his
8 boat and put up his hand. They ordered him to come
9 alongside of the sub with his boat. He did so. The
10 next thing we spotted was the Captain and the Europeans
11 in his boat boarding the sub. The boat of the 2nd
12 Off. started to get away more and more. With a few
13 men rowing in my boat I tried to get a little away
14 from the sub. But now they started to gesticulate
15 and shout from the tower. They shouted to us to
16 report. So we came alongside one by one with our
17 boats. They told the Europeans to board the sub. I
18 did not see anything of the Europeans of the Captain's
19 boat when I stepped on her deck. I only saw somebody
20 disappearing into one of the manholes on the foredeck.
21 With the 3rd Eng. I was the first one to be pointed
22 out to the fore deck. They told us to sit down there
23 facing forward. We should in no case look back they
24 told us. From all around they kept us covered.
25 When I boarded the sub they took my knife away. I

1 had my lifebelt on and luckily they forgot to take
2 that away. My papers were packed in the inside of
3 my lifebelt and they did not spot it. The foreship
4 started to fill up as they were ordering now all the
5 people out of the boats. Two Japs were making us
6 stand by in front of us, one with a revolver and one
7 with a coil of rope. Again and again they shouted
8 from the tower, 'Do not look back, because that will
9 be too bad for you.' I got the impression that there
10 was little discipline. Everybody just pleased himself
11 and they all tried to get as many souvenirs as possible.
12 So they took watches, papers and knives. A little to
13 the right before me was the 5th Eng. sitting. A little
14 to the left and forward was the 3rd Eng. I got the
15 impression that the Japs wanted to start all kinds of
16 things at the same time. One was preparing himself to
17 tie us up, another was fumbling with his revolver
18 and so on. Most of our crew did not obey the order
19 of not looking back. They continuously looked back.
20 I warned them a few times to look forward. I thought
21 it better not to irritate the Japs any more. I
22 understood the end was there for all of us, and I
23 told the Europeans near me. I told them to try to
24 make the best of it. All of us sat down depressed.
25 I felt pity for the 5th Engineer, as he was fighting,

1 I could see, to keep himself under control, but he
2 succeeded. It was a hard blow for him I thought.
3 He had just escaped out of occupied Holland and he
4 was very young. My own feelings were dumb. I had
5 finished with life and I felt abnormally calm. I
6 was surprised about myself, as I had grown a bit
7 nervous after a whole winter on the North Atlantic with
8 a few very bad experiences. During the time I was
9 on board of the sub, I was very proud of every
10 member of our crew, as I heard nobody screaming or
11 begging for life. The Japs can take this as an
12 example. There were a few fights going on behind us,
13 but I do not know the exact facts as I did not look
14 behind me. Waiting was long, At last the sub was
15 getting under way and after clearing the wreckage
16 headed on a course East. I know this because the sun
17 was shining in my face. I guessed the speed at about
18 8 knots, but it could have been less. The other
19 survivors thought it was less anyhow. I was thinking
20 now about jumping overboard, but I was surrounded by
21 Chinese and I thought I had only a very small chance.
22 So I decided to stay and wait. What would happen now?
23 Would they start to machinegun us from the tower?
24 Would they tie us up and then dive? It was very
25 difficult to guess. To wait all the time was unbearable.

1 Luckily they started now. They called the 5th Eng.
2 out and told him to start walking aft. When he was
3 aft they shot him. Now it was my turn. One Jap
4 was hanging on to my back when I walked aft. Maybe
5 he wanted to pull off my lifebelt, maybe he wanted
6 to prevent me from jumping overboard. Everywhere Japs
7 were standing by with weapons. I realized that to
8 dive with my lifebelt on would be very difficult and
9 my chance was nil as I could not keep myself under
10 with same. Whenever I should come into the water I
11 would be riddled with bullets and probably die slowly.
12 As I had to die anyhow I preferred a sudden death. So
13 I walked on, along the tower and on aft. At about a
14 distance of about 5 or 6 feet from the stern there
15 was one Jap ready with his revolver. When I came
16 alongside of him I stopped as I expected him to shoot
17 me through the head. He pointed out to me however
18 that I had to carry on. When I arrived at the very
19 end of the deck, above the propellers I heard a bang
20 and felt a terrific shock on my head and I toppled
21 over into the water. The Japs tried to make a good
22 job of it indeed, as they did it above the propellers.
23 How I missed them I do not know. I must have been
24 unconscious for a little while. When I came to I
25 was in the water, with plenty of blood around me.

I had plenty of trouble to breathe. Heavy sighing
1 gave me just enough. I spotted the sub now at about
2 a mile distant. After a couple of minutes I could
3 breathe and think a little better already. I was very
4 down. I was afraid they would find out on the sub
5 that I was still alive and come to finish me off.
6 To be executed once is pretty bad, but for a second
7 time looked horrible to me. I inspected my head with
8 my hand and found no hole in the bone. This gave
9 me some new courage. I started to get hope again
10 to live on. Now I decided to try everything in my
11 power to save my life. I kept the submarine all the
12 time in my sight and I saw her altering course a few
13 times. Twice she passed me at close range and I
14 nearly drowned by keeping my head under the surface.
15 I could still see a group of persons on the foredeck
16 of the sub. Now and then I heard a couple of shots.
17 At the end I saw the sub disappear to the South."

18
19 A final extract on page 8, at the bottom
20 of the page, about 6 lines from the bottom.

21 "After this case of our ship I think every-
22 body will be impressed by the fact that it is impossible
23 to send ships unprotected anymore over the Indian
24 Ocean. We should have some protection so that the Japs
25 cannot repeat this slaughtering of shipwrecked people.

1 There can be planes in any case. I have heard there
2 is even a base for planes on the Chagos Islands, and
3 also one on the Maldiva Islands. If this is true the
4 planes could cover a big part of the Indian Ocean.
5 Even close to Australia and Colombo we never spotted
6 any planes. I just wanted to put down our thoughts
7 as I think it is better if the officials knew what we
8 think."

9 The next document, 8472, exhibit No. 2100,
10 is the chart on which is shown the location of the
11 sinking of the ships, survivors of which I have just
12 read statements upon.

13 Now, to take up the protests: Prosecution
14 document No. 8395, a note from the Swiss Legation to
15 the Japanese Foreign Minister, dated 16 September
16 1944 is offered in evidence.

17 THE PRESIDENT: Admitted on the usual terms.

18 CLERK OF THE COURT: Prosecution document
19 No. 8395 will receive exhibit No. 2101.

20 (Whereupon, the document above
21 referred to was marked prosecution's ex-
22 hibit No. 2101 and received in evidence.)

23 CAPTAIN ROBINSON: This document reads as
24 follows:
25

"September 16, 1944

1 There can be planes in any case. I have heard there
2 is even a base for planes on the Chagos Islands, and
3 also one on the Maldive Islands. If this is true the
4 planes could cover a big part of the Indian Ocean.
5 Even close to Australia and Colombo we never spotted
6 any planes. I just wanted to put down our thoughts
7 as I think it is better if the officials knew what we
8 think."

9 The next document, 8472, exhibit No. 2100,
10 is the chart on which is shown the location of the
11 sinking of the ships, survivors of which I have just
12 read statements upon.

13 Now, to take up the protests: Prosecution
14 document No. 8395, a note from the Swiss Legation to
15 the Japanese Foreign Minister, dated 16 September
16 1944 is offered in evidence.

17 THE PRESIDENT: Admitted on the usual terms.

18 CLERK OF THE COURT: Prosecution document
19 No. 8395 will receive exhibit No. 2101.

20 (Whereupon, the document above
21 referred to was marked prosecution's ex-
22 hibit No. 2101 and received in evidence.)

23 CAPTAIN ROBINSON: This document reads as
24 follows:
25

"September 16, 1944

1 "By letters of 5 and 20 June, the Swiss
2 Minister had the honour of transmitting to His
3 Excellency Mr. Mamoru SHIGEMITSU a protest of the
4 Government of the United Kingdom on the subject of the
5 attack on the survivors of British merchant vessels
6 by Japanese submarines. By the note of 19 July the
7 Legation sent to the Imperial Foreign Office some
8 complementary information about this matter.

9 "The Swiss Legation would be thankful to the
10 Foreign Office if the Foreign Office would communicate
11 the answer of the Imperial Government to the said
12 protest.

13 * * *

14 "September 15, 1944

15 "To the Imperial Ministry of Foreign Affairs,
16 Tokyo."

17 Prosecution document No. 8416, a note from
18 the Swiss Minister to the accused SHIGEMITSU, Japanese
19 Minister of Foreign Affairs, dated 28 November 1944,
20 is offered in evidence.

21 THE PRESIDENT: Admitted on the usual terms.

22 CLERK OF THE COURT: Prosecution document
23 No. 8416 will receive exhibit No. 2102.

24 . (Whereupon, the document above
25 referred to was marked prosecution's ex-

hibit No. 2102 and received in evidence.)

1 CAPTAIN ROBINSON: A correction: This is
2 from the Japanese to the Swiss it is observed. I
3 will read the document:

4 "My dear Minister,

5 "I have the honor to acknowledge the receipt
6 of Your Excellency's letters. No. GG.I.I.3-EGd and
7 No. GG.I.I.3-EGc dated 5 and 20 June as well as the
8 verbal note No. CC.1.8.o-EGc, of the Swiss Legation
9 in Tokyo dated 19 of last July concerning a protest
10 of the British Government which pretends that in the
11 Indian Ocean some Japanese submarines torpedoes
12 British merchant vessels and unlawfully attacked the
13 survivors of the vessels.

14 "Concerning this matter I have had the competent
15 authorities make strict investigations in each case
16 indicated; and it is clear that Japanese submarine
17 at least, had nothing to do with such facts as are
18 mentioned in that protest. I have the honor to ask
19 Your Excellency to forward this reply to the British
20 Government.
21

22 "I take this opportunity," and so forth, dated
23 28 November 1944.

24 "From: Minister for Foreign Affairs, Mamoru
25 SHIGEMITSU (Seal)

 "To: His Excellency Camille Gorge, Envoy

1 Extraordinary and Minister Plenipotentiary from
2 Switzerland."

3 Prosecution document No. 8410, a letter
4 from the Swiss Minister, transmitting from the
5 Government of the United Kingdom a communication
6 to the Japanese Foreign Minister, dated 19 May 1945
7 is offered in evidence.

8 THE PRESIDENT: Admitted on the usual terms.

9 CLERK OF THE COURT: Prosecution document
10 No. 8410 will receive exhibit No. 2103. .

11 (Whereupon, the document above
12 referred to was marked prosecution's ex-
13 hibit No. 2103 and received in evidence.)
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1 CAPTAIN ROBINSON: (Reading)

2 "Karuzawa, May 19, 1945

3 "Monsieur le Ministre,

4 "I have the honor of informing Your
5 Excellency that I had not failed to communicate to
6 my Government for forwarding to the Government of
7 the United Kingdom the answer of the Imperial Govern-
8 ment which His Excellency Mr. Mamoru SHIGEMITSU gave
9 me on the subject of attacks against the survivors
10 of British merchant vessels by Japanese submarines.

11 "The Government in London has just asked
12 the Federal Authorities to send to the Imperial
13 Government the following communication:

14 "'Primo. Government of United Kingdom have
15 received through protecting power Imperial Japanese
16 Government's reply to their protest regarding inhuman
17 conduct of commanders and crews of certain Japanese
18 submarines towards crews of torpedoed British merchant
19 vessels. In this reply Imperial Japanese Government
20 deny all knowledge of the facts mentioned in H.M.
21 Government's communication.

22 "'Secundo. H. M. Government find this reply
23 entirely unacceptable. In all cases mentioned in
24 H.M. Government's protest there were survivors who
25 positively identified submarine concerned as Japanese.

1 Moreover in one instance the submarine was identified
2 as belonging to the Japanese I class.

3 "Terzio. H. M. Government desire further
4 to draw attention of the Imperial Japanese Government
5 to an operation order dated 20th March 1943 issued by
6 Admiral commanding first Japanese Submarine Force.
7 Fifth paragraph of this order authorizes submarine
8 commanders not to stop with sinking of allied ships
9 and cargoes but at the same time to carry out complete
10 destruction of allied crews except for such members
11 as it may be desirable to apprehend with a view to
12 securing intelligence. This order makes it clear
13 beyond any possibility of doubt that the inhuman
14 practices described in H. M. Government's protest are
15 officially sanctioned and prescribed by high Authorities
16 of Japanese Navy.

17 "Quarto. H. M. Government desire once again
18 to draw most serious and urgent attention of the Im-
19 perial Japanese Government to these atrocities committed
20 by Japanese submarine commanders and crews and sanctioned
21 by Japanese Naval authorities against crews of British
22 merchant vessels and to demand that such inhuman prac-
23 tices cease forthwith and that strictest disciplinary
24 measures be taken against both individual commanders
25 responsible and Naval Authorities who prescribed these

1 actions.'

2 "Please accept, Monsieur le Ministre, the
3 assurances of my very high respect.

4 "Swiss Minister."
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1 CAPTAIN ROBINSON: Prosecution document
2 No. 8481, an official report of the killing of
3 survivors of the British ship, Behar, in the Indian
4 Ocean, sworn to on 30 May 1946, is offered in evidence.

5 THE PRESIDENT: Admitted on the usual terms.

6 CLERK OF THE COURT: Prosecution's document
7 No. 8481 will receive exhibit No. 2104.

8 (Whereupon, the document above
9 referred to was marked prosecution's exhibit
10 No. 2104 and received in evidence.)

11 CAPTAIN ROBINSON: The excerpts to be read
12 appear at page two and three; at page two the second,
13 third and fourth paragraphs:

14 "I was formerly a Captain in the Imperial
15 Japanese Navy.

16 "I held the appointment of a Commander on
17 the Crusier Tone, Captain MAYUZUMI commanding, in
18 early 1944.

19 "On 9 March 1944, S. S. Behar was sunk by
20 gunfire from Tone."

21 Dropping down four paragraphs:

22 "Later in the day, after we had reported the
23 sinking of the Behar and the picking up of 115 sur-
24 vivors, the Aoba signalled us to arrange for the immed-
25 iate disposal of the prisoners with the exception of

1 two or three. I told the Captain that such a course
2 was inhuman and that I could not be a party to the
3 execution especially in view of the fact that I had
4 ordered the rescue of the survivors and saw to it
5 that the order was carried out in spite of the high
6 seas running. The Captain signalled the Aoba that
7 the prisoners were still under investigation."

8 Omitting down to the close of the affidavit,
9 the last three paragraphs preceding the final paragraph
10 on page 3, beginning:

11 "On the evening of 18th of March, I was
12 told by Captain MAYUZUMI that the execution of the
13 prisoners had to be carried out that night at sea.
14 I refused to be associated with the execution so
15 the Captain issued orders direct to Lt. ISHIHARA.

16 "I cannot remember the names of the members
17 of the execution party, but learnt that most of them
18 were gunroom officers. Lt. TANI and a few other
19 wardroom officers were in the party. I later heard
20 Sub-Lieutenants TANAKA and OTSUKA boasting of their
21 participation in the execution.

22 "As I was not a witness I could not describe
23 the exact methods used but heard that the prisoners
24 were knocked unconscious by a jab in the stomach,
25 kicked in the testicles and beheaded."

1 Prosecution document No. 548, a top secret
2 Japanese naval order for submarine operations in the
3 Indian Ocean, is offered in evidence.

4 THE PRESIDENT: Admitted on the usual terms.

5 CLERK OF THE COURT: Prosecution's document
6 No. 548 will receive exhibit No. 2105.

7 (Whereupon, the document above
8 referred to was marked prosecution's exhibit
9 No. 2105 and received in evidence.)

10 CAPTAIN ROBINSON: I should read at the top
11 of page 2, if the language section can follow -- top
12 of page 2: "JICPOA Item #5738 - Translation of
13 Captured Japanese Document, Captured Kwajalein Atoll,
14 Received JICPOA 19 February 1944 --

15 THE MONITOR: Just a minute, Captain, that
16 part is not given. The Japanese translation starts
17 from "Flagship Heian Maru at Truk." You see the other
18 explanatory note about whose translation it is is not
19 given in Japanese.

20 CAPTAIN ROBINSON: If you will start from
21 "Flagship Heian Maru at Truk, 20 March 1943 -- Military -
22 Ultra-Secret (Gunki), Copy 24 of 70 -- 1st Submarine
23 Force Secret Opord #2-43" -- the only extract that
24 needs to be read from this document is on page 4,
25 paragraph B, subparagraph 4, near the bottom of the

1 page which reads as follows:

2 "Do not stop with the sinking of enemy
3 ships and cargoes; at the same time that you carry
4 out the complete destruction of the crews of the
5 enemy's ships, if possible, seize part of the crew
6 and endeavor to secure information about the enemy."

7 The last document in this section is document
8 No. 8479. The liaison between Japan and Germany in
9 this policy of destruction in the Indian Ocean is
10 indicated by the interrogation of the defendant OSHIMA,
11 1 February 1946, prosecution document No. 8479. The
12 defendant OSHIMA has sent me a supplementary state-
13 ment and I have told OSHIMA's counsel, Mr. Cunningham,
14 that the statement is available for processing and use
15 by them as they may desire but I should like to offer
16 this document in evidence at this time.

17 THE PRESIDENT: Admitted on the usual terms.

18 MR. SHIMANOCHI: Mr. President, I object to
19 the presentation of this document, prosecution document
20 No. 8479. I have two grounds for my objection.

21 First, I respectfully call the Tribunal's
22 attention to lines 20 to 33 of page 6 of the English
23 copy. This shows that when OSHIMA was interrogated by
24 Captain Robinson his memory was not quite clear and I believe
25 it is shown that Captain Robinson also recognized that

1 OSHIMA's recollection was hazy.

2 Second, according to the memorandum pre-
3 sented by the defendant OSHIMA, we object to the
4 presentation of this document until it is either
5 given to us for our use or presented to the Court
6 before its use by the prosecution. A correction on
7 the last statement: I object to the presentation of
8 this document as evidence unless the prosecution pre-
9 sents this memorandum from OSHIMA as evidence. The
10 reason for this is that since OSHIMA wrote this
11 memorandum, because his recollection was not clear
12 it would be unfair to present document 8479 without
13 presenting the memorandum.

14 THE PRESIDENT: The objection is overruled
15 on both grounds. The first ground goes to weight
16 only or value and not to admissibility. The second
17 is a matter for the defense to establish when they
18 give evidence.

19 The document is admitted on the usual terms.

20 CLERK OF THE COURT: Prosecution's document
21 No. 8479 will receive exhibit No. 2106.

22 (Whereupon, the document above
23 referred to was marked prosecution's exhibit
24 No. 2106 and received in evidence.)

25 CAPTAIN ROBINSON: This document reads in

1 part as follows, page 1, title, first three paragraphs:

2 "Interrogation of General Hiroshi OSHIMA.

3 "Date and time: 1 February 1946.

4 "Questions by Captain Robinson:

5 "Q You had various conversations, General,
6 with Ribbentrop in regard to the naval activities of
7 Germany and Japan?

8 "A Naturally, I spoke to Ribbentrop about
9 many matters, among which these that you refer to
10 might have been included. However, actual Army
11 matters and Navy matters were always handled by the
12 respective attaches.

13 "Q Directing your attention to March 1943,
14 what was said by you and by him in regard to the
15 importance of the submarine warfare?

16 "A I do not know whether it was this meeting
17 or not, but I do recall where he suggested that Japan
18 institute submarine warfare as Germany had been doing,
19 and in this regard they would be willing to let us
20 have a new type German submarine.

21 "Q In fact they sent you two German subma-
22 rines, did they not?

23 "A Yes. The negotiations were done by me,
24 but the details were handled by the Japanese Navy, and
25 I believe that one of the submarines was sunk before

1 arriving in Japan."

2 Turning to page 2, paragraphs 5 and 6:

3 "Q And he discussed with you the difficulty
4 of cutting down not only the supply of merchant ships,
5 but also of merchant sailors to man those ships, did
6 he not?

7 "A Yes, I definitely remember.

8 "Q And he discussed with you the German
9 U-Boat order of September 1942, in regard to failing
10 to rescue survivors of torpedoed merchant vessels?

11 "A Yes, I recall hearing that."

12 Turning to page 3, paragraphs 3, 4, and 5:

13 "Q And you recall further that the orders
14 were to annihilate or destroy survivors?

15 "A I would not go so far as to say that,
16 essentially it was that they would not rescue survivors.

17 "Q He was not recommending that to you as a
18 policy for submarines? That would be merely ordinary
19 practice, not to rescue survivors. The only place
20 where his orders would be important and therefore
21 subject to a special policy statement by Ribbentrop
22 would be in the fact that these special orders differed
23 from ordinary practice in that the special orders pro-
24 vided for the complete destruction of the survivors
25 of the merchant vessel's crew and passengers. I want

1 the connection between this German order and the
2 same order as followed by the Japanese.

3 "A I do think that the German order went
4 so far as to say that. In fact, I naturally think
5 so. The Japanese one, I do not know about. I believe
6 that the Japanese would not put out such an order.
7 And further, the newspapers have it that I favored
8 this order, but that is not so. Of course, I did
9 not tell Ribbentrop that he should stop doing this,
10 as it wasn't any of my business, but I do say that
11 I did not encourage it. Of course, as you know,
12 this order was put out, but I believe that even
13 among the Germans there were those who opposed it.

14 "Q And some who carried it out and executed
15 it?

16 "A Admiral Gross, who was naval liaison
17 officer to us, told me that he did not favor this
18 order, as it was a blot on the honor of the Navy.

19 "Q Nevertheless, at the request of the
20 Germans you did convey to the Japanese submarine
21 authorities information of that operating policy,
22 namely, complete destruction of personnel, as well as
23 the ship?

24 "A I did tell it to the Naval Attache, "
25 but I have no recollection of having sent any despatches

1 to Japan about this matter."

2 Page 4, paragraphs 3, 4, 5, and 6 -- no,
3 the second paragraph, page 4, starting:
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1 "Q Did the Germans never ask you whether you
2 had followed through or not?

3 "A No. Although you probably know more about it
4 than I do, I do not believe Japan did anything about
5 it.

6 "Q You know, do you not, that the United States
7 State Department filed with the Japanese numerous
8 protests because that precise policy was carried out
9 against the crews of the United States merchant
10 vessels?

11 "A No, I do not recall any protests on that
12 matter, although I am aware that they protested many
13 times about the treatment of prisoners of war.

14 "You never had any information following that
15 date of the machine gunning of merchant seamen
16 following the torpedoing by Japanese submarines of
17 United States merchant ships?

18 "A No. I have not heard anything of the sort.

19 "Q And you did not know that an ultra-secret
20 operating order was issued to Japanese submarines
21 commanders on March 20, 1943, as well as on other
22 dates, in which paragraphs b, item 4, provided,
23 'Do not stop with the sinking of enemy ships and
24 cargoes. At the same time as you carry out the
25 complete destruction of the crews of the ships,

1 seize part of the crew and endeavor to secure infor-
2 mation about the enemy.'

3 "A No. I do not know of the order, and further,
4 if there had been such an all-secret order it would
5 not have come into the hands of a civil official such
6 as me.

7 "Q You do recognize in those words the same
8 order of which you were informed by the Germans?

9 "A Yes, they are alike. I believe that if
10 such an order had been issued by the Japanese Navy
11 they would have done it independently, for, as you
12 know, the Japanese Army and Navy are not in the habit
13 of taking suggestions from outside sources, and if
14 Japan had followed the German suggestion on this and
15 put out such an order a communication should have
16 come to me saying that they had done so, but I received
17 no such communication. I have not heard of there
18 having been any communication and if there had been
19 it would have gone with the Naval Attache to pass on
20 to the German Navy."

21
22 Page 5, the top four paragraphs and the
23 bottom two paragraphs:

24 "Q Do you know whether or not with these two
25 submarines which Germany sent to Japan she also sent
crews and specimen orders for use by the Japanese?

1 "A No, I know nothing whatsoever about what
2 happened subsequent to my talks, as it was all
3 handled by the Navy.

4 "Q Did the Germans draw particular attention to
5 the necessity of Japanese submarines operating in the
6 Indian Ocean against merchant shipping?

7 "A The matter was not spoken of to me, but I
8 do recall some talk of the German Nav. having spoken
9 to Admiral NOMURA about this matter.

10 "Q Did you later learn of the sinking of the
11 United States Liberty Ship Jean Nicolet on 2 July
12 1944, in the Indian Ocean by a Japanese I-class sub-
13 marine, in which sinking these tactics were carried
14 out?

15 "A I know nothing of it.

16 "Q Did not Ribbentrop or other Germans later
17 comment to you on the fact that their request to you
18 for such a submarine campaign appeared to be bearing
19 fruit?

20 "A No. Further, I believe Japan was not very
21 successful in her submarine warfare."
22

23 Dropping down to the bottom of the same page:

24 "Q Two questions and I am through: 1. By
25 'intensify submarine warfare' you include destruction
of survivors of the torpedoed vessels, do you not?

1 "A No. I do not believe this would be in-
2 cluded in intensification of submarine warfare. I
3 am not a naval expert, but I do not believe these
4 tactics should be used.

5 "Q What you believe and I believe does not
6 make any difference. We have your statement of
7 what the German proposal was, namely, the destruction
8 of survivors of the crews. We have your statement
9 that Ribbentrop and others did tell you that part of
10 their submarine warfare had adopted a policy of
11 destroying crews of torpedoed vessels, is that not
12 correct?

13 "A Yes, Ribbentrop did say that to me.

14 "Q And further that you did convey that infor-
15 mation to Japanese naval authorities?

16 "A I conveyed to the Naval representatives
17 the matter of the two submarines that they offered
18 to give us, and the request that we intensify sub-
19 marine warfare, but whether I actually spoke to them
20 about this order that you are stressing I do not re-
21 call, as I never felt that the order was anything
22 that should be followed. In this regard I would
23 wish that you speak to either NOMURA or YOKOI to
24 see whether I did convey this to them or not."

25 Page 6, the bottom paragraph, to the end of

page 7:

1 "A I wish to explain this one fact; that in
2 December 1941, a joint military commission was set up
3 which decided matters of tactics and operations and
4 I had no hand in this. Further, if Ribbentrop or
5 someone like that told me something military, I
6 passed this matter on to this military commission which
7 went into details, and they are the ones who are re-
8 sponsible for the carrying out of the operations.
9

10 "Q What are their names?

11 "A These are the aforementioned NOMURA, YOKAI
12 for the Navy, and Lt. Gen. BANZAI for the Army.

13 "Q The date of the appointment of this Com-
14 mission?

15 "A About the middle of December 1941.

16 "Q And the place?

17 "A Berlin. All important matters were decided
18 by them.

19 "Q Who were the German members?

20 "A I am not sure, but I believe it was Field
21 Marshal Keitel, and probably Admiral Doenitz."
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1 MR. SHIMANOUCHI: I especially call the
2 attention of the Tribunal to the English text of the
3 document just read, page 3, line 7 to 22, and page
4 5, line 25 to 37. In these parts OSHIMA states that
5 he was against the murder of the ships' crews and
6 also that he did not convey the suggestion of the
7 German side to the Japanese Navy.

8 THE PRESIDENT: We know what he said, and
9 there is no need for you to emphasize it.

10 CAPTAIN ROBINSON: May it please the Tri-
11 bunza, this concludes the presentation of evidence
12 of offenses against survivors of torpedoed ships.

13 It is now proposed to present evidence to
14 show offenses committed against prisoners of war at
15 Puerta Princesa, Palawan, Philippine Islands on
16 14 December 1944. This evidence will consist of the
17 testimony of one of the survivors of the Palawan
18 Massacre, documents consisting of affidavits of two
19 of the survivors, and protests delivered to the
20 defendant TOGO. Reference is made to two prosecution
21 documents which have been introduced as exhibits,
22 as follows:

23 Prosecution document No. 2869, exhibit
24 No. 1455, a summary of the testimony reported to
25 the Judge Advocate General of the United States on

1 this atrocity, was introduced on 12 December 1946
2 and is quoted in part at pages 12,669 to 12,672 of
3 the record.

4 Prosecution document No. 10-V, exhibit No.
5 1485, a copy of the protest transmitted by the
6 Swedish Legation to the Japanese Foreign Minister,
7 dated 19 May 1945, based on the Palawan Massacre,
8 was introduced on 13 December 1946 and is quoted in
9 part, its first two paragraphs, at pages 12,814 to
10 12,817 of the record. The last two paragraphs of
11 this protest read as follows:

12 The first two paragraphs, I take it, may
13 be before the Court, the first part of the protest
14 on Palawan, exhibit 1485, in which the State Depart-
15 ment calls attention to the massacre of December 14,
16 1944 of one hundred fifty American prisoners of war
17 at Puerto Princessa. I will not re-read those para-
18 graphs unless the Court would care to have them re-
19 peated.

20 THE PRESIDENT: There is no need to repeat
21 it.

22 CAPTAIN ROBINSON: At page 2 of this pro-
23 test, parts not read into the transcript are the
24 following paragraphs:

25 "About forty prisoners succeeded in escaping

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1 from the compound by throwing themselves over a
2 fifty-foot cliff onto the beach below. Landing barges
3 patrolling the bay and sentries on the shore fired
4 upon them. Many moaning in agony were buried alive
5 by their captors. One, who had reached the water
6 and struck out to sea, was recaptured and brought
7 back to land where Japanese soldiers, prodding him
8 with bayonets, forced him to walk along the beach.
9 A Japanese guard poured gasoline upon the prisoners
10 foot and set fire to it. Ignoring his entreaties
11 that he be shot the Japanese soldiers deliberately
12 set fire to his other foot and to both his hands.
13 They mocked and derided him in his suffering and
14 then bayoneted him until he collapsed. Thereupon
15 they poured gasoline over his body and watched the
16 flames devour it.

17 "Such barbaric behaviour on the part of
18 the Japanese armed forces is an offence to all
19 civilized people. The Japanese Government cannot
20 escape responsibility for this crime. The United
21 States Government demands that appropriate punish-
22 ment be inflicted on all those who directed or par-
23 ticipated in it. It expects to receive from the
24 Japanese Government notification that such punish-
25 ment has been inflicted. The United States Govern-

1 ment further demands that the Japanese Government
2 take such action as may be necessary to forestall
3 the repetition of offenses of so heinous a nature
4 and assure the United States Government that such
5 outrages will not again be inflicted upon American
6 prisoners of war in Japanese custody.

7 "GREW

8 (Acting)"

9 Prosecution document No. 8454, a protest
10 and note with a declaration of delivery by the Swiss
11 Legation to the defendant TOGO, dated 3 and 4 June,
12 1945. This protest, note and declaration are offered
13 in evidence.

14 THE PRESIDENT: Admitted on the usual terms.

15 We will recess for fifteen minutes.

16 (Whereupon, at 1445, a recess was
17 taken until 1500, after which the proceed-
18 ings were resumed as follows:)

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1 MARSHAL OF THE COURT: The Tribunal is now
2 resumed.

3 THE PRESIDENT: Captain Robinson.

4 CAPTAIN ROBINSON: Mr. President and Members
5 of the Tribunal, I understood that document 8454 was
6 admitted at the close of the last session, but I
7 did not get the exhibit number assigned by the Court.

8 CLERK OF THE COURT: Prosecution's docu-
9 ment No. 8454 will receive exhibit No. 2107.

10 (Whereupon, the document above
11 referred to was marked prosecution's
12 exhibit No. 2107 and received in evidence.)

13 CAPTAIN ROBINSON: This document, page 1,
14 reads as follows:

15 "Legation de Suisse

16 "Au Japon . . .

17 "Declaration

18 "The note" and so forth "dated June 3rd
19 1945, copy of which is hereto attached, containing
20 a notification of the United States government for
21 the Japanese government, as communicated to the
22 Legation of Switzerland in Tokyo by the Division for
23 Foreign Interests in Berne with their cable no. 423
24 and pertaining to the treatment of American prisoners
25 of war in Puerto Princesa, Palawan (Philippine Islands),

1 was handed over personally by the Minister of Switzer-
2 land, to H. E. Mr. Shigenori TOGO, Minister for
3 Foreign Affairs, at his private home in Karuizawa,
4 on Sunday, June 3rd 1945, at 3 p.m.

5 "Karuizawa, June 5th, 1945."

6 At page 2:

"June 4, 1945

7 "Pursuant to its note of May 30th last
8 concerning the massacre of 150 American prisoners
9 of war at Puerto Princesa, Palawan, the Swiss Lega-
10 tion has the honour to inform the Imperial Ministry
11 of Foreign Affairs that the government of the USA
12 has requested the federal authorities to present to
13 the Imperial Government the following notification:

14 "The United States government refers to
15 its protest regarding the massacre of 150 prisoners
16 of war at Puerto Princesa, Palawan, Philippine
17 Islands and further charges the Japanese government
18 in its administration of that camp that it has most
19 shamefully violated its commitment to apply to
20 American prisoners of war in its custody the humani-
21 tarian standards of the Geneva Prisoners of War
22 Convention. During their incarceration in the camp,
23 the prisoners were subjected to the following mis-
24 treatment."

25 I omit the nine paragraphs, down to the

1 last paragraph on page 3, of the quoted portion.

2 "The United States government repeats that
3 it expects the Japanese government to impose upon
4 those responsible for the maltreatment of American
5 prisoners of war the punishment which their criminal
6 behaviour merits and demands that the Japanese govern-
7 ment take all necessary steps to compel its subjects
8 to fulfil the obligations assumed by it to accord
9 humane treatment to prisoners of war. The United
10 States government expects an early reply by the
11 Japanese government as to the action taken by it to
12 punish the individuals responsible of the brutal
13 acts described herein and the measures it has taken
14 to prevent similar acts of cruelty in camps in which
15 American nationals are detained."

16
17 Prosecution document No. 8457, a note from
18 the Swiss Legation to the Japanese Foreign Minister,
19 dated 7 June 1945, is offered in evidence.

20 THE PRESIDENT: Admitted on the usual terms.

21 CLERK OF THE COURT: Prosecution's docu-
22 ment No. 8457 will receive exhibit No. 2108.

23 (Whereupon, the document above
24 referred to was marked prosecution's
25 exhibit No. 2108 and received in evidence.)

CAPTAIN ROBINSON: This note reads as

1 follows:

2 "Karuizawa 6 June 1945. . ."

3 "My dear Minister,

4 "The first of June I forwarded to you by
5 Mr. Bossi, Legation Attache at Tokyo, a notifica-
6 tion from the government of the United States of
7 America addressed to the Imperial Government con-
8 cerning the deaths of 150 American prisoners of war
9 at Puerto Princesa, Palawan.

10 "In the meantime, I have received a second
11 notification from the government of the United
12 States concerning the treatment of the prisoners of
13 war in that camp at Puerto Princesa. As I was to
14 meet Mr. TOGO Sunday, I took advantage of that oppor-
15 tunity to personally give him the second complaint
16 of the government of the United States. I explained
17 to him that I had sent the first protest to you."
18 And so forth.

19 "With my best regards, my dear Minister."

20 Addressed to His Excellency, Minister
21 Tadakazu SUZUKI, Imperial Ministry for Foreign
22 Affairs, and so forth.

23 The same announcement as made before is
24 that the SUZUKI mentioned here is not the accused
25 SUZUKI.

BOGUE

DIRECT

1 Q How long have you been in the United States
2 Marine Corps?

3 A Approximately eleven years.

4 Q Were you a prisoner of the Japanese?

5 A Yes.

6 Q During what -- when and where were you
7 captured?

8 A I was captured on Corregidor May 6, 1942,
9 at the surrender of the Philippines.

10 Q And when and where were you liberated?

11 A I escaped at Puerto Princesa, Palawan, in
12 the Philippine Islands on the 14th December 1944.

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BOGUE

DIRECT

1 Q During what periods and at what places were
2 you held a prisoner of the Japanese?

3 A I was first taken prisoner 6 May 1942 on
4 Corregidor, where I remained until approximately the
5 29th of May 1942, when I was taken to Manila from
6 29 May 1942 until approximately the 2d or 3d of June
7 1942. That includes a period en route from Corregidor
8 to Manila; my few days in Manila before being trans-
9 ferred to Cabanatuan. I arrived at Cabanatuan on
10 approximately the 5th of June, where we detrained; was
11 taken to Camp No. 3 just outside of Cabanatuan about
12 twenty kilometers, where I remained until approximately
13 the end of July 1942, and was then sent to Puerto
14 Princesa, Palawan. I arrived on the island of Palawan
15 at Puerto Princesa approximately the 5th of August
16 1942. I remained at Puerto Princesa, Palawan, until
17 14 December 1944, on which date I escaped.

18 Q Were you wounded at any time prior to
19 14 December 1944?

20 A Not in combat.

21 Q Did you have occasion to observe the provi-
22 sions for prisoners of war with respect to medical
23 facilities as provided by the Japanese?

24 A Yes, I had a very good chance for direct
25 observation.

BOGUE

DIRECT

1 Q At what places?

2 A At Corregidor, Cabanatuan, and Palawan.

3 Q Will you describe the situation at Corregidor?

4 A Troops that were wounded in combat on Cor-
5 regidor after -- during and after the occupation of
6 the Japanese were very fortunate if they received any
7 medical treatment. By that I mean that those that were
8 fortunate were those that were wounded during the
9 actual fighting and were taken into the hospital.
10 Those who were not taken into the hospital but were just
11 gathered in aid stations or their wounds were not of
12 a serious enough nature to be taken into the hospital,
13 like small shrapnel wounds or bullet wounds in the arm
14 or in the leg, these men were rounded up along with
15 the other prisoners and confined in the 92d Garage
16 Area.

17 That was on Corregidor. The only aid that
18 these men received was from the corps men or the medics
19 who had their first aid packets with them, and some of
20 the doctors who were in outlying aid stations with these
21 meager supplies were able to render whatever aid they
22 possibly could.

23 As to my knowledge, no Japanese supplies or
24 American supplies confiscated by the Japanese were
25 given these doctors to help the American wounded

BOGUE

DIRECT

1 Q At what places?

2 A At Corregidor, Cabanatuan, and Palawan.

3 Q Will you describe the situation at Corregidor?

4 A Troops that were wounded in combat on Cor-
5 regidor after -- during and after the occupation of
6 the Japanese were very fortunate if they received any
7 medical treatment. By that I mean that those that were
8 fortunate were those that were wounded during the
9 actual fighting and were taken into the hospital.
10 Those who were not taken into the hospital but were just
11 gathered in aid stations or their wounds were not of
12 a serious enough nature to be taken into the hospital,
13 like small shrapnel wounds or bullet wounds in the arm
14 or in the leg, these men were rounded up along with
15 the other prisoners and confined in the 92d Garage
16 Area.

17 That was on Corregidor. The only aid that
18 these men received was from the corps men or the medics
19 who had their first aid packets with them, and some of
20 the doctors who were in outlying aid stations with these
21 meager supplies were able to render whatever aid they
22 possibly could.

23 As to my knowledge, no Japanese supplies or
24 American supplies confiscated by the Japanese were
25 given these doctors to help the American wounded

BOGUE

LIRECT

prisoners of war there.

1
2 Most of these men's wounds continued to get
3 worse. Some, just through the men's own resistance,
4 got better. And upon about two days after the surrender
5 on Corregidor, I myself became too weak to do much
6 because I was overtaken by dysentery. And a Dr. Wade,
7 who was a medical doctor of the United States Navy,
8 he had an aid station set up in what was left of the
9 92d Garage. So I went to see Dr. Wade, and he told me
10 that the only way I could receive any medical attention
11 was to help carry some of the wounded, more seriously
12 wounded, up to the hospital where they were allowing
13 some of them to be admitted. By so doing, when I got
14 up to the hospital I mentioned my condition to a United
15 States Army doctor there who told me that he would give
16 me an examination and see just how bad my condition was.
17 Upon finding I had amoebic dysentery, I was turned in
18 to the hospital where they told me that no Japanese
19 troops were allowed to come in except those inspecting
20 the hospital itself, and that no supplies other than
21 those on hand were available.

22 While in this hospital, I seen the conditions
23 of wounded men. They were fairly well taken care of
24 there because of American medical supplies that they
25 had on hand. But the hospital itself was overcrowded,

BOGUE

DIRECT

1 very poor ventilation as it was in a tunnel, and the
2 men -- there was a considerable high death rate. The
3 food that was distributed there for the sick and wounded
4 was of a very meager nature for -- since the Japanese
5 had taken over the island.

6 Q Do you know of American requests being made
7 to Japanese authorities for better medical facilities
8 at that place and time?

9 A Prior to going to the hospital, Dr. Wade told
10 me that he had made continual requests to the
11 Japanese for medicines to stop the increase of dysentery
12 and that he had received no response.

13 Q Passing to Cabanatuan, would you describe pro-
14 visions there in the way of medical facilities for
15 prisoners of war?

16 A When we arrived at Bilibid Prison in Manila --
17 it had been used as a prisoner of war camp since Manila
18 was occupied by the Japanese, and they had somewhat of
19 a hospital or hospital area there. One of the build-
20 ings was used as a hospital there at Bilibid. I had
21 no chance to see this hospital in operation because I
22 was only there a couple days and we were rushed by train
23 from Manila to Cabanatuan. But some of these men that
24 were transferred with me to Cabanatuan were in such
25 a weak condition from re-attacks of malaria and

BOGUE

DIRECT

1 dysentery and due to the jammed quarters of these
2 box cars and the fact that we weren't fed for twenty-
3 four hours upon our arrival at Cabanatuan, when we
4 were detained there were two or three men who had
5 died en route. I did not see these men's bodies
6 removed from the box cars. I presume they was left
7 right in there.

8 We were taken to a stockade by a school
9 house in Cabanatuan where we were given a meager
10 meal of dirty rice, no soup, and were left to lay
11 on this stockade with no shelter overnight in an
12 intense rain. The next morning we were formed on
13 a road and marched twenty kilometers to Camp No. 3
14 outside of Cabanatuan which had been a Philippine
15 constabulary training camp.

16 There were two men who were with me. One
17 man, a Corporal Wood of the Marine Corps, had received
18 a shell fragment in his left shoulder and up to that
19 time had received no medical attention, which caused
20 the wound to abscess and become very inflamed; and,
21 with this shoulder, he was still forced to make this
22 twenty-kilometer hike to Camp No. 3.

23 Q At Palawan, Sergeant, what provisions were
24 made for the American prisoners of war with respect
25 to medical facilities?

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BOGUE

DIRECT

1 A The only medical supplies the Japanese
2 furnished while at Palawan was quinine and some
3 lotions for the feet due to the fact that very few
4 shoes were available and the men's feet were con-
5 stantly breaking out with ulcers and sores; and as
6 malaria was quite common there, quinine was furnished,
7 and when asked why the Japanese were furnishing the
8 quinine, the interpreter said that "We must get this
9 work done so we must keep you prisoners well."

10 Q Was there a Japanese hospital there?

11 A One of the buildings had been taken over
12 by the Japanese and made into a hospital with a large
13 red cross painted on the top; but this was solely
14 used for and by the Japanese.

15 Q What hospital facilities were provided for
16 the American prisoners of war?

17 A There was a small room right at the entrance
18 to the compound which was designated as the sick bay
19 and dispensary.

20 Q With regard to doctors, were Japanese doctors
21 provided or American doctors?

22 A Upon our arrival at Palawan we had two
23 American doctors, a Dr. Hickman and a Dr. Mango.
24 As Dr. Hickman was transferred from Palawan in September,
25 1944, Dr. Mango remained.

BOGUE

DIRECT

1 Q Did he provide medical attention for the
2 American prisoners of war?

3 A The two American doctors were the only --
4 besides two or three medics, also American, were
5 the only source of medical attention available for
6 the Americans.

7 Q What was the work in which you were engaged
8 at Palawan?

9 A Our work at Palawan was to build a military
10 airstrip.

11 Q Of what did that work consist?

12 A It consisted of clearing out the area on
13 this Puerto Princesa peninsula there in intense
14 jungle with no tools other than picks, shovels,
15 mattocks, and a few trucks -- no other machinery
16 or mechanized equipment. Our work would begin early
17 in the morning until late in the evening. The
18 jungle was -- well it was very dangerous to work
19 in this jungle due to the fact that malaria was
20 prevalent and we had no clothes -- did not have the
21 proper clothes, food or shoes to protect us. The work
22 was also very dangerous due to the fact that there
23 was considerable number of trees on this area which
24 had to be cut down; and there was several times when
25 there was -- it was just by sheer luck that nobody

BOGUE

DIRECT

1 was crushed to death from these falling trees.

2 Gradually, as we got the jungle cleared
3 out, we were forced to work in the open in a blazing
4 hot sun from the morning -- from the time we went
5 to work in the morning until the time we quit at
6 night. Some days it all -- it would all depend on
7 which commander was in charge, we would be allowed
8 a five-minute break every hour, other times a fifteen-
9 minute break, once in the morning and once in the
10 afternoon. If at any other time a man tried to
11 raise up for a few minutes rest, he was severely
12 beaten by the Japanese guards.

13 We also received approximately one canteen
14 of water for one day. The food consisted of approx-
15 imately half a level American mess kit of rice with
16 some watery -- salt watery green soup. After we
17 had the field somewhat ready for planes, we were
18 then -- we then started construction on defense
19 measures for the field which consisted of building
20 the revetments for the planes, dugouts and gun
21 positions for the troops.

22 Q When did the bombing attacks begin at
23 Palawan?

24 A On October 19, 1944.

25 Q Were prisoners assigned to work in connection

BOGUE

DIRECT

1 with those attacks?

2 A I don't quite understand that question.

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BOGUE

DIRECT

1 Q The prisoner Stedham -- was there a priso-
2 ner there named Stedham?

3 A Yes, sir.

4 Q Was he injured in the course of work assigned
5 to him at Palawan?

6 A Yes, he was. Our work did not stop due
7 to the American air raids at this point. We con-
8 tinued to work on the air field during the actual
9 air raids and the interval between. It was during
10 one of these raids when we were caught out on the
11 air strip that Stedham was injured. He received
12 a hit in the back of the head from either a bomb
13 fragment or a rock, which caused a large gash across
14 the base of his skull, completely paralyzing his
15 body. He was brought into the compound, where
16 Doctor Mango and a Japanese doctor looked over his
17 wounds.

18 The Japanese doctor told Doctor Mango that
19 he must do what he can, as the Japanese medical
20 supplies were very meager and they were very sorry
21 that they was unable to help; so Doctor Mango made
22 his own tools outside of a pair of forceps and a
23 scalpel, and by opening the wound, Stedham's wound,
24 and probing a little bit every day he was gradually
25

BOGUE

DIRECT

1 getting feeling back to Stedham's body. During
2 these treatments by Doctor Mango, on Stedham no
3 anesthetic was used.

4 Previously a Corporal McDole, of the United
5 States Marine Corps, was stricken with appendicitis.
6 After it was quite apparent to the Japanese doctor,
7 who would check McDole every day to see if he was
8 getting better or worse, that it was an acute attack
9 of appendicitis, he told Doctor Mango that he must
10 operate. Doctor Mango was very glad to hear this.
11 They also permitted McDole to be taken to Iwahig,
12 to be assisted by a Filipino doctor who was there,
13 but when the actual operation was about to be per-
14 formed Doctor Mango discovered he must operate with
15 one small light, which the electricity was furnished
16 by a very small motor, one scalpel, and a few for-
17 ceps that had not been used in quite sometime, and
18 no anesthetic. Even with these handicaps Doctor
19 Mango, after talking it over with McDole, agreed
20 to proceed with the operation. The operation took
21 approximately three and a half hours, and after the
22 operation, that is, after the appendix had been
23 removed, Doctor Mango was forced to use abaca fibre
24 to sew up the incision. A few days later after this
25 operation McDole was again returned to the compound

BOGUE

DIRECT

1 at Puerto Princesa. Doctor Mango performed three
2 of these operations successfully.

3 Q With respect to disciplinary action, what
4 did you observe on the part of the Japanese
5 authorities?

6 A While at Camp No. 3 in Cabanatuan there
7 was four American prisoners of war picked up on the
8 road leading to Camp No. 3 by some Japanese guards
9 in a truck. They were brought out on the road to
10 Camp No. 3 and immediately tied so that -- with a
11 pole passing under their knees and their arms inter-
12 locking it, so that they could neither sit nor lie
13 down but could only remain in a squatted position.
14 These men were told that they were being punished
15 for trying to escape. As to whether they were try-
16 ing to escape or not, I don't know their intentions.
17 Whenever one of these men fell over from the squat-
18 ting position, the Jap guard watching them would
19 continually beat him until he managed to crawl back
20 up on to his feet.

21 The American officers tried to find out
22 from the Japanese camp commander exactly how long
23 this torture must continue or what they intended to
24 do with these four men. The Japanese commander
25 replied that he had contacted Manila for further

BOGUE

DIRECT

1 orders as to their disposition. After two days of
2 this torture they were marched out just behind the
3 main camp area, visible to almost all men in the
4 camp, where four very shallow graves had been dug.
5 They were forced to stand in the ends of these graves,
6 and shot. They were then covered up and the graves
7 were left unmarked.

8 On Palawan four men had been caught supposed-
9 ly talking to the natives and for having several
10 cans of corned beef in their possession that the
11 Japanese claimed had been stolen from the store room.
12 These men were thrown into a cell and they were left
13 without food or water for two days. Then, without
14 trial, they were forced to hug a coconut tree, and
15 while so doing, a Japanese would stand behind with
16 with a wire whip approximately three feet long and
17 severely lash him with all his strength across the
18 center of the back. This lashing continued until
19 the Japanese could swing no more. Another Japanese
20 then stepped up with a pole approximately six feet
21 in length and maybe two to three inches in diameter
22 and severely beat the men across the buttocks until
23 they too could swing no more.
24

25 THE PRESIDENT: Beat what men across the

BOGUE

DIRECT

1 buttocks until they too could swing no more?

2 THE WITNESS: These four men that had been
3 accused of talking to the Filipinos and stealing
4 corned beef from the Japanese store room.

5 BY CAPTAIN ROBINSON (Continued):

6 Q Who were these men?

7 A They were four of the American prisoners
8 of war there.

9 Q You witnessed the beating, did you?

10 A I did.

11 THE PRESIDENT: We will adjourn now until
12 half-past nine tomorrow morning.

13 (Whereupon, at 1600 an adjournment was
14 taken until Wednesday, 15 January 1947, at 0930.)
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15 JANUARY 1947

I N D E X
Of
WITNESSES

<u>Prosecution's Witnesses</u>	<u>Page</u>
Bogue, Douglas William (resumed)	15221
Direct by Captain Robinson (cont'd)	15221
Cross by Mr. Logan	15241
" " Mr. Blewett	15258
" " Mr. Brooks	15264
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I N D E X
Of
EXHIBITS

<u>Doc.</u> <u>No.</u>	<u>Pros.</u> <u>No.</u>	<u>Def.</u> <u>No.</u>	<u>Description</u>	<u>For</u> <u>Ident.</u>	<u>In</u> <u>Evidence</u>
8487	2109		Sketch by Sergeant Bogue, U.S. Marine Corps, of POW Camps at Puerto Princesa, Palawan Island, dated 14 December 1944		15228

I N D E X

O f

E X H I B I T S

(cont'd)

<u>Doc. No.</u>	<u>Pros. No.</u>	<u>Def. No.</u>	<u>Description</u>	<u>For Ident.</u>	<u>In Evidence</u>
8350	2110		Affidavit of Rufus W. Smith, Sworn to on 20 September 1946		15279
8258	2111		Sworn Statements of William J. Balchus, Edwin A. Petry, Corporal Eugene Nielsen and Sergeant Al- berto Pacheco, sworn to on 17 March 1945		15280
8260	2112		Affidavit of Fern Joseph Barta, Radioman, 1/c, USN, sworn to on 13 February 1945		15280
2772-I-1 2113			Affidavit of Jullien Remy		15295
2772-I-2 2114			Affidavit of Coudox, Jean Francois	15298	
2772-I-2 2114-A			Excerpts therefrom		15298
2772-J-1 2115			Affidavit of Madame Veuve Bertrand		15301
2772-E-1 2116			Affidavit of Monnet, Jeanne	15303	
2772-E-1 2116-A			Excerpts therefrom		15303

1
2 Wednesday, 15 January 1947

3 - - -

4
5 INTERNATIONAL MILITARY TRIBUNAL
6 FOR THE FAR EAST
7 Court House of the Tribunal
8 War Ministry Building
9 Tokyo, Japan

10 The Tribunal met, pursuant to adjournment,
11 at 0930.

12 Appearances:

13 For the Tribunal, same as before with
14 the exception of: HONORABLE JUSTICE, JU-AO MEI,
15 Member from the Republic of China, not sitting.

16 For the Prosecution Section, same as before.

17 For the Defense Section, same as before.

18 - - -

19 (English to Japanese and Japanese
20 to English interpretation was made by the
21 Language Section, IMTFE.)
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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now resumed.

3 THE PRESIDENT: All the accused are present
4 except OKAWA, ARAKI, MATSUI and TOGO, who are repre-
5 sented by their counsel. We have a certificate from
6 the surgeon of Sugamo Prison stating that MATSUI,
7 TOGO and ARAKI are still ill and unable to attend
8 the trial today. The certificate will be recorded
9 and filed.

10 CAPTAIN ROBINSON: Mr. President, Members
11 of the Tribunal.

- - - -

12
13
14 D O U G L A S W I L L I A M B O G U E, called
15 as a witness on behalf of the prosecution, resumed
16 the stand and testified further as follows:

DIRECT EXAMINATION (Continued)

BY CAPTAIN ROBINSON:

19
20 Q On the morning of 14 December 1944, how many
21 American prisoners of war were there at Palawan?

22 A One hundred fifty.

23 Q To what service branches did they belong?

24 A There was 100 soldiers in the United States
25 Army, approximately fifteen of the United States Navy,
and about thirty-five United States Marines.

BOGUE

DIRECT

1 Q How many died on that day?

2 A About 141.

3 Q What caused their deaths?

4 A They were killed by approximately 70 to 80
5 Japanese soldiers and sailors.

6 Q By what means?

7 A By shooting with rifles and machine guns,
8 bayoneting, clubbing, killed with dynamite, hand
9 grenades and ignited gasoline.

10 Q Where were the killings committed?

11 A Approximately 111 of the prisoners of war
12 were killed in the air raid shelter area of the prisoner
13 of war compound. Approximately 30 more were killed on
14 the beach below the compound and in the Puerto Princesa
15 Bay.

16 Q Where were you at the time of the killings?

17 A First I was in my air raid shelter in the
18 air raid area of the prisoner of war compound. I was
19 then later on the beach and later swimming across the
20 Bay to make my escape.

21 Q How many of the 150 of you escaped?

22 A Nine, I believe.

23 Q Did you and the other prisoners have any
24 warning of the attack?
25

A Not on that day but as early as 1942 the

BOGUE

DIRECT

1 American prisoners of war other than -- including
2 myself, in conversations with Japanese soldiers,
3 discussed the disposition of the American prisoners
4 of war. These Japanese soldiers informed myself and
5 others that if America lost the war we would be re-
6 turned to America but if Japan lost the war we would
7 all be killed. After my arrival along with other
8 prisoners of war at Palawan a Captain KINOSHITA, who
9 was then the commander of the prisoner of war camp at
10 Puerto Princesa, Palawan, in 1942 informed us that
11 he and his men would strike the prisoners of war like
12 Pearl Harbor if there was any trouble. In October of
13 1944, a few days after the first American air raids
14 at Puerto Princesa, in a conversation with a Japanese
15 cook with myself, this Japanese cook named HAYAKA told
16 me that if the Americans invaded Palawan all the
17 prisoners, American POWs, would be killed. Also a
18 corporal, Rufus Smith of the United States Marine
19 Corps, who was also a prisoner of war at Puerto
20 Princesa, told me that while he was on a working
21 party a YAMADA, who was in charge of this working
22 party, Japanese soldier, told him that if the Americans
23 invaded Palawan all the prisoners would be killed.
24 This conversation between Smith and YAMADA took place
25 approximately two weeks before the actual attack. In

BOGUE

DIRECT

1 a conversation between myself and a Japanese radio-
2 man stationed at Puerto Princesa, he told me, through
3 Japanese and broken English and signs, that the Japan-
4 ese commander at Puerto Princesa had been receiving
5 many, many messages from Manila concerning the POWs.
6 Many other prisoners at this camp had like conversa-
7 tions with Japanese guards and interpreters from 1942
8 until 14 December 1944 and they had told me their
9 conversations and vice versa.

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BOGUE

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1 Q Were you Americans the only prisoners of war
2 on Palawan?

3 A Yes.

4 Q And about how many Japanese service personnel,
5 Army, Navy or others were on Palawan?

6 A The combined Japanese forces to my knowledge
7 at Puerto Princesa and the surrounding area consisted
8 between 2500 and 3000.

9 Q Did the Japanese take any action which you
10 considered to have been preparations for such an
11 attack?

12 MR. LOGAN: I object to the form of that
13 question, your Honor. Also, it is leading.

14 THE PRESIDENT: Well, it is a leading question
15 undoubtedly, but I do not think it matters very much.
16 My Brothers and I do not share the same opinion as to
17 what is leading and what is not very often. At least
18 some of them do not agree with me about this, but
19 I do not see anything wrong. That question is leading,
20 but, in the circumstances, I don't think it ought
21 to be prevented.

22 A leading question is one, of course, which
23 suggests what the answer should be and it is never
24 allowed in examination in chief on a matter of importance.
25 But I wish counsel would avoid leading questions. They

BOGUE

DIRECT

1 waste a lot of time here and they are very easily
2 avoided.

3 Let him answer:

4 A The preparation that I know of was the
5 construction of our air raid shelters in such a
6 confined area and in such a manner as to make them
7 a trap for what was done on 14 December 1944.

8 Q Will you describe the matter to which you
9 refer?

10 A After October 19, 1944, which was the date
11 of the first air strike by Allied planes at Puerto
12 Princessa, Palawan, it became quite apparent that
13 shelter from these attacks was necessary. At first
14 the Japanese merely herded the prisoners of war under-
15 neath the constabulary barracks, which only had one
16 entrance but was above the ground and was no cover
17 from the actual air attacks. The American officers
18 at Puerto Princessa complained to the Japanese interpreters
19 that a better shelter was necessary and the interpreters
20 replied that they would take the matter up with their
21 Commander and let them know in a few days his answer.
22 The American officers also submitted by diagram their
23 idea on what was necessary for these air raid shelters,
24 which consisted of an open zig-zag trench right close
25 to the actual barracks where the POWs were quartered.

BOGUE

DIRECT

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5 construction of our air raid shelters in such a
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11 of the first air strike by Allied planes at Puerto
12 Princesa, Palawan, it became quite apparent that
13 shelter from these attacks was necessary. At first
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15 neath the constabulary barracks, which only had one
16 entrance but was above the ground and was no cover
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18 at Puerto Princesa complained to the Japanese interpreters
19 that a better shelter was necessary and the interpreters
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21 Commander and let them know in a few days his answer.
22 The American officers also submitted by diagram their
23 idea on what was necessary for these air raid shelters,
24 which consisted of an open zig-zag trench right close
25 to the actual barracks where the POWs were quartered.

BOGUE

DIRECT

1 The Japanese interpreters SABATA and TANAKA returned
2 their Commander's decision several days later. Their
3 Commander's decision was to build 3 separate shelters
4 in the same -- in a very confined area right next to
5 the barracks where the prisoners of war were quartered,
6 but these shelters must have an overhead covering and
7 only one entrance was permitted. 50 prisoners were
8 supposed to occupy each shelter. Lieutenant Knight,
9 United States Navy, and Captain Bruni, United States
10 Army and Lieutenant Mango, United States Army continually
11 haggled with the interpreters to speak to their Commander
12 that more entrances were necessary. The American
13 officers explained that more entrances were necessary,
14 both to get in in case of a sudden attack and also to
15 get out in case of any direct hits. Several days later,
16 the Japanese interpreters informed the American officers
17 that their Commander would permit two entrances to each
18 shelter.

19 Q Have you prepared a sketch to show the area
20 to which you have been referring and to which you will
21 refer in describing the attack?

22 A I have.

23 Q I hand you document, marked No. 8487, and
24 ask you to state whether that paper is an accurate
25 representation of your POW Camp No. 1C-A, showing

BOGUE

DIRECT

1 the air raid shelter area as it was on 14 December
2 1944.

3 A It is.

4 CAPTAIN ROBINSON: If the Court please,
5 prosecution document No. 8487 is offered in evidence.

6 THE PRESIDENT: Admitted on the usual terms.

7 CLERK OF THE COURT: Prosecution document
8 No. 8487 will receive exhibit No. 2109.

9 (Whereupon, the document above
10 referred to was marked prosecution's ex-
11 hibit No. 2109 and received in evidence.)
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BY CAPTAIN ROBINSON (Continued):

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Q On this document what does the "X" line or border represent?

A It represents a double barbed wire fence which encircled the complete compound, which is approximately seven feet high, and the two fences were about two feet apart.

Q On the left, or southeasterly side of the fence, what is indicated?

A A sharp cliff, with some underbrush descending to the beach, bordering Puerto Princesa Bay. This cliff is approximately fifty to sixty feet high.

Q On the top and right, or westerly side of the dotted squares and the solid circles, what do the pointer lines represent?

A Those squares are symbols representing Japanese riflemen, and the circles with the arrows extending from them represent Japanese machine gunners.

Q Through the central portion of the sketch, what do the eight diagonal shaded portions represent?

A They are the air raid shelters themselves. The numbers along the edge of each is the number of men who occupied these shelters.

Q Which shelter was yours?

BOGUE

DIRECT

1 A The square one with the opening in the
2 center in the upper left-hand corner.

3 Q Will you describe the construction and size
4 of the shelters and state who occupied them?

5 A These shelters were approximately four to
6 four and a half feet deep, and the shelter by the
7 staircase directly southeast of the barracks with the
8 "2" alongside -- this shelter had an overhead and a
9 very small entrance, and two men were in it named King
10 and Adams. In the right-hand side of the sketch this
11 air raid shelter contained approximately fifty men and
12 was about four to four and a half feet in depth, had a
13 very thick overhead which rose to about eighteen inches
14 above the ground, having one main entrance, circled with
15 rice bags filled with dirt. This shelter was for men
16 of "A" Company. The next shelter is slightly above and
17 to the left of "A" Company's shelter and was built
18 in the same manner, with a very small entrance in the
19 lower right-hand corner, and this shelter was for the
20 four American officers at this camp, Captain Fred T.
21 Bruni, Lieutenant Carl Mango, Lieutenant Knight, and
22 Warrant Officer Turner, and they were in this shelter
23 at the time of the attack. The two shelters marked
24 "B Company" and "C Company" to the left of the diagram
25 were built similiar to a trench, four to four and a half

BOGUE

DIRECT

1 feet in depth, with a thick overhead put over the
2 top, and two very small entrances were at each end.
3 Due to the length of these shelters and the depth, the
4 men had to sit bunched up, with their knees under
5 their chin in these shelters to get everybody under
6 cover. At one entrance of the "C" Company shelter,
7 between the galley and the "C" Company shelter, the
8 drawing there, with the name Stidham underneath, re-
9 presents a man who was wounded during an air raid on
10 the airport and who was paralyzed from this wound,
11 and during actual air raids he was carried on a
12 stretcher and placed near the entrance of this air
13 raid shelter, but due to the air raid shelter's size
14 the stretcher couldn't be carried inside, so during
15 the air raid that followed he was forced to lie on
16 the stretched exposed to the actual raids.

17 Q Mr. Witness, is he the same man about whom you
18 testified yesterday, in regard to his injury?

19 A He is. Directly south of "B" Company shelter
20 from the southern entrance is a square shelter with
21 a very small entrance, square entrance to the over-
22 head, where three men were sheltered. The shelter
23 itself was built similiar to the others, corresponding
24 to the others. These three men's names were Gabriel
25 Sierra, United States Army, Stephen Kozuch, United

BOGUE

DIRECT

1 States Marine Corps, and myself. The entrance to this
2 shelter was so small it only permitted one man to go
3 in or out at a time. The Japanese wouldn't permit a
4 larger entrance. The air raid shelter directly above
5 this one was built corresponding to the others exactly
6 and there were five men in it and the entrance was
7 also restricted to such a size that only one man
8 could get in or out at a time. The remaining shelter
9 was also constructed to specifications of the other
10 shelters, with the entrance being made just large
11 enough for one man to get in or out at a time.

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1 Q Will you describe what happened in or near
2 this area on 14 December, 1944.

3 A At 1400, 14 December, 1944 all prisoners of
4 war at Puerto Princesa were gathered in this air
5 raid shelter area. They had been brought in from
6 working on the airfield at noon that day. The
7 Japanese guards permitted no one to leave this area
8 for any reason between noon and 1400 of that day.

9 Just prior to 1400 Japanese soldiers, in-
10 cluding riflemen and some armed with machineguns,
11 approached the outer fence of the air raid shelter
12 area and took up positions corresponding to those
13 on the diagram. A Lieutenant SATO of the Japanese
14 Army was in command of the forces guarding the Ameri-
15 can prisoners of war at this area at this particular
16 time.

17 At approximately 1400, while sitting out-
18 side the air raid shelters, myself along with
19 several others noticed two American P-38's circling
20 overhead at about ten to twelve thousand feet.
21 Lieutenant SATO and the Japanese guards then began
22 yelling and ordering all American prisoners to get
23 in their air raid shelters and keep their heads
24 down below the level of the entrances, with the
25 excuse that there was hundreds of American planes

BOGUE

DIRECT

1 coming to bomb. This is the first time that the
2 Japanese were so concerned about our getting com-
3 pletely under cover or under cover at all in case
4 of an air raid. The two men with me in our shelter
5 mentioned the fact that this might be the actual
6 invasion of Palawan, and it would be best to obey
7 so as not to get the guards nervous and start
8 shooting.

9 No sooner had we got under cover when I
10 heard a dull explosion and incessant yelling and
11 laughing and the shooting of machineguns and rifles.
12 I immediately stuck my head out of the entrance of
13 m^r shelter to see what was taking place. The
14 first thing I saw was a black pillar of smoke
15 coming from the entrance of A Company shelter. In
16 the few seconds that I had my head up, I was able
17 to see the following events:

18 It appeared to me that approximately fifty
19 to sixty Jap soldiers, armed with rifles, hand
20 grenades, light machineguns and buckets containing
21 gasoline, with torches, were attacking this A
22 Company shelter. With these buckets of gasoline
23 they were thrown into the entrance of A Company
24 shelter, then a lighted torch was thrown in to
25 ignite the gasoline; and, as the men were forced

BOGUE

DIRECT

1 to come out on fire, they were bayoneted or shot or
2 clubbed or stabbed. I saw several of these men
3 tumbling about, still on fire, and falling from
4 being shot.

5 Some of the other Japanese of the attacking
6 force branched off and attacked the entrances of
7 C Company -- northeast entrance of C Company
8 shelter and the north entrance of B Company shelter.
9 Due to the confined space, the whole attack was
10 visible at a glance. I saw several Japanese
11 shooting and stabbing with their bayonets directly
12 above or where Stidham, who was lying helpless on
13 a stretcher, should be.
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1 I saw who I presumed to be Dr. Mango with
2 his clothes smouldering, staggering towards the Japs
3 with his arms outstretched, get mowed down by a
4 Japanese soldier with a light machine gun. Other
5 American prisoners of war who were coming out of
6 these small entrances were being shot and falling
7 while trying to run towards the fence above the
8 cliff.

9 The Japanese soldiers participating were
10 yelling and in such a manner that it seemed to me as
11 if they were enjoying their task. This Lieutenant
12 SATO was running about with his sword out, giving
13 orders, urging his men on.

14 Before I withdrew my head the Japanese
15 guards outside the fence had commenced firing a graz-
16 ing fire over the entrances that the Japanese attack-
17 ing force had not yet attacked, in an effort to keep
18 the men down until the attacking force could get to
19 them and mop them up.

20 I told Sierra and Kozuch, who were in the
21 same shelter as I, what was taking place and that
22 our only escape was out the entrance one at a time
23 and try to get through the fence above the bluff and
24 get down on the beach. I then quickly emerged from
25 the entrance of my shelter and somehow scrambled

BOGUE

DIRECT

1 through the double barbed wire fence. Hanging on
2 the bluff I yelled back to Sierra and Kozuch that
3 they could make it now. In the few seconds that I
4 was exposed I was hit by a bullet in the right leg.
5 Kozuch was next to try, and Sierra was directly behind
6 him. Both of these men were shot down hanging partly
7 through the fence and lying across the shelter. I
8 could see the bullet holes in Kozuch's back as he
9 was hanging through the wire.

10 A number of other men were scrambling down
11 this cliff from C Company shelter where they had a
12 previously arranged escape hatch. This escape hatch
13 was made due to the indications that we had received
14 through conversation and events with the Japanese
15 that just such a thing might take place.

16 At the southern entrance of B Company shelter
17 I saw one man crawl -- manage to crawl under the
18 barbed wire fence and tumble down the bluff. I then
19 let go of the bluff and scrambled down the cliff to
20 the water's edge.
21

22 Upon arriving at the water's edge I noticed
23 two bodies of American prisoners of war lying face
24 down, half in the water, shot through the back. The
25 Japanese participating in the attack were standing
along the barbed wire fence above the bluff and

BOGUE

DIRECT

1 shooting at the men who had managed to get over the
2 bluff, either through the fence or through the
3 escape hatch.

4 It was then that I was joined by two other
5 prisoners named Ayres and Hale. I told them I was
6 going to follow up close to the rocks on the beach,
7 around to the southwest by the dock area and try to
8 get into the underbrush, circling from there into
9 the jungle. Neither Ayres nor Hale agreed with my
10 plan and attempted to swim the bay but were -- Hale,
11 after swimming approximately thirty yards from shore
12 was brought under fire by the Japanese on the bluff
13 and after a few shots struck the water alongside of
14 him he was hit, rolling over on his back, saying,
15 "They got me," and drowned.

16 THE PRESIDENT: We will recess for fifteen
17 minutes.

18 (Whereupon, at 1045, a recess
19 was taken until 1100, after which the pro-
20 ceedings were resumed as follows:)
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BOGUE

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MARSHAL OF THE COURT: The Tribunal is now resumed.

BY CAPTAIN ROBINSON (Continued):

Q Mr. Witness, will you continue?

A After seeing Ayres and Hale get killed I proceeded around the rocks towards the dock area I had previously had in mind, and after proceeding fifty to a hundred feet the rocks ended and I stumbled upon three Japanese sailors, which I recognized by the anchor on their cap, attempting to set up a Lewis gun to cover the path which I had just come over. I had no alternative but to jump these three Japanese sailors in an attempt to get this machine gun away from them.

We finally fought out into the water, where, due to their weight, I fell under the water and remained under the water, holding them under with me, forcing them finally to release their hold on the gun and on me, and they attempted to return to the beach.

Coming out of the water myself, I pulled the actuator back on the Lewis gun and managed to kill these three Japanese sailors. But seeing another machine gun being set up a little further

BOGUE

DIRECT

1 down the beach, I was forced to return the way
2 I had come, in an effort to find a hiding place
3 among the rocks. In order to get in a small
4 crevice that I found, I was forced to throw the
5 machine gun into the water. While in this crevice
6 I could easily discern the difference between
7 the Japanese hollering and laughing and the
8 Americans' screams being killed. I could also
9 smell the burning flesh and the odor of dynamite.

10 A short time later a Japanese landing barge
11 patrolled within a few feet of the rocks in an
12 effort to find or locate any prisoners who had
13 managed to get to them, and upon finding them,
14 they would be shot from the barge. Patrols con-
15 tinued to comb the rocks and the beaches for the
16 rest of the day, and about 2100, or 9 p. m., that
17 night myself, along with four others, swam the
18 bay and managed, after a few days in the jungle,
19 to join up with the Filipino guerillas.

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21 CAPTAIN ROBINSON: You can question the
22 witness.

23 MR. LOGAN: If the Tribunal please.
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BOGUE

CROSS

1 CROSS-EXAMINATION

2 BY MR. LOGAN:

3 Q Sergeant, at the time you were captured
4 at Corregidor was the supply of medicines of the
5 United States Army very well exhausted?

6 A I was in no direct position to know of the
7 exact amounts of supply that the Americans had on
8 hand at Corregidor at that time other than the fact
9 that it was impossible just prior to the surrender
10 to obtain any quantity of quinine or alcohol in
11 the field, that is, out other than right in the
12 Malinta Hospital, where I was at.

13 Q Do you have any knowledge as to whether or
14 not the Japanese supplied any medicines to the hos-
15 pital at Corregidor while you were there from
16 May 6 to May 29?

17 A Not in so many words, other than a Doctor
18 Holstein, of the United States Army, who was treat-
19 ing me for amoebic dysentery, told me that their
20 supply of Emetine, which I believe is the medicine
21 used to cure amoebic dysentery, was very, very low
22 and that there was no means to replenish this
23 supply.
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BOGUE

CROSS

1 Q By this do you mean that the Japanese
2 Army had no Emetine either?

3 A That he didn't say, sir.

4 Q Did you hear from anybody else as to whether
5 or not the Japanese Army at Corregidor had an
6 ample supply of drugs?

7 A I did not.

8 Q But you do know that the wounded who were
9 taken to the hospital were given the best atten-
10 tion possible while you were on Corregidor from
11 May 6 to May 29?

12 A I presume it was the best possible with
13 what they had. There seemed always to be con-
14 tinual complaining by the doctors and nurses that
15 there was shortages in the major medicines, that
16 is, of medicines and instruments and things that
17 we had most commonly used.

18 Q And the Japanese Army was also short of
19 these at that time, is that right?

20 A That I don't know except that the Japanese
21 told the American doctors there that they must
22 get by with what they had.
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BOGUE

CROSS

1 Q Now, would you say, Sergeant, that these
2 men who were not fortunate enough to go to the
3 hospital and were treated at these aid stations were
4 given the best attention possible under the circum-
5 stances?

6 A Does Mr. Logan mean before or after the
7 surrender?

8 Q Between May 6th and May 29th.

9 A As I was only outside of the Malinta Hos-
10 pital, and about two days after the surrender before
11 I was interned in Malinta Hospital, I could not say
12 as first-hand the conditions prevailing in those
13 aid stations from then on.

14 Q Was your own sickness two days after the
15 capture due to anything that the Japanese did to
16 you, or was that due to the last few days before
17 your capture?

18 A No. It was contracted somewhere on Bataan;
19 due to conditions of serving in the field, why, it
20 became serious at that time.

21 Q And between those dates of May 6th and
22 May 29th when there was a lack of food, was that
23 also due to the fact that the United States Army
24 had lost a great deal of its food in the last few days
25 of the fighting?

BOGUE

CROSS

1 A That, and not getting it to the men due
2 to the intensive shellings and bombings keeping
3 all roads blocked off from transporting food out
4 to the outlying positions.

5 Q In other words, Sergeant, the lack of food
6 during this time was due to state of disorder
7 that existed, and not to any plan on the part of
8 the Japanese, isn't that so?

9 A It all would depend more or less where you
10 was at. If you were near a chow dump, why, you
11 could get food. If you was not, why, there was no
12 effort made by the Japanese to see that you got any.

13 Q Were you able to get food at the place you
14 were at?

15 A If -- when I was on a working party, I was
16 furnished food which was American food, a couple of
17 cans of C-rations or something like that.

18 Q Was any effort made by the Japanese to see
19 that you got food between May 6th and May 29th?

20 A The first two days before -- after the sur-
21 render before I turned into the hospital, there was
22 no effort made by the Japanese to see that we would
23 either receive food or water; but, after being in
24 the Malinta Hospital, why, there was so much food
25 given to the hospital by the Japanese to feed the

BOGUE

CROSS

patients and personnel working there.

1 Q Was Bilibid Prison Hospital crowded?

2 A Not being in the hospital at that time, I
3 don't know.

4 Q Well, how about the prison itself, was that
5 overcrowded when you were there?

6 A When we arrived there, it was so crowded,
7 in order to sleep inside you had to sleep on top
8 of one another.

9 Q Was that one of the reasons why it was
10 necessary to relieve the congestion there that
11 you were taken up to Cabanatuan?

12 A To my knowledge, this was just a stop-over
13 for the night until we could be transported by trains
14 to Cabanatuan and the Philippine constabulary camp
15 there which had been prepared as a large POW camp
16 for further distribution of POW's into working parties.

17 Q With respect to these two men who died on
18 the train on the way up there, do you know from what
19 they died?

20 A I could not speak with the capacity of a
21 doctor, but it appeared to me that it was malaria
22 and dysentery.

23 Q Do you know if they had contracted that
24 prior to the surrender?
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BOGUE

CROSS

1 A Maybe the malaria, but the dysentery is
2 just as probable one way as another.
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1 THE PRESIDENT: The obligation is the same
2 no matter when contracted.

3 MR. LOGAN: If the Tribunal please, I am just
4 trying to find out if he contracted this while in the
5 hands of the Japanese or whether he contracted it
6 before.

7 THE PRESIDENT: It is immaterial when he
8 contracted it. The duty of the Japanese is the same.

9 MR. LOGAN: I think it makes a difference,
10 your Honor, if the Japanese did anything that caused
11 him to contract it.

12 Q While you were at Palawan you say you were
13 supplied with quinine and lotions for the feet. Did
14 you receive any other medical supplies while you were
15 there?

16 A From the Japanese, other than that foot
17 lotion and quinine, we received some gauze and adhesive
18 tape -- let me see. These were never of sufficient
19 quantity to take care of all the men. They were just
20 maybe one roll of bandage and one roll of adhesive
21 tape that was to last 150 men for a week, and when we
22 had more men, why, we received a little more.

23 Q Were these drugs supplied from the camp at
24 regular intervals by the Japanese?

25 A Every week one of the corpsmen would go over

BOGUE

CROSS

1 to the supply house -- be taken over, rather -- and he
2 would draw his one roll of bandage and one roll of
3 adhesive tape, maybe one bottle of foot lotion, and
4 enough quinine to be distributed to the men allowing
5 one tablet a day for that week or week or ten days
6 until they told him to come and get some more supplies.
7 No instruments, medical instruments, or drugs were ever
8 given to the Americans.

9 Q Do you know if the Japanese had the drugs or
10 instruments which the Americans needed?

11 A Due to the fact they had a separate building
12 used solely for the purpose of hospitalizing Japanese
13 troops only, and the fact that the Japanese doctor
14 there would continually converse with Dr. Mango on
15 medicines and tell of different sicknesses and wounds
16 and operations that he had performed and treated there
17 at Puerto Princesa on the Japanese, I would presume
18 that they had adequate equipment.

19 Q Now, when Stidham was injured and the Japanese
20 doctor told Dr. Mango that he must do what he could as
21 the Japanese medical supplies were very meager and
22 they were very sorry that they were unable to help,
23 do you know at that time that the Japanese had drugs
24 which Dr. Mango could have used for Stidham?

25 A Some time before that we received a Red Cross

BOGUE

CROSS

1 shipment, one shipment for the two and a half year period
2 we were there. Among this Red Cross equipment was one
3 or two boxes of medical supplies for the American POW's.
4 These two boxes before being given to the American doc-
5 tors had been opened by the Japanese and the drugs and
6 medical instruments removed, and the remainder given to
7 the Americans, which was discovered by the inventory
8 slip which came with each box of medical supplies; which
9 was conclusive to us that they not only had their own
10 but they had ours and had no intentions of rendering
11 any of them to us.

12 Q Was this before or after Stidham was injured?

13 A Before.

14 Q Do you know if any of those drugs were avail-
15 able, and still available, at the time Stidham was in-
16 jured?

17 A Due to the few men that were in the Japanese
18 hospital suffering from illness and wounds, it seemed
19 obvious that it all could not have been used up over
20 that period of time on such few men.

21 Q When this Japanese doctor told Dr. Mango that
22 the Japanese medical supplies were very meager, did
23 Dr. Mango do anything to try and check up on that?

24 A There was no way possible for him to check up
25 on that.

BOGUE

CROSS

1 Q Did Dr. Mango tell you that he believed that
2 to be the fact?

3 A I heard it through his discussion with Dr.
4 Knight and some of the other officers, because my bunk
5 was right next to the officers' quarters and it was only
6 separated by a very thin partition, and I could hear
7 their conversation.

8 Q Did you ever hear them saying anything about
9 believing this to be a fact?

10 A Dr. Knight mentioned that it was similar to
11 their saying that they were short on food when they re-
12 quested more rice and all the time there was two thousand
13 110 kilo sacks directly underneath the barracks we were
14 sleeping in.

15 Q When was it Stidham was injured?

16 A The exact date I do not know.

17 Q The approximate date.

18 A November sometime.

19 Q 1944?

20 A 1944.

21 Q Weren't the Japanese medical supplies being
22 exhausted by that time?

23 A That I don't know.

24 Q Do you know if they had any anesthetics in
25 the camp at the time Stidham was operated on by Dr.

BOGUE

CROSS

1 Mango?

2 A That I don't know.

3 Q When was McDole operated on?

4 A I believe it was around the first part of '44.

5 Q Do you know if the Japanese had any anesthetics
6 there at that time?

7 A That I don't know.

8 Q Did one of the Japanese doctors assist in the
9 operation of McDole?

10 A He merely looked on.

11 Q Did Dr. Mango operate on any Japanese?

12 A No.

13 Q Do you know if these four men who were executed
14 had stolen any of the food of which they were accused?

15 A Not knowing these men personally, merely ob-
16 serving their torture and execution, I heard several
17 stories concerning these four men, these four American
18 prisoners, but they all were based -- came to the same
19 conclusion that they were merely trying to buy some food
20 from some Filipinos in a small store alongside the road
21 when the Japanese guards picked them up.

22 Q When did this take place?

23 A In 1942 while I was at Camp 3 there, between
24 June and July.

25 Q Do you know if they had a trial?

BOGUE

CROSS

1 A There was no trial because they were never
2 taken inside. They were continually kept in this one
3 spot where they were tortured, and were taken from there
4 directly to these shallow graves and shot.

5 Q How long a period of time elapsed between the
6 time they were caught and the time they were shot?

7 A A couple days.

8 Q Was it possible they could have had a trial
9 without you knowing it?

10 A As far as me personally, yes. But they was
11 always in view of some of the men in the camp who said
12 that they were kept out in the open and beaten until
13 they were taken out and shot.

14 Q How large an island is Palawan?

15 A The exact dimensions I don't know.

16 Q Approximately?

17 A I would say maybe two to three hundred kilo-
18 meters long and 60 to -- 50 to 80 kilometers wide.

19 Q How many times was your camp bombed between
20 October 15, 1944 and December 14th?

21 A The first raid was on October 19, 1944, and
22 several times there was a few days that lapsed between
23 raids. But towards December 14 '44 the raids became
24 daily and also at night.

25 Q Prior to December 14, 1944 had any United States

BOGUE

CROSS

1 Army forces landed on Palawan?

2 A Not to my knowledge.

3 Q Had any Japanese of the retreating army landed
4 there?

5 A There were several crews from Japanese vessels
6 that were stranded there.

7 Q When you arrived at this camp were those machine
8 guns set up at that time; machine guns around the barbed
9 wire fences?

10 A No.

11 Q When were they set up?

12 A Just a short time prior to the attack on
13 14 December 1944.

14 THE PRESIDENT: The same day or earlier?

15 THE WITNESS: The same day, sir.

16 Q Where had those machine guns been before?

17 A That I don't know.

18 Q You said that there were 2500 Japanese in this
19 camp and vicinity; how many were actually in the camp?

20 A They were quartered throughout the town, and
21 as to their exact number in any one spot, that would be
22 impossible for me to know.

23 Q How many were assigned to guard your compound?

24 A The compound itself, there was a regular guard
25 consisting of approximately twenty-five Japanese.

BOGUE

CROSS

1 Q Now, when you say Captain KINOSHITA told you
2 in 1942 that he and his men would strike as at Pearl
3 Harbor if there was any trouble, are those his exact
4 words?

5 A They are, as interpreted to us by the Japanese
6 interpreter.

7 Q You talked about a previously arranged escape
8 hatch, will you describe that for us?

9 A In this C Company shelter, why, as I mentioned
10 before, due to different rumors and circumstances the
11 feeling became apparent as to what might actually take
12 place at this point. So, after the overhead had been
13 placed on this shelter, a few of the men had smuggled a
14 pick and a shovel into the shelter and dug from the bank
15 side of the shelter to within 6 to 12 inches of opening
16 out onto the bank. This was done without the Japanese
17 knowledge, and the pick and shovel was then concealed --
18 just concealed there in the shelter.

19 THE PRESIDENT: We will adjourn until half
20 past one.

21 (Whereupon, at 1200, a recess was taken.)
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AFTERNOON SESSION

The Tribunal met, pursuant to recess,
at 1330.

MARSHAL OF THE COURT: The International
Military Tribunal for the Far East is now resumed.

- - -

DOUGLAS WILLIAM BOGUE, called as
a witness on behalf of the prosecution, resumed
the stand and testified as follows:

THE PRESIDENT: Mr. Logan.

MR. LOGAN: If the Tribunal please.

CROSS-EXAMINATION

BY MR. LOGAN: (Continuing)

Q Sergeant, was there another means of escape
from this camp devised by the prisoners?

A No.

Q Wasn't there a drain which was enlarged
and was to be used as an escape?

A If there was, I know nothing about it.

Q Do you know a Fern Joseph Barta who was at
that camp?

A I do.

Q As a matter of fact, he used that drain, a
drain which had been made for the purpose of escape

BOGUE

CROSS

1 that day. Don't you know that to be a fact?

2 A Other than reading it in his statement,
3 in personal conversations with him, I don't believe
4 that he mentioned that fact in detail.

5 Q Prior to December 12 -- 14, have any other
6 prisoners escaped from this camp?

7 A Yes.

8 Q How many?

9 A Well, there was, I believe, 2 or 3 successful
10 attempts.

11 Q How many unsuccessful attempts?

12 A Not that I know of.

13 Q How long a period of time elapsed from the
14 time you reached your shelter and got into it till
15 the time you heard the explosion?

16 A A very few minutes.

17 Q Is it possible that explosion came from a
18 bomb?

19 A Impossible.

20 Q You didn't look out of that shelter from the
21 time you got into it until after you heard this
22 explosion, is that right?

23 A That is right.

24 Q So you don't know whether any of the prisoners
25 tried to escape, either through that drain or through

BOGUE

CROSS

1 that previously arranged escape hatch after you got
2 into the shelter and before you heard that explosion,
3 isn't that so?

4 A They had nothing to escape from.

5 Q They had the escape -- they had that escape
6 hatch, didn't they, Sergeant?

7 A The way I meant my answer was there was no
8 reason for them to attempt to escape.

9 Q Irrespective of any reason, you don't know
10 whether or not some of them did try to escape during
11 that period of time, do you?

12 A I do as far as conversing with the men that
13 did survive, especially men that used that escape hatch
14 and who had participated in the breaking through of that
15 escape hatch, who told me days later that they did
16 not make any attempt to use that escape hatch until
17 after they had heard the explosion and under the same
18 circumstances as myself.

19 Q How long a period of time elapsed from the
20 time when you first went into the shelter and by the
21 time you reached the beach?

22 A It was very few minutes from the time that
23 I got into the shelter to the time of the first
24 explosion and my -- for my part, it was just a matter
25 of minutes that I was through the barbed wire and down

BOGUE

CROSS

1 on the beach.

2 Q By the time you got to the beach you had
3 already two prisoners of war dead there, isn't that
4 so?

5 A That is so.

6 MR. LOGAN: That is all, your Honor.

7 THE PRESIDENT: Mr. Blewett.

8 MR. BLEWETT: If the Tribunal please.

9 CROSS-EXAMINATION: (Continued)

10 BY MR. BLEWETT:

11 Q By whom were you captured, Sergeant?

12 A By the Japanese.

13 Q I mean what branch of the service?

14 A Japanese Army.

15 Q What were the terms of surrender, if you
16 know?

17 A In the last position that I was holding on
18 Corregidor on the day of the surrender, I was approached
19 by a Japanese officer, several Japanese soldiers and
20 an American officer who was acting as an interpreter.
21 They approached our position and the American officer
22 hailed us, and, upon being acknowledged, stated that the
23 surrender -- the Philippines had been surrendered and
24 that this Japanese officer was here to accept our
25 surrender and we would be given about 3 minutes to make

BOGUE

CROSS

1 up a decision. If we did not come down from our
2 position with our hands up they would continue the
3 attack and annihilate us. The American officer
4 also mentioned the fact that if we did surrender we
5 would be taken alive and treated as prisoners of
6 war. There was approximately 12 of us alive in this
7 position and amongst us we decided to take the chance
8 and surrender and we approached the Japanese force
9 with our hands up, and, upon approaching the party the
10 Japanese officer asked, through the interpreter, who
11 was in charge of this position. Nobody answered,
12 but he looked each of us in the face and as he looked
13 at me he called me towards him and had me put my hands
14 down and he was leaning on his sword which was in the
15 scabbard. After making a few remarks in Japanese,
16 he picked up his sword in both hands in the scabbard
17 and hit me alongside the head knocking me unconscious.
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BOGUE

CROSS

1 Q Who was the highest ranking Japanese officer
2 in charge of the prisoners of war on Corregidor?

3 A That I don't know.

4 Q What branch of the service was in control of
5 your group from May 6 until August 5 when you reached
6 Palawan?

7 A Japanese army.

8 Q What was the highest ranking officer in
9 charge of that group at any time?

10 A The highest commander we had there at
11 Puerto Princesa, Palawan was a captain.

12 Q How many days a week did the men work at
13 Palawan?

14 A The days we worked varied. It was on an
15 average of six days a week except for inclement
16 weather until after the air raids started when we
17 worked seven days a week on the average of ten to
18 eleven hours a day.

19 Q How long did the work continue?

20 A We worked from the day we arrived at Palawan
21 until -- except for the few days off, non-working
22 days -- we worked from the day we arrived there until
23 the day of the attack.

24 Q What men were compelled to work?

25 A Any man that was able to be on his feet.

BOGUE

CROSS

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23 the day of the attack.

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25 A Any man that was able to be on his feet.

BOGUE

CROSS

1 Q What was your position there?

2 A I had several positions. From regular work
3 on the field, that is, on the airfield, with a pick
4 and shovel, or fallen trees with axes and cross-cuts,
5 shopping wood for the rice pots, breaking down coral
6 for the foundation, the concrete, used to pour on this
7 airfield.

8 Q Did you have any administrative work?

9 A No.

10 Q Who made up the guards at this camp, that is,
11 what branch of the service were they from?

12 A Japanese army.

13 Q Have you had any experience or training in
14 medicine, Sergeant?

15 A Not in recognizing different drugs or medicines,
16 things like that, but as far as first-aid or aid in
17 the field under combat conditions and things like that,
18 yes.

19 Q Was the Red Cross on the hospital during the
20 raids during October, November and December?

21 A It was.

22 Q Did you observe any reconnoitering planes
23 above the camp at any time prior to December 14?

24 A You mean American?

25 Q Yes, American?

BOGUE

CROSS

1 A The only planes passing over Puerto Princesa,
2 American planes passing over Puerto Princesa prior to
3 14 December 1944 were -- came in for the purpose of
4 attack; but December 14 there was two P-38s that
5 circled overhead and during the actual attacks on
6 Corregidor the planes would after they dropped their
7 bombs -- on Puerto Princesa after they dropped their
8 bombs would come in low and strafe and circle the area.

9 THE INTERPRETER: Mr. Witness, you meant
10 Puerto Princesa or Corregidor?

11 THE WITNESS: Puerto Princesa.

12 Q What time of day was the attack on the 14th
13 of December?

14 A Approximately 2:00 p.m.

15 Q Men were not working at that time, I take it?

16 A The men had worked up till noon that day
17 when they had been called in from the field and caused
18 to remain in the air raid shelter area.

19 Q What was it that gave you the impression
20 that the island might be retaken on that date?

21 A Well, due to the preparation from attacks in
22 the air and also due to the Japanese preparedness as
23 two o'clock that morning we had heard Japanese troops
24 who were quartered right next to the prisoner of war
25 compound shuffling -- the Japanese troops were shuffling

BOGUE

CROSS

1 around. We could hear them getting their equipment
2 ready, and early that morning at dawn they was falling
3 out in the road in formations, armed with extra am-
4 munition and full equipment, and also early in the
5 morning, during the morning, the Japanese clerks
6 were burning papers and things in fires under the
7 rice pots. Also, Americans working on the airfield
8 told me that they had seen these troops and others
9 armed, fully equipped for combat, moving down past
10 the airstrip towards the beach where their beach
11 defense positions were.

12 Q When was the island retaken, if you know?

13 A I believe it was taken on February 28, 1945.

14 Q Do you know whether or not Lieutenant SATO
15 was ever tried by a military court or commission?

16 A I do not.

17 Q Now, was your camp ever inspected by any
18 high-ranking Japanese officer?

19 A It wasn't.

20 MR. BLEWETT: Thank you, Sergeant. Thank you.
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THE PRESIDENT: Captain Brooks.

CROSS-EXAMINATION (Continued)

BY MR. BROOKS:

Q Now, Mr. Witness, in May, 1942, prior to the surrender of the Japanese, what special preparations were made prior to that surrender?

A Special preparations for what?

Q Was there any destruction of papers at that time?

A You mean documents, equipment, or anything of that nature, that is, on Corregidor?

Q Yes.

A No, we had our orders -- from my position -- speaking purely from my position, our orders were to defend the beach to the last.

Q Now, when you finally surrendered that place, was there any destruction made prior to surrender of equipment and supplies?

A The only destruction I know of is that the twelve men, approximately twelve men who surrendered with me, we destroyed our weapons before surrendering to the Japanese.

Q Do you know whether in the areas in the rear any supplies or equipment were destroyed?

A I don't know.

BOGUE

CROSS

1 Q Now, on this movement, this transfer to
2 Cabanatuan, at that time had your party of prisoners
3 of war been organized under their own officers?

4 A They had a slight organization on Corregidor
5 after -- that is, speaking for the one day after I
6 come out of the hospital that I was with the other
7 prisoners in the 92nd Garage Area before being
8 transferred to Mahila; but due to the transfer from
9 Corregidor to Manila and from Manila to Cabanatuan,
10 we were merely counted off in columns of four, groups
11 of different numbers, and placed under so many
12 Japanese, so many Japanese guards, and that is all
13 there was.

14 Q On your arrival there at Manila were there
15 any of the prisoners of war placed in sick bay or the
16 hospital?

17 A All I know is when we moved out a lot of
18 them that moved out with us should have been, but
19 weren't.

20 Q But you don't know whether they were trans-
21 ferred to any hospital that were sick at that time?

22 A No.

23 Q Was there any administrative officer
24 set up to be placed in charge of this group of prison-
25 ers for administration while you were at Manila?

BOGUE

CROSS

1 A Not to my knowledge.

2 Q Who was the -- what was the rank of the
3 senior officer present in your group?

4 A I never saw the Camp Commander at Bilibid.
5 We were only there a couple of days, and in the move-
6 ment from Manila to Catabanuan I remember seeing
7 some high-ranking noncommissioned officers and a
8 couple of junior officers.

9 Q Do you know of what branch of the service
10 this Camp Commander was?

11 A It was all Army personnel there -- probably
12 Army.

13 Q Do you know whether they had a separate
14 building, office for the prisoners of war administra-
15 tion there at that camp?

16 A No, I don't.

17 Q Were you given any information as to the
18 organization of the men for this transfer at that
19 place from any of the prisoner of war administrative
20 officials?

21 A What prisoner of war administrative officials?

22 Q I am talking of the time before you left
23 Manila, while you were there?

24 A There was no official there to my knowledge.
25 We were sorted out, four ranks, and moved out, and

BOGUE

CROSS

1 we never saw no prison officials or had any conversa-
2 tion with any such people.

3 Q Prior to leaving Corregidor for Manila was
4 there any selection of those to be transferred and --
5 first answer that question.

6 A The only selection was done in the hospital
7 on Corregidor.

8 Q Were hospital patients excluded?

9 A The selection that I was referring to in the
10 previous question was that the Japanese had ordered
11 any man that was able to work, regardless of his
12 wounds, was to be evacuated from the hospital the day
13 before Corregidor was evacuated, and that he would
14 have to go with the rest of the prisoners from the
15 92nd Garage Area.

16 Q In other words, ambulatory patients were
17 placed on the list, and those that were bedfast were
18 excluded from the list; is that correct?

19 A I guess it could be worded like that.
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BOGUE

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BOGUE

CROSS

1 Q Do you know on this group that were
2 selected if the men that died on this transfer to
3 Cabanatuan, if they were ambulatory patients at the
4 time they were selected?

5 A No.

6 Q You don't know whether they were or not?

7 A I don't know.

8 Q Do you know whether they made any previous
9 request to be excluded from the list to be transferred?

10 A Many of the men requested to be accepted by
11 the hospital facilities there at Bilibid Prison.

12 Q I am talking about previous to leaving Cor-
13 regidor.

14 A There was nobody to make a request to there.

15 Q You mean at Corregidor before you left there
16 was no prisoner of war administration?

17 A No administration other than the guards and
18 Japanese officers commanding.

19 Q Then you did not have any prisoner of war
20 leader selected for administration from your group
21 at that time?

22 A As I mentioned, I was in the hospital from
23 about two days after the surrender until the day be-
24 fore the departure of the troops from Corregidor to
25 Manila.

BOGUE

CROSS

1 Q I take it then that you don't know of that?

2 THE PRESIDENT: An army taking prisoners
3 must provide an administration.

4 MR. BROOKS: It makes their handling much
5 easier. That is why I was inquiring of the witness
6 if there was any.

7 THE WITNESS: I see that defense counsel is
8 not familiar with the Japanese way of handling prison-
9 ers.

10 THE PRESIDENT: You must not make any com-
11 ments, Witness. Just answer questions.

12 BY LH. BROOKS (Continued):

13 Q Now, as to Corporal Wood, who had the shell
14 fragment, was he in the hospital at Corregidor prior
15 to this transfer being made?

16 A He was.

17 Q Was he in the hospital at the time of the
18 selection of those to be transferred?

19 A He was.

20 Q Was he an ambulatory patient at that time?

21 A He was.

22 Q Were you in the hospital with him at that
23 time?

24 A I was.

25 Q Did he call his wound and condition to the

BOGUE

CROSS

1 Japanese prior to being placed on this list for
2 transfer?

3 A There was no Japanese there for him to call
4 his attention to.

5 Q Who was in charge there?

6 A Some American doctors.

7 Q Then you did have an American medical ad-
8 ministration of your hospital at that time?

9 A Only in carrying out Japanese orders.

10 Q And did these American medical doctors
11 select the men to be placed upon this list?

12 A Under Japanese supervision.

13 Q You mean the Japanese went with them at
14 the time?

15 A A group of Japanese, including officers,
16 passed through the Malinta Hospital just prior to
17 issuing these orders, and we were told after they had
18 left that the prisoners were going to be taken from
19 Corregidor and that any man that was able to walk,
20 regardless of his wounds, would have to leave.

21 Q So that after they left the selection was
22 left to the American medical doctors there and your
23 friend did not have a chance to call to the attention
24 of the Japanese his wound, only to the American doc-
25 tors, is that correct?

BOGUE

CROSS

1 A It may have been different in his ward, but
2 where I was at the selection was made by American
3 officers.

4 Q I think you stated the policy was to keep
5 the prisoners well if possible because certain work
6 must be done?

7 A That's right.

8 Q Was there any assistance given the American
9 doctors by Japanese doctors in carrying out this policy?

10 A Only in the issuing of quinine for malaria,
11 but not in participation of operations.

12 Q Now, besides the two American doctors that
13 were transferred with you, there was other medical
14 personnel, was there not?

15 A Yes.

16 Q Medical Corps men, internes, nurses?

17 A Three or four army medics.

18 Q How about men trained in first aid?

19 A All medics are trained in first aid, except
20 for military personnel there, who through the course
21 of military training have to know first aid.

22 Q Were there any emergency supplies or food or
23 medicine or other supplies held by the Japanese in
24 times when shipping would be cut off so there would
25 be a delay?

BOGUE

CROSS

A Not to my knowledge.

1 Q I thought you testified that there was a
2 large quantity of food under some building that you
3 were held in.

4 THE PRESIDENT: He didn't suggest it was
5 held for that purpose.

6 THE WITNESS: The reason that rice was there
7 was because the Japanese heard that American planes
8 might get some information that there was American
9 prisoners of war there and would not bomb our barracks,
10 thus destroying their food.

11 Q Was there anything else in this storeroom
12 besides food?

13 A Not in that storeroom.

14 Q Was it kept locked?

15 A It was.

16 Q Was the food issued from that daily?

17 A That was Japanese -- issued for the Japanese.

18 Q Was it issued to the Japanese daily from
19 that storeroom?

20 A Yes.

21 Q And was it replenished from time to time?

22 A It was.

23 Q You don't know whether there were any other
24 large storerooms of medical supplies or food materials
25

BOGUE

CROSS

in the area, do you?

1 A There was other supplies stored in that
2 area, but exactly where I don't know.

3 Q Now, you say Dr. Mango performed three
4 other successful operations. Did the Japanese doctors
5 help him with these operations and supply him with
6 any equipment or materials for these operations?

7 A Not to my knowledge.

8 Q Where were these operations performed?

9 A At Iwaki.
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1 Q And how far is that from where you were
2 confined?

3 A Maybe twenty, thirty kilometers.

4 Q So you had no opportunity to know what was
5 supplied or under what conditions the operations were
6 conducted?

7 A Except for what Dr. Mango and the men that
8 were operated on told me.

9 Q Did Dr. Mango tell you that the Japanese
10 had supplied any equipment or medicines or medical
11 aid for these operations?

12 A Other than the scalpel and forceps--

13 Q I am talking about the latter three operations
14 now.

15 A No.

16 Q What form of recreation and sports were
17 provided for the prisoners of war at this place?

18 THE PRESIDENT: It does not arise out of
19 the examination in chief. He did not make any
20 allegations of a breach of that particular term of
21 the Convention. I am not saying the cross-examination
22 is not relevant or is not material, but it is worthy
23 of comment that it is directed to the least important
24 part of this witness' testimony. One would hardly
25 believe that this witness has said the things he has

BOGUE

CROSS

1 after you listen to the cross-examination.

2 MR. BROOKS: Mr. President, the same remark
3 might well apply to the reason for lack of cross-
4 examination in certain points.

5 THE PRESIDENT: I make every allowance for
6 your situation, Captain Brooks.

7 MR. BROOKS: I thought that the question
8 might follow from the line of the policy to keep the
9 prisoners well if possible, that something besides
10 medical aid might have been provided by way of
11 recreation and sports.

12 May the witness answer the question?

13 THE PRESIDENT: He may.

14 A When we first arrived at Palawan we were
15 only working six days a week. The seventh day, why,
16 there was no church or religious services offered
17 and so the Japanese commander suggested sports. But
18 when it came time to play them, why, the men complained,
19 saying that they was too tired from working all week
20 to go out on their day of rest and start playing base-
21 ball or football or something like that.

22 Q Were there any games actually played?

23 A Very few.

24 Q Now, as to the church part, were there any
25 chaplains present in your group?

BOGUE

CROSS

1 A No.

2 Q In the describing the disciplinary action
3 on these four prisoners that were picked up by the
4 guards -- or these prisoners that were picked up by
5 the guards and tied to a pole, was this pole fastened
6 to anything?

7 A This pole was passed under the backs of
8 their knees and they were forced to squat down on
9 it and then their arms -- it went on the inner side
10 of the arms so that they bent just opposite, and
11 they were securely lashed to their arms and across
12 their knees.

13 Q Were they all fastened to the same pole?

14 A No.

15 Q Now, as to the disciplinary action that was
16 taken here as to the beating of these men, were these
17 men tied to this tree while they were being beaten?

18 A There was a coconut tree -- it was coconut
19 trees, and they were compelled to circle it with their
20 arms and clasping their hands. They were not tied.

21 Q And they weren't fastened to the tree in any
22 way? They just stood there hugging the tree; is that
23 right?

24 A That is right.

25 Q During this time they were being beaten

BOGUE

CROSS

1 with poles six foot long and two to three inches in
2 diameter?

3 A While they were being beaten across the
4 buttocks with these poles approximately five or six
5 feet long and two or three inches in diameter, the
6 shock was so terrific that after three or four -- after
7 they were struck three or four times the man would
8 fall away from the tree in a semi-conscious or uncon-
9 scious condition. He would then be revived with
10 water and drug back to the tree and forced to resume
11 his position and the beating would resume.

12 Q How long did this continue, in time?

13 A The time varied. It all depended on the stamina
14 of the guard. When the Japanese guard who was doing
15 the beating became exhausted, why, the man would be --
16 as far as his beating was concerned, would stop.

17 Q I think you said you watched this beating?

18 A I did.

19 Q How long were you there?

20 A Until the men were drug back into the brig.

21 Q When did this start? What time of day?

22 A Other than saying in a day, why, it is pretty
23 hard to remember the exact time.

24 Q Was it before dinner or after?

25 A I couldn't say that, either.

BOGUE

CROSS

1 THE PRESIDENT: You said the men were
2 beaten with wire whips. Can you describe those whips?

3 THE WITNESS: It was a piece of cable that
4 had been made -- had some semblance of a handle attached
5 to it.

6 Q What had you been doing previous to watching
7 this?

8 A I don't recall.

9 Q You don't know whether this was in the
10 morning or the afternoon?

11 A That is right.

12 THE PRESIDENT: You won't test his credibility
13 that way.

14 MR. BROOKS: I thought he remembered it so
15 vividly, the various parts, your Honor, that he would
16 surely know what time of day it was.

17 That is all.

18 MR. LEVIN: Mr. President, there will be no
19 further cross-examination of the Sergeant.

20 CAPTAIN ROBINSON: This concludes the
21 examination of the witness, and permission of the
22 Tribunal for the witness' departure or return to other
23 duty is requested on the usual conditions.

24 THE PRESIDENT: He is released on the usual
25 terms.

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1 (Whereupon, the witness was excused.)

2 THE PRESIDENT: We will recess for fifteen
3 minutes.

4 (Whereupon, at 1445, a recess was
5 taken until 1500, after which the proceedings
6 were resumed as follows:)

7 MARSHAL OF THE COURT: The Tribunal is
8 now resumed.

9 CAPTAIN ROBINSON: May it please the Court.

10 THE PRESIDENT: Captain Robinson.

11 CAPTAIN ROBINSON: Prosecution document
12 No. 8350 is now offered in evidence. It is the
13 affidavit of Rufus W. Smith, sworn to on 20 September
14 1946.

15 THE PRESIDENT: Admitted on the usual
16 terms.

17 CLERK OF THE COURT: Prosecution document
18 No. 8350 will receive exhibit No. 2110.

19 (Whereupon, the document referred to
20 was marked prosecution's exhibit No. 2110 and
21 received in evidence.

22 CAPTAIN ROBINSON: This statement, like
23 the two following documents, supplements the testi-
24 mony of Sergeant Bogue and will not be read.
25

1 Prosecution document No. 8258, the sworn
2 statement of Sergeant William J. Balchus, Edwin A.
3 Petry, Corporal Eugene Nielsen, and Sergeant Alberto
4 Pacheco, sworn to on 17 March 1945, is offered in
5 evidence.

6 THE PRESIDENT: Admitted on the usual
7 terms.

8 CLERK OF THE COURT: Prosecution document
9 No. 8258 will receive exhibit No. 2111.

10 (Whereupon, the document referred to
11 was marked prosecution's exhibit No. 2111 and
12 received in evidence.)

13 CAPTAIN ROBINSON: Prosecution document No.
14 8260, the affidavit of Fern Joseph Barta, radioman
15 first class, United States Navy, sworn to on 13
16 February 1945, is offered in evidence.

17 THE PRESIDENT: Admitted on the usual
18 terms.

19 CLERK OF THE COURT: Prosecution document
20 No. 8260 will receive exhibit No. 2112.

21 (Whereupon, the paper referred to was
22 marked prosecution's exhibit No. 2112 and
23 received in evidence.)
24
25

1 CAPTAIN ROBINSON: May it please the Tribunal,
2 this concludes the evidence of offenses against
3 prisoners of war and civilians committed on Pacific
4 Islands and at sea in the Pacific Ocean and the
5 Indian Ocean, as charged in the indictment, particu-
6 larly in Counts 53, 54, and 55 and Appendix D,
7 particulars of breaches of the laws of war, Sec-
8 tions 1, 2, 3, 4, 5, 7, 8, 10, 13, and 14.
9

10 The permission of the Tribunal is request-
11 ed for the substitution of certified true copies
12 in the place of original documents introduced from
13 permanent official files, such as the official files
14 of the Swiss Legation and the Navy Department.

15 THE PRESIDENT: Permission is given, there
16 being no opposition by the defendants.

17 CAPTAIN ROBINSON: Mr. Higgins will now
18 continue the prosecution's case.

19 THE PRESIDENT. Mr. Higgins.

20 Mr. HIGGINS: Members of the Tribunal,
21 on 12 November 1946, page 10,140 of the record,
22 I.P.S. Document No. 1855, which is a list of the
23 persons attending the Imperial Conference held 2
24 July 1941, was received in evidence and given ex-
25 hibit No. 1107. The Tribunal ordered that Mr.

1 IGUCHI, who certified to the document, be called
2 for the purposes of cross-examination. Investiga-
3 tion disclosed that while Mr. IGUCHI certified to
4 the document, the information contained in the cer-
5 tificates was within the knowledge of Mr. ONO, one
6 of his subordinates. Mr. Fihelly, representing the
7 prosecution, and Mr. Logan, representing the defense,
8 agreed that Mr. ONO should be called for cross-
9 examination in lieu of Mr. IGUCHI. Mr. ONO is here
10 for the purpose ordered by the Tribunal.

11 THE PRESIDENT: We must agree also, and
12 we do.

13 O N O K A T S U M I, being first duly sworn,
14 testified as follows:

15 MR. HIGGINS: You may cross-examine the
16 witness.

17 THE PRESIDENT. Mr. Blewett.

18 MR. BLEWETT: If the Court please, it
19 seems rather unusual -- of course this witness
20 has no testimony on the record unless we assume,
21 which we are willing to do, that he has taken this
22 affidavit or that he is willing to testify to the
23 same affidavit that was signed by Mr. IGUCHI. I
24 don't know what to do.
25

ONO

CROSS

1
2 THE PRESIDENT: You must examine him as
3 though he were a witness called by you, but you can
4 lead him. He is in fact the prosecution's witness
5 and they should have got his name and address and
6 occupation, but you can get it, Mr. Blewett.

CROSS-EXAMINATION

BY MR. BLEWETT:

9 Q What is your full name?

10 A ONO, Katsumi.

11 Q Where do you reside?

12 A In Tokyo.

13 Q What address?

14 A No. 78 Sanya - cho, Meguro - Ku, Tokyo.

15 Q What is your occupation?

16 A Government official.

17 Q In what department?

18 A Foreign Office.

19 Q How long have you been connected with the
20 Foreign Office?

21 A From 1929 up to the present.

22 Q Did you make any investigation as to the
23 persons attending certain liaison conferences held
24 during 1941?

25 A I did.

ONO

CROSS

1 Q And for whom did you make that investiga-
2 tion?

3 A For the Japanese Government.

4 Q From what sources did you ascertain the
5 various persons that attended the conference of
6 July 2, 1941?

7 A They were learned by me on the basis of
8 memorandums and other documents left by officials
9 in charge or who were concerned with liaison con-
10 ferences and Imperial conferences in the various
11 government ministries concerned, and after gathering
12 this data I studied them.
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ONO

CROSS

1 Q Did you make this investigation personally?

2 A I studied and edited the matter by order
3 of my senior official.

4 Q Are you familiar with a report submitted
5 by IGUCHI?

6 A I know its substance.

7 Q Dated June 10, 1946?

8 A I have not read the document, but I know
9 that it has been sent out by the Central Liaison
10 Office of the Japanese Government.

11 Q Do you know whether or not that contains
12 a list of the members of the government who attended
13 these four conferences?

14 A Yes, I do.

15 Q Now, can you tell me how you know that the
16 Home Minister attended the conferences of July 2nd
17 and September 6th and not the conferences of November
18 5th and December 1st?

19 A I do not have accurate knowledge whereby
20 I can speak of such matters at this time at this
21 place now.

22 Q Can you certify or say definitely whether
23 or not the Ministers of Justice, Education, Agri-
24 culture and Commerce attended the conference of
25 December 1, 1941?

ONO

CROSS

1 A That I cannot do.

2 Q Now, was this memorandum made up by you
3 on the assumption that it was customary for these
4 officials to attend these meetings, or do you have
5 definite knowledge that they did attend?

6 A It is largely based on the assumption
7 that these officers would attend, but it was also
8 based on the knowledge of the officials concerned
9 in the competent ministries which had anything to
10 do with these conferences at that time. The knowledge
11 of these men were used as reference.

12 Q Well, then, you cannot say definitely
13 that all the men listed in this memorandum actually
14 attended all these four conferences, can you?

15 A Inasmuch as many of the documents which
16 have anything to do with the problems concerning
17 those conferences were lost in the air raids, docu-
18 ments which should have been preserved if it had not
19 been for such disaster, the necessary data was not
20 completely available; and, therefore, the memory
21 and knowledge and recollection of the competent
22 officials in the various ministries were gathered
23 together and used as reference.

24 MR. BLEWETT: That is all, sir.

25 THE PRESIDENT: Mr. Levin.

ONO

CROSS

CROSS-EXAMINATION

1 BY MR. LEVIN (Continued):

2 Q Then do I understand that this list was
3 not prepared from any written record?
4

5 A Yes, you may understand it as such.

6 MR. LEVIN: There will be no further
7 examination of this witness, if the Tribunal please.

8 THE PRESIDENT: Mr. Higgins.

9 MR. HIGGINS: With the Tribunal's permission,
10 I want to ask one question.

REDIRECT EXAMINATION

11 BY MR. HIGGINS:

12 Q Was any Japanese official certified as
13 attending these conferences as indicated on this
14 list except those where the records of the office
15 available and the recollection of those present in
16 the office --
17

18 THE MONITOR: Will you read that back, please?

19 (Whereupon, the last statement was read
20 by the official court reporter.)

21 THE PRESIDENT: It is not a complete question,
22 is it?

23 MR. HIGGINS: No, I am not through.

24 Q (Continuing): --indicated that such officer
25 was present?

ONO

REDIRECT

1 MR. LEVIN: We object to the form of his
2 question, and also object on the ground that it
3 assumes something that is not in evidence.

4 THE PRESIDENT: I take this to be re-examin-
5 ation arising out of the cross-examination and to
6 be allowable; but the witness may understand you
7 better if you put the questions in the following
8 form:

9 Are the lists of attendance and the dates
10 of those lists reliable?

11 MR. LOGAN: With all due respect to the
12 Court, I object to that question, the form of it.

13 THE PRESIDENT: Objection overruled.

14 Answer the question, Witness:

15 THE WITNESS: I think they are reliable.

16 THE PRESIDENT: On what grounds do you think
17 they are reliable?

18 THE WITNESS: In cases where the originals
19 of the documents were lost as a result of air raids,
20 the knowledge of the competent officials in the
21 competent ministries were relied upon for information;
22 and it is my belief that the lists were prepared under
23 such conditions by the fair and just efforts on the
24 part of these officials concerned.

25 MR. HIGGINS: May the witness be excused?

ONO

REDIRECT

1 MR. LEVIN: Just a moment, please.

2 THE PRESIDENT: Mr. Levin.

3 MR. LEVIN: Mr. President, I move the
4 Tribunal disregard exhibit 1107 on the ground there
5 is no competent evidence to indicate the reliability
6 of the evidence which has been tendered in this
7 document.

8 MR. President, I would like to add this
9 before the Court announces its decision, that the
10 witness has indicated that there is a possibility
11 that competent evidence is available in relation
12 to this very important subject. This apparently
13 is third-hand evidence and it is hearsay upon hearsay,
14 and certainly the evidence is tenuous, to say the
15 least, and should not be permitted in such a very
16 important matter.

17 THE PRESIDENT: We are all of the opinion
18 that your motion should be dismissed and that the
19 evidence should be received. At the same time we
20 realize that the evidence has not great value, but
21 it is for the prosecution to say whether they will
22 supplement it by calling the persons who advised
23 the witness.

24 MR. HIGGINS: Mr. President, may this
25 witness be now excused?

ONO

REDIRECT

~~THE PRESIDENT: He is at liberty on the~~
1 usual terms.

2 (Whereupon, the witness was
3 excused.)
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THE PRESIDENT: Mr. Justice Mansfield.

MR. JUSTICE MANSFIELD: Mr. Oneto will now continue with the case for the prosecution.

MR. LEVIN: Mr. President, at the conclusion of the French phase of the case no reservation had been made with reference to offering any additional testimony on the part of the French. We had assumed that upon the conclusion of the evidence which they had offered that that was the end of their case. As I understand it, to date no permission has been requested from the Court to offer additional evidence on their part, and under the circumstances we object to their presentation of this additional phase of the case.

THE PRESIDENT: We will receive the evidence, Mr. Justice Mansfield, but we would like to know the extent to which French is going to be used. I think I understand the extent to which it is going to be used, but my colleagues may not. They may or may not approve of French being used to the extent proposed. Where French is to be used you might give the reason.

MR. JUSTICE MANSFIELD: Mr. Oneto is to make a short introductory statement in French. After that Major Depo will present the evidence, documentary evidence in English, and then Mr. Oneto will examine a French-speaking witness in French. That is the extent

1 to which French will be used during this part of the
2 prosecution's case.

3 THE PRESIDENT: Are there no documents to be
4 tendered and explained?

5 MR. JUSTICE MANSFIELD: The documents will be
6 tendered by Major Depo and he will speak in English,
7 tendering them and explaining them and reading the
8 documents in English.

9 THE PRESIDENT: Mr. Oneto.

10 MR. ONETO: Mr. President and Members of the
11 Tribunal. The French Division, I.P.S., submits for
12 the attention of the Tribunal a limited amount of evi-
13 dence drawn from a pile of documents relating the
14 atrocities and murders committed throughout the terri-
15 tory of Indo-China by the Japanese troops, with regard
16 to both civilian internees and prisoners of war.

17 The exhibits referring to Class B and C
18 crimes put in on previous days by other sections of
19 the International Prosecution Section makes it useless
20 to put in a large number of documents repeating for
21 the Union of Indo-China the details already given for
22 other territories. The documents which we are about to
23 present to the Tribunal are aimed only at giving some
24 examples of the actions of the Japanese Army in Indo-
25 China.

1 Before beginning the presentation of these
2 documents we ask permission to recall briefly three
3 documents already known to the Court:

4 I. I.P.S. document No. 2667, exhibit No.
5 663, is an official report of Supreme Headquarters
6 of the Japanese Army of the South. On page 5 of this
7 document, first paragraph, letter A, page 7176 of the
8 record, we can read the following instructions of the
9 Japanese Government decided in the course of the
10 Supreme War Guiding Conference of February 1945:

11 "Even if the French reject the Japanese de-
12 mands, the relations between the two countries will
13 not be considered as being at war. However, Japan
14 will not be bound by the existing treaties, concerning
15 French Indo-China."

16 II. I.P.S. document No. 2655, exhibit No.
17 665, record pages 7193 and 7194, contains the text
18 of the solemn warning addressed by the French Govern-
19 ment to the Japanese Government on the subject of
20 violences perpetrated on the peoples of Indo-China by
21 the Japanese Imperial Armed Forces.

22 III. I.P.S. document No. 2667, exhibit No.
23 663, page 7 of the document, conclusion, last para-
24 graph, pages 7181 and 7182 of the record, the Supreme
25 Headquarters of the Japanese Army of the South declares:

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"Moreover, the disposition of French Indo-China was based upon the directives of Tokyo and was not an arbitrary decision of local Japanese Army. All the Japanese troops, militarists, officials, civilians, however humble their posts might have been, always acted solely by orders of superior commanders, and fulfilled their responsibilities most faithfully according to each given duty."

With the permission of the Court, the documents relating to this phase of the Indictment are now going to be presented by my assistant, Major Roger Depo.

1 THE PRESIDENT: Major Depo..
2 MAJOR DEPO: Civil population.
3 Prosecution document No. 2772-I-1, affidavit
4 of Jullien Remy, is offered in evidence.

5 THE PRESIDENT: Admitted on the usual terms.
6 CLERK OF THE COURT: Prosecution's document
7 No. 2772-I-1 will receive exhibit No. 2113.

8 (Whereupon, the document above re-
9 referred to was marked prosecution's exhibit
10 No. 2113 and received in evidence.)

11 MAJOR DEPO: In this document, the witness
12 relates the ill-treatment and tortures inflicted on
13 French civilians and on an American Air Officer in the
14 spheres of the Japanese Military Police of Vinh. Some
15 of these victims died of the treatment undergone.

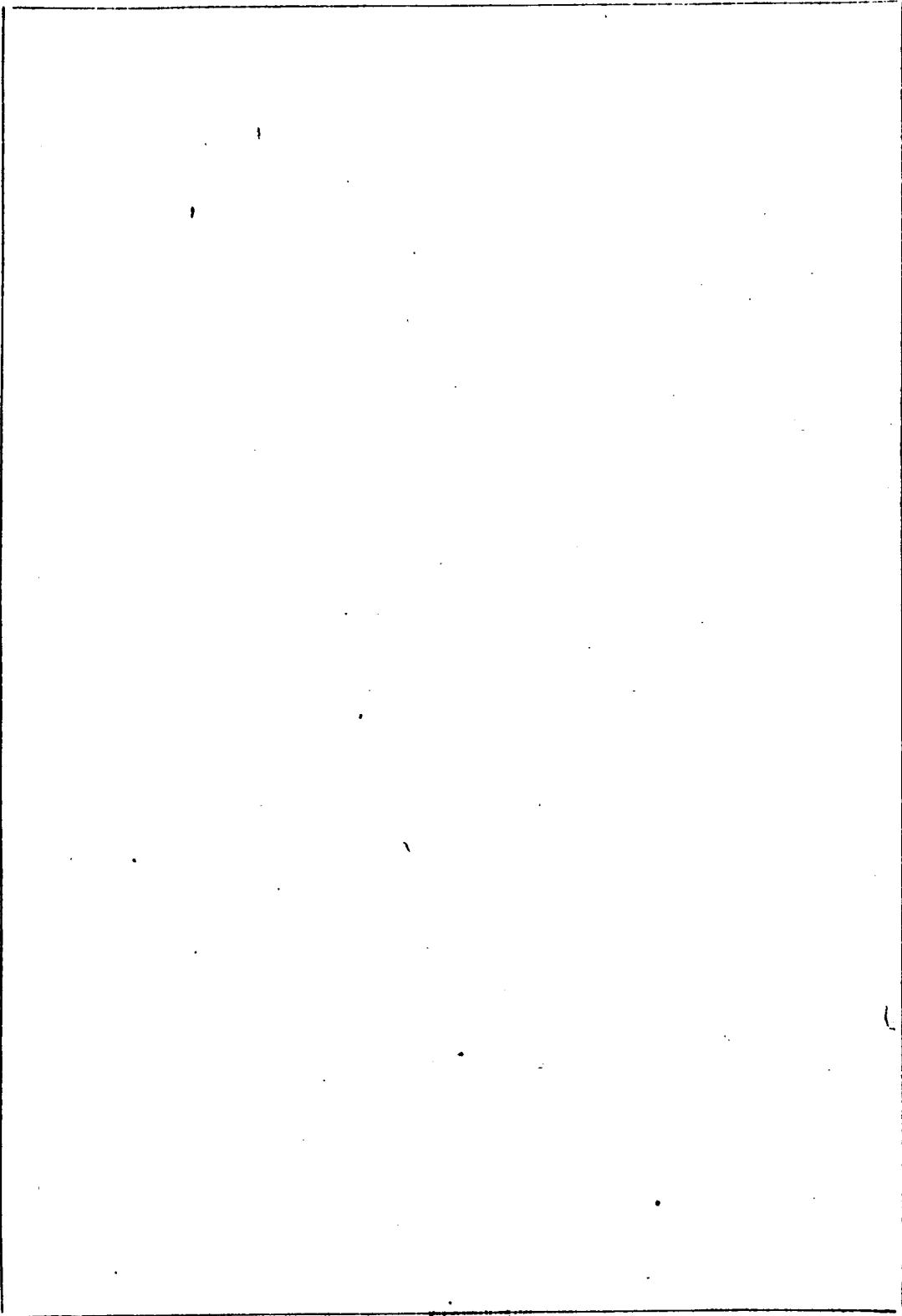
16 I will read this document with the Court's
17 permission:

18 "War Crimes Service. Stamp: Saigon,
19 24 September 1946. 654 A

20 "M'sieu Jullien Remy. Born, 21 Feb. 1912 at
21 Phan Rang (Annam). Parents: Remy and Juliette Mot.
22 Profession: Merchant at the U.C.I.A. Address: The
23 U.C.I.A.

24 "Being at Vinh on 9 March, I was arrested on
25 the 10th by the Japanese Gendarmerie and held for two

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1 days.

2 "On 13th same month I was at home when two
3 Japanese soldiers got into my house about 2 a.m. with
4 the object of robbing. I interposed and got a bayonet
5 thrust in the belly. The Japanese ran away not with-
6 out carrying off some articles.

7 "From 5 April I was appointed Representative
8 of the French in Vinh and Nord Annam, with the Japanese
9 authorities.

10 "In this capacity I have been able to prove
11 the deaths of several French killed by the /Japanese/
12 Military Police as a result of ill-treatment, cruelty
13 and privations.

14 "1. Mr. Goudenant, collector of P.T.T.,
15 arrested by the Military Police on 14 March 1945 for
16 unknown reasons. He was released to Hospital in a
17 dying condition on 21 July 1945. He died insane and
18 from physiological injuries.

19 "2. Mr. Sureau, Customs and Excise, was
20 arrested in June and taken to hospital 20 days later.
21 This man could no longer stand upright. He died 48
22 hours after his admission to hospital. His body was
23 covered with traces of burns and bruises.

24 "3. Mr. Nuriet, agent of P.T.T., arrested
25 without reason in June and died fifteen days after going

1 into /Japanese/ Military Police H.Q. in spite of the
2 fact that he was a man of robust physique.

3 "4. M. Noel, Railway Agent, entered the
4 /Japanese/ Military Police H.Q. at the end of March,
5 was not delivered to us on 21 August after the ces-
6 sation of hostilities. In spite of our representations
7 to the Military Police we could not get from them any
8 information as to the disappearance of this man.

9 "Inasmuch as I was a delegate, I had occasion
10 to enter the local offices of the Japanese Military
11 Police at Vinh repeatedly. I heard cries of anguish
12 coming from the torture chambers where Frenchmen were
13 undergoing corporal punishments.

14 "During the month of May, I saw an American
15 Air Officer being taken to the /Japanese/ Military
16 Police Headquarters. This officer was taken into the
17 torture chamber and I could hear the cries of pain.

18 "Normally, this officer, being a prisoner of
19 war should never have been taken to the Military
20 Police H.Q. at all nor interrogated there. Some days
21 afterwards the secretary of the Military Police H.Q.
22 offered me the ring belonging to this Air Officer.
23 Monsieur Richard bought this ring for 200 piastres with
24 the intention of sending it back to the officer's
25 family.

1 "This ring was restored to the first American
Mission to pass through Vinh."

2 Signed: "R. Jullien."

3 Prosecution document No. 2772-I-2, affidavit
4 of Coudoux, Jean Francois, is offered for identification
5 and the marked excerpts offered in evidence.
6

7 THE PRESIDENT: Admitted on the usual terms.

8 CLERK OF THE COURT: Prosecution's document
9 No. 2772-I-2 will receive exhibit No. 2114 for identifi-
10 cation only, and the marked excerpts therefrom, bearing
11 the same document number, will receive exhibit No.
12 2114A.

13 (Whereupon, the document above referred
14 to was marked prosecution's exhibit No.

15 2114 for identification, the excerpts there-
16 from being marked prosecution's exhibit No.
17 2114A and received in evidence.)

18 MAJOR DEPO: This document, on the fate of
19 civilian prisoners of the Japanese Military Police at
20 Vinh, completes the previous document No. 2772-I-1
21 already introduced in evidence and bearing exhibit
22 No. 2113.

23 It gives details on the tortures followed by
24 death, inflicted on two French civilians, Messrs.
25 Sureau and Uriet.

1 With the Court's permission I will read the
2 marked excerpts:

3 "Affidavit. "COUDOX, Jean Francois. Born
4 at Ba Don (Donhoi) on 1 February 1910, son of Paraon
5 Coudoux and Tran Thi Thai. Address in Indo-China;
6 At Paksong via Pakse, Laos.

7 "At Vinh:

8 "I was arrested on 13 June 1945 with my
9 brothers, Gaston and Lucien, at Phuy Quy by Chief
10 Sergeant MAORII of the Japanese Military Police for
11 having hidden and supplied with food Tisserand and
12 Lieut. Chenives, the latter being a fugitive from the
13 fight at Keheo.

14 "I was taken to the Japanese Military Police
15 H.Q. at Vinh on 14 June 1945 about 10 a.m., there I
16 remained till 18 August 1945.

17 "While I was in confinement I heard at least
18 four times the punishments inflicted on Mr. Sureau,
19 who was in the cell with us. It went on about 4 meters
20 away from the cell door and always during the night.

21 "These corporal punishments were inflicted
22 by a sergeant dressed in civilian clothes. He had
23 long hair, was of medium height and slender. I do
24 not know his name but I will be able to recognize
25 him. He was the most feared of the military police.

"Mr. Sureau was undressed and laid on the ground

naked, his arms stretched out and fastened to a bar.

1 This sergeant amused himself by passing a lighted
2 torch soaked in petrol all over his body, burning him
3 on different parts of his body, some more sensitive,
4 others less, to cause him to utter cries more or less
5 loud. He had burns all over his body, chest, legs,
6 back, hands and soles of the feet.

7 "At times the torture changed. The submitted
8 Sureau to the water punishment (see deposition of
9 Gaston Coudoux) also causing an electric current to be
10 passed into his body or to his jaw. These proceedings
11 lasted as a rule for three hours.

12 "I then used to see this brave Mr. Sureau
13 return exhausted, his whole body covered with burns,
14 with wounds running blood. For 10 days they refused
15 to let him attend to these wounds, which had rotted
16 and were eaten by maggots (see deposition of Dr.
17 Mathieu on this subject).

18 "Mr. Sureau's testicles were also swollen as
19 a result of the blows received.

20 "When he was at the point of death he was
21 hospitalized and died of his injuries about 20 August.

22 "In similar circumstances I witnessed the
23 corporal punishments inflicted on Mr. Uriet, who was
24 also shut up with us in the same cell.

25 "On 28 June 1945, he was interrogated for

1 the last time, on his knees with his trunk bare, by
2 the same Annamese interpreter, and the same sergeant in
3 civilian clothes. He was struck on the back and on the
4 arms with a heavy cudgel by Sgt. ARATA and another
5 sergeant. After two days of this treatment the body of
6 Uriet was covered with wounds and purple all over.
7 He could no longer either move or lie down.

8 "What with the diet of the ball of rice and
9 the tortures inflicted on him, he went downhill very
10 rapidly and the 29th day he was so feeble that we our-
11 selves asked the Japanese to have him sent to the
12 hospital. They refused. On the 30th day he was in
13 a dying condition in the cell and the Japanese placed
14 him on a ricksha in order to transfer him to the
15 Provincial Liaison of the Citadel, but he died in
16 the ricksha during this transfer."

17 Signed: "J. Coudoux. Coudoux, Jean Francois."

18 The affidavit of Madame Veuve Bertrand,
19 prosecution document No. 2772-J-1 is offered in
20 evidence.

21 THE PRESIDENT: Admitted on the usual terms.

22 CLERK OF THE COURT: Prosecution document
23 No. 2772-J-1 will receive exhibit No. 2115.

24 (Whereupon, the document above re-
25 ferred to was marked prosecution's exhibit
No. 2115 and received in evidence.)

1 MAJOR DEPO: In this affidavit, the witness
2 describes the discovery of the body of her husband,
3 a civilian internee, dead as the result of tortures
4 at the Japanese Military Police Headquarters of
5 Saigon. I quote:

6 "I asked him what my husband died of. He
7 replied, 'Your husband had fever in the night. The
8 Commandant gave him an anti-malaria injection and he
9 slept. This morning he did not wake.' Then they led
10 me to see the body of my husband, it was on the
11 ground floor on a short stretcher covered with a cover-
12 ing in a repulsive condition. The body was covered
13 with bruises, the upper lip swollen and contused,
14 one eye quite shut, the other half open. They then
15 loaded the corpse into a military truck and asked me
16 where they had to take it. I told them the morgue of
17 the Grall Hospital. I got into the same vehicle,
18 accompanied by Cept. TOMONO and two Japanese inter-
19 preters. When we had reached Grall they asked Chief
20 Medical Officer Guedon to come and confirm the state of
21 the body and to have it put in a coffin as soon as
22 possible. The Japanese busied themselves with the
23 papers of the Civil Commission. Friends were for-
24 bidden to enter the morgue. When the blessing of the
25 body and the bestowal of it in the casket were finished

1 TOMONO made me sign a paper ordering me to say nothing
2 on the subject of the death of my husband and a receipt
3 for the sum of 100 Piastres from the Military Police.

4 "Next I went to the cemetery, always accompanied
5 by the Japanese Military Police."

6 Prosecution document No. 2772-E-1, affidavit
7 of Monnet, Jeanne, is offered for identification and
8 the marked excerpts offered in evidence.

9 THE PRESIDENT: Admitted on the usual terms.

10 CLERK OF THE COURT: Prosecution's document
11 No. 2772-E-1 will receive exhibit No. 2116 for identi-
12 fication only and the marked excerpts therefrom, bearing
13 the same document number, will receive exhibit No.
14 2116A.

15 (Whereupon, the document above re-
16 ferred to was marked prosecution's exhibit
17 No. 2116 for identification only, the excerpts
18 therefrom being marked prosecution's exhibit
19 No. 2116A and received in evidence.)

20 MAJOR DEPO: This document describes par-
21 ticularly the violation of the witness by two Japanese
22 officers. I quote:

23 "We slept in the servants' quarters; my sister
24 aged 13 and myself in the same room.

25 "Next day, 14 March, in the evening, about

1 10 o'clock two officers of Col SHIZUMI's staff, a
2 major and a captain (I recognized them by what
3 followed) came into our room. While one held me, the
4 other took off my pajama trousers and abused me,
5 then, changing over their roles, I had to submit to
6 the other. It caused me a good deal of pain as I was
7 a virgin and I fainted. For this reason I cannot say
8 what was done to my sister."

9 THE PRESIDENT: We will adjourn now until
10 half past nine tomorrow morning.

11 ("hereupon, at 1600, an adjournment
12 was taken until Thursday, 16 January 1947, at
13 0930.)

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16 JANUARY 1947

I N D E X
Of
WITNESSES

Prosecution's Witnesses

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EXHIBITS

<u>Doc. No.</u>	<u>Pros. No.</u>	<u>Def. No.</u>	<u>Description</u>	<u>For Ident.</u>	<u>In Evidence</u>
2772-E-2	2117		Letter by Captain Merian of the French Gendarmerie, dated 12 June 1944		15307
2772-E-3	2118		Affidavit of Denise Avisse	15309	
2772-E-3	2118-A		Excerpt therefrom		15309
2772-E-4	2119		Affidavit of Teputuarai Tetani	15313	
2772-E-4	2119-A		Excerpt therefrom		15313
2772-E-5	2120		Affidavit of Nguyen-thi-Thong	15314	
2772-E-5	2120-A		Excerpt therefrom		15314
2772-A-4	2121		Affidavit of Fernand Casula		15316
2772-A-5	2122		Affidavit of Madame Remige-reau (Paulette)	15318	
2772-A-5	2122-A		Excerpt therefrom		15318
2772-A-6	2123		Affidavit of Cecile Cazajous	15320	
2772-A-6	2123-A		Excerpt therefrom		15320

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E X H I B I T S

(Cont'd)

<u>Doc. No.</u>	<u>Pros. No.</u>	<u>Def. No.</u>	<u>Description</u>	<u>For Ident.</u>	<u>In Evidence</u>
2772-A-3	2124		Affidavit of Albert Moullet, Battalion Commander	15324	
2772-A-3	2124-A		Excerpt therefrom		15324
2772-D-3	2125		Report by Captain Merian of the French Gendarmerie		15324
2772-D-4	2126		Report of a French Officer, Captain Merian of the French Gendarmerie dated 26 April 1942		15325
2772-D-5	2127		Report of Captain Merian dated 30 June 1942		15326
2772-D-7	2128		Affidavit of Pierre Babin		15326
2772-D-8	2129		Affidavit of Lawyer Philippe Duquesnay		15328
2772-D-9	2130		Affidavit of Mr. Guy Nourrit		15329
2772-D-10	2131		Affidavit of Henri Talba	15333	
2772-D-10	2131-A		Excerpt therefrom		15333
2772-D-11	2132		Affidavit of Joseph Tanguy	15335	
2772-D-11	2132-A		Excerpt therefrom		15335
2772-D-12	2133		Affidavit of Antoine Bel- godere		15336
2772-F-1	2134		Affidavit of Marcel Robert	15337	
2772-F-1	2134-A		Excerpt therefrom		15337

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(Cont'd)

<u>Doc. No.</u>	<u>Pros. No.</u>	<u>Def. No.</u>	<u>Description</u>	<u>For Ident.</u>	<u>In Evidence</u>
2772-G-1	2135		Affidavit of M'sieur Poli Dominique		15340
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E X H I B I T S

(Cont'd)

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Of

EXHIBITS

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2772-C-2	2153		Affidavit of Si-A-Phuc	15410	
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Thursday, 16 January 1947

- - -

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

8 The Tribunal met, pursuant to adjournment,
at 0930.

- - -

Appearances:

3 For the Tribunal, same as before with the
14 exception of: HONORABLE JUSTICE JU-AO IEI, Member
from the Republic of China, now sitting.

15 For the Prosecution Section, same as before.

16 For the Defense Section, same as before.

- - -

18 (English to Japanese and Japanese
19 to English interpretation was made by the
20 Language Section, IMTFE.)
21
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1 Thursday, 16 January 1947

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12 Appearances:

13 For the Tribunal, same as before with
14 the exception of: HONORABLE JUSTICE JU-AO MEI,
15 Member from the Republic of China, not sitting.

16 For the Prosecution Section, same as before.

17 For the Defense Section, same as before.

18 - - -

19 (English to Japanese and Japanese
20 to English interpretation was made by the
21 Language Section, IMTFE.)
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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now in session.

3 THE PRESIDENT: All the accused are present
4 except OKAWA, ARAKI, MATSUI, and TOGO. We have a
5 certificate from the prison surgeon, Sugamo, that the
6 accused MATSUI, TOGO, and ARAKI are unable to attend
7 the trial today on account of illness. The certificate
8 will be recorded and filed.

9 Mr. Justice Mansfield.

10 MR. JUSTICE MANSFIELD: If the Tribunal
11 please, in answer to the Tribunal yesterday I mentioned
12 certain portions of the case for which leave was re-
13 quested to present in the French language. I omitted
14 to request that leave be granted to reply in French
15 to objections which may be taken to any evidence given
16 during this present part of the phase. I now make that
17 application and, in support, desire to point out that
18 as any reply by the prosecution will necessarily be
19 extemporaneous any submissions will be expressed with
20 greater clarity in French than in English. I also add
21 that during the earlier presentation of the French
22 portion of the case that leave was granted to reply in
23 that manner.

24 THE PRESIDENT: Yes, he may reply in French.

25 MR. JUSTICE MANSFIELD: Thank you.

1 THE PRESIDENT: Mr. Levin.

2 MR. LEVIN: Mr. President, when Mr. Justice
3 Mansfield suggested this procedure yesterday I made
4 no objection, assuming that our objections made in
5 Chambers to this procedure would apply here, and I
6 therefore make that request at this time, Mr. President.

7 THE PRESIDENT: What you say is noted.

8 Major Depo.

9 MAJOR DEPO: Prosecution document No. 2772-E-2,
10 which is a letter by Captain Merian of the French
11 Gendarmerie, is submitted in evidence.

12 This item described the ill-treatment endured
13 and the death by strangulation of an Indo-Chinese
14 coolie.

15 THE PRESIDENT: Admitted on the usual terms.

16 CLERK OF THE COURT: Prosecution document
17 No. 2772-E-2 will receive exhibit No. 2117.

18 (Whereupon, the document above re-
19 ferred to was marked prosecution's exhibit
20 No. 2117 and received in evidence.)

21 MAJOR DEPO: With the Court's permission I
22 will now read this document:

23 "Subject: Murder of an Indo-Chinese (THO)
24 at Langson concession Saint Michel.

25 "Date: 12th June 1944.

1 "Place: Concession Saint Michel (Japanese
2 Camp) at Langson.

3 "Responsible: Captain TSUGITA, Commandant of
4 the detachment of Langson.

5 "Witness: Commissary of Police SABATIER --
6 Surete of Langson.

7 "Resume:

8 "Some cases of disloyalty having appeared
9 amongst the coolies supplying the Japanese Camp with
10 water the 11 June 1944, the Japanese soldiers seized
11 the person of Hoang-Van-Lan, 19 years, previously
12 employed by them and who had left his work the 7th of
13 the same month (June).

14 "This coolie who had been bound to a tree
15 and beaten violently was found dead on the morning of
16 the 12th.

17 "The autopsy carried out by Dr. Bereni showed
18 that death was produced by strangulation.

19 "Signed: Captain of the Police, Captain Merian."
20 Prosecution document No. 2772-E-3, affidavit
21 of Denise Avisse, is offered for identification and the
22 excerpts marked are offered in evidence.

23 THE PRESIDENT: Admitted on the usual terms.

24 CLERK OF THE COURT: Prosecution document
25 No. 2772-E-3 will be given exhibit No. 2118 for

1 identification only, and the marked excerpt therefrom,
2 bearing the same document number, will receive exhibit
3 No. 2118A.

4 (Whereupon, the document above re-
5 ferred to was marked prosecution's exhibit
6 No. 2118 for identification, and the marked
7 excerpts therefrom were marked prosecution's
8 exhibit No. 2118A and received in evidence.)

9 MAJOR DEPO: In this document the witness
10 relates the massacre of civilians and prisoners of
11 war, European and Indo-Chinese. Among them were two
12 French women and a child of three months.

13 With the Court's permission I will read the
14 marked excerpts:

15 "Affidavit of Avisse Denise, Alexandrine,
16 wife of Marshal des Logis (4 RAC) Avisse Pierre. Born
17 the 7th July 1927 at Lambezellec (Finistere). Daughter
18 of Proux Auguste, Louis, Albert and of Simon Philomene.
19 Domiciled in France at Kerallan-Lambezellec (Finistere).

20 "I lived at Langson, Gouttenegre Road, with
21 my husband and my son (a baby of three months).

22 "The 12th in the morning, once the firing had
23 ceased, a French NCO came to fetch us from the shelter.

24 "A French officer, whose name I do not know,
25 introduced us to the Japanese officer. This latter

1 told us that he did not take women prisoners and that
2 we could go.

3 "As soon as we were outside the gates of the
4 post, the Japanese stopped us with their bayonets. I
5 made a sign to the French officer that the Japanese
6 would not let us go. The Japanese officer made a
7 sign to his soldiers to let us pass. After having
8 gone through the gates for a second time and taken a
9 few steps in the road, a Japanese drew a line in the
10 road with his sword and forbade us to go beyond it.

11 "We went back to the post. We were grouped
12 with the wounded who were guarded by the Japanese.

13 "Among the wounded were two French NCOs,
14 one wounded in the face and the other in the legs.
15 The latter, not being able to walk, asked his comrade
16 to give him a piece of stick to help him to walk. His
17 comrade, having given him the stick, a Japanese came up
18 and took it away.

19 "We went in the direction of the market. The
20 man wounded in the legs was helped by his comrade who
21 was wounded in the face. We came to a place between
22 the market and the subdivision where we stopped, a
23 Japanese detached himself from the group and went to
24 look at the trenches near the little wall of the sub-
25 division. The detachment went forward again, skirted

1 the market, stopped between the market and the
2 Citadel, another Japanese left the ranks and went to
3 see the trenches which were between the market and
4 the Citadel. He then rejoined the group and instead
5 of taking the direction of the entrance gate to the
6 Citadel took up in an opposite direction, leading
7 to the Hotel of the Three Marshals. We went by the
8 building and arrived in the courtyard of the Officers
9 Club. There was a trench at this place and the
10 Japanese ordered us to get into it. When everyone
11 was inside, they looted us. A Japanese brutally
12 pulled one arm of my child to take off his little
13 bracelet. I was obliged to tell Madame Mercier to
14 take it off in order to avoid these brutalities to
15 my son.

16 "When this operation was over, the Japanese
17 fired on us at point blank range. Madame Mercier, who
18 was behind me, received a bullet in the back and was
19 killed outright. At the same time I received the first
20 bullet in the left side and I sank down to the ground,
21 a second bullet broke the left arm and split my son's
22 skull while I was holding him in my arms. A third
23 bullet broke my right wrist.

24 "When the butchery was over the Japanese
25 stayed there about five minutes and then went away
thinking that everyone was dead.

1 "After their departure, two sharpshooters who
2 were amongst the victims (there were about 15 of us)
3 managed to escape to the river's bank. Madame Mercier
4 was leaning on me but I managed to extricate myself
5 and went to see if the two NCOs were dead. They gave
6 no sign of life. Hearing a noise I came back to take
7 up my place. The Japanese came back to the trench.
8 Probably they realized that there were two sharpshooters
9 missing and began to check up to see if everyone was
10 dead. They turned Madame Mercier on her back and then
11 seeing that I had no blood on my back they turned me
12 over with their swords at the bottom of the trench.
13 One of them called me 'Mademoiselle.' I pretended to
14 be dead. This operation completed they went away.
15 After they had gone an Annamite came down into the
16 trench and came to search me. I made no sign. My hand-
17 bag was beside me and he took it and left the trench.
18 Finding nothing inside he threw it away. After waiting
19 a moment I decided to leave the trench if possible. I
20 covered my child over with his little coat and I slid
21 up to the side of the trench."

22 The affidavit of Taputuarai Tetani, prosecu-
23 tion document No. 2772-E-4, is offered for identifica-
24 tion and the marked excerpts offered in evidence.

25 THE PRESIDENT: Admitted on the usual terms.

1 CLERK OF THE COURT: Prosecution document
2 No. 2772-E-4 will receive exhibit No. 2119 for identi-
3 fication only, and the marked excerpt therefrom, bear-
4 ing the same document number, will receive exhibit
5 No. 2119A.

6 (Whereupon, the document above re-
7 ferred to was marked prosecution's exhibit
8 No. 2119 for identification, and the marked
9 excerpt therefrom was marked prosecution's
10 exhibit No. 2119A and received in evidence.)

11 MAJOR DEPO: This document describes the
12 violation which the witness had to submit to. I quote
13 from document No. 2772-E-4:

14 "About 10:30, four Japanese made me go back
15 into the magazine where I had spent the night. I
16 tried to resist but they struck me and pushed me into
17 this room. There, one of the soldiers came up and
18 threatened me with his bayonet, another struck me and
19 laid me on the ground. I was violated by one of them
20 under the eyes of three others, one of whom was
21 threateneing me with his bayonet. Previously they had
22 torn my clothes off me."
23
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1 Prosecution document No. 2772-E-5 is offered
2 for identification only and the excerpts marked are
3 offered in evidence.

4 THE PRESIDENT: Admitted on the usual terms.

5 CLERK OF THE COURT: Prosecution's document
6 No. 2772-E-5 will receive exhibit No. 2120 for iden-
7 tification, and the marked excerpts therefrom bearing
8 the same document number will receive exhibit No.
9 2120-A.

10 (Whereupon, the document above re-
11 ferred to was marked prosecution's exhibit
12 No. 2120 for identification, the excerpts there-
13 from being marked prosecution's exhibit No. 2120-A
14 and received in evidence.)

15 MAJOR DEPO: The witness of Indo-Chinese
16 origin mentions in particular the punishment of a
17 French captain, the massacre of 13 officers and sol-
18 diers of the Engineers and the forced obligation of
19 Indo-Chinese women to give themselves up for prostitu-
20 tion.

21 With the Court's permission I will now read
22 the marked excerpts:

23 "After four days of freedom, I was arrested in
24 the town by the Japanese and taken to their Military
25 Police H.Q. situated behind the hospital of the

1 Indo-China Guard. One day, having to go to the
2 W.C., I saw in one of the outhouses the window
3 shutters of which were partly open, the body of
4 Captain Linard hanging by the thumbs. His head was
5 turned towards the window and lolling to one side.
6 It appeared to me that he was dead.

7 I remained shut up in Japanese military police
8 H.Q. for 8 days and then let go. After that I was
9 arrested on several occasions and violently beaten.
10 The Japanese rebuked me for my relations with the
11 French.

12 "On the mound LE DUC HINH, I saw the corpses
13 of six French soldiers, one of which had been com-
14 pletely decapitated. In the direction of CO LEN I
15 saw corpses of 3 French NCOs.

16 "In the city, near the market I saw 8 corpses
17 which were afterwards buried in nearby trenches.

18 "I was able to wander in the direction of Fort
19 Negrier and to TO SON; I saw there numerous corpses
20 of French soldiers in an advanced state of decomposi-
21 tion unburied.

22 "In the course of their investigation at Lang
23 Son, the Japanese forced several of my fellow-country-
24 women who were living with French soldiers, to follow
25 them to a brothel which they had set up at TIEN YEN.

1 By means of a trick I was able to escape them."

2 The prosecution now offers in evidence
3 document No. 2772-A-4, affidavit of Fernand Casaula.

4 THE PRESIDENT: Admitted on the usual terms.

5 CLERK OF THE COURT: Prosecution's document
6 No. 2772-A-4 will receive exhibit No. 2121.

7 (Whereupon, the document above re-
8 ferred to was marked prosecution's exhibit
9 No. 2121 and received in evidence.

10 MAJOR LEPO: The witness relates the violation
11 and assassination of a European woman at Lang-Van and
12 the violation of a young Frenchwoman, wounded and
13 subsequently disappeared.

14 With the Court's permission I will now read
15 this document:

16 "AFFIDAVIT. CASAULA Fernand; born 6 Sept.
17 1900 at Bordeaux. Son of Maria CASAULA. Address in
18 France: 72 rue Mandron, Bordeaux.

19 "AT HAGIANG: About 2100 hours on the evening of 27
20 March 1945 I was called by a Japanese corporal and
21 taken out of the post of Quang Ba into a cain ha
22 (native house) where about 15 Indochinese civilians
23 were gathered round a wounded person stretched out
24 on a bunk (bat-flanc). I was asked to identify her.
25 I came near and recognized Miss Andree RENARD of

1 Hagiang. The corporal told me to question her about
2 her wound and how she came to be in Quang Ba.

3 "After her father had been killed by a stray
4 bullet during the night 9/10 March 1945 Miss Renard
5 and her mother had fled through the forest and had
6 succeeded in reaching Lang Van. On 26 March 1945, she
7 and her mother were stopped by Japanese soldiers who
8 violated them and then killed her mother with bayonet
9 thrusts. Miss Renard having had only her left shoul-
10 der pierced through was able to escape and get to
11 Quang Ba. During this account, the Japanese corporal
12 was sitting on the bunk and having put his hands under
13 Miss Renard's dress and applied himself to feeling
14 her in a disgusting manner. An interpreter translated
15 our conversation to the Japanese corporal.

16 "The Japanese doctor being absent, I asked
17 authority to give the necessary medical care to Miss
18 Renard. They paid no attention to my request and two
19 soldiers took me back to my room.

20 "Next day I tried to get some news of the wounded
21 girl. The Japanese corporal answered me that her
22 wound smelt bad.

23 "I presume that Miss Andree Renard was violated
24 again several times during the night 27/28 March 1945
25 and that she must have died as a result of these

1 outrages and of her neglected wound. For in spite
2 of the investigations which were undertaken, no trace
3 of her was ever been recovered. (Signed) F. CASAULA."

4 THE PRESIDENT: Needless to say, we will
5 disregard all such assumptions.

6 MAJOR DEPO: The affidavit of Madame
7 Remigereau Paulette, IPS document No. 2772-A-5 is
8 offered for identification and the marked excerpts
9 are offered in evidence.

10 THE PRESIDENT: Admitted on the usual terms.

11 CLERK OF THE COURT: Prosecution's document
12 No. 2772-A-5 will receive exhibit No. 2122 for iden-
13 tification only; the marked excerpts therefrom, bearing
14 the same document number, will receive exhibit No.
15 2122-A.

16 (Whereupon, the document above referred
17 to was marked prosecution's exhibit No. 2122 for
18 identification, the excerpts therefrom being
19 marked prosecution's exhibit No. 2122-A and
20 received in evidence.)

21 MAJOR DEPO: This deposition contains the
22 account of the ill treatment and tortures undergone
23 by a French woman and the violation of another French-
24 woman.

25 With the Court's permission will now read the

1 marked excerpts:

2 "Deposition of Mrs. Remigereau (Paulette).

3 "Received by us, Raymond Guillien, Professor of
4 the Faculties of Law, charged with the investigation
5 of War Crimes in North Indo-China.

6 "Toward 1900 or 2000 a Japanese had me go out
7 onto the stairway and gagged me with a napkin. I was
8 able to pull off the napkin, cry out and, despite
9 being tripped up, return to the bunk. An hour of
10 quiet followed, I was then motioned to get off the
11 bunk. I refused. Then I was struck by a Japanese
12 with the flat of the bayonet on the abdomen and the
13 thighs, and by another Japanese by rattan blows. I
14 was also slapped. New respite. Then to see whether
15 I was asleep they would strike my feet with their
16 bayonets or burn my ankles with cigarettes.

17 "The next day, 11 March, toward 10000 the Jap-
18 anese brought in 10 prisoners. It was then that a
19 Japanese made a sign to Mrs. V.... and to me from the
20 door to follow him, Then, accompanied by one other,
21 he made us go up to the third /U.S. fourth/ floor.
22 Mrs. V..... had to follow a Japanese into a room.
23 Another Japanese, in turn, made me take off my slip
24 and stretch out on a mat. My state of pregnancy
25 saved me. Mrs. V.... came down a moment after me.

1 Immediately she confided to me that she had been
2 violated. In the course of the day they came for
3 her five times. The husband of Mrs. V.... was slapped
4 in order that he would not oppose the successive de-
5 partures of his wife.

6 "During the day of the 12th Mrs. V..... was again
7 violated five times. They left me on the other hand
8 in complete peace."

9 Prosecution document No. 2772-A-6, affidavit
10 of Cecile Cazajous, is submitted to the Court for
11 identification and the marked passages are offered
12 in evidence.

13 THE PRESIDENT: Admitted on the usual terms.

14 CLERK OF THE COURT: Prosecution's document
15 No. 2772-A-6 will receive exhibit No. 2123 for iden-
16 tification only; the marked excerpts therefrom, bearing
17 the same document number, will receive exhibit No.
18 2123-A.

19 (Whereupon, the document above re-
20 ferred to was marked prosecution's exhibit
21 No. 2123 for identification, the excerpts there-
22 from being marked prosecution's exhibit No.
23 2123-A.)

24 MAJOK LEPO: This affidavit completes the
25

1 previous document No. 2772-A-5, already introduced
2 in evidence and bearing exhibit No. 2122, but it also
3 mentions the massacre at the bridge of Yen Bien at
4 Hagiang (Tonkin) of 23 French soldiers, prisoners of
5 war.

6 With the Court's permission I will read the
7 marked excerpts:
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1 MAJOR LEPO: "Affidavit of Cazajous, Cecile,
2 Agnes, Valentine, born 21 November 1905 at Aricizans-
3 Avant (Hautes-Pyrenees); wife of Adjutant Flouret;
4 daughter of Cazajous, Jean, and of Anastasie, Lacaze.
5 Domicile in France: Gonteau (Lot-et-Garonne).

6 "My husband and I were placed in the yard,
7 stripped of all we possessed, bound, struck with rifle
8 butts (I have some scars on my scalp and on my left
9 socket), loaded with the arms taken from the Tri-Chau's
10 and we were taken near the bridge of Yen Bien where we
11 served as shields between the French troops on the
12 one hand and the Japanese troops on the other who were
13 continuing the fight. We remained there till morning
14 and were then taken to one of the fermes des jeux
15 /amusement center/ of the neighborhood.

16 "I was at first closed up in one of the rooms
17 of the ferme des jeux with my husband, Mrs. Remigereau
18 (friend of Adjutant Perriolat), Sergeant Jobert, a
19 Navy Quartermaster and 23 other French military
20 personnel. These 23 military personnel were assembled,
21 taken to the bridge of Yen Bien and massacred. The
22 first five, which included me, were kept in the quar-
23 ters that we occupied and it was there, under the eyes
24 of my husband, that I had to suffer the first assaults
25 of the soldiery which I resisted efficaciously.

1 "In the course of the night 10/11 March 1945
2 I was transferred to a neighboring room along with
3 Mrs. Remigereau and I had to yield to the brutalities
4 of the Nips. I was also violated five times, including
5 once under the eyes of Mrs. Remigereau who was spared
6 after being examined.

7 "The deeds took place in the following manner:
8 The first time I was taken to a side room with
9 Mrs. Remigereau by two guards. They beat us violently
10 and laid us on the floor. One of them tore off my
11 slip and violated me. In the course of the night on
12 four separate occasions I was taken out and violated
13 in the same manner. Those guilty were always armed
14 and completely equipped. My husband who was incarcerated
15 in the same room as I could say nothing when they came
16 to get me, for he was bound and every time he attempted
17 to intervene received numerous and violent blows."

18 The affidavit of Moullet, Albert, Battalion
19 Commander, prosecution document No. 2772-A-3, is
20 offered for identification and the marked excerpts
21 offered in evidence.

22 THE PRESIDENT: Admitted on the usual terms.

23 CLERK OF THE COURT: Prosecution's document
24 No. 2772-A-3 will receive exhibit No. 2124 for identi-
25 fication only. The marked excerpt therefrom, bearing

1 the same document number, will receive exhibit
2 No. 2124-A.

3 (Whereupon, prosecution's document
4 No. 2772-A-3 was marked prosecution's exhibit
5 No. 2124 for identification; and the excerpt
6 therefrom was marked prosecution's exhibit
7 No. 2124-A and received in evidence.)

8 MAJOR DEPO: This document mentions the
9 specially hateful violation and assassination of two
10 French women. Moreover, he gives the schedule of the
11 executions of prisoners of war at Hagiang.

12 With the Court's permission, and for reasons
13 of convenience, we shall read to the Court some marked
14 excerpts from this document when we deal with the part
15 relative to prisoners of war.

16 Prosecution document No. 2772-D-3, which is
17 a report by Captain Merian, of the French Gendarmerie,
18 is offered to the Court in evidence.

19 THE PRESIDENT: Admitted on the usual terms.

20 CLERK OF THE COURT: Prosecution's document
21 No. 2772-D-3 will receive exhibit No. 2125.

22 (Whereupon, the document above
23 referred to was marked prosecution's exhibit
24 No. 2125 and received in evidence.)

25 MAJOR LEPO: This report relates an incident

1 concerning blows and wounds on the persons of three
2 Indo-Chinese of Bac-Ninh of whom one died as a result
3 of this violence.

4 I will not read this document to the Court.
5 Document No. 2772-D-4 of the prosecution,
6 being the report of a French officer, Captain Merian,
7 of the Gendarmerie, is offered to the Court in
8 evidence.

9 THE PRESIDENT: Admitted on the usual terms.

10 CLERK OF THE COURT: Prosecution's document
11 No. 2772-D-4 will receive exhibit No. 2126.

12 (Whereupon, the document above
13 referred to was marked prosecution's exhibit
14 No. 2126 and received in evidence.)

15 MAJOR DEPO: It is the record of the tortures
16 and ill-treatment undergone by an Indo-Chinese, Phong
17 Luy Thieu, and by a Frenchman, Mr. Surena, at Japanese
18 Military Police Headquarters at Hanoi.

19 I will not read this document to the Court.

20 Prosecution document No. 2772-D-5, report of
21 Captain Merian, of the Gendarmerie, is offered in
22 evidence.

23 THE PRESIDENT: Admitted on the usual terms.

24 CLERK OF THE COURT: Prosecution's document
25 No. 2772-D-5 will receive exhibit No. 2127.

1 (Whereupon, the document above
2 referred to was marked prosecution's exhibit
3 No. 2127 and received in evidence.)

4 MAJOR DEPO: This report relates the grave
5 violence suffered in 1942 by a Frenchman, Mr.
6 Casabianca, shut up in a cage of the Japanese Military
7 Police Headquarters at Hanoi.

8 I will not read this document to the Court.
9 The affidavit of Babin, Pierre, prosecution
10 document No. 2772-L-7, is offered to the Court in
11 evidence.

12 THE PRESIDENT: Admitted on the usual terms.

13 CLERK OF THE COURT: Prosecution's document
14 No. 2772-L-7 will receive exhibit No. 2128.

15 (Whereupon, the document above
16 referred to was marked prosecution's exhibit
17 No. 2128 and received in evidence.)

18 MAJOR LEPO: This document relates to the
19 tortures and ill-treatment which French civilians
20 interned at police headquarters and in the prison at
21 Hanoi had to undergo.

22 With the Court's permission, I will now read
23 this document.

24 "Affidavit of Babin, Pierre, Director of
25 Breweries & Ice Works of North Indo-China. Born

1 10 October 1904, at Arpajon (Seine, Oise); son of
2 Babin, Jules Louis Desire, and Marguerite Bardon.
3 Living at: Hommel Breweries, Hanoi.

4 "At Hanoi:

5 "Arrested for an unknown reason, I was shut
6 up at the police station from 12th of April to 24th of
7 May - at the prison for four days, then at the citadel
8 up to 29th of August.

9 "Interrogated on my curriculum, I did not
10 have to endure personally any of the cruelties
11 practiced on a number of my comrades detained with me,
12 but I witnessed them.

13 "It was in this way that I saw first the tor-
14 tures inflicted on F. Martin, Director of Air France,
15 made to kneel down on broken bricks and beaten savagely
16 for two hours with blows of a club, a rubber truncheon
17 and also kicked.

18 "Secondly, the tortures inflicted on Winter,
19 Henri, made to kneel on bars of wood with sharp edges,
20 beaten violently with a horsewhip, belts and fists
21 and torture by electricity for nearly an hour in periods
22 of 10 minutes separated by 10 minutes rest. Loss of
23 weight: 14 kilos (38 lbs).

24 "Thirdly, the return after interrogation of
25 Destombes, entirely covered with blows from neck to

1 feet. He remained for three days in a state bordering
2 on coma.

3 "I confirm the cases of typhus of Nadaillat
4 and Saumon, Bence and Barth, Henri.

5 "As for the diet at the police station, it
6 was composed of the remains of rice mixed with lime in
7 a ball (two balls a day for each prisoner) and weeds
8 boiled in water, representing in all 150 grams of dry
9 rice a day. For 20 days only one bowl (cai-bat) of
10 'la voi' /a kind of rice mixture/ was distributed for
11 six prisoners."

12 The affidavit of Lawyer Philippe Duquesnay,
13 advocate at Hanoi, prosecution document No. 2772-L-8,
14 is offered in evidence.

15 THE PRESIDENT: Admitted on the usual terms.

16 CLERK OF THE COURT: Prosecution's document
17 No. 2772-L-8 will receive exhibit No. 2129.

18 (Whereupon, the document above
19 referred to was marked prosecution's exhibit
20 No. 2129 and received in evidence.)

21 MAJOR LEPO: The witness relates the tortures
22 and the ill-treatment inflicted on French civilians
23 detained at the prison of Hanoi and in the premises
24 of the Shell Company, which had been turned into a
25 prison by the Japanese Military Police.

1 This document completes prosecution document
2 No. 2772-L-7, already introduced in evidence and marked
3 exhibit No. 2128, in so far as the regime of the
4 prison is concerned.

5 I will not read this document to the Court.

6 Prosecution document No. 2772-D-9, affidavit
7 of Mr. Guy Nourrit, barrister at Hanoi, is offered to
8 the Court in evidence.

9 THE PRESIDENT: Admitted on the usual terms.

10 CLERK OF THE COURT: Prosecution's document
11 No. 2772-I-9 will receive exhibit No. 2130.

12 (Whereupon, the document above
13 referred to was marked prosecution's exhibit
14 No. 2130 and received in evidence.)

15 MAJOR DEPO: The witness gives a description
16 of the treatment meted out to the French in detention
17 at the police headquarters of Hanoi.

18 With the Court's permission, I will now read
19 this document.
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"Affidavit of Nourrit, Guy (Barrister)

1 Born 7 June 1916 at Marseilles. Son of Nourrit,
2 Jean, and of Arnal, Emmeline. Domicile: 40 Boule-
3 vard Gambetta, Hanoi.
4

5 "At Hanoi

6 "I was arrested on 19 May 1945 for belong-
7 ing to a Resistance group. I was immediately shut
8 up in a cell of the Surete (cell No. 16), where I
9 found a person, M. Leopold Giraud, arrested for the
10 same reason on 1st April. Subsequently two other
11 prisoners were to join me in this cell.

12 "There were afterward two classes of
13 prisoners: 1) Those who, like me, were put in
14 cells. 2) Those who were put in a cage. No
15 special criterion decided the allotment to one or
16 the other class. This appeared to be left solely
17 to the whim of the Japanese jailers.

18 "Differences:

19 "The cell in which I found myself contained
20 4 prisoners, of whom one was an Annamite, a plunderer
21 of corpses. The Japanese, in effect, spared no
22 pains, to increase the inconveniences of the deten-
23 tion for the French, by putting with them one or
24 more Annamites, common law felons. The cell con-
25 tained a bunk on which only one of us could lie in

1 a somewhat cramped position. The others were
2 reduced to squatting on the earth at night. It was
3 impossible to change position. The cell was only
4 about 3 metres long. As to its breadth one could
5 touch the opposite wall by stretching out the arms.
6 Daylight penetrated by a 15 to 20 cm grating in the
7 door. The latter was opened for 5 minutes every day
8 to allow us to go to the W.C. We had no chance of
9 washing.

10 "The prisoners who were put in a cage 20
11 metres long by 7 or 8 wide never went out of it at
12 all, a W.C. being placed in a corner of the enclosure.
13 Though they had the possibility of walking about
14 and talking with about ten other co-prisoners and
15 to see the daylight through 2 or 3 windows, the
16 hygienic conditions of their stay were none the
17 less extremely painful. There were 30 or 40 penned
18 up in one enclosure. Vermin, as in the cells,
19 swarmed. There was an occasion when a dead body,
20 it was in summer, remained in the midst of the
21 prisoners for 24 hours.

22 "Ordinary Routine:

23 "Twice a day at 2 p.m. and at 8 in the
24 evening we received a ball of rice with a little
25 salt, a bit of herbs and a cai-bat-coffee cup--of

1 tea. It was, let me repeat, in summer and our
2 bodies demanded a more abundant amount of liquid.
3 We never had meat. A diet of this kind produced a
4 perceptible loss of weight after a period of days.
5 It was very weakening and as far as I myself was
6 concerned continued to feel the effects for several
7 months. We were not allowed to receive any changes
8 of linen.

9 "The monotony of the imprisonment was
10 broken by the interrogations which we underwent,
11 the pleasure of being beaten up with clubs or better
12 still, of torture by electric current. In this
13 respect certain prisoners (Messrs. Lanata of the
14 Air France Company, Roger Laurent of the Public
15 Works, Bjerring, former commandant of the 5th R.E.
16 /Strangers Regiment/ were reduced to such a bad
17 condition that the Japanese thought fit to have them
18 hospitalized. Commandant Bjerring died in the
19 hospital from tortures he had undergone.

20 "Mr. Giraud (Leopold) who was in the same
21 cell as I was, was one of the most tortured of the
22 persons detained by the Surete. He was in the cell
23 about 5 months and was sent to the Citadel by the
24 Japanese in a state of extreme weakness. Mr. Roger
25 Laurent mentioned above was hospitalized for long

1 months and also had his health particularly
2 damaged."

3 Prosecution document No. 2772-D-10, affi-
4 davit of Talba, Henri, is submitted for identifi-
5 cation and the marked excerpts are offered in
6 evidence.

7 THE PRESIDENT: Admitted on the usual
8 terms.

9 CLERK OF THE COURT: Prosecution's docu-
10 ment No. 2772-D-10 will receive exhibit No. 2131,
11 for identification only, and the marked excerpt
12 therefrom, bearing the same document number, will
13 receive exhibit No. 2131-A.

14 (Whereupon, the document above
15 referred to was marked prosecution's
16 exhibit No. 2131 for identification, and
17 the excerpts therefrom were marked prose-
18 cution's exhibit No. 2131-A and received
19 in evidence.)

20
21 MAJOR DEPO: The witness relates the
22 tortures which he had undergone at the Japanese
23 military police headquarters of Tong.

24 With the Court's permission I will read
25 the marked excerpts.

"Affidavit of Talbe, Henri Gontran, born

1 at Marin (Martinique) on 28 March 1907. Son of
2 Gaston Francois Talbe and of Julia Lavilette.

3 Address, 32, Capitaine Do-Hun-Vi Street, Hanoi.

4 "/stamp/ Service of War Crimes at Saigon,
5 September 24, 1946.

6 "At Tong and Hanoi.

7 "Savagely and repeatedly beaten by fists
8 and rifle butts, I was tied to a tree by means of
9 a cord tied round and round my body. I was left
10 in this state for six times twenty-four hours, with-
11 out drinking nor eating (from 6 April at 9 o'clock
12 to 12 April about 8 o'clock in the morning). My
13 Annamite wife's attempts to feed me remained all
14 in vain, the Japanese driving her back at each of
15 her attempts. In the above-described state, every
16 evening towards nightfall I saw an Indo-Chinese
17 with fixed bayonet rifle put under my chin in such
18 a manner that I could not take any rest during the
19 night and that all attempts at sleep were impossible
20 since they were at once interrupted by the plunging
21 of the bayonet into the throat under the weight of
22 the head falling forward. In the daytime, the rifle
23 and its bayonet were taken away, but several
24 Japanese officers, non-commissioned officers and
25 soldiers after having put on boxing gloves, practiced

1 boxing for hours on my bruised body and face.

2 "During 6 times 24 hours, I was not even
3 untied to satisfy the calls of nature and I had
4 to relieve myself by soiling myself, without it
5 being possible for me to wash myself before 12 April,
6 the day when I was able to make a little toilet
7 after having been untied and before riding in the
8 truck which was to bring me to Hanoi."

9 The affidavit of Tanguy, Joseph, prosecu-
10 tion document No. 2772-D-11, is introduced to the
11 Court for identification. The marked excerpts are
12 offered in evidence.

13 THE PRESIDENT: Admitted on the usual
14 terms.

15 CLERK OF THE COURT: Prosecution's docu-
16 ment No. 2772-D-11 will receive exhibit No. 2132
17 for identification only, and the marked excerpt
18 therefrom, bearing the same document number, will
19 receive exhibit No. 2132-A.

20 (Whereupon, the document above
21 referred to was marked prosecution's
22 exhibit No. 2132 for identification, and
23 the excerpts therefrom were marked prose-
24 cution's exhibit No. 2132-A and received
25 in evidence.)

1 MAJOR DEPO: This document relates to the
2 assassination of a French couple at Hanoi.

3 I will not read this document to the Court.

4 The affidavit of Belgodere, Antoine, prose-
5 cution document No. 2772-D-12, is offered in
6 evidence.

7 THE PRESIDENT: Admitted on the usual
8 terms.

9 CLERK OF THE COURT: Prosecution's docu-
10 ment No. 2772-D-12 will receive exhibit No. 2133.

11 (Whereupon, the document above
12 referred to was marked prosecution's ex-
13 hibit No. 2133 and received in evidence.)

14 MAJOR DEPO: The witness, who was imprisoned
15 in the premises of the Shell Company at Hanoi, gives
16 an account of the bad treatment and tortures inflict-
17 ed on French civilians. In particular he relates
18 the death of a European victim of these atrocities.
19 This document is supplementary to prosecution docu-
20 ment No. 2772-D-8, already introduced in evidence
21 and bearing exhibit No. 2129. I quote:

22 "I saw several times M. Laurent subjected
23 to torture by magneto. I saw the beating with
24 rubber clubs carried out at the prison on 14 May
25 on the persons of Messrs. Littee. Mazerm, etc., one

1 after another.

2 "On April 15 confronted with Mr. Cero, I
3 witnessed the brutalities inflicted on him by the
4 Japanese by means of a hard wooden ruler with
5 metal edges. These brutalities although relatively
6 light by reason of the kind of instrument used,
7 were none the less painful to the victim, who was
8 in a precarious state of health and who moreover
9 died two days after."

10 Prosecution document No. 2772-F-1, which
11 is the affidavit of Robert, Marcol, is presented
12 to the Court for identification and the marked
13 excerpts are offered in evidence.

14 THE PRESIDENT: Admitted on the usual
15 terms.

16 CLERK OF THE COURT: Prosecution's docu-
17 ment No. 2772-F-1 will receive exhibit No. 2134
18 for identification only, and the marked excerpt
19 therefrom, bearing the same document number, will
20 receive exhibit No. 2134-A.

21 ("Whereupon, the document above
22 referred to was marked prosecution's
23 exhibit No. 2134 for identification, and
24 the excerpts therefrom were marked prose-
25 cution's exhibit No. 2134-A and received

in evidence.)

1
2 MAJOR DEPO: This witness tells the
3 tortures of which he was the victim at Cao-Bang,
4 ordered by two Japanese officers of whom one was
5 a superior officer.

6 With the Court's permission I will now
7 read the marked excerpt.

8 "Affidavit of Robert, Marcel, born the
9 18th September 1915, at Hanoi. Son of Robert,
10 Leopold, and of Nguyen thi Ngo. Domicile: 11, Rue
11 Jacquin, Hanoi.

12 "At Cao Bang,

13 (Arrested at the post of Trung Khanh Phu
14 the 20th March 1945, I remained interned there until
15 April 4th, while awaiting successive transfers to
16 Cao Bang the 4th of April, Lang Son the 19th of
17 April, and Hanoi the 5th of June.

18 "In order to force confessions from me
19 concerning stocks of arms, of munitions, fuel and
20 supplies existing in the region and of which I
21 knew the whereabouts, I was submitted to the follow-
22 ing acts of violence and torture:

23 "Hands bound behind the back of the chair
24 on which I was sitting, hanging from the wrists
25 (tied behind my back) about one meter from the

1 ground, for more than two hours and swung from one
2 end to the other of the gaming room of Trung Khanh
3 Phu. I was at the mercy of several Japanese soldiers
4 and each one, as my body came within his reach, hit
5 me with whip, stick and butt of a Thompson rifle.

6 "In addition, the difficulties of transla-
7 tion between Mr. Gleron and the Japanese decided the
8 latter to have recourse to my good offices. While
9 remaining tied to my bench I was brought back near
10 to the place of torture. The confessions desired
11 by the Japanese not yet being forthcoming, I was
12 submitted to another group of tortures: a soldier
13 held my head with one hand and with the other stopped
14 my mouth - during this time a second soldier poured
15 cold water from a teapot into my nostrils, my head
16 thrown backwards to a position lower than the bench
17 on which I was lying. This operation was repeated
18 about fifteen times and the teapot was filled as
19 many times. This produced in me the early stages
20 of asphyxia and I estimate that I must have had
21 about 3 or 4 litres of water forced down me.

22 "I do not know the names of the subalterns
23 who inflicted the tortures I have described but, on
24 the other hand, I know those of the Japanese chiefs
25 who gave the orders. They are: Commander NITTA or

1 NITSUTA and Captain CHIBA.

2 "It was the Japanese commander and captain
3 who gave me their names before having me tortured."

4 Prosecution document No. 2772-G-1, the
5 affidavit of Poli, Dominique, is offered to the Court
6 in evidence.

7 THE PRESIDENT: Admitted on the usual
8 terms.

9 CLERK OF THE COURT: Prosecution's docu-
10 ment No. 2772-G-1 will receive exhibit No. 2135.

11 (Whereupon, the document above
12 referred to was marked prosecution's ex-
13 hibit No. 2135 and received in evidence.)
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1 MAJOR DEPO: This document comprises the
2 account of the tortures endured by the witness at
3 the Japanese Military Police Headquarters of Hanoi.
4 I quote:

5 "Next day at 7 o'clock in the morning I
6 was taken to the Japanese Police Headquarters in
7 the BONAL Blvd., taken into an office there and told
8 to take off my clothes. I was then bound to a table
9 flat on my back. Without asking me any questions
10 they inflicted the water punishment on me several
11 times. Then I was unbound and dressed myself and
12 was told to reflect.

13 "Next day the same performance, but this
14 time all day long. The day after that I was threatened
15 with having to submit to torture under the eyes of my
16 children. Always I was tortured the whole day long
17 but my children were not brought there.

18 "I had to undergo a daily period of torture
19 until the 27th, the day on which I was to have been
20 shot. On the 27th I was finally taken back to the
21 police station where I was put in a cell in company
22 with other companions."

23 Prosecution document No. 2772-G-2, affidavit
24 of LIMOUSIN Francois, is offered to the Court in
25 evidence.

1 THE PRESIDENT: Admitted on the usual terms.

2 CLERK OF THE COURT: Prosecution's document
3 No. 2772-G-2 will receive exhibit No. 2136.

4 (Whereupon, the document above re-
5 ferred to was marked prosecution's exhibit
6 No. 2136 and received in evidence.)

7 MAJOR DEPO: In this document, the witness
8 gives an account of the tortures and ill-treatment
9 endured by himself and the French imprisoned at
10 Haiphong in the premises of the Shell Company, and
11 at the Central Prison.

12 With the Court's permission I will read this
13 document.

14 (Reading) "AFFIDAVIT

15 "Monsieur Francois LIMOUSIS

16 "Born: 27-4-1893 at Carcassonne (Aude).

17 "Parents: Emile and Anna BARAT.

18 "Profession: Dock Director HAIPHONG

19 "Home address: 9 Rue de Marechal

20 "Joffre, HAIPHONG.

21 "I was arrested on 12 April as an F. F. I.

22 The Japanese Military Police took me to the Shell
23 premises in the Boulevard Gambetta where they shut
24 me up in an underground dungeon after taking away from
25 me everything I had in my possession. There were about

1 twenty French in the dungeon and some verminous,
2 scabious Annamites who, in the course of a few days,
3 covered us all with lice. Each of us received daily
4 about 150 grams of rice, in all three (3) bowls.

5 "The military police forced us to remain
6 from morning till bedtime sitting in the Japanese
7 fashion with the legs crossed. It was forbidden
8 to lean against the wall or change one's position.
9 We were also forbidden to receive anything at all
10 from outside.

11 "On 17 April I was taken to the second story
12 where my interrogation began. I was clubbed on the
13 head by the Japanese interpreter and a gendarme.
14 This treatment continued on the 18th, 19th and 20th
15 April. For 17 days I never had a motion of the bowels
16 owing to the scanty amount of food. Some of my
17 companions did not have a motion for 26 days. On
18 10 May we were removed to the Central Prison in Hanoi
19 ill and weak and subject to fainting fits.

20 "There we were lodged 45 of us in a room
21 built for twenty-four (24). There was one bucket in
22 the middle of the floor for relieving ourselves. The
23 food was tainted, composed of rice of the poorest
24 quality, uncleaned and frequently sour. The only
25 seasoning was a few slices of sweet potato and some

1 broken bits of dried fish.

2 "Towards the 22nd of May a Japanese gendarme
3 called me, handcuffed me and chained me to another
4 comrade of the F. F. I. named PORNIN and took us,
5 guarded by two Japanese soldiers, to the police
6 station where I was once more interrogated. My nega-
7 tive answers got me a very severe beating and elec-
8 trodes were fixed to my ears and connected with a
9 magneto. When further interrogation failed to give
10 satisfaction to the Japanese the magneto was started
11 and I was subjected, for an hour or more, to electric
12 shocks of high frequency which flung me about uncon-
13 trolledly and caused me to lose consciousness several
14 times.

15 "In order to get admissions about certain
16 tasks which had been entrusted to me these experiences
17 were repeated for four days. In my firm decision not
18 to utter a word and never to betray the oath which I
19 had made to my chief, the Commandant DJERRING, I
20 clenched my tongue firmly between my teeth. A violent
21 electric shock with the electrodes in my nostrils
22 contracted and paralysed my jaws. I bit through
23 my tongue on each side, blood flooded from my mouth
24 and I fell insensible.

25 "I was taken back to prison where I was

1 overcome by nervous tremblings, my tongue was swollen
2 and I could not move my jaw to the extent that I
3 was unable to swallow solid food or speak for about
4 20 days. On the following day the Japanese at the
5 place of interrogation, realizing that I could not
6 speak beat me and after jesting for a while seized
7 my sexual organs in his bare hands and twisted them
8 violently causing me horrible pain, cold sweat and
9 complete unconsciousness.

10 "I was brought to myself by being kicked in
11 the ribs and taken back to prison. My friends attended
12 to me and treated my inflamed and swollen organs with
13 cold compresses. This was the last time I was tor-
14 tured. My chief, Commandant DJERRING, died as a
15 result of the ill-treatment and privations which he
16 had endured.

17 "I was imprisoned in the citadel at HANOI
18 on 29 May 1945. I found that I had lost 17 kilogrammes
19 (40 lbs) in weight since my first imprisonment. The
20 doctor who examined me found I had a hernia on the
21 right side and a rupture on the left, both due either
22 to the treatment or the privations I had experienced.

23 "The gendarme who worked the magneto and
24 twisted my testicles was called 'The American'. I
25 can recognize him."

1 Prosecution document No. 2772-G-3, the
2 affidavit of CLAVE, Jeanne, is offered in evidence.

3 THE PRESIDENT: Admitted on the usual terms.

4 CLERK OF THE COURT: Prosecution's document
5 No 2772-G-3 will receive exhibit No. 2137.

6 (Whereupon, the document above re-
7 ferred to was marked prosecution's exhibit
8 No. 2137 and received in evidence.)

9 MAJOR DEPO: Madame CLAVE, wounded by a
10 bayonet thrust, describes the looting of her house
11 and an attempt at violation of which she was the
12 witness.

13 I will not read this document to the Court.
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1 MAJOR DEPO: The report of Captain MERIAN
2 of the French Gendarmerie, prosecution document No.
3 2772-G-5, is offered in evidence.

4 THE PRESIDENT: Admitted on the usual terms.

5 CLERK OF THE COURT: Prosecution document
6 2772-G-5 will receive exhibit No. 2138.

7 (Whereupon, the document above referred
8 to was marked prosecution's exhibit 2138 and
9 received in evidence.)

10 MAJOR DEPO: This report details the tor-
11 tures inflicted on an Indo-Chinese, THUY NGUYEN
12 of Kien-Nan, after he had been arrested on a false
13 charge of theft. I will not read this document at
14 all.

15 Prosecution document No. 2772-G-4, which
16 is the affidavit of CHEVIN, Louis, is offered to
17 the Court in evidence.

18 THE PRESIDENT: Admitted on the usual terms.

19 CLERK OF THE COURT: Prosecution document
20 No. 2772-G-4 will receive exhibit No. 2139.

21 (Whereupon, the document above referred
22 to was marked prosecution's exhibit No. 2139
23 and received in evidence.)
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1 MAJOR DEPO. In this document Mr. CHEVIN
2 relates the acts of violence and atrocities which
3 he has undergone, as well as the massacre of the
4 crew of an American plane in the outskirts of
5 Haiphong. With the Court's permission I will now
6 read this document.

7 (Reading) "Affidavit M'sieur CHEVIN Louis
8 "Born 26 January 1902 at HYERES (Var)
9 "Parents: Vindent and Angelina HEYRE.
10 "Profession: Manager T. P.
11 "Address: 7 rue de Marshal Joffre, Haiphong.
12 "(Stamp) WAR CRIMES COMMISSION SAIGON
13 "24 Sept. 1946

14 "I was arrested on 17 April 1945 along with
15 all others who belonged to the 'Resistance,' after
16 having been called together at the office of the
17 Franco-Japanese Liaison Mission. I was taken to
18 the police station and questioned by an N.C.O.
19 of the Military Police assisted by an interpreter.

20 "In the course of this questioning which
21 lasted from noon till 11 PM I was struck, had my
22 joints dislocated, was choked by strangulation and
23 thrown down by jiu jitsu. I became unconscious
24 three times.

25 "I was twice subsequently questioned in the

1 same manner on the 18th and 19th, refusing to point
2 out the position of the arms store which I was in
3 charge of. My torturers paid special attention to
4 the places where I had been injured during the
5 previous interrogation.

6 "The Military Police N.C.O. who questioned
7 me and at the same time acted as torturer is the
8 same man who executed an American airman belonging
9 to the crew of a plane which was shot down on the
10 outskirts of Haiphong. This plane was shot down
11 before the 9 March and I witnessed this massacre
12 on the embankment of Cua-Cam.

13 "In consequence of an infection due to ill-
14 treatment, I was sent to hospital about July in
15 Haiphong Hospital. On 14 August, though still
16 under treatment and seriously affected, I was taken
17 back to the prison by the Japanese and shut up
18 with severely wounded officers and N.C.O's. in the
19 condemned cells. We were freed on 9 Sept. by the
20 American Mission who conducted an inquiry into this
21 matter."

22 Prosecution document No. 2772-J-4 is now
23 submitted for identification. This document is com-
24 posed of two reports by Inspector of Police,
25 MASSOT Martial, attached to the Federal War Crimes

1 Commission. The marked excerpts in this document
2 are offered in evidence.

3 THE PRESIDENT: Admitted on the usual terms.

4 CLERK OF THE COURT: Prosecution document
5 No. 2777-J-4 will receive exhibit No. 2140 for
6 identification only, and the marked excerpts there-
7 from, bearing the same document number, will receive
8 exhibit No. 2140A.

9 (Whereupon, the document above referred
10 to was marked prosecution's exhibit No. 2140
11 for identification, and the marked excerpts
12 therefrom were marked prosecution's exhibit No.
13 2140A and received in evidence.)

14 THE PRESIDENT: You are about to read very
15 lengthy excerpts. We will recess for fifteen minutes.

16 (Whereupon, at 1045 a recess was taken
17 until 1100, after which the proceedings were
18 resumed as follows:)

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MARSHAL OF THE COURT: The International Military Tribunal for the Far East is now resumed.

THE PRESIDENT: Major Depo.

MAJOR DEPO: This document comprises a record of the investigation of the execution of fifteen Chinese at Long-Thanh in October 1944, and a report on the exhumation of the bodies. With the Court's permission I will read the marked excerpts to the Court:

"Police Inspector Martial Massot, Attached to the Federal War Crimes Commission, to The Chief of the Federal War Crimes Commission.

"In reply to your verbal request today -- a request having to do with the development of the affair which took place in October 1944 and which led to the arrest and execution of fifteen Chinese subjects by the Japanese Kempei Tai from Saigon-Cholon -- I have the honor to furnish to you the information which I have been able to assemble on this subject.

"A radio direction finder station belonging to the Japanese Kempei Tai having detected waves sent out by a secret sending station in the vicinity of the M.I.C. factory six portable RDF sets were placed around the sector thus defined.

"The transmissions being very frequent, four per day and at fixed times, and the transmitter moreover

1 not having been moved the exact point of transmission
2 was very quickly determined (see attached sketch).

3 "At this point Lieutenant SANO of the Cholon
4 Kempei Tai was ordered by Major FUKUTOMI, Chief of the
5 Kempei Tai, to carry out an investigation and to take
6 measures to put a stop to this information net.

7 "Surveillances were carried out around the
8 villa in which the transmitting station was located,
9 and in the course of time it was established that this
10 villa was occupied by a Chinese family and that the
11 husband was the operator of the clandestine station.
12 Only two Chinese came very frequently to this villa.
13 They were 'tailed' and 'lodged'. Other surveillances
14 were carried out on the houses of these two new persons;
15 other 'tails' were made which led to other surveillances.

16 "After about 45 days all the members of this
17 net were known and 'lodged'. During the course of
18 October the arrests were made at the same moment, each
19 house being surrounded. The Chief, being absent from
20 his domicile, was arrested on the basis of information
21 from one of the Chinese of the net. Thirty persons
22 were arrested in this single sweep. After interrogation
23 fifteen were released and fifteen sent to the Saigon
24 Kempei Tai.

25 "By submitting /the latter/ to torture the

1 Saigon Kempei Tai obtained complete confessions from
2 the fifteen Chinese. The transmitting station had been
3 in direct communication with Chungking.

4 "The fifteen Chinese having been condemned
5 to death by a tribunal of the Japanese Kempei Tai of
6 Saigon, the execution was set for the beginning of the
7 month of December in the vicinity of the Long-Thanh
8 airfield.

9 "A first party of Kempei Tai men left the
10 Kempei Tai Headquarters in advance with the mission
11 of finding a place for the execution and of digging the
12 trench. Then, in its turn, a second detachment com-
13 prising also the prisoners left the Gendamerie with
14 the airfield as its destination.

15 "There the prisoners were put down from the
16 conveyances and their hands tied behind their backs.
17 There were three women and twelve men. The men from
18 the first party were waiting at the airfield in order
19 to direct the new arrivals to a position chosen near
20 the ditch where the prisoners were to wait their turn
21 to be executed.

22 "Two sabres had been brought from Saigon to
23 serve in the execution, a 'Kotetsu' and a 'Muramasa'.
24 When all was ready the Kempei Tai began the executions.
25

"The operations occurred in the following

1 fashion: The prisoners were assembled in a place
2 about thirty metres from the ditch from which they
3 could see neither the ditch nor its immediate surround-
4 ings. Each of the Kempei had a prisoner to execute.
5 He would come and search out his victim, then when about
6 twenty metres from the ditch, and while it was still
7 impossible to distinguish it, he would cover his
8 /victim's/ eyes with a bandage; then leading him to
9 the edge of the ditch he would make his prisoner kneel
10 and would decapitate him with one of the two sabres
11 brought for this purpose. The head would fall into
12 the ditch and the body would fall of itself. The sabre
13 would be washed and a second execution would follow.
14 These executions were concluded at about 1730, having
15 begun at about 1600.

16 "The three women were executed first. Then
17 it was the Chief's turn and then his comrades'. The
18 first woman screamed and struggled and the Japanese
19 were obliged to place her on her knees by force and to
20 bind her legs in such a way that she would remain in
21 this position for beheading.

22 "All /the others/, with the exception of
23 this woman and the Chief who screamed in the same way
24 and struggled, died courageously.

25 "The Kempei Tai adjutant, Shunzo TOMONO, was

1 on the spot and directed the executions.

2 "When all was finished the ditch was refilled
3 and in a cynical gesture the Japanese planted a young
4 shrub, a shrub which moreover we found when we un-
5 covered the ditch.

6 "Executed that day were the following persons."

7 "Second Lieutenant Martial Massot, Attached
8 to the Federal War Crimes Commission, to The Chief of
9 the Commission.

10 "I have the honor to report to you the
11 following events:

12 "Pursuant to the orders given me I went to
13 Long Thanh in order to carry out there the exhumation
14 of the bodies of the Chinese subjects beheaded with
15 sabres by the gendarmes of the Saigon Kempe Tai during
16 the course of the month of December 1944."

17 Page 5:

18 "And we begin the exhumation of the remains
19 of these Chinese. The heads are not with the bodies."

20 Page 6:

21 "This afternoon of 15 August we uncovered
22 14 skulls. On certain of these there still remained
23 the bandage which had covered their eyes."

24 "At 1800 hours I gave the order to quit work,
25 everyone being exhausted by the effort put forth --

1 effort which was as much moral as physical. By that
2 time we had taken out of the pit fourteen skulls and a
3 considerable quantity of tibias, femurs, pelvic bones,
4 clavicles, etc."

5 "A fifteenth skull is taken from the charnel-
6 house, This will be the last, and it brings to fifteen
7 the number of Chinese executed and buried in this heap
8 /charnier/."

9 Prosecution document No. 2772-K-1, report of
10 Medical Lieutenant Cartier, about the exhumations
11 carried out at Thakhek, is presented in evidence.

12 THE PRESIDENT: Admitted on the usual terms.

13 CLERK OF THE COURT: Prosecution's document
14 No. 2772-K-1 will receive exhibit No. 2141.

15 (Whereupon, the document above re-
16 ferred to was marked prosecution's exhibit
17 No. 2141 and received in evidence.)

18 MAJOR DEPO: The seventeen bodies exhumed
19 are those of one of the groups of French civilians
20 and soldier executed at Thakhek in the course of a
21 collective massacre.

22 With the Court's permission I will read
23 Lieutenant Cartier's statement to the Court:

24 "Report of Dr. (lt.) Cartier concerning the
25 Exhumations of Thakhek.

1 "At the request of Captain Le Sourd, Deleagate
2 of the Commissioner of War Crimes at Thakhek I was led
3 to proceed 13, 14, 15 June 1946 to the exhumation of
4 the bodies of French military and civilian personnel
5 interned at the military camp of Thakhek. In the course
6 of it, 17 bodies distributed among four pits were ex-
7 humed in my presence and by my efforts.

8 "From these labors I have been able to make
9 the following statements of fact from the Medico-Legal
10 point of view.

11 "First, State of Conservation -- The soil
12 being clayey, decomposition is not complete. The viscera
13 and certain muscular masses (thighs, buttocks,) are
14 not entirely destroyed, which causes the bodies to re-
15 tain approximately their position and their original
16 relation / to each other/. One body is in course of
17 waxy degenerescence and the well-preserve trunk shows
18 no wound.

19 "Second, Position -- The four pits examined
20 were of very limited dimensions, circular and about
21 1.50 meters in diameter by 1.75 meters in depth. The
22 bodies were bent and curled up on each other, the limbs
23 overlapping and intermingling; as a result of this posi-
24 tion the disengagement of each one was very difficult.
25 From their positions it seems to me that the bodies

1 were placed in their pits after death and before the
2 appearance of cadaverous rigidity. Three skulls were
3 found neatly separated from the trunk indicating a
4 decapitation. One body remains without a head in spite
5 of all searches. For all the other bodies the heads
6 were found exactly in the prolongation of the cervical
7 vertebrae. All the bodies have their arms bound behind
8 the back by a cord tied to the waist or around the neck.
9 They have a napkin or handkerchiefs over the eyes.

10 "Third, State of the skeleton -- All the
11 skulls are the skeletal state. None presents a per-
12 foration which could give rise to the conjecture of a
13 bullet wound nor was there a trace of recent fractures
14 or break-throughs. The numerous dentures permitted
15 several identifications to be made. All apparently
16 had their mouths closed, the earth found between
17 their jaws has come from the caving in of the soil.

18 "a. Shoulder blades. All were intact.

19 "b. Bones of upper limbs. Humeri, radi,
20 cubita, without any trace of fractures. The bones of
21 the wrist were hard to locate.

22 "c. Vertebrae. All those found and examined
23 were intact.

24 "e. Rib the same.

25 "f. Iliac bones of masculine sex, without

1 any trace of fracture.

2 "g. Bones of the lower limbs. Femora, tibiae,
3 fibulae without recent fractures. All the bones of the
4 feet enclosed in shoes were intact.

5 "Conclusion.

6 "All the bodies exhumed (17) are in a state
7 of advanced decomposition indicating more than one year
8 in the soil and preventing all investigation into
9 anything other than the skeleton.

10 "The position of the bodies indicates that
11 the burial must have been taken place immediately
12 after death.

13 "Four bodies had been decapitated (3 skulls
14 recovered). As for the other bodies the absolutely
15 intact state of all the principal bones of the skeleton
16 renders very improbable the hypothesis of an execution
17 by fire arms.

18 "It is further to be noted that the trunk
19 found in a state of waxy degenerescence did not present
20 any scar of the dorsal surface (the better preserved
21 surfact)."

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1 Prosecution document No. 2772-J-5, which is
2 a copy of memoranda and record of judgments, addressed
3 to the Supreme Commander Allied Powers by the French
4 Mission at Tokyo, is presented in evidence.

5 THE PRESIDENT: Admitted on the usual terms.

6 CLERK OF THE COURT: Prosecution's document
7 No. 2772-J-5 will receive exhibit No. 2142.

8 (Whereupon, the document above re-
9 ferred to was marked prosecution's exhibit
10 No. 2142, and was received in evidence.)

11 MAJOR DEPO: Part one of this document recounts
12 the sentencing by the Permanent Military Tribunal of
13 Saigon of two Japanese to penal servitude for murder and
14 imprisonment with torture committed on French civilians
15 at Saigon and Panthiet respectively.

16 I quote the recital of the facts of the prose-
17 cution of the first of the convicted men, Medical Cap-
18 tain SAITO Kimyoshi, who was accused of murder:

19 "On 18 August at Temporary Camp C, rue du
20 Docteur Angier, died Raymond Didelot, aged 50, Chief
21 Inspector, unclassified, of the Security Police. The
22 man answerable for this death should be Medical Captain
23 SAITO. In spite of numerous oral remonstrances and
24 several written reminders this strange doctor obstinately
25 maintained that the case of Mr. Didelot, attacked by

1 sprue from 20 April 1945, was not serious and that his
2 life was not in danger. He stubbornly refused to send
3 him to hospital and even to cause the medicines nec-
4 essary for his case to be sent to the sick man. The
5 day before he died Mr. Didelot had lost 40 kilos (about
6 88 pounds) and was already unconscious, but Doctor
7 SAITO still stated that there was an improvement in his
8 condition.

9 "At the time, through incapacity and through
10 hatred of the whites, as many witnesses say, SAITO de-
11 liberately left a prisoner, who was under his care, to
12 die. Moreover Doctor SAITO was, in April 1945, director
13 of a camp of civilian prisoners at Irtatie.

14 "SAITO, indicted before the Permanent Military
15 Tribunal of Saigon at the hearing of 21 October 1946.
16 The above named was found guilty of the acts charged
17 against him and was sentenced to the punishment of eight
18 years penal servitude, sentence of expulsion suspended,
19 for murder.

20 "He appealed to the Military Court of Appeal."

21 Let me now quote the recital of the facts of
22 the prosecution of the second man convicted, KYOTA
23 KATSUNAMA, who was accused of illegal imprisonment with
24 torture:

25 "Officer commanding Japanese Military Police

1 Detachment of Panthiet from 15 February 1945 up to the
2 surrender. He is the chief perpetrator of serious
3 cruelties and ill treatment of which several French
4 residents of Panthiet, imprisoned after 9 March 1945
5 under various pretexts, in the cages of the Japanese
6 Military Police of this town.

7 "Among the N.C.O.'s victims was, in particular,
8 a missionary, Reverend Father Brugidou, ill, aged 60
9 years, on whom KYOTA vented his venom with a special
10 ferocity. This N.C.O. was officially pointed out by
11 his victims in the course of an identification parade
12 which took place on 25 February 1946 at the prison of
13 Chi Hoa.

14 "KYOTA, indicted before the Permanent Military
15 Tribunal of Saigon at the hearing of 21 October 1946,
16 the above-named was found guilty of the charges brought
17 against him and was sentenced to the punishment of ten
18 years penal servitude for illegal imprisonment with tor-
19 ture.

20 "He did not appeal to the Military Court of
21 Appeal."

22 The second part of the prosecution document
23 No. 2772-J-5 gives the names of seven Japanese prisoners
24 of war, accused of assassinations, tried and convicted
25 by the Permanent Military Tribunal of Saigon. Two of

1 them were sentenced to penal servitude for life, the
2 other five were condemned to death.

3 B. Prisoners of War:

4 Introductory Remarks:

5 Before placing before the Court the second part
6 of the French Case, we recall that certain documents
7 already presented in the past concerning the civilian
8 population gave an account of evidence on the treatment
9 of prisoners of war in Indo-China.

10 As a reminder I will quote them as follows:

11 Document 2772-I-1, bearing exhibit No. 2113,
12 Affidavit of Jullien, Remy, torture of an American Air
13 Officer at the Japanese Military Police Headquarters at
14 Vinh (Annam).

15 Document 2772-E-3, exhibit No. 2118, Affidavit
16 of Denise Avisse, relating to the massacre of prisoners
17 of war intermingled in a group of some fifteen persons.

18 Document 2772-E-5, exhibit No. 2120, which
19 recounts the torture of a French captain and the massa-
20 cre of thirteen officers and men of the Engineers.

21 Document 2772-A-6, exhibit No. 2128, Affidavit
22 of Cecile Cazajous, which relates the massacre of
23 twenty-three French prisoners of war at the bridge of
24 Yen Bien at Hagiang (Tonkin).

25 Document 2772-G-4, exhibit No. 2139, Affidavit

1 of Louis Chevin, which gives an account of the massacre
2 of the crew of an American plane in the neighborhood of
3 Haiphong.

4 Document 2772-K-1, exhibit No. 2141, Report on
5 the exhumation by Medical Lieutenant Cartier, which
6 furnishes proof of the execution of French soldiers at
7 Takhek (Laos).

8 With the Court's permission I will now submit
9 the other prosecution documents dealing with prisoners
10 of war.

11 Prosecution document No. 2772-J-2, declara-
12 tion of Artouard, Leon, Adjutant of the Gendarmerie
13 /French/, is presented to the Court for identification.
14 The marked excerpts are offered in evidence.

15 THE PRESIDENT: Admitted on the usual terms.

16 CLERK OF THE COURT: Prosecution's document
17 No. 2772-J-2 will receive exhibit No. 2143 for identi-
18 fication only; the marked excerpts therefrom, bearing
19 the same document number, will receive exhibit No. 2143-A.

20 (Whereupon, the document above re-
21 ferred to was marked prosecution's exhibit
22 No. 2143, the excerpts therefrom being marked
23 exhibit No. 2143-A, and was received in evidence.)

24 MAJOR DEPO: The witness relates the ill-
25 treatment of which he was the victim at the time of his

1 detention with other prisoners at Mytho and at the
2 Japanese Military Police Headquarters of Saigon (Co-
3 chinchina).

4 With the Court's permission I will now read
5 the marked excerpts from this document.

6 "Form C. War Crimes. Information supplied by
7 ex-prisoners of war. Number 1932. Name: Antouard, Leon.
8 Rank: Warrant Officer, Detachment of Gendarmerie of
9 Cochinchina-Cambodge. Home Address: Gendarmerie, Sai-
10 gon. Date and Place of Capture: March 9, 1945 at 8:30
11 p.m. at my house situated 7 Avenue of Oyrles, at Mytho
12 City.

13 "Immediately after my capture I was taken to
14 the post of the Japanese Kempei Tai at Mytho, and imme-
15 diately bound with ropes. Some were so tight that they
16 made deep wounds on my wrists and forearms. I was not
17 untied until 12 o'clock of the following day."
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1 Page 2:

2 "I was put to four other interrogations -
3 two lasting about 1½ hours each on the afternoon of
4 May 9, the third on the next day from 9 to 12:30
5 o'clock; and the last on the following day from 10:30
6 to 17:30. In the course of these last four interrogations,
7 I was very often struck on all parts of the body with
8 fists, feet, and sticks, and particularly on the soles
9 of my feet. At each one of these, I was placed on
10 my back on a bench and firmly tied down so as to
11 undergo 'torture by water' which consisted in causing
12 the first stages of asphyxiation by the absorption of
13 water into the respiratory tract. Water was poured
14 at the same time into the nose and the mouth, which is
15 kept open with a whip or a staff slipped between the
16 teeth, or on a rag held firmly over these two orifices.
17 A plate carrying an electrical current was also applied
18 to my feet, but did not work.

19 "In course of these last four interrogations,
20 I had one rib bashed in, ten teeth completely loosened,
21 (4 already fallen and the 6 others will follow them
22 before long), and many contusions, of which one received
23 at the joint of the left knee has made me suffer in
24 particular.

25 "No information having been extracted from me,

1 I was left in my cell for 17 days more without being
2 interrogated, and at last brought back to 'Virgil'
3 Camp on the following May 28 in a miserable state.

4 "There were no witnesses to these interrogations.
5 They were conducted by two non-commissioned officers
6 of the Kempeitai, assisted by interpreters, one of
7 whom helped them to pour water into my nose and mouth.
8 I do not know their names, but it would be easy for
9 me to recognize them."

10 Page 3:

11 "In the course of these 20 days, of incarceration,
12 I was still the object of daily violences, such as
13 kickings, beating on the head with a stick from the
14 guards (troops attached to the Kempeitai), who savagely
15 beat the prisoners, without reason, because such was
16 their amusement.

17 "The food was insufficient. It consisted
18 three times a day of a little rice ball and one-fourth
19 of a cucumber or a radish of ordinary size. Beverage
20 was also given in very insufficient quantity and almost
21 always boiling. It was usually only water.

22 "No care for cleanliness was allowed. The
23 detained were not even able to wash their hands, with
24 which they handled their food nevertheless.

25 "They were obliged to remain sitting directly

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2 interrogated, and at last brought back to 'Virgil'
3 Camp on the following May 28 in a miserable state.

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18 three times a day of a little rice ball and one-fourth
19 of a cucumber or a radish of ordinary size. Beverage
20 was also given in very insufficient quantity and almost
21 always boiling. It was usually only water.

22 "No care for cleanliness was allowed. The
23 detained were not even able to wash their hands, with
24 which they handled their food nevertheless.

25 "They were obliged to remain sitting directly

1 on the floor of their cell from the time they got up
2 until the evening roll-call, which took place at
3 21 o'clock. During all this time, they were not permitted
4 to speak, to lean, to lie, nor to sleep. They were
5 strictly watched over and all infractions were immediately
6 punished by a sound cudgelling.

7 "The electric light was never put out, and
8 it was not possible to protect oneself from it, for it
9 was prohibited to sleep on one's stomach.

10 "My cell, measuring 4' x 4' was occupied by
11 a soil-bucket and 17 prisoners, among whom there were
12 many Annamites, common law prisoners. Most of them
13 were itchy or covered with sores or ring worms. One
14 of them was even suffering from acute gonorrhoea.
15 During the night, the prisoners lay down, their bodies
16 touching one another and, because of a complete absence
17 of ventilation, the heat became intolerable.

18 "No care was given to the prisoners who were
19 ill, even in very serious cases; thus Mr. Nico-Can,
20 Chief Engineer of Public Works of Cochinchina, died
21 one hour after having been taken out of my cell where
22 he had remained dying and without any care for 5
23 or 6 days. As for me, I had not gone to the stool
24 for 19 days when I was brought to 'Virgil' Camp, where
25 they took care of me at once. A first assistant surgeon

1 (medical lieutenant) though having been informed of
2 my state on about the 10th day did not have any medicine
3 given to me."

4 Prosecution document No. 2772-J-3, report of
5 Captain Beauvallet is presented to the Court for
6 identification. The marked excerpts are offered in evidence.

7 THE PRESIDENT: Admitted on the usual terms.

8 CLERK OF THE COURT: Prosecution document No.
9 2772-J-3 will receive exhibit No. 2144 for identification
10 only. The marked excerpts therefrom, bearing the same
11 document number, will receive exhibit No. 2144-A.

12 (Whereupon, the document above
13 referred to was marked prosecution's ex-
14 hibit No. 2144 for identification; the
15 excerpts therefrom being marked prosecution's
16 exhibit No. 2144-A and received in evidence.)

17 MAJOR DEPO: In his report, Captain Beauvallet,
18 describes the ill treatment and the tortures which he
19 had to undergo at the Japanese Military Police Headquarters
20 at Saigon and the life of the detainees; he mentions
21 the death of 6 people, civilians and prisoners of war,
22 who were victims of the /ill/ treatment inflicted and
23 of the lack of care.

24 With the Court's permission I will now read
25 the marked excerpts:

1 "Report of Captain Beauvallet, bearing on
2 his imprisonment at Japanese Kempei Tai Headquarters
3 between March and August 1945. Saigon."

4 Page 2:

5 "III. Life at the Japanese Kempei Tai
6 Headquarters.

7 "I make a digression here in order to describe
8 what was the routine imposed on European detainees by
9 the Japanese Kempei Tai. The Japanese Kempei Tai had
10 set up, in a building adjoining the Chamber of Commerce
11 (situated on the left, as one enters by the main gate),
12 six cells. For this purpose they had made use of six
13 magazines and had closed their inner openings
14 with grills made of wooden bars. These grills gave
15 a veritable cage-like aspect to the cells. They
16 allowed the guards to watch the detainees all the time.
17 The entrance was a little door less than 1 metre in
18 height fastened with a padlock. The cells were about
19 4 metres by 5, with plank floors and permanently lit
20 by a central lamp.

21 "A wooden bucket with a cover was put at the
22 disposal of the imprisoned for their needs. It was
23 emptied daily by a detainee accompanied by a sentry.
24 Some straw mats, about one between two were distributed
25 among the prisoners. In the evening bedding was given

1 out on an average of one piece for three persons. "

2 Page 3:

3 "Of the six detainees who to my knowledge
4 died at Kempeitai Headquarters or shortly after
5 their release therefrom (Mr. Fournier, Mr. Nicolau,
6 Mr. Chabert, Major Langellier Bellevue, Mr. Finot,
7 and Mr. Bertrand) the majority died both from the
8 bad treatment undergone and from a lack of care."

9 * * *

10 "Certain of the N.C.O. guard-house commanders,
11 or soldiers of the guard, gave evidence under various
12 circumstances of great brutality. They inflicted on
13 the detainees whom they accused, sometimes wrongfully,
14 of having spoken or of having misbehaved, painful
15 punishments; blows with a stick, often very violent,
16 whipping with a leather belt, standing up with arms
17 in the air or extended for several hours."

18 Page 7:

19 "As I refused to speak I was subjected to
20 a seance of tortures which was particularly painful.
21 Bound to a bench with an extremely tight rope which
22 cut into flesh, I was subjected for about an hour and
23 a half simultaneously to double torture:

24 "-On the one hand, bludgeoning of the soles
25 of the feet by the adjutant provided with a hard-wood

1 club and by another Kempei provided with a rattan cane.

2 "-On the other, water asphyxiation.

3 "Besides this, another Kempei gave me a few
4 body burns with cigarette ashes.

5 "I shall dwell somewhat on the first two
6 tortures, for I carried away the impression that they
7 were applied with particular cruelty. As for the
8 bludgeoning of the feet, I find it hard to say how
9 many blows I received, perhaps 200, perhaps a few less.
10 From time to time some blows were applied to the tibias
11 and the ropes which bound my ankle bones, driving them
12 into the flesh and producing wounds which lasted a
13 long time(along with those of the tibias). Several
14 cudgel blows were also laid on my toes, and the nail
15 of the right big toe in particular was torn out.

16 "As a result of this treatment my feet
17 swelled considerably. For several days it was impossible
18 for me to stand on my feet. To get up I had to have
19 the help of two cell-mates and for the questionings
20 the Japanese Kempei carried me on their backs. At
21 the present moment, more than four months after this
22 series of tortures, my right foot remains deformed.

23 "As for the water asphyxiation, it was
24 inflicted on me under particularly painful conditions.
25 A Kempei pressed against my belly to fill out my chest.

1 A gag had been put on my nose and mouth forcing me to
2 inhale to get a little air. The interrogator poured
3 on my gag the water from a kettle which he had refilled
4 as soon as empty. It was impossible for me under these
5 circumstances to avoid swallowing water and losing
6 my breath fairly rapidly. The one pouring would stop
7 then to begin again as soon as I had succeeded in
8 catching a bit of air. This struggle for an hour and
9 a half against asphyxiation exhausted me completely.

10 "At the end of an hour and a half the adjutant-
11 interrogator, wishing no doubt to vary the pleasures,
12 placed the bench vertically in such a way that I was
13 hanging head down held by the ropes around my ankles
14 which went deeper and deeper into the wounds which
15 had been made in me. I remained about a half hour
16 under these conditions, the interrogator continuing
17 to apply the cudgel blows to my feet and pouring water
18 from time to time down my nostrils.

19 "I was then unbound, placed on a bench in
20 front of a table and Adjutant SUMIMOTO, entering the
21 room, resumed the interrogation punctuated by numerous
22 cudgel blows on my head, arms, and shoulders."

23 Page 11:

24 "My denials only served to bring about a new
25 series of brutalities. On the 22nd I received violent

1 head blows with a stick. On the 23rd Adjutant SUMIMOTO
2 himself hammered my face with extremely violent blows
3 of his fist, further forcing me to remain kneeling
4 during the interrogation. Finally, on the 24th, a
5 new series of tortures was inflicted, comprising:

6 "-The tearing out of tufts of hair from my
7 head and beard.

8 "-The twisting of my wrists and arms.

9 "-Asphyxiation by strangulation.

10 "-A wound on my foot caused by a see-saw
11 movement pressed on a cord just at the point of a wound
12 made in April. (This unattended wound got infected
13 and was at the bottom of a fit of boils which has
14 continued up to the present time.

15 "-Finally, asphyxiation by water."

16 The affidavit of Rouan Georges, Medical
17 Captain of Colonial Troops, prosecution document No.
18 2772 D-1, is now offered to the Court for identification
19 and the marked excerpts are offered in evidence.

20 THE PRESIDENT: Admitted on the usual terms.

21 CLERK OF THE COURT: Prosecution document
22 No. 2772 D-1 will receive exhibit No. 2145 for
23 identification only. The excerpts therefrom will
24 receive exhibit No. 2145-A.

25 (Whereupon, the document above

1 referred to was marked prosecution's ex-
2 hibit No. 2145 for identification; the
3 excerpts therefrom being marked prosecu-
4 tion's exhibit No. 2145-A and received
5 in evidence.)

6 MAJOR DEPO: In this document, Doctor
7 Rouan, relates the death of Medical Commandant Coste,
8 killed in his own office by blows with a sword, in
9 spite of the insignia of the International Red Cross
10 which he was wearing on his fatigue blouse.

11 With the Court's permission I will read the
12 marked excerpts:

13 "Affidavit of Rouan, Georges Germain,
14 Medical Captain of Colonial Troops, Born at la Fleche
15 (Sarthe), 21 November 1908, son of Arnand Rouan and
16 Marie Pelissou, Residence, Hotel Splendid, Hanoi

17 "At Hanoi

18 "In the afternoon of 12th March, I found the
19 corpse of Doctor Commandant Coste in his office, at
20 the hospital of the First Torkinese Sharpshooters
21 Regiment/R.T.T./. His head lay toward the door and
22 the feet toward the office desk, the lower part of the
23 body was stripped completely naked, the face was composed,
24 the corpse was still wearing a white shirt bearing the
25 insignia of the Red Cross. The office was in disorder,

1 there was blood everywhere and chiefly a big pool on
2 a level with the head of the corpse."

3 * * *

4 "According to the reports of eye witnesses,
5 at the moment of the fifth Japanese drive on the night
6 of March 9/10, Commandant Coste presented himself in
7 full light before the Japanese dressed in his shirt
8 bearing the red cross. He was shoved toward the interior
9 of his office, then killed.

10 "The Indo-Chinese male nurse on duty who
11 was with him was killed by a sabre blow which almost
12 decapitated him; his body was on the veranda joining
13 the office."
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1 Prosecution document No. 2772 D-2, affidavit
2 of Quenardel Andre, M.D., is offered to the Court for
3 identification and the marked extracts are offered in
4 evidence.

5 THE PRESIDENT: Admitted on the usual terms.

6 CLERK OF THE COURT: Prosecution's document
7 No. 2772 D-2 will receive exhibit No. 2146 for iden-
8 tification only; the excerpts will receive exhibit
9 No. 2146-A.

10 (Whereupon, the document referred
11 to was marked prosecution's exhibit No. 2146
12 for identification only, the excerpts there-
13 from being marked prosecution's exhibit No.
14 2146-A and received in evidence.)

15 MAJOR DEPO: In his affidavit, Doctor
16 Quenardel relates, in particular, the treatment
17 meted out to wounded prisoners of war in violation
18 of the Geneva Convention and also the execution of
19 prisoners of war at Hanoi. I quote:

20 "One of the most painful spectacles, during
21 the period which followed the fight of 10 March, was
22 to see the forlorn condition in which the wounded
23 soldiers of the French Army were left by the Japanese.

24 "In one of the barracks -- that of the 1st
25 R.T.T., the Senior Medical Officer, Medical Major COSTE

1 had met with massacre at the hands of the Japanese.
2 All the wounded were abandoned and it was not until
3 some time during the third day that we were able
4 to go to their aid. We retain, in particular, the
5 memory of an Irregular, seriously wounded in the
6 thigh, in the middle of a courtyard, who had to lie
7 there unable to move for three nights and three days
8 on end, bathed in his blood and dying of thirst
9 without receiving the least assistance from numerous
10 Japanese passing close beside him. These Japanese
11 over and above, formally forbade the French wounded
12 to leave the places where they had been gathered
13 together.

14 "II. Death Punishment on P.O.W.

15 "(1) I was ordered by the Japanese on 10
16 March towards 1700 hours, to go to the Citadel to
17 collect dead and wounded. It was not until towards
18 2200 hours that the small Japanese posts allowed us
19 after plenty of threats to enter this Citadel to
20 carry out our task.

21 "We were not a little surprised to come
22 across, among the dead--I will state only the cases
23 of which I was an eyewitness--Battalion Commander
24 Esquer witnessed several other cases--a sub-lieutenant
25 and two adjutants with their hands tied behind their

1 backs and showing a bullet wound at the height of
2 the heart. Without any doubt at all this was a case
3 of execution of prisoners and of officers for choice.
4 It is impossible for us to clarify the reason for \
5 such executions, the bodies of those executed being
6 very frequently mingled with other corpses."

7 Prosecution document No. 2772 C-1, the
8 affidavit of the Indo-Chinese Sergeant Le-Dinh-Bao,
9 is submitted in evidence.

10 THE PRESIDENT: Admitted on the usual terms.

11 CLERK OF THE COURT: Prosecution's document
12 No. 2772 C-1 will receive exhibit No. 2147.

13 (Whereupon, the document above
14 referred to was marked prosecution's exhibit
15 No. 2772 C-1 and received in evidence.)

16 MAJOR DEPO: The witness, in his affidavit,
17 relates the massacre of French officers and NCOs of
18 the garrison at Vatchay (Tonkin).

19 With the Court's permission I will now read
20 this document.

21 "Affidavit, Le Dink'Bao, ex-sergeant of
22 Mobile Detachment of the Aviation General Secretary
23 of the Administration Committee of Vatchay, residence
24 at Vatchay (Tonking), born 23 December 1916 at Sadec
25 (Cochin-China) son of Le-Dinh-Phu and of Mai-Thi-Tram.

1 "Deposition in the form of an Account: At
2 Vatchay, September 17, 1946.

3 "'On the 13 of March 1945 the mobile detach-
4 ment to which I belonged was in a position situated
5 near the village of Tien Yen (Hai Ninh Province,
6 Tonkin). It was commanded by Captain Estienne. It
7 was composed of eight French soldiers and about forty
8 Indo-Chinese soldiers. At about 7:30 it was attacked
9 by a strong party of Japanese. After a half-hour
10 fight the Japanese made an assault in the course of
11 which all of the French soldiers were taken prisoner.

12 "'Prevented from fleeing by the wounds which
13 I had received, I remained in their midst. About a
14 half hour after having been captured, Captain Estienne
15 and Adjutant-Chiefs Lavoiance and Butland were decap-
16 itated by blows with a saber. Next came the turn of
17 Adjutant-Chiefs Poli and Ruffini and Adjutants Garnier,
18 Carissan, and Pahun, who were massacred by blows with
19 a bayonet.

20 "'In order to facilitate the penetration of
21 the bayonets into the bodies of the victims, the
22 Japanese had opened their clothing to bare a part of
23 their chests.'"

24 Prosecution document No. 2772 B-1, affidavit
25 of Porte Laurent, Medical Officer of Colonial Troops,

1 is now offered in evidence.

2 THE PRESIDENT: Admitted on the usual terms.

3 CLERK OF THE COURT: Prosecution's document
4 No. 2772 B-1 will receive exhibit No. 2148.

5 (Whereupon, the document above
6 referred to was marked prosecution's exhibit
7 No. 2148 and received in evidence.)

8 MAJOR DEPO: It reveals the treatment of
9 prisoners of war interned in the camps of Hoa-Binh.

10 With the Court's permission I will now read
11 this document: "AFFIDAVIT

12 "Porte, Laurent, Medical Officer Colonial
13 Troops. Son of Porte, Louis and Lion, Emilie. Born
14 6 September 1913 at Toulon (Var). Living at Saigon,
15 14 Rue d'Arclause.

16 "Duration of work and effective strength.

17 "30 June, 1500 men left

18 "11 June, 300 men left

19 "1 Aug. 1275 men left

20 "TOTAL: 3075 men

21 "The return was staggered from 22 to 27
22 August. The PWs were distributed in various camps,
23 from Kilometer 40 up to beyond Hoa-Binh. We shall
24 call the camps by the names of the medical officers
25 who were in charge.

1 "Accommodation. In most of the camps the
2 Japanese had made no preparation to receive the PWs,
3 who remained exposed to the inclement weather during
4 the days necessary to construct a roof of latanias.

5 "In Dr. Porte's camp they forbade the con-
6 struction of floorboards, thus obliging the prisoners
7 to sleep in water every time it rained.

8 "In one of Dr. Mathurin's dependent camps
9 they had some floorboards constructed, but put
10 prisoners above and below. Most of the prisoners
11 did not have mosquito nets; many were without cover.

12 "Diet. Rice, of quality varying widely over
13 the days and the camps. Annamite aqueous vegetables
14 (water bindweeds, lotus leaves, pumpkin): 100 to 150
15 gr.; 5 to 10 gr. of starches (Potatoes, sweet potatoes,
16 and taros. 10 gr. of salt.

17 "During the whole month of July no fat, meat,
18 fish, eggs, nor sugar. Tiny quantities of the latter
19 were allotted from time to time in the month of August.

20 "Minimum ration, say: 1,180 calories

21 "Maximum ration, say: 2,020 calories

22 "The sick only got half-rations.

23
24 "In several camps, in particular Dr. Porte's,
25 the Japanese arranged that the prisoners should touch
less than one liter of tea a day. They were thus forced

1 to drink the dirty water of the rice-paddies. The
2 cases of dysentery were very numerous.

3 "Work: It consisted of:

4 "Embankments for the construction of mountain
5 roads and trails.

6 "Placing of wooden bridges.

7 "Boring of numerous tunnels in the mountains.

8 "Timbering of these tunnels.

9 "Transport of blocks and planks necessary
10 for this work on the backs of men driven by blows
11 from cudgels.

12 "The work was stopped 16 August.

13 "Evacuations and Medicines. Formal refusal
14 of medical evacuations on and from July 10th, and of
15 all medicines up to August 15th.

16 "Death-rate:

17 "Died on the spot: 62 (Sixty-two)

18 "Died on return to the fortress: 36 (Thirty-six)

19 "TOTAL: 98 dead. (List discontinued from 12
20 September: percentage 3.3%).

21 "Note: This percentage gives no account of
22 the actual facts since the detachment that left on
23 August, generally speaking, did not undergo sufferings
24 protracted enough to produce death. The percentage
25 under 1,800, that is, 5.6% is far nearer the truth.

1 "Disease-rate:

2 "490 seriously-ill patients sent to hospitals
3 at Lanessian Hospital and at the Fortress Infirmary.

4 "About 300 patients in the camp not sent to
5 hospital owing to lack of space in the medical units.

6 "Total - 790 patients, that is, a percentage
7 of 26%.

8 "Marsh fever, dysentery, beriberi, edema,
9 and so forth were predominant in the death and disease
10 rate.

11 "Atrocities and Ill-Treatment:

12 "In Dr. Flottes's camp, a man was beheaded
13 (of the special account tendered by this doctor).

14 "In a camp under the control of Dr. Mathurin,
15 the dysentery cases were shut up in a cage, excrement
16 and all. A little water and rice was handed in to
17 them through a hole in the partition.

18 "All in all, there were not many atrocities
19 in the strict sense of the word, but (a good deal) of
20 systematic ill-treatment with the definite intention
21 of inducing death.

22 "Excessive amount of work at all times, even
23 at night.

24 "A diet both inadequate and completely un-
25 balanced, owing to the almost total lack of albuminoids

1 and fats.

2 "Systematic sending out of the sick to work,
3 with blows from sticks. In my camp a soldier called
4 MATSUMOTO, the Annamite interpreter, was especially
5 energetic at this business.

6 "Beatings upon the slightest pretext.

7 "Refusal of medicines and medical evacuations.

8 "The intentions of the Japanese officers were
9 revealed by the words of the captain who commanded my
10 camp. In the course of an interview in which I was
11 begging, as usual, for an improvement, he replied:
12 'You are prisoners, you have no right to complain.
13 You're welcome to kill yourselves if you are not satis-
14 fied. If I feel I want to, I shall stop the food
15 supply for a day, for several days. As for the sick,
16 those already dead and those yet to die, they don't
17 matter a damn.'

18 "The lists of the dead and the sick tell
19 their own tale. They allow one to glimpse the treat-
20 ments that would have ensued if the work had lasted
21 just one month longer."

22 THE PRESIDENT: We will adjourn now until
23 half-past one.

24 (Whereupon, at 1200, a recess was
25 taken.)

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1 AFTERNOON SESSION

2
3 The Tribunal met, pursuant to recess, at
4 1330.

5 MARSHAL OF THE COURT: The International
6 Military Tribunal for the Far East is now resumed.

7 THE PRESIDENT: Major Depo.

8 MAJOR DEPO: The affidavit of Laurent
9 Henri, prosecution document No. 2772-B-2, is pre-
10 sented to the Court for identification, and the
11 marked excerpts are offered in evidence.

12 THE PRESIDENT: Admitted on the usual terms.

13 CLERK OF THE COURT: Prosecution document
14 No. 2772-B-2 will receive exhibit No. 2149 for identi-
15 fication only, and the marked excerpt therefrom,
16 bearing the same document number, will receive exhibit
17 No. 2149A.

18 (Whereupon, the document above re-
19 ferred to was marked prosecution's exhibit
20 No. 2149 for identification, and the marked
21 excerpt therefrom was marked prosecution's
22 exhibit No. 2149A and received in evidence.)

23 MAJOR DEPO: This document, dealing with
24 the treatment of prisoners of war in the Camps of
25 Hoa-Binh, supplements the affidavit of Doctor Porte --

1 prosecution document No. 2772-B-1, already intro-
2 duced in evidence and bearing exhibit No. 2148.

3 I quote:

4 "Sent on August 1st to Hoa Binh --
5 Reprisals Camp of 45 Kilometer Camp -- I was a
6 witness to the following facts:

7 "Every morning, before leaving for work,
8 sick persons -- especially those ill with malaria
9 and dysentery -- would be mustered out before the
10 thatches where they slept. At this time, a
11 Japanese noncommissioned officer, group leader,
12 would strike the men several times with a club
13 until they fell to the earth half-conscious; then
14 he would make them get up and beat them again until
15 they were carried away absolutely limp. It is
16 to be remembered that these sick men were deprived
17 of food, one meal out of every two, because they
18 did not take part in work."

19 Prosecution document No. 2772-A-1, the
20 deposition of Adjutant-Chief Suryau, is offered to
21 the Court in evidence.

22 THE PRESIDENT: Admitted on the usual terms.

23 CLERK OF THE COURT: Prosecution document
24 No. 2772-A-1 will receive exhibit No. 2150.

25 (Whereupon, the document above

1 referred to was marked prosecution's
2 exhibit No. 2150 and received in evidence.)

3 MAJOR DEPO: This deposition recounts the
4 massacre of prisoners of war at Hagiang.

5 With the Court's permission I will now
6 read this document:

7 "Deposition of the Chief Adjutant Suryau.

8 "Subject: Massacres at Hagiang.

9 "After the surrender of the barracks of
10 the Legion, which had become untenable, the French
11 were taken into the courtyard in three groups:

12 "The first group in front of the entrance
13 door was composed of Captains Bertard and Jeanee-
14 nelle, Dr. Courbiere taken as a hostage, Adjutant
15 Jost, Sgt. Leverrier, two sailors and myself.

16 "The second group, at a short distance
17 from the first, was composed of several NCOs and
18 their men.

19 "The third group, near the canteen, was
20 composed of NCOs of the Legion, a sailor and some
21 Colonials.

22 "An officer or NCO of the Police Force
23 asked Lt. MORIOKA, who was there dressed as a
24 civilian, what he should do with the prisoners;
25 he replied by making a sign of sweeping them away.

The Japanese soldiers then fell upon the prisoners of
1 the second group, threw them to the ground and
2 slaughtered them with bayonet thrusts; at the same
3 time the prisoners of the third group were killed
4 with revolver shots by three Annamites, whose names
5 I do not know but whom I would easily recognize.
6 Lt. MORLOKA then took a sword from the hands of a
7 Japanese NCO and began to strike Capt. Bertard. A
8 first thrust struck him in the back, a second thrust
9 removed his right cheek and ear. The Captain then
10 said: 'But what have I done to you?' and he was
11 then finished off by a pistol shot right in the heart.

12 "The other members of the first group were
13 simply beaten. My forehead was hammered with bullet
14 points, /of a clip/. This massacre cost the lives of
15 44 men.

16 "The survivors were taken to the residence
17 to obtain the surrender of Commander Moullet. Six
18 or seven Japanese officers were behind us with re-
19 volvers and threatened to kill us.

20 "After the surrender of the Commander we
21 were taken to prison. Later, when I asked for news
22 of Sgt. Bitkus and of the group of Legionnaires sent
23 to the residence at aperitif time, the Japanese told
24 me that they had been killed in combat, but some
25

1 civilian prisoners told us that they had been shot
2 behind the church."

3 Prosecution document No. 2772-A-2, the
4 deposition of Hospital Adjutant-Chief Potin, is
5 submitted to the Court in evidence.

6 THE PRESIDENT: Admitted on the usual
7 terms.

8 CLERK OF THE COURT: Prosecution document
9 No. 2772-A-2 will receive exhibit No. 2151.

10 (Whereupon, the document above re-
11 ferred to was marked prosecution's exhibit
12 No. 2151 and received in evidence.)

13 MAJOR DEPO: This documents mentions the
14 massacre of a group of about 20 prisoners of war, who
15 were executed on the bank of the river of Hagiang.

16 It also recounts the assassination of a
17 soldier of the Foreign Legion.

18 With the Court's permission I will now read
19 this document:

20 "Evidence of Chief Adjutant, male nurse
21 Potin on the subject of assassinations at Hagiang.

22 "After having been taken prisoner I saw
23 about twenty bodies on the bank of the river but I
24 did not see their execution.

25 "On the 12th March, about 11 o'clock, some

1 Annamite nurses told me that Legionaire Helenol
2 was hidden in the rocks behind the infirmary; I sent
3 to tell him to try and join us by taking advantage
4 of the night but this was not possible as we were
5 taken to the civilian hospital. I learned later
6 that Helenol was taken prisoner and shot, as well
7 as Mechart, who had escaped from the massacres by
8 the river.

9 "On the 15th March, I learned from the
10 civilian prisoners that Legionaire Ivanof, who was
11 hidden in a little pagoda behind the residence, had
12 been taken by the Japanese. Shortly after, from
13 the window of my room at the military hospital, I
14 saw Ivanof arrive with two Japanese sentinels,
15 they stopped just in front of my window and Lt.
16 MURASAKI arrived, had Ivanof bound, ordered him
17 to sit down on the ground and called a female
18 Annamite interpreter named MISOKA. MURASAKI began
19 by throwing stones right in the face of the prisoner,
20 then made him get up and conducted him to the bank
21 of the river, below the bridge; a Japanese sergeant
22 took off Ivanof's jacket and pulled his shirt up
23 over his face, then MURASAKI had a rifle with a
24 bayonet brought to him and killed Ivanof with a
25 bayonet thrust in the chest."

1 Prosecution document N_o. 2772-A-3,
2 affidavit of the Battalion Commander Moullet Albert,
3 has already been introduced in evidence and bears
4 exhibit No. 2124.

5 It deals with the massacres of prisoners
6 of war of Hagiang and gives a schedule of these. It
7 also gives an account of the rape and assassination
8 of two French women.

9 THE PRESIDENT: We are being handed
10 document No. 2772-A-7. You are not tendering that
11 yet?

12 Read those excerpts from exhibit No. 2124.

13 MAJOR DEPO (Reading):
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1 "AFFIDAVIT: Moullet Albert Louis, Chief of
2 Battalion OC of the Colonial Infantry, Ex-Commander
3 of the IIIrd Territory and of the military Sub-division
4 of Hagiang. Born the 15th August 1908 at Marseilles.
5 Son of Moullet Albert and of Blanc Jeanne. Domicile
6 at Hanoi, 29 Bd Dong-Khanh and in France, 23 Rue de
7 la Republique at Cuers - Var.

8 "The French Garrison of Hagiang (150 Europeans,
9 500 Indo-Chinese) were attacked by surprise by a
10 Japanese Bn. under Commander SAWANO (900 men) the
11 9th March 1945 towards 1910 hours.

12 "Treacherously surprised whilst in the drawing
13 room of the Residence, a group of French officers
14 fell into the hands of the Japanese right at the
15 start of the attack.

16 "Having succeeded in getting to the upper floor
17 of the Residence with Lieutenant Kereneur, I resisted
18 until the next day the material and moral pressure of
19 the Japanese who having captured my wife and my
20 daughter of five months, threatened throughout the
21 night to massacre them if I did not give myself up.

22 "Deprived of some of their officers, the de-
23 fense elements of the French Garrison surrendered
24 one by one.

25 "The exterior defenses of the Fortress, the

1 barracks of the Indo-Chinese Guard, the 'Bonnet
2 Phrygien', the Coast 350, fell into the hands of the
3 Japanese before 23 hours.

4 "The Fortress surrendered the 10th March towards
5 7 o'clock.

6 "The barracks of the Legion towards 8 o'clock.
7 The Japanese thereupon massacred almost the whole
8 number of the Legion's defenders, that is to say,
9 45 men. (In the afternoon of the 10th they massacred
10 23 men who had given themselves up in the morning
11 and 11 men who had given themselves up about noon.

12 "Other assassinations were spread out between
13 the 10th and 20th to a total of 88 victims.)

14 "They pushed those of the Legion who survived
15 towards the residence and threatened to shoot them in
16 order to obtain my surrender. They added my wife to
17 the group of survivors and my daughter and my parents-
18 in-law.

19 "All resistance having ceased, and there being
20 no hope of salvation I gave myself up with Lieutenant
21 Kereneur; our ammunition gave out about 9 o'clock.

22 "On the 12th March in the afternoon, the Com-
23 mander SAWANO forced Captain Vaillant and Sub-Lieut.
24 Hascott to accompany the Japanese Detachment charged
25

1 with taking the Posts on the right bank of the River
2 Claire, as their hostages for parleys.

3 "At the last moment Commander SAWANO designated
4 me to replace Captain Vaillant.

5 "He came in person to tell me before the depar-
6 ture, that my family and the French prisoners of Hagiang
7 would be executed if I escaped.

8 "The Post of Loatchay, already evacuated, was
9 occupied without combat, the 13th March.

10 "The position of Hoang Su Phi, also evacuated,
11 was occupied without combat, partly on the evening
12 of the 14th March and partly on the morning of the
13 15th.

14 "The Japanese Detachment which Sub-Lieutenant
15 Hascolt and I had been obliged to follow was joined
16 at Hoang Su Phi on the morning of the 15th March by
17 another Japanese Detachment which had come from
18 Hagiang by Bac Quang. In conformity with the Jap-
19 anese rule, this detachment had as their hostage
20 for the French parleys, the Sub-Lieutenant Boule.

21 "The 15th March during the morning whilst the
22 Japanese were installing themselves at Hoang Su Phi,
23 Hascott, Boule and myself were placed in the court
24 yard of Yamen /administration office/ du Tri Chau
25 /Province Chief/ of Hoang Su Phi.

1 "We had hardly reached this court yard when we
2 saw Lieutenant FUKUKAWA, Chief of the two Japanese
3 detachments, climb alone to the floor of the building
4 where there was a spare room and shut himself in
5 there.

6 "A little girl whom one of us knew but whose
7 French appearance left us in no doubt, came down
8 shortly afterwards, sobbing.

9 "When she was in a fit state to reply to my
10 questions, I learnt that she was Mademoiselle Theluyer,
11 who had come to Hanoi to spend a few days with her
12 sister, Madame Dumoulin, wife of an N.C.O. of the
13 Garrison of Bac Quant, that she had been taken by
14 surprise by the events of the 9th March at Bac Quang
15 and that, with her sister, she had followed the
16 French troops of Bac Quang in their retreat to Hoang
17 Su Phi the 11 and 12th March.

18 "While Mademoiselle Theluyer was speaking to us,
19 Lieutenant SURUKAWA, came downstairs with a valise in
20 each hand.

21 "He brutally separated the little girl from us.

22 "A quarter of an hour later we saw Madame
23 Dumoulin, whom we already knew, appear in tears under
24 the veranda of the upper floor.

25 "After a long and painful discussion, I obtained

1 permission from FURUKAWA, for her to come down and
2 join us.

3 "She then told us that Captain Marie, Commander
4 of the Company of Bac Quang had taken upon himself
5 to conduct them to the Chinese frontier, she and her
6 sister, when he evacuated Bac Quang and moved towards
7 Hoang Su Phi.

8 "At Hoang Su Phi Captain Thirion, Commander of
9 the Unit at Hoang Su Phi and older than Marie, took
10 over Command of the outfit.

11 "Having decided to fight in the region of Xin
12 Man and to pass into China if the outcome of the fight
13 was unfavorable to him he decided that he could not
14 impose the fatigue and privations of a campaigner's
15 life on two young women of whom one was pregnant by
16 two months, and thought that if they stayed at Tonkin
17 they would sooner or later rejoin their father and
18 mother at Kanoi.

19 "He, therefore, confided the two young women to
20 Tri Chau at Hoang Su Phi.

21 "They stayed there until the arrival of the
22 Japanese at the Trichau, in the room which we had
23 just seen Lieutenant FURUKAWA enter and leave.

24 "This officer had told them revolver in hand to
25 undress; as they refused, he had undressed them

1 himself, by brute force.

2 "The younger, aged 14 years, but who looked only
3 13, and still a virgin, being no doubt not to his
4 taste, he told to dress again and go downstairs.

5 "Remaining a line with Madam Dumoulin, aged 19
6 years, he beat her and then violated her. He then
7 opened his two suitcases, spread their contents out
8 in the room, took the money of the unfortunate woman,
9 some hundreds of piastres - the clothes and the linen
10 which suited him and took his loot downstairs in the
11 suitcases without paying any more attention to the
12 unfortunate woman.

13 "On the evening of 15th Madam Dumoulin shared
14 the same room with us, the room where she had been raped.

15 "We had a good deal of trouble to prevent the
16 Japanese N.C.O's and men from taking them away to
17 their room for a purpose easy to guess.

18 "We had to range ourselves, the three of us,
19 Hascoet, Boule and myself, at the foot of their bed
20 and held all night long, an endless conversation with
21 the excited NIPS in order to keep them within bounds
22 without actually jostling them.

23 "On the morning of the 16th the Japanese moved
24 on Lin Han taking the 3 French officers with them and
25 leaving at Hoang Su Phi a small guard with the two

1 French women.

2 "On the evening of 17th we came back to Hoang Su
3 Phi. The two women had been left without food or
4 water but had not been molested. Their anguish be-
5 gan again during the night 17/18 during which we again
6 performed the impossible in order to ward off from
7 them the outrages of the Japanese party.

8 "On the morning of the 18th they were separated
9 from us and transferred to the Military Post where
10 two beds set up in the middle of the room of the
11 Japanese soldiers were assigned to them.

12 "In this room in which slept about fifty men they
13 suffered a hideous martyrdom.

14 "Closely watched, prevented from leaving the
15 room, they were completely at the disposal of the 50
16 brutal Nipponese.

17 "Day and night they had to submit, the one be-
18 side the other and before all the occupants, to the
19 whim of each soldier.

20 "This indescribable treatment was the work of
21 Lieutenant FURUKAWA.

22 "When this officer announced to us that we,
23 Boulle, Ascoet and I were going to be sent back to
24 Hagiang, I asked him twice to allow the young women
25 to come with us, adding that they could not remain

1 alone at Hoang Su Phi and that there were other women
2 prisoners at Hagiang.

3 "I overthrew one by one the objections which
4 FURUKAWA raised.

5 "There are no horses for them.

6 "Tri Chau is able to provide them.

7 "He has no more.

8 "They will go on foot.

9 "Madame Dumoulin is pregnant, she cannot make
10 long marches.

11 "She came on foot from Bacquang. In two days she
12 will be able to get back to Bacquang from where it
13 will be easy to transport her to Hagiang in a truck.

14 "It was no good.

15 "I then asked the Japanese Medical Lieutenant INOWE
16 to intervene. he did so, with no more success.

17 "FURUKAWA declared that he would send them back
18 later when he had horses.

19 "When we got back to Hagiang I intimated their
20 presence at Hoang Su Phi to Commandant (Major)
21 SAWANO and asked him on several occasions to let them
22 come to Hagiang. No result.

23 "Battalion Commander CAPPONI, captured at COC PAI
24 on 27 March 1945 and first of all imprisoned at Xin
25 Man was transferred at the beginning of April to

1 Hagiang via Hoang Su Phi.

2 "Having arrived at Hoang Su Phi on 6 April, he
3 verified with his own eyes the miserable fate of
4 these two young women and had a short conversation
5 with Madame Dumoulin.

6 "He heard from her own lips and reported it to
7 me that not content with violating them to their
8 heart's content the Japanese beat them unmercifully
9 at every turn and that her young sister was beginning
10 to lose her reason.

11 "She begged Commandant (Major) CAPPOINI to try
12 to bring about their return to Hagiang or, at least,
13 that they should not be obliged to live in the same
14 room as the soldiers.

15 "FURUKAWA did not give any result to the requests
16 of Commandant (Major) CAPPOINI and the new represen-
17 tations that we made together, after his arrival at
18 Hagiang, to Commandant (Major) SAWANO had no better
19 success.

20 "On 7 May 1945, in the presence of the French
21 soldiers who shared my captivity, Captains Vaillant,
22 Jean Cenelle, Casaula, Cadet Viret, Gendarme Koitevin,
23 Commandant SWANO announced to me that Madame Dumoulin
24 and her sister had run away from Hoang Su Phi. As I
25 expressed some astonishment in view of the advanced

1 pregnancy of Madama Dumoulin and their ignorance of
2 the locality he told me that they had had a 'fit' of
3 melancholia but that they were being searched for and
4 would soon be found.

5 "Two days later he said in reply to my questions
6 that the search was still on.

7 "On May 17th, 1945, Commander NAGANO left Hagiang
8 once and for all, and his successor omitted to come
9 and see us.

10 "Transferred at the end of May to Yietri and then
11 to Kanoi, we were kept without news of Mme. Dumoulin
12 and Mlle. Treluyer up to Japan's surrender and even
13 far later.

14 "It was only in the first months of 1946 that I
15 learned from native sources of information that the
16 two girls had been butchered at the beginning of May
17 1945 on the orders, if not by the hand, of Lt. FURUKAWA
18 himself, as a reprisal for the attack of April 28th
19 and 29th which Commander Klein's French detachment had
20 led against the Japanese held post of MAN MGI.

21 "Of these native versions, one says that they
22 were beheaded a few hundred metres from the Koang Su
23 Phi post on the track leading to Kan Mei, and the
24 other, that they were shot behind the Yamen du Tri
25 Chau of Koanex Su Ppi."

1 Prosecution document No. 2772-A-7, the official
2 report of the deposition of Captain FURUKAWA is now
3 offered in evidence.

4 THE PRESIDENT: Admitted on the usual terms.

5 CLERK OF THE COURT: Prosecution's document
6 No. 2772-A-7, will receive exhibit No. 2152.

7 (Whereupon, the document above re-
8 ferred to was marked prosecution's exhibit
9 No. 2152 and received in evidence.)

10 MAJOR DEPO: This document is supplementary
11 to the previous document, No. 2772-A-3, already in-
12 troduced in evidence and bearing exhibit No. 2124. It
13 concerns the rape and assassination of two French
14 woman. FURUKAWA admits having killed, at Xin-Man,
15 two officer prisoners and, with the help of a certain
16 named TAKETSUBO executed 40 prisoners of war, French
17 and Indo-Chinese of the garrison of Hoang-Su-Phy.

18 With the Court's permission I will now read
19 this document:

20 "Republic of France. Federal War Crimes Service.
21 S A I G O N (Cochinchina) Official Report of 9th
22 December 1945.

23 "In the year 1946 and on the 9th December.

24 "I Captain Claude Le Sourd, Attache to the Federal
25 War Crimes Service, assisted by Miss Monique Lepelletier,

1 Interpreter, and Miss Demenais acting as clerk, pro-
2 ceeded as follows, to the interrogation of the herein-
3 after named:

4 "Questioned as to his civil status, he declared:

5 "My name is FURUKAWA, born on 29 April 1918, at
6 Miyajiricho, Ujyamada City, Mie Ken, son of FURUKAWA
7 Seikichi and FURUKAWA Fusa, following the profession
8 of Captain commander of the 6th Company of the 2nd
9 Battalion of the 226th Regiment.

10 "Q When did you arrive in French Indo China?

11 "A Coming from China, I arrived: on the 8th
12 February 1945 at Tinnan Quan.

13 "Q Will you tell me what happened at Hagiang
14 at the beginning of March 1945?

15 "A The 2nd Battalion of the 226 k.I. /Infantry
16 Regiment/ began the fighting on 9 March, towards
17 half past 7 P.M. by attacking from the rear of the
18 fortress. The combat lasted for about 4 hours. At
19 daybreak after the surrender, I assembled the prisoners
20 of my company and sent them to the Battalion.

21 "At 16.00, on 10 March I left with my company
22 for Than Thuy.

23 "Three days after, I went out with my company to
24 Laotchs chay then to Hoang Su Phy, afterwards Xin Man.
25 I watched these different positions for a week; to be

1 exact, a week at each place. Then on 15 May, we were
2 relieved and sent to hanoi. "

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1 "Q Did you take Major Moullet with you to
2 Hoang Su Phy and Thanh Thuy?

3 "A Yes.

4 "Q What can you tell about the violation of
5 a Frenchwoman of which you are accused?

6 "A On 15 or 16 March, on my arrival at
7 Hoang Su Phy, the Tri-Chau /Provincial-Chief/
8 informed me, through an interpreter from Hoang Su
9 Phy, of the presence of 2 young French girls on the
10 second floor of the house situated at the bottom
11 of the yard. He added, 'Go and see them.' This
12 I immediately did. I took with me two armed sol-
13 diers and, crossing the yard, I went up to the
14 2nd floor. Finally, after having opened the door
15 of a room, I found 2 young girls lying in a bed.
16 They get up and I searched them, wanting to make
17 sure that they were not hiding any arms. Then,
18 thinking that this search was not sufficient, I
19 opened a door communicating with another room, and
20 had them enter in, and following them in leaving the
21 two soldiers in the first room. Having shut the
22 communicating door, I made the two young girls
23 understand, under the menace of my revolver, to
24 undress themselves. I made the younger go on down,
25 and stayed alone with the other. I possessed her

1 in spite of her cries.

2 "The act accomplished, I returned to the
3 first room where I occupied myself in a search of
4 the baggage of these two prisons. I found in it,
5 300 piastres which I appropriated to myself. I con-
6 fiscated for my benefit almost all the belongings
7 discovered which I put back into their valise.

8 "Q What do you know about the murder of
9 Captain Pares and Lieutenant de Parelle? On about
10 25th May?

11 "A Embarrassed by my prisoners, I decided
12 to rid myself of them taking advantage of a lull.

13 "Going out for this purpose, from Xin Man
14 with 3 or 4 armed soldiers and 2 prisoners, I myself
15 killed first the captain with a bullet through the
16 heart, and then the lieutenant, leaving the corpses
17 to the care of my soldiers for the burial. This
18 finished, I returned to Xin Man.

19 "The execution took place along a track.

20 "I kept the third French officer, a major,
21 for the purpose of sending him to the Staff of the
22 Battalion.

23 "Q And about the massacre of French soldiers,
24 what do you know?

25 "A I was afraid of a revolt by my prisoners

1 from Hoang Su Phy. Between the 20th and the 25th,
2 I executed my plan. One day, about 11:00, I made
3 the prisoners go out one by one from the yard of the
4 Tri-Chau's house by a gate at the back, and helped
5 by TAKETSUBO, I decapitated them one by one with my
6 sword. 5 soldiers witnessed the execution of 40
7 French and Indochinese prisoners. Three of these
8 prisoners succeeded in escaping a little before.
9 At 13:00, the execution was finished, and the corpses
10 buried by the 5 soldiers. I do not know what units
11 my victims belonged to, but I can say that the
12 highest in rank was a warrant officer.

13 "Q Was it you that had the two women, one of whom
14 had been raped by you, killed?

15 "A Thinking that the young women of Hoang
16 Su Phy might furnish some useful information to the
17 emissaries of the French, I decided to cause them
18 to disappear.

19 "On 3rd May, about 19:00 or 20:00,
20 accompanied by TAKETSUBO, I made them go out and
21 took them out behind the house where they lived. I
22 fired a shot with my revolver into the back of the
23 neck of the elder, while TAKETSUBO killed the
24 younger in the same way. Helped by TAKETSUBO, I
25 dug two holes where they were buried.

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"Nothing more being said, the above affidavit was read, translated, affirmed and signed before me and the interpreter."

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1 Prosecution document No. 2772-C-2, affidavit
2 of Si-A-Phuc, is offered for identification and the
3 marked excerpts offered in evidence.

4 THE PRESIDENT: Admitted on the usual terms.

5 CLERK OF THE COURT: Prosecution's docu-
6 ment No. 2772-C-2 will receive exhibit No. 2153 for
7 identification only, and the excerpt therefrom will
8 receive exhibit No. 2153-A.

9 (Whereupon, the document above
10 referred to was marked prosecution's ex-
11 hibit No. 2153 for identification, and
12 the excerpt therefrom was marked prose-
13 cution's exhibit No. 2153-A and received
14 in evidence.)

15 MAJOR DEPO: In his affidavit Si-A-Phuc
16 relates the tortures inflicted on a French soldier,
17 burnt alive by the Japanese at Dam Ha.

18 With the Court's permission I will now read
19 the marked excerpts.

20 "AFFIDAVIT. Name: Si A Phuc. Profession,
21 Farmer. Born 18th June 1931 at Dam Ha, son of Si A
22 Soi and Song Sy. Lives in Dam Ha (Province of Hai
23 Ninh).

24 "The Japanese ordered me through a Chinese
25 to sweep the yard, to gather the sweepings, and to

1 throw them in the river. I saw them making a funeral
2 pyre near the gate on which they put the two corpses,
3 and about noon they doused them with gasoline and
4 set them on fire.

5 "About 1400 a bearded French soldier,
6 whom I did not know, arrived at the post by truck,
7 his arms bound behind his back. The Japanese
8 brought him up on to the concrete terrace behind
9 the office and again bound his arms and legs with
10 iron wire.

11 "The Chinese coolies received an order to
12 go and bring wood from near the kitchen and the
13 Japanese made a pyre with the soldier in the middle,
14 the whole bound with iron wire. They prepared also
15 wood on the ground and a Japanese soldier doused
16 the French soldier and the wood with a can of gaso-
17 line. He set the fire to his feet. The soldier
18 cried out a great deal for several minutes and the
19 flames rose everywhere. The Chinese coolies con-
20 tinued to bring wood. About 1600 the two coolies
21 who had dug a hole near the gate came to take out
22 the burned bones, and then threw them in the hole
23 where there were already the ashes of the two
24 corpses burned in the morning.

25 "I saw all that with my own eyes.

1 throw them in the river. I saw them making a funeral
2 pyre near the gate on which they put the two corpses,
3 and about noon they doused them with gasoline and
4 set them on fire.

5 "About 1400 a bearded French soldier,
6 whom I did not know, arrived at the post by truck,
7 his arms bound behind his back. The Japanese
8 brought him up on to the concrete terrace behind
9 the office and again bound his arms and legs with
10 iron wire.

11 "The Chinese coolies received an order to
12 go and bring wood from near the kitchen and the
13 Japanese made a pyre with the soldier in the middle,
14 the whole bound with iron wire. They prepared also
15 wood on the ground and a Japanese soldier doused
16 the French soldier and the wood with a can of gaso-
17 line. He set the fire to his feet. The soldier
18 cried out a great deal for several minutes and the
19 flames rose everywhere. The Chinese coolies con-
20 tinued to bring wood. About 1600 the two coolies
21 who had dug a hole near the gate came to take out
22 the burned bones, and then threw them in the hole
23 where there were already the ashes of the two
24 corpses burned in the morning.

25 "I saw all that with my own eyes.

1 "The Japanese compelled me to go and fetch
2 water for the kitchen and, in the evening, I re-
3 turned to my house.

4 "The Japanese left the French post by
5 truck the next morning for Hanoi and left some
6 Chinese pirates of their service at the French
7 post."

8 Prosecution document No. 2772-C-3, affi-
9 davit of Indo-Chinese first class soldier Vong Deng
10 is submitted for identification and the marked
11 excerpts offered in evidence.

12 THE PRESIDENT: Admitted on the usual
13 terms.

14 CLERK OF THE COURT: Prosecution's docu-
15 ment No. 2772-C-3 will receive exhibit No. 2154
16 for identification only, and the excerpt therefrom
17 will receive exhibit No. 2154-A.

18 (Whereupon, the document above
19 referred to was marked prosecution's ex-
20 hibit No. 2154 for identification, and
21 the excerpt therefrom was marked prosecu-
22 tion's exhibit No. 2154-A and received
23 in evidence.)

24 MAJOR DEPO: In his evidence, soldier Vong
25 Deng relates the massacres at Dinh-Lap inflicted on

1 a French officer, an Indo-Chinese medical lieutenant,
2 a French corporal, and 19 Indo-Chinese irregulars,
3 all of whom were prisoners of war.

4 With the Court's permission I will now read
5 this document.

6 "Affidavit. No. 1549 DDD. Name: Vong
7 Deng, first class private. Army number 51626.
8 Born on the 15 July 1922 at Xuan-Lan (near Moncay).
9 Son of Von Sy Seng and of Kim Di Ku.

10 "Address: 13th Company, Coastal forces.
11 S.P. 50.681 - BPM 406.

12 "A Japanese officer entered the post and
13 fired two shots with his revolver at Sub-Lieutenant
14 Lejhune, who had his hands tied in front of his
15 body. He fell near the trench which is behind
16 the captain's house. The Indo-Chinese surgeon
17 lieutenant was brought near Sub-Lieutenant Lejhune
18 and the Japanese forced him to sit down.

19 "The Japanese officer returned a few
20 minutes later and decapitated Sub-Lieutenant
21 Lejhune with his sword. The lieutenant was on
22 his knees on the edge of the trench. He decapitated
23 in the same way the Indo-Chinese surgeon lieutenant.
24

25 "All of us were grouped in the yard at
that time to witness these executions, the Japanese

1 surrounding us.

2 "The Japanese officer gave an order and
3 the group, of which I was one, made up of 19 sharp-
4 shooters and European Corporal Duric, was taken
5 out from the post to near the post office. We
6 were lined up at the side of the road, hands tied
7 behind our backs, in groups of two.

8 "A Japanese officer and six soldiers
9 surrounded us. Two Japanese soldiers armed with
10 rifles with bayonets fixed began to kill the
11 prisoners. I fell down with five bayonet wounds,
12 three in the neck and chest and did not move again.
13 The Japanese left us at the side of the road till
14 about 1600 hours. At that time the Japanese trucks
15 set off again towards Tien Yen and an old Tho of
16 the village came to see the corpses. He untied me
17 and guided me to Si Ung, a trader whom I knew.

18 "The inhabitants buried near the road the
19 eighteen dead riflemen and the French Corporal
20 Duric. As soon as I recovered I rejoined in China
21 the French troops which had retreated to Kwantung."
22

23 Prosecution document No. 2772-E-7, the
24 official report of the sworn evidence of first
25 class soldier Cron is now offered for identification
and the marked excerpts offered in evidence.

1 THE PRESIDENT: Admitted on the usual
2 terms.

3 CLERK OF THE COURT: Prosecution's docu-
4 ment No. 2772-E-7 will receive exhibit No. 2155
5 for identification only, and the excerpt therefrom
6 will receive exhibit No. 2155-A.

7 (Whereupon, the document above
8 referred to was marked prosecution's ex-
9 hibit No. 2155 for identification, and
10 the excerpt therefrom was marked prose-
11 cution's exhibit No. 2155-A and received
12 in evidence.)

13 MAJOR DEPO: The witness, escaped from the
14 massacre of prisoners of war at the garrison of
15 Dong Dang, relates the execution of 50 French and
16 50 French and Indo-Chinese prisoners.

17 With the Court's permission I will read
18 the marked excerpts of this document.

19 "18th Military District. Place de Roch
20 Fort. 3rd Colonial Infantry Regiment. No. 46/SM.

21 "Official Report of Evidence by the Witness.

22 "SECRET

23 "In the year 1945 on the 12th of December
24 at 15 hours

25 "Before me, Captain Cadet, Rene, of the

1 THE PRESIDENT: Admitted on the usual
2 terms.

3 CLERK OF THE COURT: Prosecution's docu-
4 ment No. 2772-E-7 will receive exhibit No. 2155
5 for identification only, and the excerpt therefrom
6 will receive exhibit No. 2155-A.

7 (Whereupon, the document above
8 referred to was marked prosecution's ex-
9 hibit No. 2155 for identification, and
10 the excerpt therefrom was marked prose-
11 cution's exhibit No. 2155-A and received
12 in evidence.)

13 MAJOR DEPO: The witness, escaped from the
14 massacre of prisoners of war at the garrison of
15 Dong Dang, relates the execution of 50 French and
16 50 French and Indo-Chinese prisoners.

17 With the Court's permission I will read
18 the marked excerpts of this document.

19 "18th Military District. Place de Roch
20 Fort. 3rd Colonial Infantry Regiment. No. 46/SM.

21 "Official Report of Evidence by the Witness.

22 "SECRET

23 "In the year 1945 on the 12th of December
24 at 15 hours

25 "Before me, Captain Cadet, Rene, of the

1 3rd R.I.C., acting by virtue of the Judicial
2 Mandate dated 23rd October 1945, of Monsieur
3 Guillien, charged with the enquiry into war crimes
4 in North Indo-China

5 "And delegated by Colonel Cariou, Commander
6 of the 3rd Regiment of Colonial Infantry

7 "First-class soldier Cron, Fernand, registered
8 No. 14170, presented himself, a survivor of the Fort
9 of Dong Dang, whom I sent for in accordance with
10 various paragraphs in the Judicial Mandate cited
11 above. We have recorded his replies which appear
12 in the official report."

13 And page two: "On the 12th March, about
14 11 a.m. the Japanese in force succeeded in scaling
15 the perimeter wall and when I, Cron, got out of my
16 demolished dug-out, there were more than 800
17 Japanese in the fort, commanded by a general.

18 "We were assembled under the veranda of
19 the fortress. The general had the French flag
20 hauled down and in its place, had their flag flown.
21 Our flag was carried off. He made us pay honours,
22 congratulated us and said he was proud to have
23 fought us because we had fought like lions.

24 "After this he sent for the captain, made
25 him sit on a chair in the middle of the courtyard

1 of the fortress and designated 9 French military
2 personnel among whom I was, the customs official,
3 and 40 Indo-Chinese.

4 "While this was going on I saw two
5 Japanese officers talking to the captain and one
6 of them, a lieutenant, struck the captain on the
7 nape of the neck with a sword and he fell to the
8 ground.

9 "The military personnel designated as
10 explained above were conducted in a double file to
11 the customs house, where we were locked up. In
12 the evening about 18 hours we were undressed by
13 Japanese soldiers who bound our hands behind our
14 backs and led us to the hill where the Japanese
15 Mission was situated.

16 "They made us kneel at the edge of a
17 trench and began to massacre us by sword strokes
18 on the back of the neck. When this was finished
19 they went away. I understood later that they had
20 gone to fetch gasoline. I fled with the two
21 sharpshooters -- one of whom had untied my hands
22 and then run off -- and I carried one of them on
23 my back. I had run about 300 metres when I saw a
24 great light coming from the place where we had
25 just been struck with swords; they were burning

1 the bodies.

2 "I fled into the mountains. I left the
3 sharp-shooter in a village with some relatives who
4 gave me some Indo-Chinese clothes, as I only had
5 an undershirt and a singlet.

6 "I managed to get back to the post of Diemhe,
7 which I found abandoned. I found the occupants in
8 the mountains. From there, I rejoined the detach-
9 ment of Captain Michel on the 14th March. We found
10 at Bao Lac the detachment of Colonel Seguin and
11 crossed the Chinese frontier.

12 "2. Give the names and addresses of other
13 surviving witnesses.

14 "Out of 50 military personnel designated
15 for the massacre above-mentioned, I only saw the
16 two sharp-shooters whom I have cited escape. I do
17 not know their identity or their registration number.
18 One fled as soon as he had untied my hands. The
19 second I left in a village at some relatives. I
20 cannot name the village."
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1 Prosecution document No. 2772-E-6, affidavit
2 of Sub-lieutenant Chomette, Louis, is offered to
3 the Court in evidence.

4 THE PRESIDENT: Admitted on the usual terms.

5 CLERK OF THE COURT: Prosecution's document
6 No. 2772-E-6 will receive exhibit No. 2156.

7 (Whereupon, the document above
8 referred to was marked prosecution's exhibit
9 No. 2156 and received in evidence.)

10 MAJOR DEPO: The witness, who was a wounded
11 survivor of one of the massacres of prisoners of war
12 of Langson, gives an account of the execution of a
13 group of officers and men.

14 With the Court's permission, I will now read
15 this document.

16 "Affidavit of Chomette, Louis, Jean-Marie,
17 Leon, Sub-lieutenant. Born 8 December 1919, at
18 St. Etienne (Loire); son of Elie Chomette and Leontine
19 Durand. Address in France: 19 Rue St. Claire,
20 Clermond-Ferrand (Puy-de-Dome).

21 "Immediately after the surrender of the fort
22 on 10 March at 1600 hours, the Japanese looted all the
23 premises and more especially the Officers' Quarters;
24 all the prisoners were searched and relieved of all
25 they possessed (money, watches, papers, rings and

1 wedding rings, etc.) but I managed however to conceal
2 a little money and my signet ring in one of my shoes.

3 "The Japanese absolutely refused to evacuate
4 our seriously wounded to the hospital of Langson.
5 Next day, about 1600 hours, all the prisoners, with
6 the exception of some seriously wounded (Battalion
7 Commander Boery, Adjutant Chief, Celestin, Private
8 Gauthier and others whose names I do not know) were
9 divided into four groups, three groups of about 20
10 soldiers each and a group of officers (5), and fastened
11 to each other by the left wrist. These groups were
12 taken, in succession, on to the ramp of the fort and
13 placed one behind the other. Shortly after, about 15
14 Japanese, armed with rifles and two machine guns,
15 took up a position some meters away from us; each of
16 us immediately understood the fate which had been
17 reserved for us. Lt. Duronoy asked the Japanese,
18 without success, that the massacre might be limited
19 to the officers. The men were very steady and calmly
20 said goodbye to us, expressing the hope that we should
21 be avenged.

22 "At the moment when the Japanese took aim
23 at us all the condemned struck up the 'Marseillaise.'
24 The Japanese let us sing about two couplets and then
25 fired.

1 "The number of shots fired was comparatively
2 few. One round each from the rifle and two short
3 bursts of machine gun fire. Many of us were wounded,
4 particularly about the legs, but I have the impression
5 that the number of dead was not high; nevertheless we
6 tumbled one on the other. During the two hours which
7 followed, scenes of unparalleled savagery took place,
8 beginning with the Japanese throwing themselves upon
9 us, yelling and using our bodies as fencing targets for
10 the bayonet. Then they amused themselves by firing
11 rifle or revolver shots in the ear of those who did
12 not appear quite dead. The least tremble called forth
13 roars of laughter and loud shouts of joy and marked a
14 new victim whom they immediately set upon with the
15 bayonet. I myself was wounded four times, in the arm,
16 in the chest and in the right buttock.

17 "When the Japanese considered that not a single
18 one more remained alive they had us removed by Annamites
19 (our irregulars) and thrown into a ravine. The bodies
20 thus thrown rolled for 200 to 250 meters. I came to
21 myself, lying head downwards, near a track which I knew
22 well and lay without moving till nightfall. Around me
23 were some twenty dead bodies among which only Chief
24 Corporal Saladini was still alive.

25 "After night had fallen it was at last possible

1 for us to get up and make our way back with difficulty
2 to the hospital of Langson.

3 "As far as concerns the fate of the Battalion
4 Commander Boery, and some severely wounded who were
5 not shot with us, I have been able to gather from
6 Private Vo Thanh (an Eurasian, considered an Annamite
7 by the Japanese, who was looked after at Langson
8 and then disappeared) the following details: The Com-
9 mandant and the other wounded were led to the top of
10 the wall of the Fort where there were two Japanese
11 captains, one of whom was a doctor (names unknown).
12 They /the French officers/ were spectators at the
13 execution of all their comrades and were then executed
14 in their turn by revolver bullets and thrown on to
15 the heap of other dead.

16 "The account of Vo Thanh seems to me the
17 more reliable as there was a moment when I received an
18 impression that something soft had fallen near me."

19 Mr. President, and Members of the Tribunal,
20 Mr. Oneto will now continue the presentation of the
21 French phase of the prosecution.

22 THE PRESIDENT: Mr. Oneto.

23 MR. ONETO: Mr. President: Before continuing
24 to present the French case, I wish to tell the Court
25 that I have received today a document which the French

1 prosecution desires to present in evidence. This
2 document having come too late for me to have it
3 processed and distributed, it will be presented later
4 to the Court when other evidence concerning the accused
5 will be presented.

6 THE PRESIDENT: What is the document?

7 MR. ONETO: Your Honor, this document is
8 relative to a Supreme Council -- Imperial Council of
9 February 1945, on which occasion the military action
10 in Indo-China which took place in March 1945 was
11 decided.

12 THE PRESIDENT: Yes. That is all I want to
13 know.

14 MR. ONETO: The French prosecution would
15 like to summon a witness. This witness is Captain
16 Gabrillagues. I ask the authorization of the Court
17 to have him called in.

18 THE PRESIDENT: Bring him in.
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GABRILLAGUES

DIRECT

1 FERNAND GABRILLAGUES, Captain,
2 The French Army, called as a witness on
3 behalf of the prosecution, being first duly
4 sworn, testified through French interpreters
5 as follows:

DIRECT EXAMINATION

6
7 MR. ONETO: The witness can only speak
8 French, and with the authorization of the Court, I
9 would like to interrogate him in this language.

10 BY MR. ONETO:

11 Q Please give your name and first name.

12 A Gabrillagues, Fernand.

13 Q What is your profession?

14 A I am a French officer -- officer in the
15 French Army, non-commissioned officer.

16 THE FRENCH MONITOR: Correction: Officer in
17 the French Army.

18 Q What is presently your occupation?

19 MR. BROOKS: If the Court please, we did
20 not get his name over the IBM. I wish the French
21 would take a little more time and give us a chance
22 to get these names.

23 Q Would you please repeat your name and first
24 name?

25 A My name is Gabrillagues.

GABRILLAGUES

DIRECT

1 Q What is presently your occupation?

2 A I am a delegate of the service of the War
3 Tribunal in Indo-China.

4 Q What is presently your address?

5 A 181 Rue Mayer, Saigon.

6 Q Where were you before the beginning of the war?

7 A I was a student in Paris.

8 Q And during the occupation?

9 A Until September, '42, I was in France.

10 Q And after September 1942, where were you?

11 A I was in Africa.

12 Q In which part of Africa?

13 A In French Equatorial Africa.

14 Q What did you do after leaving France?

15 A I was in the Colonial Service of the French
16 Colonies in Africa.

17 THE FRENCH MONITOR: Western French Africa.

18 Q Did you hold this position during the entire
19 course of the war?

20 A I was mobilized almost immediately.

21 Q Where did you go afterwards?

22 A In North Africa, in Italy, in France, in
23 southern Germany.

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GABRILLAGUES

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Q What is presently your occupation?

A I am in the War Tribunal for Indo-China.

THE FRENCH MONITOR: Delegate for War
Crimes in Indo-China.

Q How did you learn about war crimes committed
in Indo-China by the Japanese forces in this quality?

A I know of these facts because of my study of
the documentation of the war crimes that we were
making of the war crime in Indo-China.

Q Is it on the basis of your investigations
and of your activities in Indo-China which you have
prepared this statement which is here and the map
which accompanies it?

A It is solely on the documentation that I
have gathered it.

Q Do you recognize this statement and the
map which is being shown to you?

THE FRENCH MONITOR: The certificate and the
map?

A I do.

Q Is it your signature which is affixed to
the statement and to the certificate which is attached
to it?

A Yes, it is.

MR. CNETO: Mr. President, I present to

GABRILLAGUES

DIRECT

1 the Court this statement which bears No. 2963.

2 THE FRENCH MONITOR: And I offer it in
3 evidence.

4 THE PRESIDENT: Captain Brooks.

5 MR. BROOKS: If the Tribunal please, I want
6 to object to the introduction of this document No.
7 2963 that is being offered. The witness in identi-
8 fying it has stated that he is not a prisoner of
9 war. All of his testimony as set out in there is
10 therefore based upon hearsay and possibly hearsay
11 upon hearsay. Some of his conclusions therein would
12 invade the province of the Court and would not be
13 evidence but would be his opinion and conclusions
14 from documentary evidence, possibly part of it being
15 hearsay, and there is no protection on the defense
16 to investigate that; and for the further reason that
17 the conclusions of this witness in this statement
18 do not show what documents he utilized in forming
19 the statement or what material was studied that the
20 witness has examined.

21 THE PRESIDENT: Mr. Oneto.

22 MR. ONETO: Mr. President, it is precisely
23 because of the quality of the members of the Indo-
24 Chinese War Crimes Service that the witness has been
25 called. The witnesses which we should have liked to

GABRILLAGUES

DIRECT

1 present to the Court relative to certain phases of
2 the atrocities having been unable to return from
3 France where most of them have gone, the prosecution
4 thought that it would be interesting for the Court
5 to gather information -- by an officer who is par-
6 ticularly competent -- of certain information and
7 facts about atrocities about which he has some know-
8 ledge.

9 THE FRENCH MONITOR: Because of his very
10 functions.

11 THE PRESIDENT: Does he merely state what
12 he read in documents, or does he attempt to draw
13 conclusions from what he read in those documents?

14 Captain Brooks says he draws conclusions.
15 I don't know. I have not read the document.

16 Let Mr. Oneto answer, Captain Brooks.

17 MR. ONETO: Mr. President, I think that the
18 lecture of the document which I am going to read will
19 answer to -- in advance to the objections of the
20 Court.

21 THE FRENCH MONITOR: Answer by itself.

22 THE PRESIDENT: Well, the question is whether,
23 in the opinion of the Tribunal, this document has any
24 probative value. It is really a question of fact
25 upon which I will, as usual, take the views of my

GABRILLAGUES

DIRECT

colleagues.

1 The Court has decided to admit the document
2 for what it is worth.

3 CLERK OF THE COURT: Prosecution's document
4 No. 2963 will receive exhibit No. 2157.

5 (Whereupon, the document above re-
6 ferred to was marked prosecution's exhibit
7 No. 2157 and received in evidence.)
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GABRILLAGUES

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1 MR. ONETO: With the permission of the
2 Court, I will read this document.

3 (Reading). "Statement made in Tokyo 7 Janu-
4 ary 1947 before Mr. Robert Oneto, Associate-Prose-
5 cutor for France.

6 "My name is Fernand GABRILLAGUES, born 1
7 January 1918 at Paris, Bachelor of Letters. Master
8 of Laws. I am an officer of the French Army and
9 a representative of the War Crimes Service of Indo-
10 China. I live at Saigon, 181 rue Mayer.

11 "Being in charge of the investigation bureau
12 for war criminal suspects I have been led in the
13 performance of my functions to study a comprehen-
14 sive body of documents and /this fact/ has permitted
15 me to have cognizance of the war crimes committed
16 in Indo-China by the Japanese forces.

17 "The number of these crimes is consider-
18 able, the documentation concerning them is volumi-
19 nous, and there could be no question of making a
20 complete expose of them. Certain of them are and
21 will remain unknown because of the absence of wit-
22 nesses and the systematic destruction of their
23 files carried out by the Japanese in anticipation
24 of the Allied landings.

25 "I will leave aside the blows at the liberty

GABRILLAGUES

DIRECT

1 and dignity of individuals, the pillage, theft,
2 various cruelties and even murders, mentioning only
3 certain salient facts.

4 "I propose to call attention particularly:

5 "1. To the atrocities committed on the
6 premises of the Kempeitai and in the Prisoner of
7 War camps.

8 "2. To the massacres of Prisoners of War
9 and civilians.

10 "Whilst the Japanese Command in Indo-China
11 was concentrating all the French population in the
12 cities within enclosures where they were often the
13 most exposed to Allied bombardments, the KEMPEITAI
14 was signaling itself by its atrocities. Hundreds
15 of Frenchmen were imprisoned and subjected to a state
16 of affairs worse than that of common criminals; penned
17 up in cramped quarters and under distressing sani-
18 tary conditions, without clothes, without medical
19 care, without water, sometimes deprived of food
20 for whole weeks, most often receiving all in all
21 nothing but a single ball of rice, excessively
22 filthy and presented under loathsomely dirty condi-
23 tions.

24 "On the pretext of interrogation a great
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GABRILLAGUES

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1 variety of tortures were systematically inflicted:
2 clubbings that left lesions and fractures, lighted
3 matches slipped under the nails, burns by cigarettes
4 and by lighted tapers, torture by sharp-edged blocks,
5 torture by water, torture by electricity, hanging
6 by the thumbs, and others.

7 "These conditions of life and these tortures
8 caused the death of many prisoners, some having
9 been tortured to death, others having died in the
10 course of their stay in prison, exhausted by abuse
11 and sickness. At Hanoi, at Haiphong, at Vinh,
12 at Hue, at Saigon, at Pnom-Penh and in all the
13 places where the Kempeitai raged, hundreds of
14 Frenchmen of all conditions as well as a certain
15 number of nationals of Allied Nations were sub-
16 jected to degrading treatment from which a great
17 many had no deliverance save by death. Those who
18 by reason of Japan's defeat were able to escape
19 certain death left the Kempeitai prisons mere skin
20 and bones, their health definitely broken.

21 "The examination of the files makes clear
22 the identity of the methods employed in Indo-China
23 in the different local sections of the Gendarmerie.

24 "In the Prisoner of War camps the atrocities
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DIRECT

1 committed did not lag behind those habitual to the
2 Kempeitai. These officers and men were forced to
3 work like convicts at defense works. Even the
4 sick, who were soon a considerable number, were
5 also forced to work and were clubbed and beaten
6 with iron bars at the slightest faltering. Scarce-
7 ly fed, left without medical care, herded like
8 beasts into huts which they had, with great diffi-
9 culty, constructed with crude means subjected to
10 exhausting labor. The prisoners died in great
11 numbers: 98 over a period of fifty days in the Hoe-
12 Binh camp at Tonkin.

13 "But above all ---- in many parts of Indo-
14 China the Japanese massacred the Prisoners of War."

15 THE PRESIDENT: We will recess for fifteen
16 minutes.

17 (Whereupon, at 1445 a recess was taken
18 until 1500, after which the proceedings were
19 resumed as follows:)
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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now resumed.

3 THE PRESIDENT: Mr. Oneto.

4 MR. ONETO: Continuing from the top of page 3:

5 "At Langson sixty defenders of Fort Briere
6 de I'Isle were shot and finished off with the bayonets
7 immediately after the fighting was ended.

8 "At Langson also, at the Citadelle, more
9 than 200 French prisoners were massacred. The execu-
10 tion took place in successive batches of 50 men each:
11 the butchers worked with sabres, with bayonets, with
12 blows of pick axes, and threw themselves upon the
13 survivors. From the second batch on the new victims
14 stood on soil running with blood.

15 "Massacres of Prisoners of War and of
16 civilians took place in various other parts of the city
17 of Langson. General Lemonnier, Colonel Robert, the
18 Resident of the province were among the victims. A
19 child only a few months old, in its mother's arms, had
20 its skull smashed. The mother, by a miracle, survived
21 the massacre.

22 "At Dong-Dang, after a fight which lasted
23 three days, the garrison gave itself up and received
24 the congratulations of the Japanese officers for its
25 heroism. A few moments later the Captair commanding

GABRILLAGUES

DIRECT

1 the garrison was slaughtered under the eyes of his
2 men. Thereafter, it was the turn of all the other
3 defenders, executed by sabre and bayonet and of all
4 the Europeans in Dong-Dang. The only survivor of the
5 massacre, Corporal Cron, describes the execution of
6 the Captain and fifty of his men.

7 "At Dinh Lap, all French Survivors as well as
8 Annamite Tirailleurs were massacred. Similar massacres
9 of prisoners at Tien-Yen, and Hanoi, at Dam-Ha,
10 particularly as far as this last mentioned post is
11 concerned, evidence shows that four wounded Annamites
12 and one European were burned alive.

13 "The massacres mentioned above were the work
14 of the 225th Regiment of the 37th Division, commanded
15 by Colonel Shizume.

16 "The 226th Regiment which belonged to the
17 same Division has to its credit in particular the
18 massacres of Xin-Man, Hoang-Su-Phi and Hagiang where
19 French prisoners to the number of a hundred were massacred.

20 "In the last mentioned regions, several
21 cases of rape of French women occurred. A woman and her
22 sister aged 14 years were compelled to cohabit for weeks
23 with 50 Japanese soldiers who treated them brutally as
24 well as violating them. One of them went mad and both
25 were subsequently executed. Another example: a young

GABRILLAGUES

DIRECT

1 French girl of 15 years and her mother were violated
2 and then assassinated.

3 "Over and above, in several regions, native
4 women were forced into prostitution.

5 "In the section of another Japanese unit,
6 the 21st Division, massacres of French prisoners were
7 equally frequent. They took place, in particular,
8 during pursuit actions with the rearguards of General
9 Alessandri which, departing from the Hanoi region, tried
10 to reach China and got there at the price of heavy
11 losses. At Tong, five Frenchmen and 12 Annamite
12 Tirailleurs -- prisoners -- were executed. At Tan-Quy,
13 fourteen French prisoners were killed by sabre and
14 bayonet, there was a single survivor, Corporal Jubin,
15 who describes the massacre. Similarly (there were)
16 executions of prisoners at Yen-Bay, Phuto, Sonla, Leichau,
17 Malita.....

18 "Finally, in Loas at Takhek, a town likewise
19 occupied by the 21st Division, practically all the male
20 European population was massacred. Fifty-five French
21 were thus executed. Two Bishops, the Resident of the
22 Province, two women and a child figured among the
23 victims.

24 "I must add that Colonel TSUNEYASHI, Chief
25 of Staff of the 37th Division, now under detention at

GABRILLAGUES

DIRECT

1 Saigon, in the course of an interrogation before an
2 Investigating Officer of the War Crimes Service stated
3 particularly that General NAGANO, commanding the 37th
4 Division had congratulated the troops of Colonel
5 SHIZUME after the end of the fighting and massacres at
6 Langson and that the General considered these massacres
7 to be an act of war.

8 "Colonel TSUNEYOSHI further stated that
9 General TSUCHIHASHI, Commander in Chief of the Japanese
10 troops in Indo-China, to whom the massacres of the
11 prisoners at Langson were reported declared in these
12 very words: 'Act as if I knew nothing about it.'

13 "Under oath I certify that the foregoing state-
14 ments are true.

15 "Captain F. Gabrillagues, Delegate of the
16 Indo-China Federal War Crimes Service.

17 "Deposition taken at Tokyo, Tuesday,
18 7 January 1947. R. Oneto, Associate Prosecutor for
19 France."

20 THE PRESIDENT: Several of the atrocities
21 referred to in the exhibit that you have just read
22 appear to be in evidence already. Is that so?

23 MR. ONETO: Yes, it is so, but not entirely
24 so. And I feel that the witness would be in a position
25 to give some further details which would supplement

GABRILLAGUES

DIRECT

1 the information already submitted to the Court.

2 THE PRESIDENT: Yes. Are you going to examine
3 him further?

4 MR. ONETO: I have only a few questions very
5 rapidly to ask to the witness, Mr. President.

6 THE PRESIDENT: Proceed to ask him those
7 questions.

8 MR. ONETO: A map is affixed to the deposition
9 of Captain Gabrillagues with a certificate which I will
10 read:

11 "The attached outline map indicates the where-
12 abouts of the majority of the localities in Indochina
13 where murders and atrocities with respect to the civil
14 population and prisoners of war surviving the occupation
15 by the Japanese armies, were committed.

16 "Capt. Gabrillagues, Delegate of the War Crimes
17 Office."

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GABRILLAGUES

DIRECT

1 BY MR. ONETO (Continuing):

2 Q During the course of your functions you have
3 had to study a large number of documents. It is not
4 my intention to ask you to give precisions on all
5 those which you have studied. Going over only depo-
6 sitions which you have given I have the intention
7 only of asking you a few supplementary details within
8 the limit of which your memory is capable. In page 1
9 of your statement, speaking of the atrocities which
10 were inflicted upon the victims, you speak of sharp
11 blocks of wood, could you give us some details about
12 this?

13 A These tortures consisted of making the pris-
14 oners kneel on blocks of wood which were placed on
15 the ground with the sharp edge turned upwards. While
16 the prisoner was kneeling on these blocks of wood a
17 non-commissioned officer who was supposed to interro-
18 gate him jumped on the legs of the prisoner.

19 THE FRENCH MONITOR: Correction: One of the
20 aides of the non-commissioned officer who was interro-
21 gating -- who was supposed to interrogate him.

22 Q Regarding the atrocities which were blamed
23 upon various sections of the gendarmerie, were you
24 under the impression that these were isolated cases?

25 THE FRENCH MONITOR: Due to local sections of

GABRILLAGUES

DIRECT

1 the gendarmerie -- local sections.

2 A (In French.)

3 MR. LOGAN: If the Tribunal please, I object
4 to that question as calling for a conclusion of the
5 witness.

6 THE PRESIDENT: Well, the question is answered
7 now, but I think it ought to be stricken, as the Amer-
8 icans say.

9 Do you think this further examination is
10 worth while, Mr. Oneto?

11 MR. ONETO: Mr. President, I had the inten-
12 tion to ask the witness a few questions about the
13 massacre at Takhek. May I pose him those questions?

14 THE PRESIDENT: Yes, anything worth while.

15 Q The witness, can he give us some precisions
16 about the conditions in which the massacre at Takhek
17 was conducted?

18 A We have on the whole few precisions on the
19 massacre at Takhek. We know that 55 French people, of
20 whom 40 civilians, 10 soldiers, 2 women, and 1 child
21 were massacred.

22 Q At Takhek?

23 A At Takhek. We have found their bodies in the
24 course of exhumation; a certain number of them had had
25 their heads cut off, while others had a rope around

GABRILLAGUES

DIRECT

1 their neck which gave us to believe that they had been
2 hanged when Takhek was taken. After all resistance
3 had been overcome all the civilian population, men,
4 women, and children, were taken prisoners. After a cer-
5 tain lapse of time the women were separated from the
6 men. The women survived as long as the armistice and
7 we could interrogate them and learn of the conditions
8 in which they lived at Takhek. For the most part nearly
9 all of them didn't know what had become of their hus-
10 bands and children. We learned, however, that the men,
11 with two exceptions, had been massacred. These took
12 place on three occasions; there were three principal
13 occasions: The first at Takhek itself in the military
14 camp; the other two in the neighborhood of Takhek.

15 MR. ONETO: Mr. President, may I ask one more
16 question of the witness relating to the massacre of
17 Langson?

18 Q Can you give some details?

19 A The massacres of Langson were numerous as I
20 have already said in my deposition. There was one
21 massacre at Fort Briere de l'Isle, one in the Citadelle,
22 and several others in the town. We have had a few pre-
23 cisions on the massacre that took place in the Cita-
24 delle according to the deposition made by one of the
25 Japanese officers who was present at the time. His

GABRILLAGUES

DIRECT

1 name is Captain IMUDA. He told us that the French
2 prisoners were got out of the Citadelle by groups of
3 50 or 60 and killed by the river. He gave us the
4 description of the massacre of the first batch of
5 men as he didn't witness the others.
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1 THE FRENCH MONITOR: He gave us from a
2 witness of the first batch.

3 A The first batch of fifty men were taken
4 to the courtyard where a fire had been lighted. Fifty
5 French people -- they were all French, all Europeans,
6 no Annamites were in there, as he himself told us --
7 were lined up with one Japanese behind each man --
8 before each man. All fifty prisoners were killed
9 either with bayonets or sabers. The survivors were
10 executed with picks, according to another deposition
11 than that of Captain Imuda. This witness tells us
12 that, horrified by these spectacles, he ran away
13 and hid under six blankets so as to isolate himself
14 physically as well as otherwise from this terrible
15 spectacle.

16 Q Do you have any precision on the conditions
17 of executions of the other prisoners?

18 MR. BROOKS: Mr. President, it appears to the
19 defense that this is repetitious as matters already in
20 evidence, as just recently put in by the prosecutor
21 here, and this is testimony based on hearsay.

22 THE PRESIDENT: Hearsay is admissible. Mr.
23 Oneto said he was adducing additional facts. We do
24 not want repetition, certainly.

25 MR. ONETO: I have no more questions to

GABRILLAGUES

DIRECT
CROSS

1 ask the witness, Mr. President.

2 THE PRESIDENT: Captain Brooks.

3 MR. BROOKS: If the Tribunal please, the
4 defense moves at this time to strike from the evidence
5 exhibit 2157, the statement of the witness, after we
6 have heard it read for its lack of probative value,
7 and--

8 THE PRESIDENT: We have already decided
9 to admit that, Captain Brooks. If it contains any
10 conclusions that invade our province we will disregard
11 them.

12 Mr. Logan.

13 MR. LOGAN: If the Tribunal please.

14 CROSS-EXAMINATION

15 BY MR. LOGAN:

16 Q How long were you in charge of the investiga-
17 ting bureau for War Crimes Service in Indo-China?

18 A I have been concerned with researches of
19 the War Crimes Tribunal of Indo-China since September,
20 end of August or early September, of 1945.

21 Q In your work as investigator, did you inter-
22 view any witnesses yourself and take statements from
23 them or did you get all the information contained in
24 your affidavit from other affidavits?

25 A I have not understood the question.

GABRILLAGUES

CROSS

1 Q We will hold that for a minute and go back
2 and clarify the one previous. It came over the
3 transmitter that you said "1945." Is there a mis-
4 take there?

5 A It is a mistake.

6 Q What should it be?

7 A 1946.

8 Q When you received the documents respecting
9 these incidents did you go out and take any statements
10 yourselves from any of the people involved?

11 A I did not receive the depositions myself.

12 Q Did you investigate, examine, any of the
13 affidavits or documents on which your statement is
14 based?

15 A I read most of the affidavits and the com-
16 plaints which were registered by witnesses.

17 Q Did you ever question a witness yourself
18 in connection with any of these incidents you have
19 related in your statement?

20 A I did not myself interrogate witnesses.
21 It wasn't my work.

22 Q Is it a fact that these prisoners of war
23 mentioned in your statement were De Gaullists?

24 A I do not know.

25 Q Didn't you make any investigation to try to

GABRILLAGUES

CROSS

1 find out what army these soldiers belonged to?

2 A Which soldiers?

3 Q Prisoners of war you mention in your affidavit.

4 A They belonged to the Indo-Chinese army.

5 Q Were any of them De Gaullists?

6 A I do not know.

7 Q Were any of them guerrillas?

8 A Some of them belonged to the underground.

9 Q On what side were these Chinese troops?

10 Were they on De Gaulle's side or were they on the
11 side of the recognized French Government, the Vichy
12 Government?

13 A I have not understood the question.

14 Q Didn't you say a minute ago that some of
15 these troops -- you didn't know whether they were
16 De Gaullists or on the side of the Vichy Government --
17 they were Chinese troops?

18 A I do not believe I have spoken of Chinese
19 troops.

20 Q Indo-Chinese troops, what side were they on?

21 A The Indo-Chinese troops were part of the
22 French army of Indo-China.

23 Q Were they under the command of the Vichy
24 Government at that time?

25 A They were under the orders of the commanding

GABRILLAGUES

CROSS

1 general, the senior commanding general of the troops
2 in Indo-China.

3 Q For what government were they fighting?

4 A The troops were fighting for France.

5 Q When you say France, do you mean the Vichy
6 Government?

7 A France.

8 Q You understand, of course, that the Japanese
9 troops went into Indo-China under an agreement with
10 the Vichy Government. Now, in your investigation
11 did you find out that these Indo-Chinese troops
12 were opposed to the Vichy Government?

13 A I do not have the information with me to
14 answer this question.

15 Q Didn't you think it important in your work
16 as an investigator to find out what army, if any,
17 these people were employed by at the time of these
18 alleged atrocities?

19 A I concerned myself solely with the identi-
20 fication and the search for war criminals.

21 Q How can you determine who was a war criminal
22 unless you know what army he is fighting for?

23 A Criminals are judged by the crime which they
24 commit.

25 Q That isn't an answer to the question I gave

GABRILLAGUES

CROSS

1 you. Will you please answer the question?

2 A Would you please repeat the question?

3 Q Do I understand you made this investigation
4 and tried to determine whether or not a person was a
5 war criminal without knowing on which side the prisoners
6 of war were?

7 A I made researches regarding prisoners of
8 war from the complaints which I received.

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GABRILLAGUES

CROSS

1 Q Who was the Governor General, representative
2 of the Vichy Government, in Indo-China?

3 MR. ONETO: Mr. President, I object to this
4 questioning which seems to be past -- to go beyond
5 the deposition of Captain Gabrillagues.

6 THE PRESIDENT: It does go beyond it, indeed,
7 but, I think that Mr. Logan is trying to lay the founda-
8 tion for submission of law later. He is not supposed
9 to know who the Governor General was and it is not
10 relevant anyhow. The political affiliations of these
11 people may have some relevance but not their names.

12 Q Do you know who was the leader of the Indo-
13 Chinese Army?

14 A General Martin.

15 Q And was General Martin a representative of
16 the Vichy Government?

17 A I do not know.

18 Q You were in charge of this Investigation
19 Bureau, weren't you?

20 A Yes.

21 Q Well, wasn't it part of your duties to find
22 out if these prisoners of war were guerrillas?

23 A I have never considered these prisoners to
24 belong to bands of guerrillas.

25 Q Well, what did you consider them to belong to?

GABRILLAGUES

CROSS

1 A To the Army.

2 Q Whose army?

3 A The French Army.

4 Q What do you mean by the French Army?

5 A I cannot give you a definition. It seems
6 difficult to give you an immediate definition.

7 Q Well, can you give us a definition tomorrow?

8 A I think it would perhaps be possible.

9 Q Can you tell me how many of these prisoners
10 of war set forth in your statement were members of the
11 Indo-Chinese Army?

12 A They all belonged to the Army of Indo-China.

13 Q Were they naturalized Frenchmen?

14 A They were either French subjects or French
15 citizens.

16 THE PRESIDENT: The nationality of the
17 French didn't change with the change of government.

18 Q In your investigation did you also come
19 across a document which gave the Japanese Army the
20 right to go into Southern Indo-China in July, 1941?

21 A I have never seen such a document.

22 Q Now, isn't it a fact, Mr. Witness, that you
23 know that the Vichy forces and the DeGaulist forces
24 were fighting in Indo-China?

25 A Fighting how? I don't know.

GABRILLAGUES

CROSS

1 Q You don't know? Do you know there were
2 two factions in Indo-China, the DeGaullist faction
3 and the faction representing the legal Vichy Government?
4

5 THE PRESIDENT: You forget, Mr. Logan,
6 perhaps, that there is such a thing as a crime against
7 humanity as well as a conventional war crime.

8 MR. LOGAN: I know there is such a crime
9 charged, your Honor, and I am coming to that in a little
10 while.

11 THE PRESIDENT: Crimes against soldiers
12 may conceivably be not war crimes, but they may be
13 crimes against humanity in relation to war. You have
14 got to keep that in mind.

15 Q May I have an answer to the question?

16 THE PRESIDENT: I do not want to interfere
17 with your cross-examination, but I want you to under-
18 stand that we quite understand also what the position
19 is.

20 MR. LOGAN: I think there is a question
21 unanswered, your Honor.

22 Will the court reporter read the question?

23 (Whereupon, the question referred to
24 was read by the official court reporter.)

25 A You are telling me about it.

Q Well, is that true and do you know it?

GABRILLAGUES

CROSS

1 A What?

2 Q Do you know it to be a fact that there were
3 two factions in Indo-China, one representing the legal
4 Vichy Government and one representing the DeGaullists?

5 THE PRESIDENT: Crimes against humanity
6 could extend to fellow subjects of the person charged.

7 We will adjourn until half-past nine tomorrow
8 morning.

9 (Whereupon, at 1600, an adjournment
10 was taken until Friday, 17 January 1947, at
11 0930.)

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17 Jan 47

17 JANUARY 1947

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2242	2175		An addition to document No. 2242 (exhibit No. 753) and a new photostatic map attached thereto		15541
2955	2176		Report by Prof. Chang Feng-Chu, Handwriting expert, re the handwriting of Prosecution Witness Henry Pu Yi re letter written by Pu Yi to Defendant General MINAMI		15543
1908	2177		Volume 63 of 65 "Proceedings, Tokyo Court of Appeals" marked 46, "May 15th Incident and OKAWA Faction"	15556	15556

Friday, 17 January 1947

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

The Tribunal met, pursuant to adjournment,
at 0930.

- - -

Appearances:

For the Tribunal, same as before.

For the Prosecution Section, same as before.

For the Defense Section, same as before.

- - -

(English to Japanese, Japanese to
English, French to English and English to
French interpretation was made by the
Language Section, IMTFE.)

GABRILLAGUES

CROSS

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MARSHAL OF THE COURT: The International
Military Tribunal for the Far East is now in session.

THE PRESIDENT: All the accused are present
except OKAWA, ARAKI, MATSUI and TOGO, who are repre-
sented by their counsel. We have a certificate from
the prison surgeon at Sugamo certifying that the
accused ARAKI, MATSUI and TOGO are unable to attend
the trial today on account of illness. The certificate
will be recorded and filed.

Mr. Logan.

MR. LOGAN: If the Tribunal please.

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GAERILLAGUES

CROSS

1 FERNAND GABRILLAGUES, called as a
2 witness on behalf of the prosecution, resumed the
3 stand and testified further through French inter-
4 preters as follows:

CROSS-EXAMINATION

BY MR. LOGAN (Continued):

7 Q During the course of your investigation you,
8 of course, found out that the Japanese troops entered
9 Northern Indo-China in 1940, isn't that a fact?

10 A The Japanese troops entered Northern Indo-
11 China.

12 Q And you also found out that they entered
13 Southern Indo-China in 1941, isn't that so?

14 A I have not worried about this question.

15 Q Irrespective of whether you worried about
16 it, have you found out that to be a fact?

17 A The documentation which I have consulted
18 does not allow me to answer that question -- to give
19 an answer to that question.

20 Q Irrespective of the documents which you have
21 consulted, is that a fact?

22 A It is possible.

23 Q Irrespective of whether it is possible or
24 not, is it a fact?

25 A I say that it is possible but I cannot give

GABRILLAGUES

CROSS

1 any precisions.

2 Q Do you mean to tell us that you have made
3 all these investigations and you do not know when
4 the Japanese army entered Indo-China?

5 A I know that there were Japanese penetrated
6 into Southern Indo-China but I do not know the exact
7 date of the penetration.

8 Q What is your best recollection on it?

9 THE PRESIDENT: This is utterly trifling
10 and we do not want his assistance on these points at
11 all. He says he does not know and let us leave it at
12 that. You are not testing his credibility effectively
13 that way, Mr. Logan. It is possible he does not know
14 the exact date; I do not. I would have to refresh
15 my memory from the evidence.

16 MR. LOGAN: I am not asking these questions,
17 if the Court please, to test this witness' credibility.
18 I am asking it to try and ascertain the facts.

19 THE PRESIDENT: I will read this note:
20 "Counsel might test his credibility by this line of
21 cross-examination. I think at present the witness is
22 hedging."

23 I do not agree. "Hedging" is the last word
24 in that note.

25 Q From your investigation what was the earliest

GABRILLAGUES

CROSS

1 year that you found out that the Japanese were in --
2 entered Northern Indo-China.

3 MR. ONETO: I object to the question as
4 being immaterial, irrelevant and beyond the scope of
5 the witness' statement. The witness, Mr. Gabrillagues,
6 has been called here to testify on things which are
7 within his functions, that is, atrocities. He was
8 not present when these -- when the facts referred to
9 took place. The question put by counsel refers to
10 the general phase of this case which is already passed
11 and this, the present phase, is on atrocities and only
12 atrocities.

13 THE PRESIDENT: What have you to say,
14 Mr. Logan?

15 MR. LOGAN: I prefaced my question by asking
16 him whether or not he obtained this information from
17 his investigation which brings it squarely within the
18 statement made by this witness on direct testimony.
19 He has made this statement referring to various
20 alleged atrocities. It is important to find out just
21 when the Japanese army entered Indo-China to see if
22 it was actually present at the time of these alleged
23 atrocities and to investigate the further situation
24 of the resistance troops operating in Indo-China.

25 THE PRESIDENT: The question is allowed.

GABRILLAGUES

CROSS

1 Objection overruled.

2 A I cannot give you any precise date. My
3 recollections are not very clear. I recollect some
4 complaints which were -- which date from 1943, 1942,
5 1945, 1946, but my recollections are not very, very
6 clear on this point.

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GABRILLAGUES

CROSS

1 Q Let me ask you this, then: Is it a fact
2 that after the Japanese troops entered Indo-China
3 there sprang up a Resistance movement?

4 A The documents do not allow me to answer in
5 a precise manner to this question.

6 Q Well, what would allow you to answer that
7 question?

8 A I was at the war crimes office in charge of
9 researches on crimes committed by the Japanese Army.
10 Complaints were received and on the basis of these
11 complaints I began my investigations. My work was a
12 material work of researching what crimes had been
13 committed and where the criminals were, so that
14 they could be rounded up.

15 Q Have you finished?

16 A Yes.

17 Q Yesterday you referred to the underground.
18 Will you tell us what you meant by that?

19 A During my researches I have sometimes found
20 the word "resistance," "underground," in the docu-
21 ments which I have seen.

22 Q Did you investigate to find out what this
23 underground or resistance was?

24 A No.

25 Q Weren't you interested, as the person in

GABRILLAGUES

CROSS

1 charge of the investigating bureau, to find out what
2 this Resistance group was?

3 A I did not take up that matter.

4 Q Did you ask anybody else to take it up?

5 A Absolutely not.

6 Q Do I understand you, Mr. Witness, that you
7 appear in this Tribunal and present affidavits where
8 you mention "Resistance group" and "underground,"
9 and you mean to tell this Tribunal you don't know what
10 it means?

11 A I do not understand -- I do not very well
12 understand the question as it has been translated.

13 MR. LOGAN: May I have it re-translated,
14 your Honor?

15 (Whereupon, the last question
16 was re-interpreted.)

17 A I did not present any affidavits to this
18 Tribunal. I only -- I have only told of them what
19 I had done, or the work that I had done, in the war
20 crimes office.

21 Q Well, let me ask you this question: Do you,
22 of your own knowledge, know what the Resistance
23 group was?

24 MR. ONETO: Mr. President, I object to this
25 question because I do not find on what part of the

GABRILLAGUES

CROSS

1 statement the counsel bases these questions.

2 THE PRESIDENT: It is not for you to take
3 objections. You answer the questions until objec-
4 tion is taken by counsel and allowed.

5 THE FRENCH INTERPRETER: Mr. President,
6 the translation was just given of Mr. Oneto's
7 objection.

8 THE PRESIDENT: Well, that is all right.
9 I misunderstood it. I was reading his statement
10 when Mr. Oneto was speaking.

11 I think the question is allowable and
12 should be answered. It is quite a simple question.

13 A I believe that I have already answered
14 this question.

15 Q Well, answer it again, will you please?

16 A I answered that in the documents that I had
17 I found a few -- several times, the word "resistance."

18 Q I understand what you said, Mr. Witness,
19 but that isn't the question I put. I am asking you
20 now: Do you know, of your own knowledge, what the
21 Resistance movement was.
22

23 A I have no precise knowledge on movements of
24 the underground -- movement of the Resistance.

25 Q Well, what was that movement?

A What I could tell you would only be a

GABRILLAGUES

CROSS

1 repetition of what was told to me. That is hear-
2 say, and I want to speak before this Tribunal only
3 of things which I know by myself, in my own
4 knowledge.

5 O Well now, Mr. Witness, as a matter of fact,
6 your entire affidavit submitted by you on direct is
7 all hearsay, isn't it?

8 A I did not say that what -- that my deposi-
9 tion was based on affidavits, but on depositions of
10 witnesses and of victims of these crimes.

11 MR. ONETO: I object to the translation,
12 because I think the translation is somewhat wrong.
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GABRILLAGUES

CROSS

G 1 THE PRESIDENT: Well, we have no reference
r 2 board as far as French is concerned. We have nobody
e 3 to whom to refer that, and I cannot accept any cor-
n 4 rection from the floor.
b 5

r 6 After consulting one of my colleagues, I
g 7 think that the following questions are pertinent,
& 8 and I will ask the witness to answer them:
B 9

a 10 Did the members of the Resistance wear
r 11 uniforms?
t 12

O 13 THE WITNESS: I have not been able to
n 14 ascertain it.
15

16 THE PRESIDENT: Of course, we still have
17 crimes against humanity to consider.
18

19 MR. LOGAN: I appreciate that, your Honor,
20 but they are on different counts in the Indictment.
21

22 BY MR. LOGAN (Continued):
23

24 Q Well, tell us what you heard this Resistance
25 Movement was?

A I practically have no knowledge of the
movement -- concerning the Resistance Movement. I
only received complaints from victims of atrocities
of the Japanese Army, and I confined my activities
to that.

Q Isn't it a fact that the Resistance Movement
was started in Indo-China against the Japanese and

GABRILLAGUES

CROSS

1 the Vichy Government in French Indo-China?

2 A The documentation which I have seen does
3 not allow me to answer your question.

4 MR. LOGAN: If the Tribunal please, I think
5 I have been patient about this. I think we ought
6 to have a direction and make this witness answer
7 these questions.

8 THE PRESIDENT: Witness, do you, in fact,
9 know anything more than appears in the documents?

10 THE WITNESS: All that I have heard beyond
11 that I consider as hearsay, and I cannot give evi-
12 dence of these before this Tribunal.

13 THE PRESIDENT: You can. You are mistaken.
14 You must answer from hearsay, but you can say the
15 source of your information.

16 THE WITNESS: I haven't heard any informa-
17 tion on this point.

18 BY MR. LOGAN (Continued):

19 Q When you were in the Colonial Service of
20 the French Colonies in Africa, were you in the Vichy
21 Army or were you in the Resistance Movement from
22 that point onward?

23 A I was mobilized -- I was drafted February
24 1, 1943 -- no: 1944.

25 Q Do you understand English?

GABRILLAGUES

CROSS

1 A (In English) Very small.

2 Q Was that year incorrect that was just given
3 over the translation system?

4 A (In English) It seems that the number --
5 (In French) I think that the number given, "4," is
6 not exact -- is not correct. It is "'43."

7 Q What time were you a member of the Resistance
8 Movement?

9 A I was drafted February 1, 1943 in the
10 French Army of Africa.

11 Q Was that under the Vichy Government or was
12 that in the Resistance Army?

13 A In the French Army of Africa.

14 Q Was that as a member of the Resistance Group
15 or a member of the forces of the Vichy Government?

16 A It was as a French citizen who was still
17 under military obligations.

18 THE PRESIDENT: It is suggested to me that
19 if you use "Free French" instead of "Resistance,"
20 you might get more satisfactory answers.

21 Q Were you a member of the Free French?

22 A Since February 1, 1943 I belonged to the
23 French Army of Africa, the only army which was in
24 Africa.

25 Q Were you under General Le Clerc?

GABRILLAGUES

CROSS

1 A I did not say that I was in Africa. I was
2 in West of Africa -- in French West of Africa.

3 Q I didn't ask you that. Were you under
4 General Le Clerc?

5 A General Le Clerc was not in the West of
6 Africa.

7 Q Were you under him?

8 A Absolutely not.

9 Q Then were you under some General of the
10 Vichy Government?

11 A I do not think so.

12 Q Do you seriously want this Tribunal to
13 understand from your testimony that you were fight-
14 ing for France but you didn't know which army you
15 were in?

16 A I was only thinking of fighting for France.

17 Q And you didn't care which army you were
18 in, is that it? And, furthermore, you don't know
19 which army you were in, is that it?

20 A I was in the French Army.

21 THE PRESIDENT: The French Government
22 employed him on war crimes, apparently, and that
23 is the Free French Government.

24 Q From whom did you receive your pay from
25 1943 on?

GABRILLAGUES

CROSS

1 A The Disbursing Officer of my unit.

2 THE PRESIDENT: Mr. Logan, this is trifling.
3 I say it again subject to any Member of the Tribunal
4 having a different view.

5 MR. LOGAN: It may be trifling, your
6 Honor, but to me it is more serious than that. A
7 witness comes here and testifies the way he has.
8 I'm trying to find out just what the situation was
9 as he investigated it so that he can give this Tri-
10 bunal some information on these alleged crimes.

11 BY MR. LOGAN (Continued):

12 Q Tell me this: Did you ever check to find
13 out if any of the charges made in these affidavits
14 which were submitted by you were false?

15 A It was not for me to judge whether the wit-
16 nesses have made false depositions.

17 Q I am not talking about the depositions;
18 I am talking about the charges in the depositions.

19 A That is just what I wanted to say: If the
20 accusations presented in those depositions were
21 false or not.

22 Q And you made no check to find that out, is
23 that it?

24 A It was not in my province to judge of the
25 exactitude or the directness of witness -- of the

GABRILLAGUES

CROSS

1 depositions made.

2 Q Now, is it a fact that these people who
3 claim to have suffered these alleged atrocities were
4 members of the Resistance Force?

5 A Yes, certainly.

6 Q And the civilians also mentioned in these
7 affidavits, were they assisting the Resistance
8 Force?

9 A Some did and some did not.

10 Q And General Martin was the one in charge
11 of the Resistance Force in Indo-China?

12 A I do not know.

13 Q Did you make any investigation to find out?

14 A I did not try to find out.

15 MR. LOGAN: That is all.

16 THE PRESIDENT: Counsel SHIMANOUCI.

17 CROSS-EXAMINATION (Continued)

18 BY MR. SHIMANOUCI:

19 Q Mr. Witness, what is your age?

20 A I was born January 1, 1918.

21 Q You testified, Mr. Witness, that you were
22 a student prior to the war. Then were you drafted
23 in the Army in September, 1942?

24 A I stated that it was on February 1, 1943.

25 Q Up to that time were you occupied in some

GABRILLAGUES

CROSS

1 profession or vocation?

2 A I was a student, and then I went to Africa
3 as a Colonial civil servant.

4 Q What duties were you assigned to after
5 you were drafted?

6 A I was infantry platoon leader.

7 Q Have you, Mr. Witness, before you took up
8 your work with the War Crimes Office in September,
9 1946, engaged in any legal business either as a
10 prosecutor or a lawyer?

11 A Not at all.

12 Q Mr. Witness, you have testified as follows
13 in the latter part of Court exhibit 2157. In this
14 passage, Mr. Witness, you state as follows: "Colonel
15 TSUNEYOSHI further stated that General TSUCHIHASHI,
16 Commander-in-Chief of the Japanese troops in Indo-
17 China, to whom the massacres of the prisoners at
18 Langson were reported, declared in these very words:
19 'Act as if I knew nothing about it.'" Does this
20 mean that General TSUCHIHASHI was afraid that other
21 people might know that he, himself, was connected
22 in any way with the massacre at Langson when he heard
23 about it?

24 A I am only repeating what Colonel TSUNEYOSHI
25 told me and adding no commentary to it. I am not

GABRILLAGUES

CROSS

1 interpreting it.

2 Q Then, was it your interpretation that
3 Lieutenant General TSUCHIHASHI was afraid of reporting
4 this massacre to the central authorities in Tokyo --
5 was afraid that this massacre would be reported to
6 the central army authorities in Tokyo?

7 A I cannot give my impression on this subject.

8 MR. SHIMANOUCHI: That is all, sir.

9 THE PRESIDENT: Captain Brooks.

10 CROSS-EXAMINATION (Continued)

11 BY MR. BROOKS:

12 Q Mr. Witness, in your investigation, did
13 you investigate to see if any of these alleged acts
14 were taken by way of reprisal?

15 A I think that in certain localities the
16 Japanese may have been irritated by the actions --
17 by the attitude of the French population.

18 Q Did your investigation show that certain
19 actions complained of were to suppress and deter the
20 activities in resistance of franc-tireurs or others?

21 A The massacres at Langson and other places
22 certainly did not aim at suppressing the activities
23 of franc-tireurs.

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GABRILLAGUES

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1 Q Did your investigations uncover any actions
2 that would classify the participants as Franc tireurs?

3 A In my deposition I have not spoken of re-
4 lations between the Japanese and those that may be
5 called Franc tireurs.

6 Q In other words, you never made any investiga-
7 tion as to the matters that might have been in justi-
8 fication of some of the actions to which you have
9 testified to?

10 A (No answer)

11 MR. BROOKS: I didn't get the answer.

12 THE PRESIDENT: Did you try to find any
13 reason why the Japanese acted as they did?

14 THE WITNESS: I did not try to discover any
15 reasons. I may have had some echoes of this in the
16 complaints.

17 MR. BROOKS: That is all.

18 MR. LOGAN: No further cross-examination.

19 If the Tribunal please, at this time I move
20 to strike out and disregard all the evidence presented
21 of alleged atrocities in Indo-China on the ground that
22 the evidence shows that these resistance troops were
23 not lawful troops of France, they were fighting con-
24 trary to the orders of their own legally recognized
25 government, and cannot claim rights as prisoners of

1 war under international law but fall into the
2 classification of guerrillas or franc-tireurs.

3 THE PRESIDENT: Of course, there is no such
4 evidence as you claim, Mr. Logan. We will, at the
5 proper time, pass judgment on the evidence we have
6 heard. The application to deal with the matter
7 instanter is dismissed.

8 Mr. Oneto.

9 MR. ONETO: Mr. President, there will be no
10 redirect and I ask the permission of the Court to let
11 the witness stand down.

12 THE PRESIDENT: The witness is excused on
13 the usual terms.

14 (Whereupon, the witness was excused.)

15 MR. JUSTICE MANSFIELD: If the Tribunal please
16 that is the end of the French phase of the atrocity
17 part of the prosecution. Mr. Lopez now desires to
18 tender to the Court some two documents which he omitted
19 to tender before.

20 MR. PRESIDENT: Mr. Lopez:

21 MR. LOPEZ: At the request of the New Zealand
22 and Chinese representatives we are introducing as
23 additional evidence on atrocities in the Philippines
24 committed by Japanese Armed Forces on a New Zealand
25 priest and the members of the Chinese Consulate staff
at Manila.

1 We formally tender in evidence IPS document
2 No. 2899 which is an extract from a note addressed by
3 the United States Acting Secretary of State to the
4 Charge d'Affairs ad interim of New Zealand Legation,
5 Washington, on 31 May 1945.

6 THE PRESIDENT: Admitted on the usual terms.

7 CLERK OF THE COURT: Prosecution document
8 No. 2899 will receive exhibit No. 2158.

9 (Whereupon, the document above re-
10 ferred to was marked prosecution's exhibit
11 No. 2158 and received in evidence.)

12 MR. LOPEZ: From this document we read the
13 following:

14 "The following is quoted from a recent report
15 of the American Consulate General at Manila:

16 "I have the honor to refer to the Depart-
17 ment's airgram No. 4 of March 10, 1945, transmitting a
18 communication received by an officer of the Department
19 from the New Zealand Legation at Washington concerning
20 the whereabouts and welfare of four Catholic priests
21 and to report that Martin Strong, Arthur Price and
22 Thomas Dwyer are in good health and at present are being
23 quartered in the New Bilibid camp at Muntinlupa.

24 "According to information received by Arthur
25 Price through Philippine sources, Vernon Douglas was

1 subjected to extreme torture in the presence of a large
2 group of Filipinos at Pililla Convent, Pililla, Rizal,
3 over a period of three days in July of 1942. When last
4 seen by eye-witnesses one eyeball was hanging entirely
5 out of his head and there was a large hole in his fore-
6 head. According to some reports he was then taken to
7 Paete, Laguna, and subsequently to Santa Cruz but it
8 is the belief of Arthur Price that he died near Paete."

9 We further introduce in evidence document
10 No. 2901 which is a summary of evidence of JAG Report
11 No. 33 on the torture and murder of the members of the
12 Chinese Consulate in Manila in January, 1942.

13 THE PRESIDENT: Admitted on the usual terms.

14 CLERK OF THE COURT: Prosecution's document
15 No. 2901 will receive exhibit No. 2159.

16 (Whereupon, the document above referred
17 to was marked prosecution's exhibit No. 2901 and
18 received in evidence.)

19 THE PRESIDENT: Are you going to read much
20 of this?

21 MR. LOPEZ: We read the whole document, if
22 your Honor please.

23 THE PRESIDENT: We will hear it after the
24 recess. We will recess now for fifteen minutes.

25 (Whereupon, at 1045, a recess was

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taken until 1100, after which the proceedings
were resumed as follows:)

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1 MARSHAL OF THE COURT: The Tribunal is now
2 resumed.

3 THE PRESIDENT: Mr. Lopez.
4 Why are you not proceeding to read?

5 MR. LOPEZ: I will read the entire Summary
6 of Evidence.

7 "Briefly summarized, the evidence adduced
8 by the Investigator-Examiners is to the effect that:

9 "When the Imperial Japanese Forces entered
10 Manila on 2 January 1942, the Consulate officials
11 representing the Republic of China in Manila, and
12 consisting of Lr. Clarence Kuangson Young, Kai Yien
13 Mok, Siao Pin Chu (I. P. Chu), Yu Heng Loo (Ping-Se
14 Lu), Tsu Siu Yao, Tom Ming Siao, Ching Siu Young
15 and James Kung Wei Wang, proceeded to hide in the
16 Swiss Consulate in Manila with the exception of
17 Dr. Young who moved to the Manila Hotel. These offi-
18 cials remained at the Consulate for a few days,
19 returning to their homes at No. 15 Brixton Hill,
20 Santa Mesa, Manila, by 4 January.

21 "About 8 January they were all taken into
22 custody by the Japanese and interned at Villamor Hall,
23 University of the Philippines, Manila, for examina-
24 tion and interrogation. They were confined in the
25 music practice room about six by twenty meters in size

1 on the second floor, without any mattresses, cots,
2 clothes or food except that which was brought to them
3 by their respective families. The treatment accorded
4 them in the beginning was fair and they were permitted
5 to walk in the university garden and around Villamor
6 Hall under guard while their families were allowed to
7 visit them because their captors were trying to obtain
8 their cooperation. The Japanese in charge of the
9 Consulate Group were members of the Military Police
10 Command whose headquarters was located at Fort Santiago,
11 Intramuros, Manila.

12 "From 8 January to 28 March they were
13 questioned by the Japanese and it was reported that
14 Dr. Young was asked about 15 March by Lt. Col. OHTA,
15 Commander of the Military Police, how much the Chinese
16 in the Philippines had contributed to the Chungking
17 Government since 1937 to which Dr. Young replied
18 'about twelve million pesos.' This officer then stated
19 that if the Chinese could contribute that much to the
20 Chungking Government, they could contribute more than
21 that amount to the Japanese Army, and demanded that
22 Dr. Young inform the Chinese people in the Philippines
23 to contribute twice that amount within three months,
24 ordered him to denounce the Chungking Government under
25 Chiang Kai-Shek and recognize the Wang Ching Wei (puppet)

1 Government. Furthermore, the Japanese Commander gave
2 Mr. Young three days to make a decision but after dis-
3 cussing the matter with his colleagues he replied that
4 he could not meet the demands.

5 "The Consulate Group were transferred to Fort
6 Santiago, Intramuros, on 28 March, where they were
7 placed in Cell 14, located in a temporary building
8 without windows and with meager ventilation facilities.
9 They were rarely allowed to receive their families and
10 the usual means of conversation with them was through
11 a slit in the cell. They had nothing to sleep on
12 except empty rice sacks, wore only their underwear and
13 were allowed out of the cell once a week for the purpose
14 of bathing and exercising.

15 "The treatment received at Fort Santiago was
16 very poor, so on 5 April, Mr. Young complained to Major
17 NISHIMURA, who was in charge, that there was not even
18 a place to rest or sit down in the cell. On 16 April
19 the Japanese informed the Consulate Group that they
20 would be removed to Muntinglupa Internment Camp, Rizal
21 Province.

22 "Mrs. Kay Lo Mok last visited her husband on
23 the morning of 17 April at ten o'clock when she was
24 informed by the Commander of the Military Police at
25 Fort Santiago that the wives could return and visit

1 their husbands on the following day. At 1700 hours
2 on the afternoon of 17 April, Mr. Ang Tian Sang of the
3 (Pro-Japanese) Chinese Association informed Mrs. Mok
4 and Mrs. Yang Si Cheng Yao that there would be little
5 use for the families of the Consulate Group to try and
6 see their husbands again at Fort Santiago as they had
7 been transferred. In spite of this, Mrs. Clarence K.
8 Young, Mrs. Mok, Mrs. Felisa Cu Loo, Mrs. Shirley Shao
9 Wang, Mrs. Ruby Wang Siao and Mrs. Yao returned to Fort
10 Santiago on 18 April and were told by the Commanding
11 Officer that 'They are not under our custody anymore.
12 They have been transferred to the Army.' Mrs. Mok then
13 went to a Military Chief whose name is unknown and
14 asked him where her husband was and she was told that
15 he was far away and that his whereabouts was secret,
16 but it was suggested that she return in ten or twelve
17 days for an answer 'after he had wired the Emperor.'
18 She waited for this period to elapse and returned to
19 the office of this Military Chief who told her that he
20 was sorry that he could not give her an answer because
21 the Emperor said 'No' and he added, 'Don't come here
22 anymore.' The wearing apparel and personal property
23 of the Group were thereafter returned to their families
24 except articles which the husbands had carried on their
25 persons.

1 "Between 16 and 19 April two internees at Fort
2 Santiago, Joaquin Pardo de Tavera and Jovito Salonga, saw
3 three or four Japanese officers with pistols and sabers
4 line up the Consulate Group in front of their cell,
5 tie their hands and march them away. Actually, at
6 about 1400 hours on 17 April a Japanese convoy including
7 a Military Police automobile, one truck filled with
8 Japanese soldiers and another with the consular
9 officials with guards, entered the gate of the Chinese
10 Cemetery, Santa Cruz, Manila, proceeded towards the
11 Chinese chapel and turned off to the right on a road which
12 passed beside the grave of Lai Yip Sang in Section 25.
13 The motor caravan then turned to the left, drove across
14 the open field about 100 yards from this latter grave
15 and stopped. The entire Consulate Group was taken from
16 the truck and caused to sit on the ground in a circle
17 surrounded by the Japanese soldiers. An unknown
18 priest, presumed to be Japanese, moved around the circle
19 after which the Chinese were lined up in front of a
20 prepared grave eight meters long, with their hands tied
21 behind them, blindfolded, and caused to kneel while a
22 Japanese soldier with a rifle stood behind each of the
23 eight officials. After an officer made an inspection,
24 each soldier shot his victim and those who did not die
25 instantly were bayoneted, after which the soldiers

1 threw some loose earth over the bodies in the grave
2 in Section 9, and then departed.

3 "Other laborers in the cemetery were directed
4 to complete the filling of the grave and a wood marker
5 bearing four Japanese characters meaning 'community
6 grave' was placed thereupon. Mr. Pelagio Reyes,
7 Superintendent of Cemeteries, Department of Health,
8 Manila, whose office was 200 meters away from the
9 Chinese Cemetery, recorded in his book without the
10 knowledge of the Japanese authorities the date of burial
11 and number of bodies interred there during the Japanese
12 occupation. Such records disclose that at 1500 hours
13 on 17 April 1942 eight bodies were buried in a grave
14 prepared upon the order of the Japanese. He marked his
15 record of the burials 'asst'd' (assorted) since he was
16 not certain of their nationality at that time.

17 "On 14 June 1945 the remains of the eight
18 bodies were exhumed from the common grave in Section 9,
19 Chinese Cemetery, in the presence of Shirley Shao Wang,
20 wife of James Kung Wei Wang, Alfonso Young and Yu
21 King Hun (Young King Hun), brothers, and Wy Chut Young,
22 mother of Ching Siu Young; Ruby Wang Siao, wife of
23 Tom Ming Siao; May Lo Mok, wife of Kai Yien Mok; Felise
24 Cu Loo, wife of Yu Hong Loo; Yang Si Cheng Yao, wife
25 of Tsu Siu Yao. These relatives were able to positively

1 identify the bodies as those of the eight Chinese
2 Consulate officials from the shape of their respective
3 skulls and personal property of the victims found in
4 the grave. Mrs. Mok recognized the horn-rimmed glasses
5 found in the common grave as those worn by her husband,
6 and many of the wives of the Consulate Group further
7 identified Dr. Young's white, gold-rimmed and sun
8 eyeglasses. Mrs. Wang, Mrs. Mok and Mrs. Siao believed
9 that a pair of shoes discovered in the grave belonged
10 to Mr. Wang since he had always had two holes in the
11 toes. The red pencil found in the grave of Mr. Loo
12 was the same one which Mr. Chang Chin had given to
13 Mr. Loo during the time he had acted as Deputy Consul
14 in the Chinese Consulate from 1935 to 1940. A brown
15 leather belt taken from Mr. Loo's grave was the one
16 which he had previously purchased before being taken
17 prisoner and his wife was further able to point out
18 that the Dr. West 'Miracle Tuft' toothbrush taken from
19 the grave was identical with the one she had taken to
20 him when he was at Fort Santiago. The upper jaw of the
21 skull of Mr. Loo was examined, and a tooth with a silver
22 filling was identified while a toothbrush and a pair
23 of eyeglasses rimmed with silver and a flowery design
24 were found and identified as those of Mr. Yao. Mrs.
25 Siao identified her husband's silver tooth found in

1 his skull; and the suspenders of Mr. Chu and Mr.
2 C.S. Young. There were also taken from the grave a
3 cigarette holder and toothbrush which were recognized
4 as belonging to Ching Siu Young. His mother, Wy
5 Chut Young, and brothers, Alfonso Young and Yu King
6 Hun, further identified the shape of the skull and
7 his four front upper teeth found in the grave."

8 THE PRESIDENT: Mr. Justice Mansfield.

9 MR. JUSTICE MANSFIELD: If the Tribunal
10 please, evidence will now be introduced of Japanese
11 atrocities committed against members of the forces
12 of the Union of Soviet Socialist Republics.

13 The prosecution offers in evidence prosecution
14 document No. 1993, which is the affidavit of Lieutenant
15 Colonel Ivan Fedorovitch Pozinzky. I shall read
16 paragraph 3 thereof.

17 THE PRESIDENT: Admitted on the usual terms.

18 CLERK OF THE COURT: Prosecution document
19 No. 1993 will receive exhibit No. 2160.

20 (Whereupon, the document above
21 referred to was marked prosecution's ex-
22 hibit No. 2160 and received in evidence.)

23 MR. JUSTICE MANSFIELD: (Reading)

24 "On August 2, 1938, I was a captain and
25 arrived with the Artillery Regiment in the area of
the Lake Hasan. The regiment had a task to coordinate with

1 other units of the Red Army and to drive the Japanese
2 troops out of the Soviet territory. I must say that
3 by that time the Japanese had been driven out of the
4 area south of the Lake Hasan, but still they were
5 holding part of the Soviet territory, the Lake Hasan
6 itself and Hill Zaozernaya. On the same day during
7 the artillery reconnaissance in the area south of the
8 Lake Hasan, I found two corpses of the Soviet Red army
9 men and one corpse of a Soviet officer in rank of
10 Junior Lieutenant. All three corpses were atrociously
11 mutilated. The corpse of the junior lieutenant was
12 stabbed with a bayonet in the region of its face, chest,
13 abdomen and legs, besides the bayonet was driven into
14 his mouth and cartridges shot into his eyes. The
15 corpses of the Red army men were also stabbed with
16 bayonets. Besides the mouth of one corpse was slit
17 to the ears, and the head of another one was broken
18 in many places, with heavy instrument and the chest
19 was shot through with ten bullets.

20 "All these I saw personally. I have nothing
21 else to state."
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1 Prosecution offers in evidence prosecution
2 document No. 1996, which is the affidavit of Major
3 Yakov Vasilievich Omelchenko.

4 THE PRESIDENT: Admitted on the usual terms.

5 CLERK OF THE COURT: Prosecution document
6 No. 1996 will receive exhibit No. 2161.

7 (Whereupon, the document above
8 referred to was marked prosecution's ex-
9 hibit No. 2161 and received in evidence.)

10 MR. JUSTICE MANSFIELD: I shall read paragraphs
11 4,8,9,10 and 11:

12 "In 1939 I was a lieutenant and held the
13 position of Second in command of the rifle regiment
14 149 which at that time was in the area of the Halhin-
15 Gol river. The conflict in the mentioned area was
16 caused by the provocative actions of the Japanese
17 troops, to which I was a witness."

18 Passing to paragraph 8:

19 "In the course of the fighting, near the
20 Halhin-Gol river, in which our units were engaged
21 against the Japanese troops who encroached on the
22 Mongolian People's Republic, Junior Lieutenant of our
23 company, Komaristih, was wounded and taken prisoner
24 by the Japanese.

25 "It was on the night before the 29th of May,

1 1939. In the morning when we were advancing, near the
2 Mount 'Remizovo' my scouts and I found the corpse of
3 Junior Lieutenant Komaristih. 5 stars were carved out
4 on the back of the corpse. A large star with the
5 sickle and hammer was carved out on the chest.
6 Cartridges were driven into his eyes. The skull was
7 broken in many places; the wrists and ankles were
8 broken whereas the hands were twisted. The penis was
9 cut off, there was an anti-tank shell in the abdomen,
10 the heels of the feet were scorched, the finger nails
11 were torn off, the tongue and the ears were cut off,
12 all the body was pierced through with ramrods. I
13 was witness of the atrocities of the Japanese military
14 clique over our Red Army men and officers.

15 "On the 24th of June, 1939, a Japanese
16 cavalry squadron and 7 Japanese armoured cars surrounded
17 a group of the Red Army men of our regiment. The
18 Group consisted of 13 Red Army men and 1 officer.

19 "All of them were wounded and taken prisoners
20 by the Japanese in the fighting where the odds were
21 against them, a group, under my command consisting of
22 1 battalion was sent to the place of the fighting.
23 When the Japanese were driven out, we saw the following
24 picture: our Red Army men 13 in number and one
25 lieutenant that were taken prisoners by the Japanese

1 lay cut to pieces in one spot.

2 "I have nothing else to state."

3 Prosecution offers in evidence prosecution
4 document No. 1997, which contains the minutes of
5 interrogation of Colonel Vladimir Ivanovitch Kobzev.

6 THE PRESIDENT: Admitted on the usual terms.

7 CLERK OF THE COURT: Prosecution document
8 No. 1997 will receive exhibit No. 2162.

9 (Whereupon, the document above
10 referred to was marked prosecution's ex-
11 hibit No. 2162 and received in evidence.)

12 MR. JUSTICE MANSFIELD: I shall read paragraphs
13 2 to 8 of this document:

14 "Since July 19, 1939, till October 22, 1939,
15 I, as chief of the staff of an artillery regiment in
16 the rank of captain, was at the Nomangan River battle
17 area. When I arrived, stubborn fighting between the
18 Soviet-Mongolian and the Japanese troops was going on
19 there. The Soviet and Mongolian troops had the task
20 of clearing the territory of Mongolian People's
21 Republic of Japanese troops who had penetrated into it.
22 "Remaining all the time on the battle field
23 in immediate vicinity of the Japanese advanced positions,
24 I witnessed atrocities perpetrated by the Japanese
25 military to our Red Army soldiers and officers.

1 "So, on August 27, 1939, a part of Mongolian
2 territory in the vicinity of Peschanaya hill was
3 liberated as a result of our offensive operations.
4 I arrived at that territory together with my scouts
5 to establish a new observation post there. There I
6 saw the corpse of a Red Army soldier, dressed in Red
7 Army uniform, but without a cap. Coming nearer I
8 saw that its nose and ears were cut off, and that the
9 corpse was pinned to the earth through the chest by
10 the bayonets of three Soviet rifles which had broken
11 butts and no locks.

12 "On September 2, 1939, in the vicinity of the
13 Zelenaya hill I conducted officer's reconnaissance of
14 sector where the regiment was to be deployed for
15 defense. The sector of Zelenaya hill was a strongly
16 fortified strongpoint of the Japanese and was in their
17 hands till the last days of August.

18 "Inside this strongpoint there were about
19 15 corpses of Red Army soldiers and officers (12 of
20 them were Red Army soldiers; and 3 officers).

21 "The corpses were decayed. Legs and arms
22 of most of the corpses were cut off. The limbs of some
23 of them were lying there near the corpses. The limbs
24 of other corpses were not cut off completely, and
25 moreover, there were traces of innumerable blows

1 inflicted on the limbs with some sharp cutting weapon.
2 The skin in some places of the chest of almost all
3 the corpses was cut out. All corpses had a great
4 number of stabs and cut wounds on them.

5 "The nature of the wounds excludes all
6 possibilities for them having been received in battle.

7 "All the above said I saw myself."

8 Prosecution offers in evidence prosecution
9 document No. 1995, which is the affidavit of Nikolai
10 Ivanovitch Tomilin.

11 THE PRESIDENT: Admitted on the usual terms.

12 CLERK OF THE COURT: Prosecution document
13 No. 1995 will receive exhibit No. 2163.

14 (Whereupon, the document above
15 referred to was marked prosecution's ex-
16 hibit No. 2163 and received in evidence.)

17 MR. JUSTICE MANFIELD: I shall read para-
18 graphs 3,4,5 and 6:

19 "In 1939 I was in the rank of major and the
20 second in command of the 1st Army Artillery Group in
21 the Battle area of the Khalhin-Gol river.

22 "In September 1939, when the active hostilities
23 were over, I was appointed by the Soviet Government
24 to the Committee for exchanging of war-prisoners and
25 delivery of corpses.

1 "Personally I received about 60 Soviet war
2 prisoners according to the list from the Japanese
3 Command. All the prisoners were extremely exhausted.
4 They could hardly stand on their feet because of their
5 weakness. Their thinness and paleness were striking.
6 Their faces and bodies were bruised and scratched all
7 over.

8 "After the prisoners were transferred
9 to me they told me in detail about the brutal treat-
10 ment of the Japanese authorities. The prisoners had
11 been subject to systematic beating and they had been
12 starved for a long time."
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1 The prosecution offers in evidence document
2 No. 1999, which is an extract from the affidavit of
3 AMANO, Isamu.

4 THE PRESIDENT: Admitted on the usual terms.

5 CLERK OF THE COURT: Prosecution document
6 No. 1999 will receive exhibit No. 2164.

7 (Whereupon, the document above re-
8 ferred to was marked prosecution's exhibit
9 No. 2164 and received in evidence.)

10 MR. JUSTICE MANSFIELD: I shall read this
11 document:

12 "Extract from the affidavit of defendant AMANO,
13 Isamu of October 12, 1945.

14 "I plead guilty that on the day of the outbreak
15 of the war between the Soviet Union and Japan, i.e.
16 on August 9, 1945, I summoned the chief of the 5th
17 (intelligence) section, senior non-commissioned
18 officer BITO and gave him instructions to get in
19 touch with the Province Police and gendarmery Depart-
20 ments, to arrest the Soviet citizens who lived in
21 the town of Hailar and were on the list of the Police
22 Department and take special measures, i.e. to murder
23 them; I gave also instructions to murder the Soviet
24 scouts who were kept under arrest in the police prison.

25 "On giving the said order to BITO I left for the

1 fortified area. Later BITO came there to see me and
2 reported that my order had been executed; the Soviet
3 citizens living in the town of Hailar and considered
4 to be suspects had been arrested and murdered. BITO
5 reported that the Soviet scouts under arrest in the
6 police prison had also been murdered.

7 "QUESTION How many Soviet citizens were murdered by
8 your order on August 9, 1945?

9 "ANSWER Neither BITO, nor my other subordinates who
10 had participated in the arrest and murder of August
11 9, 1945, reported on the number of the murdered
12 Soviet citizens. But I can tell the interrogators
13 the following:

14 "There were not fewer than 20 Soviet scouts in
15 the police prison who had been arrested in the period
16 between the end of 1944 and July 1945. When I was
17 arrested I was shown a ditch in the yard of the Police
18 Department where 43 bodies were buried. So we may
19 say that in the town of Hailar were arrested and mur-
20 dered about 20 Soviet citizens all of them civilians.

21 "QUESTION Why did you give instructions to murder the
22 Soviet citizens living in the town of Hailar?

23 "ANSWER In accordance with the order of the Com-
24 manding General of the Kwantung Army the Police De-
25 partment had to make up a list of Soviet citizens

1 every year. It was being done in case the war be-
2 tween the Soviet Union and Japan broke out.

3 "Thus these people had to be murdered when the
4 war broke out. This order was to be put into practice
5 by the Police Department. But on August 9, 1945, con-
6 sidering the situation brought about by the Red Army
7 offensive, I took the initiative into my own hands
8 and gave instructions to arrest and murder the Soviet
9 citizens living in the town of Hailar and being sus-
10 pects on the list of the Police Department. I also
11 gave order to murder the Soviet scouts who were being
12 kept in the police prison."

13 Then missing the next question and answer.

14 "QUESTION What were the charges against the Soviet
15 citizens murdered by your order on August 9, 1945?

16 "ANSWER No concrete charges were made against the
17 Soviet citizens arrested and then murdered by my order
18 on August 9, 1945; but in accordance with the order
19 of the Commanding General of the Kwantung Army they
20 were put on the lists of suspects in case the war
21 between the Soviet Union and Japan broke out, be-
22 cause we thought that during the war these persons
23 might carry on espionage and sabotage directed against
24 the Japanese Army."
25

The prosecution offers in evidence prosecution

1 document No. 1998, which contains the minutes of in-
2 terrogation of Nikolai Alexeevitch Romanov. I shall
3 read the questions and answers on page 2.

4 THE PRESIDENT: Admitted on the usual terms.

5 CLERK OF THE COURT: Prosecution's document
6 No. 1998 will receive exhibit No. 2165.

7 (Whereupon, the document above re-
8 ferred to was marked prosecution's exhibit No.
9 2165 and received in evidence.)

10 MR. JUSTICE MANSFIELD: (Reading):

11 "QUESTION: You Captain of medical corps Romanov,
12 since the beginning of hostilities against Imperialistic
13 Japan, were as a medical officer in X Regiment for
14 providing the rear of the Red Army in the field and
15 being in the town of Lunnan, visited the place of the
16 atrocities perpetrated to Chinese population by Jap-
17 anese. Tell what did you find out as a medical
18 officer in the place of execution?

19 "ANSWER: On August 19, 1945, being in the town of
20 Lunnan in X Regiment, by order of Major Mityaev,
21 Deputy Commander of the Regiment, I accompanied him
22 to the place of massacre of the Chinese population
23 indicated by Chinese. At about one kilometer south-
24 east of the town suburbs, at a certain distance off
25 the road, at the edge of the wood, 22 corpses in

1 different postures among them 2 female corpses, were
2 discovered. One woman, judging by her face, was a
3 European woman; her nationality could not be es-
4 tablished. The majority of corpses were half decayed,
5 as the weather had been very hot, their hands tied
6 behind their backs, some corpses were on their knees
7 with their heads bent to the ground. The cut wounds
8 were on the necks of the corpses, the legs of one
9 of female corpses were cut off, on the back of another
10 male corpse, one vertebrae was broken and there were
11 stabbed wounds. As we succeeded in establishing, the
12 people had been murdered by sabring the neck, but the
13 people were not beheaded at once, only a neck ver-
14 tebrae was cut and in some cases the vertebrae was
15 slightly cut and the people were alive for a long
16 time after that, dying a long and painful death suf-
17 fering from thirst and loss of blood. Several corpses
18 were 100-150 meters from the place of execution and
19 were still fresh, which shows that the people were
20 alive for several days, were crawling and died re-
21 cently from hunger and loss of blood. From the medical
22 point of view, the methods of murdering of the said
23 people I, as a medical officer, consider to be
24 atrocious. I have nothing more to testify concerning
25 the case, all the notes from my words are correct and

are read to me."

That completes, if the Tribunal please, the presentation of documents relating to atrocities to members of the forces of the Soviet Union.

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1 THE PRESIDENT: Mr. Comyns Carr.

2 MR. COMYNS CARR: Mr. President, I now have
3 to deal with certain questions which arose about the
4 translation of prosecution document 1810A, Court
5 exhibit 473, and prosecution document 1509A, court
6 exhibit 475, which concern the present phase. They
7 were introduced during the evidence of Colonel Wild
8 and relate to the Burma-Siam Railway.

9 In the former case, 473, the translation
10 was prepared by the prosecution, and it appears that
11 there were certain errors and omissions in it. We
12 have, therefore, processed an entirely new one which
13 has been agreed with Major Moore and served upon the
14 defense. I propose to hand it in and ask you to
15 substitute it for the copies you already have,
16 calling attention to the more important differences.

17 THE PRESIDENT: The substitution will be
18 made.

19 MR. COMYNS CARR: Could it be circulated?

20 THE PRESIDENT: And circulated.

21 MR. COMYNS CARR: On the new page 1 there
22 is added in line 2 a description of Minister SUZUKI's
23 position: "Office for the Affairs of Residents in
24 Enemy Countries, Foreign Ministry" and the seal of
25 that Ministry. As already mentioned, the accused

1 SHIGEMITSU was Foreign Minister at that time. The
2 SUZUKI mentioned is not the accused, but the witness.
3 DOHIHARA was Commander in Malaya at that date.

4 At the bottom, under "Distribution," the
5 first item is "War Ministry," not "Minister."

6 Then, on page 3, line 6 reads: "Chiefs of
7 War Camps in Malaya (not Burma) and Siam."

8 At the bottom there is a heading "Distribu-
9 tion," previously omitted, and I call attention to
10 the last line, "Military Affairs Section notified,"
11 i. e. notified by the Prisoner of War Information
12 Bureau.

13 Page 4 is entirely new, but of no special
14 importance.

15 Page 5 again contains the description of
16 SUZUKI and the note with regard to the Military
17 Affairs Section, both previously omitted.

18 Page 6 is entirely new, but again not
19 important.

20 Page 9 is entirely new. It is important
21 to note from the table which it contains that it
22 was proposed to make a report to General Staff Head-
23 quarters and to submit a reply to the Foreign Office.

24 On page 13, which corresponds to the
25 original page 10, the second paragraph now reads:

1 "This matter concerns the sacrifice of the administra-
2 tion of the prisoners of war for operational reasons
3 temporarily and contains no material for refutation
4 against the enemy protest."

5 Page 14 is new and shows the intention to
6 send a composite reply to the Foreign Office when
7 all the reports were collected.

8 This necessitates corresponding corrections
9 in the record on pages 5493, line 10, 5494, line 21,
10 5495, lines 4 and 25, 5497, lines 12 and 13, 5510,
11 line 6.

12 With regard to exhibit 475 the position is
13 different. In that case the Japanese and English
14 versions were both provided, as is frequently the
15 case, by the Japanese authority from which they came.
16 The translation was not made by us. In our submission,
17 therefore, both versions are equally original docu-
18 ments on either of which we are entitled to rely.
19 If there is a discrepancy between them anybody may
20 draw the attention of the Tribunal to it, and you
21 may draw such inferences as you think fit, but
22 nobody is entitled to alter either document. This
23 is a matter of principle, which may in some cases
24 be important. On the Japanese version the heading
25 appears: "Central Investigation Committee relating

1 to Prisoners of War." These do not appear on the
2 English version, nor do the words shown on the copy:
3 "Report by Japanese Government, Burma-Thailand
4 Railway" appear on the document itself. To show
5 where these came from, I now offer in evidence
6 prosecution documents 1509 C and D, the latter being
7 the original covering letter with which the report
8 reached SCAP and the paragraph at the bottom being
9 added subsequently by the latter. The actual
10 exhibit 475 is the copy which reached us through
11 the Swiss Legation.

12 THE PRESIDENT: Admitted on the usual terms.

13 CLERK OF THE COURT: Prosecution document
14 No. 1509C will be given exhibit No. 2166.

15 (Whereupon, the document above re-
16 ferred to was marked prosecution's exhibit
17 No. 2166 and received in evidence.)

18 CLERK OF THE COURT: Prosecution document
19 1509D will receive exhibit No. 2167.

20 (Whereupon, the document above re-
21 ferred to was marked prosecution's exhibit
22 No. 2167 and received in evidence.)

23 MR. COMYNS CARR: 2166 (reading):

24 "CONCERNING THE SUBMITTANCE OF REPORT ON
25 THE USE OF WAR PRISONERS IN CONNECTION WITH THE

1 CONSTRUCTION OF THE SIAM-BURMA CONNECTION RAILWAY.

2 "1. The present report is an official
3 document which was submitted to the Headquarters
4 of the Allied Powers from the then War Minister on
5 November 27, 1945 through the Central Liaison Office,
6 Tokyo.

7 "2. The present report was submitted
8 voluntarily on receiving the protest of the Allied
9 Army.

10 "3. Documents concerned with the matter
11 are also attached herewith for your reference."

12 Dated, "September 12, 1946. /s/ S. YOSHIMOTO."
13

14 - - -

15 "To: Central Liaison Office, Tokyo.

16 "From: First Demobilization Ministry.

17 "Subject: Employment of Prisoners of War
18 in Construction of Thai-Burma Railway.

19 "Due to the protest of the governments of
20 Britain and Australia concerning the employment of
21 prisoners of war for the construction of railroad
22 between Burma and Siam, we investigated the situation
23 as shown in the attached note herewith. Please be
24 bothered to submit it to G. H.Q."

25 - - -

"To: General Headquarters of the Supreme

1 Commander for the Allied Powers.

2 "From: Central Liaison Office, Tokyo.

3 "The Japanese Government submits herewith
4 two copies of the written investigations concerning
5 the employment of prisoners of war in the construction
6 of the Thai-Burma Railway concerning which protests
7 have been filed by the British and Australian Govern-
8 ments."

9 2167:

10 "To: General Headquarters of the Supreme
11 Commander for the Allied Powers.

12 "From: Central Liaison Office, Tokyo.

13 "The Japanese Government submits herewith
14 two copies" -- I have read those. And then at the
15 bottom (reading):
16

17 "Those reports were in answer to protests
18 made by the British and Australian Governments in July
19 1944. Therefore this headquarters has no record of
20 such protests since they were made through the Swiss
21 Legation. One copy has been turned over to the
22 Australian Liaison Office, Brigadier Anderson, and
23 the other has been delivered to the Swiss Legation
24 for information after which it will be given to the
25 British Staff Section."

1 THE PRESIDENT: Colonel Woolworth.

2 MR. WOOLWORTH: If the Tribunal please, the
3 prosecution desires to introduce in evidence document
4 No. 5219, which is a list covering the Japanese tried
5 by Australian military courts against whom findings
6 and sentences have been confirmed, up to April 2, 1946.

7 THE PRESIDENT: Admitted on the usual terms.

8 CLERK OF THE COURT: Prosecution's document
9 No. 5219 will receive exhibit No. 2168.

10 (Whereupon, the document above re-
11 ferred to was marked prosecution's exhibit No.
12 2168 and received in evidence.)

13 MR. WOOLWORTH: If the Tribunal please, in
14 the interest of time saving, the prosecution desires
15 to introduce document No. 5239 and then give to the
16 Court the totals, rather than reading each conviction
17 separately. Document 5239 covers a list of Japanese
18 tried by Australian military courts up to the 28 of
19 May 1946.

20 THE PRESIDENT: Admitted on the usual terms.

21 CLERK OF THE COURT: Prosecution's document
22 No. 5239 will receive exhibit No. 2169.

23 (Whereupon, the document above re-
24 ferred to was marked prosecution's exhibit No.
25 2169 and received in evidence.)

1 MR. WOOLWORTH: These two documents contain
2 results of trials by Australian military courts of
3 Japanese charged with commission of war crimes in
4 Bornero, Celebes, Halmahara Islands, Timor, New Guinea
5 and New Britain. They contain particulars of Jap-
6 anese against whom findings and sentence of courts
7 had been confirmed up to May 28, 1946, and of Jap-
8 anese who had been acquitted up to that date.

9 Summarizing the results shown in these two
10 documents, 35 were sentenced to death, 198 were sen-
11 tenced to imprisonment, 100 were found not guilty.

12 The crimes of which they were found guilty
13 included murder, massacre, rape, cannibalism, mutila-
14 tion of the dead, torture and ill treatment of
15 prisoners of war.

16 If the Court please, the prosecution desires
17 to call Mr. SUZUKI, Tadakatsu as a witness.

18 THE PRESIDENT: Call him after lunch, but
19 there is one question I would like to put to you,
20 Colonel. Maybe you can answer it. It may be a matter
21 for the Chief of Counsel to answer.
22

23 We understand that you are, before the
24 defense move their motions, to place before us a
25 statement showing the evidence against each of the
accused in respect of every count against him in

1 the Indictment. There is no obligation upon you to
2 provide it, but it occurred to me that you may
3 require something of the kind to meet the defense
4 motions to dismiss.

5 MR. WOOLWORTH: If your Honor please, this
6 is a matter which I think should be taken up with
7 Mr. Higgins and Mr. Tavenner, and I think they will
8 be ready to have a reply made after lunch, if it may
9 be delayed to that hour.

10 THE PRESIDENT: Something was said here or
11 in Chambers which I may have misapprehended, but that
12 is my understanding.

13 MR. WOOLWORTH: I might say that the pro-
14 secution has not yet received copies of all the motions.

15 THE PRESIDENT: We will adjourn.

16 (Whereupon, at 1200, a recess was
17 taken until 1330.)
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AFTERNOON SESSION

The Tribunal met, pursuant to recess,
at 1330.

MARSHAL OF THE COURT: The International
Military Tribunal for the Far East is now resumed.

THE PRESIDENT: Colonel Woolworth.

MR. WOOLWORTH: If the Tribunal please:
In answer to your Honor's last question in the
morning session, I have been instructed to state
that before the afternoon session is over an answer
will be given to the Tribunal.

I desire to recall the witness for the
prosecution SUZUKI, Tadakatsu, who has already been
sworn.

- - - -

S U Z U K I, T A D A K A T S U, recalled by the
prosecution for further examination, testified
through Japanese interpreters as follows:

DIRECT EXAMINATION

BY MR. WOOLWORTH:

THE PRESIDENT: You are still on oath,
Witness.

Q SUZUKI, will you please state your full
name, residence and occupation?

SUZUKI

DIRECT

1 A My name, SUZUKI, Tadakatsu; my present
2 residence, Yokohama; my occupation at the time,
3 director in charge of the office relating to
4 matters pertaining to Japanese nationals in enemy
5 countries.

6 Q Did you hold that position under the
7 Ministry of Foreign Affairs from 1942 to 1945?

8 A Yes.

9 MR. WOOLWORTH: I desire to hand the wit-
10 ness and have marked for identification document
11 No. 3000-10-B-1.

12 CLERK OF THE COURT: Prosecution's docu-
13 ment No. 3010-B-1 will be given exhibit No. 2170
14 for identification only.

15 Correction: document number is 3000-10-B-1.

16 (Whereupon, the document above re-
17 ferred to was marked prosecution's exhibit.
18 No. 2170 for identification.)

19 Q Can you state the source of that document,
20 exhibit No. 2170?

21 A This is a copy of a document in the files
22 of the Foreign Office.

23 MR. WOOLWORTH: Prosecution desires to
24 introduce in evidence exhibit No. 2170.

25 THE PRESIDENT: Admitted on the usual terms.

SUZUKI

DIRECT

1 CLERK OF THE COURT: Prosecution's docu-
2 ment No. 3000-10-B-1, exhibit No. 2170, is
3 admitted into evidence according to order of Court.

4 (Whereupon, the document above
5 referred to was received in evidence.)

6 MR. WOOLWORTH: "'Jo' 3, 'Futsu', 'Go' No.
7 53. January 13, Showa 17/1942/

8 "Vice-Minister of War,

9 "Vice-Minister of the Navy,

10 "Vice-Minister of Home Affairs.

11 "Matter Concerning Transmission of the
12 Notes from the American Government with regard to
13 the adherence to the Provisions of the International
14 Treaty and the Red Cross Treaty of July 27, 1929,
15 regarding Treatment of Prisoners of War.

16 "Concerning the above, the Swiss Minister in
17 Tokyo has sent us a note as per separate copy,
18 which is enclosed herewith. Your opinion thereof
19 will be appreciated.

20 "Vice-Minister of Foreign Affairs.

21 "This message addressed to:

22 Vice-Minister of War,

23 Vice-Minister of the Navy,

24 Vice-Minister of Home Affairs.

25 "A copy of note enclosed."

SUZUKI

DIRECT

1 I invite the attention of the Court to
2 the fact that the KIMURA at that time was Vice-
3 Minister of War; Vice-Minister of the Navy was
4 SHIMADA. .

5 Prosecution desires to have marked for
6 identification document No. 3000-10-B-2.

7 CLERK OF THE COURT: Prosecution's docu-
8 ment No. 3000-10-B-2 will receive exhibit No.
9 2171 for identification only.

10 (Whereupon, the document above
11 referred to was marked prosecution's ex-
12 hibit No. 2171 for identification.)

13 Q Will you please state the source of that
14 document, exhibit No. 2171?

15 A This is an official copy of the document in
16 the files of the Foreign Office. This also, like the
17 former one.

18 MR. WOOLWORTH: Prosecution desires to
19 introduce into evidence exhibit No. 2171.

20 THE PRESIDENT: Admitted on the usual terms.

21 CLERK OF THE COURT: Prosecution's docu-
22 ment No. 3000-10-B-2, given exhibit No. 2171, is
23 admitted into evidence, according to order of Court.

24 (Whereupon, the document above
25 referred to was received in evidence.)

SUZUKI

DIRECT

1 MR. WOOLWORTH: "'Jo' 3, 'Futsu' No. 5.
2 January 21, Showa 17/1942/

3 "Vice-Minister of Overseas Affairs

4 "Matter Concerning Transmission of the Notes
5 from the American Government with regard to the
6 International Treaty of July 27, 1929, regarding
7 Treatment of Prisoners of War.

8 "Concerning the above, the Swiss Minister in
9 Tokyo, representative of American interests, has
10 sent us a note, as per separate copy, enclosed
11 herewith. We would greatly appreciate your opinion
12 concerning the policy of treatment of overseas non-
13 combatant internees of the enemy countries.

14 "Vice-Minister of Foreign Affairs."

15 Prosecution desires to have marked for iden-
16 tification document No. 3000-10-B-3.

17 CLERK OF THE COURT: Prosecution's docu-
18 ment No. 3000-10-B-3 will receive exhibit No. 2172
19 for identification.
20

21 (Whereupon, the document above
22 referred to was marked prosecution's ex-
23 hibit No. 2172 for identification.)

24 Q Will you please state the source of that
25 document?

A This also is an official copy of the docu-

SUZUKI

DIRECT

1 ment in the files of the Foreign Office.

2 MR. WOOLWORTH: Prosecution desires to
3 introduce in evidence exhibit No. 2172.

4 THE PRESIDENT: Admitted on the usual
5 terms.

6 CLERK OF THE COURT: Prosecution's docu-
7 ment No. 3000-10-B-3, given exhibit No. 2172, is
8 admitted into evidence, according to order of Court.

9 (Whereupon, the document above referred
10 to was received in evidence.)

11 MR. WOOLWORTH: "'Jo' 3, 'Futsu' No. 17.
12 January 13, Shows 17/1942/

13 "President of the Japan Red Cross Society

14 "Matters Concerning Transmission of the
15 Notes from the American government with regard to the
16 adherence to the Provisions of the International
17 Treaty and the Red Cross Treaty of July 27, 1929,
18 regarding Treatment of Prisoners of War.

19 "Concerning the above, we have received,
20 from the Swiss Minister in Tokyo, a note, as per
21 separate copy which is enclosed herewith for your
22 information.

23
24 "Vice-Minister of Foreign Affairs."

25 Prosecution desires to have marked for
identification document No. 3000-10-M-1.

SUZUKI

DIRECT

1 CLERK OF THE COURT: Prosecution's docu-
2 ment No. 3000-10-M-1 will receive exhibit No. 2173.
3 for identification.

4 (Whereupon, the document above
5 referred to was marked prosecution's ex-
6 hibit No. 2173 for identification.)

7 Q Will you please state the source of exhibit
8 No. 2173?

9 A This too is an official copy of the docu-
10 ment in the files of the Foreign Office.

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SUZUKI

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1 MR. WOOLWORTH: Prosecution desires to
2 introduce in evidence exhibit 2173.

3 THE PRESIDENT: Admitted on the usual terms.

4 CLERK OF THE COURT: Prosecution's document
5 No. 3000-10-M-1, given exhibit No. 2173, is admitted
6 into evidence according to order of Court.

7 (Whereupon, the document above
8 referred to was received in evidence.)

9 MR. WOOLWORTH: (Reading) "'Kyo Hi Go' No. 93.
10 12 February 1944. The Vice-Minister of Foreign Office.

11 "Chief of POW (Information) Bureau:

12 "Transmittal of the American Government's
13 Protest with regard to the Treatment of Prisoners of
14 War and Civilian Internees under Japanese Jurisdiction.

15 "Inasmuch as the Swiss Minister in Tokyo,
16 stating that he was acting on instructions from his
17 home government, recently presented the Imperial
18 Government with the American Government's protest, as
19 per the enclosed copy, I hereby send you this together
20 with the informal translation of the above. Re counter
21 measures to meet this protest, I wish to confer with
22 you later and in the meantime will you kindly investi-
23 gate the particulars concerned with your bureau.

24 "Concerning a letter which was cited at the
25 beginning of the Swiss Minister's letter relating to

SUZUKI

DIRECT

1 this matter, kindly refer to my telegrams 'Kyo Hi Go'
2 No. 25 dated 15 January last year, and 'Kyo Hi Go'
3 No. 229 dated 27 March, the same year.

4 "This letter addressed to: The Minister of
5 War, Navy, Home Affairs, Justice, Greater Asia, and
6 the Chief of POW Information Bureau."

7 Prosecution desires to have marked for
8 identification document No. 3000-10-S-1.

9 CLERK OF THE COURT: Prosecution's document
10 No. 3000-10-S-1 will receive exhibit No. 2174.

11 (Whereupon, the document above
12 referred to was marked prosecution's exhibit
13 No. 2174 for identification.)

14 Q Will you please state the source of
15 exhibit 2174?

16 A This also is an official copy of the document
17 in the files of the Foreign Office.

18 MR. WOOLWORTH: Prosecution desires to intro-
19 duce in evidence exhibit 2174.

20 THE PRESIDENT: Admitted on the usual terms.

21 CLERK OF THE COURT: Prosecution's document
22 No. 3000-10-S-1, given exhibit No. 2174, is admitted
23 into evidence according to order of Court.

24 (Whereupon, the document above
25 referred to was received in evidence.)

SUZUKI

DIRECT

1 MR. WOOLWORTH: (Reading) "'Kyo Hi Go'
2 No. 192. April 25, 1945.

3 "The Chief of Prisoners of War Information
4 Bureau:

5 "Protest from the American Government with
6 Regard to the Treatment of Prisoners of War in the
7 Philippines.

8 "The Swiss Minister in Tokyo transmitted a
9 protest from the American Government with regard to
10 the treatment of prisoners of war in the Philippines
11 by his letter to the Minister of Foreign Affairs dated
12 March 23. We are much obliged if you investigate
13 the actual circumstances of the above-mentioned matter
14 and send us as soon as possible detailed reports as
15 well as your opinion of how to reply to the protest.

16 "Minister SUZUKI. The Office for Affairs of
17 Residents in Enemy Countries, Foreign Office.

18 "This letter addressed to:

19 "The Chief of the Military Affairs Bureau of
20 the War Ministry. The Chief of the Prisoners of War
21 Information Bureau.

22 "Copies of this letter addressed to:

23 "The Chief of the Naval Affairs Bureau of the
24 Navy Ministry."

25 Q Mr. SUZUKI, did you cause a search to be made

SUZUKI

DIRECT

1 in the office of the Foreign Ministry for documents
2 10-C, 10-L, 10-E, 10-F, 10-G, 10-H, 10-I, 10-J, 10-K,
3 10-L, 10-N, 10-P, 10-T, 10-U, 10-X?

4 A At the request of this Tribunal, I caused
5 to have these documents investigated into at the
6 Foreign Office. The Foreign Office did its best to
7 search for these documents but unfortunately proved
8 unsuccessful.

9 Q The office found no letters of transmittal
10 for those documents?

11 A Yes, the letters of transmittal were not
12 found.

13 MR. WOOLWORTH: I desire to invite the
14 Tribunal's attention to the fact that the exhibit
15 10-S-1 bears the exhibit No. 1482; exhibit 10-M-1
16 bears the exhibit No. 1479; document 10-B-3 bears the
17 exhibit No. 1468; document 10-B-2 bears exhibit
18 No. 1468; and document 10-B-1 bears exhibit No. 1468.

19 THE PRESIDENT: Mr. Logan.

20 MR. LOGAN: If the Tribunal please.

21 CROSS-EXAMINATION

22 BY MR. LOGAN:

23 Q Mr. SUZUKI, according to your testimony last
24 time you were here, you were not in the Foreign Office
25 in January, 1942, were you?

SUZUKI

CROSS

1 A I was not in the Foreign Office.

2 Q So you do not know whether any enclosure was
3 with prosecution's exhibit 2170? That is the letter
4 dated January 13, 1942.

5 A Together with the letter of transmittal,
6 there was also a copy and translation of the protest
7 delivered from the Swiss Legation.

8 Q But you don't know of your own knowledge whether
9 that was actually enclosed in that letter, do you?

10 A With respect to that, I might say that after
11 my office was established I read the documents which .
12 were handled previous to the establishment of my office
13 and I recall -- I remember that from memory.

14 Q With respect to prosecution's exhibit 2170
15 dated January 13, exhibit 2171 dated January 21,
16 2172 dated January 13, all for the year 1942, is it
17 not a fact that those letters were written prior to the
18 establishment of the Prisoner of War Information
19 Bureau and the Prisoner of War Administration Bureau?

20 A My understanding is that the Prisoner of War
21 Information Bureau was established shortly after the
22 outbreak of war. But I cannot answer whether this
23 was established prior to the date these letters were
24 written -- these letters were sent.
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SUZUKI

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1 Q But, in any event, while you were in the
2 Foreign Office, your letters were addressed to the
3 Chief of the Prisoner of War Information Bureau,
4 isn't that so?

5 A Not necessarily to the Chief of the Prison-
6 ers of War Information Bureau only.

7 Q These two exhibits, 2173 dated February 12,
8 1944 and 2174 dated April 25, 1945, they are ad-
9 dressed to the Chief of the Prisoners of War Infor-
10 mation Bureau. Is that the usual way that all your
11 covering letters were addressed?

12 A Before making a reply, I should like to
13 request, if possible, to be given permission to see
14 all of the documents under question.

15 Q Do you understand English?

16 A Yes, some,

17 (Whereupon, documents were handed
18 to the witness.)

19 A (Continuing) May I have the previous
20 question repeated?

21 (Whereupon, the next to the last
22 question was repeated by the interpreter.)

23 A (Continuing) As I said before, I presume
24 that the Prisoners of War Information Bureau was made
25 or established before these letters were sent. But,

SUZUKI

CROSS

1 with respect to the handling of official documents
2 transmitted by the Swiss Government at that time --
3 or some neutral government at that time, I must say,
4 as I have said before in my affidavit, that there
5 was no arrangement or routine established at that
6 time.

7 Q Will you look at exhibit 2173, letter dated
8 February 12, 1944. You will find in there a state-
9 ment. I quote: "I wish to confer with you later."
10 Does that word "you" refer to the Chief of the
11 Prisoner of War Information Bureau?

12 A Yes.

13 Q Now, on that same letter, at the bottom,
14 you have this statement: "This letter addressed to:
15 The Ministers of War, Navy, Home Affairs, Justice,
16 Greater Asia, and the Chief of P.O.W. Information
17 Bureau." Does that mean that the copies of that
18 letter went to those various offices?

19 A No.

20 Q What does it mean?

21 A When this protest was sent out, the same
22 protest was also transmitted in the name of the
23 Foreign Minister, himself, separately to the War,
24 Navy, Home, Justice and Greater East Asiatic Affairs
25 Ministers. And this particular document was sent to

SUZUKI

CROSS

1 the Chief of the Prisoners of War Information Bureau
2 in the name of the Vice-Minister for Foreign Affairs.
3 To repeat, to the various government departments
4 listed in this exhibit separate and independent
5 letters of the same text were sent. To add another
6 word by way of explanation, simultaneously as this
7 letter was sent to the War Minister in the War Office
8 it was sent to the Chief of the Prisoners of War
9 Information Bureau.

10 Q Did those words appearing on the bottom
11 of that exhibit 2173 appear on the copies that you
12 sent to those various offices?

13 A In all official communications the name of
14 the addressees are indicated in similar manner.

15 Q So those names appeared on all the copies
16 that were sent out, is that so?

17 A Yes.

18 Q And isn't it a fact, Mr. SUZUKI, that the
19 words "Chief of POW Information Bureau," as appearing
20 at the top of that exhibit 2173, indicates that the
21 letter was addressed primarily and for the attention
22 of primarily the Chief of the Prisoner of War Infor-
23 mation Bureau?

24 A No. To explain the matter further, with
25 respect to documents relating to the matter contained

SUZUKI

CROSS

1 therein, it so happened that only the copy of the
2 letter sent to the Chief of the Prisoners of War
3 Information Bureau was found in the Foreign Office,
4 and other letters were not found; that is, other
5 letters addressed to other government offices were
6 not found.

7 Q You mean by that that the copies of this
8 letter which was sent to the Ministers of War, Navy,
9 Home Affairs, and so forth, did not have the words
10 "Chief of POW Information Bureau" written at the top?

11 A That is what I mean.

12 Q In other words, each letter that went out
13 had a different salutation on it, is that right?

14 A Yes. The name at the top would bear the
15 words "War Minister" or "Home Minister" or to whom-
16 ever it was sent.

17 Q So that each one of these bureaus who re-
18 ceived a copy of this exhibit 2173 would expect you
19 to confer with them, is that right, according to
20 that statement which I read to you previously?

21 A To speak -- if I might explain the purpose,
22 I should say that the covering of itself is a very
23 simple thing while the text of the protest itself is
24 rather large and bulky and containing many and various
25 items; and the investigations into the subjects in-

SUZUKI

CROSS

1 quired into in the protest are carried on by various
2 agencies concerned with the matter. The Foreign
3 Office's part in this matter is to assemble the
4 reports and information obtained as a result of
5 investigation and to coordinate them and, on the
6 basis of the results drawn up by the Foreign Office,
7 to consult with the government departments concerned --
8 government departments and other agencies concerned.

9 Q When I asked you before, Mr. SUZUKI, about
10 this particular sentence, "I wish to confer with
11 you later," you told me that that was primarily ad-
12 dressed to the Prisoner of War Information Bureau,
13 isn't that so?

14 MR. WOOLFORTH: If your Honor please, I
15 object to the question as misquoting the record.
16 The witness' answer was "no."

17 THE PRESIDENT: I had the impression it was
18 "no," but I may have been wrong. I will have to look
19 it up.

20 A If I may be permitted to continue, I should
21 like to reply on that point. May I explain this
22 fact in this manner: When I -- in speaking of the
23 letter, particularly addressed to the Chief of the
24 Prisoners of War Information Bureau, the "you" refers
25 to that chief. In the letter that would be sent to

SUZUKI

CROSS

1 the War Minister or to the Home Minister or to the
2 Minister of Greater East Asiatic Affairs, the "you"
3 in those letters would be addressed respectively to
4 the addressees.

5 Q So that, according to this letter, you wish
6 to confer with all of these people, is that it?

7 A Yes, and that was necessary.

8 Q Now, this letter of April 25, 1945, prosec-
9 cution's exhibit 1274 -- will you explain the
10 meaning of those words at the bottom of that letter:
11 "This letter addressed to": then you have two
12 offices; then "Copies of this letter addressed to"
13 and one office. What is the difference in those two
14 sentences?

15 A The same text of this communication was
16 sent out at the same time, that is, simultaneously
17 and independently and separately, to the Chief of
18 the Military Affairs Bureau of the War Ministry and
19 to the Chief of the Prisoners of War Information
20 Bureau, and the copy of the letters sent to these
21 two officers was sent to the Chief of the Naval Af-
22 fairs Bureau of the Naval Ministry.

23 Q And a copy of that letter, then, did not go
24 to the Chief of the Military Affairs Bureau?

25 THE PRESIDENT: That is not what he said.

SUZUKI

CROSS

1 The letter itself would go to him. What he says is
2 borne out by exhibit 2174.

3 Q Do I understand from your testimony that a
4 copy of this letter, 2174, and also a copy of enclo-
5 sure, went to the Chief of the Military Affairs
6 Bureau and to the Chief of the Prisoners of War
7 Information Bureau?

8 A Yes.

9 Q And just a copy, isn't it so -- just a copy
10 of this particular letter, 2174, went to the Chief
11 of the Military Affairs Bureau and the Navy Minister,
12 isn't that right?

13 A What I mean to say is that the copy of the
14 covering note was sent to the Chief of the Naval
15 Affairs Bureau together with a copy of the protest
16 and the translation.

17 Q And these are the only documents, 2170 to
18 2174, that you have been able to find in your office?

19 A As certified by the Chief of the Archives
20 Section of the Foreign Office, these were the only
21 documents which were found.

22 Q And the fact that these exhibits, 2170 to
23 2174, were addressed to various people -- various
24 officers, and no two of them being alike, does that
25 give rise to the statement in your affidavit in the

SUZUKI

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1 next to the last paragraph -- next to the last
2 answer: "The affidavit sworn to the 12th day of
3 November, 1946"?

4 MR. WOOLWORTH: If your Honor please, I
5 suggest that the witness be given a copy of his
6 affidavit.

7 (Whereupon, a document was handed
8 to the witness.)

9 A Yes; but, if I am permitted, I should like
10 to explain this in further detail.

11 Q Go ahead.

12 A Especially with respect to documents 10N
13 and 10S, -- I haven't seen the others, and I don't
14 know; but I have seen these two documents actually,
15 and I think that I should repeat what I have said
16 before in different words.

17 In my affidavit I have said that, in case
18 letters or communication was sent to the War Minister,
19 the Vice-Minister of War, the Chief of Military Af-
20 fairs Bureau and the Chief of the Prisoners of War
21 Information Bureau, copies of those letters were
22 also sent to other agencies of the War Minister --
23 War Office concerned. With respect to documents
24 10N and the remainder, the arrangement was estab-
25 lished at the time this matter was in question that

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1 instead of having copies of the letter sent -- copies
2 of letters, that is, copies of letters addressed to
3 the War Minister, Vice-Minister, Chief of the
4 Military Affairs Bureau, Chief of the Prisoners of
5 War Information Bureau -- instead of sending of
6 the copies of the letters sent to them to the other
7 agencies of the War Ministry, the arrangement came
8 into being wherein the text of the same letter or
9 the same letter or letter of identical text were
10 sent -- letters of identical text were sent separate-
11 ly to all of these agencies even though these agencies
12 were related to the War Ministry.

13 Q But, isn't it a fact, Mr. SUZUKI, that these
14 protests were primarily concerned with the Prisoner
15 of War Information and Administration Bureaus?
16

17 MR. WOOLWORTH: If your Honor please, I
18 submit that this question has been answered three
19 different times by the witness.

20 THE PRESIDENT: He may answer.

21 A On the basis of the regulations governing
22 the handling of such business, the matter was, of
23 course, in charge of the Prisoners of War Information
24 Bureau. But, at the request of the War Office, this
25 new arrangement was established.

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1 Q Isn't it a fact, Mr. SUZUKI, with respect to
2 exhibits 1477 through 1487, which are the protests,
3 from 10-K through 10-X, that you cannot tell us defin-
4 itely which of those documents were sent to any par-
5 ticular agency?

6 A Unfortunately, not having copies of the docu-
7 ments in question, I cannot say. But on the basis of
8 my memory and experience in handling these documents
9 I can say that such an arrangement was carried out.

10 Q But you don't know definitely which of these
11 documents went to any particular agency, isn't that so?

12 A With respect to that I think I could answer
13 as follows: I think it can be said that with respect to
14 all documents that those addressed to the Chief of the
15 Prisoner of War Information Bureau were also at the same
16 time sent to the Chief of the Military Affairs Bureau,
17 and/or to the Vice-minister of war, and in some cases
18 to the war minister himself.

19 Q But you don't know definitely which of those
20 documents were so forwarded?

21 THE PRESIDENT: Well, he did as regards two of
22 them.

23 Q I mean aside from those two you mentioned be-
24 fore.

25 A With regard to the others I cannot say con

SUZUKI

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1 concretely. However, I can say that these documents
2 were channeled through two routes I might say. The
3 question is this, Mr. Counsel, that these documents were
4 always addressed to the Chief of the Prisoner of War
5 Information Bureau, that I can say definitely, but whether
6 it went to the Chief of the Military Affairs Bureau or
7 to the Vice-minister of War or to the War Minister I
8 cannot say. However, I can say that it went to one of
9 these three.

10 MR. LOGAN: That is all, thank you.

11 THE PRESIDENT: Major Blakeney.

12 CROSS-EXAMINATION (Continued)

13 BY MR. BLAKENEY:

14 A Mr. Witness, in your affidavit you have al-
15 ready explained the method and routine which your bureau
16 followed in receiving and forwarding protests and other
17 documents. I want to ask you whether in carrying out
18 that routine forwarding of protests and other documents
19 it was the practice of your office always to forward them
20 to the appropriate authorities as promptly as possible --
21 let us say immediately?

22 A Yes, to dispose of such matters as speedily
23 as possible, that we have made an effort to do.

24 Q In addition to the written recommendations
25 which, as you have stated, sometimes accompanied the

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1 communications when they were forwarded to the Prisoner
2 of war Information Bureau or elsewhere, did the Foreign
3 ministry officials from time to time make oral recom-
4 mendations to those other authorities?

5 A Yes, very frequently.

6 Q Is it a fact that you yourself or other officials
7 of the Foreign ministry from time to time requested the
8 war ministry officials concerned to hasten their replies?

9 A Yes.

10 Q and is it a fact that from time to time the
11 Foreign ministry officials requested the War Ministry
12 officials to make re-investigations in cases where
13 replies had been received?

14 A Yes.

15 Q Prior to the institution of your bureau, was
16 it not the Treaty Bureau of the Foreign Office which was
17 concerned with these matters?

18 A Yes.

19 Q and are you able to state from the investiga-
20 tion and study which you made of the files of the Treaty
21 Bureau pertaining to this subject whether their routine
22 was in all of these respects similar to that which you
23 have described as being your own routine?

24 A The Treaty Bureau of the Foreign Office handled
25 such business for one year after the outbreak of the war.

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1 when my office was established the same arrangements
2 and routines were continued -- were followed.

3 Q aside from the handling of these protests and
4 other correspondence, together with the answers thereto,
5 had your bureau or the Foreign Office itself any authority
6 or power in connection with prisoners of war?

7 A Mr. Counsel, could you possibly reframe your
8 question? I have not been able to get the full meaning
9 of the last question.

10 Q In addition to the matter of handling this
11 correspondence which we have been discussing, what, if
12 any, authority reposed in the Foreign Ministry in con-
13 nection with the prisoners of war?

14 A I do not think there was any authority in the
15 Foreign Office aside from the conducting of the business
16 to which I have already referred.

17 Q When your bureau prepared its replies to the
18 protests or inquiries, were those replies always for-
19 mulated on the basis of information furnished you from
20 the War Ministry people concerned?

21 A Yes.

22 Q And was there any method of obtaining informa-
23 tion available to the Foreign Ministry except through
24 these inquiries to the War Ministry?

25 A There were none.

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1 Q When replies were prepared on the basis of
2 that information, were they always forwarded immediately
3 upon receipt of the information?

4 A Yes, they were.

5 Q May we assume from the name of your bureau,
6 Bureau in Charge of Japanese Nationals in Enemy Countries,
7 that your chief concern was the welfare of those Japanese
8 nationals abroad?

9 A Yes, the primary and official function of my
10 office was to look after the interests of Japanese
11 nationals in enemy countries, especially those who were
12 interned in enemy countries, and to protect their inter-
13 ests.

14 THE PRESIDENT: We will recess for fifteen
15 minutes.

16 (Whereupon, at 1445, a recess was
17 taken until 1500, after which the proceedings
18 were resumed as follows:)

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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now resumed.

3 THE PRESIDENT: Major Blakeney.

4 CROST-EXAMINATION

5 BY MR. BLAKENEY:

6 Q It is true, is it not, that in view of your
7 desire to ameliorate the conditions of Japanese interned
8 in alien countries -- in enemy countries -- you felt
9 that it was to the interest of your Bureau to attempt
10 to ameliorate the conditions of prisoners of war in
11 Japan?

12 A In view of the fact that the two questions,
13 Japanese interned in enemy countries and prisoners of
14 war in Japan were related, we strongly desired to seek
15 the improvement of the conditions of prisoners of war.

16 Q And therefore did all you could toward that
17 end, did you not?

18 A Yes, I think we gave every effort possible
19 toward that end.

20 MR. BLAKENEY: Thank you. That seems to
21 be all the cross-examination, sir.

22 THE PRESIDENT: Colonel Woolworth.

23 MR. WOOLWORTH: If the Tribunal please, something
24 was said by the cross-examiner, Mr. Logan, about the date
25 of the enactment of the -- the date of the formation

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1 of the Prisoner of War Information Bureau. I am --

2 THE PRESIDENT: Something was suggested
3 by him.

4 MR. WOOLWORTH: I direct the attention of
5 the Tribunal to -- I invite the attention of the
6 Tribunal to exhibit 1965, which shows that the Prisoner
7 of War Information Bureau was established 27th of
8 December 1941.

9 I have one further question to ask the witness.

10 REDIRECT EXAMINATION

11 BY MR. WOOLWORTH:

12 Q Did the search which you made for letters
13 of transmittal go any farther than to look for letters
14 of transmittal to the documents which the Court requested?

15 A No, the search was made only in connection with
16 the documents referred to in my affidavit.

17 MR. WOOLWORTH: That is all.

18 THE PRESIDENT: Do you want him any further?

19 MR. WOOLWORTH: I ask that the witness be
20 excused.

21 THE PRESIDENT: Excused on the usual terms.

22 (Whereupon, the witness was excused.)
23
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25

1 THE PRESIDENT: Mr. Higgins.

2 MR. HIGGINS: Mr. President and Members of
3 the Tribunal, in reply to the President's question
4 to Colonel Woolworth just before the noon recess, let
5 me say that since the Tribunal indicated that it would
6 hear motions to dismiss, the prosecution has been using
7 all spare time in gathering material for answer. Thus
8 far, motions in behalf of only two of the accused
9 have been served on us. Until the motions are in
10 it would be difficult to prepare any general answer and
11 impossible to prepare a detailed answer. We are anxious
12 to prepare for the Tribunal such replies as will,
13 in our judgement, assist the Tribunal in passing on the
14 questions raised. These replies will be made available
15 as soon as they are completed. At the present time we
16 have no material assembled in a manner near enough to
17 its final form to justify, in our judgement, presenting
18 it to the Tribunal now.

19 Mr. President, due to the absence on account
20 of illness of General Vasiliev, I desire to introduce
21 to the Tribunal Colonel L.M. Smirnov, associate
22 prosecutor for the Soviet Union, a recent addition to
23 our staff. He was formerly Chief Prosecutor of the
24 Investigation Department of the Attorney General's Office
25 of his country.

1 THE PRESIDENT: Colonel Smirnov.

2 COLONEL SMIRNOV: If the Court please, at
3 the session of the Tribunal on October 15, 1946, we pre-
4 sented a photostatic copy of the map of a sector of
5 the frontier line between the USSR and China attached
6 to Hunchun Agreement of 1886. The map was attached to
7 prosecution document No. 2242. The document together
8 with the map was received by the court in evidence and was
9 marked as exhibit No. 753. After the admission of the
10 map by the Court, defense counsel, Mr. Furness, drew
11 the Tribunal's attention to the fact that the frontier
12 line on the photostatic copy of the map was superimposed
13 in yellow paint or ink and was not part of the photograph,
14 and he requested the Tribunal to reject the map as evidence
15 proving the border. (pages 7778-79 of the Record)

16 The President of the Tribunal did not consider
17 it necessary to rule on this matter, and the map remained
18 in evidence, but after this statement of the defense
19 counsel there has remained some uncertainty which may
20 have bearing upon the estimation of the probative value
21 of this document in the future. There is a yellow line
22 on the original photostatic map presented to the Tribunal
23 which indicates the frontier line. The paint by which
24 the line is made is not part of the photograph. However,
25 the line itself is undoubtedly part of the photograph,

1 but it was painted yellow to make the frontier line
2 look more distinct and clear.

3 In order to completely dismiss all uncertainty
4 as regards this matter I had requested and received from
5 Moscow a new photostatic copy of this map which leaves
6 no doubts as to the actual frontier line at this sector.

7 I request the Tribunal for leave to present
8 this photostatic copy in addition to the previous one
9 which is with the Tribunal attached to document No.
10 2242, exhibit No. 753. Copies of this photostatic map
11 which we are going to present to the Tribunal have not
12 been served on the defense because they are identical
13 with those served on them previously, for it is all the
14 same whether the photographs are taken from the original
15 on which the frontier line is indicated in yellow or in
16 black.

17 Together with this map we present, as supplement
18 to the same document No. 2242, a photostatic copy of the
19 original "Protocol about thorough checking of the first
20 section of the border between two States" of June 26,
21 1886 with the signatures of the Russian and Chinese
22 parties.

23 Previously we gave only an excerpt from this
24 Protocol quoted in the document No. 2242, the Report of
25 the Commander of the Frontier Corps of the USSR of

1 March 21, 1946.

2 Presenting the full text of the Protocol I
3 have in view to facilitate the Court and the defense
4 the correct estimation of the document.

5 MR. LOGAN: If the Tribunal please, we
6 haven't seen the new map.

7 With regard to the testimony offered by
8 prosecutor here as to the authenticity and what the
9 yellow line meant on the map, we ask that that be stricken.
10 If there is any doubt about it they should call a witness
11 to give the testimony which was given by the prosecutor
12 here.

13 THE PRESIDENT: The new map can be given
14 provided it is properly certified to and an explanation
15 may be given for tendering a new map. The explanation
16 given is because of that yellow line the Court may not
17 regard it as having probative value. That explanation
18 requires no testimony on oath or otherwise.

19 Tender the new map, if you wish.

20 COLONEL SMIRNOV: With the permission of the
21 Court, I would like to make a short statement. We have
22 presented the map in evidence, your Honor. The map
23 is properly certified by the Chief of the Record Office
24 of the USSR.

25 THE PRESIDENT: Does that appear on the map?

1 Is the certificate under the hand of the
2 party certifying?

3 COLONEL SMIRNOV: It is on the back of the
4 document.

5 THE PRESIDENT: Well, the defense should
6 see the document proposed to be tendered so that it
7 may take objection if they think fit.

8 MR. LOGAN: If the Tribunal please, in order
9 to save time I desire to submit at this time a
10 reservation to object after we have seen the map.
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1 COLONEL SMIRNOV: If the Court please, during
2 the presentation of evidence in the prosecution phase
3 dealing with the Japanese Aggression against the USSR
4 we cancelled temporarily a number of documents concern-
5 ing certain matters and we did not present them because
6 we did not have at our disposal the full documents, as
7 required, but only excerpts therefrom.

8 Mr. President suggested that we present the
9 whole evidence dealing with the matter later. On this
10 ground Minister Golunsky said we should omit this group
11 of documents with the understanding that we should have
12 an opportunity of presenting them at a later date.

13 I respectfully invite the Tribunal's attention
14 to pages 7748-7749 of the record. I have been informed
15 that these documents have now been found and will be
16 sent to us from Moscow at the end of January after
17 having been put in due form. Consequently, we shall
18 get them in the middle of February and I will be able
19 to process them and present them to the Tribunal, if
20 your Honor please, sometime later than the middle of
21 February. I do not want to anticipate the time when
22 these documents may be presented but any decision of
23 the Tribunal as to the time of presenting them is ac-
24 ceptable to us.

25 I am speaking of several documents dealing with

1 subversive activities of the Japanese at the Chinese-
2 Eastern Railroad, with an undeclared war waged in the
3 Nomonghan area, and with subversive activities of the
4 Japanese against the U.S.S.R. which were carried on in
5 the Far East, and of the preparation of war against the
6 U.S.S.R.

7 THE PRESIDENT: You have raised a very nice
8 point as to the extent to which we can receive evidence
9 for the prosecution after the case of the prosecution
10 has been closed. I shall have to discuss that with
11 my colleagues. I will say nothing about it to-day.
12 The defense may wish to be heard on that point too be-
13 fore we come to any decision.

14 MR. LOGAN: You mean now, your Honor, or at a
15 later date?

16 THE PRESIDENT: When the matter is raised.
17 It is obvious that the evidence will not be available
18 before the defense opens their case unless the prosecu-
19 tion are going to take a much longer time to complete
20 their case than I anticipated. It may be, of course,
21 that the prosecution's case will not end before the
22 middle of February. I could not say.

23 COLONEL SHIRNOV: I would like to invite the
24 Tribunal's attention that in the course of the presenta-
25 tion of the prosecution's case that defense counsel,

1 Major Blakeney, presented to the Court a book by
2 Reginald Johnson, "Twilight in the Forbidden City",
3 and then a letter which was supposed to have been
4 written by Pu-Yi was also presented by the defense
5 counsel, so in my submission there is a precedent for
6 the presentation of additional documents in the course
7 of the defense phase of the trial.

8 THE PRESIDENT: It may be a fact here
9 that the prosecution's case may be closed before the
10 evidence that you foreshadow is available. However,
11 we are not in a position to argue the matter to-day,
12 satisfactorily, at all events. The defense will want
13 some notice.

14 Are you tendering that new map?

15 COLONEL SMIRNOV: Yes, your Honor.

16 THE PRESIDENT: Admitted on the usual terms.

17 CLERK OF THE COURT: Prosecution document
18 entitled "An addition to document No. 2242", which re-
19 ceived exhibit No. 753, and a new photostatic map at-
20 tached thereto will be given exhibit No. 2175.

21 (Whereupon, the document above re-
22 ferred to was marked prosecution's exhibit
23 No. 2175 and received in evidence.)
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25 COLONEL SMIRNOV: That is all, your Honor.

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THE PRESIDENT: Mr. Blewett.

MR. BLEWETT: During the presence of the prosecution for the Soviet Republic in Court it might be feasible to inquire when we may expect the production of the witness Tomenega. I recall the witness -- the Court acceded to the request of the defense that he be produced.

THE PRESIDENT: Is the prosecutor responsible for that phase present? I can't answer it. Somebody at the prosecution table must answer that.

MR. TAVENNER: If it please the Tribunal, that is a matter of which I do not have particular information. I think it is a matter that has always heretofore been handled in Chambers on motion, and we would be very glad to take it up with counsel at any time. I am informed now that General Vasaliev, who is absent today on account of illness, may have information in regard to it.

MR. BLEWETT: At the pleasure of the Court, may I also suggest, your Honor, that request has been made for other witnesses in this phase of the case which have not yet been concluded by your Honor and Members of the Tribunal?

THE PRESIDENT: I will consult with my colleagues about that, Mr. Blewett.

1 Judge Hsiang.

2 JUDGE HSIANG: Mr. President and Members of
3 the Tribunal: The prosecution introduces in evidence
4 IPS document No. 2955, being a report by Professor
5 Chang Feng-Chu, handwriting expert, chosen at the
6 request of the prosecution to make a study of the
7 handwriting of prosecution witness Pu Yi for the
8 purpose of determining the genuineness of the letter
9 to defendant General MINAMI allegedly written by the
10 hand of Pu Yi, the abdicated Emperor Hsuan Tung of
11 China. This questioned letter received Court exhibit
12 No. 278. See record of Court proceedings, page 4116,
13 page 4164, page 4199, etc.

14 THE PRESIDENT: Admitted on the usual terms.

15 CLERK OF THE COURT: Prosecution's document
16 No. 2955 will receive exhibit No. 2176.

17 (Whereupon, the document above re-
18 ferred to was marked prosecution's exhibit
19 No. 2176 and received in evidence.)

20 JUDGE HSIANG: I will now read exhibit No.
21 2167:

22 "A Report on the Study of Pu-Yi's handwriting.

23 "I. Purpose of the Study - Whether the so-
24 called Emperor Hsuan Tung's letter to General MINAMI
25 dated the first day of the ninth moon in the year

1 'Hsin-wei' - 1931 is in Pu-Yi's handwriting.

2 "II. Findings of the Study - The so-called
3 Emperor Hsuan Tung's letter to General MINAMI dated
4 the first day of the ninth moon in the year 'Sin-Wei'
5 1931 is NOT in Pu-Yi's handwriting.

6 "III. Reasons supporting the Findings - See
7 photostats at end of document representing papers 1
8 to 5.

9 "Paper 1. On the afternoon of 29 August 1946, in
10 the presence of the representatives of the International
11 Military Tribunal for the Far East, the International
12 Prosecution Section and the Defense together with
13 the handwriting experts chosen by the prosecution and
14 the defense respectively, Pu-Yi made specimens of
15 his handwriting on three sheets of paper. There are
16 123 Chinese characters on the first sheet of paper.
17 (Paper 1). 17 characters on the second sheet (Paper
18 2) and 116 characters on the third sheet (Paper 3.)
19 The characters which Pu-Yi wrote on the first and the
20 second sheets of paper (Papers 1 and 2) were characters
21 taken from the so-called Emperor Hsuan Tung's letter
22 to General MINAMI dated the first day of the ninth
23 moon in the year 'Hsin-Wei' (that is, the 20th year
24 of the Republic of China, namely, the year 1931). As
25 these characters were selected at random and not word

1 for word, the following 37 characters found in the
2 said questioned letter were not written by Pu-Yi in
3 our presence: (Ch'u) (Ts'o) (Shih) (Tang) (Shen)
4 (Min) (Tzu) (Ch'ien) (Huang) (Shih) (Chia)
5 (Ting) (Chiao) (Shou) (Fu) (Szu) (Chun)
6 (Ch'en) (Jen) (T'an) (Ch'uan) (Jang) (Han)
7 (Tsu) (Chi) (Cheh) (Ch'e) (Ti) (Ch'ih) (Huo)
8 (Tang) (Hsing) (Yeh) (Shih) (Chu) (To) (Chien).

9 "Pu-Yi wrote the characters (pu) (Yi), his
10 signature in Chinese, which are not found in the
11 questioned letter.

12 "The third sheet of paper (Paper 3) contains
13 Pu-Yi's handwriting of characters taken from what is
14 supposedly written by His Majesty Emperor Hsuan Tung
15 on a fan belonging to Johnston, his tutor. On this
16 sheet of paper the two characters (Yee) and (Chin)
17 are erroneously copied for (Tsao) and (Ling), the
18 latter two characters appearing on the above mentioned
19 fan. The two characters (Nan) and (Fei) which Pu-Yi
20 wrote in his specimen handwriting are not found on
21 the said fan. On the other hand, the following 12
22 characters on the fan were not written by Pu-Yi in
23 his specimen handwritings: (Keng) (Wu) (Hsia)
24 (Yueh) (Ch'u) (Fu) (Wei) (Chih) (Tao) (Szu) (Fu)
25 (Shu). The two characters (pu) (Yi) found in Pu-Yi's

1 for word, the following 37 characters found in the
2 said questioned letter were not written by Pu-Yi in
3 our presence: (Ch'u) (Ts'o) (Shih) (Tang) (Shen)
4 (Min) (Tzu) (Ch'ien) (Huang) (Shih) (Chia)
5 (Ting) (Chiao) (Shou) (Fu) (Szu) (Chun)
6 (Ch'en) (Jen) (T'an) (Ch'uan) (Jang) (Han)
7 (Tsu) (Chi) (Cheh) (Ch'e) (Ti) (Ch'ih) (Huo)
8 (Tang) (Hsing) (Yeh) (Shih) (Chu) (To) (Chien).

9 "Pu-Yi wrote the characters (pu) (Yi), his
10 signature in Chinese, which are not found in the
11 questioned letter.

12 "The third sheet of paper (Paper 3) contains
13 Pu-Yi's handwriting of characters taken from what is
14 supposedly written by His Majesty Emperor Hsuan Tung
15 on a fan belonging to Johnston, his tutor. On this
16 sheet of paper the two characters (Yee) and (Chin)
17 are erroneously copied for (Tsao) and (Ling), the
18 latter two characters appearing on the above mentioned
19 fan. The two characters (Nan) and (Fei) which Pu-Yi
20 wrote in his specimen handwriting are not found on
21 the said fan. On the other hand, the following 12
22 characters on the fan were not written by Pu-Yi in
23 his specimen handwriting: (Keng) (Wu) (Hsia)
24 (Yueh) (Ch'u) (Fu) (Wei) (Chih) (Tao) (Szu) (Fu)
25 (Shu). The two characters (pu) (Yi) found in Pu-Yi's

1 for word, the following 37 characters found in the
2 said questioned letter were not written by Pu-Yi in
3 our presence: (Ch'u) (Ts'o) (Shih) (Tang) (Shen)
4 (Min) (Tzu) (Ch'ien) (Huang) (Shih) (Chia)
5 (Ting) (Ch'iao) (Shou) (Fu) (Szu) (Chun)
6 (Ch'en) (Jen) (T'an) (Ch'uan) (Jang) (Han)
7 (Tsu) (Chi) (Cheh) (Ch'e) (Ti) (Ch'ih) (Huo)
8 (Tang) (Hsing) (Yeh) (Shih) (Chu) (To) (Chien).

9 "Pu-Yi wrote the characters (pu) (Yi), his
10 signature in Chinese, which are not found in the
11 questioned letter.

12 "The third sheet of paper (Paper 3) contains
13 Pu-Yi's handwriting of characters taken from what is
14 supposedly written by His Majesty Emperor Hsuan Tung
15 on a fan belonging to Johnston, his tutor. On this
16 sheet of paper the two characters (Yee) and (Chin)
17 are erroneously copied for (Tsao) and (Ling), the
18 latter two characters appearing on the above mentioned
19 fan. The two characters (Nan) and (Fei) which Pu-Yi
20 wrote in his specimen handwriting are not found on
21 the said fan. On the other hand, the following 12
22 characters on the fan were not written by Pu-Yi in
23 his specimen handwriting: (Keng) (Wu) (Hsia)
24 (Yueh) (Ch'u) (Wei) (Chih) (Tao) (Szu) (Fu)
25 (Shu). The two characters (pu) (Yi) found in Pu-Yi's

1 specimen handwriting on the third sheet of paper do
2 not appear on the fan.

3 "Upon comparing Pu-Yi's handwriting found in
4 Papers 1, 2 and 3 (see photographic copy) with the
5 handwriting found in Paper 4 which is the photographic
6 reproduction of the questioned letter, I have found that
7 the so-called Emperor Hsuan Tung's letter to General
8 MINAMI dated the first day of the ninth moon of the
9 year 'Hsin-Wai' is definitely a forgery and is cer-
10 tainly not in Pu-Yi's handwriting. The reasons are
11 as follows:

12 "1. Spirit and Air in the Handwriting - Any
13 one with an elementary knowledge of penmanship can
14 readily tell that these two sets of writings are not
15 from the same hand just by comparing the handwriting
16 found in Paper 4 with the handwriting found in Papers
17 1, 2 and 3. Pu-Yi's handwriting as shown in Papers
18 1, 2 and 3, is plump and stiff in general appearance
19 while the handwriting in Paper 4 is soft and thin.
20 The one is clumsy while the other is nimble. The
21 one is heavy and steady while the other is airy and
22 flighty.
23

24 "2. Style of the Handwriting - The style of
25 handwriting used in the so-called Emperor Hsuan Tung's
letter to General MINAMI dated the first day of the

1 ninth moon in the year 'Hsin-Wei' (1931) is commonly
2 known as the 'intermediate style' and the style used
3 by Pu-Yi is his specimen handwriting in Papers 1, 2
4 and 3 is commonly known as the 'square style.' The
5 fact that the one is in the 'intermediate style' and
6 the other is in the 'square style' does not prevent
7 an adequate comparison for the purpose of determining
8 the genuineness of the questioned letter; however,
9 for the purpose of further comparison we requested
10 Pu-Yi, while writing in our presence on the afternoon
11 of 29 August 1946, to write also in the 'intermediate
12 style'. Pu-Yi replied that he was unable to comply
13 with our request as he could not write in the 'inter-
14 mediate style'. But we kept on urging him and he
15 finally complied with our request by trying to write
16 in the 'intermediate style', and the 'running or
17 cursive style'. The result was that although the
18 following Chinese characters (Mou) (Nien) (Tsai)
19 (Chiu) (Yu) (T'su) (Wen) (Fei) (So) (Tung) (Ya)
20 (Chih) (Kung) (Ku) (Shih) (Fu) (Chung) (Wu)
21 (Ning) (Erh) (Yen) (Chen) (Heng) (Yeh) etc.
22 found in the 6th, 7th, 9th and 10th lines of Paper 1
23 are something between the 'intermediate style' and
24 'running or cursive style', they are so poor that it
25 is evident that the handwriting as photographically

1 ninth moon in the year 'Hsin-Wei' (1931) is commonly
2 known as the 'intermediate style' and the style used
3 by Pu-Yi is his specimen handwriting in Papers 1, 2
4 and 3 is commonly known as the 'square style.' The
5 fact that the one is in the 'intermediate style' and
6 the other is in the 'square style' does not prevent
7 an adequate comparison for the purpose of determining
8 the genuineness of the questioned letter; however,
9 for the purpose of further comparison we requested
10 Pu-Yi while writing in our presence on the afternoon
11 of 29 August 1946 to write also in the 'intermediate
12 style'. Pu-Yi replied that he was unable to comply
13 with our request as he could not write in the 'inter-
14 mediate style'. But we kept on urging him and he
15 finally complied with our request by trying to write
16 in the 'intermediate style'. and the 'running or
17 cursive style'. The result was that although the
18 following Chinese characters (Mou) (Nien) (Tsai)
19 (Chiu) (Yu) (T'su) (Wen) (Fei) (Tung) (Ya)
20 (Chih) (Kung) (Ku) (Shih) (Fu) (Chung) (Wu)
21 (K'ing) (Erh) (Yen) (Chen) (Heng) (Yeh) etc.
22 found in the 6th, 7th, 9th and 10th lines of Paper 1
23 are something between the 'intermediate style' and
24 'running or cursive style', they are so poor that it
25 is evident that the handwriting as photographically

1 reproduced in Paper 4 is by a different hand. In
2 general, Pu-Yi, in his better days, must have put
3 some effort in learning to write both small and
4 large characters in the 'square style' as shown in
5 Paper 3. He is definitely weak in the 'intermediate
6 style' of penmanship."
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"(3) Strokes in the handwriting -- The
1 dots in Pu-Yi's handwriting forming a part of the
2 following Chinese characters:
3 "(Pien) (Fu) (Yi) (Wen) (Shih) (Chi) (Ning)
4 (Ch'iung) (Hsin), etc. are generally shaped" in heavy
5 and short dots. "But the dots appearing in the
6 questioned letter are in the form of" light and
7 elongated dots. "The four Chinese characters (Chih)
1 (Yuan) (Ta) (Tu) written by Pu-Yi are entirely differ-
ent from those found in the said questioned letter.
The left component part (Yen) of the character (Mou)
in Pu-Yi's handwriting is also greatly different from
the (Yen) of (Jaug) and (Mou) appearing in the said
letter.

"(4) Character (Chang) -- Pu-Yi wrote
(Chang Ai) which appear in the said letter as (Chang
li). The mistake in the left component part of this
one Chinese character in the said questioned letter
not only proves that the letter is a forgery but
also betrays the fact that it was not written by a
Chinese.

"(5) Note and Signature (Cheng Hsiao-Shu) --
the lower left corner of the paper marked 4 bearing
a photographic reproduction of the so-called
Emperor Hsuan Tung's letter to General MINAMI dated
the first day of the ninth moon in the year 'Hsin-Wei'

"(3) Strokes in the handwriting -- The
1 dots in Pu-Yi's handwriting forming a part of the
2 following Chinese characters:
3 "(Pien) (Fu) (Yi) (Wen) (Shih) (Chi) (Ning)
4 (Ch'iung) (Hsin), etc. are generally shaped" in heavy
5 and short dots. "But the dots appearing in the
6 questioned letter are in the form of" light and
7 elongated dots. "The four Chinese characters (Chih)
8 (Yuan) (Ta) (Tu) written by Pu-Yi are entirely differ-
9 ent from those found in the said questioned letter.
10 The left component part (Yen) of the character (Mou)
11 in Pu-Yi's handwriting is also greatly different from
12 the (Yen) of (Jaug) and (Mou) appearing in the said
13 letter.

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15 (Chang Ai) which appear in the said letter as (Chang
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17 one Chinese character in the said questioned letter
18 not only proves that the letter is a forgery but
19 also betrays the fact that it was not written by a
20 Chinese.

21 "(5) Note and Signature (Cheng Hsiao-Shu) --
22 In the lower left corner of the paper marked 4 bearing
23 the photographic reproduction of the so-called
24 Emperor Hsuan Tung's letter to General MINAMI dated
25 the first day of the ninth moon in the year 'Hsin-Wei'

1 "(3) Strokes in the handwriting -- the dots
2 in Pu-Yi's handwriting forming a part of the following
3 Chinese characters:

4 "(Pien) (Fu) (Yi) (Wen) (Shih) (Chi) (Ning)
5 (Ch'iang) (Hsin), etc. are generally shaped. But the
6 dots appearing in the questioned letter are in the
7 form of . The four Chinese characters (Chih)
8 Yuan) (Ta) (Tu) written by Pu-Yi are entirely different
9 from those found in the said questioned letter. The
10 left component part (Yen) of the character (Hou) in
11 Pu-Yi's handwriting is also greatly different from
12 the (Yen) of (Jaug) and (Mou) appearing in the said
13 letter.

14 "(4) Character (Chang) -- Pu-Yi wrote
15 (Chang Ai) which appear in the said letter as (Chang
16 Ai). The mistake in the left component part of this
17 one Chinese character in the said questioned letter
18 not only proves that the letter is a forgery but
19 also betrays the fact that it was not written by a
20 Chinese.

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22 In the lower left corner of the paper marked 4 bear-
23 ing the photographic reproduction of the so-called
24 Emperor Hsuan Tung's letter to General MINAMI dated
25 the first day of the ninth moon in the year 'Hsin-Wei'

(1) is found a note consisting of the following Chinese characters:

(Chin) (Shang) (Yu) (Pi) (Cheng) (Hsiao)
nu) (Chia) (Shu) (Erh) (Yueh) (Erh) (Shih) (Jih).

"(Translator's Note: The meaning of the said note is as follows: This is the present Emperor's Handwriting, Cheng Hsiao-Shu, the 20th day of the second moon in the year 'Chia-Si,' namely, 1934.)

"In connection with Cheng Hsiao-Shu's note and signature, the absence of certain indispensable words absolutely required by convention and court usage; such as the character (Chen, meaning 'Ministerial Servant') above Cheng Hsiao-Shu's name and the characters (Chin Tih, meaning 'respectfully noted by') attached to his name; reveals the forgery of the document.

"For the foregoing reasons, I have come to the conclusion that the so-called Emperor Hsuan Tung's letter to General MINAMI dated the first day of the ninth moon in the year 'Hsin-Wei' (1931) is not in Pu-Yi's handwriting.

"IV. Corollary -- Apart from the main result of the study stated above, the sub-findings are given as follows:

1 (1931) is found a note consisting of the following
2 14 Chinese characters:

3 (Chin) (Shang) (Yu) (Pi) (Cheng) (Hsiao)
4 (Shu) (Chia) (Shu) (Erh) (Yueh) (Erh) (Shih) (Jih).

5 "(Translator's Note: The meaning of the
6 said note is as follows: This is the present
7 Emperor's Handwriting, Cheng Hsiao-Shu, the 20th day
8 of the second moon in the year 'Chia-Si,' namely,
9 1934.)

10 "In connection with Cheng Hsiao-Shu's note
11 and signature, the absence of certain indispensable
12 words absolutely required by convention and court
13 usage; such as the character (Chen, meaning 'Minis-
14 terial Servant') above Cheng Hsiao-Shu's name and the
15 characters (Chin Tih, meaning 'respectfully noted by')
16 attached to his name; reveals the forgery of the
17 document.

18 "For the foregoing reasons, I have come
19 to the conclusion that the so-called Emperor Hsuan
20 Tung's letter to General MINAMI dated the first day
21 of the ninth moon in the year 'Hsin-Wei' (1931) is
22 not in Pu-Yi's handwriting.

23 "IV. Corollary -- Apart from the main
24 result of the study stated above, the sub-findings
25 are given as follows:

(1931) is found a note consisting of the following
14 Chinese characters:

(Chin) (Shang) (Yu) (Pi) (Cheng) (Hsiao)
(Shu) (Chia) (Erh) (Yueh) (Erh) (Shih) (Jih).

"(Translator's Note: The meaning of the
said note is as follows: This is the present
Emperor's Handwriting, Cheng Hsiao-Shu, the 20th day
of the second moon in the year 'Chia-Si,' namely,
1934.)

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and signature, the absence of certain indispensable
words absolutely required by convention and court
usage; such as the character (Chen, meaning 'Minis-
terial Servant') above Cheng Hsiao-Shu's name and the
characters (Chin Tih, meaning 'respectfully noted by')
attached to his name; reveals the forgery of the
document.

"For the foregoing reasons, I have come
to the conclusion that the so-called Emperor Hsuan
Tung's letter to General MINAMI dated the first day
of the ninth moon in the year 'Hsin-Wei' (1931) is
not in Pu-Yi's handwriting.

"Iv. Corollary -- Apart from the main
result of the study stated above, the sub-findings
are given as follows:

3 "1. The so-called His Majesty Emperor
4 Hsuan Tung's handwriting on the fan belongs to
5 Johnston, his tutor (Paper 5) is not in Pu-Yi's
6 handwriting.

7 "2. The handwriting in the so-called
8 Emperor Hsuan Tung's letter to General MINAMI
9 dated the first day of the ninth moon in the year
10 'Hsin-Wei' (1931) and the so-called His Majesty
11 Emperor Hsuan Tung's handwriting on the fan belong-
12 ing to Johnston, his tutor, are not written by the
13 same person.

14 "The handwriting on the fan as shown in
15 Paper 5, being different from Pu-Yi's handwriting
16 as shown in Papers 1, 2 and 3, is also different
17 from the handwriting in the so-called Emperor Hsuan
18 Tung's letter to General MINAMI dated the first day
19 of the ninth moon in the year 'Hsin-Wei' in all
20 respects, such as spirit, style, strokes and so
21 forth. Suffice it to say that even a person with
22 but an elementary knowledge of penmanship can
23 readily tell the difference between the handwriting
24 on the fan and the handwriting in the questioned
25 letter.

"Report on Handwriting made by Cheng Feng-
Chu (signed). Formerly, Professor of Chinese

1 "1. The so-called His Majesty Emperor
2 Hsuan Tung's handwriting on the fan belonging to
3 Johnston, his tutor (page 5) is not in Pu-Yi's hand-
4 writing.

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6 Emperor Hsuan Tung's letter to General MINAMI,
7 dated the first day of the ninth moon in the year
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13 Paper 5, being different from Pu-Yi's handwriting
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15 from the handwriting in the so-called Emperor Hsuan
16 Tung's letter to General MINAMI dated the first day
17 of the ninth moon in the year 'Hsin-Wei' in all
18 respects, such as spirit, style, strokes and so
19 forth. Suffice it to say that even a person with
20 but an elementary knowledge of penmanship can
21 readily tell the difference between the handwriting
22 on the fan and the handwriting in the questioned
23 letter.

24 "Report on Handwriting made by Cheng Feng-
25 Chu (signed). Formerly, Professor of Chinese

1 Literature, National Peking University; formerly,
2 Lecturer on Chinese Literature, Institut des Hautes
3 Études Chinoise, Université de Paris; at present,
4 Member of the Committee on Educational Research,
5 Ministry of Education, Nanking; concurrently, Cultural
6 Expert of the Chinese Mission in Japan, Tokyo."

7 THE PRESIDENT: That is a unanimous report,
8 is it, Judge Hsiang?

9 JUDGE HSIANG: This is a report made by the
10 expert chosen at the request of the prosecution.

11 THE PRESIDENT: From your side, unanimous.

12 MR. BLAKENEY: May it please the Tribunal,
13 I wish to object to the -- I wish to move to strike
14 out this document for the following reasons: first,
15 that it is supported by no oath of any nature; second,
16 that the document purports to be the expert testimony
17 of a man who does not show himself qualified as an
18 expert; and, to emphasize the significance of that
19 latter point, I should like to point out that his
20 corollary (1) on page 6, that the fan is not in
21 Pu-Yi's handwriting, is directly contrary to the
22 testimony of Pu-Yi himself. Inasmuch as the witness
23 denies the authenticity of the document admitted by
24 the writer, I think the matter of his qualification
25 if of obvious importance. In that connection I refer

1 Literature, National Peking University; formerly,
2 Lecturer on Chinese Literature, Institut des Hautes
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20 corollary (1) on page 6, that the fan is not in
21 Pu-Yi's handwriting, is directly contrary to the
22 testimony of Pu-Yi himself. Inasmuch as the witness
23 denies the authenticity of the document admitted by
24 the writer, I think the matter of his qualification
25 is of obvious importance. In that connection I refer

1 the Tribunal to page 4292 of the record, in which
2 in response to the question, "In whose handwriting is
3 the fan?" Pu-Yi said, "That is my own handwriting."

4 THE PRESIDENT: Well, it is very unsatis-
5 factory at this stage. We should have an oath, of
6 course, covering this, or have an affidavit.

7 JUDGE HSIANG: May I be permitted to say a
8 few words in explanation. According to the Chinese
9 custom, a paper like this, if he signed it himself,
10 an oath is not necessarily required. A document of
11 this nature --

12 THE PRESIDENT: Well, seeing that he is
13 here in Tokyo, he should be subjected to cross-examina-
14 tion.

15 JUDGE HSIANG: The prosecution will try to
16 obtain him and present him for that purpose.

17 I want to finish my first sentence; that is,
18 a paper of this nature, as it was prepared in original
19 Chinese form, is admissible to the Chinese Court
20 without oath.

21 THE PRESIDENT: If he makes an affidavit
22 do you want to have him tendered for cross-examination,
23 Major?

24 MR. BLAKENEY: We have no desire to cross-
25 examine this witness, your Honor.

1 THE PRESIDENT: Well, you are objecting to
2 this evidence as not being under oath. There should
3 be an affidavit at least.

4 JUDGE HSIANG: We will try to obtain an
5 affidavit for that purpose.

6 THE PRESIDENT: What the effect will be,
7 I would not venture to say. It is a common experience
8 with handwriting experts.

9 MR. BLAKENEY: I understand the Tribunal
10 is not ruling on the question of the expert's quali-
11 fication on this point.

12 THE PRESIDENT: He should be well qualified
13 in view of his claim to be what he is, but we cer-
14 tainly want what he says on oath, and his oath will
15 extend to his qualification. Until the sworn testi-
16 mony is forthcoming we will not act on the report.

17 Mr. Tavenner.

18 MR. TAVENNER: If it pleases the Tribunal,
19 in an earlier phase of the case I called the Tribunal's
20 attention to the official positions held by some of
21 the accused on 25 November 1941. In this connection,
22 as appears at page 6048 of the transcript of pro-
23 ceedings, I said that the accused SHIRATORI held
24 the position of "Advisor to the Foreign Minister."
25 Further investigation shows that SHIRATORI was relieved

1 from this post at his request on 22 July 1941, and
2 I desire to make this alteration.

3 We now desire to present some additional
4 evidence relating to certain of the accused.

5 The Tribunal, as shown at page 1513 of the
6 transcript of proceedings, granted the prosecution's
7 application to introduce in evidence the testimony
8 given by Dr. OKAWA at his trial in September 1934 in .
9 the Tokyo Court of Appeals for his alleged partici-
10 pation in what is known as the "May 15th Incident"
11 of 1932, with the modification that the whole of
12 OKAWA's testimony be presented. As the Tribunal
13 will recall, the translation and processing could
14 not be completed during the phase of the case then
15 being presented, so, with the Tribunal's approval,
16 I desire at this time to file for identification
17 only prosecution document 1908, which is Volume 63
18 of 65, "Proceedings, Tokyo Court of Appeals" marked
19 46, "May 15th Incident and OKAWA Faction," and I
20 offer in evidence the OKAWA testimony taken there-
21 from as document 1908-B.

22 THE PRESIDENT: Admitted on the usual terms.

23 CLERK OF THE COURT: Prosecution document
24 No. 1908 will be given exhibit No. 2177 for identifi-
25 cation only, and the marked excerpts therefrom, bearing

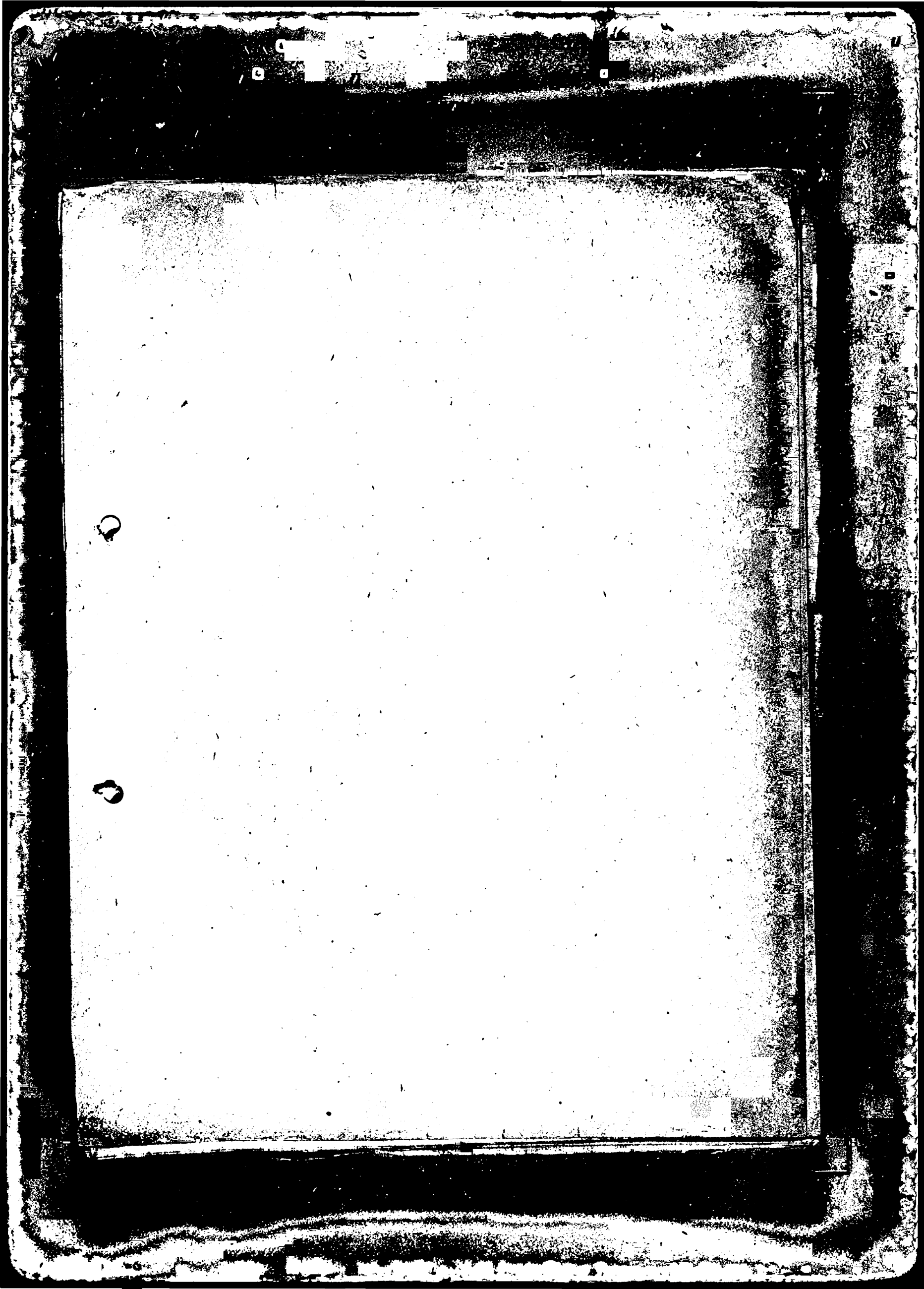
1 document No. 1908-B, will be given exhibit No.
2 2177-A.

3 (Whereupon, document No. 1908 was
4 marked prosecution's exhibit No. 2177 for
5 identification, and document No. 1908-B was
6 marked prosecution's exhibit No. 2177-A and
7 received in evidence.)

8 THE PRESIDENT: We should be given copies
9 of the map tendered by the Soviet prosecutor. That
10 can be done on Monday.

11 We will adjourn until half-past nine on
12 Monday morning.

13 (Whereupon, at 1600, an adjournment
14 was taken until Monday, 20 January 1947, at
15 0930.)
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20 Jan '47 ✓

20 JANUARY 1947

I N D E X
Of
WITNESSES

(none)

I N D E X
Of
EXHIBITS

<u>Doc. No.</u>	<u>Pros. No.</u>	<u>Def. No.</u>	<u>Description</u>	<u>For Ident.</u>	<u>In Evidence</u>
1908B	2177-A		Minutes of the Third Trial (OKAWA Testimony)		15556
1918	2178		Volume 64 of 65 "Proceedings, Tokyo Court of Appeals" re Trial of OKAWA, Shumei	15590	
1918A	2178-A		Excerpt therefrom		15590
1918B	2178-B		Excerpt from Trial of OKAWA Shumei re Propaganda Campaign conducted by OKAWA throughout Japan at the time of the Manchurian Incident		15591
684	2179		Book entitled "Asia, Europe, Japan" by OKAWA, Shumei, published 15 October 1925	15604	
684A	2179-A		Excerpts therefrom		15605
693	2180		Book entitled "The Way of Japan and the Japanese" by OKAWA Shumei published 20 March 1926	15609	
693A	2180-A		Excerpts therefrom		15609
692	2181		Book entitled "2600 Years of Japanese History" by OKAWA Shumei published 5 July 1929	15613	
692A	2181-A		Excerpt therefrom		15613

I N D E X

Of

EXHIBITS

(cont'd)

<u>Doc. No.</u>	<u>Pros. No.</u>	<u>Def. No.</u>	<u>Description</u>	<u>For Ident.</u>	<u>In Evidence</u>
685	2182		Book entitled "The Establishment of Order in Greater East Asia" by OKAWA, Shumei, published 20 August 1943	15618	
685A	2182-A		Excerpts therefrom		15618
687	2183		Book entitled "SATO Shinen's Ideal State" by OKAWA, Shumei, published 20 February 1924	15633	
687A	2183-A		Excerpt therefrom		15633
2902	2184		Letter from OKAWA, Shumei to TOJO, Hideki, dated 20 July 1940		15644
13C	2185		Further extracts from exhibit No. 675		15648
828	2186		"10 Day Report from the Home Ministry of 11 January 1941"	15664	
828A	2186-A		Excerpt therefrom		15664
1598	2187		Book entitled "The Second Creation" by HASHIMOTO, Kingoro (14th Edition) published 30 January 1941	15668	
1598A	2187-A		Excerpt therefrom		15668
1875	2188		Excerpts from Testimony of HASHIMOTO, Kingoro, conducted from 17 January to 18 February 1946		15674
2955A	2189		Affidavit of Prof. Cheng Feng-Chu		15708
2773	2190		Extracts from Interrogation of DOHIMARA, Kanji	15713	
2773	2190-A		Excerpt therefrom		15713

1 Monday, 20 January 1947

2 - - -

3
4 INTERNATIONAL MILITARY TRIBUNAL
5 FOR THE FAR EAST
6 Court House of the Tribunal
7 War Ministry Building
8 Tokyo, Japan

9 The Tribunal met, pursuant to adjournment,
10 at 0930.

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13 **Appearances:**

14 For the Tribunal, same as before.

15 For the Prosecution Section, same as before.

16 For the Defense Section, same as before.

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21 (English to Japanese and Japanese
22 to English interpretation was made by the
23 Language Section, INTFE.)
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MARSHAL OF THE COURT: The International
1 Military Tribunal for the Far East is now in session.

THE PRESIDENT: All the accused are present
2 except OKAWA and MATSUI who are prepresented by their
3 counsel. We have a certificate from the Surgeon
4 of Sugamo Prison that the accused MATSUI is ill and
5 unable to attend the trial today. The certificate
6 will be recorded and filed.

Mr. Levin.

MR. LEVIN: Mr. President, on Friday when
7 Mr. Higgins presented Colonel L. N. Smirnov of
8 the Soviet Union, I did not realize that the pre-
9 sentation of Class B and C offenses by Mr. Justice
10 Mansfield had been concluded.

Mr. President, I gave to the interpreter
11 a copy of the statement that I want to make for the
12 purpose of saving time.

THE INTERPRETER: Mr. Levin, inasmuch as
13 it is not translated into Japanese, it cannot be
14 given simultaneously. It will have to be relayed.

MR. LEVIN: It will be recalled that when
15 the learned prosecutor from Australia made his opening
16 statement, which conformed strictly to the require-
17 ments of the Charter as to what the opening statement
18 should contain, I objected to that portion of the
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22 the learned prosecutor from Australia made his opening
23 statement, which conformed strictly to the require-
24 ments of the Charter as to what the opening statement
25 should contain, I objected to that portion of the

1 statement which related to the accused SUZUKI on
2 the ground that same was a conclusion and argument-
3 ative, and that I asked that it be disregarded by
4 the Tribunal.

5 I desire to call the attention of the
6 Tribunal that throughout the presentation of this
7 phase of the case no evidence, either directly or
8 by affidavit, was tendered to implicate or which
9 implicated the accused SUZUKI with the Class B and
10 C offenses presented by Mr. Justice Mansfield. The
11 only evidence that might have the remotest connection
12 with the accused SUZUKI was exhibit 1971, which read
13 in part as follows:

14 "As a result, the Cabinet Planning Board
15 entrusted by the Army Administrative Department
16 for War Prisoners, held a conference on August 15
17 regarding the transfer of war prisoners to Japan
18 proper and their employment."

19 I desire to further call the Court's
20 attention that in Colonel Woolworth's opening statement
21 calling attention to the responsibility of indi-
22 viduals for Class B and C offenses the accused SUZUKI's
23 name was not mentioned.

24 In view of these facts, I now request that
25 that portion of Mr. Justice Mansfield's statement

1 which appears on page 12,875 of the record be dis-
2 regarded.

3 THE PRESIDENT: I understand you have a
4 motion to dismiss on behalf of the accused SUZUKI.

5 MR. LEVIN: That is correct, Mr. President;
6 and in view of the fact that a portion of that
7 motion refers to Class B and C offenses, I especially
8 make this application. Those are Counts 52, 53,
9 and 54 of the Indictment.

10 THE PRESIDENT: I see no reason why we
11 cannot and should not deal with that on your motion,
12 Mr. Levin. You have this morning made what is in
13 substance a motion to dismiss pro tanto. We should
14 deal with the matter as a whole.

15 MR. TAVENNER: If it please the Tribunal:

16 THE PRESIDENT: Mr. Tavenner.

17 MR. TAVENNER: On Friday afternoon document
18 1908-B was introduced in evidence as exhibit 2177-A.

19 THE PRESIDENT: Yes.

20 MR. TAVENNER: In the course of his testimony,
21 Dr. OKAWA asserted Japan's need for acquiring Manchuria,
22 described his cooperation with the military in the
23 so-called solution of the Manchurian problem, defined
24 the March Incident and the October Incident and
25 their connection with the so-called Manchurian

1 Incident, and directly involved the accused, KOISO,
2 HASHIMOTO, ITAGAKI, and DOHIHARA in his planning.

3 I will now read from exhibit No. 2177-A
4 excerpts touching on these matters, beginning at
5 page 3.

6 (Reading) "Q. What is the purpose of
7 the East Asia Research Institute?

8 "A. Originally, this Research Institute was
9 founded by GCTO, Shimpei, the first President of
10 the South Manchuria Railway Company, with the idea of
11 making a Research Institute in Japan as an organ of
12 the South Manchuria Railway Company, after investi-
13 gating the various research organs in Europe. Mr.
14 GCTO's purpose at the time of foundation lay in
15 studying the economic situation of Manchuria from the
16 world's economic standpoint. When I became a member,
17 it was investigating the world's general economic
18 situation and the situations of Manchuria and China.
19 After it was turned into a foundation, the sphere of
20 investigation was limited in Manchuria and China,
21 and we began to study the economic value of Manchuria
22 and China not from the viewpoint of world economy, but
23 from the standpoint of Japan."

24 I will now omit reading down to the first
25 question appearing on page 7.

1 (Reading) "Q. It is understood that you
2 had published, 'The Gist of the National Reformation
3 Plan', by KITA, IKKI, and revealed the general outline
4 for how to reform Japan, is that right?

5 "A. Yes, it is right. However, I could not
6 entirely approve of the 'Gist of the National Re-
7 formation Plan' in general. There was no definite
8 plan for the practical reformation of the state at
9 that time, and it was necessary to have some opinion
10 worth discussing about. Consequently I published
11 that book so that our comrades could get together
12 and do some studying. It does not mean that I had
13 entirely approved of this book.

14 "Q. But I understand that you resigned from the
15 YUSONSHA because of difference of opinion with KITA
16 IKKI, and that the YUSONSHA had dissolved simul-
17 taneously with your resignation, is that right?

18 "A. Yes.

19 "Q. It is understood that you were very worried
20 about the Rice Riot of 1918, and the so-called The
21 Serious Incident in the Imperial Palace (KYUCHU,
22 JUDAI JIKEN), is that right?

23 "A. Yes. This is a matter which everybody
24 should worry about who looks clearly into the present
25 situation in Japan and has any interest in the future

1 of Japan.

2 "What I was most surprised about the rice
3 riot was that just when Japan had decided to begin
4 a war with a foreign country and the Commander in
5 Chief of the Siberian Expeditionary Forces was
6 bidding farewell to the Emperor MEIJI at the
7 MONOYAMA Mausoleum, some of the Japanese people
8 had to rise in request of rice because they were
9 hungry, and the military had to shoot at the hungry
10 people. I believe anybody would be surprised at
11 this.

12 "At that time I was very much shocked and I
13 thought that it was the first manifestation of the
14 defects of Japan which had hitherto been hidden."

15 I will omit reading down to the question
16 appearing in the middle of page 8.

17 "Q. However, in 1925, it seems that you
18 had organized the 'KOCHI SHA', is that right?

19 "A. Yes."

20 I will omit the next question and answer.

21 "Q. What were the principles of KOCHISA?

22 "A. I think there were seven principles.

23 (1) To establish a revolutionized Japan. (2) To
24 firmly establish a national ideal. (3) To realize
25 liberty in spiritual life. (4) To realize equality

1 in political life. (5) To realize fraternity in
2 economic life. (6) To liberate the colored races.
3 (7) Moral unification of the world."

4 I will omit reading down to the second
5 question appearing at the top of page 10.

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1 "Q Was it because KITA-IKKI distributed
2 the so-called reprehensible literature in which he
3 accused the Minister of the Imperial Household
4 MAKINO and his ministry of corruption?

5 "A Yes.

6 "Q Since then, you and KITA drifted further
7 apart. Because the army was somewhat cautious of
8 KITA, they were cautious of you, too, but when they
9 found out that you had become estranged from KITA
10 by that incident, and relation between you and the
11 Army became more intimate than ever and you were
12 able to openly deliver lectures at the Army General
13 Staff, etc. weren't you?

14 "A Yes.

15 "Q Were these the men you became intimate-
16 ly acquainted with: Lt. Gen. KOISO, Maj. Gen.
17 OKAMURA, Maj. Gen. ITAGAKI, Maj. Gen. DOHIHARA,
18 Maj. Gen. TADA, Col. KAWAMOTO, Col. SASAKI and Col.
19 SHIGETO?

20 "A Yes.

21 "Q Now, what were your activities after
22 becoming an employee of the South Manchurian Rail-
23 way Company?
24

25 "A I was a very faithful employee. I

1 encouraged the staff of the Investigation Bureau
2 and also kept myself busy in the investigation of
3 world economy and the Manchurian situation. The
4 work assigned to me at that time was the investiga-
5 tion of licensed colonial corporations. This study
6 became the essay for my degree of Doctor of Law.

7 "Q Did you acquire the belief that the age
8 of Great Powers was gone and that the age of Super
9 Great Powers had come while you were doing such
10 research?

11 "A Yes, if you study world history, you
12 will reach such a conclusion. For a nation to keep
13 going as an independent country in this present age,
14 she should possess a territory that is at least
15 self-sufficient. The present state of world affairs
16 proves this clearly.

17 "Q In the case of Japan, what kind of
18 territory should she incorporate?

19 "A Korea and Manchuria are within the
20 scope of possibility, but I believe Manchuria alone
21 will not be sufficient.

22 "Q You seem to have made investigation
23 trips to Manchuria and China frequently, didn't you?
24

25 "A I went there two to three times a year
for two to six months ever since I became an employee

1 of the SMR Co. Hence, I have done considerable re-
2 search.

3 "Q Did you acutely sense the anti-Japanese
4 sentiment there?

5 "A It is not the anti-Japanese sentiment
6 which I acutely sensed, but what I regret very much
7 was the cause leading to the rise of the anti-
8 Japanese sentiment. To call it anti-Japanese
9 sounds narrow, but generally it means the diplo-
10 macy. Anti-Japanism is one of the manifestations
11 of diplomacy. Japan's diplomacy toward Manchuria
12 and China wasn't too active. Japan's influence in
13 Manchuria was at the highest peak when I joined the
14 S.M.R. And while I was in Manchuria, Japan's
15 influence began to wane yearly. It reached the
16 bottom following Chang Tsuo-Liu's death in an ex-
17 plosion and after Chang Hsuen-Lian assumed the
18 political power of Manchuria succeeding him.
19 Though there may be various arguments in regard to
20 this, in short, Japan's national opinion has never
21 united in its diplomacy toward foreign countries.
22 That is, the greatest cause was the fact that Japan
23 was divided in two in its diplomacy towards China
24 and Manchuria. It was in the spring of 1929 during
25 the later period when the TANAKA Cabinet assumed

1 positive policy and dealt with the Manchurian prob-
2 lem when, as a concrete manifestation of the TANAKA
3 Cabinet's positive policy, the S.M.R. desiring to
4 complete the construction of the Kirin-Huining
5 railway, exerted its whole effort trying to
6 secure the approval of Chang Hsueh-Liang. At that
7 time, I was in Mukden for several months starting
8 from January and was negotiating with Chang Hsueh-
9 Liang. One day, Chang Hsueh-Liang showed me a letter.
10 That letter was from his younger brother Chang
11 Hsueh-mei, who was in Tokyo at that time. It
12 stated as follows:

13 "Recently MINSEITO, member of the House
14 of Representatives, came to see me and stated that
15 the TANAKA cabinet will fall soon. In such an
16 event, the MINSEITO Cabinet will solve not only
17 the railway problem, but all Manchurian problems
18 to your advantage, so tell your brother to dilly-
19 dally and prolong the negotiations in regard to the
20 Kirin-Huining Railway until our Cabinet is formed.
21 Since another MINSEITO member of the House of
22 Representatives came to tell me that, I am relaying
23 this to you.'

24 "This, Chang Hsueh-Liang showed me with a
25 grin. With their being given a prospective of the

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~~circumstances within, like this, it is inevitable~~

1 that they assume a more positive attitude and turn
2 anti-Japanese. I could not help feeling that the
3 development of Japan's power was absolutely hope-
4 less with Japan being divided into a MINSEITO state
5 and a SEIYUKAI state and half siding with the
6 enemy.

7 "Again in February of that year, Minister
8 YOSHIZAWA was negotiating with Chang Sing-tei, at
9 Shanghai in regard to the Nanking Incident. On
10 that occasion, I rushed from Manchuria to Shanghai.
11 Minister YOSHIZAWA had gone to Tokyo in the spring
12 of 1928 and had returned with a concrete plan for
13 the solution of the incident after having held repeat-
14 ed discussions with Prime Minister TANAKA and the
15 various cabinet members and having found something
16 that was satisfactory. Hence, he was negotiating
17 with the Nanking Government and I believe that they
18 had reached an agreement and probably had temporarily
19 signed it, but the text of the agreement was con-
20 sidered to be disgraceful on the part of the
21 TANAKA Cabinet's China diplomacy and almost
22 brought about a movement to overthrow the cabinet.
23 Hence, a telegram came from Tokyo suddenly instruct-
24 ing the cancellation of the arrangement made accord-
25

1 ing to the concrete plan which was decided the
2 previous spring when YOSHIKAWA had taken the trouble
3 to go to Tokyo. There is nothing so stupid as this.
4 This, in other words, is not a diplomacy towards
5 China, but toward the House of Peers of Japan.
6 If such a thing is continued, Japan's overseas
7 development can never be accomplished. At least,
8 not under the present circumstances wherein two
9 political parties are scrambling for political
10 power. It is therefore only natural for anti-Japan-
11 ism to exist. I thought this cannot be left alone.
12 This is what I meant when I stated I keenly felt
13 anti-Japanism.
14

15 "Q The newspaper, moreover, stated that
16 the MINSEITO members of the House of Representatives
17 clamored for the revelation of the real facts in
18 regard to the death by explosion of Chang Tsuo-ling
19 in The Diet. Is it true?

20 "A Yes, I believe Mr. Seigo NAKANO made
21 such interpolation before The Diet. This, too,
22 was most reprehensible.

23 "Q Was there any question raised as to
24 whether Japan should deal with Chang Hsueh-liang
25 or with Yong Yu-tin after Chang Tsuo-lin's death?

1 "A Yes. There was. The commander of the
2 Kwantung Army then was Lt. Gen. MURAOKA and the
3 Chief of the Special Service Agency was Shinji
4 HATA. Their opinion was that it would be better
5 naturally to deal with Chang Hsueh-liang and action,
6 in general, was taken according to this opinion.
7 However, since Yong Yu-tin had been handling their
8 business transaction, The OKURA-GUMI strongly ad-
9 vocated that, from a practical point of view, to
10 place the Manchurian political power in the hands
11 of Yong Yu-tin would be better because their commer-
12 cial advantages with Yong. And this opinion was
13 considerably strong within the army too. This was
14 the first time that I discovered that the capital-
15 ists of Japan had a great influence upon the politi-
16 cal and military diplomacy. For example, when Lt.
17 Gen. MURAOKA was in Mukden after the death by
18 explosion of Chang Tsuo-lin, he would meet with
19 Chang Hsueh-Liang, but not with Yong Yu-tin.
20 However, the OKURA-GUMI, wanting Lt. Gen. MURAOKA
21 to meet Yong Yu-tin and desiring at least to make
22 the relationship between Lt. Gen. MURAOKA and Yong
23 Yu-tin closer, actively campaigned to draw the
24 interest of the Army General Staff. As a result,
25

1 a telegram suggesting rather than ordering Lt. Gen.
2 MURAOKA to confer with Yong Yu-tin was sent from
3 the control headquarters. Lt. Gen. MURAOKA is a
4 very excellent army man who can be rated as being
5 No. 1 or 2 among the army personnel. And with him
6 in Mukden, how impudent it was for the person to
7 send a wire suggesting whom he should meet. I
8 thought it disgusting that OKURA-GUMI had begun to
9 have such a great influence upon them.

10 "Thus, there were two factions -- one center-
11 ing around Chang Hsueh-liang and the other around
12 Yong Yu-tin, existing in Manchuria and Japan. Such
13 being the state, the OKURA-GUMI secretly worked
14 behind the scenes. Thereafter, negotiations with
15 Manchuria were made with Yong Yu-tin.
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1 "Q. And you reportedly started a people's move-
2 ment because you thought that the Manchurian and
3 Mongolian problems cannot be left in the hands of
4 the capitalists and politicians, but should be
5 solved by a people's movement, is that right?

6 "A. Yes.

7 "Q. Did you give lectures about this?

8 "A. Yes. On the opinion that a small country
9 cannot be independent, I reasoned that I should
10 let the people know that Japan, for the time being,
11 should attempt economic development in Manchuria;
12 that the nation cannot go on without having the
13 foundation of her national life built on a united
14 economic system of both Japan and Manchuria and that
15 if this is done, the Manchurian problems, too, can
16 be solved. There are fifty prefectures in Japan,
17 and I decided to make a hasty trip and explain the
18 Manchurian situation to the people by giving lectures
19 and showing motion pictures at three or four places
20 in a prefecture. I undertook this in the latter
21 days of April in May, 1929, immediately upon return-
22 ing from my Manchurian trip and continued it up to
23 the outbreak of the Manchurian Incident."
24
25

1 "Q Were there any repercussions?

2 "A There was a very unexpected reaction. At
3 first, I did not know how much the repercussion would
4 be, and when I consulted with the army authorities
5 about undertaking the project together, the army didn't
6 agree, stating that it would be criticized as mili-
7 tarism and imperialism and lose its effect if the army
8 would join. Hence, I undertook it alone and the
9 reaction was indeed surprising. Leaving aside rare
10 instances, it drew a full house everywhere.

11 "Q What do you mean by the construction of Hulutao
12 Harbor?

13 "A Hulutao Harbor is an ice-free port situated
14 to the west of Lairen at the tip of the Pohai Bay. As
15 it was planned to reconstruct the harbor, the harbor
16 reconstruction plan had already been made, and a Dutch
17 company had contracted and was undertaking the project.
18 Chang Hsueh-liang had thought of this and his proposal
19 was to usurp the prosperity of Lairen and at the same
20 time to construct a trunk line to Hulutao paralleling
21 that of S.M.R. and accumulate the products of Man-
22 churia at Hulutao, thus making S.M.R. virtually value-
23 less and killing the prosperity of Lairen.

24 "Q Was this the reason why the people gradually
25 began to consider the Manchurian problems seriously

1 and become disgusted with SHIDEHARA's diplomacy?

2 "A Yes, I believe so.

3 "Q It is claimed that as the voice of dissatis-
4 faction grew louder among the people, the army took
5 note of this trend and began to take positive action
6 gradually. Is that right?

7 "A Yes. The army, being alert on taking advan-
8 tage of opportunities, began taking positive actions as
9 soon as this trend became great. And finally, they
10 began to act together with us, and the Army General
11 Staff and other departments, even began sending lecturers
12 to us.

13 "Q It is said that the London Naval Disarmament
14 Conference has made the young naval officers indignant.
15 Is it so?

16 "A It is obvious, I believe, as to how indignant
17 the young naval officers were by the mere fact that
18 Lt. Cmdr. KUSAKARI committed suicide.

19 "Q June 30, 1930, Gen. YASHIRO died. Did he tell
20 you anything in regard to the country at that time?

21 "A He didn't say anything definitely, but he
22 repeatedly stated that everything should be done for
23 Japan.

24 "Q In that year, Premier HAMAGUCHI was shot with
25 a pistol at Tokyo Station and the following year 1931,

1 the Diet was convened under Acting Premier SHIDEHARA,
2 and it was put in disorder as though a bees' nest had
3 been disturbed because of a slip of the tongue by the
4 acting premier. Was it so?

5 "A Yes.

6 "Q Did you found the Jimmukai?

7 "A Yes, I did, on the anniversary of the accession
8 of the Emperor JIMMU on February 11, 1932.

9 "Q What are the principles of the Jimmukai?

10 "A The general principles of the Jimmukai were
11 to realize a family system conforming to the national
12 spirit, to eliminate the evils of party politics, which
13 considers party's interest and policy as primary and
14 national welfare as secondary, and to reform the capi-
15 talistic economic system, which considers self-interest
16 as primary and national welfare as secondary. What we
17 planned to do was to bring about the opportunity for a
18 national reformation through a national movement.

19 "Q Was this movement effective?

20 "A It was in February, 1932, that the movement
21 was started, and I was arrested in June of that year.
22 If I had not been arrested, I believe it would have
23 become a considerably powerful movement.

24 "Q Did you have supporters or sponsors?

25 "A I don't know.

1 "Q Do you know a person named Koichiro ISHIHARA?

2 "A Yes, I do. He was a supporter of the Jimmukai
3 and he supplied us with most of the funds needed for the
4 movement of the Jimmukai.

5 "Q You were connected with the so-called March
6 Revolution or the Imperial Flag Revolution, weren't you?

7 "A There wasn't any incident called the March
8 Revolution. Since it is not proper to use the word
9 'revolution' for the March Incident, I would like to
10 make this clear beforehand.

11 "(The Chief Justice, after a conference,
12 ordered the spectators to leave the court after having
13 announced that the resolution and the reason for the
14 suspension of open court thereafter was because of the
15 fear of impending the public peace and order, but special
16 permission was given to Seisaku HASEGAWA, Munezo MURAI
17 and A. KATA KURA to attend court.

18 "The Chief Justice, then, questioned Shumei
19 OKAWA as follows:)

20 "Q Did you, in about 1931, know that there existed
21 a strong antagonism against the political parties among
22 the important personnel of the Army?

23 "A Yes, when Acting Premier SHIDEHARA made a slip
24 of the tongue before the Diet. The slip of the tongue
25 was made in regard to the London Conference. A statement

1 to the effect that it was disloyal for anyone to criti-
2 cize it. Using this as their ground, the Seiyukai Party
3 started a great commotion and prevented the progress
4 of the session for three days. This made the army per-
5 sonnel, who had been indignant at the attitude of the
6 Diet before this, all the more indignant.

7 "Q The military group reportedly believe that Japan
8 can never be saved if parliamentary politics in which
9 two powerful parties confronting each other, is sloppily
10 continued. That enmity of America toward Japan, in the
11 long run, may bring about a Japanese-American war and that
12 if a Japanese-American war is unavoidable, it should be
13 held now. Is it so?

14 "A Yes. If a Japanese-American war is unavoidable,
15 this war probably will be a protracted one. Since Japan
16 will be confronted with food and other economic diffi-
17 culties, the Manchurian problem should be settled
18 before this. Therefore, the national life, we thought,
19 should be reconstructed on an economic foundation made
20 up of Japan and Manchuria as a unit to enable Japan to
21 withstand a protracted war.

22 "This Manchurian problem was the important
23 motive for the March Incident. SHIDEHARA's diplomacy
24 was very soft and he did not try to take any positive
25 action against Manchuria. Since it had been firmly

1 proven by the China policy of the TANAKA Cabinet that
2 even if the Seiyukai Party should form a cabinet and
3 advocate a positive policy, it would only be words, we
4 thought that this would not do.

5 "Q Then, the Capt. NAKAMURA Incident occurred and
6 it was decided, by the high officers at the Chiefs-of-
7 Staff conference held in May of that year, that an
8 aggressive policy should be taken without any hesitation,
9 wasn't it?

10 "A It wasn't by high officers. Even in the
11 Japanese army, high-ranking officers do not readily
12 express such opinion. It was decided by the young
13 Chiefs-of-Staff conference that since one can never tell
14 what they'll do next upon judging from the attitude of
15 Chang Hsueh-liang, they should be smashed firmly and
16 without any hesitation in the event the Manchurian
17 regime should insult Japan beyond the limit.

18 "Q Were you present when such discussions were
19 held?

20 "A Yes, I was.

21 "Q Then, on September 18, the destruction of the
22 Manchurian railway line at Lukow-chiao occurred and
23 with this as the beginning, the Manchurian Incident
24 began, didn't it?

25 "A Yes. We were able to take such prompt action

1 because, as I have stated previously, our mind was made
2 up.

3 "Q Next, what is the March Incident?

4 "A In short, it ended merely as a plan. The plan
5 was for the masses to express their disapproval of the
6 Diet then in session by means of a mass demonstration.
7 To do this, as many people as possible would be mobilized.
8 Since a clash with the police must naturally be
9 expected on this occasion, those who start this
10 demonstration should bear this in mind. And if during
11 the clash with the people the citizens or people taking
12 part should increase more and more, aggravating the
13 commotion and throwing the metropolis into a turmoil,
14 the army would step in and declare martial law, thus
15 taking its first step toward national reformation.

16 "Q With whom did you make the plan?

17 "A The movement for it grew up as it was being
18 discussed here and there.

19 "Q Then, was there a rumor at that time that
20 Gen. UGAKI will succeed Gen. TANAKA as president of the
21 Seiyukai Party?

22 "A Yes, there was.

23 "Q So did you see Gen. UGAKI to ascertain the fact
24 upon being told by the Chief of Military Affairs Bureau
25 KOISO?

1 "A Yes, I did. These circumstances lead to the
2 March Incident. At that time, my intimate friends,
3 Col. SHIGETO, head of the Second Chinese Affairs Section
4 and Lt. Col. Kingoro HASHIMOTO of the Russian Affairs
5 Section of the General Staff, told me that the upper
6 class of the army was burning with indignation at the
7 Diet and that such a Diet should be crushed. And they
8 asked me to see Gen. UGAKI to find out what his opinion
9 was. Then, I met Gen. UGAKI for the first time. In a
10 similar vein as that expressed by me previously, Gen.
11 UGAKI stated that Japan can never develop her fate and
12 overseas development with such a Diet and expressed in
13 very strong words his indignation at party politics.
14 Then, when I returned and told Lt. Col. HASHIMOTO and
15 others the gist of what I had heard from Gen. UGAKI,
16 they decided to get the opinion of others. HASHIMOTO
17 and SHIGETO, then went to see Lt. Gen. NINOMIYA, who
18 was then Deputy Chief of Staff, and Maj. Gen. TATEKAWA,
19 who was then Chief of the Second Department, and asked
20 their opinion. They, too, were very indignant and
21 inquired if there wasn't any means to bring about an
22 opening for a reformation at this time.

23 "Q Didn't Chief of Military Affairs Bureau KOISO
24 have any connection with this?
25

 "A As it was being discussed more and more by

1 everyone, Chief of Military Affairs Bureau KOISO
2 gradually came to be involved, and others also joined
3 later.

4 "Q Was it the discussion to start a mass demonstra-
5 tion on March 20 and was this called the March Incident?

6 "A Yes.

7 "Q But it was cancelled because of the fear of
8 being discovered, wasn't it?

9 "A It wasn't because of the fear of being dis-
10 covered. It was because of Gen. UGAKI's opinion that
11 we shouldn't do such a thing,

12 "It was planned to agitate a mass demonstration
13 at first and to have the army take positive actions
14 when martial law is declared. Gen. UGAKI's intention
15 appeared to be that, too. When I met Gen. UGAKI, that
16 was what I ascertained first, and I reported this to
17 Col. SHIGETO and others.

18 "That evening, Chief of Military Affairs Bureau
19 KOISO, Deputy Chief of Staff NINOMIYA and Vice-Minister
20 of War SUGIYAMA went to see Gen. UGAKI. Gen. UGAKI
21 told them exactly what he had told me and these three
22 had the idea the Gen. UGAKI possessed such a positive
23 intention.

24 "Then, Lt. Gen. KOISO, taking charge of every-
25 thing, told me that since there would be the danger of

1 being discovered if too many fussed about it, we should
2 pretend to have suspended it on the surface and that I
3 should represent the civilians and he will represent
4 the army. However, although he went ahead with the plan,
5 Lt. Gen. KOISO decided to suspend it later. Hence, it
6 was decided to suspend it and that was the end of the
7 March Incident.

8 "I decided to carry on after that by myself,
9 but since Marquis Yoshichika TOKUGAWA dissuaded me from
10 doing so, I abandoned the plan.

11 "Q Did you intend to dissolve the Diet or merely
12 bring the members of the Diet to their senses by mass
13 demonstration?

14 "A We didn't intend to destroy the Diet completely.
15 Gen. UGAKI stated that he had an intention to dissolve
16 the Diet and held as many elections as necessary. We
17 had no intention to disapprove parliamentarism itself.

18 "Q What do you mean by taking positive action of
19 martial law is declared?

20 "A Our idea was to set up a new political power
21 and form a Cabinet centering around the army.

22 "Q You mean to leave the Cabinet system as it is,
23 but have an influential army man as the leader of the
24 Cabinet and actually adopt a bold policy. But not in
25 the form of a dictatorship, is that right?

1 "A Yes, my idea is so. At any rate, we didn't
2 care what they did if it was a Diet that would obey.

3 "Q Now, what is the October Incident?

4 "A At the last trial, the Chief Justice told
5 Mr. HOMMA that OKAWA claims that he is the only civilian
6 that knows about it; but what I meant was the March
7 Incident. The public appears to be making various
8 remarks in regard to the March Incident and as if
9 UGAKI is an ambitious person. What I mean was that
10 I was the only civilian who knew the actual facts.
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1 "The cause of the October Incident is re-
2 lated to the Manchurian Incident and was started by
3 the destruction of the SMR line at Lukow-chiao on
4 September 18, 1931. The Cabinet at that time, as you
5 know, was the SHIDEHARA Interim Cabinet and it had
6 no definite policy. Not only was the policy of the
7 Cabinet so, but the military leaders, too, had no
8 definite ideas.

9 "At that time, as a result of having
10 taken two days and two nights to decide whether the
11 action of Commander HONJO should be approved or
12 not, it was found that if his action were to be
13 disapproved, Commander HONJO would have to be court
14 martialed. Therefore, they finally approved it,
15 but they did not know their own mind in everything.
16 Even in an urgent instance when speedy measures and
17 methods should have been taken, the attitude of the
18 government was very disgusting. If they should
19 dilly-dally as they were doing, all would end in
20 vain, although the lid for the solution of the
21 Manchurian Incident had been thrown open. Even
22 the purpose would not be achieved. Hence, the aim
23 of the October Incident was, generally speaking, to
24 crush them and set up a new, powerful political
25 power capable of undertaking the solution of

1 important problems because it was obvious that
2 they, possessing such a weak stomach as to be
3 unable to digest even the domestic problems, could
4 do nothing if they were fed with such a big and raw
5 thing as Manchuria. Also, according to Mr. HOMMA,
6 he had heard of it in about September, so I can't
7 help wondering how it had leaked out. At any rate,
8 it was like that and was planned by the young army
9 officers. Many others joined them, and the general
10 set up was that a couple of army men would draw up
11 the entire plan and that those who endorsed this
12 aim were not to consider the plan of others, but to
13 carry out only the role assigned to them exactly as
14 determined by the planners of the whole undertaking.
15 This was necessary to prevent the secret from
16 leaking out and was also most reasonable. In this
17 type of thing, many should not be called in on the
18 discussion, for the most logical thing is to do it
19 with a consistent idea. Hence, I know the assign-
20 ment given to me, and about how many had been
21 gathered to do approximately this much, but not the
22 details.
23

24 "The set up, generally speaking, was to
25 have military men primarily and not to include
civilians.

1 "Q Who drafted the ultimate plan?

2 "A I don't know exactly, but the person who
3 gave me orders was Kingoro HASHIMOTO.

4 "Q Then you don't know who was at the top
5 drafting the plan?

6 "A I have an idea.

7 "Q Are SHIGETO, HASHIMOTO, ITAGAKI and
8 DOIHARA involved?

9 "A Yes.

10 "Q Are you the only civilian?

11 "A Yes.

12 "Q After all, they are satisfied with how
13 things are now, so what do they want to do?

14 "A Their plan, I suppose, is to set up a
15 Cabinet centering around the army and with an army
16 man at the head and establish a one-party political
17 system.

18 "Q Are they going to leave the Diet as it is
19 now?

20 "A I think they planned to leave it so.

21 "Q What was your assignment?

22 "A My assignment was to lead a squad of
23 eighty soldiers and visit the various influential
24 newspapers in Tokyo and to order them to write items
25 desired by us and to see that they do it. Another

This Page is Secret

1 was to make a flag with the inscription 'The Imperial
2 Flag Renovation Headquarters' (Kinki Ishin Hombu)
3 and float it from the roof at the Land Survey
4 Department of the General Staff Headquarters.
5 That is, the headquarters was to be set up in the
6 Land Survey Department. But we weren't able to
7 carry this out because the soldiers who had planned
8 this secretly had been arrested.

9 "Q Were General MASAKI and General ARAKI
10 involved in the March Incident or the October
11 Incident?

12 "A No.

13 "Q Were you involved in the Blood Brotherhood
14 Incident?

15 "A Absolutely not.

16 "(At this juncture, the Chief Justice,
17 after a conference, announced his decision to
18 suspend the closed court order and ordered the court
19 to be opened.)
20

21 "The Chief Justice, then questioned
22 Shumei OKAWA as follows:"

23 I will omit reading down to the middle
24 of page 27.

25 "Q When KOGA visited you on April 3, 1932, at
your home in Tokyo, Shinagawa-ku, Fami-Osaki,

1 4-chome, #231, formerly Tokyo-Fu, Ebara Grun,
2 Osaki Cho, Kami Osaki, #231, you gave him five
3 pistols, about 125 rounds of bullets and 1500 yen
4 at the above mentioned home of yours, didn't you?

5 "A Yes."

6 I will omit reading down to a question
7 near the bottom of page 32.

8 "Q Do you think that the action taken by KOGA
9 and others in the February 15 Incident to be right?

10 "A I think it was inevitable.

11 "Q What do you think of your action of having
12 furnished funds and pistols?

13 "A Generally speaking, the motive and the
14 result should be considered in determining this.
15 Since my motive was very good, I have no regrets.
16 Considering it from its result, I don't think that
17 it caused any bad effect although in the argument
18 of Prosecutor KIUCHI it is claimed that it caused
19 a bad effect, I believe it to be good for, after
20 all, it will contribute to the progress of our
21 country."
22

23 I present for identification only prosecu-
24 tion document No. 1918, which is volume 64 of 65,
25 Proceedings, Tokyo Court of Appeals, relating to the
said trial of OKAWA, Shumei.

1 CLERK OF THE COURT: Prosecution's docu-
2 ment No. 1918 will receive exhibit No. 2178 for
3 identification only.

4 (Whereupon, the document above
5 referred to was marked prosecution's
6 exhibit No. 2178 for identification.)

7 MR. TAVENNER: The first excerpt from this
8 document is the record of additional questioning
9 of OKAWA by the Court, and I desire to offer it in
10 evidence as prosecution document No. 1918-A.

11 THE PRESIDENT: Admitted on the usual
12 terms.

13 CLERK OF THE COURT: Prosecution's docu-
14 ment No. 1918-A will receive exhibit No. 2178-A.

15 (Whereupon, the document above
16 referred to was marked prosecution's ex-
17 hibit No. 2178-A and received in evidence.)

18 MR. TAVENNER: This document is presented
19 only for the purpose of complying with the Tribunal's
20 order that the entire testimony of OKAWA be presented.
21 I do not desire to read it.

22
23 The second excerpt from this document is
24 a statement presented to the Court in behalf of
25 OKAWA, which describes in some detail the propa-
ganda campaign conducted by him throughout Japan at

1 the time of the so-called Manchurian Incident and
2 other matters. I desire to introduce it in evidence
3 as prosecution document No. 1918-B.

4 THE PRESIDENT: Admitted on the usual
5 terms.

6 CLERK OF THE COURT: Prosecution's docu-
7 ment No. 1918-B will receive exhibit No. 2178-B.

8 (Whereupon, the document above
9 referred to was marked prosecution's ex-
10 hibit No. 2178-B and received in evidence.)

11 MR. TAVENNER: I will read exhibit No.
12 2178-B.

13 "The Investigation of the Special
14 Contribution of Dr. Shumei, OKAWA,
15 the Former Chief Director of the East
16 Asia Economic Research Institute to
17 the Manchurian Incident.

18 "The contribution that he separated the East
19 Asia Economic Research Institute from the South
20 Manchurian Railway Company.

21 "The efforts that he exerted for the reform
22 of the Institute after the separation.

23 "The works of investigation.

24 "The establishment of the policy towards
25 Manchuria and the awakenings of the national opinions,

1 and the control of guidance.

2 "Activities after the settlement of the
3 Manchurian Incident.

4 "Contribution to the establishment of
5 Manchukuo.

6 "With his pure and simple nature, Shumei
7 OKAWA, the former chief director, took the lead of
8 the great number of his staff, and also he had a
9 power to make his staff attend to their duties with
10 diligence and enthusiasm.

11 "The works of the Research Institute were
12 nothing but the works of Mr. OKAWA both nominally
13 and virtually. I believe that it is hardly imagined
14 that but for Mr. OKAWA the following things would
15 not have been done, that is, the reform of the
16 various systems after the separation and independence
17 of the Research Institute, the works of the investi-
18 gation, the establishment of the Japanese policy
19 towards Manchuria and the awakenings of the national
20 opinions, the contribution to the leadership and
21 the Manchurian Incident which had followed, and the
22 activities before and after the establishment of
23 Manchukuo.

24 "The contribution to the separation of the
25 East Asia Economic Research Institute.

1 "Hitherto, the Research Institute showed
2 a change on its course of the investigation when-
3 ever the authorities of the South Manchuria Rail-
4 way Company were changed, and worse than all it
5 was not only twice or thrice that even its
6 abolition was brought up in the discussion as an
7 object. But Mr. OKAWA made the relation between
8 Japan and Manchuria and Mongolia closer and tighter,
9 and at the same time, reading that in order to plan
10 how to expand the Japanese economical activities,
11 we had to rely upon the activities of such an organi-
12 zation as this Research Institute, Mr. OKAWA per-
13 suaded Jotaro YAMAMOTO, who was at that time the
14 president of the South Manchuria Railway Company,
15 to separate this Research Institute from the South
16 Manchuria Railway Company and also to make it an inde-
17 pendent foundation in July of the fourth year of
18 Showa (1929).

19 "Then he made it possible for the institute
20 to demonstrate its activities, making the funds rich
21 and enlarging its substance."

22 I omit reading to the last paragraph on
23 page 2.

24 "After the separation of the institute,
25 Dr. OKAWA placed the purpose of investigation on

1 the relation between Japan and China, especially
2 the relation towards Manchuria and Mongolia. He
3 planned to contribute to the Japanese development
4 to Manchuria by investigating the economy and also
5 the political condition of each part of the East
6 Asia and also of the world, making this a keynote,
7 and from the view point of the above-mentioned, he
8 made various kinds of investigations, and even those
9 which were distributed among various parts of both
10 the government and the people in the form of pub-
11 lished books counts over fifty kinds.

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1 "The Establishment of the Policy towards
2 Manchuria and the Awakening the National Opinions
3 and the Control of Leadership.

4 "In May in the fourth year of Showa (1929),
5 as soon as the separation of the Research Institute
6 was decided first of all in order to establish the
7 foundation of the Japanese policy towards Manchuria,
8 the chief director OKAWA began to make the investiga-
9 tion researches in detail in cooperation with the
10 general staff headquarters, ordering all the person-
11 nel. While as to the nations, in order to prepare
12 them for the occasions by making them recognize the
13 Manchurian problems well, Dr. OKAWA gave the lectures
14 in various parts in the whole Japan on 'the situations
15 of Manchuria, Mongolia and China, and he gathered the
16 authorities versed in this problem, and he sent them
17 to various parts to propagandize to people to deepen
18 their recognition on the problems regarding Manchuria.'

19 "Its plans and the outline of the progress
20 were as the following:

21 "The purpose of this propaganda, was to
22 divide people into three parts into the armed forces
23 in various parts, the local leading class, and the
24 general populace, and to lead the forces, mainly the
25 group of the officers, and the local leading class or

1 the intellectual class of the citizens and the
2 educated with the lectures and pamphlets and also
3 to lead the general populaces with the lectures and
4 movies about the situations of Manchuria, while
5 using the pamphlets which were explained plainly,
6 and he tried his best to carry out this purpose. Thus
7 by August of the sixth year of Showa from the fourth
8 year of Showa, they made their rounds of the whole
9 land. To explain this in detail, in the fourth year
10 of Showa, they went their rounds the nine provinces
11 in the North East District, and the places where
12 they held the lectures counted forty. In the fifth
13 year, they made their rounds of one district and ten
14 provinces or twenty-seven places, by August of the
15 sixth year of Showa, they went rounds of twelve
16 provinces and the places where they held the meetings
17 were eighteen. After the incident happened, in the
18 cooperation with the general staff headquarters, and
19 the South Manchurian Railway Company, again they had
20 the lectures at fifty places in the whole nation for
21 two months. During this period, the chief director
22 Dr. OKAWA made lectures fifty-two times voluntarily
23 and if we added the times of his lectures made, being
24 asked by others, they count even one hundred and twenty.
25

"Thus he held lecture meetings in one hundred

1 the intellectual class of the citizens and the
2 educated with the lectures and pamphlets and also
3 to lead the general populaces with the lectures and
4 movies about the situations of Manchuria, while
5 using the pamphlets which were explained plainly,
6 and he tried his best to carry out this purpose. Thus
7 by August of the sixth year of Showa from the fourth
8 year of Showa, they made their rounds of the whole
9 land. To explain this in detail, in the fourth year
10 of Showa, they went their rounds the nine provinces
11 in the North East District, and the places where
12 they held the lectures counted forty. In the fifth
13 year, they made their rounds of one district and ten
14 provinces or twenty-seven places, by August of the
15 sixth year of Showa, they went rounds of twelve
16 provinces and the places where they held the meetings
17 were eighteen. After the incident happened, in the
18 cooperation with the general staff headquarters, and
19 the South Manchurian Railway Company, again they had
20 the lectures at fifty places in the whole nation for
21 two months. During this period, the chief director
22 Dr. OKAWA made lectures fifty-two times voluntarily
23 and if we added the times of his lectures made, being
24 asked by others, they count even one hundred and twenty.
25

"Thus he held lecture meetings in one hundred

1 and thirty-five different places, and the number of
2 audiences were over a hundred thousand. Once Chief
3 Director OKAWA mounted the lecture platform, the
4 whole audience would always show their enthusiasm to
5 brave fire and water for their motherland aroused by
6 the fulmination of OKAWA. Thus, once the beacon was
7 burned in Mukden, the people united, and dared the
8 government and its hesitation, and finally accomplished
9 the great task of the establishing Manchukuo. Especial-
10 ly, for the union of the national opinion, he estab-
11 lished 'Toa-Kai' (East Asia Ass'n) besides this
12 lecture meeting, and formed a united body of the
13 national leaders which held one thousand members
14 throughout the nation and reported or translated
15 the publications of the Research Institute and
16 European, American, Russian or Chinese criticism on
17 Japan, thereby working for arousing the spirit of
18 cooperation and the public opinion. We must, at
19 the same time, especially write about the establish-
20 ment of the union of the Economic Research Organs
21 throughout the nation. This union united more than
22 one hundred and twenty Research organs in offices,
23 companies and schools throughout Japan, and as a
24 facility of the Chief Director of the Research Insti-
25 tute, it has been guiding the unification of public

1 opinions on foreign policy, and it must be said that
2 its contribution was extremely great.

3 "The Outline of Doctor OKAWA's Lecture.

4 "The Outline of Manchurian Problems.

5 "The Present Conditions in China and Chang
6 Hsueh-liang.

7 "The America's Policy towards Manchukuo and
8 Mongolia.

9 "What is so-called Manchurian Problems?

10 "Japan's position in East Asia.

11 "China's International Relations.

12 "Japan's Attitude in East Asia.

13 "The Activities before and after the Incident.

14 "In this way, Chief Director OKAWA has been
15 concentrating all his energies directly and indirectly
16 on the ground that the solution of the Manchurian prob-
17 lems is an absolute condition to the very existence
18 of Japan, but knowing that a trouble could not be
19 avoided in the solution of this problem, he has been
20 taking the above-mentioned measures and has been
21 leading the nation in order to prepare the people for
22 such a case. In foreign relations, he has been pre-
23 paring for the worst by propagandizing the particular
24 position of Japan in Manchuria by various methods, and
25 by cooperating with the chiefs of the Kwantung Army,

1 did his utmost to further various background opera-
2 tions.

3 "Although these are confidential matters
4 and cannot be minutely described, there were times
5 when he risked the lives of his best followers, and
6 on other occasions he himself went to the actual field
7 and planned matters, and his efforts were such as
8 cannot be conjectured by ordinary persons. Possibly
9 the situation during this period is well known at
10 the army headquarters. When the incident broke out,
11 and the situation became disadvantageous, he requested
12 his foreigner friends, regardless of whether they
13 were residing in Japan or not. to visit the place of
14 the present post or Manchuria themselves, and had
15 them propagandize to their own countries the in-
16 evitableness of the Manchurian Incident and the just
17 position of Japan. Citing an example, Doctor Klaus
18 went to Manchuria himself, and sent to his country,
19 Germany, an extremely effective and adequate report
20 as well as sending a long report which continued for
21 a month and was very kindly disposed towards Japan to
22 his immediate superiors and to the Pope. However, as
23 these happenings took place during the confusions of
24 the Incident, not even the men of intelligence, let
25 alone the general public, knew of them.

1 "His Contribution towards the Establishment
2 of Manchukuo.

3 "From the viewpoint that the establishment of
4 Manchukuo is absolutely necessary for the existence
5 of Japan, as well as that the spirit should always
6 be founded on the morality of Japanese chivalry, he
7 has been of the opinion that the Japanese officials
8 who are to assist Manchukuo should be the most superior
9 among the Japanese nationals, and he conferred with
10 the Kwantung Army, and cooperating with the army,
11 he selected the officials for Manchukuo and sent
12 them to that country. However, there was a time
13 when he was looked upon with suspicion as the
14 thoughtless higher class were moved by the slanders
15 of narrow-minded persons, but his clear, transparent,
16 cloudless soul was explicitly revealed by the actual
17 facts. For instance, the most superior young officials
18 who are working on the front line as the first year
19 graduates of Daido Gakuin Institute without the
20 least self-interest and are now exerting themselves
21 to the utmost are all chosen by Doctor OKAWA himself."
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1 THE PRESIDENT: That document comes from
2 a Tokyo Court of Appeals. Will you tell the Tribunal
3 or remind me who is the individual or who are the
4 individuals responsible for that pronouncement on
5 OKAWA's activities?

6 MR. TAVENNER: It is a paper filed in his
7 defense in the proceedings.

8 THE PRESIDENT: We expect you to prove that,
9 Mr. Tavenner.

10 MR. TAVENNER: Yes, sir.

11 THE PRESIDENT: Captain Brooks.

12 MR. BROOKS: I would like to ask if the
13 prosecution -- if the Court would approve, would call
14 for cross-examination, the maker of the certificate
15 and the party that has made this report for cross-
16 examination on this matter.

17 THE PRESIDENT: Why, in our own countries
18 these court records could be produced by a person not
19 taking an oath. Why call this man? Why call some
20 clerk for cross-examination, Captain Brooks?

21 MR. BROOKS: Mr. President, I just consulted
22 with the prosecutor and asked if he would stipulate
23 and agree that OKAWA, Shumei was sentenced by this court
24 to 5 years' imprisonment and served his sentence, and he
25 said he would.

1 MR. TAVENNER: The paper referred to is shown
2 by the certificate to be a part of the official record
3 of the trial. A further explanation in regard to it
4 will be obtained if it is in the record.

5 THE PRESIDENT: The parent document is not in
6 evidence. It is merely tendered for identification.
7 That is why we must have proof of the nature of this
8 document you have just read.

9 MR. TAVENNER: I offer in evidence prosecution
10 document No. 684, which consists of three excerpts
11 from the book entitled, "Asia, Europe, Japan" by OKAWA,
12 Shumei, published 15 October 1925. It is an attack
13 upon the principle of maintaining the status quo among
14 nations, advocates world supremacy by Japan and urges
15 Japan to prepare for war with the United States.
16

17 THE PRESIDENT: Captain Broeks.

18 MR. BROOKS: If the Tribunal please, this
19 excerpt does not show and I think it would be quite
20 proper to show the date of publication of this book and
21 have it before the Court, because I think that would be
22 relevant to its value.

23 THE PRESIDENT: A Colleague assures me that
24 the date appears in the certificate.

25 MR. BROOKS: I don't have the certificate,
your Honor.

1 THE PRESIDENT: We will recess for fifteen
2 minutes.

3 (Whereupon, at 1045, a recess
4 was taken until 1100, after which the
5 proceedings were resumed as follows:)
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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now resumed.

3 MR. TAVENNER: If it please the Tribunal,
4 the OKAWA book to which I referred, I desire to be
5 tendered for identification only, and the excerpts,
6 consisting of document 684, to be introduced in
7 evidence.

8 THE PRESIDENT: Captain Brooks.

9 MR. BROOKS: If the Court please, I want
10 to enter an objection to the introduction of the
11 excerpts from this publication in 1925 for lack of
12 probative value due to the date and the writer's
13 position at that time; anything that was said in
14 there would be immaterial and irrelevant at this date.

15 THE PRESIDENT: It is already admitted for
16 whatever probative value it has. Lord Patrick pointed
17 out that it had a date, 1925. It is admitted for
18 whatever probative value it has.

19 CLERK OF THE COURT: Prosecution document
20 No. 684 will receive exhibit No. 2179 for identifica-
21 tion only, and the excerpts therefrom bearing the same
22 document number will receive exhibit No. 2179A.

23
24 (Whereupon, the document above re-
25 ferred to was marked prosecution's exhibit
No. 2179 for identification, and the excerpts

1 therefrom were marked prosecution's ex-
2 hibit No. 2179A and received in evidence.)

3 MR. TAVENNER: I will read exhibit No. 2179A.

4 "'Asia, Europe, Japan' by OKAWA, Shumei.

5 "Excerpt 1.

6 "We must admit that it is very clear that
7 as long as one sticks to the present status quo and
8 the other strives to destroy it, this effort to re-
9 construct Asia will be contradictory to the aim of
10 the League of Nations -- also a product of the World
11 War. Regardless of how the platform of the League
12 of Nations may be decorated with rhetorical flourishes
13 it is after all an organization which is meant to
14 eternally maintain the international status quo and
15 is by no means based upon the new internationalism.
16 Moreover, does not the status quo of the world actually
17 imply the domination of the world by the Anglo-Saxons?
18 Therefore, the League of Nations exists in order to
19 enable the Anglo-Saxons to be the permanent dominators
20 of the world."

21 MR. BROOKS: I can't follow that, your Honor.
22 684 -- it doesn't appear on our excerpt in that order.

23 THE PRESIDENT: Page 70.

24 MR. TAVENNER: (Reading continued) "One of
25 the reasons why Japan is called the only black spot

1 in dawning Asia is also because Japan joined the
2 League of Nations. (p. 70)

3 "Excerpt 2.

4 "In Chapter 9, Revival of Asia:

5 "However, we must not be so rash as to
6 conclude that the coming war between the East and West
7 will be fought between allied Asia and allied Europe.
8 Such a thing cannot possibly happen in the near future.
9 The war between Asia and Europe will be fought by
10 the respective powers representing Asia and Europe,
11 which will be the dawn of the new day in the world
12 history, when all mankind will become awakened from
13 their slumber. It will be fought also in the future
14 by the respective powers of Asia and Europe as it
15 has been the case in ancient times. The strong Power
16 representing Asia and the other strong Power repre-
17 senting Europe will be chosen out by Heaven as champions
18 of the East and the West. Although there might, of
19 course, be some other countries siding with either
20 one of these two, the actual fighting must be done by
21 the decisive war of the said two Powers. In short,
22 the coming war between the East and West will be a
23 clash and strife of the strongest countries in the
24 East and the West. Asia! You must not confuse con-
25 ceptions with facts, and imagine that the war between

1 the East and the West will take place only when the
2 alliance of all the eastern countries and the alliance
3 of all the western countries is realized. Regardless
4 of the other powers' attitude, one of you must be
5 chosen as the champion of Asia -- the champion for
6 the New World to come. (p. 75)

7 "Excerpt 3.

8 "Chapter 10. Europe, Asia, Japan.

9 "The history of the world indicates that
10 the West and the East must be linked together. How-
11 ever, this union will not probably be completed in
12 peace. "Heaven is always seen through brandished
13 swords." For the sake of the advent of a New World,
14 it is the unavoidable fate, as has probably been the
15 case in the past, to have a deadly fight between the
16 powers of the West and of the East. This theory is
17 sure enough realized in the American challenge to
18 Japan. The strongest country in Asia is Japan and
19 the strongest country that represents Europe is
20 America. We can't tell whether it was by coincidence
21 or God's will, but as these two countries are symbolized
22 by the sun and the stars respectively, the opposition
23 of the two countries appears as if to signify the
24 opposition between broad daylight and a dark night.
25 These two countries are destined to fight against each

1 other as Greece and Persia, or Rome and Carthage had
2 to do. O Japan! Will it be a year, ten years, or
3 thirty years hence? Only God knows when it will be.
4 At any time, you /T. N, Japan/ may be summoned/ to
5 fight. Let us not lose even a moment in preparing
6 ourselves!/
7

8 "During the three thousand years since
9 the foundation of the country, this superior race has
10 only taken the whole of her culture and civilization
11 from foreign countries. Japan has never yet made
12 any positive contribution to the history of the world.
13 Was this long period of preparation actually not for
14 the sake of today? Through the victory of Japan in
15 the coming war between Japan and America, the dark
16 world will disappear and a world radiant with the
17 rays of the sun must begin.' (pp. 82, 83)"

18 I present for identification only prosecu-
19 tion document 693. It is a book entitled, "The Way
20 of Japan and the Japanese," by OKAWA, Shumei, published 20
21 March 1926; and from this book I desire to introduce
22 in evidence document No. 693A, which consists of two
23 excerpts from this book.

24 MR. BROOKS: If the Court please, I would
25 like for the same objection to be noted for each one
of these excerpts from this book.

1 THE PRESIDENT: The objection has been and
2 will be overruled in each case, Captain.

3 Admitted on the usual terms.

4 CLERK OF THE COURT: Prosecution document
5 No. 693 will receive exhibit No. 2180 for identifica-
6 tion only, and the excerpts therefrom, bearing the
7 document No. 693A, will receive exhibit No. 2180A.

8 (Whereupon, document No. 693 was
9 marked prosecution's exhibit No. 2180 for
10 identification, and document No. 693A was
11 marked prosecution's exhibit No. 2180A and
12 received in evidence.)

13 THE PRESIDENT: We take it it is admitted
14 by the defense that the date is 1926. There is no
15 proof otherwise.

16 MR. TAVENNER: I don't know, your Honor.
17 I am not familiar enough with this book to know the
18 publication date. I thought the certificate showed
19 the fact that it was --

20 THE PRESIDENT: We have no certificate with
21 this.

22 MR. TAVENNER: I believe the certificate
23 was circulated separately from the document.

24 THE PRESIDENT: Is it in some of these
25 comprehensive certificates?

1 MR. TAVENNER: I will have the certificate
2 produced and attach it to the document. I know there
3 was one.

4 In this book the accused OKAWA reiterates
5 the principle of Japanese world supremacy, for the
6 accomplishment of which war between the great powers
7 of the East and West must be fought at the risk of
8 their whole existence.

9 I will read exhibit No. 2180:

10 "'The Way of Japan and the Japanese' by
11 OKAWA, Shumei.

12 "Pages 125-126) Asia and Europe in the
13 History of the World.

14 "The fact that Japan has hitherto had
15 practically no connection with world history means, in
16 my opinion, that Japan has to render her services
17 towards a mission which is greater than anything other
18 countries have ever achieved. What, then is this
19 mission which has no parallel ever since the commence-
20 ment of world history? As is being suggested by many
21 people, I believe that our mission lies in realizing
22 the unification of the civilization of Europe and that
23 of Asia and to thereby open a new page in the history
24 of the world.

25 "(Pages 142-143) I am afraid that a war

1 between the great powers of the East and West which
2 must be fought at the risk of their whole existence
3 is, as was the case in the past, again a fate now
4 inevitable for the advent of a new world. This does
5 not by any means imply, however, that all Asia as
6 a body will wage war against the whole of Europe. In
7 the actual circumstances, one country representing
8 Europe and one representing Asia will be chosen as
9 the champions of the West and the East respectively,
10 and they will have to fight for the realization of a
11 new world. In very truth it seems to me that
12 Providence is trying to elect Japan as the said
13 champion of the East.

14 "It seems to me that all the preparations
15 we have made in the long period of past three thou-
16 sand years have been meant for this purpose. This
17 is truly a sublime and grand mission, we must say. In
18 order to fulfill this sublime mission, Japan and the
19 Japanese must endeavor to develop a strong moralistic
20 spirit and to materialize that spirit in the life of
21 the individual and that of the nation. With this, I
22 close my lecture."

23 MR. BROOKS: I would like to have the record
24 show that this first excerpt read started at pages
25 125 to 126, and that the second excerpt was from

1 pages 142 to 143, starting, "I am afraid that a war
2 between the great powers," et cetera.

3 THE PRESIDENT: Captain Brooks appears to
4 repeat something already in the exhibit.

5 MR. TAVENNER: I omitted to read the page
6 numbers while reading the text. It appeared plainly
7 in the document itself.

8 THE PRESIDENT: This transcript will show
9 the whole exhibit, as it always does.

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1 MR. TAVENNER: I offer for identification
2 only prosecution document 692, which is a book en-
3 titled "2600 Years of Japanese History," by OKAWA,
4 Shumei, published 5 July 1929, and I desire to in-
5 troduce in evidence from this book certain excerpts --
6 a certain excerpt set out in prosecution document
7 692-A.

8 THE PRESIDENT: Admitted on the usual terms.

9 CLERK OF THE COURT: Prosecution document
10 No. 692 will receive exhibit No. 2181 for identifica-
11 tion only, and the excerpt therefrom, bearing the
12 same document number, will receive exhibit No. 2181-A.

13 (Whereupon, the document above re-
14 ferred to was marked prosecution's exhibit No.
15 2181 for identification, the excerpt therefrom
16 being marked prosecution's exhibit No. 2181-A
17 and received in evidence.)

18 MR. TAVENNER: In this book Dr. OKAWA told
19 the Japanese people that Japan had the divine mission
20 of restoration of the world, the first step of which
21 is the establishment of the new order in East Asia
22 which Japan started to establish in collaboration with
23 Manchukuo.

24 I will read exhibit 2181-A, pages 441 to
25 444 inclusive:

1 "2600 Years of Japanese History. By OKAWA,
2 Shumei.

3 "Page 441-444 inc.

4 "The Chang Hsueh-lian regime was swept completely
5 away from Manchuria in one swoop through the quick
6 and daring actions of the Japanese troops. The Man-
7 churian people, who had long been suffering under the
8 oppression and exaction of the Chang regime, took
9 advantage of this occasion and started the independence
10 movement, finally succeeding in declaring independence
11 in February of the following year, 1932. Then, on
12 the 15th of September 1932, our country recognized
13 this newly established Manchukuo, concluded the
14 Japan-Manchukuo Protocol, and thus laying the legal
15 foundation for the co-existence and co-prosperity of
16 both countries, started to establish the New Order in
17 East Asia in close collaboration with Manchukuo. When
18 Japan faced this sublime task, the spirit of patriotism
19 which had been slumbering in her people's hearts was
20 suddenly awakened. Democracy and Communism which had
21 overwhelming influence on the minds of the people not
22 long ago were finally swept away, and the national-
23 istic tendency reached an unprecedented climax.
24 Moreover, when Japan daringly rebuffed the coercion of
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1 other Powers at the time of the Manchurian Incident,
2 by boldly withdrawing from the League of Nations and
3 by abrogating the London Treaty, the self-realization
4 of the people was much intensified, the excessive es-
5 teem for the West as in the past was overcome, and a
6 vivid spirit of independence was reborn.

7 "However, the establishment of Manchukuo ex-
8 ceedingly incited China. China, who had already
9 been carrying on antagonistic movements against Japan
10 for a long period of time through her misunderstanding
11 of Japan's true intentions, took the establishment
12 of Manchukuo as an outcome of Japan's imperialistic
13 ambition, and incited the hostilities of her people
14 against Japan by advocating recovery of the lost ter-
15 ritory. Due to this attitude of China, many un-
16 fortunate incidents took place between Japan and
17 China, and this situation reached its explosive point
18 on 7 July 1937 when a unit of the Japanese Army that
19 was engaged in night manoeuvres at Marco Polo Bridge
20 near Peking was suddenly fired at by a group of
21 Chinese soldiers. In spite of Japan's patient exer-
22 tions to settle the affair peacefully on the spot,
23 China persistently maintained a challenging attitude,
24 placing too much confidence in her national power
25 and underestimating our national strength. Therefore,

1 Japan was impelled to resort to arms in order to
2 urge China to thoroughly re-examine her attitude;
3 this finally resulted in the utilizing on the Con-
4 tinent of the greatest number of troops ever known
5 since the founding of the Empire (T.N.Japan). Since
6 the outbreak of the Incident, already two years are
7 about to elapse. During those years, the Japanese
8 forces have, under the August virtue of His Majesty,
9 scattered the Chinese troops away like leaves blown
10 away by a hurricane. We have first of all succeeded
11 in hoisting the flag of the rising sun over the whole
12 of North China; then we have captured Shanghai which
13 the enemy counted upon as being impregnable; taken
14 Nanking, the capital, then Canton like a whirlwind,
15 going farther up along the Yangtze River to realize
16 the fall of the three cities of Wu-Han and Nanchang.

17 "The object of the Japanese military expedition
18 to China was, as expressed in the Imperial Edict of
19 4th September 1937, simply 'to urge grave self-
20 reflection upon China and to establish peace in East
21 Asia without delay.' The Chinese Government, however,
22 taking the last hold on Chungking in a corner of
23 Ssuchuan Province, in spite of the fatal blow she
24 had received, is still calling for a protracted war
25 of resistance. This obstinate opposition to Japan is.

1 due to their expectation of assistance from England,
2 France and the Soviet Union on the one hand, and on
3 the other to their hope that Japan will utterly
4 exhaust her strength. The respective interests and
5 objects of these pro-Chiang Kai Shek Powers vary,
6 but they all agree in not welcoming the revival of
7 Asia under Japan's leadership. Accordingly they have
8 restrained Japan by their foreign policy, and are
9 trying to place her in a disadvantageous situation
10 either by helping China financially or by supplying
11 her with munitions of war. In these circumstances,
12 Japan must, observing the Imperial wishes to cut down
13 the root of the evils of long standing, make up her
14 mind to continue to exert her utmost efforts with
15 irresistible force over a long period in order to
16 realize the establishment of the New Order in East
17 Asia. The establishment of the New Order in East
18 Asia is the first step towards the eventual recovery
19 of all Asia, and this in effect will mean the hes-
20 titation of the World. Since her national foundation
21 2600 years ago, Japan has never before assumed such a
22 truly grand and sublime role. We must accordingly
23 overcome all trials and difficulties both internal and
24 external in order to fulfill this divine mission."

25 THE PRESIDENT: That book appears to be

1 written in 1939. Is that so?

2 MR. TAVENNER: 5 July 1939 is date of pub-
3 lication.

4 I now offer for identification only document
5 685. It is a book entitled, "The Establishment of
6 Order in Greater East Asia," by OKAWA, Shumei, pub-
7 lished 20 August 1943, and from it I desire to in-
8 troduce in evidence excerpts appearing in prosecution
9 document 685-A.

10 THE PRESIDENT: Admitted on the usual terms.

11 CLERK OF THE COURT: Prosecution document
12 No. 685 will receive exhibit No. 2182 for identifica-
13 tion only, and the excerpt therefrom, prosecution's
14 document 685-A, will receive exhibit No. 2182-A.

15 (Whereupon, the document above re-
16 ferred to was marked prosecution's exhibit No.
17 2182 for identification, the excerpts therefrom
18 being marked prosecution's exhibit No. 2182-A
19 and received in evidence.)
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MR. TAVENNER: (Reading):

"Extracts from Shumei OKAWA's 'The Establishment of Order in Greater East Asia.'

"If I were to write a modern history of Japan, I should begin it with a description of Shin-en SATO's ideas. This is because in the soul of this great scholar had already been conceived a new Japan in the most concrete form. (From page 9)

"Shin-en SATO, first of all, thought Japan 'the foundation of the world' and believed that Japan would be able to make all the rest of the world her countries or prefectures if she succeeded in 'ruling over the foundation of the world'. With a view to carrying out this 'great work of renovating the world', he advocated a drastic political renovation of the interior Japan and the order of unifying all nations. 'In order to develop other countries, it is best for the Empire /i.e. Japan/ to make a start by absorbing China into her first of all,' he advocated '.....Even the powerful China is no match for the Empire, not to speak of other barbarous countries.If China becomes our possession, is it possible for the other countries in the West, Siam and India not to come gradually under the sway of the Empire yearning for her power of commanding love and respect, being

1 overawed and falling prostrate before her?' Besides,
2 it was his opinion that in order to control China,
3 'no other place is easier to occupy than Manchuria.'
4 And at the same time he thought it necessary to obtain
5 the whole 'area in the South Sea covering thousands of
6 ri starting with the Philippines so as to prepare
7 for the northward aggression of the European Powers,
8 especially of Great Britain and then obtain gradual
9 control of India and its neighbors and various islands
10 in the Indian Ocean, following the occupation of
11 China, Annam, Shan-Cheng and Cambodia.' (From pages
12 10-11).

13 "This explains why the loyalists of the
14 Meiji Restoration period made it their goal of ambition
15 to renovate Japan and at the same time unify Asia,
16 under the slogan of 'reverence for the Emperor and
17 expulsion of foreigners'. Shoin YOSHIDA says in his
18 letter to Genzui KUZAKA, 'We should show our pushing
19 spirits by cultivating the Isle of Yezo /i.e. Hokkaido/,
20 ruling over the Loochoos, obtaining Korea, occupying
21 Manchuria by force, controlling China, and reigning
22 over India.' Izumi MAKI states in his suggestions
23 which he advanced to Sanmi OHARA and also in his letter
24 to Nanshu SAIGO that Japan should set herself against
25 the invasion of /the countries in/ Europe and America

1 by obtaining Korea and the Loochoos, and making
2 Manchuria and Chingkuo her outside clans."

3 I will omit reading down to the last para-
4 graph on page 3:

5 "The Japanese victory over the Russians gave
6 the first and severe shock to the European countries
7 that had been bracing the high way of aggression for
8 four hundred years and had never been put to shame
9 of defeat by any alien race. For the first time,
10 their time-honored victory met with a setback at that
11 time. This caused to arouse hope and courage among
12 the nations that had been under the pressure of the
13 white men, and inspired the various races that had been
14 suffering under the tyranny of the Powers with ideal and
15 vitality.

16 "It is the victory of one world over another.

17 "So-called 'Versailles system' was meant to
18 build a palace of European peace on the basis of Germany
19 which was weak and incompetent. And at the same time
20 the League of Nations made it its second important
21 object to put pressure upon Japan that was considered
22 to have lost the least and have gained the most in the
23 World War.

24 "Then, what did Britain and America do toward
25 Japan? First of all, they succeeded in reducing Japan's

1 status in East Asia as they had been wishing to, at
2 the Versailles conference.

3 "Britain and America, not being satisfied
4 even with this, gave heavier blow to Japan at the London
5 Conference. It might be that Britain and America
6 chuckled to themselves over the thought that they had
7 succeeded in strengthening the Versailles system by
8 this. Nevertheless, this system soon met with a
9 severe repulsion, namely, the Manchurian Incident and
10 thus the old order of the world began to go through
11 the stage of collapse.

12 "As I stated before, the Russo-Japanese War
13 gave the first blow to the European ambition to assume
14 hegemony of the world and it was going to prove a pre-
15 lude to the coming restoration of the world by urging
16 Asia to wake up to the situation; nevertheless, Japan,
17 to our great regret, failed to realize this meaning
18 which would be epoch-making in the world history/ but
19 rather she made for the direction which was quite con-
20 trary to the fundamental trends of the world history/;
21 instead of being kind to the nations in Asia, who were
22 deeply impressed with Japan's victory over Russia and
23 were beginning to direct their attention, and instead
24 of leading and encouraging them, Japan, on the con-
25 trary, devoted herself solely to keep pace with Europe

1 and America in her international policies.

2 "The movement which aims at the expulsion of
3 Japanese rights and interests has been emphasized
4 acceleratively. And this trend much aggravated with
5 Chiang Hsui-Liang's becoming a new master of Manchuria
6 after the death of Chiang Tso-Lin through the explosion
7 in the summer of Showa 3 (1928).

8 "Besides, Chiang Hsui-Liang judged that the
9 fierce strife for political power between the Seyu-Kai
10 and the Minsei parties would make it impossible for
11 Japan to unify her public opinion, and on the other
12 hand, lacking in his proper knowledge of essential
13 qualities of the Imperial army he had become so self-
14 conceited that he believed that the Japanese army which
15 lacked experiences of actual warfare would be no match
16 for the Chinese army which had been trained through a
17 series of battles. And in the end, this ultimately led
18 some of the Chinese soldiers to explode the railroad
19 of the South Manchurian Railway Co. at Liuchiaokon.

20 "On the midnight of September 18, 1931, some
21 Japanese soldiers of the Third Company, Mukden
22 Independent Defense Unit, hearing an unusual noise of
23 explosion during their patrol along the railroad not
24 far off Liuchiaokon, immediately rushed to the scene
25 and found the rails blasted, when they were fired at

1 by Manchurian soldiers. They, therefore, returned
2 the fire, while they sent an emergency call for the
3 main body; and, at one coup, they started to attack
4 Peitaying. On the morning of the following day, the
5 19th, they succeeded in their swift driving away of
6 the Manchurian army from Peitaying and then occupied
7 the Castle of Mukden. On the afternoon of the same day,
8 Commander of the Kwantung Army HONJO, who left Port
9 Arthur at dawn alarmed at the news, arrived at Mukden
10 accompanied by his staff officers, took command and
11 superintendence of the shold army moving the Head-
12 quarters to Mukden, and clarified his firm resolution
13 by absolutely denying Chiang Hsui-Liang's Regime in
14 Manchuria and clearly declaring his intention of waging
15 a thoroughly punitive war against it at home and
16 abroad. Thus did the so-called Manchurian Incident
17 break out.

18 "The Japanese government will surely put
19 restraint upon military operations in Manchuria.
20 This was just what Britain and America believed.
21 Mr. Stimson, the then Secretary of State (of the United
22 States of America), writes down in his diary as
23 follows: 'The Japanese Foreign Minister will put out
24 the flames of nationalism and lead Japan to be a faith-
25 ful observer of the Nine Power Pact and of the Kellogg

1 Pact.' When China brought an action for the Manchurian
2 Incident before the League of Nations then in session
3 and Mr. Drumond, Chief Secretary of the League of
4 Nations, tried to sound him regarding the American
5 attitude for applying the Kellogg Pact to the Manchurian
6 Incident, Mr. Stimson, firmly believing the above-
7 mentioned Japanese Foreign Minister's intention, gave
8 the following answer: 'It is wise for us to refrain
9 from any action that may inflame Japanese feeling
10 cause the Japanese to support their army authorities
11 and thus put Foreign Minister SHIDEHARA in a very
12 difficult position.'

13 "Now, when Japan came to fact the great task
14 of founding of Manchoukuo after the Manchurian Incident,
15 ardent patriotic spirit which had lain dormant in the
16 soul of the nation woke up all of a sudden. Democracy
17 which had been taking the world by storm up to that
18 time and communism which had become so uppish follow-
19 ing it hid themselves from among the people and a
20 nationalistic trend became unprecedentedly flourishing
21 instead. In the process of her realization of this
22 great work, Japan was obliged to fight against the
23 heavy pressure of Britain and America and this had
24 gradually caused Japan to clearly realize that Britain
25 and America on whose good offices had depended Japan

1 for her security were throughly incombatile enemies
2 of East Asia. Under these circumstances, Japan
3 decisively disconnected herself from the League of
4 Nations, an organ for the Anglo-Saxons to assume the
5 hegemony of the world, in other words, their headquarters
6 for maintaining the old order of the world and con-
7 sequently Japan, overcoming her dependency on Britain
8 and America at a stroke, succeeded in exhibiting her
9 independnt spirit in hier diplomacy.

10 "In September, Showa 17 (1936), the Commander
11 of the Kwantung Army issued a very important proclama-
12 tion regarding the mission of the Hseih-ho-hui /i.e.
13 the Concordia Association/ in the process of the found-
14 ing of Manchoukuo and at the same time the Chief of
15 the Staff of the Kwantung Army officially gave the
16 following explanation about this proclamation: "What
17 the Concordia Association prays for is, in the first
18 stage, to bring Manchoukuo to perfection and then to
19 establish gradually paradise with righteous govern-
20 ment by emancipating the oppressed and conquered
21 nations in every part of East Asia.

22 "Nobody, I suppose, expected at the beginning
23 that the regretable skirmish between Japan and China
24 which had been occasioned by the report of a rifle
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1 heard at the approach to the Marco Polo Bridge on
2 July 6, Showa 12 (1937), should extend over such a
3 long period of time. The Japanese government, for
4 instance, called it the North China Incident and faced
5 it with the so-called non-expansion policy, under the
6 very simple slogan of 'chastising outrageous China.'
7 But unexpected development of affairs forced the govern-
8 ment to overthrow its non-exansion policy by the actual
9 situation and the name of the Incident was also changed
10 to the China Affair, the line of battle being extended
11 over the whole China as was named and the situation
12 having continued up to the present. The China Affair
13 has been included in the Greater East Asia War since
14 December 8, Showa 16 (1941) when the Imperial Rescript
15 declaring war upon America and Britain was promulgated
16 and its name was disused, but still Japan and China
17 are fighting fiercely.

18 "Since the outbreak of the China Affair, both
19 America and Britain have manifested an apparent
20 hostile feeling against Japan, And changes had taken
21 place in their attitude toward Japan three times --
22 two years from the beginning of the Affair to the out-
23 break of the European War, the period from the outbreak
24 of the European War to the conclusion of the Triple
25 Alliance between Japan, Germany and Italy, and from

1 that time onward. During the first period, they
2 supported /the/ Chungking /government/ openly to fight
3 against Japan so as to protect their rights and
4 interests in China thoroughly. Nevertheless, during
5 the second period which followed the outbreak of the
6 European War, they seemed as if they had been endeavor-
7 ing to curry favor with Japan in order to win her to
8 their side if possible, at the cost of part of their
9 rights and interests if it could not be helped, or
10 at least to prevent her from taking part with Germany
11 and Italy. The very interception of the Burma Route
12 by Britain is enough to give us a general tendency of
13 their policy. As there were still many people at that
14 time in Japan who advocated the reliance on Britain
15 and America, such activities of Britain and America
16 were a very mischievous temptation. Japan, however,
17 did not fall into the trap and the Triple Alliance
18 came into being.
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1 "Should the two countries, Japan and China,
2 unite through the great duty of revived Asia and rise
3 hand in hand for its materialization India would never
4 fail to act in unison with them, and then the establish-
5 ment of the Greater East Asia Sphere would proceed
6 under easy sail.

7 "So long as the China Affair is not managed,
8 we shall not be able to expect a successful conclusion
9 of the Greater East Asia War, to what extent the fight-
10 ing power of Britain and America may fall off.

11 "History shows us most clearly that the inter-
12 posal of a third state between Japan and China has al-
13 ways caused the gulf between them to be deepened.

14 "And, as mentioned before, Japan tried to make
15 China change her false course by this /Manchurian/ In-
16 cident and on the other hand, being resolved to be pre-
17 pared to become a champion for the emancipation of
18 Asia returning to the spirit of restoration, she en-
19 deavored to re-establish a closer union of blood rela-
20 tionship than before with China. In spite of the fact
21 that such Japanese spirit and ideal have become as
22 clear as day by our declaration of war upon America
23 and Britain, the Chiang Regime is still overriding
24 the great duty of reviving Asia allying with the com-
25 mon enemies of Asia -- this should be said to be a

1 matter for great regret, indeed.

2 "The first of these geographical divisions
3 is the damp zone which is under the influence of the
4 monsoon. This includes those areas that face the
5 Pacific and Indian Oceans and extend, beginning with
6 the north, from the Japanese Islands, the Korean Penin-
7 sula, South Manchuria, China, and then, through South-
8 East Asia, to the south which includes India and Cey-
9 lon.

10 "Now, geographically the damp zone of Asia
11 includes those three great parts and it is Japan, China,
12 and India that represent those three parts. Before we
13 came in touch with Europe and America, what was called
14 'world' by us were Kara /i.e. China/ and Tenjiku /i.e.
15 India/, in other words, the eastern half of Asia in
16 which China and India formed its center; adding Japan
17 to these two countries, we have called them 'Three
18 Countries.' Now we call these 'Three Countries' the
19 Greater East Asia Sphere and we are fighting in order
20 to realize a new order here.

21
22 "It was indeed Japan's victory in the Russo-
23 Japanese War that roused Asia from her long lethargy.
24 A dark night had covered Asia but, from that time on,
25 the day began to dawn gradually and a flash of hope
appeared from the east.

1 "The fact is too well known to be repeated
2 here, but Japan has learnt many things from China and
3 India for a long time. Our modern spirit has been
4 formed by thoroughly assimilating and fostering up
5 the thought and culture of China and India-----there-
6 fore, the Japanese spirit can be understood correctly
7 only when it is considered to be orientalism.

8 "Besides, Japan, as stated before, has called
9 the whole Orient 'Three Countries' and has been can-
10 vassing with that consciousness at all times-----that
11 Japan had a clear consciousness of 'Three Countries'
12 when China left Japan out of consideration and perhaps
13 India was not aware of the very existence of Japan,
14 suggests that the time will soon come when she will
15 assume a great mission and responsibility toward China.
16 And the day has come! What makes the basis of the
17 spirit of the new order of the Greater East Asia is the
18 Three Country Spirit which has been hardened through
19 her vital experiences of one thousand years. The
20 objectification or materialization of the Three Country
21 Spirit is neither more nor less than the Great East
22 Asia Sphere."
23

24 "Finally, according to his belief, Japan, being
25 the first country in the world to be created--" That
is another document. I beg your pardon, sir.

1 THE PRESIDENT: Captain Brooks.

2 MR. BROOKS: If the Court please, on page
3 4 of exhibit 1282-A there is a mistranslation; it says
4 the Versailles Conference, it should be the Washington
5 Conference. It is down in the third full paragraph.
6 I think it is pages 40 and 41. It appears on the
7 original. It has been checked.

8 I would like to call to the Court's attention
9 that the first full paragraph on page 2 read by the
10 prosecutor refers to Shinen SATO who, I have confirmed,
11 lived over two hundred years ago.

12 THE PRESIDENT: The translation question will
13 be referred to the board in the usual way.

14 MR. TAVENNER: I offer for identification
15 only prosecution document 687. It is a book entitled
16 "SATO Shinen's Ideal State," by OKAWA, Shumei, published
17 20 February 1924, and I desire to introduce two ex-
18 cerpts from this book as prosecution document No. 687-A.

19 THE PRESIDENT: Admitted on the usual terms.

20 CLERK OF THE COURT: Prosecution's document
21 No. 687 will receive exhibit No. 2183 for identifica-
22 tion only, and the excerpts therefrom, document No.
23 687-A, will receive exhibit No. 2183-A.

24 (Whereupon, the document above re-
25 ferred to was marked prosecution's exhibit

1 No. 2183 for identification; the excerpts
2 therefrom being marked prosecution's exhibit
3 No. 2183-A and received in evidence.)

4 MR. TAVENNER: I will read exhibit No. 2183-A.

5 "Excerpts from 'SATO Shinen's Ideal State' by
6 IKAWA, Shumei.

7 "Finally, according to his belief, Japan,
8 being the first country in the world to be created,
9 is the foundation of all nations and ever since the
10 beginning, it has been the primary mission of Japan
11 to protect all nations of the world to live in peace
12 and safety.

13 "He therefore established a most concrete
14 policy as regards the way in which Japan should ac-
15 complish her Divine Mission to give orders to all the
16 nations. (Page 47)

17 "His brilliant brain, taking into consideration
18 the international position of Japan, perceived the
19 danger rather than the crisis and fate of our country.
20 Hence, he warned that if the maritime provinces of
21 Siberia are not occupied to prevent the southward ad-
22 vance of Russia on one hand, the South Sea Islands not
23 taken to prevent the northward advance of England on
24 the other hand, Japan will not be able to solidify the
25 foundation of her national strength. (Page 50)"

1 MR. BROOKS: I would also like to call to the
2 Court's attention that this is the same excerpt from
3 the history of SATO Shinen of two hundred years ago.

4 THE PRESIDENT: There is nothing to prevent
5 the modern Japanese from adopting his attitude.

6 MR. TAVENNER: Document No. 2902 is a copy of
7 a letter from OKAWA to TOJO. The original of this
8 letter cannot be found, so there is attached to the
9 document an affidavit by HAYASHI, the interpreter who
10 translated the original document and who states that
11 the copy is a true and accurate translation of the
12 original which he had in his possession in October 1945
13 when he made the translation, and also there is attached
14 the affidavit of Captain H. E. Thompson, Chief of
15 Civil Intelligence Section, stating that the original
16 cannot be located. There is also attached to this
17 document an interrogation of the accused OKAWA which
18 is intended as a further authentication of the copy
19 and for the purpose of establishing the year 1940 as
20 the year in which the letter was written. I offer in
21 evidence prosecution document No. 2902 with the affi-
22 davits and interrogation mentioned.

23 MR. BROOKS: If the Court please, I object to
24 its introduction. The defense has not been served with
25 a copy; none of the defense counsel have a copy of 2902.

1 THE PRESIDENT: The rules will be observed,
2 Mr. Tavenner.

3 MR. TAVENNER: My information was that the
4 rules were complied with several days ago with regard
5 to this document. There may be some mistake.

6 THE PRESIDENT: You may look into the matter
7 during the luncheon adjournment. We will adjourn until
8 half past one.

9 (Whereupon, at 1200, a recess
10 was taken.)
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AFTERNOON SESSION

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3 The Tribunal met, pursuant to recess,
4 at 1330.

5 MARSHAL OF THE COURT: The International
6 Military Tribunal for the Far East is now resumed.

7 THE PRESIDENT: Colonel Warren.

8 MR. WARREN: If the Tribunal please, during
9 the noon recess defense counsel held a meeting and
10 discussed a matter of grave importance to us, I
11 think to the entire conduct of the trial. The matter
12 of particularly pressing moment at this time is in
13 reference to our motions to dismiss.

14 In accordance with the Tribunal's permission
15 given to us in the past, there will be an overall
16 general motion to dismiss, and, in addition, there
17 is being prepared and processed motions for all of
18 the accused. From the number of documents and other
19 matters called to our attention, we had anticipated
20 that the prosecution would continue in their present-
21 ation of their phases of the case for a longer period
22 of time than apparently they contemplate at the
23 present time. Due to the very nature of the motions,
24 which, of course, are directed to the evidence, it
25 has been necessary that defense counsel, in order to

1 make at least a presentable appearance -- or at least
2 a semblance of a decent argument -- to the Tribunal,
3 that we delay the commencement of the preparation of
4 our motions as long as possible.

5 As matters now stand, it, of course, goes
6 without saying that our motions to some extent must
7 be anticipatory of the evidence which will be
8 introduced and which has been introduced from the
9 time we started processing.

10 Now, we have stated in the past, and the
11 situation still remains static, that is, we do not
12 have and have never had sufficient help to carry
13 out the mechanics of the tasks assigned to us.
14 Setting aside every other thing that we have, there
15 are enough motions and arguments in process now to
16 where I have been informed that it would be impos-
17 sible to complete merely the mechanics of running
18 them off on the Mimeograph machine today or tomorrow.
19 We, of course, had expected some assistance from the
20 prosecution's translation section and from some of
21 their clerical help which they have promised, but
22 so far they have been unable to give us any assis-
23 tance. The defense counsel consequently have requested
24 that I request the Tribunal to give us a recess until
25 next Monday, rather an adjournment until next Monday,

1 regardless of what time this week the prosecution
2 may finish their case in order that we can complete
3 the mechanics of the preparation of our motions.

4 They have also asked me to express our
5 apprehension for the future events to come that we
6 will not have sufficient help -- mechanical help
7 and things to get our case out in time as we should.
8 We, therefore, request the Tribunal to give us such
9 assistance as they can in that matter.

10 Thank you, sir.

11 THE PRESIDENT: You and Mr. Logan and
12 other defense counsel spoke to me during the lun-
13 cheon adjournment about these matters, Colonel Warren,
14 and I did suggest that you bring them up here this
15 afternoon. I understood your difficulty was due to
16 the shortage of staff and not to a desire to hear
17 the last word of the prosecution's evidence before
18 you prepared your motions. It may be that prose-
19 cution cannot assist you fully until they have pre-
20 pared to meet those motions.

21 I have mentioned this matter to two or
22 three of my colleagues. I have not had an opportunity
23 to speak to all of them, but I feel, though, that we
24 are prepared to give you whatever extra time is
25 required. But, I am sure that we would all expect

1 you to be ready not later than Monday next.

2 MR. WARREN: Apparently, your Honor, I
3 did not make myself clear on one point. In stating
4 that this was a motion that went to the evidence
5 and we had not heard all of the evidence, I did
6 explain that our motions must of necessity become
7 anticipatory with reference to some phases. We are
8 working now, but the reason I explained that was
9 to show to the Tribunal the reason we had delayed
10 as long as we thought we could and get in under the
11 wire. As a matter of fact, most of our motions and
12 the arguments have already been completed. It is
13 a mechanical difficulty, and your Honor was correct
14 in your interpretation of our committee's intentions
15 at noon.

16 Thank you, sir.

17 THE PRESIDENT: Do you suggest you will be
18 ready to move your motions on Monday, or merely that
19 your papers will be in order then?

20 MR. WARREN: We anticipate, your Honor,
21 that we will be ready to start presenting our
22 motions on Monday.

23 THE PRESIDENT: That means the prosecution
24 will be served before Monday. They must get some
25 notice, however short. We will have to hear them on

1 that, of course.

2 MR. WARREN: Yes, we had taken that into
3 consideration.

4 THE PRESIDENT: Mr. Higgins.

5 MR. HIGGINS: Mr. President, we would
6 like to have the benefit of an examination of those
7 motions -- arguments that they have already prepared
8 because our replies will be a matter of some time
9 to us and the sooner we get them, the sooner we will
10 be in a position to accommodate the defense by the
11 lending of some of our personnel -- the use of some
12 of our personnel.

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1 THE PRESIDENT: The two motions already
2 filed are very short and we would expect the others
3 to be short.

4 MR. WARREN: Your Honor, we will be prepared
5 to present to the prosecution immediately upon the
6 close of their case everything that we have processed
7 and in the mimeograph form. After that we shall be
8 prepared as soon as the document is completed and
9 in final form draft to give them a typewritten copy.

10 THE PRESIDENT: I think I can say in behalf
11 of the Tribunal that if you undertake to be ready
12 on Monday we will give you until then.

13 MR. WARREN: Thank you very much, your Honor.

14 THE PRESIDENT: There is another matter,
15 Colonel Warren. Colonel Hanley said that the
16 defense desired the accused to be brought into the
17 War Ministry every day during the recess in order
18 to facilitate the preparation of the defense case.
19 I think I can say in behalf of the Tribunal that
20 if the persons responsible for security are satis-
21 fied, the Bench will raise no objection. It may be
22 that proper facilities are not available at Sugamo
23 for so many, but we do not readily interfere with
24 security measures.
25

1 MR. WARREN: Yes, your Honor, I appreciate
2 that. Not only is it a question of all that; it is
3 a question of transportation. It will save us
4 literally hours of time which we can apply to the
5 preparation of this case, which it is our earnest
6 desire to do, and if it can be worked out we cer-
7 tainly will appreciate it.

8 THE PRESIDENT: Mr. Tavenner.

9 MR. TAVENNER: If the Tribunal please, the
10 question was raised as to whether or not prosecu-
11 tion document No. 2902 had been served on defense
12 counsel. I was advised during the noon recess that
13 we have a receipt showing that it was served on the
14 administrative office of the defense on the 16th of
15 January, four days ago. I therefore desire to offer
16 in evidence prosecution document No. 2902, together
17 with the two affidavits and the interrogation of
18 OSHIMA attached thereto -- OKAWA I meant to say.

19 THE PRESIDENT: Captain Brooks.

20 MR. BROOKS: Mr. President and members of
21 the Tribunal, I want to object to the introduction
22 of this document, first on the ground that there is
23 not a certificate of origin and authenticity as to
24 the copy of said letter, as to its origin.
25

1 THE PRESIDENT: OKAWA admits it, doesn't he?

2 MR. BROOKS: I will get to that, your Honor.

3 Second, it is not the best evidence and the
4 original letter should be produced so that the trans-
5 lations can be thoroughly checked and the date can
6 be authenticated.

7 As to the exhibit No. 4186, the interroga-
8 tion of OKAWA of the 11th of March, 1946, this is
9 being offered as a part of this exhibit, and due
10 to the mental condition of OKAWA, I haven't ques-
11 tioned thereon, and I do not believe that any ques-
12 tioning would achieve any results. However, I
13 asked associate counsel in the case, Mr. Blewett,
14 to question Mr. TOJO as to this letter, and he
15 denies any letter whatsoever. I asked the prosecu-
16 tion if in their examination of TOJO they have any-
17 thing on this it should be brought to light in
18 connection with this matter, because we do not have
19 that mental condition in his case.

20 I should also like to further object to the
21 last question on prosecution document No. 4186 in
22 that it is a double question, and I ask that the
23 answer be stricken, as it could not be responsive
24 to such a question; and the Japanese translation
25

1 is not a simple yes.

2 I call that to the attention of the trans-
3 lators.

4 THE PRESIDENT: The objection made by
5 Captain Brooks is met by the admission in OKAWA'S
6 interrogation, if the interrogation is proved.
7 The last question is not objectionable, in view of
8 the admission immediately preceding it. It merely
9 follows up what is already admitted. These inter-
10 rogations, like police interrogations in ordinary
11 criminal cases, are always put in the form of lead-
12 ing questions. That is the only way to effective-
13 ly interrogate in such circumstances. Suspects who
14 are interrogated are not regarded as police wit-
15 nesses -- prosecution's witnesses being examined
16 by judicial process.

17
18 The objection is overruled and the document
19 is admitted on the usual terms.

20 CLERK OF THE COURT: Prosecution document
21 No. 2902 will receive exhibit No. 2184.

22 (Whereupon, the document referred to
23 above was marked prosecution's exhibit 2184 and
24 received in evidence.)
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MR. TAVENNER: I will read exhibit 2184:

"To: Hideki TOJO, #25 - 2 chome KIFAZAWA,
Setagaya-ku.

From: Shumei OKAWA, #231 - 4 chome Kami-
Osaki, Shinagawa-ku. 21 July 19__

"Your Excellency:

"During these turbulent times your duties must
keep you very busy; but because you are the one hope
of Japan, I pray that your most important mission with
regard for the welfare of the people is thoroughly
accomplished.

"But for the insincerity of the Minister of
Finance the United States Loan Agreement question is
almost settled as you know. Will you please exert
your wholehearted efforts in alleviating this condition.

"General Chiang Kai Shck's only salvation is
to obtain aid from the United States; therefore if the
above-mentioned agreement is completed it will be a
lightning stroke obliterating China's only hope,
bringing about an immediate termination of the China
Incident and making it possible for Japan to proceed
in its southward advancement plan. This I believe is
the only solution to the present critical situation.

"It was my wish to confer personally with
you on this matter but because I am leaving for Manchuria

1 tonight, please accept this epistle instead."

2 I will read from the accompanying interroga-
3 tion of OKAWA the last two questions and answers.
4 After setting forth the letter in question, this ques-
5 tion is asked:

6 "Did you write that letter?

7 "A Yes, I think so.

8 "Q You remember this letter very well now that
9 I read it to you? You wrote it on July 12, 1940?

10 "A Yes."

11 Colonel Woolworth will now address the Court.

12 THE PRESIDENT: Colonel Woolworth.

13 COLONEL WOOLWORTH: May it please the Tribunal,
14 It has been agreed by defense to waive the provisions
15 of Rule 6b(1) of Rules of this Tribunal as to the
16 introduction of excerpts from documents as follows:

17 Against HASHIMOTO: documents No. 13-c, 828,
18 1598, and 1875;

19 Against MINAMI: documents No. 1903, 827, 1426,
20 831, 1483, 1869;

21 Against UMEZU: documents No. 1483, 1144-A,
22 1144-B, 1144-C, 1144-D, 1144-E.

23 Prosecution has agreed to have processed for
24 defense such further excerpts from said documents as
25 reasonably may be required.

1 HASHIMOTO conspired, led and instigated
2 aggressive warfare on the part of Japan, with announced
3 purpose of having Japan control all East Asia, China,
4 Burma, Siam, Philippines, Malaya and the Netherlands
5 East Indies.

6 He was the author of many books, pamphlets
7 and articles advocating such action.

8 He was one of those responsible for the March
9 and October, 1931, incidents.

10 He conspired with Major CHO and Dr. OKAWA
11 and others to bring about the Manchurian incident.

12 He was founder of the Sakura Kai, Dai Nippon
13 Seinento (Greater Japan Youth Party), and its
14 successor Dai Nippon Seikisei-Kai; Permanent Director
15 of IRAA, Director of IRAPS, Vice President and Chief
16 of Staff of GHQ of IRAA Youth Corps, permanent director
17 of Greater East Asia League -- all of which organiza-
18 tions fostered plans for wars of aggression in viola-
19 tion of treaties and international law.

20 I will now offer documents to prove the
21 above facts.

22 Prosecution document No. 13-C was introduced
23 for identification only as exhibit 675, record page
24 7348. I now desire to offer in evidence additional
25 excerpts from this document which have not as yet been

read.

1 THE PRESIDENT: Admitted on the usual terms.

2 CLERK OF THE COURT: Prosecution document
3 No. 13-C, further extracts therefrom, will be given
4 exhibit No. 2185.

5 (Whereupon, the document above referred
6 to was marked prosecution's exhibit No. 2185 and
7 received in evidence.)

8 COLONEL WOOLWORTH: I will now read the marked
9 portions of this document, exhibit 2185:

10 "Excerpts from the article entitled 'A
11 Message to Young Men' ('Seinen Shoshi Ni Tsugu') by
12 Kingoro HASHIMOTO, published in the 'Taiyo Dai Nippon'
13 17 December 1936.

14 "This August I retired from active military
15 service and entered with high spirit the front line of
16 the renovation movement. When one is in the military
17 profession, the prosecution of his own aspirations is
18 restricted in no small degree, but when one retires
19 from public life, he finds himself in the happy situ-
20 ation of being able, if he would only try, to work
21 fully from a broadminded, high viewpoint. I decided
22 at once to begin a new action for the next generation
23 and organized the Greater Japan Young Men's Party
24 (Dai Nippon Seinento).
25

1 "Our aim is renovation. In order to effect
2 renovation, blood and enthusiasm are absolutely
3 essential. The blood and enthusiasm thus required
4 are the possessions of young men.

5 "From the physical point of view, old people
6 never can accomplish such a great work as the second
7 creation of the world. For the sake of the renovation
8 I hope that pure, sincere and ardent young people will
9 surely succeed in it. To make young men become the
10 framework of New Japan and to unite the whole strength,
11 both tangible and intangible, of the Japanese race in
12 our Emperor, is the way to be loyal to our country,
13 and that is also the spirit of the Dai Nippon Seinento."

14 "Excerpts from the Article entitled: 'The
15 Reform of Parliamentary System' appearing in the Taiyo
16 Dai Nippon January 17, 1932, Page 1:

17 "Responsible government - Party Cabinet System -
18 runs absolutely counter to the Constitution. It is
19 the democratic government which ignores the 'Tenno'
20 government.

21 "Then what is the nature of state ministries?
22 The above mentioned 'Exposition of the Imperial Consti-
23 tution' says: 'The way for state ministries to serve
24 the Throne is to strive to encourage good and correct
25 wrongs, and if they commit any mistakes, they shall not

1 evade responsibility under the pretence of having made
2 them under Imperial command.' It further says:
3 'According to the Constitution, state ministers have
4 the heavy responsibility of assisting the Throne and
5 possess great administrative powers. They not only
6 occupy posts of making decisions on their own responsi-
7 bility, but also have the duties of correcting wrongs.
8 Hence, they should themselves bear responsibility for
9 them!'

10 "No matter how much the existing political
11 parties, imitating the constitutional system of Europe
12 and America, might try to make it the basis of party
13 government under the pretence of responsible govern-
14 ment, it is very clear that it runs counter to the
15 'Tenno' government, which has been established firmly
16 since the founding of our Empire, and which remains
17 solemnly unshaken in the constitution granted by the
18 Emperor.

19 "Dissolve the Political Parties at Once.

20 "They who destroyed the national structure,
21 desecrated the Constitution and corrupted the govern-
22 ment, not realizing their faults, are now bewildered
23 by the demand for the rejection of party government
24 and the reformation of the parliamentary system and are
25 trying their best to glorify their own rule by deceiving

1 the people in the name of 'Movement for the defense
2 of the Constitution.' "When we consider their dangerous
3 anti-national structure, political ideology and their
4 aggressive evils, we believe it most urgently necessary
5 first of all to make a scapegoat of the existing
6 political parties and destroy them for the sake of the
7 construction of a cheerful new Japan."

8 At the bottom of page 2:

9 "Excerpts from the article entitled, 'Powers
10 are Desperately Building Up Air Forces - Build Up an
11 Invincible Air Force,' appearing in Taiyo Dai Nippon
12 July 1, 1937, Page 1:

13 "In comparison with such desperate efforts
14 of the powers to enlarge and reinforce their air
15 forces, Japan is in a pitifully poor condition at present.
16 If we allow things to remain in their present state,
17 it is certain that there will be an irretrievable handi-
18 cap between Japan and the other powers in the future.
19 Especially how shall we be able to battle against the
20 Soviet Union which is not making irresistible progress?

21 "The declaration by Kingoro HASHIMOTO says:

22 'Make an invincible air force the mainstay of armaments,
23 get rid of the concept that the air force belongs to
24 the army and foster instead the concept that it is the
25 air force of the State, the same as our ancient concept

1 of the sword.' In other words, the strongest and most
2 promising air force should constitute the mainstay of
3 armaments, with which we intend to complete an invincible
4 structure."

5 "Excerpts from the Article entitled, 'The
6 Greater East Asia Sphere under Imperial Influence
7 (Dai Toa Koka Ken)' by Kingoro HASHIMOTO, President
8 of Dai Nippon Sekisei Kai, appearing in Taiyo Dai
9 Nippon, January 5, 1942, page 1:

10 "The war to bring an end to the Euro-American
11 culture which has dominated for several centuries the
12 peoples of the whole world, has been started. The
13 blow struck in the Pacific on the 8th of December, 1941,
14 is a blow of initiation of the movement for the turn-
15 ing of world history. The world culture based on the
16 old principle of domination will probably meet doom
17 with a violent crash.

18 "The utmost efforts of the leaders of the
19 world to avert such a situation were all in vain.
20 History, like the universe, revolves in a stately form.
21 It is beyond the power of man to control it. Why does
22 history revolve so? People may say: 'from liberalism
23 to totalitarianism; from national economy to regional
24 economy; from the old order to the new order.' But
25 there are merely superficial views of the matter. The

1 world is striding forward as if it were the divine
2 will, toward a greater higher and truer principle of
3 governing mankind.

4 "The present great world upheaval is a
5 scene of strife where we are groping for a high
6 philosophy and principle of governing mankind. Seeing
7 this scene of strife, 'Amano Minakanushi No Kami' (the
8 creator of the universe) must be very anxious to make
9 us grasp the highest principle of guiding mankind.

10 "Well, then, what is the highest principle of man-
11 kind? That is our national structure. It is the great
12 ideal of 'Hakko Ichiu' (universal concord).

13 "Such capitalism and communism have no
14 significant philosophy nor any humanitarianism, and
15 yet Britain, America and U.S.S.R. have theologized
16 these shallow principles, and have tried to exploit
17 the people of the world. But they have now reached
18 their last days in the present great world war.
19 Hitler said that the present great world war was a
20 war of the outlook of the world. I would like to say
21 that it is a war for the establishment of a guiding
22 principle. It should be called a war for the establish-
23 ment of the great ideal of 'Hakko Ichiu.' Whether
24 we like it or not, the world is progressing steadily
25 toward the above-described guiding principle.

1 "The Greater East Asia Co-Prosperity Sphere
2 and the European Co-Prosperity Sphere of Germany and
3 Italy are the manifestations of this progress. The
4 North and South American Co-Prosperity Sphere is, in
5 its pattern, a similar manifestation, although it is
6 still bearing the name of old capitalistic guiding
7 principle for co-prosperity, it is certain that it will
8 have to rely on our guiding principle some day in the
9 future. Among those three regional blocs, the Greater
10 East Asia Co-Prosperity Sphere possesses the highest
11 and most philosophical guiding principle. By guiding
12 principle, I mean the principle of 'Hakko Ichiu', a
13 principle similar to that of the human body. And that
14 is why I call this sphere 'Dai Toa Koka Ken' (The
15 Greater East Asia Sphere under Imperial Influence).
16 That is, in the 'Koka Ken', the constituent countries
17 form an organic whole, with Japan as the brain, grow-
18 ing and developing as one living substance under the
19 august virtues of His Majesty the Emperor. If it is
20 only a horizontal federation of the countries of
21 Greater East Asia, it not only lacks life, but is
22 also very far from the ideal of 'Hakko Ichiu.'

23 "It follows that, as the first cardinal point
24 of the Greater East Asia Co-Prosperity Sphere under
25 Imperial Influence, the races of Greater East Asia

1 must religiously grasp the above described principle.
2 Otherwise, it would be meaningless. In order to
3 achieve this, first of all the Yamoto race must be
4 fully imbued with this principle and disseminate and
5 inculcate it into other races. The Yamoto race must
6 be fully imbued with and practice this principle. This
7 is Showa Renovation. Without this it is not possible
8 to establish the Greater East Asia Sphere under Imperial
9 Influence.

10 "In fixing the limits of the Greater East
11 Asia Sphere under Imperial Influence, we must turn
12 our attention first of all to national defense, because
13 however abundant our resources may be, and however
14 solid the political combination of the various races
15 may be, we shall be very easily destroyed by outsiders
16 if our national defense is deficient. From the
17 national defense point of view in the light of the
18 present world situation, it is absolutely necessary to
19 include the Pacific Ocean and Indian Ocean in our
20 national defense sphere. This is because we shall
21 automatically be able to control the countries of the
22 Sphere if we gain control of the seas. Little consider-
23 ation needs to be given to the armaments with reference
24 to countries within the Sphere, but armaments against
25 those outside the Sphere are necessary. The mainstay

1 of our national defense is our invincible air force.
2 From this standpoint the minimum requirement is the
3 inclusion of islands within the line extending in the
4 east from Hawaii and New Zealand, and in the West
5 from the Persian Gulf eastward. In the north it is
6 necessary to take possession of the Aleutian Islands.
7 I refrain from saying here about the U.S.S.R. sector,
8 but you can imagine what I want to say. Besides these,
9 Japan, Manchuria, China and other countries on the
10 continent should be added of course, and further, great
11 naval ports are necessary in the northern part of Japan,
12 Singapore, the southern point of India, Sidney, and
13 Davao. With these places as operational bases, it is
14 necessary to establish many air bases and bases for
15 minor war vessels in the neighboring islands. By means
16 of a series of operational spheres of our air forces,
17 we should ensure the safety of the Greater East Asia
18 Sphere under Imperial Influence, and at the same time
19 post a considerable army on the continent and other
20 countries of the Sphere under Imperial Influence.

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I turn next to page 8. "Excerpts from
Article entitled 'Clear the Clouds from the East
Asia Sky' by HASHIMOTO, Kingoro, which appeared
in the 1 May 1939 issue of the Taiyo Dai Nippon:

"On coming back to the homeland from the
battlefield, the first pledge I made is to 'pay
homage to the soldiers.' We can pay no higher
homage to them in leading the China Incident to its
solution, and the cardinal point of the solution
lies in solving the problems in connection with
England and the Soviet Union who assist Chiang Kai-
Shek. Without solving these problems, all our ef-
forts in destroying Chiang Kai-Shek would be fruitless.
The longer we fight, the firmer the Chinese people will
unite, adoring Chiang as their hero. Chiang Kai-Shek
is a puppet fed and manipulated by England and the
Soviet Union. Therefore, the key of solving the Chi-
nese problem lies in the destruction of those supporters
of Chiang.

"The chief supporter is England rather than
the Soviet. She has great interests in China, and as
her retreat from China leads necessarily to her re-
treat in India and in her other territories in Asia,
it is perfectly natural that she is making desperate
efforts to stick to China.

1 "When we overthrow England, the Soviet Union
2 will be left alone. To begin with, it is unnatural
3 and impossible for the Soviet Union to make an alliance
4 with England. Communism, which is the fundamental
5 principle of the Soviet Union, advocates a challenge
6 to capitalism. It was the failure in our foreign policy
7 to have made Russia intent on the oriental affairs.
8 If we show our decision to attack England, the Soviet
9 Union will immediately turn the point of her spear to-
10 ward India, the treasure house of capitalism. We must
11 defend on the north and advance toward the south. Our
12 destiny will be decided in the south.

13 "I have heard recently of the need of strength-
14 ening Axis collaboration. From the viewpoint that the
15 success in solving the China Incident depends entirely
16 upon the expulsion of England, the policy of Germany
17 and Italy to destroy England and France are on the same
18 foundation with that of Japan. Accordingly, we must
19 instantly expand and strengthen the hitherto superficial
20 Tri-Partite Pact, including democracy as well as com-
21 munistism as the object of attack. If we strengthen our
22 collaboration, it is easy to put an end to England and
23 France. In Europe, Germany and Italy will eliminate
24 communism and democracy, the two enemies of human
25

1 civilization, and in Asia, in the area east to India
2 at least, Japan will expel those countries which are
3 founded upon communism and democracy."

4 "Excerpt from Article entitled, 'Expel the
5 British Influence from the Far East' by HASHIMOTO,
6 Kingoro, which appeared in the 15 May 1939 issue of
7 Taiyo Dai Nippon:

8 "Under the present condition, it is very
9 easy to beat England. We have only to say decisively
10 that we will occupy Hong Kong and her concession in
11 Shanghai. How can the British troops come to the Far
12 East? The British fleet will not be able to enter
13 Singapore. For we have our peerless aviators in addi-
14 tion to the fleet! Even though England is wealthy, she
15 will suffer greatly if her warship which costs 100,000,000
16 yen will be sunk by our 300,000 yen airplane. Even if
17 we need 100 airplanes to sink a warship, the account
18 is entirely on our side."
19

20 "Short Cutting Remarks on the Present Situa-
21 tion by HASHIMOTO, Kingoro which appeared in the 1 June
22 1939 issue of Taiyo Dai Nippon:

23 "It is a humiliation to have a talk with
24 England."

25 "Define England as the enemy!"

"Our way is one: Expulsion of England."

1 "Arm the Axis!"

2 "The enemy that blocks our way to the South
3 is England."

4 "Excerpts from the article entitled 'The
5 Solution of the Incident Depends upon the expulsion
6 of England' by HASHIMOTO, Kingoro, which appeared in
7 the 20 June 1939 issue of the Taiyo Dai Nippon:

8 "If it had not been for the support of Eng-
9 land, the Chiang Government would have been already
10 destroyed. It is clear that if we attack England,
11 the Incident will be brought to an end immediately.

12 "The Premier and the Foreign Minister have
13 told us that it is necessary to strengthen the Axis
14 collaboration, but they have been hesitating to con-
15 clude the Military Alliance. It is because they are
16 afraid of England. If the Tri-Partite Military Alliance
17 is useful in solving the Chinese problems, we must
18 instantly proceed toward it.

19 "The foreign concessions in Tientsin are
20 blockaded. This is an opportune moment to start the
21 attack. Because the whole nation has recognized its
22 necessity, the Government should avail itself of this
23 opportunity and attack instantly. The attack should not
24 be stopped at Tientsin, but extended to Shanghai and
25 to Hong Kong. This is the only possible solution of the

1 China Incident. We have no choice. Fight England!"

2 "Excerpt from an article entitled, 'Organize
3 a Class A Wartime Cabinet that has no Fear of England
4 and the Soviet Union' by HASHIMOTO, Kingoro appearing
5 in the 10 July 1939 issue of the Taiyo Dai Nippon:

6 "Now our real opponents are England and the
7 Soviet Union. When there is only one way ahead of us,
8 why are we hesitating? Are we afraid of economic
9 blockade? Even if it should be enforced, it is only
10 a group of plutocrats that suffer. Japan as a whole
11 can make her way through with a complete wartime system
12 in which every subject returns his property to the
13 Emperor.

14 "A Government without policy and decision is
15 a great obstacle in the way of the nation. It is passion,
16 power and blood that matters. We have nothing to fear.
17 What we need now is a wartime cabinet with the highest
18 authority."

19 "Excerpt from an article entitled 'Build a
20 State Union of China and Manchukuo with Japan as its
21 Leader' by HASHIMOTO, Kingoro, which appeared in the
22 20 July 1939 issue of Taiyo Dai Nippon:

23 "The public opinion of the whole people has
24 taken an anti-British turn. This is natural and satis-
25 factory, but a deplorable fact is that we Japanese do

1 not know what to do with China. My opinion is as fol-
2 lows:

3 "1. The thorough destruction of the old order
4 is necessary. We must destroy the Kuomintang Govern-
5 ment, and the economic, political and ideological in-
6 fluences of England and Russia.

7 "2. China and Manchukuo should organize a
8 state union with Japan as its leader. We must organ-
9 ize a self-supplying bloc within the Far East, and that
10 economical, defensive bloc must be led by Japan, the
11 savior of East Asia. We should then have friendly
12 terms with those countries that recognize our union
13 state, and allow no commercial relations with other
14 countries."

15 "Excerpt from an article entitled, 'No More
16 Compromise!' by HASHIMOTO, Kingoro, which appeared in
17 the 25 September 1941 issue of Taiyo Dai Nippon:

18 "I have often pointed out that England and
19 America have been hostile to us throughout the China
20 Incident. The Government authorities also have re-
21 cently warned the nation of this fact. Moreover,
22 have they not been taking such challenging attitudes
23 as to give birth to the term 'ABCD bloc?' The abol-
24 ishment of the commercial treaty by England, America's
25

1 freezing of our funds and Anglo-American economic
2 embargo of Japan is a declaration of war. There is,
3 no hope of readjusting the friendly relations between
4 Japan and the two countries. Germany and Italy have
5 already gone into a state of war with America. What
6 Japan should do now is clearly expressed in the Tri-
7 Partite Pact.

8 "The Incident will come to an end when the
9 leaders of China become aware of the true facts and
10 become oriental again. If we should put an end to
11 the Incident now, by compromising with England and
12 America, China will be left as she has been - dependent
13 on England and America. If this should happen, how
14 could we apologize to the war dead who have sacrificed
15 themselves for the cause?

16 "The Government seems to be taking the atti-
17 tude of an opportunist. It is not a good attitude.
18 We Japanese must decide by ourselves. It is up to us
19 to create our own victorious history."

20 I offer for identification only prosecution
21 document No. 828, which is the "10 Day Report from the
22 Home Ministry of 11 January 1941," and from this docu-
23 ment I desire to introduce in evidence Section 2.

24 THE PRESIDENT: Admitted on the usual terms.

25 CLERK OF THE COURT: Prosecution's document

1 No. 828 will receive exhibit No. 2186 for identifica-
2 tion only, and the excerpt therefrom, bearing the same
3 document number, will receive exhibit No. 2186-A.

4 (Whereupon, the document above re-
5 ferred to was marked prosecution's exhibit
6 No. 2186 for identification, the excerpt
7 therefrom being marked prosecution's exhibit
8 No. 2186-A and received in evidence.)

9 MR. WOOLWORTH: I will read exhibit 2186-A.

10 "II. The conditions of Sekiseikai meetings
11 in the Central and Western Districts. Sekiseikai
12 has been preparing for opening of meetings in Western
13 and Central Districts, and as per schedule the Cen-
14 tral Area meeting was opened in Kyoto on the second
15 of this month, and the Western Area meeting was opened
16 at Kokura on the ninth of this month."

17 THE PRESIDENT: You are reading another docu-
18 ment. It may be another translation of the same docu-
19 ment. The document we have opens this way: "The
20 conditions of the Ultra Nationalist meetings--"

21 MR. WOOLWORTH: If the Tribunal please, there
22 was a correction published on this document. There was
23 an error in translation, and the words "Ultra National-
24 ist meetings" and the words "Ultra Nationalist Society"
25 were stricken, and in their place was substituted

1 "Sekiseikai" meetings.

2 THE PRESIDENT: Our copies have not been
3 corrected yet.

4 MR. WOOLWORTH: There is a further correc-
5 tion in paragraph 3, the words "Ultra Nationalist
6 Society" are stricken - in the second line of paragraph
7 3.

8 THE PRESIDENT: It does not appear in our
9 copies in paragraph 3. Right at the end the words
10 appear, at the end of page 1.

11 MR. WOOLWORTH: It is the numbered paragraph
12 3, sir, toward the bottom of the first page, the sec-
13 ond line.

14 May I proceed?

15 THE PRESIDENT: Yes.

16 MR. WOOLWORTH: ". . . . and as per sched-
17 ule the Central Area meeting was opened in Kyoto on the
18 second of this month, and the Western Area meeting was
19 opened at Kokura on the ninth of this month.

20 "(1) Conditions of the Central Area meeting.
21 On the day in question they gathered at Kangyo Hall
22 in Okazaki Park, 5800 members attended and there were
23 two speeches by HASHIMOTO, Kingoro, President of the
24 society, and ADACHI, chief clerk. After the lecture,
25 inspection of members was held in the public square in

1 front of the meeting place and afterwards with all
2 members in formation, circled the park and went to
3 pay homage at Heian Shrine and from there to Hisaka
4 Shrine in twos and threes, and were dismissed.
5

6 "At this meeting, the President of the society,
7 H. SHIMOTO, advocated overthrow of England and
8 America just as he has always done in his customary
9 lecture, entitled 'Praying to Soldiers.' And regarding
10 the TOJO Cabinet he commented: (Since the outbreak
11 of China Affair, succeeding Cabinet has been
12 regarded with contempt by England and America but
13 now, for the first time, a cabinet has appeared which
14 has some power.) He also advocated southward advance,
15 and as epilogue he strongly emphasized: (Greater
16 East Asia Co-Prosperity Sphere is not suitable. We
17 should construct Greater East Asia under the Imperial
18 Influence Sphere as soon as possible. That time is
19 not to be counted by month but by days. In short it
20 is necessary for us to act at once.)
21
22
23
24
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1 ,"(2) Conditions of the Western District
 2 meeting. Members meeting was held that day at Kokura
 3 City Public Hall at 10.30 in the morning and there
 4 were 15000 members including 50 women assembled.
 5 After a resolution had been made and passed and the
 address of instructions by the President advocating
 wrongly, the passing of the resolution of the society,
 been given movements of every local branch offices
 central office were reported, the meeting finished
 20 then in a body, went to the military cemetery
 On the way, HASHIMOTO, President, ADACHI,
 clerk, and NISHIBE, head of the Western
 office, riding their horse reviewed the members.

16 lock in the afternoon the lecture meeting
 17 at the meeting place. However, there was no
 18 of the members and there were only
 19 present and amongst them there were
 20 ers. HASHIMOTO, the President, and
 21 erk, gave lectures almost identical
 22 Central District meeting, but
 23 ism was felt.
 24 for boosting of moral support
 25 sident of SEKISEIKAI, HASHIMOTO
 of our in Kwansai District,
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1 ,"(2) Conditions of the Western District
2 meeting. Members meeting was held that day at Kokura
3 City Public Hall at 10.30 in the morning and there
4 were 15000 members including 50 women assembled.
5 After a resolution had been made and passed and the
6 address of instructions by the President advocating
7 strongly, the passing of the resolution of the society,
8 had been given movements of every local branch offices
9 and central office were reported, the meeting finished
10 at 12.20 then in a body, went to the military cemetery
11 to pray. On the way, HASHIMOTO, President, ADACHI,
12 the chief clerk, and NISHIBE, head of the Western
13 District office, riding their horse reviewed the members.
14 At three o'clock in the afternoon the lecture meeting
15 was held at the meeting place. However, there was no
16 enthusiasm among the members and there were only
17 about 1800 people present and amongst them there were
18 extremely few members. HASHIMOTO, the President, and
19 ADACHI, the chief clerk, gave lectures almost identical
20 with one given at the Central District meeting, but
21 a feeling of unenthusiasm was felt.

23 "(3) Command for boosting of moral support
24 of southward advance. President of SEKISEIKAI, HASHIMOTO
25 Kingoro, now on a lecture tour in Kwansai District,
on the seventh of

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"(2) Conditions of the Western District meeting. Members meeting was held that day at Kokura City Public Hall at 10.30 in the morning and there were 15000 members including 50 women assembled. After a resolution had been made and passed and the address of instructions by the President advocating strongly, the passing of the resolution of the society, had been given movements of every local branch offices and central office were reported, the meeting finished at 12.20 then, in a body, went to the military cemetery to pray. On the way, HASHIMOTO, President, ADACHI, the chief clerk, and NISHIBE, head of the Western District office, riding their horse reviewed the members. At three o'clock in the afternoon the lecture meeting was held at the meeting place. However, there was no enthusiasm among the members and there were only about 1800 people present and amongst them there were extremely few members. HASHIMOTO, the President, and ADACHI, the chief clerk, gave lectures almost identical with one given at the Central District meeting, but a feeling of unenthusiasm was felt.

"(3) Command for boosting of moral support of southward advance. President of SEKISEIKAI (Ultra Nationalist Society) HASHIMOTO, Kingoro, now on a lecture tour in Kwansai District, on the seventh of

1 November directed members of head office to transmit
2 the following command throughout the whole country.

3 "Rise up resolutely, time approaches. Insti-
4 gate at once a powerful national movement, using
5 every kind of method (speeches, discussion, meetings,
6 posters, etc.) and begin a sweeping campaign against
7 sympathizers of England and America and at the same
8 time start a movement to inspire moral support of
9 'Advance Southward' program throughout the country."

10 I offer for identification document No. 1598
11 which is a book entitled "The Second Creation" by
12 HASHIMOTO, Kingoro, the 14th Edition, published 30
13 January 1941. I offer in evidence excerpts from this
14 document.

15 THE PRESIDENT: Admitted on the usual terms.

16 CLERK OF THE COURT: Prosecution's document
17 No. 1598 will receive exhibit No. 2187 for identifica-
18 tion only and the excerpt therefrom bearing the same
19 document number will receive exhibit No. 2187-A.

20 (Whereupon, the document above
21 referred to was marked prosecution's exhibit
22 No. 2187 for identification only; the excerpt
23 therefrom being marked prosecution's exhibit
24 No. 2187-A and received in evidence.)

25 MR. WOOLWORTH: I will now read exhibit 2187-A.

1 "Excerpts from 'The Second Creation' by
HASHIMOTO, Kingoro, 30 January 1941 (14th Edition)

2 "DECLARATION

3 "The world at present is facing an historic
4 turning point requiring great fundamental change
5 because the social system of materialistic liberalism
6 has come to a deadlock. (p. 1)

7 * * *

8 "At this juncture, any country that succeeds
9 in establishing a superior national structure, will
10 be able to lead the whole world. I think our country
11 whose national policy is 'eight corners under one
12 roof' (Hakko Ichin) should, with a bold leap, estab-
13 lish the national structure combining mental and
14 material culture, and become a glorious moral leader
15 of the world, by immediately displaying her original
16 character depending solely upon His Majesty with all
17 the capacity of the nation. In this sense, I propose
18 the following new national structure. (p. 1)

19 * * *

20 "III. Diplomatic Strides.

21 "Within our territory we should let different
22 races have limited self-government under a closely
23 connected organic system that would allow each race
24 to give full play to its strong points, so that the
25

1 racial, cultures may be elevated as a whole and the
2 influence of the Imperial benevolence may be realized.
3 This policy should be extended to the rest of the
4 world. (p. 2)

5 "IV. Strides in Military Preparations.

6 "Absolute war preparations should be completed,
7 enabling us to crush, at any time, countries which,
8 under different ideologies, may interfere with us
9 when we carry this national structure into operations.

10 "The principal part of our armaments should
11 be an invincible air force. We should lead the
12 nation to have the idea that airplanes belong to
13 the nation and the country, giving up the idea that
14 they belong to the Army, so that they may come to
15 bear the same confidence in aircraft that the Japanese
16 nation is known to have had toward the Japanese sword
17 from of old. (p.3) * * *

18 "If our overseas emigration and also the
19 export of our commercial commodities to foreign markets
20 should prove to be impossible, there is only one thing
21 left: The national policy to develop the Asiatic
22 Continent and to advance to the south, which Japan has
23 been carrying out in spite of the difficulties since
24 the Manchurian Incident. (p. 216) * * *

25 "Regarded from the Japanese standpoint, the

1 China Incident is undoubtedly an expansion and develop-
2 ment of the Manchurian Incident. Being afraid of
3 Japan's expansion on the Continent after the Manchurian
4 Incident, European and American powers have tried
5 every means to prevent it. For example, they blocked
6 the markets of our commercial commodities; Great
7 Britain influenced the United States to threaten
8 Japan in economic as well as military affairs.

9 Great Britain also instigated Soviet Russia to make
10 such unreasonably heavy war preparations in the Far
11 East, and tried to fish in troubled waters by causing
12 war between Japan and Russia. It is Great Britain's
13 plainest anti-Japanese policy to help the Chiang
14 Kai-shek Government and turn it against Japan. One
15 of her methods is seen in the fact that Great
16 Britain has interfered with the accomplishment of
17 our national policy toward the Continent by buying
18 out the pro-British elements in Japan. The China
19 Incident is really the outcropping of the conflict
20 between Japan and England on the stage of China.

21 (pp. 218, 219) * * *

22 "Japan and England are doomed to fight with
23 force of arms also in the near future, but as it is
24 the diplomatic policy to break down Great Britain
25 without using force, we consider it the most appropriate

1 policy to expel all British influence from China
2 first, and gradually to exclude British influence
3 from the East Asiatic united zone, by means of anti-
4 British pressure from the masses. (p. 236) * * *

5 "At present as the second World War is
6 raging, Great Britain is trying her utmost not to
7 offend Japan's feelings, but she will surely renew
8 her effort and strengthen her anti-Japanese policy
9 as soon as the European affair is settled. As far as
10 our country is concerned, now is the best opportunity
11 to overthrow Great Britain. (p. 237) * * *

12 "In diplomacy, too, it is best to concentrate
13 strength on the principal points and to smash them
14 one by one. At present, our diplomatic opponent is
15 England, so we must concentrate all our efforts upon
16 control over England. Our diplomatic policy toward
17 Soviet Russia must be decided from this standpoint.
18 Soviet Russia is a bogey-like country, and the extent
19 to which she can be trusted is very hard to understand,
20 but it is not wise to turn her into our enemy reck-
21 lessly. And all the more so since the conflicting
22 interests possessed by Soviet Russia and Japan in East
23 Asia are not so grave or significant as those existing
24 between Great Britain and Japan. (pp. 238, 239) * * *

25 "It is reasonable for us to be prepared

1 against Soviet Russia, which is an incomprehensible
2 country, solidify ideological and warlike preparations
3 to resolutely defy Soviet ideological or military
4 challenges, and be ready in power to overthrow her
5 on the spot, should she come and invade us. (p. 239)

6 "However, if a political pact were to be
7 reached from a broader point of view between Japan
8 and the Soviet Union to the effect that Russia will
9 adjust diplomatic relations with Japan and take the
10 offensive against Britain, all these pending procedural
11 problems will be solved of themselves. (p. 241) * * *

12 "The principle of our foreign policy is to
13 push activities viz a viz the powers on the one hand,
14 while on the other exerting its full strength toward
15 the re-establishment of China and the formation of a
16 united body of countries in East Asia. When this
17 united body has been formed, the actual power of our
18 country will be absolutely incomparable. Great Britain
19 and Soviet Russia will count for nothing. And if we
20 thus embrace the Continent of Asia and seize control
21 of the Pacific Ocean, then great forward striding
22 Japan will be recognized by the world as a leading
23 nation of the earth. (pp. 242, 243)."
24
25

1 I offer in evidence prosecution document
2 No. 1875, consisting of excerpts from the interrogation
3 of HASHIMOTO, Kingoro, conducted from 17 January to
4 18 February 1946.

5 THE PRESIDENT: Admitted on the usual terms.

6 CLERK OF THE COURT: Prosecution document No.
7 1875 will receive exhibit No. 2188.

8 (Whereupon, the document above
9 referred to was marked prosecution's ex-
10 hibit No. 2188 and received in evidence.)

11 MR. WOOLWORTH: I will read exhibit No. 2188:

12 "Excerpts from Testimony of HASHIMOTO, Kingoro,
13 conducted from 17 January, 1946 to 18 February, 1946.

14 "Q And in your examination of February 12
15 you denied having made the following statement which
16 was included in the publication entitled 'Sekai Saiken
17 No Michi' (How to Rebuild the World), which was published
18 30 January 1941: 'I would not say that is the only
19 reason, but anyway thereafter the Manchurian Incident,
20 withdrawal from the League of Nations, denunciation of
21 the Disarmament Agreement, the May 15 Incident, Shimpei
22 Tai, and the February 26 Incident took place in succession.'
23 When you denied making that statement in your examination
24 of February 12 you were mistaken on that point, were you
25 not?

1 "A It is in that book. I was mistaken on the
2 other day." (Case 343-10, Page 8-15 Feb. 46)

3 * * * * *

4 "Q Colonel, you said at the last hearing that
5 you were one of the founders of the Sakura Kai. Is
6 that true?

7 "A Yes.

8 "Q Who were some of the other members of
9 that society when it was formed?

10 "A The founder of this Sakura Kai is myself,
11 but there are a few others that were with me at the time
12 The sole founder of this society is myself,
13 and the others were more or less in the capacity of
14 assistants as secretaries, etc." (Case 343-6, Page 31-
15 22 January 1946)

16 * * * * *

17 "Q Do you know anything about the Greater
18 East Asia Co-Prosperity Sphere?

19 "A Yes.

20 "Q Describe to what geographical regions
21 this Sphere extended.

22 "A The approximate geographical sphere would
23 include India, the Philippines, China.

24 "Q Was Burma included?

25 "A Yes.

1 "Q You wanted to get the British out of this
2 Sphere?

3 "A Yes."

4 * * * * *

5 "Q You belong to the Dai Nippon Seki Sei
6 Kai?

7 "A I formulated that. (Case 343-6, Page 41-
8 22 January 1946)

9 "Q But sooner or later you did get around
10 to planning a coup de etat, didn't you?

11 "A This was not something that the Cherry
12 Blossom Society alone planned, but in October, 1931
13 there was the attempted 'October Incident' in which it
14 was planned to do away with the high government officials
15 in office and put in a new group.

16 "Q And prior to this October incident there
17 had been the 'March Incident' which had failed,
18 hadn't there?

19 "A Yes."

20 * * * * *

21 "Q Colonel, suppose you just tell us now the
22 names of those that planned the March Incident and the
23 names of those that planned the October incident.

24 "A I will start with the March incident. I
25 shall have to think a bit to bring to mind the names.

1 NINOMIYA, who is now dead. SUGIYAMA, who is also dead.
2 KOISO, he is alive. TATEKAWA, deceased, OKAWA, alive.
3 I think Major General NAGATA was involved, but am not
4 sure. Major IKEDA was somewhat involved
5 SHIGETO, yes. That is about all

6 "Q How about Major CHO?

7 "A Yes."

8 * * * * *

9 "Q The way it stands you admit plotting with
10 General TATEKAWA, General KOISO, General NINOMIYA,
11 General SUGIYAMA, and Dr. OKAWA to bring about the
12 March Incident and to bring about the October Incident;
13 but you deny any knowledge or complicity in the 2/26
14 Affair?

15 "A Yes, that is correct.

16 "Q You admit to active participation then
17 in two revolutions, but not three.

18 "A Yes."

19 * * * * *

20 "Q Did you have any part in the formation
21 of the Dai Nippon Seinen To?

22 "A After being retired in October 1936,
23 I organized this society.

24 "Q And you were president of the society,
25 were you not?

1 "A I was head of the society."

2 * * * * *

3 "Q Where was your regiment stationed at the
4 time of the Panay Incident?

5 "A At a place called Wuhu, on the Yangtze
6 River above Nanking.

7 "Q Who was the General in command over you
8 at that time?

9 "A Lieutenant General YANAGAWA.

10 "Q How did the attack on the Panay happen?
11 What caused it?

12 "A I had no knowledge of the Panay Incident
13 until the British gunboat Ladybird passed by Wuhu; I
14 shelled the Ladybird and took it into custody and at
15 that time the Commanding Officer of the Ladybird told
16 me he was going to the assistance of the Panay because
17 he had gotten word that the Panay was in trouble. This
18 was my first knowledge of the Incident. I simply knew
19 the Panay was downstream and did not know anything further
20 than that."
21

22 * * * * *

23 "Q Under whose orders did you act when you
24 shelled the Ladybird?

25 "This was under orders from Lt. Gen. YANAGAWA.
These orders read as follows: 'Nanking being in a state

1 of seige, and it appearing that enemy troops will attempt
2 to flee upstream, Colonel HASHIMOTO is to sink all
3 vessels proceeding toward Nanking without regard to
4 nationality.'"

5 That should appear as an answer.

6 THE PRESIDENT: We will recess for fifteen
7 minutes.

8 (Whereupon, at 1445, a recess
9 was taken until 1500, after which the
10 proceedings were resumed as follows:)
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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now resumed.

3 THE PRESIDENT: Colonel Woolworth.

4 MR. WOOLWORTH: May it please the Tribunal,
5 in the second line on page 3 should appear the letter,
6 in capital, "A." It was omitted.

7 (Reading):

8 "Q Colonel, when you came back from the battle-
9 field in China 25 March 1939, weren't you tendered a
10 great reception described as 'an unprecedented demon-
11 stration for the national restoration'?

12 "A The assembly was a good deal after my return.
13 As for the rest of your question, that is essentially
14 correct.

15 "Q You state there in your book that you dis-
16 solved the Dai Nippon Seinento and instantly estab-
17 lished the Dai Nippon Sekisei Kai and the following
18 policies were approved at the Third General Assembly
19 of the Association in 19 November 1939:

20 "1. Restroation of the nation.

21 "2. Stronger armament for the defense and
22 liberation of the Asiatic races.

23 "3. Asiatic autarchy.

24 "4. Attack Britain and her dominions.

25 "5. Imperialization of east Asia.

1 "6. Establishment of state union in Asia.

2 "A Point one, that is correct. Point two I
3 advocated a peerless air force. Point three is cor-
4 rect. Point four, whether I said it then or not I do
5 not know, but I hold those feelings.

6 "Q Aren't they set out in your book there?

7 "A This book has only through the Second General
8 Assembly. No, it is here! Point four is correct. I
9 say that to attack England is to bring to a conclusion
10 the China Incident. Point five -- I do not know what
11 you mean exactly -- I advocated independence of all
12 Asiatic nations. Six is correct.

13 "Q Colonel, when you published this book in 1941
14 including these attached outlines and histories of
15 your societies, you were a leader and an official and
16 a permanent director of the Imperial Rule Assistance
17 Association, weren't you?

18 "A That is correct.

19 "Q And the Premier KONOYE was the President of
20 the Imperial Rule Assistance Association, wasn't he?

21 "A Yes.

22 "Q Colonel, you stated in answer to some ques-
23 tions of mine on the 12th of February that in Taiyo Dai
24 Nippon you did not say in an article entitled 'Expel
25 the British Influence from the Far East,' that 'under

1 the present condition it is very easy to beat England.'

2 'Copy of the Taiyo Dai Nippon is shown to HASHIMOTO.)

3 "A Is that so?

4 "Q Was your answer true that you did not say any --

5 "A There is no mistake. I must have said it.

6 "Q And did you not say on the same day to me that
7 you did not say in an article in this paper under date
8 of May 11, 1939, 'We have only to say decisively that
9 we will occupy Hongkong and her concession in Shanghai.
10 How can the British troops come to the Far East?'

11 (Copy of the article is shown to HASHIMOTO.)

12 "A Yes, I made such a statement. It is something
13 I said a long time ago and therefore I did not remember
14 it very well. But if you look at it here (pointing to
15 the newspaper) you should find the correct statements.

16 "Q Then you want to correct the answer you made
17 on the 12th of February in which you said that you did
18 not make such a statement?

19 "A It is as written here.

20 "Q And it does say there in that article written
21 by you, in substance, 'that we have only to say de-
22 cisively that we will occupy Hongkong and her concession
23 in Shanghai. How can the British troops come to the
24 Far East?'

25 "A That is correct.

1 "Q And you did say in that same article that
2 the 'British fleet will not be able to enter Singapore
3 for we have our peerless aviators in addition to the
4 fleet?'

5 "A Yes, in substance -- but what is actually
6 stated here is that if we have these aforementioned
7 things the British Fleet will receive a crushing blow
8 before being able to enter Singapore.

9 "Q This quotation which you just read is from
10 the publication Taiyo Dai Nippon dated May 11, 1939,
11 which is part of document No. 13, is it not? (Indicating
12 copy of publication).

13 "A Naturally.

14 "Q And you were responsible for the publication
15 of that newspaper?

16 "A Yes.

17 "Q And that was published bimonthly, the 5th
18 and 20th?

19 "A Three times a month. It is not circulated
20 outside of the Sekisei Kai.

21 "Q How many members did that society have?

22 "A I do not believe there were over 20,000.

23 "Q And in this same article you said in sub-
24 stance: 'Even though England is wealthy, she will
25 suffer greatly if her warship which costs one hundred

1 million yen will be sunk by our three hundred thou-
2 sand yen airplane.'?

3 "A That is correct.

4 "Q Then you were mistaken when you stated on
5 the 12th of February that you had made no such state-
6 ment?

7 "A That is so. I did not remember.

8 "Q And in the issue of this same paper of June 1,
9 1939, did you say 'Define England as the enemy?'

10 "A Yes.

11 "Q Then you were mistaken when you stated in
12 the examination of 12 February that you did not make
13 such a statement?

14 "A Yes.

15 "Q And did you state in the issue of June 1 of
16 this paper, document No. 13, 'Our way is one -- expul-
17 sion of England?'

18 "A Yes.

19 "Q Then your denial of that statement was untrue.

20 "A I had no remembrance. Your interpretation
21 was not incorrect. My memory was in error.

22 "Q What is the title of that article there?
23 (Indicating article in paper)

24 "A It means on topics of the time, upon
25 matters of the moment, or something like that.

1 "Q It doesn't say 'Solution of incident depends
2 upon expulsion of England?'

3 "A Yes. (Comment by Interpreter: He admitted
4 that.)

5 "Q 'Does it appear there that you said, 'if it
6 hadn't been for support of England, the Chiang Govern-
7 ment would have been already destroyed?'

8 "A Those are essentially my ideas, but whether
9 it is here or not I do not know. (Looking at article
10 to see.) I do not see it here, but those were my
11 ideas in any case.

12 "Q Turning to the June 20, 1939 article, title,
13 'Expulsion of England in the Solution to the China
14 Incident,' did you state in that article substantially
15 as follows: 'The foreign concessions in Tientsin are
16 blockaded. This is an opportune moment to start the
17 attack, because the whole nation has recognized it is
18 necessary the Government should avail i'self of this
19 opportunity and attack instantly. The attack should
20 not be stopped at Tientsin but extended to Shanghai and
21 to Hongkong. This is the only possible solution of the
22 China incident. We have no choice -- fight England.'

23 "A In substance that is correct.

24 "Q Then you were mistaken when you made a
25 statement on the 12th of February that you did not say

1 that in this paper?

2 "A That is so. My memory was bad.

3 "Q When you denied that you published the state-
4 ment 'Don't hesitate to establish the Asiatic Bloc, this
5 is not an infringement of the Nine Power Treaty; if
6 others think it constitutes such an infringement, re-
7 nounce the treaty,' you were mistaken, were you not?

8 "A There is nothing about the Nine Power Pact in
9 this article. I made that statement in an article in
10 the issue of this same paper dated December 5, 1939.

11 "Q Then you were mistaken when you denied making
12 that statement in your examination of February 12?

13 "A Yes, I was mistaken. (Case No. 343-10, pages
14 4 to 7, inc. -- 15 Feb. 1946).

15 "Q You were in favor, however, of the expedition
16 into Manchuria, were you not?

17 "A Yes.....

18 "Q Did you make a statement advocating the
19 unification of the world under the Emperor, in which
20 you said 'The territories will include Japan, the
21 leader, Manchukuo, China, the far eastern part of
22 Soviet Russia, French Indo-China, Burma, Malaya, Dutch
23 East Indies, British East India, Afganistan, Australia,
24 New Zealand, Hawaii, Philippines, and islands on the
25 Pacific and Indian Oceans?

1 "A That I did say. I do not recall including
2 Russia or Hawaii. However, I did make such a statement.

3 "Q In fact, that plan has been in your mind and
4 been advocated by you for many years, has it not?

5 "A I have had such an idea for a long time.
6 (Case No. 343-7, page 5-6-- 12 February 1946.)

7 "Q You published a book, did you not, or were
8 author of it, entitled 'Inevitability of the Renova-
9 tion?'

10 "A Yes.

11 "Q I show you a document which is marked
12 'Document No. 488,' and ask you if you were the author
13 of that book?

14 "A Yes, I wrote it.

15 "Q Did you state in this book 'But what prevents
16 most seriously the progress of the world and the pros-
17 perity of the races is the assistance of England. Japan
18 has only to show her decisive attitude. We have only
19 to say that we will occupy Hongkong and Shanghai. Eng-
20 land knows that if she loses in China she must withdraw
21 also from India.'? This is the book published 25 Dec.
22 1940, called the 'Inevitabilit of the Renovation.'

23 "A Yes.

24 "Q Colonel, directing your attention to page 35
25 of this same publication that you admitted authorship of --

1 Did you not advocate the unification of the world
2 under the Emperor as expressed in the Imperial Edict
3 promulgated by Emperor JIMMU?

4 "A Yes, that is correct.

5 "Q Directing your attention to page 52. Did you
6 not say, 'This newly organized measure is the only way
7 for the complete promotion of the unification of the
8 world under the Emperor. And consequently our nation
9 has the right to establish a new order and a problem
10 like the China Incident can be considered as the be-
11 ginning of the establishment of this New World Order.?'
12

13 "A Yes, it is written there.

14 "Q Directing your attention back to page 36, did
15 you not say in substance that the world to come will be
16 divided into three blocks -- the American block with the
17 Monroe Doctrine, the Oriental block of the Oriental
18 Races, and the European block in Europe.

19 "A Yes, I did.

20 "Q And these three blocks will have to strive
21 for mastery?

22 "A Yes.

23 "Q And in promoting Japan to international
24 position, the most important point is the establish-
25 ment of the Japan-Manchukuo-China block?

"A That is so. In other words, the world will

1 be divided into three blocks, and we must make a block
2 also.

3 "Q Then you talk about how strong the Oriental
4 block must be made following the KONOYE declaration,
5 and then you make this statement: 'This new order
6 means a thorough destruction of the old world order
7 sustained by England, America, France, and the soviet
8 Union.' That is still on page 36.

9 "A Essentially those were my words.

10 "Q Now you further urged on the people through
11 this publication the 'expulsion of the Anglo-American
12 organization to exploit East Asia.'?

13 "A Yes, I made such a statement.

14 "Q Directing your attention to page 58, you are
15 urging a powerful Cabinet to accomplish these aims, and
16 you say 'It is beyond doubt that those nations like
17 Britain, America, and the soviet are scheming to op-
18 press Japan by having close touch with one another.'?

19 "A Yes, I made that statement.

20 "Q Now directing your attention to page 62 of
21 this same document No. 488, did you not say that -- the
22 nation which stands as the leader of the anti-Japanese
23 enveloping attack is Britain. Therefore the infliction
24 of the decisive blow on Britain, the leader, prior to
25 their thorough amalgamation is one of the first for

1 dispelling the others. Once Britain is defeated,
2 America will not act haughty, but if in spite of that
3 America shows signs of challenging us, she can easily
4 be knocked off by means of an individual attack; and
5 this is the only strategy through which Japan can win
6 her victory?

7 "A Yes, I made that statement.

8 "Q Then you went on to say on page 64, 'Fortu-
9 nately the cream of Europe, two mighty nations, are
10 extending their hands for an alliance with Japan.
11 Now is the critical moment for deciding the question
12 of creating the expanded greater Japan! The time has
13 come! If we do it now it can be done!'

14 "A Yes.

15 "Q Now, Colonel, we direct your attention to
16 page 71 of this same document and do we not find you
17 urging 'Germany and Italy are fighting against England
18 and France in order to overthrow the status quo and
19 to establish a new order. And it is needless to say
20 that the China Incident in Asia also is the Japanese-
21 Chinese united front against the Anglo-American
22 domination. When we take a strict view of the histori-
23 cal facts. Japan, Germany, and Italy have already gone
24 into an inevitable war against England, France and
25 America.'? Then you say 'Those who purposely refuse to

1 admit this fact are dependent upon England and America.'
2 Now I will ask you -- at this time that you published
3 this query to the Premier YONAI, wasn't he trying to
4 put an end to the China Incident and effect a friendly
5 settlement with England and America?

6 "A I do not believe they were."
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1 "Q What was the purpose of this exhortation?

2 "A I believe it was aimed at telling YONAI to
3 carry on and to bring about an end to the China
4 Incident.

5 "Q Then, Colonel, why did you say this -- 'If
6 you try to put an end to the China Incident in colla-
7 boration with England and America, you will never
8 be able to solve the problem. The instant you make
9 up your mind to expel England and America from China,
10 China will start moving toward a new order?' That is
11 on page 73.

12 "A It was not a fact that YONAI was trying to
13 bring to a close the China Incident. However, at
14 the time there was talk about working in conjunction
15 with the United States and England, and this was
16 written as a warning not to do so.

17 "Q Directing your attention to this same remarka-
18 ble document, page 115, do you not find yourself urging
19 on the people of Japan that 'Now is the time for
20 totalitarianism to rule the world?'

21 "A Yes, that is correct.

22 "Q And on page 122, you say 'The world is ad-
23 vancing from individualism to totalitarianism, and
24 in the future the nations in the world will be
25 united into one?'

1 "A Yes.

2 "Q And on page 131 you are writing about
3 ringing the loud alarm bell at the year end, and did
4 you not say under the date of 20 December 1940, 'The
5 world is now divided into two camps, the one camp is
6 for the status quo, and the other is for the new order.
7 Japan is not neutral. Our enemies of course....are
8 England and America who want to maintain the status
9 quo...Why should we hesitate to take a decisive
10 attitude toward America? ...Whatever form it may take,
11 the collision between Japan and America is inevitable.
12 We had best rise when it is not too late and estab-
13 lish a Co-Prosperity Sphere in the south. Nothing
14 ventured, nothing gained?'

15 "A That is correct.

16 "Q And then don't you refer a little later, on
17 page 135, to the war with China, which has been
18 curiously labeled 'an incident' as a 'holy war?'

19 "A Yes, that is correct.

20 "Q Now I believe, Colonel, that back in 1936
21 you published your rather famous 'Declaration of
22 HASHIMOTO Kingoro?'

23 "A Yes, that was the declaration of the society.

24 "Q But it is known and was labeled in your pub-
25 lication of it as the 'Declaration of HASHIMOTO

1 Kingoro?'

2 "A Yes.

3 "Q And you wrote it?

4 "A Yes.

5 "Q Directing your attention to it, did you say
6 'Methinks that our nation, which has the realization
7 of the unification of the world under the Emperor as
8 her national policy, should instantly manifest her
9 inherent nature in uniting all her people directly
10 under the Emperor?'

11 "A I do not know how the translation reads, but
12 essentially I said something of the sort -- that the
13 world would have to be united under the principle of
14 the Eight Corners Under the One hoof.

15 "Q I will direct your attention to your section
16 dealing with the advancement of our policy abroad. You
17 say in that section 'Within our dominion let each race
18 give a full play to their own characteristics by
19 giving them restricted local government under a close
20 organic system. Try to enhance their racial culture
21 as a whole and to materialize concretely the way of
22 the Empire. With this formula we must later work
23 upon the other parts of the world?'

24 "A That is essentially correct.

25 "Q In this same declaration of yours, Colonel,

1 made away back in 1936, you have got a section on
2 'Advancement of Armaments,' in which you said 'In-
3 crease our armaments to the amount absolutely nec-
4 essary for conquering other countries of different
5 principles that try to hinder us on our way toward
6 the realization of the Imperial Way. The essence of
7 the armaments should be the invincible air force
8 whose airplanes should be considered airplanes of the
9 nation, not only of the Army. Make the people trust
10 the airplane as they trusted the sword in the old
11 times?'

12 "A Yes, I did make such a statement.

13 "Q Now at the time this book was published, were
14 you an official in the IIAA?

15 "A I believe so.

16 "Q Now will you state just what position you
17 held in the IIAA at this time?

18 "A Somu. (Interpreter's Note: Which I believe
19 translates General Affairs Secretary.)

20 "Q You were also a permanent director, were
21 you not?

22 "A Yes.

23 "Q Quoting from the Japan Year Book for 1941-42,
24 in the article on page 175, entitled 'National Move-
25 ment for Assisting the Throne,' the following appears:

1 'The move is highly political in nature.' Isn't that
2 so?

3 "A Prince KONOYE originally thought of it as
4 being a political movement, but because of the clamor
5 in the Diet, all political action was stripped from it.

6 "Q The party aimed at 'superseding the old party
7 politics characterized by sectional interests and
8 predicated upon liberalism?'

9 "A That is substantially so.

10 "Q And it aimed at 'the concentration and
11 unification of all the forces and resources of the
12 nation?' Its activity extended to the whole life of
13 the nation, did it not?

14 "A Yes.

15 "Q Now quoting further from the Year Book, 'the
16 President controls the Association and directs the
17 movement; the Prime Minister is President ex officio.'
18 Is that true?

19 "A That is a question of terminology as the Prime
20 Minister is actually the President and under him the
21 man who controls the Association and directs the
22 movement thereof is known as the Vice President.

23 "Q Now, Colonel, if a new man became Prime Min-
24 ister he also became President of this Association,
25 didn't he?

1 "A That is correct.

2 "Q Colonel, as to the membership of the Associa-
3 tion, the Japan Year Book 1941-1942 states 'The Asso-
4 ciation for Assisting the Throne being a movement that
5 concerns the entire nation, every individual of the
6 Japanese race is by birthright qualified for membership
7 in it in the widest sense of the term.' Is that a
8 true statement?

9 "A Yes.

10 "Q As a matter of fact, the effect of this
11 Association was to create a single party in the Diet
12 replacing all the other political parties, was it not?

13 "A That was the aim; but the result was that
14 the Diet members fought the scheme and ultimately
15 succeeded in keeping the IRAA out of politics.

16 "Q Did nearly everybody in Japan belong to
17 this society?

18 "A One hundred million.

19 "Q Would you say that this Association largely
20 resembled a Fascist Party) (Comment by Interrogator
21 to Interpreter: Explain to him that we understand
22 that under the Japanese constitution there couldn't
23 be a one-party system, but ask him if actually this
24 was not the beginning of the instatution of somewhat
25 of a Fascist Party in Japan.)

1 "A Outside the realm of politics it worked to
2 unite the people as one and to follow the road behind
3 the Emperor.

4 "Q Colonel, wouldn't you say that this associa-
5 tion had accomplished the same thing in Japan in the
6 way of a national mobilization of efforts and re-
7 sources that the Nezi party did in Germany, or the
8 Fascist party did in Italy?

9 "A The only difference is that we had nothing
10 to do with politics.

11 "Q However, I will direct your attention back
12 to one of your first answers this morning, in which
13 you verified the statement in the Japan Year Book
14 that the 'movement was highly political in nature.'

15 "A It was originally political, but was even-
16 tually prohibited from having any part in political
17 action.

18 "Q Didn't you say the main purpose was to unify
19 the nation back to the military for defense of the
20 nation and its principles?

21 "A No, KONOYE was not thinking along these lines.
22 The political parties had disbanded and therefore
23 KONOYE thought, I believe, that this movement would
24 make it possible to have a new and strong single party.

25 "A And you agreed with him?

1 "A Yes, I agreed with him and worked towards
2 it. That was the reason I became a member of the
3 Preparatory Committee.

4 "Q Now I hand you a document marked 'Evidentiary
5 Document 490', and ask you to look at it. I show you
6 your picture in the front of the book. The name of
7 this book is 'How to Rebuild the World.' and I ask
8 you, did you write this book?

9 "A Yes.

10 "Q When?

11 "A Around 1941 I believe.

12 "Q Were you dissatisfied with the way the
13 IRAA was being run at this time?

14 "A No.

15 "Q Why did you get out?

16 "A There was actually no particular reason.

17 "Q How long before you joined the IRAPS?

18 "A I believe I resigned from the IRAA in
19 February of 1941 and the IRAPS was not set up until
20 April of 1942.

21 "Q I will ask you, Colonel, if your book 'How
22 to Rebuild the World' was not published 30 January
23 1941?

24 "A Yes.

25 "Q Then your other answer was a mistake, was it

1 not?

2 "A I believe I said I was still a member.

3 "Q To clear it up anyway, Colonel, you were
4 still officially connected with the IRAA when this
5 book was given to the nation?

6 "A Yes.

7 "Q Directing your attention to page 83 of this
8 same book, do you not urge a 'reformation of Japan
9 is an urgent necessity. Liberalism should be taken
10 away from every sphere?'

11 "A Yes, more or less. Liberalism must be done
12 away with because this is a form under which different
13 individuals strive to make money for themselves or
14 gain power for themselves, and do not heed the overall
15 wishes of the nation.

16 "Q You were the leader of a Young Men Organiza-
17 tion at this time?

18 "A Yes.

19 "Q What was your position in this organization -
20 President?

21 "A I was the President.

22 "Q I hand you a book marked for identification
23 'Evidentiary Document 487,' and ask you to look at
24 this book.

25 "A This is my book.

1 "Q Is not the title of this book 'Speeches to
2 Young Men'?"

3 THE PRESIDENT: Colonel, I think you are
4 speaking rather fast.

5 MR. WOOLWORTH: (Continuing to read):

6 "Q Is not the title of this book 'Speeches to
7 Young Men?'

8 "A Yes.

9 "Q I point to your picture in the front of the
10 book, that is the Japanese front, and ask -- did you
11 write this book?

12 "A Yes. If you go into detail on this book,
13 some of the academic subjects in it are things that I
14 heard from others so that it might be a little dif-
15 ficult for me to explain fully. However, I wrote it.

16 "Q That's all right, Colonel. Directing your
17 attention to page 12, is Chapter II not headed 'Des-
18 truction of World Liberalism?'

19 "A That is correct.

20 "Q In this chapter, do you not attack liberalism,
21 majority rule, imperialism, and white rule? And in
22 this chapter you advocate substituting a controlled
23 economy and free economy, do you not?
24

25 "A Yes.

"Q And on page 23, don't you say 'The existing

1 world order has come to such a pass that it must
2 either settle accounts or undergo a second world war?'

3 "A Yes.

4 "Q Still, from your book, 'Speeches to Young
5 Men,' on page 24, Chapter III, headed 'Material
6 Civilization and Spiritual Culture,' don't you say
7 that 'The white man has conquered four-fifths of the
8 globe and Japan alone is standing against him. Un-
9 less strengthened by Japanese influences, Asiatic
10 peoples fall prey to the white man.' You then pre-
11 sent historical arguments to the effect that Asiatic
12 arms were often and Asiatic culture was always superior
13 to European. You then view history as a struggle
14 between the Europeans and Asiatics and say 'for three
15 thousand years the Asiatics were superior, but in the
16 past three hundred years the white man turned the tables
17 because of his material progress.' Then you further
18 say 'Does this mean that Asiatic spiritualism will
19 always bow to materialism? No.' Not the true Asiatic
20 Spirit, but a degenerated form of it was defeated.
21 Japan will lead a revival of the old Asiatic culture.'
22 Are these not accurate quotations and statements from
23 this chapter?

24 "A Yes, in substance those are my remarks.
25 What I have said in essence is that European material

1 civilization has defeated our Asiatic spiritual
2 civilization, but that this state of affairs does not
3 necessarily have to continue, and that we must rise.

4 "Q I will direct your attention to Chapter 7 of
5 this same book published in 1937, headed 'Japan of
6 the World, the World of Japan,' and will ask if you
7 don't say there -- 'Japan for Japan's sake; Japan for
8 the world's sake; the world for Japan's sake. Build-
9 ing a better Japan was our chief aim. At the time of
10 the Meiji restoration Japan was on the first stage.
11 A better Japan thus built, however, must be a power
12 of the world since after the Sino-Japanese war, which
13 was quite an epoch making war for Japan, Japan's
14 power has been recognized and become one of the three
15 most powerful nations in the world. But this is never
16 the end of all. We must build the world for Japan's
17 sake. Heaven ordered Japan to achieve its great
18 mission. The Manchurian Incident has thus occurred.'
19 Is that not a correct quotation?

20 "A This is substantially a correct translation.

21 "Q Do you not argue in this same chapter that
22 Japan is literally forced to expand by the white man,
23 that because of emigration and national industrialism
24 being blocked and boycotted by the whites, the only
25 course left is for Japan to enlarge her territory.

1 "A That is correct.

2 "Q Then don't you say in that chapter that 'there
3 are four countries we must watch today -- China,
4 Soviet Russia, America, and the English Empire.

5 "A Yes.

6 "Q In Chapter VIII of this same book entitled
7 'Speeches to Young Men,' don't you say on page 201,
8 'Our Army and Navy are personally controlled by the
9 Emperor and are the means to show the dignity of this
10 country of the Gods.'

11 "A Yes, that is correct."
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MR. WOOLWORTH: Judge Hsiang will address the Court.

THE PRESIDENT: Captain Brooks.

MR. BROOKS: If the Tribunal please, in reference to the statement on page 2 of exhibit 2188 in regard to KOISO, I want to submit for reference the June 26 court record, page 1404, line 8 to 14; page 1410, line 12 to 19; page 1411, line 4 to 7; page 148, line 12 to 25; and finally, page 1419, line 1 to 16.

THE PRESIDENT: You said page 148. Do you mean that?

MR. BROOKS: Will the reporter repeat the President's statement? I didn't get it.

("hereupon, the official, court reporter read as follows: "You said page 148. Do you mean that?")

MR. BROOKS: 1418, line 12 to 25. Correction.

These statements were by the prosecution's witness on cross-examination, covering this matter, and I would like to request the right to cross-examine HASHIMOTO on page 2 in reference to his statements in regard to KOISO.

THE PRESIDENT: We can't call him, and I am

1 sure the prosecution won't. Did you say you wanted
2 to cross-examine the interpreter, or the interro-
3 gator, or HASHIMOTO?

4 MR. BROOKS: I requested the right to
5 cross-examine HASHIMOTO on the interrogation.

6 THE PRESIDENT: That is HASHIMOTO, the
7 accused. I shouldn't be called upon for any further
8 explanation.

9 MR. BROOKS: If the prosecution is putting
10 this testimony in evidence I would like to have the
11 right to cross-examine on it.

12 THE PRESIDENT: He is not a prosecution's
13 witness. No accused who is interrogated before the
14 trial ever is.

15 MR. BROOKS: May I inquire if the Court
16 is taking the reference to other accused in con-
17 sideration in accepting this if the evidence
18 accepted -- if the evidence as presented is being
19 accepted also against KOISO, as well as the accused
20 HASHIMOTO?

21 THE PRESIDENT: That applies to all co-
22 defendants. If it is desired that the Tribunal
23 should hear argument on it, well, they will hear it,
24 but my mind is made up about it.

25 You see what the position is, you would

1 have the prosecution calling the accused and sub-
2 jecting him to all the risks that followed. You
3 see, he has not made any statement here on oath.
4 There is no such thing as calling him for cross-
5 examination. You are asking in effect that the
6 prosecution call one of the accused as a witness.
7 We have no power to direct that, in my opinion.
8 This, however, is an international court and I am
9 only an Australian Judge, who doesn't bind this
10 Court.

11 MR. BROOKS: May I reserve my point for
12 later argument if we see fit, and for the right to
13 call this HASHIMOTO as a hostile witness in the
14 defense case?

15 THE PRESIDENT: Judge Hsiang.

16 JUDGE HSIANG: Mr. President and Members
17 of the Tribunal: In compliance with the Court's
18 direction regarding IPS document No. 2955, which
19 received, last Friday, court exhibit No. 2176, the
20 prosecution introduces in evidence IPS document
21 No. 2955-A, being an affidavit by Professor Chang
22 Feng-Chu, handwriting expert, setting forth, among
23 other things, his qualifications and experience
24 as such.

25 THE PRESIDENT: Admitted on the usual terms.

1 CLERK OF THE COURT: Prosecution's docu-
2 ment No. 2955-A will receive exhibit No. 2189.

3 (Whereupon, the document above
4 referred to was marked prosecution's ex-
5 hibit No. 2189 and received in evidence.)

6 JUDGE HSIANG: I will read exhibit 2189.

7 "International Military Tribunal for the Far East

8 "No. 1

9 "The United States of America, et al

10 versus

11 "ARAKI, Sadao, et al

12 "AFFIDAVIT

13 "I, CHANG Feng-Chu, of Nanching, Province
14 of Kiangsi, China, do swear on my conscience that
15 the following facts are true:

16 "1. I was born in Nanchang, China, on
17 3 December 1895. I am now Member of the Committee
18 of Educational Research, Ministry of Education,
19 Nanking, China, and concurrently, Cultural Expert
20 of the Chinese Mission in Japan, Tokyo, Japan.

21 "2. During my boyhood and early youth I
22 studied uninterruptedly Chinese literature and
23 philology under many masters. Following several
24 years of study in Japan, I graduated and received the
25 degree of 'Bungakushi' from the Kyoto Imperial

1 University in 1922. Since then, while engaged in
2 other activities, I have constantly kept up my
3 study of Chinese literature and philology.

4 "3. I have held the following positions:

5 "Professor of Chinese and Japanese Litera-
6 ture, National Peking University.
7 (1922-1929)

8 "Professor of Chinese and Japanese
9 Literature, Teachers' College,
10 Peking. (1923-1927)

11 "Lecturer on Chinese Literature, Institut
12 des Hautes Etudes Chinoises,
13 Universite de Paris. (1930-1933)

14 "Engaged in Cultural Research Work under
15 Ministry of Education, Nanking and
16 Chungking. (1934-1945)

17 "Member of Committee on Educational Re-
18 habilitation, Ministry of Education,
19 Nanking, China. (1945-1946)

20 "Member of Committee on Educational
21 Research. (February 1946 to date)

22 "Cultural Expert of the Chinese Mission
23 in Japan. (April 1946 to date)

24 "4. I commenced to learn Chinese handwriting
25 in early boyhood and have never ceased to study and

1 practice it. For a period of over thirty years
2 my interest in Chinese calligraphy as an art has
3 continued and grown. I have closely studied the
4 writings of famous Chinese men of letters, start-
5 ing with WANG P'si-Chih in TSIN Dynasty (4th Century
6 A.D.) and continuing down to modern writers. I
7 frequently had access to both private and public
8 art collections and was thus enabled to make a
9 comparative study of penmanship of a large
10 number of past literary masters. As a student
11 of art, I had opportunity not only to see but also
12 to scrutinize closely various types of handwriting
13 shown in manuscripts left by famous authors of the
14 past as well as of the present. As a teacher,
15 I had opportunity to and did observe and analyse
16 different types of handwritings of hundreds of
17 students. As penmanship in Chinese is an art in
18 itself and constitutes a part of attainment of
19 an intellectual, my profession constantly presents
20 me occasions calling for the observation and
21 examination of handwritings of my fellow
22 countrymen.
23

24 "While I was Lecturer on Chinese Litera-
25 ture, Institut des Hautes Etudes Chinoises,
Universite de Paris, I was three times invited as

1 an expert on Chinese handwriting by the Tribunal
2 de la Seine a Paris, to examine Chinese handwriting
3 and did so qualify and testify before the said
4 Tribunal.

5 "6. Following the written request of the
6 Chief Prosecutor of the International Prosecu-
7 tion Section for the recommendation and designation
8 of a Chinese handwriting expert to examine Pu-Yi's
9 handwriting, Lt. General CHU Shih-Ming, Chief of
10 the Chinese Mission in Japan, recommended and
11 designated me for that purpose. I was consequently
12 invited by the Prosecution to serve in that
13 capacity.

14 "7. I.P.S. document No. 2955 entitled
15 'A Report on the Study of Pu-Yi's Handwriting'
16 bearing court exhibit No. 2176, annexed hereto, is
17 a statement drawn up by me after consideration
18 of matters set out therein and in so far as it
19 describes facts is true and in so far as it
20 expresses my opinions is correct to the best of
21 my knowledge, information and belief."

22 In the Mimeographed copies distributed
23 of this affidavit there are typographical errors, in
24 putting two lines in the wrong place. I will read
25 the remainder of the document as it is found

1 in the original copy filed with the Tribunal. I
2 continue to read the affidavit as follows:

3 "I certify upon my conscience that the
4 above facts are true and correct. CHANG Feng-Chu,
5 Signed, 18 January 1947, Tokyo. Witness: Yorkson,
6 C.T. SHEN, Signed, Minister Plenipotentiary Chief
7 Adviser, Chinese Mission in Japan, 18 January 1947,
8 Tokyo."

9 Colonel Mornane will present documents
10 for the prosecution.
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1 THE PRESIDENT: Colonel Mornane.

2 LIEUT. COLONEL MORNANE: I propose to tender
3 to the Tribunal one document as part of the case against
4 the accused LOHIHARA. It is prosecution document
5 No. 2773, and constitutes a record of the interrogation
6 of that accused on the 11th of January, 5th of
7 February, and 12th of February, 1946.

8 I tender the original document for identifica-
9 tion and the marked excerpts in evidence.

10 THE PRESIDENT: Admitted on the usual terms.

11 CLERK OF THE COURT: Prosecution's document
12 No. 2773 will receive exhibit No. 2190 for identification
13 only; and the excerpt therefrom, bearing the same
14 document number, will receive exhibit No. 2190-A.

15 (Whereupon, the document above
16 referred to was marked prosecution's exhibit
17 No. 2190 for identification, and the excerpt
18 therefrom was marked prosecution's exhibit
19 No. 2190-A and received in evidence.)

20 LIEUT. COLONEL MORNANE: (Reading.

21 "11 January 1946, Pages 1, 2, 3.

22 "Q What year was it when you first went to
23 Manchuria for the first time?

24 "A August 15, 1931. I entered Manchuria with
25 Japanese forces as a Colonel and as Commander or Head

of the Japanese Special Service Department.

1 "Q What were your duties in that capacity,
2 briefly?

3 "A First of all, to gain intelligence of the
4 Chinese and as a liaison between the Chinese forces
5 and the Japanese forces -- but this was before the war.
6

7 "Q What was the date when the Manchurian Inci-
8 dent began?

9 "A September 18. The war or state of hostilities
10 began September 18, 1931. At that time, there was
11 a Captain who was killed. I had to investigate the
12 killing and negotiate with the Chinese forces. That
13 was the particular job I was there for.

14 "Q How long did you continue on that assignment?

15 "A I was recalled to Tokyo about the 8th of
16 September. I was recalled to Tokyo regarding the
17 killing of this Captain.

18 "Q How long after the Manchurian Incident were
19 you assigned as head of the Japanese Special Service
20 Department there?

21 "A When I went back, I was relieved of the
22 Special Service Command and was sent over there as one
23 of the staff section of the Kwantung Army.

24 "Q Is that the Supreme Command of the Kwantung
25 Army?

1 "A I was a member of the staff of the Kwantung
2 Army headquarters. On the 23rd, I became head of the
3 City of Mukden.

4 "Q What I want is a brief statement or table of
5 your assignments there.

6 "A At the end of November, I was sent to Harbin
7 as head of the Special Service Organization.

8 "Q How long did you stay on that?

9 "A Until the last of March 1932. I went as a
10 Brigadier General. On the first of April 1932, I took
11 command of the 9th Brigade with the grade of Major
12 General at Hiroshima. I stayed at Hiroshima from
13 April 1932 to July 1934 and then went to Mukden with
14 the Japanese Special Service Organization.

15 "Q How long did you stay at Mukden?

16 "A Until the end of February 1936. Then, I
17 became a Lt. General and Commander of the 1st Depot
18 Division in Tokyo until March 1937. I then became
19 Commander of the 14th Division at Utsunomiya until
20 August 25, 1937. After that, I went to North China
21 (Peiping to Hankow drive) and the 14th Division
22 became part of the First Army until the first of
23 June 1938 when I was recalled to Tokyo to serve on
24 the staff attached to the Chief of Staff. From
25 August 1938 to June 1939, I was sent to China by the

1 Government to see what I could do about settling the
2 war. I carried on negotiations with Tang Shao-I and
3 Ou Phi Fu, who was the original founder of the
4 Kuomintang Party. These people acted as intermediaries
5 between Chiang Kai-Shek. Tang Shao-I was killed so
6 that the negotiations fell through.

7 "Q Were you Chief of the Mission?

8 "A Yes, I was Chief of the Mission.

9 "Q What was your next assignment?

10 "A On June, 1939, I became Commander-in-Chief
11 of the 5th Army in Taonan, Manchuria, until the fol-
12 lowing June 1940, when I became Supreme War Councillor.
13 About April 1941, I was made Inspector General of
14 Aviation.

15 "Q Did you continue as Supreme War Councillor
16 at the same time?

17 "A Yes.

18 "Q That went to when?

19 "A The first part of May 1943.

20 "Q After that?

21 "A I became Commander-in-Chief of the Eastern
22 Army. At the end of March 1944, I became Commander of
23 the 7th Area Army at Singapore and remained there until
24 the first part of April 1945. I then became Inspector
25 General of Military Training. I arrived in Tokyo

1 on May 10, 1945.

2 "5 February 1946, Pages 2 and 3.

3 "Q In August 1931, who was the Chief of the first
4 section?

5 "A The Chief of the first section was ISHIHARA,
6 Kanji.

7 "Q What was his grade, Lieutenant General?

8 "A I am not quite sure if his rank was Lt.
9 Colonel or full Colonel.

10 "Q And who was Chief of the second section in
11 August 1931?

12 "A The Chief of No. 2 section was ITAGAKI,
13 Seishiro, rank of Colonel. I am not sure about the
14 other sections, but there was one man named KATAKURA,
15 Chu, who might have been one of the section chiefs.
16 I am not quite sure if he was chief of a section or
17 not. My memory is not very clear on that. I cannot
18 think of the other section chiefs.

19 "Q Now, did your Special Service Organization
20 operate under the control or under the direction of the
21 second section, the Intelligence Section?

22 "A Yes, Special Service Organization was part
23 of No. 2 section.

24 "Q And you reported to Colonel ITAGAKI?

25 "A Yes, I did work for Colonel ITAGAKI, Seishiro.

1 "Q And that was true in August 1931, while you
2 were Resident Official of Mukden?

3 "A Yes, that is true.

4 "Q And during that time the second section gave
5 you your order as to what your organization was to do?

6 "A Yes, that is true. I received my orders
7 from No. 2 section but they were given by the Commanding
8 General of the Kwantung Army.

9 "Q As Resident Official of Mukden -- you had
10 that title while being the head of the Special
11 Service Organization there, is that correct?

12 "A When I was Mayor of Mukden I was not the head
13 of the Special Service Organization.

14 "Q When was that, General?

15 "A I am not quite sure, but I think it was
16 September 21, 1931.

17 "5 February 1946, Pages 10 and 11."

18 THE PRESIDENT: This is a very lengthy one
19 you are about to read and you would not finish it
20 tonight.

21 When do you hope to finish the prosecution's
22 case, Colonel?

23 LIEUT. COLONEL MORNANE: I beg your pardon?

24 THE PRESIDENT: When do you hope to close
25 the prosecution's case?

1 LIEUT. COLONEL MORNANE: With regard to
2 the accused LOHIHARA?

3 THE PRESIDENT: The lot.

4 LIEUT. COLONEL MORNANE: I should think
5 about Thursday, sir.

6 THE PRESIDENT: Yes. Well, we will adjourn
7 now until half-past nine tomorrow morning.

8 (Whereupon, at 1600, an adjournment
9 was taken until Tuesday, 21 January 1947,
10 at 0930.)

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21 January 47 ✓

21 JANUARY 1947

I N D E X
Of
WITNESSES

Prosecution's Witnesses

TANAKA, Ryukichi (recalled)
Direct by Mr. Comyns Carr

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Of
EXHIBITS

<u>Doc. No.</u>	<u>Pros. No.</u>	<u>Def. No.</u>	<u>Description</u>	<u>For Ident.</u>	<u>In Evidence</u>
2910	2191		Extract from the 11 January 1932 Entry from Diary of Marquis KIDO		15731
1632 ^w (8)	2192		Extract from the 30 May 1935 Entry from Marquis KIDO's Diary		15733
2943A-1	2193		Telegram No. 623 sent by Consul- General HAYASHI at Mukden to Foreign Minister SHIDEHARA dated 19 September 1931		15735
2943A-3	2194		Cablegram from Consul-General HAYASHI to Foreign Minister SHIDEHARA dated 21 September 1931		15736
2789	2195		Cable No. 1532 sent by Consul- General HAYASHI at Mukden to Foreign Minister INUKAI dated 14 December 1931		15738

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(Cont'd)

<u>Doc. No.</u>	<u>Pros. No.</u>	<u>Def. No.</u>	<u>Description</u>	<u>For Ident.</u>	<u>In Evidence</u>
2788	2196		Cable No. 1258 dated 12 November 1931 sent by Consul-General HAYASHI at Mukden to Foreign Minister SHIDEHARA		15740
2913	2197		Extract from "The Japan Advertiser" Tokyo Sunday, 26 June 1938 (Page 3) entitled "Long Preparedness is Urged by ITAGAKI"		15741
4047C	2198		Cablegram sent by Ambassador Ott to the Army High Command and Air High Command on 6 September 1939		15744
2957	2199		Extract from "The Japan Advertiser" Tokyo Sunday 2 October 1938 (Page 1) entitled "KONOYE CABLES HITLER HIS CONGRATULATIONS ON 'SPLENDID SUCCESS'"		15745
2958	2200		News story entitled "Japanese Press Comments" (Page 6) of "The Japan Advertiser" dated 17 March 1939		15746
2959	2201		Extract from the 7 July 1939 issue of "The Japan Times & Mail" Second Edition (Pages 1 and 2)		15749
1903	2202		Copy of "The Osaka Asahi" dated 1 July 1931	15752	
1903	2202-A		Excerpt therefrom		15752

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(Cont'd)

<u>Doc. No.</u>	<u>Pros. No.</u>	<u>Def. No.</u>	<u>Description</u>	<u>For Ident.</u>	<u>In Evidence</u>
827	2203		Biography of General MINAMI by YOSHITAKE, Ken. "Days of War Minister and Manchurian Incident"	15756	
827	2203-A		Excerpt therefrom		15756
1426	2204		Foreign Ministry Records: Manchurian Incident-Public Opinion and Press Comment (pp. 241-242)	15759	
1426	2204-A		Excerpt therefrom		15759
831	2205		Minutes of Meeting of the Privy Council on 9 December 1931 re Report on the China Incident	15761	
831	2205-A		Excerpt therefrom		15761
1483	2206		Foreign Ministry document containing foreign press comment re North China Incident of May and June 1935	15769	
1483	2206-A		Excerpt therefrom		15769
1869	2207		Interrogation of General MINAMI, Jiro		15783
1144	2208		"Details Re Movements of Rightists Bodies in connection with Change of Government" published by Peace Section, Police Bureau, Home Ministry, April 1937	15790	
1144A	2208-A		Excerpt therefrom		15790

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EXHIBITS

(Cont'd)

<u>Doc. No.</u>	<u>Pros. No.</u>	<u>Def. No.</u>	<u>Description</u>	<u>For Ident.</u>	<u>In Evidence</u>
1144B	2208-B		Excerpt from exhibit No. 2208		15794
1144C	2208-C		Excerpt from exhibit No. 2208		15796
1144D	2208-D		Talk by General UMEZU, Vice War Minister		15798
1144E	2208-E		Notice to the Ex-Soldiers Organizations from Vice War Minister UMEZU		15800
646	2209		Transfer of Secret Funds from the Manchurian Incident Expenditure Account to the Accused UMEZU		15804
2900	2210		Secret Expenditures for the Manchurian Incident - Record re Payment of Money to the Accused KOISO, Kuniaki, Vice Minister of War		15809
2907	2211		Secret Expenditures for the Manchurian Incident - Record re Payment of Money to the Accused KOISO, Kuniaki		15810
2896	2212		Secret Expenditures for the Manchurian Incident - Record re Payment of Money to the Accused KOISO, Kuniaki		15811
2922	2213		Secret Expenditures for the Manchurian Incident - Record re Payment of Money to the Accused KOISO, Kuniaki		15811

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(cont'd)

<u>Doc. No.</u>	<u>Pros. No.</u>	<u>Def. No.</u>	<u>Description</u>	<u>For Ident.</u>	<u>In Evidence</u>
4043G	2214		Domei Radio presents an ITAGAKI-KOISO interview		15815
2954	2215		Extract from the Minutes of Second Joint Conference of Sections I, II, III and IV of the Committee of Accounts of the House of Representatives, 75th Session of the Imperial Diet on 17 March 1940	15830	
2954	2215-A		Excerpt therefrom		15830
2342B	2216		Excerpt from Interrogation of the Defendant ARAKI (exhibit No. 187-L)		15832
2344B	2217		Excerpt from Interrogation of the Defendant ARAKI (exhibit No. 187-N)		15833
2254B	2218		Excerpt from Interrogation of the Defendant ARAKI (exhibit No. 187-G)		15835
2347B	2219		Excerpt from Interrogation of the Defendant ARAKI (exhibit No. 187-Q)		15840
2253C	2220		Excerpt from Interrogation of the Defendant ARAKI (exhibit No. 187-F)		15843
2253B	2221		Excerpt from Interrogation of ARAKI		15843
2248B	2222		Excerpt from Interrogation of the Defendant ARAKI (exhibit No. 187-A)		15845

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Of
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(cont'd)

<u>Doc.</u> <u>No.</u>	<u>Pros.</u> <u>No.</u>	<u>Def.</u> <u>No.</u>	<u>Description</u>	<u>For</u> <u>Ident.</u>	<u>In</u> <u>Evidence</u>
2155	2223		Speech by the Defendant ARAKI	15847	
2155B	2223-A		Excerpt therefrom		15847

1 Tuesday, 21 January 1947

2 - - -

3
4 INTERNATIONAL MILITARY TRIBUNAL
5 FOR THE FAR EAST
6 Court House of the Tribunal
7 War Ministry Building
8 Tokyo, Japan

9 The Tribunal met, pursuant to adjournment,
10 at 0930.

11 - - -

12
13 **Appearances:**

14 For the Tribunal, same as before.

15 For the Prosecution Section, same as before.

16 For the Defense Section, same as before.

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20 (English to Japanese and Japanese
21 to English interpretation was made by the
22 Language Section, IMTFE.)
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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now in session.

3 THE PRESIDENT: All the accused are present
4 except OKAWA and MATSUI who are represented by their
5 counsel. We have a certificate from the prison surgeon
6 of Sugamo that the accused MATSUI is ill and unable
7 to attend the trial today. The certificate will be
8 recorded and filed.

9 Major Moore.

10 LANGUAGE ARBITER (Major Moore): Mr. President:
11 With the permission of the Tribunal we submit the
12 following correction: Exhibit 2182A, record page
13 15,622, line 2, substitute "Washington" for "Versailles."

14 THE PRESIDENT: Colonel Mornane.

15 LIEUT. COLONEL MORNANE: (Reading:)

16 "5th February, 1946, pages 6, 7, 8.

17 "Q Now, General, in our first interrogation my
18 first question was when was it you first went to
19 Manchuria for the first time. Now, your answer was
20 August 15th, 1931.

21 "A Yes, I said that, but later changed it to
22 the 18th of August. I corrected you the last time.
23 I had that difference of three days, which I corrected.

24 "Q That is the first time you ever were in
25 Manchuria?

1 "A Yes, I did go there once long ago. I went
2 in 1911, and that was the first time I set foot in
3 Manchuria.

4 "Q And you were not in Manchuria then between
5 1911 and August 18, 1931?

6 "A No. That is not correct. I have been in
7 Manchuria in between. I went there once in 1929.

8 "Q How long were you there then?

9 "A I was there about six months.

10 "Q What were your duties then?

11 "A At that time I went as an aide to MATSUI
12 Nanao, who is advisor to Marshal Cheng Tso-lin.

13 "Q Where was Marshal Cheng Tso-lin at that time?

14 "A At first he was in Peking and later he
15 returned to Mukden.

16 "Q You were with the Tokumu Kikan?

17 "A My first connection with Tokoku Kikan was
18 18 August 1931.

19 "Q You never had anything to do with it before
20 then?

21 "A I had no connection prior to that time.

22 "Q Now, as a matter of fact, General, were you
23 not the Resident Official for the Japanese Special
24 Services organization in Mukden prior to August 18,
25 1931, and for several years before that time?

1 "A No, I was not.

2 "Q Prior to August 18, 1931, how much of your
3 army service was in China immediately preceding and
4 continuing before August 18, 1931?

5 "A I spent almost 18 years in China, but during
6 that time I had returned to Japan for a short period.

7 "Q Most of that 18 years was with the Japanese
8 Special Services organisation, was it not?

9 "A No, it was not. Most of the time I was an
10 aide to Lt. Gen. BANZAI. Lt. Gen. BANZAI was advisor
11 to Yuan Shih-kai, Ti Huang and Fong Yui-Shiang -
12 different Chinese leaders, in other words.

13 "Q But during all this time, General, that you
14 spent in China, the only times you got to Manchuria
15 were in 1911, sometime in February or March, 1929,
16 when you stayed for six months as aide to the Advisor
17 to Marshal Chang Tso-lin, and on August 18, 1931, when
18 you finally went over to the Japanese Special Service
19 organisation?

20 "A That is true, except in 1911, I just passed
21 through Manchuria, in 1929 I went there as aide to
22 MATSUI, but had no connection with Special Service
23 organisation, and August 18, I went there with the
24 Special Service Organisation.

25 "Q General, what was the connection between

1 Dr. Cheo Hain-Po and the murder of Marshal Chang
2 Tso-lin on June 3, 1928?

3 "A I don't know if there was any connection,
4 but I do know Cheo Hain-Po, who was the advisor to
5 Chang Tso-lin, and I think the date was the 4th of
6 June, 1929.

7 "Q The historical record of the murder of Marshal
8 Chang Tso-lin shows beyond a doubt it was June 3, 1929.

9 "A That may be so, but I recall it as 4 June,
10 1929.

11 "Q Does that change the story about when you were
12 in Manchuria during the 1920's.

13 "A Yes, it will. I thought it was in 1929 that
14 I was there, but I could be mistaken, but I remembered
15 it to be 1929, so if it was 1928, it would change my
16 story. I am quite sure it was in 1929, and that was
17 the time that Chang Tso-lin was murdered, and I was
18 there at the time.

19 "5 February 1946, Pages 10 - 11.

20 "Q General, do you still insist that the story
21 you gave me that your sole mission on being sent for
22 on August 18, 1931, was to investigate the murder of
23 Captain NAKAMURA?

24 "Q That was not the only purpose of my going
25 there, but that was the most important.

1 "Q You told me the other day that was your only
2 purpose.

3 "A I think that I told you that was my most
4 important job, but since I was the head of Special
5 Service Organization I had other duties.

6 "Q What were those other duties?

7 "A The other two duties were investigation and
8 liaison with Chinese forces.

9 "Q What does investigation mean?

10 "A The investigation consisted of determining
11 the strength of Chinese forces, their training, their
12 communication and the condition in the civilian popu-
13 lation.

14 "Q You were sent from Tokyo to take charge of
15 the Special Service organizations in August 1931, is
16 that correct?

17 "A I left from Tokyo and travelled through
18 Shanghai, Hankow, Peking, Tientsin and Mukden, arriv-
19 ing at Mukden on the 18th of August.

20 "Q What date did you leave Tokyo?

21 "A I cannot recall accurately, but I think it
22 was early part of July.

23 "Q Why did you make that long swing to go up to
24 Mukden?

25 "A The Chief of Staff felt that it would be a

1 good idea to find out the conditions in China before
2 taking this post in Mukden, so I took that round-about
3 trip.

4 "12 February 1946, Pages 7, 8, 9.

5 "Q Right. Now, General, at the time you had
6 this meeting with Henry Pu-yi at Tientsin as you
7 remember in October 1931 you were Mayor or Governor of
8 Mukden, weren't you?

9 "A Yes.

10 "Q What were you doing at Tientsin?

11 "A I was sent there to convey the order from the
12 Kwantung Army. Also I was the Mayor but the actual
13 work was delegated to Chao Hain-po -- the work of my
14 office -- and then went to Tientsin.

15 "Q Then you were sent to Tientsin for the
16 specific purpose of contacting Henry Pu-yi, is that
17 correct?

18 "A That is correct.

19 "Q Who sent you?

20 "A By Kwangtung Army.

21 "Q Who issued the order; what person in Kwantung
22 Army headquarters?

23 "A The commander of the Kwangtung Army.

24 "Q Was General HONJO still the commander then?

25 "A Yes, sir, he was.

1 "Q Did General ITAGAKI have anything to do with
2 it?

3 "A Colonel ITAGAKI was the Chief of the Second
4 Section of the General Staff.

5 "Q Well, did he have anything to do with sending
6 you to Tientsin?

7 "A Yes, order to proceed to Tientsin was issued
8 by General HONJO, the Chief. However, details to my
9 meeting with Pu-yi at Tientsin was arranged by Colonel
10 ITAGAKI.

11 "Q What was Colonel ITAGAKI's order, do you
12 remember?

13 "A In substance, my instruction was to convey
14 to Pu-yi that should he return to Manchuria the
15 Kwangtung Army would welcome his return, and, next,
16 he arranged for my transportation and expenses, etc.

17 "Q Were you to suggest to Henry Pu-yi that the
18 reason why the Kwangtung Army would welcome him back
19 was because they would like to have him head the new
20 puppet government that you were setting up in Manchuria?

21 "A I believe the Kwangtung Army must have had
22 that idea in order to save Manchuria, however, I did
23 not have any such idea.

24 "Q But you know, didn't you, General, that when
25 you conveyed this welcome greeting to Pu-yi that he
would understand that was what it meant, didn't you?

1 "A That is true although I did not have my plan;
2 however upon receipt of instruction from the Kwangtung
3 Army I felt that such things would be required to
4 settle the Manchoukuo turmoil where so many factions
5 are competing against each other and causing disturbances.
6 I happened to think of that more than about what the
7 Chief of the Second Section told me at the time.

8 "Q Good.

9 "A That was to the effect that he warned me that
10 I should not force him to return to Manchoukuo and if
11 he wants to come back it would be fine.

12 "Q Why on earth did he warn you to that effect;
13 had you suggested that it might be wise to try to force
14 him?

15 "A He definitely told me that there would not
16 be a necessity to bring him back forcibly.

17 "Q Well, that does not answer my question,
18 General; answer it, please.

19 "A Perhaps the Chief of the Second Section might
20 have had some other idea to control the situation in
21 Manchuria even though Pu-yi may not return.

22 "Q But why is it that he was afraid you might
23 use force, was that your usual method in handling things
24 like this?

25 "A That I don't know. That is up to ITAGAKI.

1 "Q Well, answer the last part of that question.
2 Was that your usual method of handling things like this?
3 And by that I mean was it your own personal method or
4 the method of the Kwangtung Army, either one?

5 "A I do not know what method the Kwangtung Army
6 used, however, it is my motto that whatever the order
7 I receive I see to it that purpose is accomplished.

8 "12 February 1948, page 10.

9 "Q What was your report regarding the situation
10 in North China that you made to the Kwangtung Army
11 that you referred to a minute ago?

12 "A Upon my return to the Kwangtung headquarters?

13 "Q Yes.

14 "A I don't remember so well, it took place
15 sometime ago; however, I mentioned the fact that the
16 situation in North China remained unsettled, and also
17 a distribution of enemy forces throughout that area
18 meaning Tientsin armies. Also gave information on
19 the subject of how to be ready in case the troops in
20 Manchuria should spread over to North China.

21 "12 February 1946, Page 11.

22 "Q General, you know what the Nine Power Treaty
23 is, don't you?

24 "A I know what that is; however, I don't know as
25 to each provision it contrains.

1 "Q You know, don't you, that it guarantees the
2 sovereignty of China?

3 "A Yes, I know that.

4 "Q You knew that in October 1931 when you were
5 sent to contact Henry Pu-yi, didn't you?

6 "A Yes, of course, I did.

7 "Q Then you knew, didn't you, that when the
8 Kwangtung Army was planning to set up an independent
9 state called Manchoukuo that that was going to violate
10 the Nine Power Treaty, didn't you?

11 "A Yes, I did, but at that time Japan made some
12 proclamation about her attitude toward the treaty. I
13 do not remember the details of it."

14 Mr. Lopez will carry on the presentation of
15 the case of the prosecution at this stage, if the
16 Tribunal pleases.

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1 THE PRESIDENT: Mr. Lopez.

2 MR. LOPEZ: If the Tribunal please, we
3 offer in evidence IPS document No. 2910 which is an
4 extract from the January 11, 1932 entry of the diary
5 of the defendant KIDO, to show the defendant
6 ITAGAKI's inner connection with Japanese activities
7 in Manchuria. The KIDO Diary has been marked
8 exhibit 178 for identification only (pages 1,921
9 and 1,922 of the record.)

10 THE PRESIDENT: Admitted on the usual
11 terms.

12 CLERK OF THE COURT: Prosecution's document
13 No. 2910 will receive exhibit No. 2191.

14 (Whereupon, the document above re-
15 ferred to was marked prosecution's exhibit
16 No. 2191 and received in evidence.)

17 MR. LOPEZ: We read the complete extract.

18 "January 11 -- At 10:30 o'clock this morn-
19 ing in the antechamber connected to the lecture hall
20 of the Imperial Palace, I, together with persons
21 close to the Emperor, heard from Colonel S. ITAGAKI,
22 staff officer of the Kwantung Army, the conditions
23 in Manchuria and Mongolia. Colonel ITAGAKI first
24 explained the situation concerning the progress of
25 campaign against soldier bandit forces in Manchuria

1 and Mongolia as well as the progress in establishing
2 a new state in Manchuria. Regarding the establish-
3 ment of a new state, Colonel ITAGAKI gave hint that
4 Manchuria would be placed under a new ruler, and
5 Japanese Army would take charge of a national defense
6 of the new Manchurian state. Colonel ITAGAKI further
7 explained that Japanese people would participate in
8 the management of a new state as high government
9 officials and such Japanese becoming Manchurian
10 officials would be invited to become Manchurian
11 subjects. Under such circumstances, Colonel
12 ITAGAKI further says that they are now studying
13 regulations concerning the naturalization and dual
14 certificate of nationality. Hearing this from
15 ITAGAKI I was rather astonished to find that there
16 are a wide difference between my 'head' (T. N. idea?)
17 and that of theirs."

18 We tender in evidence IPS document No.
19 1632W(8) which is an extract from the May 30, 1935
20 entry of the diary of the defendant KILG, to show
21 that defendant ITAGAKI and others were endeavoring
22 to have the military, instead of the diplomatic
23 circles, undertake negotiations with the Chinese
24 Government.
25

THE PRESIDENT: Admitted on the usual terms.

1 CLERK OF THE COURT: Prosecution's document
2 1632W(8) will receive exhibit No. 2192.

3 (Whereupon, the document above re-
4 ferred to was marked prosecution's exhibit
5 No. 2192 and received in evidence.)

6 MR. LOPEZ: From this document we read the
7 first five paragraphs:

8 "May 30, 1935.

9 "Thursday (Extract) - According to this
10 morning's newspaper, the Japanese garrison in North
11 China are reported to have lodged a momentous claim
12 against the Chinese Government.

13 "In reply to my questions on the matter,
14 Vice-Minister SHIGEMITSU made a general observa-
15 tion to the following effect:

16 "On the one hand, the new development seems
17 to be connected with conferences conducted by Japane-
18 ese officers at Lairen, Shanghai, and so on. Al-
19 though Yu Hsueh Chung, originally a member of
20 Chiang Hsueh Liang defeated party, has invariably
21 opposed to our military objectives, the Chinese
22 Government has been powerless to take any counter-
23 measures.

24 "On the other hand, the report that SAKAI,
25 Chief of Staff of the Japanese garrison, on the

1 occasion of his trip to Tokyo, not only abused the
2 Central Army authorities but also complained of the
3 unfair distribution of honours. He also thought
4 it possible that the absence of the War Minister
5 may afford the Japanese garrison an opportunity of
6 taking up a positive attitude.

7 "At any rate, this step against China is
8 based on the idea that ITAGAKI and others who have
9 been intending to let the military, instead of the
10 diplomatic circles, take the lead in negotiations
11 with the Chinese Government, just as in the case of
12 Manchuria. For the attainment of such an end, they
13 were going to utilize the Manchurian Railway Company
14 and the Japanese garrison in Tientsin, as has indeed
15 been revealed by the recent action of that garrison."

16 We introduce in evidence IPS document No.
17 2943A-1 which is Telegram No. 623 sent by Consul-
18 General HAYASHI at Mukden to Foreign Minister
19 SHILEHARA, 19 September 1931, to show that the
20 defendant ITAGAKI was deaf to any plea to prevent
21 the unnecessary aggravation and expansion of the
22 Mukden Incident.

23 THE PRESIDENT: Admitted on the usual terms.

24 CLERK OF THE COURT: Prosecution's document
25 No. 2943A-1 will receive exhibit No. 2193.

1 (Whereupon, the document above re-
2 ferred to was marked prosecution's exhibit
3 No. 2193 and received in evidence.)

4 MR. LOPEZ: We read the whole document
5 except the last two paragraphs:

6 "1931

7 "Despatched MUKLEN 19th A.M.

8 "Received This Ministry 19th September A.M.

9 "/T.N. From: Consul-General HAYASHI

10 "/T.N. To: Foreign Minister SHIDEHARA

11 "/T.N. Telegram No. 024./

12 "Re: Outgoing telegram No. 623.

13 "In view of the fact that there have been
14 several requests from the Chinese side to settle
15 the Incident amicably, I telephoned Staff Officer
16 ITAGAKI that, as both Japan and China had not yet
17 entered formally into a state of war, and, moreover
18 as the Chinese side has been declaring to the ef-
19 fect that it would adhere strictly to the non-
20 resistance principle, it would be essential at this
21 juncture to endeavor not to aggrandize the Incident
22 unnecessarily and to arrange to settle the Incident
23 through diplomatic channels. However, the said
24 Staff Officer replied that, as it was a matter con-
25 cerning the prestige of the State and of the Army,

1 although efforts would be made for the protection of
2 foreign residents, the Army's policy was that, as
3 the Chinese Army had attacked our troops, it had to
4 be dealt with thoroughly. As he thus failed to show
5 the slightest sign of complying with my request, I
6 repeated to him the above-mentioned purport to
7 arouse his attention."

8 We tender in evidence IPS document No.
9 2943A-3, which is a cablegram from Consul-General
10 HAYASHI to Foreign Minister SHIDEHARA, sent 21
11 September 1931, to show that ITAGAKI was a staff
12 officer of the Kwantung Army that set up a
13 municipal administration with a Japanese military
14 man as mayor.

15 THE PRESIDENT: Admitted on the usual terms.

16 CLERK OF THE COURT: Prosecution's document
17 No. 2943A-3 will receive exhibit No. 2194.

18 (Whereupon, the document above re-
19 ferred to was marked prosecution's exhibit
20 No. 2194 and received in evidence.)

21 MR. LOPEZ: We read the whole document with
22 the exception of the last three paragraphs thereof:

23 "1931

24 "Despatched MUKLEN 21st A.M.

25 "Received This Ministry 21st Sept. A.M.

1 "/T.N. From/ Consul-General HAYASHI

2 "/T.N. To/ Foreign Minister SHILEHARA

3 "/T.N. Telegram/ No. 676

4 "The Commander of the KWANTUNG Army is to
5 issue a proclamation on the municipal administration
6 of this city during today, the 20th instant, as per
7 telegram sent separately. My visit was requested
8 for by the Army Headquarters this morning, but as
9 I was out at the time, MORISHIMA visited them. He
10 found the Chief of Staff MIYAKE, Chief of the
11 Military Police /T. N. Kempei-Tai/ NINOMIYA, and
12 Staff Officer ITAGAKI present, and was told that the
13 Kwantung Army is going to issue a proclamation today
14 pertaining to the municipal administration, although
15 it is not intended to establish a military adminis-
16 tration. So saying, the said proclamation was shown.
17 MORISHIMA requested them to reconsider the matter,
18 but failed to have them agree on the ground that it
19 has already been decided upon and approved of by the
20 Commander.

21 "I therefore met the Commander subsequently
22 and had an informal talk, in the course of which I
23 pointed out the mistake of the virtual establishing
24 of a municipal administration by the Japanese and the
25 appointment of a military man as Mayor. On the whole,

1 the Commander endorsed my opinions but remarked that
2 inasmuch as the order had already been duly issued
3 it could not be altered, and that it would only be
4 a matter of a few days, as it was intended to eventu-
5 ally hand same /T.N. the administration/ over to
6 the Chinese."

7 We introduce in evidence IPS document No.
8 2789 which is Cable No. 1532 sent by Consul General
9 HAYASHI at Mukden on December 14, 1931 to Foreign
10 Minister INUKAI, to show that the defendant ITAGAKI
11 was represented to have met and negotiated with
12 Chiang Kai-shek.

13 THE PRESIDENT: Admitted on the usual terms.

14 CLERK OF THE COURT: Prosecution's document
15 No. 2789 will receive exhibit No. 2195.

16 (Whereupon, the document above re-
17 ferred to was marked prosecution's exhibit
18 No. 2195 and received in evidence.)
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1 MR. LOPEZ: We read the entire document
2 except the last paragraph:

3 "From Consul-General HAYASHI at Mukden.

4 "To Foreign Minister INUKAI.

5 "Despatched from Mukden P.M. Dec. 14th 1931.

6 "Received P.M. Dec. 14th 1931.

7 "Cable No. 1532 (Cipher Code, Secret).

8 "Tsang Shih - I returned to his home after
9 being released on the night of the 13th, but, accord-
10 ing to information received from a reliable source,
11 the Army authorities, with a view to saving the
12 situation, are intending to summon all the Provincial
13 Government Governors here, and, with regard to the
14 foregoing, Staff Officer ITAGAKI is said to have met
15 and negotiated with Tsang today, the 14th."

16 We introduce in evidence IPS document No.
17 2788, which is a certified copy of Cable No. 1258
18 sent 12 November 1931 by Consul-General HAYASHI at
19 Mukden to Foreign Minister SHIDEHARA, reporting on the
20 activities of the defendant ITAGAKI with reference to
21 the coming of Pu-Yi to Manchuria.

22 THE PRESIDENT: Admitted on the usual terms.

23 CLERK OF THE COURT: Prosecution's document
24 No. 2788 will receive exhibit No. 2196.

25 (Whereupon, the document above

1 referred to was marked prosecution's exhibit
2 No. 2196 and received in evidence.)

3 MR. LOPEZ (Reading):

4 "From Consul-General HAYASHI at Mukden.

5 "To Foreign Minister SHIDEHARA.

6 "Despatched from Mukden P.M. Nov. 12th 1931.

7 "Received P.M. Nov. 12th 1931.

8 "Cable No. 1258 (Cipher Code, Secret)

9 "Referring to your Cable No. 'Go' 1421, on
10 asking the Commander of the Army on the 12th regarding
11 Emperor Hsuan-Tung's /T.N. Same as Pu-Yi/ coming to
12 Manchuria, he replied saying that, not only had he
13 heard nothing whatsoever, but that he even had Staff
14 Officer ITAGAKI notify the Tientsin Garrison several
15 days before that they were not to hurry about the
16 Emperor's coming to Manchuria as the time was not yet
17 sufficiently ripe.

18 "On my stating that it would be extremely
19 impolitic to carry out the plan of reinstating the
20 monarchy at once at this juncture when the military
21 affairs in the Amur District have not yet become
22 settled, and the regimes in the various districts have
23 not yet been firmly established as well as when inter-
24 national relations too are extremely tense, and also
25 that, even should the said Emperor come to Manchuria,

1 it would be advisable not to set him up at once,
2 the Commander agreed with me in general, at the same
3 time promising that, in addition to exerting his efforts
4 so as not to start upon any immediate movement even in
5 the event of the said visit to Manchuria, he would
6 promptly notify us of his arrival."

7 We tender in evidence IPS document No. 2913
8 which is a news story entitled "Long Preparedness is
9 Urged by Itagaki," published in the "Japan Advertiser"
10 for Sunday, June 26, 1938, to show that the defendant
11 ITAGAKI, on his first important press interview since
12 joining the cabinet as Minister of War, expressed no
13 need for formally declaring war on China, a determina-
14 tion to prepare for a war of more than ten years'
15 duration with China, and a resolve to fear not third
16 power interference in China.

17 THE PRESIDENT: Admitted on the usual terms.

18 CLERK OF THE COURT: Prosecution's document
19 No. 2913 will receive exhibit No. 2197.

20 (Whereupon, the document above
21 referred to was marked prosecution's exhibit
22 No. 2197 and received in evidence.)

23 MR. LOPEZ: From said document we read the
24 following extracts: on page 1, the headings and
25 the first and third paragraphs:

"LONG PREPAREDNESS IS URGED BY ITAGAKI

1 "War Minister Says Army Should Be Ready to Prosecute

2 "Fighting for 10 More Years

3 "POPULAR SUPPORT ASKED

4 "No Formal Decision Reached Yet on Enforcement of

5 "Mobilization Law, He Reveals

6 - - -

7
8 "Because it may be the intention of General
9 Chiang Kai-shek to 'resist Japan for the rest of his
10 life,' the army should be prepared to continue the
11 hostilities 'perhaps for ten more years,' War Minister
12 Seishiro ITAGAKI declared in a Domei interview at
13 Kyoto yesterday.

14 "The first important interview since Lieutenant-
15 General ITAGAKI recently joined the Cabinet was given
16 after the War Minister yesterday visited the Ise Grand
17 Shrines to report his assumption of office, the Kashi-
18 wara Shrine and also the Momoyama Mausoleum.

19 "Chiang's Tactics Seen

20 "General Chiang Kai-shek is not counting
21 on victories on the first line of battle, but is
22 hoping to overcome Japan by imposing a burden on the
23 country's resources over a protracted period, the
24 Minister said. The Japanese forces in China 'indeed,
25 are accomplishing splendid work,' he declared,

1 emphasizing that continued cooperation on the home
2 front 'alone is the key to overcome the emergency
3 by throwing upon it the whole weight of the country.'" :

4 From page 2 we read the second paragraph as
5 follows:

6 "Voicing his conviction that the country is
7 able to withstand future hostilities over an indefinite
8 period, the War Minister, hoped that the nation will
9 enter into the spirit of the Government program for
10 conservation of national resources and extend unstinting
11 cooperation toward the authorities."

12 And from page 2, the last paragraph:

13 "Commenting on the international situation,
14 he said: 'It is natural that Third Powers are resort-
15 ing to various maneuvers for the sake of protecting
16 their interests in China. It should suffice for
17 Japan to follow its own policy without fear or hesita-
18 tion. There has been talk of the advisability of
19 formally declaring war on China, but in view of the
20 Government's official declaration of January 16,
21 personally I see no need for that action.'"

22 We offer in evidence IPS document No. 4047-C
23 which contains among others a captured cablegram sent
24 by Ambassador Ott to the Army High Command and Air
25 High Command on 6 September 1939, to show the determined

1 but emphasized that he himself as a soldier had full
2 understanding of the German action.

3 "Grenan, Matsky

4 "Ott"

5 We tender in evidence IPS document No. 2957
6 which is a news story published on page 1 of the
7 Sunday edition, 2 October 1938, of the "Japan Advertiser"
8 with reference to the defendant ITAGAKI sending a con-
9 gratulatory telegram to Adolf Hitler.

10 THE PRESIDENT: Admitted on the usual terms.

11 CLERK OF THE COURT: Prosecution's document
12 No. 2957 will receive exhibit No. 2199.

13 (Whereupon, the document above
14 referred to was marked prosecution's exhibit
15 No. 2199 and received in evidence.)

16 MR. LOPEZ: From that document we read the
17 second paragraph:

18 "War Minister Seishiro ITAGAKI sent a tele-
19 gram to Chancellor Adolf Hitler yesterday morning
20 saying: 'The Imperial Army expresses deep admiration
21 and felicitations for Germany's successful conduct of
22 the Sudeten issue and prays that Germany's national
23 fortunes will ever rise and that the friendship of the
24 German and Japanese Armies, united on the anti-Comintern
25 front, will be strengthened more than ever.' Navy

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2 understanding of the German action.

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9 gratulatory telegram to Adolf Hitler.

10 THE PRESIDENT: Admitted on the usual terms.

11 CLERK OF THE COURT: Prosecution's document
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15 No. 2199 and received in evidence.)

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21 and felicitations for Germany's successful conduct of
22 the Sudeten issue and prays that Germany's national
23 fortunes will ever rise and that the friendship of the
24 German and Japanese Armies, united on the anti-Comintern
25 front, will be strengthened more than ever.' Navy

1 Minister Mitsumasa YONAI instructed the naval attache
2 at the Japanese Embassy in Berlin to deliver a similar
3 message to the Reichsfuehrer and, Domei reports, also
4 sent a representative to the Czechoslovak Legation here
5 to convey a message of felicitation."

6 We offer in evidence IPS document No. 2958
7 which is a news and editorial round-up entitled
8 "Japanese Press Comments" published in the "Japan
9 Advertiser" of March 17, 1939, to show that the de-
10 fendant ITAGAKI, as War Minister, expressed on the
11 floor of the Diet the belief that friction with third
12 powers was unavoidable in the execution of Japanese
13 policy for the creation of the so-called new order in
14 East Asia.

15 THE PRESIDENT: Admitted on the usual terms.

16 CLERK OF THE COURT: Prosecution's document
17 No. 2958 will receive exhibit No. 2200.

18 (Whereupon, the document above
19 referred to was marked prosecution's exhibit
20 No. 2200 and received in evidence.)

21 MR. LOPEZ: From this document we read the
22 complete two paragraphs on page 4 under the subhead
23 "Powers Must Be Ejected":

24 "Powers Must Be Ejected

25 "MIYAKO

1 "The Powers, especially Britain, France, and
2 the Soviet Union, have been hostile toward this
3 country since the Manchurian and China incidents. War
4 Minister Seishiro ITAGAKI and Navy Minister Mitsumasa
5 YONAI had the attitude of these Powers in mind, when,
6 in reply to interpellations in the Diet, they declared
7 that it would be impossible to avoid friction with
8 third countries in the execution of the policy for
9 the creation of a new order in East Asia. In the
10 same statements, they gave expression to the resent-
11 ment felt by the people over the attitude of Britain,
12 France, and the Soviet Union toward the Sino-Japanese
13 conflict. Evidently they had these same Powers in
14 mind when they argued that unless third countries
15 supporting the Chiang Kai-shek regime are ejected,
16 there can be no hope of settling the China incident.
17 If the Powers which are giving aid to the Chiang regime
18 in the struggle against this country do not reform
19 their attitude in time, this country will be compelled
20 to take steps which will lead to a situation, the
21 consequences of which will be serious.

22
23 "Following its action in making a loan to
24 the Chiang regime, Britain has established a fund to
25 stabilize the Chinese currency. The people consider
this step as an act of hostility against Japan and the

1 Provisional Government at Peiping. This impression
2 is confirmed by the representations which have been
3 made by Britain, America, and France, protesting
4 against the exchange control which has been enforced
5 in North China. There is no doubt that these countries
6 deliberately misinterpreted the aims of the step
7 taken by the Provisional Government in order to hamper
8 the work of creating a new order in East Asia. The
9 three Power demarches cause us to anticipate that the
10 Powers will attempt to put further obstacles in Japan's
11 way as the community of interests between Japan and
12 China increases. The service Ministers were quite
13 right when they told the Diet that it was their con-
14 sidered opinion that the China incident will not be
15 brought to a conclusion until Powers supporting the
16 Chiang regime are ejected."

17 We present in evidence IPS document No. 2959
18 which is a news story entitled "ITAGAKI, YONAI Score
19 Powers' Interference," published on page 1 of the
20 July 7, 1939 issue of the "Japan Times & Mail," 2d
21 edition, to show that the defendant ITAGAKI was for
22 stamping out interference by third powers in what he
23 considered as Japan's mission of constructing a new
24 order in East Asia.
25

THE PRESIDENT: Admitted on the usual terms.

1 CLERK OF THE COURT: Prosecution's document
2 No. 2959 will receive exhibit No. 2201.

3 (Whereupon, the document above
4 referred to was marked prosecution's exhibit
5 No. 2201 and received in evidence.)

6 MR. LOPEZ: From this document we read all
7 of page 1 with the exception of paragraph 3 and the
8 last paragraph:

9 "ITAGAKI, YONAI SCORE POWERS' INTERFERENCE.
10 Warn Nation Must Not Relax in Determination for China
11 Affair Goal.

12 "Unjust interference by third Powers in the
13 execution of Japan's mission of constructing a new
14 order in East Asia must be stamped out, it was said
15 by both War Minister Lieutenant-General Seishiro
16 ITAGAKI and Navy Minister Admiral Mitsumasa YONAI
17 Thursday night on the eve of the second anniversary
18 of the China Affair.

19 "The world is well aware of the fact that
20 the invincible Japanese troops of His Majesty the
21 Emperor have gained victories on land and sea and
22 achieved such remarkable success which is unique in
23 the history of the world.'

24 "BLAMES THIRD POWERS

25 "The stubborn Chiang Kai-shek regime is

1 still continuing resistance against Japan in complicity
2 with third Powers which have ambitions in the Far East.
3 It has now been laid bare that Japan's immediate enemy
4 is not limited to the Chungking Government.

5 "It is necessary, therefore, to crush the
6 anti-Japanese policy on the part of Third Powers
7 in order to put an end to the resistance campaign
8 by the Chiang's regime against Japan. This must
9 be accomplished at any cost no matter how long the
10 present hostilities continue. Accomplishment of
11 this point is the key to put an end to the current
12 affair.

13 "At the same time, it must be pointed out
14 that the affair cannot be regarded as ended even if
15 the Chiang Kai-shek's regime collapses tomorrow. In
16 order to make China free from the semi-colonial condi-
17 tion and build up a new order in East Asia, any
18 maneuvers on the part of pro-Chiang countries must be
19 checked and the nation must fully be ready to cope
20 with the possible crisis in the world.

21 "All the people in the country must express
22 their firm determination that Japan will never abandon
23 her aim of making East Asia for the East Asiatics. No
24 pains must be spared for the attainment of the goal."
25

1 MR. LOPEZ: Colonel Woolworth will address
2 the Court, if your Honor please.

3 MR. WOOLWORTH: If it please the Tribunal.

4 THE PRESIDENT: Colonel Woolworth.

5 MR. WOOLWORTH: General MINAMI advocated and
6 planned the Mukden Incident (September 18, 1931) and
7 was responsible for expanding that incident while Minister
8 of War, and was responsible for the sending of reinforce-
9 ments into Manchuria and committing acts of aggression
10 in violation of treaties and assurances. As Commanding
11 General of the Kwantung Army --

12 THE PRESIDENT: Mr. McManus.

13 MR. McMANUS: If your Honor please, I realize
14 the Court's ruling on statements before the introduction
15 of evidence, but I still insist that the Court should
16 draw some line on the prosecutor testifying. I know
17 that this statement here from the outset, if the Court
18 pleases, your Honor can determine immediately that it is
19 more than an explanation. Let the evidence speak for it-
20 self. I object to any lengthy explanation rather than
21 the evidence speaking for itself.

22 THE PRESIDENT: We assume, Colonel Woolworth,
23 that you will not say more than appears in the evidence
24 you are about to adduce. So far you have not offended.

25 MR. WOOLWORTH: As Commanding General of the

1 Kwantung Army and concurrently Ambassador to Manchukuo
2 (1934-1936) he conspired with others of the military
3 clique to further aggress against China in violation
4 of treaties and assurances.

5 I will now offer documents in proof of the
6 above facts:

7 Prosecution offers for identification only
8 document 1903, which is a copy of the Osaka Asahi of 1
9 July 1931, and introduces in evidence an excerpt there-
10 from.

11 THE PRESIDENT: Admitted on the usual terms.

12 CLERK OF THE COURT: Prosecution's document
13 No. 1903 will be given exhibit No. 2202 for identification
14 only. The excerpt therefrom, the same document number,
15 will receive exhibit No. 2202-A.

16 (Whereupon, the document above
17 referred to was marked prosecution's ex-
18 hibit No. 2202 for identification; the
19 excerpts therefrom being marked prose-
20 cution's exhibit No. 2202-A and received
21 in evidence.)

22 MR. WOOLWORTH: (Reading)

23 "Osaka Asahi

24 "1 July 1931

25 "The War Ministry invited Manchurian railway

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1 to avoid unnecessary anxieties on the part of the local
2 people, I state this."

3 I omit the last paragraph.

4 Prosecution offers for identification only
5 document No. 827, which is a Biography of General MINAMI
6 by YOSHITAKE, Ken, and introduces in evidence an excerpt
7 therefrom, document 827.

8 THE PRESIDENT: Mr. Toshio OKAMOTO.

9 MR. T. OKAMOTO: I object to the presentation
10 of this document on the ground that the biography of
11 General MINAMI is only an excerpt thereof. I submit that
12 no leave of the Court for the presentation of an excerpt
13 of a biography was given by the Court.

14 THE PRESIDENT: Does that suggest the rules
15 have not been observed? The use of every excerpt must
16 be the subject of an order under the rules.

17 MR. WOOLWORTH: If your Honor please, I read
18 to the Tribunal yesterday the agreement of the defense
19 that this excerpt could be used; a waiver of Rule 6b(1).
20

21 THE PRESIDENT: If I recollect rightly, such
22 an agreement was made a consent order, but I do not know
23 what it covered.

24 MR. WOOLWORTH: It covered this document, sir.

25 MR. T. OKAMOTO: I am not aware -- This counsel,
the present counsel, is not aware of the consent or waiver

1 of the order -- rule -- which the prosecutor just
2 stated to the Court. If there was any such similar agree-
3 ment or consent it was -- it pertains to excerpts which
4 are going to be presented during the time of the defense's
5 case and it does not apply to this kind of document
6 which is being presented by the prosecution.

7 THE PRESIDENT: I think it had better be cleared
8 up. I do not recollect every detail in Chambers. There
9 was a large attendance of counsel on the occasion.

10 MR. T. OKAMOTO: Mr. Blewett notified me that
11 such an agreement was concluded between counsel Logan
12 and the prosecution section. Therefore, I withdraw
13 the reason of my objection. However, I should like to
14 ask of the prosecutor what relevancy has page -- has the
15 content in page one and page two of exhibit 827?
16 Under the title of "Biography of General MINAMI",
17 I find in this document a piece of a cartoon taken from
18 a newspaper, and souvenir or remembrance or recollection
19 concerning outbreak of the Manchurian Incident. I am
20 not sure or rather I am doubtful whether those two docu-
21 ments or materials, which appear in the evidence have
22 actually been taken or have been taken from the book
23 itself.

24
25 THE MONITOR: Slight correction: Instead of
souvenirs and so forth, just remembrances of the outbreak

1 of the Manchurian Incident.

2 THE PRESIDENT: The counsel can consult the
3 original. The prosecution have no obligation to explain
4 the point of their evidence to the defense. They have
5 such an obligation to the Court and they have discharged
6 it.

7 The objection is overruled.

8 (Whereupon, the document above re-
9 ferred to was marked prosecution's exhibit
10 No. 2203 for identification and the excerpt
11 therefrom was marked prosecution's exhibit
12 No. 2203-A and received in evidence.)
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1 Mr. WOOLWORTH: (heading):

2 "Biography of General MINAMI by YOSHITAKE, Ken.
3 Days of War Minister and Manchurian Incident.

4 "Not many days after the occurrence of the
5 Manchurian Incident, a caricature contained in a news-
6 paper showed MINAMI drawn in colossal figure sunk back
7 in a chair with arms folded. Finance Minister
8 INOUE in smaller form sat in the same chair with his
9 back against the general, while the Premier, WAKATSUKI,
10 and the Foreign Minister sat beneath the chair with
11 folded knees. It was an ASAHI issue of about the
12 middle of October 1935, when the Finance Minister was
13 being spoken of as preparing for the next presidency
14 of the Minsei-to (Democratic Party.) This reflects
15 upon the fact that the WAKATSUKI Cabinet, after the
16 Manchurian Incident, was substantially led by General
17 MINAMI. (p. 115)

18 "General MINAMI believed from the very beginning
19 in the 'strongists' policy, that the Manchurian issue
20 could be effectively settled by use of arms alone. To
21 the so-called softist, this came as a matter of sur-
22 prise, but to the general, as a matter of course. Firm
23 was his determination and solid as a rock. Consistence
24 ruled his beliefs from start to finish. No wonder then
25 that soon after accepting the chair of the Ministership,

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1 in August of 1931, when war clouds hung heavily over
2 Japan and China because of the assassination of Major
3 Shintaro NAKAMURA, that the general in his position as
4 Minister of War delivered a speech at the conference
5 of divisional commanders saying, 'Guard our lifeline
6 Manchuria!' The voice of the strongest eventually
7 prevailed and the nation came to accept the cry
8 'Guard the lifeline' as their own voice. (pp. 115-116.)"

9 THE PRESIDENT: This is only the opinion of an
10 editor or caricaturist.

11 MR. WOOLWORTH: That is true.

12 THE PRESIDENT: Why put that before us. If
13 the world knows that we get this stuff and believe we
14 act on it what will they think of us? It is nonsensical.
15 We are judging these men not the editors of the Japanese
16 press or the caricaturists, and we judge them from
17 what they say and do and from what others in associa-
18 tion with them say and do.

19 MR. WOOLWORTH: If the Court please, I will
20 read no further from this document.

21 THE PRESIDENT: Counsel OKAMOTO's objection
22 was well taken, but we didn't appreciate it at the
23 time. We have to read what you tendered first.

24 MR. WOOLWORTH: The prosecution offers for
25 identification only document No. 1426, which is Foreign

1 Ministry Records: Manchurian Incident-Public Opinion
2 and Press Comment. pp. 241-242, and introduces in
3 evidence excerpt therefrom which is a translation of
4 War Minister MINAMI's statement appearing in the New
5 York Herald-Tribune on or about 18 October 1931.

6 THE PRESIDENT: Admitted on the usual terms.

7 CLERK OF THE COURT: Prosecution's document
8 No. 1426 will receive exhibit No. 2204 for identifica-
9 tion only, and the excerpt therefrom, same document
10 number, will receive exhibit No. 2204-A.

11 (Whereupon, the document above re-
12 ferred to was marked prosecution's exhibit No.
13 2204 for identification, the excerpt therefrom
14 being marked prosecution's exhibit No. 2204-A
15 and received in evidence.)

16 MR. WOOLWORTH: (Reading):

17 "Foreign Ministry Records: Manchurian Incident-
18 Public Opinion and Press Comment. pp. 241-242.

19 "Translation of War Minister MINAMI's statement
20 cabled by a New York Herald Tribune correspondent on or
21 about 18 October, 1931.

22 "Today's statement made by the military authorities
23 has clarified the base of the Government's policy
24 objecting to American participation. War Minister
25 MINAMI stated that: 'It is doubtful whether United

1 States intervention would contribute to the settle-
2 ment of the matter in question, that this matter should
3 be dealt with directly between Japan and China, that
4 we cannot admit the intervention of any third party
5 and that whatever steps the League Council would take
6 with the United States, it is quite evident that Japan
7 would under no circumstances alter her policy in re-
8 gard to the question that has a bearing upon her
9 national vicissitude. According to the Rengo semi-
10 official press agency, a certain high ranking army
11 officer remarked that the conduct of the United States
12 in Manchuria went too far in interfering with par-
13 ticular Japanese interests and if the United States
14 criticizes the Chinchow Incident, then what about the
15 Nicaragua question? He said that it was a regrettable
16 thing that the League and the United States were showing
17 attitudes of ignoring Japan's special interests in Man-
18 churia; that the fundamental policy of the Army is to
19 disapprove third power intervention in settling the
20 matter in question; and that this stand is definite
21 and immovable."

22 I will omit the last paragraph.

23 The prosecution offers for identification
24 only document No. 831, which is minutes of meeting of
25 Privy Council 9 December 1931, and introduces in evidence

1 excerpts therefrom, pages 16 to 32 of the Japanese
2 text, document 831.

3 THE PRESIDENT: Admitted on the usual terms.

4 CLERK OF THE COURT: Prosecution's document
5 No. 831 will receive exhibit No. 2205 for identifica-
6 tion only; the excerpt therefrom will receive exhibit
7 No. 2205-A.

8 (Whereupon, the document above re-
9 ferred to was marked prosecution's exhibit No.
10 2205 for identification, the excerpts therefrom
11 being marked prosecution's exhibit No. 2205-A
12 and received in evidence.)
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1 MR. T. OKAMOTO: I should like to point out
2 two important mistakes in connection with the docu-
3 ment which has just been presented and received.
4 The first one is in page 1 in the seventh line under
5 the heading "WAR MINISTER MINAMI", line seven of
6 that paragraph. There we find the words "the com-
7 mander of the above force." It can be taken as --
8 I am afraid it will be taken to mean the commander
9 of the Kwantung Army. Whereas, if you compare the
10 text with the original Japanese text, you will find
11 out that those words mean "the Central Army
12 authorities", and this mistake will be very easily
13 found out if you compare the text with the Japanese
14 original.

15 In the second line -- I mean the next line
16 immediately underneath the words I pointed out
17 previously you will find the words "12.40 P.M."
18 This should read either "12.40 hours" or "00.40"
19 and is another obvious mistake.

20 Then coming down to the page 2, fifth line
21 of the third paragraph, "the affair would be extended"
22 should read "the affair would not be extended."
23 That is also an obvious mistake.

24 THE PRESIDENT: I think the shortest way
25 to deal with this is to refer the matter to the

1 Board of Reference and to ask them to consider any
2 representations that counsel OKAMOTO makes.

3 THE INTERPRETER: I should like to terminate
4 the words of the counsel OKAMOTO.

5 It means the contrary if "not" is added
6 between "would" and "be extended."

7 THE PRESIDENT: The Board may have revised
8 the exhibit before we meet again. We will recess
9 for fifteen minutes.

10 (Whereupon, at 1045, a recess was
11 taken until 1100, after which the proceedings
12 were resumed as follows:)

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MARSHAL OF THE COURT: The International Military Tribunal for the Far East is now resumed.

THE PRESIDENT: Colonel Woolworth.

MR. WOOLWORTH: If your Honor please, as I understand it, before I read this document there will be a report on the translation.

THE PRESIDENT: We thought that one might be made during the recess. Well, proceed to read it and we can make any corrections necessary later.

MR. WOOLWORTH: (Reading)

"MINUTES OF THE CONFERENCE ON THE CHINA INCIDENT REPORT DATED DECEMBER 9TH 1931.

"Report on the China Incident (Map Annexed).

"The meeting was opened at the office of this Council Building at 1:30 P.M. on Wednesday, 9th December 1931."

I will omit the persons present.

"(WAR MINISTER MINAMI): 'I shall now report on conditions in the Chinchow district. In the concentration of an army it is a principle in military tactics to send one unit ahead. Now, as you know, our forces were distributed over Tsitsihar, Ssuping kai, and other places. So, in order to concentrate them, one unit was sent to the Chinchow district. Accordingly an order was issued commending all units in the said

1 area to receive instructions from the commander of
2 the above force in all their operations and following
3 this an order was issued at 12:40 P.M. on the 27th
4 November that the unit should return to a position
5 east of Hsin-Min-Tun. Incidentally, information to
6 the effect that if Japan so demanded the Chinese would
7 evacuate Chinchow came into our hands. Thus, there
8 was no necessity for any strong offensive action.
9 Perhaps this might have led to the report which ap-
10 peared in the newspapers, etc., to the effect that the
11 Chief of Staff, the Minister of War, and the Minister
12 of Foreign Affairs, had come to an agreement that the
13 attack on Chinchow should not be carried out.'

14 "COUNCILLOR EGI): 'Although I think it is
15 reasonable that attack should be made under some pre-
16 text on Chinchow where CHANG HSUEH-LIANG has his head-
17 quarters, but great will be our loss of credit with the
18 League of Nations and the great powers. Though it
19 might be very convenient for Japan to have Manchoukuo
20 an independent state, I do not believe the great powers
21 would accept it. It might be well for Manchurian people
22 to work for their independence on their own accord, but
23 are we not losing general confidence as a result of
24 continually taking action under the pretext of self-
25 defense.'

1 "(WAR MINISTER MINAMI): 'We do not wish to
2 give the impression to foreign countries that we have
3 attacked Manchuria and Mongolia.'

4 "(COUNCILLOR SAKURAI): 'After our planes
5 bombed Chinchow our country quickly lost the confidence
6 of the League of Nations which is certainly a matter
7 of regret. Must we all regard this loss as inevitable?'

8 "(WAR MINISTER MANIMI): 'I too consider it
9 regrettable. However, apparently Europeans and Americans
10 are mistaken in thinking that we made use of the large
11 bombs such as used in the European War. Moreover, the
12 contrast between this incident and the frequent govern-
13 ment announcements that the affair would be extended has
14 caused a strong reaction amongst them.'

15 "(COUNCILLOR SAKURAI): 'What is meant by the
16 term "benitai"?'

17 "("WAR MINISTER MINAMI): ' "Benitai" means
18 units which engage in battle wearing plain clothes and
19 not uniform. No small inconvenience has been exper-
20 ienced in fighting them because they make it their
21 practice to indulge in espionage activities.'

22 "(COUNCILLOR MIZUMACHI): 'What do you think
23 are CHANG HSUEH-LIANG's real intentions?'

24 "("WAR MINISTER MANIMI): 'As far as my own
25 judgment goes, he intends to go back to his own base so

1 that he might maintain his livelihood. But as it is,
2 he has no means of raising income tax, and it is very
3 likely he is worrying how to carry on. His recent ac-
4 tivity against Japan may offer some excuse to the Nan-
5 king Government and partly indicates what might be
6 termed a desperate action.'

7 "(COUNCILLOR EGI): 'Regarding my interpellation
8 the other day when I asked a question regarding the im-
9 proper action taken by some of the young officers of
10 our Army. It is not at all suitable for the maintenance
11 of military discipline to leave the matter of punishment
12 ambiguous. Once they rebel is it not a matter of
13 course that they should be punished? I fear some sol-
14 diers may rise up in indignation. It is desirable that
15 such matters should be publicly disposed of.'

16 "(WAR MINISTER MINAMI): 'We thank you for your
17 warning, but the questions of punishment is still under
18 consideration. However, the authorities also deem it
19 important to maintain discipline, so please leave the
20 affair to the Army.'

21 "(COUNCILLOR EGI): 'I am quite satisfied to
22 hear your answer. I am not at all concerned about the
23 details of the punishment.'

24 "(CHAIRMAN KURATOMI): 'We thank the War Minis-
25 ter for his giving us the detailed information he has

1 given us. Today's meeting is now adjourned.
2 "(Adjournment took place at 3:30 P.M.)"
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1 MR. WOOLWORTH: The prosecution offers for
2 identification only document No. 1483, Foreign
3 Ministry document containing foreign press com-
4 ment, North China Incident of May and June, 1935,
5 and introduces in evidence marked excerpts there-
6 from.

7 THE PRESIDENT: Admitted on the usual
8 terms.

9 CLERK OF THE COURT: Prosecution's document
10 No. 1483 will receive exhibit No. 2206 for identi-
11 fication only, and the excerpt therefrom, the same
12 document number, will receive exhibit No. 2206A.

13 (Whereupon, the document above
14 referred to was marked prosecution's exhibit
15 No. 2206 for identification; and the excerpt
16 therefrom was marked prosecution's exhibit
17 No. 2206A and received in evidence.)

18 MR. BROOKS: Mr. President, my co-counsel
19 tells me that in this document 2205A which was
20 just introduced, where there was some mis-
21 translation, that the translation is very bad
22 in several other places, and there is actually
23 a page that he never pointed out. On that account
24 I think we should refer the minister's statements,
25

1 that is, War Minister MINAMI'S statements, therein
2 to the Language Section for a careful check on a
3 matter of this importance.

4 THE PRESIDENT: 'It is already referred for
5 consideration and such representations as the Jap-
6 anese counsel might make.

7 MR. BROOKS: If the President desires,
8 we can list the others, but there are so many
9 others that I think, for the purpose of saving
10 time, that the four or five paragraphs, that is,
11 of MINAMI'S statement, should all be checked
12 and presented all at one time. It is as you
13 desire.

14 THE PRESIDENT: We want you to consider
15 every representation made by Japanese counsel,
16 Major Moore. We don't want you to deal with the
17 matter piecemeal. Japanese counsel mentioned
18 some matters to us; apparently there others
19 that he wants to name, so don't read what you
20 have to say until you see Japanese counsel
21 again, Major Moore.

22 LANGUAGE ARBITER (Major Moore): Yes,
23 sir.

24 THE PRESIDENT: This document is admitted
25

1 on the usual terms -- 1483.

2 MR. WOOLWORTH: (Reading) "Excerpts from
3 the Christian Science Monitor, May 31, 1935.

4 "JAPAN THREATENS STRONGER ACTION IN NORTH
5 CHINA.

6 "By a Staff Correspondent of The Chris-
7 tian Science Monitor.

8 "Tokyo, May 31 - Sino-Japanese co-operation,
9 carefully nurtured by the Japanese Foreign Ministry
10 during the last months. was somewhat blighted by
11 the drastic action of Japanese military leaders who
12 presented to Chinese authorities in North China a
13 series of demands containing all the features of an
14 ultimatum except a definite time limit.

15 "Accusing Chinese authorities, especially
16 the Governor of Hopei Province, Gen. Yu Hsueh Chung,
17 of violating the Tangku truce by instigating or
18 conniving in political banditism in the demilitarized
19 zone and by the assassination of two Chinese editors
20 who were considered Japanese agents, the Japanese
21 Chief of Staff in North China, Colonel Sakai,
22 stated that if China did not immediately halt all
23 anti-Japanese and anti-Manchoukuo activities and
24 abolish all organizations resorting to terrorist
25 acts, the Japanese Army would take steps to cope

1 with the situation.

2 "A Foreign Office spokesman today intimated
3 that Japanese action, in the event of the Chinese
4 non-compliance, would probably take the form of
5 occupation of the demilitarized zone for the purpose
6 of maintaining order. He expressed doubt whether
7 the occupation would include Tientsin and Peiping.
8 However, inclusion of these cities within a new
9 demilitarized zone is possible if the incident takes
10 a serious or protracted turn.

1 "The present move was not sudden, as Japan-
2 ese military leaders for some time have expressed
3 growing dissatisfaction over the alleged failure of
4 the Chinese to carry out the letter and spirit of the
5 Tangku truce. So far the Japanese Foreign Office
6 has made no representations to Nanking, the matter
7 being considered exclusively military.

8 "High Japanese Army officers have repeated-
9 y proclaimed dissatisfaction with what they con-
10 sidered a too conciliatory Foreign Office policy
11 ward China, and openly protested against the recent
12 sing of the Japanese Legation at Peiping to the
13 us of an Embassy. Simultaneously with the emer-
14 s of a serious crisis in North China, milder

1 with the situation.

2 "A Foreign Office spokesman today intimated
3 that Japanese action, in the event of the Chinese
4 non-compliance, would probably take the form of
5 occupation of the demilitarized zone for the purpose
6 of maintaining order. He expressed doubt whether
7 the occupation would include Tientsin and Peiping.
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9 demilitarized zone is possible if the incident takes
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16 has made no representations to Nanking, the matter
17 being considered exclusively military.

18 "High Japanese Army officers have repeated-
19 ly proclaimed dissatisfaction with what they con-
20 sidered a too conciliatory Foreign Office policy
21 toward China, and openly protested against the recent
22 raising of the Japanese Legation at Peiping to the
23 status of an Embassy. Simultaneously with the emer-
24 gence of a serious crisis in North China, milder
25

1 ambassador to the Japanese-protected state."

2 And I read from page 8 in the next to the
3 last paragraph:

4 (Reading) "We seek a solution of all Sino-
5 Jap problems, including that of the puppet regime.
6 By the latter phrase I mean China's recognition of
7 the new empire," asserted Major-General Rensuke
8 ISOGAI Japanese military attache and spokesman."

9 I read from page 9, beginning the third
10 paragraph from the bottom of the page:

11 (Reading) "Lieutenant-General Yoshijiro
12 UYEZU, commander of the Japanese garrison in North
13 China, said at the close of the day's discussions,
14 that future Japanese action depends upon 'the sin-
15 cerity of the Chinese in dealing with the Japanese
16 'requests.'

17 "He declared that the removal of Chinese
18 officials in that area to other positions was
19 'evading the issue and that the root of the trouble
20 remains although on the surface it appears that the
21 Japanese demands have been met.'

22 "Major-General ISOGAI was quoted by Rengo
23 (Japanese news agency) as saying China faces the
24 necessity of establishing a new government 'capable
25 of cooperating with Japan in maintaining peace in

1 differences arose at Shanghai and Nanking, Japan
2 objecting to Chinese action in raising the tariff
3 10 per cent and in instituting a sugar monopoly.

4 "The present flurry coincides with the
5 period when the Japanese Army and Navy formulated
6 demands for next year's budget appropriations.
7 Military action or the constant threat thereof may
8 conceivably prove a means of inducing China to recog-
9 nize the independence of Manchoukuo.

10 "Excerpt from the New York Herald Tribune,
11 June 2, 1935.

12 "JAPAN EYEING INNER MONGOLIA, ITS RULER SAYS

13 "Prince Teh Tells of Bid by Nipponese to
14 Establish Airdrome in Territory.

15 "Seen Aimed at Russia.

16 "Tokio Demands Chinese Bow to 14-Pt. Ulti-
17 matum.

18 "By Victor Keen.

19 "From the Herald Tribune Bureau.

20 "Shanghai, June 2 (Sunday) - Prince Teh,
21 virtual ruler of Inner Mongolia, asserted to newspaper
22 men in Peiping yesterday that there had been renewed
23 Japanese efforts to extend the borders of Manchukuo
24 into Inner Mongolia as a spearhead pointed toward
25 Soviet Russia.

1 with the situation.

2 "A Foreign Office spokesman today intimated
3 that Japanese action, in the event of the Chinese
4 non-compliance, would probably take the form of
5 occupation of the demilitarized zone for the purpose
6 of maintaining order. He expressed doubt whether
7 the occupation would include Tientsin and Peiping.
8 However, inclusion of these cities within a new
9 demilitarized zone is possible if the incident takes
10 a serious or protracted turn.

11 "The present move was not sudden, as Japan-
12 ese military leaders for some time have expressed
13 growing dissatisfaction over the alleged failure of
14 the Chinese to carry out the letter and spirit of the
15 Tangku truce. So far the Japanese Foreign Office
16 has made no representations to Nanking, the matter
17 being considered exclusively military.

18 "High Japanese Army officers have repeated-
19 ly proclaimed dissatisfaction with what they con-
20 sidered a too conciliatory Foreign Office policy
21 toward China, and openly protested against the recent
22 raising of the Japanese Legation at Peiping to the
23 status of an Embassy. Simultaneously with the emer-
24 gence of a serious crisis in North China, milder
25

"The Prince reported that recently a Japanese airplane landed at Panchiang, in the eastern Inner Mongolia, bearing a Japanese military representative. This envoy informed Prince Teh that the Japanese desired to build an airdrome in the vicinity of Panchiang, establish a branch of the military service bureau of the Kwantung (Japanese puppet) army there, and also erect a wireless

station. Furthermore, the representative submitted by the Japanese military authorities that the Mongolian capital be removed from Pailing-siemiao, 100 miles to the north. Peisic is a key to the motor highway between Manchukuo and Mongolia. The Japanese demands indicate, therefore, a desire to extend Manchukuo's borders

to the Chinese Face Ultimatum.

Meanwhile, the North China situation may be expected to occupy the attention of the military and political leaders. Its peace-appeal apparently hinged on China's unqualified acceptance of the Japanese military demands.

Summarized here as follows:

1. Removal of General Yu Hsueh-chung,

1 "The Prince reported that recently a Jap-
2 anese airplane landed at Panchiang, in the eastern
3 part of Inner Mongolia, bearing a Japanese military
4 representative. This envoy informed Prince Teh
5 that the Japanese desired to build an airdrome in
6 the vicinity of Panchiang, establish a branch of the
7 special service bureau of the Kwantung (Japanese
8 continental) army there, and also erect a wireless
9 station.

10 "Furthermore, the representative submitted
11 a request by the Japanese military authorities that
12 the Inner Mongolian capital be removed from Pailing-
13 miao to Peisiemiao, 100 miles to the north. Peisic-
14 miao is the key to the motor highway between Manchu-
15 kuo and Mongolia. The Japanese demands indicate,
16 therefore, a desire to extend Manchukuo's borders
17 westward.

18 "Chinese Face Ultimatum.

19 "Meanwhile, the North China situation
20 continued today to occupy the attention of the
21 Chinese military and political leaders. Its peace-
22 ful solution apparently hinged on China's unquali-
23 fied acceptance of the Japanese military demands.
24 These were summarized here as follows:

25 "The removal of General Yu Hsueh-chung,

1 differences arose at Shanghai and Nanking, Japan
2 objecting to Chinese action in raising the tariff
3 10 per cent and in instituting a sugar monopoly.

4 "The present flurry coincides with the
5 period when the Japanese Army and Navy formulated
6 demands for next year's budget appropriations.
7 Military action or the constant threat thereof may
8 conceivably prove a means of inducing China to recog-
9 nize the independence of Manchoukuo.

10 "Excerpt from the New York Herald Tribune,
11 June 2, 1935.

12 "JAPAN EYEING INNER MONGOLIA, ITS RULER SAYS

13 "Prince Teh Tells of Bid by Nipponese to
14 Establish Airdrome in Territory.

15 "Seen Aimed at Russia.

16 "Tokio Demands Chinese Bow to 14-Pt. Ulti-
17 matum.

18 "By Victor Keen.

19 "From the Herald Tribune Bureau.

20 "Shanghai, June 2 (Sunday) - Prince Teh,
21 virtual ruler of Inner Mongolia, asserted to newspaper
22 men in Peiping yesterday that there had been renewed
23 Japanese efforts to extend the borders of Manchukuo
24 into Inner Mongolia as a spearhead pointed toward
25 Soviet Russia.

1 Governor of Hopei Province (whose capital is Tientsin),
2 and of Chang Ting-ao, Mayor of Tientsin.

3 "The abolition of the Peiping branch of
4 the Chinese military affairs commission.

5 "The transfer elsewhere of all troops under
6 direct Nanking control or under generals formerly
7 owing allegiance to Marshal Chang Hsueh-liang.

8 "The abolition of the Chinese gendarmerie
9 headquarters in Peiping, which are under the direct
10 control of Generalissimo Chiang Kai-shek.

11 "The maintenance of peace and order in the
12 Peiping-Tientsin area by means of peace preserva-
13 tion corps and militia.

14 "The complete abolition or rigid curtail-
15 ment of the city branches of the Kuomintang (National
16 People's party, in power in Nanking) in Peiping and
17 Tientsin.

18 "The abolition of political training cen-
19 ters maintained by the Kuomintang, and the removal
20 of the headquarters of all secret terrorist socie-
21 ties, such as the Blue Shirts.

22 "The handing over to the Japanese authori-
23 ties for punishment, under the terms of the Boxer
24 Protocol of 1901. of the murderers of Pa Yu-yuan
25

1 "The Prince reported that recently a Jap-
2 anese airplane landed at Panchiang, in the eastern
3 part of Inner Mongolia, bearing a Japanese military
4 representative. This envoy informed Prince Teh
5 that the Japanese desired to build an airdrome in
6 the vicinity of Panchiang, establish a branch of the
7 special service bureau of the Kwantung (Japanese
8 continental) army there, and also erect a wireless
9 station.

10 "Furthermore, the representative submitted
11 a request by the Japanese military authorities that
12 the Inner Mongolian capital be removed from Pailing-
13 miao to Peisiemiao, 100 miles to the north. Peisie-
14 miao is the key to the motor highway between Manchu-
15 kuo and Mongolia. The Japanese demands indicate,
16 therefore, a desire to extend Manchukuo's borders
17 westward.

18 "Chinese Face Ultimatum.

19 "Meanwhile, the North China situation
20 continued today to occupy the attention of the
21 Chinese military and political leaders. Its peace-
22 ful solution apparently hinged on China's unquali-
23 fied acceptance of the Japanese military demands.
24 These were summarized here as follows:

25 "The removal of General Yu Hsueh-chung,

Wu Wen-pu, pro-Japanese editors assassinated in
Shanghai last month.

"Parallel to Shanghai Cited.

"The Shanghai 'Nichi Nichi,' Japanese daily,
characterizes the North China situation as not dif-
ferent from that which precipitated the Shanghai
Mukden incidents.

"General Chiang Kai-shek will arrive in
Shanghai from Chungking on June 10 to discuss the situa-
tion with Wang Ching-wei, Premier; Huang Fu, Min-
ister of Interior and chairman of the Peiping Politi-
cal Readjustment Commission, and Ying Tung,
managing director of the Peiping-Mukden Railway.

"Yakichiro Suma, Japanese Consul General
Nanking, stated yesterday that Chiang had in-
structed Marshal Chang to 'deal adequately' with
General Yu, the Hopei Governor, who has incurred
the wrath of the Japanese military authorities in
North China because of his alleged anti-Japanese
activities. General Yu is quoted in Japanese dis-
patches as saying that he will not resign his post
unless specifically ordered to do so by the Nanking
authorities.

"Yu Seen Slated to Go.

1 and Hu Wen-pu, pro-Japanese editors assassinated in
2 Tientsin last month.

3 "Parallel to Shanghai Cited.

4 "The Shanghai 'Nichi Nichi,' Japanese daily,
5 characterizes the North China situation as not dif-
6 ferent from that which precipitated the Shanghai
7 and Mukden incidents.

8 "General Chiang Kai-shek will arrive in
9 Hankow from Chungking on June 10 to discuss the situa-
10 tion with Wang Ching-wei, Premier; Huang Fu, Min-
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13 managing director of the Peiping-Mukden Railway.

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19 North China because of his alleged anti-Japanese
20 activities: General Yu is quoted in Japanese dis-
21 patches as saying that he will not resign his post
22 unless specifically ordered to do so by the Nanking
23 authorities.

24
25 "Yu Seen Slated to Go.

1 Governor of Hopen Province (whose capital is Tientsin),
2 and of Chang Ting-ao, Mayor of Tientsin.

3 "The abolition of the Peiping branch of
4 the Chinese military affairs commission.

5 "The transfer elsewhere of all troops under
6 direct Nanking control or under generals formerly
7 owing allegiance to Marshal Chang Hsueh-liang.

8 "The abolition of the Chinese gendarmerie
9 headquarters in Peiping, which are under the direct
10 control of Generalissimo Chiang Kai-shek.

11 "The maintenance of peace and order in the
12 Peiping-Tientsin area by means of peace preserva-
13 tion corps and militia.

14 "The complete abolition or rigid curtail-
15 ment of the city branches of the Kuomintang (National
16 People's party, in power in Nanking) in Peiping and
17 Tientsin.

18 "The abolition of political training cen-
19 ters maintained by the Kuomintang, and the removal
20 of the headquarters of all secret terrorist socie-
21 ties, such as the Blue Shirts.

22 "The handing over to the Japanese authori-
23 ties for punishment, under the terms of the Boxer
24 Protocol of 1901. of the murderers of Pa Yu-yuan
25

1 "Japanese press dispatches from Nanking
2 state that the Chinese Government leaders have
3 decided to demand the resignation of General Yu.

4 "Lieutenant General Yoshijiro UMEZU,
5 commander of the Japanese force in North China,
6 returned to Tientsin yesterday following a hurried
7 visit to Hsingking, capital of Manchukuo, where he
8 conferred with General Senjuro HAYASHI, Japanese
9 War Minister, and General Jiro MINAMI, commander
10 of the Kwantung army. Their discussion covered
11 alleged Chinese violations of the Tangku peace
12 agreement of 1933."

13 THE PRESIDENT: Colonel Woolworth, when you
14 began to read this document we treated it as a
15 series of news items in which there would be state-
16 ments by the accused, or some of them, or statements
17 by those associated with them, but to a very large
18 extent there are no such statements.

19 MR. WOOLWORTH: There are some appearing
20 throughout these items as we go along. There is
21 a statement at the time of the activities of the
22 accused MINAMI and the accused UMEZU.

23 THE PRESIDENT: Some of the extracts have
24 nothing at all in them that seem to connect the
25 accused with any allegation. However, you had

1 and Hu Wen-pu, pro-Japanese editors assassinated in
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19 North China because of his alleged anti-Japanese
20 activities. General Yu is quoted in Japanese dis-
21 patches as saying that he will not resign his post
22 unless specifically ordered to do so by the Nanking
23 authorities.

24 "Yu Seen Slated to Go.
25

1 better proceed to read this, but in the future will
2 you do a little more editing of this, Colonel Wool-
3 worth?

4 MR. WOOLWORTH: Very well, sir.

5 I will read from page 6:

6 (Reading) "Shanghai, June 5. - Japanese
7 military authorities at Tientsin today cancelled
8 departure orders for all troops scheduled to return
9 to Japan June 15 upon the expiration of their enlist-
10 ment terms. Major-General Yosjiro UMEZU, chief
11 commander of the Japanese garrison, issued the
12 order. He stated that the cancellation of leave
13 was due to 'a critical situation existing.'"

14 I read the sixth paragraph of the same
15 page:

16 (Reading) "In addition to the forces at
17 Tientsin, the Japanese now have one brigade sta-
18 tioned within the demilitarized zone northeast of
19 Peiping. In the event hostilities develop, now
20 regarded as practically inevitable, all the Japanese
21 forces of North China will be placed under the com-
22 mand of the Kwantung army, which controls the
23 'puppet regime' of Manchukuo. They are commanded
24 by General Jiro KINAMI, who serves concurrently as
25

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2 state that the Chinese Government leaders have
3 decided to demand the resignation of General Yu

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5 commander of the Japanese force in North China,
6 returned to Tientsin yesterday following a hurried
7 visit to Hsingking, capital of Manchukuo, where he
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20 throughout these items as we go along. There is
21 a statement at the time of the activities of the
22 accused MINAMI and the accused UMEZU.

23 THE PRESIDENT: Some of the extracts have
24 nothing at all in them that seem to connect the
25 accused with any allegation. However, you had

1 ambassador to the Japanese-protected state."

2 And I read from page 8 in the next to the
3 last paragraph:

4 (Reading) "'We seek a solution of all Sino-
5 Jap problems, including that of the puppet regime.
6 By the latter phrase I mean China's recognition of
7 the new empire,' asserted Major-General Rensuke
8 ISOGAI Japanese military attache and spokesman."

9 I read from page 9, beginning the third
10 paragraph from the bottom of the page:

11 (heading) "Lieutenant-General Yeshijiro
12 TANEZU, commander of the Japanese garrison in North
13 China, said at the close of the day's discussions,
14 that future Japanese action depends upon 'the sin-
15 cerity of the Chinese in dealing with the Japanese
16 'requests.'

17 "He declared that the removal of Chinese
18 officials in that area to other positions was
19 'evading the issue and that the root of the trouble
20 remains although on the surface it appears that the
21 Japanese demands have been met.'

22 "Major-General ISOGAI was quoted by Rengo
23 (Japanese news agency) as saying China faces the
24 necessity of establishing a new government 'capable
25 of cooperating with Japan in maintaining peace in

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2 you do a little more editing of this, Colonel Wool-
3 worth?

4 MR. WOOLWORTH: Very well, sir.

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12 order. He stated that the cancellation of leave
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20 regarded as practically inevitable, all the Japanese
21 forces of North China will be placed under the com-
22 mand of the Kwantung army, which controls the
23 'puppet regime' of Manchukuo. They are commanded
24 by General Jiro MINAMI, who serves concurrently as
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1 the Far East.'

2 "New Japanese troops are expected to arrive
3 June 12."

4 THE PRESIDENT: That adds nothing whatever
5 to what we have already heard about the Japanese
6 attitude toward China.

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1 MR. WOOLWORTH: I read from page 18 at the top
2 of the page:

3 "A dispatch from Hsinking, Manchoukuo, said
4 that orders to place Japan's war machine in Manchuria
5 in readiness to roll southward across the Great Wall if
6 China fails to submit to the ultimatum, were issued from
7 the general headquarters of General Jiro MANIMI,
8 Japanese Military Chief in Manchoukuo."

9 I will read from page 19 at the top of the page:

10 "JAPAN ARMY GETS SECRET ORDERS IN CHINA RO".
11 TIENTSIN AND PEIPING FACT OCCUPATION.

12 "Tokyo Orders all demands for clearing region
13 be complied with--

14 THE MONITOR: Mr. Prosecutor, the last paragraph
15 you have just read has not been translated by the Inter-
16 national Prosecution Section and we have no prepared text.
17 Shall we do it by relay?

18 MR. WOOLWORTH: Yes. I will read one paragraph.

19 THE MONITOR: Just one paragraph?

20 MR. WOOLWORTH: Yes.

21 THE MONITOR: Will the Court Reporter read the
22 passage just read by the prosecutor?

23 (Whereupon, the official court re-
24 porter read the last statement of the prosecutor
25 as follows):

1 "JAPAN ARMY GETS SECRET ORDERS IN CHINA ROO.
2 TIENTSIN AND PEIPING FACE OCCUPATION.

3 "Tokyo orders all demands for clearing region
4 be' complied with--"

5 THE MONITOR: Is that all?
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1 THE PRESIDENT: We are wasting much time
2 about material which many of us, if not all of us,
3 think has little or no value.

4 MR. WOOLMORTH: Very well, sir.

5 The prosecution offers in evidence document
6 1869, excerpts from interrogation of General MINAMI,
7 Juro.

8 THE PRESIDENT: Admitted on the usual terms.

9 CLERK OF THE COURT: Prosecution's document
10 No. 1869 will receive exhibit No. 2207.

11 (Whereupon, the document above re-
12 ferred to was marked prosecution's exhibit
13 No. 2207 and received in evidence.)

14 MR. T. OKAMOTO: I should like to ask for
15 the leave of the Court to point out some other errors,
16 although I know it is rather annoying, because the
17 matter is important.

18 Tenth line from the top of page 2, the
19 answer there reads: "From 30 March 1944 until 15
20 August 1945." However, it should read: "From 30
21 March 1945", instead of "1944", "until 15 August 1945".
22 It is obvious accordingly if you look up the personal
23 history of General MINAMI attached to the Indictment.

24 Then the eleventh line, next page, it reads:
25 "and did not go East of this aforementioned

1 river." However, it should read: "did not go West"
2 instead of "East". It may well be said that the
3 whole text of the translation is incoherent as it
4 was translated by someone who cannot distinguish
5 East from West.

6 THE PRESIDENT: We will refer the matter to
7 the Language Section. In the meantime, read it.

8 MF. WOOLCORTH: "Q. ***When Vice Chief of
9 Staff at the time the Sainan Incident took place ...
10 was quick in action and notable in decision. He
11 adopted a strong attitude when the incident broke out.
12 He at once ordered troops to Shantung for the second
13 time.' Is that statement true which I have just
14 repeated to you from that book?

15 "A. That was under the orders of the Chief
16 of Staff and the TANAKA Cabinet which decided that
17 troops should be sent to Shantung*****.

18 * * * * *

19 "Q. Do you recall a speech you delivered
20 about the 4th of August 1931 to Army Commanders and
21 Commanding Generals of Divisions at the War Ministry?
22

23 "A. Yes.

24 "Q. Did you say in the course of that speech,
25 'Guard Manchuria, our life line!'

1 "A. I do not recall that statement, but
2 the sentiments are correct."

3 * * * * *

4 "Q. When did you take command of the Kwantung
5 Army?

6 "A. December, 1934.

7 "Q. And you remained in command of that army
8 for upwards of two years?

9 "A. One year and three months.....

10 "Q. How many troops did you have under your
11 command in Manchuria at that time?

12 "A. About 60,000, I believe.

13 "Q. You were concurrently Ambassador to
14 Manchukuo while Commanding General of the Kwantung
15 Army, were you not?

16 "A. Yes. "

17 * * * * *

18 "Q. You had given General HONJO blanket
19 authority to take any action he saw fit in Manchuria
20 just prior to the Mukden incident?

21 "A. No. The Commander in Chief of the
22 Kwantung Army has this privilege and has had it for
23 over twenty-five years.

24 "Q. Then he could take any war-like steps
25 he wanted over there under the prerogative of supreme

1 command?

2 "A. Within the jurisdiction of his own
3 area he can do practically anything he wishes.

4 "Q. And did you approve of the action he
5 took?

6 "A. Yes."

7 * * * * *

8 "Q. General, you stated that you were a
9 member and President of the Greater Japan Political
10 Association?

11 "A. Yes.

12 "Q. Now tell me, how long were you a member
13 of this society? I want the dates.

14 "A. From 30 March 1944 until 15 August 1945.

15 "Q. Now you said that one of the principal
16 aims of this society was to extend the Greater East
17 Asia Co-Prosperity Sphere?

18 "A. Essentially that might be termed one
19 of its principal aims..."

20 * * * * *

21 "Q. How far did you want to extend this
22 Co-Prosperity Sphere? To what geographical limits?

23 "A. Exactly as the Government had outlined.

24 "Q. How was that?

25 "A. Asiatics.

1 "Q. To extend it over all Asia?

2 "A. Yes.

3 "Q. Under that you include India, Burma,
4 the Dutch Indies and the Philippines?

5 "A. Yes.

6 "Q. You weren't concerned with how the proper
7 sovereignties felt about India, Burma, the Dutch
8 Indies, China, or the Philippines?

9 "A. Yes, I believed that Asiatics wished to
10 be freed of the yoke of foreign domination.

11 "Q. General, you believed then in Asia for
12 Asiatics.

13 "A. Yes."

14 * * * * *

15 "Q. While you were Minister of War in 1931
16 the Japanese Army waged war upon China, did they not?

17 "A. Yes."

18 "A. We concluded our engagements at the
19 Ryoga River in 1931 and subsequent to that consolidated
20 the territory.....

21 "Q. What do you mean by coordinating your
22 position?

23 "A. (General MINAMI showed on a map he drew
24 that the South Manchuria Railroad ran from Harbin to
25 the Chinese border and the Ryoga River cut the territory

1 of Manchuria more or less in half.)

2 "At the time I was War Minister we were guarding
3 the route of the railway and did not go East of this
4 aforementioned river. Now when I was Commander in
5 Chief of the Kwantung Army, the whole of Manchuria
6 had been occupied and was now Manchukuo. Certain
7 units of the Army may have crossed over the Chinese
8 border in skirmishes, but the Army as such never took
9 part in any engagements.

10 "Q. As Ambassador to Manchukuo, what were
11 your principal duties?

12 "A. To preserve the independence of Manchuria.

13 "Q. Your Army occupied practically all of
14 Manchukuo then, did it not?

15 "A. Yes.

16 "Q. And some of your troops went beyond the
17 great wall?

18 "A. Yes."

19 * * * * *

20 "Q. What did you have to do with the govern-
21 ment of Manchukuo at that time?

22 "A. Essentially I advised them on such
23 matters as agriculture, transportation, education, etc.

24 "Q. And your advice was accepted, I suppose?

25 "A. Yes.

1 "Q. In fact, your advice in substance was
2 a direction, was it not?

3 "A. You might say so. -- Yes."

4 This concludes the additional evidence
5 against the defendant MINAMI.

6 This is in regard to General UMEZU.

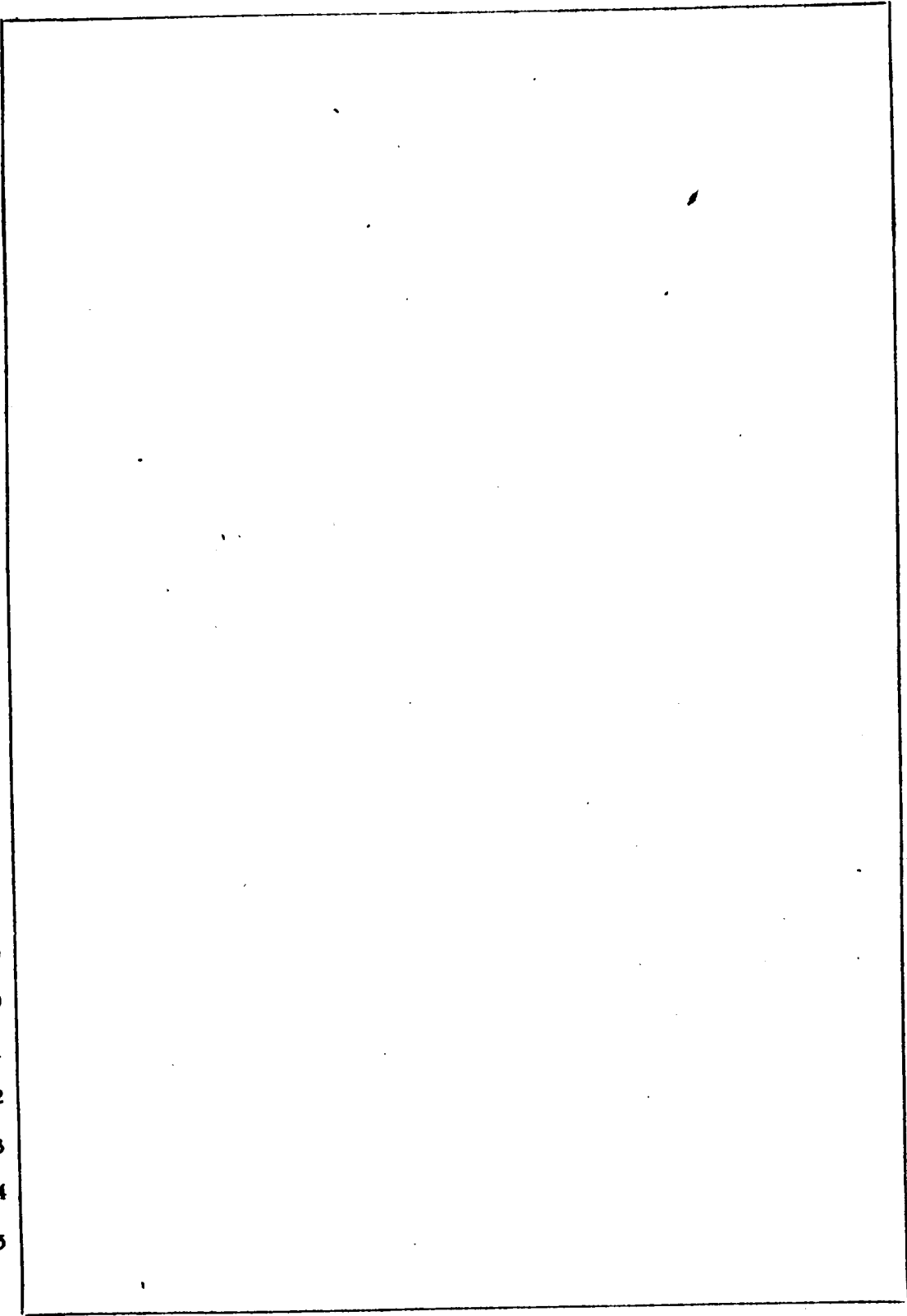
7 UMEZU, while Vice Minister of War, was the
8 leader of the military clique which was responsible
9 for the failure of General UGAKI to form a new
10 cabinet in January, 1937 by refusing to name a War
11 Minister. This usurpation of authority by the
12 military to make and unmake cabinets gave them practic-
13 ally control over Japan's governmental policy.

14 In March, 1935, he was appointed Commander
15 of the Japanese Army stationed in China. There, in
16 conjunction with General MINAMI, then Commanding
17 General of the Kwantung Army, and with the approval
18 of the War Ministry, he engineered the taking over
19 of North China and establishment of the North China
20 Autonomous Government.

21 He was the author of the well-known HO-UMEZU
22 Agreement of 10 June 1935 which resulted in the with-
23 drawal of Chiang Kai-shek's forces from North China.

24 Prosecution will now offer documents in proof
25 of the above facts.

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1 The prosecution offers for identification
2 only document No. 1144, which is "Details Regarding
3 Movement of Rightist Bodies in Connection with the
4 Change of Government," published by the Peace Section,
5 Police Bureau, Home Ministry, April, 1937, and offers
6 in evidence document No. 1144-A, which is an excerpt
7 from pages 5 to 8 of that document.

8 THE PRESIDENT: Admitted on the usual terms.

9 CLERK OF THE COURT: Prosecution document
10 No. 1144 will receive exhibit No. 2208 for
11 identification only, and the excerpts therefrom,
12 document No. 1144-A, will receive exhibit No. 2208-A.

13 (Whereupon, the documents above re-
14 ferred to were respectively marked prosecution's
15 exhibit No. 2208 for identification and prose-
16 cution's exhibit No. 2208-A in evidence.)

17 MR. WOOLWORTH: The prosecution will now
18 read exhibit 2208-A.

19 (Reading) "Declaration issued by the SEIYUKAI
20 Party Mass Meeting (20th of January 1937)

21 "Excerpt from pages 5-8 of 'Details Regarding
22 Movements of Rightist Bodies in Connection with Change
23 of Government' published by Peace Section, Police
24 Bureau, Home Ministry, April 1937.

25 "Owing to the multiplicity of the Government's

1 diplomatic policy, it is not clear where responsi-
2 bilities rest. Moreover, the Government has persis-
3 tently adhered to secret diplomacy, originating in
4 bureaucratic self-complacency, thereby failing to
5 carry out national diplomacy characteristic of a
6 Modern State. The purport of the JAPAN-GERMAN Pact
7 was defence against the Comintern, which desires to
8 destroy our State organization through Communism.
9 But the Government bungled the matter so as to cause
10 other Powers to suspect the formation of a rightist,
11 dictatorial State. The Government can never be
12 absolved from responsibility for diplomatic failure
13 as to procedure, time and method in concluding the
14 Pact. Our Party is very anxious about the matter,
15 and herein lies the reason why we are going to seek
16 thorough clarification of the matter at the Diet.

17 "The Government formulated many plans dog-
18 matically concluding that a semi-wartime organization
19 is necessary. If those plans, however, discourage
20 industrial development and result in a menace to
21 national livelihood, the nation will turn from its
22 present attitude to grudge and resentment against
23 the Government, and laxity of national spirit will
24 be caused thereby. Our Party is determined to subject
25 Government plans to strict examination in the Diet,

and rectify their demerits relentlessly.

1 "The present Cabinet calls the State control
2 of electric power and the extension of compulsory
3 education period products of all-out administrative
4 reform. Our Party is willing to agree to the Govern-
5 ment's claim in principle. But pure bureaucratic
6 control of economy is harmful without being useful
7 in any way. Autonomous control should be encouraged,
8 with State control exercised when necessary. Only
9 thus may free progress be promoted.
10

11 "It has long been our desire to elevate the
12 educational level of the nation. Which is more
13 urgent, however, the extension of the period or the
14 repletion of the substance? Moreover, necessity
15 of sweeping reforms in the educational system has
16 for many years been the public opinion of the nation.
17 If the Government disregards it at this time, it
18 will bring discredit on civil administration. Measures
19 adopted by the present Cabinet are not generally based
20 on the nation, but are influenced by the dogmatic
21 prejudices of the bureaucrats and the military.

22 "The bureaucrats are wedded to self-complacency.
23 The Military are overflowing with superiority complex.
24 And they want to interfere in every sphere of State
25 function. If this evil grows the will of the people

1 will be prevented from free realization, constitutional
2 government become nominal, and oligarchic tyranny
3 introduced. This, we fear, is contrary to the funda-
4 mental principles of our State, which are based, on
5 the whole upon the national allegiance to the single
6 Sovereign, and betrays the principle that the civil
7 and military services should keep to their respective
8 duties. We herewith intend to live up to the spirit
9 of the Constitution, strengthen parliamentary poli-
10 tics with solemn determination, to devise a new
11 departure for our Party to forge ahead to regeneration
12 and to make strenuous efforts day and night, thereby
13 to requite Imperial favour and to serve the State."
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1 Prosecution offers in evidence document
2 No. 1144P, an excerpt from exhibit 2208.

3 THE PRESIDENT: Admitted on the usual terms.

4 CLERK OF THE COURT: Prosecution's document
5 No. 1144P will receive exhibit No. 2208B.

6 (Whereupon, the document above re-
7 ferred to was marked prosecution's exhibit
8 No. 2208B and received in evidence.)

9 MR. WOOLWORTH: (Reading)

10 "Details Regarding Movements of Rightist
11 Bodies in Connection with Change of Government /T.N.
12 Cabinet Changes/.

13 "Peace Section, Police Bureau, Home Ministry.

14 "Views expressed by Army authorities.

15 "(Night of 21st January 1937)

16 "Under the prevailing atmosphere it is
17 absolutely impossible to discuss any all-out administra-
18 tive reform with the present day political parties.
19 The political parties make it their sole business to
20 attack the military authorities all the time without
21 reflecting on their own conduct. The political parties
22 are advocating an all-out administrative reform, but
23 they do not possess any concrete plans. The only
24 plans they have are of a negative nature and are
25 inclined to the maintenance of the status quo. An

1 all-out administrative reform to create a Conservative
2 (Retrogressive) Japan runs completely counter to the
3 loud cry for an all-out administrative reform that
4 arose immediately after the February 26th Incident.
5 Such a reform is like crying wine and selling vinegar,
6 and our 100,000,000 compatriots cannot possibly be
7 satisfied with same. Has not a positive wholesale
8 administrative reform aimed at the existence and
9 expansion of our people, with the Empire /T.N. Japan/
10 as the stabilizing power of East Asia, always been the
11 very cry of our 100,000,000 compatriots? Would not
12 the abandonment of a positive policy imply being
13 cramped up within Insular Japan? Could we thereby
14 ever fulfill the heaven-ordained mission of the Yamato
15 Race? We agree indeed to a positive all-out admin-
16 istrative reform as the general will of the people,
17 but we cannot agree to a negative all-out administra-
18 tive reform. Ought we not to get rid of the present
19 state of Parliament that has hitherto given itself up
20 to party interest and party politics and ignored
21 national interests and the welfare of the people, and
22 return to true parliamentary politics conforming to the
23 Constitution, and, hand in hand, clarify the national
24 polity, develop industry, complete national defence,
25 stabilize the living of the people, and steadily dis-
pose of important questions? What was expected to

1 come has /T.N. finally/ come; that is, the collision
2 between the /T.N. advocates of the/ status quo and
3 /T.N. the advocates of/ the destruction of the status
4 quo. Japan stands now at the turning-point where she
5 should realize a positive all-out administrative
6 policy in order to overcome the present difficulties
7 and tide over the existing international crisis."

8 Prosecution offers in evidence document
9 No. 1144C, being excerpts from exhibit 2208.

10 THE PRESIDENT: Admitted on the usual terms.

11 CLERK OF THE COURT: Prosecution's document
12 1144C will receive exhibit No. 2208C.

13 (Whereupon, the document above referred
14 to was marked prosecution's exhibit No. 2208C
15 and received in evidence.)

16 MR. WOOLWORTH: (Reading)

17 "Publication of War Minister TERAUCHI's
18 Talk. (8:25 p.m. 23rd)

19 "Because there are matters in the present
20 political situation which differ from my beliefs, I
21 took steps for presenting my resignation yesterday,
22 the 22nd. There are said to be some people who say
23 that Mr. HAMADA's speech is the cause of matters
24 having come to this stage, but that is not the reason
25 at all. It is because I ascertained the fact that the

1 views on the /T.N. present/ situation by the party which
2 has some members sitting as cabinet members for the
3 purpose of cooperating with the execution of the policy
4 of the present cabinet, differ fundamentally with ours.
5 This is clear in view of the declaration made at their
6 party meeting prior to the opening of the Diet session,
7 the speech of the party leader, the speech of the party
8 representative on the first day when the Diet recon-
9 vened after the recess, the atmosphere in the House,
10 etc. I think it is utterly impossible to tide over
11 the present situation by temporizing under compromise
12 between those who fundamentally vary in their cognition
13 of the present situation. In short, under such cir-
14 cumstances, I believe it to be absolutely impossible
15 to enforce military discipline, the completion of
16 national defence, an all-out administrative reform,
17 etc., to which I have exerted my utmost efforts since
18 I took office. This is why I have humbly tendered
19 my resignation /T.N. to His Majesty./"

20 Prosecution offers in evidence document No.
21 1144D being extracts from exhibit 2208, "Talk by
22 General UMEZU, Vice War Minister."

23 THE PRESIDENT: Admitted on the usual terms.

24 CLERK OF THE COURT: Prosecution's document
25 1144 D will receive exhibit No. 2208D.

(Whereupon, the document above

1 referred to was marked prosecution's ex-
2 hibit No. 2208D and received in evidence.)

3 MR. WOOLWORTH: (Reading)

4 "(P.M. 27th January 1937)

5 "Whether General UGAKI would accept the
6 Imperial mandate or not depends upon the attitude of
7 General UGAKI's Office for the Cabinet Formation, and
8 as for the Army it will not call any particular meet-
9 ing nor take any measures to check the formation of a
10 cabinet by General UGAKI. As you know the Army is
11 just watching calmly the development of the situation.
12 Rumour is circulating among the public that General
13 UGAKI is persistently trying to continue the work of
14 cabinet formation even by resorting to drastic measures,
15 and because of this the nation is feeling great unrest.

16 "This, however, is an intentional rumour made
17 by those who still do not understand the real intentions
18 of the Army or by those who for certain purposes dare
19 to avoid understanding. The Army firmly believe that
20 such malicious rumour has not been uttered from the
21 mouth of General UGAKI himself and it is clear that a
22 cabinet which has been formed unreasonably is not the
23 best one.

24 "Viewing the objective situation, the formation
25 of a cabinet by General UGAKI is now most difficult
and it can't be imagined that General UGAKI who is

1 supposed to be a great statesman would resort to a
2 temporizing measure even at the expense of sacrific-
3 ing his dignity. I, therefore, firmly believe that
4 he would respectfully decline, and that his attitude
5 would be such as that he as a General, a great superior
6 Army officer, would decline peacefully not leaving the
7 Army in the lurch but obtaining true understanding of
8 the Army's standpoint and sympathizing with their real
9 intentions.

10 "I think that among the public not a few
11 people are doubtful of the Army's real intention since
12 the Army has not published the reasons till today as
13 to why it is so strongly opposed towards General UGAKI,
14 and to my great regret I still cannot disclose openly
15 the true state of affairs.

16 "And yet if you look back upon the Army's
17 determination for the maintenance of discipline through
18 purge which was carried out resolutely at the expense
19 of many victims as well as upon the results gained
20 thereby, the reasons for the general will of the Army
21 having stood against General UGAKI would naturally be
22 understood. Although I cannot disclose the true state
23 of affairs right now, a word may be given to the effect
24 that the objection is a result of full consideration
25 by the whole Army united for the sake of completion of

1 the maintenance of discipline and the control of the
2 circles /T.N. cliques/. Therefore it was against
3 General UGAKI himself that the Army raised an objec-
4 tion and the policy to be announced by General UGAKI
5 was not in question. I firmly believe, without
6 mentioning those who are indifferent to the maintenance
7 of discipline and control of the circles /T.N. cliques/
8 that anyone who has an ardent wish for these would
9 surely be good enough to understand and approve the
10 Army's present attitude."

11 Prosecution desires to introduce in evidence
12 document No. 1144E which is a notice to the ex-soldiers
13 organizations from Vice War Minister UMEZU, out of
14 exhibit 2208.

15 THE PRESIDENT: Admitted on the usual terms.

16 CLERK OF THE COURT: Prosecution's document
17 No. 1144E will receive exhibit No. 2208E.

18 (Whereupon, the document above
19 referred to was marked prosecution's ex-
20 hibit No. 2208E and received in evidence.)

21 MR. WOOLWORTH: (Reading)

22 "Notice to the Ex-Soldiers Organizations from
23 Vice War Minister (Umezu).

24 "Matter pertaining to the measures taken by
25 the Army authorities in connection with the present
political changes.

1 "1) Summary of Development.

2 "On receipt of the report that the Imperial
3 mandate had been given to General UGAKI on the evening
4 of 24th January (Sunday), the Army established the view
5 that now they are making progress toward the maintenance
6 of military discipline that from an impartial and really
7 fair standpoint whoever might be nominated as War Min-
8 ister on behalf of the Cabinet headed by General UGAKI,
9 he would not be capable of bearing the heavy responsibil-
10 ity of controlling the Army because the formation of
11 the cabinet by General UGAKI who had been alleged to
12 have some connection with a certain incident while he
13 was occupying the post of War Minister and widely
14 believed to be a responsible person for the clan
15 struggle among the Army, would make it more difficult
16 to maintain military discipline and moreover there is
17 much fear that the control of the Army would greatly
18 be embarrassed.

19 "In view of the above, the War Minister when
20 he received a visit from General UGAKI at 4 p.m. on
21 25th (Monday) for recommendation of a succeeding War
22 Minister, replied to the effect that although the Army
23 would not dare to check the formation of a cabinet by
24 General UGAKI, the Army would ask him to fully consider
25 his behaviour from the standpoint of the Army

1 maintenance and control.

2 "At 11 a.m. on 26th (Tuesday), the Inspector-
3 General of Military Education SUGIYAMA called on
4 General UGAKI and asked further consideration giving
5 full explanation of the situation within the Army. In
6 the afternoon of the same day, the three Chiefs'
7 meeting was held to decide a choice of candidates for
8 succeeding War Minister in accordance with General
9 UGAKI's request for recommendation, but none of the
10 candidates accepted the post in view of the fact that
11 they would not be able to fulfill the duty of War Minister
12 in the present situation, and they came to the conclu-
13 sion that others besides the candidates would also feel
14 the same. Therefore, the War Minister called on
15 General UGAKI at 5:30 p.m. on the same day to reply
16 accordingly.

17 "At about 11 a.m. on 28th (Thursday), the
18 War Minister received a call from Seitoku IMAIDA but
19 replied according to the above-mentioned point. Thus
20 since nobody was willing to accept the post of War
21 Minister for the UGAKI cabinet, General UGAKI finally
22 respectfully declined the Imperial mandate.

23 "2) Regarding the Army's attitude for the
24 present political situation.

25 "As explained in the above-mentioned development,

1 the Army's behaviour in the present political situation
2 is based on its inmost hope to complete the control
3 and maintenance of the Army in order to display the
4 true feature of the Imperial Army, and the measures
5 were moderate and legal; there existed absolutely no
6 such fact as would impinge upon the Imperial prerogative
7 and the replies to General UGAKI were given with every
8 mark of respect and left no room for criticism."

9 THE PRESIDENT: We will adjourn until half
10 past one.

11 (Whereupon, at 1200, a recess was
12 taken.)
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AFTERNOON SESSION

The Tribunal met, pursuant to recess at 1330.

MARSHAL OF THE COURT: The International
Military Tribunal for the Far East is now resumed.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: Mr. President and Members of
the Tribunal, IPS document No. 646 shows the transfer
of large secret funds from the Manchurian Incident
Expenditure Account to the accused TOJO and UMEZU.
I offer it in evidence.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Prosecution document
No. 646 will receive exhibit No. 2209.

(Whereupon, the document above re-
ferred to was marked prosecution's exhibit
No. 2209 and received in evidence.)

THE PRESIDENT: Captain Brooks.

MR. BROOKS: If the Court please, I wish to
object to the introduction of this document for its
lack of probative value standing alone, and to ask
also that the title designating certain funds be
checked for correct translation, as there are several
related documents dealing with funds in which the
word "kimitsuhi" appears, and has been translated in

1 several instances as "secret service funds." This,
2 we contend, is an error, and the defense states that
3 the meaning of this word implies a fund without
4 accountability for official use for entertainment or
5 special expenses similar to our "general staff officers
6 funds," and that the mere transfer of funds to an offi-
7 cial of these capacities designated does not have any
8 probative value as to the use thereof. I would like
9 to also add, if the Tribunal please, that the defendant
10 KOIS⁰ is not named in this document or the position he
11 held either.

12 THE PRESIDENT: This document, like other
13 documents, has been admitted for whatever probative
14 value it has. There is no reason for rejecting it
15 instanter. What effect we will give to it we will
16 determine later when we consider it.

17 The language question will be referred to
18 the board of reference.

19 We note what Captain Brooks says about KOIS⁰.

20 MR. TAVENNER: Page 2 of exhibit No. 2209
21 appears to be in the nature of an authorization or
22 receipt, which is endorsed by a number of officials.
23 I will read only the caption and the names of those
24 of the accused whose names are signed to this docu-
25 ment.

1 "Transfer of secret funds from the Manchurian
2 Incident Expenditure Account, 13 April 13th year of
3 Showa, 13 April 1938. Vice-Minister UMEZU," followed
4 by his seal.

5 I will now read page 3 of the document:

6 "Draft of Notification to the Chief of the
7 Extraordinary Army Intendance Section in Tokyo,
8 'Riku Man Mitsu' /Military Manchuria Secret/.

9 "Secret funds from the Manchurian Incident
10 Expenditure Account shall be transferred upon dis-
11 bursement as follows:

12 "Items:

13 "To TOJO, Hideki, the Chief of Staff of the
14 Kwantung Army: 700,000 yen."

15 I will omit reading the next item.

16 "To UMEZU, Yoshijiro, Vice-Minister of War:
17 77,800 yen.

18 "Riku Man Mitsu No. 134 / Army Manchuria
19 Secret/ 6 April Showa 13 /1938/"

20 THE PRESIDENT: What is the significance
21 of **this**? We know that the Japanese had an army
22 in Manchuria and that it involved expenditure from
23 Japanese funds; and we know who were the army heads in
24 Manchuria, and it would follow that any expenditure
25 would be disbursed through them, wouldn't it? Has

1 it any greater significance, Mr. Tavenner?

2 MR. TAVENNER: We anticipate that it may,
3 your Honor. If we were certain that it had no greater
4 significance than your Honor has indicated we would not
5 have had the document processed. These do not appear
6 to be ordinary military expenditures. However, the
7 extent to which the evidence may go in showing what
8 they are is a matter on which we will have to await
9 further developments, and I cannot at this time make
10 any statement with respect to that.

11 MR. BROOKS: If the Court please, the document
12 on its face shows that it is a large numbered page
13 of several documents, and they are, as can be readily
14 ascertained if the prosecution wishes, complete records
15 of all the financial transactions of the army, includ-
16 ing this.

17 MR. TAVENNER: IPS document No. 2900 is a
18 similar record relating to the payment of money to the
19 accused KOISO. I offer it in evidence.

20 MR. BROOKS: If the Tribunal please, I would
21 like to make the same objection to this document and
22 ask that the word here appearing be also checked with
23 the translation section; and I would call the prosecu-
24 tion's attention that there are other documents that
25 he can very well ascertain that the 20,000 yen of

1 KOISO as Vice-Minister of War on page 2 is set down
2 for entertainment funds for the parties of that
3 Ministry.

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1 MR. LOGAN: If the Tribunal please, on the
2 basis of Mr. Tavenner's answer to your Honor's ques-
3 tion with respect to the last document, it is quite
4 apparent that neither this nor the previous document
5 has any probative value, it is purely speculative,
6 and the previous document should be stricken and
7 this document now offered should not be permitted
8 to be introduced in evidence.

9 THE PRESIDENT: I made an inquiry and
10 received a reply which did not warrant the rejection
11 of the document. The objection taken by Captain
12 Brooks and by Mr. Logan is overruled. The document
13 is admitted on the usual terms.

14 CLERK OF THE COURT: Prosecution's document
15 No. 2900 will receive exhibit No. 2210.

16 (Whereupon, the document above
17 referred to was marked prosecution's exhibit
18 No. 2210 and received in evidence.)

19 MR. TAVENNER: I will read from page 2 of
20 exhibit No. 2210.

21 "20,000 yen to KOISO, Kuniaki, Vice-Minister
22 of War."

23 IPS document 2907 is a similar record relating
24 to an additional payment to KOISO. I offer it in
25 evidence.

1 MR. BROOKS: Same objection, your Honor.

2 THE PRESIDENT: Objection overruled.

3 Admitted on the usual terms.

4 CLERK OF THE COURT: Prosecution's document
5 No. 2907 will receive exhibit No. 2211.

6 (Whereupon, the document above
7 referred to was marked prosecution's exhibit
8 No. 2211 and received in evidence.)

9 MR. TAVENNER: I will read from page 2 of
10 exhibit 2211.

11 "18,500 yen to Kuniaki KOISO, the Vice-
12 Minister of War."

13 IPS document No. 2896 is a similar record
14 relating to the payment of money to the accused UMEZU.
15 I offer it in evidence.

16 THE PRESIDENT: Admitted on the usual terms.

17 MR. BROOKS: If the Court please, I would
18 like to enter the same objection, and also point out
19 in connection with this that KOISO, at the date of
20 this instrument, was in Korea during this period
21 for a little over a year as Commander-in-Chief of
22 the Korean Army.

23 THE PRESIDENT: Objection overruled.

24 CLERK OF THE COURT: Prosecution's document
25 No. 2896 will receive exhibit No. 2212.

1 (Whereupon, the document above
2 referred to was marked prosecution's exhibit
3 No. 2212 and received in evidence.)

4 MR. TAVENNER: I will read from page 2 of
5 exhibit 2212.

6 "Disburse from the Manchurian Incident funds,
7 secret expenditures as follows:

8 "To: Vice-Minister of War Yoshijiro UMEZU,
9 150,830 yen. Riku-man-mitsu No. 85. Army-Manchuria-
10 Secret. March 8, 1938."

11 IPS document No. 2896 is a similar record
12 relating to the payment of money to the accused UMEZU.

13 I beg your pardon, I have introduced that
14 document.

15 IPS document No. 2922 is a similar record
16 relating to the payment of money to KOISO. I offer
17 it in evidence.

18 THE PRESIDENT: Admitted on the usual terms.

19 MR. BROOKS: May the same objection be
20 noted for the record.

21 CLERK OF THE COURT: Prosecution's document
22 No. 2922 will receive exhibit No. 2213.

23 (Whereupon, the document above
24 referred to was marked prosecution's exhibit
25 No. 2213 and received in evidence.)

1 MR. TAVENNER: I read from page 2 of this
2 exhibit.

3 "Disburse from Manchurian Incident Funds,
4 Secret Expenditures as follows:

5 "December 27, 1933.

6 "To: Chief of Staff, Kwantung Army,
7 KOISO, Kuniaki, 1,970,000.00 yen."

8 MR. BROOKS: If the Court please, I would
9 like to call attention to the center of page 2,
10 where this fund was turned over "as required by your
11 Armies up to the end of the current year have been
12 disbursed from the Manchurian Incident Funds." And
13 the records previously referred to show that it was
14 used for the suppression of bandits.

15 MR. TAVENNER: Prosecution document No. 4043-G
16 is a--

17 THE PRESIDENT: Observe the red light,
18 Mr. Tavenner.

19 MR. TAVENNER: Thank you, sir.

20 THE PRESIDENT: Mr. UZAWA.

21 DR. UZAWA: Mr. President, may I have the
22 Court's permission for Mr. MIMACHI, Associate Counsel
23 for the defendant KOISO, to address this Court in the
24 absence of Mr. SAM'ONJI, Chief Counsel for the
25 defendant KOISO?

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THE PRESIDENT: He can only take an objection
if one is open.

I understand he wishes to take an objection.

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1 MR. MIMACHI: I object to the introduction
2 of this document on the following grounds. In the
3 first part of this document we find the words,
4 "meeting between KOISO and ITAGAKI," but in the next
5 twelve lines we can find no mention of this supposed
6 meeting between KOISO and ITAGAKI at all.

7 Next, we find the words printed on top of
8 page 2: "Raw Material - For personal information only -
9 Without editorial guarantee." Besides these, besides
10 showing itself in this manner as being a very irresponsi-
11 ble document we find four lines before the end of the
12 page the following translator's note: "ARITA," and
13 then, "/T.N.: sic; error for KOISO?/." The defendant
14 KOISO says that since he was not Foreign Minister he
15 never made such a statement. Therefore he believes
16 that it was Foreign Minister ARITA but this document
17 does not show whether it was ARITA or KOISO. There-
18 fore I must say that this document has no probative
19 value.

20 Furthermore, the prosecution in its last
21 phase shows no signs of presenting any documents which
22 will prove this document. In connection with this I
23 would like to object -- I would like to say that we
24 defense counsel have taken great pains in drawing up
25 our motions to dismiss. After being written they must

1 be typewritten, stencils must be cut and they must be
2 mimeographed. After we have drawn up these motions,
3 when documents like this document which have very
4 little probative value are submitted, it causes us
5 great trouble -- great inconvenience. May I have the
6 consideration of the Court on this matter?

7 THE PRESIDENT: Many of the matters mentioned
8 are matters for the defense to give evidence of when
9 their turn comes. The other objections raised go not
10 to admissibility at all but to weight only. What you
11 say will be noted but the document will be admitted
12 on the usual terms and the objection is overruled.

13 MR. BROOKS: Will the Court allow the language
14 section to check the translation of the name "KOISO"
15 or "ARITA" and see which is correct?

16 CLERK OF THE COURT: Prosecution's document
17 No. 4043-G will receive exhibit No. 2214.

18 (Whereupon, the document above
19 referred to was marked prosecution's exhibit
20 No. 2214 and received in evidence.)

21 THE PRESIDENT: Only one counsel will be
22 heard on behalf of each accused.

23 MR. TAVENNER: I will read this document:

24 "Tokyo, 8 May. - Domei Radio presents an
25 ITAGAKI-KOISO interview.

1 "War Minister ITAGAKI declared it to be a
2 welcome fact that Germany and Italy had bound them-
3 selves through their military alliance still more
4 firmly to the maintenance of peace in their joint
5 efforts to build up a New Order in Europe. ITAGAKI
6 ascribed the confusion of the European situation
7 to the lack of equilibrium between old and new rising
8 Powers. Asked whether the possibility existed that
9 Japan might enter the Italo-German Military Alliance,
10 ITAGAKI declared that the spirit which animated the
11 conclusion of the Tri-lateral Anti-Pact was very
12 deeply rooted and in case for that reason Germany and
13 Italy wanted it it was not impossible that Japan might
14 conclude a military alliance with the Axis Powers. * * *

15 "9 May 1939.

16 "Minister of Colonies KOISO stated that
17 apparently negotiations directed toward the conclusion
18 of a military alliance among the three Axis powers
19 were being conducted. As a private observation KOISO
20 stated: 'Whether such negotiations lead to the goal
21 or not depends entirely upon whether Germany and Italy
22 understand Japan's point of view and power in East
23 Asia as well as their own position in Europe.' He
24 stated further that it would be suitable for Japan to
25 cooperate with Germany and Italy in the execution of

1 her policies, while it would not only not be suitable
2 but downright dangerous for Germany and Italy to
3 attempt to carry out their policies vis-a-vis the
4 encirclement measures of their opponents without
5 the closest cooperation with Japan, the strongest
6 power in East Asia. The difficulties are constantly
7 causing the lack of mutual understanding, explained
8 KOISO further. Therefore it lay in Japan's interest,
9 as well as Italy's and Germany's for Germany and Italy
10 to understand not only their own position but also
11 that of Japan and her point of view in the Far East.
12 Nearly all Japanese had more knowledge of Germany and
13 German affairs than the Germans of Japan and Japanese
14 affairs. Japan was convinced, ARITA" -- and there
15 appears a translator's note -- (/T.N.: sic; error for
16 KOISO?/) emphasized, of the 'necessity of further
17 strengthening of the Anti-Pact' in view of Japan's
18 earlier experiences and present position in order to
19 be able to face the international situation from
20 'Japan's own standpoint.' As for the Roosevelt
21 Message, ARITA declared that this was a dual-purpose
22 action, namely, first as a domestic political gesture
23 and second as a measure to inflame world public against
24 Germany and Italy. Finally having been directed to
25 the China conflict, ARITA emphasized that Japan's

1 historic and racial mission lay in the establishment
2 of a New Order in East Asia in closest cooperation
3 with China and Manchoukuo, although third powers
4 were trying to bring into discredit Japan's military
5 actions in China."

6 THE PRESIDENT: That is a document brought
7 from Germany, we notice.

8 MR. TAVENNER: Yes, sir; a German captured
9 document.

10 THE PRESIDENT: If the defense question any
11 translation, they may refer the matter direct to the
12 board of reference without mentioning it in Court.
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1 MR. TAVENNER: I offer in evidence prosecution
2 document No. 2954, which is an excerpt taken from the
3 minutes of the Second Joint Conference of Sections
4 I, II, III, and IV of the Committee of Accounts of the
5 House of Representatives, 75th Session of the Imperial
6 Diet.

7 THE PRESIDENT: Admitted on the usual terms.

8 CLERK OF THE COURT: Prosecution document
9 No. 2954 will receive exhibit No. 2215.

10 (Whereupon, the document above
11 referred to was marked prosecution's ex-
12 hibit No. 2215 and received in evidence.)

13 MR. TAVENNER: It relates to proceedings
14 on 17 March, 1940. This document reflects the views
15 of the accused, KOISO, with regard to Japanese expansion
16 in the South and shows that he participated in the
17 planning of the Japanese program.

18 I will read this document:

19 "Extracts from minutes (Shorthand) of Second
20 Joint Conference of Sections I, II, III and IV of the
21 Committee of Accounts of the House of Representatives.

22 "As for instance, as regards Davao in the
23 Philippines, the population has not decreased so much"--

24 I would like to begin over. This is a state-
25 ment by Committee-Man FUKUDA, which is finally answered

1 by KOISO; so, I begin with the statement by FUKUDA.

2 "As for instance, as regards Davao in the
3 Philippines, the population has not decreased so much
4 although approximately over thirty-five years have elapsed
5 till the present day. Moreover, business is reported
6 as flourishing, and those engaged this day in the
7 cultivation of hemp are said as not having used fertilizers
8 even once during thirty years'time. For instance, in
9 the Lake Tondano/phonetic/ region in Celebes, in the
10 experience of more than ten years in cultivating rice,
11 they have had three crops annually, without using any
12 fertilizer at all, which, if used even for once, would
13 spoil everything. There are such places as these which
14 are indeed inconceivable from the agricultural view-
15 point of the Japanese. How about then going ahead and
16 seizing those places? Of course, we cannot do so; never-
17 theless, the development of the Southern Regions would
18 not necessarily be an impossibility, if we should be
19 prepared to suffer such hardships as in dealing with
20 Manchuria or Russia, or if we possess an equal amount
21 of determination, effort and financial power as required
22 in overcoming the difficulties of the North China
23 Incident. Such being the case, we believe that Japan will
24 be confronted with considerable difficulties unless the
25 Minister of State/T.N. KOISO/ would carry out a drastic

1 reform in the national policy in such a way as to make
2 some two-fold policy -- one phase being for defense, and
3 the other for advance. Now, as for Taiwan /T.N. Formosa/
4 or the South Sea Islands Government Office /T.N. Nanyo-
5 Cho./ they were able to become independent either
6 shortly after its occupation or its inauguration of
7 government. As regards Chosen and Manchuria -- though
8 Manchuria is an independent nation, Japan is at present
9 obliged to defray enormous sums of money in accordance
10 with armament and other agreements. This may possibly
11 last for scores of years to come. In the case of Chosen,
12 which was the first to be annexed to Japan, not only
13 has she as yet been unable to become independent, but
14 enormous subsidies have to be granted to her. Such are
15 the conditions even in so nice a place like Chosen. I
16 wish to state that it is all the more unnatural to send
17 farmers -- constituting Japan's higher-class labour --
18 to North Manchuria where even coolies and Koreans are
19 unable to go. The policy that they must be sent over is
20 all very fine, but, as that kind of unnaturalness is
21 very hard to overcome, I wish you to kindly give your
22 consideration to this point, and our national policies
23 in the future should be such that whatever difficulties
24 may crop up, -- we are the people that could endure
25 many years of difficulties and hardships as we have been

1 since we started the so-called Sino-Japanese Incident of
2 today -- if we have the determination to go through
3 hardships, we shall find the true treasure house on the
4 Southern Pacific, where probably 200 times as much coal,
5 gold, silver, iron and petroleum as found in the whole
6 of China. If Japan should have such resources, she
7 would no longer have to suffer from her present plight
8 of being unable to wage a war as she would like just
9 because of the scarcity of resources. Such being the
10 case, we must, for the sake of establishing the national
11 policy of the State, have a fundamental change made at
12 this juncture in the traditional national policy of the
13 past. We are extremely pleased at the fact that Minister
14 of State KOISO has, at Cabinet Conferences and the like,
15 expressed his opinion several times fairly strongly in
16 that line or dwelling upon the policy in that line. So,
17 although things may not go so easily as I say -- although
18 it would be splendid if they did -- and things may be
19 difficult, nevertheless even if we are to sacrifice a
20 great deal of our national power, what is to follow
21 could not be compared with the results of the efforts
22 in Manchuria or China. We have been thinking this way.
23 If peace is restored now, it is needless to say that
24 Japan will suffer from over-population. As you have
25 just mentioned, most of our farmers hold only five tans.

1 (T.N. approximately 1.2 acres). As they own only that
2 much of land, although we talk about family system in
3 agricultural villages, children born in those villages
4 must necessarily go out -- if there are five children,
5 four of them, either male or female, must go out and get
6 a job. The eldest son will be left behind and the rest
7 must be abandoned as unnecessary if we wish to enable
8 the Japanese nation to keep on living -- such is the actual
9 condition in Japan's agricultural district today. This
10 fact alone will make you realize that we shall suffer
11 from over-population when peace is restored. What should
12 we do about it? It is quite clear that we shall feed
13 on each other and fall together if we stick to the five-
14 tan-farming. We must establish a great national policy
15 right now. Here lies the basis for our discussion.
16 However, in regard to sending people over to Manchuria --
17 we have heard about your ideals of sending 200,000 or
18 1,000,000 families over there -- it can not be carried
19 out very easily. Much money is spent with no results.
20 Moreover, people are not interested in going in spite
21 of our encouragement to go. I would like to tell you
22 that unless you take into consideration, when establishing
23 national policy, some place where people would by all
24 means go even if they are told not to go rather than
25 the place where people would go and come back, the

1 great task of reviving Japan, of constructing Japan will
2 never be accomplished. In regard to matters in this
3 direction, the military so far have been concentrating
4 too much upon the North. I wonder if this is not mistaken
5 a little bit. I say, mistaken as Japan's national policy.
6 I do not know what you would say from the viewpoint
7 of national defense, but this is, I think, a little
8 mistaken when we consider the great task of reviving
9 Japan, of constructing Japan. Therefore, we must replace
10 this with what we call / the principle of/ having both
11 South and North as our objectives, and make utmost
12 exertion toward the South. We must establish policies
13 which will enable us to overcome the difficulties
14 involved in the task."

15 "CHAIRMAN AOKI: Mr. FUKUDA, please state the
16 gist of your opinion, as we have no more time.

17 "COMMITTEE-MAN FUKUDA: I hope the State
18 Minister will study further in that direction -- we have
19 become members of the committee for accounts and have
20 studied the enormous budget for the coming year of the
21 Ministry for Overseas Affairs. Even if you will make
22 extreme exertions, it will be impossible to achieve
23 hoped-for effect since it will be very difficult to have
24 any results at all, we had better take the neutral point,
25 and in the execution of this budget also we wish you to

1 direct your efforts to attaining the true object. As
2 the Ministry for Overseas Affairs has profound under-
3 standing as to the South regarding the matters of that
4 kind, and as we require great efforts of both Formosa
5 and the South Sea Government today, and as we expect you
6 to make development in the field of economics and others,
7 we would like to know what your opinions along that line
8 are. We should be much obliged if the Minister for
9 Overseas Affairs would inform us with his opinions
10 regarding those national policies."

11 "MINISTER OF STATE KOISO: I fully endorse Mr.
12 FUKUDA's remarks regarding having both North and South
13 as our objectives. The Ministry of Overseas Affairs is
14 also advocating the idea of having both North and South
15 as our objective. There is, however, a slight difference
16 in views in regard to the path to be followed and its
17 substance. In a nutshell, according to the opinion of
18 the Overseas Affairs Ministry who are to carry out the
19 idea of having both North and South as our objectives,
20 special emphasis is to be laid on the following points:
21 As towards the Continent, movement of population, which
22 must naturally be accompanied by economic development,
23 and as towards the South, economic expansion, which must
24 by all means be accompanied by movement of population,
25 as this is our way of thinking. Therefore, as regards

1 Continental Expansion, we consider movement of population
2 as of primary importance, and economic expansion of
3 secondary importance; whereas for Southern Expansion,
4 we consider economic expansion as of primary importance
5 and movement of population of secondary importance.
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7 This is the idea on which we /T.N. the Overseas Affairs
8 Ministry/ are proceeding along. Please note, nevertheless,
9 that as regards the idea of having both North and South
10 as our objectives, I am in full accord with Mr. FUKUDA's
11 opinion."
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1 Colonel Mornane will now address the Court.
2 I beg your pardon, it will be Mr. Comyns Carr.

3 THE PRESIDENT: Mr. Comyns Carr.

4 MR. COMYNS CARR: May it please the Tribunal,
5 first of all I have to ask the Tribunal to correct a
6 misprint which has been detected in the Indictment in
7 count 25. That count is based upon the same facts
8 and evidence as count 52. In count 52 the list of
9 accused is correctly printed and the last name is
10 "TOJO," but in count 25 the last name has been printed
11 as "TOGO," which is incorrect. We ask you to amend
12 count 25 by substituting the name of "TOJO" for "TOGO."

13 THE PRESIDENT: Mr. Blewett.

14 MR. BLEWETT: If the Court please, it looks
15 like it may be an error, a clerical error; however,
16 the matter has not been brought to our attention until
17 just a few moments previously and we feel almost under
18 an obligation to make an objection to save ourselves
19 on the record.

20 MR. COMYNS CARR: The accused TOJO would not
21 be in any sense taken by surprise or prejudiced because
22 he already knew that he had to meet the same facts
23 under the charges in count 52.

24 MR. BLEWETT: If the Court please, we have
25 noticed this in drawing up our motion for dismissal

1 and have already referred to it therein.

2 THE PRESIDENT: Technically until now TOJO
3 did not know that count 25 was directed at him; that
4 is to say, after over eight months.

5 MR. BLEWETT: I recollect, sir, I took
6 advantage of that in my motion to dismiss and also
7 in all my references to the various counts called
8 attention to 25 and asked that he be -- that the
9 defendant be relieved from any responsibility under
10 52 on that basis.

11 MR. LOGAN: Before the Tribunal rules on this
12 we wish to enter a general objection to the prosecu-
13 tion amending the Indictment after issue has been
14 joined. We know--

15 THE PRESIDENT: Substituting a new accused
16 as regards that count after eight months.

17 MR. LOGAN: Yes, sir.

18 THE PRESIDENT: Right at the end of the
19 prosecution's case; however, it is a matter that
20 we should seriously consider among ourselves before
21 we come to any decision. We will reserve our decision
22 on that point, Mr. Carr.

23 Mr. Tavenner.

24 MR. TAVENNER: If your Honor please, I would
25 like for the record to show that exhibit 2215 was

1 introduced for identification only and that
2 excerpts were taken from that document which were
3 introduced in evidence, and that the record show
4 that the correct number of the document which I
5 read be No. 2215-A.
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THE PRESIDENT: What are you asking me to do? I do not appreciate it you want me to do anything in particular?

MR. TAVENIER: I merely request that the Clerk so record it by direction of your Honor.

THE PRESIDENT: Is it clear to you, Mr Mantz?

CLERK OF THE COURT: Yes, your Honor.

(Whereupon, document No 2954, previously marked prosecution's exhibit No. 2215 in evidence, was marked prosecution's exhibit No 2215 for identification; and the excerpt therefrom was marked prosecution's exhibit No. 2215-A and received in evidence.)

THE PRESIDENT: Have you considered Count 35 to which my attention is directed by my colleagues?

MR. COMYNS CARE: Yes, your Honor.

If amendment is granted, the reference in Court 35 would be to the defendants in Court 25 as amended, which is what it was originally intended to be.

THE PRESIDENT: That is if we decide to amend Count 25.

MR. COMYNS CARE: Yes.

The prosecution now offers in evidence documents all but one of which are excerpts from

1 interrogations of the defendant ARAKI. All these
2 excerpts are from exhibits already admitted for
3 identification on the 10 July 1946, pages 2215 and
4 2216 of the record.

5 The prosecution first offers in evidence
6 IPS document No. 2342-B, being excerpts from IPS
7 document No 2342, which is exhibit No 187-L.
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1 THE PRESIDENT: Admitted on the usual terms.

2 CLERK OF THE COURT: Prosecution's document
3 No. 2342-B will receive exhibit No. 2216.

4 (Thereupon, the document above re-
5 ferred to was marked prosecution's exhibit
6 No. 2216 and received in evidence.)

7 MR. COYNS CLERK (Reading): "Q. That I
8 mean is that the KONOYE Cabinet, or if the Premier
9 KONOYE was not in favor of aggression in China, how
10 did it happen that the Japanese forces were making
11 progress in advancing?

12 "A. During wartime what the Cabinet wishes and
13 what the Army does are two different things. I be-
14 lieve that the Army and Navy were in favor of aggres-
15 sion in China. KONOYE was not in favor of the aggres-
16 sion. However, since KONOYE was outnumbered two to one
17 I possibly think that the forces took the best of the
18 deal and made the aggression.

19 "Q. That do you mean -- outnumbered two to one?

20 "A. The Army and Navy within the Cabinet.

21 "Q. Because General SUGIYAMA and HITSUMASA
22 Yonai were in favor of advancing and they were Army
23 and Navy members that their word went with the Emperor
24 and not KONOYE's.

25 "A. Since forces cannot be sent overseas without

1 the consent of the War, Navy, Finance, Foreign Ministers
2 and the Premier, I believe that it was approved by
3 these Ministries that the China affair be carried
4 through."

5 The prosecution now offers in evidence IPS
6 document No. 2344-B, being excerpts from IPS document
7 No. 2344 which is exhibit No. 187-N.

8 THE PRESIDENT: Admitted on the usual terms.

9 CLERK OF THE COURT: Prosecution's document
10 No. 2344-B will receive exhibit No. 2217.

11 (Whereupon, the document above re-
12 ferred to was marked prosecution's exhibit
13 No. 2217 and received in evidence.)

14 MR. COYNS CARR: "Q. I understand, also,
15 that after that resignation the General became a
16 member of what in English is called the Cabinet Ad-
17 visory Council which was established by an ordinance,
18 an Imperial Ordinance of October 14, 1937?

19 "A. I became a member of this Cabinet Advisory
20 Council at request of Prince KONOYE who came to me for
21 advice in connection with the China Incident.

22 "Q. And that council was set up to advise
23 concerning the situation in China?

24 "A. Yes.

25 "Q. How often did it meet?

1 the consent of the War, Navy, Finance, Foreign Ministers
2 and the Premier, I believe that it was approved by
3 these Ministries that the China affair be carried
4 through."

5 The prosecution now offers in evidence IPS
6 document No. 2344-B, being excerpts from IPS document
7 No. 2344 which is exhibit No. 187-N.

8 THE PRESIDENT: Admitted on the usual terms.

9 CLERK OF THE COURT: Prosecution's document
10 No. 2344-B will receive exhibit No. 2217.

11 (Whereupon, the document above re-
12 ferred to was marked prosecution's exhibit
13 No. 2217 and received in evidence.)

14 MR. CONYNS GARR: "Q. I understand, also,
15 that after that resignation the General became a
16 member of what in English is called the Cabinet Ad-
17 visory Council which was established by an ordinance,
18 an Imperial Ordinance of October 14, 1937?

19 "A. I became a member of this Cabinet Advisory
20 Council at request of Prince KONOYE who came to me for
21 advice in connection with the China Incident.

22 "Q. And that council was set up to advise
23 concerning the situation in China?

24 "A. Yes.

25 "Q. How often did it meet?

1 "A. Once a week.

2 "Q. That was in 1937 that you were appointed,
3 I believe?

4 "A. Yes.

5 "Q. And did you remain a member of that
6 until you were made Minister of Education by Prince
7 KONOYE?

8 "A. Yes, I was a member until I was appointed.

9 "Q. Do you remember what date it was you
10 became a member of the Advisory Council?

11 "A. Almost immediately after the formation
12 of the Cabinet Council.

13 "Q. And then after you were Minister of
14 Education you were again appointed to the same council
15 in 1940?

16 "A. I left the Education Ministry in 1939.

17 "Q. And when were you made a member of the
18 Advisory Council again?

19 "A. I think in September, 1939, I am not sure.

20 "Q. Did you attend most of these meetings
21 when you were a member of this Council?

22 "A. It was compulsory to attend and I
23 attended all the meetings once a week."
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1 The prosecution now offers in evidence IPS
2 document No. 2254-B, being excerpts from IPS document
3 No. 2254, which is exhibit No. 187-G.

4 THE PRESIDENT: Admitted on the usual terms.

5 CLERK OF THE COURT: Prosecution's document
6 No. 2254-B will receive exhibit No. 2218.

7 (Whereupon, the document above re-
8 ferred to was marked prosecution's exhibit
9 No. 2218 and received in evidence.)

10 MR. McMANUS: If your Honor pleases, I call
11 your Honor's attention that these are excerpts, how-
12 ever I shall not press my objection at this time, as
13 your Honor has already ruled on the admissibility of
14 these excerpts. I do request the Court, however, that
15 in considering the motions to dismiss and also in
16 considering this testimony that they read at least the
17 interrogation of that particular day, which is the
18 exhibit 187 and lettered "N" and so on, rather than
19 just a page of excerpts.

20 THE PRESIDENT: We won't give the prosecution
21 any direction. You will have ample scope for amendment
22 or on the motions to read additional material.

23 MR. COMYNS CARL: heading exhibit 2218:

24 "Q When I was here on the 7th of this month,
25 I asked you this question: (heading) 'Then I

1 understand that when you were Minister of War you
2 attended these meetings but when you were Minister of
3 Education later, you did not attend the meetings con-
4 cerning foreign affairs,' and you answered as follows:
5 (Reading) 'During my tenure of office as War Minister
6 there were very few of these meetings to the best of
7 my recollection, but during the time I held office
8 as Minister of Education these matters were usually
9 discussed at the usual cabinet meetings held once a
10 week.' Do you remember those answers?

11 "A Yes. When I was Minister of Education, I
12 did not attend these meetings. If a question regard-
13 ing foreign policy came up, this would be discussed
14 at the usual cabinet meetings.

15 "Q And you were appointed Minister of Education
16 in May, 1938, and held that position until August 29,
17 1929, and I understand then that important matters
18 concerning foreign affairs were discussed at full
19 cabinet meetings during that period?

20 "A At one time the Premier requested SUETSUGU,
21 Nobumasa who was Home Minister, and myself to confer
22 with him on the China question. It was decided to
23 hold these meetings regularly but as my views and
24 SUETSUGU's views differed so widely and we could not
25 agree, it was decided after the second meeting to hold

1 no more. I do not know whether SUETSUGU was re-
2 requested to attend this meeting as Home Minister or as
3 an Admiral.

4 "Q That is SUETSUGU who is dead now, who was
5 Minister for Home Affairs?

6 "A Yes.

7 "Q I assume that the Prime Minister was the one
8 who decided what foreign affairs were important enough
9 to discuss in the full cabinet meetings, is that
10 correct?

11 "A Yes, that is correct.

12 "Q Did the Foreign Minister ever bring up a
13 question as to foreign affairs for the full cabinet
14 meeting to discuss?

15 "A Yes the foreign minister would also have to
16 bring up the question at full meetings.

17 "Q And did the War Minister bring up such ques-
18 tions before the full cabinet meetings?

19 "A As this was during the China incident, and
20 the War and Navy Ministers were deeply concerned, they
21 would also bring up such questions before the full
22 cabinet. However, matters of great importance to the
23 foreign office, the War and Navy and Finance Ministries,
24 were usually not put before the full cabinet meetings
25 as interference by other ministers was not relished.

1 and matters were usually discussed by the respective
2 ministers direct with the Prime Minister.

3 "Q That seems to contradict what you said up
4 to now. Do I understand then that the full cabinet
5 has nothing to do with decisions made?

6 "A Yes, the full cabinet was concerned with
7 decisions made, but if the four principal ministers
8 mentioned previously, and the Prime Minister decided
9 on a line of policy, this would be pushed through the
10 cabinet in spite of opposition.

11 "Q If there was opposition in the cabinet to a
12 decision made by these four would a vote be taken on
13 the question submitted?

14 "A No, a vote would not be necessary. The Prime
15 Minister would request opinions from the other members,
16 but when he had decided, the measure was put through.
17 If that became impossible, the cabinet would fall, or
18 the member opposing any measure up for discussion
19 would resign."

20 The prosecution offers in evidence IPS
21 document No. 2347-B, which is excerpts from IPS
22 document No. 2347, which is exhibit No. 187-Q.

23 THE PRESIDENT: Admitted on the usual terms.
24 We will recess for fifteen minutes.

25 (Whereupon, at 1445, a recess was

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taken until 1500, after which the proceedings
were resumed as follows:

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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now resumed.

3 THE PRESIDENT: Mr. Comyns Carr.

4 MR. COMYNS CARR: The prosecution offers in
5 evidence, in this order, IPS document No. 2253C and
6 2253B, being excerpts from IPS document No. 2253
7 which is exhibit No. 187F.

8 THE PRESIDENT: Admitted on the usual terms.

9 Are you going to read exhibit --

10 MR. COMYNS CARR: I beg your Honor's pardon.
11 I had not read that.

12 CLERK OF THE COURT: The last document which
13 you introduced, prosecution document 2347B, was given
14 exhibit No. 2219.

15 (Whereupon, the document above re-
16 ferred to was marked prosecution's exhibit
17 No. 2219 and received in evidence.)

18 MR. COMYNS CARR: That is right.

19 (Reading)

20 "Q Did the Cabinet, along about this time, in
21 the fall of 1938, when in session, discuss the trouble
22 with the United States over United States rights in
23 China, if you remember?

24 "A I do not remember any discussions of these
25 things took place. It must have been the Foreign
26 Minister and the War and Navy Ministers.

1 "Q Well, this is the rejection of the United
2 States' protest. Now, if war had ensued on this ac-
3 count, do you think that the blame would have been
4 entirely on the Foreign Minister and could the
5 Cabinet have said it was not its fault that war took
6 place?

7 "A No, the Cabinet could be held responsible
8 for the outbreak of the war. If there was actual
9 danger of war breaking out, the matter would be dis-
10 cussed thoroughly in the Cabinet.

11 "Q I understand then, General, that you were
12 on the Cabinet here, and a statement was made for
13 which, under the Constitution, the Cabinet ought to
14 be responsible, to a friendly power, and you didn't
15 approve the statement, had nothing to do with its
16 issuance, and yet under the Constitution were re-
17 sponsible for that statement and whatever happened
18 by reason of its issuance. Is that correct?

19 "A As a member of the Cabinet, and according
20 to the Constitution, I could be held responsible. If
21 there had actually been danger of war breaking out as
22 as a result of this defiance, the matter would cer-
23 tainly have come up for discussion and judgment in
24 the Cabinet. Around 1938, I had several talks with
25 three British Ambassadors, namely, Lyndley, Clive,

1 and Craigie. Also with Major Pigott, Military
2 Attache to the British Embassy. In my conversations,
3 I always advocated that Japan, the United States and
4 England should work together and establish the found-
5 dations for a peaceful world. With such views, I am
6 certain that if a matter such as the defiance of the
7 United States had come up, I would have had plenty
8 to say. Perhaps it was not considered a very import-
9 ant matter at the time.

10 "Q Let me ask you, General, if in 1938 or
11 1939, while you were in the Cabinet, there ever was
12 a discussion of the friction between the United
13 States and Japan on account of America's claims that
14 her treaty rights were being violated in China by
15 Japan.

16 "A No, I do not remember this ever having been
17 discussed, however, my own view is that violations of
18 treaty rights were some times unavoidable, and if the
19 matter were referred to me, I would have advocated
20 settling these violations to the satisfaction of all
21 by diplomatic means after the settlement of the
22 Incident in China."

23 The prosecution now offers in evidence, in
24 this order, IPS document No. 2253C and 2253B, being
25 excerpts from IPS document No. 2253 which is exhibit

1 No. 187F.

2 THE PRESIDENT: Admitted on the usual terms.

3 CLERK OF THE COURT: Prosecution's document
4 No. 2253C will receive exhibit No. 2220, and document
5 No. 2253B will receive exhibit No. 2221.

6 (Whereupon, prosecution's document
7 No. 2253C was marked prosecution's exhibit
8 No. 2220, and prosecution's document No.
9 2253B was marked prosecution's exhibit No.
10 2221, and both were received in evidence.)

11 MR. COMYNS CARR: Exhibit 2220:

12 "After I became War Minister, I discussed
13 the policy of the occupation of General Chang's four
14 provinces to clear up the Manchurian situation.
15 After I had made the plan up myself with the Prime
16 Minister, the Foreign Minister, and the Finance
17 Minister, all agreed with me. The Prime Minister
18 approached the Privy Council for approval."

19 Exhibit 2221:

20 "The Japanese naval commander ordered the
21 landing of troops in Shanghai on January 28, 1932. I
22 do not remember discussions in the Cabinet. The
23 Cabinet could not recall the troops because the battle
24 was going on. I do not think the attack was to cripple
25 the Chinese boycott. I do not remember that it was

1 discussed in the Cabinet. They did discuss the means
2 of ending the incident. The naval commander in
3 Shanghai reported the landing to the Navy Minister
4 who reported it to the Cabinet, and that was the
5 first time I heard of it. Since the Navy Minister
6 said it could be settled quickly, no one was worried.
7 On February the 2nd or 3rd, the Navy Minister came
8 to me and stated that due to the hard fight, the
9 naval forces might be destroyed and could the army
10 send some forces. I conferred with the Cabinet and
11 it was agreed that the army would send supporting
12 forces quickly. Troops were sent the following day
13 on destroyers to Shanghai.

14 "At the Cabinet meeting, the Foreign,
15 Finance, Prime, War and Navy Ministers at least were
16 there. I think it was agreed to send one and one-
17 half divisions. Those were sent. Approximately
18 ten thousand men. It was after the Cabinet approval
19 that I ordered that troops be sent and also that the
20 incident be localized. The troops were sent as sup-
21 port for the Navy, the Navy waging a losing war a-
22 gainst the Chinese Nineteenth Route Army.

23 "The first division I sent was under General
24 UEDA, but since he suffered great losses and was having
25 difficulties, I sent another supporting division and

1 when the Nineteenth Army heard of this, they started
2 to withdraw and at that time General SHIRAKAWA either
3 talked to the Nanking Government or with the Nanking
4 Army and urged that fighting cease. Just before the
5 supporting division landed, the battle was concluded.
6 After this conclusion, a representative of the League
7 of Nations, a representative from Japan and from
8 China, came to an agreement that Japan should have
9 one Japanese brigade remain in that area, but I
10 thought all troops should be withdrawn from China."

11 The prosecution offers in evidence IPS
12 document No. 2248B, being excerpts from IPS document
13 No. 2248 which is exhibit No. 187A.

14 THE PRESIDENT: Admitted on the usual terms.

15 CLERK OF THE COURT: Prosecution's document
16 No. 2248B will receive exhibit No. 2222.

17 (Whereupon, the document above re-
18 ferred to was marked prosecution's exhibit
19 No. 2222 and received in evidence.)

20 MR. COMYNS CARR: (Leading)

21 "Q Who was present at the special Cabinet meet-
22 ing of March 17, 1933 at which it was finally agreed
23 in the Cabinet that Japan should withdraw from the
24 League?

25 "A The Prime Minister (SAITO); War Minister

1 (ARAKI); Navy Minister (OSUMI); Finance Minister
2 (TAKAHASHI); Foreign Minister (UCHIDA); Home
3 Minister (YAMAMOTO); and Education Minister (KOYAMA).

4 "Q All Ministers were present?

5 "A Yes.

6 "Q And all agreed that Japan should withdraw
7 from the League of Nations?

8 "A Yes.

9 "Q The Foreign Minister went to the Emperor to
10 call the Privy Council for advice as to Japan's with-
11 drawal, is that correct?

12 "A Yes.

13 "Q A special committee appeared from the
14 Cabinet before the Privy Council?

15 "A Yes.

16 "Q Who were they?

17 "A SAITO (Prime Minister); OSUMI (Navy Minister);
18 ARAKI (War Minister); UCHIDA (Foreign Minister). I
19 think there was a full Cabinet Conference later."

20 That concludes the excerpts from interroga-
21 tions.

22 The prosecution now offers in evidence IPS
23 document No. 2155 for identification. The prosecution
24 offers in evidence IPS document No. 2155B which consists
25 of two speeches by the accused ARAKI taken from the

1 exhibit.

2 THE PRESIDENT: Admitted on the usual terms.

3 CLERK OF THE COURT: Prosecution's document
4 No. 2155 will receive exhibit No. 2223 for identifi-
5 cation only; and the excerpt therefrom, document No.
6 2155B, will receive exhibit No. 2223A.

7 (Whereupon, prosecution's docu-
8 ment No. 2155 was marked prosecution's ex-
9 hibit No. 2223 for identification; and
10 prosecution's document No. 2155B was marked
11 prosecution's exhibit No. 2223A and re-
12 ceived in evidence.)

13 MR. COMYNS CARH: I now propose to read
14 excerpts from the first speech:

15 "On the Occasion of the 15th Anniversary
16 of the Issuance of the Imperial Rescript on the
17 Awakening of the National Spirit

18 "Minister of Education,
19 Baron ARAKI, Sadao.

20 "On 10 November 1923, the Emperor TAISHO,
21 being greatly concerned about the contemporary condi-
22 tion of our Empire, reverently issued an Imperial
23 Rescript on the Awakening of the National Spirit.

24 "For the past fifteen years since then our
25 people have observed its spirit day and night and

1 have endeavored earnestly for its realization. The
2 10th of October marks its fifteenth anniversary.

3 "This is just the time when CANTON and
4 three principal cities near HANKOW have been cap-
5 tured in succession by our Imperial Army marking one
6 phase of this incident. We have finally come to a
7 period for actual activities in the long-term con-
8 struction. In view of the graveness of the present
9 situation of our Empire, I believe our people should
10 proceed with the subjugation of difficulties with a
11 determination much firmer than that made after the
12 KWANTO earthquake disaster.

13 "And now, as we await the anniversary of the
14 issuance of the keshcript, I believe we must proceed
15 on the path of supporting the Emperor's undertaking of
16 expanding the Imperial Way by renewing the spirit with
17 which we had received the Imperial keshcript."

18 And another excerpt on page 2 at the
19 bottom:

20 "As I have often repeated on several occas-
21 sions, the fundamental question of the present situa-
22 tion does not lie in the China Incident but the pre-
23 sent situation must be regarded as a sign of the laws
24 of a new world peace. Therefore, it is a great mistake
25 to think that the occupation of some important strate-

1 gic points in China will mean the settlement of the
2 present situation. On the contrary, at present, we
3 have only seen the first ray of the dawn of a new
4 world that has been gradually approaching since the
5 close of the World War. It is our country that has
6 been playing a leading part in it as a pioneer, and
7 I believe that Japan is in a position to play an
8 important role in the coming new world. Consequently,
9 we have an important duty imposed upon us, and we
10 must be fully prepared for any emergency. Japan,
11 who has sprung from 'Japan in the Orient' to 'Japan
12 in the world,' is now placed in such a difficult
13 condition. So we must bear in mind, as the Japanese
14 subjects, the honor and the duty to play an important
15 role on the world's stage in settling the present
16 difficult question. The present condition, I think,
17 will not come to an end in near future. Whatever
18 Chiang Kai-shek or the world may say about us, we
19 must be pushing forward, slowly but steadily, towards
20 the construction of a new world, ever storing up the
21 national strength, ever reflecting upon our own es-
22 sence and ever eradicating the roots of evils, as the
23 subjects of a glorious country who is holding a heavy
24 responsibility upon themselves, at this dawn of a new
25 world."

1 And then -- I now propose to read excerpts
2 from the second speech, heading:

3 "Instructions at the National Conference of
4 Principals of Agricultural Schools.

5 "I have just been appointed by the Emperor
6 to the post of Education Minister, and am to manage
7 the educational administration. In view of the
8 present situation, I am aware of the extremely heavy
9 responsibility of the task, and expect to exert my
10 utmost in carrying out my duty.

11 "At this critical period the most important
12 thing is the strengthening of the national spirit."

13 On the bottom of page 6:

14 "Next, in view of conditions in our country,
15 I think it is very important to devise the overseas
16 expansion of the people. Especially, in order to
17 carry out the national policy based on the unity of
18 Japan, Manchukuo and China, the most urgent mission
19 is the advancement to the Continent of many youths
20 possessing thorough education and firm faith. I de-
21 sire everyone of you to fully understand the state
22 of affairs in our country and endeavor to promote the
23 spirit of overseas expansion of the YAMATO Race."

24 That concludes the documents with regard to
25 ARAKI, and I now propose to recall General TANAKA for

1 further evidence with regard to a number of small
2 points relating to several different defendants.
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1 THE PRESIDENT. Mr. Logan.

2 MR. LOGAN: If the Tribunal please, we
3 renew the objections made when General TANAKA was
4 called the second time, with the same force and
5 effect as if made today, and there has been no
6 reservation by the prosecution at the time he left
7 the stand the second time for permission to recall
8 him at this time.

9 MR. COMYNS CARR: My friend is in error in
10 his last remark. The Tribunal may remember that I
11 applied at the time when he was here on the second
12 occasion and informed the Tribunal that we would
13 have been perfectly prepared to proceed with this
14 matter then, but that as some of the evidence which
15 he is to give affects the accused MUTO, who was
16 absent on that occasion, and also his counsel, owing
17 to illness, we asked leave to postpone it.

18 THE PRESIDENT: The Tribunal will receive
19 further evidence from TANAKA. The objection is
20 overruled.

21 MR. McMANUS. If your Honor please, concern-
22 ing the last document read by Mr. Comyns Carr, may
23 I call the Tribunal's attention that where it was
24 mentioned "overseas expansion" the speech was
25

TANAKA

DIRECT

1 delivered from the standpoint of an agricultural
2 policy?

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5 R Y U K I C H I T A N A K A, recalled as a wit-
6 ness on behalf of the prosecution, resumed
7 the stand and testified through Japanese
8 interpreters as follows:

9 THE PRESIDENT (to the witness): You are
10 under your former oath.

11 DIRECT EXAMINATION

12 BY MR. COMYNS CARR:

13 Q The first thing I want to ask you, General,
14 is about another conversation with the accused
15 ITAGAKI concerning the Manchurian Affair. Do you
16 remember the conversation to which I am referring?

17 A Yes.

18 Q About when did that conversation take
19 place?

20 A In the summer of 1935.

21 Q Now, would you tell us what ITAGAKI told
22 you?

23 A In December of 1931 General HONJO, Commander-
24 in-Chief of the Kwantung Army, made up his mind that
25 Manchukuo -- that Manchuria must become an independ-

TANAKA

DIRECT

1 ent state; and when ITAGAKI went to Japan to convey
2 this opinion to the Japanese Government, he con-
3 veyed -- ITAGAKI conveyed HONJO'S opinion to the
4 government and army circles, whereupon, concerning
5 complete independence, these circles showed some
6 difficulty. But War Minister ARAKI said that com-
7 plete independence was the only way in which the
8 Manchurian Incident could be solved, and concurred
9 with this opinion of HONJO'S. This is what ITAGAKI
10 told me.

11 Q According to what he told you, was the
12 Cabinet in favor of this policy or against it?

13 A The Cabinet was against it.

14 Q Did ARAKI, according to ITAGAKI, give him
15 any instructions as to what he was to do?

16 A I believe that he didn't give him any instruc-
17 tions. I heard only that War Minister ARAKI agreed
18 with this opinion, saying that that line of policy
19 should be taken.

20 Q And what happened?

21 A In March Manchuria declared her independ-
22 ence.

23 Q Now, were there in the army at that time
24 certain factions, divisions of opinion between the
25 high officers?

TANAKA

DIRECT

1 A Yes, there were divisions of opinion.

2 Q What were the names of the principal groups?

3 A All these factions had as their fundamental
4 aim the renovation of the corrupt politics at that
5 time and the complete reformation of the corrupt
6 government of the time. One of these factions was
7 called the Kodo faction, or the Imperial Way fac-
8 tion. The other faction was called the Tosei
9 faction, or the Control faction. Both of them were
10 for the reformation of Japan.

11 Q Who was the head of the Kodo faction?

12 A The leaders of the Kodo faction were General
13 ARAKI, General MAZAKI, and Lieutenant General YANA-
14 GAWA.

15 Q Had that faction any particular views with
16 regard to war?

17 A The principal motto of the Kodo faction
18 was reverence for the Emperor -- was the direct rule
19 of the Emperor, and was -- and this faction was en-
20 tirely opposed to communism. Therefore it was very
21 antagonistic towards Soviet Russia. It had no
22 enmity -- no special enmity towards other nations.

23 Q Now quite a different subject: During the
24 early years of the Manchurian Affair what organiza-
25

TANAKA

DIRECT

1 tion controlled opium traffic in Manchuria:

2 A Until 1935, when the Opium Control Board
3 was set up, the opium trade was controlled by the
4 various special service organs of the army.

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1 Q In Southern Manchuria who was at the head
2 of the special service organ in question?

3 A It was the Mukden Special Service Organiza-
4 tion.

5 Q Yes. And who was in command of that?

6 A Major General ISHIHARA was in charge of the
7 special service organization at Mukden when the
8 Manchurian Incident broke out. Later, for a short
9 time, someone whose name I do not remember occupied
10 that position, and then again Major General DOHI-
11 HARA became the head of that organization.

12 Q And did he remain in that position until
13 the change-over that you have spoken of?

14 A Correction. At the time of the outbreak of
15 the Manchurian Incident the head of the special service
16 organization was Major General DOHIHARA in Mukden.

17 Q Then, to go to my next question, did he remain
18 at the head of that organization right down to the
19 time when the control of the opium traffic was trans-
20 ferred?

21 A Yes.

22 Q Now, who were the people who principally
23 brought about that change, that transfer of control?
24

25 A The ones who made efforts to take away the
control of opium traffic from the various special

TANAKA

DIRECT

1 service organizations and to establish the opium
2 monopoly bureau were these three, namely: General
3 MINAMI, Commander-in-Chief of the Kwantung Army; his
4 Chief of Staff, General ITAGAKI; and the next Chief
5 of Staff, General TOJO.

6 Q Now, when the transfer had taken place
7 what was the relation between the new bureau and the
8 Government of Manchukuo? .

9 A The duties of this monopoly bureau was to
10 collect and to sell opium as one of the outer bureaus
11 of the Manchurian Government.

12 Q And what was the effect of that change upon
13 the finances of Manchukuo?

14 A Although I do not remember exactly, I
15 believe that at the time I was there the yearly
16 revenue from this source was about twenty million yen.

17 Q And did that go to the Manchukuo Government?

18 A Yes.

19 Q Now, I want you to tell us a little bit
20 more about the position of the Military Affairs
21 Bureau in the War Ministry.

22 MR. LOGAN: If the Tribunal please, that
23 subject was covered fully the last time General
24 TANAKA appeared upon the stand, and the prosecution
25 had no further redirect at that time.

1 THE PRESIDENT: There was much evidence
2 about it, but I do not think the position was made
3 as plain as it might be.

4 BY MR. COMYNS CARR (Continued):

5 Q In the first place, what were the powers
6 of that bureau with relation to measures taken by the
7 General Staff?

8 A The General Staff Office draws up plans for
9 the operations, mobilization, and organization of the
10 army; but these are only plans, and in order to put
11 these plans into execution the General Staff must
12 gain the agreement of the Military Affairs Bureau.
13 In other words, since the War Ministry controls expenses
14 and supplies, in drawing up any plans for operations,
15 organization, and the mobilization of the army, the
16 General Staff Office must have the expenses and
17 supplies given to it from the War Ministry, and, there-
18 fore, in making such plans the General Staff Office
19 requests the War Ministry for such expenses and
20 supplies. Upon receiving such request the War Ministry,
21 after studying the funds and supplies it has, carries
22 out the General Staff's plans, and the Military Af-
23 fairs Bureau is that section of the War Ministry for
24 carrying out these plans, which does these things.

25 Q I think you told us before that they control

TANAKA

CROSS

1 the budget; is that right?

2 A Yes, that is true.

3 Q And now, if they have enough money them-
4 selves for the purpose, do they need to ask anybody
5 else's consent before handing it over to the General
6 Staff?

7 MR. LOGAN: I object to that as leading,
8 your Honor.

9 THE PRESIDENT: It is not leading, in my
10 opinion. The objection is overruled.

11 A The General Staff does not receive any of
12 the budget of the army. The War Ministry itself
13 apportions out the funds according to the directions
14 of the War Ministry. The budget for the army is a
15 budget which has been passed by the Diet.

16 Q Now, take the case where they have not got
17 within the budget already passed sufficient funds to
18 carry out what the General Staff recommends, what do
19 they do then?

20 A The War Ministry reduces the budget -- reduces
21 its expenses.
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TANAKA

DIRECT

1 Q If they wish to spend the additional money,
2 to whom do they apply for it?

3 A The General Staff puts in a request to the
4 War Ministry, which then puts in a request to the
5 government, and the government, after drawing up an
6 additional budget, presents it to the Imperial Diet,
7 and after receiving the consent of the Imperial Diet
8 then the additional expenditure is granted and is
9 apportioned out by the War Ministry to the necessary
10 sections. This work is carried out under the direction
11 of the Military Affairs Bureau.

12 Q Now, a different subject. When we find
13 from time to time a statement of policy being issued
14 by the army -- not by any individual but in the name
15 of the army -- who are the people or what office
16 is responsible for preparing and issuing such a
17 statement?

18 MR. LOGAN: If the Tribunal please, that--

19 THE INTERPRETER: The witness replied, "It
20 is the Military Affairs Bureau."

21 MR. LOGAN: That question is highly speculative,
22 to try and find out who is responsible for a certain
23 general policy. If the prosecution has any particular
24 policy in mind and this witness knows who made the
25 statement, that would be proper, to ask him that.

TANAKA

DIRECT

1 But for a general policy to include everybody in it
2 in a sort of blanket manner is certainly objectionable.

3 I understand that the witness answered the
4 question. I also ask that his answer be stricken out.

5 THE PRESIDENT: He did not answer as far as
6 I am aware. I did not hear any answer.

7 I understand the interpreter says he did.

8 THE MONITOR: Yes, your Honor, the witness
9 answered, "The Military Affairs Bureau," sir.

10 THE PRESIDENT: Well, we will take his answer.
11 But I see no reason why the question should be stricken.
12 It seemed to me to be a reasonable question and
13 answer. Apparently one body is responsible for
14 statements of policy, and that is the Military Affairs
15 Bureau. Who was responsible on any particular occasion
16 is a matter to be determined; I mean, what individuals
17 associated with the bureau.

18 Q Now, when questions required to be settled
19 between the army and the navy, which department in
20 the army and which department in the navy would deal
21 with them?

22 A All negotiations with sections outside the
23 respective ministries were done by the respective
24 military affairs bureaus.

25 Q Now, I want to come to ask you some questions

TANAKA

DIRECT

1 with regard to the relations between TOJO when he
2 was War Minister and afterwards also Prime Minister,
3 and, first of all, MUTO and then SATO.

4 Take MUTO first. From your personal obser-
5 vation when you were in the War Ministry, what would
6 you say were the relations between TOJO and MUTO?

7 A Lieutenant General MUTO became Chief of the
8 Military Affairs Bureau in October 1939, and because
9 of his brilliant brains and political ability, he was
10 the outstanding character -- he was one of the prin-
11 cipal figures in the War Ministry. In July 1940,
12 when the YONAI Cabinet fell and War Minister HATA
13 resigned, he continued, MUTO continued, in his post
14 as Chief of the Military Affairs Bureau. And when
15 Lieutenant General TOJO succeeded General HATA as War
16 Minister he continued in this post. And in October
17 1941 when General TOJO became Prime Minister and con-
18 currently War Minister, MUTO was still Chief of the
19 Military Affairs Bureau, and MUTO continued in this
20 post until April 1942, when he became Commander of
21 the Imperial Guards Division.
22

23 During these years, in reality the army was
24 the driving force in Japan, and as a matter of fact,
25 almost all the policies of the army were evolved from
the brilliant mind of this same General MUTO as

TANAKA

DIRECT

1 Chief of the Military Affairs Bureau.

2 THE PRESIDENT: I don't suppose you expected
3 answers just in that terminology. That is outside
4 his province as a witness.

5 We will adjourn now until half-past nine
6 tomorrow morning.

7 (Whereupon, at 1600, an adjournment
8 was taken until Wednesday, 22 January 1947,
9 at 0930.)

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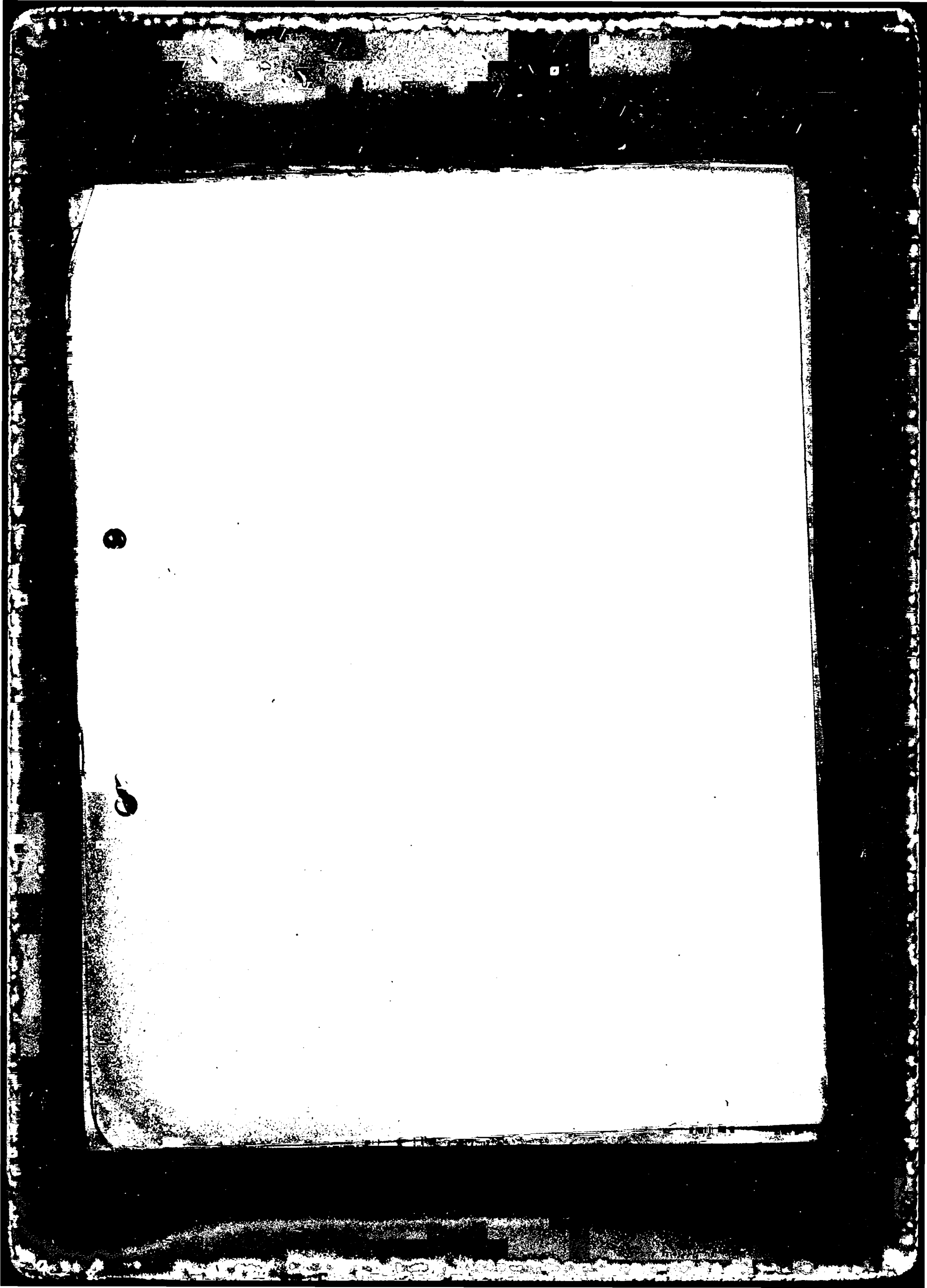
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22 JANUARY 1947

I N D E X
Of
WITNESSES

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I N D E X
Of
EXHIBITS

<u>Doc. No.</u>	<u>Pros. No.</u>	<u>Def. No.</u>	<u>Description</u>	<u>For Ident.</u>	<u>In Evidence</u>
587B	2224		Article appearing in the Japanese Newspaper "Yomiuri" on 5 November 1940 entitled "The Outline of Ten-Year Plan for Block Economy of Japan-Manchoukuo-China"		15952

1 Wednesday, 22 January 1947

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3
4 INTERNATIONAL MILITARY TRIBUNAL
5 FOR THE FAR EAST
6 Court House of the Tribunal
7 War Ministry Building
8 Tokyo, Japan

9 The Tribunal met, pursuant to adjournment,
10 at 0930.

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13 **Appearances:**

14 For the Tribunal, same as before.

15 For the Prosecution Section, same as before.

16 For the Defense Section, same as before.

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20 (English to Japanese and Japanese
21 to English interpretation was made by the
22 Language Section, IMTFE.)
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1 MARSIAL OF THE COURT: The International
2 Military Tribunal for the Far East is now in session.

3 THE PRESIDENT: All the accused are present
4 except OKAWA, who is represented by his counsel. That
5 will be taken to be the case until I state otherwise.

6 Major Moore.

7 LANGUAGE ARBITER (Major Moore): Mr. President,
8 with the Tribunal's permission we present the following
9 language corrections:

10 Exhibit No. 2205-A, Record page 15,765,
11 line 1, substitute "higher authority" for "commander
12 of the above force."

13 Line 3, "12.40 P.M." is correct.

14 Record page 15,766, line 13, insert "not"
15 after "affair would."

16 There are no further objections to the
17 translation of this exhibit.

18 THE PRESIDENT: Mr. Comyns Carr.
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TANAKA

DIRECT

1 R Y U K I C H I T A N A K A, recalled as a witness
2 on behalf of the prosecution, resumed the stand
3 and testified through Japanese interpreters as
4 follows:

DIRECT EXAMINATION

5
6 BY MR. COMYNS CARR (Continued)

7 Q General TANAKA, you have told us that the
8 bureau chiefs met under the presidency of the War
9 Ministry twice a week. All the time that General MUTO
10 was Chief of the Military Affairs Bureau did you meet
11 him on those occasions?

12 A Yes, he was in attendance at these conferences,
13 generally speaking and on the whole.

14 Q How frequently did you converse with him
15 apart from that during that period?

16 A Practically every day inasmuch as we had
17 our noon meals together and also various dinners in
18 the evening.

19 Q Were you working with him in the old War
20 Ministry Building until it was destroyed and then in
21 this building?

22 A Yes.

23 Q Now, in the course of your conversations did
24 he tell you what his plans and views were?

25 A Not in detail but I heard his ideas in general

TANAKA

DIRECT

1 and on the occasion of the bureau chiefs' conferences
2 and other dinner meetings.

3 Q Did you notice whether those views which he
4 expressed to you were generally adopted or rejected
5 by the War Minister?

6 A I think on the whole they were adopted by
7 the War Minister.

8 Q Did he express to you his views with regard
9 to war against United States and Great Britain?

10 A Yes, once in the course of a conference.

11 Q What were they?

12 A Shortly after the reply was received from
13 Roosevelt to Ambassador KURUSU's compromise plan on
14 the 25th of December at a meeting of the bureau chiefs
15 of the War Ministry, General MUTO said that if Japan
16 adopted the United States' proposal, proposed reply --
17 proposed plan in the reply -- then Japan would have
18 to abandon her national policy, which was to establish
19 the New Order -- the sphere of common prosperity in
20 East Asia -- which was a long standing policy of the
21 Japanese Government.

22 THE MONITOR: Correction: "December 25"
23 should read "November 25," according to the witness.

24 A If Japan were to accept the reply it would
25 be a case of gradual exhaustion of Japanese resources.

TANAKA

DIRECT

1 In order to prevent Japan from collapsing as a result
2 of this gradual exhaustion and in order to keep alive
3 the policy of the establishment of a sphere of common
4 prosperity in East Asia, which has been Japan's
5 national policy of many years, and also for which
6 Japan had made many sacrifices, Japan might have
7 to fight, according to General MUTO, in a statement
8 he made at a conference of bureau chiefs on November
9 29, if I remember correctly.

10 Q Had he on any earlier occasion than those
11 you mentioned expressed any view about war with the
12 United States and Great Britain?

13 MR. LOGAN: If the Tribunal please, we object
14 to this question. The witness has already answered
15 that he only had this one conversation.

16 THE PRESIDENT: That is so, Mr. Carr, but
17 we are not bound by technical rules of procedure here.
18 Still we must conduct a just trial. I think with
19 some doubt that the witness should be allowed to
20 answer your question.

21 A It is a fact that since the ABE Cabinet the
22 Military Affairs Bureau had a policy, that is, it had
23 one consistent policy which springs from the Tri-Partite
24 Alliance among Japan, Germany and Italy. Whereas it
25 was the policy of Germany and Italy to establish a

TANAKA

DIRECT

1 New Order in Europe, Japan parallel with that program
2 should have a policy of establishing a New Order in
3 East Asia. That was a consistent policy held by the
4 Military Affairs Bureau.

5 MR. LOGAN: If the Tribunal please, this
6 answer is not responsive at all to the question. I
7 ask it be stricken out.

8 THE PRESIDENT: It may yet lead to a responsive
9 answer; I do not know.

10 A I have not heard personally from General
11 MUTO about the establishment of the East Asia New
12 Order. As Chief of the Military Service Bureau of
13 the War Ministry, I have always from the side lines
14 observed, heard or saw through printed announcements
15 the policies as announced by the Military Affairs
16 Bureau -- as announced by the press section of the
17 War Ministry -- and I can say it as a fact that this
18 was a consistent policy of the Military Affairs Bureau.
19 The Chief of the Military Affairs Bureau must be held
20 responsible for all words and actions on the part of
21 officers in that bureau. That is all.

22 Q I will leave it there now.

23 General TANAKA, that leads to a question I
24 was going to ask you later. Did the War Ministry take
25 any part in the matter of press control?

TANAKA

DIRECT

1 A Press control was in the hands of the press
2 section, Military Affairs Bureau, War Ministry.

3 Q Now, do you remember any conversation with
4 General MUTO about Ambassador KURUSU?

5 A I think it was on December 9, 1941, at a
6 meeting held in a dining room of the old War Office
7 Building on which occasion General MUTO in the course
8 of an informal conversation said that the dispatch
9 of Ambassador KURUSU to the United States, as well
10 as the dispatch of the Tatsuta Maru, was nothing
11 more than a sort of a camouflage of events leading to
12 the opening of hostilities.

13 THE MONITOR: At the time of dinner, at
14 the time of luncheon held at the bureau chiefs'
15 dining room.

16 Q Was there a meeting of the bureau heads on
17 the previous day, the 8th of December, the day of the
18 Pearl Harbor attack?

19 A No, there was not. There was a meeting of
20 all staff members of the War Ministry.

21 Q What happened at that meeting?

22 A Before War Minister TOJO issued his instructions
23 to his staff we were standing by together and he said
24 that at last the War Minister has become a hero.

25 Q Who said that?

TANAKA

DIRECT

1 A Chief of the Military Affairs Bureau,
2 General MUTO.

3 Q Now, when General MUTO ceased to be Chief
4 of the Military Affairs Bureau on the 20th of April,
5 1942, where did he go, what did he become, and where
6 did he go?

7 A He went to Sumatra as commander-in chief of
8 the Second Imperial Bodyguard Division.

9 Q Now about General SATO; who succeeded him as
10 Chief of the Military Affairs Bureau? What had he
11 been before that?

12 A He was Chief of the Military Affairs Section
13 of the Military Affairs Bureau.

14 Q What were, as far as you observed, his
15 personal relations with TOJO, the War Minister?

16 A Yes, he was held in confidence.

17 Q And do you remember General SATO telling you
18 anything about the manner in which TOJO became Prime
19 Minister?

20 A After War Minister TOJO became Prime Minister
21 he came to my office and told me about the matter.
22 It was always the stand of the Military Service Bureau
23 of the War Ministry that the army, outside of the War
24 Minister himself, should not participate or interfere
25 in politics; and I think that SATO's visit to me was

TANAKA

DIRECT

1 in connection with this matter by way of excuse --
2 to explain his position in the matter -- and he told
3 me that he had seen the two veteran generals, ABE and
4 HAYASHI, to whom he said in speaking of the trend
5 within the army itself, that unless TOJO is War
6 Minister -- was made Prime Minister -- it would be
7 difficult to control the army. I listened silently
8 to his words on this matter.

9 MR. COMYNS CARR: That is all I have to
10 ask, your Honor.

11 MR. S. OKAMOTO: I am counsel OKAMOTO,
12 counsel for the defendant Akira NUTO.

13 THE PRESIDENT: Counsel OKAMOTO.
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TANAKA

CROSS

CROSS-EXAMINATION

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1 BY MR. S. OKAMOTO:

2 Q You testified, Mr. Witness, that in order to
3 carry the operational plans of the General Staff into
4 execution you had to have the consent of the Military
5 Affairs Bureau concerning the matters relating to the
6 budget. Does that mean that the consent of the War
7 Minister should be obtained?

8 A Yes, on the basis of regulations governing
9 the handling of business, yes, but detailed consulta-
10 tion on that matter would be held between the General
11 Staff and the Military Affairs Bureau, after which a
12 plan is drawn up for the approval of the War Minister.
13 That is a fact.

14 Q Not only in the War Ministry, but also in
15 Navy Foreign and Home Ministries, the positions of the
16 Bureau Chiefs are determined by the regulations in the
17 Article 18 of the regulations governing the organization
18 of various ministries; is it not a fact?

19 A I don't know as to the Foreign Office, but
20 with respect to the Foreign Office or the Home Office --
21 but in so far as the duties of the Chiefs of Bureaus
22 in the War Ministry is concerned, that is determined
23 by the regulations governing the organization of the
24 War Ministry itself.
25

TANAKA

CROSS

1 Q Mr. Witness, please refresh your memory.

2 Is it not a fact that in the regulations governing the
3 organization of the War Ministry there is no mention
4 of the position of the Chiefs of -- Bureau Chiefs?

5 A Well, I haven't seen the regulations govern-
6 ing the Bureau Chiefs in the various ministries, but
7 having served as Chief of the Military Service Bureau
8 of the War Office, I know as a matter of fact that the
9 duties of Bureau Chiefs in the Ministry are regulated
10 by the regulations of that Ministry.

11 Q Although I am confident that what you are
12 saying is wrong, I should like to ask you, Mr. Witness,
13 to state in what articles are mentioned regulations
14 governing the status of Bureau Chiefs, in the regulations
15 governing the organization of the War Ministry?

16 A Well, I don't know what article that appears
17 in, but I know that the Bureau Chiefs are responsible
18 to the War Minister, and that he should direct and
19 supervise the work of his subordinates. If you want
20 to ask me what article in the regulations of the War
21 Ministry that is stipulated in, I shall be glad to
22 answer if you will first show me those regulations.

23 MR. S. OKAMOTO: May I show him the regulations?

24 THE PRESIDENT: You may.

25 MR. OKAMOTO: I will send for it, and in the

TAMAKA

CROSS

1 meantime I will ask him another question.

2 THE PRESIDENT: We will have to be satisfied
3 they are the regulations and all the regulations. You
4 may have to wait until you are giving evidence for the
5 defense before you can establish that fully.

6 Q Now, this is a document tendered by the
7 prosecution section.

8 THE PRESIDENT: Mr. Comyns Carr.

9 MR. COMYNS CARR: If this is a document
10 tendered by the prosecution which is being shown to
11 the witness, it must have an exhibit number and must
12 be identified.

13 Q No. 74, exhibit No. 74, IPS No. 180.

14 A Yes, I understand very well.

15 Q What are the functions of the Bureau Chiefs?

16 A Yes. Now, this is the regulations governing
17 the organization of the War Ministry and the duties of
18 the Bureau Chiefs, as I explained. This is in accord-
19 ance with the regulations governing the duties of
20 Bureau Chiefs of all the Ministry.

21 Q You understand it now, Mr. witness, don't
22 you? It is stipulated -- the position or status of
23 the Bureau Chiefs of the War Ministry is stipulated
24 in accordance with general rules of Article 18 of
25 general regulations governing the organization of

TANAKA

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1 ministries, and according to that article various
2 bureau chiefs should conduct his business in accord-
3 ance with the orders from ministers of the ministries
4 concerned; isn't that so?

5 A Yes, that is so.

6 Q Then, from a wider point of view, the
7 position of the Chief of the Military Affairs Bureau
8 is identical with the positions of, for instance,
9 Chief of the Military Service Bureau, of which you
10 were the head at one time, and the Chief of the
11 Medical Affairs Bureau, or that of the Legal Affairs
12 Bureau of the War Ministry, as well as Bureau Chiefs
13 of other ministries.

14 THE PRESIDENT: Well, we do not want a
15 statement from counsel. We want the witness' evidence.
16 Do not converse with the witness. Ask him questions.

17 MR. S. OKAMOTO: What I was trying to get
18 out of this witness is that the position of the
19 Chief of the Military Affairs Bureau of the War
20 Ministry is the same as the position of other bureau
21 chiefs in the War Ministry or that of bureau chiefs
22 of other ministries, because I have the impression
23 that the position of the Bureau Chief of the Military
24 Affairs Bureau of the War Ministry has been exaggerated.

25 THE PRESIDENT: You are still obliged to ask

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1 questions and not carry on a conversation.

2 A The duties of the chiefs of bureaus are
3 stipulated by Japanese law, as you say, Mr. Counsel;
4 but, whether this bureau is important or not depends
5 on the kind of business it handles as well as the
6 time when such business is handled.

7 Q This is just as you say. But what I am ask-
8 ing you, Mr. Witness, is not the content of the busi-
9 ness but whether the bureau chiefs' only handled
10 business under their jurisdictions in accordance
11 with orders from the Ministry?

12 THE MONITOR: That may be as you say, Mr.
13 Witness; but what I am saying is: is it not true
14 that bureau chiefs, whatever ministry he belongs to,
15 acts in accordance with and carries out duties of
16 his office in accordance with the orders given to him
17 by the Minister of his particular Ministry?

18 A Yes, there is no difference between General
19 MUTO or me in so far as acting in accordance with the
20 orders of the Minister, but there is a very great
21 difference when you consider the contents or kind of
22 business of the duties handled by his office and mine.
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1 Q Then I will ask you another question. In
2 cases where requests pertaining to operational,
3 mobilization or organization matters made and pre-
4 sented to the War Ministry, how does the Military
5 Affairs Bureau deal with it? I should like you to
6 answer to this question in order.

7 A This matter is handled principally by the
8 Military Section of the Military Affairs Bureau in
9 the War Ministry, and first of all, those consulta-
10 tions or negotiations are held among those in charge
11 of the matter, and if there is no agreement between
12 those in charge then it will have to wait agreement
13 between the section chiefs concerned, and if no agree-
14 ment is reached there then it will have to be brought
15 up to the chiefs of bureau in the War Ministry con-
16 cerned and the chiefs of the divisions in the General
17 Staff concerned. In most cases it is customary for
18 agreement on these matters to be reached between
19 section chiefs and it is rarely if ever that the
20 matter is brought up as high as the bureau chiefs.
21 However, there are cases when conferences or con-
22 sultations are held between War Ministry bureau
23 chiefs and divisional chiefs in the General Staff
24 office. Generally, when a draft plan is decided upon
25 then it is submitted to the War Minister for approval.

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That is all.

1 Q Then I will put my question this way: Then
2 is it not a fact that in cases where the Military
3 Affairs Bureau receives requests from the General
4 Staff it reports first of all to the War Minister
5 and to the Vice War Minister?
6

7 A If my memory is not incorrect, if matters
8 which are handled by the bureaus and divisions be-
9 tween the two offices concerned are incomplete they
10 are not submitted to the War Minister, and it is cus-
11 tomary for matters to be submitted to the War Minister
12 only when these plans are complete. But, of course,
13 in cases of very important or urgent matters they are
14 first of all presented to the War Minister and then
15 submitted to the chiefs of bureaus and divisions for
16 consultation.

17 Q The yearly annual operational plans are
18 matters of extreme importance, and in case of re-
19 quests made concerning such matters they are naturally
20 reported immediately to the War Minister and the
21 Vice Minister, is it not?

22 A As to the annual operational plans, I do
23 not think that they come to the Military Affairs
24 Bureau from the General Staff. Such cases generally
25 cannot occur, and under no circumstances, inasmuch as

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1 the annual operational plans are highly secret
2 and cannot be disclosed to the War Minister. If
3 ever it does that would be an infringement on the
4 duties or responsibilities of the high command.

5 Q Some words in my question were not heard
6 probably. What I said was when requests were re-
7 ceived from the General Staff based upon annual
8 operational plans. That is what I said.

9 THE MONITOR: I am speaking of requests made
10 by the General Staff of the War Ministry on the
11 basis of the annual operational plan. I am not
12 speaking of the operations plan.

13 A Concerning materiel and perso. nel.
14 That is what I mean to say. That is after the draft
15 plans are completed. That is after the matter has
16 been agreed upon and completed that the General Staff
17 office formally makes its request to the War Ministry,
18 but before any such plans are completed there is a
19 great deal of informal negotiations and consultations
20 between the two offices; that is, the War Ministry
21 and the General Staff, and with respect to this
22 matter the Military Affairs Bureau handles the matter
23 for the War Ministry.

24 Q Did you say that of those matters those
25 important are reported to the ministry, is it not?

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1 A Yes, that is correct.

2 Q In preparation, at such a time does not the
3 Military Affairs Bureau submit the budget aspects
4 of the matter to the Intendence Bureau of the War
5 Ministry? Does it request the accounting of the
6 budget to the Intendence Bureau?

7 A Yes, accounting is done by the Intendence
8 Bureau, but it has no power of decision.

9 Q Then does the Military Affairs Bureau re-
10 quest the Military Service Bureau in connection with
11 matters pertaining to personnel and horses, and so
12 forth?

13 A The Military Section of the Military Affairs
14 Bureau refers the matter to the section dealing with
15 mobilization of materiel, and whether this request
16 should actually be met or not is studied and decided
17 by the Military Service Bureau.

18 Q Because of the fact that the Military Ser-
19 vice Bureau is an expert, as it were, concerning
20 matters of the personnel and materiel, is not the
21 decision made by the Military Service Bureau, in
22 the light of what I said, decisive?

23 A We can't decide, but it is a fact that
24 what is decided upon by the Military Service Bureau
25 serves as a basis.

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1 Q Is it not a fact that concerning materiel,
2 studies are conducted by the Materiel Mobilization
3 Bureau, and concerning arms and weapons plans and
4 studies are made by the Ordnance Department?

5 A Yes, that is correct.
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1 Q And then the results of those studies and
2 investigations are brought together by bureau chiefs
3 and their subordinates to be assembled and coordinated
4 to establish over-all plan for the War Ministry; is it
5 not a fact?

6 A The outline for such studies are made by
7 the Military Affairs Bureau, and the various depart-
8 ments concerned conduct their studies in accordance
9 with the established outline.

10 Q While the outline of the plans are decided,
11 determined, by the Military Affairs Bureau, the over-
12 all plan of the War Ministry are decided by various
13 ministries concerned, by their mutual consultations
14 and under their common responsibility -- various
15 bureaus of the ministry and of their common respon-
16 sibilities?

17 A Yes, your question, Mr. Counsel, refers to
18 what is customary to all ministries of the Japanese
19 government; that is true. What you are referring to,
20 Mr. Counsel, is what is customary in all ministries.
21 But in the War Ministry, the Military Affairs Bureau
22 established the outline, it handled policy, the budget,
23 accounting, and, in a word, it handled -- it was the
24 office wherein all matters were given final decision.
25 And so it is a fact that the Military Affairs Bureau

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1 had, in substance, the real control.

2 Q I reframe my question.

3 THE PRESIDENT: Probably we have heard enough
4 about the bureaus and what they do and what their
5 functions are. What we are concerned about is the
6 activity of individuals, and more particularly the
7 accused, within those bureaus.

8 The distribution of powers and responsibilities
9 among government departments and sub-departments is
10 very likely the same in Japan as elsewhere. We are
11 concerned about the activities of individuals, and
12 more particularly the accused. The other matter, of
13 course, it is necessary to know; but I think we have
14 heard enough about it.

15 MR. S. OKAMOTO: Then I will ask a question
16 observing your suggestion, your Honor.

17 Q Is it not a fact that also in the Military
18 Affairs Bureau under General MUTO, the final plans
19 were determined after consultation among various
20 ministries -- various departments and bureaus of the
21 War Ministry in dealing with the requests coming from
22 the General Staff to the War Ministry?

23 A As I think I have said in my reply before,
24 the business routine itself is the same at all times,
25 whether under MUTO or anybody else.

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1 Q The final plans at the time which were made,
2 were they reported to the War Minister and Vice War
3 Minister in order to obtain their approval at the time
4 when General MUTO was at the head of the Military
5 Affairs Bureau?

6 A Yes, all matters are reported to the Minister,
7 but if my memory is not incorrect, I think that they
8 were not necessarily in all cases reported to the Vice-
9 Minister.

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1 Q The requirements of various bureaus are
2 first assembled and budgets compiled by the Intendance
3 Bureau, and in following this procedure does the out-
4 come of the budget necessarily become unnecessarily
5 great?

6 A It is customary for the budget to become
7 very much inflated.

8 Q Then I want to ask you again a question
9 about what happened during the time of tenure of
10 office by General MUTO. Are the budgets curtailed,
11 the excessive part of the budget curtailed after a
12 conference in the War Ministry under the presidency
13 of the War Minister?

14 A Curtailement of budgets are within the
15 power of the Military Affairs Bureau and therefore
16 if there is any budget or aspect of the budget that
17 requires curtailement and is recognized by the Military
18 Affairs Bureau, that is done.

19 Q What I am asking was that whether the cur-
20 tailment is decided at a conference sponsored --
21 ministerial budgetary conference sponsored by the
22 War Minister and at which are present all the chiefs
23 of bureaus.

24 A For two years I have been a chief of bureau
25 in the War Ministry, but at no time have I ever

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1 attended such a conference nor have I ever been
2 called to such a conference. I think that is a
3 matter between the Chief of the Intendance Bureau
4 and the Chief of the Military Affairs Bureau.

5 Q Then is one of your subordinates in attend-
6 ance at the meeting with respect to the budget?

7 A My subordinates do not attend. They
8 merely negotiate or consult.

9 Q You have testified here yesterday that
10 General Staff has neither money nor materiel, while
11 the War Ministry has the both -- has both, and is
12 able to utilize them, but according to your explana-
13 tion today any proposal or plan or request brought to
14 the attention of the War Ministry by the General
15 Staff office is studied in the War Ministry where a
16 plan is drawn up, and that this plan is then brought
17 to the Ministry of Finance. Isn't that it?

18 A I say that the General Staff has the power
19 to ask but it has no power to decide; that power
20 resides in the War Ministry. That is my point.
21 And therefore it is my view that money and materiel
22 resides where the power of decision resides.

23 Q However, that power of decision is bestowed
24 upon the Ministry by first negotiating with the
25 Finance Ministry and then the Finance Ministry

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1 presenting the plan to the Diet, which gives the
2 approval to the plan, and then the power of decision
3 is created. Isn't it a fact?

4 A Well, that is the legal procedure in so far
5 as the budget is concerned, but what I was saying --
6 what I was doing was compering the power of the
7 General Staff and the War Ministry, and said that
8 the power resides -- power of decision resides in
9 the War Ministry because they have money and men
10 and materiel.

11 THE PRESIDENT: We will recess for fifteen
12 minutes.

13 (Whereupon, at 1045, a recess was
14 taken until 1100, after which the proceed-
15 ings were resumed as follows:)

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1 THE PRESIDENT: Counsel OKAMOTO.

2 BY MR. S. OKAMOTO (Continued):

3 Q Needless to say that the testimony that
4 you are bound to make here is not neither allegory
5 nor mere description of something. So will you
6 try to testify more accurately?

7 A I am not using allegorical remarks or ad-
8 jectives.

9 Q Perhaps I am mistaken, but I took this to
10 be an allegory, the fact that the testimony went
11 in to the effect that the general staff receives
12 money and materiel of the War Ministry.

13 A Maybe my words were insufficient, but I
14 mean to say that the War Ministry allocates money
15 and materiel because in drawing up a budget, it
16 naturally concerns money and materiel; and that
17 is especially the case under a planned or controlled
18 economy.

19 Q To put it more accurately, does that mean
20 that the government asks the Finance Ministry for the
21 budget whereupon the Ministry of War receives money
22 and materiel?

23 A As I have said before, that is the matter
24 of allocating the budget, and whatever concerns the
25 Ministry of War, the Ministry of War allocates.

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1 I am not speaking about the government budget but
2 the budget as it concerns the War Ministry.

3 Q Then the budget obtained at the request of
4 the general staff, after having obtained approval
5 of the Finance Ministry and the approval of the
6 Diet, is clearly determined as to the purpose of
7 its use and it cannot easily -- readily be changed,
8 is it not true? The War Ministry cannot on its own
9 change the purpose of its use?

10 A That is true with respect to the budget in
11 peacetime, but in wartime there is this extraordinary
12 wartime supplementary budget which can readily be
13 changed by the War Ministry at its own will with
14 respect to all items included in that budget. I
15 recall that since 1941 practically the entire war --
16 Army budget was included in the supplementary wartime
17 budget.

18 Q Then as to its use, you testified previously,
19 decision is made after consultations have been held
20 between Chief of General Staff and the War Ministry,
21 and the War Ministry cannot of its own free will decide
22 the use of that budget?

23 A Yes, it cannot decide by its own will.

24 However, the power of decision resides in the
25 War Ministry.

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1 Q Then that means in the long run that -- in
2 the final analysis the power of decision rests with
3 the War Minister?

4 A In any branch of the government the final
5 decision is made by the Minister.

6 Q Then I will change over to another question.

7 THE PRESIDENT: Counsellor OKAMOTO, I
8 would like you to tell us the point of your cross-
9 examination. If I understand you rightly, you are
10 attempting to show that the responsibility rests
11 in one place, or rests really not in one place but
12 is shared. What does it matter to the question of
13 guilt or innocence whether it rests in one place or
14 is shared? I would understand your duty to be to
15 show that your client, at all events, had no part
16 in these things. You do not do that by showing the
17 responsibility was shared with others. These general
18 budgeting matters are common to all countries, if I
19 understand the situation.

20 MR. S. OKAMOTO: Mr. President, the prose-
21 cution have been trying to prove the importance --
22 in fact, the great importance of the role of the
23 Military Affairs Bureau by calling witness TANAKA
24 already twice and by other means.
25

THE PRESIDENT: The prosecution have

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1 endeavored to show through TANAKA that individual
2 accused were personally responsible in that they
3 shared responsibility with others and not that they
4 assumed the whole responsibility. All you have been
5 endeavoring to do, if I understand you rightly, is
6 to distribute the responsibility, and that gets you
7 nowhere.

8 MR. S. OKAMOTO: I believe that I have
9 succeeded to make it clear that the Chief of
10 Military Affairs Bureau was merely a clerk or an
11 administrator under -- or merely an officer or
12 official who acted under the -- on the orders of
13 the War Minister by the help of this witness. Then
14 how the business is handled afterwards, and especially
15 concerning that matter in relation to comparing
16 with the Military Service Bureau of which the witness
17 himself was connected, was there any difference?

18 General FUTO, as a soldier, was the Chief
19 of the Military Affairs Bureau at that time. However,
20 whoever was put in his place, he would have done the
21 same thing, the same thing under those circumstances.
22 So that was the point I wanted to establish. However,
23 I shall reframe my question.
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1 Q Mr. Witness, you testified that the Mili-
2 tary Affairs Bureau was the only bureau responsible
3 for negotiating with organs or with persons out-
4 side the War Ministry. However, was the Military
5 Service Bureau not responsible concerning military
6 training at schools and young men's associations --
7 and military training of the youth?

8 THE INTERPRETER Mr. Witness, you testi-
9 fied that all negotiations between the War Ministry
10 and other departments of the government were carried
11 on by the Military Affairs Bureau. Is it not true
12 that the bureau of which you were chief, that is,
13 the Military Service Bureau, negotiates with the
14 Education Ministry with respect to youth training
15 and military training in the schools?

16 A Yes, on the basis of the regulations
17 governing the organization of the War Ministry,
18 the Military Affairs Section of the Military Affairs
19 Bureau handles the matter, but at the time the
20 Military Service Section -- Military Affairs Sec-
21 tion was so busy that, with the understanding of
22 that section, the matter was taken over and handled
23 by the Military Service Bureau.

24 Q And is it not true that the section or
25 bureau to which you belonged negotiated with the

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1 Home Ministry pertaining to the matters of preser-
2 vation of peace and counterespionage?

3 A Not with respect to the maintenance of law
4 and order; but my bureau has negotiated with the
5 Home Office with respect to the question of counter-
6 espionage, that being one of the duties of my bureau.

7 Q Concerning matters relating to women's
8 associations, did not the Military Service Bureau
9 negotiate with Home and Welfare Ministries?

10 A With respect to that, we haven't negotia-
11 ted with the Home Office, but we have consulted the
12 Welfare Ministry.

13 Q With respect to other business handled by
14 the War Office with organs outside of the Ministry,
15 is it not true that matters pertaining to the pro-
16 curement and mobilization of materiel the War Min-
17 istry would consult the Planning board; with respect
18 to labor, the Ministry of Welfare; and with respect
19 to shipping and railways, the Transportation Ministry?

20 THE INTERPRETER: War Ministry should read
21 War Mobilization Planning Bureau instead of as
22 translated.

23 A Yes, business negotiations with various
24 outside bodies is done by the Military Service
25 Bureau and other bureaus with respect to matters

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1 under their jurisdiction.

2 Q Now, concerning such programs -- impor-
3 tant programs -- as budget, for instance, wasn't
4 the Intendance Bureau responsible for negotiating
5 with the Finance Ministry and not the Military
6 Affairs Bureau?

7 A The Intendance Bureau serves as an adviser
8 to the Military Affairs Bureau with respect to busi-
9 ness negotiations with the Finance Ministry, but
10 as to the contents of the budget itself, such nego-
11 tiations are done by the Military Affairs Bureau
12 itself.

13 Q I understood you to say, Mr. Witness, a
14 while ago that Military Affairs Bureau was solely
15 responsible for conducting negotiations with out-
16 side. Now, Mr. Witness, may I understand that you
17 have rectified your previous testimony by your
18 present statement?

19 A Yes, with respect to business negotiations,
20 all bureaus in the War Ministry conducted them.
21 However, in carrying out certain plans -- in carry-
22 ing out the actual negotiations with the outside,
23 the Military Affairs Section and the Military Sec-
24 tion in the Military Affairs Bureau was primarily
25 responsible with all negotiations with the outside.

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1 Q However, in the final analysis, is it not
2 true -- is it not more correct to say that the
3 Military Affairs Bureau were responsible as well as
4 the Military Service Bureau and Materiel Mobiliza-
5 tion Bureau and Intendance Bureau for handling
6 business actually? I should like to get your answer
7 in yes or no.

8 A Due to shortage of personnel, the various
9 bureaus conducted negotiations with the outside,
10 but they could not do so without the consent and
11 approval of the Military Affairs Bureau, which, as
12 I have said before, was principally responsible for
13 negotiation with the outside, and my answer is
14 emphatically no.

15 Q Then, I will not press my questioning any more.
16 You have testified that all plans announced
17 by the War Ministry are drafted and originated by
18 the Military Affairs Bureau. Is that statement
19 correct?

20 A May I correct that to say, on the whole or
21 most of it.

22 Q Were not matters such as defense of the
23 homeland, national defense, land planning, city
24 planning, counter espionage, and air defense not
25

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1 originated and drafted by the Military Service
2 Bureau as well as military conscription?

3 A Yes. It had drafted a plan, but it cannot
4 publicize these plans without the approval of the
5 Military Affairs Bureau, nor can it carry these
6 plans into operation.

7 Q I am asking about originating of the
8 plans.

9 A That applies also to drafting of the plans.

10 Q Does that mean the plans are not drafted
11 at the Military Service bureau?

12 A Will you read and study my last reply?

13 Q I thought you said that the Military Ser-
14 vice Bureau drafted the plans.

15 A Even with respect to drafting of plans,
16 the Military Service Bureau cannot carry it out into
17 operation without the approval of the Military Affairs
18 Bureau.

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1 Q Does the military affairs Bureau share the
2 responsibility with the military Service Bureau de-
3 pending on the nature of the matter?

4 A Well, rarely; but the military affairs Bureau
5 requests the common responsibility of the military
6 Service Bureau also.

7 Q Well now, plans concerning military mobiliza-
8 tion and productive expansion, were these plans not
9 drafted by the military Intendence Bureau and Mobili-
10 zation Planning Bureau?

11 A As this relates to national defense, the
12 outlines of the plan would be prepared by the mili-
13 tary Section of the military affairs Bureau, and the
14 plan is carried out within the scope of the outline
15 as established.

16 THE PRESIDENT: Counselor OKAMOTO, I must
17 tell you again I do not think any Member of the Tri-
18 bunal is getting the least assistance from this
19 cross-examination on generalities.

20 MR. S. OKAMOTO: Then I will change to another
21 question -- change the subject in accordance with the
22 suggestion of Mr. President.

23 Q Mr. witness, you testified that most of the
24 opinions expressed by General MUTO as Chief of the
25 military affairs Bureau were adopted by Prime Minister

1 TOJO -- war minister TOJO. However, is it not true
2 that most of the plans made by the chiefs of the mili-
3 tary affairs Bureau were adopted generally and as a
4 whole by the war minister?

5 A There is a case of a chief of the Military
6 affairs Bureau who resigned from the War Office as a
7 result of conflictive views with the War minister.
8 General NUTO is a very erudite politician, and as I
9 observed from the side lines, General TOJO to a very
10 great extent adopted the political and diplomatic views
11 held by NUTO.

12 Q But, however, was General TOJO, or war minister
13 TOJO, a man who would accept without criticism opinions
14 expressed by bureau chiefs?

15 A Yes. War minister TOJO had his own subjective
16 views on certain subjects, on certain questions, which
17 he held at all times, but on subjects with which he
18 was not acquainted he received advice and opinions from
19 others. As I said, His Excellency TOJO has little
20 experience with respect to politics and diplomacy.
21 Although this is my own subjective view, TOJO was very
22 much taken over with the consistent aim and policy of
23 the Military Affairs Bureau to which I referred before,
24 that is, the concept of the Axis with Germany creating
25 a new order in Europe and Japan establishing a sphere

1 of common prosperity in East Asia. This political
2 concept or idea held by the military affairs Bureau
3 was won over and was also the view held by General
4 TOJO. Let me give an example: This does not refer
5 to war minister TOJO but to another accused, war min-
6 ister HATA, who at the end of the cabinet of Premier
7 YONAI resigned from the cabinet because the army's
8 views on the Tri-Partite Alliance was not accepted
9 by the cabinet. Shortly after I became Chief of the
10 Military Service Bureau in 1940 I had occasion to
11 take dinner with General HATA in Tsukiji, Tokyo, and
12 at that time I asked General HATA why he took such an
13 attitude which was really against his ideas and his
14 nature, and he said that he was obliged to do so by
15 the influence of MUTO. War minister TOJO was a posi-
16 tivist and did not mention such matters, but I think
17 he entertained the ideas and concepts of the Military
18 Affairs Bureau at that time.

19 Q I was asking about relations between War
20 minister TOJO and not with other persons such as General
21 HATA.

22 A I was merely trying to explain the very great
23 influence and power held by the Military Affairs Bureau.
24 I just merely gave this as an example to show that with
25 respect to political and diplomatic questions the

1 Military Affairs Bureau held sway, and those ideas
2 and concepts were accepted by the War minister. Had
3 War minister TOJO not accepted the views of the Mili-
4 tary Affairs Bureau he would have met the same fate
5 as War minister HATA.

6 Q Is it not your subjective view or your own
7 speculation?

8 A I base this on the way Japan moved since
9 then, and also by my observations with respect to the
10 political activities of army officers at the time I
11 was Chief of the Military Service Bureau as a part of
12 my duty. It may be my subjective view but it is a
13 fact.

14 Q Does that mean that in spite of the fact you,
15 yourself, as Chief of the Military Service Bureau
16 worked side by side with General HUTO who was at the
17 time Chief of the military Affairs Bureau, you cannot
18 testify -- give any complete examples or statements
19 concerning relations between HUTO and TOJO?

20 A I did not speak of anything like that.

21 Q I have not heard any.

22 A The fate which has befallen Japan speaks for
23 itself. There is nothing more eloquent than facts.

24 Q Then, Mr. Witness, you are not testifying on the
25 basis of the fact that you were present at the time

1 policies were discussed between MUTO and TOJO?

2 A Such policies are discussed in secret, and
3 I had no authority to attend such meetings.

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1 Q Then it amounts only to your guess and your
2 subjective views, doesn't it?

3 A It isn't speculation or guess. I'll give an
4 example.

5 Q I'm asking for facts.

6 A I'm trying to give you an example. According
7 to the regulations governing the War Office, the only
8 person who is permitted to participate in politics is
9 the War Minister himself. However, at a session of
10 the Diet in 1940, War Minister TOJO said that the
11 Chief of the Military Affairs Bureau may also partici-
12 pate in politics in the House of Peers. Now, what
13 does this speak of? Does this not say that the
14 Military Affairs Bureau Chief was a very intimate aide
15 de camp, politically speaking, of the War Minister?

16 Q It only shows the way TOJO -- War Minister
17 TOJO interpreted regulations governing the organiza-
18 tion of the War Office, does it not?

19 A I am positive that, inasmuch as officers on
20 the active list are not civilian officers and the War
21 Minister himself is a civilian officer, they cannot
22 participate in politics.

23 THE MONITOR: Therefore, I am positive that
24 this is stipulated in the Japanese Constitution:
25 namely, that the War Minister, who is by the status

1 of his office a civilian officer -- active officers on
2 the active list cannot be civilian officers and,
3 therefore, cannot participate in politics.

4 Q Again changing the subject, are you not aware
5 of the fact that War Minister TOJO frequently asked
6 opinions of Bureau Chiefs and accepted their criti-
7 cism?

8 A Yes, that is the nature and character of War
9 Minister TOJO.

10 Q Then again I shall ask you, was not General
11 TOJO's character like this: He was a man who acted
12 on his beliefs, and he was ready to accept what was
13 right. But, once he accepted something, he made it
14 his own belief and acted upon it. Once he accepted
15 opinions from his subordinates, he made it his own
16 belief and acted on the basis of it?

17 A That is true.

18 Q Then, if ever TOJO accepted all what General
19 MUTO said without any criticism, as you testified,
20 does that not mean that he was not a man of belief --
21 that he did not act upon his own belief?

22 THE MONITOR: Then, do you mean to say that,
23 in case TOJO accepted the views and beliefs and
24 opinions of MUTO, he would not make it his own belief
25 and act upon it?

1 A Yes. In so far as ordinary administration of
2 duties were concerned, War Minister TOJO was very
3 strict. But, in so far as political and diplomatic
4 matters were concerned, his knowledge and experience
5 were so shallow that he acted upon the views and
6 opinions of MUTO.

7 Q I don't want to hear any more of your
8 speculations.

9 Do you recall, Mr. Witness, an occasion
10 where you and MUTO presented your respective views
11 to the War Minister TOJO whereat MUTO's views were
12 rejected-- MUTO's opinions were rejected and yours
13 accepted?

14 A Yes, I think there was such an occasion,
15 but there there were also occasions where I was
16 rejected.

17 Q Does it not mean that you and MUTO were
18 treated equally as Chiefs of Bureaus by TOJO?

19 A I guess so, yes; as a Bureau Chief --

20 Q Mr. Witness, you testified here in this court
21 on the 6th of January that General TOJO gave an
22 immediate reply to a request or proposal made by
23 General UEMURA, Chief of Prisoners of War Information
24 Bureau, at the time of a meeting of Bureau Chiefs at
25 War Ministry and gave an immediate reply.

1 A Yes, that is correct.

2 Q Mr. Witness, have you ever heard instructions
3 by War Minister TOJO with respect to setting an
4 example in leading your men?

5 A Yes, twice.

6 Q Does it mean that a chief should act and
7 carry out plans -- determine his ideas on his own
8 responsibility?

9 A Yes. That is, to handle matters in a blitz
10 manner.

11 Q And TOJO followed this principle by setting
12 an example by his own actions, did he not?

13 THE MONITOR: He was the first to set this
14 example, was he not?

15 A That is correct.

16 Q On the 4th of January, 1941, when General
17 TOJO made a New Year's speech, were you present?

18 A Yes, I was there, and I heard him in the
19 large dining room of the War Ministry.

20 Q At that time, did not the War Minister say,
21 "You officers, never do anything that is outside of
22 your will or intention."?

23 A Not only that; he spoke of that matter
24 frequently, on many occasions.

25 Q Not only did he say that in his instructions,

1 but he never allowed himself to do anything which was
2 not in accordance with his own will -- one with his
3 own will.

4 THE INTERPRETER: Not only with respect to
5 his instructions to others, did not War Minister TOJO,
6 himself, do nothing that would be contrary to his own
7 intentions, purposes and will?

8 A No, he would not if he found it out himself.

9 THE INTERPRETER: Not only in his instructions,
10 but he also prohibited any actions that would be con-
11 trary to one's intentions, will or purposes.

12 The counsel's question should be corrected
13 to read that, "Not only in his instructions, but he
14 expected all at all times to act in accordance with
15 his beliefs and intentions and will."

16 The reply of the witness was that, "Once he
17 discovered anybody acting contrary to that, he would
18 not readily pardon them."

19 THE PRESIDENT: We will adjourn until half-
20 past one.

21 (Whereupon, at 1200, a recess was
22 taken.)

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1 AFTERNOON SESSION

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3 The Tribunal met, pursuant to recess at
4 1330.5 MARSHAL OF THE COURT: The International
6 Military Tribunal for the Far East is now resumed.

7 THE PRESIDENT: Counsel OKAMOTO.

8 - - -
910 R Y U K I C H I T A N A K A, recalled as a witness
11 on behalf of the prosecution, resumed the stand
12 and testified through Japanese interpreters as
13 follows:

14 CROSS-EXAMINATION

15 BY MR. S. OKAMOTO (Continued):

16 Q Mr. Witness, are you an intimate friend of
17 General MUTO?18 A Up to the time I became Director or Chief of
19 the Military Service Bureau I was a friend of his --
20 an intimate friend. After becoming Chief of the Military
21 Service Bureau we were privately, as individuals, on
22 intimate terms, but from the standpoint of the views
23 held by the Military Service Bureau, that military
24 men should not participate or interfere in politics
25 and the Military Service Bureau frowned upon the

TANAKA

CROSS

1 actions of the Military Affairs Bureau, so on matters
2 of principle there was a conflict between the two
3 bureaus. There is no ill will of any kind between
4 us as individuals even today.

5 Q You graduated one period behind MUTO from
6 the Military Academy, didn't you?

7 A Yes, you are correct.

8 Q And two periods behind from the War College?

9 A One year behind -- one term behind.

10 Q Were you his subordinate in the Kwantung Army?

11 A From June 1936 to March 1937 I was a sub-
12 ordinate of his.

13 Q At that time was he kind to you?

14 A Will you repeat that question, counsel?

15 Q Was MUTO kind to you in those days?

16 A Yes, very kind.

17 Q However, after you became the Chief of the
18 Military Service Bureau, I do not know what was the
19 true relationship between you yourself and MUTO but
20 the world at large said that you were opposed to
21 each other -- in other words, you were not in good
22 terms with each other; is that true?

23 A Yes, the public at large rumored to that effect.

24 Q Did you ever speak ill of MUTO?

25 A I said political participation was bad.

TANAKA

CROSS

1 Q Have you ever attended the Diet when you
2 were Chief of the Military Service Bureau as one of
3 the government committeemen?

4 A Yes, I attended the Diet in the spring of
5 1940 as a member of the government committee but at
6 the next session of the Diet, in spite of the fact that
7 there was a bill drafted by my bureau pending in
8 the Diet, I was unable to attend because of the
9 opposition of the Military Affairs Bureau. However,
10 because Vice-Minister of War KIMURA said that I must
11 attend that Diet in the spring of 1942 and therefore
12 by his order, I attended the Diet.

13 Q At the time, the bold statement that you
14 made at the Diet, was it not played up by the press
15 and printed in the Japanese press with much publicity?

16 A Yes, it was very greatly publicized by the
17 press.

18 Q Did the public say that TANAKA would be
19 appointed next Chief of the Military Affairs Bureau?

20 A Yes, there was some who said that and there
21 was some who came to me to ask me to become chief of
22 that bureau.

23 Q How did you reply to your fans, so to speak?

24 A My reply was to the effect that I entertained
25 no ambitions of becoming chief of that bureau but if

TANAKA

CROSS

1 such an opportunity came I would positively take
2 action to bring about the abandonment of political
3 participation by the army.

4 Q However, in your statement at the Diet, did
5 you not express boldly your political views?

6 A What kind of political expression did I make?

7 Q If you do not remember it, it is all right.

8 A What I wish to emphasize is that as Chief
9 of the Military Service Bureau I said that the army
10 should not play with politics and that any actions
11 of that kind would be controlled by the bureau of
12 which I was chief.

13 THE MONITOR: As long as anyone held a post
14 in the army.

15 Q Don't you think that the fact you participated
16 in the Diet as a member of the committee of the govern-
17 ment and as the Chief of the Military Service Bureau
18 constituted a political action -- participation in
19 politics? .

20 A A government committeeman is appointed by the
21 government and his expressions in the Diet itself is
22 free.

23 Q That means within that scope you could
24 freely express your political opinions; is that it?
25

A That as stipulated in the in-laws or in the

TANAKA

CROSS

1 constitution is in reply to interpellations in the
2 Diet.

3 Q Then I shall ask you, Mr. Witness, was it
4 not the thing that you liked most, to attend the Diet
5 and reply to the interpellations as a member of a
6 political committee of the government, and the fact
7 that MUTO, General MUTO, Chief of Military Affairs
8 Bureau, tried to prevent you from this kind of
9 activities offended you very much?

10 A No, I was rather -- rather, I was happy that
11 I did not have to attend the Diet. The petition to
12 Vice-Minister of War KIMURA that I should attend
13 the Diet in connection with the bill drafted by my
14 bureau, that is, the military conscription order, was
15 made by Chief of the Procurement and Material Mobiliza-
16 tion Section, who on his own went to the Vice-Minister
17 to get his approval and order for my attendance, and
18 I scolded him for having taken such action. The man
19 I reprimanded was Colonel SUGAI. Colonel SUGAI in-
20 sisted that I attend inasmuch as the matter was in
21 the jurisdiction and province and under the charge of
22 my bureau of which I was chief, and he replied that
23 therefore he went to Vice-Minister KIMURA on his own
24 initiative and asked that I be permitted to attend. I
25 entertained no desire whatsoever to attend the Diet

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on this sort of a matter.

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1 Q Mr. Witness, you have testified in answering
2 a question put to you by counsel Blewett on the 6th of
3 January in this Court, that you never dreamt of becoming
4 Chief of the Military Affairs Bureau; that you never
5 dreamt of even desiring to become a Chief of the Military
6 Affairs Bureau. According to the English text, that is,
7 the translation of your testimony in Japanese, words
8 such as "I never expected nor hoped" are used. However,
9 in the Japanese text, I mean in the Japanese, it was
10 "I never dreamt of becoming such and such." Does that
11 mean, according to you, definite mitigation of the
12 intention? In short, in the English text of the tran-
13 script on January 6, you are interpreted as having
14 said that you have not expected or desired to become
15 Chief of the Military Affairs Bureau, but in the Japanese
16 shorthand transcript the following words are used, that
17 you have never dreamt or hoped -- dreamt of becoming
18 Chief of that bureau. Now, that is a stronger term
19 than the English. What is your true expression on that
20 subject?

21 A Well, my -- the circle of men around me and
22 my subordinates persuaded me to become Chief, but at
23 no time ever entertained or dreamt of becoming or holding
24 that office and I told these subordinates of mine that
25 I had not even dreamt or entertained the ambition of

TANAKA

CROSS

1 becoming Chief of the Military Affairs Bureau nor am
2 I the type to become Chief of that bureau. That was
3 my reply to my subordinates and my circle of friends
4 who persuaded me to take that office.

5 To give you one concrete illustration: In
6 the spring of 1941, His Imperial Highness, Prince
7 KAYA, called upon me and told me that His Imperial
8 Majesty, the Emperor, entertained -- was very much
9 anxious and worried over the participation of the
10 army in politics and proposed me -- proposed that I
11 become Chief of the Military Affairs Bureau in order to
12 stop such military participation in politics and my
13 reply to His Imperial Highness was that I am not the
14 kind of person to do so nor could I realize such a
15 purpose and that I entertained no ambitions of becoming
16 Chief of the Military Affairs Bureau. Therefore,
17 I flatly refused his proposal or rejected his proposal.

18 Q Have you ever heard of public comments to the
19 effect that TANAKA, because he did not become Chief of
20 the Military Affairs Bureau, holds a grudge against
21 General MUTO and that he is testifying against his favor
22 in the Court.

23 A There was such a reputation current at the
24 time I was Chief of the Military Service Bureau that
25 Major General TOMINAGA, as Chief of the Personnel Section --

TANAKA

CROSS

1 Personnel Bureau of the War Ministry, came to me to
2 ask me about it. At that time I told him my feelings
3 on the subject such as I have already expressed and I
4 think TOMINAGA understood just where I stood on the
5 matter. I am not mixing emotions when I make any
6 expressions before this Tribunal. My expressions
7 in this Tribunal is for the purpose of giving expression,
8 giving voice to the cause why Japan has met her present
9 fate and that cause, I say, is the Army's participation
10 in politics and I should like to have -- let the truth
11 be known to the people in order to set this country
12 aright and also to let known these truths to our posterity.

13 Q I will change the subject.

14 Are you aware of the fact that in the course
15 of 1941 criticism was voiced from General Staff circles
16 against MUTO to the effect that he was an exponent
17 of weak-kneed American policy -- weak-kneed and com-
18 promising policy towards America?

19 A Yes, there was such a criticism of him. At
20 the same time in September 1941 I wrote an article under
21 an assumed name in the Kaikoshu Journal, that is, the
22 Army Officer's Magazine, to the effect that Southern
23 operations was dangerous and that there was no possibility
24 or prospect of winning -- of succeeding in such operations
25 and, therefore, not only MUTO, but I myself was strongly

TANAKA

CROSS

1 criticised by the very strong and positive elements
2 within the General Staff Office as being defeatist
3 military men. That is a fact.
4

5 There were no political views expressed in
6 that article and the subjects discussed in that article
7 were with respect to military organization, military
8 equipment and installation, training, and so forth
9 and was written entirely from the military point of view
10 and pointed how insufficient and deficient the training
11 of the army was. I also heard from the then Colonel
12 SATO, then Chief of the Military Affairs Section of the
13 Military Affairs Bureau, that Lieutenant General MUTO's
14 attitude towards the United States was very vague
15 and abstract. That is all.
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1 Q I wanted to ask of you MUTO's attitude
2 towards the United States, however, Mr. Witness, you
3 stated your own attitude towards the United States at
4 that time. It helped me quite a lot. Thank you.

5 THE MONITOR: You have also stated your own
6 position towards the United States and by so doing
7 you have made the situation all the more clear. Thank
8 you.

9 Q In connection with that matter, do you
10 remember that military police -- contingent of mili-
11 tary police was attached to MUTO to protect him
12 against possible attacks from the rightest elements?

13 THE MONITOR: Rightest, positivist elements.

14 A Yes, I instructed the Kempeitai to give
15 MUTO a bodyguard, and that was because it was
16 shortly after an attempted attack upon the Vice
17 President of the Privy Council, HIRANUMA.

18 Q Then, are you aware of the fact that Colonel
19 IWAKURA, who was sent to assist Ambassador NOMURA
20 in the America-Japan negotiations on the recommenda-
21 tion of MUTO, then Chief of the Military Affairs Bureau?

22 A Yes, I know that very well, but that was by
23 the order of the War Minister.

24 Q Are you aware of the fact that at that time
25 both the War Minister and the Chief of the Military

TANAKA

CROSS

1 Affairs Bureau were endeavoring -- struggling hard to
2 bring the Japanese-American negotiations to a suc-
3 cessful conclusion?

4 A Yes, I know that very well, and I also, in
5 the event such a successful settlement were reached
6 between the United States and Japan and during the
7 possibility of a possible uprising within the Army
8 by the rightest and positivist elements I had even
9 made preparations with regard to stopping or prevent-
10 ing any such uprisings, such movements.

11 THE MONITOR: I was thinking of preparing to
12 settle these things if it should rise. I even thought
13 of it.

14 Q Immediately after an address -- the address
15 was given by the War Minister in the afternoon --
16 immediately after the mid-day of the 8th of December,
17 1941, did you or not tell General TOMINAGA that TOJO
18 by this act became a hero?

19 A Yes, General MUTO spoke to me before the War
20 Minister's address to his staff members, but I don't
21 recall having had any talk with TOMINAGA after that
22 address was given.

23 THE MONITOR: Slight correction. General
24 MUTO told me -- made this statement to me before the
25 War Minister delivered his address, but I don't

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CROSS

1 remember having said this to General TOMINAGA after
2 the address.

3 THE PRESIDENT: Colonel Warren.

4 CROSS-EXAMINATION (Continued)

5 BY MR. WARREN:

6 Q Mr. TANAKA, in your testimony yesterday you
7 stated that at the outbreak of the Manchurian Incident
8 the head of the Special Service organization in Man-
9 churia was General DOIHARA. Do you desire to change
10 your answer at this time on that?

11 MR. COMYNS CARR: He said in southern Man-
12 churia?

13 MR. WARREN: I am reading from the record,
14 your Honor, and I will read the entire answer and
15 answer his correction. (Reading): "At the time of
16 the outbreak of the Manchurian Incident the head of
17 the Special Service organization was Major General
18 DOIHARA in Mukden." Do you want to change that answer?

19 THE PRESIDENT: What page.

20 THE WITNESS: I am ready to change it.

21 MR. WARREN: 15,857.

22 Q You state you are ready to change it?

23 A I said that he was Chief of the Special
24 Service Department at Mukden. Inasmuch as the Chief
25 of the Military Service Department was in charge of

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CROSS

1 small local areas, I said that he was in charge of
2 the Special Service Department in south Manchuria, or,
3 that is, Mukden.

4 Q You further stated that he remained at the
5 head of that organization right down to the time when
6 the control of the opium traffic was transferred. In
7 answer to a previous question you had stated that the
8 Opium Control Board was set up in 1935. Do you want to
9 change those answers?

10 A In my recollection, the Opium Control Board
11 was -- the establishing of the Opium Control Board
12 was completed in the spring of 1935. After that it
13 became necessary for opium retailers to abide by the
14 regulations and permission issued by the Special Ser-
15 vice Department, and without such permission they were
16 not permitted to engage in this traffic, and so
17 therefore General MINAMI, then the Commander-in-Chief
18 of the Kwantung Army, ITAGAKI, Chief of Staff, and
19 TOJO, later Chief of Staff of the Kwantung Army,
20 took this authority away from the Special Service
21 Department.

22 Q Just a minute. I am not asking for an ex-
23 planation. I want to know if you want to change your
24 answer to the question concerning DOIHAI-A, and as to
25 the date of setting up the Opium Control Board. Please

TANAKA

CROSS

1 answer my question.

2 A I was speaking of the period when the Special
3 Service Department was engaged in the opium traffic.
4 As for General DOHIHARA, he was Chief of the Special
5 Service Department at the time of the outbreak of
6 the Manchurian Incident, and after that he once re-
7 turned to Japan and then went back to Manchuria in
8 December. If my recollection is not mistaken, in
9 December, 1934, as Chief of the Special Service De-
10 partment. If there is any mistake in my memory I
11 shall be very glad to change it.

12 Q Then I will refresh your memory. Do you
13 recall the Captain NAKAMURA Incident? That is an
14 incident where a Japanese Army captain was killed by
15 Chinese soldiers and then his body burned in order to
16 destroy the evidence of their guilt.

17 A Yes, I know that very well.

18 Q Do you know whether General DOHIHARA was
19 appointed by his government to investigate that
20 matter?

21 A Yes, I think he was ordered to do so.

22 Q I will ask you if he was not in Tokyo at
23 the outbreak of the Manchurian Incident and was not
24 in any way connected with the Special Service Depart-
25 ment of the Army in Manchuria?

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3 Service Department was engaged in the opium traffic.
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19 appointed by his government to investigate that
20 matter?

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23 the outbreak of the Manchurian Incident and was not
24 in any way connected with the Special Service Depart-
25 ment of the Army in Manchuria?

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CROSS

1 A Yes, I know that the Manchurian Incident
2 broke out when he was in Tokyo to report on the
3 Captain NAKAMURA Incident.

4 Q Well, you didn't answer all of the question,
5 Mr. TANAKA. I want to know if he had any connection
6 whatsoever with Special Services Department of the
7 Army in Manchuria at that time.

8 MR. COMYNS CAIR: I submit, your Honor, my
9 friend ought to make clear the date he is speaking of.

10 THE PRESIDENT: Now you are talking against
11 the red light. I was waiting for that. If the red
12 light stops me it stops you too, Mr. Carr.
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1 MR. COMYNS CARR: I would like to repeat my
2 objection. The question was put "at that time." We
3 have not yet heard whether my friend was referring to
4 a particular date, and if so, what date, or to a
5 period, and if so, what period. I submit that the
6 witness should have his attention drawn to the period
7 or date about which he is being asked.

8 MR. WARREN: I might suggest, your Honor,
9 if counsel listens to the question he would know we
10 are referring to the Mukden Incident; and for his
11 information, according to the prosecution, it
12 occurred on the 18th of September, 1931. I think the
13 witness understands.

14 THE PRESIDENT: You mentioned the NAKAMURA
15 Incident.

16 MR. COMYNS CARR: My friend has not answered
17 the point in the least. The Mukden Incident may
18 mean the precise date, the 18th of September, 1931,
19 or my friend may be referring to and sometimes appeared
20 to be referring to a much longer and undefined period
21 of time. The witness is entitled to know which he is
22 being asked about.

23 MR. WARREN: He is quibbling, your Honor.

24 THE PRESIDENT: Do not say that.

25 MR. WARREN: I explained it was the 18th of

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1 September, 1931. I am sure the witness understood
2 that is the date I had reference to, the date of the
3 Mukden Incident.

4 I will repeat the question in order to save
5 time.

6 Q At the outbreak of the Manchurian Incident
7 or the Mukden Incident on September 18, 1931, will you
8 tell this Tribunal if General DOHIHARA had anything
9 to do with special services in Manchuria?

10 A He was Chief of the Mukden Special Service
11 Organization, but at the time of the outbreak of the
12 Incident he was in Tokyo. My recollection is that
13 he returned to Mukden after the outbreak of the
14 Manchurian Incident.

15 Q In what capacity did he return?

16 A My recollection is that after returning to
17 Mukden he became mayor, provisional mayor of that
18 city.

19 Q For one month; isn't that correct?

20 A I think he was concurrently Chief of the
21 Mukden Special Service Department and mayor. I
22 think he was mayor for a period of one month, of
23 about one month.

24 Q Well, do you know?

25 A Since he was at that time Assistant Military

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1 Attache of the Military Attache's office in Shanghai
2 and saw telegrams from the Kwantung Army, I think I
3 am right -- Military Attache's office of the Japanese
4 Legation in China.

5 Q What, if you recall, was the context of any
6 one of those telegrams?

7 THE PRESIDENT: That is too much to expect.

8 MR. WARREN: Your Honor, that may be true,
9 but he is basing it upon his recollection, trying to
10 think things. He says, "I think"; he didn't say,
11 "I know," and if he can't remember that tests his
12 credibility. That is the reason I am asking him.
13 However, if your Honor believes that is an extreme
14 test I will not ask him.

15 THE PRESIDENT: So it is.

16 Q Now, to refresh your memory, I will ask you
17 if the Opium Control Board was not set up, I mean
18 not promulgated on November 30, 1930 and put into effect
19 on January 11-- wait, I am sorry -- November 30, 1932 --
20 correction on that date -- and put into effect on
21 January 11, 1933?

22 A Yes, I think that is when the board was put
23 into effect, but the actual completion of the organiza-
24 tion of the Opium Control Board took place in April,
25 1935, at the time of the reorganization of the

1 Manchurian Government, Manchukuo Government. In my
2 recollection the Opium Control Board up to that time
3 was an organization in name and not in fact.

4 Q Then you insist that it wasn't until 1935
5 that they had an Opium Control Board?

6 THE PRESIDENT: He did not say that. He
7 said they did not have an effective one until then.

8 MR. WARREN: That is quite right, your
9 Honor. I withdraw the question.

10 Q And at a previous time when you testified
11 from the witness stand, do you recall that you testi-
12 fied that shortly after DOHIHARA's term as Mayor of
13 Mukden that he was sent into North China?

14 A I don't recall ever having said that in
15 this Tribunal; but I do recall that after he served
16 as Mayor of Mukden he went to Tientsin in China. At
17 the same time my recollection is that his position
18 as Chief of the Mukden Special Service Department
19 remained, and that he merely made a trip to Tientsin
20 on a special mission. That, of course, was by order
21 of the Commander-in-Chief of the Kwantung Army,
22 General HONJO.

23 Q I ask you if it isn't a fact that he severed
24 his connections with the Kwantung Army and was under
25 the command of an entirely separate unit of the armies

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1 of Japan?

2 A I think I am quite sure in saying that he
3 returned to Mukden from North China in the spring of
4 1932 and returned to Japan as Divisional Commander
5 of the HIROSHIMA Division, and that he again returned
6 to Mukden as Chief of the Special Service Department
7 in 1934. That is my recollection.

8 Q Well, to assist your recollection somewhat,
9 I will ask you if he didn't become the Commander of
10 the 14th Division in Japan?
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1 MR. COMYNS CARR: Would my friend kindly
2 tell the witness when he suggests he became Com-
3 mander of the 14th Division?

4 MR. WARREN: If your Honor please.

5 THE PRESIDENT: It is easy. I will ask
6 him.

7 Were you ever Commander of the 14th Di-
8 vision? Was DOHIHARA ever Commander of the 14th
9 Division?

10 THE WITNESS: Yes.

11 THE PRESIDENT: When?

12 MR. WARREN: Your Honor, my objection was
13 this. I must pay attention to the red light. I
14 stopped. I had not completed my answer. It would
15 have been in there. I tried to tell Mr. Carr that
16 when he came up but apparently he didn't understand
17 me. The red light cut me off.

18 Q Now do you recall an occasion when he be-
19 came the Commander of the First Division of North
20 China, and if you do what is your recollection on
21 that date?

22 MR. COMYNS CARR: Your Honor, I submit it
23 is unreasonable to expect this witness to remember
24 the date on which every person concerned in this
25 case was appointed to a particular command. The

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1 dated are recorded in the personnel records and in
2 DOHIHARA's case that is exhibit 104.

3 THE PRESIDENT: Well, if they are recorded
4 here we don't want them again unless their
5 accuracy is challenged. They constitute no memory
6 test and no test of credibility. If he has said
7 anything inconsistent with those dates, well, you
8 may cross-examine about that.

9 MR. WARREN: Your Honor, to tell this
10 witness the date when testing his credibility is
11 not cross-examination. He has made statements
12 and he has the statement which I have read to the
13 Tribunal, or at least referred to, that General
14 DOHIHARA remained the head of the organization from
15 right on down until 1935. Now he has made that
16 statement.

17 THE PRESIDENT: Well if that is incon-
18 sistent with the record, with the exhibit already
19 in evidence, you could refer him to the exhibit and
20 that would be sufficient for our purposes, unless
21 he could show that he held the dual capacity.

22 MR. WARREN: Your Honor, this man's memory
23 has been most convenient on direct examination.

24 THE PRESIDENT: That is another question.

25 MR. WARREN: Yes, sir.

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1 THE PRESIDENT: This is a very important
2 witness and we hesitate to interfere with the
3 cross-examination, but nevertheless there is a
4 short way of cross-examining this man effectively.
5 I have already suggested it.

6 MR. WARREN: I know you have, your Honor.

7 MR. COMYNS CARR: In view of what my friend
8 has just said, I think I ought to point out that
9 according to DOHARA's personnel record, exhibit
10 104, he was not appointed to the 1st Division,
11 as my friend was asking about a moment ago, until
12 May -- March 23, 1936, and he wasn't appointed to
13 the 14th Division until March 1, 1937, both of which
14 dates are long after the period of which the witness
15 has spoken, which ended in April 1935.
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1 MR. WARREN: Your Honor, I was testing this
2 witness' credibility. Counsel has educated him. It
3 is impossible to do so now. If this witness did not
4 know those matters, it is a matter of record, of course;
5 the Court knows it. But I am testing his credibility.
6 If his memory is so lax, we want to know it.

7 THE PRESIDENT: The exhibit to which Mr. Carr
8 refers shows that the witness' memory is sound.

9 MR. WARREN: Your Honor, I prefer that the
10 witness answer from his own memory and not from
11 prompting of counsel by objection.

12 I will proceed.

13 THE PRESIDENT: I repeat, the exhibit to which
14 Mr. Carr refers confirms his recollection.

15 Q I refer again to page 15,857 of the record,
16 where you stated that Major General ISHIHARA was in
17 charge of Special Service Organization at Mukden when
18 the Manchurian Incident broke out. You further state
19 that for a short time someone's name whom you do not
20 remember occupied that position, and then again Major
21 General DOHIHAPA became the head of that organization.
22 You later corrected that as I have called to your
23 attention. May I suggest to you that your first
24 designation of the person who was in charge was General
25 ISHIHARA, if that is not the correct person who was

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1 in charge, and not General DOHIHARA?

2 A That is not so. I said DOHIHARA, but I
3 think the interpreter made the mistake and said ISHI-
4 HARA. I think it was a mistake in interpretation.

5 Q Well, how do you account for the fact that
6 you said after DOHIHARA or ISHIHARA, whichever was
7 correct, was the head of the Special Service Organi-
8 zation, that you mentioned another person who occupied
9 it, and then continued to state, in additional question,
10 that General DOHIHARA occupied that position up until
11 1935? Both statements could not be true. Will you
12 clarify that?

13 A I did not say that he was the chief of the
14 Special Service Organization up till 1935. I said in
15 1935 he was the chief of the Special Service Organization.

16 THE PRESIDENT: In fairness to the witness,
17 you ought to quote far more from page 15,857 than you
18 have quoted. At that page, he first mentioned Major
19 General ISHIHARA as being in charge when the Manchurian
20 Incident broke out. There is some confusion there,
21 undoubtedly, and it may be, as he says, mistranslation,
22 which could easily occur.

23 THE MONITOR: That point has been corrected
24 by the Monitor, Mr. President. I think it will
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1 state so further ahead in the record.

2 THE PRESIDENT: We will recess now for
3 fifteen minutes.

4 (Whereupon, at 1445, a recess was
5 taken until 1500, after which the proceedings
6 were resumed as follows:)

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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now resumed.

3 THE PRESIDENT: Colonel Warren.

4 BY MR. WARREN:

5 Q The President of the Tribunal has sugges-
6 ted that I read at length from your testimony
7 yesterday, and I shall do so.

8 THE PRESIDENT: I have read all that we
9 need.

10 MR. WARREN: Sir?

11 THE PRESIDENT: I do suggest that there
12 has been some mistake about it.

13 MR. WARREN: Your Honor, there is one answer
14 here in which the word appears "correction." I don't
15 know whether that was the witness. I took it
16 that the witness made that statement. It may have
17 been the interpreter. If it was the interpreter,
18 it appears as the statement of the witness.

19 THE PRESIDENT: I don't think you can effec-
20 tively cross-examine on the assumption of a contra-
21 diction there. He started off by saying that
22 ISHIHARA was the head of that organization at the
23 time of the Mukden Incident. After all, you are
24 only testing his credibility by way of testing his
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1 memory.

2 MR. WARREN: That is quite true, your
3 Honor. In addition to that, I am laying definite
4 grounds for bringing in testimony at a later time
5 to impeach the witness, if possible. Maybe I can
6 clarify it in this manner:

7 Q Mr. TANAKA, did you mean that General
8 DOHIHARA was the head of the Special Service Organi-
9 zation in the City of Mukden only?

10 A No, I said that he was Chief of the Mukden
11 Special Service Department and at the same time Mayor
12 of Mukden.

13 Q Now what I want you to do is to define the
14 limitations of his command in regard to the, as you
15 refer to it, Mukden Special Service Organization.

16 THE PRESIDENT: You know what DOHIHARA
17 says about it. Put that to him and see whether he
18 accepts it. That is the shortest and the conven-
19 tional way.

20 MR. WARREN. That is quite true, your Honor;
21 I knew what General DOHIHARA says about it and I
22 knew what the Lytton report says about it. I want
23 to know what this witness says about it.

24 There are two ways to attack the credibility
25 of the witness: one is on direct examination and

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1 the other is to come back later with evidence to
2 show that he was mistaken; and that is what I want
3 to find out. In other words, your Honor, I want to
4 know exactly what this witness says and what he
5 thinks under no misapprehension as to an error which
6 may have occurred in the record. I want to impeach
7 him on what he actually says when he isn't mistaken.
8 I am not mistaken in what he means.

9 However, if your Honor feels that I am just
10 taking the time of the Tribunal on that point, I
11 shan't insist on it. I certainly don't want to do
12 anything of that kind.

13 THE PRESIDENT: I feel you are about to
14 impose a severe memory test, and if he fails it
15 won't amount to much anyhow.

16 MR. WARREN: Very well, your Honor. Then,
17 in deference to the feelings of the Tribunal I
18 shan't proceed further with this witness.

19 THE PRESIDENT: Captain Brooks.

20
21 CROSS-EXAMINATION (Continued)

22 BY MR. BROOKS:

23 Q Now, General, in reference to your testi-
24 mony on court record page 15,857, line 25 to line
25 5 of page 15,858, was the setting up of this opium

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1 control board for a good purpose:

2 A Yes, you are correct.

3 Q Now, wasn't this a measure to prevent boot-
4 leg and blackmarket activity in narcotics and to
5 gain control of the sources of supply?

6 A Yes, it is as you say, but there is also
7 one more important purpose. Putting aside opium
8 addicts, the other purpose was to prevent new opium
9 smokers.

10 Q Thank you, General. And wasn't it also
11 the plan to restrict the use of opium, gradually
12 eliminating the addicts that had previously existed?

13 A You are correct, yes.

14 Q And as this was also a result, because
15 prohibitory laws had failed to stop the use of
16 opium and sources were available to addicts and new
17 addicts were being created previous to this time,
18 is that not correct?

19 A You are right.

20 MR. BROOKS: I think that is all.

21 THE PRESIDENT: Mr. Blewett.
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1 MR. BLEWETT: If the Court please:

2 CROSS-EXAMINATION (Continued)

3 BY MR. BLEWETT:

4 Q Were you not as Chief of the Military Affairs
5 and Discipline Bureau absent from Tokyo on many
6 occasions in pursuance of your responsibilities?

7 THE MONITOR: Mr. Counsel, by "Military
8 Affairs and Discipline Bureau" -- do you have the
9 Japanese spelling of that, that is, the Romanized
10 spelling? You see, we can't translate these bureaus
11 by the English words. We are not sure of it.

12 THE INTERPRETER: Mr. Blewett, we do not
13 like to guess here. You said "Military Affairs and
14 Discipline Bureau." That name has not come up so
15 far. We have the name "Military Service Bureau"
16 and "Military Affairs Bureau."

17 THE MONITOR: There are two bureaus, Military
18 Service Bureau and Military Affairs Bureau. You may
19 have something else in mind. We cannot tell.

20 MR. BLEWETT: That was referred to the last
21 time this witness testified. Ask him "Military
22 Affairs Bureau."

23 A I have never been a Chief of the Military
24 Affairs Bureau.

25 Q Well, as Chief of the Military Service Bureau,

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1 were you not absent from Tokyo on many occasions.
2 in pursuance of your responsibilities and on your
3 job?

4 A Yes, I was.

5 Q I see your point, General. I am sorry.
6 It is "Service"--"Military Service Bureau", that was
7 the department of which you were the head of, that
8 is correct, isn't it?

9 A Yes.

10 Q Now, then, were you not out of Tokyo on
11 official business during part of November and
12 December, 1941?

13 A I was out of Tokyo in October, but not in
14 November or December.

15 Q On what date did SATO speak to you about
16 the Prime Minister situation?

17 A That was two or three days after TOJO
18 formed the Cabinet.

19 Q Did not SATO tell you at that time that
20 the War Minister suggested that one of the Royal
21 Household be selected as Prime Minister by the
22 Emperor?

23 A He did not mention anything about the
24 Imperial House. He said, that is, SATO said that
25 TOJO was the best choice for Prime Minister for the

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1 purpose of controlling the Army.

2 Q And that statement made to you was made
3 subsequent to the time that General TOJO assumed
4 the position of Premier, was that not right?

5 A Yes.

6 Q Was not the Chief of the Military Affairs
7 Bureau selected by the War Minister?

8 A You are right.

9 Q Was he not the sole authority in such
10 selection?

11 A Yes, you are right.

12 Q Were you ever asked at any time by General
13 TOJO to be Chief of the Military Affairs Bureau?

14 A Not even once.

15 Q If, as you say, you were opposed to the
16 policies of the military, why did you remain in
17 office until your resignation was requested in the
18 fall of 1942?

19 A I resigned.

20 Q Now, General, were not all these conver-
21 sations between yourself, MUTO and SATO, simply
22 friendly exchanges on social occasions and in no
23 way connected with official business?

24 A You are correct.

25 MR. BLEWETT: That is all. Thank you.

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THE PRESIDENT: Mr. Logan.

CROSS-EXAMINATION (Continued)

BY MR. LOGAN:

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3 Q General, you say that HONJO, General HONJO,
4 was the one who made up his mind that Manchukuo must
5 become an independent state. At least that is what
6 was conveyed to you in a conversation, is that
7 correct?
8

9 A It was in a talk with General ITAGAKI.
10 The independence of Manchuria cannot be effected
11 without the decision of General HONJO.

12 Q And that was his sole idea, that is, HONJO's
13 idea, is that correct?

14 A Yes, that is true in the light of his
15 official position of responsibility.

16 Q When that idea got back to Tokyo, the
17 Government was opposed to it; and by the Government
18 you mean the Cabinet, I suppose?

19 A Yes, I mean the Cabinet.

20 Q And not only was the Cabinet opposed to it,
21 but there was a divergence of views among the Army
22 as to whether or not it should be done, isn't that so?

23 A That is positively a fact.

24 Q In other words, there was no conspiracy
25 between all these men, was there?

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1 MR. COMYNE CARR: I must object to that, if
2 the Tribunal please.

3 MR. LOGAN: I withdraw the question.

4 Q And you spoke of the sphere of common
5 prosperity in your testimony this morning. By that
6 do you mean the Co-Prosperity Sphere?

7 A What I mean is to flourish together by
8 cooperating together.

9 Q By that do you mean the Co-Prosperity
10 Sphere, those words exactly?

11 A Yes.

12 Q You said this morning that idea was a
13 long-standing policy of the Japanese Government.
14 Isn't it a fact, General, that those words were
15 never used until 1939?

16 A I do not say that this phrase was used for
17 a long time in Japan; but, as you say, it is a fact
18 that it has been in use since 1914.

19 THE INTERPRETER: That was the statement of
20 the witness.

21 Q Those words "Co-Prosperity Sphere" have been
22 used in Japan since 1914, do you mean that, General?

23 A The idea that Asia must mutually cooperate
24 has been in currency for a long time, but the word
25 "Co-Prosperity" came into currency about the time of

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1 the ABE Cabinet when a plan for the establishment
2 of a trade ministry was under consideration.

3 Q In other words, those words "Co-Prosperity
4 Sphere" have no implication of any invasion, have
5 they, military invasion?

6 MR. COMYNS CARR: I object to that question,
7 your Honor.

8 THE PRESIDENT: This amounts to swearing
9 the issue if he answers. You can ask him what the
10 name implies in the way of action on the part of
11 Japan?

12 BY MR. LOGAN (Continued):

13 Q Do those words imply any military action on
14 the part of Japan?

15 A The words "Co-Prosperity Sphere" in itself
16 is a very fine expression and does not include any-
17 thing military -- any military action.

18 MR. LOGAN: Thank you, General.
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1 MR. SHIOBARA: Counsel SHIOBARA.

2 CROSS-EXAMINATION (Continued)

3 BY MR. SHIOBARA:

4 Q Is it possible for a vice-minister, who has
5 not the status of a state minister, to work -- to act
6 in the place of the War Minister?

7 A Absolutely not.

8 Q Was the Accused KIMURA ever appointed a state
9 minister?

10 A No.

11 Q Then in cases where TOJO was absent on
12 business and other matters was it not a fact that
13 the position, the post of Vice War Minister remained --
14 I mean the position of War Minister remained vacant
15 and no deputy, or acting War Minister was appointed?

16 A You are correct.

17 Q Since the War Minister TOJO was appointed
18 concurrently Prime Minister, did he remain mostly at
19 the official residence of the Prime Minister and so
20 preoccupy himself solely with the business of the
21 Prime Minister leaving the business of the War Ministry
22 in the hands of his vice-minister, or did he as pre-
23 viously continue to look after the business of the
24 War Ministry at the same time?

25 A He cannot, that is, the War Minister cannot

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CROSS

1 leave matters pertaining to state affairs in the
2 hands of Vice-Minister KIMURA. War Minister TOJO
3 himself took the leadership in supervising the work
4 of the War Minister.

5 Q In your testimony which you made either on
6 the sixth or seventh of January, you said that the
7 War Vice-Minister had no power of decision but did
8 the vice-minister have executive authority, that is,
9 to carry out the business routine within the War
10 Ministry?

11 A No. Only matters delegated to the vice-
12 minister could be carried out by him pertaining to
13 the business of the ministry.

14 Q In Article 16 of the regulations governing
15 organization -- general regulations governing organiza-
16 tion of ministries, and in the functions of vice-
17 minister is stipulated as follows: "The vice-minister
18 shall look after the business of his ministry and
19 supervise various bureaus and sections." By super-
20 vision do you mean that the vice-minister, if bureau
21 chiefs and section chiefs did not obey his orders, he
22 had the power to compel them to execute his orders
23 or to punish them?

24 THE MONITOR: Not "do you mean to say that
25 they had" but "did he have the power to punish or

TANAKA

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1 force the bureau chiefs to obey his orders."

2 A No.

3 Q Now, turning to the question of opium, since
4 the policy which Mr. Brooks mentioned was adopted in
5 Manchuria, did the number of opium smokers among
6 the Manchurian -- among the leaders -- Manchurian
7 officials and leaders in Manchuria decrease?

8 A I have indirectly heard that the number
9 decreased but not knowing the fact I cannot answer
10 positively.

11 Q Do you remember in what year the ABE
12 Cabinet planned to set up a Foreign Trade Ministry,
13 Foreign Trade Department, established the Foreign
14 Trade Department? In what year did the ABE Cabinet
15 establish the Foreign Trade Department, if you know?

16 A I think the ABE Cabinet was formed in
17 September, 1939, and its primary purpose was to set
18 up a Foreign Trade Ministry but, because of the strong
19 opposition of the Foreign Office, the plan proved
20 abortive. That is the principal reason for the fall
21 of the ABE Cabinet.

22 MR. SHIOBARA: That is all. This concludes
23 all the cross-examination.
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REDIRECT

REDIRECT EXAMINATION

1 BY MR. COMYNS CARR:

2 MR. COMYNS CARR: Your Honor, there is only
3 one matter I need refer to on redirect examination,
4 and that is exhibit 74, the regulations about which
5 the witness was asked this morning. We find that
6 in the translation Article 10 has been accidentally
7 omitted. It reads as follows: In the Military
8 Affairs Bureau there are the Military Administration
9 Section and the Military Affairs Section." The next
10 article, numbered, in your copy, 10, should be 11,
11 and lists the business of the Military Administration
12 Section of which No. 5 is: "Matters concerning the
13 general control of the military estimates." Then
14 Article 12 lists the affairs of the Military Affairs
15 Section: "1. Matters concerning general affairs of
16 national defense policy;

17 "2. Matters concerning international
18 regulations;

19 "No. 4. Matters concerning general affairs
20 of national mobilization" it should be instead of
21 demobilization;

22 "5. Matters concerning army affairs of
23 Manchuria and China and others concerned with them;

24 "6. Matters concerning army affairs of
25 foreign countries other than Manchuria and China."

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REDIRECT

1 MR. LOGAN: If the Tribunal please, I don't
2 know exactly what my friend is doing here, if he is
3 correcting an exhibit or reporting from the Language
4 Section or whether he is cross-examining the witness
5 or just what it is. Frankly I don't know.

6 THE PRESIDENT: Obviously it is preliminary
7 to the asking of a question on re-examination, but
8 if there is any contest about this correction it
9 should be referred to the board. If the correction
10 is not agreed upon, Mr. Carr, I suppose you will
11 have to refer to the board.

12 MR. COMYNS CARR: Quite so, your Honor. The
13 main purpose in which I was engaged was drawing the
14 attention of the Tribunal to the regulations about
15 which the witness was being cross-examined this
16 morning which were not before the Tribunal while he
17 was being cross-examined. Incidentally, I find it is
18 necessary to make those two corrections.

19 "7. Matters concerning connection affairs
20 with the Imperial Dict;

21 "8. Matters concerning popularization of
22 national defense spirit and counterplan for nation's
23 thoughts."

24 BY MR. COMYNS CARR:

25 Q The question I want to ask the witness is

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REDIRECT

1 this: Was the section of which you have told us
2 that SATO was the head before he became head of
3 the whole bureau, was that the Military Administra-
4 tion Section or was it the Military Affairs Section?

5 A He was chief of the Military Affairs Section.

6 MR. COMYNS CARR: Thank you. That is all
7 we have to ask him.

8 THE PRESIDENT: The witness is excused on
9 the usual terms.

10 (Whereupon, the witness was excused)

11 THE PRESIDENT: Will you finish tomorrow,
12 Mr. Carr?

13 MR. COMYNS CARR: I hope so, your Honor.

14 THE PRESIDENT: Colonel Mornane.

15 LIEUT. COLONEL MORNANF: If it please the
16 Tribunal: I propose to introduce two documents to
17 complete the case against the Accused HOSHINO. The
18 first is prosecution document No. 587B. It is a
19 page from the Japanese newspaper Yomiuri of the 5th
20 of November, 1940, containing an article "The Outline
21 of Ten-Year Plan for Block Economy of Japan-Manchoukuo-
22 China."

23 THE PRESIDENT: Admitted on the usual terms.

24 CLERK OF THE COURT: Prosecution's document
25 No. 587B will receive exhibit No. 2224.

1 (Whereupon, the document above re-
2 ferred to was marked prosecution's exhibit
3 No. 2224 and received in evidence.)

4 LIEUT. COLONEL MORNANE: I tender the article
5 itself in evidence. I propose to read excerpts
6 marked in the exhibit.

7 THE PRESIDENT: You propose to read quite a
8 lot of this document, Colonel?

9 We will adjourn until half past nine
10 tomorrow morning.

11 (Whereupon, at 1550, an adjournment
12 was taken until Thursday, 23 January 1947, at
13 0930.)
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23 JANUARY 1947

I N D E X
Of
WITNESSES
(none)

I N D E X
Of
EXHIBITS

<u>Doc. No.</u>	<u>Pros. No.</u>	<u>Def. No.</u>	<u>Description</u>	<u>For Ident.</u>	<u>In Evidence</u>
1915B	2225		Excerpts from the Interrogation of the Accused HOSHINO, Naoki. (Original admitted for Identification as exhibit No. 453)		15962
915	2226		Informal Statement of Foreign Minister HIROTA, Koki, on the Occasion of Japan's Secession from the London Naval Conference (16 January 1936)	15977	
915	2226-A		Excerpts therefrom		15977
2946	2227		Outline of Japanese Army's Five-Year Plan (10 June 1937)		15980
1108	2228		Book entitled "Business Reports-1938, Vol. I Economic Relations in China" published by East Asia Ministry 1 December 1938	15982	
1108	2228-A		Excerpt therefrom ("Instruction by Minister HIROTA")		15982

I N D E X
of
EXHIBITS
(cont'd)

<u>Doc. No.</u>	<u>Pros. No.</u>	<u>Def. No.</u>	<u>Description</u>	<u>For Ident.</u>	<u>In Evidence</u>
1505E	2229		Address of Baron HIRANUMA, Kiichiro, Prime Minister, taken from the March 1939 issue of the Tokyo Gazette	15987	
					15988
1505E	2229-A		Excerpt therefrom		
4043H	2230		Telegram from the German Foreign Minister to the German Ambassador in Tokyo dated 28 May 1939		15990
1918C	2231		An Excerpt of exhibit No. 2178 (for identification only) "A Summary of Argument at the Court of Appeals Trial of OKAWA, Shumei		15998
4095	2232		Telegram from Mackensen to the Foreign Minister in Berlin dated 2 September 1939		16003
2427	2233		Article written by the Defendant SHIRATORI, Toshio, entitled "Make This Mankind's Last War" published in the Magazine of Today (Gendai) 1 June 1942	16012	
					16012
2427	2233-A		Excerpts therefrom		
1616	2234		Discussion of the Japan-Germany-Italy Axis by SHIRATORI, Toshio		16027

I N D E X
Of
EXHIBITS
(cont'd)

<u>Doc. No.</u>	<u>Pros. No.</u>	<u>Def. No.</u>	<u>Description</u>	<u>For Ident.</u>	<u>In Evidence</u>
1840	2235		Outline of Speeches delivered by the Accused SATO on the 25th and 29th of August 1938 (tentative)		16069 16076 16082
2774	2236		Record of Proceedings of the Committee Meeting in the House of Representatives, Vol. 8, No. 79	16076 16103	
2774	2236-A		Excerpt therefrom		16076 16103
2775	2237		Record of Proceedings of the Committee Meeting in the House of Representatives, Vol. 8, No. 81	16080	
2775	2237-A		Excerpts therefrom		16080
2887	2238		Record of Interrogation of the Accused SATO	16083	
2887	2238-A		Excerpts therefrom		16083

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Thursday, 23 January 1947

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

The Tribunal met, pursuant to adjournment,
at 0930.

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Appearances:

For the Tribunal, same as before.

For the Prosecution Section, same as before.

For the Defense Section, same as before.

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The Accused:

All present except OKAWA, Shumei, who is
represented by his counsel.

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(English to Japanese and Japanese
to English interpretation was made by the
Language Section, IMTFE.)

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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now in session.

3 THE PRESIDENT: Colonel Mornane.

4 LIEUT. COLONEL MORNANE (Reading):

5 "MAKE OUR EMPIRE'S ECONOMY HIGHER, WIDER
6 AND STRONGER!"

7 I am starting on the wrong page, if the
8 Court please.

9 "The Outline of Ten-Year Plan for Block
10 Economy of Japan-Manchoukuo-China

11 (The Yomiuri, dated November 8, 1940.)

12 "MAKE OUR EMPIRE'S ECONOMY HIGHER WIDER AND
13 STRONGER!"

14 "ESTABLISH A SOLID CO-PROSPERITY SPHERE!"

15 THE PRESIDENT: You are reading from exhibit
16 No. 2224?

17 LIEUT. COLONEL MORNANE: Yes, this is from
18 exhibit 2224, which was put in evidence last night.

19 "Our government previously concluded 'a
20 summary of the fundamental national policy' immediately
21 after the Cabinet was formed, and announced it on
22 August 1st. The Government, since then, has been
23 studying, principally with the Planning Board, how
24 to embody 'the establishment of a Co-operative
25 Economic Sphere: unifying Japan, Manchukuo and China

1 and embracing the Greater East Asia. And the draft
2 of 'the Outline of a Plan for Block Economy of Japan-
3 Manchukuo-China' was recently completed, and was made
4 public on the 5th instant, as follows: (The above
5 photo is the President HOSHINO of the Planning Board)."

6 Coming back to page 1:

7 "The Cabinet Intelligence Bureau announces:

8 "Our fundamental policy to establish Co-
9 Prosperity Sphere of Greater East Asia which aims to
10 form new order in the world, has now entered a new
11 stage, by the conclusion of the Tripartite Treaty
12 between Japan, Germany and Italy. In order to con-
13 form with this situation, our Government decided, at
14 the recent Cabinet meeting, upon the outline of Block
15 Economy of Japan-Manchukuo-China upon which our future
16 policies will be controlled and carried out. And aim
17 of this policy is to spur the progress of the Co-
18 Prosperity Sphere of Greater East Asia which is based
19 upon the synthetic development of new economic order
20 between Japan, Manchukuo and China.

21 "Now the world economy of free trade in
22 which all countries can trade their resources, is now
23 collapsing before our own eyes. Our economy, too,
24 must shake off its old system based upon the old order
25 and set up a new one, which will make it a higher,

1 broader and stronger one, so as to push up the living
2 standard of the nations in Greater East Asia and to
3 enable them to live in contentment and peace -- in
4 other words, 'higher' means to give greater pro-
5 ductive power to the nation's life; 'broader' means
6 to extend the economic sphere of reciprocal dependence,
7 from Japan, Manchukuo and China to Greater East Asia
8 and to establish a solid Co-Prosperity Sphere; and
9 'stronger,' to make the Imperial Economy depend to
10 the least possible degree upon other countries and
11 stand as firm as a rock in any situation.

12 "In order to make our economy thus higher,
13 broader and stronger, the whole nation must combine
14 their efforts and be resolute to overcome those
15 difficulties in the country which arise from the
16 reform and to reject any possible pressure or threats
17 from abroad. In the course of ten years we must
18 complete the new economic order in East Asia with
19 Japan as its leader. Only in this new order can
20 Manchukuo, China and all other countries in East
21 Asia look forward to a glorious development of their
22 economy.

23
24 "Main Points of Outline of Establishment of
25 the Economy.

"In order to accomplish our mission to

1 establish new order in East Asia and to maintain
2 permanent peace in the world, we must unify and
3 promote the process of reforming our national system
4 and the process of enlarging the sphere of our
5 existence. Accordingly our basic economic policies
6 must be established on a synthetic plan of the
7 following three big processes:

8 "1. To complete the reorganization of our
9 national economy.

10 "2. To organize and strengthen the Japan-
11 Manchukuo-China economy.

12 "3. To enlarge the scale of Co-Prosperity
13 Sphere of East Asia.

14 "Basic Policies.

15 "Japan -- will devote herself to developing
16 basic manufacturing industries.

17 "Manchukuo and China -- basic industries
18 and resources.

19 "1. The establishment of the Japan-Manchukuo-
20 China economy aims, in the course of ten years, at
21 obtaining economic independence for the three
22 countries as a whole and promoting the establishment
23 of the Co-Prosperity Sphere in East Asia, so as to
24 strengthen the position of East Asia in world economy.
25

"2. The Imperial spirit of guidance in the

1 establishment of the Japan-Manchukuo-China economy
2 lies in promoting co-existence, co-prosperity and
3 general welfare by means of the joint efforts of
4 Japan, Manchukuo and China in accordance with the
5 great spirit of 'hakko ichiu' / all peoples under one
6 roof/.

7 "3. In order to promote the establishment
8 of the Japan-Manchukuo-China economy, Japan will
9 enhance her national morale, reform her internal
10 state of affairs and try to enrich her national
11 power, and will help and support Manchukuo and China
12 in establishing their economy. For this purpose she
13 will devote herself to promoting an epoch-making
14 development of science, technical skill and pioneer
15 manufacturing industries.

16 "4. Manchukuo, quite inseparable from Japan,
17 is expected to rapidly arrange and develop her im-
18 portant basic industries.

19 "5. China is expected to cooperate with
20 Japan and Manchukuo, to develop her resources, to
21 revive her economy, and to devote herself especially
22 to the development of communications, smooth trade of
23 resources, basic industries and resources, and thus
24 to contribute to the establishment of the Co-Prosperity
25 Sphere in East Asia.

1 "6. In order to adjust and promote a com-
2 prehensive plan for the establishment of Japan-
3 Manchukuo-China economy, a structure will be set up
4 for a synthetic plan of the Japan-Manchukuo-China
5 economy.

6 "Since they form the backbone of the Co-
7 Prosperity Sphere in East Asia, Japan, Manchukuo and
8 China are under an obligation to regulate their
9 economic relations in very close combination. From
10 this point of view, the Government has decided upon
11 the basic policies of industry, labor, finance, trade
12 and communication of Japan, Manchukuo and China.

13 "DIVISION OF INDUSTRIES.

14 "Japan will promote high-degree precision-
15 tools industry.

16 "Manchukuo and China will develop mining,
17 electricity, and salt-manufacturing industries."

18 Turning now to page 4:

19 "Finance.

20 "Nationalistic Management shall be considered,
21 new financial facilities shall be established.

22 "In order to promote national-defense economy,
23 finance must function so as to meet national purposes.
24 It must enable the country to obtain materials of such
25 quality and quantities as it requires. We must decide

1 on a planned distribution of funds and keep such
2 financial facilities as practicable. It will be
3 necessary for us, we consider, to establish such a
4 financial system as important resources can be
5 stored in accordance with changes in equipments due
6 to future advances in skill and future allotment of
7 industries. The funds of Japan, Manchukuo and
8 China must, of course, depend upon the amount in
9 reserve, and so they must endeavor to increase and
10 utilize their reserves."

11 Turning to page 5, under the heading of
12 'Trade':

13 "Commercial-mindedness shall be put right,
14 and mutual relations between the three Powers that
15 form a whole will be established."

16 "The old theory of profit-taking commercialism
17 has to be overhauled in the new order of world economy,
18 that is to say, it must be replaced by the trade that
19 places production first; in other words, Japan,
20 Manchukuo and China, and all other territories in
21 the Co-Prosperity Sphere must establish such a mutual
22 trade relation as one body, as to obtain from all
23 countries, territories and economic spheres, the
24 resources which they respectively need for their
25 planned production, and to supply others with what

1 they want, and thus an agreement for special settle-
2 ment will be necessary to promote the close and
3 smooth trade of resources between Japan, Manchukuo,
4 China and all other territories in the Co-Prosperity
5 Sphere."

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1 Our next document is prosecution document
2 No. 1915-B, which consists of excerpts from the re-
3 cord of the interrogation of the accused HOSHINO.
4 The original record of the interrogation was admitted
5 for identification as exhibit 453, at page 5,119 of
6 the record.

7 I now tender prosecution document 1915-B
8 in evidence.

9 CLERK OF THE COURT: Prosecution's document
10 No. 1915-B will receive exhibit No. 2225.

11 (Whereupon, the document above re-
12 ferred to was marked prosecution's exhibit
13 No. 2225 and received in evidence.)

14 LIEUT. COLONEL MORNAME: I propose to read
15 all the extracts shown in this exhibit:

16 "28 January 1946, page 13.

17 "Q Did the General Affairs Bureau during the
18 period from 1932 when you were in Manchukuo up to
19 1936 have to approve the sale of stocks or bonds by
20 private corporations?

21 "A We rendered assistance when necessary in the
22 sale of stocks and bonds. These were in connection
23 with the sale of shares of electric power companies,
24 telephone companies, and others of that description."

25 The same date, page 8:

1 "Q As member of the KONOYE second cabinet, you
2 were chairman of the Cabinet Planning Board?

3 "A Yes.

4 "Q After you became Chief of this planning
5 board, did you promulgate or make any economic plans
6 for Japan?

7 "A The board made rough plans to be determined
8 by the cabinet meeting as I said before.

9 "Q When did the cabinet first adopt a plan
10 that you had suggested covering the economic situa-
11 tion in Japan?

12 "A November, 1940.

13 "Q Will you tell us just what that plan con-
14 templated?

15 "A It was to form various companies in a given
16 industry into one association, one group, so that
17 they could develop their industry as one group.

18 "Q Under that plan was it contemplated that the
19 government would appoint the head of the group?

20 "A The government would nominate one member
21 from among the companies as the head.

22 "Q And did the government appoint the heads of
23 each of these so-called 'control associations?'

24 "A Yes, the government did appoint the head
25 usually the most senior member although there was no

1 legal procedure to appoint such a head.

2 "Q And did the man that the government appoint-
3 ed at the head of each of these control associations
4 have the final say as to how things should be carried
5 on?

6 "A Within certain limits he ran the control
7 association, the limits being set by the government.

8 "Q Was the plan that was adopted by the cabinet
9 in November 1940 ever revised?

10 "A There were no particular modifications.

11 "Q Did that method of handling the business of
12 Japan continue from November until the end of the war?

13 "A In general, yes."

14 The following page, page 9:

15 "Q In what way did the plan constitute a separa-
16 tion of capital from management?

17 "A This plan imposed certain new limitations
18 on capital, as to the management of the business, but
19 capital still retained certain prerogatives as to
20 hiring and firing and so on, so that you cannot say
21 that capital and management were separated.

22 "Q In what way did the men that the government
23 put in control at the head of these associations con-
24 trol the method of development of their plants?

25 "A The plan does not take that into account,

1 but the Minister of Commerce and Industry would hold
2 particular conferences as the need arose with the
3 various control association heads. In relation to a
4 previous question - this rough plan did not go into
5 great detail about the management of the control
6 associations. It only set up the system of control
7 associations.

8 "Q Was the plan later revised so as to exercise
9 more control?

10 "A Gradually various laws and decrees were pro-
11 mulgated to exercise this control as the need arose.

12 "Q In what way in exercising this control was
13 the distribution of war materials controlled by the
14 government among the members of these associations?

15 "A As a member of the cabinet planning board I
16 had no access to that - the matter was handled by the
17 Minister of Commerce and Industry. The Cabinet
18 planning board set up a grand policy so that the
19 various ministries acted more or less under their own
20 authority in carrying out this plan."

21 Page 14:

22 "Q Did you as minister without portfolio ever
23 attend the Imperial Conferences?

24 "A Yes, once.

25 "Q When?

1 "A October, I think, 1940.

2 "Q What was that conference about?

3 "A About the Japan-Germany alliance, I think.
4 I do not remember exactly.

5 "Q Was it the triple alliance between Japan,
6 Germany and Italy?

7 "A Yes.

8 "Q And was that Imperial Conference held for the
9 purpose of approving that triple alliance agreement?

10 "A I do not remember exactly. There was some
11 discussion of the treaty but there were other matters
12 like mobilization which were discussed.

13 "Q Did you enter into the discussion at that
14 meeting?

15 "A Yes.

16 "Q What did you say at the time you took part
17 in that conference?

18 "A I don't remember but I outlined the condition
19 of various industries at that time.

20 "Q Did you approve the tripartite agreement?

21 "A Well, it was settled at the cabinet meeting,
22 so naturally I did not oppose it."

23 Page 18:

24 "Q Did you attend the first meeting at KONOYE's
25 house of the Imperial Rule Assistance Association?

1 "A I do not understand.

2 "Q It was the first meeting of the Imperial Rule
3 Assistance Association and I understand it was held
4 at KONOYE's house or official residence.

5 "A Yes, I attended."

6 Page 25:

7 "Q Was there an Imperial Conference held in the
8 early part of December?

9 "A Yes, I think there was.

10 "Q On what date?

11 "A I don't remember exactly.

12 "Q Was it the first day of December?

13 "A About the 1st or 2nd day of December.

14 "Q What was under consideration at that meeting?

15 "A If the negotiations did not succeed during
16 the first part of December, there would be war.

17 "Q Was there a cabinet meeting held before
18 this Imperial Conference?

19 "A I think there was.

20 "Q Were all of the ministers present?

21 "A Yes.

22 "Q Were you personally at the cabinet meeting?

23 "A Yes, as secretary.

24 "Q Was it at this cabinet meeting that the de-
25 termination to commence war if negotiations were not

1 completed in the early part of December was decided
2 upon?

3 "A Yes.

4 "Q Did you attend the Imperial Conference?

5 "A Yes.

6 "Q Was the emperor present at that conference?

7 "A Yes."

8 Page 27:

9 "Q Did you attend every cabinet meeting that
10 took place from the beginning of TOJO's cabinet until
11 after December 8, 1941?

12 "A Yes.

13 "Q When was the Privy Council's meeting held
14 in the Emperor's presence that declared war on the
15 United States - on what date?

16 "A On December 8th.

17 "Q At what time?

18 "A At about 9 o'clock.

19 "Q Did you attend it?

20 "A Yes.

21 "Q Were all of the cabinet members present and
22 were all of the Privy Council there?

23 "A Yes."

24 Page 28:

25 "Q What time of day did you say the meeting of

1 the Privy Council took place on December 8th?

2 "A At 9 o'clock in the morning.

3 "Q Was the Emperor present at that meeting?

4 "A Yes.

5 "Q So that the Privy Council and all members of
6 the cabinet including those without portfolio were
7 present at this meeting on December 8th at 9 o'clock
8 in the morning, and the Emperor was there?

9 "A Yes."

10 Pages 29 and 30:

11 "Q When was the formal declaration of war against
12 America made?

13 "A The foreign minister in consultation with
14 military authorities had fixed the time for delivering
15 the declaration of war. No one else knew anything
16 about this decision.

17 "Q I thought you said there could be no declara-
18 tion of war without the approval of the Privy Council,
19 is that so?

20 "A Well, yes, for a formal declaration of war,
21 the approval of the Privy Council is necessary.

22 "Q Had they had any meeting of the Privy Council
23 and Cabinet prior to December 8th, at which that matter
24 was considered and decided?
25

"A No."

1 31st of January, 1946, page 15:

2 "Q Did the General Affairs Bureau have anything
3 to do with the establishment of any of the industries
4 in Manchuria after you became Chairman of the Board,
5 I mean chief?

6 "A There are many cases in which the General
7 Affairs Bureau had connection with industries in Man-
8 chukuo.

9 "Q Does that mean with the establishment of in-
10 dustries?

11 "A Yes, in the establishment of industries - not
12 directly, of course.

13 "Q How were they connected with it?

14 "A The General Affairs Bureau was consulted in
15 many important matters concerning industry.

16 "Q Did the General Affairs Bureau interest
17 itself in trying to get capital invested in Manchukuo
18 for the purpose of developing it?

19 "A Yes."

20 11 February, 1946, pages 7, 8 and 9:

21 "Q Did the Cabinet take any action on the report
22 of this conference between Mr. Roosevelt and Mr. Hull
23 and Mr. NOMURA and Mr. KURUSU?

24 "A I believe the Cabinet got the impression that
25 the negotiation was not going to be carried through.

1 "Q At what meeting? When?

2 "A I do not recall exactly what Cabinet meeting
3 it was.

4 "Q Was there any special Cabinet meeting held
5 about that time?

6 "A I believe there was a Cabinet meeting in early
7 December concerning the negotiation.

8 "Q Why was it called?

9 "A I believe the special Cabinet meeting was
10 called because it got the impression that a treaty
11 would not be arrived at with the United States and in
12 the event that the treaty did not go through well what
13 steps they might take or would take.

14 "Q What steps did they decide to take if the
15 negotiations did not go along well?

16 "A That if the negotiation could not be made
17 then Japan would take free action.

18 "Q Was there any disagreement among the ministers
19 at the meeting about going to war with the United
20 States?

21 "A No."

22 Same date, pages 11, 12 and 14:

23 "Q When was the declaration of war submitted
24 to the Privy Council?

25 "A The morning of the 8th.

1 "Q And were you present at that meeting?

2 "A Yes.

3 "Q At the time of the meeting of the Privy
4 Council did you know whether or not Pearl Harbor had
5 been attacked?

6 "A Yes, I had heard.

7 "Q And did you hear it before the declaration
8 of war was approved by the Privy Council?

9 "A I believe that I had learned it.

10 "Q After the Privy Council had approved the
11 declaration of war did they send it to the Emperor?

12 "A Yes.

13 "Q And what did the Emperor do with it?

14 "A He signed it as he received this declaration
15 of war."

16 26 February 1946, pages 8, 9 and 10:

17 "Q I am advised, Mr. HOSHINO, that you were the
18 closest man in the Cabinet to General TOJO. How about
19 that?

20 "A As the Chief Secretary, I was the closest to
21 TOJO, however, I cannot say that I was the closest
22 adviser.

23 "Q When did you first know, Mr. HOSHINO, that
24 war had been determined upon by Japan with the United
25 States?

1 "A On the 26th or 27th of November I had heard
2 that a war with the United States was almost unavoidable.
3 It was stated that an ultimatum by the President of
4 the United States was received on the 26th and this
5 made it almost impossible to better American-Japanese
6 relations according to the Cabinet members.

7 "Q And who made the statement to the Cabinet
8 that this condition existed as of November 26, 1941?

9 "A I think Premier TOJO reported that to the
10 Cabinet.

11 "Q And was the full Cabinet in session at this
12 meeting?

13 "A I do not remember exactly, but I am quite
14 certain that they all attended and it took place, I
15 think, in the latter part of November or the first of
16 December.

17 "Q Who were the members of the Cabinet who were
18 present at this meeting at which Premier TOJO made
19 this statement?

20 "A I do not remember them all, but I am sure
21 they all were in attendance.

22 "Q Following this meeting at which this state-
23 ment was made by Premier TOJO, Mr. HOSHINO, what
24 happened then?
25

"A Following that there was an Imperial Conference

1 in which the Chief of Staff of the Army and the Navy
2 were present as well as the various ministers.

3 "Q Who was the Chief of Staff of the Army
4 present at the Imperial Conference?

5 "A The Chief of Staff of the Army was SUGIYAMA
6 and the Chief of Staff of the Navy was NAGANO.

7 "Q Was any statement made at the Imperial Con-
8 ference by Premier TOJO or any one else in connection
9 with the probability of war with the United States or
10 the determination to embark upon war with the United
11 States?

12 "A I think TOJO did make a statement, however, I
13 do not recall as to what was said.

14 "Q In view of the importance of this Imperial
15 Conference, Mr. HOSHINO, can you not, from your re-
16 collection, state in effect what was said, if not the
17 exact language?

18 "A I cannot say as to what was stated at that
19 time, but I think that he did infer that a war with
20 the United States was inevitable and, therefore, we
21 must make all necessary preparation.

22 "Q Is it not a fact that both the Chief of Staff
23 of the Army General SUGIYAMA and Admiral NAGANO
24 stated at this meeting that both the Army and the Navy
25 were preparing to attack the United States and had

1 made all plans to do so in preparation for war?

2 "A I cannot recall as to what exactly was said,
3 however, I think he did say that preparation had
4 already been made.

5 "Q And when you say he, whom do you mean?

6 "A I do not remember exactly, however, I think
7 both of these Chiefs of Staff made that statement.

8 "Q Was the Emperor present at this Imperial Con-
9 ference?

10 "A Yes, he was."
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1 Page 11:

2 "Q Is it not a fact, Mr. HOSHINO, that upon
3 instructions of the Cabinet that you actually wrote
4 up the declaration of war and prepared the same as
5 Secretary of the Cabinet?

6 "A It is hard to state as to exactly who wrote
7 the document, however, being as it does come out
8 under the name of the Premier I did help compile part
9 of it."

10 The 1st of April, 1946, page 1:

11 "Q Mr. HOSHINO, when I interrogated you some
12 time ago you stated that you had written some part
13 of the declaration of war. That was correct, was it
14 not?

15 "A I cannot say I wrote the whole thing but
16 it was compiled by me.

17 "Q When you speak of the declaration of war,
18 Mr. HOSHINO, do you mean the note that was submitted
19 to the United States or the declaration of war that
20 was signed by the Emperor?

21 "A It is the Imperial Rescript and not the
22 note given to the United States on December 7."

23 Mr. Comyns Carr will now carry on the
24 presentation of the prosecution's case, if the Tri-
25 bunal pleases.

1 THE PRESIDENT: Mr. Comyns Carr.

2 MR. COMYNS CARR: If it please the Tribunal,
3 I now offer in evidence certain additional documents
4 to supplement the case against the accused HIROTA.
5 First, prosecution document No. 915, a statement
6 issued by him on the occasion of the withdrawal of
7 Japanese delegates from the London Naval Conference,
8 16 January, 1936, which I offer in evidence.

9 THE PRESIDENT: Admitted on the usual terms.

10 MR. COMYNS CARR: First of all, I should
11 offer the book itself, in which the document is
12 printed, for identification.

13 CLERK OF THE COURT: Prosecution document
14 No. 915 will receive exhibit No. 2226 for identifi-
15 cation only; and the excerpt therefrom, bearing the
16 same document number, will receive exhibit No. 2226A.

17 (Whereupon, document No. 915 was
18 marked prosecution's exhibit No. 2226
19 for identification, and the excerpt there-
20 from was marked prosecution's exhibit No.
21 2226A and received in evidence.)

22 MR. COMYNS CARR: (Reading)

23 "It being the immutable policy of the
24 Japanese Government to contribute toward the mainten-
25 ance and promotion of international peace, we gladly

1 participated in the present Naval Conference at
2 London.

3 "The aim of our Government at the conference
4 was to establish the security of national defense by
5 concluding a fair and equitable agreement on naval
6 disarmament, and simultaneously to lighten the tax
7 burden of the peoples concerned, promoting thereby
8 the peace and amicable intercourse among nations. In
9 order to realize this object, our delegates made a
10 proposal looking to a reduction of armaments which,
11 without impairing the sense of security of each Power
12 in its national defense, would make it difficult for
13 any Power to attack another but easy to defend it-
14 self. For that purpose, our proposal provided for the
15 establishment of a common upper limit for all the
16 navies, to be fixed at the lowest possible level.
17 It also provided for the abolition of the armaments
18 of offensive nature, such as capital ships and air-
19 craft carriers, and for a drastic reduction in the
20 first class cruisers. Thus we hoped to achieve a
21 thorough-going disarmament and to establish the
22 principle of non-menace and non-aggression among
23 nations.

24 "But, in spite of the earnest endeavours of
25 our delegates, these fair and reasonable basic claims

1 of our Government were not accepted by the other
2 Powers; and moreover, the earnest proposal of our
3 Government was also rejected, in which it was pro-
4 posed to conclude such agreements as might be pos-
5 sible at the conference, and to terminate the confer-
6 ence in an amicable manner after making for the purp-
7 ose of forestalling naval competition a joint declara-
8 tion to the effect that the Powers concerned would
9 not enter upon an armament race. In the light of
10 these circumstances, it became unavoidable that our
11 delegates should withdraw from the conference.

12 "However, it is needless to say that our
13 Government, devoted to the principle of non-menace
14 and non-aggression, have not the slightest intention
15 of doing anything to stimulate an armament race,
16 irrespective of whether or not there exists a treaty
17 for disarmament. Furthermore, there is not the
18 slightest change in the cherished desire of our
19 Government to cooperate for the realization of
20 disarmament for the cause of world peace. It is our
21 fervent wish that all the Powers concerned will soon
22 come to appreciate the sincerity of our Government
23 in proposing a thorough-going limitation and reduction
24 in armament."

25 Having regard to the nature of the Japanese

1 proposals, it is our submission that these words
2 must have been uttered with the tongue in the
3 cheek.

4 Next, prosecution document 2946, a draft
5 by the Army of the Five Year Plan submitted to
6 HIROTA on 13 July, 1937 with a covering letter.

7 THE PRESIDENT: Admitted on the usual terms.

8 CLERK OF THE COURT: Prosecution's document
9 No. 2946 will receive exhibit No. 2227.

10 (Whereupon, the document above re-
11 ferred to was marked prosecution's exhibit
12 No. 2227 and received in evidence.)

13 THE PRESIDENT: Mr. Logan.

14 MR. LOGAN: If the Tribunal please, I
15 move to strike out the gratuitous remark of Mr.
16 Carr after he finished reading the document. If
17 he has any proof of what he said, let him offer it.

18 MR. COMYNS CARR: The proof of the nature
19 of the Japanese proposals is already in evidence
20 and has been fully dealt with by Naval witnesses.

21 THE PRESIDENT: What comment did Mr. Comvns
22 Carr make on the last document? I did not hear it.
23 I put the document aside. I read it ahead of him,
24 and I did not assume any contribution would be made
25 by him.

1 MR. COMYNS CARR: The comment I made, your
2 Honor, was that, having regard to the nature of the
3 Japanese proposals, it is the submission of the
4 prosecution that the words in the document must
5 have been uttered with the tongue in the cheek.
6 That is an inference which we ask the Tribunal
7 to draw from the evidence already given as to the
8 nature of the proposal.

9 THE PRESIDENT: It is not an explanation
10 of the document, really. The suggestion comes too
11 early for me, Mr. Carr. It will be open to you to
12 make it later. For the time being, the Tribunal
13 has decided to disregard the observation.

14 MR. COMYNS CARR: Now, exhibit 2227. The
15 draft itself does not differ materially from
16 exhibit 842 already in evidence, and I will not
17 read it. The point is to prove by the covering
18 letter on page 6, which I will read, that HIROTA,
19 as Foreign Minister, was a party to it.

20 (Reading) "To Mr. HIROTA, Koki, July 13,
21 1937.

22 "This report enclosed herewith is an ex-
23 tract from the note shown to me confidentially by
24 the Army side. Every Ministry will set to make a
25 draft through this line. And, as soon as the

1 programs have been drafted, they should be submitted
2 to the Cabinet Planning Board (Kikakucho) for execu-
3 tion. I am sure you may get a general idea of the
4 future administration of the country. Please keep
5 this report top secret.

6 "P. S. The national productive power of
7 the year 1936 shows an increase of 216.3 per cent
8 in comparison with the basic year 1931.

9 "Yours respectfully,

10 "Secretary

11 "AKIYAMA."

12 The accused KAYA was Finance Minister at
13 that date.

14 The last is prosecution document No. 1108
15 which I offer in evidence. First of all, the book
16 which I offer for identification.

17 THE PRESIDENT: Admitted on the usual terms.

18 CLERK OF THE COURT: Prosecution's document
19 No. 1108 will receive exhibit No. 2228 for identifi-
20 cation only; and the excerpt therefrom, bearing the
21 same document No., will receive exhibit No. 2228A.

22 (Whereupon, document No. 1108 was
23 marked prosecution's exhibit No. 2228 for
24 identification, and the excerpt therefrom
25 was marked prosecution's exhibit 2228A and

1 received in evidence.)

2 MR. COMYNS CARR: It is an instruction
3 issued by HIROTA as Foreign Minister on some date
4 in 1938 as to the preferential treatment to be
5 given to Germany in North China.

6 (Reading) "As for the aforesaid German
7 proposal for economic cooperation in China, our
8 government intends, for the economic development of
9 China, to solicit foreign capital with which to
10 replenish, on one hand, the capital and goods
11 necessary for such development, and to contribute,
12 on the other hand, to the improvement of inter-
13 national relations. This was already made clear in
14 the policy for the economic development of North
15 China, decided by the Cabinet meeting. Especially,
16 as regards the participation of Germany and Italy,
17 it will mean that special consideration is required
18 from the political point of view as well. However,
19 as a practical question, it is difficult for us to
20 reach a conclusive opinion, unless the general plan
21 for North China development is set up, and develop-
22 ment companies and other business firms have been
23 established, thus enabling us to have some pros-
24 pects for those enterprises and investments.

25 "However, if Germany, as already mentioned,

1 desires the establishment of general rights concern-
2 ing the economic development of North China before
3 getting into concrete problems, we regard it neces-
4 sary to make due correction /T.N. of the German
5 views/ at an early stage. Although we must give
6 Germany and Italy the greatest consideration as re-
7 gards the economic development of North China, we
8 cannot allow them a position equal to us or even
9 inferior, if it gives them preference which would
10 threaten to cut off entirely the economic partici-
11 pation of England and America in the future.
12 Accordingly, I think the cooperation of Germany
13 and Italy in the economic development of North
14 China will be accomplished chiefly by Germany's
15 cooperative investment in various important indus-
16 tries. The methods are:-

17 "(a) Investment in the Development Com-
18 pany and its sub-companies (Provided that it does
19 not affect the managing rights of the business.)

20 "(b) Subscription of debentures.

21 "(c) Supply of machinery on credit or by
22 delivery of shares.

23 "(d) Joint management by Japan and
24 Germany, or by Japan, Germany and China, of some
25 kind of enterprise.

1 "Among the above methods, since (a) and (b)
2 will not be considered important by Germany for the
3 time being, (c) and (d) methods will be chiefly
4 adopted. As regards (c), we may have to depend
5 largely upon Germany for railroad and other trans-
6 portation materials, mining and iron manufacturing
7 machinery, and electrical machinery and materials,
8 etc. Concerning (d), we may ask Germany, for
9 example, to supply us with patent rights and lique-
10 faction machinery for coal liquefaction enterprises,
11 to be carried out by the joint management of Japan
12 and Germany or of Japan, Germany and China. The
13 Army, also, considers this entirely possible.
14 Further, in view of the necessity of taking into
15 consideration at this juncture the efforts made in
16 Germany by Foreign Minister Ribbentrop, Ambassador
17 TOGO will offer the following proposal at an approp-
18 priate opportunity: 'In view of the fact that Germ-
19 any has consistently shown a favourable attitude
20 towards Japan in the present incident, that the said
21 attitude of Germany will not only be continued in
22 the future but will be more and more strengthened, and
23 that the political and economic cooperation due to
24 the anti-Communist orientation of the two countries,
25 Japan and Germany, will become closer, the Imperial

1 Government, on the promise that Germany will approve
2 Japan's special position in China, will endeavor not
3 to put Germany in a position inferior to that of
4 other countries hereafter as far as Germany's
5 economic activities in North China are concerned.
6 Furthermore, in every case which may happen in the
7 future, Japan will try to give her the best pos-
8 sible preference.' Besides, as the said proposal
9 of Germany lays stress not only on her enterprises
10 in China, but also on securing and expanding her
11 trade in China, we have given instructions to
12 answer Germany to this effect, that 'We consider
13 that, in principle, both countries, Japan and
14 Germany, should stand equal in the Chinese market.
15 Therefore, we will strive to our utmost so that
16 both countries may enjoy equal treatment so far as
17 the Chinese Customs System is concerned. However,
18 as Japan actually is responsible for the mainten-
19 ance of the currency system in North China, it will be
20 inevitable that some special position will accrue
21 to her. Be that as it may, in setting up any im-
22 port and export system, Germany's interests will be
23 fully respected and will be given preference over
24 any third country.'"
25

1 Exhibits 2208-A, -B and -C, put in by
2 Colonel Woolworth as part of the case against UMEZU,
3 are also relevant to the case against HIROTA.

4 And that completes the prosecution case
5 against HIROTA.

6 THE PRESIDENT: Mr. Higgins.

7 MR. HIGGINS: Mr. President, I offer for
8 identification IPS document No. 1505-E, which is
9 an address taken from the March 1939 issue of the
10 Tokyo Gazette, certified as to origin and authenticity
11 by prosecution's exhibit No. 448.

12 This address was delivered before the Diet
13 on 21 January 1939 by the accused Baron HIRANUMA, as
14 a statement of governmental policy, upon assuming
15 office as Prime Minister.

16 THE PRESIDENT: Admitted on the usual terms.

17 CLERK OF THE COURT: Prosecution's docu-
18 ment No. 1505-E will receive exhibit No. 2229 for
19 identification only, and the excerpt therefrom, bear-
20 ing the same document number, will receive exhibit
21 No. 2229-A.

22
23 (Whereupon, the document above
24 referred to was marked prosecution's ex-
25 hibit No. 2229 for identification, and
the excerpt therefrom was marked prose-

1 cution's exhibit No. 2229-A and received
2 in evidence.)

3 MR. HIGGINS: I read prosecution's exhibit
4 No. 2229-A.

5 "In regard to the China Affair upon which
6 both the Government and the people are concentrat-
7 ing their endeavours, there exists an immutable
8 policy, for which Imperial sanction was obtained by
9 the previous Cabinet, and in accordance with which
10 the necessary steps have been taken in various
11 directions. As the present Cabinet is, of course,
12 committed to the same policy, it is determined to
13 proceed at all costs to the achievement of the final
14 purpose. To lay the foundation of prosperity and
15 progress in East Asia through the political,
16 economic and cultural cooperation of Japan, Man-
17 choukuo and China with full mutual understanding
18 between the three countries, for the realization
19 of mutual helpfulness, neighbourly amity and
20 solidarity, is, needless to say, to manifest the
21 very spirit in which our nation was founded.
22 Therein lies Japan's national purpose, which alone
23 can insure the permanent peace of East Asia, and
24 which can contribute to the progress of the world.

25 "Obviously no lasting peace can be hoped

1 for unless Japan, Manchoukuo and China, the three
2 countries responsible for the stability of East
3 Asia, are speedily united in the realization of
4 the above-mentioned common objective - the establish-
5 ment of a new order to replace the old. 'Overcome,'
6 said the Emperor MEIJI, 'the evil ways of the past,
7 and follow the just principles of nature.' Here
8 we have, I believe, what must be the basis of
9 government in our country. Here is the ideal which
10 was handed down from time immemorial by the Imperial
11 Ancestors, and in accordance with which all the
12 Imperial Successors have ruled the land. To
13 'follow the just principles of nature' means in
14 the last analysis to enable all entities to find
15 their own proper places, and therein lie also,
16 I believe, the essentials of government. And this
17 principle applies equally to internal politics and
18 international relations. The construction of the
19 new East Asiatic order should proceed on the basis
20 of this ideal.

21 "I hope the above intention of Japan will
22 be understood correctly by the Chinese so that they
23 may cooperate with us without the slightest appre-
24 hension. Otherwise, the construction of the new
25 order would be impossible. As for those who fail

1 to understand to the end and persist even hereafter
2 in their opposition against Japan, we have no other
3 alternative than to exterminate them."

4 Mr. Tavenner will continue for the prose-
5 cution.

6 THE PRESIDENT: Mr. Tavenner.

7 MR. TAVENNER: May it please the Tribunal:
8 Prosecution's document No. 4043-H is a captured
9 German document. It is a telegram from the German
10 Foreign Minister to the German Ambassador in Tokyo,
11 under date of 28 May 1939, relating to the refusal
12 of the accused OSHIMA to carry out certain instructions
13 from his government. The War Minister at this time
14 was the accused ITAGAKI.

15 I offer it in evidence.

16 THE PRESIDENT: Admitted on the usual terms.

17 CLERK OF THE COURT: Prosecution's docu-
18 ment No. 4043-H will receive exhibit No. 2230.

19 (Whereupon, the document above
20 referred to was marked prosecution's ex-
21 hibit No. 2230 and receive in evidence.)

22 MR. TAVENNER: "Berlin, 28 May 1939.
23 Diplogerma. Tokyo. No. 174. Telegram in cipher
24 (Secret Cipher Procession).

25 "Exclusively for the Ambassador personally.

Re your telegrams No. 213 and 217.

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"1. The formal communication made to you
20 May at the request of War Minister, General
MAJIRI, that the Foreign Minister there would have
us informed at the latest on Sunday, 21 May of the
positive new decision of the Japanese Cabinet
Conference has proved to be without effect. The
local Japanese Embassy has up to today not been in
a position to make any official communication at
all regarding the state of affairs.

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"2. OSHIMA reported the following in
yesterday's strictly confidential and unofficial
conversation: He has received a telegram from
ARITA, according to which the Japanese Government
wishes to reserve entrance into a state of war in
case of European conflict. In a very energetic
telegram to ARITA OSHIMA has refused to pass this
point of view on to the German Government at all.
Thereupon the War Minister requested OSHIMA by
wire to hold off until later against ARITA in
order not to disturb the discussions among the
various factors in Tokyo. The Army is firmly
resolved to fight the matter out quickly and even
at risk of a cabinet overthrow.

"3. I request you without making use of

1 the aforementioned confidential communications of
2 OSHIMA's to make it clear to your authorities
3 that the absence of the communication formally
4 announced to you as well as of every other communi-
5 cation has produced great astonishment in us and in
6 the Italians. It is unavoidable that as a result
7 of this silence the Japanese attitude is now beginning
8 to be regarded with distrust. We can no longer
9 understand here what can be going on in Tokyo and for
10 what reasons the Japanese Government at this advanced
11 stage of the negotiations is still further heightened
12 by the attitude of the Japanese delegation at the
13 World Postal Congress in Buenos Aires.

14 G.F.M.

15 /German Foreign Minister/"

16 THE PRESIDENT: Counsel SHIMANOUCI.

17 MR. SHIMANOUCI: I respectfully call the
18 Tribunal's attention to the following two points
19 regarding this document:

20 Mr. Tavenner has just said that the accused
21 OSHIMA refused to convey instructions from the
22 Japanese government to the German government, but a
23 prosecution document introduced last October makes
24 it clear that these instructions were delivered to
25 the German government soon after.

1 Second. I wish to call the Tribunal's
2 attention to the fact that German documents can
3 not be regarded as accurate. For instance, in the
4 beginning of the document just presented by Mr.
5 Tavenner, we find the words "War Minister MAJIRI."
6 There has never been a War Minister called MAJIRI
7 in Japan, nor has there ever been a War Minister
8 whose name even slightly resembles such a name.

9 Mr. Tavenner himself has just said that the
10 War Minister at the time was General ITAGAKI.

11 For these reasons I respectfully call the
12 Tribunal's attention to the value of captured German
13 documents -- the dubious value.

14 THE PRESIDENT: Your representations come
15 too early. All the matters you mention are for
16 proof by the defense later in the course of their
17 case. It is time you understood that.

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1 MR. TAVENNER: I desire to offer in evi-
2 dence prosecution's document 1918C. It is an
3 additional excerpt from exhibit 2178.

4 THE PRESIDENT: Admitted on the usual
5 terms.

6 CLERK OF THE COURT: Prosecution's docu-
7 ment No. 1918C --

8 MR. BROOKS: Just a minute. We have not
9 been served with that, if your Honor please -- what
10 we asked for. It is not on the front of this list
11 and therefore we do not have it with us. We don't
12 know how to check against it.

13 THE PRESIDENT: A similar objection was
14 raised recently within the last few days without
15 justification, Captain Brooks, it must be observed.

16 MR. TAVENNER: I think if counsel will
17 permit, and the Court will permit, my completed
18 description of the document, it will be apparent
19 that the 24-hour rule does not apply as to this.
20 However, we did make distribution of this document
21 yesterday. My recollection is that three o'clock
22 was the exact hour in which distribution was made.

23 THE PRESIDENT: For the time being we have
24 to take your word for it, Mr. Tavenner.

25 MR. TAVENNER: Completing the description

1 of the document --

2 MR. SHINAMOUCI: Is this a document concern-
3 ing the accused OSHIMA?

4 MR. TAVENNER: No, it speaks for itself.
5 If you will let me describe it you will see what it
6 is.

7 THE PRESIDENT: Do not come to the lecturn
8 to find out those things. Ask the prosecution
9 independently.

10 MR. TAVENNER: As I started to state, this
11 is an additional excerpt from exhibit 2178, Proceed-
12 ings of Tokyo Court of Appeals, and is offered for
13 the purpose of showing that exhibit 2178B, hereto-
14 fore read in evidence, was filed in the record of
15 the Tokyo Court of Appeals by counsel for the accused
16 OKAWA. This document is supported by the affidavit
17 of the translator that this document, and also ex-
18 hibit 2178B, are true and accurate translations of
19 the record of this proceeding, which has been filed
20 for identification as exhibit 2178.

21 MR. BROOKS: If the Court please, I ask
22 the benefit of the 24-hour rule. If this was served,
23 as the prosecution says, at three o'clock yesterday,
24 our services wouldn't have it in our baskets this
25

1 morning. I haven't had a chance to check it, and I
2 think it is important to check it.

3 MR. TAVENNER: I would like to call the
4 Tribunal's attention to our position, that the 24-
5 hour rule is probably not applicable to a situation
6 of this kind where the question arose in connection
7 with the introduction of the document which was
8 read and which, I take it, the Tribunal would have
9 permitted me to have pointed out at the moment had
10 I been able to put my finger upon it. However, I
11 have given all the notice it was possible to give
12 them and as full a notice as was possible to give
13 them.

14 MR. BROOKS: The Court can see I haven't
15 even had a chance to know if the prosecution is
16 correct in that statement without study. I will
17 try my best over the noon hour to go into this
18 matter so that he may raise it this afternoon, if
19 you will defer it. I would like to be able to point
20 out at the time anything that is possible.

21 THE PRESIDENT: We can waive our own rules
22 in special circumstances, that is to say, where the
23 defense are not prejudiced and where nothing would
24 result but delay if we did not waive the rule.
25 Nothing will result here but delay. The case might

1 be closed in the next hour but for this; and if your
2 objection were upheld, fancy delaying the closing
3 of the prosecution's case for no purpose at all,
4 just for bare compliance with the rule.

5 MR. BROOKS: If the Tribunal please, my
6 objection is not based on mere compliance with the
7 rule -- failure to comply. If this document had
8 been called to my attention, because the prosecu-
9 tor knew he was serving it less than the 24-hour
10 period, I would have gone out of my way and stayed
11 up any period of time last night to study it and be
12 prepared to offer my cooperation this morning. But
13 I have the right --

14 THE PRESIDENT: There is no possibility of
15 prejudice to the defense.

16 MR. BROOKS: That I cannot say, your Honor,
17 because I haven't studied it, and it is a position
18 I don't want to take -- not make a snap judgment
19 on.

20 THE PRESIDENT: Well, it is possible to deny
21 anything, even the obvious. These rules do not
22 obtain for the protection of the defendants in any
23 other court but this and they apply only except as
24 far as we otherwise order, as the rules expressly
25

1 state.

2 The document is admitted on the usual terms.

3 MR. TAVENNER: I would like to state that

4 we were not requesting the waiving of any rule.

5 It was our position that the rule would probably

6 not apply where the situation arose as this did.

7 CLERK OF THE COURT: Prosecution's docu-
8 ment 1918C, which is an excerpt from court exhibit
9 No. 2178 for identification only, is given exhibit
10 No. 2231.

11 (Whereupon, the document referred to
12 above was marked prosecution's exhibit 2231
13 and received in evidence.)

14 MR. TAVENNER: I will read exhibit 2231:

15 "Page 1288.

16 "A Summary of Argument at the Court of
17 Appeals Trial of OKAWA, SHUMEI (II)

18 "To KIYOSE, ICHIRO.

19 "Page 1310, line 7.

20 "I have caused the Manchurian Railroad
21 Investigation Bureau to investigate and report the
22 OKAWA'S participation in the present question. I
23 am now going to mention only the cardinal points,
24 and the rest I ask you to refer to the document
25 itself. I shall read the headings.

1 "1. His contribution in separating the
2 East Asia Economic Research Bureau from the South
3 Manchuria Railway Co.

4 "2. His exertions in reforming the sub-
5 stance of the Bureau after the separation.

6 "3. Research work.

7 "4. Establishment of policies toward Man-
8 churia and stimulating, guiding and unifying of the
9 people's opinion.

10 "5. His activities after the incident.

11 "6. His contributions in establishing
12 Manchukuo.

13 "The above are the items mentioned. But
14 please keep in mind that this was not investigated
15 by myself, that is, this is the authentic investiga-
16 tion made by the Research Bureau ***."

17 I will not read the affidavit attached
18 thereto.

19 THE PRESIDENT: We will recess now for
20 fifteen minutes.

21 (Whereupon, at 1045 a recess was
22 taken until 1100, after which the proceedings
23 were resumed as follows:)
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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now resumed.

3 MR. TAVENNER: If it please the Tribunal,
4 I now desire to read in evidence a part of docu-
5 ment No. 1908B, heretofore filed as exhibit 2177A, which
6 is Minutes of the Third Trial of OKAWA. The part I
7 desire to read is as follows: "The below mentioned
8 counsels for the defense were present." I will read
9 only the name of the one concerned: KIYOSE, Ichiro.

10 THE PRESIDENT: What is the point in reading
11 that? We accept him as counsel here.

12 MR. TAVENNER: I have just shown by the
13 record that KIYOSE, Ichiro filed this paper on behalf
14 of OKAWA. This connects him as the counsel for OKAWA.

15 THE PRESIDENT: I still fail to see the
16 significance of it.

17 MR. BROOKS: If the Tribunal please, in
18 reference to exhibit 2231 the pages 1310 of this do
19 not, in my mind in the examination I have made in the
20 last fifteen minutes, I can't find where that is
21 connected with the documents which the Court has
22 asked for to the matter which was in issue. This
23 appears to be a matter that was put in in rebuttal
24 and to clear up certain evidence that was presented
25 as far as I can see at this time. I want to call it

1 to the Court's attention for its consideration and
2 study.

3 MR. TAVENNER: We introduce in evidence IPS
4 document 685A as exhibit 2182A, constituting excerpts
5 from the book entitled "The Establishment of Order in
6 Greater East Asia." The certificate did not include
7 the date of publication of this book. I desire, there-
8 fore, to offer in the form of a correction to the
9 certificate the affidavit of the translator showing
10 that there appears on the flyleaf of the said book the
11 statement "Published August 25, 1943," and that the
12 Court direct the clerk to attach this affidavit to
13 exhibit 2182A.

14 THE PRESIDENT: We direct accordingly.

15 CLERK OF THE COURT: Prosecution document
16 685 will be attached to Court exhibit No. 2182A
17 according to order of the Court.

18 MR. TAVENNER: Mr. McKinney will now address
19 the Court.

20 THE PRESIDENT: Mr. McKinney.

21 MR. MCKINNEY: If it pleases the Tribunal,
22 the prosecution has further documentary evidence to
23 offer against the defendant Toshio SHIRATORI. Two
24 of these documents were written by the defendant,
25 published and distributed to the general public in

1 Japan. These documents prove that the defendant was
2 not satisfied with his position as a career diplomat
3 but desired to soar to a much higher level, in fact
4 to become a leader in establishing the Greater East
5 Asia Co-Prosperity Sphere. He was in favor of wars
6 of aggression, expansion, and conquest, and by his
7 writings attempted to convert the Japanese public to
8 accept and adopt his views.

9 I now offer in evidence International Prosecution
10 Section document No. 4095 which is a telegram from
11 Mackensen to the Foreign Ministry in Berlin dated
12 September 2, 1939, in regard to SHIRATORI's recall
13 from his post as Ambassador to Rome, and conferences
14 with SHIRATORI in which he, SHIRATORI, promised to
15 work in Tokyo in furtherance of the closer collaboration
16 of the Axis Powers. This document also contains a
17 memorandum by von Plessen about a conference with the
18 defendant SHIRATORI in which SHIRATORI promises to
19 work for an alliance of Japan with Germany and Italy.
20 He also discusses his reluctance to present the
21 Japanese protest against the non-aggression pact entered
22 into between Germany and Russia and expressed his view
23 that Japan should enter into a like treaty, and among
24 other things he discusses a general war.

25 THE PRESIDENT: That is a rather lengthy

1 explanation. Admitted on the usual terms.

2 MR. CAUDLE: If it please the Tribunal, I
3 make a motion to have that stricken. I think the
4 document is the best evidence. It speaks for itself.

5 CLERK OF THE COURT: Prosecution document
6 No. 4095 will receive exhibit No. 2232.

7 (Whereupon, the document above re-
8 ferred to was marked prosecution's exhibit
9 No. 2232 and received in evidence.)

10 MR. McKINNEY: I will now read exhibit
11 2232:

12 "Rome, 2 September 1939. Foreign Berlin.
13 "Quite Secret. For German Foreign Minister.
14 "No. 404 of 2 September.

15 "Japanese Ambassador visited me today to
16 inform me that he had now received his expected re-
17 call. Expects to depart in about three weeks would
18 particularly welcome /opportunity/ to have detailed
19 talk with German Foreign Minister on homeward trip
20 which he may take via Moscow. He seemed to be of the
21 opinion that with a new Japanese Cabinet there was a
22 well-founded chance for successful continuation of
23 the stalled further rapprochement with the Axis Powers.
24 For this very purpose of being able personally to work
25 more effectively than was possible from Rome he was

1 going to Tokyo. Ambassador mentioned further that
2 opinion was growing in Japan for a certain settlement
3 with Russia which, if carried through in stages and
4 via economic conversations, might eventuate in a non-
5 aggression pact. Question was for us, too, of consider-
6 able significance, for a Japan freed from a Russian
7 threat was in a position to reduce a possible tendency
8 of the United States to intervene in Europe. Ambassador
9 remarked finally that the ill feeling against us after
10 conclusion of the German-Russian Non-Aggression Pact
11 had improved considerably with the Cabinet change.

12 Signed: "Mackensen."

13 "ROME, 4 September 1939 Secret!"

14 "Note.

15 "After previous appointment by telephone I
16 visited the local Japanese Ambassador today. After
17 Mr. SHIRATORI, referring to his conversation with the
18 Ambassador on 2 September, had told me why he wished
19 to speak to me, he stated in the course of the conversa-
20 tion -- which lasted a good half hour -- approximately
21 the following:

22 "As is known to me, the conclusion of the
23 German-Russian Non-Aggression Pact came as a severe
24 blow and made a great sensation in Japan. The friends
25 of Germany had since then been laboring to counteract

1 this effect. He himself, who belongs to this circle,
2 had been trying ever so long to induce the Japanese
3 Government to conclude an alliance with us (and pre-
4 sumably also with Italy). This was the aim of his
5 office here. Since this aim was not attained, he
6 requested recall and was now returning to Japan, for
7 he believes he can be of more use in the aforesaid
8 direction there than here.

9 "Mr. SHIRATORI went on to say /these words
10 crossed through in original/ the German Foreign
11 Minister von Ribbentrop proposed to him during his
12 (SHIRATORI's) presence in Berlin on the occasion of
13 the Fuehrer's birthday that Japan should enter into a
14 closer alliance relationship with Germany. He sent
15 this proposal on to Tokyo at the time without, however,
16 receiving a reply from there. When he again saw the
17 German Foreign Minister 16 June, the latter told him
18 Germany would now conclude a non-aggression pact with
19 Russia, since Japan had not agreed to our proposals.
20 He reported this to Tokyo, too. The Japanese
21 Ambassador in Berlin, OSHIMA, who as a military man
22 understands naught of these matters, reported to Japan
23 at the time that it was out of the question that
24 Germany would conclude a pact with Russia. The Tokyo
25 Government believed the German Foreign Minister

1 /von Ribbentrop crossed through/ had only 'bluffed'.
2 It had also spread this around Tokyo with the addition
3 that he (SHIRATORI) and OSHIMA had been led around by
4 the nose. Two months had passed without Tokyo's answer-
5 ing him (SHIRATORI) and finally we had concluded the
6 pact with Russia. Thereupon the Japanese Government
7 had resigned and he had put in four times for recall
8 until it was finally accepted.

9 "As for the supposed Japanese protest against
10 the German-Russian Non-Aggression Pact, Mr. SHIRATORI
11 told me OSHIMA had doubtless received instructions to
12 protest. He (SHIRATORI) had been informed thereof at
13 the same time. He had then got in touch with the
14 Japanese Embassy in Berlin by telephone in order to
15 stop the protest action if possible. Some official --
16 the embassy counselor, if I am not mistaken -- told
17 him that OSHIMA had already gone to the Foreign Office.
18 State Secretary von Weizsacker did not accept the pro-
19 test there. On his return to the Embassy OSHIMA found
20 the news of his (SHIRATORI's) telephone call and then
21 reported to Tokyo that he considered a protest inopportu-
22 tune. In spite of this he received instructions from
23 Tokyo to carry out the step. This has, however, not
24 yet taken place.

25

1 "Concerning the present state of Japanese-
2 Russian relations (here I come to the most important
3 part of the conversation) Mr. SHIRATORI informed me
4 the Japanese Ambassador in Moscow had received in-
5 structions a few days ago to make the following pro-
6 posals to the Russian Government:

7 "1. To settle by diplomatic means the
8 dispute on the border between Mongolia and Manchoukuo,
9 where for a considerable time a regular battle has
10 been in progress;

11 "2. To appoint a commission for the settle-
12 ment of the border problems there in general;

13 "3. To conclude a trade treaty. If in the
14 course of the discussions of the trade treaty Russia
15 should make known her desire to conclude a non-
16 aggression pact with Japan, Ambassador TCGO should
17 enquire first whether Russia were disposed to deny
18 help to Chiang Kai-Shek.

19 "He (SHIRATORI) does not consider these in-
20 structions to the Ambassador in Moscow fortunate, even
21 /deems them/ dangerous. Russia, indeed, had never of
22 her own accord proposed a non-aggression pact. The
23 proposal for the German-Russian Non-Aggression Pact,
24 too, had originated with us. In his opinion, the only
25 way to secure a non-aggression pact with Russia --

1 which he also considered highly desirable -- was with
2 Germany's mediation. He had therefore proposed to
3 General OSHIMA, on his own, without instructions from
4 Tokyo, to request Germany's good offices. All this
5 had taken place a few days earlier. General OSHIMA
6 had not yet been able to see the German Foreign Min-
7 ister, since he /GFM/ had had no time to receive him
8 before his departure for the front where he had gone
9 with the Fuehrer. The Fuehrer had received General
10 OSHIMA before his departure, but that was only a matter
11 of a very short visit during which the Fuehrer de-
12 clared Germany wished to maintain the old, friendly
13 relations with Japan, but during which OSHIMA had no
14 opportunity to broach the question of German mediation
15 between Japan and Russia. He (OSHIMA) wished to attempt
16 to speak to the German Foreign Minister after his
17 return to Berlin.

18 "Regarding these latest developments Berlin
19 was not yet officially informed. He (SHIRATORI) wanted
20 to keep us au courant here and considered it appropriate
21 that we inform Berlin.

22 "To a remark from me that he had, so far as
23 I understood it, the wish to speak to the German For-
24 eign Minister on his return trip to Japan Mr. SHIRATORI
25 replied that his travel plans were not yet definite.

1 He would presumably return to Japan via Scandinavia
2 and America and would of course be happy to talk to
3 the German Foreign Minister in case the latter wished
4 it. I got the impression that Mr. SHIRATORI did not
5 wish to ask for a conference on his own initiative,
6 so to speak, probably out of regard for General OSHIMA.
7 He expressed the view that the latter was to be found
8 in Berlin.

9 "In the course of the conversation Ambassador
10 SHIRATORI mentioned that in connection with the Anti-
11 Comintern Pact a secret accord was concluded between
12 Germany and Japan to the effect that the two countries
13 were not to conclude a non-aggression pact with Russia.
14 The whole situation had since then completely altered
15 through the developments in Europe and no one could
16 demand from any country that it commit suicide for a
17 treaty's sake. At the time in question Russia appeared
18 the chief enemy to us as well as to Japan. For both
19 countries, however, (as a further development after the
20 Tientsin Incident) England had now become the chief
21 enemy, who absolutely has to be beaten. The advantage,
22 to us also, of a cleansing or an amelioration of Russian-
23 Japanese relations was self-evident, for America would
24 in this case decide with much greater difficulty to
25 intervene in the present conflict. The goal of Japanese

1 policy in China remains, now as then, the establishing
2 of a new order there, with which was linked the expul-
3 sion of England from China. In order to attain this
4 goal Japan was hoping for financial help from America.

5 "We then came to speak of the present conflict.
6 Mr. SHIRATORI believed that after the overpowering of
7 Poland the opportunity of an understanding with France
8 and England might present itself. Germany and Italy
9 were not at present in a position, and France and Eng-
10 land were not disposed, to wage a war on a truly large
11 scale. If it should come to a general conflict into
12 which Italy, the United States, Russia and Japan would
13 then necessarily be drawn, it would simply be a catas-
14 trophe whose extent could not be conceived.

15 "In reply to a question of Mr. SHIRATORI's as
16 to Italy's attitude, I strongly emphasized that Italy
17 was proceeding in closest accord with us and that her
18 attitude corresponded to our intentions in every respect.
19 Signed Plessen."

20 I now offer in evidence International Prosecu-
21 tion document No. 2427, which is an article written
22 by the defendant SHIRATORI, entitled "Make this Man-
23 kind's Last War" published in the Magazine of Today,
24 (Gendai) dated 1 June 1942, wherein he pictured Japan
25 as a super-race with a divine mission to rule the world.

1 He predicts as of June 1942 inevitable victory for
2 the European Axis, but intimates that even they must
3 eventually come under the sovereignty of Japan.

4 MR. CAUDLE: I still enter a motion that it
5 be stricken. I think the article will speak for itself.

6 I would also like to call to the attention of
7 the Tribunal that on each page of this document, both
8 at the top and at the bottom there appears the word
9 "Confidential" which indicates the article might have
10 been of some secret nature. However, Mr. McKinney
11 has explained it was published in a magazine, as appears
12 on the top part of the first page and also on the cer-
13 tificate. I thought it might be best to call it to
14 your attention.

15 THE PRESIDENT: If Mr. McKinney proposes to
16 read the whole document, the explanation, perhaps, is
17 not too lengthy. Nothing turns on the use of the word
18 "Confidential."

19 The document is admitted on the usual terms.

20 CLERK OF THE COURT: Prosecution's document
21 No. 2427 will receive exhibit No. 2233 for identifica-
22 tion only, and the excerpts therefrom will receive
23 exhibit No. 2233-A.

24 (Whereupon, the document above re-
25 ferred to was marked prosecution's exhibit

1 No. 2233 for identification, the excerpts
2 therefrom being marked prosecution's exhibit
3 No. 2233-A and received in evidence.)

4 MR. MCKINNEY: (Reading) "MAKE THIS MANKIND'S
5 LAST WAR. SHIRATORI Toshio, Former Foreign Office
6 Adviser and Ambassador to Italy, in Magazine of Today
7 (Gendai) 1 June 1942.

8 "Taking a general view of the present war
9 situation, we can not only say that the Greater East
10 Asia War is progressing most satisfactorily, but also
11 that the European War is going very well for the Axis
12 nations. It is now simply a matter of time before the
13 malign influence of the United States and Great Britain
14 will be expelled from the territories of Greater East
15 Asia, and Chungking, now gasping her last breath, will
16 no doubt capitulate soon. On the other side of the
17 world, the Axis armies of Germany and Italy can be
18 expected to achieve supremacy in Europe this year.
19 Even the insatiable British Empire must expect her
20 inevitable doom within the following year at the latest.
21 The so-called 'Old Powers' of the world will in all
22 probability flee to the American continent, which they
23 plan to use as a base for their final resistance.
24 Meanwhile America, rich in resources, protected by
25 the Atlantic and the Pacific, is desperately expanding

1 her armaments. Thus if we are to bring her completely
2 to her knees, we will need a considerable amount of
3 time. It is for this reason that everyone predicts
4 a long war. Long war though it may be, with the fall
5 of Britain armed hostilities will wane and become
6 chiefly a series of delaying actions, subsequently de-
7 veloping into economic and ideological warfare. There-
8 fore the question becomes: How much force can the
9 Allied Nations bring to bear upon the Axis? In other
10 words, how great is America's internal strength? On
11 the answer to this will depend the outcome of a long
12 war.

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1 "In studying the war from this point of
2 view, one can only conclude that the Axis enjoys a
3 decided advantage. The internal structure of Germany
4 and Italy, already tested through many years, is
5 sounder than ever. Although the strength of these
6 two nations has been sapped in many respects by the
7 war, their successes have given them more than
8 enough in the way of resources. This means that
9 the remainder of their struggle should be considerably
10 easier. As for Japan, her internal unity and the
11 morale of her people are, needless to say, unmatched
12 by any other nation in the world. Furthermore, in
13 the matter of resources, she has the vast and rich
14 territories of Greater East Asia at her disposal.

15 If she progressively develops this source, she need
16 have no concern on this score regardless of how long
17 the war may last. Japan's might will become ever
18 greater, her morale ever higher.

19 "In contrast, what will be the future
20 developments in America's internal conditions? If we
21 study her present trends we see that America, as has
22 ever been the case, is a nation following an irre-
23 sponsible policy, a nation hardly deserving to be
24 called a 'nation' in the true sense of the word. In
25 times of peace and normalcy her people are content,

1 but under the duress of modern war their strength
2 for resistance is feeble indeed. Today, America's
3 finances are actually on the verge of bankruptcy.
4 Not even the cleverest manipulation by the most able
5 financial experts can extricate her from this condi-
6 tion. Even should the war end today, no makeshift
7 measures could be devised which could save her from
8 bankruptcy. To put it mildly, with her budget ranging
9 into astronomical figures, the burden on her people
10 can only increase, her debt grow larger, and her
11 standard of living become correspondingly lower. In
12 a situation where America has both of her oceans
13 blockaded, and finds herself cut off from the rest
14 of the world with her supply of critical materials
15 gradually diminishing, her leaders will be prone to
16 lose whatever confidence they have in their ability
17 to continue the war for any lengthy period. There
18 is no longer any doubt whatsoever that an internal
19 collapse is inevitable. In this light, even should
20 the 'old powers' of the world establish themselves
21 behind the walls of America, their power to resist
22 will be inconsequential. The Axis nations have only
23 to continue their steady application of pressure, and
24 calmly wait for America to bring about her own destruc-
25 tion.

1 "Thus, although the consensus of opinion
2 tends to favor a long war, the above factors justify
3 the belief that the war will not last too long. If
4 the present war were anything like wars in the past --
5 merely a clash of material interests -- peace negotia-
6 tions could be commenced immediately upon the enemy's
7 capitulation, and with this all armed hostilities
8 should cease. But this war is 'mankind's last war' --
9 a war to end all wars -- whose objective is the
10 complete eradication of the old Anglo-American world
11 policy, and the establishment of an idealistic world
12 based on a new policy. Any makeshift variety of peace
13 is unthinkable. Moreover, between the old order and
14 the Axis, there are no grounds upon which a compromise
15 could be considered. For these reasons, the war to
16 establish world order and peace will inevitably require
17 a considerable amount of time.

18 "Section 2

19 "The immediate objective is to repulse and
20 destroy the enemy and to gain the final victory.
21 Victory alone, however, does not insure the war's end.
22 Only when we have completely realized all our new
23 undertakings along with victory can we rejoice in triumph.

24 "Every citizen accepts the brilliant successes
25 and the heroic efforts of the Imperial armed forces

1 with gratitude and praise. We need not harbor any
2 fear of our armed forces letting us down. Before
3 us, who shoulder the responsibility of exploitation,
4 still lies the important portion of the task. It will
5 demand from us the utmost in effort. We cannot forget
6 that, aside from the important duty of producing and
7 supplying, directly or indirectly, the materials neces-
8 sary to war, we have the heavy responsibility of
9 establishing the New World Order.

10 "Though the words 'New World Order' have been
11 heard frequently enough, it seems that their exact
12 meaning has yet to be authoritatively explained. Up
13 to now it has been generally chorused that the New
14 World Order based on totalitarianism must be introduced
15 in the place of the Anglo-American individualism, but
16 the outbreak of the Greater East Asia War has made
17 this inadequate. The new Italo-German Order in place
18 of the old Anglo-American Order explains only the
19 character of the War in Europe. That Italo-German
20 political principles and economic systems are far
21 superior to those of Anglo-American and are extremely
22 close to Japan's Nationalism, we will for the moment
23 agree. Yet to make this war the war to end all wars,
24 the Italo-German totalitarian ideals in themselves do
25 not provide an adequate foundation. With vast economic

1 spheres in Europe, the American and Greater East Asia
2 existing and opposing each other in the future world,
3 can a permanent peace on this earth be guaranteed?
4 Even though this is a great step forward when compared
5 to the world of the past, we must conclude that that
6 is still far from perfect. There is an order in all
7 things. First to establish the Greater East Asia
8 Sphere, then to strive for its co-prosperity with the
9 European-American economic sphere, is certainly a
10 logical procedure. If there is no other way out, this
11 set-up can be considered temporarily satisfactory.
12 However, an ideal situation will require even more
13 than this.

14 "Section 3

15 "At this point we must re-examine our national
16 polity. KOKUTAI MEICHO (Clarification of Japanese
17 National Polity) is a phrase that has been quoted in
18 relation only to Japan proper, and used in a very
19 limited sense. The MEIJI Restoration, which overthrew
20 the TOKUGAWA Shogunate, was introduced, as to be
21 expected, by KOKUTAI MEICHO. The present members of
22 the faction supporting 'KOKUTAI MEICHO' reason that,
23 since in the Japan of today there exists a kind of
24 force quite similar to the TOKUGAWA Shogunate, such a
25 force must be eradicated by the clarification of

1 national polity.

2 "If such a force does exist within Japan, it
3 must be eradicated. However, in the SHOWA Restoration,
4 this force does not exist within the nation. It comes
5 from the outside. The American-Anglo Jewish influence
6 is this force. To preach renaissance at this time will
7 only invite public censure, since it is evident that
8 those who preach it do not fully understand the national
9 structure of Japan.

10 "If the Ancient Chronicle (KOJIKI) and the
11 Nippon Annals (NIPPON SHOKI) are correctly interpreted
12 and understood, you will probably be able to realize
13 that the rule of the Sun Goddess AMATERASU OMIKAMI was
14 not restricted to the narrow islands of the Japanese
15 Archipelago. Her direct descendants, the Emperors,
16 who are the incarnation of God, extended their August
17 Virtues not only to the Japanese nation and the Japanese
18 people but to the universe. The Emperor is deeply con-
19 cerned about the world for the sake of humanity. He
20 said in his Imperial Rescript at the conclusion of
21 the Axis Agreement, 'The world shall be united', and
22 again, 'Each nation shall have its place in the Sun and
23 all human beings shall live in peace.'

24 "We must thoroughly clarify the origin of
25 Japan, the true meaning of the descent to earth of

1 the descendants of the Sun-Goddess, and the true
2 nature of the Emperor, the incarnation of God.

3 "Emperor JIMMU, prior to his departure on a
4 expedition to subjugate Eastern Japan, said, 'Since
5 the descent of Prince NINIGI about 1,792,470 years
6 ago, we have unobtrusively lived in Western Japan,
7 and have there, developed our culture and promoted
8 justice, etc.'. Since then, for a period of 2,600
9 years, the history of Japan shows that she has un-
10 obtrusively developed her culture and promoted justice
11 only within the East Asia Sphere.

12 "In keeping with divine policy, the authority
13 of the Emperor has been restrained while Japan has
14 fully absorbed foreign culture. Throughout this
15 time, she has been earnestly awaiting the fulfillment
16 of her destiny.

17 "If a philosophic view is taken of world
18 conditions today, it is evident that the time for that
19 fulfillment has come. This Holy War can be said to be
20 something greater than the Eastern Expedition of Emperor
21 JIMMU, that is, this is the prelude to the opening of
22 the Rock Cave. (TN: The opening of the Rock Cave is
23 an allusion taken from Japanese mythology. According
24 to the legendary account, the Sun Goddess hid in a
25 cave after being insulted by her brother. This plunged

1 the whole world into darkness and the evil deities
2 became active. When she was finally persuaded to
3 come out of the cave by the good deities the universe
4 was again enlightened. The modern analogy is that
5 the world is again in darkness, and Japan's mission is
6 to bring light once more to a world overcome with evil.)
7 If the Japanese polity is fully interpreted, this is
8 the only possible conclusion.

9 "Today, for this reason, our national polity
10 should be clarified and shown to the world. I firmly
11 believe that the time has come to advocate permanent
12 world peace and world co-prosperity.

13 "This is the real purpose of the present
14 war -- the basic idea behind the establishment of the
15 New Order. It is the mission of the Japanese people.
16 KOKUTAI MEICHO today is the motivating force of World
17 Restoration.

18 "With this stupendous task confronting the
19 Japanese people, it should be clear to you how you
20 must be prepared to meet any internal or external
21 emergency. It is undoubtedly necessary to undertake
22 a complete reform of our national polity. However,
23 the foreign materialistic reforms of the past cannot
24 accomplish this purpose. Rather, they tend to obscure
25 the national polity.

1 "Section 4

2 "In the past, I have resided in foreign
3 countries for a long time and have associated with
4 all classes of people -- intelligentsia, proletariat,
5 students, etc. -- and I have found the Japanese to
6 be superior to all foreigners. Physical characteristics
7 such as flat nose and yellow skin matter little, since
8 these are due to the influences of weather, custom and
9 food. They naturally cannot be taken as standards.
10 The value of man lies in his soul. The soul is
11 invisible, but it is in evidence whenever a crisis
12 occurs. On the battle field, where risk of life is
13 great, the existence of the soul is especially evident.
14 In this war, the Japanese spirit has been thoroughly
15 displayed everywhere.

16 "Through numerous praiseworthy deeds and
17 miracles on the field of battle and the homefront the
18 Japanese people have admirably proven they are a super-
19 ior race unequalled in this world. If the Japanese
20 conform to their inherent nature, they inevitably will
21 be endowed with the divine blessing of Providence.
22 Those who do not believe in Providence are not true
23 Japanese. And if we do not receive the divine blessing,
24 it is because we are acting contrary to the national
25 polity.

1 "KOKUTAI MEICHO on the homefront is very
2 important. The duty of the Japanese on the homefront
3 is primarily to clarify the national polity. Lately,
4 there have been many who favor using the Diet to assist
5 the Emperor, and advocate assistance to Imperial Rule.
6 Regrettably, there are still some who do not comprehend
7 the true significance of Imperial Rule. It is Imperial
8 Rule when the Emperor graciously presides over the
9 government. In America, where Roosevelt assumes the
10 reins of government, it is simply politics. The two
11 forms of government differ in essence and significance.
12 There is a basic difference between the essence of
13 foreign governments and the significance of the Imperial
14 Rule of Japan.

15 "The benevolent rule of His Majesty, The
16 Emperor, is not only bestowed upon Japan itself, but
17 extends to all mankind. This is the reason why it is
18 defined as 'The Divine Mission'. You are to assist in
19 this 'Divine Mission'; so, as Japanese, you must have
20 a superior mental attitude. If you are to employ a
21 foreign political ideology to assist this 'Divine
22 Mission,' it will be merely an exercise of the privilege
23 of suffrage.
24

25 "The basic principle of Imperial Rule is that
it be extended over the earth. Therefore, since you

1 are to assist in this, it must take on a deeper
2 significance. Not comprehending its essence, there
3 are some who have lost their interest in assisting
4 the Imperial Rule.

5 "The present Greater East Asia War is the
6 Divine Will of God. The time has come now to open
7 the Rock Cave on this earth. Japan, during this war,
8 is able to nurture her strength and spirit, while
9 materialistic foreign countries are faced with decline.
10 That is natural since, from a materialistic viewpoint,
11 war exhausts a nation's strength. Therefore, the
12 longer the war is prolonged, the greater will be the
13 difference between the strength of our country and
14 that of foreign countries, until finally the stage
15 will probably be reached where their only hope will
16 be to respectfully request the sovereignty of His
17 Majesty, The Emperor, the Incarnation of God.

18 "We Japanese must not view this war material-
19 istically. This Holy War is not a war of men and
20 materials. If this war is fought on a basis of man-
21 power and material strength alone, the attrition of
22 war will exhaust friend and foe alike, and eventually
23 all mankind will be prostrate. But if there should be
24 a race of people who have a true God presiding over
25 them, and who are fighting a holy war in his name, these

1 noble people will inevitably be bestowed with the
2 Divine Blessing of Providence. Therefore, there
3 will be a marked difference in the national strength
4 of countries which are guided by God and those which
5 are not. The race which is fighting under the
6 guidance of God must be Japan. Otherwise, there would
7 be no justification for the sanctification of the
8 Japanese national polity. In this light our national
9 polity should be thoroughly understood by all Japanese.

10 "When Emperor JIMMU went on a punitive ex-
11 pedition to Ada, the rebel resistance was strong.
12 Moreover, many of his soldiers fell ill, and Prince
13 ITSUSE was pathetically killed in action. Even the
14 Emperor himself became sick and underwent terrible
15 hardships. At this point he solemnly offered suppli-
16 cation to the Gods of Heaven and Earth, and as a
17 result he was able to successfully conclude the ex-
18 pedition against Ada without having to depend on arms.

19 "In order to conclude the war successfully,
20 we must first follow the historical example of Emperor
21 JIMMU and offer supplication.
22

23 "The Emperor is the incarnation of God, and
24 is the personification of the Sun Goddess, AMATERASU
25 OMIKAMI. Therefore, if the Japanese people worship
their Emperor, they are, in reality, worshipping God.

1 "If the proper state of mind is developed
2 to perfection, the spiritual and materialistic as-
3 pects of the war will take care of themselves; the
4 internal structure of Japan will be strengthened and
5 the New World Order will be firmly established. Each
6 nation will have its place under the sun, and for the
7 first time a permanent peace and security will be
8 assured all mankind."
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1 Captain Sandusky will now offer further evidence
2 to the Court.

3 MR. CAUDLE: If it please the Tribunal, on
4 page 4 of this document which has just been read, the
5 last paragraph starting with the 5th line, there appears
6 to be a translator's note there down to the next to the
7 last line. It is all in parenthesis and I think it
8 ought to be stricken from the record.

9 THE PRESIDENT: 'Are you really prejudiced
10 by it?

11 MR. CAUDLE: Well, sir, I don't think so. I
12 just think it ought not be in here. If we are going
13 to let the translators give evidence we might get in
14 the habit of it.

15 THE PRESIDENT: Captain Sandusky.

16 MR. SANDUSKY: Mr. President, I continue the
17 case against the accused, SHIRATORI and offer in evidence
18 IPS document No. 1616.

19 THE PRESIDENT: Admitted on the usual terms.

20 CLERK OF THE COURT: Prosecution's document
21 No. 1616 will receive exhibit No. 2234.

22 (Whereupon, the document above
23 referred to was marked prosecution's ex-
24 hibit No. 2234 and received in evidence.)
25

MR. SANDUSKY: This document consists of 7

1 articles and lectures which I hasten to add will be
2 read only in part.

3 Like the preceding documents, this document
4 will show further that the defendant, SHIRATORI, was
5 an ardent apostle of military collaboration with Germany
6 and Italy for the purpose of furthering Japan's aggressive
7 expansion in Asia. (Reading):

8 "Discussion of the Japan-Germany-Italy Axis
9 by SHIRATORI, Toshio, Special Advisor to the Foreign
10 Ministry.

11 "Preface" --

12 THE PRESIDENT: You are reading or propose
13 to read practically the whole of this?

14 MR. SANDUSKY: I beg your pardon, your Honor,
15 I did not hear.

16 THE PRESIDENT: According to the blue pencil
17 markings, you propose to read practically the whole
18 of this very lengthy document.

19 MR. SANDUSKY: Your Honor, excisions, substantial
20 excisions have been made since the time the document
21 was marked and I will be obliged to announce them as I
22 go along. I think that not more than one-third will
23 be read.

24 THE PRESIDENT: That will add about forty or
25 fifty pages to the transcript.

1 Yes, proceed, Captain Sandusky.

2 MR. SANDUSKY: (Reading)

3 "Preface

4 "I am presenting to my friends these various
5 lectures I have given all over the country and which
6 have appeared in newspapers and magazines since my
7 return to Japan last autumn. They are here organized
8 under one cover for publication.

9 "Seen in today's light, they constitute
10 opinions which might well be revised and since in the
11 light of later facts there are several chapters that
12 are false, I should perhaps be ashamed to offer this
13 to the public as it stands.

14 "However, it required considerable 'courage'
15 for me to offer them at the time I returned in an
16 atmosphere in which such ideas were being ridiculed by
17 certain groups saying 'Is it not like making a landing
18 in the face of the enemy?' Seen from such an historical
19 viewpoint, this may still have some reference value.

20 "However, now that the Tripartite Alliance
21 has become a reality, we should of course not wander
22 aimlessly over particulars of the past. The worldwide
23 significance of this Alliance, particularly as regards
24 the new view of the world and the New Order which is to
25 govern human society in the future, requires profound

1 explanation. It is hoped that through such efforts
2 by competent persons those results will one after another
3 be achieved in the world. I shall be happy if this book
4 results in presenting a small beginning to that end in
5 the future.

6 "SHIRATORI, Toshio

7 "November 1940

8 - - - -

9 "I The Necessity of the Japan-Germany-Italy
10 Alliance

11 "(December 1939)

12 "Before we discuss present foreign policies,
13 we must firstly know the fact that the world is now on
14 the eve of a great revolution. The last world war was
15 not fought as the result of opposition between new powers
16 and old ones, but countries of similar character determined
17 their attitude toward the war according to old ideas
18 about their respective circumstances and interests.
19 Therefore, countries that were basically unable to
20 cooperate fought on the same side. A conspicuous example
21 is that Japan and Italy took sides with the old powers
22 including Britain, the United States, and France.
23 However, the Versailles Treaty reversed the course of
24 history and returned the order of the world to that of
25 one or two centuries ago, thus stimulating the rise of

1 new powers. Japan's launching upon her continental
2 policies, and Italy's and Germany's completion of their
3 totalitarian systems are evidence of this. At first these
4 new powers could not be said to have awakened to their
5 common mission, but, as the old powers, from the instinct
6 of self-preservation, showed a tendency to combination
7 and establishment of a united front, the new powers were
8 inevitably compelled to cooperate with each other.
9 Such is the present situation of the world.

10 "Hitherto, these two sides have been distinguished
11 as have nations and have-not nations. This is quite
12 right, for most of the rising nations have poor resources
13 with living spheres confined to too narrow areas, and
14 are greatly dissatisfied with existing conditions.
15 However, if the desires of these countries were for
16 mere improvement of their economic conditions, there
17 would be no difference between the existing struggle
18 and past international struggles for supremacy. However,
19 I think we can find higher significance in the present
20 opposition in the world.

21 "Now all our people know that Japan's advance
22 in the continent is not the result of a desire for mere
23 material gain, but aims at the realization of the
24 Japanese people's great ideal established at the time
25 of the foundation of our nation. This is clearly shown

1 in the phrase 'the new order in East Asia'. As is known,
2 the concept of the national structures of Italy and
3 Germany has something in common with the basic principle
4 of the foundation of our empire. It is needless to say
5 that the views of what in brief may be called totalitarian
6 nations regarding the universe and the state form a sharp
7 contrast to those of so-called democratic nations,
8 whose keynote is individualism. When we examine the present
9 situation of the world divided into two powers, the new
10 and the old, we must focus our attention on the conflict
11 of these ideas.

12 THE PRESIDENT: We will adjourn until half-past
13 one.

14 (Whereupon, at 1200, a recess
15 was taken until 1330.)
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AFTERNOON SESSION

The Tribunal met, pursuant to recess, at 1330.

MARSHAL OF THE COURT: The International Military Tribunal for the Far East is now resumed.

THE PRESIDENT: Mr. Sandusky.

MR. SANDUSKY: Mr. President, before the noon recess I was reading Document 1616 and had reached the last paragraph on page 4. I omit the next several paragraphs and continue on the last paragraph of page 5.

(Reading): "If BRITAIN, AMERICA, FRANCE, and others wish to maintain their immense economic sphere which they themselves are at present enjoying, is it not proper for them in magnanimity to recognize that a superior race, no less inferior to them, should hold an economic sphere of the same degree? The birth of a new world cannot be realized without this. This, I believe, is the immediate problem confronting the world. To bring forth this new world, such ideas as natural rights of man, racial self-determination, and sovereign rights of nations must be considerably reformed and at the same time the so-called have nations should be prepared to sacrifice themselves. To put it plainly, the world hitherto has been divided into some

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1 sixty odd nations, each insisting upon the absoluteness
2 of her sovereign rights, which has led all the more
3 to obstruction of the growth and development of
4 human society. Roughly, the aim of totalitarian
5 countries can be said to lie in the remedying of
6 this irrationality. In other words, their plan is
7 to divide the world into comparatively few groups
8 or blocs and within their respective spheres to enable
9 each race to lead a harmonious life of contentment
10 and peace. In the old concept of thought, this is a
11 drastic revolution and perhaps it cannot be realized
12 without great strife. An extensive war has been waged
13 in ASIA for these two and a half years, while in
14 EUROPE a great conflict has come into existence between
15 the new and the old powers and it is most likely to
16 increase its intensity and scale. However, a European
17 union has been advocated among the belligerent countries
18 of EUROPE, and in the Orient also there is a demand
19 for an EAST ASIA federation or bloc. Thus, we believe,
20 future world history will necessarily proceed along
21 the above-mentioned course.

22 "In the light of the aforementioned premises
23 as a whole, I feel there is no need for hesitation
24 in determining JAPAN's future foreign policy. In
25 fact, ever since JAPAN embarked on her continental

1 policy with the Manchurian Incident, her foreign policy
2 has been established and to back out of or swerve from
3 it now is not permissible. Still, the presence of two
4 different opinions in JAPAN today and the fact that
5 the people are hesitating between them is truly a
6 wonder of this world. However, this is a transitory
7 phenomenon. The inevitability of history cannot be
8 altered by human power. In the long run, that which
9 is bound to happen, will probably happen. However,
10 the domestic and foreign situations at present will
11 not allow hesitation and indecision for long."

12 I omit the next two paragraphs.

13 "Therefore, not only is it unnecessary for
14 JAPAN to change any of her program for establishing
15 the new order in East ASIA, but now she need not
16 hesitate in expanding and completing them.

17 "The new order of East ASIA is linked with
18 the new order of the world. The new order cannot be
19 realized in this part of the world alone, if the
20 rest of the world adheres to the old order, or goes
21 back in the opposite direction. It seems that JAPAN
22 is going to withdraw utterly from the problems of
23 EUROPE and make efforts to settle the CHINA Incident.
24 Unable to understand and explain correctly the new
25 phenomena which crop up one after another throughout

1 EUROPE, she dismissed them with the single comment
2 'Complicated and incomprehensible.' This amounts
3 to nothing more than seeking refuge in the popular
4 but common policy of devoting herself in the future
5 entirely to the problem of CHINA. However, the
6 present situation of the world does not permit such
7 an evasion. Problems of ASIA are inevitably those
8 of EUROPE and AMERICA. A bold and brave foreign
9 policy for new JAPAN should be established in a
10 dignified manner and should display understanding
11 of the international political situation which is
12 now at a turning-point in world history.

13 "II

14 "THE EUROPEAN WAR

15 "and

16 "The Attitude of JAPAN

17 "An address in November, 1939

18 "Before I went to ITALY, every one in JAPAN
19 talked of totalitarianism and of an anti-comintern
20 axis. Many people thought that the relationship
21 among JAPAN, GERMANY and ITALY did not end merely in
22 the Anti-Comintern Pact, but that this relationship
23 would be further strengthened. One of the reasons
24 is probably that the people themselves keenly felt,
25 in the light of present international relations, that

1 the settlement of the CHINA Incident would owe much
2 to GERMANY and ITALY. Before I went abroad, I ob-
3 served a rather widespread feeling among the people
4 that it would, therefore, be well if this anti-Comin-
5 tern relationship were further developed into a
6 military alliance. As regards the conclusion of a
7 generally unconditional military alliance of JAPAN,
8 GERMANY, and ITALY, it was definitely recognized
9 that the people in general desired an 'alliance,' the
10 type of alliance being a secondary matter. Thereupon,
11 I left for ITALY with the thought of doing my humble
12 best in this matter.

13 "JAPAN, however, seemed to be for the
14 settlement of the CHINA Incident by cooperating with
15 BRITAIN. Such being the attitude of JAPAN, GERMANY
16 and ITALY began to mistrust JAPAN on this point and,
17 finally giving up JAPAN, went as far as the RUSSO-
18 GERMAN Non-Aggression Pact. As there is not enough
19 time to explain in detail the circumstances which
20 led them to this Treaty, and as it also seems some-
21 what improper to make them all frankly known, I am
22 going to omit this part. However, I can affirm here
23 the indisputable fact that JAPAN also was perhaps
24 responsible and should indulge in introspection for
25 the course which led to conclusion of the RUSSO-GERMAN

has not really undergone a change even today. However,

1 Non-Aggression Pact.

2 "It is generally considered that GERMANY
3 betrayed JAPAN and is treacherous, but in my opinion,
4 GERMANY neither betrayed JAPAN nor was guilty of
5 treachery. Considering the circumstances leading to
6 her action, we cannot dare call GERMANY treacherous.
7 Moreover, Germany allied herself with the SOVIET UNION,
8 contrary to the spirit of the Anti-Comintern Pact
9 which naturally seemed mutually advantageous to both
10 JAPAN and herself. Furthermore, since this was a
11 step nearer to an alliance and not a mere non-aggression
12 treaty, it seems sensible that GERMANY's feeling toward
13 JAPAN will become cool. However, the truth is quite
14 the opposite. I can state as an absolute fact that
15 GERMANY, in spite of her alliance with the U.S.S.R.,
16 is now still offering JAPAN her friendship as profound
17 as ever. Of course ITALY has no reason to change
18 her feeling towards JAPAN. She still feels as ex-
19 ceedingly friendly as ever. Moreover, the relation
20 between ITALY and GERMANY is not at all aggravated
21 by this Non-Aggression Pact. The fact is that ITALY
22 preferred a GERMANY-U.S.S.R. rapprochement, and had
23 hitherto been recommending it to GERMANY.

24 "The JAPAN-GERMANY-ITALY Axis, therefore,
25 has not really undergone a change even today. However,

1 JAPAN seems to think GERMANY in some way betrayed
2 her, and that the latter's alliance with the SOVIET
3 UNION is suspect. In view of the international
4 situation in which JAPAN stands today, and from
5 practical necessity, it is desirable that JAPAN
6 cooperate with GERMANY and also go hand in hand with
7 ITALY. However, the general sentiment of JAPAN
8 seems to be that she cannot again put out her once-
9 rejected hand to GERMANY. Nevertheless, the bias of
10 JAPAN is such that the relationship between JAPAN,
11 GERMANY and ITALY can be brought back again to the
12 past not only in form but in fact.

13 "The GERMANY-U.S.S.R. Pact, concluded in
14 this way, is not due to GERMANY's ill will against
15 JAPAN and GERMANY alone must not be denounced for
16 a betrayer. Then, I feel we must consider coolly
17 whether the conclusion of this RUSSO-GERMAN Pact is
18 advantageous to JAPAN or not. The first fruit of
19 the GERMANY-U.S.S.R. Pact is the current BRITISH-
20 FRENCH War against GERMANY. If the GERMANY-U.S.S.R.
21 Pact had not been concluded, GERMANY would probably
22 not have adopted such a strong policy. It may be
23 said that the GERMANY-U.S.S.R. Pact was a direct
24 incentive to this war.
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"I do not blindly consider the present war

1 in EUROPE as being a divine tempest or providential
2 help for JAPAN. However, I firmly believe that the
3 fact that this war has broken out can be developed
4 in favour of JAPAN according to her aims and policies."

5 I omit the next two paragraphs, beginning
6 the middle of page 11.

7 "The same thing may be said about AMERICA,
8 I think. AMERICA is now very anxious about JAPAN's
9 rapprochement with the U.S.S.R. With BRITAIN, AMERICA
10 always hopes for deterioration of RUSSO-JAPANESE
11 relations. This is because she fears JAPAN's position
12 in the FAR EAST will be strengthened. If JAPAN
13 were to fight with the U.S.S.R., she would have to
14 relax her control of construction in CHINA. They
15 hope that JAPAN will find it necessary to give up
16 CHINA. The possibility of a compromise between JAPAN
17 and the SOVIET UNION is truly annoying to them. The
18 reason why AMERICA suddenly recognized the U.S.S.R.
19 after sixteen years' refusal is this: After the
20 outbreak of the MANCHURIAN Incident, JAPAN would
21 not listen to AMERICA in every matter, and, moreover,
22 AMERICA can do hardly anything to JAPAN. The U.S.S.R.
23 is the only country within reach of JAPAN. Therefore,
24 AMERICA adopted a policy of lending money, supplying
25 materials, and furnishing technical experts to the

1 U.S.S.R. in order to make her powerful so that
2 AMERICA could oppress JAPAN."

3 I omit to the second paragraph on page 13.

4 "What world happen if JAPAN had slaved for
5 the sake of the democratic countries to destroy the
6 totalitarian nations, and if the old powers of
7 democracy had come to dominate the world again?
8 To the eyes of BRITAIN, the UNITED STATES, and others,
9 JAPAN, today, is a rascal not inferior to GERMANY
10 and ITALY, and is considered as an aggressor. If
11 they win again, the result will not be as simple as
12 that of the last WASHINGTON Conference. I am sure
13 that they would force JAPAN to withdraw her army from
14 CHINA, to return MANCHURIA and, furthermore, to get
15 out of KOREA and FORMOSA. They would probably even
16 insist that the whole Japanese Navy be sunk off
17 CUSHIMA Island. Such is quite obvious.

18 "However, if GERMANY really is unable to
19 defeat BRITAIN and FRANCE, it is needless to say that
20 JAPAN must think the matter over deeply. It would be
21 unfortunate, but we cannot support those who are
22 destined to be defeated. However, as for my forecast
23 on this war, I simply cannot believe that GERMANY will
24 be beaten again this time."

25 "I omit to the last paragraph on page 14.

1 Under such circumstances, Germany today will
2 never be defeated, even under the most possible condi-
3 tions. Therefore, we reach the conclusion that there
4 will be no great danger, if Japan, today does show
5 good-will to Germany and fights on her side. Further-
6 more, if the countries that are trying to establish a
7 new order in Europe should not be able to win, it
8 would be impossible for the Japanese people to construct
9 a new order in Asia. Generally speaking, the old order
10 in Europe and Asia is represented by Britain and France.
11 If the countries that are endeavoring to maintain this
12 old order cannot be defeated, a new order cannot be
13 established either in the Occident or in the Orient.
14 Japan, Germany and Italy are all countries whose
15 mission it is to build in cooperation the new world
16 order. Even without concluding a treaty, the aim of
17 the three powers is one.

18 "The Germans used to say, 'By no means do
19 we ask for Japan to come and help us in Europe. She
20 has her own mission to carry out. Her obligation to
21 a treaty would be discharged by destroying the old
22 order and establishing a new one in Asia. Purging
23 British power from Asia by any means is actually what
24 we would expect from Japan as her duty in this Treaty.
25 We require nothing more than that.' As long as Japan

1 carries out that obligation, there is really no need
2 for an alliance and the like. They want Japan to
3 fight solely for the establishment of a new order in
4 Asia and press on towards the settlement of the
5 China Incident with a firm resolve never to compromise
6 with the old powers or make concessions to them."

7 I omit the remainder of this article and
8 resume at Part III on page 18:

9 "SOVIET-GERMAN COALITION PROBLEM AND GERMAN
10 POWER.

11 "(LECTURE GIVEN AT THE IMPERIAL UNIVERSITY
12 ALUMNI ASSOCIATION 'GAKUSHI-KAI' IN FEBRUARY 1940.

13 "The recent diplomacy of Japan, before I
14 went abroad, was based on the Japan-German-Italy
15 Anti-Comintern Axis, which the government constantly
16 proclaimed and which all of the people believed. How-
17 ever, as the China Incident gradually progressed, the
18 people in general realized that German and Italian aid
19 to Japan was extremely effective so that the opinion
20 came to be expressed that a further step should be
21 taken to make it into a military Alliance."

22 I omit the next two paragraphs and resume at
23 the second paragraph on page 19:

24 "It cannot be denied that in the China
25 question Japan gradually became clearly pitted against

1 Britain. The anti-British movements throughout the
2 country relative to the Tientsin question clearly
3 demonstrate this. Particularly at that time it was
4 Japan's disposition to aim exclusively at the Soviet
5 Union, but should not Japan alter that idea in the
6 course of the China question? In view of the
7 inevitability of a clash between Japan and Britain
8 and the aforementioned attitude of Germany and Italy,
9 I felt that perhaps Japan should alter basically her
10 former attitude. However, Japan's feeling was still
11 determined to aim at the U. S. S. R. Since it was
12 the idea of influential quarters to compromise with
13 England if possible and in certain cases to be
14 friendly with America, I thought that it would be
15 extremely difficult to put my ideas into practice.

16 "In short, Germany, unlike Japan, has Britain
17 and France as their chief objects instead of U. S. S. R.
18 I could have asserted that although Germany would
19 fight the U. S. S. R. if absolutely necessary, she
20 took the old powers of democracy as the greatest
21 hindrance. But since the circumstances within the
22 country were as I have mentioned before, I submitted
23 to the Government my opinion that Germany would
24 inevitably ally with the U. S. S. R., only if Japan
25 hesitated to contract this alliance. However, a

1 nation-wide anti-British movement broke out with
2 respect to the Tientsin problem. And as I saw that
3 this was supported by the whole Japanese nation,
4 I thought that it was no time to hesitate and in
5 early July I notified the Government twice in
6 details as follows:

7 "Germany and Italy are not contemplating
8 a war against the USSR. If the Government is going
9 to conclude a Treaty on the assumption that war will
10 be waged against USSR, the idea had better be given
11 up. I believe the intention of Germany and Italy is
12 to draw Russia to their side after concluding an
13 alliance among Japan, Germany and Italy. In order
14 to establish a new order in China today, we must drive
15 out from China the old order which is represented by
16 Britain. Therefore, I believe that Japan should
17 conclude a treaty as soon as possible with Germany
18 and Italy in opposition to Britain and France, and
19 furthermore, for her to confront the USSR with the
20 combined powers of Japan, Germany and Italy; with the
21 aid of Russia wash their hands off of the East; to
22 have USSR stop the aid to Chiang Kai-shek, and to have
23 USSR withdraw the forces from the Manchurian-Soviet
24 border, and gradually effect the solution of the
25 pending problems favorably. I believe that this

1 policy is best suited to the occasion for Japan.

2 "At this moment if we do not conclude an
3 alliance with Germany and Italy, Germany will probably
4 league with USSR. Moreover, it is drawing near. It
5 is not the time for hesitation. If Japan tried to
6 solve the problem between her and USSR after the
7 alliance between Germany and USSR has been concluded,
8 wouldn't things become unfavorable for Japan as the
9 situation will have changed by them?"

10 I omit the next paragraph:

11 "Now Germany and Italy were of the opinion
12 that the policy adopted by Japan on the continent
13 since the Manchurian Incident and the establishment
14 of a new order in its place; in other words, that it
15 was Japan's continental policy to overthrow first in
16 the East the status quo of the world established by
17 the Versailles Treaty -- the Versailles order which
18 in the East is expressed as the Washington order --
19 is what Japan is trying to overthrow. They believe
20 that the Manchurian Incident, the renunciation of the
21 Naval Disarmament Pact, the establishment of a new
22 order in China now in question are all directed to
23 that object. Therefore, nothing seemed to them to
24 be more natural that Japan, Germany and Italy should
25 enter into an alliance to overthrow the old order of

1 the world in concert. They little dreamed of diffi-
2 culty in the negotiation. They looked upon that
3 treaty as all too natural and a matter of course.
4 But the negotiations dragged on, until at last in
5 June they came into possession of a report that Japan
6 was going to make terms with Great Britain, her
7 enemy nation, greatly to their astonishment. Besides,
8 this situation was brought about immediately after
9 nation-wide anti-British movement. I suppose that
10 Japan's actions and her natural feelings must have
11 struck them as strange and complex."

12 I omit the next two paragraphs and resume in
13 the middle of page 22:

14 "Such being the case, the Russo-German
15 Treaty was concluded at last. At that time the
16 German authorities said that they felt deeply regret-
17 table and that they should have had Japan's understand-
18 ing beforehand, but if they had said such thing to
19 Japan, it would surely appear in all the papers of
20 the world within 48 hours. Since such cases have been
21 experienced number of times in the past, they were
22 unable to notify Japan beforehand. They entreated
23 us not to think ill of this action. They violated
24 the pact because they adhered to legalities and
25 formalities. They pleaded us not to say that it was

1 a breach of faith. In the pressing situation, it was
2 necessity that compelled them, so do not think ill
3 of them. They assured us that their feelings towards
4 Japan today have not changed the least. They still
5 hold expectations of bringing about intimacy of the
6 relations between the two nations. They have often
7 and repeatedly suggested to Japan to compromise with
8 the USSR, and if Japan is in that mood, they will
9 offer their services as mediator. In short, as I
10 have stated in the beginning, this may be enough to
11 confirm the supposed intention that Germany has no
12 thought of fighting the USSR and when the Japan-
13 Germany-Italy Alliance is found, Germany had in
14 mind to attract the USSR into this camp."

15 I omit the material from here to the first
16 full paragraph on page 29:
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1 "To begin with the totalitarian system of Ger-
2 many and Italy is, to them, the representation of the
3 natural progress of history, while the system of
4 liberalistic individualism of the British and French
5 should perish. It will perish even if it is left
6 untouched. I believe they are of the view that mere
7 confrontation by the powerful German-Italian New
8 Order against the declining liberalistic order of Great
9 Britain and France will cause Britain and France to
10 lose faith. It seems that Germany will take stand in
11 the Siegfried Line and bent to exhaust the nerves of
12 Britain and France, while on the other hand, she will
13 aim to deal a finishing blow on them with her air
14 forces and submarines. Of course, in practice matters
15 will not be so simple, but I hold that a confronta-
16 tion of the old against new forces today will give
17 sufficient chances to the new powers to win this war.
18 Of course, if the USSR, Italy and Japan side with
19 the British and French, it will be of grave con-
20 sequence to Germany; but today, such things will not
21 happen. As to Italy, the people say that she is again
22 sitting on the fence. She had to side with Great Britain
23 in 1914 because of her various weaknesses.

24 "However, with the result of Mussolini's rise,
25 things have assumed a new aspect. Today Italy possesses
enough power that Britain and France cannot easily

1 sway her. The situation has changed so that Italy
2 of today is not what she had been in the last war,
3 when she was forced to run to the Allies by Britain
4 and France. Italy made full developments in her
5 political powers under 17 years of Fascist rule.
6 For further developments, there remains but ter-
7 ritorial expansion. As Mussolini puts it Italy must
8 expand or explode. There is no first-class power so
9 destitute of resources as Italy. Her population shows
10 a yearly increase of 450,000. She must either expand
11 or explode."

12 I omit the next four paragraphs to the
13 middle of page 31:

14 "We were sent on a mission to Europe and we did
15 what we were able to form the Triple Alliance. Since
16 an alliance is an important affair affecting the
17 fate of a State, we did all our best to investigate
18 and study fully their conditions. As a result we
19 arrived at the conclusion as we have explained above
20 on the actual strength and attitude of the powers
21 involved. As Japan did not join the Alliance and, on
22 the contrary, the Russo-German rapprochement has been
23 brought about, thus leading to the outbreak of the war,
24 the European situation may have more or less changed
25 since my return home. I will not decidedly affirm

1 that all future developments will become as what I
2 have stated. What I can say with confidence today is
3 that what Japan is doing in the East and what Germany
4 and Italy are trying to do in Europe bear resemblance
5 on the point that both possess the great historic
6 mission to establish a new order in the East which
7 is a national conviction in connection with the China
8 Incident, will help much, in a larger sense, what
9 Germany and Italy are trying to do in Europe.

10 "Consequently, should Japan compromise with the
11 old forces because of her consideration for resources
12 and others, the spiritual blows that will affect the
13 new rising power of Europe such as Germany and Italy
14 will be indeed great. Furthermore, it may tend to
15 weaken their determination. As above explained, it
16 is true that the Russo-German Pact and the current
17 hostilities have relieved Japan's international
18 position for the time being. However, to entertain
19 the idea that Japan should neither side with Germany
20 and Italy, nor bind itself with Britain and the
21 United States, but utilize the present easy position
22 and go on settling the China Incident with the so-
23 called principle of independence and Self-reliance
24 will be opportune if they actually go on fighting
25 forever, but there is no such war that has no end.

1 There is always peace with war. Japan will surely
2 be asked to participate in that Peace Conference.
3 In such a case, Japan's principle of Independence and
4 Self-Reliance; that is, siding with neither will mean
5 isolation and without assistance at the conference
6 meeting. Japan should be most careful that the white
7 people should not form a united front and attempt
8 solution of their problems at the sacrifice of the
9 East. Should they suddenly awake and find that it is
10 futile to fight among themselves in Europe; and
11 realize whichever side may win, resources are short
12 in Europe. Fortunately, there are much resources
13 in the East, and that the people are weak. Japan is
14 just but a fledgling state. If it becomes such that
15 they come to agree upon carrying out a joint ex-
16 ploitation of the East, where Britain has until now
17 made it her domain rejecting other countries and
18 herself not fully utilizing it, and that before Japan's
19 power could be maintained, Japan must confront an
20 indeed difficult situation. The reason why we ad-
21 vanced the forming of an alliance with the far-away
22 powers of Germany and Italy is because we gave thought
23 to this question.

24 "I believe that this should be the fundamental
25 policy of Japan's diplomacy. In practice, our seniors
have also taken up such policy. The people and

1 government may have been unconscious of this fact,
2 but for examples, the Anglo-Japanese Alliance was a
3 result of that -- in other words, the white man's
4 world was divided into two and we have bound ourselves
5 with one of them. There is no reason why we should
6 let them become one."

7 I omit the remaining two paragraphs of this
8 part.

9 Part IV, "The Trend of the Great War," from
10 the Diamond Magazine, June, 1940:

11 "The Trend of the Great War.

12 "We are told that the German Army which invaded
13 Belgium and Holland crushed the Allied Armies with
14 irresistible force and has already emerged at the
15 English Channel. Reflecting on this, it seems that
16 the Allied forces numbering upwards of one million
17 on the Belgian Front will not be able to escape
18 annihilation, and the final issue is already certain."

19 I omit the next four paragraphs. The second
20 full paragraph on page 34:

21 "As a result of this war is it not probable that
22 a cruel, rather ghastly great liquidation would take
23 place? Now the question is: will Britain and France,
24 which have been basking in the favors of the world for
25 countless centuries past, be permitted to exist as

1 great powers or not? Furthermore, can the former
2 absurd situation wherein the small countries of
3 Europe hold absolute sovereignty and stand in the way
4 of the big powers continue or not?

5 "If the above-mentioned revolution should be
6 carried out in Europe, it is unavoidable that it
7 will have a great influence on Asia as a matter of
8 course. How would the colonies of Britain and France,
9 and those of Holland be disposed of? This is a question
10 of great significance from Japan's standpoint. The
11 destiny of several hundred million Asiatic compatriots
12 is now at a great turning point. Would it be proper
13 for this great problem to be decided in the presence
14 of Japan without listening to Japan? What significance
15 does the new order in East Asia contain, and what
16 significance should it have? Our people must at this
17 time carefully consider this point anew.

18 "Since the outbreak of the second European war
19 Japan has adopted a policy of non-participation and
20 has said she will press exclusively for the solution
21 of the China Incident. However, this is fundamentally
22 a point of view which misread the trend of world
23 history. Inasmuch as the European War is a war be-
24 tween old and new principles, it must be considered a
25 great mistake for Japan, which launched a great

1 . undertaking in Asia to destroy the old order and estab-
2 lish a new one, to think she can stay out of the
3 European War. Whatever may be said of this, Japan is
4 actually involved in the European War. Speaking even
5 more briefly, it is not too much to say that the
6 fuse of the European War was first attached by the
7 China Incident.

8 "The reason is that the war between the East and
9 the West centered on that common target. The forces
10 which stand in the way of a new order in East Asia --
11 the enemies of Germany and Italy -- are those not
12 the powers of the old order in the world? Our ad-
13 vocacy of the alliance between Japan, Germany and
14 Italy was based upon this point of view. Moreover
15 for this reason also the assertion is made that in
16 spite of the fact that an alliance has not been con-
17 cluded and apart from the question of a treaty, Japan,
18 Germany, and Italy stand in an inseparable relation-
19 ship. For this reason in particular we have been
20 crying loudly that we must not regard the European
21 War with indifference, and that Japan must not let
22 Germany lose. The inseparable relationship between
23 Japan, Germany and Italy is historically inevitable.
24 Although it looks outwardly as if Japan, misguided
25 by the influence of a certain group in the country

1 is inclined toward Britain and the U.S.A., rather
2 than toward Germany and Italy, the path of world
3 political trends cannot by this be changed even
4 slightly. Japan, in spite of the opinion of forces of
5 the old order at home, is making a great contribution
6 to Germany, which is in an extremely advantageous
7 position, in the latter's prosecution of the war.
8 No one doubts that the Russo-German Pact was a prime
9 requisite for this war. However, the fact that made
10 the Soviet Union shake hands with her old enemy
11 Germany, so easily is the existence of the Japan-
12 German-Italy axis, although the progress of negotia-
13 tions for the three power alliance is the main
14 reason. Furthermore, it cannot be denied that America's
15 remaining neutral for eight months contrary to pre-
16 war expectation and her wrangling with Japan over the
17 China Incident has made her unable to participate
18 in the European War. Therefore, although we talk
19 about non-participation, Japan has actually played a
20 great role in the European War and it must be said
21 that Germany owes Japan a great deal."

22 I omit the remaining three paragraphs of
23 this part.

24 Part V:

25 "The New Order in Europe and Japan's Politics.

1 Attendance: SHIHATORI, Toshio, Former Ambassador
2 Plenipotentiary to Italy; NOMURA, Shigeami, Chief
3 of the Investigation Section, Spiritual Mobilization
4 Headquarters; KOBAYASHI, Goro, President of the
5 National Review Company. Reporter. (July, 1940).

6 "1. Japan's Spiritual Assistance to Germany and
7 Italy.

8 "KOBAYASHI: I called on you today because I
9 wish to listen to all of your opinions concerning
10 the international problem.

11 "SHIHATORI: Until now, I have done what I could
12 for the renovation of Japanese diplomacy, and in the
13 world situation, what we have advocated in the past
14 have generally become factual. However, since the
15 situation in Europe has changed with such rapidity,
16 we cannot merely boast of our far sighted views.
17 What we must firstly consider is whether Germany and
18 Italy who have won a great victory may change their
19 attitude. This would be, to a certain degree, un-
20 avoidable. The end of the war is now in sight, and
21 I deeply feel that the present is indeed too late
22 for Japan, who has been greatly limited in the scope
23 of giving assistance.
24
25

1 "SHIRATORI: What I have always said to
2 others is that the war will surely reach the con-
3 clusion as we had anticipated, and a situation will
4 develop in which we can say, 'Didn't we tell you
5 so', but the situation would then be too late, and
6 Japan will be placed in an awkward predicament.
7 However, I am not at all pessimistic, because Germany,
8 Italy, and Japan will essentially stand on common
9 ground even in the future world. Generally speak-
10 ing, due to the fact that the political leaders of
11 Japan have misconstrued the inevitable course of
12 world history, it is regrettable that Japan has
13 somewhat deviated from this course. Regardless of
14 what one may say, the course which Japan has followed
15 since the China Incident could not be controlled
16 by a small number of people.

17 "We ought to follow the course which we
18 must follow. As long as Japan follows this course,
19 she, as a nation, must necessarily join the course
20 followed by Germany and Italy. For instance, for
21 the reason that that alliance was not established,
22 Japan, of course, has no obligation to assist Germany
23 and Italy. Notwithstanding the fact that the Govern-
24 ment has actually stated its policy of non-inter-
25 ference, what Japan is doing is becoming of great

1 help to Germany and Italy. What they wanted of
2 Japan in the alliance between Japan, Germany and
3 Italy was mainly that Japan weaken British and
4 French positions in the Orient and to check the
5 United States, and although Japan was not asked to
6 do this she has, in fact, done so. Now, even if
7 the United States wishes to participate in the war,
8 she cannot do so. During these nine months, they,
9 being checked by Japan, have neglected Europe.
10 Although diplomatically, they speak ill of Germany,
11 and are more or less aiding England and France
12 materially, their actual power is concentrated in
13 the Pacific. For Germany, this is a great help.
14 Before the war, it was generally said that America
15 would participate in the early stages of this war,
16 but if that were true the United States would have
17 furnished England and France with many planes.
18 Although England has predominant navy power, it
19 seems that her forces is still insufficient. If
20 the American navy had cooperated with that of Great
21 Britain, it would probably have been very advantage-
22 ous for England and France. Firstly, it would have
23 been a great spiritual encouragement to England
24 and France. Such a country as Italy would have
25 hesitated to enter the war. If the United States

1 navy had operated together with that of England
2 and France in the Mediterranean Sea, Italy would
3 not have been able to make any moves. If viewed
4 in this manner, the situation would probably
5 have been considerably different from the present.
6 For one thing, America had greatly under-rated
7 Germany's strength. She had thought that Europe
8 was safe if entrusted to England and France. She
9 feeling that checking Japan was her chief mission,
10 is now concentrating her real power in the Pacific
11 Ocean. If viewed by Japan it is extremely bother-
12 some, but if viewed by Germany, it is an extreme
13 blessing. It is a great role that Japan has played
14 for the sake of Germany. However since the fact
15 that the concentration of the main power of the
16 U.S. in the Pacific was painful to the political
17 leaders of Japan, in trying to improve relations
18 in some way, and to reach an economical under-
19 standing, they have followed a course which is
20 contrary to Germany's intentions. Consequently,
21 although Germany has no longer any reason to be
22 thankful to Japan, actually, Japan has rendered
23 services comparable to that extended by Italy.

24 "2. THE NEW ORDER IN EUROPE AND THE
25 OPPOSITION OF THE U.S.

1 "By the above fact, it can be seen that
2 looking from the standpoint that the position of
3 Japan, Germany, and Italy lies in a mission aiming
4 at the establishment of a new order in the East
5 and the West, what each nation in doing separately
6 is concentrated towards achieving the same goal.
7 What each does independently becomes in effect
8 mutual assistance. I think that the relationship
9 between the three nations lies in such a funda-
10 mental relationship. Viewed from that standpoint,
11 it is expected that Japan, Germany and Italy
12 can continue to cooperate, and even if Germany
13 should expel English and French influences from
14 Europe, it does not mean that from that very moment
15 a new order in Europe can be established. All
16 the factors belonging to the old order in Europe
17 will assemble in the American continent. The
18 gold bullion, which is most typical of the old
19 order, has already been quickly concentrated in
20 the United States. Of course the Jews, who are
21 greatest enemy of the new order, have already the
22 intention of moving to the United States, and all
23 the ousted ruling classes of England and France,
24 will also go to the United States. Since these
25 elements have formerly followed individualistic

1 and liberalistic philosophies, they cannot abso-
2 lutely remain in Europe ruled under totaliterian-
3 ism. Henceforth, they will move in groups to the
4 United States as did the Puritans in olden times.
5 As a result of this, all the old elements of the
6 world will be concentrated in the United States.
7 America, which has been called the new world will
8 become the old world, and Europe of the old world
9 will become the new world, and this state of
10 opposition will continue for a considerable period
11 of time. Until the old elements in America are
12 finally driven out, the struggle will continue.

13 "On the one hand, if the national system
14 of Japan is abruptly converted to the new order,
15 and proceeds rapidly towards the establishment of
16 the new order in East Asia, it would naturally be
17 unavoidable for her to collaborate and cooperate
18 with Europe's new order.

19 "On the other hand, in the Pacific, she
20 will have to stand in opposition with America's old
21 order. Looking at it from its rough outline, it
22 may be said that after all, the coalition of Japan,
23 Germany, and Italy and the relation of mutual aid
24 and communication will continue."
25

I omit the rest of the items in part V,

1 and will resume with part VI, on page 60.

2 THE PRESIDENT: You say 60?

3 MR. SANDUSKY: Yes, sir, page 60.

4 "VI. Comment on Japan's Non-Interference.

5 (The Greater ASIA Magazine, June 1939)

6 "Within ten days since the invasion of
7 German troops into Belgium and Holland, they
8 obtained the same results as in the first one month
9 or two of the First European War. The fall of
10 Paris and the capture of the seacoast of Dover are
11 near at hand, and it is considered likely that the
12 German troops may also proceed to the British
13 Isles."

14 THE PRESIDENT: Is that date correct, June
15 1929? There was no second World War then.

16 MR. SANDUSKY: May I make a correction?
17 The first World War.

18 THE PRESIDENT: Here is an article in the
19 Greater East Asia Magazine of June 1939 speaking
20 about happenings in the war that had not yet
21 taken place.

22 MR. SANDUSKY: Your Honor, that seems
23 obviously to be an error. May I check on that and
24 give the correct date later?

25 "Within ten days since the invasion of

1 German troops into Belgium and Holland, they
2 obtained the same results as in the first one month
3 or two of the First European War. The fall of
4 Paris and the capture of the seacoast of Dover
5 are near at hand, and it is considered likely that
6 the German troops may also proceed to the British
7 Isles. This is, literally, world-shaking. To the
8 observers, however, who have witnessed the German's
9 invessant efforts for the last 7 years and who
10 properly appreciate the characteristics of the
11 German people and of their totalitarian regime,
12 the present state of affairs is, in fact, only
13 what was to be expected. It is therefore only
14 natural that those who have hitherto been regarding
15 liberalism and democracy as the pinnacle of human
16 culture and who believe in the indom' table power
17 of England or the Anglo-Saxon race have come to
18 doubt their own observations."

19 I omit down to the last paragraph on page
20 62.

21 "We have been advocating since the very
22 beginning of the present war that the world is just
23 on the eve of a gigantic transformation in which
24 the Old Order based upon Democratic Capitalism
25 will be doomed, in lieu whereof the New Order based

1 upon Totalitarianism must be set up. As Japan
2 has, ever since the Manchurian Incident, been assum-
3 ing the leading role in establishing the New
4 Order throughout the China Incident, the Japanese
5 people should realize the New Order and act in
6 close concert with the Axis Powers, as Germany
7 and Italy. The supporters of the Old Order in
8 Japan have been reluctant in realizing the true
9 significance of this gigantic world-wide trans-
10 formation, and in fact the conclusion of the
11 Triple Alliance between Japan, Germany and Italy
12 finally fell through due to the Old Order element
13 both at home and abroad. However, no human power
14 can do anything against the inevitable current of
15 world history.

16 "The way for Japan to pursue has already
17 been decided on. In fact, Japan has already been
18 trodding along the said path for nearly ten years.
19 Those Japanese who do not know well where their way
20 is leading to are looking on the present war in
21 Europe with utter indifference and wrongly think
22 that they can establish the New Order in Eastern
23 Asia by merely continuing to act in a conciliatory
24 manner with those powers established upon the Old
25 Order. They may be likened to persons who are

1 unaware of a fire in which they are already in
2 the midst. They imagine they can keep themselves
3 free from the world-wide gigantic transformation
4 so long as they are declaring their non-interference
5 policy.

6 "Some of the other Japanese are making
7 similar mistakes. For instance, they think that
8 Japan will not be dragged into the war as she did
9 not conclude the Triple Alliance with Germany and
10 Italy. These persons do not know the fact that
11 Japan has contributed much towards the attainments
12 made hitherto by Germany. But for the Alliance
13 between Germany and Soviet Russia, Germany would
14 probably not have been able to make up her mind
15 to start this war; and, in making Soviet Russia
16 friendly towards Germany, the presence of Japan
17 in the East and the fair progress of the negotia-
18 tions for concluding an alliance between the Axis
19 countries at Tokyo, Berlin and Rome are factors
20 which have contributed considerably.

21 "If the U.S. had participated in the war
22 at its early stage, not only might it possibly
23 have encouraged the morale of the British and
24 French forces, but their fighting power might also
25 have become actually enhanced. Germany too, might

1 not have been able to acquire her absolute
2 supremacy in the air, and it is likely that the
3 attitude of Italy might also have been greatly
4 effected. Is it not Japan that fastened the U.S.
5 down to the Pacific? The U.S. has not as yet been
6 able to assume a decisive attitude. Is not the
7 presence of Japan practically the main reason for
8 this? Germany owes a mint of gratitude to Japan.
9 In defiance of this close relation between Japan
10 and Germany, a certain group of Japanese have
11 sought a certain kind of understanding with
12 Britain at the Tokyo Ferley after the Tientsin
13 Affair. This fact was promptly reported to
14 Germany. Of course Japan's attitude too has
15 doubtlessly become clearly understood recently in
16 Berlin. Under such circumstances, how can we
17 expect Germany to be grateful towards Japan?
18 The Japanese people should not forget the fact that
19 the Japanese diplomacy has done something that does
20 not pay for Japan, it has done much for Germany
21 and yet lets itself open to incur her wrath.

22 "If the world's map has to be drawn anew
23 as a result of the European War, if the Netherlands,
24 for instance, should become merged as German ter-
25 ritory, the Dutch East Indies would, as a matter

1 of course, become added to German territory. If
2 Japan continues to behave as she has in the past,
3 Germany will be placed under no obligation what-
4 soever to Japan in giving the question of the
5 Dutch Indies her special consideration. It must
6 be remembered, however, that the South Seas has
7 become Japan's life line economically and strategical-
8 ly. We, in establishing the New Order, do not mean
9 to confine its area only to China. Japan cannot
10 remain idle as an onlooker in the event of a
11 wholesale change of territory taking place in the
12 southeast of Asia.

13 "If Japan should devote herself exclusively
14 to the solution of the China Problem by adhering
15 merely to her non-interference policy, matters will
16 doubtlessly become settled within a short period,
17 and subsequent to this European War, the Dutch
18 Indies as well as the colonies of England and France
19 will have their ownership decided with Japan look-
20 ing on as a mere spectator. Therefore, at this
21 important juncture, Japan should realize the
22 ultimate significance of this gigantic world-wide
23 reform and should not fail to engage in active
24 participation therein."
25

1 of course, become added to German territory. If
2 Japan continues to behave as she has in the past,
3 Germany will be placed under no obligation what-
4 soever to Japan in giving the question of the
5 Dutch Indies her special consideration. It must
6 be remembered, however, that the South Seas has
7 become Japan's life line economically and strategical-
8 ly. We, in establishing the New Order, do not mean
9 to confine its area only to China. Japan cannot
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11 wholesale change of territory taking place in the
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14 to the solution of the China Problem by adhering
15 merely to her non-interference policy, matters will
16 doubtlessly become settled within a short period,
17 and subsequent to this European War, the Dutch
18 Indies as well as the colonies of England and France
19 will have their ownership decided with Japan look-
20 ing on as a mere spectator. Therefore, at this
21 important juncture, Japan should realize the
22 ultimate significance of this gigantic world-wide
23 reform and should not fail to engage in active
24 participation therein."
25

1 Since the remaining part, part VII, covers
2 the same subject matters discussed in preceding
3 parts, I will, if it please the Tribunal, omit
4 reading it into the transcript.

5 Lieutenant Colonel Mornane will continue
6 reading for the prosecution.

7 THE PRESIDENT: Colonel Mornane.

8 LIEUTENANT COLONEL MORNANE: I propose to
9 produce four documents to complete the case against
10 the accused SATO. My first document is prosecution
11 document No. 1840, consisting of outlines of two
12 speeches delivered by the accused on the 25th and
13 29th of August 1938.

14 I tender this document in evidence.

15 THE PRESIDENT: Admitted on the usual
16 terms.

17 CLERK OF THE COURT: Prosecution's docu-
18 ment No. 1840 will be given exhibit No. 2235.

19 (Whereupon, the document above
20 referred to was marked prosecution's ex-
21 hibit No. 2235 and received in evidence.)

22 MR. FREEMAN: If the Tribunal please, I
23 object to the introduction of this document on
24 the ground that it was previously introduced under
25 exhibit No. 370. It appears that the prosecution

1 at this time is attempting to re-introduce the
2 same document with a new translation.

3 Previously I objected to the introduction
4 of this document on the ground that it did not
5 contain the words of the accused SATO, but only the
6 resume' of an unknown writer. The prosecution has
7 failed' to comply with the order of the Court
8 that they furnish the writer of the original trans-
9 lation. I refer here to page 3604 of the record,
10 where the President of the Tribunal directed the
11 prosecution in this manner. I think they should
12 endeavor to tell us who the writer is. They are
13 here in this document attempting to substitute a
14 new translation, with the name of a new translator,
15 but still not the writer.
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THE PRESIDENT: Is this another version
of the speech by a different reporter?

MR. FREEMAN: If the Tribunal pleases, it
is and the contents of it are different from the
original exhibit 270.

THE PRESIDENT: That only puts us in the
position of making a choice; it does not render it
inadmissible.

MR. FREEMAN: It is a different translation
of the same speeches.

THE PRESIDENT: But the reporter's name is
now disclosed, is that so?

MR. FREEMAN: This is another one, not the
original writer.

THE PRESIDENT: Please state the facts as
you see them, Colonel Mornane.

LIEUT. COLONEL MORNANE: If it please the
Tribunal, reading from page 3604 of the record, your
Honor said that you thought the prosecution should
endeavor to tell the Tribunal who the writer of the
document was. The original document, which has now
been produced to the Court as exhibit 2235, bears
the name of KUMAGAI and also his seal. I am not
familiar with the office held by KUMAGAI, but the

1 prosecution would be quite willing to ascertain what
2 that office is.

3 THE PRESIDENT: KUMAGAI could be anybody.
4 He could be a fictitious person.

5 LIEUT. COLONEL MORNANE: That may be so,
6 your Honor.

7 THE PRESIDENT: Do you know whether he exists
8 or not, and if he does, where he is?

9 LIEUT. COLONEL MORNANE: I didn't hear what
10 you said, your Honor.

11 (Whereupon, the last statement was
12 read by the Official Court heporter.)

13 LIEUT. COLONEL MORNANE: That is the posi-
14 tion, your Honor, but I would point to the certifi-
15 cate of authenticity, which states that this docu-
16 ment is an official document of the Japanese Govern-
17 ment and that it is part of the official archives
18 and files of the Home Ministry, and that it bears
19 the title "Policy Re Sino-Japanese Incident, War
20 Ministry Newspaper Section Chief, Colonel SATO, Kenryo."

21 THE PRESIDENT: Was SATO Home Minister or
22 War Minister?

23 LIEUT. COLONEL MORNANE: SATO at that time
24 was the Press Chief -- Chief of Press Section of the
25 War Ministry, your Honor.

1 THE PRESIDENT: Well, there is some evi-
2 dence of authenticity on the face of the document.

3 MR. FREEMAN: If the Tribunal pleases, I
4 will emphasize the fact that this is a translation by
5 a new translator and is not the writer of the docu-
6 ment.

7 THE PRESIDENT: Suppose they had a document
8 with two translations attached. They could tender
9 both and put the onus on the Court of making the
10 selection after hearing all the facts. That is all
11 it amounts to. We have to make a choice.

12 MR. FREEMAN: This document is the same docu-
13 ment that they found in the Home Ministry. They
14 have another translation for it and the contents of
15 this one is different in some respects from the
16 first one.

17 THE PRESIDENT: We have one original and
18 two translations. It is for the Language Section
19 to decide. There is still no ground of non-admissi-
20 bility. That is what I am looking for.

21 MR. FREEMAN: I would like to call the
22 Court's attention to the fact that 1840 in the Jap-
23 anese is identical to exhibit 270. I would like to
24 call the Court's attention further to the fact that
25 originally, when Mr. Parkinson introduced this docu-

1 ment as exhibit 270, the Court ordered them to offer
2 a certificate of authenticity then, and they couldn't
3 do it.

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1 THE PRESIDENT: Colonel Mornane, will you
2 come to the lectern?

3 (Whereupon, Colonel Mornane approached
4 the lectern.)

5 THE PRESIDENT: State why you are tendering this
6 additional document.

7 LIEUT. COLONEL MORNANE: Personally, your
8 Honor, I was unaware of the fact that exhibit 270 had
9 been tendered. Rather than waste the Tribunal's time
10 at the moment, I would ask leave to have the opportunity
11 to compare this document with 270 during the recess.
12 If the documents are the same, or substantially the same,
13 that will save the Tribunal having to hear this document
14 read into the record.

15 THE PRESIDENT: You might find out who KUMAGAI
16 is.

17 LIEUT. COLONEL MORNANE: I will have inquiries
18 made as to that, your Honor.

19 THE PRESIDENT: We will suspend action on this
20 document.

21 LIEUT. COLONEL MORNANE: My next document is
22 "Full Report on proceedings -- record of proceedings
23 of the Committee Meeting in the House of Representatives,
24 Volume 8, No. 79. It is prosecution document No. 2774.
25 I tender it for identification.

1 CLERK OF THE COURT: Prosecution's document
2 No. 1840 will be given exhibit No. 2235 as a tentative
3 exhibit number. Document No. 2774, now tendered for
4 identification, will be given exhibit No. 2236 for
5 identification only.

6 (Whereupon, the document above
7 referred to, No. 1840, was marked prose-
8 cution's exhibit No. 2235 and received in
9 evidence as a tentative exhibit number.

10 Document No. 2774 was marked prosecution's
11 exhibit No. 2236 for identification.)

12 LIEUT. COLONEL MORNANE: From this document
13 I tender in evidence excerpts from the statement made
14 by the accused, SATO, Head of Bureau of Military Affairs,
15 and Government Delegate at a Budget Committee Meeting
16 of the 79th session of the Imperial Diet, House of
17 Representative, February 10, 1942. The extracts are
18 taken from page 137.

19 THE PRESIDENT: Admitted on the usual terms.

20 CLERK OF THE COURT: Prosecution's document
21 No. 2774, an excerpt from the foregoing exhibit for
22 identification, will be given exhibit No. 2236-A.

23 (Whereupon, the document above
24 referred to was marked prosecution's exhib-
25 it No. 2236-A and received in evidence.)

1 CLERK OF THE COURT: Prosecution's document
2 No. 1840 will be given exhibit No. 2235 as a tentative
3 exhibit number. Document No. 2774, now tendered for
4 identification, will be given exhibit No. 2236 for
5 identification only.

6 (Whereupon, the document above
7 referred to, No. 1840, was marked prose-
8 cution's exhibit No. 2235 and received in
9 evidence as a tentative exhibit number.

10 Document No. 2774 was marked prosecution's
11 exhibit No. 2236 for identification.)

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14 by the accused, SATO, Head of Bureau of Military Affairs,
15 and Government Delegate at a Budget Committee Meeting
16 of the 79th session of the Imperial Diet, House of
17 Representative, February 10, 1942. The extracts are
18 taken from page 137.

19 THE PRESIDENT: Admitted on the usual terms.

20 CLERK OF THE COURT: Prosecution's document
21 No. 2774, an excerpt from the foregoing exhibit for
22 identification, will be given exhibit No. 2236-A.

23 (Whereupon, the document above
24 referred to was marked prosecution's exhib-
25 it No. 2236-A and received in evidence.)

1 CLERK OF THE COURT: Prosecution's document
2 No. 1840 will be given exhibit No. 2235 as a tentative
3 exhibit number. Document No. 2774, now tendered for
4 identification, will be given exhibit No. 2236 for
5 identification only.

6 (Whereupon, the document above
7 referred to, No. 1840, was marked pros-
8 ecution's exhibit No. 2235 and received in
9 evidence as a tentative exhibit number.
10 Document No. 2774 was marked prosecution's
11 exhibit No. 2336 for identification.)

12 LIEUT. COLONEL: From this document I tender
13 in evidence excerpts from the statement made by the accused,
14 SATO, Head of Bureau of Military Affairs, and Government
15 Delegate at a Budget Committee Meeting of the 79th
16 session of the Imperial Diet, House of Representatives,
17 February 10th, 1942. The extracts are taken from page
18 137.

19 THE PRESIDENT: Admitted on the usual terms.

20 CLERK OF THE COURT: Prosecution's document
21 No. 2774, an excerpt from the foregoing exhibit for
22 identification, will be given exhibit No. 2236-A.

23 (Whereupon, the document above
24 referred to was marked prosecution's ex-
25 hibit No. 2236-A for identification.)

1 MR. FREEMAN: If the Tribunal please, I
2 wish to object to prosecution document 2774 on the
3 ground it contains a misstatement of facts.

4 The first paragraph states "Excerpts from
5 statements made by Major General Kenryo SATO, Head
6 of the Military Affairs Bureau," and so forth, " at
7 a Budget Committee Meeting of the 79th session of the
8 Imperial Diet, House of Representatives, February
9 10th, 1942."

10 By the prosecution's own admission and state-
11 ment contained in document 2944, the opening statement
12 of Colonel Woolworth, the accused, SATO, did not become
13 Chief of the Military Affairs Bureau until April of
14 1944 -- 1942.

15 THE PRESIDENT: The prosecution can look into
16 it during the recess. We will recess for fifteen
17 minutes.

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19 (Whereupon, at 1446, a recess
20 was taken until 1500, after which the
21 proceedings were resumed as follows:)
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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now resumed.

3 THE PRESIDENT: Mr. Freeman.

4 MR. FREEMAN: If the Court please, I would
5 like to complete my objection to document 2774 for the
6 sake of the record.

7 This document, therefore, is misleading in
8 that it tends to infer that the words spoken by the
9 accused were spoken when he was Chief of the Military
10 Affairs Bureau. I further object to the introduction
11 of this document on the ground that these statements
12 were made after the war commenced and are not incon-
13 sistent with the attitude and demeanor of a citizen
14 of any country against an enemy thereof, and as highly
15 immaterial and irrelevant and tends to prove or dis-
16 prove no issue in this case and had no probative value.

17 THE PRESIDENT: The second point, that the
18 war had started, goes to weight only. Colonel Mornane,
19 it could be that the person who made this statement
20 was the head of the Military Affairs Bureau on the
21 10th of February 1942. That wouldn't be SATO if
22 Mr. Freeman is stating the fact as to the time when
23 he was bureau head. What is the position?

24 LIEUT. COLONEL MORNANE: If it please the
25 Tribunal, I would ask that the original of this

1 exhibit be referred to the Japanese Language Arbitrator.

2 THE PRESIDENT: It will be referred accord-
3 ingly and we suspend action in the meantime.

4 LIEUT. COLONEL MORNANE: I take it that in
5 the meantime I will read this exhibit and if the
6 Japanese Arbitrator --

7 MR. FREEMAN: If the Court please, I object
8 to his reading that at this time.

9 THE PRESIDENT: If it is objected to, it
10 shouldn't be read if there is a serious doubt about
11 it. It may not have been said by SATO. It may have
12 been said by the man who was the head of that bureau
13 at that time.

14 LIEUT. COLONEL MORNANE: In that case, if the
15 Tribunal pleases, with the Tribunal's permission I
16 will leave the document stand down for the time being.

17 My next document is prosecution document
18 No. 2775 which is a full report on proceedings -
19 Record of proceedings of the Committee Meeting in the
20 House of Representatives, Volume 8, No. 81. I
21 tender it for identification and I tender in evidence
22 an extract from the statement made by the Accused SATO
23 at the Budget Committee meeting of the 81st session
24 of the Imperial Diet, House of Representatives,
25 February 18, 1943, which is taken from page 82.

1 THE PRESIDENT: Mr. Freeman.

2 MR. FREEMAN: If the Tribunal please, I
3 object to the introduction of this document for the
4 reason that the alleged statement was made after the
5 commencement of the war and is not inconsistent with
6 statements by government officials of any country
7 engaged in intensive warfare.

8 THE PRESIDENT: Objection overruled.

9 MR. FREEMAN: May I complete my objection?
10 In addition, this statement could in no way have
11 affected the plan or policy being carried out by the
12 Japanese government at that time with reference to
13 the counts in this indictment and has no probative
14 value.

15 THE PRESIDENT: Objection still overruled.
16 The document is admitted on the usual terms.

17 CLERK OF THE COURT: Prosecution document
18 No. 2775 will receive exhibit No. 2237 for identifica-
19 tion only, and the excerpts therefrom, bearing the
20 same document number, will receive exhibit No. 2237A.

21 (Whereupon, the document above re-
22 ferred to was marked prosecution's exhibit
23 No. 2237 for identification, the excerpts there-
24 from being marked prosecution's exhibit No.
25 2237A and received in evidence.)

LIEUT. COLONEL MORNANE: (Reading)

1
2 "Just as the Prime Minister had been stating
3 previously, there is no change in the general policy
4 of dealing resolutely with anyone who carries on
5 arguments which hinder the execution of the war in
6 any way, regardless of their positions or ranks. How-
7 ever, as you know, recently, various informations are
8 appearing concerning peace talks, Anglo-German peace,
9 Soviet-German peace, etc., in accordance with the
10 changes in the world situation. I do not have the
11 right to bring up each of these points at the present
12 time, but when we investigate the general source from
13 which they emanate, we find that they are due to
14 enemy propaganda. Therefore, if there are people who
15 believe such propaganda and repeat them, it is as if
16 they are doublecrossing not only the soldiers on the
17 front line, but also the people in the production
18 front at home. They will be resolutely dealt with."

19 If the Tribunal please, reverting to
20 exhibit 2234 I find that the contents are generally
21 the same as exhibit 270.

22 THE PRESIDENT: You mean 2235 I think.

23 LIEUT. COLONEL MORNANE: 2235; I am sorry.
24 The document, however, has a certificate from the
25 Home Ministry and also the signature of the person

1 who made the outline of the speech. I, therefore,
2 tender the document in evidence, although I do not
3 propose to read it as it has already been, or a similar
4 document has already been read into the record.

5 MR. FREEMAN: I renew the same objections
6 to it.

7 THE PRESIDENT: Objection overruled. The
8 document is admitted on the usual terms.

9 (Whereupon, prosecution's exhibit
10 No. 2235 was received in evidence.)

11 THE PRESIDENT: Mr. Logan.

12 MR. LOGAN: If the Tribunal please, as I
13 understand this situation there is one Japanese
14 original and one prosecution English translation of
15 that document which has already been introduced in
16 evidence.

17 THE PRESIDENT: You cannot take this objection,
18 Mr. Logan. I have overruled that objection. We will
19 know how to deal with this situation. We have two
20 translations; we have one original. If we are in
21 doubt we will refer to our board.

22 MR. LOGAN: That is just the point that I
23 wish some information from the Tribunal about.

24 THE PRESIDENT: I can undertake, I think,
25 safely to say that we will refer them both to the board.

1 MR. LOGAN: I understood your Honor to say
2 before the recess that where two translations were
3 offered in English that you would decide which one
4 to accept, but in this case there has been no contest
5 by the defense as to the translation which has already
6 been put in evidence. The defense has not asked that
7 it be referred to the translation bureau.

8 THE PRESIDENT: We are not restricted to
9 that extent, that we cannot refer a matter of trans-
10 lation to the board without the concurrence of the
11 defense or the prosecution. We refer the matter to
12 the board for our guidance.

13 LIEUT. COLONEL MORNANF: Our last document is
14 the original record of the interrogation of the Accused
15 SATO. It is prosecution document 2887. I tender it
16 for identification and the marked excerpts in evidence.

17 THE PRESIDENT: Admitted on the usual terms.

18 CLERK OF THE COURT: Prosecution document
19 No. 2887 will receive exhibit No. 2238 for identifica-
20 tion only, and the excerpts therefrom, bearing the same
21 document number, will receive exhibit No. 2238A.

22 (Whereupon, the document above referred
23 to was marked prosecution's exhibit No. 2238 for
24 identification, the excerpts therefrom being
25 marked prosecution's exhibit No. 2238A and re-
received in evidence.)

1 LIEUT. COLONEL MOINANE: (Reading) "27 April
2 1946, Page 2.

3 "A. In 1937 I was promoted to Lieutenant
4 Colonel still serving in the War Service Bureau. In
5 August of 1938 I was promoted to Colonel and served
6 as the Army spokesman. This duty included the making
7 of news releases. In December 1938 I became Pro-
8 fessor in the Army Air Corps School at Hammatsu. In
9 May of 1938 I became a Staff Officer for the South
10 China Expeditionary Force.

11

12 "In March of 1941 I returned to the War
13 Department, becoming Chief of the War Service Section
14 of the War Service Bureau, being promoted to the rank
15 of Major General in October of the same year. In April
16 of 1942 I became Chief of the War Service Bureau. In
17 December of 1944 I became Assistant Chief of Staff of
18 the China Expeditionary Force. The Chiefs of Staff
19 were: 1. MATSUI, Takuro, Lieutenant General; 2.
20 KOBAYASHI, Asasaburo, Lieutenant General. The Com-
21 mander of the Force was OKAMURA, Meiji, General.

22 "In March of 1945 I was promoted to Lieuten-
23 ant General; and in April of 1945 I became Commander
24 of the 37th Division stationed in Indo China. The
25 division subsequently was ordered to Thailand, where I

1 remained until the end of the war.

2 "Q. How long have you known General TOJO?

3 "A. I first met TOJO when I was a student
4 in the Army War College and TOJO became a professor
5 (Lieutenant Colonel). I studied war history under
6 TOJO for one year. Then later I again met TOJO when he
7 was Vice Minister of War and worked around him for a
8 period of five months while I was the Army Spokesman.
9 I have known him quite well. I have judged him to be
10 a very sincere person, which I first realized when
11 I was sent abroad as language officer. TOJO took
12 good care of my family during that period.

13

14 "Q. Did General TOJO appoint you to the
15 position in the War Ministry as head of the Military
16 Affairs Bureau?" Then an interpolation: "(Q. by
17 Interpreter: Of the Bureau or the Section? A. by
18 Interrogator: Bureau.)

19 "A. Yes, inasmuch as the War Minister makes
20 the appointments, TOJO appointed me."

21 Same date, Pages 4 and 5.

22 "Q. Under an ordinance, your Bureau made the
23 plans for all Prisoner of War Camps in Japan, the
24 construction of buildings, etc., did they not?

25 "A. The policies regarding prisoners of war

1 were determined in the Prisoners of War Section. The
2 actual design of the camps and budget concerns came
3 through my Bureau. The administration was handled
4 by another Bureau.

5 "Q. The correspondence from protecting powers,
6 for example, from the Swiss, in connection with United
7 States prisoners of war held by Japan passed through
8 your Bureau, did it not?

9 "A. They, after obtaining permission from the
10 Foreign Office, dealt only with the Prisoners of War
11 Section, Prisoners of War Information. Only where
12 it concerned me did they have to contact our office.

13 "Q. I understood you to say that your Bureau
14 handled matters involving foreign affairs. Is that
15 true?

16 "A. Yes, our Bureau did handle foreign
17 affairs where they concerned the Army directly. For
18 example, when negotiations were under way with the
19 United States, any replies from the United States
20 came through the Foreign Office to the War Minister,
21 and inasmuch as any decisions would affect the Army
22 we were notified. In cases of prisoners of war,
23 this matter was specifically set aside for the Prisoners
24 of War Section. Such things as removal of fortifica-
25 tions came to us, although they also went to the

1 Heimukyoku (Military Service Bureau). For instance,
2 when the Red Cross wanted to speak to us about the
3 prisoners of war, they went through the Prisoners of
4 War Section, and where it concerned medicine from there
5 were referred to the Medical Bureau.

6

7 "29 April 1946, Pages 6 and 7.

8 "Q. Well, you would say, would you not, that
9 the Chief of the Military Affairs Bureau is probably
10 the third most important member of the military es-
11 tablishment. There is the Minister of War, the
12 Chief of Staff, and then comes the Chief of the Mili-
13 tary Affairs Bureau - that is conceded, is it not?

14 "A. First I would like to explain that according
15 to the Japanese Constitution, the War Ministry and
16 the General Staff are completely independent and sub-
17 servient to the Emperor. The Chief of the Military
18 Affairs Bureau and the Chief of Operations in the
19 General Staff are equivalent in their respective
20 fields.

21 "Q. Do you recall who was Chief of Staff at the
22 time the determination was made to try by court mar-
23 tial the Loolittle flyers who were apprehended?

24 "A. SUGIYAMA was the Chief of Staff.

25 "Q. Who made the determination that the Loolittle

1 flyers who were apprehended were to be tried by court
2 martial?

3 "A. It was decided, I believe, by the Chief of
4 Staff and the Minister of War in conference. However,
5 I do not remember very clearly.

6

7 Same date, Pages 7, 8, 9, 10.

8 "Q. It is true, is it not, General, that the
9 rules in connection with the treatment of prisoners
10 of war were drawn up in conference between the General
11 Staff and the Chief of the Military Affairs Bureau?
12 (Question by General SATO: Are you applying that
13 directly to the Loolittle flyers? Answer by Interro-
14 gator: No, just in general.)

15 "A. As I said the other day, matters pertaining
16 to the prisoners of war came to the various Bureaus
17 concerned; a matter such as something affecting the
18 budget would come through my office, things involving
19 medical matters would go through the Medical Affairs
20 Bureau, and so on.

21 "Q. That does not answer my question.

22 "A. The rules were drawn up between the General
23 Staff and the War Ministry, under the War Ministry.
24 The individual rules were drawn up by the various
25 Bureaus.

1 "Q. And the Military Affairs Bureau had their
2 part in the drafting of these rules, did they not?

3 "A. Yes, they were involved in a part of these
4 rules.

5 "Q. As a matter of fact, you made the recommen-
6 dation, did you not, as Chief of Military Affairs
7 Bureau, to the War Minister as to what the rules
8 should be?

9 "A. Yes, matters concerning my office. There
10 were also others which were passed as an order from the
11 War Minister.

12 "Q. General TOJO on the 28th of March this year
13 stated that the rules regarding the treatment of pris-
14 oners of war were the result of conferences between
15 the Chief of the Military Affairs Bureau and the Gen-
16 eral Staff. Is that statement true or false?

17 "A. That is not true. He must have been mistaken,
18 inasmuch as positions of equal level would meet di-
19 rectly. The Chief of Staff would not meet with the
20 Chief of Military Affairs Bureau, but with the War
21 Minister. A Chief of Section in the General Staff could
22 meet with a Chief of Section in the War Ministry.

23 "Q. I did not say that the Chief of Bureau of
24 Military Affairs met with the Chief of Staff. That
25 was not the statement General TOJO made. The statement

1 that he made was that the rules regarding the treat-
2 ment of prisoners of war were the result of conferences
3 between the General Staff and the Chief of Military
4 Affairs Bureau. Now, is that true?

5 "A. That is possible.

6 "Q. When did you serve, General, in Indo China?

7 "A. From April 1945 until the end of the war.

8 "Q. Had you ever served in that territory before
9 in any capacity?

10 "A. In the summer of 1940 I went to Indo China
11 as Staff Officer of the China Expeditionary Forces.

12 "Q. You were Assistant Chief of Staff of the
13 Expeditionary Forces, were you?

14 "A. Yes, Assistant Chief of Staff.

15 "Q. What did you have to do with a bill known as
16 the National Total Mobilization Act?

17 "A. At that time I was a member of the Military
18 Affairs Section of the War Ministry. My connection with
19 that came about in the following manner. The general
20 mobilization law first was a matter of the Cabinet; on
21 the side of the military it was the job of a Mobiliza-
22 tion Plans Bureau. When the time came for the
23 bill to be presented to the Diet, it became a matter
24 of the Military Affairs Bureau.

25 "Q. You made a report on the bill in behalf of the

War Ministry to the Diet, did you not?

1 "A. The actual report was made by the Premier.
2 My capacity was to explain the bill to the Diet.
3 There are three different positions which are involved
4 in the presentation of a bill to the Diet, of which
5 the person giving the explanation is the third in rank.
6

7 "Q. You had some disagreement at that time with
8 a man named MIYAWAKI, Chochiki, did you not?

9 "A. Yes.

10 "Q. And in the course of your talk in explanation
11 of the bill you told him to 'shut up' did you not?

12 "A. Yes.

13 "Q. They called you 'Shut Up SATO' after that,
14 did they not?

15 "A. There are a lot of mistakes on that thing,
16 so I would like to give an explanation if you have
17 time.
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1 "Q. Go ahead.

2 "A The General Mobilization Law was presented
3 in February 1938 to the KONOYE Cabinet. At that time
4 the Diet planned to take the following three measures:
5 1. Forced resignation of the Cabinet; 2. stop
6 passage of an electric power generation law which
7 was disliked very much by the public; 3. eliminate
8 all existing political parties and establish new parties.
9 Although the objectives of the three movements were
10 different, the backers of the movements were united
11 in their expectation of a collision between the Diet
12 and the government. The Diet members were in hopes
13 that this collision could first be obtained through
14 the General Mobilization Law.

15 "At that time Japan was in the midst of
16 the China Incident. In December 1937 Japan attempted
17 to obtain peace with Chiang Kai-shek through the
18 German Ambassador, and in January of 1938 it was
19 realized that there was no hope of a quick settlement.
20 Thus it became obvious that the General Mobilization
21 Law was a necessity. However, the three movements
22 mentioned before were causing undue opposition by the
23 government to the General Mobilization Law. I was
24 worried over this situation in the Diet, due to the
25 conflict. We were using enormous quantities of

material, however, we couldn't replace it. The capitalists opposed necessary increase in production facilities, the reason being that the capitalists were expecting a short war. Thus, at the conclusion of the war any investments in increased facilities would be a complete loss. In the last world war there was considerable loss incurred on the part of capital, as they had made enormous increases in production facilities. I do not blame the capitalists for their stand. However, they put the Army in a difficult position. The enterprisers, who are dependent on capital, would have built plants based on orders from the Army, but at the conclusion of the war, with the lack of orders all the investments would have been a total loss. It was, therefore, necessary to protect the enterprisers from such danger. Under the General Mobilization Law the government would administer all such war industries, and in case of the sudden cessation of hostilities the government would also take the responsibility of reimbursing any enterpriser who would thus be caught short. Therefore, the General Mobilization Law was a necessity, not only for the sake of the Army, but also for the capitalists.

"The Diet would not look at the General Mobilization Law in this light and, due to the

1 previously mentioned three movements, put up unneces-
2 sary objections to the law. Because of this opposition
3 I felt very sad. The government was unable to explain
4 this satisfactorily to the Diet and of those present
5 before the Diet I was the only person capable of
6 explaining the implication of the law. Therefore,
7 I was hoping to be given an adequate chance to
8 explain the bill before the Diet. However, since I
9 was only the 'explainer' I did not have the power to
10 go ahead on my own initiative, and finally on about
11 the 24th of February I was told by the Diet that I
12 could present my explanation as the 'explainer'. It
13 was at this point that I stood up to give my explana-
14 tion. Of the explanations given up to that time I
15 feel sincerely that mine was the most powerful one
16 given."

17 MR. FREEMAN: If the Tribunal pleases, this
18 document leaves off a part of that answer. It is just
19 one paragraph and with the Court's permission I would
20 like to read it in the record.

21 THE PRESIDENT: The prosecution may agree to
22 read it.

23 LIEUT. COLONEL MORNANE: The prosecution
24 have no objection, your Honor.

25 (Reading): "Diet member MIYAWAKI was a

1 former army man and personally disliked me. He made
2 all efforts to interrupt or interfere with the explana-
3 tion. At that point I ceased my explanation and asked
4 the Diet whether they wished a continuation of the
5 explanation or not. The leader of the Diet, also
6 the members, expressed a desire to hear the rest of
7 the explanation and therefore I continued. At that
8 time MIYAWAKI put forth more efforts to interrupt me
9 and I told him to shut up."

10 Continuing: "29 April 1946, Pages 11, 12.

11 "Q In 1940 after TOJO became Minister of
12 War he recalled you from South China, did he not, and
13 you were made Chief of the Military Affairs Section?

14 "A I became the Chief of the Military Affairs
15 Section in March of 1941.

16 "Q That was immediately after your recall
17 from South Indo-China?

18 "A Yes, I was there as I frequently had to
19 go down to Indo-China on my duties from South China.
20 During my stay with the South China Expeditionary
21 Forces I went to Indo-China three or four times,
22 remaining only a week or ten days at a time.

23 "Q As Chief of the Military Affairs Section
24 and Chief of the Military Affairs Bureau, you were in
25 accord with the policies of the Minister of War, were

1 you not?

2 "A Yes, I was in agreement with the policy
3 of the Minister of War.

4 "Q When was it that the Japanese troops
5 invaded Indo-China?

6 "A The first entry was made into North
7 Indo-China in September or October of 1940. At that
8 time I was a Staff Officer with the South China
9 Expeditionary Forces. The second invasion was made
10 into South Indo-China in July of 1941. At that time
11 I was the Chief of the Military Affairs Section.

12 "Q Did you consider that invasion of South
13 Indo-China necessary?

14 "A I don't think it could be helped, the
15 reason being that Japan was undergoing hardships in
16 regard to the supply of rubber.

17 "Q You were familiar with the provisions of
18 the Nine Power Treaty and the Briand-Kellogg Non-
19 Aggression Pact, were you not?

20 "A Yes.

21 "Q You realize that such invasion was in
22 violation of the provisions of both the Nine Power
23 Treaty and the Briand-Kellogg Pact, do you not?

24 "A Inasmuch as the occupation of Indo-China
25 was made by the Vichy-Japanese Government Agreement,

1 I do not consider it as a war.

2 "Q During the time you served in the War
3 Ministry under General TOJO you frequently consulted
4 with him, did you not?

5 "A Yes, after I became Chief of the Bureau;
6 while Chief of the Section I dealt with the Chief of
7 the Bureau.

8 "Q Who was the Chief of the Military Affairs
9 Bureau before you succeeded to that position?

10 "A MUTO.

11 "Q And you and MUTO were in accord on your
12 policies, were you not?

13 "A Yes and no.

14 "Q Can you say 'yes' or 'no'?

15 "A MUTO felt that the nominations for candi-
16 dates for the Diet were proper. However, I disagreed
17 with him on that point.

18 "29 April 1946, Pages 14, 15.

19 "Q I am going to read you a statement here
20 and ask you if it is true:

21 "The rules and regulations regarding
22 prisoners of war were assembled by the Military Affairs
23 Bureau in Conference with the Prisoners Information
24 Bureau and Chiefs of Staff and then presented to the
25 War Minister for approval. The Chief of the Military

1 Affairs Bureau was the main figure in the promulgation
2 of these rules and regulations. The policy for the
3 handling of prisoners of war emanated from the Military
4 Affairs Bureau and the actual handling of the prisoners
5 of war was performed by the Prisoners Information
6 Bureau on down through to the Field Commanders. Al-
7 though the Chief of the Prisoners Information Bureau
8 participated in the making of the policies for the
9 handling of war prisoners, the Chief of the Military
10 Affairs Bureau was the higher authority as exemplified
11 by the fact that if the Chief of the Information Bureau
12 came to the Chief of the Military Affairs Bureau with
13 a plan and it was disapproved by the latter the normal
14 procedure would be to forget the plan there and then
15 because of the position maintained in the Army by the
16 Chief of Military Affairs Bureau plus the fact that he
17 was always in close connection with the War Minister.
18 However, under such circumstances if the Chief of the
19 Prisoners Information Bureau was insistent that his
20 plan, disapproved by the Military Affairs Chief, be
21 carried through then both parties would present the
22 matter to the War Minister for determination.
23

24 "A The statement is in part true, but Chiefs
25 of various other Bureaus concerned are omitted from
this record and they actually took part in the conferences

1 depending on the point under discussion. As to the
2 reference of a main figure in the promulgation of
3 rules and regulations, I believe the statement is
4 wrong. The main figure depends only on the matter
5 concerned. You may go through the War Ministry records
6 and notice the signatures. At times the Prisoners
7 Administration Bureau was the main figure, at times
8 the Military Affairs Bureau. However, this all depends
9 on the matter under consideration. I disagree with
10 the statement that the Military Affairs Bureau Chief
11 was a higher authority. The mention that the normal
12 procedure was to forget the plan was only if the Chief
13 of the Information Bureau was in accord finally with
14 the Chief of the Military Affairs Bureau. Also the
15 reference that the Chiefs of both Bureaus would present
16 the matter to the War Minister is incorrect. The Chief
17 of the Prisoners Information Bureau had free access to
18 the War Minister and could see him without the Chief of
19 the Military Affairs Bureau. Final determination
20 rested with the War Minister.

21 "Q It is true, is it not, General, that the
22 actual promulgation of the rules regarding prisoners
23 of war, the publication of them, was done by the
24 Military Affairs Bureau?

25 "A The promulgation is done by the Vice

1 Minister of War.

2 "Q It is further stated, General, that
3 when a complaint was received as to the mistreatment
4 of prisoners of war from the International Red Cross
5 the following procedure was in force: The complaint
6 was received in the Foreign Office and referred to
7 the Military Affairs Section, a division of the
8 Military Affairs Bureau. The head of the Military
9 Affairs Section then took the complaint up with the
10 Chief of the Prisoners Information Bureau and as a
11 result of this conference a plan was drawn up to meet
12 the alleged complaint. This plan was presented to
13 the Chief of the Military Affairs Bureau and if
14 approved by him in turn taken to the War Minister
15 for approval. The Military Affairs Section was the
16 door through which all outside complaints came to the
17 War Minister. The International Red Cross, however,
18 would have the right to go directly to the Chief of
19 the Prisoners of War Information Bureau with a complaint,
20 but in such an instance the Information Bureau Chief
21 would confer with the head of the Military Affairs
22 Section and the procedure which I have just outlined
23 would be followed.

24 "A First, I am not quite sure, but I had
25 been under the impression that complaints regarding

1 prisoners first went through the Prisoners Information
2 Bureau. However, the statement may be correct. Any
3 plans which have been drawn up between the Prisoners
4 Information Bureau and the Military Affairs Section
5 could go back to the Minister directly from the
6 Prisoners of War Bureau or the Military Affairs Bureau.
7 It merely depended on the nature of the plan which
8 was drawn up to meet the complaint. I think that when
9 a plan had to be approved by the War Minister it must
10 have gone through the Prisoners of War Administrative
11 Bureau, inasmuch as I have never had to take anything
12 to the War Minister.

13 "Q Do you mean in connection with prisoners
14 of war, or at any time?

15 "A Yes, in reference to prisoners and com-
16 plaints by the Red Cross."
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1 LIEUT. COLONEL MORNANE: If it please the
2 Tribunal, I now have the Language Arbiter's report
3 on document 2774. That is exhibit 2236.

4 CLERK OF THE COURT: 2236-A, yes.

5 LIEUT. COLONEL MORNANE: 2236-A. The report
6 is that the words "Head of Bureau of Military
7 Affairs and" should be struck out from the heading
8 of this document. I now propose, with the Tribunal's
9 permission, to read the document.

10 THE PRESIDENT: Before you do so, my
11 attention has been directed to the first page of
12 the document you have just read, No. 2238. In the
13 second line appear the words "War Service Bureau,"
14 and in the second line of the next paragraph appear
15 the words "War Service Section of the War Service
16 Bureau." Should that be "Military Affairs Bureau"
17 in each case?

18 LIEUT. COLONEL MORNANE: I understand that
19 is so, your Honor. I understand that "Military Affairs
20 Bureau" can be -- is sometimes translated as "War
21 Service Bureau"; and "War Service Bureau" -- "War
22 Service Section" as "Military Affairs Section."

23 MR. FREEMAN: If the Court please, that is
24 a poor translation. In October, 1941, he became
25 head of the Military Affairs Section in the Military

1 Affairs Bureau; in April, 1942, he became Chief of
2 the Military Affairs Bureau, never served in the
3 War Service Bureau. It is entirely different. They
4 are two separate bureaus. TANAKA was head of the
5 War Service Bureau.

6 THE PRESIDENT: Document No. 2774 is ad-
7 mitted on the usual terms with the correction just
8 noted.

9 CLERK OF THE COURT: Prosecution's document
10 No. 2774, which has received exhibit No. 2336 and
11 exhibit No. 2336-A is now admitted according to
12 order of the Court.

13 LIEUT. COLONEL MCNANE (Reading): "I believe
14 that the people must, to a certain degree, be made
15 to thoroughly understand the gist of how this Greater
16 East Asia War is being directed, what the outcome of
17 its progress will be, as well as the concrete per-
18 spective of its development, and to thereby consolidate
19 their faith in certain victory arising therefrom.
20

21 "The war will be fought through until both
22 the United States and Britain are brought down to
23 their knees."

24 THE PRESIDENT: I desire now to refer to the
25 question of how far answers made by accused when
interrogated could be used against other accused.

1 I refer to page 2782 of the record. In
2 answer to an objection by Mr. Logan, I stated:

3 "Ordinarily, it would be evidence only
4 against the accused who made the admission. I have
5 no doubt about that. I am not prepared to state
6 the decision of the Tribunal without consulting all
7 of" the members. "I do not know to what extent they
8 will be prepared to accept ARAKI's statement as
9 evidence against all of them. But we must hear it
10 as evidence against ARAKI. Whether it will be
11 extended to other accused remains to be determined."

12 At page 2807 Mr. McManus brought the matter
13 up again; and in reply to him, I said:

14 "The Tribunal has not yet decided that
15 question and may not decide it until it is considering
16 the whole of the evidence."

17 Then Mr. Logan at page 2898 again pressed
18 for a decision; and I said:

19 "I can give no undertaking, but I am pre-
20 pared to put the matter to my colleagues at a con-
21 venient time."

22 I am putting it -- I propose to put it this
23 afternoon.

24 Do you wish to say anything, Mr. Higgins?
25 I understand you do.

1 MR. HIGGINS: Mr. President, Members of
2 the Tribunal, we have offered in evidence from time
3 to time statements made by certain of the accused
4 during what we contend to be the life of the conspir-
5 acy. Under the general rules of evidence in conspir-
6 acy cases, such statements are not only evidence
7 against the person making them, but if they relate
8 to the conspiracy, they become evidence against all
9 members of the conspiracy. On the other hand, we
10 have offered in evidence statements by certain of
11 the accused made since hostilities ceased and the
12 conspiracy terminated. Under the general rules of
13 evidence in conspiracy cases, such statements are
14 evidence against the person making them only and
15 do not constitute evidence against their former
16 associates in the conspiracy. The prosecution does
17 not insist that there should be any relaxation or
18 broadening of these general rules in this case
19 unless expressly provided for in the Charter.

20 THE PRESIDENT: Mr. McManus.

21 MR. McMANUS: If your Honor please, I don't
22 see how at this time the Tribunal can admit statements
23 of an accused against other accused unless the Tribunal
24 has arrived at a predetermined decision that a
25 conspiracy existed.

1 THE PRESIDENT: Even then, it would not be
2 admissible against another accused in an ordinary
3 court.

4 If I understand you rightly, Mr. Higgins,
5 you are saying in effect, "Receive this evidence only
6 against the accused who made the answers and not
7 against the other accused."

8 MR. LOGAN: If the Tribunal please, I
9 believe Mr. Higgins has correctly stated the law,
10 and we press for a decision on the same basis.

11 THE PRESIDENT: Of course, there is nothing
12 in the Charter about it.

13 We take you as tendering these answers in
14 the course of interrogations by the prosecution for
15 the purposes of this trial as being evidence only
16 against the person who made the answer.

17 MR. HIGGINS: That is correct.

18 THE PRESIDENT: Naturally, we won't give
19 it any greater effect than the prosecution invites
20 us to give it. So the objections taken by Mr. Logan
21 and Mr. McManus are sustained.

22 Now there is another matter that we have to
23 discuss, the proposal to tender more evidence in
24 respect of the Russian case, about the further Russian
25 evidence.

1 I am not proposing to give any decision,
2 but I want some information. There is only one
3 prosecution here. It was different in Germany.
4 When the Chief Prosecutor closes the case, it is closed
5 for all nations. Do you suggest that the case should
6 be kept open until the Russian evidence is received?
7 That may be some considerable time.

8 MR. TAVENNER: My understanding of the motion
9 of the Russian Prosecutor was that the case be closed
10 at the time that the Chief of Counsel so announces
11 with the right to introduce the original documents
12 from which excerpts had been tendered at an earlier
13 stage of the trial and had been withdrawn because
14 of the need of the entire original document. Due to
15 the possibility that the motion may have gone beyond
16 my understanding of it, I think the Russian Prose-
17 cutor should be heard on it.

18 THE PRESIDENT: We think he should get that
19 opportunity.

20 Will you be ready tomorrow morning?

21 MR. TAVENNER: Yes, sir.

22 THE PRESIDENT: We will adjourn until half-
23 past nine tomorrow morning.

24 (Whereupon, at 1010, an adjournment was
25 taken until Friday, 24 January 1947, at 0930.)

24 Jan 47 ✓

24 JANUARY 1947

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O F
WITNESSES

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4111	2239		Extracts from Interrogation of General Akira MUTO, dated 19 April 1946		16117
4108	2240		Extract from Interrogation of General Akira MUTO, dated 15 April 1946 (corrected)	16150	16121
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4109	2241		Extract from Interrogation of General Akira MUTO, dated 16 April 1946 (corrected)	16150	16126
4109	2241-A		Excerpt therefrom		16150
2273	2242		Extract from Interrogation of General Akira MUTO, dated 22 April 1946 (corrected)	16150	16130
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2947	2243		Article from "The Japan Times & Mail" for Thursday 21 March 1940 (corrected)	16150	16137
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2925	2244		Affidavit of TANAKA, Shinichi		16141

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16A	2245		Memorandum of transmittal of the Report of the Investigation of the Doolittle Fliers sent by the Military Police Commander NAKAMURA, Akito, to Chief of Staff, General SUGIYAMA, dated 26 May 1942		16176
2534A	2246		News-story entitled "Conference is Held by Army Members of Supreme Council" - an Extract from "The Tokyo Nichi-Nichi" dated Tuesday, 1 July 1941		16178
2908	2247		News-story entitled "Awarding of Decoration to General SUGIYAMA and Others from Fuehrer Hitler" published in the Asahi Shimbun on 2 October 1942		16180
2774B	2248		Minutes of the Accounts Committee Meeting of The Diet on 10 February 1942 - Speech made by Defendant SHIMADA		16183
1532E	2249		Telegram from KURUSU, Nomura to Foreign Minister TOGO dated 26 November 1941		16196
2A	2250		Circumstances Under Which the Third KONOYE Cabinet Tendered Resignations		16198
1632W(3)	2251		Entry from Marquis KIDO's Diary dated 28 January 1932		16213
1632W(5)	2252		Extract from Entry from Marquis KIDO's Diary dated 17 May 1932		16215

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1632W(6)	2253		Extract from Entry from Marquis KIDO's Diary dated 18 April 1933		16216
1632W(9)	2254		Extract from Diary of Marquis KIDO's Diary dated 14 July 1937		16217
1632W(10)	2255		Extract from Entry from Marquis KIDO's Diary dated 27 October 1937		16218
1632W(11)	2256		Entry from Marquis KIDO's Diary dated 3 November 1937		16219
1632W(13)	2257		Entry from Marquis KIDO's Diary dated 16 November 1937		16220
1632W(14)	2258		Entry from Marquis KIDO's Diary dated 19 November 1937		16221
1632W(15)	2259		Extract from Entry from Marquis KIDO's Diary dated 21 December 1937		16222
1632W(16)	2260		Entry from Marquis KIDO's Diary dated 14 January 1938		16223
1632W(18a)	2261		Extract from Entry from Marquis KIDO's Diary dated 19 May 1938		16224
1632W(19)	2262		Entry from Marquis KIDO's Diary dated 9 August 1938		16225
1632W(21)	2263		Extract from Marquis KIDO's Diary dated 7 September 1938		16227
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1632W(24)	2265		Extract from Entry from Marquis KIDO's Diary dated 26 December 1938		16231
1632W(25)	2266		Entry from Marquis KIDO's Diary dated 29 December 1938		16232
1632W(26)	2267		Extract from Entry from Marquis KIDO's Diary dated 5 January 1939		16233
1632W(27)	2268		Entry from Marquis KIDO's Diary dated 31 March 1939		16234
1632W(28)	2269		Entry from Marquis KIDO's Diary dated 19 April 1939		16235
1632W(29)	2270		Entry from Marquis KIDO's Diary dated 2 May 1939		16235
1632W(30)	2271		Entry from Marquis KIDO's Diary dated 4 August 1939		16237
1632W(32)	2272		Extract from Entry from Marquis KIDO's Diary dated 28 August 1939		16240
1632W(33)	2273		Entry from Marquis KIDO's Diary dated 10 November 1939		16242
1632W(34)	2274		Extract from Entry from Marquis KIDO's Diary dated 10 May 1940		16246

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1632W(35)	2275		Extract from Entry from Marquis KIDO's Diary dated 26 May 1940		16247
1632W(31)	2276		Extract from Entry from Marquis KIDO's Diary dated 1 June 1940		16248
1632W(43)	2277		Extract from Marquis KIDO's Diary dated 21 September 1940		16250
1632W(45)	2278		Extract from Entry from Marquis KIDO's Diary dated 29 November 1940		16251
1632W(70)	2279		Extract from Entry from Marquis KIDO's Diary dated 25 September 1941		16253
1632W(73)	2280		Extract from Entry from Marquis KIDO's Diary dated 1 October 1941		16253
2155C	2281		Speech by ARAKI, Sadao, on the 1st Anniversary of the China Incident, printed in the Education Ministry Review of 1 July 1938		16255
2927	2282		Record by the 1st Demobilization Bureau re locations of certain formations of the Japanese Army on certain dates		16257
			<u>PROSECUTION RESTED</u>		16259

1 Friday, 24 January 1947

2 - - -

3
4 INTERNATIONAL MILITARY TRIBUNAL
5 FOR THE FAR EAST
6 Court House of the Tribunal
7 War Ministry Building
8 Tokyo, Japan

9 The Tribunal met, pursuant to adjournment,
10 at 0930.

11 - - -

12 Appearances:

13 For the Tribunal, same as before.

14 For the Prosecution Section, same as before.

15 For the Defense Section, same as before.

16 - - -

17 The Accused:

18 All present except OKAWA, Shumei, who is
19 represented by his counsel.

20 - - -

21 (English to Japanese and Japanese
22 to English interpretation was made by the
23 Language Section, IMIFE.)
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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now in session.

3 THE PRESIDENT: Major Moore.

4 LANGUAGE ARBITER (Major Moore): Mr. Presi-
5 dent, with the permission of the Tribunal we present
6 the following language corrections. As these have
7 already been distributed, only those items indicated
8 which affect the transcript will be read at this
9 time.

10 Record page 15,806: Line 1, substitute
11 "of" for "from"; line 2, delete "Expenditure"; line
12 9, substitute "of" for "from"; line 10, delete
13 "expenditure."

14 Record page 15,811: Lines 6 and 7, delete
15 from "Manchurian" to "expenditures" and substitute
16 "Secret Funds of the Manchurian Incident Account."

17 Record page 15,812: Lines 3 and 4,
18 delete from "Manchurian" to "Expenditures" and
19 substitute "Secret Funds of the Manchurian Incident
20 Account."

21 Exhibit 2214, record page 15,815: The
22 names found in this document are in the original
23 German.

24 Record page 15,817: Lines 15 and 16,
25 delete translator's note.

1 Exhibit 2215, record page 15,822: Line
2 15, substitute "substantially along" for "fairly
3 strongly in."

4 Record page 15,823: Line 17, substitute
5 "the ideal" for "your ideals."

6 Record page 15, 824: Line 6, delete "what
7 you would say."

8 Record page 15,825: Line 24, substitute
9 "necessarily" for "by all means."

10 Mr. President, we have a few more items
11 to present to the Tribunal, if the Tribunal please.

12 Record page 14,386: Line 22, there appear
13 the words "was KIMURA War Minister." This phrase
14 was put into Japanese by the interpreter so that
15 the question would mean "was KIMURA acting for
16 the War Minister."

17 The Tribunal is asked to take note of this
18 point.

19 Exhibits 270 and 2235, two translations
20 of the same original Japanese, have been referred
21 to the Arbitration Board. From a spot check we
22 find that either translation is acceptable. But
23 since exhibit 2235 is a slightly more exact render-
24 ing we recommend that it be accepted as the official
25 translation.

1 THE PRESIDENT: Thank you, Major. Those
2 corrections will be made.

3 Mr. Tavenner.

4 MR. TAVENNER: General Vasiliev is here
5 this morning and would like to make a statement.

6 THE PRESIDENT: General Vasiliev.

7 MAJOR GENERAL VASILIEV: If the Court
8 please, the gist of our motion made in court on
9 January 17 is as follows:

10 During the presentation of our evidence in
11 the prosecution case we cancelled temporarily some
12 of the documents on various matters and we did not
13 present them because we did not have the documents
14 in due form.

15 Mr. President suggested that we present
16 the whole evidence dealing with the matter later.
17 On this ground Minister Golunsky said we should
18 omit this group of documents with the understanding
19 that we should have an opportunity of presenting
20 them at a later date.

21 I respectfully invite the Tribunal's
22 attention to pages 7748 and 7749 of the record of
23 October 15, 1946. I am informed that these
24 documents have now been found and will be sent to
25 us from Moscow at the end of January, after having

1 been put in due form, which means that we shall
2 get them in the middle of February.

3 This is probably connected with the fact
4 that during the war the archives were transferred
5 deep into the country and are now being trans-
6 ferred back, which makes it hard to use them.

7 I am speaking of several documents deal-
8 ing with subversive activities of the Japanese on
9 the Chinese Eastern railroad, with an undeclared
10 war of aggression waged in the Nomongan area, with
11 subversive activities of the Japanese against the
12 USSR which were carried on in the Far East, and
13 with the preparation of war against the USSR.

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1 I deemed it my duty to inform the Tribunal
2 about this in order to leave no doubt in the minds
3 of the Tribunal.

4 We have no intention of holding open the
5 prosecution case until the Russian documents arrive.
6 If that was the understanding of the Court we pro-
7 bably did not quite clearly express our opinion.

8 As I understand it some of these documents
9 may be presented in the course of the cross-examination
10 of the accused, while the others may be presented in
11 rebuttal.

12 I, however, will be glad to follow any
13 ruling of the Court on that matter. Withdrawing my
14 motion on this point, I request the Tribunal to take
15 my today's statement into consideration.

16 THE PRESIDENT: This application is
17 unnecessary so far as the documents in question can be
18 got in during cross-examination or by way of rebuttal.
19 However, no doubt you are not sure about being able
20 to get in any document that way, and this application
21 is practically necessary. On this matter we are, of
22 course, bound by the Charter but not by any technical
23 rules.

24 Do I understand that the new documents will
25 be in substance the same as those already before the

1 Court?

2 MAJOR GENERAL VASILIEV: Yes, your Honor,
3 in substance they will be the same.

4 THE PRESIDENT: The defense know what the
5 new documents will be, in substance?

6 I must take the word of the Russian prosecutor
7 that the documents are in substance the same, those
8 already before the Court and those proposed to be
9 tendered later.

10 Our whole purpose must be to insure that the
11 defense are not prejudiced in any way. They will not
12 be prejudiced if they move this Court on the assumption
13 that the fresh documents will be admitted later if
14 the Charter permits. I come to no conclusion about
15 that without consulting my colleagues.

16 MAJOR GENERAL VASILIEV: Your Honor, we will
17 be glad to follow any ruling of the Court on that
18 matter as to the possible time of presentation of these
19 fresh documents.

20 MR. LOGAN: If the Tribunal please.

21 THE PRESIDENT: Mr. Logan.

22 MR. LOGAN: If my recollection is correct,
23 there are a number of documents which were in evidence
24 tentatively as offered by the Russian prosecutors.
25 There were also a number of documents which were not

1 permitted to be introduced in evidence, were merely
2 marked for identification. We do not know without
3 further reference to the record and a list from the
4 Russian prosecutors as to which documents they are
5 referring on this motion.

6 In any event, they have had three months
7 since this Court made its ruling with respect to all
8 those documents to get them here. In our motions to
9 dismiss we have taken the record as it exists today,
10 and we see no reason why the prosecution should be
11 permitted to introduce more documents on the defendants'
12 case. When they rest, they should rest for all
13 purposes.

14 MAJOR GENERAL VASILIEV: I really don't
15 know to what documents my learned colleague refers.
16 All our documents were admitted in evidence and we
17 have strictly followed all rulings of the Court and
18 have not violated them so far and have no intention
19 of doing it in the future.

20 As far as the presentation of fresh documents
21 is concerned, we hope that it will be possible to do
22 in the course of the cross-examination of the accused
23 or in rebuttal; and I am quite satisfied with the
24 remarks Mr. President made on that matter.
25

THE PRESIDENT: The Tribunal will consider the

1 matter.

2 Mr. Higgins, is Mr. Carr in the court?

3 MR. HIGGINS: We will have him sent for,
4 Mr. President.

5 THE PRESIDENT: He moved a motion on which
6 the Court has come to a decision, and I wish to give
7 the decision.

8 MR. HIGGINS: We have sent for him, Mr.
9 President.

10 THE PRESIDENT: Well, he may take some time
11 to get here, so you had better proceed with the presen-
12 tation of your evidence.

13 MR. HIGGINS: Mr. Lopez will proceed for
14 the prosecution.
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THE PRESIDENT: Mr. Lopez.

MR. LOPEZ: If the Tribunal please:

We offer in evidence IPS document No. 4111 which contains extracts from the 19 April 1946 interrogation of the defendant MUTO, which shows his admission of the important positions he occupied in the Japanese Government.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Prosecution's document No. 4111 will receive exhibit No. 2239.

(Whereupon, the document above referred to was marked prosecution's exhibit No. 2239 and received in evidence.)

MR. LOPEZ: From that document we read the entire excerpt:

(Reading): "Q. General MUTO, would you please give us your official office from 1926 up until your appointment as Chief of the Military Affairs Bureau?

"A. In March 1926 I entered the Department of the Inspector General of Military Education, remaining there until December of 1929. I entered the Department as Captain, and in 1928 became a major. Then until December of 1930, I was a student in the Army War College. I was then with the General Staff, G-2, until

1 March of 1934. I was promoted to Lieutenant Colonel
2 in 1932.

3 "Q. G-2? What is that?

4 "A. Intelligence. I then went to the First
5 Infantry Regiment (Tokyo) and remained there until
6 March of 1935. I was transferred to the War Depart-
7 ment Military Affairs Bureau, remaining there until
8 June of 1936. From June of 1936 until March of
9 1937, I was a member of the staff of the Kwantung
10 Army. In 1936 I was promoted to Colonel. March of
11 1937 until November of the same year I was attached
12 to G-3 (operations) in the Tokyo General Staff.
13 From November 1937 until July 1938, I was the Adju-
14 tant of the General Staff of the Central China
15 Expeditionary Army. From July of 1938 until October
16 of 1939, I was the Adjutant of the General Staff with
17 the North China Area Army. In 1938 I became major
18 general. In October of 1939 I was appointed Chief
19 of the Military Affairs Bureau.

20 "Q. Then in April 1942 you left your office
21 as Chief of the Military Affairs Bureau and what
22 was your next position?

23 "A. I became Commander of the KONOYE Division
24 (Sumatra.)

25 "Q. How long were you there?

1 "A. I remained in Sumatra from 1942 until
2 October of 1944. Then in October 1944 I went to
3 the Philippines as Chief of Staff for the 14th Area
4 Army. In 1942 I became lieutenant general. In
5 September 1945, I was taken prisoner at the surrender.

6 "Q. General, from March 1937 to November 1937,
7 were you Chief of the Operations Section in the
8 General Staff here in Tokyo?

9 "A. Yes. I was not the Chief of Operations.
10 I was attached to Operations.

11 "Q. Weren't you subsequently appointed Chief
12 of the Operations Section?

13 "A. I was Chief of the Operations Section of
14 G-3 (Operations and Planning) and under that I was
15 Chief of Operations.

16 "Q. General, in any operation by the Army,
17 rather detailed plans have to be made before hand,
18 do they not?

19 "A. Ordinarily operational plans are drawn up
20 every year, however in case of an emergency, plans
21 are drawn up immediately.

22 "Q. General, what plans were drawn yearly?

23 "A. At that time, the annual plans involved
24 Northern Russia and China.

25 "Q. What part of China, General?

1 "A. North and Central China operations.

2 "Q. What were the plans against Russia?

3 "A. The plans involved defense in case of
4 Russian attack.

5 "Q. At what location would your defense be?

6 "A. Along the Manchurian borders.

7 "Q. Northern Manchuria?

8 "A. Yes.

9 "Q. Manchuria was a pretty good buffer against
10 Russia for Japan?

11 "A. It was intended as a buffer area.

12 "Q. Those plans were drawn yearly, is that
13 correct, General?

14 "A. These plans were reviewed annually, as done
15 by any staff.

16 "Q. You were on the staff in 1931 and 1932,
17 General?

18 "A. Yes."

19 We introduce in evidence IPS Document No.
20 1408--

21 THE PRESIDENT: Mr. Carr is here now.

22 MR. LOPEZ: Mr. Comyns Carr.

23 THE PRESIDENT: Mr. Carr, the other day
24 you moved the Tribunal to strike out of Count 25
25 the name TOGO and to insert in lieu thereof the name

1 TOJO. The application is granted so far as it
2 extends to the striking out of the name TOGO, but
3 refused so far as it includes the striking out --
4 the insertion of the name TOJO.

5 Mr. Lopez.

6 MR. LOPEZ: Shall I proceed, Mr. President?

7 THE PRESIDENT: Yes.

8 MR. LOPEZ: We introduce in evidence IPS
9 document No. 4108 which is an extract from the 15
10 April 1946 interrogation of the defendant MUTO,
11 to show his admission regarding the relation between
12 the Military Affairs Bureau and the Army General
13 Staff, his function as liaison between the War Ministry
14 and Navy Ministry and his intervention in the drafting
15 of the Imperial Rescript declaring war on the United
16 States.

17 THE PRESIDENT: Admitted on the usual terms.

18 CLERK OF THE COURT: Prosecution's document
19 No. 4108 will receive exhibit No. 2240.
20

21 (Whereupon, the document above re-
22 ferred to was marked prosecution's exhibit
23 No. 2240 and received in evidence.)

24 MR. LOPEZ: We read that document in its
25 entirety:

(Reading): "Page 11.

1 "Q. Is it not true that HOSHINO and OKA, as well
2 as yourself, supported the decision of the Liaison
3 Conference to wage war against the United States?

4 "A. You can call it that, although it wasn't
5 our position to decide one way or the other.

6 "Q. You did nothing on your part to avert the
7 decision to wage war, did you?

8 "A. I did not oppose it.

9 "Page 17

10 "Q. Isn't it true that the Military Affairs
11 Bureau is consulted by the Army General Staff for
12 its advice and also consultation in regard to the
13 necessary preparations to wage war?

14 "A. It may be put that way, but what actually
15 happens is that the General Staff says such and such
16 will be necessary and we advise them whether it can
17 be procured or not.

18 "Q. Who was the higher categorical authority
19 in the scheme of things in Japan, the Chief of the
20 General Staff or the War Minister himself?

21 "A. The Chief of the General Staff.

22 "Q. Is it not true that the General Staff always
23 acquainted the War Ministry with any operations in
24 order that the War Ministry could formulate a sound
25 policy?

1 "Page 18

2 "A. Yes.

3 "Q. And is it not also true that in order to
4 accomplish effectively a given mission, that the
5 Navy Ministry and the War Ministry establish a
6 Liaison in order to coordinate their efforts?

7 "A. Yes.

8 "Q. Was not OKA of the Navy Affairs Bureau and
9 you of the Military Affairs Bureau the Liaison between
10 the army and the navy?

11 "A. Yes.

12 "Questions by Mr. Lopez:

13 "Q. And precisely OKA and you were present all
14 the time in the Liaison Conference in order to avoid
15 any misunderstanding of action and to coordinate the
16 efforts of both the army and the navy, together with
17 the Minister of Finance, the Foreign Minister, the
18 Minister of State, and the Prime Minister himself?

19 "A. Yes.

20 "Q. And during your incumbency as Chief of
21 the Military Affairs Bureau, you were closely
22 associated with OKA by the very nature of both of
23 your offices--liaison between the Army and the Navy?
24

25 "A. Yes.

"Page 20.

1 "Q. You had a hand in preparing the declaration
2 of war?

3 "A. Yes.

4 "Q. As a matter of fact, you collaborated in
5 the preparation of that declaration of war with
6 Mr. TOGO and OKA?

7 "A. The Cabinet--that is to say, Minister TOGO
8 wrote one up and so did OKA, and I also prepared a
9 draft. The three of them were put together and the
10 final one was decided upon.

11 "Q. How many hours leeway did you give the
12 United States to answer the ultimatum before attacking?

13 "A. The time was decided upon by the Navy
14 General Staff. I do not recall what time limit
15 we gave the United States after the ultimatum?

16 "Q. You mean to say that the Cabinet gave the
17 General Staff that power?

18 "A. The Navy General Staff figured out when
19 their operations would take place and then notified
20 the Liaison Conference of the Minus H hour at which
21 the United States could be notified.

22 "Q. But the fact of the matter was that you,
23 Mr. TOGO and Mr. OKA collaborated in the drafting
24 of the final note?
25

"A. Yes, and the final dispatching of the

1 communication was left to the Foreign Office.

2 "Q. Let us get this straight for the sake of
3 posterity. You prepared your own draft; Mr. TOGO
4 also prepared his own draft; and Mr. OKA also prepared
5 his. After each one of you prepared an individual
6 draft, the three of you huddled together and drafted
7 the final draft, is that it?

8 "A. I am sorry. What I thought you meant by
9 declaration of war was the speech which the Emperor
10 gave. This was prepared by me and the others.
11 The actual ultimatum was drafted by the Foreign
12 Office.

13 "Q. You mean to say that the Imperial Rescript
14 was prepared by you and others?

15 "A. Yes. That was the thing that we drew up
16 and brought before the Liaison Conference where changes
17 were made and the final draft was settled upon.

18 "Page 21

19 "Q. When the document which you termed to be an
20 ultimatum to the United States, which you claim to
21 have been prepared only by the Foreign Minister, was
22 that document ever shown to the War Ministry or to
23 you for consultation as to whether it was agreeable
24 to your office?

25 "A. Yes.

1 "Q. Of course, it was agreeable to you before
2 it was sent, otherwise it would not have been sent?

3 "A. Yes.

4 "Q. You practically OK'd it?

5 "A. Yes.

6 "Q. Did you offer any suggestion, correction
7 on the draft as submitted to you by the Foreign
8 Ministry?

9 "A. I have no recollection.

10 "Q. But you recall that you approved it?

11 "A. Yes."

12 We offer in evidence IPS document No. 4109,
13 which is an extract from the 16 April 1946 interro-
14 gation of the defendant MUTO, to show his admission
15 that he agreed with all the policies of the defendant
16 TOJO when he was Premier of Japan, and his role in
17 helping draft the Imperial Rescript which declared
18 war against the United States.

19 THE PRESIDENT: Admitted on the usual terms.

20 CLERK OF THE COURT: Prosecution's document
21 No. 4109 will receive exhibit No. 2241.

22 (Whereupon, the document above re-
23 ferred to was marked prosecution's exhibit
24 No. 2241 and received in evidence.)

25 MR. LOPEZ: We read this document in its

1 entirety:

2 (Reading) "Page 1.

3 "Q. General, you agreed with TOJO on all his
4 policies since the time that TOJO became Premier
5 in October 1941 and up to the time you resigned as
6 Director of the Military Affairs Bureau, did you
7 not?

8 "A. The Cabinet was unanimous. I only recollect
9 matters up to April 1942. After this date I know
10 nothing because I was sent to the front.

11 "Q. When your answer is that you did agree
12 completely with TOJO?

13 "Page 2.

14 "A. Yes.

15 "Q. And that is particularly with reference to
16 the relations with the United States and Great Britain?

17 "A. Yes.

18 "Page 4.

19 "Q. Going back to the Imperial Rescript which
20 you said you had a hand in its preparation, can you
21 tell us who were the others who helped prepare the
22 Imperial Rescript declaring war against the United
23 States?

24 "A. OKA, HOSHINO and myself prepared the draft
25 of the Imperial Rescript to be handed to the Liaison

1 Conference for approval. This was altered considerably
2 by the Liaison Conference.

3 "Q. OKA, HOSHINO and yourself were the Committee
4 created to make the draft?

5 "A. Yes.

6 "Q. Admiral OKA represented the Navy, Mr.
7 HOSHINO represented the Liaison Conference, and
8 yourself represented the War Ministry?

9 "A. I remember that there was a representative
10 from the Foreign Office who also participated. I
11 think his name was YAMAMOTO.

12 "Q. But you represented the Army, Mr. OKA
13 represented the Navy, and Mr. HOSHINO as Chief
14 Secretary of the Liaison Conference represented the
15 Liaison Conference.

16 "Page 5.

17 "A. Yes.

18 "Q. The Committee of which you were a member
19 prepared a draft and submitted the draft to the
20 Liaison Conference.

21 "A. Yes, this was submitted to the Liaison
22 Conference.
23
24
25

1 MR. LOPEZ: We tender in evidence IPS
2 Document No. 2273, which is an extract from the
3 April 22, 1946, interrogation of the defendant MUTO,
4 to show his admission that he was the deputy chief
5 of staff of General MITSUI during the Rape of Nank-
6 ing and General YAMASHITA'S chief of staff during
7 the Rape of Manila, that he and other Japanese
8 officers had heard of a book printed in America
9 denouncing the Japanese armed forces for the Rape
10 of Nanking, that it was in 1915 in Siberia that
11 Japanese troops showed for the first time "tenden-
12 cies toward atrocity" involving "confiscation, or
13 rather, stealing, rape, robbery, and such.

14
15 THE PRESIDENT: You do not need such a
16 lengthy explanation of such a short document. You
17 have practically said everything that is in the docu-
18 ment.

19 MR. LOPEZ: Mr. President, the document
20 that I will read is quite lengthy, and if I ever
21 did it, it was to guide the Court.

22 THE PRESIDENT: Yes. Read it.

23 MR. LOPEZ: We read the document in its
24 entirety.

25 THE PRESIDENT. Admitted on the usual terms.

1 CLERK OF THE COURT: Prosecution's docu-
2 ment 2273 will receive exhibit No. 2242.

3 (Whereupon, the document above refer-
4 red to was marked prosecution's exhibit No.
5 2242 and received in evidence.)

6 MR. LOPEZ: We will read the document in
7 its entirety.

8 "Page 7:

9 "Q Your forces in Nanking were not being pressed
10 by the Chinese forces in any way -- so much so that
11 you were able to celebrate the taking over, is it
12 not?

13 "A Japanese troops waited outside the city
14 wall, and leaflets were dropped ordering the Chinese
15 to surrender. Such orders were not obeyed; there-
16 fore, the Japanese troops entered the city by force.

17 "Q How long did it take them to do it?

18 "A Two days, after the actual bombardment
19 commenced.

20 "Q Do you attribute it to coincidence the
21 fact that you were also the Deputy Chief of Staff
22 of General YAMASHITA when the rape of Manila hap-
23 pened?

24 "A In the case of Nanking, two or three bat-
25 talions were to enter the city. However, the whole

1 army entered within the walls, thereby resulting
2 in the rape of Nanking. In the case of Manila,
3 General YAMASHITA desired to avoid fighting within
4 the city. However, certain elements of the navy
5 and the army outside of General YAMASHITA's command
6 remained in the city, thereby forcing American
7 forces to attack the City of Manila.

8 "Q Is fighting in the City of Manila any
9 justification for raping of the women of Manila by
10 your soldiers?

11 "A Such is not justifiable.

12 "Q Is fighting in the City of Manila any
13 justification for your soldiers of killing thousands
14 of civilians by burning them with gasoline or by
15 shooting them with machine guns, including women and
16 small children?

17 "A Such is definitely not justifiable.

18 "Q Can you explain the behavior of these troops
19 in the light of education given by the army or by
20 the Government of Japan?

21 "A I regret that you ask such a question.
22 There is no army in the world or government in the
23 world that will instruct their people to shoot or
24 kill children or civilian population.
25

1 "Q Has it not troubled your conscience to find
2 that so many innocent women and children were either
3 killed or raped, either in China or the Philippines?

4 "A After the atrocities in Nanking and Manila,
5 and being a member of the General Staff at both
6 incidents, I felt that something was lacking in the
7 Japanese military education.

8 "Q What do you think is lacking in military
9 education?

10 "A The troops that committed the atrocities
11 in Nanking and Manila were men mobilized in a hurry,
12 and they were not trained properly in military
13 education.

14 "Q When did you come across that book written
15 by an American on the rape of Nanking?

16 "A I have not seen the book, but I merely
17 heard that such a book was printed in America.

18 "Q You were told about it in 1937 - 1938?

19 "A I believe it was in 1938.

20 "Q Were you not ashamed as a professional
21 soldier that such a state of things should find it-
22 self in a book indicting against your army?

23 "A I felt that it was a shame to the Japanese
24 troops.

25 "Q Did not the high ranking Japanese officers

1 discuss the matter and find out in what way you could
2 improve the situation so that similar incidents
3 would not be repeated in the future?

4 "A There were no formal gatherings just to
5 discuss such matters, but among the officers there
6 were individual discussions.

7 "Q Did you not feel at the time in 1938 that
8 there must be something wrong with the information
9 section of your army? Why was it that in the case
10 of Nanking you only knew about ten or twenty inci-
11 dents when the book mentioned written by the Ameri-
12 can, 'The Rape of Nanking', the whole civilian popu-
13 lation?

14 "A As I have stated before, I have only heard
15 of between ten to twenty incidents. How many inci-
16 dents were reported within the two armies I do not
17 know.

18 "Page 10:

19 "Q When you heard in 1938 about the book
20 mentioning about the rape of Nanking, did you not
21 discuss the matter informally with other officers
22 in a higher echelon?

23 "A There were no discussions.

24 "Q You mentioned about informal discussions
25 about atrocities committed in China. Of what did

1 those discussions consist?

2 "A There were no discussions concerning the
3 rape of Nanking in regards to the published book.
4 However, because the Japanese troops were misbehav-
5 ing, there were informal discussions.

6 "Q What remedies were suggested in those dis-
7 cussions?

8 "A During the China-Japanese and the Russo-
9 Japanese War such atrocious acts were not known among
10 the Japanese Army. It was about 1915 when Japanese
11 troops were sent to Siberia such tendencies toward
12 atrocity came into the limelight, thereby proving
13 that the quality and character of the Japanese is
14 slowly deteriorating. Therefore, education in
15 homes and schools must be changed to meet the situa-
16 tion. Such discussions were held informally.

17 "Q Many officers like you were worried about
18 such atrocities because it reflected adversely on
19 the honor and the prestige of the Japanese Imperial
20 Forces, is it not?

21 "A They were very much worried.

22 "Q You were worried yourself so that when the
23 book appeared you tried to investigate what you
24 could do in order to remedy the situation -- the
25 book on the rape of Nanking?

1 "A For a long time I had been associated with
2 the Inspector General Military Training Department,
3 and I was very much interested in the proper educa-
4 tion of the army.

5 "Q What reforms did you introduce in the train-
6 ing and education of the young men who were about to
7 go into the army so that those weaknesses which you
8 noticed to have cropped up after the Siberian ex-
9 pedition in 1915 could be corrected?

10 "A At the time when Japanese troops were sent
11 to Siberia, I was only a Second Lieutenant, so even
12 if I did notice that I couldn't do anything about
13 it.

14 "Q But when you had influence with the office
15 of the Adjutant General who was in charge of mili-
16 tary training, what did you do in order to strengthen
17 that weakness which you noticed way back in 1915?

18 "A Even after I became Lieutenant General I
19 could not do anything as I was not a divisional
20 commander. In order to put anything into force one
21 has to be a divisional commander.

22 "Q How about when you became Chief of the
23 Military Affairs Bureau?

24 "A The Chief of the Military Bureau is only
25 a staff under the Minister of War, and he has no

1 power to give out orders on such.

2 "Q If you were a divisional commander or if
3 you had been in charge of the training or education
4 in the schools, you would have given out orders to
5 the schools that that weakness which you noticed
6 since 1915 was strengthened and fortified?

7 "A Yes. (witness laughs)

8 "Q What happened in Siberia which started the
9 deterioration of the character of the Japanese
10 soldier?

11 "A Confiscation, or rather (tealing, rape,
12 robbery, and such."

13 MR. LOPEZ: We offer in evidence IPS Docu-
14 ment No. 2947 which is a news story entitled "MUTO
15 Fleys Bureaucrats and Parties," published in "The
16 Japan Times & Mail" for March 21, 1940, on pages 1
17 and 2, to show the importance of the high office
18 occupied by defendant MUTO as Director of the
19 Military Affairs Bureau, and to --

20 THE PRESIDENT: Admitted on the usual
21 terms.

22 MR. LOPEZ (continuing): further show his
23 totalitarian views which included favoring dissolu-
24 tion of political parties and suggesting that national-
25

1 ism is a better name for totalitarianism of European
2 conception as guiding principle of the Japanese
3 nation.

4 CLERK OF THE COURT: Prosecution's docu-
5 ment No. 2947 will receive exhibit No. 2243.

6 (Whereupon, the document above refer-
7 red to was marked prosecution's exhibit No.
8 2243 and received in evidence.)

9 THE PRESIDENT: What is the delay due to?
10 Is there something wrong with the IBM?

11 MR. LOPEZ: We will read the first six
12 paragraphs from page 1 of this document:

13 "MUTO FLAYS BUREAUCRATS AND PARTIES.
14 "Revers Army Wants Political Organizations
15 to Reconsider Attitudes.

16 "Tokyo, Wednesday, March 20, 1940.

17 "Major-General Akira MUTO, Director of the
18 Military Affairs Bureau of the War Office, Tuesday
19 afternoon expressed straightforwardly the opinion
20 of the Army favoring dissolution of political
21 parties if they seek to further their interests
22 alone under the current emergency.

23 "General MUTO'S declaration came in answer
24 to interpellations put to War Minister General
25 Shunroku HATA at a joint meeting of sub-committees

1 of the House of Representatives in charge of dis-
2 cussing settlement of accounts of State budget.

3 'Bunhei HAMACHI, Seiyukai KUHARA, Faction
4 M.P., put interpellations to War Minister HATA on
5 the following points:

6 "1. What does the Army think of the present
7 social system?

8 "a. Don't you think that the Army commits
9 itself to the field of politics and economy too much?

10 "3. Don't you think that the Army, bureau-
11 crats and political parties ought to proceed hand in
12 hand to accomplish the objective of the 'sacred war'?"

13 MR. LOPEZ: Also from page 2 of this docu-
14 ment we read paragraphs 4, 5, and 6, as follows:

15 "Referring to totalitarianism of European
16 conception, General MUTO said that 'nationalism'
17 is considered a better name for what is believed to
18 be the guiding principle of the Japanese nation.

19 "In this connection, General MUTO quoted
20 the speech delivered by General Juichi TERAUCHI
21 before the Diet when he was War Minister that ours
22 should be totalitarianism completely nationalist
23 in principle and faith.

24 "If the whole nation carried everything
25 before the State,' General MUTO further said, 'the

1 full power of the State will be displayed.' "

2 MR. LOPEZ: If your Honor please, we offer
3 as our next witness Shinichi TANAKA.

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1 S H I N I C H I T A N A K A, a witness called by
2 the prosecution, being first duly sworn, testi-
3 fied through Japanese interpreters as follows:

DIRECT EXAMINATION

BY MR. LOPEZ:

4
5
6 Q Will you kindly give us your full name,
7 age, and address, and occupation if any?

8 A TANAKA, Shinichi, age 54, No. 2040 Tsuizawa-
9 mura, Miye County, Miye Prefecture. Address 2042.

10 Q I show you IPS document No. 2925 entitled
11 Affidavit. Will you kindly tell us if you have read
12 its contents?

13 A I have read it.

14 Q Are the facts recited in that affidavit true
15 and correct?

16 A Yes.

17 Q Did you make that affidavit voluntarily with-
18 out any compulsion, intimidation, or any pressure brought
19 to bear on you?

20 A Yes, you are correct.

21 MR. LOPEZ: At this juncture, Mr. President,
22 we offer in evidence IPS document No. 2925 identified
23 by the witness Sinichi TANAKA as his affidavit.

24 THE PRESIDENT: Admitted on the usual terms.

25 CLERK OF THE COURT: Prosecution's document

TANAKA S.

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1 2925 will receive exhibit No. 2244.

2 (Whereupon, the document above re-
3 ferred to was marked prosecution's exhibit
4 No. 2244 and received in evidence.

5 MR. LOPEZ: We will read the affidavit in
6 its entirety:

7 "I, Shinichi TANAKA, make oath and say as
8 follows:

9 "Q Were you once Chief of the First Section
10 (Operations) of the General Staff of the Japanese
11 Imperial Army?

12 "A Yes, I was such from October 12, 1940 to
13 December, 1942.

14 "Q What was your rank when you assumed office
15 for the first time?

16 "A I was Major General but was promoted to
17 Lieutenant General in October, 1941.

18 "Q Do you know the defendant Akira MUTO?

19 "A Yes. When I was Chief of the First Section
20 (Operations) under General SUGIYAMA, General MUTO
21 was Chief of the Military Affairs Bureau. He was one
22 of the liaison men who did most of the work between
23 the War Ministry and the Army General Staff.

24 "Q As liaison man what was the nature of his
25 work?

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DIRECT

1 "A At the General Staff office the work was
2 mostly paper work concerning mobilization, organiza-
3 tion, operations, strategy and tactics. The Army
4 General Staff has nothing to do with matters involv-
5 ing politics, foreign relations and finance.

6 "Q In the decision to undertake operations on
7 Indo-China in 1941, what had the War Ministry to do
8 with that decision?

9 "A In matters like that, military policies go
10 to the General Staff from the War Ministry, but it does
11 not mean that the War Ministry makes the decision.
12 First of all the Prime Minister, the Foreign Minister,
13 the Minister of War, the Minister of Navy and the Chief
14 of the Army General Staff and the Chief of the Navy
15 General Staff, hold a preliminary meeting and arrive
16 at a decision of national policies. The decision of
17 the Cabinet is handed down to the War Ministry which
18 in turn contacts the General Staff on matters which
19 concern the General Staff such as military operations.

20 "Q Who is sent down to the Army General Staff
21 from the War Ministry in order to convey the policy
22 laid down or the decision made?

23 "A In such important matters as the national
24 policy regarding Indo-China, the War Minister would
25 go directly to the Chief of Staff, but in minor

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DIRECT

1 details the War Minister approaches the Chief of the
2 Military Affairs Bureau and he in turn will make
3 connections with the General Staff.

4 "Q Who would follow up the order or the decision
5 arrived at at the conference which is handed down to
6 the War Minister and which is passed on to the General
7 Staff?

8 "A The Chief of the General Staff will carry out
9 that part of national policy as far as operations are
10 concerned. The Chief of General Staff integrates the
11 national policy into operations and strategy.

12 "Q In what way does he carry out the order?

13 "A The Chief of the General Staff had been al-
14 ready included in the preliminary meeting so he knows
15 in general the over-all policies and operations. For
16 this reason, it is easier for him to integrate the
17 policies into the operations. After he comes back to
18 the General Staff office, he calls in the Vice Chief
19 of Staff and the four main assistants and he requests
20 the various assistants, after revealing his plans and
21 policies, to bring in various details to conform to his
22 plans. After such materials are gathered the Chief of
23 General Staff gives out the order for the actual
24 carrying out of the operation.

25 "Q Your section is in charge of operations and

TANAKA S.

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1 strategy?

2 "A Yes.

3 "Q As the Chief of the General Staff attends
4 the conference that makes the decision why is the need
5 for the War Minister to go over to the Chief of Staff
6 and hand him the orders?

7 "A The decisions arrived at the preliminary
8 meetings must be approved by the Cabinet in order to
9 make them legal and binding. Since the Chief of
10 General Staff does not know the decision of the Cabinet,
11 the War Minister contacts the Chief of General Staff.

12 "Q Once you have prepared the plans for opera-
13 tion, to whom do you submit them?

14 "A After the operational plans are completed,
15 they are presented to the Vice Chief of Staff. He
16 makes the necessary corrections and in turn delivers
17 them to the Chief of the General Staff.

18 "Q Once it is received by him, what does the
19 Chief of the General Staff do about it?

20 "A He makes the necessary corrections and
21 important matters are discussed with the War Minister.
22 It is shown to the War Ministry and if approved the
23 Chief of the General Staff will give out the orders
24 and if they are important orders, they are first shown
25 to the War Minister, who will sign it if he approves.

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1 "Q Following the Imperial Conference of 2 July
2 1941, do you recall if you were directed by General
3 SUGIYAMA to make operational study on a campaign
4 against Malaya, Java, Borneo, Bismarck, Dutch East
5 Indies and Philippines?

6 "A Yes.

7 "Q Following the Imperial Conference of 6
8 September 1941 do you remember if you were directed
9 by General SUGIYAMA to begin preparations for opera-
10 tions against those countries?

11 "A Yes, I was ordered to do so following the
12 Imperial Conference which was attended by KONOYE, TOJO,
13 OIKAWA, SUGIYAMA, TOYODA and NAGANO.

14 "Q Can you tell us if Generals TOJO, KIMURA and
15 MUTO had knowledge of these instructions by General
16 SUGIYAMA to you in September 1941?

17 "A Yes, for by the very nature of the rules and
18 practices governing the relationship between the War
19 Ministry, and the General Staff at the time, Generals
20 TOJO, KIMURA and MUTO had to know and did know of
21 those instructions. As I stated before, the paper work
22 for the preparation of the operation is done by the
23 General Staff, however, the actual preparation such
24 as supply and strength, etc., was carried on by the
25 War Ministry. Since General MUTO was Chief of the

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1 Military Affairs Bureau of the War Ministry expec-
2 tations for the preparation of the operation had to
3 be made to him by the General Staff. He was well
4 informed, especially on supply and money matters.

5 "Q Was it the duty of the General Staff to alert
6 the field commanders about the imminence of hostil-
7 ities?

8 "A If necessary, the field commanders were
9 alerted by the General Staff. It wasn't the duty of
10 my Section, it was more the duty of the Intelligence
11 Section.

12 "Q Following the Imperial Conference on 1 December
13 1941 were you directed on the next day by General
14 SUGIYAMA to draft an alert order to all commanding
15 generals of troops in the South Seas Areas that war
16 with the United States, England and Holland was
17 imminent and warning them that hostilities should
18 commence on X-Day?

19 "A I was directed by General SUGIYAMA to write
20 the order to the field commanders in the South Seas
21 so that in case war should break out they would be
22 ready. Actually, SUGIYAMA issued the order because
23 his signature was necessary to make the order valid
24 and effective; but before the order could be wired
25 to the various commanders in the South Pacific it also

TANAKA S.

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1 Military Affairs Bureau of the War Ministry explen-
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3 be made to him by the General Staff. He was well
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13 1941 were you directed on the next day by General
14 SUGIYAMA to draft an alert order to all commanding
15 generals of troops in the South Seas Areas that war
16 with the United States, England and Holland was
17 imminent and warning them that hostilities should
18 commence on X-Day?

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20 the order to the field commanders in the South Seas
21 so that in case war should break out they would be
22 ready. Actually, SUGIYAMA issued the order because
23 his signature was necessary to make the order valid
24 and effective; but before the order could be wired
25 to the various commanders in the South Pacific it also

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1 had to have the signature of approval of Generals
2 TOJO, KIMURA and MUTO in their respective capacities
3 as War Minister, Vice Minister of War and Chief of
4 the Military Affairs Bureau. It was the customary
5 rule in our office to obtain the signatures of the
6 War Minister, the Vice War Minister and the Chief
7 of the Military Affairs on those important orders
8 before they could be sent out.

9 "Q When were you so directed?

10 "A I am not sure, though I think it was
11 December 2nd or 1st when I was directed by General
12 SUGIYAMA to write and issue the order in his name.

13 "Q Was the alert order sent by wire to the
14 commanding generals of all troops of the South Seas
15 areas?

16 "A Yes, they were sent that day after it had
17 been signed by General SUGIYAMA.

18 "Q Did General SUGIYAMA tell you what day was
19 X-Day?

20 "A Yes, about 27th or 28th November 1941 he told
21 me that X-DAY would be December 8, 1941."

22 That is all for the witness.

23 THE PRESIDENT: We will recess for fifteen
24 minutes.

25 (Whereupon, at 1045, a recess was

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taken until 1100, after which the proceedings
were resumed as follows:)

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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now resumed.

3 THE PRESIDENT: Mr. Lopez.

4 MR. LOPEZ: If the Tribunal please, at the
5 suggestion of the Clerk of the Court and before the
6 defense will proceed on its cross-examination of my
7 witness, Shinichi TANAKA, I beg leave to offer to be
8 marked for identification only the whole interrogation
9 of the defendant MUTO, of April 1946, from which exhibit
10 2239 was extracted from.

11 We also offer for identification only the
12 whole interrogation of the defendant MUTO, of 15 April
13 1946, from which exhibit 2240 was extracted from.

14 We likewise offer for identification only,
15 the whole interrogation of defendant MUTO, of 16 April
16 1946, from which exhibit 2241 was extracted from.

17 And further offer for identification only
18 the whole interrogation of the defendant MUTO, of
19 22 April 1946, from which exhibit 2242 was extracted from.

20 THE PRESIDENT: You told us at the time, Mr.
21 Lopez, you were tendering the whole of the interrogation
22 in each case, although your document did not indicate it.

23 The document tendered for identification will
24 have the same number in each case as the excerpt. The
25 excerpt in each case will be renumbered as now, plus

TANAKA S.

1 the letter "A".

2 CLERK OF THE COURT: The record then will
3 show as corrected prosecution document No. 4108 will
4 receive exhibit No. 2240 for identification only and the
5 excerpt therefrom, bearing the same document number,
6 will receive exhibit No. 2240-A.

7 Prosecution's document No. 4109 will receive
8 exhibit No. 2241 for identification only and the excerpt
9 therefrom, bearing the same document number, will receive
10 exhibit No. 2241-A.

11 Document No. 2273 will receive exhibit No.
12 2242 for identification only and the excerpt therefrom,
13 bearing the same document number will be exhibit No.
14 2242-A.

15 Document No. 2947 will receive exhibit No.
16 2243 for identification only and the excerpt therefrom,
17 the same document number, will receive exhibit No. 2243-A.

18 Document No. 2925 will receive exhibit No.
19 2244.

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21 (Whereupon, the documents above
22 referred to were marked prosecution's ex-
23 hibit Nos. 2240 to 2243 for identification;
24 the excerpts therefrom being marked pros-
25 ecution's exhibit Nos. 2240-A to 2243-A
and received in evidence. Document No.

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1 2925 was marked prosecution's ex-
2 hibit No. 2244 and received in evidence.)

3 MR. LOPEZ: If your Honor please, our
4 witness is ready for any cross-examination.

5 THE PRESIDENT: Counsel OKAMOTO.

6 CROSS-EXAMINATION

7 BY MR. S. OKAMOTO:

8 Q In your affidavit, page one, answer to the
9 fifth question, you state that first of all the Prime
10 Minister, the Foreign Minister, the Minister of War,
11 the Minister of Navy and the Chief of the Army General
12 Staff and the Chief of the Navy General Staff called
13 a preliminary meeting. This sounds to be a new name
14 to me. Does it mean the liaison conference?

15 A It is a preliminary conference and is not a --
16 "preliminary" used as an adjective and this is not a
17 proper noun and it is a liaison conference.

18 THE INTERPRETER: I will repeat that. "This
19 merely denotes a preliminary conference with the word
20 'preliminary' used as an adjective and is not a proper
21 noun and it is a liaison conference."

22 Q Is the liaison conference not a preliminary
23 conference and is an independent conference?
24

25 A Liaison conference as I see it in order to
 make it legal and to empower it must, first of all,

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CROSS

1 require the meeting of the Cabinet.

2 Q But, in fact, are there any precedents or
3 examples of decisions reached at the liaison conference
4 being modified by Cabinet conferences?

5 A That, I do not know.

6 Q Then I shall change the subject.

7 Concerning the 12th question and answer of
8 your affidavit, in page two of the English affidavit --
9 fifth question and answer on page two of the affidavit.
10 By what you have stated here, do you mean that the power
11 to decide operational plans rests in the hands of the
12 Chief of the General Staff; is that what you mean?

13 THE INTERPRETER: The witness' answer: "That
14 is correct."
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1 Q But is it not a fact that the power of
2 decision which the Chief of General Staff is alleged
3 to possess is the prerogative of command, a secret
4 prerogative of command, which cannot be violated by
5 anyone and which must be respected and cannot be
6 violated by anyone? That is the custom in Japan, is
7 it not?

8 THE MONITOR: Just a minute, correction:
9 Will you strike out "secret" from the -- "secret"
10 prerogative.

11 MR. LOPEZ: Objection, your Honor, because
12 the question is very vague and not clear. I wish it
13 reworded and reformed.

14 THE PRESIDENT: The test is whether the
15 witness understands it. Do you understand the question,
16 Witness?

17 THE WITNESS: Yes, that question was rather
18 vague and abstract. If put to me more concretely I
19 may be able to answer more precisely.

20 MR. S. OKAMOTO: Then I shall try to put the
21 question in a concrete form.

22 Q Could the War Minister interfere with decisions
23 made by the Chief of General Staff; could he? What I
24 am trying to ask you is whether the highest power of
25 decision rested with the Chief of General Staff?

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1 A A nation's operational plan is based upon
2 that nation's national policy; however, the War
3 Minister is in charge of national defense policy and
4 the outline of that national defense also is under
5 the charge of the War Ministry. The matter over
6 which the Chief of the General Staff has charge is
7 national defense and operations. An operational
8 plan is completed only when a nation's national
9 policy and its national defense policy -- and its
10 national defense operations -- are coordinated and
11 integrated, so both in theory as well as in fact
12 there cannot be any operational plan which is
13 separated from national policy and national defense.

14 Q I understand that point already, therefore
15 I am asking you definitely about the employment of
16 armed forces and operations for national defense.

17 A If that is your premise, then if a nation
18 is to set up or formulate an operations plan it must
19 also take into consideration diplomatic policy which
20 is related to that matter, and also to formulate an
21 operations plan it is necessary to build up its
22 military manpower strength, the mobilization of its
23 military personnel, as well as preparations in matters
24 pertaining to materiel, equipment, and so forth;
25 thus materiel, personnel and budget necessary for

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CROSS

1 operations is in charge of the War Ministry, and if
2 I should add still further, it should be under the
3 charge of the cabinet or the government itself.
4 Therefore, an operations plan is built up or formulated
5 on the basis of the equipment and materiel, personnel
6 and money available and within the limits of the --
7 or within the scope of such materials available. The
8 Chief of the General Staff formulates the operations
9 plans and decides upon it.

10 Q What you have stated generally coincides
11 with the knowledge that we generally have. Mr.
12 Witness, you are trying to answer all at once all
13 of the questions I am trying to put to you. Then I
14 shall put the questions separately to you.

15 Has the Chief of General Staff the right to
16 decide, to make decisions concerning operational plans
17 inasmuch as operational plan is drawn up in parts
18 with each part in charge of separate groups; however,
19 the highest decision that is rendered is by the Chief
20 of Staff, is that not so, as far as operational plans
21 are concerned?

22 MR. LOPEZ: Objection, your Honor, because
23 it is a long-winded question and it involves so many
24 extremes. I wish the question reported more simply,
25 one by one. There are several subject matters there.

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1 decisions have been reached by -- decision has been
2 made by the Chief of General Staff, explanation is
3 made to the War Minister and his understanding is
4 sought?

5 A No, that is not so.
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1 Q What I am asking is not about the materiel
2 and personnel but the operations plans, that is to
3 say, the plans drawn up by the Chief of the Army
4 General Staff. I presume that confirmation is a
5 matter of consultation between the two parties.
6 Now, are you speaking about the plans itself, that
7 is, operations plan itself? My interpretation is
8 you are not.

9 A I think I know where the mixup lies. In
10 an operations plan men and materiel are all included.
11 They are important fundamental elements for the
12 making of an operations plan -- how much ammunition
13 should be made, or what kind of fighting strength
14 should be built up. These matters are all included
15 in the operations plan, And, therefore I find that
16 with respect to the important items in the operations
17 plan, such as men and materiel, the Chief of the
18 General Staff discusses the matter with the War
19 Minister.

20 Q Then I understand you better now. What you
21 state in your affidavit about discussions, consulta-
22 tions, and approval means consultation and approval
23 pertaining to matters relating to men and materiel.
24 So that means confirmation of those things, doesn't
25 it?

TANAKA, S.

CROSS

1 A Actually those are the principal matters,
2 and, as I have said before, it was a very intimate
3 relationship with general policy itself.

4 Q I think I understand you generally. Then I
5 shall turn to another point; then I will turn to my
6 next question. It is about the thirteenth question
7 and answer in your affidavit on page 2, English text.
8 There you find the question:

9 "Following the Imperial Conference of
10 2 July 1941, do you recall if you were directed by
11 General SUGIYAMA to make operational study on a
12 campaign against Malaya, Java, Borneo, Bismark,
13 Dutch East Indies and Philippines?"

14 To that question you answered, "Yes."

15 A Yes, I remember being directed.

16 Q Were these plans made at one time or were
17 orders received on several occasions and plans made
18 on several occasions?

19 A I am not referring to a plan. I was
20 ordered to make a study.

21 Q That was my mistake. The word "study"
22 appears here. "Well", the order to conduct the study,
23 were these orders given on several occasions?
24

25 A Yes, I think they were given separately,
on different occasions.

TANAKA, S.

CROSS

1 THE PRESIDENT: Over what period?

2 MR. S. OKAMOTO: That will be in my next
3 question, your Honor.

4 Q When were they made, the whole thing, whole
5 study?

6 A Yes, the study was started about that time,
7 but was not completed until about the first part
8 of December.

9 Q Then with respect to the next question,
10 that is, the question and answer No. 14 on page 2
11 of the English affidavit. There you find the
12 question:

13 "Following the Imperial Conference of
14 6 September 1941 do you remember if you were directed
15 by General SUGIYAMA to begin preparations for
16 operations against those countries?"

17 And you answered affirmatively to that
18 question.

19 Did you hear in those days, at that time,
20 from General SUGIYAMA, Chief of Staff, that although
21 efforts were mainly concentrated on diplomatic nego-
22 tiations we were making preparations to cope with
23 an eventuality?

24 THE MONITOR: Possible exigency.

25 A Yes, I have heard that definitely.

TANAKA, S.

CROSS

1 Q Then your answer to the effect that you
2 remember that at the Imperial Conference you answered
3 "Yes, I was ordered to do so following the Imperial
4 Conference which was attended by KONOYE, TOJO,
5 OIKAWA, SUGIYAMA, TOYODA and NAGANO," did the Chief
6 of General Staff explain that to you? Was the im-
7 port of this Imperial Conference explained to you
8 by the Chief of General Staff?

9 A I was not able to get your question clearly.
10 Do you mean what he explained to me about?

11 Q What I am asking you is whether the Chief
12 of General Staff also talked to you in line with the
13 decision read at the Imperial Conference?

14 A Yes, that is correct.

15 THE MONITOR: Correction in a question that
16 was asked two or three back: "That diplomatic
17 negotiations, efforts, should be primarily devoted to
18 diplomatic negotiations, and that military or
19 operational plans should be made only in case of
20 a possible contingency.

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TANAKA, S.

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1 Q Then turning to question and answer No.
2 17, second question and answer in page 3 of English
3 affidavit. There you find words -- telegrams to
4 commanding generals of troops in the field. Why
5 was this communicated to the War Minister -- were
6 they communicated to the War Minister and his
7 subordinates?

8 A What telegram are you referring to, Mr.
9 Counsel? I don't know. I don't quite understand.

10 Q Then I shall read your answer: "I was
11 directed by General SUGAYAMA to write the order to
12 the field commanders in the South Seas, so that in
13 case war should break out they would be ready."

14 A That is based upon regulation and custom
15 and it is impossible to conceive that such an im-
16 portant matter like this is not reported or let
17 known by the War Office.

18 Q May I take it to mean that the War Minister
19 was notified?

20 A No. It is stated as written there.

21 Q Were there any regulations concerning that
22 matter?

23 A Yes.

24 Q Do you mean to say that there is a regula-
25 tion which stipulates that approval should be . . .

TANAKA, S.

CROSS

1 obtained from the War Minister and his subordinates?

2 A Yes.

3 Q Does that mean that because they are the
4 matters relating to diplomatic affairs, relations
5 and military administration and not because they
6 are matters relating to operations and employment
7 of military force?

8 A Of course, because it applies, or it
9 relates to military administration, but at the same
10 time it relates to the national defense policy, in
11 the very large sense.

12 Q Although it may be needless to say the power
13 of decision rests with the Chief of General Staff,
14 doesn't it; that is, the power of command with
15 respect to sending communication to commanding
16 generals in the field?

17 A Yes. Power to issue orders, is that it?

18 Q Yes.

19 A As a matter of fact, there is no case in
20 which any order is issued on which the approval or
21 agreement of the War Minister has been obtained.

22 THE MONITOR: Has not been obtained.

23 Q I am not asking about the agreement or
24 the consent; I am asking about the right to issue
25 orders, authority to issue orders.

TANAKA, S.

CROSS

1 A The authority to issue orders with respect
2 to questions relating to operations resides in the
3 Chief of Staff.

4 Q Then passing over to the 20th question in
5 your affidavit, page 3 of the English affidavit.
6 There, answering the question, you say that you were
7 told by General SUGAYAMA of his determination to
8 start a war. At that time, Mr. Witness, did the
9 Chief of the General Staff tell you that although a
10 decision for war had been made, inasmuch as the
11 Japanese negotiations were being continued that if
12 a settlement, a successful settlement, were reached
13 as a result of those negotiations, the operational
14 force will be abandoned? Did he give you any such
15 order?

16 A Yes, I received such a statement from the
17 Chief of Staff. There is something further that is
18 related to that if I may speak of it.

19 Q Please speak of it.

20 A I think it was shortly after Chief of the
21 General Staff SUGAYAMA issued that order that the
22 Chief of the Personnel Bureau of the War Office came
23 to see me. "The order has been issued," he said,
24 "but if the diplomatic negotiations then under way
25 should reach a successful culmination, then the

TANAKA, S.

CROSS

1 Japanese forces sent out to the South Seas areas
2 will have to be brought back; that is, they will
3 have to be returned," and he asked me, "Will it be
4 possible to return these forces peacefully?" And
5 the purpose of the mission, the purpose of the
6 visit made to me by the Chief of the Personnel
7 Bureau of the War Office, was that the War Minister
8 had said that if the negotiations should reach a
9 successful culmination the forces will be returned,
10 "and so you go on to see the Chief of the First
11 Division, of the first department of the General
12 Staff Office and discuss the matter whether these
13 soldiers can be brought home peacefully." Thereupon,
14 I said that that is not a very simple question,
15 however there would be nothing better than a suc-
16 cessful culmination of the Japanese-American negotia-
17 tions, and assured my visitor that the General Staff
18 Office will take full responsibility as to the re-
19 turning of the forces from the front line.

20 Q Who was the Chief of the Personnel Bureau
21 at that time?

22 A Lieut. General TOMINAGA, Kioji.

23 THE PRESIDENT: A colleague has asked me
24 to put the following question. Answer this, witness:
25 If the War Ministry refused to provide materiel, men

TANAKA, S.

CROSS

1 or other things required by the Chief of the General
2 Staff, what happens?

3 THE WITNESS: If refused, the operational
4 plans as conceived by the General Staff could not
5 be formulated, but it would have to as a matter of
6 course formulate an operations plan within the limi-
7 tation of the men and materiels provided them or
8 provided the General Staff by the War Ministry.

9 THE MONITOR: Instead of "provided,"
10 "guarantee," by the War Ministry.

11 THE PRESIDENT: We will recess until half
12 past one.

13 (Whereupon, at 1200, a recess was
14 taken until 1330, after which the proceedings
15 were resumed as follows):
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AFTERNOON SESSION

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MARSHAL OF THE COURT: The International Military Tribunal for the Far East is now resumed.

MR. HIGGINS: Mr. President.

THE PRESIDENT: Mr. Higgins.

MR. HIGGINS: It is with deep regret that I announce to the Tribunal the death of Mr. Worth McKinney, our staff associate from the United States. The end came suddenly as a result of a heart attack at eleven o'clock today, while he was at his post of duty.

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THE PRESIDENT: We greatly regret to hear of the sudden death of an esteemed member of the American bar and member of the prosecution. Our sympathy goes out to his sorrowing widow.

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SHINICHI TANAKA, called as a witness on behalf of the prosecution, resumed the stand and testified through Japanese interpreters as follows:

CROSS-EXAMINATION

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BY MR. S. OKAMOTO (Continued):

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THE PRESIDENT: Mr. OKAMOTO.

25

Q Now, referring to the fifth question and

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1 answer in your affidavit, page 1, in the English
2 text:

3 "Q In the decision to undertake operations
4 on Indo-China in 1941, what had the War Ministry
5 to do with that decision?"

6 I don't think you are referring to operations
7 by your answer. You simply mean dispatch or
8 advance, dispatch of troops, advance into Indo-
9 China, by your answer, do you not?

10 A By operations I mean combat, the forward
11 advance of troops and stationing of troops, and
12 therefore when I say advance I also include that
13 to be within the meaning of operations. That is
14 our definition of "operations."

15 THE MONITOR: Slight explanation: The
16 word "advance" as used by the witness, is "shinchu,"
17 and means advance and occupy or advance into and
18 station.

19 Q Changing the subject: The question comes
20 from the question and answer number 17 in your
21 affidavit. In answering the question there you
22 stated that for certain kinds of orders signature
23 of the War Minister is necessary.

24 A Where is that, Mr. Counsel?

25 Q That is where you are speaking about

TANAKA, S.

CROSS

1 telegrams.

2 A What did you say?

3 Q Then I shall read it. Then I read it:

4 "Q Following the Imperial Conference on 1
5 December 1941 were you directed on the next day
6 by General SUGIYAMA to draft an alert order to
7 all commanding generals of troops in the South
8 Seas areas that war with the United States,
9 England and Holland was imminent and warning them
10 that hostilities should commence on X-Day?"

11 I believe that only the War Minister,
12 the War Minister alone makes decisions -- the
13 Minister alone makes decisions in the War Ministry
14 and then it is not necessary for the Vice-Minister
15 of War or for chiefs of bureaus of the Ministry to
16 make the decisions. However, if they sign those
17 decisions it is not only for the purpose of
18 accelerating the carrying out of those decisions?

19 THE PRESIDENT: Your questions are objec-
20 tionable. They purport to contain statements of
21 fact which may or may not be fact. The simple
22 question you put at the end of your statement did
23 not warrant that lengthy introduction including
24 the question itself.

25 INTERPRETER: The witness' reply was: As

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1 you say.

2 MR. S. OKAMOTO: How shall I do it?

3 Shall I repeat the last question again?

4 THE PRESIDENT: No. We have an answer to
5 the question but I do object to the time of the
6 Court being wasted on questions of unnecessary
7 length.

8 MR. S. OKAMOTO: I understand.

9 Q Then I shall ask you a question about MUTO.
10 When you made requests to the War Ministry on the
11 orders -- Ministry for matters necessary for the
12 General Staff on the order of the Chief of the
13 General Staff -- did MUTO, the Chief of the Military
14 Affairs Bureau of the War Ministry, negotiate with
15 you upon the orders of the War Minister TOJO?

16 A Yes, as you say.

17 Q In those days did not MUTO remain strictly
18 within the bounds of his duties and never went
19 beyond them?

20 A As far as I know, I think he carried out
21 his duty within limits strictly -- within strict
22 limits.

23 Q In other words, he obeyed strictly the
24 instructions and intentions of the Minister himself?

25 THE MONITOR: Obeyed and respected.

TANAKA, S.

CROSS

1 A Yes, I think he respected to the point
2 where I used to feel that it certainly is something
3 to be able to respect to the degree that he did.

4 Q Was he not a man of common sense, and was
5 he not a man who would always abide by the law,
6 who would implicitly abide by the law?

7 A Well, I don't understand your question
8 too well, but MUTO generally was a man rich in
9 common sense, very realistic and very conservative --
10 and somewhat conservative.

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TANAKA, S.

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1 Q Are you aware of the fact that in those
2 days MUTO's opinion was specially favored and adopted
3 by TOJO?

4 A I don't know very much about that.

5 Q Then, are you aware of this, that plans made
6 by MUTO were rejected very often by the Minister?

7 A That does not apply only to MUTO but to many
8 others whose plans have been rejected by General TOJO.

9 Q I am asking you particularly of the case of
10 MUTO.

11 A I don't have any example, concrete example,
12 here but I am quite sure that such situation existed.

13 Q Then, have there not been any documents --
14 cases of any documents of either General Staff or of
15 the War Ministry which had already been signed by
16 MUTO and after MUTO's signature had been affixed, been
17 rejected by TOJO?

18 A Yes, there are cases such as that.

19 THE PRESIDENT: The relevance of this is not
20 clear.

21 MR. LOPEZ: I object to this type of question
22 because it is beyond the scope of the cross-examination.

23 THE PRESIDENT: You must observe the red
24 light, Mr. Lopez.

25 MR. S. OKAMOTO: I should like to ask your

TANAKA, S.

CROSS

1 opinion, Mr. President. I failed to hear, Mr. President,
2 your last remark.

3 THE PRESIDENT: My remark was that your
4 question was hardly relevant. The objection was that
5 it was beyond the scope of the affidavit of the
6 witness and his examination in chief.

7 The objection is upheld.

8 MR. S. OKAMOTO: Then I will ask another
9 question.

10 Q Now, Mr. Witness, in cases where agreement
11 of views was not reached between you and MUTO, the
12 Chief of the Military Affairs Bureau, is the matter
13 then brought for consultation between the Vice-Chief
14 of Staff and the Vice-Minister of War?

15 A Yes.

16 Q Then, in cases where no solution is reached
17 even between the Vice-Chief of General Staff and the
18 Vice-War Minister, is the matter brought up to Chief
19 of Staff and War Minister himself?

20 A Yes.

21 Q Does that mean that the bureau chief had no
22 power or authority to make decisions?

23 A A bureau chief had no power of decision on
24 any matter of importance.

25 MR. S. OKAMOTO: That is all.

1 MR. LOGAN: No further cross-examination,
2 your Honor.

3 THE PRESIDENT: Mr. Lopez.

4 MR. LOPEZ: We have no redirect examination
5 of the witness, your Honor.

6 THE PRESIDENT: The witness is excused on
7 the usual terms.

8 (Whereupon, the witness was excused.)

9 MR. LOPEZ: We offer in evidence IPS document
10 No. 1793-A, which is a Japanese Military Secret Order
11 No. 2190 issued 28 July 1942 by Vice-Minister of War,
12 Heitaro KIMURA, to show the defendant KIMURA's con-
13 nection and responsibility in so far as the execution
14 of the Doolittle fliers was concerned.

15 MR. SHIOHARA: Counsel SHIOHARA.

16 I should like to call the attention of the
17 Tribunal to this present document.

18 On the 8th of January, Associate Prosecutor
19 Woolworth said that he would omit tendering as
20 evidence document 1793-A because it was identical
21 and the same as exhibit 1992 and, therefore, there
22 is no need to tender that document here.

23 With respect, Mr. President, to exhibit 1992,
24 may I say that because there were very serious trans-
25 lation mistakes, the matter was referred to the Language

1 Arbitration Board and that the words "By order you are
2 notified" was added, and in the place of "capital
3 crime" the word "major criminal" -- "capital criminal,"
4 the words "major criminal" were inserted. However,
5 since these mistakes have not been corrected or recti-
6 fied in the copies now tendered, I feel that it is
7 very unfair to the accused and prejudicial to the
8 accused.

9 I wish to say one more, sir, and that is the
10 Japanese words "Gunitsu Kōji" is rendered as "Military
11 Discipline Council," and since this is a very
12 unclear rendition of that term, I wish that this matter
13 would be considered for correction.

14 MR. LOPEZ: If your Honor please, those facts
15 have escaped us, and we have no doubt that counsel
16 for the defense must have the facts right, and for
17 that reason I refrain from further offering in evidence
18 the document that we intended to offer.

19 THE PRESIDENT: Objection upheld.

20 MR. LOPEZ: We offer in evidence IPS document
21 No. 16-A, which is a memorandum of transmittal of the
22 report of the investigation of the Doolittle fliers,
23 sent by Military Police Commander NAKAMURA, Akito,
24 to Chief of Staff, General SUGIYAMA, dated 26 May 1942,
25 copy of which was forwarded to the Minister of War,

1 Vice-Minister of War, Chief of the Military Affairs
2 Bureau, and others.

3 This evidence shows that the defendant KIMURA,
4 who was then Vice-Minister of War, was constantly posted
5 with the fate of the Doolittle fliers.

6 THE PRESIDENT: Admitted on the usual terms.

7 CLERK OF THE COURT: Prosecution's document
8 No. 16-A will receive exhibit No. 2245.

9 (Whereupon, the document above
10 referred to was marked prosecution's exhibit
11 No. 2245 and received in evidence.)

12 MR. LOPEZ: We will read the document in its
13 entirety.

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1 MR. LOPEZ: (Reading) "NOTE: Translation
2 requested by Legal Section.

3 "Military Police Report No. 352

4 "Report on the Matter Concerning the Investi-
5 gation of the American Airmen Who Raided the Japanese
6 Homeland.

7 "FROM: Military Police Commander NAKAMURA,
8 Akito

9 "TO: Chief of General Staff SUGIYAMA, Gen.

10 "26 May 1942.

11 "Attached is the report of the investigation
12 of the eight officers and men of the American planes
13 who took part in the raid on JAPAN proper on 18 April
14 and were forced down at NANCHANG and NING PO in
15 CENTRAL CHINA.

16 "FORWARD TO: Minister of War, Vice-Minister
17 of War, Chief of the Bureau of Naval Affairs, Chief
18 of Military Affairs Bureau, Chief of Home Defence. (3).

19 "Chief of General Staff, Vice-Chief of
20 General Staff, Chief of 1st (Administration) Section,
21 Chief of 2nd (Intelligence) Section, Chief of General
22 Affairs Bureau. (3)

23 "Chief of Naval General Staff, Vice-Chief
24 of Naval General Staff, Chief of 1st (Administration)
25 Section, Chief of 2nd (Intelligence) Section, Chief of

1 5th Bureau.

2 "Navy Minister, Vice-Minister of Navy,
3 Chief of Bureau of Naval Affairs (3) and the
4 Commander-in-Chief of the Home Defense."

5 THE PRESIDENT: Where is the report?

6 MR. LOPEZ: I beg your pardon. We have not
7 tendered the report, your Honor. We merely want to
8 show that they were kept posted about investigations.

9 We tender in evidence IPS document No.
10 2534-A, which is a news-story entitled, "Conference
11 is Held by Army Members of Supreme Council", published
12 in the Tokyo Nichi Nichi of Tuesday, July 1, 1941,
13 to show that the defendant KIMURA was part of the
14 inner circle that plotted the course of Japanese
15 policies in the face of the "fast-changing internation-
16 al situation." The Tokyo Nichi Nichi issue of July 1,
17 1941 was already admitted in evidence as exhibit 1132
18 (page 10,204 of the record):

19 THE PRESIDENT: Admitted on the usual terms.

20 CLERK OF THE COURT: Prosecution's document
21 No. 2534-A will receive exhibit No. 2246.

22 (Whereupon, the document above re-
23 ferred to was marked prosecution's exhibit
24 No. 2246 and received in evidence.)

25 MR. LOPEZ: We read the document in its

1 entirety:

2 "CONFERENCE IS HELD BY ARMY MEMBERS OF
3 SUPREME COUNCIL

4 "TOJO EXPLAINS

5 "Candid Views are Exchanged Regarding
6 Fast-Moving Situation.

7 "The Army called a conference of Army members
8 of the Supreme War Council on June 30 at 1:30 p.m.
9 at the War Minister's official residence.

10 "War Minister Lieut. General TOJO and re-
11 lated officials explained in detail the present
12 fast-changing international situation after which
13 candid views were exchanged regarding the attitude
14 to be taken by Nippon in the future.

15 "The Army members of the Supreme War Council
16 who attended the conference were T. I. H. Marshal
17 Prince KAN-IN, General Prince ASAKA and General
18 Prince HIGASHI-KUNI General Count Hisaichi, TERAUCHI,
19 General Kenji DOIHARA and General Yasuji OKAMURA.

20 "Representing the Army organs were War
21 Minister TOJO; General Gen SUGIYAMA, Chief of the
22 General Staff; General Otozo YAMADA, Inspector-General
23 of the Army Education; War Vice-Minister KIMURA,
24 Vice-Chief TSUKATA of the General Staff, and other
25 officials concerned."

1 We tender in evidence IPS document No.
2 2908, which is a news-story entitled, "Awarding
3 of Decorations to General SUGIYAMA and others from
4 Fuehrer HITLER", published in the Asahi Shimbun
5 of 2 October 1942 which gives account of the cere-
6 monies attending the award of medals from Adolf
7 HITLER to the defendants KIMURA, DOIHARA, and SATO
8 in recognition of their contribution to German-
9 Japanese collaboration.

10 THE PRESIDENT: Admitted on the usual terms.

11 CLERK OF THE COURT: Prosecution's document
12 No. 2908 will receive exhibit No. 2247.

13 (Whereupon, the document above re-
14 ferred to was marked prosecution's exhibit
15 No. 2247 and received in evidence.)

16 MR. LOPEZ: We will read the document in
17 its entirety:

18 (Reading): "AWARDING OF DECORATIONS TO
19 GENERAL SUGIYAMA AND OTHERS FROM FUEHRER HITLER.

20 "CEREMONY HELD AT EMBASSY TODAY

21 "Answering to the decorations which were
22 conferred by His Majesty the Emperor upon military
23 and civil officials of Axis nations residing in
24 Japan on the anniversary of the conclusion of the
25 Tripartite Pact, the ceremony of awarding decorations

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9 Japanese collaboration.

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21 "Answering to the decorations which were
22 conferred by His Majesty the Emperor upon military
23 and civil officials of Axis nations residing in
24 Japan on the anniversary of the conclusion of the
25 Tripartite Pact, the ceremony of awarding decorations

1 conferred by Fuehrer Hitler upon Japanese officials
2 was held at the German Embassy, NAGATACHO KOJIMACHI
3 KU TOKYO at 12.30, 1st October.

4 "SUGIYAMA, Chief of General Staff, DOHIHARA,
5 Army Air Inspector General, KIMURA, Vice War Minister,
6 SATO, Chief of Military Affairs Bureau, NINOMIYA,
7 Secretary to the Prime Minister proceeded to the
8 Embassy in dignified official military uniform.
9 Ambassador OTT, after handing the 'Grand Cross of
10 the German Eagle' to General SUGIYAMA and DOHIHARA
11 and Lieutenant General KIMURA, 'Order For Merit with
12 Star' to Major General SATO and 'First Class Order
13 For Merit' to Colonel NINOMIYA, stated as follows:

14 "We acknowledge your merits in having by
15 your efforts won glorious victories in the joint
16 execution of the War.' Representing the others
17 General SUGIYAMA stated as follows: 'We pledge that
18 we will march steadily towards the final victory
19 with a firmer belief in the victory of the Axis in
20 order to respond to the honour given by the FUEHRER
21 today.'

22 "The decorations conferred by the FUEHRER
23 today are all newly issued war time decorations with
24 swords attached to them.

25 "After the ceremony was over, all the

1 attendance drank a toast. They had dinner with
2 friendly conversation and atmosphere and the meeting
3 was closed at 2 P.M."

4 Brigadier General Quilliam, your Honor,
5 will address the Court.
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2 friendly conversation and atmosphere and the meeting
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1 THE PRESIDENT: Brigadier Quilliam.

2 BRIGADIER QUILLIAM: May it please the
3 Tribunal, I offer in evidence as implicating the
4 defendant SHIMADA the report of a speech made by
5 him at an Accounts Committee Meeting of the Diet
6 on the 10th February 1942, being IPS document No.
7 2774B. This is part of IPS document No. 2774 which
8 has been already produced for identification, and
9 was given exhibit No. 2236. In this speech SHIMADA
10 emphasizes that Japan must be the leading power
11 throughout the whole area of Greater East Asia and
12 that any element which does not conform to the will
13 of the Japanese must be eliminated completely. I
14 propose, if the Tribunal please, to read the whole
15 speech.

16 THE PRESIDENT: Admitted on the usual
17 terms.

18 CLERK OF THE COURT: Prosecution's document
19 No. 2774B will receive exhibit No. 2248.

20 (Whereupon, the document above re-
21 ferred to was marked prosecution's exhibit
22 No. 2248 and received in evidence.)

23 BRIGADIER QUILLIAM: (Reading)

24 "Minutes of the Accounts Committee Meeting
25 of the Diet, 7th Day, February 10, 1942, Speech by

1 Navy Minister SHIMADA.

2 "I am overwhelmed with gratitude for the
3 praises given just now concerning the various naval
4 victories. The question asked, is not a matter which
5 can be decided by the Navy alone. A part of the out-
6 line of the basic policy is primarily indicated in
7 the Emperor's Declaration of War. The Government's
8 Declaration also extends to this point. Premier
9 TOJO has already reported at this Diet Session
10 (T. N. 79th Imperial Diet Session) matters which can
11 safely be revealed at this time. As for the Navy,
12 it also has the desire to successively show good
13 results by following the Government's policies, not
14 to mention the Emperor's Declaration. I am in full
15 agreement with the anxiety which was expressed, that
16 perhaps it might be meaningless to have foreigners
17 who already have foundations, grab the economic power
18 despite our occupation, which was no easy task.
19 I believe that this does not apply only to the southern
20 regions. I believe that this should apply to the
21 whole area which comprises the Greater East
22 Asia Co-Prosperity Sphere. We, the JAPANESE race,
23 must be the leading power throughout the whole area
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1 of Greater East Asia. However, since JAPAN is the
2 center of activities, whatever one may say, any
3 element which does not conform to the will of the
4 JAPANESE race must be eliminated completely. How-
5 ever, those who work on a foundation of righteous-
6 ness will naturally be recognized. I am also of the
7 conviction that we must never allow the sacrifices
8 of lives to have been made in vain. In the future,
9 concrete matters will be decided by the Government
10 and not by the Navy alone. I am also of the opinion
11 that this line of thought should be adopted. For
12 the present, we must win this war at all costs, as
13 the Premier has stated frequently. The opponent
14 is a great enemy who possesses vast amounts of
15 materials, and since two great powers are unitedly
16 opposing JAPAN, it is no easy task to defeat them.
17 Occasionally we hear people cry for materials and
18 gasoline just because we have attained a few mili-
19 tary victories, but we soldiers do not feel any
20 such freedom from care. Even a drop of gasoline
21 must be used for military purposes, and the war must
22 be won somehow or other. After first winning the
23 war, I would like to build the foundation while
24 eliminating the point which you have just indicated.
25

1 (T. N. The last sentence was addressed to Committee
2 Member KASAI who gave a talk just prior to SHIMADA)
3 in other words, as regards the great plan of devis-
4 ing various measures for the winning of the war and
5 also the successive building of a foundation which
6 will enable the JAPANESE race to expand in the future,
7 I believe, as the Premier stated previously in the
8 Diet, that an announcement will be made in the near
9 future since appropriate organs are now ready. I
10 want them to progress by striving to the utmost,
11 taking into consideration the peoples ideas and
12 avoiding pitfalls. It is now only two months
13 since this war started, but even if we think far in
14 the future, if we make too much haste, mistakes are
15 more likely to crop up. Therefore, I hope that per-
16 fect plans will be devised in order to avoid miscal-
17 culations."

17 BRIGADIER QUILLIAM: May it please the
18 Tribunal, that concludes the evidence to be present-
19 ed against the defendant SHIMADA.

20 THE PRESIDENT: Mr. Comyns Carr.

21 MR. COMYNS CARR: May it please the Tribunal,
22 I now come to supplement the case against the accused
23 KIDO.

24 I first tender corrected translations to
25

1 agree with the Language Arbitration Board of four
2 extracts from his diary, already exhibited. Exhibit
3 1196 is dated 29 November 1941. The pages of the
4 record which will be required to be replaced are
5 10,452 to 10,454.

6 THE PRESIDENT: Admitted on the usual terms.

7 MR. COMYNS CARR: "Extract from entry from
8 Marquis KIDO's diary, 29 November 1941."

9 "From 2 o'clock for about an hour in the
10 study, the Emperor listened in person to the Senior
11 Statesman's opinions. The following is a summary:

12 "The Emperor remarked, The times have be-
13 come very difficult, haven't they? To this Baron
14 WAKATSUKI at once replied, in substance, as follows:

15 "WAKATSUKI - I am not worried about the
16 spiritual strength of our people but in the matter
17 of materials the question of whether or not we can
18 really stand a long-range war deserves careful study.

19 "OKADA - I think that today we are truly
20 confronted with a critical situation. I am con-
21 cerned as to whether we can put full confidence in
22 our ability to supply necessary materials. There
23 was an explanation by the Government a short while
24 ago, but I am still not convinced.
25

1 "HIRANUMA - His Excellency WAKATSUKI has
2 spoken of the spiritual strength of our people and I
3 agree with him on this point. But if today, when we
4 have already been engaged in war for four years,
5 things should further develop into a protracted
6 war, it would become necessary to endure hardships
7 and privations. I therefore consider that adequate
8 measures and efforts for bracing up public sentiment
9 are necessary.

10 "KONOYE - I deeply regret that I have not
11 been able to do anything toward the adjustment of
12 Japanese-American relations despite my efforts since
13 last April. But I beg to express my appreciation to
14 the present cabinet for zealously striving to attain
15 this end. To my great regret I am forced to conclude,
16 on the basis of this morning's explanation by the
17 Government that further continuation of diplomatic
18 negotiations would be hopeless. Still, is it necessary
19 to resort to war at once even though diplomatic nego-
20 tiations have been broken off? Would it not be
21 possible, I wonder, while carrying on things as
22 they are -- to later find a way out of the deadlock
23 by perservering to the utmost under difficulties.
24 I think that I would like to question the authorities
25 concerned on this point later.

1 "YONAI - I do not have any data with me so
2 I cannot express any definite opinion, but if Your
3 Majesty will permit me to use the vernacular, I
4 pray that we may take care 'not to lose everything
5 by trying to avoid becoming poor gradually.'

6 "HIROTA - After having talked on conditions
7 of each of the world powers since the World War,
8 Japan has adopted every possible means to avoid the
9 intervention of Britain and America in the China
10 Incident. In spite of this the diplomatic situa-
11 tion has become so serious as it is today. Accord-
12 ing to the explanations of the Government we seem
13 to stand now face to face with a diplomatic crisis.
14 Though the diplomatic crisis has a close relation
15 to the strategic moment, I think the true intentions
16 of both sides in diplomatic negotiations are only
17 revealed after passing through several crisis. Why
18 should we hastily rush into war immediately after
19 being confronted with the present crisis? Granting
20 that war is inevitable, I believe we should always
21 be on the watch to seize the opportunity for a solu-
22 tion by diplomatic negotiations even though blows
23 have been exchanged.

24 "HAYASHI - I have no reference data with me
25

1 but on the whole there is no alternative but to reply
2 on the conclusions arrived at by the Cabinet after
3 thorough cooperation and study with Imperial Head-
4 quarters.

5 "ABE - According to the Government's ex-
6 planation it seems as the continuation of diplomatic
7 negotiations will be difficult and that we are now
8 placed in a really grave situation. I believe that
9 we cannot expect anything further from the Cabinet
10 as it appears to have studied matters very minutely
11 from every conceivable angle. But it will be nece-
12 ssary to carefully take into account the attitude of
13 the Chinese people, for I believe it will be possible
14 by one false step to lose all the gains hitherto
15 achieved.

16 "WAKATSUKI - We have today, I believe,
17 arrived at a really important moment. I should like
18 to say one thing: If it is necessary for the preser-
19 vation and self defense of the Empire, we must
20 rise to arms even though the country be reduced to
21 ashes and though we can foresee defeat. But it is
22 dangerous indeed to execute state policy or to make
23 use of the national strength to achieve such ideals
24 as to the 'Establishment of the Greater East Asia
25

1 Co-Prosperity Sphere' or of the 'Stabilizing Power
2 of East Asia.' I pray that Your Majesty will give
3 careful consideration to this point."

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1 MR. COMYNS CARR: The next exhibit is 1239.
2 The page of the record is 10,683.

3 (Reading): "Extract from Entry from Marquis
4 KIDO's Diary, 8 December 1941.

5 "At 12:40 a.m. Foreign Minister TOGO tele-
6 phoned me saying that Ambassador GREW had brought a
7 personal telegram from President ROOSEVELT to the
8 Emperor, and asked my advice as regards the manner
9 of handling same. I therefore advised him to
10 deliberate carefully with the Premier as regards
11 its diplomatic effect and procedure, also stating
12 that, as for an audience with HIS MAJESTY, His
13 Majesty would graciously grant same even at midnight,
14 so that there was no need of paying heed to this
15 point.

16 "At 1:30 a.m. MATSUDAIRA, the Minister of
17 the Imperial Household called me up by telephone
18 about the aforesaid matter, so I gave him my opinion.

19 "Was notified that Foreign Minister TOGO
20 had proceeded to the Imperial Palace. I also pro-
21 ceeded to the Palace at 2:40 a.m. I had a talk with
22 the Foreign Minister at The Palace. Returned home
23 at 3:30 a.m.

24 "At 7:15 a.m. was on duty at the office.
25 Today was an unusually fine day. As I was proceeding

1 towards Miyake-zaka after having climbed the Akasaka
2 Mitsuke slope, I saw the sun rising brilliantly
3 above the buildings in the distance. When one comes
4 to think of it, this is the very day when our
5 country is at last going to enter a gigantic war
6 against the two great Powers of America and Britain.
7 Already at daybreak this morning, an air unit of
8 the Navy has carried out a mass air raid on Hawaii.
9 Knowing of it, I was anxious about its result, and
10 unconsciously I faced the sun and closed my eyes in
11 prayer.

12 "At 7:30 a.m. met the Premier and both
13 Chiefs of Staff and on hearing about the good news
14 of the grand success of the surprise attack on
15 Hawaii, I deeply felt the blessings of Divine Grace.

16 "From 11:40 to 12 a.m. was received in audience.
17 Even at the moment of our entering upon a war where
18 the national destiny was at stake, I most humbly
19 beg to remark that I found His Majesty perfectly
20 calm and absolutely unperturbed in His demeanor, for
21 which I truly felt extremely thankful. The Imperial
22 Proclamation of War was issued."

23 MR. LOGAN; If the Tribunal please, may
24 we have this referred to the Language Section to
25 have them point out to the Tribunal just what the

1 Japanese interpretation is of the words "at last",
2 because I understand they are different from what
3 we ordinarily understand them in English.

4 THE PRESIDENT: This document is approved
5 by the Board and it is supposed to contain the
6 equivalent English words.

7 MR. LOGAN: They are the equivalent English
8 words, your Honor, but they have an entirely differ-
9 ent meaning, as I understand it, from what is
10 ordinarily understood in the English language, that
11 is, the Japanese meaning.

12 THE PRESIDENT: They are supposed to give
13 us the English words that convey the proper meaning.

14 MR. LOGAN: Well, I spoke to the Translation
15 Bureau about it, and they said that they would not
16 put a translator's note on it unless they had a
17 direction from the Court. I might say that those
18 same words were used in exhibit 1210, which is also
19 another excerpt from Marquis KIDO's diary.

20 THE PRESIDENT: We will refer the matter to
21 them.

22 MR. COMYNS CARR: I would like to say that
23 this matter has been referred to the Board.

24 THE PRESIDENT: We will refer it to them again.

25 MR. COMYNS CARR: If your Honor pleases:

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2
3 Exhibits 1278 and 1282 were read in the
4 corrected form in the record. All I have to do is
5 to hand in copies of the pages which have been
6 reprocessed to be substituted for the pages in the
7 copy of exhibits themselves.

8 Your Honor, I am asked to ask for this
9 instruction. In the cases of 1196 and 1239 the
10 whole document has been reprocessed and should be
11 substituted for the original translation. In the
12 cases of 1278 and 1282 it was only necessary to
13 reprocess certain pages, and those should be sub-
14 stituted for the corresponding pages in the original
15 translation.

16 THE PRESIDENT: Well, you are not merely
17 making amendments on a document already tendered,
18 but you are tendering fresh documents; and they are
19 admitted on the usual terms, and will bear the same
20 number.

21 MR. COMYNS CARR: The next is prosecution's
22 document 1532-E, which is the Japanese original of
23 exhibit 1189, an intercepted message in which certain
24 errors were found (see Record page 10402). As certain
25 errors appear on examination, I offer the original in
evidence.

THE PRESIDENT: Admitted on the usual terms.

1 Exhibits 1278 and 1282 were read in the
2 corrected form in the record. All I have to do is
3 to hand in copies of the pages which have been
4 reprocessed to be substituted for the pages in
5 the copy exhibits themselves.

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8 whole document has been reprocessed and should be
9 substituted for the original translation. In the
10 cases of 1278 and 1282 it was only necessary to
11 reprocess certain pages, and those should be sub-
12 stituted for the corresponding pages in the original
13 translation.

14 THE PRESIDENT: Well, you are not merely
15 making recommendations on a document already tendered,
16 but you are tendering fresh documents; and they are
17 admitted on the usual terms, and will bear the same
18 number

19 MR. COMYNS CARR: The next is prosecution's
20 document 1532-E, which is the Japanese original of
21 exhibit 1189, an intercepted message in which certain
22 errors were found (see Record page 10402. As certain
23 errors appear on examination, I offer the original in
24 evidence.

25 THE PRESIDENT: Admitted on the usual terms.

1 CLERK OF THE COURT: Prosecution's document
2 No. 1532-E will receive exhibit No. 2249.

3 (Whereupon, the document above re-
4 ferred to was marked prosecution's exhibit
5 No. 2249 and received in evidence.)

6 MR. COMYNS CARR: A telegram to Foreign
7 Minister TOGO from NOMURA and KURUSU, No. 1180,
8 dated November 27, 1941.
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1 MR. COMYNS CARR: A telegram to Foreign
2 Minister TOGO from NOMURA and KURUSU, No. 1180, dated
3 November 26, 1941:

4 "As /stated/ in our frequent cables, there
5 is no hope to get acceptance for the whole of B plan,
6 while we have not much time left. If the condition
7 does not change we must give up the negotiation
8 though it is not desirable at all. We are deeply
9 humiliated at our lack of influence. In this case
10 the only way to bridge over this difficulty is to let
11 President Roosevelt cable to His Majesty first of the
12 hope of Japan and America's cooperation to maintain
13 peace in the Pacific, (we will try our best to do so,
14 if we can get your permission) and in return, to ask
15 His Majesty to answer this message, clearing the air.
16 At the same time, if we can get a little time more,
17 it is possible to take the initiative in proposing
18 the establishment of neutral countries including French
19 Indo-China, Netherland East Indies and Siam, consider-
20 ing that England and America may start protective
21 occupancy (as you know, President Roosevelt suggested
22 to make the Netherlands East Indies and Siam neutral
23 countries in September of this year).

24 "Though there is an opinion that the rupture
25 of this negotiation does not decidedly mean the

1 outbreak of war, after the breakdown of the negoti-
2 ations, it is possible for them to occupy Netherlands
3 East Indies, as I stated previously and the conflict
4 will inevitably start by our attack. But it is very
5 doubtful whether Germany will take action in accord-
6 ance with Article Three of the (Tri-Partite) treaty,
7 and the solution of the China incident must be
8 carried over at least to the end of this "world war."

9 "As this telegram may become the last one of
10 my suggestions, I wish you to show this at least to
11 the Lord Keeper of the Privy Seal KIDO and answer
12 us by return telegram."

13 The first additional document which I offer
14 in evidence is prosecution No. 2-A dated November,
15 1941, being a fuller and more considered account
16 than appears in his diary, exhibits 1147, 1150,
17 1151, 1154, and 1156, of the fall of the Third
18 KONOYE Cabinet and his reasons for recommending
19 TOJO as the new premier.

20 THE PRESIDENT: Admitted on the usual terms.

21 CLERK OF THE COURT: Prosecution's document
22 No. 2-A will receive exhibit No. 2250.

23 (Whereupon, the document above re-
24 ferred to was marked prosecution's exhibit
25 No. 2250 and received in evidence.)

1 THE PRESIDENT: Any substituted document
2 will bear on its face a statement that it is sub-
3 stituted by order of the Court of the 24th of
4 January 1947. I am referring now to thos pages that
5 were substituted.

6 MR. COMYNS CARR: I take it, your Honor,
7 that the substituted exhibits will retain the same
8 number as the original for which they are substituted.

9 THE PRESIDENT: I have already so directed,
10 but, in addition, the substituted material should
11 bear on its face a statement that it is substituted
12 by order of this Tribunal of today.

13 MR. COMYNS CARR: Reading now exhibit 2250:

14 "Circumstances under which the Third KONOE
15 Cabinet Tendered Resignations.

16 "On October 16, 1941, Prime Minister KONOE
17 collected the resignations of the Cabinet Members
18 and presented them to the Emperor.

19 "According to the announcement of the
20 Information Board, the reason for the resignation en-
21 bloc of the Cabinet is the incongruous perspective
22 of opinion in regard to the execution of the present
23 national policy. Consequently, the actual facts of
24 the circumstances leading up to the resignation en-
25 bloc are not known at all by the public, and it is

1 not at all such a simple matter.

2 "Of course, this is not unreasonable, because
3 as regards the decision of the Council in the Imperial
4 presence of September 6 which was the cause of the
5 recent political change, not even the fact of the
6 opening of the Council itself was announced; thus, it
7 was hardly possible to know nor in any way to let it
8 be known. Let it slip out, then indeed, one is
9 liable to infringe on the National Defense Preserva-
10 tion Law. However, unless somebody who knows the
11 truth clarify this situation, there is the fear of
12 erroneous judgment by historians at a later date. So
13 the gist of the circumstances has come to be recorded.

14 "1. The Decision of the Council in the
15 Imperial Presence on September 6 and the Developments
16 later.

17 "The direct cause of the recent political
18 shakeup had its origin in the decision of the Council
19 in the Imperial presence of September 6. Prior to
20 this, however, the government had been pushing, with
21 utmost secrecy, the negotiations in regard to the
22 adjustment of diplomatic relations with America since
23 about April. There are many matters worth recording
24 about these negotiations, but they will be omitted
25 inasmuch as they have no direct connection with the

1 present subject. At any rate, those negotiations had
2 to be temporarily suspended because of the peaceful
3 advance of the Imperial army into Southern Indo-
4 China and also the resignation en bloc of the Second
5 KONOE Cabinet. But they were again taken up by the
6 Third KONOE Cabinet. As a result the Council in the
7 Imperial Presence was opened on September 6, when the
8 following policy was decided, and in line with it,
9 the following important decision was made:

10 "To utilize every means of diplomacy in
11 regard to America and Britain to fulfill the require-
12 ments of Japan, with the determination to open
13 hostilities against America (Britain and the Nether-
14 lands) immediately in case our requirements seem un-
15 likely to be realized by some time during the first
16 ten days of October.'

17 "The Principle of the Execution of the
18 National Policy of the Empire.

19 "In view of the present imminent situation,
20 especially the anti-Japanese attitudes taken by the
21 various countries, such as America, Britain and the
22 Netherlands, the situation of Soviet Russia as well as
23 the resiliency of the national strength of the Empire,
24 etc., the Empire will carry out the policy prescribed
25 in regard to the South within "the Principles of the

1 National Policy of the Empire in line with Recent
2 Developments of the Situation" in accordance with the
3 following:

4 "1. The Empire will complete war preparations
5 by around the latter part of October, with the deter-
6 mination not to shirk war against America (Britain
7 and Netherland) /if it be/ for the sake of self-
8 preservation.

9 "2. In line with the aforementioned, the
10 Empire will endeavour to fulfill the requirements of
11 the Empire by utilizing every diplomatic means in
12 regard to America and Briatin.

13 "The minimum required items which the Empire
14 must obtain in regard to the negotiations with America
15 (Britain) and the limit of agreements which can be
16 accepted by the Empire in regard to these are on
17 separate sheets (separate sheets omitted).

18 "3. We are resolved to open hostilities
19 against America (Britain and the Netherlands) immedi-
20 ately if, by the diplomatic negotiations of the pre-
21 ceding paragraphs, there is still no outlook for the
22 realization of our requirements by about the early part
23 of October.

24 "Policies towards areas other than the South
25 shall be in accordance with the established national

1 policy, and particularly, an endeavour shall be made
2 to avoid a combined battle front against the Empire
3 by America and Soviet Russia in the future.'

4 "After that, although the government worked
5 assiduously for the establishment of negotiations
6 with America, the opinions of the two countries did
7 not coincide readily and finally the 10th day of
8 October came and passed. Thereupon, the army repeatedly
9 demanded the execution of the decision of the Council
10 in the Imperial presence, but Prince KONOE remained
11 irresolute. However, as the political situation
12 was such that things could not be put off from day to
13 day, Prince KONOE called the three ministers, the
14 Foreign, Army and Navy, along with President SUZUKI
15 of the Planning Board, to his private residence at
16 Ogikubo on October 12 and held a meeting. From
17 Chief Secretary TOMITA of the Cabinet, I learned
18 that opinions were divided at the meeting as to the
19 interpretation of the decision reading 'in case there
20 is no outlook for realization of our requirements. . .'
21 The premier was of opinion that there was still hope,
22 whereas the War Minister had already decided that
23 there was no hope and strongly advocated a decision
24 to open hostilities. The attitude of the Naval
25 Minister was to await the decision of the premier.

1 Finally, the following decision was made upon the
2 suggestion of the War Minister:

3 "In the Japanese-American negotiations,
4 Japan should:

5 "Try to obtain confidence regarding diplo-
6 matic success on the following two points by about
7 the time desired by the Supreme Command:

8 "a. No changes to be made in the policies
9 regarding the stationing of Japanese troops, and any
10 policies centering around them.

11 "b. Not to undermine the success attained
12 in the China Affair.

13 "Proceed to reach diplomatic agreement
14 according to the abovementioned conviction.

15 "Stop preparations for military operations,
16 with the decision of proceeding with the above inten-
17 tion.

18 "The Foreign Minister should investigate
19 the possibilities of success of the above points.

20 "2. Developments after the Ogikubo Conference.

21 "Although the decision was made as above
22 mentioned, the political situation tightened up each
23 moment and without time for sufficient study of the
24 aforementioned decision and without arriving at any
25 conclusion, the Cabinet rushed into the resignation

1 en bloc which took place on the 16th. I had several
2 occasions to confer informally in regard to the sav-
3 ing of the situation with Premier KONOE, War Minister
4 TOJO and President SUZUKI of the Planning Board, etc.,
5 from the 12th to the 16th, inclusive, but the details
6 will be omitted. Mention may be made, however, as to
7 the attempted formation of the Imperial Prince
8 HIGASHIKUNI Cabinet, which was proposed by War Minister
9 TOJO at that time and which was reportedly agreed upon
10 by Prince KONOE. I expressed my opposition from the
11 following reasons, and had it sent to War Minister
12 TOJO through the medium of President SUZUKI:

13 "1. The request for the help of an Imperial
14 Prince should be sought only in case of sheer neces-
15 sity, for instance, a case when the Army and the Navy
16 coincide in opinions, but the circumstances call for
17 the arbitration by an Imperial Prince. In such a
18 case, there is a possibility of the formation of an
19 Imperial Prince Cabinet. According to the circum-
20 stances as represented in the talk of the night before
21 last, difficult problems still remained unsettled. In
22 such situation, it is absolutely impossible to request
23 an Imperial Prince for the solution of these problems.

24 "On the other hand, it may be construed as
25 an indication that there is no able man among the

1 subjects, and moreover, if a war should happen between
2 America and Japan with an Imperial Prince Cabinet, it
3 would be a grave matter. In other words, if a member
4 of the Imperial Families should be entrusted with the
5 execution of the policies of such an important nature
6 as even Premier KONOE could not carry out according
7 to the decision of the Council in the Imperial presence,
8 and if it should turn out against expectations, then
9 the Imperial Families would be liable to be exposed as
10 a national object of hatred.

11 "On the 16th, an interview was sought by War
12 Minister TOJO, so I received him at 3 p.m. at the
13 office of the Lord Keeper of the Privy Seal. The talk
14 was connected with the extremely pressing political
15 situation. At that meeting, TOJO suggested Prince
16 HIGASHIKUNI as the succeeding premier, to which I
17 expressed opposition for the foregoing reasons.
18 Moreover, I expressed my opinion candidly as follows
19 in regard to the saving of the situation:

20 "In view of the present attitude of the
21 Navy, it is hardly possible to decide on the opening
22 of hostilities against America. On the other hand,
23 without doubt, the decision of the Council in the
24 Imperial presence of September 6 is of the utmost
25 importance. Now, if there should be even a little

1 doubt /about the attitude of the Navy or the decision
2 of the Council/, I believe it will necessitate a com-
3 plete reconsideration. In short, without the decisive
4 assurance of the Navy, the utmost precaution must be
5 taken in plunging into an all-out war and gambling
6 the fate of the country.'

7 "War Minister TOJO completely agreed with my
8 opinion and went so far as to express the opinion
9 that the decision of the Council in the Imperial
10 presence was a cancer and that this war could not be
11 carried out without the firm confidence of the Navy.
12 Then we exchanged opinions to the effect that, if the
13 War Minister understood the situation to this extent,
14 there should be some means of reaching an understand-
15 ing with the Premier and of removing the deadlock with
16 success. By this time, however, it was reported that
17 the Premier had been collecting the resignations of
18 the Cabinet members individually, and at 5 p.m.
19 Prince KONOE proceeded to the Palace and tendered
20 the resignations to the Throne.

21 "An Imperial order was immediately given to
22 me in regard to the remedial measures following the
23 resignation en bloc of the KONOE Cabinet. This time,
24 various difficulties which had never been seen before
25 appeared and I could not come to a decision readily.

1 Firstly, there was no one for the candidacy of premier
2 equal to Prince KONOE, and, secondly, the recent
3 political change had been caused by the interpreta-
4 tion of the decision of the Council in the Imperial
5 presence, even the opening of which had not been made
6 public. Judging from the change of the recent situ-
7 ation, the minimum requisite of today was to withdraw
8 the decision of the Council in the Imperial presence
9 of September 6, but, on the other hand, the so-called
10 'Imperial Standard,' - that is to say, the decision
11 that in case diplomatic negotiations seem hopeless by
12 the first part of October, we will be determined to
13 open hostilities against America -- was in the hands
14 of leading elements of the Army. Thus, in view of
15 the recent situation, the most difficult task was to
16 withdraw the aforementioned decision and start from
17 the very beginning. In other words, the man who was
18 entrusted with the Imperial order at this time, and
19 formed a Cabinet, must comply with the wishes of the
20 Emperor in assuming leadership of the military, es-
21 pecially of the Army, and also in bringing about the
22 complete cooperation of the Army and the Navy. The
23 person who was able to meet these conditions had to
24 be a man who could sufficiently comprehend the
25 development of the situation up to this time, and had

1 sincerely reviewed the circumstances which had brought
2 about the present situation. In this respect, I
3 thought, that a man who had been an outsider to date
4 would not only not be able fully to understand the
5 above-mentioned situation, but would most likely be
6 unable to resist the so-called 'Imperial Standard'
7 and would inevitably destroy the significance of the
8 recent political change.

9 "At the Meeting of the Elder Statesmen on the
10 17th, I recommended the War Minister /as the succeed-
11 ing Premier/ for the above mentioned reasons and made
12 a reply to the Throne with the approval of the majority
13 of the members. As such was the actual state of things
14 at that time, even if the Imperial order for the re-
15 organization of a Cabinet were issued, it would be
16 difficult to save the situation. So I requested the
17 Emperor that, at the time of the issue of the Imperial
18 order to the War Minister TOJO, the Imperial message
19 should also be bestowed on him as follows, and that,
20 simultaneously, Navy Minister OIKAWA should be special-
21 ly called and the following message bestowed on him,
22 communicating to him the Imperial request for the
23 eternal close cooperation between the Army and the
24 Navy. Thereafter, I communicated, by order of the
25 Emperor, the following Imperial messages to both

1 Ministers who had returned to the writing room, and
2 thus, the decision of the Council in the Imperial
3 presence of September 6 was completely withdrawn.

4 "I presume that the Imperial message has
5 just been given to you regarding the cooperative
6 relations between the Army and the Navy. I under-
7 stand it is the Emperor's wishes that, in deciding
8 the fundamental national policy, it is necessary to
9 investigate the domestic and foreign affairs more
10 broadly and deeply and to carry out an earnest study
11 of things without being bound by the decision of the
12 Council in the Imperial presence of September 6. I
13 communicate this to you by Imperial order.'

14 "To War Minister TOJO:

15 "I hereby authorize you to proceed with the
16 organization of a Cabinet. I wish you to conform to
17 the provisions of the constitution. I believe that
18 the present situation is confronted with utmost
19 difficulties.

20 "At this time, I further wish that the Army
21 and the Navy should cooperate more closely.

22 "I will receive the Navy Minister later and
23 tell him about this.

24 "To Navy Minister OIKAWA:

25 "I have received War Minister TOJO and

1 ordered the formation of a Cabinet. I believe that
2 the present situation is confronted with utmost dif-
3 ficulties. As I have given words /to TOJO/ that Army
4 and the Navy should cooperate more closely, you also
5 must endeavour to carry out my will.

6 "In the meantime, the argument to restrain
7 the Army and tide over the threatening crisis of war
8 against America and Britain by appointing General
9 UGAKI was considerably and strongly stressed, and there
10 were demands directed to me from various quarters to
11 heed this argument, but as for myself, I estimated it
12 was unsuitable at this time, according to the afore-
13 mentioned reasons. Consequently, I finally determined
14 to recommend War Minister TOJO to the Throne. Being
15 resolved to take over the whole responsibility upon
16 myself, I submitted the recommendation to the Emperor.

17 "November, 1941."

18 THE PRESIDENT: Do you hope to complete
19 presenting the prosecution's evidence, apart from the
20 Russian, today?

21 MR. COMYNS CARR: I am afraid possibly not
22 quite, your Honor. We may do it or we may be just a
23 few documents short if the Tribunal rises at the
24 usual hour.

25 THE PRESIDENT: We will recess for fifteen

1 minutes.

2 (Whereupon, at 1445, a recess was
3 taken until 1500, after which the proceed-
4 ings were resumed as follows:)

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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now resumed.

3 MR. COMYNS CARR: I now offer in evidence
4 a series of further extracts from his diary which
5 explain themselves and which I will read. Translation
6 queries have been agreed. The corrections are made in the
7 Court copies and in the errata sheet circulated to
8 other parties.

9 Prosecution document No. 1632W(3).

10 THE PRESIDENT: Admitted on the usual terms.

11 CLERK OF THE COURT: Prosecution's document
12 No. 1632W(3) will receive exhibit No. 2251.

13 (Whereupon, the document above
14 referred to was marked prosecution's ex-
15 hibit No. 2251 and received in evidence.)

16 MR. COMYNS CARR: (Reading)

17 "January 28th, 1932

18 "At 2:00 p.m. today, General MINAMI delivered
19 a lecture on the latest situation in Manchuria before
20 the Emperor in the Palace. I had the honor to attend
21 the lecture in the Imperial presence.

22 "General MINAMI told us of his impressions
23 resulting from his inspection of the general situation
24 there. He explained that the brave action of our Japanese
25 troops lay in the Japanese people's overall assistance

1 to them, their firm belief in victory, and their
2 confidence in their own military skill.

3 "His conclusions regarding the Manchuria-
4 Mongolia question:

5 "I. In the matter of our national defence,
6 Japan's relation to the new state and its administration
7 will be to take over its defence and by expediting the
8 completion of the Kirin-Kwainai Railway, make the
9 Sea of Japan into a lake and facilitate Japan's advance
10 into the North Manchuria area. Thus our national
11 defence plans would be revolutionised.

12 "II. Japan-Manchuria Joint Management - To
13 take concrete measures against economic blockade from
14 abroad, thereby firmly establishing a method by which
15 she can live forever as a Japan of the world.

16 "III. Solution of the Population Problem -
17 It is not so difficult to solve the population problem
18 provided that we give our emigrants in Manchuria the
19 same protection as that which they receive in South
20 America, and provided that we establish a colonial
21 trooping system there.

22 "When a new state is established in Manchuria
23 and Mongolia, I think it is advisable to unify the present
24 three or four Japanese organs in Manchuria and Mongolia
25 under one Japanese organ to be placed under a Government-

1 General as follows:- The Governor General."

2 There is a plan I won't read.

3 Next, 1632W(5).

4 THE PRESIDENT: Admitted on the usual terms.

5 CLERK OF THE COURT: Prosecution's document
6 1632W(5) will receive exhibit No. 2252.

7 (Whereupon, the document above
8 referred to was marked prosecution's ex-
9 hibit No. 2252 and received in evidence.)

10 MR. COMYNS CARR: (Reading)

11 "May 17th, 1932.

12 "At noon today I met and had lunch with Prince
13 KONOYE, Marquis INOUE and Lt. Col. SUZUKI at Baron
14 HARADA's residence. We talked about matters concerning
15 measures to cope with the present incident as well as
16 the succeeding cabinet..... Lt. Col. SUZUKI
17 said that if a new Cabinet were organized under the
18 leadership of political parties, a second or third
19 incident would occur..... It was suggested that a
20 national coalition cabinet might be a solution. Vice-
21 Minister KOISO seems to be in favour of a HIRANUMA
22 Cabinet. It is thought that the direct stimulation for
23 the incident this time was a declaration in respect to
24 the safeguarding of the political parties."
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1632W(6).

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1 THE PRESIDENT: Mr. Levin.

2 MR. LEVIN: Mr. President, I think it should
3 be indicated that certain portions of the memoranda
4 of this day are not in the exhibit. In other words,
5 the exhibit itself does indicate that fact, but there
6 is nothing in the statement and I would like to direct
7 the attention of the Tribunal to that fact.

8 MR. COMYNS CARR: 1632W(6).

9 THE PRESIDENT: Admitted on the usual terms.

10 CLERK OF THE COURT: Prosecution's document
11 No. 1632W(6) will receive exhibit No. 2253.

12 (Whereupon, the document above
13 referred to was marked prosecution's ex-
14 hibit No. 2253 and received in evidence.)

15 MR. COMYNS CARR: (Reading)

16 "18 April 1933

17 "Attended a party given by Vice-Minister OTANI
18 at the Kinsui. In the middle I left to attend a party
19 held for Prince HIGASHIKUNI at the residence of Marquis
20 INOUE, and I found there Prince KONOYE, Baron HARADA,
21 Lieutenant-Colonel SUZUKI and Chief of the Information
22 Bureau SHIRATORI.

23 "The discussion naturally extended to the
24 theory of the Japanese spirit, Viscount OKABE's abolition
25 of the metric system, and the severance of diplomatic

1 relations with Russia.

2 "According to Lt. Col. SUZUKI there were two
3 kinds of enemies, an absolute enemy and a relative
4 enemy. As Russia aimed to destroy the national structure
5 of Japan, he pointed out Russia as an absolute enemy.
6 He said that any attempt to conclude a non-aggression
7 pact with Russia is nothing more than a utilitarian
8 calculation and must be denounced by all means."

9 1632W(9).

10 THE PRESIDENT: Admitted on the usual terms.

11 CLERK OF THE COURT: Prosecution's document
12 1632W(9) will receive exhibit No. 2254.

13 (Whereupon, the document above
14 referred to was marked prosecution's ex-
15 hibit No. 2254 and received in evidence.)

16 MR. COMYNS CARR: (Reading)

17 "14th July, 1937 - (Extract)

18 "ATSUI came at 8:00 o'clock. We talked on
19 matters such as discontinuing the dispatching of troops
20 to North China, and became indignant."

21 This a few days after the Marco Polo Bridge
22 Incident.

23 MR. LOGAN: May I say that that word is not
24 "We", it is "He."

25 MR. COMYNS CARR: This has been before the

1 Language Board, your Honor, and I am reading what I
2 understand is their version.

3 THE PRESIDENT: The capital "H" appears
4 so indistinctly as to easily be taken as a "W". It
5 is "H" and it is "He".

6 MR. COMYNS CARR: It is "He", your Honor. If
7 it is "He", your Honor, is there anything between
8 "and" and "became" in the last line in your Honor's
9 copy?

10 THE PRESIDENT: No.

11 MR. COMYNS CARR: 1632W(10).

12 THE PRESIDENT: Admitted on the usual terms.

13 CLERK OF THE COURT: Document No. 1632W(10).
14 will receive exhibit No. 2255.

15 (Whereupon, the document above
16 referred to was marked prosecution's ex-
17 hibit No. 2255 and received in evidence.)

18 MR. COMYNS CARR: (Reading)

19 "27 October 1937

20 "I attended the extraordinary session of the
21 cabinet, in which we decided on our statement and answer
22 to the invitation to the Council in connection with the
23 Nine-Power Pact."
24

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1 Language Board, your Honor, and I am reading what I
2 understand is their version.

3 THE PRESIDENT: The capital "H" appears
4 so indistinctly as to easily be taken as a "W". It
5 is "H" and it is "He".

6 MR. COMYNS CARR: It is "He", your Honor. If
7 it is "He", your Honor, is there anything between
8 "and" and "became" in the last line in your Honor's
9 copy?

10 THE PRESIDENT: No.

11 MR. COMYNS CARR: 1632W(10).

12 THE PRESIDENT: Admitted on the usual terms.

13 CLERK OF THE COURT: Document No. 1632W(10).
14 will receive exhibit No. 2255.

15 (Whereupon, the document above
16 referred to was marked prosecution's ex-
17 hibit No. 2255 and received in evidence.)

18 MR. COMYNS CARR: (Reading)

19 "27 October 1937

20 "I attended the extraordinary session of the
21 cabinet, in which we decided on our statement and answer
22 to the invitation to the Council in connection with the
23 Nine-Power Pact."
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KIDD was now Education Minister.

1632(W)11.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Prosecution document

No. 1632W(11) will receive exhibit No. 2256.

(Whereupon, the document above referred to was marked prosecution's exhibit No. 2256 and received in evidence.)

1 MR. COMYNS CARR (Reading):

2 "3 November 1937. War Minister SUGIYAMA
3 visited me at 6:00 o'clock. We freely exchanged
4 views on matters such as saving of the situation,
5 the establishment of the Imperial General Headquarters,
6 the declaration of war, etc."

7 1632W (13).

8 THE PRESIDENT: Admitted on the usual terms.

9 CLERK OF THE COURT: Prosecution's document
10 No. 1632W (13) will receive exhibit No. 2257.

11 (Whereupon, the document above
12 referred to was marked prosecution's exhibit
13 No. 2257 and received in evidence.)

14 MR. COMYNS CARR (Reading):

15 "16 November 1937. At 10 a.m. I called on
16 Prince KONOYE at the Premier's official residence. I
17 urged him as follows: Concerning the matter mentioned
18 yesterday, I thought that the action would have an
19 adverse influence on financial and other circles,
20 particularly with respect to the rate of exchange. I
21 am very much concerned over how the war situation might
22 be affected if it should drop heavily.

23 "Whatever the case might be in the event of
24 the war changing into a defensive operation, if there
25 were a commotion in the internal politics now when we

1 are on the offensive, the attitude of foreign
2 countries, which had finally turned serious, would be
3 changed by it. This must be avoided by all means.

4 "Moreover I said that even if he should
5 resign, nine chances out of ten the Emperor would
6 again order him to form a cabinet, and if he should
7 refuse this command, I should also be unable to
8 explain it to the elder statesman (GENRO) and the
9 others. I said that if he should finally make up his
10 mind to do it, that I should like to talk casually
11 about the future to Mr. Seihin IKEDA and the Chief of
12 the Military Affairs Bureau, MACHIJINI, beforehand. He
13 said 'wait a little while.' Moreover he decided that
14 in the event of an Imperial command he would accept.
15 The talk ended for the time being."

16 1632W (14).

17 THE PRESIDENT: Admitted on the usual terms.

18 CLERK OF THE COURT: Prosecution's document
19 No. 1632W (14) will receive exhibit No. 2258.

20 (Whereupon, the document above
21 referred to was marked prosecution's exhibit
22 No. 2258 and received in evidence.)

23 MR. COMYNS CARR (Reading):

24 "19th November, 1937. Attended the Cabinet
25 session at 10 a.m. We decided the matter respecting

1 the liaison between the Imperial General Headquarters
2 and the Government. I said that the present Imperial
3 General Headquarters Regulations cover incidents as
4 well as war, but I asked if the degree and extent of
5 an incident had been studied.

6 "The War Minister replied though he had never
7 tried to find a definition on the degree of an incident
8 he considered that only in the case of an incident of
9 such an extent as to require a declaration of war,
10 that is, if the mobilization of the army must be
11 ordered, would Imperial Headquarters be established."

12 1632W (15).

13 THE PRESIDENT: Admitted on the usual terms.

14 CLERK OF THE COURT: Prosecution's document
15 No. 1632W (15) will receive exhibit No. 2259.

16 (Whereupon, the document above
17 referred to was marked prosecution's exhibit
18 No. 2259 and received in evidence.)

19 MR. COMYNS CARR (Reading):

20 "21st December, 1937. At 10 a.m. I attended
21 a Cabinet meeting in which we deliberated on the
22 negotiations with China, draft of the answer to the
23 German Ambassador, and counter-measures for the China
24 Affair. I urged the necessity of creating cultural
25 measures in North China."

1 1632W (16).

2 THE PRESIDENT: Admitted on the usual terms.

3 CLERK OF THE COURT: Prosecution's document
4 No. 1632W (16) will receive exhibit No. 2260.

5 (Whereupon, the document above
6 referred to was marked prosecution's exhibit
7 No. 2260 and received in evidence.)

8 MR. COMYNS CARR (Reading):

9 "14th January, 1938. At 10:00 a.m. attended
10 the Cabinet Meeting held at the Prime Minister's
11 Official Residence. Discussed about our epoch-making
12 announcement concerning the China Affair. We continued
13 our discussion through the afternoon.

14 "At the request of the German Ambassador,
15 the Minister of Foreign Affairs met him at 4:30 p.m.
16 The Ambassador said that the German Ambassador in
17 China had handed him the answer of the Chiang Kai-shek
18 Government to the effect that as late as today, it
19 wished to know the meaning of the conditions.

20 "As we thought that it lacked sincerity, we
21 decided to make an announcement of a fixed policy to
22 the effect that we would have nothing to do with the
23 national government, but would negotiate with the new
24 Chinese Government which we expect to be established
25 and join it in the promotion of the newly rising China

1 and the peace of Asia. Concluded the meeting at
2 5:30 p.m."

3 HIROTA was Foreign Minister at this date.
4 1632W (18a).

5 THE PRESIDENT: Admitted on the usual terms.

6 CLERK OF THE COURT: Prosecution's document
7 No. 1632W (18a) will receive exhibit No. 2261.

8 (Whereupon, the document above
9 referred to was marked prosecution's exhibit
10 No. 2261 and received in evidence.)

11 MR. COMYNS CARR (Reading):

12 "May 19th, 1938. At 4:00 o'clock I conversed
13 with President HONJO. He expressed the following
14 opinion in regard to the preparations after the battle
15 of Suchow. I promised to do my best since I agreed
16 generally with his opinion.

17 "It may be difficult to anticipate any
18 striking changes as a result of the Battle of Suchow
19 as it appears also that a fairly large portion of the
20 enemy managed to run away. However, even in China there
21 is a considerable amount of peace talk. There is in-
22 formation that when Wu-Pei-Fu protested to Tang-Shao-I
23 as to the attitude of Chiang Kai-shek, Tang replied to
24 the effect that although Chiang's attitude before the
25 Incident was improper, he approved of Chiang's attitude

1 and actions since the Incident. It is said that Tang
2 has contacted Kao-Tsung-Wu, so it could be thought
3 that perhaps there may be some sort of a negotiation
4 from China. Before making a statement to the effect
5 that we will have nothing to do with the Chiang
6 Government, it is necessary to give due consideration
7 and provide room for breaking the impasse.

8 "After the battle of Suchow, it is on one
9 hand, necessary to show an attitude of advancing to
10 Hankow, but, at the same time, it is essential to
11 take steps for settling the Incident. If things do
12 not turn out as hoped for, I believe it would, by all
13 means, be necessary to establish a close connection
14 also with the Supreme Command and, with the present
15 Reserve Fund of ¥800,000,000 and ¥300,000,000 in
16 gold, enter into protracted warfare, by planning to
17 continue for about three years. Etc."

18 1632W (19).

19 THE PRESIDENT: Admitted on the usual terms.

20 CLERK OF THE COURT: Prosecution's document
21 No. 1632W (19) will receive exhibit No. 2262.

22 (Whereupon, the document above
23 referred to was marked prosecution's exhibit
24 No. 2262 and received in evidence.)

25 MR. COMYNS CARR (Reading):

1 "August 9th, 1938. I attended the Cabinet
2 meeting held at 10:00 a.m. and heard about the progress
3 of Changkufeng incident from the War Minister and the
4 Foreign Minister. After the meeting I heard from the
5 Premier that the German Foreign Minister von Ribbentrop
6 made a very important proposal to Ambassador OSHIMA
7 (Ambassador TOGO was ignorant of this fact).
8 Von Ribbentrop had consulted with Hitler for four
9 hours before he made this proposal (Ambassador OTT
10 was also ignorant about it). Lt. Col. KASAHARA returned
11 by airplane with the above message.

12 "The essence of this proposal is to reinforce
13 the relationship between Japan and Germany which con-
14 tains three clauses.

15 "The third clause provides that in case one
16 nation is attacked by a third country, the other will
17 render military aid. It is a serious matter. According
18 to von Ribbentrop's explanation, Italy will become a
19 participant in this treaty and his words suggest that
20 the negotiations with Italy have already begun. The
21 Navy objects to this clause. Von Ribbentrop predicts
22 the European political situation as follows: 'War with
23 Russia is inevitable; peaceful measures will be taken
24 towards the Czechs; Anglo-French relationship is so
25 intimate that it is impossible to cause disunity between

1 them; America will aid England and France financially
2 but not militarily; Rumania will remain neutral, and
3 Hungary can be made an ally."

4 ITAGAKI was War Minister at this date.

5 1632W (21).

6 THE PRESIDENT: Admitted on the usual terms.

7 CLERK OF THE COURT: Prosecution's document
8 No. 1632W (21) will receive exhibit No. 2263.

9 (Whereupon, the document above
10 referred to was marked prosecution's exhibit
11 No. 2263 and received in evidence.)
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MR. COMYNS CARR: (Reading)

"September 7, 1938:

". . . . Dined with Prince KONOYE, Baron HARADA, Marquis MATSUDAIRA, and the widow of TSUGARU at" -- I can't read that -- "at 6:30 p. m. Had a friendly talk with Prince KONOYE in a separate room. I learned that the following is in general the state of affairs in regard to the head of the new political party:

"After the fall of Hakko, the changes in the situation may cause a condition which may necessitate our dealing with Chiang Kai-shek. Furthermore, there are domestic conditions calling for considerable concern such as unemployment and other matters. From the viewpoint that there is a necessity for arranging a so-called 'one nation-one party' system by incorporating all the political parties into one body in order to deal with the above problems, AKIYAMA, KITA, KUHARA, ASO, and others are participating in the movement. It is said that through the mediation of AKITA, MEIDA also met AKIYAMA recently. Prince KONOYE said that he is giving an ambiguous answer thinking that perhaps it would be inadvisable to refuse the party leadership if the political party merger -

1 movement should progress according to the afore-
2 mentioned meaning.

3 "Furthermore, Prince KONOYE revealed his
4 true mind by saying, 'I came up against the outbreak
5 of the China Incident since the formation of my
6 cabinet, and have continued to make various pains-
7 taking efforts. However, in viewing the perspective
8 after the fall of Nanking, the result of the declara-
9 tion of January 16th, the effects and showing of the
10 establishment of the new Regime, etc., there are many
11 cases where matters have gone contrary to my expecta-
12 tions. If, on top of this, things should finally
13 lead to having to deal with Chiang Kai-shek, there
14 is nothing I can do but resign since the responsi-
15 bilities thereof would be too heavy.' Moreover
16 he recalled that it could also be surmised that the
17 recent backbiting against the Premier's policy, etc.,
18 by the UGAKI circle is being done with the inten-
19 tion of eventually overthrowing this cabinet. I
20 therefore stressed the fact that it was wholly out
21 of the question for the Premier to quit at this time
22 due to dealing with Chiang Kai-shek and to have the
23 new political situation dealt with by Foreign
24 Minister UGAKI's policies. I told him that it
25 would probably result in a disturbance within the

1 country, and that there was sufficient reason to
2 fear that this would result in our nation's defeat.
3 I emphasized that it was necessary for him not to
4 think of such a thing and go ahead, mustering up
5 his courage once more, and for this purpose it might
6 be unavoidable for him to accept the leadership of
7 the new party if necessary. We talked further
8 about the forming of the new party taking every
9 possible circumstance into consideration, but we
10 both eventually agreed that the secretary-general's
11 test of selecting men is extremely difficult. We
12 further promised each other that we would study this
13 matter more thoroughly.

14 "The Right Wing is also of the opinion
15 that peace between Japan and China must be brought
16 about even by dealing with Chiang-Kai-shek,
17 and TOYAMA and SUENAGA agree to this. He said that
18 he was contacted by SUENAGA on the above point.

19 "As for the military, it is said that the
20 General Staff is generally of the above opinion, and
21 that Lt. Col. IMADA and his Imperial Highness
22 Prince CHICHIBU are its leaders. At first War
23 Minister ITAGAKI was inclined to be opposed to
24 this but lately he has come almost to agree with
25 it. It is said that the situation is at a deadlock

1 because TOJO and KAGESA have the opposite opinion.

2 "I returned home at 11 a. m."

3 TOJO was then Vice-Minister.

4 1632W (22).

5 THE PRESIDENT: Admitted on the usual
6 terms.

7 CLERK OF THE COURT: Prosecution document
8 1632W (22) will receive exhibit No. 2264.

9 (Whereupon, the document above re-
10 ferred to was marked prosecution's exhibit
11 No. 2264 and received in evidence.)

12 MR. COMYNS CARR (Reading): "2 Nov. 1938.

13 "At 10:00 a. m. I attended the conference
14 of the Privy Council. It was decided to cease
15 cooperating with the various bodies of the League
16 of Nations."

17 1632W (24).

18 THE PRESIDENT: Admitted on the usual terms.

19 CLERK OF THE COURT: Prosecution document
20 No. 1632W (24) will receive exhibit No. 2265.

21 (Whereupon, the document above re-
22 ferred to was marked prosecution's exhibit
23 No. 2265 and received in evidence.)

24 MR. COMYNS CARR (Reading): "26 Dec. 1938.

25 "At 1:00 p. m. I called on Baron HIRANUMA

at his residence. He expressed his opinion on the
1 resignation of KONOYE Cabinet. He insisted that
2 they must carry on. His reason was that it was
3 reported that Wang Chao-ming had escaped from
4 Chungking and that the plot was proceeding steadily.
5 Even from the viewpoint of loyalty, it is undesirable
6 that Prince KONOYE should resign his post in the
7 present situation."

8 1632W (25).

9 THE PRESIDENT: Admitted on the usual terms.

10 CLERK OF THE COURT: Prosecution document
11 No. 1632W (25) will receive exhibit No. 2266.

12 (Whereupon, the document above re-
13 ferred to was marked prosecution's exhibit
14 No. 2266 and received in evidence.)

15 MR. COMYNS CARR (Reading): "December 29,
16 1938.

17 "At 9:00 a. m. Maj. Gen. Teichi SUZUKI
18 visited me. He insisted that KONOYE's Cabinet should
19 carry on.

20 "At 7:00 p. m. the Prime Minister's
21 Secretary, KISHI, telephoned me and I called on
22 Prince KONOYE at his Okikubo residence at 8:00
23 o'clock. Finance Minister IKEDA also went there.
24 War Minister ITAGAKI was already present. The
25

1 War Minister explained the development of the
2 scheme and the international situation."

3 1632W (26).

4 THE PRESIDENT: Admitted on the usual terms.

5 CLERK OF THE COURT: Prosecution document
6 No. 1632W (26) will receive exhibit No. 2267.

7 (Whereupon, the document above re-
8 ferred to was marked prosecution's exhibit
9 No. 2267 and received in evidence.)

10 MR. COMYNS CARR (Reading): "5 Jan. 1939.

11 "Received an invitation from Baren HIRA-
12 NUMA, and called on him at 9:50 a. m. at the offi-
13 cial residence of the Minister of Justice. He
14 requested me to take the position of Home Minister
15 on the ground that the nomination was a predetermined
16 one and almost constituted a condition as the result
17 of his talk with Prince KONOYE. I then consented,
18 on condition that I might dispose of the many
19 different pending problems in the Ministry at my
20 discretion. I was requested, at the same time,
21 to take up the post of the Welfare Minister, to
22 which I assented on condition that the full-time
23 Minister should take up his post as soon as
24 possible. At 1 p. m. I reported the circumstances
25 to Secretary KOREMATSU and Vice-Minister HIROSE.

1 "As the result of several negotiations
2 over the telephone with Justice Minister SHIONO,
3 Baron HIRANUMA also approved my proposal to promote
4 Vice Minister HIROSE. HIROSE was immediately
5 informed and sent to the cabinet organization head-
6 quarters."

7 1632W (27).

8 THE PRESIDENT: Admitted on the usual terms.

9 CLERK OF THE COURT: Prosecution document
10 No. 1632W (27) will receive exhibit No. 2268.

11 (Whereupon, the document above re-
12 ferred to was marked prosecution's exhibit
13 No. 2268 and received in evidence.)

14 MR. COMYNS CARR (Reading): "31 March 1939.

15 "Conferred at 1 p. m. with the Premier on
16 the problems of the Military Alliance between Japan
17 and Germany and of the appointment of new cabinet
18 members, etc. At 4 p. m. I went to the Tokyo Club,
19 and met Prince KONOYE there. We had not met for
20 some time, but exchanged opinions until 6 p. m. on
21 the political situation and the policy towards the
22 Incident."

23 HIRANUMA was the Premier.

24 1632W (28).

25 THE PRESIDENT: Admitted on the usual terms.

1 CLERK OF THE COURT: Prosecution document
2 No. 1632W (28) will receive exhibit No. 2269.

3 (Whereupon, the document above re-
4 ferred to was marked prosecution's exhibit
5 No. 2269 and received in evidence.)

6 MR. COMYNS CARR (Reading): "19 April 1939.

7 "At 1:30 p. m. I conferred with Premier
8 HIRANUMA on the Military Alliance (T. N. between
9 Germany, Italy and Japan/ and emphasized that, in
10 the event of its ending in failure, it would have a
11 dangerous effect on the domestic situation and
12 would be a decisive disadvantage to the settlement
13 of the China Incident, and requested him to (t. N.
14 therefore/ exert his increased efforts."

15 1632W (29).

16 THE PRESIDENT: Admitted on the usual terms.

17 CLERK OF THE COURT: Prosecution document
18 No. 1632W(29) will receive exhibit No. 2270.

19 (Whereupon, the document above re-
20 ferred to was marked prosecution's exhibit
21 No. 2270 and received in evidence.)

22 MR. COMYNS CARR (Reading): "2 May 1939.

23 "Met with Chief Secretary OTA at p p. m.
24 at the Premier's official residence. Heard from
25 him the details of the disagreement between Army

1 and Navy circles in regard to the Military Alliance.

2 "At 8 p. m. I called on the Navy Minister
3 to hear of the recent progress in the Military
4 Alliance and we exchanged views as to the saving
5 of the situation.

6 "I stressed that there is no reason to
7 force the conclusion of the Military Alliance, as
8 it depends on the will of the other parties. But
9 if it fails after so much effort, it would not
10 only have a bad influence on our policy towards
11 the Sino-Japanese Incident, but it would inevi-
12 tably bring about a feeling of uneasiness and
13 dissatisfaction on the part of the people, espe-
14 cially if the main cause of failure were due to
15 disagreements between the Army and Navy on such
16 an important national policy. Therefore it must
17 be avoided by all means. And so we must do our
18 utmost to unify public opinion as far as possible,
19 even if we should fail to conclude the Treaty.
20 The Navy Minister was entirely of the same opinion
21 and promised me to exert himself to follow the
22 above line. I felt somewhat relieved and returned
23 home at 10 p. m."

24 1632W (30).

25 THE PRESIDENT: Admitted on the usual

1 terms.

2 CLERK OF THE COURT: Prosecution document
3 No. 1632W (30) will receive exhibit No. 2271.

4 (Whereupon, the document above re-
5 ferred to was marked prosecution's exhibit
6 No. 2271 and received in evidence.)

7 THE PRESIDENT: Mr. Carr, would you defer
8 reading these excerpts until each Judge has a copy?

9 MR. COMYNS CARR: I beg your pardon.

10 (Reading): "4 August 1939.

11 "At noon, I presented the following views
12 to War Minister ITAGAKI on the question of the Mili-
13 tary Alliance with Germany and Italy, and on talks
14 of political changes connected with it, and he
15 agreed with them.

16 "According to general rumor the Army has
17 decided to conclude the Military Alliance as soon
18 as possible, and if the proposal is not accepted at
19 the Cabinet Meeting, the War Minister is determined
20 to resign, notwithstanding the fact that it will
21 unavoidably result in the resignation of the entire
22 Cabinet. If we observe this from the present state
23 of internal affairs the people appear somewhat tired
24 of the war. They are hoping for a settlement of the
25 Incident, so they have pinned their hopes on the

1 trend which is gradually pushing a settlement of
2 conditions, such as the success of the Tokyo
3 Conference and the establishment of the Wang Regime.
4 This is splendid; but if the reverse should happen,
5 i. e., if the Tokyo Conference does not materialize,
6 and the effort to establish the Wang Regime should
7 fail, a serious situation might develop. It would
8 be unwise to bring the political situation to a head
9 by taking up this matter during the Anglo-Japanese
10 Conference. The last time, shortly after Wang
11 escaped from Chungking, the KONOYE Cabinet fell;
12 now this time, it would be extremely bad policy
13 should the HIRANUMA Cabinet resign prior to the
14 establishment of the regime, after Wang has taken
15 all the trouble to come to Tokyo to confer with
16 the Cabinet ministers. I believe that it is best,
17 if possible, to have the political change after
18 the Wang Regime is established. It is rumored that
19 Army circles insist on effecting martial law,
20 forcibly in case of political change, and they
21 intend gradually to adopt a military administra-
22 tion.

23 "But I think we must resist such methods
24 with all our might, especially so in the present
25 situation. In case of political change, if the

1 trend which is gradually pushing a settlement of
2 conditions, such as the success of the Tokyo
3 Conference and the establishment of the Wang Regime.
4 This is splendid; but if the reverse should happen,
5 i. e., if the Tokyo Conference does not materialize,
6 and the effort to establish the Wang Regime should
7 fail, a serious situation might develop. It would
8 be unwise to bring the political situation to a head
9 by taking up this matter during the Anglo-Japanese
10 Conference. The last time, shortly after Wang
11 escaped from Chungking, the MONOYE Cabinet fell;
12 now this time, it would be extremely bad policy
13 should the HIRANUMA Cabinet resign prior to the
14 establishment of the regime, after Wang has taken
15 all the trouble to come to Tokyo to confer with
16 the Cabinet ministers. I believe that it is best,
17 if possible, to have the political change after
18 the Wang Regime is established. It is rumored that
19 Army circles insist on effecting martial law,
20 forcibly in case of political change, and they
21 intend gradually to adopt a military administra-
22 tion.

23 "But I think we must resist such methods
24 with all our might, especially so in the present
25 situation. In case of political change, if the

1 Army and the Navy are permitted to continue to
2 balk one another, and the Emperor should order the
3 formation of a new Cabinet, it is certain that it
4 would be impossible to form one. Therefore, I think
5 that it is absolutely necessary for the Army and
6 Navy to find a way to break their deadlock before
7 the political change. So I want you (T. N. ITAGAKI/
8 to get in touch with all concerned if you by any
9 chance make up your mind.

10 "I told the Premier about the result of the
11 above talk, and we exchanged opinions. I also
12 relayed the above talk to the Minister of Justice
13 and to the Chief Cabinet Secretary."
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1 1632-W-32.

2 THE PRESIDENT: Admitted on the usual terms.

3 CLERK OF THE COURT: Prosecution's document
4 1632-W-32 will receive exhibit No. 2272.

5 (Whereupon, the document above re-
6 ferred to was marked prosecution's exhibit
7 No. 2272 and received in evidence.)

8 MR. COMYNS CARR: (Reading):

9 "28th August, 1939.

10 "A cabinet meeting was held at the Premier's
11 official residence at 9 a.m. Premier HIRANUMA ex-
12 plained about the reasons why the Cabinet should re-
13 sign en bloc, and requested all the Cabinet Minis-
14 ters to agree with his opinion. His proposal was
15 unanimously approved and all tendered their resigna-
16 tions. The Premier immediately proceeded to the
17 Imperial Palace, and after being received in audience
18 by the Emperor, presented to the Throne all the re-
19 signations of the Cabinet Ministers. But the Emperor
20 requested that all Cabinet Ministers should remain
21 in their present posts until further notice.

22 "At 1:30 p.m. Nazomi NAKAGAWA called on me to
23 express his gratitude for the Imperial nomination as
24 a member of the House of Peers.

25 "At 8:00 p.m. Chief KATO of the Gendarmerie

1 1632-W-32.

2 THE PRESIDENT: Admitted on the usual terms.

3 CLERK OF THE COURT: Prosecution's document
4 1632-W-32 will receive exhibit No. 2272.

5 (Whereupon, the document above re-
6 ferred to was marked prosecution's exhibit
7 No. 2272 and received in evidence.)

8 MR. COMYNS CARR: (Reading):

9 "28th August, 1939.

10 "A cabinet meeting was held at the Premier's
11 official residence at 9 a.m. Premier HIRANUMA ex-
12 plained about the reasons why the Cabinet should re-
13 sign en bloc, and requested all the Cabinet Minis-
14 ters to agree with his opinion. His proposal was
15 unanimously approved and all tendered their resigna-
16 tions. The Premier immediately proceeded to the
17 Imperial Palace, and after being received in audience
18 by the Emperor, presented to the Throne all the re-
19 signations of the Cabinet Ministers. But the Emperor
20 requested that all Cabinet Ministers should remain
21 in their present posts until further notice.

22 "At 1:30 p.m. Nazomi NAKAGAWA called on me to
23 express his gratitude for the Imperial nomination as
24 a member of the House of Peers.

25 "At 8:00 p.m. Chief KATO of the Gendarmerie

1 visited me. He said there was a rumor that
2 Lieutenant-General TADA was to be appointed War
3 Minister. He added he was very anxious that this
4 might intensify ~~friction between different groups~~
5 ~~within the army~~, and sought my opinion to
6 prevent it. I answered that, as an outsider, I
7 could do nothing about it.

8 "At 8:50 p.m. General Nobuyuki ABE was summoned
9 by the Emperor and was ordered to organize a new
10 Cabinet.

11 "At 11:30 p.m. Prince KONOYE telephoned me and
12 informed me of the following fact. The Prince
13 seemed to be perplexed and asked my opinion about it.

14 "According to the Prince, he was paid a visit
15 by General ABE and the General told him that he had
16 been ordered by the Emperor to organize a new
17 Cabinet and that the Emperor had given him instruc-
18 tions on the following three points, which, not being
19 expected, seemed to embarrass the General very much.

20 "1. Either UMEZU or HATA should be appointed
21 War Minister.

22 "2. Diplomatic policy should follow the line
23 of cooperation with Britain and the United States.

24 "3. ~~Discretion must be used~~ in choosing
25 the Home Minister and the Justice Minister, as the

1 maintenance of public order was of supreme importance.

2 "After thinking over the matter, I telephoned
3 Prince KONOYE at 0030 a.m. and expressed my opinion
4 to him as follows, with which the Prince agreed.

5 "Points 2 and 3 above could in any case be dis-
6 posed of at the discretion of General ABE, but as for
7 the nomination of the War Minister by the Emperor, there
8 was a danger, if it were left to take its own course,
9 that it might bring about a clash with military circles.
10 So it was advisable that the Emperor summon the War
11 Minister or let the Chief Aide-de-camp to his Majesty
12 convey to the Army the Imperial Order given to General
13 ABE as to the selection of the War Minister, and let the
14 three Chiefs of the Army recommend the War Minister.

15 "I requested Prince KONOYE to convey my opinion
16 to General ABE."

17 1632-W-33.

18 THE PRESIDENT: Admitted on the usual terms.

19 CLERK OF THE COURT: Prosecution's document
20 No. 1632-W-33 will receive exhibit No. 2273.

(Whereupon, the document above re-
ferred to was marked prosecution's exhibit
No. 2273 and received in evidence.)

MR. COMYNS CARR: (Reading):

1 maintenance of public order was of supreme im-
2 portance.

3 "After thinking over the matter, I telephoned
4 Prince KONOYE at 0030 a.m. and expressed my opinion
5 to him as follows, with which the Prince agreed.

6 "Points 2 and 3 above could in any case be dis-
7 posed of at the discretion of General ABE, but as
8 for the nomination of the War Minister by the Em-
9 peror, there was a danger, if it were left to take
10 its own course, that it might bring about a clash
11 with military circles. So it was advisable that
12 the Emperor summon the War Minister or let the Chief
13 Aide-de-camp to his Majesty convey to the Army the
14 Imperial Order given to General ABE as to the selec-
15 tion of the War Minister.

16 "I requested Prince KONOYE to convey my opinion
17 to General ABE."

18 1632-W-33.

19 THE PRESIDENT: Admitted on the usual terms.

20 CLERK OF THE COURT: Prosecution's document
21 No. 1632-W-33 will receive exhibit No. 2273.

22 (Whereupon, the document above re-
23 ferred to was marked prosecution's exhibit
24 No. 2273 and received in evidence.)

25 MR. COLYNS GARR: (heading):

1 "10th November, 1939.

2 "At 10:00 a.m. Marquis MATSUDAIRA visited me.

3 As I have been contemplating, at the request of
4 Prince KONOYE, the method of recommending the suc-
5 ceeding Premier to the Throne in case of the resig-
6 nation of the Cabinet, I had a talk over the matter
7 with the Marquis. The gist of my opinion is as
8 follows:

9 "When I had an interview recently with the Lord
10 Keeper of the Privy Seal, his opinion on this question
11 was that no other method except the present one was
12 conceivable for him, because he could not think of
13 any other plan even when the elder statesman was
14 still alive and well. As for me, there was no reason
15 to raise any objection to the above opinion, but I
16 thought we ought to consider beforehand the method
17 in question after the death of the elder statesman.
18 Besides, judging from the recent atmosphere of
19 political circles, in which the present method was
20 being criticised unfavorably, there was a need for
21 setting up a new method which would be more objective
22 than the present one. The authorized limit of powers
23 of both the offices of the Lord Keeper of the Privy
24 Seal and of the President of the Privy Council were
25 prescribed by the Government Organization Ordinance,

1 and so there was some doubt as to whether the
2 office of the Lord Keeper of the Privy Seal, which
3 was responsible to the Emperor as his adviser, was
4 really compatible with the act of recommending a
5 Premier to the Throne. Moreover, from the political
6 point of view, it was not desirable that high
7 officials who were so close to the Emperor should
8 hold the reins of political power. So, in the future,
9 the office of the Lord Keeper of the Privy Seal should
10 be strictly confined to that of the adviser to the
11 Emperor, but in the case of an 'en bloc' resignation
12 of the Cabinet, the Emperor would do well to consult
13 with former Prime Ministers as to the succeeding
14 Premier, not limited to those accorded the status
15 of former Premier. In case the number of ex-Prime
16 Ministers was too small, ex-Ministers of State might
17 be added to the meeting. Whether the Lord Privy
18 Seal should participate in it by the special order
19 of the Emperor, or whether he should not take part
20 in it at all but only act as adviser to the Emperor
21 when he investigated the matter, needs further con-
22 sideration. The above principle could be applied to
23 the President of the Privy Council. I believed that
24 both the Lord Privy Seal and the President of the
25 Privy Council should be strictly separated from the

1 function of recommending succeeding Premiers for the
2 time being.

3 "In the event of the Emperor asking the opinion
4 of ex-Premiers, they should hold a conference to
5 discuss the question, but it is undesirable that
6 they should decide the matter by vote. They should
7 report to the Throne all the opinions expressed in
8 the conference together with the minority opinion
9 as material for the judgment of the Emperor.

10 "I expressed my opinions as above, to which the
11 Marquis assented, and we promised each other to
12 discuss the matter further.

13 "At 1:30 p.m. I called on Prince KONOYE at his
14 residence at Ogikubo. After having a talk on the
15 general situation both at home and abroad, I told him
16 about my opinions which I had told Marquis MATSUDAIRA
17 in the morning. Prince KONOYE gave his full assent
18 to my opinions. He even hoped to carry out the plan
19 at the first opportunity, and requested me to take
20 proper measures as soon as possible. But I wanted
21 him to make a further study on this problem, since
22 it was difficult to carry it out while the elder
23 statesman is still active. Then Prince KONOYE asked
24 me whether my opinion meant, in the end, the aboli-
25 tion of the office of the Lord Privy Seal. I answered

1 to the effect that it might seem so from the logical
2 point of view, but in fact I did not favor the
3 abolition, for there would be many important affairs
4 of State left for him as the adviser to the Emperor.
5 We parted at 3 p.m."

6 At this date KIDO was out of office.

7 1632-W-34.

8 THE PRESIDENT: Admitted on the usual terms.

9 CLERK OF THE COURT: Prosecution's document
10 No. 1632-W-34 will receive exhibit No. 2274.

11 (Whereupon, the document above re-
12 ferred to was marked prosecution's exhibit
13 No. 2274 and received in evidence.)

14 MR. COMYNS CARR: (Reading):

15 "10 May '40.

16 "At 9:00 a.m. Mr. IKEZAKI called and sounded
17 out my opinion in regard to the new political party
18 of which Prince KONOYE is to be President, with me
19 as Vice-President, and with regard to the formation
20 of a Cabinet. I frankly expressed my opinion that
21 as long as Prince KONOYE stays in the political field,
22 I would like to have him take the leadership and that
23 I would support him to the last, as I had no inten-
24 tion of forming any other new political party."
25

1632-W-35.

~~THE PRESIDENT:~~ Admitted on the usual terms.

1 CLERK OF THE COURT: Prosecution's document
2 No. 1632-W-35 will receive exhibit No. 2275.

3 (Whereupon, the document above re-
4 ferred to was marked prosecution's exhibit
5 No. 2275 and received in evidence.)

6 MR. COMYNS CARR: (Reading):

7 "26th May, 1940.

8 "Dined with Prince KONOYE and Count AKINA at
9 Kioicho Kinsui at 6:00 p.m; we discussed the problem
10 of the new political party and agreed upon the fol-
11 lowing:

12 "1. The formation of a new political party
13 should not be carried out positively prior to the
14 acceptance of the Imperial Mandate.

15 "Consideration, however, shall be given to this
16 point when the movement for the establishment of a
17 new party is commenced by the political parties
18 themselves.

19 "2. When the Imperial Mandate is issued the
20 following should be considered:

21 "(a) A supreme national defense conference is
22 to be established between the Chiefs of General
23 Staff of both the Army and Navy, the Premier, and the
24 War and Navy Ministers.
25

1 "(b) The desires of the Army and Navy concerning
2 national defense, foreign affairs and finance shall
3 be considered.

4 "(c) By announcing the resolution for the es-
5 tablishment of a new political party, the dissolution
6 of all political parties shall be requested.

7 "3. The Cabinet shall be composed of only the
8 Premier, the War Minister and the Navy Minister, while
9 other posts shall be held additionally by them.
10 According to circumstances, however, two or three
11 members of the Cabinet (for instance, Minister of
12 Foreign Affairs, etc.) shall be appointed.

13 "4. The remainder of the cabinet shall be
14 selected from the most able members of the new party
15 after its formation. The ministers already appointed
16 prior to the establishment of the new party shall be
17 made to join the party."

18 1632-W-31.

19 THE PRESIDENT: Admitted on the usual terms.

20 CLERK OF THE COURT: Prosecution's document
21 No. 1632-W-31 will receive exhibit No. 2276.
22

23 (Whereupon, the document above re-
24 ferred to was marked prosecution's exhibit
25 No. 2276 and received in evidence.)

1 MR. COMYNS CARR: (Reading):

2 "1st June, 1940.

3 "By request of the Imperial Household Minister
4 I called at his official residence at 10:30 a.m.
5 and was asked to accept the appointment of Lord
6 Keeper of the Privy Seal. I thought I was not fitted
7 to the post but understood that it was an unanimous
8 recommendation of all the higher officials, including
9 Prince KONOYE, Lord Keeper YUASA, Premier YONAI and
10 Prince SAIONJI. Under the circumstances, I wished to
11 withhold my answer until I had consulted about the
12 matter with Prince KONOYE. I went to KONOYE's resi-
13 dence at Ogikubo at 11:30 a.m. After lunch we ex-
14 changed views freely. After arriving at the con-
15 clusion that there was no alternative but to accept
16 the office, I reported my acceptance by telephone
17 to the Imperial Household Minister.

18 "This morning at 8:30, Mr. Tadataka IKEZAKI came
19 and told me how important my role would be in con-
20 nection with the new Party. He strongly urged me to
21 refuse the offer of the post of Lord Keeper of the
22 Privy Seal."

23 1632-W-43.

24 THE PRESIDENT: Admitted on the usual terms.

25 CLERK OF THE COURT: Prosecution's document

1 1632-W-43 will receive exhibit No. 2277.

2 (Whereupon, the document above re-
3 ferred to was marked prosecution's exhibit
4 No. 2277 and received in evidence.

5 MR. COMYNS CARR: (Reading):

6 "21st September, 1940.

7 "The Chief Aide-de-Camp called at 10:30 and
8 stated that French Indo-China authorities were showing
9 signs of concessions in regard to the question of our
10 penetration into French Indo-China.

11 "Foreign Minister MATSUOKA reported over the
12 telephone that telegraphic instructions had reached
13 the German side since this morning.

14 "I reported the above to His Majesty. With re-
15 gard to the solution of the China Incident, I ex-
16 pressed my opinion to His Majesty to the effect that
17 we should have eventually to oppose both England and
18 the United States if we conclude a military alliance
19 with Germany and Italy. We should therefore make
20 necessary adjustments regarding our relations with
21 China as soon as possible."

22 Your Honor, looking at the clock and at the
23 work remaining to be done, I think that we could con-
24 clude the prosecution case tonight, if the Tribunal
25 would concede us a comparatively few minutes overtime.

1 THE PRESIDENT: We are all agreed to sit
2 late.

3 MR. COMYNS CARR: 1632-W-45.

4 THE PRESIDENT: Admitted on the usual terms.

5 CLERK OF THE COURT: Prosecution's document
6 No. 1632-W-45 will receive exhibit No. 2278.

7 (Whereupon, the document above re-
8 ferred to was marked prosecution's exhibit
9 No. 2278 and received in evidence.)
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Greenberg & Barton

1 MR. COMYNS CARR: (Reading).

2 "From 2:00 p.m. until 2:45 p.m. I was granted
3 an audience and was asked for my opinion regarding the
4 settlement of the China Incident. His Majesty wanted
5 to know what kind of policy we should take if the in-
6 cident were prolonged by the failure of Chungking
7 negotiations, and we are forced to conclude a treaty
8 with the Wang Government.

9 "In reply to His Majesty's query I said "As
10 Your Majesty says, the incident will be a prolonged
11 war and yet it would be difficult for us to defeat
12 Chungking completely at this time, in view of the pre-
13 sent exhausted state of our power. Under the circum-
14 stances, we should be fully prepared to complete our
15 national strength, while securing key points. Today,
16 we should exercise the utmost caution in compromising
17 with positive action proponents for it will cause in-
18 ability to bring about the submission of the enemy
19 and also the completion of our national strength.
20 It is indeed alarming to think of the future of the
21 country."

22 1632W (70).

23 THE PRESIDENT: Admitted on the usual terms.

24 CLERK OF THE COURT: Prosecution document
25 No. 1632W (70) will receive exhibit No. 2279.

1 (Whereupon, the document above
2 referred to was marked prosecution exhibit
3 No. 2279 and received in evidence.)

4 MR. COMYNS CARR: (Reading).

5 "September 25th, 1941. (Extract).

6 "Ambassador SHIGEMITSU visited me at 9 a.m.
7 to talk about the negotiations between the U.S.A.
8 and this country. . . .

9 "The Chief Aide-de-Camp visited me at 1 p.m.
10 and told me about the report of the Chief of the Army
11 General Staff to be submitted to the Throne."

12 1632W (73).

13 THE PRESIDENT: Admitted on the usual terms.

14 CLERK OF THE COURT: Prosecution document
15 No. 1632W (73) will receive exhibit No. 2280.

16 (Whereupon, the document above
17 referred to was marked prosecution exhibit
18 No. 2280 and received in evidence.)

19 MR. COMYNS CARR: (Reading).

20 "October 1st, 1941 - (Extract).

21 "SUZUKI, President of the Planning Board,
22 visited me at 9 A.M. to have an informal talk about
23 our national policy towards the U.S.A."
24
25

1 May I now take the opportunity of intro-
2 ducing my friend Mr. Glanville Brown who has come
3 from England to replace my late colleague, Mr. Davis.
4 He would have dealt with the ARAKI exhibits the
5 other day, but he was indisposed and will now read
6 one which was inadvertently omitted.

7 THE PRESIDENT: Mr. Brown.

8 MR. LOGAN: If the Tribunal pleases --

9 THE PRESIDENT: Do let me greet Mr. Brown,
10 Mr. Logan.

11 Mr. Logan.

12 MR. LOGAN: If the Tribunal please, with
13 respect to all these exhibits just introduced from
14 KIDO's Diary, they have been rushed through in the
15 past few days, and I cooperated as much as possible
16 with the prosecution; and there may be further
17 changes with respect to some of them. May I ask
18 leave to submit them to the Language Board if and
19 when they should come up so they can be corrected?

20 THE PRESIDENT: We will submit any that you
21 suggest contain errors, Mr. Logan.

22 Mr. Brown.

23 MR. BROWN: May it please the Tribunal, I
24 now offer in evidence prosecution document No.
25 2155-C of the same volume which became exhibits 2223

1 and 2223A. It is a speech by AR/KI on the first
2 anniversary of the China Incident, printed in the
3 Education Ministry Review of July 1, 1938.

4 THE PRESIDENT: Admitted on the usual terms.

5 CLERK OF THE COURT: Prosecution document
6 2155-C will receive exhibit No. 2281.

7 (Whereupon, the document above re-
8 ferred to was marked prosecution's exhibit
9 No. 2281 and received in evidence.)

10 MR. BROWN: I will read the passage on
11 page 2:

12 "Yet Chiang's bigoted thought has not shown
13 any symptom of changes and his unspeakable acts of
14 tyranny can never be stopped before he comes to the
15 end of his devil's luck. Our Imperial Japan, who
16 is entrusted by God, took the arm and stood up for
17 justice and humanity, will, of course, inflict chasten-
18 ing blows persistently against Chiang's Regime and it
19 is our policy that we will not lay down arms until
20 anti-Japanese China is completely crushed to the
21 extent that they can not stand up again. As we
22 announced many times previously the Chinese people
23 are not the enemy of our Imperial Japan.

24 "Furthermore, the peoples under the Chiang
25 Kai-shek's regime have suffered for many years from
the misgovernment and they are still wandering on

1 the brink of starvation.

2 "For the Chinese people of four hundred
3 thousand are now under the protection of Japanese
4 Army and they are receiving our Army's warm sympathy."

5 I will now read passages on page 5 and 6:

6 "As the situation will become more serious
7 with the development of the war, it is beyond the
8 question whether the substance of the system of this
9 movement has to be perfected further or not.

10 "We the people even though we shall engage
11 in various occupations according to our divine
12 duties -- such as cultivation of rice-fields, wood-
13 cutting in the forests, fishing along the coasts,
14 beating hammers in the factories, teaching on the
15 platforms, or keeping the homes, we must -- keeping
16 in mind that each of us is one of the elements of
17 the strong motive power in this spiritual movement --
18 show our sincerity of loyalty and patriotism, assist
19 and encourage each other, old or young and men or
20 women, fill up the storehouses with products by
21 making industries prosperous, endeavor to strengthen
22 finance and economy by performing thrift and savings
23 and moreover, we must be prepared for the aggrandize-
24 ment of national strength required to wage long-
25 period war.

1 "With deep understanding of the national
2 thought, we should clarify the absolute superiority
3 of our national constitution and the thought of
4 HAKKO ICHIU or the unification of the world under
5 one roof should be pervaded to the whole world.

6 "National Mobilization must be achieved
7 both in the material and spiritual sense, which
8 will promote the conspicuous ever-progressing pros-
9 perity of the nation, who must not be left as a
10 power in East Asia only but must be promoted to the
11 world's Japan as the leader of the new era and the
12 proper magnanimity and full vigour of her people
13 should be cultivated so that the mission given to
14 her may be thoroughly fulfilled."

15 That concludes that extract, Mr. President.

16 MR. COMYNS CARR: I now offer in evidence
17 the prosecution's last document, No. 2927.

18 THE PRESIDENT: Admitted on the usual terms.

19 CLERK OF THE COURT: Prosecution document
20 No. 2927 will receive exhibit No. 2282.

21 (Whereupon, the document above re-
22 ferred to was marked prosecution's ex-
23 hibit No. 2282 and received in evidence.)

24 MR. COMYNS CARR: It is a record compiled
25 and certified by the First Demobilization Bureau
giving the locations of certain formations of the

1 Japanese Army at certain dates. They link up with
2 the commands held by various accused as shown in
3 their personnel records. I will only read those
4 which turn out to be of some importance.

5 The first five relate to DOHIHARA whose
6 personnel record is exhibit 104:

7 The 14th Division, from 1 March 1937 to 18
8 June 1938. Then, from August, 1937 onwards, "After
9 Peiping-Hankow Campaign in North China stationed near
10 Hsinsiang."

11 "Fifth Army: Area around T'ungnan, East
12 Manchuria; 19 May 1939 to 9 June 1941.

13 "Eastern District Army: Area around Tokyo;
14 1 May 1943 to 22 March 1944.

15 "Seventh Area Army: Malay, Sumatra, Java,
16 Borneo; 22 March 1944 to 2 March" -- there is a mis-
17 print -- "1945.

18 "Twelfth Area Army: Area around Tokyo;
19 25 August to 14 September 1945."

20 I now read the entry regarding the 32nd
21 Division which relates to KIMURA whose personnel
22 record is exhibit 113:

23 "32nd Division: Organized on 1st April
24 1939; stationed at Yenchou (60 kilometres south of
25 Chinan); 9 March 1939 to 7 November 1940."

1 I now read the entry regarding the 14th
2 Area Army which relates to MUTO whose personnel
3 record is exhibit 118:

4 "14th Area Army: Philippine Area; 5 October
5 1944 to 2 September 1945."

6 The next one, 37th Division, relates to
7 SATO whose personnel record is exhibit 122:

8 "37th Division: Area around Bangkok (in
9 course of being transferred from Northern French
10 Indo-China); 7 April to 2 September 1945."

11 The last one, 1st Army, relates to UMEZU
12 whose personnel record is exhibit 129.

13 "1st Army: 1938 May to November, stationed
14 at Shihchiachwang; 1938 - After December, stationed
15 at Taiyuan."

16 THE PRESIDENT: We will adjourn until half-
17 past nine on Monday morning.

18 We had better decide this other matter first.

19 MR. HIGGINS: Mr. President, the prosecution
20 will now rest.

21 - - -

22 (WHEREUPON, THE PROSECUTION
23 RESTED.)

24 - - -
25

1 MR. BLEWETT: If the Court please, I move
2 that exhibit No. 705, found on page 7,526 to 7,529
3 of the record, being the testimony of TOMINAGA, be
4 disregarded by the Court. This testimony was given
5 on direct examination to interrogatories, and the
6 witness was ordered to be produced for cross-examina-
7 tion by the Tribunal.

8 If the Court please, we have other motions
9 of like tenor concerning which we have not as yet had
10 an opportunity of looking through the evidence in the
11 record to point out the particular page on which the
12 testimony is given.

13 THE PRESIDENT: I suppose the prosecution
14 knew what they were doing in closing their case this
15 afternoon. They could have waited until Monday
16 morning.

17 We will reserve consideration of that
18 matter mentioned by you, Mr. Blewett.

19 We will adjourn until half-past nine on
20 Monday morning.

21 (Whereupon, at 1615, an adjourn-
22 ment was taken until Monday, 27 January
23 1947 at 0930.)
24
25

27 Jan 47



27 JANUARY 1947

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1 Monday, 27 January 1947

2 - - -

3
4 INTERNATIONAL MILITARY TRIBUNAL
5 FOR THE FAR EAST
6 Court House of the Tribunal
7 War Ministry Building
8 Tokyo, Japan

9 The Tribunal met, pursuant to adjournment,
10 at 0930.

11 - - -

12 Appearances:

13 For the Tribunal, same as before with the
14 exception of: LORD PATRICK, Member from the United
15 Kingdom of Great Britain and HONORABLE JUSTICE NORTHCROFT
16 Member from New Zealand, not sitting.

17 For the Prosecution Section, same as before.

18 For the Defense Section, same as before.

19 - - -

20 The Accused:

21 All present except OKAWA, Shumei, who is
22 represented by his counsel.

23 - - -

24 (English to Japanese and Japanese
25 to English interpretation was made by the
Language Section, IMTFE.)

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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now in session.

3 THE PRESIDENT: Mr. Smith.

4 MR. SMITH: If the Court please, it is the
5 plan of the defense to present a number of motions.

6 THE PRESIDENT: I would like to know -- the
7 Tribunal would like to know in what order you propose
8 to move them and what counsel will support each.

9 MR. SMITH: Might I suggest that I was going
10 to ask your Honor's direction on it? For example,
11 we have a motion for mistrial on behalf of eleven
12 defendants.

13 THE PRESIDENT: I have never known of such
14 a motion until now. I have heard of a motion for
15 a new trial after a trial had been completed, but
16 even that is rare in national jurisdictions with which
17 I am familiar. I notice the motion is based on the
18 assumption that we are prepared to review all the
19 decisions we have given in the course of the proceed-
20 ings, and we are not prepared to do that. If I
21 understand the feeling of my colleagues, such a motion
22 will not be entertained. You will not be allowed to
23 move that motion.

24 Now, have you any other motion? What is
25 the next motion?

1 MR. SMITH: If your Honor has finally decided
2 that you are not going to entertain a motion for a
3 mistrial, we would like to have it filed in the
4 record to show what we tendered, and ask your Honor
5 to allow us an exception.

6 THE PRESIDENT: We have never denied you
7 an exception, and we will not deny you an exception
8 in this case. The motion will appear in the record.
9 It will be part of it, but will not appear in the
10 transcript, not in extenso.

11 MR. SMITH: We have also, your Honor, in
12 addition to separate motions to dismiss on behalf
13 of each defendant in the dock, a general motion
14 which has been purposely drawn in two parts for
15 this reason:

16 THE PRESIDENT: First, let us deal with
17 the motion in respect of the Supreme Commander's
18 position.

19 MR. SMITH: The first part --

20 THE PRESIDENT: That assumes, of course,
21 that we judicially notice the United States Consti-
22 tution and, of course, the constitution of every
23 other nation represented on this Court without any
24 request that we so judicially notice it. That is a
25 wrong view, in my opinion.

1 Any motion you move must be based on the
2 absence of evidence or on some uncontested matter,
3 something that is proved beyond question, something
4 that we must judicially notice; and the Constitution
5 of the United States and the legislation of the
6 United States is not to be judicially noticed as a
7 matter of course.

8 Understand clearly that the Tribunal is
9 not denying you the right to move any motion when
10 you have established a proper foundation for it,
11 but you have established none in respect of the
12 Supreme Commander.

13 There is another motion based on matters
14 which were dealt with on the 3rd of May when we
15 gave our decision on the question of jurisdiction.
16 Now, if I understand rightly, it was the wish of
17 the defense that that matter of jurisdiction and
18 the constitution of the Court should be disposed of
19 on a preliminary application. Dr. KIYOSE, repre-
20 senting all accused, spoke on the motions. I think
21 they were two. He spoke on one or both. The
22 motions were heard and disposed of by nine members,
23 then the whole Court, of whom eight are present today.
24 There was no dissentient, although I do not say that
25 every member voted on all the points; but an

1 overwhelming majority of the Court at the time thought
2 that the motions should be dismissed for reasons to
3 be given later. Those reasons will be given in due
4 course. Here, again, I say that at the proper time,
5 at the end of the trial, it will be open for the
6 defense to put every point they have already put
7 and additional points for the benefit of the three
8 new members.

9 Lastly, in Chambers I was assured, if my
10 recollection serves me rightly, and I can be cor-
11 rected from the records, that the motions today
12 would be motions to dismiss because of the absence
13 of evidence or of sufficient evidence. We had a
14 discretion to allow or not to allow those motions,
15 and we allowed them on that understanding. So, pro-
16 ceed to move those individual motions. At present
17 I cannot see the need for a motion on behalf of all
18 the defendants based on the absence of evidence or
19 sufficient evidence to convict, but you may be able
20 to show there is a need for it.

21 You have, without the asking, exceptions
22 from everything the Tribunal has said and done this
23 morning.
24
25

1 MR. SMITH: If your Honor please, your
2 Honor has made a number of statements this morning
3 and I would like to have an opportunity to say some-
4 thing in reply to your Honor.

5 THE PRESIDENT: Be as brief as I was, Mr.
6 Smith.

7 MR. SMITH: Well, your Honor, I don't think
8 anybody has ever accused me of being verbose in
9 this case. If your Honor doesn't want me to say
10 anything this morning, I would appreciate it if
11 you would say so frankly.

12 In the first place, I wasn't in Chambers
13 when counsel said that the general motions would
14 be limited to the sufficiency of the evidence.

15 THE PRESIDENT: I said what I mean, Mr.
16 Smith. Address the Tribunal briefly, please.

17 MR. SMITH: If your Honor could have
18 listened in on the discussions among American
19 counsel during the last week as to what is properly
20 included in a motion to dismiss and what is improper,
21 your Honor would realize there is no agreement among
22 ourselves as to what the order of the Court
23 meant.

24 THE PRESIDENT: The cooperation among the
25

1 defense counsel has for months been excellent. I
2 realize that there must be differences always.

3 MR. SMITH: With respect to the second part
4 of the General Motion to Dismiss, in that part of
5 the motion are discussed, and nowhere else, so far
6 as I can see, in an individual motion to dismiss,
7 the broad aspects of the insufficiency of the evi-
8 dence and the broad points of law which affect the
9 position of each man in this dock.

10 As far as the first part of the motion to
11 dismiss is concerned, dealing with the jurisdiction
12 of the Court, our thought was that all international
13 tribunals take judicial knowledge of their level
14 of law, that is, the international level and all
15 bodies and systems of law lower in stature.

16 THE PRESIDENT: Seeing we are not a court
17 of any of the particular countries concerned, that
18 may be difficult to establish; but we are always
19 prepared to hear argument on it. This, however,
20 is not the time.

21 MR. SMITH: As far as the jurisdiction goes,
22 there seems to be a misunderstanding. Last June,
23 before this trial started, I came into Chambers
24 and merely sought leave from your Honor to file a mo-
25 tion on behalf of Mr. HIROTA alone, going to the juris-

1 defense counsel has for months been excellent. I
2 realize that there must be differences always.

3 MR. SMITH: With respect to the second part
4 of the general motion to dismiss, in that part of
5 the motion are discussed, and nowhere else so far
6 as I can see in an individual motion to dismiss,
7 the broad aspects of the insufficiency of the evi-
8 dence and the broad points of law which affect the
9 position of each man in this dock.

10 As far as the first part of the motion to
11 dismiss is concerned, dealing with the jurisdic-
12 tion of the Court, our thought was that all inter-
13 national tribunals take judicial knowledge of their
14 level of law, that is, the international level, and
15 all bodies and systems of law, law in statute.

16 THE PRESIDENT: Seeing we are not a court
17 of any of the particular countries concerned, that
18 may be difficult to establish; but we are always
19 prepared to hear argument on it. This, however,
20 is not the time.

21 MR. SMITH: As far as the jurisdiction goes,
22 there seems to be a misunderstanding. Last June,
23 before this trial started, I came into chambers
24 and merely sought leave from your Honor to file a mo-
25 tion on behalf of Mr. HIROTA alone, going to the juris-

1 diction. A majority of the defendants in the box
2 joined in that motion and it has been amplified.
3 If it is necessary, we intend to go to the federal
4 courts in Washington and raise these matters all
5 over. In order to get into that court we must show
6 that we fairly presented the matter to your Honors
7 and that this Tribunal was given an opportunity to
8 correct it.

9 THE PRESIDENT: It is a matter of sheer in-
10 difference to us whether you go to the federal court
11 in Washington or to the federal court in Sidney or
12 to the federal court in Ottawa or the federal court
13 in Moscow or any other court. One has as much right
14 to review as the other.

15 MR. SMITH: If your Honor has finally deter-
16 mined not to hear that part of the general motion to
17 dismiss which deals with the jurisdiction, then I
18 would like to have it spread on the record, and ask
19 your Honor to allow me an exception to your refusal
20 to entertain it.

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1 THE PRESIDENT: You have an exception.
2 I told you that you already have an exception to
3 anything we have said or done today.

4 MR. SMITH: Your Honor, with respect to
5 the motion to jurisdiction, I had a minor amendment
6 which merely adds one sentence, so I will call it to
7 the Court's attention, or the clerk's attention,
8 rather, in order that it be complete.

9 Your Honor, there is this further to
10 be said about the motion for jurisdiction: At one
11 time or another it was indicated while the papers
12 were being drawn that all defendants joined in that
13 part of the motion. I am now advised that all the
14 defendants except TOJO, SUZUKI, KAYA, OSHIMA, DOHIHARA,
15 MATSUI, and ITAGAKI make that motion.

16 THE PRESIDENT: What particular motion
17 is that Mr. Smith? They are not numbered yet, not in
18 our papers. You might give us the numbers.

19 MR. SMITH: The motion, general motion
20 dealing with the jurisdiction, your Honor, has no
21 number on it. It is simply entitled "A motion to
22 dismiss on behalf of all defendants."

23 THE PRESIDENT: Mr. Mantz assures me
24 the original has not been filed. You are improperly
25 before the Court.

1 MR. SMITH: I am sure it was sent over;
2 certainly by this morning.

3 Your Honor, I would like to add two more
4 names to the list of those who do not join the motion
5 with respect to jurisdiction. In addition to the
6 names which I previously read there should be HIRANUMA
7 and OKA.

8 THE PRESIDENT: Here are four general motions
9 and I do not know which one you are talking about.

10 MR. SMITH: Your Honor, we might pass this
11 for the time being. Evidently the papers have not
12 been brought into the court but they were delivered.
13 Nearly all of them were delivered Saturday but I
14 think this MacArthur Motion through an inadvertence
15 was not delivered until nine o'clock this morning.

16 THE PRESIDENT: We will call it the Supreme
17 Commander Motion. It has fifteen pages. Is that
18 right?

19 MR. SMITH: No, your Honor. The motion
20 itself consists of only four pages.

21 THE PRESIDENT: I haven't it.

22 MR. SMITH: But the argument on the motion,
23 which your Honor is evidently looking at, consists
24 of fifteen pages.

25 THE PRESIDENT: I have it now. Well, you are

1 moving that formally, Mr. Smith?

2 MR. SMITH: Your Honor, I would like to have
3 this proposed motion, which we are calling the Supreme
4 Commander Motion, and the argument connected with it,
5 copied into the record in order to show what our
6 contention is.

7 THE PRESIDENT: There is no need to publicly
8 challenge the position of the Supreme Commander. It
9 is not necessary in the interests of justice. It can
10 do no good. In this place and under these circumstances
11 it is undesirable unless it becomes necessary in the
12 interest of justice, and it is not yet necessary. You
13 will be allowed to do it if you establish a proper
14 foundation for it during the course of putting the case
15 for the defense, but you will do it as a respectful
16 legal argument and not as a political harangue. This
17 is not the right of Congress or the floor of the
18 Senate of the United States or of any other parliament.

19 MR. SMITH: I would like to have your Honor
20 allow me an exception to your Honor's remark that our
21 motion and the argument connected with it is a political
22 harangue. It was not intended to be anything of the
23 kind. Counsel are certainly entitled to make their
24 contentions in this record and have this record show
25 what we tried to bring to your attention.

1 THE PRESIDENT: The point could be put in
2 sober legal language in one-tenth the space you have
3 taken up in saying what you intended to say. It will
4 not be read into the record and you have your excep-
5 tion.

6 MR. SMITH: Does that include the motion
7 itself? Your Honor refuses to allow the motion to
8 be copied into the record?

9 THE PRESIDENT: The Tribunal has already
10 told you it will be part of the record but it will
11 not be read into the record, that is to say, into the
12 transcript.

13 MR. SMITH: All that would mean that I have
14 to deal with, Your Honor, is the second part of the
15 general motion to dismiss which deals with the in-
16 sufficiency of the evidence and also hits the broad
17 points of law in this case.

18 THE PRESIDENT: Mr. Smith, I think we would
19 like you to move the individual motions first, that
20 is, the motions based on the ground there is not
21 enough evidence or no evidence, and then at the end
22 to deal with the motions generally on behalf of all
23 the accused.

24 Colonel Warren.

25 ~~MR. BLOWARRENE~~ If the Tribunal please, in order

1 that the record will be clear, the accused HIRANUMA,
2 DOHIHARA, and OKA did not join either of these two
3 motions, but unless the remarks of counsel might be
4 misconstrued we do not desire to waive our right to
5 raise the jurisdictional question at any time we feel
6 proper, and I want to call that to the Court's
7 attention at this time. Thank you, sir.

8 THE PRESIDENT: I thought I had made this
9 perfectly plain. You will be entitled to move any-
10 thing that you are capable of moving on the state of
11 the record at the end of the trial, but it is for us
12 to say when you will be entitled to move. Up to the
13 end of the trial we have control, subject always to
14 compliance with the Charter.

15 Mr. Levin.

16 MR. LEVIN: Mr. President, Mr. Smith I do
17 not believe made it clear that a number of counsel
18 did not join in the motion with reference to the mis-
19 trial, and I am authorized to say that counsel for
20 KIMURA did not join in that motion. Neither did I
21 join it on behalf of the clients that I represent.
22 I desire to state further to the Court that in such
23 participation that I had in relation to getting the
24 permission of the Court to make motions to dismiss
25 that there were no reservations of any kind in my mind.

1 While other counsel participated in presenting that
2 matter both in chambers and, I believe, in open court
3 to some extent, the record I am sure speaks for itself.
4 I have just been given a list of those who are not
5 joining in the various motions and if the Court will
6 give me permission I should like to read those names.

7 On the motion for mistrial the following do
8 not join: TOJO, SUZUKI, KAYA, OSHIMA, DOHIHARA,
9 ITAGAKI, MATSUI, HOSHINO, KIMURA, and OKA.

10 On the MacArthur motion, TOJO, SUZUKI, KAYA,
11 HOSHINO, DOHIHARA, ITAGAKI, MATSUI, HIRANUMA, OKA, and
12 KIMURA.

13 On the general motion to dismiss the follow-
14 ing do not join: SUZUKI, KAYA, OSHIMA, HOSHINO,
15 ITAGAKI, and MATSUI.

16 THE PRESIDENT: Mr. McManus.

17 MR. McMANUS: If your Honor pleases, on
18 behalf of the defendant ARAKI I now present an individu-
19 al motion to dismiss. However, in view of your Honor's
20 rulings it has become necessary for me to somewhat
21 revise the prepared copy that I have now before me.

22 THE PRESIDENT: I do not recollect saying
23 anything to which exception could be taken on individu-
24 al motions, but there may be something.

25 MR. McMANUS: If your Honor pleases, I shall

1 read to page 13 and then ask further directions of
2 the Tribunal.
3

4 THE PRESIDENT: This is one I did not read.
5 I must confess I did not get some of them until very
6 late yesterday afternoon.

7 MR. McMANUS: Mr. President:

8 If it pleases the members of this Tribunal,
9 I should like at this time on behalf of the accused
10 ARAKI, Sadao to request that the said accused ARAKI
11 be considered as having participated and joined in all
12 motions heretofore made by any and all defense counsel
13 and more particularly with reference to those motions
14 heard by this Tribunal before arrival of a number of
15 American counsel to represent their individual accused.
16 I further request this Tribunal to consider the defend-
17 ant ARAKI as having made such motions and that he be
18 granted an exception to any adverse ruling by this
19 Tribunal where such adverse rulings were rendered.

20 The court will undoubtedly recollect that
21 when these proceedings first started only several of
22 the accused were represented by American counsel and
23 on a number of occasions motions were made by the
24 American counsel for these few individual defendants
25 and a number of the accused did not join in such
motions. It will also undoubtedly be recalled that

1 the President of the Tribunal informed the remaining
2 American counsel whose clients were not represented
3 on these motions by American counsel that the said
4 counsel could make such motions at the time the
5 Tribunal decided to hear motions for dismissal at the
6 end of the prosecution's case. I presently so move
7 this Court and pray that the accused ARAKI be per-
8 mitted to have made all such motions made by the
9 aforementioned several attorneys and that he be
10 granted the exceptions to any adverse rulings by
11 the Tribunal as aforementioned.

12 THE PRESIDENT: I do not recollect that
13 statement but you can point it out to me. Perhaps
14 it is in the record.

15 MR. McMANUS: If your Honor pleases, during
16 the discussions with American counsel I am sure
17 that on several occasions several of the American
18 attorneys stated that they had discussed these matters
19 with your Honor and that you stated that at the proper
20 time or at the end of the prosecution's case that we
21 could make these particular motions in which the
22 defendants, our individual defendants, had not joined
23 before the arrival of American counsel.

24 THE PRESIDENT: The words I object to there
25 as representing my views are "the end of the

1 prosecution's case." No doubt I would have said it
2 as regards the defense summation.

3 MR. McMANUS: If your Honor would prefer I
4 could withdraw this request now and present it at
5 the end of the entire case, if you so desire.

6 THE PRESIDENT: I think so, Mr. McManus.

7 MR. McMANUS: I shall now delete the next
8 three paragraphs.

9 THE PRESIDENT: Where do you come to the
10 submissions based on the absence of evidence, Mr.
11 McManus? I think that is where we'll start.

12 MR. McMANUS: On page 2, your Honor, bottom
13 of page 2.

14 Consequently, now comes the defendant ARAKI
15 and moves this Tribunal to dismiss these charges
16 allegedly attributed to him in the Indictment on the
17 grounds that the prosecution has failed to establish
18 a prima facie case against him in

19 (a) Conspiracy.

20 The Indictment charges that the accused
21 ARAKI conspired with the defendants and divers other
22 persons between the first of January, 1928, and the
23 second of September, 1945, to commit or encourage the
24 commission of crimes against peace, war crimes and
25 crimes against humanity. It is the contention of the

1 accused that the prosecution has failed to connect
2 him in any way with these defendants or any other
3 persons by a combination, an agreement or otherwise
4 to commit or perform any unlawful acts contrary to any
5 laws, international or otherwise, or to commit or
6 perform any lawful acts by unlawful means as so alleged
7 in the Indictment.

8 Concerning conspiracy itself, let us examine
9 briefly the definition thereof and the elements neces-
10 sarily essential to constitute a criminal conspiracy.
11 We are undertaking to delve briefly into these funda-
12 mentals for the purpose of showing to this Tribunal
13 that the prosecution has failed not only in its
14 endeavor to connect the accused ARAKI with the con-
15 spiracy so alleged in the Indictment but that it has
16 failed also to establish any conspiracy whatever,
17 wherein it is alleged ARAKI participated.

18 There are several definitions for a conspir-
19 acy, a very common one being an agreement between or
20 a combination of two or more persons for an unlawful
21 purpose. However, the conspiracy charged in this
22 Indictment is a conspiracy to commit crimes. There-
23 fore we might concern ourselves with the definition
24 of a conspiracy to commit a crime, to wit, an agree-
25 ment or a combination of two or more persons to do an

1 unlawful act.

2 The elements required to prove such a conspir-
3 acy are as follows:

4 1. There must be a crime set out by statute
5 or existing by common law;

6 2. The combination or agreement by two or
7 more persons to commit such a crime;

8 3. The intent of the two or more persons to
9 violate the statute setting out the above-mentioned
10 crime;

11 4. There must be a meeting of the minds;

12 5. The overt act done by one or more persons
13 after the aforementioned agreement had been reached.

14 First, let us consider the crime. It is the
15 contention of the accused ARAKI that insofar as the
16 prosecution has decided to proceed under the terms of
17 an international Charter set up for the purpose of
18 trying alleged war criminals for various violations,
19 the crime or crimes alleged in the Indictment are,
20 therefore, statutory and that the charges attributed
21 to them is a conspiracy to commit a statutory crime
22 or crimes.

23 Consequently, insofar as this Charter or
24 statute making certain acts a crime was not set up
25 until after the cessation of hostilities, the crimes

1 so attributed to the accused ARAKI were not in
2 existence at the time of their alleged commission.

3 It is fundamental that a person cannot be
4 charged retroactively for an offense committed before
5 a statute setting out such an offense came into
6 existence.

7 In the present case, the Court will take
8 judicial notice of the fact that no such crimes as
9 "crimes against peace, war crimes, or crimes against
10 humanity" had existed by statute internationally
11 before the drafting of this Charter or the Nuremburg
12 Charter, both of which came into existence as a result
13 of World War II.

14 THE PRESIDENT: Well, I think you had better
15 omit any reference to that part, Mr. McManus.

16 MR. McMANUS: Concerning the second
17 essential element to be proven for the purpose of
18 establishing a conspiracy, namely, the agreement or
19 combination of two or more persons to perform an
20 unlawful act, it is the contention of the accused
21 ARAKI that he, at no time during the course of the
22 testimony taken at this Tribunal, has been connected
23 up with any of the other accused or any other un-
24 known divers persons to perform any such acts here-
25 tofore described. The accused respectfully points

1 out to the Court the improbability and impossibility
2 of the existence of any such continuing conspiracy
3 from 1928 until 1945 by virtue of the fact that
4 during this period of time there have been great
5 differences of opinion between members of various
6 cabinets and this point can be unquestionably corro-
7 borated by the fact that during this set period there
8 have been fifteen different cabinets, each new cabinet
9 taking office as a result of the fall of the previous
10 one because of dissatisfaction with the previous
11 cabinet's policies.

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1 It is also pointed out to the Tribunal that
2 on several occasions the fall of the above-mentioned
3 cabinets was marked by violence. Many of the accused
4 were members of different cabinets during this period
5 of time. How, then, can it be said that they were of
6 one mind or that any combined agreement or conspiracy
7 existed between them for any single unlawful purpose?

8 Calling the Tribunal's attention to the
9 many incidents concerning political unrest in Japan
10 during the years 1923 to 1945 and the acts of violence
11 accompanying same, together with those accompanying
12 the fall of several of these cabinets, it is respect-
13 fully pointed out to the Court that this might well
14 depict the characteristics and the general attitude
15 of the Japanese public. Consequently, if public
16 opinion and the populace of Japan demanded that their
17 leaders resort to activities which might appear to the
18 rest of the world somewhat unorthodox (exhibit 2177-A),
19 how again can it be said that the leaders at various
20 times were performing anything more than their official
21 national obligations which might be placed in the
22 category of purely ministerial acts demanded by the
23 Japanese public itself? It further should be taken
24 into consideration that this feeling of unrest existed
25 in the Japanese public themselves and that if their

1 leaders were compelled to perform such ministerial
2 functions, where again can it be inferred, as the
3 prosecution so desires it should be, that there
4 existed a conspiracy among these defendants?

5 The next essential requirement for the
6 establishment of a conspiracy is the proof of intent
7 on the part of any one or more of the alleged con-
8 spirators. As the accused ARAKI is charged with
9 entering this conspiracy in 1928, it is respectfully
10 called to the Court's attention that at the time of
11 the outbreak of the Manchurian Incident the accused
12 ARAKI held no portfolio. The Manchurian Incident was
13 well under way before the defendant ARAKI was requested
14 to assume the post of War Minister. It is pointed out
15 to this Tribunal that by documentary evidence already
16 adduced, ARAKI assumed this post with the sole purpose
17 of bringing the incident rapidly to a close. It is
18 further called to the Court's attention that an over-
19 whelming amount of testimony has been adduced to show
20 that any activity on the part of Japan toward Manchuria
21 concerning this Manchurian Incident was definitely one
22 of self defense. The fact that the Manchurian Incident
23 had been extended to the area which later comprised
24 Manchukuo has also been shown to this Court to be due
25 to additional uprisings of bandits and insurgents in

1 that area. The testimony will show that the Incident
2 was brought to a close as expeditiously as possible
3 under the then existing circumstances and that the
4 State of Manchukuo was acknowledged and recognized
5 first by Salvador, a member of the League of Nations,
6 and then by Italy while she was still in the League.
7 Germany also acknowledged it. Poland and the Soviet
8 Union exchanged consuls with her and recognized her
9 virtually or economically by bargaining, railroads,
10 and so forth. Spain and the Balkan States also recog-
11 nized her. Even between Japan and America there had
12 been an understanding concerning her recognition. In
13 1934 after the completion of the Manchurian Incident,
14 ARAKI left office and was without portfolio again
15 until 1938.--

16 THE PRESIDENT: Mr. McManus, what you are
17 saying is most interesting and we want to hear every
18 word of it but you are reading fast. We do not mind
19 taking a little more time with a good thing.

20 MR. McMANUS: All right, your Honor.

21 In 1934 after the completion of the Manchurian
22 Incident, ARAKI left office and was without portfolio
23 again until 1938. In view of this fact that upon
24 completion of this one obligation imposed upon him,
25 to-wit, to donate his services to his country during

1 a time of emergency and national stress, how then can
2 it be said that the accused ARAKI, well knowing at
3 that time that there was hardly sufficient armaments
4 in Japan to meet the requirements of the Manchurian
5 Incident just completed, had any intent on his part
6 to be a member of any conspiracy to dominate the
7 world?

8 Concerning the essential element required
9 to be proven for the purpose of establishing a con-
10 spiracy, to-wit, a meeting of the minds of the con-
11 spirators, it is respectfully called to the Tribunal's
12 attention that it is a well-known fact that to establish
13 a conspiracy it is not necessary to actually show the
14 conspirators gathered around a round table plotting
15 for an unlawful purpose or to produce any agreements
16 in writing or to record any conversations between the
17 conspirators setting out a combination or agreement to
18 so perform an unlawful act. Conspiracy can be inferred
19 by the acts of the conspirators. But if this be the
20 case where a conspiracy is to be inferred by such acts
21 of individuals to make them part of the conspiracy,
22 then it must be determined which were acts pertaining
23 to the conspiracy and which were separate individual
24 acts. It is the contention of the accused ARAKI and
25 we believe substantiated by the evidence heretofore

1 adduced that any acts of his were his own and were
2 entirely individual and not performed because of any
3 agreement with any one or several other persons. It
4 is further the contention of the accused ARAKI that,
5 as a soldier and as a patriot of Japan, all his actions
6 militated towards duty to his country and even if
7 there were a conspiracy he at no time was part of it,
8 he had no agreement with any of the accused or any
9 unknown divers persons and that at no time did he
10 have any understanding or meeting of the minds with
11 any of the accused or any other persons concerning
12 the commission of war crimes, crimes against peace,
13 crimes against humanity, or any plan to dominate the
14 world.

15 The prosecution has failed to show ARAKI at
16 any such meetings at a round table; has not produced
17 any written agreement setting out any unlawful purpose
18 showing a combination of ARAKI and others to commit
19 any of the acts alleged in the Indictment; has not
20 produced any recordings or statements of the accused
21 ARAKI setting out any agreements with the accused or
22 any other persons; but in lieu thereof, it has attempted
23 to connect the accused ARAKI with this conspiracy by
24 inference and although definitely not conceding any,
25 if there can be considered, even remotely, any unlawful

1 acts committed by the defendant ARAKI, it should be
2 contended that they were committed individually, on
3 behalf of the government of Japan.

4 Concerning the next essential requirement
5 to be proven to establish the conspiracy, to-wit, the
6 overt act, and even conceding, for the sake of argument,
7 that the conspiracy has been established, the prosecu-
8 tion has defeated its own purpose insofar that they
9 have blown hot and cold by making the same acts overt
10 acts to be considered as part of the conspiracy and
11 alleging these acts again as substantive crimes. It
12 is the contention of the accused ARAKI that the prosecu-
13 tion must make an election to use any unlawful acts as
14 overt acts in a conspiracy or list them as substantive
15 crimes but not to employ them in a double or dual
16 capacity.

17 Consequently, on the over-all conspiracy the
18 defendant ARAKI moves to dismiss on the grounds that a
19 prima facie case has not been established against him,
20 not only in the prosecution's attempt to connect him
21 with the conspiracy but that it has failed to make out
22 a prima facie case of any conspiracy at all.
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1 Coming now to certain specific counts in the
2 Indictment, let us place these counts into two categories.
3 First, those counts which should be summarily dismissed
4 because of the irrefutable fact that on their face they
5 cannot be charged to the defendant ARAKI. Second,
6 those counts which should be dismissed because of lack
7 of evidence.

8 COUNTS WHICH SHOULD BE SUMMARILY DISMISSED

9 It is respectfully called to the Tribunal's
10 attention that Count 18 of the Indictment charges the
11 defendant ARAKI with having initiated a war of aggression
12 against the Republic of China on September 18, 1931.
13 It is undoubtedly obvious to this Court that in view of
14 the overwhelming testimony produced thus far by the
15 prosecution, and the Court can even take judicial notice
16 of a fact which is a matter of record, that the defendant
17 ARAKI did not become War Minister until December 13, 1931
18 (Exhibits 103 and 187-M), three months after the outbreak
19 of the Manchurian Incident. He held no portfolio at
20 the time of the outbreak of this Incident other than
21 Chief of the General Affairs Bureau here in Tokyo. He
22 had no say concerning any policies of the government; he
23 was not a member of the Cabinet, but merely a professor.
24 How, then, can he be held responsible for the outbreak
25 of the Manchurian Incident in the light of the testimony

1 that this Incident resulted from maneuvers and operations
2 in the field abroad?

3 Count 19 charges the defendant ARAKI with having
4 initiated a war of aggression against the Republic of
5 China on or about the 7th of July 1937. Again it is
6 respectfully pointed out to this Court in view of the
7 testimony adduced so far and it is requested that the
8 Court take judicial notice as it is also a matter of
9 record that at the outbreak of this incident the accused
10 ARAKI was on the reserve list, having been placed on
11 such reserve list on the 6th of March 1936 (Exhibit 103).
12 During this period of time, while on the reserve list,
13 it is pointed out that the accused ARAKI was practically
14 in retirement and for this reason it is urged that
15 Count 19 be summarily dismissed.

16 Count 23 charges the defendant ARAKI with having
17 initiated a war of aggression against the Republic
18 of France on or about the 22nd of September 1940.
19 Again it is called to the attention of the Tribunal that
20 it is also a matter of record that the accused ARAKI
21 resigned from the office of Cabinet Councillor on
22 August 3, 1940 and from this date to the end of the war
23 held no responsible position with the government of
24 Japan and was practically in retirement. As the accused
25 ARAKI, from the 3rd of August 1940, had no say whatever

1 in any of the affairs or policies of the government to
2 the end of the war, it is respectfully requested that
3 this Count 23 also be summarily dismissed, together with:

4 Count 29 which charges the accused ARAKI
5 with responsibility for waging a war against the United
6 States of America between the 7th of December 1941
7 and the 2nd of September 1945;

8 Count 30, which charges him with waging a
9 war of aggression against the Commonwealth of the
10 Philippines between the 7th of December 1941 and the
11 2nd of September 1945;

12 Count 31, which charges him with waging a
13 war of aggression against the British Commonwealth of
14 Nations between the 7th of December 1941 and the 2nd
15 of September 1945;

16 Count 32, which charges the accused ARAKI
17 with waging a war of aggression against the Kingdom
18 of the Netherlands, between the 7th of December 1941
19 and the 2nd of September 1945;

20 Count 33, which charges the accused ARAKI
21 with waging a war of aggression against the Republic of
22 France on the 22nd of September 1940;

23 Count 34, which charges the accused ARAKI
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1 with waging a war of aggression against the Kingdom of
2 Thailand between the 7th of December 1941 and the 2nd
3 of September 1945.

4 All these above counts, as can be readily
5 observed by this Tribunal, relate to charges implicating
6 the defendant ARAKI and charging him with the respon-
7 sibility for the acts of others or of the government,
8 whichever it may be, when the accused ARAKI held no
9 portfolio; had no say whatever in determining any policies
10 of the government; had no control whatever over any
11 individuals holding responsible offices in the government;
12 had no connection with any political parties of the
13 government; had no influence over any members of the
14 Diet or Cabinet; or the military; and in most instances
15 was considered to be in a state of disrepute with his
16 associates. For the above reasons the defendant ARAKI
17 respectfully requests this Court to summarily dismiss
18 these counts heretofore mentioned.

19 THE PRESIDENT: Mr. McManus, this is a
20 convenient break.

21 I think you will find that the Japanese
22 translation will be continuing long after you finished.
23 You were reading very fast.

24 We will recess for fifteen minutes.
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(Whereupon, at 1045, a recess
was taken until 1100, after which
the proceedings were resumed as follows:)

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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now resumed.

3 THE PRESIDENT: Mr. McManus.

4 MR. McMANUS: (Continuing)

5 Concerning the second classification of
6 these counts, these which should be dismissed for lack
7 of evidence, the accused ARAKI now enumerates same
8 and his reasons for their dismissal, and they are as
9 follows:

10 Concerning Counts 1 to 17 charging re-
11 sponsibility for conspiracy and preparations for
12 aggressive warfare, it is respectfully pointed out to
13 the Court that the only testimony adduced at this
14 trial which in any slightest degree implicates the
15 accused ARAKI in the prosecution's endeavor to con-
16 nect the aforementioned ARAKI with such preparations
17 for aggressive warfare is that given by the witness
18 OUCHI, Hyoe. This witness states that military train-
19 ing in schools which started as a result of an educa-
20 tional rescript in 1890 was extended to universities
21 under ARAKI's regime as Education Minister in 1938.
22 He stated further that some form of military training
23 had been going on since the date of this rescript,
24 that in 1933 a request was made by the accused to
25 extend it to the universities and then in 1938 when

1 ARAKI became Education Minister it was extended to the
2 universities. However, may it be pointed out to the
3 Court at this time that the year 1933 was immediately
4 after the Manchurian Incident and the year 1938
5 followed the China Incident. May it also be called to
6 the Court's attention that after every war or incidents
7 such as these people become conscious of their lack of
8 adequate arms which such an incident or war will
9 certainly bring to light and practically every nation
10 in the world, after such an incident or war, because of
11 this consciousness, endeavors to promote military
12 training for purposes of preparedness in the event of
13 any future similar occurrence. I might call to the
14 Court's attention that even now Representative Brooks
15 in the United States is advocating in Congress today
16 the passage of a bill for compulsory military training
17 for the youth of the United States. The fact that
18 military training is advocated by a person is not
19 indicative of a desire on his part to conquer the
20 world. It may very well be a step toward a nation's
21 security. Mr. OUCHI also stated that this military
22 training consisted of lectures and propaganda to in-
23 spire militaristic and ultra-nationalistic spirit
24 in the students. He stated that these views were
25 adhered to by the Educational Minister ARAKI when he

1 requested that such training be extended to the
2 universities. He further stated, however, on cross-
3 examination, that he never attended any of the military
4 lectures and he received his information entirely
5 from some of the students. Then when the witness
6 was asked on cross-examination concerning whether or
7 not the accused ARAKI between the years 1938 and 1939
8 had intensified this training that this information
9 was purely hearsay and that he had not heard it
10 directly as a school authority but that he had heard
11 it indirectly (page 979 of the record). During the
12 course of OUCHI's examination he stated that the
13 Education Minister acted on the request of the War
14 Minister; so it is pointed out to the court that if
15 military training was intensified during that year it
16 might very well have been at the request of another
17 government official rather than an individual direct
18 act on the part of the Education Minister. It is
19 also pointed out to the Court that the witness OUCHI
20 was imprisoned on several occasions for his writings
21 and lectures which unquestionably embodied thoughts
22 and theories resulting from his close association
23 with the works of Marx and Engels and other utili-
24 tarian philosophers (page 948 of the record). Might
25 it not be assumed that because of this imprisonment

1 the witness's testimony might be, to say the least,
2 somewhat biased if not wholly antagonistic toward any
3 of educators of Japan at that time?

4 This witness's testimony stands alone in all
5 the pages of the testimony taken during the entire
6 prosecution's case which tends to even remotely con-
7 nect the accused ARAKI with "preparing for aggressive
8 war." For the reasons stated above, and because of
9 the fact that the witness himself so stated that he
10 had only "heard this indirectly" concerning the
11 intensification of military training by ARAKI, and
12 further because of a direct contradiction of the
13 statements contained in his affidavit, on cross-
14 examination, it is respectfully requested that
15 Counts 6 to 17 be dismissed because of lack of
16 evidence and because the testimony is insufficient
17 to constitute a prima facie case.

18 In considering these Counts 6 to 17 it is
19 also respectfully requested that the Court take into
20 consideration the argument relating to the general
21 conspiracy heretofore stated and apply the same
22 to these counts as well as from Counts 1 to 5.

23 Now referring to Counts 25, 35, and 52 which
24 charge the accused ARAKI with the responsibility for
25 aggression and murder in the region of Lake Khason,

1 it is respectfully pointed out to this Tribunal
2 that the accused at that time in 1938 was Minister
3 of Education and that he had no responsibility for
4 any friction in a frontier region. It is further
5 pointed out to the Tribunal that also in 1939 ARAKI
6 was Minister of Education during which year he is
7 charged in the Indictment with being responsible for
8 aggression and murder in Counts 26, 36 and 51, and
9 again it is asked of this Tribunal how any responsi-
10 bility can rest on the Education Minister for hostili-
11 ties in the outlying district of Khalkhan-Gol River.

12 It is called to the attention of the court
13 that no testimony thus far has been introduced by
14 the prosecution as to why the Education Minister
15 should be responsible for military activities con-
16 ducted in regions far from the homeland and where, as
17 the testimony conclusively shows, that such fields
18 or frontier activities are the sole responsibility of
19 the Chief of Staff or the area commanders. Of course,
20 if it is to be assumed that all members of the
21 Cabinet should shoulder responsibility for any
22 activities of the Japanese military, why then were
23 not all the Members of that Cabinet indicted here and
24 why then was not the Navy Minister who held a much
25 more important post concerning the military than the

1 Education Minister charged with some responsibility
2 for these actions? The above reasoning might also
3 be applied to Counts 28 and 45, the China Incident
4 and the Nanking attack respectively, when the
5 accused ARAKI was Cabinet Councillor and Education
6 Minister, with the additional explanation that the
7 testimony has shown that a Cabinet Councillor is
8 more of an honorary position than an active one, and
9 where the testimony has also shown that a Cabinet
10 Councillor is not in any way responsible for any
11 operational orders of the military (Exhibit 187-N).

12 Concerning Counts 46 and 47, the Canton
13 attack and the Hankow attack respectively, it is
14 called to the Tribunal's attention that during these
15 periods ARAKI was the Minister of Education, and it is
16 respectfully requested that the Court consider the
17 arguments advanced heretofore mentioned for Counts
18 25, 35, 52, 26, 36 and 51.

19 Concerning Count 44, to wit, conspiracy for
20 murder, it is pointed out that there has been no
21 testimony introduced by the prosecution to substan-
22 tiate this count and that there has not been a
23 scintilla of evidence adduced.

24 With reference to Counts 53, 54 and 55, to
25 wit, general conspiracy, orders to commit offenses,

1 and breaches of observance of the laws and customs
2 of war, it is pointed out to this Tribunal that there
3 is no evidence to show that the accused ARAKI should
4 be held responsible in any degree for the charges
5 alleged therein.

6 With reference to Count 27, it is respect-
7 fully requested that the Court take into consideration
8 the arguments heretofore advanced re the responsi-
9 bility of the War Minister during the Manchurian
10 Incident. For all the reasons stated above, the
11 accused ARAKI contends that a prima facie case has
12 not been made out by the prosecution against him;
13 that no conspiracy has been established; that the
14 prosecution has failed to connect him with any plot
15 or plan to commit crimes against peace, war crimes,
16 and crimes against humanity as defined in the Charter
17 of this Tribunal, and moves this Court to dismiss
18 this Indictment."

19 THE PRESIDENT: That is the end of the
20 submissions on the evidence, Mr. McManus?

21 MR. McMANUS: Yes, your Honor. Now, if
22 your Honor would just read (c) -- I ask your Honor
23 if I may continue in view of your Honor's ruling?
24

25 THE PRESIDENT: I think I have covered that
in my remarks to Mr. Smith, Mr. McManus.

1 MR. McMANUS: Yes. Then your Honor rules
2 that I should not continue?

3 THE PRESIDENT: That is so.

4 MR. McMANUS: Thank you.

5 THE PRESIDENT: We will give you an exception
6 if you desire it.

7 MR. McMANUS: I beg your pardon?

8 THE PRESIDENT: We will give you an exception
9 if you desire it.

10 MR. McMANUS: Will it be considered, if the
11 Court please, as a part of the record, the balance
12 of the argument?

13 THE PRESIDENT: Yes.

14 Colonel Warren.
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1 MR. WARREN: If the Tribunal please. I
2 represent the accused DOHIHABA.

3 THE PRESIDENT: If a majority of the Tri-
4 bunal desires that each of these motions should be
5 answered as they are made, would the prosecution be
6 in a position to give the answer?

7 MR. E. WILLIAMS: The prosecution, due to
8 the shortness of the time that we have had to pre-
9 pare to answer these motions, has decided and has
10 made preparation to answer them all together.

11 THE PRESIDENT: You have had very short
12 notice. Some of these motions were served only yes-
13 terday afternoon.

14 MR. E. WILLIAMS: Some of them only this
15 morning.

16 THE PRESIDENT: None of them earlier than late
17 on Friday.

18 MR. E. WILLIAMS: Mr. Comyns Carr, who is
19 going to make part of the answer on behalf of the
20 prosecution, is at the present time working on com-
21 pleting the part of the presentation which he will
22 make. I have already concluded the part that I will
23 give, which is generally of this character.

24 THE PRESIDENT: And to answer them together
25 would avoid probable duplication and triplication.

1 MR. E. WILLIAMS: I may say I discussed this
2 matter just a few moments ago with Mr. Warren and
3 some other of the defense counsel and they seem to
4 feel that the method which we have decided upon was
5 entirely satisfactory to them.

6 THE PRESIDENT: Some of the Judges haven't
7 been served with copies yet.

8 MR. WARREN: This motion was served, I am
9 sure, your Honor, last Wednesday -- Tuesday or Wed-
10 nesday.

11 THE PRESIDENT: The Members from China,
12 Russia and France have not copies of this motion
13 you are about to move, Colonel.

14 MR. WARREN: My motion, your Honor, my
15 stamped copy, shows it was received in the Clerk's
16 office on 21 January.

17 THE PRESIDENT: We had better take a motion
18 where every Judge has a copy.

19 Commander Harris.

20 MR. HARRIS: Mr. President, this is a motion
21 of the defendant HASHIMOTO, Kingoro to dismiss. I
22 presume that copies have been distributed to all the
23 Honorable gentlemen.

24 THE PRESIDENT: Some of the Judges didn't
25 bring in their copies. I certainly am not going to

1 allow you to proceed until each Member has a copy
2 and until each Member authorizes me to tell you to
3 go ahead.

4 MR. HARRIS: Yes, sir.

5 THE PRESIDENT: I think we will have to
6 adjourn, because no Judge -- I haven't got the full
7 concurrence of all the Judges to any motion. The
8 Member from the United States hasn't his copy and
9 I am not going ahead without his concurrence.

10 LIEUT. LAZARUS: Might I suggest, Mr. President -
11 Mine is No. 664, on behalf of the accused HATA,
12 Shunroku --

13 THE PRESIDENT: I have authority from my
14 colleagues to take these matters only in alphabetical
15 order and copies have not been distributed to enable
16 that to be done.

17 MR. BROOKS: Colonel Warren, if your Honor
18 please, has gone to the Secretariat to get extra
19 copies of his motion and should be back --

20 THE PRESIDENT: Well, we shall have to wait
21 until he returns.

22 (Slight delay).

23 MR. WARREN: If the Tribunal please, the
24 Clerk of the Court is bringing the additional copies
25 of the DOHIHARA motion as quickly as he can get them,

1 - which he thinks will be in a very short period of
2 time, a few minutes.

3 THE PRESIDENT: That will be in a few minutes.

4 MR. WARREN: If the Tribunal please, if the
5 Tribunal will give us an indication of the number
6 of motions they are short, perhaps among defense
7 counsel they may have copies here so we can proceed.

8 THE PRESIDENT: As far as I know, there are
9 three Judges without copies of the DOHIHARA motion.

10 Proceed, Colonel, please.

11 MR. WARREN: Thank you, sir. (Reading):

12 In presenting argument in support of the de-
13 fendant DOHIHARA's motion for dismissal, it has been
14 deemed advisable, for the sake of brevity, not to
15 argue the evidence with respect to each individual
16 count but to so arrange the argument that it would
17 apply to the general category in which each count
18 naturally falls.

19 Counts one to five inclusive purport to allege
20 the crime of conspiracy to wage aggressive warfare.
21 Conspiracy, of course, contains several elements
22 necessary to constitute the crime, among them is the
23 meetings of the minds of the conspirators to perform
24 an unlawful act or to perform a lawful act in an
25

1 unlawful manner. Ordinarily, in order for a court
2 or tribunal to overrule a motion of this type, there
3 should be some evidence of each element of the offense
4 charged, and substantial evidence of all the elements
5 as a whole. Inasmuch as there has been no indica-
6 tion from the Tribunal that another construction
7 will be used in determining the issues raised by
8 this motion, this argument will be based upon such a
9 premise.

10 The evidence, taken in its entirety, fails to
11 show that this defendant did at any time conspire with
12 other defendants to wage aggressive warfare. It is
13 clear that this defendant was, at all periods of time
14 embraced by the counts against him, a member of the
15 armed forces, and subject to the orders of his
16 superior officers. The testimony discloses that the
17 acts, apparently relied on by the prosecution to
18 prove the meeting of the mind of this defendant with
19 the minds of the others to perform unlawful acts
20 were but acts which he carried out in furtherance of
21 orders received from superior officers. There is no
22 evidence that the defendant was ever in a position
23 where he could, even if he so desired, enter into a
24 conspiracy to wage aggressive war with any hope of a
25 successful conclusion. It is suggested that before a

1 defendant could be guilty of the crime of conspiracy
2 to wage aggressive war he must have held a position
3 of power of such magnitude as to be able to sway the
4 issues and give orders to subordinates in furtherance
5 of his conspiracy. This is not true in the case of
6 the defendant DOHIHARA. It is contended that with
7 reference to counts one through five the prosecution
8 has failed to produce substantial evidence that this
9 defendant engaged in a common plan or conspiracy to
10 wage war.

11 Counts six through seventeen purport to charge
12 the defendant with planning and preparing a war of
13 aggression and a war in violation of international
14 law, treaties, agreements and assurances. The pro-
15 secution has produced a mass of testimony in the form
16 of documentary evidence in an attempt to substantiate
17 these charges, among which has been various treaties,
18 agreements and assurances. As evidence, the contents
19 of such documents become material to be analyzed in
20 arriving at a settlement of the issues involved, and
21 as interpretation as to their meanings, their scope and
22 their limitations is necessary. Standing alone they
23 are not evidence of a violation of international
24 law, and while they are necessary to the determina-
25 tion of the issues the real question which presents

1 itself, after the terms of such instruments have
2 been interpreted, is the parole and additional
3 documentary evidence which explains or proves the
4 violation of the terms of the particular instrument
5 involved, and what holds true of counts one through
6 six, holds true in this instance.

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1 These counts under discussion are stated
2 in terms which can lend themselves to no interpreta-
3 tion except that the framers intended that if they
4 failed to prove conspiracy on counts one to six,
5 that they could do so by pleading and proving conspiracy
6 in a new and novel manner. All of the defendants
7 are joined in these counts, and if they together
8 planned and prepared a war of aggression in defiance
9 of the precedents of international law they would be
10 conspirators regardless of any contention to the
11 contrary, and each element of the offense of conspiracy
12 would have to be proved before this Tribunal would be
13 justified in holding this defendant for further
14 action upon these counts. Regardless of pleading
15 or definition the crime of conspiracy in all of its
16 elements remains constant. The Charter provides that
17 technical rules of evidence need not be adhered to,
18 and it necessarily follows that the technical rules
19 of pleading need not be adhered to, and that so long
20 as a defendant is fully apprized of the charges
21 against him that the count is good and is not subject
22 to attack.

23 The Tribunal has passed upon this question,
24 and inasmuch as there appears to be no other
25 construction which can be placed upon the verbiage

1 used in the counts under discussion, it is believed
2 that in the absence of proof that there was a meeting
3 of the mind of this defendant with the minds of other
4 alleged co-conspirators to perform an unlawful act, that
5 there is a failure of proof and not sufficient evidence
6 to warrant the holding of this defendant for further
7 action by this Tribunal. It is contended that there
8 is a failure of proof on this point.

9 Counts eighteen through twenty-six allege
10 that this defendant, together with other defendants,
11 initiated wars of aggression in violation of inter-
12 national law, treaties, agreements, and assurances.
13 It appears that these counts, although they allege
14 in substance that many of the defendants acted in
15 concert, in initiating the so-called war or wars of
16 aggression must of necessity depend upon individual
17 proof with reference to each of the co-defendants
18 named in any particular count. Without going into
19 detail it is contended that there is a failure of proof
20 on all such counts against this defendant.

21 Counts twenty-nine through thirty-six allege
22 that this defendant in concert with other defendants,
23 waged wars of aggression in violation of international
24 law, treaties, agreements and assurances. It appears
25 that initiating and waging aggressive wars is as

1 closely allied as is conspiring and planning wars
2 of aggression, and consequently the argument thus far
3 advanced with reference to the counts alleging ini-
4 tiation of wars of aggression is here adopted. It
5 becomes a matter of proof as to each individual defen-
6 dant. With reference to this defendant it is submitted
7 that there is no proof that he waged aggressive war,
8 unless it be contended that all the enlisted, non-
9 commissioned and commissioned officers of the army
10 and navy of Japan are guilty. It is not believed
11 that any such contention could be seriously entertained.

12 Counts thirty-seven through fifty-two purport
13 to charge the defendants named therein with crimes
14 against peace, conventional war crimes and crimes
15 against humanity, contrary to all the paragraphs of
16 Article 5 of the Charter.

17 The defendant FOHIMARA is named in counts
18 thirty-seven through forty-four and in counts fifty-one
19 and fifty-two. Counts thirty-seven and thirty-eight
20 allege, in substance, a conspiracy to commit murder
21 by initiating unlawful hostilities. Counts thirty-
22 nine through forty-three allege murder as a result of
23 homicide in armed combat.

24 It is contended that the so-called crime of
25 conspiracy to commit murder, as a result of homicide

1 occurring in any type of warfare, is a new and unusual
2 application of the crime of conspiracy; that such a
3 crime is not one of common knowledge and never existed
4 before the commencement of this trial, and therefore a
5 court or tribunal may not take judicial notice thereof.
6 If it is a crime, it becomes a question of fact to be
7 proved by the evidence. If it be contended that it is
8 a crime because the Charter authorizing this Tribunal
9 outlines it as a crime, it must of necessity be con-
10 tended that it became a crime because the Supreme
11 Commander for the Allied Powers in the Pacific so
12 decreed.

13 International law has never been created by
14 mandate of an individual, and if international law can
15 be created in any such manner that also becomes a
16 matter of proof. It is no new thing to prove the
17 existence of a law by the presentation of evidence.
18 The prosecution has wholly failed to produce evidence
19 that such a crime in truth and in fact exists, or is
20 recognized in international law or to go further that
21 international law may be created in the manner this
22 alleged law is purported to have been brought into being.
23 The same argument as applied to these two counts can
24 likewise be applied to counts forty-two through forty-
25 three.

1 Count forty-four alleges a plan or conspiracy
2 to procure and permit the murder on a wholesale scale
3 of prisoners of war and other such categories of per-
4 sons. The defendant DOHIHARA is named in this count
5 but the following counts, which charge murder as a
6 culmination of the conspiracy alleged in count forty-
7 four, do not name him. It is contended that not only
8 is there no substantial evidence of a conspiracy alleged
9 on the part of this defendant, but that there is no
10 evidence of his participation in such conspiracy, if
11 any there was.

12 Counts fifty-one and fifty-two allege in
13 substance that the defendant is guilty of murder as a
14 result of homicide during armed conflict. This point
15 has been previously argued.

16 Counts fifty-three through fifty-five allege
17 a conspiracy to authorize mistreatment of prisoners of
18 war, et cetera, and are referred to as conventional
19 war crimes in the Indictment. As to whether the defen-
20 dant DOHIHARA participated in such conspiracy, if any
21 there was, or did any of the acts complained of in the
22 other remaining counts is a question of proof. We are
23 unable to find any such proof..

24 In presenting this argument it had been the
25 intention of counsel to analyze completely the entire

1 evidence produced by the prosecution against the
2 defendant DOHIHARA. However, in deference to the sug-
3 gession of the President that arguments in support of
4 motions of this type were expected to be short, such
5 analyzation, which has heretofore been prepared, has
6 been deleted from this argument; but the defendant
7 respectfully requests the Tribunal to analyze the evi-
8 dence in accordance with the propositions herein
9 advanced.

10 THE PRESIDENT: Commander Harris.

11 MR. HARRIS: This is a motion of the defendant
12 HASHIMOTO, Kingoro, to dismiss.

13 Now comes the defendant HASHIMOTO, Kingoro,
14 by his counsel, and moves the Court to dismiss each and
15 every one of the counts in the Indictment against him
16 on the ground that the prosecution has not offered
17 evidence in support of these counts sufficient to
18 warrant a conviction of this defendant.

19 Accompanying memorandum in support of motion
20 of defendant HASHIMOTO, Kingoro, to dismiss:

21 An examination of the defendant's career as
22 set forth in exhibit 105 shows that throughout the
23 period of this Indictment the defendant was either an
24 ordinary civilian without an official position, or
25 when serving as an army officer -- the only official

1 post he ever occupied -- such position was never of
2 sufficient importance to enable him to participate
3 either in the planning or executing of the conspiracy
4 set forth in Counts 1 to 5 inclusive, nor in the
5 planning and preparation for a war of aggression as
6 charged in Counts 6 to 17 inclusive.

7 Although Count 18 charges the defendant with
8 having initiated a war of aggression against the
9 Republic of China on or about 18 September 1931, at
10 this time the defendant was not in China but was
11 stationed in Japan attached to the Headquarters of the
12 General Staff, Russian Section. The evidence produced
13 with the intention of connecting HASHIMOTO with the
14 Mukden Incident is insufficient to warrant a conviction
15 on this count.

16 Count 19 likewise charges initiation of a war
17 of aggression against the Republic of China on or
18 about 7 July 1937. No evidence has been adduced to
19 connect the defendant with such a war since he was at
20 that time an ordinary civilian without any official
21 position.

22 Counts 27 and 28 charge the defendant with
23 waging a war of aggression against the Republic of
24 China. No evidence has been produced substantiating
25 the charge set forth in these counts.

1 Counts 29 to 32 and 34 charge the defendant
2 with waging a war of aggression against various
3 countries. The evidence is insufficient to warrant a
4 conviction, since after March, 1939, HASHIMOTO was a
5 civilian without any official position and could not
6 have participated in the acts of which he is accused.

7 No evidence has been submitted to show that
8 the defendant participated in any manner in the attacks
9 on Nanking, Canton, and Hankow or in any conspiracy to
10 murder as set forth in Counts 44 to 47 inclusive.

11 In Counts 53 to 55 inclusive, the defendant
12 HASHIMOTO is charged with conventional war crimes and
13 crimes against humanity in the case of the Republic
14 of China. The evidence is insufficient to support the
15 charges set forth in these counts.

16 Exhibit 954-C, dealing with the "Ladybird"
17 Incident is insufficient to establish the fact that
18 the firing on that ship was other than a mistake.

19 The prosecution has produced evidence to show
20 that the defendant HASHIMOTO was a member of certain
21 societies, such as the SAKURAKAI, the SEKISEIKAI and
22 the Imperial Rule Assistance Association, but it has
23 failed to adduce sufficient evidence to show that the
24 aims or activities of these societies and of the
25 defendant HASHIMOTO were concerned with any matters

1 other than those of a purely domestic nature or that
2 such aims or activities were part of a conspiracy to
3 commit crimes against peace.

4 Evidence has further been produced with the
5 intention of proving that the defendant HASHIMOTO by
6 virtue of his authorship of certain books and articles
7 conspired to commit crimes against peace, but beyond
8 the mere fact that his authorship of such texts has
9 been proven, the evidence has failed to show that these
10 books and articles were other than expressions of the
11 personal opinions and sentiments of the defendant
12 HASHIMOTO on certain subjects, made in an unofficial
13 capacity and totally without authority or influence
14 to produce or compel cooperation; nor has such proof
15 been sufficient to warrant a conviction on the charge
16 that such expressions were part of a conspiracy to
17 commit the crimes charged.

18 Dated this 17th day of January, 1947.
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1 THE PRESIDENT: Captain Lazarus.

2 MR. LAZARUS: Mr. President, for the sake of
3 brevity, I will omit reading the formal part.

4 The prosecution's case against HATA, Shunroku
5 is noteworthy for the fact that in well over 2,000
6 exhibits and in about 15,000 pages of court record
7 the name of the accused HATA has appeared but very
8 few times, and even then never in connection with an
9 important document or policy-directing or delineating
10 speech, pamphlet, or book, nor a policy-making
11 conference or meeting; never in connection with any
12 military clique, faction, uprising, demonstration
13 or movement; never in connection with or as a member
14 of any political faction, association, political
15 party, research institute, or Jingoistic group; never
16 in connection with or as a member of any government
17 position, board, department or bureau which made any
18 decision for the planning, preparation or initiating
19 of war or wars; never in connection with any depart-
20 ment of the government when a war broke out, and most
21 certainly never in connection with any board, bureau
22 or department that at any time had any control of or
23 voice, directly or indirectly, in matters pertaining
24 to Prisoners of War.

25 We shall now proceed to examine the counts

1 of the Indictment and the position of the accused HATA
2 under them.

3 Counts 1 - 4, inclusive, charge conspiracy
4 to control various areas of the world, and, as stated
5 above and as will be shown later, the accused HATA,
6 Shunroku has not been proved by any evidence to have
7 taken part in such conspiracy.

8 Count 5 alleges a conspiracy with Germany
9 and Italy. The best evidence that the accused HATA
10 was not involved in such conspiracy is the fact that
11 after the signing of the Tri-Partite Pact he, HATA,
12 was not among those shown by the prosecution to have
13 been recommended to Hitler by the German ambassador
14 to Japan to receive an award from the German Govern-
15 ment for their services in sponsoring the Tri-Partite
16 Pact.

17 Counts 6 - 17, inclusive, are general counts
18 alleging the planning and preparing of war against
19 countries named therein. At no time was it ever
20 shown, as has been stated above and as will be shown
21 later in the specific counts involving those same
22 countries, that the accused HATA helped plan and pre-
23 pare any war or wars.

24 Count 19 alleges the initiation of a war
25 against China, on the 7th of July 1937. The curriculum

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1 on the one occasion when the name HATA was read into
2 the transcript by the Russian prosecutor, Colonel
3 Ivanov explained to this Tribunal that it was not
4 HATA, Shunroku who was involved, but the other HATA --
5 Hikosaburo HATA, who was a staff officer of the Kwan-
6 tung Army. It may safely be said that if it has
7 been the accused HATA who was meant every time the
8 name HATA appeared in these statements and affidavits,
9 those said parts would have been read into the trans-
10 cript. At no time during this phase was any evidence
11 introduced naming the accused HATA, Shunroku.

12 Count 26 alleges initiation of a war against
13 the Mongolian Peoples' Republic. Again, as stated in
14 answer to Count 25, no evidence was adduced naming
15 the accused HATA.

16 Count 27 alleges all the accused waged a war
17 against China between 1931-1945. It is respectfully
18 submitted on behalf of the accused HATA that never
19 anywhere in all history has it ever been even suggested
20 that the profession of arms is criminal, and as a life-
21 long soldier and an officer in the Japanese Army, the
22 accused HATA had absolutely no alternative other
23 than to obey his country's call and to follow im-
24 plicitly the orders of his superiors, once war broke
25 out. As has been shown previously, the accused HATA

1 had nothing whatsoever to do with the outbreak of the
2 China War and the evidence shows that he landed in
3 China for the first time in late February of 1938.
4 Never more than in this instance had the words of the
5 great American patriot and fighter Commodore Stephen
6 Decatur seemed more appropriate to explain the posi-
7 tion of a soldier: "Our country! In her intercourse
8 with foreign nations may she always be in the right;
9 but our country, right or wrong!"

10 Count 28 alleges that all the accused between
11 7 July 1937 and 2 September 1945 waged war against
12 China. The same may be said here as in Count 27.

13 Count 29 - 32, inclusive, and Count 34 allege
14 all the defendants waged war against the United States,
15 the Commonwealth of Philippines, the British Common-
16 wealth of Nations, the Kingdom of the Netherlands,
17 and the Kingdom of Thailand between 7 December 1941
18 and 2 September 1945. At no time did the accused
19 HATA appear in any field of battle except in China,
20 and never between the dates stated did he hold any
21 position from which it could be said he waged war
22 against any of these named countries. Nor has any
23 evidence been introduced that he did so. Indeed,
24 Counts 20, 21, 22, and 24 do not allege that he
25 initiated a war against the first three and the last

1 of these named countries.

2 Count 35 alleges the same defendants as in
3 Count 25, including HATA, waged war against U.S.S.R.
4 in the summer of 1938, and Count 36 alleges that the
5 same defendants as in Count 26, again including HATA,
6 waged war against the Mongolian Peoples' Republic
7 and the U.S.S.R. in the summer of 1939. The same
8 answers given in Counts 25 - 26 may be given here --
9 NO EVIDENCE.

10 Count 44 charges all defendants with conspir-
11 acy to murder Prisoners of War. At no time has any
12 evidence been introduced to show that the accused
13 HATA participated in any such conspiracy, was a member
14 of any government department, bureau, or office that
15 at any time made any decision or had anything to do
16 with reference to Prisoners of War, either directly
17 or indirectly.

18 Count 45 alleges the attack on the city of
19 Nanking and the slaughter of inhabitants. The evi-
20 dence shows that the city of Nanking fell on 13
21 December 1937 and that the accused HATA arrived in
22 China for the first time in late February 1938 to
23 assume command of the Central China Army, by which
24 time all evidence shows the city was again quiet and
25 under no circumstances can HATA be charged with

1 responsibility for the Nanking Incident.

2 Count 46 alleges that the same defendants
3 as in Count 45, including accused HATA, attacked the
4 city of Canton. Although it was not pointed out to
5 Court by the prosecution, a glance at the map will
6 show that the city of Canton is in South China and
7 not in the area of command of Central China Army,
8 commanded at this time by the accused HATA. This
9 city was in the area of command of South China Army,
10 and no evidence whatsoever was introduced to show
11 that the accused HATA was in any wise connected with
12 the operation against Canton. Exhibit 106 verifies
13 that HATA was at this time in command only of Central
14 China Army.

15 Counts 47, 48, 49 and 50. No evidence what-
16 soever was introduced to show that the accused HATA
17 was in any wise responsible for the allegations con-
18 tained in these counts.

19 Counts 51 and 52 allege attacks on Mongolia
20 and the U.S.S.R. and the murder of citizens of those
21 countries. As already pointed out in answer to counts
22 25, 26, 35 and 36, no evidence whatsoever was intro-
23 duced during Russian phase naming the accused HATA,
24 Shunroku.

25 Counts 53, 54 and 55. No evidence whatsoever

1 was introduced that between 7 December 1941 and 2
2 September 1945 the accused HATA at any time par-
3 ticipated as leader, organizer, instigator or accom-
4 plice in a conspiracy to order or authorize breaches
5 of the Laws and Customs of War against Prisoners of
6 War. At no time has it been shown that the accused
7 HATA held any position in the government or in any
8 department or bureau in which he could have partici-
9 pated in such conspiracy. Exhibit 106 reveals that
10 from March 1941 - November 1944 the accused HATA
11 was in China, and on his return to Japan held no
12 government position, was a member of no bureau,
13 attended no conferences of any nature whatsoever, nor
14 was he at any time in the period stated in these
15 counts in any way connected with any department having
16 anything to do, directly or indirectly, with Prisoners
17 of War, and the best evidence on this point is that
18 Mr. Justice Mansfield in his opening address on this
19 phase did not name the accused HATA as one of the
20 accused liable under these counts.

21 We come to the positions held by the accused
22 HATA during the critical years. He was Inspector
23 General of Military Education, member of the Supreme
24 War Council, War Minister, Aide-de-Camp to the
25 Emperor, and member of Board of Marshals and Admir-

1 als. What are the powers of these positions? We
2 take the statements of Brigadier Nolan and Mr.
3 Horwitz made in the opening phase when they ex-
4 plained to the Tribunal the functions of the various
5 government divisions.

6 BOARD OF FIELD MARSHALS AND ADMIRALS. On
7 Page 672 of the transcript Mr. Horwitz says: "This
8 Board was originally created in 1898 and its member-
9 ship is limited to field marshals and fleet admirals.
10 Theoretically, this body is supposed to be the high-
11 est advisory body to the Throne on Army and Navy
12 matters, but it is in fact purely an honorary body
13 with little or no power." No evidence was ever
14 introduced to show the contrary, nor even to prove
15 that this Board ever held a meeting.

16 SUPREME WAR COUNCIL. On the same page Mr.
17 Horwitz tells us: "Its function is to advise on all
18 military and naval policy generally and to coordinate
19 all administrative and tactical organizations. It
20 plays no part with respect to tactics and strategy."
21 No evidence was introduced to show that this body
22 ever made any decisions or that it even ever held a
23 meeting.

24 CHIEF AIDE-de-CAMP TO THE EMPEROR. Mr.
25 Horwitz tells us, page 674: "While this officer, a

1 full general, has no connection with Supreme Command,
2 he has full access to it. All military memorials
3 and requests for audiences with the Throne are sub-
4 mitted through him and all Imperial orders for army
5 and navy are transmitted by him." Purely an honorary
6 position and again, no evidence was ever introduced
7 to show otherwise.

8 WAR MINISTER AND INSPECTOR GENERAL: Brigadier
9 Nolan tells us, in his explanation of these position,
10 page 589 of the transcript: "Briefly, one might say
11 that the Minister of War administers, the Inspector
12 General trains, and the Chief of Staff employs the
13 army, both in maneuvers and in battle." General
14 HATA was never a member of Imperial Headquarters or
15 General Staff.

16 It can thus be seen, from the prosecution's
17 own words, the accused HATA never held any position
18 that had policy-making powers or which allowed him
19 to help formulate policy or to make decisions, from
20 which it might be inferred he conspired to wage,
21 that he initiated, or that he did wage war or wars.

22 HATA was War Minister in the conservative
23 ABE and YONAI Cabinets. The evidence showed YONAI
24 and his Foreign Minister ARITA fought the Tri-Partite
25 Pact. No evidence was introduced to show HATA held

1 contrary convictions. Mr. Tavenner in his opening
2 of that phase stated (5865-5866 of transcript):
3 "After several attempts to bring about the downfall
4 of the YONAI Cabinet had proved unsuccessful, the
5 military resorted to the device of having the War
6 Minister resign. General HATA tendered his resig-
7 nation to Premier YONAI 16 July 1940." No evidence
8 exists to show HATA was one of the military who
9 wanted the downfall of the YONAI Cabinet. That HATA
10 had to resign and thus cause the downfall of the
11 YONAI Cabinet and that he could not insist on stay-
12 ing in office and save the conservative YONAI Cabinet
13 then fighting the Tri-Partite Pact is proven from the
14 opening address of Mr. Horwitz, page 666 of the
15 transcript. There, explaining the powers of the high
16 command in matters of such a situation as this, he
17 says (line 17): "Second, by compelling the war or
18 navy ministers, subject to the orders of the high
19 command because of their active service status, to
20 resign, either the army or the navy could bring about
21 the resignation of the Cabinet." When later that
22 day, 16 July 1940, HATA notified YONAI no one else
23 could be found to fill the post of War Minister,
24 thus precluding the formation of a new YONAI Cabinet,
25 or the continuation of the old one, the explanation

1 for this situation is again found with Prosecutor
2 Horwitz' address (same page). He points out that by
3 refusing to name a War Minister, the high command
4 could prevent the formation of a cabinet. And who
5 had the power to name the new War Minister? The
6 same people who had just forced HATA to resign as
7 War Minister.

8 If it were true that HATA had wanted the
9 downfall of the YONAI Cabinet, such evidence could
10 have been supplied by the prosecution by the pro-
11 duction of YONAI and ARITA in court. They both live
12 in Tokyo today. Further evidence that HATA was not
13 a part of that group stems from the fact that he was
14 not a member of the KONOYE Cabinet which succeeded
15 the YONAI Cabinet and in fact never held a cabinet
16 minister's post again. These facts are mentioned
17 here in order to stress that at no time can it be
18 said HATA conspired with anyone or even belonged to
19 the group the prosecution alleges is guilty of con-
20 spiracy.

21 In conclusion, it is respectfully submitted
22 that no evidence of any nature whatsoever has been
23 adduced to show that the accused HATA at any time
24 conspired or planned or initiated any war against any
25 country, as has been pointed out in answering the

1 specific counts. In the case of the Russian counts
2 he has been named by mistake, or confused with General
3 Hikosaburo HATA. It is a singular fact that at the
4 times when it is alleged by the prosecution that wars
5 were being planned or initiated, the accused HATA was
6 not in any position of authority so that it could be
7 said that he participated in their planning or in
8 their initiation. It is finally pointed out to the
9 Tribunal that Counts 18, 20, 21, 22, 23 and 24, which
10 allege initiation of wars against these respective
11 countries and the Counts 37 and 38 which allege con-
12 spiracy between June 1, 1940 - December 8, 1941 to
13 murder citizens of respective countries named therein,
14 and Counts 39, 40, 41, 42, and 43 which allege murder
15 of citizens of countries named in 38 and 39 at
16 various times and places do not name HATA. How then
17 can it be held that he planned and prepared a war,
18 or wars, as alleged in Counts 6 - 17, inclusive?
19 Clearly, the specific Counts which do not name him
20 clear the accused HATA of complicity in the general
21 counts.

22 WHEREFORE, in view of all these facts, the
23 accused HATA respectfully moves this Tribunal to dis-
24 miss each and every one of the counts in the Indict-
25 ment against him.

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THE PRESIDENT: We will adjourn until half-
past one.

(Whereupon, at 1200, a recess was
taken.)

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AFTERNOON SESSION

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The Tribunal met, pursuant to recess, at 1330.

MARSHAL OF THE COURT: The International Military Tribunal for the Far East is now resumed.

THE PRESIDENT: Colonel Warren.

MR. WARREN: If the Tribunal please, thus far I have not appeared on record as counsel for Baron HIRANUMA. He was formerly represented by Captain Kleiman who returned to the United States because of ill health, and it now appears that he will not return, that is, insofar as we can determine. I, therefore, ask -- I have consented, rather, with the approval of the Tribunal, to act as American counsel for the defendant HIRANUMA.

THE PRESIDENT: You have the Tribunal's approval, Colonel Warren.

MR. WARREN: Thank you, sir.

Now, if the Tribunal please, we have prepared and I served last Friday a typewritten copy of the motion, on behalf of Baron HIRANUMA, on the prosecution. Unfortunately, in the mechanical preparation of the motion and argument for presentation to the Tribunal there were some errors which had to be corrected, and they have been corrected this

1 morning; but the motion is not in form to bring
2 to the Tribunal. I, therefore, request that Baron
3 HIRANUMA's name be passed to the end of the list
4 and defense counsel who are concerned have agreed
5 if the Tribunal will agree to that.

6 THE PRESIDENT: We are reluctant to change
7 the order, Colonel Warren. Are the alterations
8 extensive?

9 MR. WARREN: No, sir.

10 THE PRESIDENT: You might note them as
11 you go along.

12 MR. WARREN: All right, sir.

13 THE PRESIDENT: We will take the accused
14 HIRANUMA's motion now.

15 THE MONITOR: Mr. Warren, the revised copy
16 of Japanese, is it correct in the Japanese copy, sir?

17 MR. WARREN: That is correct.

18 THE MONITOR: Thank you, sir.

19 MR. WARREN: May I have just about thirty
20 seconds, your Honor?

21 THE PRESIDENT: Yes.

22 MR. WARREN: For the sake of brevity, the
23 counts in the Indictment concerning this defendant
24 will, for the most part, be referred to in the group
25 within which they naturally fall and will be argued

1 in such manner rather than individually. Counts
2 one to five are general counts alleging conspiracy
3 between this defendant and others between January 1,
4 1928, and September 2, 1945. The prosecution has
5 introduced as exhibit 107 the personnel record of
6 this defendant which discloses that he held the
7 post of Vice President and President of the Privy
8 Council, Prime Minister and Cabinet Minister during
9 such time and that he also was in retirement, holding
10 no public office, from August 30, 1939, until
11 December 20, 1940; from October 18, 1941 to August 28,
12 1942; and from October 14, 1942 until April 9, 1945.
13 It is submitted that a perusal of the evidence
14 adduced against this defendant will fail to disclose
15 that this defendant participated in the alleged
16 conspiracy. The evidence wholly fails to disclose
17 that he did at any time use his official positions
18 as a means of fostering such alleged conspiracy and
19 certainly there is no single word of testimony in
20 the record to show that he participated in or was in
21 any way connected with it during his periods of
22 retirement from public life.

23 Counts six to seventeen relate to the planning
24 and preparation of a war of aggression. The arguments
25 which apply to counts one through five likewise apply

to these counts and the same evidence relied upon
1 in an attempt to prove such counts is apparently
2 relied upon to prove these. There is no need for
3 further enlargement and the argument advanced with
4 reference to counts one to five is here adopted.

5 Counts eighteen to twenty-six charge the
6 initiation and waging of wars of aggression against
7 various countries specified in the several counts.
8 Although the accused is named in each of these
9 counts the evidence will disclose that the only
10 event which occurred while he was Prime Minister
11 is the event which is alleged in count twenty-six.
12 All other events occurred at a time when he was
13 either a member of the Privy Council or in retirement.
14 The evidence fails to disclose that the Prime
15 Minister had anything to do with the outbreak of
16 the alleged war of aggression as set forth in count
17 twenty-six and it is submitted that there is a failure
18 of proof on this point. At the time of the alleged
19 initiation of wars of aggression against the Republic
20 of China, as set forth in counts eighteen and nine-
21 teen, and against the Union of Soviet Socialist
22 Republics, as set forth in count twenty-five, the
23 defendant was, according to the testimony, a member
24 of the Privy Council. There is no evidence to show
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1 that this defendant or the members of the Privy
2 Council, during his tenure of office, initiated or
3 had the authority to initiate any such wars of
4 aggression. With reference to the alleged wars of
5 aggression against the United States of America,
6 the Commonwealth of the Philippines, British Common-
7 wealth of Nations, the Republic of France, and the
8 Kingdom of Thailand as set forth in counts twenty
9 through twenty-four, the evidence shows that this
10 defendant was in retirement and held no public
11 office on the date of December 7, 1941, at which
12 time the alleged wars of aggression are supposed
13 to have been commenced. It is contended that the
14 evidence is entirely insufficient on any of the
15 counts eighteen through twenty-six to warrant a
16 conviction.

17 Counts twenty-seven through thirty-six
18 allege the waging of a war of aggression against
19 the various countries specified in such counts. The
20 evidence does disclose that at the time of the alleged
21 waging of a war of aggression against the Union of
22 Soviet Socialist Republics as set forth in count
23 thirty-six that this accused held the post of Prime
24 Minister. It is contended that this fact alone is
25 not sufficient, without additional evidence, to warrant

1 a conviction of the accused and a search of the
2 record fails to disclose that this defendant ever
3 was responsible for the waging of any such war of
4 aggression. During the period of time covered by
5 counts twenty-seven and twenty-eight alleging the
6 waging of aggressive war against the Republic of
7 China the evidence discloses that the defendant
8 held the post of Prime Minister for a period of
9 approximately eight months from January 5, 1939
10 to August 30, 1939, and later, on two separate
11 occasions, was appointed a Cabinet Minister and
12 held such post for approximately ten months alto-
13 gether from December 21, 1940 to October 18, 1941.
14 The evidence also discloses that he was dispatched
15 to China as a Special Envoy of good will for about
16 seven weeks during the year 1942.

17 There is a correction there, sir. That
18 reads on your copy "1941".

19 During the rest of the time, covered by
20 the two counts twenty-seven and twenty-eight, he
21 was either in the Privy Council or in retirement.
22 It is contended that there is a failure of proof,
23 presented by the prosecution to show that this
24 accused was personally responsible for waging a war
25 of aggression against the Republic of China. During

1 the period of time embraced by count thirty-five,
2 which alleges a war of aggression against the
3 Union of Soviet Socialist Republics, the evidence
4 shows that the defendant was a member of the
5 Privy Council but wholly fails to show that there
6 was any connection between the defendant or Privy
7 Council with any alleged hostilities against such
8 nation. During the period of time from December 7,
9 1941 through September 2, 1945 -- and there should
10 be inserted here, your Honor, "embraced by counts
11 twenty-nine through thirty-four," -- the accused
12 held no public office, except as previously stated,
13 he did hold the post of Special Envoy of good will
14 to China in 1942 and was appointed to the President
15 of the Privy Council for the second time on April 9,
16 1945. It is contended that the evidence adduced
17 against this accused with reference to these counts
18 is entirely insufficient to warrant a conviction.

19 Counts thirty-seven to fifty-two allege
20 murder. We most strongly urge that there is no
21 evidence to connect this defendant with any responsi-
22 bility in connection with these alleged offences. It
23 is significant that the accused is not charged in
24 counts forty-eight through fifty.

25 Counts thirty-five to fifty-five -- that

1 should be changed, if the Tribunal please, to
2 "Counts fifty-three to fifty-five," -- relate to
3 conventional war crimes and crimes against humanity.
4 This accused is named in these counts only insofar
5 as they relate to the Republic of China and the
6 argument that has been advanced with reference to
7 counts thirty-seven to fifty-two would likewise
8 apply to these charges and need not be enlarged
9 upon.

10 In conclusion, it is submitted that there'
11 is not sufficient evidence, of a substantial nature,
12 even under the leeway given this Tribunal, to warrant
13 conviction of this accused, and therefore respect-
14 fully submit that all charges against him ought,
15 in the interests of justice, be dismissed.

16 THE PRESIDENT: Mr. Smith.
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1 MR. SMITH: If the Court please, we now come
2 to the defendant HIROTA, Koki, and I move this
3 Honorable Tribunal to dismiss each and every count
4 in the indictment against that defendant, being
5 counts 1-17, 19-25, 27-35, 37-47, and 52-55, for
6 the reason that there has been a total failure on
7 the part of the prosecution to offer any substantial
8 evidence to support any of the foregoing counts
9 against said defendant..

10 GROUNDS IN SUPPORT OF THE FOREGOING MOTION
11 AND ARGUMENT.

12 'As American counsel, I have the honor to
13 present on behalf of the Honorable Koki HIROTA a
14 motion to dismiss each and every of the counts of
15 the indictment affecting Mr. HIROTA. There has
16 been a palpable failure on the part of the
17 prosecution to introduce a scintilla of eivence
18 to sustain any of the wide, sweeping allegations
19 contained against him in any count of the indictment.
20 A mere reflection on the part of the Tribunal will
21 disclose at once the gross miscalculation on the
22 part of the prosecution in joining Mr. HIROTA in the
23 instant indictment. The prosecution has not produced
24 one jot of evidence to show that Mr. HIROTA either
25 individually or in concert with any other defendant

1 then a closed book; and Japan had already withdrawn
2 from the League of Nations. In this situation Mr.
3 HIROTA found Japan virtually isolated in the family
4 of nations and he earnestly set about, as is shown
5 by many pieces of prosecution evidence, to bring
6 Japan into good relations with the nations of the
7 world, especially China, Britain and the United
8 States, and to promote better feeling and under-
9 standing in every direction. Witness, for example,
10 the evidence introduced by the prosecution which
11 shows that Mr. HIROTA sent a message to Secretary
12 Hull on February 21, 1934, saying that no issue
13 existed between the United States and Japan which
14 was "fundamentally incapable of amicable solution,"
15 and that Japan had no intention whatever of making
16 trouble with any other power; and the cordial reply
17 of Secretary Hull of March 3, 1934, to the open hand
18 of friendship and good will extended by Mr. HIROTA.

19 The SAITO Cabinet was succeeded on July 8,
20 1934, by the OKADA Cabinet in which Mr. HIROTA
21 continued as Foreign Minister until March 8, 1936.
22 Peace existed in the Far East during all of Mr.
23 HIROTA'S service as Foreign Minister in both the
24 SAITO and OKADA Cabinets. The prosecution has
25 totally failed to prove any act or omission on the

1 in the dock or in combination with that bewildering
2 category of persons described as "divers unknown
3 persons" ever made any plan, or common plan or con-
4 spiracy, to do any of the things so extravagantly
5 charged in the indictment against him in the desig-
6 nated counts.

7 In order to clarify the points and argument
8 it is well to recall the offices held by Mr. HIROTA
9 and the times in which he lived and conducted his
10 official actions. After serving for four years
11 as Minister to the Netherlands and as a well-liked
12 Ambassador to the Soviet Union, he returned to Japan
13 in 1932 and was placed on the retired list and pen-
14 sion as a career service diplomat of Japan. He
15 has never been a member of the armed forces. On
16 September 14, 1933, he was appointed to his first
17 high office in the home government, having been
18 appointed Foreign Minister in the SAITO Cabinet,
19 which continued until July 7, 1934, when the SAITO
20 Cabinet resigned. At the time of the appointment of
21 Mr. HIROTA as Foreign Minister in September 1933,
22 the Manchurian incident was then two years old,
23 Manchuria had already declared her independence and
24 had been recognized as a separate and independent
25 State by Japan; the Shanghai incident of 1932 was

1 then a closed book; and Japan had already withdrawn
2 from the League of Nations. In this situation Mr.
3 HIROTA found Japan virtually isolated in the family
4 of nations and he earnestly set about, as is shown
5 by many pieces of prosecution evidence, to bring
6 Japan into good relations with the nations of the
7 world, especially China, Britain and the United
8 States, and to promote better feeling and under-
9 standing in every direction. Witness, for example,
10 the evidence introduced by the prosecution which
11 shows that Mr. HIROTA sent a message to Secretary
12 Hull on February 21, 1934, saying that no issue
13 existed between the United States and Japan which
14 was "fundamentally incapable of amicable solution,"
15 and that Japan had no intention whatever of making
16 trouble with any other power; and the cordial reply
17 of Secretary Hull of March 3, 1934, to the open hand
18 of friendship and good will extended by Mr. HIROTA.

19 The SAITO Cabinet was succeeded on July 8,
20 1934, by the OKADA Cabinet in which Mr. HIROTA
21 continued as Foreign Minister until March 8, 1936.
22 Peace existed in the Far East during all of Mr.
23 HIROTA'S service as Foreign Minister in both the
24 SAITO and OKADA Cabinets. The prosecution has
25 totally failed to prove any act or omission on the

1 part of Mr. HIROTA or the SAITO or OKADA Cabinets
2 as a whole falling within the issues made by the
3 indictment in this case. The court will vividly
4 recall that Mr. OKADA, former Prime Minister of
5 Japan, was called to the stand as a prosecution
6 witness and testified under questioning by the prose-
7 cutors that when he came to office the Manchurian
8 incident was an accomplished fact and it was too
9 late to set back the hands of the clock; and that
10 his Cabinet recognized Henry Pu Yi as Emperor hav-
11 ing in mind the sole consideration of "the happiness
12 of the people" in Manchoukuo. Here the Tribunal
13 will recall that Manchoukuo declared her independ-
14 ence on March 1, 1932, during the previous INUKAI
15 Cabinet (December 13, 1932 - May 25, 1932) and that
16 Manchoukuo had been formally recognized as an inde-
17 pendent State during the INUKAI Cabinet tenure;
18 also that Pu Yi had been recognized as Emperor dur-
19 ing March 1934 during the tenure of the SAITO Cab-
20 inet but some five months before Mr. HIROTA became
21 Foreign Minister in the SAITO Cabinet. The
22 prosecution has failed to offer a scintilla of evi-
23 dence to show that Mr. HIROTA conspired with any
24 member of the SAITO or OKADA Cabinets or any member
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1 of the Privy Council or ever approved the maneuvers
2 in Manchuria, the outcome of which was presented to
3 him some two years later as an accomplished fact.
4 Surely the Tribunal will appreciate that after a
5 long lapse of time even old sores must be dealt with
6 reason and common sense.

7 The OKADA Cabinet resigned on March 8, 1936.
8 Between February 26-29, 1936, the City of Tokyo had
9 been thrown into a state of terror by the action
10 on the part of more than 1400 young officers and
11 men of the army who conducted a series of assassina-
12 tions, ostensibly for the purpose of ridding the
13 Government of so-called old timers whom they con-
14 sidered stood in the way of ends sought by some of
15 the younger men in the army. The Tribunal will
16 remember the testimony of Mr. OKADA with respect
17 to the attempt against his life and the fact that a
18 secretary was assassinated in his place by mistake.
19 The court will also recall that Tokyo was in a stage
20 of siege and martial law for a number of days
21 immediately after February 26, 1936, and that by
22 reason of the conditions and disorders at that time
23 Mr. OKADA and his entire Cabinet resigned. In
24 that strange and incredible day Mr. HIROTA was
25 summoned by His Majesty, the Emperor and ordered to

1 form a new Cabinet which he did after a delay of
2 five days. The HIROTA Cabinet held office from
3 March 9, 1936, to February 1, 1937, at which later
4 date Mr. HIROTA and his entire Cabinet voluntarily
5 resigned. For less than a month Mr. HIROTA held
6 the office of Foreign Minister concurrently with
7 that of Prime Minister and in April 1936 Mr. ARITA
8 took over as Foreign Minister. The Tribunal will
9 realize that it is plain as day that the Emperor
10 summoned Mr. HIROTA to occupy the high office of
11 Prime Minister of Japan in order to control the so-
12 called "hot headed" and rebellious elements among
13 the younger men in the army and to bring order and
14 stability to Japan. All the evidence of the prosecu-
15 tion, fragmentary as it is in this respect, shows
16 that Mr. HIROTA devoted himself to efforts to con-
17 trol elements within the army of Japan, to make the
18 civil side of the Government of Japan supreme over
19 the army and navy, especially as it related to the
20 foreign affairs of Japan; and that when he realized
21 he had failed in this respect as a result of a demand
22 by the army for dissolution of the House of Repre-
23 sentatives of the Diet as the result of an attack
24 upon the army by Mr. HAMADA, he voluntarily, together
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with every member of his Cabinet, resigned on

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February 1, 1937. Japan was at peace during the entire tenure of the HIROTA Cabinet.

The Tribunal is confronted with the astounding fact shown by all the evidence in the case that Mr. HIROTA is the only person among the large number of persons who occupied high official offices in the SAITO, OKADA, HIROTA and first KONOE Cabinets who stands as a prisoner in the dock, except the defendant ARAKI, who occupied the post of War Minister in the SAITO Cabinet for about three months while MR. HIROTA was Foreign Minister and nothing occurred affecting any issue in this case; and except that the defendant KIDO occupied the innocuous posts of Minister of Education and Welfare in the first KONOE Cabinet; and except that the late Admiral NAGANO occupied the post of Navy Minister during the HIROTA Cabinet and at a time when Japan was at peace and naval construction was at a virtual standstill. There has been a total failure of proof on the part of the prosecution to show that Mr. HIROTA conspired with ARAKI, KIDO or NAGANO or any other officials in any of those Cabinets to commit any of the things alleged in the indictment. There is a total failure of proof

1 to show that Mr. HIROTA ever conspired with any
2 member of the Privy Council or member of the Diet
3 of Japan, or any other alleged "unknown person"
4 to do any of the things alleged against him in
5 the indictment.

6 The HIROTA Cabinet was succeeded by the
7 HAYASHI Cabinet which continued in office from
8 February 2 to June 3, 1937. The HAYASHI Cabinet
9 was succeeded by the first KONOE Cabinet (the
10 court will remember that there were three separate
11 and distinct KONOE Cabinets). Mr. HIROTA was
12 urged to become Foreign Minister in the first
13 KONOE cabinet by the late Prince SAIONJI, one of
14 the most learned, liberal and distinguished elder
15 statesmen Japan ever produced. It was thought at
16 the time that MR. HIROTA would lend strength to
17 the first KONOE Cabinet in the post of Foreign
18 Minister. He assumed the post of Foreign Minister
19 on June 4, 1937, and resigned on May 26, 1938,
20 never again to resume any high official post in the
21 Government of Japan. Shortly after Mr. HIROTA
22 had assumed the post of Foreign Minister in the first
23 KONOE Cabinet he was confronted on the night of
24 July 7, 1937 with the Marco Polo Bridge incident
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1 in China. All the prosecution evidence shows that
2 he immediately attempted as Foreign Minister to
3 localize the issue and to bring the incident to a
4 speedy settlement. As meager and unfair as the
5 prosecution evidence stands at the conclusion of
6 its case, its own evidence shows that Mr. HIROTA
7 made repeated efforts to settle the incident in
8 China and in November 1937, made a peace proposal
9 to Chiang Kai-Shek which contained four simple
10 points as follows: (1) immediate cessation of
11 hostilities on both sides; (2) cessation of anti-
12 Japanese activities; (3) cooperation to prevent the
13 spread of Communism; and (4) indemnity to Japan for
14 the damages inflicted. And I would like to digress
15 here to say to your Honors that the evidence shows
16 that still later on Mr. HIROTA dropped the request
17 for indemnity for the damages in order to try to
18 settle the matter. The court will notice the
19 highly significant request for "indemnity to Japan"
20 as it relates to the fantastic assertion on the
21 part of the prosecution that Japan was engaged in
22 the "territorial" conquest of China, "overlordship,"
23 and effort at aggression.
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1 While Mr. HIROTA occupied the office of
2 Foreign Minister in the First KONOE Cabinet the so-
3 called "rape of Nanking" occurred. Nowhere has the
4 prosecution shown any responsibility of the Foreign
5 Minister of Japan for the lack of good order and
6 discipline on the part of the Japanese army. In this
7 connection the Court will recall the opening explan-
8 ation of Brigadier Nolan with respect to the constitu-
9 tion and distribution of powers thereunder in Japan;
10 he explained lucidly that under the constitution and
11 practice of Japan the army and navy were autonomous
12 and answerable only to the Emperor himself for their
13 acts and omissions; that throughout recent Japanese
14 history the army had proceeded to take actions with-
15 out first consulting the civil officers of the Govern-
16 ment of Japan; and invariably presented the civil
17 government of Japan with a fait accompli. In this
18 background and in these circumstances admitted by the
19 prosecution itself, the prosecution has failed to pro-
20 duce a shred of evidence that any act or omission of
21 Mr. HIROTA contributed to the activities of the armed
22 forces of Japan in Nanking or China as a whole or that
23 after the incident came to his attention he omitted
24 to do anything whatever to remind the responsible com-
25 manders of the Japanese army to watch the "reputation"

1 of the Japanese army. And in these circumstances it
2 is perfectly fantastic for the prosecution to indict
3 Mr. HIROTA in Count 55 and to charge him with being
4 "responsible" for alleged war crimes committed by
5 the Japanese army in Nanking. The Nanking incident
6 is the only respect in which Mr. HIROTA is charged
7 with so-called "conventional war crimes and crimes
8 against humanity."

9 "Mr. HIROTA resigned as Foreign Minister of
10 the first KONOE Cabinet on May 26, 1938, because of
11 a difference of views with the Prime Minister with
12 respect to the activities of the Japanese army in China.
13 Although he was offered high office thereafter, he
14 declined.

15 Throughout this argument the Court will
16 notice that Mr. HIROTA had absolutely nothing to do
17 with the so-called "new order" in China or the so-
18 called "Greater East Asia Co-Prosperity Sphere,"
19 irrespective of the varying constructions put upon
20 those terms. All the evidence shows that the term
21 "new order" in East Asia was first heard in government
22 circles in Japan in November 1938, some five months
23 after Mr. HIROTA last occupied the high office of
24 Foreign Minister in the first KONOE Cabinet and that
25 it was not until at least August 1940, that the term

1 "Greater East Asia Co-Prosperity Sphere" was put for-
2 ward in governmental circles in Japan. Hence, regard-
3 less of what interpretation may be put on the two fore-
4 going terms, it has been demonstrated by the evidence
5 of the prosecution that Mr. HIROTA has no connection
6 with the aims expressed in those slogans and no personal
7 responsibility therefor.

8 The prosecution has contended in argument and
9 in opening statement that the Anti-Comintern Pact
10 signed on November 25, 1936, was the "forerunner" of
11 the Tri-Partite Agreement signed in September 1940
12 by Foreign Minister MATSUOKA. At the time the Anti-
13 Comintern Pact was signed on November 25, 1936, that
14 action had already been unanimously approved by the
15 Privy Council and by His Majesty, the Emperor. Mr.
16 HIROTA was merely one of the many persons in official
17 life in Japan who had a voice and vote as to whether
18 or not Japan would enter into that Pact. The prosecu-
19 tion has failed to offer a scintilla of evidence that
20 any other person who had a voice in the final deter-
21 mination of whether or not Japan would sign that Pact
22 is a defendant in this case or one of the persons
23 mentioned in that vague category of persons described
24 as "divers unknown persons." The alleged "secret
25 agreement" which accompanied the Anti-Comintern, as

1 appears from its face, was nothing more than a mild
2 defensive agreement with Germany to the effect that
3 should the Soviet Union attack either without provoca-
4 tion, neither as the case might be, would furnish any
5 active aid or assistance to the Soviet Union, but with-
6 out any obligation on the part of Germany or Japan to
7 intervene or take any positive action. The defensive
8 agreement is a far cry from the allegations of the
9 Indictment and amounts to nothing more than the usual
10 duty of a neutral during hostilities.

11 Moreover, the prosecution has failed to
12 demonstrate in any respect how a defensive alliance
13 against Communism could contribute in anywise to a war
14 of aggression or a war for the domination of any people
15 in the world. Nothing in the Anti-Comintern Pact or
16 secret agreement connected therewith shows any reason-
17 able tendency toward a war of aggression.

18 It is too plain for argument that the prosecu-
19 tion has failed to demonstrate any connection whatso-
20 ever between the Anti-Comintern Pact and the Tri-
21 Partite Agreement which transpired some three years
22 and ten months later and after Japan had lived through
23 the HAYASHI Cabinet, the first KONOE Cabinet, the
24 HIRANUMA Cabinet, the ABE Cabinet, the YONAI Cabinet
25 and the second KONOE Cabinet, and the changing times

1 in which those Cabinets functioned. What is more
2 important is that Mr. HIROTA is not indicted in any
3 count for having negotiated the Anti-Comintern Pact.
4 At the time that Pact was signed Japan had tradition-
5 ally lived by the standards of the so-called "capitelistic
6 system" in which the right of private property and
7 ownership was recognized and respected. At that time
8 practically the entire civilized world outside the
9 Soviet Union was taking action by law, regulation,
10 practice, and police measures to actively combat Communism
11 and its encroachment throughout the world. It was then
12 universally believed that the Third Communist Inter-
13 nationale and the Soviet Union were one and the same
14 thing. Moreover, the prosecution evidence shows that
15 the Third Internationale had declared both Japan and
16 Germany to be natural "enemies" of the Soviet Union.
17 The United Kingdom and the United States were notable
18 in that respect for the measures and protests taken
19 against the activities of the Third Internationale.
20 The prosecution has wholly failed to explain how the
21 effort on the part of Japan to protect its ideal and
22 philosophy of private ownership of property and recog-
23 nition of the dignity and place of the individual in
24 civilized society contributed in any respect to a war
25 or wars of aggression.

1 Again in the Soviet phase of the prosecution
2 the prosecutors asserted, but wholly failed to intro-
3 duce any evidence to substantiate the fact, that Mr.
4 HIROTA "forced" the Soviet Union to sell the Chinese
5 Eastern Railway to Manchukuo. This incident illustrates
6 perhaps better than anything else in the case the
7 extraordinary and fantastic lengths to which the prose-
8 cution went in an effort to tie Mr. HIROTA in with even
9 a short period of Japanese history as it relates to the
10 acts charged in the Indictment. As previously stated,
11 there is no evidence in the case to show that Japan
12 or any official of Japan ever "forced" the great Soviet
13 Union to do anything, much less sell the Chinese
14 Eastern Railway. All the evidence of the prosecution
15 does demonstrate beyond doubt that the Soviet Union
16 sold the Chinese Eastern Railway to Manchukuo (thereby
17 de facto recognizing Manchukuo as a sovereign and
18 independent state) and in connection with the sale
19 exacted a guarantee of the payment of the purchase
20 price from Japan itself; and further that the
21 negotiations between Japan, Manchukuo and the Soviet
22 Union extended over a period of nearly two and one-
23 half years, and consisted principally in haggling over
24 the purchase price; and that the Japanese Government
25 was actuated solely by the desire to remove Soviet

1 influence, employees and guards from Manchukuo terri-
2 tory, in order to give that new and independent State
3 a fair and decent opportunity to develop without the
4 friction which in years past had caused so many dis-
5 orders and disturbances within that primitive territory.

6 There is a total failure of proof on the part
7 of the prosecution to show any economic or military
8 preparation for war during the tenure of offices held
9 by Mr. HIROTA. For example, exhibit No. 380, dealing
10 with the total strength of the Japanese army shows
11 that there was no increase in the number of divisions
12 and brigades in the Japanese army between 1933 and the
13 occurrence of the Marco Polo Bridge incident in China
14 on July 7, 1937, and that during the foregoing period
15 the enlisted personnel of the Japanese army was in-
16 creased by only 70,000 men who were apparently recruited
17 in order to bring the existing seventeen divisions of
18 five brigades each up to normal strength. The Court
19 will also recall the testimony of the prosecution
20 witness, General TADA, Chief of Staff of the Japanese
21 army in 1937, who testified that there was no military
22 preparation for a war in China and that Japan was ill
23 prepared for such a conflict; and further that there
24 was no thought in the army in 1937 of preparation for
25 an alleged Pacific War.

1 Consider, also, the informal statement issued
2 by Mr. HIROTA on January 16, 1936, on the occasion
3 of Japan's withdrawal from the London Naval Conference
4 (IPS document 915, exhibit 2226) in which he said
5 in part:

6 " - - - our delegates made a proposal looking
7 to a reduction of armaments which, without impairing
8 the sense of security of each Power in its national
9 defense, would make it difficult for any Power to
10 attack another but easy to defend itself. For that
11 purpose, our proposal provided for the establishment
12 of a common upper limit for all the navies, to be fixed
13 at the lowest possible level. It also provided for the
14 abolition of the armaments of offensive nature, such
15 as capital ships and aircraft carriers, and for a drastic
16 reduction in the first class cruisers. Thus we hoped
17 to achieve a thorough-going disarmament and to establish
18 the principle of non-menace and non-aggression among
19 nations.

20 "But, in spite of the earnest endeavours of
21 our delegates, these fair and reasonable basic claims
22 of our Government were not accepted by the other Powers;
23 and moreover, the earnest proposal of our Government
24 was also rejected, in which it was proposed to conclude
25 such agreements as might be possible at the conference,

1 and to terminate the conference in an amicable manner
2 after making for the purpose of forestalling naval
3 competition a joint declaration to the effect that the
4 Powers concerned would not enter upon an armament race.
5 In the light of these circumstances, it became unavoidable
6 that our delegates should withdraw from the conference.

7 "However, it is needless to say that our
8 Government, devoted to the principle of non-menace and
9 non-aggression, have not the slightest intention of
10 doing anything to stimulate an armament race, irrespec-
11 tive of whether or not there exists a treaty for dis-
12 armament. Furthermore, there is not the slightest
13 change in the cherished desire of our Government to
14 co-operate for the realization of disarmament for the
15 cause of world peace. It is our fervent wish that all
16 the Powers concerned will soon come to appreciate the
17 sincerity of our Government in proposing a thorough-
18 going limitation and reduction in armament."

19 It is a matter for sound reflection how much
20 better off the entire world would have been since 1935
21 had it adopted the Japanese proposal for abolition of
22 battleships, heavy cruisers, aircraft carriers and sub-
23 marines, especially as such offensive types of arms
24 appear to have become virtually useless in the fact of
25 the development of atomic energy.

1 The very evidence of the prosecution shows
2 that the construction of warships during the tenure
3 of Mr. HIROTA in office (September 1933 - May 1938)
4 was insignificant and in this connection the Tribunal
5 is referred to Exhibits 913, 917 and 918.

6 Finally, the prosecution has apparently
7 attempted to hold Mr. HIROTA responsible for wars of
8 aggression in the Pacific War because as one of the
9 "elder" statesmen of Japan he was commanded to appear
10 before the Emperor and express his views in the criti-
11 cal days preceding December 7, 1941. It is said that
12 when the third KONOE Cabinet went down that Mr. HIROTA
13 agreed with Marquis KIDO that a military man should
14 be appointed to head the Government and that Mr. HIROTA
15 agreed with KIDO that Mr. TOJO would be an appropriate
16 appointment in the conditions of that time. Irrespec-
17 tive of whether the assertion by the prosecution is
18 correct or not, the prosecution has wholly failed to
19 show by any evidence that at the time Mr. TOJO was
20 appointed Prime Minister of Japan he ever expressed
21 the intention of waging war against the United States,
22 Great Britain or any other nation or had exhibited in
23 anywise warlike characteristics. Compare, the KONOE
24 statement, IPS Document 2-A, in which KONOE said he
25 took the sole responsibility for recommending TOJO.

1 All the evidence of the prosecution fails to show a
2 single utterance by Mr. HIROTA that tends to show by
3 any stretch of the imagination an attitude or desire
4 that war should be made against the United States,
5 Great Britain or any other country, or that war against
6 those countries was "inevitable" even from the stand-
7 point of self-preservation and self-defense on the
8 part of Japan. The "elder" statesmen of Japan, as
9 the prosecution evidence clearly shows, exercise no
10 official office and traditionally merely express their
11 points of view to the Emperor for such weight and con-
12 sideration as the Emperor may care to accord to such
13 views. But whatever the prosecution has striven so
14 mightily to prove against Mr. Hirota is utterly destroyed
15 by its own evidence, being Exhibit 1196, a revised
16 translation of an "extract" from an entry from Marquis
17 KIDO's diary of 29 November 1941; there the conference
18 between the Emperor and the elder statesmen on the eve
19 of the Pacific War is recorded in substance and Mr.
20 HIROTA, true to his traditional lifetime attitude of
21 patience, liberality, tolerance and peace among all
22 men is quoted as saying in the face of the Government
23 decision that war was "inevitable:"

24 "HIROTA - After having talked on conditions
25 of each of the world powers since the World War, Japan

1 has adopted every possible means to avoid the inter-
2 vention of Britain and America in the China Incident.
3 In spite of this the diplomatic situation has become
4 so serious as it is today. According to the explana-
5 tions of the Government we seem to stand now face to
6 face with a diplomatic crisis. Though the diplomatic
7 crisis has a close relation to the strategic moment,
8 I think the true intentions of both sides in diplo-
9 matic negotiations are only revealed after passing
10 through several crises. Why should we hastily rush
11 into war immediately after being confronted with the
12 present crisis? Granting that war is inevitable, I
13 believe we should always be on the watch to seize the
14 opportunity for a solution by diplomatic negotiations
15 even though blows have been exchanged."

16 What has been said ought to dispose of all
17 counts against Mr. HIROTA. However, the attention of
18 the Tribunal is specially directed to counts 20, 21,
19 22, 24, 29, 30, 31, 32, 34, 39, 40, 41, 42 and 43,
20 all of which relate to events in the Pacific War
21 which occurred on and after 7 December 1941. As the
22 prosecution evidence positively demonstrates that Mr.
23 HIROTA had nothing whatever to do with the Pacific War
24 and actually tried to stop it in the conference before
25 the Emperor and that he had held no official office

1 since May 26, 1938, it is obvious the foregoing counts
2 cannot be sustained. Again counts 23, 24, 33, 35, 37,
3 38, 46, 47 and 52 relate to events which occurred after
4 Mr. HIROTA had resigned his last office on May 26, 1938,
5 and otherwise there has been a total failure to connect
6 Mr. HIROTA with any of the allegations in those counts.

7 Thus, it appears that the prosecution made a
8 grievous mistake in indicting Mr. HIROTA on any one of
9 the foregoing counts and has failed to offer a scin-
10 tilla of evidence tending to show a prima facie case
11 with respect to any single count. The prosecution has
12 produced nothing to overcome the presumption of inno-
13 cence which clothed Mr. HIROTA throughout the trial.
14 Moreover, the prosecution evidence demonstrates in a
15 positive way the innocence of Mr. HIROTA under each
16 count against him.

17 Counsel plead most earnestly that the Tribunal
18 will enter an order dismissing the indictment as against
19 Mr. HIROTA and summarily order his discharge from
20 custody. All of which is most respectfully submitted.

21 THE PRESIDENT: At the bottom of page 2 you
22 have in brackets "December 13, 1932 - May 25, 1932."
23 There appears to be a mistake there, Mr. Smith.

24 MR. SMITH: That is an error, your Honor. I
25 had not noticed it. I will see that it is corrected

1 and due notice sent.

2 THE PRESIDENT: Mr. Williams.

3 MR. G. WILLIAMS: If the Tribunal please,
4 now comes the accused HOSHINO, Naoki, by his counsel,
5 and moves the Tribunal to dismiss each and every one
6 of the Counts in the Indictment against him on the
7 ground that the evidence offered by the prosecution
8 is not sufficient to warrant a conviction of the
9 accused.

10 Argument in support of motion of accused
11 HOSHINO, Naoki to dismiss. Counts 1 to 5.

12 There is no evidence to show that the accused
13 conspired or entered into any common plan for the ob-
14 jects therein mentioned. The evidence of his positions
15 as a civilian in the Government of Manchukuo from 1932
16 to 1940, as Minister without Portfolio and President
17 of the Planning Board of the Japanese Government from
18 1940 to April 1941, and as Chief Secretary of the
19 Cabinet from October 1941 to 1944, shows that he filled
20 various government posts but nowhere points to his
21 personal participation in a conspiracy nor use of his
22 official influence and position for such purposes. I
23 shall omit the references to the transcript pages, if
24 the Tribunal please.

25 The gist of the case revolves around the issue

1 of conspiracy as set out by the prosecution in its open-
2 ing statement, and by paragraph 3 of the first part of
3 the Indictment. The evidence fails to show the founda-
4 tion which must be laid before a criminal conspiracy
5 can be shown herein, i.e., that there is an organized
6 society of nations against which individuals or nations
7 can conspire. It indicates that the accused was a
8 career public servant and that during his period of
9 government service he performed various functions and
10 acts, all capable of any one of several reasonable inter-
11 pretations and inferences other than that of participa-
12 tion in a conspiracy. For example, the evidence dis-
13 closes that as an official of the Finance Ministry of
14 Manchukuo, the accused signed a loan contract in 1932
15 between his government and certain Japanese banks pledg-
16 ing the government's opium monopoly profits for the
17 loan, but it does not show that he signed the document
18 in other than a purely administrative capacity nor that
19 he set the policy. Similarly, the charge in Section 3,
20 Appendix A of the Indictment as to economic exclusion
21 of other nations from Manchuria is refuted by the
22 interrogation of the accused evidencing a plan to bring
23 foreign capital into that country. It is submitted
24 that this is insufficient evidence from which to infer
25 a conspiracy or the intent to commit aggression.

1 At the Privy Council meeting of 26 September
2 1940 at which the Tri-Partite Alliance was discussed,
3 this accused was present in his capacity as head of
4 the Planning Board as an "explaining" member only and
5 he withdrew after performing that duty, thereby indi-
6 cating his lack of authority in setting policy in the
7 highest post held by him in the Government of Japan.

8 Counts 6 to 17.

9 The evidence nowhere shows that this accused
10 planned and prepared a war of aggression nor a war in
11 violation of international law against the nations named
12 in these Counts. Instead it shows routine planning
13 for international contingencies in the effort to
14 strengthen the economy of first, Manchuria, later of
15 Japan, in order to make them self-sufficient.

16 The accused was Acting Director of the Total
17 War Research Institute from October 1940 to January
18 1941, prior to the commencement of its operations in
19 April 1941. The evidence discloses that the Institute
20 was founded for the hypothetical study of total war,
21 was divorced from government policy, and that the
22 accused's post as a counselor of the Institute was not
23 important.

24 Counts 19, 27, 28.

25 The evidence does not connect the accused with

1 the commencement of hostilities in China in 1937, and
2 fails to prove that he waged a war of aggression against
3 that country.

4 Counts 20 to 22, 24, 29 to 32, 34, 37 to
5 43, 53 to 55.

6 The evidence shows that the accused held no
7 policy-making position in December 1941 when the wars
8 herein referred to began, but indicates only that he
9 held an administrative post as Chief Secretary of the
10 Cabinet. It was in such a secretarial capacity that
11 he attended Cabinet meetings and the Liaison and Imper-
12 ial Conferences of 28 November and 1 December 1941,
13 respectively, at which war with the Allied Nations was
14 decided.

15 If the Tribunal please, I should like to insert
16 this short addition here: It should be inserted that
17 the charge in Appendix E of the Indictment that the
18 accused was a Minister of State under TOJO is erroneous,
19 an error pointed out by Mr. Higgins of the prosecution
20 at page 9305 of the transcript. Exhibit 102, a list
21 of the Japanese Cabinet members, and exhibit 109, the
22 personnel record of the accused, disclosed that at this
23 time he was Chief Cabinet Secretary only, a post
24 below ministerial rank.
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1 To get on with paragraph V next:

2 V. Counts 23, 33.

3 The evidence does not show that the Vichy
4 Government which controlled the Military Governor of
5 French Indo-China was, de facto or de jure, the
6 Government of the Republic of France.

7 VI. Counts 25, 35, 52.

8 The evidence does not connect the accused
9 with the hostilities against the Soviet Union in 1938
10 but shows only that he held a civilian position in
11 the Manchurian Government.

12 VII. Count 44.

13 The evidence wholly fails to connect this
14 accused with any common plan or conspiracy to murder
15 prisoners of war. As previously contended, it does no
16 more than establish his position in an administrative
17 capacity with the Cabinet under which hostilities
18 were commenced in 1941.

19 All of which is most respectfully submitted.

20 THE PRESIDENT: Mr. Mattice.

21 MR. MATTICE: If the Tribunal please, comes
22 now the accused ITAGAKI, Seishiro, and moves this
23 Tribunal to dismiss the Indictment herein as to him
24 for the reason and upon the ground that the evidence
25 adduced by the prosecution is insufficient to justify a

1 conviction.

2 Memorandum in Support of Motion to Dismiss.

3 1. The evidence is insufficient to connect
4 the accused ITAGAKI with the charges contained in
5 Counts 1, 2, 3, 4, and 5, to the effect that he with
6 others participated in the formulation or execution
7 of a plan, the objects of which were as stated in each
8 of said counts. The evidence thus far adduced does
9 not show that ITAGAKI designedly, culpably and know-
10 ingly participated in any such formulation. In the
11 first place it has not been shown that there was any
12 such plan. If any such plan has been established, the
13 evidence does not show that ITAGAKI participated in it,
14 was a member of it, or that in any respect he acted
15 consciously in aid thereof.

16 2. There is not sufficient evidence to
17 warrant his conviction under Counts 6, 7, 8, 9, 10,
18 11, 12, 13, 14, 15, 16 and 17, where he is charged,
19 with others, as planning a war of aggression and a war
20 in violation of International Law, treaties, agreements
21 and assurances against the countries named in each count.

22 At the times stated in said counts ITAGAKI
23 held no post or position in which he was authorized to
24 or could formulate policy or plan war. During the
25 Manchurian phase and for some time thereafter he was

1 conviction.

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4 the accused ITAGAKI with the charges contained in
5 Counts 1, 2, 3, 4, and 5, to the effect that he with
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10 ingly participated in any such formulation. In the
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12 such plan. If any such plan has been established, the
13 evidence does not show that ITAGAKI participated in it,
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15 consciously in aid thereof.

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18 11, 12, 13, 14, 15, 16 and 17, where he is charged,
19 with others, as planning a war of aggression and a war
20 in violation of International Law, treaties, agreements
21 and assurances against the countries named in each count.

22 At the times stated in said counts ITAGAKI
23 held no post or position in which he was authorized to
24 or could formulate policy or plan war. During the
25 Manchurian phase and for some time thereafter he was

1 not in command of any military forces. He was a
2 staff officer, third in authority, subject to the
3 judgment and the orders of his commanding officer
4 (General HONJO, and others) and the General Staff and
5 other Government offices and bureaus in Tokyo.

6 Respecting Count 7, war against the United
7 States, the evidence shows that from 7 July 1941 to
8 April 1945 ITAGAKI was in Korea serving as commander
9 of the Korean Army. He, and that army, had no part in
10 the commencement of or carrying on the war against
11 the United States.

12 3. In Count 18, he is charged, with others,
13 with initiating a war of aggression, and so forth,
14 against the Republic of China in September 1931. The
15 evidence shows that ITAGAKI was not in command of the
16 Kwantung Army; that General HONJO was; that ITAGAKI was
17 a staff officer thereof and subject to the orders and
18 views of his commander and the War Ministry in Tokyo;
19 and the evidence fails to show that any war of aggres-
20 sion ensued against China. The evidence shows, what
21 was common knowledge, that a state of war already
22 existed in which Japanese, who were in a place where
23 they had a right to be, to-wit, in Manchuria, were
24 subjected to continued violence in which their lives
25 were endangered and their property stolen and destroyed,

1 a continuance of which would result in their extermina-
2 tion. The Japanese Empire, as it had a right to do,
3 took steps to defend and protect its nationals and
4 their property and to defend its duly acquired, lawful
5 and existing rights in that area.

6 4. In Count 19, he is charged, with others,
7 with initiating a war of aggression against the
8 Republic of China, about 7 July 1937.

9 The evidence shows that at the time mentioned
10 in this count, ITAGAKI was commander of the 5th
11 Division, stationed at Hiroshima, Japan, and he is
12 not shown to have had any connection with or part in
13 the 1937 military operations in China.

14 5. He is not charged in Counts 20, 21 and 22.

15 6. In Count 23, he is charged, with others,
16 with initiating a war of aggression against the Republic
17 of France, about 22 September 1940.

18 The evidence shows that ITAGAKI at the time
19 mentioned was Chief of Staff of the Chinese Expeditionary
20 Force in China, but it does not show that he had any
21 connection with or part in the action taken in French
22 Indo-China. Some troops of the Chinese Expeditionary
23 Force were detached and sent to Indo-China, but there
24 is no evidence that it was done upon his initiative or
25 his order, or that he had any connection with it.

1 Obviously such an order would emanate from General
2 Headquarters at Tokyo and the General Staff or other
3 over-all authority, in Tokyo, would necessarily not
4 only have ordered such diversion of troops but con-
5 trolled their movement and actions thereafter, not the
6 accused ITAGAKI.

7 7. He is not charged in Count 24.

8 8. In Count 25, he is charged, with others,
9 with initiating a war of aggression, by attacking the
10 Russians in the area of Lake Khasan, about July 1935,
11 and in Count 26, with attacking the Mongolian Peoples
12 Republic in the area of Khalkhin-Gol River, in the
13 summer of 1939.

14 At the time mentioned in Count 25, ITAGAKI
15 was Minister of War, but the War Ministry had no
16 control over the operations in the Lake Khasan area,
17 and such operations has not been shown to have been
18 instigated by Japan's armed forces. The same is true
19 as to Count 26. The evidence indicates that Russia
20 caused the Incident as much as it indicates the con-
21 trary and where a given state of facts may be recon-
22 ciled as easily upon the basis or theory of innocence
23 as upon one of guilt, the accused is entitled to the
24 benefit thereof and there should be an acquittal.

25 9. In Counts 27, 28, 29, 30, 31 and 32, he

1 is charged, with all the defendants, with waging a
2 war of aggression against the countries named in
3 those counts. The evidence does not show that
4 ITAGAKI had the power to wage war against either of
5 those countries, or that he caused the same to be
6 done. When he became Minister of War in 1938, the
7 warfare in China was already under way.

8 10. In Count 33, he is charged, with others,
9 with waging a war of aggression against the Republic
10 of France in September 1940. This appears to be the
11 same charge as that set out in Count 23. At the time
12 stated ITAGAKI was Chief of Staff of the Chinese
13 Expeditionary Force and had no connection with or
14 part in the military actions concerning France. Some
15 troops had been detached from his command by General
16 Headquarters of the Japanese Empire and sent to Indo-
17 China, but it is not shown that the accused ITAGAKI
18 caused that to be done or that he had any control
19 over said troops thereafter.

20 11. In Count 34, he is charged, with all
21 the defendants, with waging a war and so forth against
22 Thailand, from 7 December 1941 to 2 September 1945.
23 During that period, ITAGAKI was in command of the
24 Korean Army in Korea and he had no contact with or
25 part in any military operations in Thailand.

1 12. In Count 35, he is charged, with others,
2 with waging a war against Russia in 1938, and in Count
3 36, against Russia in 1939. There is no evidence
4 warranting this accused conviction under either of
5 these specifications.

6 13. He is not charged in Counts 37, 38, 39,
7 40, 41, 42 and 43.
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1 14. In Count 44 he is charged with participating
2 in the formulation of a plan to procure and permit the
3 murder of prisoners of war. There is no evidence
4 justifying his conviction on this charge, there being
5 no showing that he either counseled or procured any
6 such thing to be done, or that he permitted same.

7 15. In Count 45, he is charged, with others,
8 with having, about 12 December, 1937, ordered, caused
9 and permitted an attack on the City of Nanking and
10 murdering thousands of civilians and disarmed soldiers
11 of China. There is no evidence connecting this accused
12 with the actions at Nanking. For aught the evidence
13 shows, ITAGAKI may have been one thousand miles away
14 and stationed at a place known as Shanshi. He is not
15 shown to have had any connection with or part in the
16 Nanking operation.

17 16. In Count 46 he is charged, with others,
18 as in Count 45, with respect to the City of Canton,
19 and in Count 47, with respect to the City of Hankow.
20 True, he was, at this time, Minister of War, but with-
21 out more, this falls short of establishing his respon-
22 sibility criminally. As is shown by the evidence, the
23 Minister of War, had not, alone, the authority or power
24 to order an attack.

25 17. He is not charged in Counts 48, 49 and 50.

1 18. In Count 51, he is charged, with others,
2 with ordering, causing and permitting an attack on
3 Mongolia and Russia in the region of Khalkhin-Gol
4 River, in 1939, and the killing of members of the armed
5 forces of Mongolia and Russia. There is no evidence
6 upon which his conviction could be justified under this
7 charge. The same is true as to the charge in Count
8 52.

9 19. Group three. Conventional War Crimes.

10 Counts 53, 54 and 55

11 Late in the period concerning which evidence
12 was given respecting mistreatment of prisoners of war,
13 etc., it appeared that ITAGAKI was placed in command
14 of the 7th Army, at Singapore, where, from April,
15 1945, to the end of the war, he served in that capacity.
16 No evidence has been adduced showing any action or
17 order on ITAGAKI's part about which any complaint could
18 be made. The evidence shows that about that time there
19 was improvement in the conditions in the prisoners
20 of war camps. At the most, the prosecution merely
21 states that he had "some responsibility."
22

23 Comment on some of the documentary evidence

24 Reference is made to the prosecution exhibit
25 No. 838, which was the interrogation of KUSABA. The
prosecution did not read it, but the document, which is

1 in evidence, at page 10 (page 5 of the served copy)
2 states that when asked what Japanese persons he thought
3 were responsible for the policies of the Manchurian
4 occupation, that General HONJO, the commander of the
5 Kwantung Army at the time, is responsible for the
6 happening of the Manchurian Incident, which was operated
7 following a plan made by HONJO.

8 In prosecution exhibit No. 157, the affidavit
9 of SHIMIZU, the affiant states that OKAWA, while drunk,
10 made certain statements concerning the Mukden Incident.
11 It need only be noted that this was hearsay and very
12 probably the bragging of a drunken person.

13 In prosecution exhibit No. 453-A, interrogation
14 of HOSHINO, page 8 (page 4 of the served copy), when
15 asked who had the final say in the Kwantung Army, stated
16 that the Commander had, and asked if the Chief of Staff
17 had final say, stated that he didn't think so; that the
18 Kwantung Commander had been serving for a long time,
19 so he knew the conditions and the situation, and,
20 therefore, he had final say. And, at page 18 (page 12
21 of the served copy), he stated that the Kwantung Army
22 advocated a Manchurian corporation to handle industries
23 in Manchuria; that the industries in Manchuria should
24 be controlled by Manchukuoans.
25

In prosecution exhibit No. 668, page 6,

1 affidavit of Semyonov, the affiant states that Pu-Yi
2 asked him to help him in his negotiations with the
3 Japanese for assistance in the restoration of his
4 Imperial prerogatives. And, on page 7, the affiant
5 stated that HONJO, the Commander of the Kwantung Army,
6 directed the operation of the seizure of Manchuria.

7 In prosecution exhibit No. 2191, diary of KIDO,
8 it is stated that ITAGAKI reported on the condition
9 in Manchuria and Mongolia, and on the progress of the
10 campaign against soldier bandit forces in Manchuria.
11 This could mean nothing else than Chinese soldier bandit
12 forces. He also states that with respect to the new
13 State and new ruler, that the Japanese army would take
14 charge of the national defense. The new State would
15 naturally have no force for the purpose of preserving
16 order and defending itself and the Japanese forces
17 would, necessarily, have to attend to that. It is also
18 stated that the Japanese would take part in the manage-
19 ment of a new State as officials, who would become
20 Manchurian subjects by naturalization.

21 In prosecution exhibit No. 2192, diary of KIDO,
22 it is stated, that it was the idea of persons named,
23 including ITAGAKI, to let the military, instead of the
24 diplomatic circles, take the lead in negotiations
25 with China regarding North China. The evidence shows

1 that Japan had an army in North China (at Tientsin)
2 at that time, of which one SAKAI, was Chief of staff.
3 It was this army which had to do with the North China
4 affairs, not the Kwantung Army and ITAGAKI had nothing
5 to do with those matters and was not responsible.

6 In prosecution exhibit No. 2197, an extract
7 from the Japan Advertiser, stating that ITAGAKI urged
8 long preparedness because it might be that Chiang-Kai-
9 shek intended to resist "the rest of his life".
10 It is not seen how this statement, if made by ITAGAKI,
11 could afford any basis for his conviction herein.

12 In prosecution exhibit No. 2201, ITAGAKI is
13 said to have scored the Powers for their interference
14 with the execution of Japan's mission of constructing
15 a new order in East Asia. Whether he said it or not,
16 it would be a natural thing for any Japanese official
17 to say in view of the fact that Japan honestly and
18 actually felt that the Powers were interfering, among
19 other things, by rendering aid to Chiang-Kai-shek.

20 It may be noted from prosecution exhibit No.
21 2193, the telegram from HAYASHI, at Mukden, to HIDEHARA,
22 that it discloses that the Chinese Army had attacked the
23 troops of Japan, and, as naturally would be the case
24 with any country, Japan's troops would strike back. The
25 matter had progressed beyond the diplomatic stage and

1 a shooting affair had come into being.

2 It may also be noted that the prosecution
3 witness Pu-Yi was impeached by the prosecution's own
4 evidence. The affidavit of the Russian G.M. Semyonov,
5 exhibit 668, page 6, and by another document introduced
6 by the prosecution consisting of an affidavit of a
7 Japanese diplomatic official at Tientsin, both of these
8 items of documentary evidence squarely dispute Pu-Yi's
9 testimony that he had given no thought to the matter
10 of restoration to the throne.

11 THE PRESIDENT: We will recess for fifteen
12 minutes.

13 (Whereupon, at 1447 a recess was
14 taken until 1500, after which the proceed-
15 ings were resumed as follows:)
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1 MARCHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now resumed,

3 THE PRESIDENT: The next motion listed is
4 that of the defendant KAYA.

5 MR. LOGAN: We sent somebody after Mr. Levin.
6 He should be here in a minute, your Honor.

7 THE PRESIDENT: Mr. Levin.

8 MR. LEVIN: May it please the Tribunal:
9 (Reading): MOTION OF DEFENDANT KAYA, Okinori,
10 TO DISMISS.

11 Now comes the defendant KAYA, Okinori, by
12 his counsel, and moves the Court to dismiss each and
13 every one of the counts in the Indictment against him
14 on the ground that the evidence offered by the prosecu-
15 tion is not sufficient to warrant a conviction of this
16 defendant.

17 Dated this 8th day of January, 1947.

18 - - -

19 ACCOMPANYING MEMORANDUM IN SUPPORT OF MOTION
20 OF DEFENDANT KAYA, Okinori, TO DISMISS.

21 With reference to Counts 1 to 5 -- these
22 counts are general counts, charging conspiracy between
23 January 1, 1928 and September 2, 1945. The official
24 position of this accused, as indicated by his personnel
25 record, exhibit 111, shows that he is a career

1 administrative officer. On February 2, 1937, he be-
2 came Vice-Minister of Finance and was Minister of
3 Finance from June 4, 1937 to May 26, 1938, and again
4 became Minister of Finance on October 18, 1941, re-
5 signing on February 19, 1944.

6 THE PRESIDENT: February 2, 1944.

7 MR. LEVIN: February 2, 1944. His only other
8 position of consequence was President of the North
9 China Development Company from August 1939 to
10 October 1941, which was purely an administrative
11 office. At no time does the evidence indicate that
12 defendant participated either in planning or execut-
13 ing the conspiracy set forth in these counts.

14 Counts 6 to 17 relate to the planning and
15 preparation of a war of aggression. What we have
16 said with reference to Counts 1 to 5 applies to these
17 counts. Although the accused is not charged with the
18 initiation of a war of aggression against France,
19 as set forth in Count 23, nevertheless, under Count 15
20 he is charged with the planning and preparation of a
21 war of aggression against France. Not only is the
22 charge under Count 15 inconsistent with the fact that
23 the accused is not charged in Count 23, but no evidence
24 has been offered by the prosecution to sustain the
25 charge in Count 15.

1 In Count 17 the accused KAYA is charged, with
2 the other defendants, in the preparation and planning
3 of a war of aggression against Soviet Russia. We
4 submit that throughout the detailed record presented
5 on the Russian phase that not the slightest evidence
6 has been offered to indicate any relation of the
7 defendant KAYA to the evidence offered on this phase
8 of the case.

9 Count 19 charges the defendant. among others,
10 with having initiated a war of aggression on or
11 about July 7, 1937, against the Republic of China.
12 Throughout this record no evidence has been adduced
13 which would in any way connect the accused with the
14 China affair. It is true that for a short period of
15 time the accused was President of the China Develop-
16 ment Company, but no evidence has been indicated that
17 any act which he performed was other than a proper
18 act in the administration of this corporation.

19 It will be noted that the defendant is not
20 charged under Count 18. There is no evidence to
21 indicate, except for the mere fact that he held
22 office, that he in any manner initiated a war of
23 aggression against the Republic of China.

24 Counts 20, 21, 22, 24 and Counts 27 to 36
25 charge the defendant with initiating a war of

1 aggression against those countries specified in the
2 various counts. Counts 27 and 28 relate to the
3 waging of war against the Republic of China, Count 27
4 relating to the Incident of September 18, 1931, and
5 Count 28 to the Incident of July 7, 1937. It is
6 strongly urged that there is nothing in the record
7 to charge this defendant with any participation in
8 connection with the waging of these wars except as
9 a mere incident to the holding of office at or about
10 the time specified in Count 28. Except in a minor
11 capacity, he held no office in September 1931.

12 For the reasons heretofore given, and the
13 fact that the accused held purely administrative
14 offices, it is submitted that the evidence offered by
15 the prosecution is not sufficient to warrant a con-
16 viction on these counts, and in addition thereto,
17 there is no evidence in any manner connecting the
18 defendant KAYA with the charges set forth therein.

19 Group 2, Counts 37 to 47, inclusive: It is
20 submitted there is no evidence against this defendant,
21 nor any responsibility on his part in relation to the
22 matters set forth in these counts. The evidence
23 offered by the prosecution is not sufficient to
24 warrant a conviction of this defendant on said counts.
25 Count 45 relates to the Nanking attack; Count 46 to

1 the attack on Canton, and Count 47 to the attack on
2 Hangkow. These took place after the resignation of
3 the defendant as Finance Minister and there is no
4 evidence to connect the defendant with these counts.
5 The evidence is abundantly clear that the responsi-
6 bility for the opening of hostilities was not that
7 of a Minister of Finance. There is no evidence in
8 this record indicating any activity or participation
9 or power on the part of this accused to be responsi-
10 ble for the acts charged in these counts.

11 Counts 53, 54 and 55 deal with conventional
12 war crimes and crimes against humanity. We submit
13 that the evidence offered by the prosecution is not
14 only insufficient to warrant a conviction of this
15 defendant, but that there is not the slightest
16 evidence in the record to charge any responsibility
17 on the part of the defendant in connection therewith.
18 The matters indicated in these counts are matters of
19 military administration and in the very nature of
20 things this defendant could not possibly have
21 participated in them.

22 In referring to special counts in the
23 Indictment, it is not intended in any manner to admit
24 the charges against this accused in any of the counts
25 to which no special reference has been made. Where

1 no special reference is made to particular counts,
2 it is intended that the general statement in relation
3 thereto shall be considered as a specific argument to
4 each of said counts.
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1 Mr. President, I should like to add a word,
2 and I have given the interpreters and the translators
3 the data. The attention of the Tribunal is directed
4 to the fact that only seven exhibits were introduced
5 in evidence to make the slightest reference to Mr.
6 KAYA, one of which is his personnel record. The ex-
7 hibits are No. 111, 492, 853, 1207-A, 1240 and 1241.
8 In several of these in which the Finance Minister
9 is referred to it is not indicated that he was the
10 initiator of any policy, plan or action. His ac-
11 tivities were merely routine in connection with the
12 functions of his office.

13 The accused KAYA, Okinori, devoted his life to
14 public service. In preparation for this, he studied
15 political science at the Tokyo Imperial University.
16 In April, 1917, he entered the Finance Ministry. In
17 October, 1917, he passed the higher civil service ex-
18 amination and rose in the Ministry, either by re-
19 ceiving promotions or passing further civil service
20 examinations, his services in that Ministry being
21 almost continuous until his resignation as Finance
22 Minister in February, 1944. He is a career public
23 servant, practically born and raised in the Finance
24 Ministry. He is the type of official whom govern-
25 ments look for and need, one who has been brought up

1 in the Department, with a background of abundant
2 experience and knowledge of the intricate affairs of
3 the finances of government. He performed his ser-
4 vices well and conscientiously. The evidence offered
5 by the prosecution proves no more.

6 THE PRESIDENT: Mr. Logan.

7 MR. LOGAN: If the Tribunal please, the
8 accused KIDO moves the Honorable, the International
9 Military Tribunal for the Far East, to dismiss the
10 Indictment and all the counts contained therein as
11 to him and for a judgment of acquittal on the ground
12 that there is insufficient evidence to sustain the
13 charges. The evidence not only fails to sustain the
14 counts in the Indictment but also conversely es-
15 tablishes that KIDO is innocent of any of the charges
16 contained therein.

17 With respect to crimes against peace, Counts 1
18 to 5 inclusive.

19 The evidence shows that KIDO never participated
20 as leader, organizer, instigator or accomplice in the
21 formation or execution of any common plan or con-
22 spiracy for waging war or wars to secure Japanese
23 military, naval, political and economic domination of
24 the areas stated in these counts between January 1,
25 1928 and September 2, 1945 or at any other time.

1 The evidence is that from January 1, 1928 until
2 October 22, 1937 KIDO held minor positions in the
3 government including his position as Chief Secretary
4 to the Lord Keeper of the Privy Seal, which position
5 he held from October 28, 1930 until October 22, 1937.
6 His subsequent offices were (Exhibit 112): October 22,
7 1937 - May 26, 1938, Minister of Education (1st KONOYE
8 Cabinet). January 11, 1938 - January 5, 1939, a con-
9 current post also in the first KONOYE Cabinet.
10 January 5, 1939 - August 30, 1939, Minister of Home
11 Affairs in the HIRANUMA Cabinet. August 30, 1939 -
12 June 1, 1940, he was retired. June 1, 1940 - November,
13 1945, he was Lord Keeper of the Privy Seal.

14 There is no evidence that as Chief Secretary to
15 the Lord Keeper of the Privy Seal KIDO had any policy
16 making functions or that he participated in any de-
17 cisions of the government or the military. No evidence
18 has been adduced of any cabinet meetings attended by
19 him at which he voted for any act or measure bearing
20 directly or indirectly on any of the charges in the
21 Indictment. His duties as Lord Keeper of the Privy
22 Seal were to keep custody of the Privy Seal and the
23 Great Seal, take charge of affairs concerning Imperial
24 Rescripts, Imperial messages and other documents of
25 the Inner Court and "he shall regularly assist the

1 Emperor and supervise the office of the Lord Keeper
2 of the Privy Seal." (exhibit 95).

3 KIDO's position as Lord Keeper of the Privy Seal
4 is generally misunderstood. The evidence is that
5 "The respective Ministers of State shall give their
6 advice to the Emperor, and be responsible for it."
7 (exhibit 68). No such duty or responsibility rested
8 on the Lord Keeper of the Privy Seal. The Diary is
9 replete with entries showing that KIDO only gave the
10 Emperor information when he was requested to do so,
11 and this was part of his duties. The entries also
12 show that Cabinet members had access to the Emperor.
13 KIDO merely acted as a liaison officer between the
14 Emperor and other governmental officials. There is
15 an utter lack of evidence that he carried out his
16 duties, or conspired with anyone in the exercise of
17 his duties, for a criminal purpose.

18 All the evidence and reasonable inferences to
19 be drawn therefrom show that as Lord Keeper of the
20 Privy Seal he committed none of the acts charged in
21 the Indictment. Nor is there any evidence that as
22 a private individual he committed any of the acts
23 charged. There is no evidence that there was in
24 existence in 1931 or subsequent thereto, any con-
25 spiracy which had as its object and purpose that set

1 forth in the Indictment.

2 When the Manchurian Incident broke out in
3 September 1931 KIDO was only Chief Secretary to the
4 Lord Keeper of the Privy Seal and as such had no
5 part in any conspiracy. The entries in KIDO's Diary
6 in evidence from July 11, 1931, through October 15,
7 1931, which are the only ones introduced by the Pro-
8 secution for that year, show that he was worried at
9 the opposition of the Army to a reduction of armaments
10 and economy; (exhibit 179-A - Record 1925-1926); ex-
11 pressed regret at Army plots; (exhibit 179-F - Record
12 1927); recorded the "under-handed" activities of the
13 Army; (exhibit 179-G - Record 1931; exhibit 179-D -
14 Record 1936; stated "we shall have to think up an
15 adequate counter-measure" to the attempt of certain
16 militarists to create a Fascists' government; (exhibit
17 179-C - Record 1934-1935); referred to the plot of the
18 militarists to create a dictatorship of "a national
19 calamity," and "It is very difficult to devise a
20 counter measure;" (exhibit 179-L - Record 1940); dis-
21 cussed the formation of an association as a permanent
22 counter measure to the Army plots; (exhibit 179-P -
23 Record 1941-1942); and in referring to the cause of
24 the Manchurian Incident, concerning which no report
25 was received, he stated "it seems very strange to me."

1 (exhibit 179-J - Record 1939). On January 11, 1932,
2 when he heard of the Army's plans regarding the
3 government of Manchuria, he was astonished "to find
4 that there was such a wide difference between my
5 ideas and theirs." (Doc. 1632W(1) to be offered.)

6 In view of this overwhelming evidence is there
7 any logic to the charge that in 1931 KIDO was a con-
8 spirator? In fact is it not conclusively shown,
9 quite to the contrary, that he was not involved?

10 At the outbreak of the China Affair on July 7,
11 1937, KIDO was still Chief Secretary to the Lord
12 Keeper of the Privy Seal. No excerpts from his Diary
13 have been introduced in evidence from the period of
14 time from January 11, 1932, to July 14, 1937.

15 I might say at this point that last Friday after
16 this motion was prepared there were three innocuous
17 excerpts introduced covering this period of time.

18 There is a complete lack of evidence that KIDO
19 participated either directly or indirectly in any
20 alleged conspiracy in connection with the commence-
21 ment of the China Affair.

22 There is no evidence to indicate that he par-
23 ticipated in any conspiracy during the period he was a
24 Cabinet member from October 22, 1937, to August 30,
25 1939. The testimony of OUCHI, Hyoe, and IKESHIMA,

1 Shigenobu with respect to several minor matters while
2 he was Minister of Education were admitted by both
3 of these witnesses on cross-examination to be based
4 purely on hearsay. (Record 954, 1106.) There is no
5 evidence that a general historical statement attributed
6 to the Ministry of Education (exhibit 266 - Record
7 3543) was ever seen or approved by KIDO nor is there
8 any evidence indicating that it has any probative
9 value proving any issue in the Indictment. The
10 announcements of the Japanese Government relating to
11 the China Incident and the policy outlined therein,
12 fails to establish any alleged conspiracy charge.
13 (exhibit 268 - Record 3553; exhibit 972-A - Record
14 9505).

15 Although KIDO was a member of the Cabinet during
16 the occurrence of the Panay and Ladybird Incidents
17 there is no evidence that he participated in any
18 alleged conspiracy in regard to these actions of the
19 military, and as a matter of fact the government as
20 such apologized and paid indemnity therefor.

21 The entries of KIDO's Diary show that he depended
22 on Imperial Household Minister MATSUDAIRA and con-
23 ferred frequently and exchanged opinions with him on
24 many matters. MATSUDAIRA was referred to by Ott on
25 May 18, 1941, as an "anglophile." (exhibit 1073 -

1 Record 9909, 9912.) The Court circle, of which
2 KIDO was a member, was referred to by Ott in July,
3 1940, as a "pro-British group." (exhibit 546 - Record
4 6293.) Thus the prosecution's own evidence in-
5 dicates that KIDO was pro-British, and certainly that
6 is not a chargeable offense in the Indictment. This
7 is so foreign to the allegations in the Indictment as
8 to render them absurd by the inconsistency contained
9 therein.

10 In respect to the so-called "Rape of Nanking"
11 in December, 1937, and early 1938, there is no evidence
12 that KIDO, either individually or as a member of the
13 Cabinet, ordered or countenanced the commencement or
14 continuance of this event. Throughout his Diary he
15 frequently expressed his opinion that the China In-
16 cident should be settled.

17 Although KIDO in April, 1939, was in favor of
18 negotiations for an alliance with Germany due to the
19 precarious situation at home and in China at that
20 time, (Doc. 1632W(28), to be offered), the evidence
21 introduced from KIDO's Diary from June 1, 1940, to
22 September 26, 1940, fails to show that KIDO par-
23 ticipated in or approved of the Tri-Partite Pact of
24 September 27, 1940. It does appear that he was in-
25 formed of it on September 14, 1940 and tried to have

1 the proposal submitted to the Elder Statesmen, but
2 this was opposed by the War Minister and Navy Vice
3 Minister. (exhibit 627 - Record 6972). KIDO had no
4 responsibility in his official capacity as Lord
5 Keeper of the Privy Seal and certainly there is no
6 evidence that he conspired with any one in connec-
7 tion with this Alliance. The evidence is that the
8 Alliance itself was designed to avoid war between
9 the United States and Japan. (exhibit 550 - Record
10 6329).

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1 KIDO was not a member of, nor a participant
2 in, the Four Minister Conference held June 19, 1940,
3 which arrived at a decision regarding French Indo
4 China. On September 14, 1940 when he was asked his
5 opinion with respect to French Indo China, KIDO re-
6 quested that the Emperor issue a direction to be very
7 careful before taking any action and that he should
8 so warn the government. In the Diary entry of
9 September 26, 1940 KIDO expressed regret at the bom-
10 bardment of Haiphong because it was a measure taken
11 by the military in the field, contrary to orders.

12 The evidence definitely establishes that
13 KIDO was vigorously opposed to the hostilities which
14 commenced on December 7, 1941. The entries in his
15 Diary after September 26, 1940 amply demonstrate
16 this. These excerpts are replete with admonitions
17 by KIDO to various officials to be prudent; and when
18 he was asked by the Emperor for information, on many
19 occasions he continually urged him to give careful
20 consideration to the various points involved. In
21 the Diary entry of June 12, 1941 KONOYE, HIRANUMA and
22 KIDO were unable to judge MATSUOKA's intentions.

23 On July 15, 1941 when MATSUOKA, contrary
24 to KONOYE's idea, instructed NOMURA to reject
25 Secretary Hull's oral statement, KIDO acquiesced

1 in the contention that MATSUOKA should resign, and
2 if not, the Cabinet should resign "en bloc" and a
3 new Cabinet be recommended with KONOYE as Prime
4 Minister. This evidence demonstrates KIDO was
5 ardently hoping for the success of the negotiations
6 with the United States under KONOYE's guidance. The
7 Cabinet did resign en bloc, and at the meeting of
8 the Elder Statesmen, KONOYE was recommended as Prime
9 Minister on July 17, 1941.

10 On July 31, 1941 after the Emperor received
11 a report from the late Admiral NAGANO, KIDO, in
12 reply to the Emperor's questions, stated, "The
13 U.S.A. recognized the existence of the Tri-Partite
14 Pact in our previous parley with America, and I was
15 very doubtful whether we could deepen the confidence
16 of the U.S.A. for us by the act of annulment of the
17 pact, as the U.S.A. was a nation which showed re-
18 spect for international treaties, or we would only
19 be held in contempt by the U.S.A. There are several
20 means to be tried regarding the relationship between
21 America and Japan. We must deliberate patiently on
22 the matter in a constructive manner. I would urge
23 the Premier's careful consideration on this point.

24 On August 7, 1941 in reviewing circumstances
25 with Prince KONOYE, KIDO recognized that the situa-

1 tion was serious and that if the report with respect
2 to oil was correct "we must reach the conclusion that
3 our war with the U.S.A. would be a hopeless one."
4 He urged restoration of "friendly relations be-
5 tween the U.S.A. and Japan." He was of the opinion
6 that the Japanese people should be resolved to toil
7 through ten years of hard struggles and roughly
8 mapped out a ten-year plan. As shown in the Diary
9 entry of October 6, 1941 he had in mind a plan to
10 build up a defensive nation.

11 On September 6, 1941, in response to ques-
12 tions by the Emperor, KIDO advised him to warn the
13 Supreme War Command at the Council in the Imperial
14 presence, to be held that day, to exert every effort
15 to bring about a diplomatic success, "inasmuch as
16 the present decision was such an important one that
17 it might lead to a war in which our national fortunes
18 would be staked." At the meeting, which KIDO did
19 not attend, the Supreme War Command did not answer
20 the questions concerning diplomatic moves put by
21 the President of the Privy Council and the Emperor
22 expressed his regrets that such a reply was not
23 given. The Emperor also emphasized that whole-
24 hearted efforts should be made in the conduct of
25 diplomatic negotiations with the United States.

1 On September 26, 1941 KONOYE told KIDO that
2 if the military insisted on starting a war on October
3 15, he would have no choice but to consider resign-
4 ing. KIDO, hoping that KONOYE would continue in his
5 efforts, said, "I hoped that he would be prudent.
6 The prosecution has further shown affirmatively
7 that KIDO was not a participant in any conspiracy
8 in submitting the entry in his Diary of October 9,
9 1941 wherein he expressed his opinion to Prince
10 KONOYE that the resolution of the Council in the
11 Imperial Presence on September 6, 1941 seemed to
12 him to be too outright and was not the result of an
13 exhaustive discussion. KIDO further stated that
14 "it would be inadvisable to declare war against
15 the U.S.A. immediately We should acquire
16 freedom without paying any attention to economic
17 pressure by the U.S.A. The people should be
18 made to understand the necessity for ten or fifteen
19 years of hard struggle on the part of our nation
20 and to establish a highly defensive nation." I call
21 the Court's attention to the word "defensive." In
22 view of this opinion by KIDO, it is incorceivable by
23 any stretch of the imagination that he can be so
24 charged as a criminal as stated in this Indictment.

25 On October 12, 1941 KIDO recorded the

1 results of a meeting, which he did not attend, of
2 the War, Navy and Foreign Ministers and President
3 of the Planning Board as related to him by the Chief
4 Secretary to the Cabinet. At this meeting War
5 Minister TOJO stated that he did not insist on war
6 and the Ministers discussed the possibility of res-
7 toration of friendly relations with the United
8 States by diplomatic negotiations. On the advice
9 of War Minister TOJO the Ministers made an agree-
10 ment among themselves that they should not change
11 their policy of stationing troops in China and that
12 they should not entertain anything that might affect
13 the results of the China Incident. With these points
14 in view, they further agreed that it should be found
15 out whether negotiations can be successful within
16 the time set by the High Command. When this had
17 been ascertained, the matter should be settled
18 through diplomacy. Such being the case, all
19 operational preparations be discontinued.

20 When it became apparent that was was in-
21 evitable and that the KONOYE Cabinet was falling,
22 TOJO presented his idea to the President of the
23 Planning Board for a Prince's Cabinet and various
24 discussions were held with respect to Prince
25 HIGASHIKUNI becoming Premier. This idea was re-

1 jected for the reasons set forth in the Diary of
2 October 15, 1941.

3 Again KIDO pointed out that the decisions
4 of the Imperial Conference of September 6, 1941 were
5 careless, in a conversation with TOJO on October
6 16, 1941. When the KONOYE Cabinet resigned en bloc
7 October 16, 1941, the next day KIDO suggested TOJO
8 as Prime Minister at the meeting of the Elder States-
9 men. After due consideration, the Elder Statesmen
10 recommended TOJO. That evening KIDO told OIKAWA
11 and TOJO, after being ordered to do so by the
12 Emperor, that it was the Emperor's message that there
13 should be cooperation between the Army and the Navy
14 and that in deciding the fundamental policy of
15 Japan, they need not necessarily follow the de-
16 cisions of the Council of September 6, 1941.

17 As the country was on the brink of war,
18 it is unarguable that it was imperative to have a
19 Premier with the following qualifications:

20 1. A man who would endeavor to settle the
21 differences between the United States and Japan in
22 a diplomatic manner.

23 2. A man who, if diplomatic negotiations
24 with Japan and the United States proved successful,
25 would be strong enough to keep the younger militar-

1 ists in check.

2 Prince KONOYE favored TOJO as the next
3 Premier so as to avoid war. As shown, TOJO, prior
4 to being recommended as the next Premier, stated
5 that he did not insist on war and had agreed to
6 explore the possibilities of the differences between
7 the United States and Japan. Certainly the mere
8 fact that Japan did go to war after the failure of
9 negotiations is no reason to say that KIDO or the
10 Elder Statesmen are criminals, because they recom-
11 mended TOJO. There is no evidence and no inference
12 from the evidence that KIDO conspired with anyone
13 to make a recommendation with a criminal intent
14 or for the purpose of plunging Japan into war. The
15 Elder Statesmen were ex Prime Ministers; and their
16 statesmanship and integrity were relied upon by the
17 Emperor for the proper selection of a Prime Minister.
18 They had no reason for having any criminal motives.
19 The next Premier was never suggested on KIDO's
20 individual judgments. It is certainly not a fact,
21 nor does any evidence so state, that TOJO was
22 selected solely as a result of KIDO's actions. Even
23 if he were, no conspiracy or crime has been shown.

24 On October 20, 1941 KIDO told the Emperor
25 that "one mistaken step taken in the present Cabinet

1 change might have inadvertently plunged us into war.
2 After careful consideration, I believe this to be
3 the only way of giving a new turn to the situation
4 and had thus recommended it." The Emperor replied
5 with a Japanese axiom equivalent to "nothing ven-
6 tured, nothing gained."

7 After becoming Prime Minister, in his ef-
8 forts to continue diplomatic negotiations with the
9 U.S.A., TOJO sent KURUSU to the United States and
10 so advised KIDO on November 5, 1941. He prepared
11 items for re-examination at the Liaison Conference
12 at the Imperial Headquarters after he became Premier
13 to determine among other things the possibilities of
14 "giving up the war plan against the United States,
15 England and Holland."

16 As late as November 19, 1941 KIDO was
17 still hopeful of peace and had a conversation with
18 the Emperor wherein after reviewing the prospects
19 of negotiations with Washington he said, "Thus,
20 several phases of the situation must be foreseen,
21 and it would appear that there is left enough ground
22 for controversy with regard to our rushing into the
23 war headlong on the mere automatic grounds that the
24 last day of the month of November has passed." He
25 further told the Emperor that "when the Premier

1 solicits His Majesty's final decision, if circum-
2 stances require, the Premier should be ordered to
3 hold the Council in the Imperial presence with the
4 participation therein of all the senior statesmen."
5 Here again KIDO advocated reliance on the wisdom,
6 experience and prudence of the Elder Statesmen.
7 Does this seem like the act of a man advocating
8 aggressive war or the act of a criminal conspirator?

9 Again on November 26, 1941 KIDO, in his
10 answer to the Emperor's questions, said, "Once the
11 final decision be made this time, it would truly be
12 the last and irretrievably final one. Thus, if
13 there should be any doubt or any better idea to sur-
14 mount the difficulties in your Majesty's mind, I
15 pray that your Majesty be pleased to elucidate the
16 same without the least reserve and take appropriate
17 steps which your Majesty might not repent of after-
18 wards. I, therefore, pray that your Majesty command
19 the Premier without reserve."

20 On November 29, the Senior Statesmen had a
21 discussion with respect to the war, and on November
22 30, 1941 KIDO replied to the Emperor that "His
23 Majesty's decision is of such gravity that, once
24 decided, it could not later be retracted. Hence,
25 it is felt that, if there is the least uncertainty,

1 every possible precaution should be taken to do that
2 to which His Majesty can give assent."

3 On December 1, 1941 the Council, in the
4 presence of the Emperor, decided on war. The evi-
5 dence further shows that even at the eleventh hour,
6 when KIDO was advised that President Roosevelt's
7 message had been received, he arranged a midnight
8 audience for Foreign Minister TOGO to report
9 President Roosevelt's message to the Emperor. KIDO,
10 himself, went up to the Palace at 2:40 A.M. to see
11 if he couldn't do something in so far as the message
12 was concerned. There can be no criticism of KIDO's
13 patriotic remarks after the broadcast of the attack
14 that morning. Is the price of criminal immunity
15 the corruption of patriotism? KIMO early advocated
16 that the war should be terminated as shown by his
17 Diary entry of January 6, 1944 nearly two years
18 before it ended.

19 The prosecution, by its own evidence, has
20 proven KIDO innocent of any alleged conspiracy.
21 There is no evidence in the other entries of his
22 Diary, not mentioned above, which can possibly lead
23 to a contrary conclusion.

24 With respect to Counts 6 to 17, inclusive:
25 There is no evidence that KIDO planned and

1 prepared a war of aggression or a war in violation
2 of international law and treaties against the
3 various nations set forth in these counts between
4 January 1, 1928 and September 21, 1945. As shown,
5 the testimony is that he never personally or in
6 any of his official capacities planned and prepared
7 any wars of aggression.

8 I have made no remarks about Count 18
9 because that is the only count in which he is not
10 named in the Indictment.

11 With respect to Count 19:

12 There is no evidence at all that KIDO
13 initiated a war of aggression against China on July
14 7, 1937. On that date and for some years prior
15 thereto he was merely Secretary to the Lord Keeper
16 of the Privy Seal.

17 With respect to Count 20 to 26:

18 These counts should be dismissed as the
19 evidence definitely establishes that he was person-
20 ally opposed to the initiation of any wars against
21 the various countries mentioned in these counts and
22 was not in an official position to initiate any such
23 wars.

24 With particular reference to Counts 25
25 and 26, the evidence clearly shows that the border

1 affairs referred to therein occurred at a time
2 when KIDO was a cabinet member, and there is no evi-
3 dence in the case that he either individually or as
4 a member of the cabinet initiated these affairs.
5 Both of these incidents were settled with Russia
6 through diplomatic channels, and there exists no
7 legal foundation for the charges in these counts.

8 Counts 27 to 36, inclusive:

9 There is no evidence that KIDO either
10 personally or in his official capacity waged any
11 war of aggression against the various nations on
12 the various dates set forth in these counts of the
13 Indictment. It is fundamental that no public
14 official appointed or elected can be held respons-
15 ible for acts as such in merely carrying out his
16 duties when his government has been plunged into a
17 state of war, particularly where that public official
18 consistently tried to avert war. The mere fact
19 that one happens to hold an official position in
20 a government during the period of time that govern-
21 ment is at war does not ipso facto make him a
22 criminal.
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1 With respect to Counts 37 and 38, charging
2 murder:

3 All of the evidence and the reasonable
4 inferences to be drawn therefrom demonstrate that
5 between June 1, 1940, and December 8, 1941, KIDO was
6 not a leader, organizer, instigator or accomplice in
7 any plan or conspiracy to kill or murder anyone. The
8 evidence shows that he did everything in his power
9 personally to avert war and in his official capacity
10 as Lord Keeper of the Privy Seal he did not participate
11 in any such plan or conspiracy as charged. He was not
12 in a position to nor did he order, cause or permit the
13 armed forces of Japan to murder anyone.

14 With respect to Counts 39 to 43:

15 The prosecution has failed to show by evidence
16 that KIDO ordered, caused and permitted the armed
17 forces of Japan to commit murder against the various
18 nations at the various times and places set forth in
19 these counts. As Lord Keeper of the Privy Seal, KIDO
20 was not authorized to, nor did he, issue any orders
21 nor was he in a position to cause or permit the armed
22 forces of Japan to commit the acts charged.

23 With respect to Count 44:

24 This count should be dismissed as the evidence
25 fails to show that KIDO had any connection whatsoever

1 as a leader, organizer, instigator or accomplice to
2 procure and permit murder on a wholesale scale of
3 prisoners of war.

4 With respect to Counts 45 to 51:

5 No evidence has been adduced by the prosecution
6 that KIDO ordered, caused or permitted the armed
7 forces of Japan to attack the city of Nanking on
8 December 12, 1937. At this time he was Minister of
9 Education in the KONOYE Cabinet. There is no evidence
10 that he individually or as a member of the Cabinet had
11 any control over the armed forces of Japan. On
12 October 21, 1938, when the city of Canton was attacked
13 and on October 27 of the same year when the city of
14 Hangkow was attacked KIDO was Welfare Minister in the
15 KONOYE Cabinet. Here, too, there is an absence of
16 evidence that he either ordered, caused or permitted
17 the armed forces of Japan to commit the acts alleged.
18 KIDO was Lord Keeper of the Privy Seal at the time of
19 the alleged attacks on Changhsa, Hangyang, Kwelein
20 and Liuchow. It is self-evidence that in such capa-
21 city he was not in a position to command and issue
22 orders to the expeditionary forces abroad. KIDO was
23 Minister of Home Affairs in the HIRANUMA Cabinet
24 when the alleged Khalkhin-gol Incident occurred. There
25 is no evidence that he either individually or as a

1 member of the Cabinet, ordered, caused or permitted
2 the armed forces of Japan to make such an alleged
3 attack.

4 With respect to Count 52:

5 This count should be dismissed as to KIDO
6 because there is no evidence that KIDO participated
7 in any of the acts charged against Russia.

8 Conventional war crimes and crimes against
9 humanity.

10 Count 53:

11 There is an absence of evidence that KIDO,
12 either individually or in his official capacity,
13 participated in any conspiracy for maltreatment of
14 prisoners of war and civilian internees. Diary entries
15 showing knowledge by him of a few instances of treat-
16 ment of POW's is no basis for an unsupported conclusion
17 of responsibility where none is shown, and where the
18 evidence shows that responsibility rested elsewhere.

19 With respect to Counts 54 and 55:

20 These counts should be dismissed as there is
21 no evidence that KIDO ordered, authorized or permitted
22 the alleged offenses charged in these counts or that
23 he was in any position to do so as Lord Keeper of the
24 Privy Seal.

25 The accused KIDO also moves at this time to

1 strike out in so far as the charges in the Indictment
2 against him are concerned, all the testimony, affida-
3 vits, documents, synopses and statements including
4 interrogations of other accused, except the evidence
5 referred to in this motion, on the ground that they are
6 immaterial, irrelevant and have no probative value,
7 the rulings on which having been reserved by the
8 Tribunal.

9 In conclusion, it is respectfully submitted
10 that the Indictment and each and every count therein
11 be dismissed as to the accused Koichi KIDO for the
12 reasons that the evidence conclusively establishes:

13 1. That he is innocent of any of the charges
14 contained therein.

15 2. That there is no evidence that he parti-
16 cipated, either individually or in his official capa-
17 city, in any alleged plan or conspiracy.

18 3. There is no evidence that he committed
19 any of the crimes alleged in the Indictment.

20 Dated January 14, 1947.

21 THE PRESIDENT: Mr. Howard.

22 MR. HOWARD: Mr. President, and Members of
23 the Tribunal:

24 Now comes the defendant KIMURA, Heitaro, by
25 his counsel, and moves the Court to dismiss each and

1 every one of the counts in the Indictment against him
2 on the ground that the evidence offered by the prose-
3 cution is not sufficient to warrant a conviction of
4 this defendant.

5 There has been no evidence adduced that would
6 tend to prove that KIMURA, Heitaro, knowingly took
7 any part in the formulation or execution of a common
8 plan or conspiracy, if there was one, as charged in
9 Counts 1, 2, 3, 4, and 5.

10 There has not been sufficient evidence adduced
11 to prove that KIMURA knowingly planned and prepared a
12 war of aggression against the countries mentioned in
13 Counts 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16 and 17.
14 In fact, there is no evidence that he did anything more
15 than he was duty bound to do as a soldier who was loyal
16 to his country which was engaged in preparing for war
17 or waging war. A prosecution witness testified that
18 KIMURA was not an advocate of war with the United
19 States, and told him, not on one occasion alone, that
20 if Ambassador KURUSU went to the United States a settle-
21 ment could be reached between the two countries.

22 There has not been sufficient evidence
23 adduced to prove beyond a reasonable doubt that KIMURA
24 knowingly took any part in initiating a war of aggression
25 against the countries mentioned in Counts 20, 21, 22, 24,

1 27, 28, 29, 30, 31, 32, and 34. There is nothing to
2 show that he did anything more than his duty as a
3 loyal soldier of a nation engaged in waging war.

4 There has been no evidence adduced that would
5 tend to show that KIMURA knowingly took any part in
6 the formulation or execution of a common plan or cons-
7 piracy to commit murder as charged in Counts 37, 38,
8 39, 40, 41, 42, 43, and 44.

9 There has not been sufficient evidence adduced
10 to prove beyond a reasonable doubt that KIMURA parti-
11 cipated in the formulation or execution of a common
12 plan or conspiracy to permit breaches of the Laws and
13 Customs of War as charged in Counts 53, 54, and 55.

14 Neither does Appendix E, Statement of Indivi-
15 dual Responsibility for Crimes, set out in the Indict-
16 ment, list KIMURA as being present and concurring in
17 any decisions taken at some of the conferences and
18 cabinet meetings held in 1941, which decisions allegedly
19 prepared for and led to unlawful war on 7 December
20 1941; nor is there any evidence that KIMURA attended
21 any of the meetings listed. In fact, there was testi-
22 mony by a prosecution witness that he did not attend.

23 Appendix E states in part that the defendant
24 KIMURA, between 1928 and 1945, was, among other posi-
25 tions held, Vice War Minister under KONOYE and TOJO

1 (1941 to February 1944); Member, Supreme War Council
2 (1943); Commander-in-Chief, Japanese Army, Burma
3 (1944); full General (1945).

4 The evidence shows that KIMURA was Vice War
5 Minister from 10 April 1941 to 11 March 1943 and not
6 to February 1944 as shown by Appendix E.

7 There is evidence that KIMURA was assigned
8 as War Councillor 11 March 1943. There is no evidence
9 that the Supreme War Council had any authority, nor is
10 there any evidence that it ever held a meeting while
11 KIMURA was a member. Evidence has been adduced that
12 would tend to prove that KIMURA attended a meeting of
13 the Supreme War Council June 30, 1941, as Vice War
14 Minister and one of the representatives of the army,
15 but not as a member.

16 There has been evidence adduced that KIMURA
17 was Commander-in-Chief, Japanese Army, Burma, from
18 30 August 1944 to the surrender. There is no evidence
19 that any prisoners of war were taken during this time.
20 The Tribunal may take judicial notice of the fact that
21 at the time KIMURA was in Burma the Japanese army was
22 being defeated. The natural assumption is that it
23 was not taking any prisoners of war.

24 Evidence has been adduced by the prosecution,
25 through Witness TANAKA, that KIMURA, while Vice War

1 Minister, had no authority or responsibility in
2 important prisoner of war matters other than the duty
3 to transmit notifications by order of the War Minister
4 to army commanders. Prosecution Witness WAKAMATSU also
5 testified that the Vice War Minister did not have the
6 power of decision in matters concerning prisoners of
7 war. WAKAMATSU also stated that KIMURA was not
8 basically responsible for the decision to use prisoners
9 of war in the construction of the Burma-Siam Railway
10 (Exhibit 1989).

11 Prosecution Witness TANAKA testified that
12 KIMURA had no authority to take part in forming
13 decisions at meetings at Imperial Headquarters, that
14 he attended meetings as attendant only of the War
15 Minister; that the Vice War Minister did not have the
16 right to hire or discharge employees in the army or
17 the War Ministry; that the Vice War Minister did not
18 have the authority to punish those in the army or
19 War Ministry who disobeyed instructions; that the Vice
20 War Minister had no command authority over Chiefs of
21 Bureaus; that when TOJO was Premier and War Minister,
22 small matters only were turned over to KIMURA but
23 not any matters pertaining to state affairs, such as
24 policy-making, politics, economics and diplomacy; that
25 external negotiations were handled by Chief of the

1 Military Affairs Bureau.

2 No evidence has been adduced that KIMURA had
3 charge of any prisoners of war while in Burma. On
4 the other hand, there is evidence that the Rangoon
5 POW camp was under the control of the Southern Army.

6 Now, I would like to add that there has been
7 evidence adduced since the filing of this motion that
8 KIMURA was never a minister of state and, therefore,
9 could not have performed all of the functions of War
10 Minister.

11 THE PRESIDENT: We will adjourn until half-
12 past nine tomorrow morning.

13 (Whereupon, at 1605, an adjournment
14 was taken until Tuesday, 28 January 1947, at
15 0930.)

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28 JANUARY 1947

I N D E X

INDIVIDUAL MOTIONS TO DISMISS

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Tuesday, 28 January 1947

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

The Tribunal met, pursuant to adjournment,
at 0930.

Appearances:

For the Tribunal, same as before with the
exception of: HONORABLE JUSTICE NORTHCROFT, Member
from New Zealand, not sitting.

LORD PATRICK, Member from the United
Kingdom of Great Britain, now sitting.

For the Prosecution Section, same as before.

For the Defense Section, same as before.

The Accused:

All present except OKAWA, Shumei, who is
represented by his counsel.

(English to Japanese and Japanese
to English interpretation was made by the
Language Section, IMTFE.)

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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now resumed.

3 THE PRESIDENT: Mr. Smith.

4 MR. SMITH: If your Honor please, if it is
5 appropriate I would like to suggest a couple of correc-
6 tions in the record of yesterday's proceedings. The
7 first correction is on page 16,267 of the record, the
8 last three words in the second paragraph. The words
9 "law in statute" should be stricken and in place of it
10 should be "lower in stature."

11 The next, page 16,268 of the record, in the
12 first sentence, the first sentence should be corrected
13 to read, "A majority of the defendants in the box have
14 joined in the present motion and it has been amplified."

15 THE PRESIDENT: Captain Brooks.

16 MR. BROOKS: Now comes KOISO, Kuniaki, by
17 his counsel, and respectfully moves the Tribunal to
18 dismiss each and every one of the Counts in the Indict-
19 ment against said Defendant on the ground that the
20 evidence offered by the prosecution is not sufficient
21 to warrant a conviction of said Defendant.

22 Before stating the argument in support of this
23 motion to dismiss, we submit our legal basis therefor,
24 and state that to determine whether a crime has been
25 committed, it must be established:

1 1. That an act was committed which was
2 sufficient to constitute a crime objectively, i.e.,
3 having the objective elements of a crime.

4 2. That the accused had the intention or
5 knowledge of committing said crime, subjectively, i.e.,
6 he must have committed the act with the knowledge of
7 facts or subjective elements, that they would rightly
8 constitute the said crime, and we submit that the prose-
9 cution has failed to prove that KOISO committed any
10 act which constituted a crime objectively or that he
11 had guilty knowledge that any act he committed was wrong,
12 or that he committed any act with knowledge subjective-
13 ly that it constituted a crime.

14 We submit it is necessary for the prosecution
15 in order to establish crimes against peace to prove
16 that planning and preparation of a war was carried out
17 with subjective knowledge or intention to initiate or
18 wage a war of aggression or a war in violation of
19 international law, treaties, agreements or assurances,
20 or a war must have been initiated and waged with the
21 knowledge that the war was an aggressive war or a war
22 in violation of international law, treaties, agreements
23 or assurances.

24 A crime against peace can not be said to have
25 been committed where ones actions were without the

1 foregoing knowledge and where the prosecution's evidence
2 points to an emergency situation and to a prevailing
3 international situation that caused the initiation of
4 measures for self-defense; or where the accused came
5 into a responsible position without the foregoing know-
6 ledge or intention and carried out the duties of his
7 office as a patriotic citizen of his country in what
8 he believed to be a war of self-defense.

9 All wars are not criminal, and the burden of
10 proof is on the prosecution to show the accused had
11 knowledge that the said war was one of aggression or
12 in violation of international law, treaties, agreements
13 or assurances, and that the accused did not rely on
14 official statements that his government was exercising
15 its exclusive, sovereign prerogative to institute
16 and carry out measures on the basis of self-defense.

17 Since the causes of a war are complicated
18 and divergent, it is difficult for any one other
19 than the sovereign nation itself to analyze what
20 action is a measure of self-defense and even the govern-
21 ing body of a country may be wrong in its judgment and
22 decision and statement, due to omissions in its infor-
23 mation or misinformation, or misunderstanding when
24 coupled with the difficulty of understanding and
25 analyzing the real situation prevailing inside an

1 opposing country, especially when the relations of
2 countries are strained and the sentiment, passion and
3 pride of the people is aroused.

4 Therefore, assuming it was clear after peace
5 has been restored and abundant revealing information
6 has been collected from the various countries concerned
7 that in the light of difficult and profound theory of
8 international law, treaties, agreements and assurances,
9 a war has been waged that was illegal or aggressive,
10 these facts alone do not establish that the officials
11 of the country concerned were cognizant that said war
12 was or would be considered illegal or aggressive. The
13 prosecution must show by facts and evidence that at
14 the outset and at the time thereof the accused had such
15 guilty knowledge beyond a reasonable doubt which they
16 have failed to do.

17 Since international law, treaties, agreements
18 or assurances require highly technical knowledge in
19 relation to the interpretation thereof, together with
20 the circumstances enumerated above, it becomes
21 impossible for an individual or the general public to
22 form an independent judgment as to the legality of
23 a war and they are compelled to listen and depend
24 naturally upon government announcements and opinions
25 of other men of authority and as in the case of an

1 interpretation of the reservation of the right for
2 the use of self-defense mentioned in the Kellogg-Briand
3 Pact since a clear and concise definition has not been
4 reached by international agreement and proclamation,
5 the exclusive determination and interpretation thereof
6 is an individual sovereign right of each nation.

7 When we consider the above stated points,
8 we readily understand why in the Nuernberg judgment
9 they did not find guilty of crimes against peace any
10 defendant who failed to attend those important confer-
11 ences at which Hitler confidentially expressed his
12 aggressive intention and only where the prosecution
13 proved beyond a reasonable doubt that those in this
14 small inner circle had guilty knowledge and intention
15 to act, to carry out Hitler's aggressive war plans,
16 did the Court impose penalty.

17 We submit that the finding of the Nuernberg
18 trial in relation to the "General Staff and High
19 Command" reaffirmed the principle that the simple
20 fact that an accused occupied a certain important
21 position at the time when a certain incident broke out
22 does not establish that said accused is guilty of a
23 crime against peace and a sharp distinction was made
24 between this and a criminal organization such as the
25 Nazi party of Germany. Here, the Cabinet, the Ministry

1 of War, other Ministries, the General Staff Office and
2 the Kwantung Army Headquarters have not been shown by
3 the prosecution to be criminal organizations, and the
4 occupation of a position thereon does not establish
5 the fact that the defendant was guilty of a crime
6 against peace.

7 If the prosecution has established that a
8 certain criminal act occurred in which several persons
9 participated, we submit that only those members of
10 said joint action can be held responsible for the
11 crime who had guilty knowledge that said act was a
12 crime, or whose official acts were carried out with
13 knowledge and intention to aid and assist or conspire
14 to commit said crime. Otherwise, we overthrow the
15 principle of law that in the case where a nurse pre-
16 pares medicine and administers it in accordance with
17 a doctor's prescription in good faith, or in the case
18 where the doctor who, without knowing the patient's
19 abnormal constitution, prescribed for him properly,
20 neither nurse nor doctor can be charged with murder
21 even though the patient dies as a result of taking the
22 medicine.

23 Moreover, in the ordinary criminal offense,
24 the actual relations or objective elements of the crime
25 are not very complicated, and belong in principle

1 to illegal acts; therefore, those who brought about
2 facts or objective elements which constitute the crime
3 can generally be presumed to have had knowledge that
4 their acts were criminal but this theory is only
5 followed where the burden of proof rests with the
6 defendant who contends his innocence.

7 In the case of a war the actual relations as
8 previously stated are not only complicated and
9 divergent but if there is a presumption it would be
10 that a war is not illegal. Therefore, except in a
11 special instance where a defendant is a member of an
12 organization which has been declared by a court of
13 justice to be criminal the burden of proof regarding
14 malicious intention or guilty knowledge is on the
15 prosecution and has not been established by the evidence
16 presented against the defendant KOISO.

17 Mere knowledge by a defendant that following
18 a war or an act of hostility a change is brought about
19 in the territorial sovereignty of a certain area does
20 not establish that said war or act of hostility was
21 one of aggression or was intended to be one of aggres-
22 sion. For example, during World War I, the Allied
23 Powers occupied certain territories and countries,
24 and, after the war, made a part of them either their
25 own territory, or acquired same as mandated territory.

1 No one by reason thereof would accuse such countries
2 of having or of having considered this change as being
3 interpreted as being aggressive, or contemplated as
4 such either during the waging of the war or thereafter.

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1 We submit that simple declarations in news-
2 papers, or marshalling of various policies alone are
3 far from sufficient to establish that a plan for an
4 aggressive war existed. The Nuernberg finding clearly
5 stated this point:

6 "But in the opinion of the tribunal, the
7 conspiracy must be clearly outlined in its criminal
8 purpose. It must not be too far removed from the
9 time of decision and of action. The planning, to be
10 criminal must not rest merely on the declaration of
11 a party program, such as are found in the 25 points
12 of the Nazi party, announced in 1920 or the political
13 affirmation expressed in 'Mein Kampf' in later years.
14 "The tribunal must examine whether a concrete plan to
15 wage war existed and determine the participants in
16 that concrete plan."

17 We further submit, that to be a participant,
18 guilty knowledge must be proven by the prosecution to
19 have existed on the part of the accused and to have
20 governed his actions.

21 In examining various counts under Group I,
22 Crimes Against Peace, we find their constitution ex-
23 temely complicated and hard to comprehend, and that
24 no clear charge with sufficient connecting and support-
25 ing evidence has been established against the defendant

1 KOISO, and we submit that KOISO had no connection
2 with the crimes charged, even if such a general and
3 abstract conspiracy as charged by the prosecution
4 existed. We further submit that such a charge by the
5 prosecution under Count I cannot be said to constitute
6 a crime against peace as set forth by Article 5 A of
7 the Charter of the Tribunal in light of the Nuernberg
8 decision above quoted. The prosecution has failed to
9 show that KOISO conspired with the defendants or other
10 divers persons. The prosecution's evidence (Court
11 exhibit 1278) shows KOISO was not intimately known
12 by other accused and members of the government, and
13 was considered by the Army circle to belong to a neutral
14 faction, and by government officials he was described
15 as a just, moderate and moral character, possessed of a
16 well-developed common sense. The prosecution has failed
17 to show that KOISO was member of either the Minseito
18 or Seiyukai political parties, or active in any other
19 political group or factions. The prosecution's evidence
20 establishes that the so-called March Incident and
21 October Incident of 1931 were domestic political issues
22 due to the corruption of domestic administration and
23 aimed at internal reform, and that there was no relation
24 between these incidents and any war or plan for war, as
25 was testified to by witnesses SHIMIZU, Konosuke;

1 TOKUGAWA, Yoshichika; and UGAKI, Kazushige; during
2 cross-examination on 26 June and 1 July 1946. (Court
3 record pages 1404-1410, 1411, 1418, 1419, 1626 and
4 1627.)

5 This testimony clearly shows that the defendant
6 KOISO was not a participant but that KOISO, by order of
7 his superior, prevented the carrying out of the incident
8 and caused the firecrackers to be used in the demonstra-
9 tion to be confiscated.

10 Court exhibit 179-C, an excerpt from KIDO's
11 diary, we submit is not reliable as it was based on
12 hearsay received by KIDO from HARADA after the incident
13 occurred. Since HARADA was not a participant in the
14 incident his information could only be based on rumors
15 unfounded on facts, many of which were circulating in
16 political circles. The above also explains why KOISO
17 was kept at a respectful distance by extremist political
18 factions. Furthermore, UGAKI, the War Minister in the
19 Minseito Cabinet which was then in power, could not
20 conceivably be expected to discuss a scheme for over-
21 throwing the Cabinet with Mr. MORI, a leader of the
22 Seiyukai, an opposition party. (Court record pages
23 1626-27.) Wherefore, defendant moves to dismiss
24 Count I of the Indictment.

25 On the 18th of September 1931, the time of

1 the Manchurian Incident, the prosecution's evidence
2 fails to prove that KOISO in any of the positions of
3 government occupied (Court exhibit 114) was in a position
4 of authority or responsibility, or was connected in any
5 illegal or criminal activity or conspiracy, and it was
6 therefore natural that in the opening statement pertain-
7 ing to the Manchurian Incident read by Prosecutor Darsey,
8 1 July 1946, there was no specific mention of defendant
9 KOISO.

10 The prosecution's evidence in this phase of
11 the case presented by the witness SHIDEHARA, Kijuro,
12 Minister of Foreign Affairs at the time of the Inci-
13 dent (Court record page 1385), and the testimony of
14 WAKATSUKI, Reijiro, Prime Minister (Court record page
15 1571) discloses that the defendant MINAMI, Minister
16 of War, supported SHIDEHARA's policy for localization
17 of the incident and assisted in carrying out this
18 policy. KOISO, Chief of Military Affairs Bureau under
19 MINAMI (Court exhibit 162), also acting under War
20 Minister MINAMI's orders, carried out his duties in
21 conformity with the SHIDEHARA policy, and the prose-
22 cution's evidence does not show any illegal or criminal
23 activity in KOISO's exercise of the functions and duties
24 of his office.

25 Later, on the formation, in December 1931, of

1 the INUKAI Cabinet in place of the WAKATSUKI Cabinet,
2 Premier INUKAI stuck to the policy of localizing the
3 Manchurian Incident (Court exhibit 161, court record
4 pages 1479-1480,) and Defendant ARAKI, War Minister,
5 supporting the same policy (Court record page 1489)
6 utilized Defendant KOISO, first in the capacity of
7 Chief of Military Affairs Bureau as theretofore, and
8 also later as Vice-Minister of War where KOISO's
9 authority and responsibility was very limited. (Court
10 record pages 14397, 14405 and 14406.)

11 On 8 August 1932 KOISO was appointed Chief of
12 Staff of Kwantung Army under Field Marshal MUTO,
13 Commander in Chief of Kwantung Army, where he executed
14 his duties in conformity with the orders of the Com-
15 mander in Chief, (Court record pages 2075-2076 and
16 2101-2102,) and in the belief that the administrative
17 duties assigned to him were in conjunction with the
18 subjugation of bandits, the maintenance and restoration
19 of peace and order, and for the protection of Japanese
20 and Korean residents and property rights under the
21 Japanese Government's previous steps taken in the exer-
22 cise of its sovereign right of self-defense, which was
23 generally accepted on the basis of a report of investi-
24 gation as testified to by witnesses SHIDEHARA, 25 June
25 1946, WAKATSUKI, 28 June 1946, and TANAKA, 8 July 1946.

1 We submit Defendant KOISO had no means or facilities
2 of his own to inquire into the state of affairs, and
3 was dependent on the announcements made by the Japanese
4 Government, and the prosecution's evidence fails to
5 establish that Defendant KOISO had guilty knowledge
6 that said incident was or would be considered an aggres-
7 sive act as alleged.

8 In connection with Court exhibit 230 it can
9 be inferred from the introductory part of this document,
10 entitled, "The Principles for Guiding Manchukuo," the
11 Second Division of the Army General Staff drafted this
12 in accordance with government policies decided by the
13 Cabinet (Court exhibit 222,) then seeking the advice
14 of the authorities on the spot as to the advisability
15 and practicality of the principles to be used, the
16 Second Division sent such rough drafts to the Staff
17 office of the Kwantung Army for their comments. Said
18 Staff officers in consultation with NAGATA, Chief of
19 Second Division of Army General Staff then in Manchukuo,
20 suggested revisions deemed necessary in view of local
21 conditions, and when approved by the Commander in Chief,
22 sent such draft back to the War Ministry. Therefore,
23 we submit that KOISO's actions in this matter were not
24 unlawful.

25 We further submit that any promotions received

1 by KOISO, as indicated in Court exhibit 114, were
2 based on length of service and followed as a matter of
3 course, and that certain technical transfers were made
4 in order to place him on the reserve list, as, for
5 example, his attachment to the General Staff on 18
6 July 1938, which was not meant to make him occupy any
7 effective function as a member of the General Staff
8 but made him eligible for retirement on the reserve
9 list, which was, in fact, done two weeks later, and
10 the prosecution's evidence does not supply any proof
11 that any promotion or change in position was an award
12 for or a part of any unlawful activity. Wherefore,
13 defendant moves to dismiss Counts 2, 18 and 27 of the
14 Indictment.

15 We submit that in relation to the China Inci-
16 dent that an examination of Court exhibit 114 will dis-
17 close that KOISO was not in any position where he could
18 have taken any part in the movement for autonomy for
19 the five North China Provinces (Court record page 2026)
20 nor in the outbreak of the so-called China Incident
21 resulting from the clash between Japanese and Chinese
22 forces, 7 July 1937, at Marco Polo Bridge near Peking,
23 KOISO was in Keijo, Korea, from 2 December 1935 until
24 15 July 1938 -- the brief shows 18; it should be 15.
25 Although KOISO was Minister of Overseas Affairs in the

1 HIRANUMA Cabinet from 7 April to 30 August 1939 and in
2 the YONAI Cabinet from 16 January to 22 July 1940, and
3 Prime Minister from 22 July 1944 to 7 April 1945, there
4 is no evidence connecting KOISO, or proving he partici-
5 pated, or had any responsibility for the military actions
6 that occurred, or were being carried on during said
7 periods of occupying said government posts. The
8 KONOYE Cabinet having adopted a policy of not enlarg-
9 ing the said conflict, negotiated with the Chinese in
10 the hope of coming to a solution, but failed and
11 succeeding cabinets failed in their efforts.

12 The military action necessitated by the con-
13 flict was solely in the prerogative of the Chief of the
14 General Staff, and the cabinet had no authority there-
15 in, as shown by the evidence of UGAKI (Court Record
16 page 1620), by SHIDEHARA (Court Record page 1389-1392)
17 and Court exhibit 179-L. Furthermore, the Japanese
18 Government having publicly declared that the outbreak
19 of the China Incident originated in self-defensive
20 action taken to protect Japanese residents and property
21 rights and against provocative Chinese acts resulting
22 from anti-Japanese propaganda, it was natural that
23 KOISO not having at his disposal any organization
24 or means to personally investigate such matters,
25 should give full credence to the declaration of the

1 government, and there is no evidence which indicates
2 that the defendant was cognizant, that the Chinese
3 Incident and the actions taken therein was or would
4 be considered unlawful or illegal as alleged and
5 the evidence does not show that he conspired or partici-
6 pated in any manner as charged or that his action in
7 the exercise of his duties and responsibilities in
8 any government position was unlawful or illegal, or
9 done with guilty knowledge or malicious intent to
10 conduct or assist in any unlawful act. Wherefore,
11 defendant moves to dismiss Counts 3, 6 and 28.

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1 We submit that in relation to the Anti-
2 Comintern Pact of 1938, renewed in 1941, the Tri-
3 Partite Pact of 1940, and the Cultural and Trade
4 Agreements signed between Japan in 1938 and 1939,
5 and the No Separate Peace Pact of 1941, the prosecution
6 contends that these agreements signed by the military
7 representative on behalf of their separate countries
8 were concluded with the view of obtaining the ends
9 of Count 5 in the Indictment, and preferred charges
10 thereunder against all persons participating in the
11 conclusion of said treaties and agreements. We
12 submit that Court exhibits 480, 483, 37, 38, 39 and
13 589 indicate this could not be true in regard to the
14 Anti-Comintern Pact and the Cultural and Trade Agree-
15 ments. As to the other pact, treaties and agreements,
16 in their conclusion, the will of the state was ex-
17 pressed by the signed instrument to preclude the
18 extension of hostilities and the aim of the aforesaid
19 pact was defensive and pacific as made clear by Court
20 exhibits 43, 554, 553-page 3, and 558-page 1. The
21 prosecution construes "Establishment of a Co-Prosperity
22 Sphere" to mean or indicate "Invasion." This is errone-
23 ous. States lying in geographical propinquity are
24 deeply affected by conditions of their neighbors, and
25 the above phrase means that countries with common

1 interests should unite their efforts to cooperate
2 and further their mutual prosperity taking into
3 consideration the resources and needs of their
4 respective people in a regional community, itself a
5 component and cooperating part of the universal
6 community, thus cooperating and contributing to the
7 progress of culture, well-being, and understanding
8 and taking advantage of the special abilities of
9 each to contribute thereto. Court exhibits 529-page
10 1, 553-page 3, 557-page 1, 558-page 1 and 2 indicate
11 that although misuse can be made of the term "Co-
12 Prosperity," in a sense which it originally does
13 not possess, it is improper and erroneous to give
14 it such meaning.

15 "Concerning war criminals of Germany, who
16 endeavored to drive Japan into a war with the U.S.S.R.,
17 the United States and Great Britain, the Nuernberg
18 decision did not question the treaty of alliance
19 between Germany and Japan but only stated, "Ribbentrop
20 attended a conference in May 1941 with Hitler and
21 Antonescuo relating to Rumania's participation in the
22 attack on the U.S.S.R. He also consulted with Rosen-
23 berg in preliminary planning for political exploitation
24 of Soviet territories and in July, 1941, after the
25 outbreak of war urged Japan to attack the Soviet Union."

1 This confirms the error of the prosecution's view.
2 Moreover, defendant KOISO at the conclusion of the
3 Anti-Comintern Pact, 1936, was residing in Keijo,
4 Korea.--

5 THE PRESIDENT: Captain Brooks, we are not
6 bound by Nuernberg's findings of fact which may turn
7 on different evidence. That may prove to be in your
8 favor as well, perhaps, as against you.

9 MR. BROOKS: Yes, sir.

10 As Minister of Overseas Affairs in the
11 HIRANUMA cabinet in 1939 which was after Ribbentrop's
12 approach to Japan in the early part of said year,
13 cabinet opinion was divided as to concluding said
14 alliance, and KOISO opposed it and a committee of
15 those mostly concerned was set up to study this prob-
16 lem but they never reached a conclusion. (Court
17 exhibit 504; Court record, page 6108). The cabinet
18 fell 30 August 1939 as the result of the conclusion of
19 the Non-Aggression Pact between Germany and U.S.S.R.,
20 23 August 1939, KOISO resigned as Minister of Overseas
21 Affairs (Court record, page 5859, Court exhibit 114),
22 and took no part in the conclusion of the Japanese-
23 German alliance. On 16 January 1940 KOISO joined the
24 YONAI cabinet as Minister of Overseas Affairs, but in
25 this cabinet, the Prime Minister, YONAI, Foreign

1 a conversation took place, and KOISO pointed out he
2 had no authority to negotiate or responsibility in
3 such diplomatic matters as proposed by Ott. The
4 German Ambassador had many intimate friends in the
5 Japanese Army, as made clear in Court exhibit 498,
6 504, 508, 511, and if the Japanese Army had wanted to
7 sound German attitude concerning such an important
8 military operation in French Indo-China or Netherlands
9 East Indies, they would not have entrusted this to
10 KOISO, as he was not on specially good terms with
11 them, and was not even acquainted with Ott nor could
12 they converse without an interpreter. And, further-
13 more, military operations were outside the scope of
14 KOISO's jurisdiction.

15 The fact that KOISO was not of the KONOYE
16 political faction, and the fact that he was not on
17 especially intimate terms with the Army is pointed
18 out in exhibit 1278, pages 9-10.

19 Furthermore, contrary to Ott's observation,
20 KOISO withdrew from official life with the fall of
21 the YONAI cabinet, and for two years retired as a
22 private citizen engaged in agriculture (Court exhibit
23 114), and the KONOYE cabinet came in and KOISO being
24 opposed to conclusion of the Tri-Partite Pact; had no
25 expectations of holding cabinet positions therein.

1 Minister, ARITA, the defendant KOISO and others
2 opposed the conclusion of the Tri-Partite Alliance
3 during their tenure of office. Dissatisfaction on
4 the part of the Army, concerning this opposition,
5 caused the cabinet to fall 22 July 1940 and KOISO
6 was obliged to resign (Court exhibits 515, 520, 530,
7 531 and 532, Court record, page 5865-5866).

8 Court exhibit 523, a telegram from Ott to
9 Germany was offered during the Dutch East Indies
10 phase and is inconsistent, for at said time, KOISO
11 was Minister of Overseas Affairs in the YONAI cabinet,
12 and was told by TOKUGAWA, Yoshitomo, that Ott desired
13 to meet KOISO, although KOISO was not Minister of
14 Foreign Affairs, there was great concern in Japanese
15 Government circles as to the future of Netherlands
16 East Indies and French Indo-China, since they were
17 colonies of Netherlands and France, who had been
18 recently defeated by Germany. (Court exhibits 517,
19 518, 519, 520, 525, 526, 527 and 528). And also
20 because of the supervision of the South Seas Mandated
21 Islands, former German colonies, it was feared con-
22 flict might arise between Japan and Germany in the
23 future. Therefore, having obtained approval of Prime
24 Minister YONAI and Foreign Minister ARITA, to meet Ott
25 and sound out the attitude of Germany, unofficially,

1 a conversation took place, and KOISO pointed out he
2 had no authority to negotiate or responsibility in
3 such diplomatic matters as proposed by Ott. The
4 German Ambassador had many intimate friends in the
5 Japanese Army, as made clear in Court exhibit 498,
6 504, 508, 511, and if the Japanese Army had wanted to
7 sound German attitude concerning such an important
8 military operation in French Indo-China or Netherlands
9 East Indies, they would not have entrusted this to
10 KOISO, as he was not on specially good terms with
11 them, and was not even acquainted with Ott nor could
12 they converse without an interpreter. And, further-
13 more, military operations were outside the scope of
14 KOISO's jurisdiction.

15 The fact that KOISO was not of the KONOYE
16 political faction, and the fact that he was not on
17 especially intimate terms with the Army is pointed
18 out in exhibit 1278, pages 9-10.

19 Furthermore, contrary to Ott's observation,
20 KOISO withdrew from official life with the fall of
21 the YONAI cabinet, and for two years retired as a
22 private citizen engaged in agriculture (Court exhibit
23 114), and the KONOYE cabinet came in and KOISO being
24 opposed to conclusion of the Tri-Partite Pact, had no
25 expectations of holding cabinet positions therein.

1 Ott's reason for meeting KOISO who was opposed to the
2 Tri-Partite Pact in the anti-alliance YONAI and ARITA
3 cabinets is not clear and his telegram following
4 said meetings may have been calculated only to impress
5 his government with his efforts (Court record, page
6 5860, lines 4-16).

7 Furthermore, KOISO did not attend any of
8 the Imperial or liaison conferences or cabinet
9 meeting listed in Appendix E of the Indictment.
10 Therefore, the evidence of the prosecution has not
11 indicated that Counts 4, 5, 7, 8, 9, 10, 11, 12, 13,
12 14, 15, 16 or 17 implicate defendant KOISO. Wherefore,
13 we move their dismissal on behalf of KOISO.

14 We submit that the portion of Court exhibit
15 730 tendered by the Soviet prosecutor, dealing with
16 the defendant KOISO is inconsistent with the fact
17 that KOISO was Chief of Staff of the Kwantung Army
18 from 8 August 1932 to 5 March 1934, and Minister of
19 Overseas Affairs from 7 April to 30 August 1939, and
20 since the witness was executed in Soviet Russia and
21 the right to cross-examination was thereby prevented,
22 the probative value and consideration of this document,
23 under the circumstances, is dubious. Court exhibit
24 668 is contrary to fact and absurd in stating that
25 KOISO issued Education Ministry instruction. This

1 witness was also executed and cross-examination
2 prevented thereby. The incident between Japanese
3 and Soviet troops in the Khalhin-gol River area occurred
4 when KOISO was Minister of Overseas Affairs in the
5 HIRANUMA cabinet. The evidence shows this to be a
6 local incident over an undefined boundary line and
7 was settled among Japan, Manchukuo, Mongolia and the
8 Soviet Union, without the fighting spreading outside
9 the area in question. Moreover, the movement of
10 armed forces in areas outside Japan is under the
11 jurisdiction of the Army General Staff and not under
12 the jurisdiction of the cabinet, as is clear by the
13 testimony of various witnesses (Court record, pages
14 1623, 1389, 1392, etc.).

15 We submit that when defendant KOISO occupied
16 the post of Prime Minister during the Pacific War,
17 22 July 1944 to 7 April 1945, this war had already
18 been initiated and was being waged by the TOJO cabinet,
19 and on the fall of said cabinet, because this military
20 situation could not be left to itself, on recommenda-
21 tion of senior statesmen, after investigation of
22 KOISO's past record, KOISO was commanded by the
23 Emperor to form a cabinet in cooperation with admiral
24 YONAI, and to devote their efforts toward saving their
25 country. (Court exhibit 1279).

1 These were the circumstances of KOISO's
2 undertaking the Premiership, and it was not as a
3 result of any request by the TOJO cabinet to take
4 charge of the situation, and KOISO's activity and
5 duties of said office were understood to follow the
6 Imperial Rescript, issued on 8 December 1941 (Court
7 exhibit 1240), proclaiming this to be a legitimate
8 war of self-defense in the exercise of the exclusive
9 sovereign rights to take defensive measures.

10 Therefore, KOISO, as a citizen of this
11 country, and unrelated in any way with planning,
12 preparing or initiating this war, had no alternative
13 but to place reliance and trust on said declaration,
14 and in doing so, had no knowledge that he was com-
15 mitting any unlawful act. The prosecution's evidence
16 does not prove or indicate that KOISO had knowledge
17 that this was an illegal war as alleged, and, we sub-
18 mit that KOISO cannot be regarded as having waged an
19 illegal war merely on the ground that he assisted in
20 conducting affairs of state as Prime Minister. KOISO,
21 by reason of his office as Premier, in accordance
22 with regulations previously passed, unavoidably became
23 president of the I.R.A.A. which was originally a public
24 organization for carrying out the ways of the subject,
25 (Court exhibit 167, 168, Court record page 1643 and

1 1946) and it was not an organization such as the
2 Nazi Party, and did not have any political platform
3 advocating aggressive war; moreover, actual leader-
4 ship was entrusted to the Vice-President, a minister
5 without portfolio (Court record, page 637).

6 The Administrative Speech delivered in the
7 Imperial Diet (Court exhibit 829) is what would be
8 expected in the speech of any war time premier and
9 it is clear that similar to a platform of a political
10 party this cannot be taken to mean the waging of an
11 illegal war--as discussed in the Nuernberg decision.

12 Wherefore defendant moves to dismiss the
13 balance of counts in Group I, that is: Counts No.
14 4, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 26, 29,
15 30, 31, 32, 34 and 36.

16 We submit that in relation to the counts
17 under Group II -- murder, and Group III -- conventional
18 war crimes and crimes against humanity, the prosecution
19 has failed to establish the proof in any way of the
20 existence of facts as related to the accused KOISO
21 as charged in counts thereof. Moreover, since the
22 movement of armed forces outside of Japan come primarily
23 under the jurisdiction of the Supreme Command, and are
24 controlled exclusively by the Chiefs of the General
25 Staff, the responsibility thereof has no connection

1 with any office held by KOISO during said time.

2 Furthermore, prisoners of war outside of
3 Japan are the responsibility of the Commander in
4 Chief of the Army in the field, where as the Commander
5 in Chief of the respective place concerned is respon-
6 sible for executing the policy for the treatment of
7 prisoners of war in Japan proper. Anyone outside
8 of the Army, even the Prime Minister, has no authority
9 to intervene in these matters, and no responsibility
10 in connection therewith. Moreover, the Prime Minister
11 has no authority to punish or prevent illegal acts in
12 the Army (Court record, page 575, 586, 588, 594, 595,
13 596, 597, 599, 600, 601, 1389, 1392, 1862, and Court
14 exhibit 68, 70, 74, 75, 78, 79, 80 and 92).

15 Also, Court exhibit 114 makes clear that
16 defendant KOISO never filled the post of Minister of
17 War, Chief of the General Staff, or Commander in Chief
18 of any front line armies, and was not in the service
19 of the army after 29 July 1938.

20 Furthermore, protests by foreign countries
21 concerning treatment of prisoners of war were as a
22 matter of routine transferred by the Foreign Office
23 to certain prisoner of war administration offices
24 under the Ministry of War, where such matters were
25 forwarded to the respective commander in the field

1 responsible for supervising and reporting as to pris-
2 oners of war and other internees. None of this
3 information whatever thereanent was forwarded to
4 the Prime Minister (Court exhibit 2170, 2174, Court
5 record, last line--page 14286 and page 14287; also
6 testimony of Tadakatsu SUZUKI in afternoon session of
7 the Court, 17 January 1947).

8 Whereas, the accused KOISO, as stated
9 above, does not fall under any of the crimes against
10 peace in Group I, it would be quite clear that there
11 is no basis for any charge in relation to the counts
12 relating to crimes of murder in Group II, or conven-
13 tional war crimes and crimes against humanity in
14 Group III. Wherein, counsel moves to dismiss Counts
15 44, 48, 49, 50, 51, 53, 54 and 55.

16 The defendant KOISO voluntarily presented
17 himself to the authorities for trial and thereafter
18 pleaded not guilty at the time of arraignment and
19 cooperated by way of interrogatory to place the truth
20 before this Tribunal so that his actions might be
21 judged in the light of the circumstances as set out
22 above and his name be cleared of any implication
23 that he was knowingly a participant in any dishonor-
24 able act or guilty of malicious or unlawful intentions
25 in carrying out his obligations in behalf of his native

1 land and since the sands of time are running short in
2 his life and because he has been deprived of liberty
3 in Sugamo Prison more than a year, counsel confidently
4 and most earnestly requests the Tribunal, and firmly
5 believes that your Excellencies, Mr. President and
6 Members of the Tribunal, all of whom have deep
7 understanding concerning such matters, after solemn
8 deliberation and reflection, setting aside the
9 prejudices and passions aroused by the holocaust of
10 war, will understand and discern the difference
11 between loyal devotion to duty, however mistaken,
12 as distinguished from guilty knowledge and malicious
13 intention to commit evil, and for the reason that
14 there has been a total failure on the part of the
15 prosecution to offer any substantial evidence to
16 support any of the counts of the Indictment against
17 said defendant will enter an order dismissing the
18 Indictment as against Mr. KOISO and summarily order
19 his discharge from custody.

20 All of which is most respectfully submitted.
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1 THE PRESIDENT: Mr. Mattice.

2 MR. MATTICE: May it please the Tribunal,
3 omitting the caption and the signatures:

4 COMES NOW the accused MATSUI, Iwane, and moves
5 this Tribunal to dismiss the Indictment herein as to
6 him, for the reason and upon the ground that the
7 evidence adduced by the prosecution is insufficient
8 to justify a conviction.

9 Inasmuch as the accused MATSUI is not charged
10 in all of the Counts of the Indictment this memorandum
11 will be directed first to the various counts for the
12 purposes of clarity.

13 1. The evidence is insufficient to connect
14 the accused MATSUI with the charges contained in
15 Counts 1, 2, 3, 4 and 5 to the effect that he with others
16 participated in the formulation or execution of a plan,
17 the object of which is as stated in each of the Counts.
18 The evidence thus far adduced shows that the accused
19 MATSUI was called out of retirement and appointed
20 Commander of the Shanghai Expeditionary Forces on 15
21 August 1937 and that he was relieved of his post in
22 February 1938. Nowhere else in all of the evidence
23 adduced in this case does MATSUI appear. The military
24 actions in China had commenced and had been under way
25 for a long period of time before MATSUI was appointed

1 as aforesaid.

2 2. There is not sufficient evidence to warrant
3 his conviction in charges 6, 7, 8, 9, 10, 11, 12, 13,
4 14, 15, 16 and 17, where he is charged with others as
5 planning a war of aggression and a war in violation
6 of International Law, treaties, agreements and assurances
7 against countries named in those Counts.

8 3. He is not charged in Count 18.

9 4. In Count 19 he is charged with others in
10 having initiated a war of aggression and in violation
11 of International Law against China. The evidence adduced
12 shows that the military actions in China had been
13 commenced and had continued for a long period of time
14 before MATSUI had any connection with it.

15 5. MATSUI is not charged in Counts 20, 21,
16 22 and 23, and in addition to what was stated in this
17 motion it should be stated that he is also not charged
18 in Count 24 and by reason thereof lines 1 and 2 of
19 paragraph No. 6 should be deleted so that paragraph
20 6 will read as follows:

21 6. In Count 25 initiating war against Russia,
22 and in Count 26 initiating war against Mongolian Peoples
23 Republic. In Counts 27, 28, 29, 30, 31 and 32 with
24 having waged war against the countries named in these
25 Counts. It is submitted that there is no substantial

1 evidence to justify the conviction of the accused
2 MATSUI on those specifications.

3 7. He is not charged in Count 33.

4 8. In Count 34 he is charged again with others
5 with having waged war against Thailand. In Count 35
6 against Russia and in Count 36 against the Mongolian
7 Peoples Republic and the Russians. To sustain these
8 charges, as to the accused MATSUI, there is not sufficient
9 evidence.

10 9. He is not charged in Counts 37, 38, 39,
11 40, 41, 42 and 43.

12 10. In Count 44 he is charged with others
13 with participating in the formulation of a plan to
14 procure and permit murder of Prisoners of War and
15 civilians. It is submitted that there is no evidence
16 to sustain these charges against the accused MATSUI.

17 11. In Count 45 he is charged with others
18 in unlawfully ordering, causing and permitting an
19 attack on the city of Nanking in breach of treaties,
20 and to kill and murder thousands of civilians and
21 disarmed soldiers of China. It is submitted that there
22 is no evidence in the record establishing beyond a
23 reasonable doubt that MATSUI either ordered, caused or
24 permitted the attack on Nanking, or that he either
25 ordered, caused, permitted or even had knowledge of

1 the killing of thousands of civilians and disarmed
2 soldiers in China. The attack on Nanking by Japanese
3 forces, was, of course, not an action which the accused
4 MATSUI initiated, as is shown by the evidence. The
5 attack was ordered by the Headquarters of the Japanese
6 Army in Tokyo. As Commander of the Japanese Forces the
7 accused simply carried out such orders. As will be
8 more fully set out subsequently in this memorandum,
9 there is no evidence to show that the accused MATSUI
10 had any culpable part in any killing or murder of
11 civilians or disarmed soldiers of China.

12 12. By reason of an error in the date this is
13 in addition to what is taken in the motion. By reason
14 of an error in the date named in line 3, paragraph 12
15 has been amended and the correction or amended paragraph
16 12 has been mimeographed and is being distributed --The
17 Language Section has been furnished with the correction --
18 so that paragraph 12 will read as follows:

19 In Count 46 the same charge as in Count 45
20 is made against the accused MATSUI with respect to the
21 City of Canton on 21 October 1938 and in Count 46 with
22 respect to the City of Hankow, the date of which is
23 27 October 1938. As to the attack on these cities
24 the evidence does not show that the accused MATSUI
25 had anything whatever to do with those operations.

1 At the said time the accused MATSUI had resigned
2 from his post as Commander of the Middle China
3 Expeditionary Force and was living in retirement
4 in Japan.

5 13. He is not charged in Counts 48, 49 and
6 50, but in Count 51, he is charged with others in
7 having ordered, caused and permitted the attack on
8 Mongolia, and Russia in the summer of 1939 and with
9 having unlawfully killed and murdered members of the
10 armed forces of Mongolia and Russia. This likewise
11 was a military operation which occurred after the accused
12 MATSUI retired from the armed forces of Japan and the
13 evidence fails to show that he had any connection with
14 it.

15 15. In Count 52 he is charged with others with
16 having ordered, caused and permitted an attack on
17 Russia and the killing and murder of members of the
18 armed forces of Russia and for the same reason as
19 stated in paragraph 14 above. The evidence is wholly
20 insufficient to justify his conviction.

21 16. In Count 53, Group 3, "Conventional
22 War Crimes" he is charged with others in having partici-
23 pated in the formulation of a plan to order, authorize
24 and permit the Commander-in-Chief of several Japanese
25 Naval and Military forces in each of several theaters

1 of war, and the officials of the Japanese War Ministry,
2 and the persons in charge of each of the Prisoner of
3 War Camps to commit breaches of the Laws and customs
4 of war. It is submitted that there is no evidence to
5 sustain the charge set out in this Count as to the
6 accused MATSUI.

7 17. In Count 54 he is charged with others
8 in having ordered, authorized and permitted the offenses
9 of Count 53 and thereby violated the laws of war.
10 There is no evidence to sustain this charge as to the
11 accused MATSUI.

12 18. In Count 55 he is charged with others
13 during the period 7 December 1941 to 2 September 1945
14 with disregarding their duty to take adequate steps
15 to secure the observance of conventions and assurances
16 and the Laws and Customs of War in the respects described
17 in said Count and thereby violated the laws of war.
18 It is submitted that there is no evidence to sustain
19 this charge as to the accused MATSUI.

20 In connection with the post of Commander of
21 the Shanghai Expeditionary Force held by the accused
22 MATSUI from 15 August 1937 to 30 October 1937 and of
23 the Middle China Expeditionary Force from 30 October
24 1937 to February 1938, it may be noted that so far as
25 the evidence thus far adduced is concerned it shows that

1 the only theater in which action occurred in which his
2 command participated was at Nanking. There is evidence
3 that he was at his Headquarters at Soochow at the time
4 of such attack. How distant from Nanking Soochow was
5 does not appear from the evidence. There is evidence
6 that the accused MATSUI went to Nanking on 17 December
7 1937. This was several days after the attack and taking
8 of the City of Nanking. There is also evidence that
9 after a few days in Nanking the Accused MATSUI returned
10 to Shanghai.

11 Prosecution introduced in evidence exhibit
12 199, titled "Facts of Japanese Aggression in North
13 China" in which Ching Teh-chun, formerly Deputy Commander
14 of the 29th Army, stated that one Chen-Cho Shung had
15 told him that DOHIHARA and MATSUI, Chief of the Japanese
16 Special Service Board in Peiping that the Japanese made
17 certain demands in respect to the building of a rail-
18 road, and revision of the customs.

19 It was developed on cross-examination (record
20 page 2376) that the MATSUI mentioned in exhibit No. 199
21 is not the accused.

22 Prosecution introduced in evidence exhibit
23 257, which was an excerpt from interrogation of the
24 accused MATSUI. It should be noted on page 4 thereof
25 the accused MATSUI directed that discipline be maintained

1 and the punishment of all evil-doers, and also directed
2 a thorough investigation of the Nanking Incident and
3 collaboration with foreign officials and diplomats and
4 this was done. From this interrogation it also appears
5 that the accused MATSUI was in Nanking only from 17
6 December to 24 December, that he met with United States
7 and British Commanders and Admirals, also Italian and
8 French Ambassadors, with view of settling matters in a
9 peaceful manner. It also appears from this page of the
10 interrogation that the accused MATSUI had never commanded
11 troops before this time. On page 5 of this excerpt it
12 appears that Division Commanders were responsible for
13 whatever may have occurred at Nanking, and on page 6
14 it appears that there were court martial proceedings
15 against an officer and some soldiers in regard to charges
16 of rape of Chinese in Nanking, that the officer was
17 executed and the soldiers imprisoned.

18 Prosecution introduced in evidence exhibit 552,
19 titled "Conclusion of Fact between Japan-Germany-Italy".

20 Prosecution introduced in evidence exhibit
21 650, "Minutes on Privy Council Meeting", in regard to
22 Protocol between Japan and France. Also introduced
23 exhibit 660 titled "Investigation Committee of Privy
24 Council on the Treaty between Japan and France",
25 regarding residence, navigation, tariffs and trade.

1 In each of these exhibits the name of one of the
2 Councilors was MATSUI. Attention is called to the
3 fact that there was no evidence identifying the accused
4 MATSUI as the individual mentioned in exhibits 552,
5 650 and 660, and it is not believed that the prosecution
6 will claim that the MATSUI mentioned in those exhibits
7 is the accused.

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1 THE PRESIDENT: In paragraph 15 you refer
2 to paragraph 14.

3 MR. MATTICE: Paragraph 15?

4 THE PRESIDENT: It is pointed out to me
5 there is no paragraph 14. Do you mean 13?

6 MR. MATTICE: I see. No 14 seems to be --
7 there seems to be no No. 14; so the numbers, of
8 course --

9 THE PRESIDENT: You alone know, Mr. Mattice.

10 MR. MATTICE: It should be rearranged.

11 THE PRESIDENT: Should that be 13?

12 MR. MATTICE: No, they seem to follow in
13 sequence. No. 14 is missing between 13 and 15,
14 which here appears. So, of course, the paragraph to
15 which your Honor refers, which is No. 15, would
16 really become No. 14.

17 THE PRESIDENT: Well, read paragraph 15 of
18 your motion, your reasons for it.

19 MR. MATTICE: Yes, your Honor is quite right.
20 It should refer to 13.

21 THE PRESIDENT: Captain Brooks.

22 MR. BROOKS: Now comes MINAMI, Jiro, by his
23 counsel, and respectfully moves the Tribunal to
24 dismiss each and every one of the counts in the
25 Indictment against said defendant on the ground

1 that the evidence offered by the prosecution is not
2 sufficient to warrant a conviction of said defendant.

3 The evidence adduced utterly fails to
4 establish that the accused, MINAMI, Jiro, is guilty
5 as a matter of law of any one of the counts alleged
6 in the Indictment. In order to facilitate the
7 Tribunal's consideration of these special aspects
8 not considered in the general motion in behalf of
9 all defendants, the defendant desires to present
10 this memorandum brief which he respectfully submits
11 is clearly in support of his contentions.

12 We find in Count 1:

13 That all the defendants are charged with
14 participation in the formation or execution of
15 conspiracy to make Japan secure the military, naval,
16 political and economic domination of East Asia of the
17 Pacific and Indian Oceans, and to make her wage
18 declared or undeclared war or wars of aggression and
19 war or wars in violation of international law,
20 treaties, agreements and assurances.

21 Section 1 of Appendix A states:

22 "From January 1, 1928, onwards there was
23 plot in the Japanese Army, and particularly in the
24 Kwantung Army, supported by certain civilians, to
25 create an incident in Manchuria, which should form

1 a pretext for Japan to conquer, occupy and exploit
2 that country as the first step in a scheme of
3 domination which later extended to other parts of
4 China, to the territory of the Union of Soviet
5 Socialist Republics, and ultimately to a wider field,
6 aiming to make Japan a dominant power in the world."

7 That such a plot ever existed was denied
8 by all the witnesses produced to this Tribunal by
9 the prosecution (e. g., WAKASUKI's testimony, C. R.
10 p. 1591). Even the notorious TANAKA Memorial was
11 proved by the prosecution's own evidence to be a
12 fake (see MORISHIMA's testimony, C. R. p. 3098).
13 Grnating for argument's sake; that such a plot
14 had existed somewhere in Japan or in Manchuria,
15 the prosecution failed to connect the defendant
16 MINAMI with it as a leader, organizer, instigator
17 or accomplice thereof. Furthermore, if the so-
18 called October Incident was the plot, then the
19 defendant MINAMI was the one who successfully nipped
20 it in the bud, as ex-Premier WAKATSUKI, testified
21 that in the middle of October, 1931, MINAMI, as War
22 Minister in his Cabinet, arrested the group of hot-
23 blooded young officers involved in said plan, which
24 was to start with the assassination of WAKATSUKI
25 (C. R. pp. 1567-8).

1 Furthermore, Ryukichi TANAKA also testi-
2 fied: "However, on 12 September a cable was re-
3 ceived by the Foreign Minister SHIDEHARA from the
4 Japanese Consul General in Mukden reporting the
5 fact that a company commander of a patrol unit in
6 Fushun had said that within a week a big incident
7 would break out. Foreign Minister SHIDEHARA brought
8 this matter to the attention of the War Minister
9 MINAMI and strongly protested against the report
10 that he had on hand. As a result, the War Minister
11 MINAMI ordered General TATEKAWA to go to Mukden as a
12 special emissary post haste to put a stop to any
13 contemplated action of the Kwantung Army and, in
14 accordance with that order, General TATEKAWA made
15 a hasty trip to Mukden." (C. R. p. 2006).

16 TANAKA further testified that General
17 TATEKAWA told him that General MINAMI, War Minister,
18 had instructed TATEKAWA to stop any such incident at
19 all costs (C. R. p. 2006).
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1 Furthermore, SHIDEHARA, the Foreign Minister
2 above mentioned, testified that General MINAMI, far
3 from opposing SHIDEHARA, was in complete agreement
4 with his views (Court record, page 1385). Baron
5 WAKATSUKI, the Prime Minister at that time, also
6 testified that MINAMI was opposed to the spreading of
7 the warfare in Manchuria (Court record, page 1571)
8 and that MINAMI at Cabinet meetings never raised any
9 objection to policies decided by the Cabinet. (Court
10 record, page 1583.)

11 Furthermore, Mr. Hammock, 17th June, 1946,
12 stated in opening, that they would prove the Cabinet
13 of Baron WAKATSUKI, Premier from April 1931 to
14 December 1931, was forced to resign by reason of the
15 actions of the Defendant MINAMI, who was then War
16 Minister. WAKATSUKI however, testified that the
17 collapse of his Cabinet was caused not by any action
18 on the part of War Minister MINAMI, but by the actions
19 of the Home Minister ADACHI. (Court record, page
20 1580.) Baron SHIDEHARA also testified that the
21 WAKATSUKI Cabinet was not forced to resign because
22 of any action of General MINAMI (Court Record, page
23 1376). SHIDEHARA further testified that in spite of
24 all the preventive measures taken by General MINAMI,
25 the Incident continued to develop and to expand.

1 (Court Record, page 1389.)

2 Furthermore, the prosecution's evidence
3 shows MINAMI also resigned in December 1931, and for
4 a full three years was nearly forgotten by the public
5 in an insignificant position in an office which had
6 no special duty assigned to it but to attend a meeting
7 or lectures once or twice a year.

8 Furthermore it was after his resignation
9 that the Manchurian Incident reached its height and
10 the Empire of Manchukuo was created. Would he have
11 been in such a disfavored position during this time
12 if he was a participant of any plan for the forma-
13 tion of that Empire?

14 Furthermore, Court exhibit 286, presented
15 by the prosecution, a telegram from Foreign Minister
16 SHIDEHARA to Consul General KUWASHIMA in Tientsin
17 under the date of November 1st, 1931, shows General
18 MINAMI, and the central military authorities were op-
19 posed to the independence of Manchuria, and to the
20 restoration of the former Emperor Hsuan Tung, i.e.,
21 Pu-Yi. Court exhibit No. 299 a telegraphic instruc-
22 tion of General MINAMI to General HONJO, Commander
23 of the Kwantung Army, warns the latter not to meddle
24 with a new regime movement in Manchuria. Is it not
25

1 obvious that because he tried to enforce the
2 Cabinet's policy to such an extent was the reason he
3 had to resign with the WAKATSUKI Cabinet because
4 they met with the dissatisfaction of public opinion?

5 Referring again to the Indictment Appendix A
6 states: "About 3rd January, 1932, the Japanese
7 forces occupied Chinchow in spite of assurance given
8 by their Foreign Office to the United States on 24th
9 November 1931 that they would not do so."

10 In regard to this matter we refer to Court
11 exhibit No. 190, wherein the U.S. Ambassador Forbes
12 in Tokyo sent a telegram on said date to the Depart-
13 ment of State, informing that the Japanese Prime
14 Minister, War Minister, Foreign Minister and the
15 Chief of General Staff were all in full accord that
16 hostile operations should not be extended to Chinchow,
17 and that orders had been issued to that effect.

18 Furthermore, the Lytton Report, introduced
19 by the prosecution, sets out on page 77 that the
20 Japanese Army withdrew from the neighborhood of Chin-
21 chow to Shinmin, to the great surprise of the
22 Chinese side, on 28th November. These facts clearly
23 show that, while General MINAMI was in office, i.e.,
24 up to the 10th December, 1931), that said assurance
25 given to Ambassador Forbes was faithfully observed.

1 Furthermore, the prosecution's own evidence
2 shows that the power of the War Minister in the
3 Japanese Government was very much limited compared
4 with that of other countries, and that in Japan,
5 matters concerning military operation, and of ex-
6 peditionary forces came under the jurisdiction of the
7 Chief of General Staff who had direct access to the
8 throne in such matters. Mr. Horwitz, in his opening
9 statement, June 14, 1946, discussed these matters as
10 follows:

11 "According to the Constitution, the Emperor has
12 the following powers with respect to the armed services:
13 Article XI. The Emperor has the supreme command of
14 the Army and Navy.

15 Article XII. The Emperor determines the organization
16 and peace standing of the Army.

17 Based on these two articles, the Imperial pre-
18 rogative over military affairs has in practice been
19 divided into the prerogative over the supreme command
20 and the prerogative over the administration of the
21 armed forces. The former covers the power of using
22 the armed forces for the protection of the State from
23 attack from both without and within, and the powers
24 directly relating to military operations. The latter
25 includes the organization of divisions and of fleets,

1 and all matters relating to military districts and sub-
2 districts, to the storing up and distribution of
3 arms, to education, inspections, discipline, modes
4 of salute, uniforms, guards, fortifications, naval
5 defenses, preparation for expeditions and fixing the
6 annual number of recruits. This division has been
7 constantly maintained since the cabinet system was
8 started in 1885. In the exercise of the former power,
9 that of the supreme command, the Emperor does not
10 exercise it through the cabinet...." (C.R. p.p.
11 667-669).

12 Thereafter, Mr. Horwitz states that such
13 power of supreme command was exercised through the
14 Minister of War, the Minister of Navy, the Chiefs of
15 the General Staff and the Chief Aide-de-camp to the
16 Emperor (C.R. P. 669). This is in contradiction to
17 the previous statement and is a mistaken inter-
18 pretation of the distinct separation of the two
19 powers, i.e., the power of supreme command and the
20 power of military administration. The prosecution's
21 evidence if studied will show who should be res-
22 ponsible for the former and who for the latter, and
23 that the former was exercised through the chief of
24 the General Staff, and the latter through Ministers
25 of War and Navy. In other words, the Minister of War

1 was not responsible for matters of supreme command,
2 but dealt with administrative personnel and budget
3 problems as a member of the Cabinet. Reference to
4 Court exhibit No. 188-B, ARAKI's interrogations, as
5 offered by the prosecution, states: "After a policy
6 has been decided by the Government, orders for
7 operations would be issued by the Chief of General
8 Staff. The War Minister has no right to issue orders
9 in connection with operations." (C.R. p. 2220).

10 Furthermore, General UGAKI, called as a wit-
11 ness on behalf of the prosecution, testified: "The
12 military movements and actions overseas come under
13 the command of the Chief of Staff." (C.R. p. 1620).
14 Furthermore, Baron WAKATSUKI testified to the same
15 effect. (C.R. p. 1584).

16 Furthermore, Brigadier Nolan, in his state-
17 ment, June 13th, 1946, quoted Prince ITO's interpre-
18 tation of the Japanese Constitution as follows:

19 "The exercise of the right of warfare in the
20 field - as the exigency of circumstances may require,
21 may be entrusted to the commanding officer of the
22 place, who is allowed to take such actual steps as
23 his discretion dictates, and then report to the govern-
24 ment. This is to be regarded as a delegation of
25 sovereign power to a general in command of an army

1 in order to meet the stress of emergencies."

2 (C.R. p. 586).

3 Therefore, the prosecution's evidence shows
4 that the War Minister had no power or right to order
5 the commanding officer of the field to obey his
6 desire. All he could do as a Cabinet Minister was
7 to advise and negotiate through the Chief of General
8 Staff and make his advice or requests known in-
9 directly to the army on the spot. In view of this
10 restriction on the power of the War Minister and in
11 consideration of what he had actually done to make
12 known the policy of the Cabinet, we must admit that
13 MINAMI excelled any of his predecessors or successors
14 in an effort to control out-post garrisons at such a
15 time of intermingling crisis and emergency.

16 THE PRESIDENT: We will recess for fifteen
17 minutes.

18 (Whereupon, at 1045, a recess was
19 taken until 1100, after which the proceedings
20 were resumed, as follows):
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1 THE MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now resumed.

3 THE PRESIDENT: Captain Brooks.

4 MR. BROOKS: Resuming reading, if the
5 Tribunal please, in the center of page 6:

6 The prosecution presented as evidence
7 (court exhibit No. 186) an excerpt from an article
8 in the Japan Times dated August 6, 1931, "to prove
9 that MINAMI was in sympathy with the ultimate ob-
10 jective of the army in Manchuria." (Court record
11 page 2205.) Mr. Hyder read this excerpt as follows:

12 "Some other observers, without studying
13 the conditions of neighboring foreign countries,
14 hastily advocate limitation of armaments and engage
15 in propoganda unfavorable for the nation and the
16 army." (Court record page 2209.) "Manchuria and
17 Mongolia are very closely related to our country
18 from the viewpoint of our national defense as well
19 as of politics and economics. It is to be regretted
20 that the recent situation in that part of China
21 is following a trend unfavorable to our empire.
22 The recent ascendancy of anti-foreign agitation
23 and new economic power in China, are responsible
24 for such a tendency, which is a phenomenon of
25 permanent duration instead of being a passing one.

1 In view of such a situation, I hope you will exe-
2 cute your duty in educating and training the troops
3 with enthusiasm and sincerity, so that you may
4 serve the cause of His Majesty to perfection."

5 (Court record pages 2209, 2210.)

6 What is wrong with this speech? It was
7 delivered at an anniversary meeting of division
8 commanders. Is it, as was called by Mr. Hyder, "the
9 dissemination of expansionist propaganda to the
10 divisional officers by the accused General MINAMI"?
11 (Court record page 2193.) Is it not customary for
12 a war minister to instruct the officers to educate
13 and train their troops with enthusiasm and sin-
14 cerity? Is it not customary for a war minister to
15 admonish hasty propagandists for armament limitation
16 who do not take into consideration the conditions
17 of neighboring countries and was it not proper to
18 point out the seriousness of the Manchurian question
19 from the viewpoint of national defense? Was MINAMI's
20 speech any different than the commonplace, ordinary
21 and matter-of-fact speech that would have been made
22 by any minister of war on such an occasion and
23 under like circumstances? We contend that the prose-
24 cution's evidence does not show sympathy with the
25 army in Manchuria nor any dissemination of expansion-

1 ist propaganda.

2 Furthermore, the defendant MINAMI, after
3 three years' silence as hereinbefore mentioned,
4 was thereafter appointed Commander of the Kwantung
5 Army and concurrently Ambassador to Manchukuo
6 December 1934. What made him come back to such a
7 post with which he had such painful experiences
8 three years before? The answer may be found in the
9 testimony of Ryukichi TANAKA:

10 "I think General MINAMI was appointed be-
11 cause of his very amiable character and his
12 administrative ability. By speaking of General
13 MINAMI's administrative ability, I am referring to
14 the fact that there was a big job to be done, since
15 Manchuria at that time was a hotbed of many disputes,
16 especially between the police and the military
17 police, and because banditry was still widespread,
18 and his job was to restore peace and order, (cor-
19 rection by Monitor: because it was right after
20 the time when there was an open clash between civil
21 police and military police, and also because of
22 guerrillas and bandits the situation was in chaos)."
23 (Court record page 2140.)

24 In studying this matter, the attention of
25 the Tribunal is called to the evidence that, when

1 MINAMI served as war minister in 1931, he served
2 in the Cabinet formed by the MINSEITO Party, one
3 of the two great political parties at that time;
4 and that after the fall of the cabinet and simul-
5 taneous resignation of MINAMI in December of that
6 year, the SEIYUKAI Party took power lasting until
7 May 1932. On the assassination of the Premier
8 INUKAI, a new cabinet was formed under Admiral SAITO,
9 who was a non-partisan man. This super-party cabinet
10 was succeeded by Admiral OKADA in July 1934, who was
11 also disconnected with any party. Court exhibit
12 No. 175 is cited, in which Admiral OKADA stated:

13 "The SAITO Cabinet which came into office
14 in May of 1932, in which, as previously stated, I
15 was Minister of the Navy, and my cabinet, which
16 came into office in July of 1934, were known in
17 government and army circles as 'Navy Cabinet.'
18 The army resented both of these cabinets, because
19 it recognized in them navy influence in opposition
20 to the army policy of the use of force in connection
21 with the expansion of Japanese influence in Asia."
22 (Court record pages 1823, 1824.)

23 During cross-examination, OKADA testified
24 that the administrative policy of his cabinet was
25 the control or supervision of the military, the

1 economy of expenditures, and relief to the farming
2 population. (Court record page 1886.) Was it
3 then a mere coincidence that MINAMI, who had once
4 tried to keep the military within bounds, was again
5 chosen by the OKADA Cabinet to continue and accomplish
6 the difficult task, on the spot?

7 Furthermore, Ryukichi TANAKA testified
8 that immediately after General MINAMI's arrival to
9 take over the post of Commander-in-Chief, he
10 abolished the special service department in order
11 to remove the evils of the practice of meddling in
12 politics, inasmuch as he felt that it would lead to
13 the corruption of the army itself. TANAKA stated
14 also that MINAMI took the first decisive step toward
15 the abolition of extraterritoriality in Manchuria
16 and the transfer of the administrative rights of
17 the South Manchurian Railway Zone. (Court record
18 page 2118.) TANAKA emphatically denied that he had
19 any recollection whatsoever of having ever testified
20 to Prosecutor Sackett that General MINAMI was an
21 instigator of aggressive action. (Court record
22 page 2140.)

23 Mr. Darcey in his opening statement July 1,
24 1946, said he would prove that General MINAMI,
25 Commander-in-Chief of the Kwantung Army, General

1 UMEZU, Commander-in-Chief of the Tientsin Army,
2 and Colonel DOHIHARA cooperated in an effort to
3 establish an autonomous area in the provinces of
4 North China for the purpose of extending and
5 strengthening the military, political, and economic
6 domination of Japan in China.

7 In reference to this, court exhibit No.
8 211, an official document of the Chinese govern-
9 ment, is cited:

10 "The Kuomintang Government despatched its
11 War Minister, General Ho Ying-Chin to the north.
12 As a result of his conference with General Sung Cheh-
13 Yuan and General Han Fu-Chu, the Hopei-Chahar
14 Political Council was established as an organ to
15 manage the administration of North China. General
16 Sung Cheh-Yuan was appointed as its chairman and
17 assumed the office on December 18, 1935. This
18 institution, while being under the supervision of
19 the Kuomintang Government, is a new political organ
20 which has in its hand the power to negotiate with
21 Japan and Manchukuo for the maintenance of amiable
22 relations with them." (Court record page 2704.)

23
24 On cross-examination, Chinese General Ching
25 Teh-Chun replied that probably there was such a fact
that General Sung Cheh-Yuan very greatly welcomed

1 the establishment of the Hopei-Chahar Political
2 Council and that he had given voice to the principle
3 of respecting the will of the people and the main-
4 tenance of harmony between Japan and China. (Court
5 record page 2367, 2368.) He admitted also that the
6 complex interests possessed by Japan in North China
7 far exceeded those of other nations there (court
8 record page 2473), and that on 10 June 1935,
9 Generalissimo Chiang Kai-Shek issued an executive
10 order for amicable relations between two neighboring
11 countries, namely, between China and Japan. (Court
12 record page 2480.) "The purpose of this order,"
13 Ching Teh-Chun explained, "was to admonish the people
14 as a whole, as well as the Chinese army, to respect
15 and be friends with neighbor countries." (Court
16 record page 2480.)

17 From this evidence, it is clearly indicated
18 that unprecedented relations of friendship existed
19 between China and Japan in 1935 and 1936, the period
20 in which the defendant MINAMI was the Chief of the
21 Kwantung Army. It must be pointed out, moreover,
22 that, according to court exhibit No. 215 (item 5 of
23 the gist of plans in the instruction to the commander
24 of the stationary troops in China from the General
25 Staff in Tokyo under date of 13 January 1936), the

1 management of matters concerning North China was
2 definitely assigned to the duty of the Commander
3 of the Japanese stationary troops in China and did
4 not belong to the jurisdiction of the Commander of
5 the Kwantung Army. In line with this, Ryukichi
6 TANAKA testified that he had seen the instruction
7 of December 31, 1935, from the central authorities
8 to the Chief of Staff of the Kwantung Army, to
9 transfer General DOHIHARA from the Kwantung Army
10 to the North China Army. The reason for such transfer,
11 according to witness TANAKA, was that Major-General
12 TADA, head of the North China garrison forces,
13 protested to the coming of DOHIHARA, unless DOHIHARA
14 was put under TADA's command. (Court record pages
15 2125, 2126.) It is, therefore, obvious that MINAMI's
16 authority as Commander of the Kwantung Army did not
17 extend to North China. Furthermore, he resigned
18 from said office of commander and was retired from
19 the active list in March 1936.

20 As to Section 2 (Military Aggression in the
21 Rest of China) of appendix A, there is no need to
22 mention the disconnection of MINAMI, as he was only
23 a civil governor in Korea at the period of the so-
24 called China Incident.

25 As to Section 3 (Economic Aggression in

1 China and Greater East Asia), it is maintained by
2 the prosecution: "During the period covered by
3 this Indictment, Japan established a general super-
4 iority of rights in favor of her own nationals,
5 which effectively created monopolies in commercial,
6 industrial and financial enterprises, first in
7 Manchuria and later in other parts of China, etc."

8 In reference to this, it has already been
9 pointed out above that MINAMI was the one who took
10 the first step for abolition of Japanese special
11 rights and interests in Manchuria, and said alle-
12 gation of the prosecution, in this section, in
13 relation to MINAMI, is not borne out by their evidence.

14 There was not the slightest evidence con-
15 necting MINAMI with the charges set forth in the
16 remaining section.

17 Section 4 (Methods of Corruption and Coercion
18 in China and Other Occupied Territories, in par-
19 ticular, secret transaction in opium and other
20 narcotics). Section 5 (General Preparation for War),
21 Section 6 (The Organization of Japanese Politics and
22 Public Opinion for War), Section 7 (Collaboration
23 between Japan, Germany and Italy, Aggression against
24 French Indo-China and Thailand), Section 8 (Aggression
25 against the Soviet Union), Section 9 (Japan, the

1 United States of America, the Commonwealth of the
2 Philippines and the British Commonwealth of Nations),
3 and Section 10 (Japan, the Kingdom of the Nether-
4 lands and the Republic of Portugal).

5 The prosecution's evidence shows that
6 MINAMI did not take part in any of the Imperial
7 conferences or liaison conferences of 1941 but
8 that MINAMI was Governor of Korea from August 1936
9 to May 1942, when he was appointed a member of the
10 Privy Council. The fact that the Privy Council
11 was simply and purely an advisory board without
12 any executive power was made clear to the Tribunal,
13 in the prosecution's evidence on the departments
14 of the Japanese government. The appointment of
15 the defendant MINAMI was due to his resignation from
16 the governorship of Korea on account of being deaf.
17 MINAMI never spoke at meetings of the Privy Council,
18 because of the difficulty in hearing, except on one
19 occasion in 1943 when the Great East Asia Ministry
20 was proposed to be set up, and then his only remark
21 was that he was opposed to the proposition.
22

23 Finally in March 1945, when Japan was
24 on the verge of collapse under the burden of a titanic
25 war, MINAMI despite his age and infirmity was re-
quested to take the chair of a society called the

1 Political Association of Great Japan, where he exerted
2 his last effort to control the military and save
3 the country from ruin. The prosecution never men-
4 tioned this political party, except in his life record
5 attached to the Indictment. It must not be overlooked,
6 however, that this society was entirely different
7 from the Imperial Rules Assistance Association and
8 that under his leadership or perhaps because of his
9 leadership, the Japanese people, as distinguished from
10 the government, accepted the Potsdam Declaration in
11 such a calm and peaceful manner without great
12 internal dissention.

13 THE PRESIDENT: We are assuming that these
14 motions are based on the evidence that we already
15 have and not on evidence that you propose to give.
16 One gets the impression, perhaps wrongly, that you
17 are at times projecting yourself into evidence to
18 be given by the defense later. However, proceed.

19 MR. BROOKS: If the Court please, I think
20 that a check on the references given will bear out
21 the points I have in mind, although in one or two
22 instances we have more or less previewed what we
23 thought was coming in, and if it does not have pro-
24 bative value the Court can of course disregard it.

25 While we are digressing, if the Court

1 please, I might also point out that in relation to
2 the opium problem that was brought out you will
3 recall the testimony of witness TANAKA that MINAMI
4 was responsible for the change in that.
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1 Count 2 of the Indictment refers to a cons-
2 piracy to wage war against the Republic of China
3 for the purpose of securing for Japan the military,
4 naval, political and economic domination of the
5 provinces of Liaoning, Kirin, Heilungkiang and Jehol,
6 either directly or by establishing a separate state
7 under the control of Japan.

8 As already set out herein, all the evidence
9 produced by the prosecution establishes that MINAMI
10 during the time he was War Minister, supported the
11 cabinet policy to localize the conflict and prevent
12 its expansion, but under the circumstances, it was
13 humanly impossible for him to succeed in this task.
14 As Baron WAKATSUKI testified, it was a sad truth that
15 the Manchurian Incident continued to spread in spite
16 of the unanimous efforts of his cabinet. (Court Record
17 page 1575.) The fact that MINAMI was opposed to the
18 establishment of a new regime in Manchuria has also
19 been clearly indicated heretofore by the prosecution's
20 evidence. Thus he incurred the disfavor of the public
21 and kept an obscure post for three full years. Had
22 he participated in the Manchurian Incident or fostered
23 the establishment of Manchukuo, he would have been
24 acclaimed by the jingoists, and also have received a
25 title of baron, at least, as was bestowed by the

1 Emperor in the case of General HONJO.

2 When MINAMI was appointed in 1934 as
3 Commander of the Kwantung Army and concurrently
4 Ambassador to Manchukuo under the circumstances of
5 which we discussed above, the independence of Manchu-
6 kuo had already been recognized by Japan, by the
7 Pope, the Republic of Salvador and the Republic of
8 Dominica, and the Kwantung Army was stationed in
9 Manchukuo by virtue of the Japan-Manchukuo Treaty of
10 September 15, 1932. He was the third ambassador to
11 the court of Manchu, after Marshal MUTO and General
12 HISHIKARI. Soviet Russia sent her consuls to Manchu-
13 kuo, concluded agreements for the sale of railways,
14 and settled waterway and border questions. Even the
15 Republic of China made various agreements with Man-
16 chukuo, such as postal, telegraphic, traffic and
17 customs affairs. Never were the relations between
18 China and Japan better than at that time, exchanging
19 declarations of amity and promoting their legations
20 to the status of embassies. Ryukichi TANAKA testified
21 that the policy of the Japanese Government toward
22 Manchukuo had been fixed when MINAMI went to Manchuria,
23 and that it could not have been changed or modified by
24 MINAMI's single authority. (Court Record pages 2114-5)

25 In this connection, TANAKA stated:

1 "The Kwantung Army exercised the authority
2 of inner guidance over Manchukuo by virtue of the
3 Japan-Manchukuo Treaty. This treaty being concluded
4 by the Japanese Government, it goes without saying
5 that this authority was conferred upon the Kwantung
6 Army by the Japanese Government." (Court Record
7 page 2174)

8 TANAKA also stated:

9 "There is a very great difference between
10 interference and inner guidance. It is natural not
11 to interfere. But as to pulling the strings, as it
12 were, that is a separate question." (Court Record
13 pages 2115-6)

14 Even by the interpretation of a hostile
15 witness, the inner guidance or the pulling of strings
16 by Japan does not mean interference with the indepen-
17 dent status of Manchukuo. In fact, there are many
18 countries in the present world which are perfectly
19 independent but placed under some sort of guidance by
20 foreign states. For instance, we do not doubt the
21 independence of the Republic of China, in spite of
22 our common presumption that the United States and
23 U.S.S.R. are both pulling strings in regard to her
24 inner politics. When the defendant MINAMI took the
25 new post in Manchukuo, he believed that it was an

1 independent country in law and in fact, and that it
2 was his duty as per the command of the Emperor to
3 protect Japanese life and property rights therein. In
4 the testimony of Ryukichi TANAKA, we can see a glimpse
5 of MINAMI's attitude toward Manchukuo, and, inciden-
6 tally, toward Mongolia. TANAKA testified that the
7 treaty of July 1935 between Manchukuo and the Inner
8 Mongolian Autonomous Government was concluded between
9 the two parties on an equal footing, not by the
10 demands of the Kwantung Army, but by the earnest desire
11 on the part of Prince Teh himself. (Court Record
12 page 2042)

13 TANAKA testified also that MINAMI flatly
14 refused TANAKA's request in 1944 to strengthen the
15 said autonomous government by establishing a Mongolian
16 Society. (Court Record pages 2143-4.) Why did MINAMI
17 decline to become the president of a society for the
18 promotion of the independence of Inner Mongolia? The
19 evidence does not show he was conspiring to create a
20 separate state or states under the control of Japan,
21 as alleged in Counts 2 and 3 of the Indictment, but
22 it does show that MINAMI was neither an empire-builder
23 nor a state-maker.

24 Count 3 has been generally covered in the
25 above discourse. Luring MINAMI's tenure of office

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1 "I have no recollection whatsoever of having
2 ever testified to Prosecutor Sackett that General
3 MINAMI was an instigator of aggressive action."

4 (Court Record page 2140)

5 We shall not be able to understand these
6 words of the witness, unless we call the charge false
7 which alleges MINAMI a conspirator to wage war against
8 the Republic of China for the purpose of dominating
9 her either directly or by establishing a separate state
10 or states under control of Japan.

11 In Count 4, the prosecution charges a
12 conspiracy to wage war against the United States of
13 America, the British Commonwealth of Nations, the
14 Republic of France, the Kingdom of the Netherlands,
15 the Republic of China, the Republic of Portugal, the
16 Kingdom of Thailand, the Commonwealth of the Philippines,
17 and the U.S.S.R. for the purpose of dominating East
18 Asia and the Pacific and Indian Oceans.

19 The prosecution's evidence does not connect
20 MINAMI with this formidable charge. Their evidence
21 shows that when the Pacific war was started, MINAMI
22 was the Governor of Korea and had been a resident in
23 Seoul since August 1936. The evidence does not show
24 that he was summoned to Tokyo to be present at any
25 of the Imperial or liaison conferences of the

1 government or of general headquarters to discuss the
2 prcs and cons of the war, nor even that he had any
3 information that such a war was contemplated in Tokyo.

4 In Count 5, the prosecution charges a
5 conspiracy to wage war against the whole world by
6 mutual assistance of Germany, Italy and Japan, for
7 the purpose of securing for each of the three countries
8 special domination in its own sphere. The prosecution's
9 evidence does not show that MINAMI had hand in this
10 matter. When the Anti-Comintern Pact was signed in
11 November 1937, and when the Tripartite Pact was con-
12 cluded in September 1940, MINAMI was Governor General
13 of Korea, and did not return to Tokyo until May 1942,
14 some time after the outbreak of the war. It should
15 be mentioned in passing that the governmental charts
16 show the Governor of Korea is a civilian official
17 under the jurisdiction of the Ministry of Colonies.
18 (Court Exhibit No. 87)

19 In relation to Count 6, as already stated
20 above the prosecution has failed to show by the evi-
21 dence that MINAMI ever planned or prepared a war against
22 the Republic of China, but their evidence does show
23 that he was strongly opposed to any measure or action
24 that might lead to such a war, and was never in a
25 position where he could be said to be responsible for

1 any action causing such war.

2 In relation to Counts 7, 8, 9, 10, 11, 12,
3 13, 14, 15, 16 and 17, the prosecution has failed to
4 show that MINAMI had any position of responsibility
5 or any connection with the wars against the various
6 allied nations therein set out, as an instigator or
7 conspirator or any other capacity or took any part in
8 formulating or advising on the war plans in relation
9 thereto.

10 While Count 18 mentions specifically the
11 name of the defendant MINAMI as one who, on or about
12 18 September 1931, initiated a war of aggression and
13 a war in violation of international law, treaties,
14 agreements and assurances against the Republic of
15 China, this allegation has already been refuted at
16 length by the prosecution's own witnesses and evidence.
17 The same is true of Count 27 (which charges him for
18 actually waging a war against China between the
19 18th of September, 1931, and the 2d of September, 1945)
20 and of Count 28 (which charges waging war against China
21 between the 7th of July, 1937, and the 2d of Septem-
22 ber, 1945), Count 29 (against the United States of
23 America between the 7th of December, 1941, and the 2d
24 of September, 1945), Count 30 (against the Philippines),
25 Count 31 (against the British Commonwealth), Count 32

1 (against the Netherlands), and of Count 34 (against
2 Thailand).

3 Coming to Count 44 which charges a conspiracy
4 to procure and permit murder on a wholesale scale of
5 prisoners of war, members of the armed forces of
6 countries opposed to Japan who might lay down their
7 arms, and civilians who might be in the power of
8 Japan, on land or sea, in territories occupied by
9 Japan, and crews of ships destroyed by Japanese
10 forces, in ruthless pursuit of victory in the unlawful
11 wars in which Japan was or would be engaged during the
12 period between 18 September 1931 and 2 September 1945,
13 a conspiracy of this kind is beyond imagination; and
14 because it was so ridiculous the Nuernberg Tribunal
15 excluded such a charge from war crimes and crimes
16 against humanity. (Decision and Judgment given on
17 31 August 1946, page 16,884.)

18 Furthermore, there is no evidence connecting
19 MINAMI therewith or no showing that MINAMI ever held
20 a position of such a nature or committed any act or
21 issued any order as would make him responsible
22 therefor.

23 In Count 53, the prosecution charges the
24 defendant MINAMI for a conspiracy to order, authorize
25 and permit the commander-in-chief of the several

1 Japanese naval and military forces in each of the
2 several theaters of war in which Japan was then
3 engaged, and the officials of the Japanese War Ministry,
4 and the persons in charge of each of the camps and
5 labor units for prisoners of war and civilian internees
6 in territories of or occupied by Japan and the military
7 and civil police of Japan, and their respective sub-
8 ordinates, frequently and habitually to commit the
9 breaches of the laws and customs of war, as contained
10 in and as proved by the conventions, assurances and
11 practices, against the armed forces of the Republic
12 of China and against many thousands of prisoners of
13 war and civilians then in the power of Japan, and that
14 the government of Japan should abstain from taking
15 adequate steps in accordance with the said conventions
16 and assurances and laws and customs of war, in order to
17 secure observance and prevent breaches thereof, during
18 the period beginning with the 18th of September, 1931.
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1 Count 54 charges MINAMI for having ordered,
2 authorized and permitted the same persons as men-
3 tioned in Count 53 to commit the offences therein
4 mentioned.

5 Count 55 charges MINAMI for having delib-
6 erately and recklessly disregarded the legal duty
7 to take adequate steps to secure the observance and
8 prevent breaches of the said conventions and assur-
9 ances, Laws and Customs of War, he being by virtue
10 of his office responsible for securing such obser-
11 vance.

12 In relation to the above and to the bal-
13 ance of the charges, there is no evidence to con-
14 nect MINAMI therewith. During the period from
15 April to December 1931 when MINAMI was war minister
16 and also from December, 1934, to March, 1936, when
17 he was Commander of the Kwantung Army, there was,
18 as a matter of fact, not a single prisoner of war
19 in existence. We do not mean by this that there
20 were no prisoners of war on the basis that the Man-
21 churian Affairs was not a legal war. It means that
22 captured Chinese troops and bandits were disarmed
23 during this period and were either turned over to
24 Chinese authorities or released on their avowal to
25 become good citizens and there was no necessity for

1 Japanese guards to detain them. During his period
2 of office, no harm was done to civilians in any
3 fighting in Manchuria and none were detained as
4 P. O. W's or internees. (C.R. p. 14370).

5 It must be pointed out, moreover, that no
6 evidence was produced by the prosecution to show
7 that MINAMI ordered, authorized and permitted any
8 kind of offences in Manchuria and China, or that
9 he had deliberately and recklessly disregarded his
10 legal duty to prevent breaches of international law.

11 Same being respectfully submitted.

12 THE PRESIDENT: Mr. Cole.

13 MR. COLE: Now comes the accused MUTO,
14 Akira, by his counsel, and moves the Tribunal to
15 dismiss each and every Count in the Indictment in
16 which he is accused, on the ground that the prosecu-
17 tion has failed to prove by substantial and suffi-
18 cient evidence the offenses therein charged against
19 him.

20 MEMORANDUM.

21 In addition to joining in the over-all
22 motion to dismiss, the accused MUTO moves the Tribunal
23 to dismiss the Indictment as to all Counts thereof
24 in which he is charged.

25 The accused, throughout his career, has

1 been a military man. The record is completely bare
2 of any evidence to show that he ever committed any
3 act, at any time or place, which was not in accord
4 with the highest traditions of military service,
5 whether those traditions be of Japan or any other
6 country. On the contrary, the evidence plainly
7 shows that throughout the greater part of his mili-
8 tary career he has held subordinate positions, in
9 the sense that those above him were the ones to de-
10 termine policies; and that his duty, by every recog-
11 nized concept of the military throughout the world,
12 was to carry out the orders of his superiors. We
13 contend that this is a principle beyond argument and
14 recognized by all the world, including the highest
15 military men of the countries represented on this
16 Tribunal.

17 This principle, and the complete failure
18 of the prosecution to show that this accused com-
19 mitted any act outside the proper scope of his duties
20 should require a dismissal of the charges against
21 him. In brief, there is not one incident in the
22 record to show that the accused did anything which
23 others of comparable rank could not have properly
24 done in any country in the world which has a mili-
25 tary establishment.

1 For the sake of brevity, the various counts
2 in the Indictment will be considered in groups.

3 Group One is composed of Counts 1 to 36,
4 inclusive. The accused MUTO is named in all except
5 Counts 18, 25, and 35. He is charged in taking
6 part in the formulation or execution of a common
7 plan or conspiracy, having planned and prepared a
8 war of aggression, and having initiated and waged
9 a war of aggression. The evidence discloses that
10 the accused never at any time had a position which
11 would permit him to formulate policies which would
12 bind Japan or the individuals in power. Others
13 above him were the ones who formulated such policies
14 as existed.

15 Brief reference to the record will suffice
16 to show how far the prosecution has failed to es-
17 tablish these charges against the accused. His
18 tenure of office as Chief of the Military Affairs
19 Bureau is relied on by the prosecution as proof
20 of these counts. But no where in the whole record
21 is there the slightest quotation of this accused to
22 show the part he is supposed to have contributed.
23 It is clear that he attended various conferences,
24 by virtue of his office. But he attended them in
25

1 his minor capacity of "secretary", "exponent",
2 or "explainer", to quote the documents in ques-
3 tion.

4 We refer to Exhibits 649, 1030, 1241, and
5 1266, in all of which the accused is referred to as
6 an "exponent" or "explainer". It is highly signifi-
7 cant that in all these instances the accused's super-
8 iors were present. This in itself is enough to show
9 that he was not a spokesman or policy maker. And
10 it is more significant, not to say curious, that
11 although minutes of such conferences and meetings
12 were kept, as is obvious from the fact that what the
13 prosecution considers important has been quoted,
14 there is not one word of quotation of the accused
15 throughout the entire record.

16 Further, as proof of the minor capacity of
17 this accused in the conferences referred to, we quote
18 from Exhibit 649, which was a meeting of the Privy
19 Council regarding a protocol between France and Japan,
20 held on 28 July 1941: "Chairman of the Committee
21 SUZUKI ruled that the inquiries were over and
22 requested the Cabinet Ministers and Explainers to
23 retire. (Cabinet Ministers and Explainers retired)."
24 In Exhibit 1266, which refers to a meeting of the
25

1 Investigation Committee of the Privy Council, 10
2 December 1941, it is said: "After the above-men-
3 tioned questions were completed, Chairman of the
4 Committee SUZUKI, deeming that all the questions
5 were over, asked the Ministers and Explainers to
6 retire. (Ministers and Explainers retired)."

7 Other examples to the same effect could be cited.

8 With reference to Exhibit 1103, it should
9 be noted that the meetings or conferences referred
10 to are proved, not by any official minutes or records
11 but by an article from a newspaper. Why were no
12 official records produced? If these conferences
13 were of the grave importance attributed to them by
14 the prosecution, it is highly improbable that news-
15 paper men were allowed to attend. If they were not
16 allowed to attend, it is absurd to assume that the
17 list of persons attending or the matters discussed
18 could have been determined by an outsider. This
19 type of evidence is wholly unconvincing and the
20 President of the Tribunal made pointed comments
21 regarding this exhibit at Pages 10,054 and 10,056
22 of the record.

23 We call attention to Exhibit 1207-A, an ex-
24cerpt from the interrogation of the accused TOGO.
25 In speaking of the composition of a note, he says:

1 "The note itself was written by the Foreign Office,
2 but the responsibility for the composition rests
3 with the participating members of the liaison con-
4 ference." Thus a significant distinction is made
5 between those who, by their very duties, participa-
6 ted in such matters, and those who attended merely
7 as secretaries or explainers. The importance of
8 these latter has been shown to be negligible. We
9 quote from Exhibit 1209, an extract from the inter-
10 rogation of the accused TOJO: "There were also
11 probably three other persons in the capacity of
12 secretaries, for these three usually came to
13 Imperial Conferences. These three were Mr.
14 HOSHINO . . . Mr. MUTO . . . and Vice Admiral OKA."
15 And further in the same document, "I am not posi-
16 tive that they were there." This, indeed, is
17 strange proof of the importance of those whom
18 the prosecution would like to describe as policy-
19 makers.
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21 It is claimed by the prosecution that the
22 accused MUTO was appointed to various committees,
23 etc., the claim being that such committees were parts
24 of the common plan or conspiracy, but it is curious
25 that there has been a complete failure on the part
of the prosecution to show the accused MUTO's par-

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25 that there has been a complete failure on the part
of the prosecution to show the accused MUTO's par-

1 ticipation in the work of such committees, his
2 attendance at meetings, or indeed whether any meet-
3 ings were held. It is absurd to claim that the
4 accused participated in a plan or conspiracy of
5 such magnitude, and then to fail to show any official
6 act or utterance made by that accused in the meet-
7 ings or conferences in which such alleged plan or
8 conspiracy was originated, forwarded, and executed.

9 As to the Counts of Group One dealing with
10 initiating and waging of war of aggression, it is
11 contended, and the records show, that the accused
12 was never in a position of power sufficient for that
13 purpose. There is nothing in the record in this
14 respect to show anything but his devotion to duty
15 as a military man, the doing of his duty as imposed
16 upon him by his superior officers.

17 Groups Two and Three will be considered
18 together for the sake of brevity. Group Two includes
19 Counts 37 to 52 and all are charged against this
20 accused with the exception of Counts 48, 49, 50 and
21 52. He is charged under Counts 53, 54, and 55, which
22 compose Group Three. These two groups charge murder,
23 conspiracy to murder, to authorize and permit viola-
24 tions of laws of war, and disregard of duty in regard
25 thereto.

1 The prosecution has failed completely to
2 establish such charges against the accused. They
3 have shown no conspiracy, and surely no participa-
4 tion by this accused in such an alleged conspiracy.
5 There is not even a hint of evidence to show that
6 this accused murdered any person, knowingly permit-
7 ted the murder of any person or approved of any
8 alleged murder after it was committed. The same
9 applies in full to all violations complained of in
10 these counts.

11 With particular regard to the matter of
12 Prisoners of War, to take an example, the testimony
13 is muddled at best and totally insufficient to es-
14 tablish the faintest degree of guilt upon this
15 accused. A great amount of evidence was adduced to
16 show that Prisoner of War policies were handled
17 through the Military Affairs Bureau of the War Min-
18 istry, but this evidence is garbled and totally un-
19 convincing. Further, the accused MUTO held the office
20 as Chief of said bureau only until 20 April 1942.
21 The only matter shown to have transpired during the
22 period from the outbreak of war to 20 April 1942
23 regarding Prisoners of War is the exchange of notes,
24 which established policies. It is important to
25

1 note that it was after the accused MUTO had left
2 this office -- in late April or early May -- the
3 testimony is conflicting here, too -- that Prisoner
4 of War policies complained of by the prosecution
5 were adopted.

6 Regarding atrocities and Prisoner of War
7 matters in the field, it should be noted that the
8 accused held only one position in which he had any-
9 thing approaching command responsibility; from April
10 1942 until October 1944, while he commanded the
11 Imperial Guards Division in Sumatra. During that
12 entire period there was no fighting in Sumatra, no
13 prisoners were taken, and those prisoners who were
14 confined in camps in Sumatra were already reported
15 to Tokyo and were under the control and direction
16 of higher authorities, as the evidence clearly shows.
17 The evidence further shows that Prisoner of War
18 matters were handled almost exclusively through
19 other than the regular channels of command, for the
20 sake of expeditiousness, and thus did not involve
21 this accused.

22 To conclude, it is respectfully contended
23 that the evidence shows that the accused MUTO was
24 in subordinate positions at all pertinent periods,
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2 this office -- in late April or early May -- the
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1 was never on a policy-making level, and could not
2 and did not commit the acts charged to him in the
3 Indictment. The prosecution has failed wholly to
4 prove the offenses therein charged.
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1 THE PRESIDENT: Colonel Warren.

2 MR. WARREN: If the Tribunal please, before
3 commencing my argument I should like to make this
4 observation. In view of the Tribunal's ruling
5 with reference to statements of co-defendants made
6 after the consummation of the alleged conspiracy,
7 it is submitted that virtually all of the State's
8 case with reference to OKA has fallen.

9 In presenting arguments on behalf of the
10 accused OKA with reference to his motion to dismiss,
11 counsel, for the sake of brevity, will not argue each
12 individual count and will confine themselves to the
13 overall evidence bearing on this defendant. It is
14 our contention that there has been insufficient
15 evidence adduced by the prosecution to prove each
16 element of each offense charged in the Indictment
17 and that, therefore, the accused OKA should not be
18 required to assume the burden of proceeding and
19 introducing evidence in his own behalf.

20 There has been no contention on the part
21 of the prosecution at any time that the defendant
22 OKA acted in any capacity other than with regard
23 to his duties in the Navy of Japan; consequently the
24 position of the Navy is of great importance in
25 deciding the issues with reference to this defendant.

1 What, then, was its position? The answer
2 is clear. The position of the Navy in opposing war
3 has at all times been well defined. As late as
4 the Third KONOYE Cabinet it remained adamant in its
5 position that war should be avoided if at all pos-
6 sible. Reference is made to page 10,254 of the trans-
7 cript of evidence for November 12, 1946, wherein the
8 then Navy Minister OIKAWA made plain the Navy's
9 position. This particular part of the evidence is
10 a quotation from the Memoirs of the then Prime
11 Minister KONOYE who states that OIKAWA made the
12 following statements which are here quoted and are
13 extracts from the transcript of evidence.

14 "Let us leave the decision as to whether
15 there is any hope for a successful conclusion
16 of the diplomatic negotiations in the hands of
17 the Prime Minister and the Foreign Minister,
18 and as for the Navy, she will comply with that
19 decision***."

20 "If there is any hope for a successful
21 conclusion of the diplomatic negotiations,
22 we want the negotiations to be continued***."

23 "That is if we are to rely on diplomatic
24 negotiations, we would like it to be carried
25 out thoroughly***We want to make it a success

1 at all costs***We want the decision of the
2 Prime Minister***We want to comply with this
3 decision."

4 Continuing with his statement, the then
5 Prime Minister KONOYE made an additional remark which
6 appears of record at page 10,263 of the transcript
7 of the evidence, and which is here quoted:

8 "In the meantime it became gradually known
9 ***that since the Navy herself had not the will
10 to fight, but couldn't say so herself, she was
11 appealing to the Premier through Bureau Chief
12 OKA by the way of Chief Secretary TOMITA for
13 the Premier to express it***."

14 "As an outcome of it, Chief MUTO of the
15 Military Affairs Bureau called on Chief Secretary
16 TOMITA and reportedly requested that the Navy
17 be asked to make a definite statement at this
18 time. Hence, when Chief Secretary TOMITA relayed
19 this to Chief OKA of the Navy Affairs Bureau,
20 Bureau Chief OKA reportedly stated that the
21 Navy, as usual, cannot say it and that she can
22 say no more than that she will comply with the
23 decision of the Premier***."

24
25 There is other evidence in the record, which
the Tribunal will recall, that corroborates these

1 quoted statements of the then Prime Minister KONOYE.
2 At this time when the negotiations referred to were
3 being carried on between the Prime Minister and the
4 Navy Minister, it is clear from the evidence that
5 the acts of the defendant OKA were his official acts
6 as liaison officer and he was merely delivering
7 messages of higher officials. In view of the fact
8 that it is clear from the evidence that the Navy did
9 not want nor desire war at that time and that it was
10 the Navy's hope that the negotiations to avert war
11 would be successful, it does not follow that any
12 logical conclusion may be drawn from the evidence which
13 would support the prosecution's contention that the
14 accused OKA aided, abetted, assisted, participated
15 or otherwise engaged in any common plan or conspiracy
16 to wage aggressive war, or a war of any kind, but
17 that, on the contrary, he and his superior officers
18 diligently attempted to avert war.

19 There is evidence that the defendant OKA
20 attended certain liaison conferences and Imperial
21 Conferences held during the year 1941, but there is
22 no evidence to show that he did at any time voice or
23 express an opinion in such meetings, other than to
24 answer questions propounded to him by participating
25 members concerning technical or factual matters which

1 might be expected to be within the knowledge of a
2 person occupying the subordinate positions which
3 the evidence indicates he held from time to time.
4 It is suggested that all the evidence introduced
5 concerning him shows that his position was at all
6 times that of a secretary and of a liaison officer,
7 and that he never did attain a position which would
8 place him on a policy-making level. Messages
9 conveyed by him or prepared by him or his subordinates
10 contained the decisions of his superior officers;
11 and there is no substantial evidence to indicate
12 that he at any time influenced such decisions.

13 There is some evidence that the accused was
14 present on November 5, 1941, at an alleged Imperial
15 Conference in which decisions were reached concerning
16 Japan's attitude toward various nations in the event
17 of war. The evidence with reference to this incident
18 plainly shows that in addition to the presence of
19 the accused such conference was also attended by
20 the Navy Minister. There is no evidence to indicate
21 that the accused was a participating member of this
22 conference or that he acted in any manner other than
23 that of a secretary.

24 In support of the contention concerning the
25 position of this defendant, reference is made to

1 exhibit 1209, which is an extract from an interrogation
2 of Hideki TOJO concerning a similar Imperial Conference
3 held on December first or second in which he gives
4 the names of certain persons who attended such con-
5 ference and states concerning them:

6 "These were the responsible people who
7 were there***."

8 In continuing his statement he says:

9 "There were also probably three other persons
10 in the capacity of secretaries, for these three
11 usually came to the Imperial Conferences. The
12 three were the Chief Cabinet Secretary Naoki
13 HOSHINO, Chief of the Military Affairs Section
14 of the War Ministry, Mr. Sho MUTO, Chief of the
15 Military Affairs Section of the Navy Ministry,
16 Vice-Admiral OKA.***I am not positive that they
17 were there***."

18 This remark becomes significant in view of
19 the fact that so unimportant was the accused OKA in
20 the minds of those responsible persons who attended
21 such conferences that Hideki TOJO was not even certain
22 they were present but they may have been because they
23 were secretaries that usually attended. The only
24 logical conclusion which can be drawn is that when
25 the defendant OKA attended such meetings, he attended,

1 not as a responsible person, but in the capacity of
2 secretary.

3 Reference is again made to the evidence
4 which indicates that the accused OKA attended liaison
5 conferences during the year 1941. The evidence with
6 reference to these conferences indicates just as
7 strongly that the accused acted in his accustomed
8 capacity as secretary and not as a participating
9 member. There is no evidence to show that he partici-
10 pated in any of the decisions or that he wielded
11 undue or great influence upon his superior officers
12 who were always in attendance at such meetings. It
13 is contended that the accused cannot be chargeable
14 with the acts and decisions of his superior officers.

15 It is suggested that at best the evidence
16 upon which the prosecution relies to show the presence
17 of this defendant and other persons at the liaison
18 conferences has little evidentiary value. It is
19 significant that the accused OKA never attended any
20 such meetings unless there was also present an officer
21 superior in rank and on a policy-making level. The
22 evidence relied upon to show the attendance of persons
23 at such conferences appears to be an extract from an
24 article which appeared in the newspaper "Asahi"
25 introduced as exhibit 1103. In commenting upon the

1 introduction of this particular document at page
2 10,054 of the transcript of evidence, the President
3 of the Tribunal made the following observations:

4 "Well, is there any part you would like to
5 point in particular? It may be an extremely
6 useful document, but there is no advantage, so
7 far as I can see, in reading it into the trans-
8 cript if the nature of the business is so
9 indefinite***."

10 "You might consider for what purpose you
11 are really introducing this***."

12 And on page 10,056 there appears this
13 additional remark,

14 "This document at this state of the
15 transcript would be no more useful to us than
16 the exhibit itself if omitted from the trans-
17 cript*** "

18 In analyzing this documentary evidence it
19 does not appear to counsel that it would be logical
20 to reach the conclusion that newspaper reporters were
21 permitted in the conference rooms. Otherwise, it
22 seems certain that the prosecution would have been
23 able to produce news stories concerning the topics
24 under discussion and that such topics would not have
25 to be referred to any such vague and indefinite terms

1 as "exchange of views", "exchange of information on
2 important matters", or "discussion of important
3 matters". Apparently news reporters were not per-
4 mitted to attend these conferences and, therefore,
5 it is not illogical to conclude that perhaps upon
6 many occasions, when the defendant OKA was alleged
7 to have been present, he was merely present in the
8 chambers where the conferences were held in order
9 that his services, if needed, would be available
10 to those on policy-making levels and that he was
11 not physically present in the actual conferences
12 themselves. In this connection it is believed signi-
13 ficant that many of the reports do not list him as
14 present but in each instance where he is listed his
15 superior officer was in attendance.

16
17 The capacity of the accused at such of the
18 liaison conferences as he did attend is explained
19 in exhibit 1207A, which is an extract from the
20 Interrogation of Shigenori TOGO. This extract is
21 with reference to a note written by the Foreign
22 Office of the Japanese Government concerning negoti-
23 ations with the United States in which appear the
24 following statements:

25 "The note itself was written by the Foreign
Office, but the responsibility for the composition

1 rests with the participating members of the
2 liaison conferences***."

3 In the same document is the additional
4 statement:

5 "As I have said at a previous meeting,
6 members of a liaison conference who were
7 responsible for the study and discussions
8 on the matter were TOGO, SHILADA, SUGIYAMA,
9 NAGANO, TSUKADA, ITO, KAYA, SUZUKI, and the
10 three secretaries -- HOSHINO, MUTO and OKA.
11 As to the members of the Cabinet, under the
12 constitution they were responsible for
13 decisions of the Cabinet even on matters
14 outside of their respective offices***."

15 It is clear from the extracts of the docu-
16 ments here quoted, that is to say, exhibits 1209 and
17 1207A, that Imperial Conferences and liaison confer-
18 ences were attended by two separate categories of
19 persons, one referred to as the responsible or
20 participating members and the other as secretaries.
21 In each instance the line of demarcation is clear
22 and the evidence leaves little room to doubt that
23 those in the capacity of secretaries were of little
24 or no importance in so far as the participating
25

1 rests with the participating members of the
2 liaison conferences***."

3 In the same document is the additional
4 statement:

5 "As I have said at a previous meeting,
6 members of a liaison conference who were
7 responsible for the study and discussions
8 on the matter were TOGO, SHIMADA, SUGIYAMA,
9 NAGANO, TSUKADA, ITO, KAYA, SUZUKI, and the
10 three secretaries -- HOSHINO, MUTO and OKA.
11 As to the members of the Cabinet, under the
12 constitution they were responsible for
13 decisions of the Cabinet even on matters
14 outside of their respective offices***."

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17 ments here quoted, that is to say, exhibits 1209 and
18 1207A, that Imperial Conferences and liaison confer-
19 ences were attended by two separate categories of
20 persons, one referred to as the responsible or
21 participating members and the other as secretaries.
22 In each instance the line of demarcation is clear
23 and the evidence leaves little room to doubt that
24 those in the capacity of secretaries were of little
25 or no importance in so far as the participating

1 or responsible members were concerned. The last
2 quoted statement from exhibit 1207A might be
3 confusing inasmuch as it refers to the members of
4 a liaison conference who were responsible for the
5 study and discussions on the matter. However, it
6 is believed that if the entire document is taken
7 as a whole, the only construction that can be placed
8 thereon is that the secretaries, as such, were not
9 participating or responsible members of such
10 committees.

11 There is also evidence that the accused OKA
12 attended a meeting referred to as the "Assembly of
13 Greater East Asiatic Nations' Joint Declaration
14 Adopted on November 6, 1943." This is set out in
15 exhibit 1346 and appears of record at page 12,098
16 continuing through page 12,102. In examining this
17 evidence it is again disclosed that the defendant OKA
18 accompanied his superior officer. In analyzing all
19 of the evidence in the record concerning meetings
20 attended by the accused OKA there is not recorded
21 one single instance when he attended a meeting in
22 the absence of a superior officer on a policy-making
23 level.
24

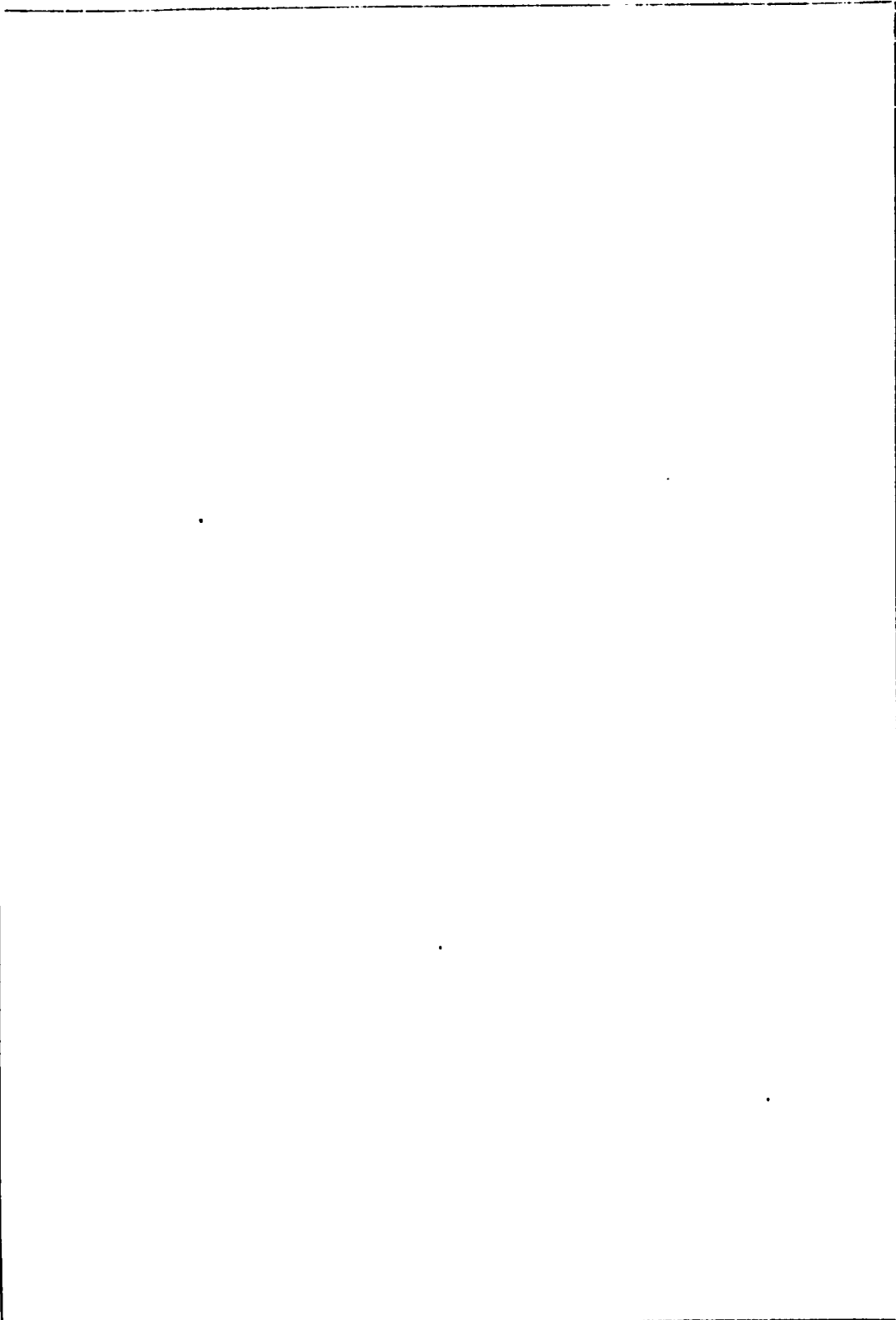
25 In view of these facts, it is the contention
of counsel that the defendant OKA always acted in a

1 subordinate manner without power to make important
2 decisions and without power to engage in discussions
3 except when asked. To further bolster this contention
4 reference is made to exhibit No. 649 which is used
5 only as an example because other exhibits will
6 disclose the same situation. However, they are
7 not dealt with here for the sake of brevity. On
8 page two of the document appear the names of persons
9 referred to as explainers. Among them appears the
10 name of the accused OKA. This exhibit refers to
11 a meeting of the Privy Councillors. After a full
12 and complete discussion was had concerning the
13 business in hand, explainers and ministers present
14 were requested to retire after which the Privy
15 Councillors conferred among themselves and arrived
16 at their own conclusions.

17 In this argument it has been the intention
18 of counsel to refer to each instance in which the
19 name of the accused OKA appears in the transcript
20 of evidence and to refer to those documents which
21 appear most likely to shed light upon his activities.
22 Reference has not been made to all documents which
23 might in some manner affect the accused; and if a
24 discussion of any document which might be pertinent
25 to the issues has been overlooked, it is not intentional.

1 The Honorable Mr. Justice Mansfield in
2 presenting that phase of the prosecution's case
3 dealing with the events under Article 5B of the
4 Charter states in substance that copies of the
5 complaints lodged by the Swiss Legation as pro-
6 tecting power on behalf of the United States, Great
7 Britain, Australia, Canada and New Zealand were
8 transmitted to the Foreign Ministry, to the War
9 Ministry, Navy Ministry and Home Ministry, and draws
10 the conclusion that the accused OKA by virtue of
11 his office was guilty of making misleading state-
12 ments. This statement, of course, is of no evidentiary
13 value and is merely a conclusion on the part of
14 the prosecution which appears to be nowhere substanti-
15 ated in the evidence. That is to say, there is
16 no substantial evidence to indicate that the accused
17 OKA had at any time command functions which would give
18 him power to issue orders respecting treatment of
19 prisoners of war. Apparently the only power he did
20 possess was that of drafting notes in reply to
21 inquiries presented through the protesting power
22 by the various nations and to return such replies
23 through the proper channels and his superior officers.
24 There is no evidence that the accused personally
25 drafted any such notes or that he had any knowledge

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1 of the mistreatment of prisoners. On the contrary,
2 the evidence as a whole tends to conclusively prove
3 that the only information available to the accused
4 was official information furnished his department by
5 other agencies properly charged with the knowledge
6 and administration of such matters.

7 In conclusion it is respectfully submitted
8 that the evidence taken as a whole proves conclusively
9 that the accused OKA acted in a subordinate manner
10 at all times, was never on a policy-making level,
11 and that, therefore, he could not have been guilty
12 of any of the crimes lodged against him in the
13 indictment and that consequently the prosecution has
14 wholly failed to produce any substantial evidence
15 which would be sufficient to warrant holding the
16 accused for any further action before this Tribunal.

17 All of which, your Honor, is respectfully
18 submitted.

19 THE PRESIDENT: We will adjourn until
20 half-past one.

21 (Whereupon, at 1200, a recess was taken.)
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25

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2 the evidence as a whole tends to conclusively prove
3 that the only information available to the accused
4 was official information furnished his department by
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18 submitted.

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20 half-past one.

21 (Whereupon, at 1200, a recess was taken.)
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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now resumed.

3 THE PRESIDENT: Captain Brooks.

4 MR. BROOKS: Now comes OKAWA, Shumei, by his
5 counsel, and respectfully moves the Tribunal to dis-
6 miss each and every one of the counts in the Indictment
7 against said defendant on the ground that the evidence
8 offered by the prosecution is not sufficient to warrant
9 a conviction of said defendant.

10 In support of the motion to dismiss on behalf
11 of OKAWA, Shumei, argument will be presented in a
12 general and limited way as to all counts of the indict-
13 ment, because of the time limit, and also because of
14 the limited amount of evidence against OKAWA, under
15 the charges made by the prosecution; we submit the
16 prosecution has failed to connect OKAWA with any un-
17 lawful or illegal act, or crime and the prosecution
18 has failed to prove that OKAWA, individually, or with
19 any other divers persons, committed any of the acts
20 charged by the Indictment, or that OKAWA was ever in
21 a position of power, or responsibility, such as would
22 enable him to have acted as charged, if such inclina-
23 tion was proved. We submit that early in this case
24 the prosecution's own witnesses testified that OKAWA
25 was by profession a teacher of History in the Imperial

1 University, and a writer, and that his living was
2 derived from such efforts.

3 The books he wrote were his interpretation
4 and recording of current historical events, discussions
5 on colonial and diplomatic matters, and he did not
6 advocate, or publish the material in said books,
7 because of personal ambitions or with criminal inten-
8 tions and motives, and the prosecution's evidence does
9 not prove otherwise.

10 In relation to the March and October Incidents,
11 prosecution's own witnesses have testified that these
12 local political Incidents had nothing to do with any
13 war, or international situation, at that time or
14 later, and that domestic problems, corrupt politics,
15 and political struggles between rival political groups
16 to bring about internal reform was the basis for such
17 incidents, actions, and demonstrations as transpired.

18 We submit that possibly through misunderstand-
19 ing or because of translation difficulties and not
20 being thoroughly acquainted with Japanese activities
21 and the conditions of the time, the prosecution placed
22 undue emphasis on these incidents; they believed that
23 if 300 bombs were to be used, in what they thought,
24 and charged, was an attempt to destroy the Diet Build-
25 ing that this must be incorporated for examination by

1 the Court, but our submission is made very clear, when
2 on cross-examination it was found that this was only
3 a political demonstration, such as we see nearly every
4 week in Japan, and the bombs were naught but fire-
5 crackers, and that KOISO, acting on orders of higher
6 authority, seized the firecrackers and ordered OKAWA
7 and the others to abandon said demonstration. The
8 evidence shows this fact and confirms that matters in
9 issue were purely domestic issues, and that said
10 incidents failed to achieve any change, and that during
11 the time, or thereafter, no position of responsibility
12 or trust was sought or obtained by OKAWA, thus, we
13 submit that all said counts and charges against OKAWA
14 should be dismissed.

15 We further submit that in the trial that
16 followed covering such incidents as set out in exhibit
17 2177, OKAWA was censored for his political activity,
18 and although he tried to explain the same, however
19 as a result of this series of trials instituted by
20 those government officials in power, OKAWA was removed
21 from the political scene by sentence of the Court to
22 five years imprisonment for his part in such activities,
23 which sentence OKAWA duly served, as the prosecution
24 were willing to stipulate and agree.

25 We submit it is illogical to charge OKAWA

1 with being a conspirator as set forth in the Indict-
2 ment, for had he been in any conspiracy with those in
3 power, or control of the Japanese Government, as
4 alleged by the prosecution, would they have stood silent-
5 ly by, and let him be tried, if he had been aiding,
6 abetting and assisting their cause, or would they
7 have caused his arrest and allowed him to remain in
8 prison to serve a five years sentence if he were a
9 fellow conspirator? Furthermore, how could OKAWA
10 conspire as charged during the years that he was in
11 prison, and is it logical that such charges made by
12 the prosecution are well founded?

13 We submit that another matter is raised, if
14 we assume for argument, that, prior to said trial the
15 actions of OKAWA had unlawful and criminal significance
16 and he was called to account therefor, then what is
17 the effect of this former trial, conviction and
18 punishment for activities previous to said date; can
19 said defendant be tried again, or for any other offense
20 if either offense is necessarily included in the other?
21 We submit these matters should be considered in Bar
22 of trial and as to their placing said defendant in
23 double jeopardy as a result of this trial.

24 Wherein counsel moves that all counts pertain-
25 ing hereto be dismissed as against defendant OKAWA.

1 Furthermore, the prosecution has failed to
2 show any connection, between OKAWA, and any other
3 defendant, or other divers persons, acting in con-
4 junction with OKAWA, to be responsible or to have had
5 any part in any unlawful activity after his release
6 from said prison on completion of said five years
7 sentence. Therefore, since no evidence against OKAWA
8 has been introduced by prosecution and he has not
9 been mentioned or connected with either the China
10 Incident, or the Pacific War that followed in 1941,
11 and thereafter, we submit that said counts as they
12 pertain to OKAWA should be dismissed for lack of
13 evidence.

14 In the opening phases of this case a personal
15 record was presented on every defendant except OKAWA.
16 This is understandable as OKAWA was never in military
17 service, because of being physically disqualified
18 therefor from youth, and since OKAWA had never held
19 any political office there was no political record.
20 The only record of OKAWA is that of his student days
21 showing his training to become a teacher of the History
22 of Colonization by foreign powers, and he wrote, during
23 vacation periods. However, if a check is made on the
24 dates of publication of his books, we find that his
25 greatest period of literary activity was during his

1 time in prison when he was serving the five years
2 sentence previously referred to and the proceeds from
3 the sale of these books went to support his family
4 during said tragic years of his life as a political
5 prisoner.

6 The only evidence presented against OKAWA
7 in relation to the Manchurian Incident was very sketchy
8 and hazy and based entirely on hearsay testimony, with-
9 out the chance for cross-examination or confrontation
10 of said witness, and it was only to the effect that
11 OKAWA expressed no surprise for such an incident, and
12 what followed, as from current events and knowledge of
13 anti-Japanese sentiment in China, such an action was
14 sooner or later, more or less, expected but there is
15 no evidence that OKAWA participated, planned or had
16 knowledge and assisted in any of the acts charged by
17 the counts in relation thereto. "herein such counts
18 should be dismissed as against OKAWA.

19 The evidence of the witness TANAKA and of
20 the witness SHIMIZU make it very clear that OKAWA
21 is not guilty as charged.

22 There is no evidence that OKAWA had any con-
23 nection with diplomatic negotiations, or with initi-
24 ating any hostilities, and the evidence as to murder
25 counts, atrocities or the case for prisoners of war

1 do not charge OKAWA with any participation or responsi-
2 bility therein; nor was OKAWA charged as participating
3 in any of the Important Liaison and Imperial conferences
4 of Cabinet meetings throughout any period of the Indict-
5 ment; and as to conventional war crimes and crimes
6 against humanity the attention of the Tribunal is
7 called to the fact that OKAWA is not named or shown
8 to have been connected directly or indirectly there-
9 with by even a scintilla of evidence.

10 Wherein such counts should be dismissed as
11 against OKAWA.

12 It has not been shown by the prosecution that
13 the accused had guilty knowledge or a malicious inten-
14 tion or criminal motive for or behind any action of
15 said defendant during said periods covered by the
16 counts of said Indictment or that he either objectively
17 or subjectively committed any act that was a crime or
18 unlawful as alleged in said Indictment.

19 Furthermore there has been no showing that
20 any of the articles written by OKAWA were used by the
21 Japanese Government or by any of the accused in making
22 any important decision, charges, formulation of policy
23 or otherwise, and furthermore even had such articles
24 been so used for an unlawful purpose, there has been
25 no evidence to show that the writer thereof had

1 knowledge that they would be so used, or intended for
2 same to be used for such criminal purpose, or that
3 they could or would be used in such a manner if said
4 fact had been proved to be true.

5 Many books, articles and expressions of
6 personal opinion are daily made in every democratic
7 country in the world, under the right of free speech,
8 and rights established for freedom of the press, and
9 freedom of speech and expression is a prerogative that
10 has been encouraged and guaranteed, and though such
11 expressions may influence decisions and policies of
12 government, it is only by the process of adoption,
13 and making them the opinion of the government official,
14 with such modifications and changes, and for such pur-
15 pose as he has in mind, does such result occur and the
16 writer does not get credit or share in the responsi-
17 bility therefor.

18 In view of the limited activity of OKAWA
19 and his civilian status and background as has been
20 brought out in prosecution's evidence, and as he was
21 considered as a crackpot writer by high authorities,
22 it is impossible to conceive that he was ever in a
23 position of such influence and authority as it would
24 be necessary for him to have had, to be able to formu-
25 late and direct the foreign policies of Japan in any

1 such way as the prosecution has tried to lead the
2 Tribunal to believe.

3 The Tribunal is requested to consider that
4 had OKAWA been sane during the period 1928 to 1945
5 that there is insufficient evidence to convict him of
6 any of the charges made, and we submit that the Tribunal
7 should clear this defendant of any charges of guilt,
8 so that his small home and property may be released
9 from government control for the benefit of his
10 family and so they may utilize what little money he
11 has accumulated from his writings to pay his hospital
12 and institutional expenses.

13 We submit that since the evidence has been
14 necessarily heard, and OKAWA has been represented
15 daily in Court, to avoid leaving any cloud on OKAWA's
16 past record and also to avoid the expense of or
17 necessity for a trial at some future date over this
18 same evidence.

19 The Court's action on this motion should be
20 taken for if said motion to dismiss is granted
21 defendant is not prejudiced or harmed thereby and
22 if it is denied then the question of sanity during
23 said period may be determined.

24 Wherein we respectfully request all counts
25 against OKAWA and that a finding of not guilty be

1 entered, and that OKAWA be released to the custody
2 and care of his family and legal representatives.

3 All of which is most honorably submitted.

4 THE PRESIDENT: Mr. Cunningham.

5 MR. CUNNINGHAM: If the Tribunal please:

6 Comes now the accused OSHIMA, Hiroshi, and
7 respectfully moves the Tribunal to dismiss the charges
8 contained in the Indictment as to him, on account of
9 the insufficiency of the evidence to prove his partici-
10 pation in any conspiracy as charged, or his commis-
11 sion of the offense of murder, or any crimes against
12 humanity, or his violation of the rules of land war-
13 fare, or any other offense described in the Charter
14 or Indictment or counts thereof.

15 The following points are submitted for the
16 consideration of the Tribunal:

17 1. That the evidence fails to show that
18 the accused OSHIMA was a party to any agreement, plan
19 or conspiracy which had for its purpose the initi-
20 ating or waging of any war of aggression.

21 The evidence fails to show that the accused
22 OSHIMA was a member of any group, organization, or
23 association which had for its purpose aggressive war
24 or any object which was contrary to international
25 law, treaties, or assurances.

1 That the evidence fails to show that the
2 accused OSHIMA was within the jurisdiction of this
3 Tribunal when the acts complained of were committed,
4 particularly the charge of murder, crimes against
5 humanity and conventional war crimes; but the evidence
6 discloses that the accused OSHIMA was in Europe at the
7 times when the acts complained of were committed.

8 The evidence fails to disclose that the
9 accused OSHIMA held any position in the Japanese Govern-
10 ment to which any criminal responsibility was attached,
11 for acts committed in the performance of the duties of
12 the office; but the proof discloses that he was an
13 ambassador when the acts complained of were committed
14 and therefore immune by virtue of the rights, privileges
15 and protection afforded his office under the rules of
16 international law -- set out more fully in the brief
17 to be submitted.

18 The evidence fails to sustain the charges
19 contained in the Indictment, but does establish that
20 the accused OSHIMA was a personal representative of
21 the sovereign of Japan and that his acts were not
22 personal but the acts of state, therefore not punish-
23 able under international law by virtue of their
24 nature.
25

1 The evidence fails to show that as a diplo-
2 matic agent of Japan the accused OSHIMA received in-
3 structions to do anything which was beyond customary
4 diplomatic protocol, or beyond his authority as Ambassa-
5 dor; but has established that all negotiations and in-
6 structions were in compliance with the established
7 policy of Japan and in conformance with the laws of
8 Japan.

9 The evidence fails to show that there was any
10 effective collaboration between the German and Japan-
11 ese Governments, or military or naval forces; but
12 proves that the relationships between the two nations
13 were created by treaties, agreements, and alliances
14 entered into through the established governmental chan-
15 nels.

16 The proof fails to establish that any of the
17 acts complained of in the Indictment were performed
18 in a manner contrary to international law and custom;
19 but the facts prove that the acts complained of were
20 performed in the manner required and in the manner
21 prescribed for the conduct of Ambassadors in inter-
22 national relationships by international law and cus-
23 tom.

24 The evidence fails to show that the accused
25 OSHIMA performed any tasks other than those required

of his office.

1 The evidence fails to establish that the
2 accused OSHIMA was a policy maker in the Japanese
3 Government, or that he was an official of the Japan-
4 ese Government within the contemplation of the amended
5 Charter, or that he exercised any governmental politi-
6 cal control, or military command over Japanese forces.
7

8 The evidence fails to establish any tangible
9 relationship between the accused Ambassador and the
10 political administration of Japan; but the record
11 discloses that he served under nine different Foreign
12 Ministers during his tour of duty as Ambassador, and
13 that the interpretation and translation of their
14 policies differed according to the policy of the cab-
15 inet in power.

16 The evidence fails to prove that any of the
17 administrative acts of the accused OSHIMA were illegal,
18 but the evidence discloses that they were based upon
19 the established policy of the Japanese Government,
20 were legitimate exercises of the powers given to
21 persons of such responsibility, and were consistent
22 with the Imperial policy and political decisions of the
23 Japanese Government.

24 That the prosecution has failed to prove that the
25 acts of the accused OSHIMA were contrary to law, that

1 they were contrary to the law of the country of his
2 ambassadorial residence, that they were prohibited
3 in the land of his permanent residence, or that they
4 were in violation of any of the laws of any of the
5 complaining nations at the time of their commission.
6 It is established that the acts of the accused OSHIMA
7 in the performance of his duties were exempt from ju-
8 dicial inquiry in the country of his ambassadorial
9 residence, were within the law of his permanent resi-
10 dence, and were permitted by international law and
11 custom.

12 The record is silent as to any participation
13 of the accused in the Manchurian and China Phases;
14 and there is insufficient evidence to establish the
15 guilt of the accused in any other phase of the case.
16 The proof discloses affirmatively that the accused
17 OSHIMA was kept in the dark concerning the events lead-
18 ing up to the war between Japan, United States, Great
19 Britain, Philippines, Netherlands, and the other
20 Allied Powers.

21 There is no evidence to sustain the charge
22 that the accused OSHIMA committed any offense against
23 humanity, or violated the rules of land warfare in any
24 respect. The Counts 53 to 55 charging these offenses
25 to the accused should be dismissed as to him.

1 That the Prosecution does not sustain the
2 charge that the accused OSHIMA participated in any
3 plan or conspiracy to violate international law,
4 treaties, or assurances.

5 That the prosecution has failed to establish
6 that the accused OSHIMA committed any of the offenses
7 described in the Indictment, or that the acts of
8 omission or commission of ambassadors were contem-
9 plated in the definition of the offenses described in
10 the amended Charter.

11 18. Concerning the individual Counts the
12 accused OSHIMA states that there is insufficient evi-
13 dence to prove his guilt under the following Counts,
14 and moves that they be dismissed as to him for the
15 reasons set forth:

16 Count I. The charge is indefinite and the
17 evidence too abstract to establish proof of commis-
18 sion of any of the offenses charged in the Count.

19 Count 2. The prosecution has failed to prove
20 that there was a government in existence in the terri-
21 tory described in the Count capable of protecting
22 life, property and interests which had been acquired
23 under treaties and agreements, but the proof affirma-
24 tively shows that Manchukuo having become an inde-
25 pendent state, the issues raised in Count 2 have been

1 adjudicated politically through the only means avail-
2 able at the time.

3 Counts 3, 6, 27 and 28, eliminating 19.

4 Under these Counts the prosecution has failed to present
5 sufficient evidence to establish a prima facie case
6 showing that the accused OSHIMA had any connection
7 whatever with the China conflict, except that he used
8 his best efforts to secure mediation and settlement
9 through the good offices of third parties.

10 Counts 4 and 5. These Counts contain numerous
11 charges which are not sustained against the accused
12 OSHIMA. There is a misjoinder of causes and complain-
13 ants in these Counts which has neither been justified
14 nor authorized under the amended Charter.

15 Count 6 is the same as Count 3.

16 As to Counts 7 to 13, 20, 21, 22, 29, 30 and
17 31, the prosecution has failed to substantiate these
18 Counts but has proven by the greater weight of the
19 evidence that the settlement of the dispute between
20 the United States, Great Britain and the Commonwealth
21 of Nations was impossible of disposition by pacific
22 means.

23 Counts 14 and 32: That the evidence fails
24 to establish a just cause of complaint under these
25 Counts, for the reason that no act of aggression has

1 been proved; on the contrary, the Government of the
2 Kingdom of the Netherlands violated conventions and
3 treaties by making a sudden and unexpected declara-
4 tion of war against Japan. There is a misjoinder of
5 complaining nations under these Counts.

6 Count 15, eliminating 23 and 33; there is
7 a question as to whether or not those Counts cover
8 this accused. The proof fails to sustain this Count,
9 but shows that the action taken by the Japanese Gov-
10 ernment was in accordance with agreement between the
11 Japanese and French Governments as it existed at the
12 time. This Count presumes the existence of the "Re-
13 public of France" which has not been proved by any
14 evidence introduced in this cause.

15 Counts 16, 24 and 34. The evidence fails
16 to disclose that the Kingdom of Thailand and the
17 Mongolian Peoples Republic are authorized complainants
18 in these proceedings and no evidence has been intro-
19 duced to sustain the charges as against the accused
20 OSHIMA.

21 17. The charges in these counts have not
22 been substantiated. Striking the rest of that alle-
23 gation--
24

25 Counts 37 to 44 inclusive. These Counts
 should be dismissed as to the accused OSHIMA for the

1 reasons set out in Paragraph 3 of this Motion, and
2 more particularly for the reasons set out in the ob-
3 jection to the introduction of evidence made in be-
4 half of the accused OSHIMA, and set out in Appendix
5 18 in the brief. Also, for the further reasons that
6 the Charter does not contemplate a charge of conspiracy
7 to commit murder or other crimes against humanity, and
8 that the proof does not sustain the charge of personal
9 responsibility of the accused OSHIMA for any of the
10 offenses described. The proof does not define the
11 crime of murder or conventional war crimes which
12 strictly defined are restricted to military responsi-
13 bility, whereas crimes against humanity require venue,
14 presence personally, overt acts and a specific viola-
15 tion against some established law of a specified
16 country. No such offense has been proved. Therefore,
17 Counts 37 to 44 inclusive should be dismissed as to
18 the accused OSHIMA.

19 Counts 53, 54 and 55. These Counts should
20 be dismissed as to the accused OSHIMA for the reasons
21 stated in Paragraph 15 of this Motion and more particu-
22 larly set out in the objection to the evidence in the
23 atrocity phase of the case. Said objection found in
24 the official record on pages 11,405, 11,406 and 11,407,
25 dated 27 November 1946, and are hereto referred to and

1 made a part of this Motion by this reference in Section
2 18 of the Brief and Memorandum filed herewith. I be-
3 lieve the brief will be distributed during the day.
4 Prosecution has failed in its responsibility to es-
5 tablish that the complaining nations have performed
6 their reciprocal obligations under the rules of land
7 warfare before having recourse to complain against the
8 Japanese. That by resorting to inhuman illegal methods
9 to subdue Japanese armed forces and to destroy the
10 morale of the Japanese war effort, the complaining
11 nations have forfeited any right to punish violators
12 of the rules of land warfare in their own right.

13 19. The evidence proves conclusively the
14 following:

15 (a) That the Japanese form of government
16 with its checks and balances provides a system which
17 is incompatible, irreconcilable with the theory of
18 conspiracy charged by the complaining nations against
19 the accused OSHIMA in this cause.

20 (b) That the foreign policy of Japan was
21 always in the hands of the government alone.

22 (c) That the acts complained of as respects
23 the accused OSHIMA were committed in the lawful exer-
24 cise of his function as the agent of a sovereign
25 nation.

1 (d) That the accused OSHIMA held no power or
2 influence sufficient to place him in a position to
3 commit the offenses charged against him in the Indict-
4 ment.

5 (e) That the decisions leading to war were
6 accomplished through the established governmental
7 channels. The complaining nations have waived their
8 rights by negotiating and making agreements with the
9 same governmental officials as they charge with con-
10 spiracy in the Indictment.

11 (f) The acts complained of in the Counts
12 naming the accused have been judicially and politically
13 determined and settled by treaties, non-aggression and
14 mutual assistance pacts and by financial settlement
15 according to the only existing legal processes as of
16 the time of their commission. This was accomplished
17 further by applying economic sanctions, embargoes,
18 freezing of assets, and all other acts short of war,
19 and by electing to have recourse to war to determine the
20 issues.

21 I have submitted an amendment on 20 which I
22 think has probably been circulated as a correction.

23 THE PRESIDENT: Read it as corrected.

24 MR. CUNNINGHAM: Has it been received? I
25 read it as corrected.

1 The record fails to establish the following
2 vital elements of proof which are indispensable to
3 permit a finding by the Tribunal that the evidence
4 offered by the prosecution is sufficient to find the
5 accused OSHIMA responsible under any Counts of the
6 Indictment.
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1 (1) That the acts complained of were criminal
2 at the time of commission.

3 (2) That the complaining nations are authorized
4 to join in these proceedings.

5 (3) That the prosecutors are empowered to
6 represent humanity or mankind.

7 (4) That conspiracy is a crime recognized
8 by International Law.

9 (5) That the amended Charter is in conformance
10 to the Potsdam Declaration.

11 (6) That the Indictment complies with the
12 amended Charter or that the Japanese Government was
13 controlled by any group of the accused at any time
14 during the period covered by the Indictment.

15 (7) That the presumption of self-defense was
16 overcome.

17 (8) That the appointing authority has power
18 or authority over the persons of the accused in this
19 cause.

20 (9) That the Members of the Tribunal are
21 legally appointed and sworn to administer any established
22 system of laws, universal in character, enforceable by
23 judicial order; or that the scope of this inquiry is
24 unlimited.

25 (10) That the record embraces basic documents

1 upon which this Tribunal bases its power; but only an
2 unsigned mimeographed copy of an amended Charter, which
3 fails to satisfy its own requirements as documentary
4 evidence, is of record.

5 (11) That there is no evidence on record to
6 show any international agreement, treaty or convention
7 creating this Tribunal as in similar cases provided.

8 THE PRESIDENT: Of course, many of these
9 submissions are outside the scope of the motions which
10 we permitted. Nevertheless, we will be satisfied to
11 keep that in mind.

12 Now, talking of "(10)", I might scotch this
13 thing at once. An unsigned mimeographed copy is a
14 mistaken description of the document. The person who
15 signs the wax sheet intends that every copy shall be
16 a duplicate or a triplicate, and so on; and you can use
17 a duplicate or a triplicate as much as the original.
18 Obviously, the wax sheet is never intended to be the
19 original. In any event, it is for us to say what we
20 will accept as proof, if proof be needed, and if we
21 cannot judicially notice our own existence. However,
22 it may be thought by one or more Members of the Court
23 that the wax sheet is the original.

24 MR. CUNNINGHAM: My only thought, your Honor,
25 was that the original Charter of January 19 probably

1 should be on file together with the amendment, showing
2 that the amended Charter modified the original Charter
3 and the chain of events which led to exhibit 10,
4 being the official record of this Court's existence. That
5 was my only thought.

6 THE PRESIDENT: Well, we will say no more
7 about it for the time being.

8 MR. CUNNINGHAM: With the exception of isolated
9 instances the facts of the case disclose that the only
10 acts upon which the prosecution relies for implication
11 of the accused OSHIMA were those committed while he
12 was military attache or ambassador plenipotentiary in
13 Germany. The record sets forth that 9 foreign ministers
14 directed the foreign policy of Japan during the seven
15 year tour of the accused. From this and other facts
16 it must be evident that the foreign and domestic policy
17 of Japan towards Germany varied, as the different
18 Cabinets which directed the destiny of Japan while the
19 accused was in Europe, rose and fell. There is no
20 logical way to connect this accused with the charge of
21 conspiracy. If unity of purpose or continuity of plan
22 is an essential element of the crime, this link is
23 certainly missing in this instance.

24 If participation in the deliberation of policy
25 and decisions as to the course to be followed by the

1 Japanese Government is at all required to establish
2 responsibility of the accused for the initiation of or
3 planning for war, then the accused OSHIMA must be excused
4 for he was never an official charged with decisions or
5 allowed to participate in the deliberation leading to
6 decisions. The second link of the chain is also missing.

7 If criminal intent, knowledge of illegal
8 plan, consent or agreement are indispensable elements,
9 and positions or influence necessary to carry out the
10 plan can be attributed to one of the Japanese Empire's
11 ambassadors, then there must be absolute proof as to
12 the essential elements in order to establish guilt.

13 The facts bespeak the opposite in the case
14 of the accused. His sincerity of purpose, his limited
15 access to governmental processes, the impossibility of
16 the exercise of discretion or choice in the performance
17 of his duties add greatly to his presumption of innocence.
18 "Instructions" was the keynote of the accused OSHIMA's
19 relation to his government. The chain of evidence has
20 omitted another important link.

21 All decisions for the Japanese Government were
22 made in Tokyo; decoding and transmission through dip-
23 lomatic channels only were handled by the accused OSHIMA,
24 but this to a very limited extent. Can it be said or
25 read in any degree of fairness from the record that the

1 Japanese Government is at all required to establish
2 responsibility of the accused for the initiation of or
3 planning for war, then the accused OSHIMA must be excused
4 for he was never an official charged with decisions or
5 allowed to participate in the deliberation leading to
6 decisions. The second link of the chain is also missing.

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8 plan, consent or agreement are indispensable elements,
9 and positions or influence necessary to carry out the
10 plan can be attributed to one of the Japanese Empire's
11 ambassadors, then there must be absolute proof as to
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13 The facts bespeak the opposite in the case
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15 access to governmental processes, the impossibility of
16 the exercise of discretion or choice in the performance
17 of his duties add greatly to his presumption of innocence.
18 "Instructions" was the keynote of the accused OSHIMA's
19 relation to his government. The chain of evidence has
20 omitted another important link.

21 All decisions for the Japanese Government were
22 made in Tokyo; decoding and transmission through dip-
23 lomatic channels only were handled by the accused OSHIMA,
24 but this to a very limited extent. Can it be said or
25 read in any degree of fairness from the record that the

1 accused OSHIMA could determine what was coming next from
2 Tokyo, or what he would be asked in Berlin to transmit
3 to his government? Common knowledge tells us that an
4 ambassador is only a person who receives instructions
5 and who reflects reactions; diplomacy will not admit
6 greater participation. A nation's policy is formed by
7 its leaders at home and the proof does not indicate
8 that the accused OSHIMA exercised any influence what-
9 ever in this determination.

10 If sovereignty has lost its right of repre-
11 sentation with immunity in international relations; if
12 freedom from restraint is no longer an attribute of
13 its agents; and if diplomats are now required to pattern
14 their negotiations and operate with the fear of punish-
15 ment if their mission fails; and if the ordinary
16 consequences follow their errors of judgment, then
17 perhaps the acts of the accused are within the scope
18 of this inquiry.

19 But if nations continue to carry on diplomatic
20 relations, if world citizenship is to be enjoyed by
21 spokesmen, if each nation is to have its seat at the
22 table of family of nations, then ambassadorial immunity
23 will continue to be a measure by which the acts of the
24 sovereign representatives will be protected.
25

 If the official acts of the accused OSHIMA

1 furnish a link in the chain of evidence from what proof
2 can it be constructed from this record? The accused
3 OSHIMA does not rely solely upon the immunity which
4 international law provides for his official acts, but
5 emphasizes this privilege as an additional release from
6 any personal responsibility to be attached to his
7 ambassadorial functions.

8 The duties of an ambassador are so well described
9 and their field so circumscribed by long usage, custom
10 and the necessities of the assignment that the term
11 "agent" truly describes the role. Discretion and use
12 of moral choice are uncalled for, they have no place.
13 Human personalities and individual responsibility are
14 beyond the field, when nations deal with each other.
15 Nations deal through the heads of their states and the
16 foreign ministers are the organs for communication, the
17 ambassador, the conduit. Resignation, recall and
18 dismissal of agents are prerogatives exercised extensively
19 during recent years.

20 Analyzing German-Japanese relations we find ten
21 agreements, none of which were negotiated or signed
22 by the accused OSHIMA until after their approval in
23 Tokyo and instructions received. Performing the admin-
24 istrative task of signing agreements which were within
25 the ordinary course of diplomatic procedure cannot be

1 considered proof for any of the charges contained in
2 the Indictment. To predicate a conspiracy charge upon
3 an agreement with Germany is contradictory in itself.
4 Looking at the alleged cooperation it resolves itself
5 into three main demands:

6 (1) Germany wished Japan to go against
7 England, Japan refused at a time when the war was
8 going hard for the British Empire.

9 (2) Germany urged Japan to go against Soviet
10 Russia when Hitler's army was marching towards Moscow,
11 and later; this Japan refused to do.

12 (3) The foreign policy of Germany was directed
13 in the crucial period towards keeping the United States
14 out of the European War.

15 Japan was unable to comply with all three demands.
16 There was no effective cooperation between Germany and
17 Japan. The accused is charged with creating a situation
18 which did not in reality exist.

19
20 His presence in Germany from 1934-39 and again
21 from 1941 until 1945, the time during which most of the
22 acts complained of were being committed in Japan and
23 in occupied areas in the Far East, places the accused
24 in a position far remote from the internal operations
25 which were deciding peace or war for Japan. Lack of
communication, strained conditions in international

1 relations specially limited the opportunity of the
2 accused OSHIMA to participate in any organization or
3 governmental program, and any acts which the accused
4 OSHIMA committed were those initiated in Tokyo.

5 No instructions, orders or directives could be
6 issued by the accused OSHIMA by the nature of his
7 assignment. It should be noted that the United States
8 of America carried on diplomatic relations with Germany
9 until war was declared.

10 9. With the close control which a foreign
11 minister exercises over the ambassador and the limited
12 scope of operation allowed, it is inconceivable that one
13 in such a position could be accused so generally as the
14 charges embrace. With the distance involved, the
15 probability of interception of messages, the lack of
16 confidence among nations, and the delicate situation
17 throughout the world the Japanese ambassador in Germany
18 was out of touch with conditions at home far more than
19 the average Diet member or Japanese citizen. He
20 received only that information which the governmental
21 leaders chose to impart to him and the further information
22 obtained from the press and radio. His field of activity
23 was too limited to permit him to commit the offenses
24 with which he is charged.
25

In all of the opening statements, the prosecutors

1 in explaining their theory of the case, have emphasized
2 throughout, the importance of government posts which
3 determine policy and the official position of the accused,
4 who occupied them. On this basis alone the accused
5 OSHIMA was beyond the scope of this inquiry. If the
6 decision war or peace was critical, if the determination
7 of the Japanese foreign policy was decisive, if the
8 ability to direct or order action of any kind is a
9 material element of the case, then this link of the
10 chain of evidence is most conspicuous in its absence
11 so far as the accused OSHIMA is concerned. He was
12 never a policy maker, military commander, Minister
13 of State, or head of a department. His role was
14 purely administrative, perfunctory, prescribed by
15 the law of his own country and through restraints
16 imposed by international law.

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1 Since the people of Japan could not go in
2 a body to Germany, or any other country in the world,
3 to express friendship or desire for cooperation,
4 they must of necessity send their representative.
5 The presence of the head of the state and also the
6 foreign minister is most desirable at home, therefore,
7 there was selected "an agent" who was given instruc-
8 tions and messages to deliver in the name of all of
9 the people. The will of the nation is expressed in
10 the policies of the government translated through
11 official communications, treaties and agreements
12 through the ambassador who is a symbol of his country.
13 The whole nation is bound by what he does. We cannot
14 associate official personality with the individual.

15 All of the agreements, treaties, commitments
16 made to Germany were directed by the Japanese govern-
17 ment through its established governmental channels.
18 This is without question. Not one illegal agreement
19 has been suggested, each nation is the sole judge as
20 to what extent it will carry out intercourse with
21 other sovereign powers. The brief of the evidence
22 under this point shows forcefully how the two nations
23 carried on their relations since World War No. I. It
24 proves conclusively that the accused OSHIMA did only
25 as directed. His country could not have been bound

otherwise.

1 Although no case appears in the record of
2 courts of any land convicting the ambassador for any
3 offense committed during his tour of duty -- that I
4 have been able to discover; I had better insert that --
5 or while he was engaged as a diplomat, international
6 law books and treatises abound with authority showing
7 release and exoneration from blame and dismissal of
8 charges without trial. Courts are ordinarily held to
9 be without jurisdiction to try offenses committed by
10 ambassadors. In the United States, cases involving
11 ambassadors are held exclusively to the United States
12 Supreme Court, but Federal procedure prohibits prosecu-
13 tion of foreign ministers. Expediency and necessity
14 have been the keynote of the development to the
15 immunity of ambassadors.
16

17 All civilized nations recognize their right
18 to perform their duties unrestrained, subject only
19 to the limitations imposed and instructions from
20 their homeland. International law has been the champion
21 and their protector. All the authorities and legal
22 scholars sanction this principle.

23 To contend that an ambassador residing in
24 Germany thousands of miles away from the scene of the
25 Pacific war, secluded from communication with his

1 country except through the courtesy of Russia,
2 Switzerland and other neutrals, could commit any of
3 the offenses charged under crimes against humanity,
4 or the rules of land warfare, is fantastic.

5 It is not to be seriously considered that
6 conspiracy to commit this class of offenses described
7 in Counts 53 to 55 was contemplated by the amended
8 Charter, or that the accused OSHIMA is deemed respon-
9 sible for the commission of any such offenses personally
10 or by remote control. His position, mission and
11 location all negative any connection with these
12 offenses.

13 To charge and attempt to sustain by proof that
14 an ambassador who is the representative of one country
15 to the government of another has violated international
16 law, treaties and assurances requires a complete re-
17 versal of action. Can a legislator be guilty of
18 violating a law by attempting to change or alter it
19 in his official capacity, at the instance of his
20 constituent? Does the executive make himself criminally
21 responsible for error in judgment or is that for the
22 voters, parliament or the senate in impeachment to
23 determine, solely as a political question?
24

25 Is international law for individuals, states,
or both? One is the subject, the other is the object.

1 Public international law is for the state, private
2 international law, for individuals. .Only the latter
3 concerns itself with crimes. The issue is being con-
4 fused; we are attempting to apply the law of states
5 to individual conduct. This not only leads to con-
6 fusion but is contrary to the purpose and intent of
7 international law itself. Theorists and acadamicians
8 may temporarily have their day in advocating such
9 extensions, but judges and practitioners must show
10 the fallacy of this erroneous premise.

11 If the framers of the amended Charter had
12 contemplated making ambassadors responsible as public
13 officials and as authors of war, this fact would have
14 been expressly stated. It is assumed that the authors
15 of the amended Charter and the Potsdam Agreement knew
16 of the existence of immunity for they were enjoying
17 the privilege themselves while they were meeting.

18 Since the amended Charter says "OF ITSELF"
19 in Article 6, it must have contemplated that certain
20 offices would be beyond the reach of the Charter as
21 amended. It cannot be imagined that ambassadors are
22 classed with governmental leaders, mere politicians
23 who make decisions and policy. Ambassadors are presumed
24 to be above party politics and represent the sovereignty.
25

1 CONCLUSION

2 So long as nations must act through their
3 duly appointed representatives, whether it be League
4 of Nations, United Nations, or private consuls of
5 two or more countries, there must be some freedom
6 of expression on the part of the plenipotentiaries,
7 as of necessity the governments of the world must
8 speak through their duly constituted emissaries. If
9 the ambassador or the minister is to bind his country
10 and to express the view of his nation manifested
11 through the organized machinery, he must also be
12 vested with some qualities and characteristics of
13 the sovereignty and his right to speak must be respected
14 and held inviolate.

15 The Von Papen acquittal indicates that the
16 International Military Tribunal charter employed in
17 Nuernberg was directed toward policy makers primarily.
18 As the court there indicated, it in nowise intended
19 to reach beyond and punish the mere spokesmen. There
20 is a principle of international law involved there
21 which grants immunity and impunity to the sovereign's
22 representative. If the nations of tomorrow wish to
23 maintain the integrity of expression and rely upon
24 the word of the ambassador as expressive of the policy
25 of the nation he represents, then this principle must

1 be followed to the letter. There is no doubt that
2 the law of the future will assume what it so well
3 established in the law of the past: that the ambas-
4 sador must have freedom from the ordinary consequences
5 of his acts.

6 THE PRESIDENT: Mr. Freeman.

7 MR. FREEMAN: If the Tribunal please, comes
8 now the accused SATO, Kenryo and at the close of the
9 prosecution's case and moves the Court to dismiss
10 each and every count against him in said Indictment
11 contained for the reason that the evidence is insuf-
12 ficient to sustain the charges.

13 For the purpose of this brief discussion
14 relative to the failure of the prosecution to dis-
15 charge its burden of sustaining the counts of the
16 Indictment against the accused SATO, Kenryo, we will
17 accept the general divisions named in the Indictment
18 and treat the counts under three classifications:

- 19 1. Crimes Against Peace.
20 2. Murder.
21 3. Conventional War Crimes and Crimes Against
22 Humanity.

23 I. CRIMES AGAINST PEACE (Counts 1 - 36)

24 Since it would be little more than repetitious
25 to describe the contents of these counts and those to

1 follow under the other two groupings, it will
2 suffice to say they deal with the alleged conspiracy
3 or common plan to wage, plan, prepare and initiate
4 wars of aggression as well as the acts which tend to
5 compose the alleged conspiracy. This accused is not
6 charged in counts 18, 19, 23, 25, 26, 33, 35 and 36.

7 To intelligently discuss this matter, it
8 becomes necessary not only to determine the theory
9 behind the alleged conspiracy charges but to
10 rationally treat this subject in the light of
11 logical reasoning. Certainly the application of
12 the broadest concept of conspiracy law might well
13 include a charge against every citizen of Japan who
14 did not openly work contrary to the governmental
15 policies during the period alleged in the Indictment.

16 The prosecution cannot intend this. Such
17 would be fantastic for there would be neither time nor
18 personnel enough to complete the task of trying those
19 involved in the war effort. Therefore, reason would
20 dictate that the gist of the alleged conspiracy accusa-
21 tions comprises as its objective the accusation of
22 those high governmental figures who possessed sufficient
23 power and influence to actually formulate the policies
24 of the country.

25 My colleagues have discussed the question of

1 conspiracy and the substantive law applying thereto.
2 We do not propose to elaborate further but to now
3 point out, from the prosecution's evidence and the
4 failure of the prosecution's evidence, why the accused
5 SATO, Kenryo cannot by any stretch of reasoning be
6 judged guilty of complicity herein.

7 Prosecution exhibit 122 is a brief biography
8 of the positions held by the accused during his
9 military career. It reveals that he was a military
10 man by vocation. Fifty days, or less than two months,
11 prior to the commencement of hostilities December 7,
12 1941 this accused held only the rank of colonel. On
13 October 15, 1941 he was promoted to the rank of
14 "Shosho" which is perhaps comparable to Brigadier
15 General and is the lowest ranking general in the
16 Japanese Army.

17 Certainly then, up to this date the accused
18 occupied such a minor role in the governmental and
19 military affairs of Japan that he cannot with serious-
20 ness be held accountable as a participant in the
21 formulation of even minor governmental policies --
22 not to mention such a momentous decision as war. The
23 very nature of his position makes it physically impos-
24 sible for him to have done so unless the criterion be
25 so broad as to encompass, as said before, the actions

1 of many thousands, if not millions, of Japanese people.

2 The evidence recites further that on November
3 15, 1941 -- and this date is subject to correction
4 because the record varies as to the month -- just
5 twenty-three days prior to the attack on Pearl Harbor,
6 this accused was ordered to assume charge of the
7 Military Affairs Section of the Military Affairs
8 Bureau under the jurisdiction of the War Ministry.
9 The Tribunal should bear in mind that this was merely
10 a section under a Bureau of the War Ministry. The
11 evidence fails to show that this position carried with
12 it any duty of such a nature as could possibly involve
13 the accused in the charges contained under this group
14 of the Indictment. Moreover, there is a total failure
15 of proof that the assumption of an administrative
16 military assignment under orders is, in and of itself,
17 a criminal act.

18 Prosecution evidence reveals that not even
19 the chiefs of bureaus under the War Ministry had
20 authority to make decisions on official documents
21 sent to the War Ministry. And certainly a section
22 head under such a bureau would be in a much lesser
23 position of authority. (Record page 14377).

24 Prosecution evidence further shows that prior
25 to April 20, 1942, at which time the accused SATO

1 succeeded, to the office of Chief of the Military
2 Affairs Bureau, he was not even qualified to attend
3 the conferences of bureau chiefs. The effect of this
4 is obvious. How can he be successfully charged with
5 the planning, preparing or initiating of wars of ag-
6 gression or any other acts stated in these counts
7 when a necessary corollary is the ability to
8 participate by virtue of the office or influence
9 held.

10 Having thus shown the Tribunal, by the
11 evidence presented, that up to the period of commence-
12 ment of hostilities December 7, 1941 this accused
13 possessed neither the rank nor occupied any position
14 or influence wherein or whereby he could participate
15 in, control, command or authorize the initiating,
16 planning or waging of war of aggression, we move to
17 the next group.
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II. MURDER (Counts 37 - 52).

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Encompassed under this group are counts charging the initiation by Japan of hostilities between June 1, 1940 and December 8, 1941 and subjecting the accused to liability for the crime of murder. This accused is omitted from Counts 45, 46, 47 relative to certain cities in China, together with Counts 51 and 52 pertaining to the U. S. S. R.

What does the evidence show to sustain these charges against this accused. At the risk of the patience of the Tribunal, we reiterate that the accused SATO was without the means to qualify as to those charges.

The record of various meetings where at the grave and weighty matters which were to guide the destiny of Japan were decided do not include the name of SATO, Kenryo as one present nor does the prosecution offer even a scintilla of evidence that he was a participant, leader, organizer, instigator or accomplice in the matters herein alleged.

Whether or not the charge of murder can successfully be applied to the act of destroying human lives upon the commencement of war is a matter which has been treated in the general argument and will not be further discussed here.

1 The accused's advancement to the position
2 of Chief of the Military Affairs Bureau dates as
3 of April 20, 1942 and will be considered in the
4 following group.

5 III. CONVENTIONAL WAR CRIMES AND CRIMES
6 AGAINST HUMANITY (Counts 53 - 55).

7 The prosecution has consumed a larger
8 portion of its time under these counts in dealing
9 with the commission of the individual acts which com-
10 pose the alleged war crimes against humanity. The
11 legally all-important proposition of connecting such
12 alleged acts with the responsibility of this accused
13 has failed of proof and the evidence offered there-
14 fore is of a weak and varying nature which cannot
15 but be considered a complete failure of proof in
16 this regard.

17 The heartbeat of the prosecution's case
18 against this accused is that he, as Chief of the
19 Military Affairs Bureau commencing April 20, 1942
20 as aforesaid, was in charge of the Prisoner of War
21 Bureaus. This allegation of the prosecution has not
22 been substantiated by the evidence offered but in
23 fact has been disproven by their own witnesses and
24 documents.
25

Exhibit 92 describes the set-up and origin

1 of the Prisoner of War Internment Camp and Prisoner
2 of War Information Bureaus. The Tribunal should
3 take particular note of the use of the word
4 "bureaus." In this document are contained the
5 words and I quote: "The Prisoner of War Informa-
6 tion Bureau shall be under the jurisdiction of
7 the Minister of War." A like statement is contained
8 in reference to the Prisoner of War Internment Camps.
9 They were thereby given the rank and dignity of
10 bureaus and so designated as such.

11 The witness TANAKA on page 14,346 said:
12 "There is no bureau in War Ministry which is under
13 the control of the Military Affairs Bureau. They are
14 all under the jurisdiction and control of the
15 Minister of War. The Prisoner of War Information
16 Bureau is a special existence in Japan and is
17 under the control of the Minister of War."

18 In connection with this line of thought,
19 the Tribunal should carefully note the testimony of
20 the witness TANAKA that UEMURA as Chief of the
21 Prisoner of War Bureaus was a Lieutenant General
22 and superior in rank to this accused. Therefore,
23 the proof before the Tribunal as to the relationship
24 between the Military Affairs Bureau and the Prisoner
25 of War Bureaus can well be expressed in the words

1 of their own witness TANAKA (Record 14,404). "The
2 Prisoner of War Information Bureau was established
3 as an outside bureau attached to the War Ministry."

4 The evidence further shows the needs of
5 the commanders of Prisoner of War Camps were com-
6 municated directly to the Prisoner of War Information
7 Bureau where the matters pertaining to the Prisoners
8 of War were disposed of.

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1 Prosecution relied upon the testimony of
2 witness SUZUKI to show that protests relative to
3 treatment of prisoners of war delivered by the Swiss
4 Legation to the Japanese Government were connected
5 with the accused SATO. Their attempt has been highly
6 unsuccessful for the evidence reveals time and time
7 again that the duties pertaining to the handling of
8 prisoners were in the hands of the two bureaus known
9 as the Prisoner of War Information Bureau and the
10 Prisoner of War Administration and/ or Control
11 Bureau; that the protests were sent directly to them.

12 The witness is of the opinion that copies
13 may have been sent to the other bureaus (Record Page
14 15526) but this, in and of itself, does not put the
15 accused SATO in a position dissimilar to that of any
16 of the Bureau Chiefs.

17 The burden is on the prosecution to prove
18 these things and their failure to do so cannot be
19 supplied by implication or innuendo. The evidence
20 should be clear and concise. But by whatever rule
21 the Tribunal wishes to apply in judging the suf-
22 ficiency of the evidence it is demonstrated that in
23 regard to the accused SATO a conviction cannot be
24 sustained by the evidence presented.

25 The witness TANAKA has admitted that he was in

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2 witness SUZUKI to show that protests relative to
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19 supplied by implication or innuendo. The evidence
20 should be clear and concise. But by whatever rule
21 the Tribunal wishes to apply in judging the suf-
22 ficiency of the evidence it is demonstrated that in
23 regard to the accused SATO a conviction cannot be
24 sustained by the evidence presented.

25 The witness TANAKA has admitted that he was in

1 charge of the Military Service Bureau of the War
2 Ministry and that friction existed between his
3 bureau and the Military Affairs Bureau. Therefore
4 the Tribunal should take into consideration the pos-
5 sibility of biased testimony on the part of this
6 witness which may be retaliatory in a sense. (Record
7 Page 14343).

8 It has not been the purpose of counsel to
9 take each count separately for the reason that it
10 would be tiresome and repetitious to state and re-
11 state simply that there has been a failure of proof.
12 Therefore this accused incorporates the arguments
13 heretofore made by counsel in reference to general
14 matters and statements pertaining to law relative to
15 the Indictment.

16 Relying upon the Tribunal at this time, at
17 the close of the prosecution's evidence, to weight
18 the value and nature of the evidence offered, and
19 to note the lack of evidence, in reference to each
20 and every count the accused SATO renews his motion
21 that the Indictment be dismissed and requests that he
22 be not required to go forward with evidence in his
23 behalf.

24 MR. BLAKENEY: May it please the Tribunal --

25 THE PRESIDENT: Which are you taking, Major?

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2 Ministry and that friction existed between his
3 bureau and the Military Affairs Bureau. Therefore
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5 sibility of biased testimony on the part of this
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21 that the Indictment be dismissed and requests that he
22 be not required to go forward with evidence in his
23 behalf.

24 MR. BLAKENEY: May it please the Tribunal --

25 THE PRESIDENT: Which are you taking, Major?

1 Mr. BLAKENEY: In the absence of Mr.
2 Furness, I have been asked to read the motion on
3 behalf of SHIGEMITSU, Mamoru.

4 THE PRESIDENT: I think it will be con-
5 venient to have the recess now. We will recess for
6 fifteen minutes.

7 (Whereupon, at 1440, a recess was
8 taken until 1500, after which the proceedings
9 were resumed as follows):

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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now resumed.

3 THE PRESIDENT: Major Blakeney.

4 MR. BLAKENEY: Now comes the defendant
5 SHIGEMITSU, Mamoru, and moves the Tribunal to dismiss
6 the Indictment and the several counts thereof in so
7 far as they relate to him upon the ground that the
8 evidence adduced by the prosecution is insufficient to
9 warrant a conviction upon any of the counts charged
10 by the Indictment.

11 In moving the Tribunal for the defendant
12 SHIGEMITSU to dismiss the Indictment, we invite the
13 attention of the Tribunal to the evidence adduced by
14 the prosecution against the defendant, which we very
15 briefly analyze under the following headings:

- 16 (1) Sino-Japanese Relations
17 (2) The Pacific War
18 (3) Japanese-German-Italian Relations
19 (4) Soviet-Japanese Relations
20 (5) Conventional War Crimes

21 To shorten the argument, the citations of
22 pages of the record pertinent to the various points will
23 not be read.

- 24 (1) Sino-Japanese Relations.

25 The defendant SHIGEMITSU is indicted in

1 Counts 1, 2 and 3 for conspiracy to dominate
2 respectively Eastern Asia, Manchuria, and China; in
3 Count 6 for planning and preparing war; and in
4 Counts 18 and 27 for waging war against China. No
5 evidence has been adduced by the prosecution to estab-
6 lish any responsibility of his of whatever kind on
7 these charges. Not only that, but all the witnesses
8 produced by the prosecution for testimony pertinent
9 to this point have testified affirmatively to his
10 efforts and his fruitful services toward peace between
11 China and Japan.

12 Moreover, abundant evidence offered by the
13 prosecution has clarified the fact that the Manchurian
14 Incident occurred without desire or intention on the
15 part of the Japanese Government -- or, rather, occurred
16 against its intention. See, for instance, the testi-
17 mony of the witnesses SHIDEHARA, the then Foreign
18 Minister; WAKATSUKI, then Premier; TANAKA, ex-Director
19 of the Military Service Bureau; MORISHIMA, et al.
20 The defendant SHIGEMITSU, the evidence discloses, had
21 nothing to do with the outbreak of such incident.

22 Baron SHIDEHARA, Foreign Minister at the time
23 of the Manchuria Incident, has also testified to the
24 facts that SHIGEMITSU was a faithful apostle of
25 "SHIDEHARA diplomacy"; that he himself recommended

1 appointment of the defendant as Minister to China;
2 that the appointment took place during his tenure of
3 office as Foreign Minister; that the defendant spared no
4 effort to relax the tension then prevailing between
5 China and Japan; and that strenuous efforts were made
6 by the defendant, after the outbreak of the incident
7 in Manchuria, toward a peaceful solution of the con-
8 flict. Also the testimony of the witness MORISHIMA,
9 Consul at Mukden, Manchuria, at the time of the
10 Manchurian Incident, is as clear on these points.
11 The witness Powell has testified to the fact that
12 SHIGEMITSU, after the unfortunate outbreak of hostili-
13 ties around Shanghai, succeeded by dint of his untiring
14 efforts in concluding the Agreement for Cessation of
15 Hostilities on 5 May 1932.

16 Attention is now invited to the facts that
17 the defendant SHIGEMITSU is not indicted in Count 19
18 for initiating war against China on or about 7 July
19 1937, and that, though Count 28 charges him with
20 waging war against China, he was neither in Tokyo nor
21 in China at the time when those hostilities occurred
22 between China and Japan, but was in Europe as ambassador
23 until the hostilities in China had reached a much
24 advanced stage (Cabinet Secretariat curriculum vitae,
25 exhibit 123. It may be also noted in this connection

1 that one page -- covering the period of five years
2 from 1930 to 1934 -- is evidently missing from this
3 personnel record.)

4 This defendant is indicted also on Counts 48,
5 49 and 50 for slaughtering the inhabitants of the
6 cities of Changsha, Hengyang, Kweilin and Liuchow.
7 The statement above applies also to these charges,
8 and no evidence can be said to have been adduced to
9 connect him with such murders.

10 (2) The Pacific War.

11 The defendant SHIGEMITSU is charged, in
12 Counts 4 and 7 to 16, with the conspiracy for and
13 the planning and preparation of the war against the
14 United States of America and nine other nations.
15 But the fact is that the war had been begun before he
16 was appointed Minister for Foreign Affairs on 20 April
17 1943; and of course before he was concurrently appointed
18 Minister for Greater East Asia on 22 July 1944. He
19 was at his posts abroad not only before but after
20 the outbreak of the war. Exhibit 123 shows that:

21 (a) The war against the United States, the
22 British Commonwealth, the Philippines and the Nether-
23 lands started about sixteen months before his appoint-
24 ment as Foreign Minister, and about two years and seven
25 months before he became Minister for Greater East Asia;

1 (b) The advance of the Japanese Army into
2 French Indo-China was completed about three years
3 before the defendant SHIGEMITSU was made Minister for
4 Greater East Asia (retaining his portfolio as Foreign
5 Minister). In this respect, it has been made clear
6 in the opening statement on this phase that the
7 Japanese Army moved into northern French Indo-China
8 on 22 September 1940, and into southern French Indo-
9 China on 28 July 1941, and that Japan was, from that
10 moment onward, the master of Indo-China. As Mr.
11 SHIGEMITSU was not in Tokyo at that time (exhibit 123),
12 he did not participate in governmental conferences
13 in 1941 concerning that occupation, nor had he any
14 knowledge of the negotiations which were conducted
15 exclusively by a very limited number of people in
16 ununter secrecy in Tokyo, Vichy and Hanoi. It is
17 only natural that the prosecution did not mention in
18 court the name of the defendant as one of those who
19 occupied positions of authority in regard to matters
20 concerning French Indo-China.

21 On the other hand, the French National
22 Committee of de Gaulle declared war on Japan on
23 8 December 1941; that is, two years and seven months
24 before the defendant took office as Minister for
25 Greater East Asia;

1 (c) The same facts as in paragraph (a) apply
2 to the war against Thailand.

3 Not only, therefore, has no evidence been
4 tendered by the prosecution to sustain the charges
5 against the defendant SHIGEMITSU of conspiracy for
6 and the planning and preparation of the above-mentioned
7 wars; but all the evidence, through the exhibits
8 cited above, demonstrates the contrary; that is, that
9 he had nothing whatever to do with these wars.

10 The statement under this heading will apply
11 also to Count 23 for initiating war against France,
12 and Counts 29 to 34 for waging war against the United
13 States, the British Commonwealth, China, France, the
14 Philippines and the Netherlands, with which the
15 defendant is not indicted on Counts 19, 20, 21, 22
16 and 24, for the initiation of the aforesaid wars.

17 (3) Japanese-German-Italian Relations.

18 This is Count 5. During the time when the
19 negotiations on the Anti-Comintern Pact were being
20 conducted, the defendant SHIGEMITSU was on the reserve
21 list of the Foreign Office (exhibit 123).

22 When later the negotiations on the Tripartite
23 Pact were going on, he was ambassador to the Court of
24 St. James (exhibit 123), and innumerable evidentiary
25 documents of the prosecution have proven that the

1 negotiations were expedited mainly in Tokyo by a very
2 small number of people, in complete secrecy. These
3 facts reinforce the inference from his failure to be
4 mentioned in this connection to indicate that this
5 defendant had no connection with either of these
6 pacts, or with the alleged three-power conspiracy.

7 (4) Soviet-Japanese Relations.

8 As for Counts 17 and 35 -- initiating and
9 waging war against the Union of Soviet Socialist
10 Republics -- the defendant, as a career diplomat,
11 was ambassador in the U.S.S.R. at the time of the
12 Lake Khasan Incident mentioned in Count 35
13 (exhibit 123). Whatever he said during the negotiations
14 in 1938 was all within the scope of the instructions
15 he received from his home government (exhibit 754,
16 extract from the record of the Talk of Litvinov and
17 SHIGEMITSU on 20 July 1938, in Moscow, concerning
18 Khasan Lake), and no evidence has been adduced by the
19 prosecution to establish that the Tokyo government
20 had any idea of initiating or waging war against the
21 U.S.S.R. In executing the instructions mentioned
22 above, the defendant made no slightest pretention of
23 demanding cession of Soviet territory by demarcating
24 the border between the U.S.S.R. and Manchukuo, as it
25 was contended without proof in the opening statement

1 of the Russian prosecutor. On the contrary, the
2 record of the Talk of Litvinov and SHIGEMITSU
3 (exhibit 754) testifies to the facts that what the
4 defendant wished was that the border should be accurately
5 demarcated, not on the basis of the data of Manchukuo
6 alone, but that the data of both parties should be
7 consulted, and that the first and foremost concern
8 of the defendant in these negotiations was tranquility
9 on the Soviet-Manchukuoan border in the region of
10 Lake Khasan. And thus agreement was reached between
11 Commissar Litvinov and Ambassador SHIGEMITSU on the
12 border clash of 1938.(exhibit 273). The prosecution
13 has in this way tendered evidence that the defendant
14 made a valuable contribution to peace between the
15 two nations; the charge that he initiated war against
16 the U.S.S.R. is sustained by no evidence.

17 This defendant is also indicted in Count 52
18 for murder in the affair of Lake Khasan. The state-
19 ment above under the present heading applies a fortiori
20 to this point; and not even the slightest evidence
21 which might connect the defendant with any such murder
22 has been tendered by the prosecution.

23 (5) Conventional War Crimes.

24 Mr. SHIGEMITSU is indicted in Counts 53, 54
25 and 55 for conventional war crimes. As far as the

1 defendant is concerned, we understand that he is
2 directly charged with matters regarding the treatment
3 and administration of prisoners of war and civilian
4 internees, as well as murder of such and similar
5 persons. The Minister for Foreign Affairs, which
6 post the defendant assumed well after the commencement
7 of the war, had no competence or responsibility for
8 prisoners and civilian internees. His sole competence
9 in this respect was to transmit to appropriate Japanese
10 authorities documents received on this matter from
11 foreign governments, and to inform those foreign govern-
12 ments of replies from such authorities when he was
13 furnished with them. The opening statement of the
14 prosecution for this phase admitted that such was
15 the competence of the Minister for Foreign Affairs, and
16 this fact has been established by the evidence of
17 TANAKA, Ryukichi, ex-Director of the Military Service
18 Bureau, and SUZUKI, Tadakatsu, during the war Chief
19 of the Bureau for Affairs of Japanese Residents in
20 Enemy Countries, witnesses introduced by the prosecu-
21 tion.

22 Abundant proof as to who the competent
23 authorities on this matter were may be found in numerous
24 evidentiary documents tendered by the prosecution --
25 for example, exhibit 1965-A, containing the regulations

1 concerning the Prisoners of War Information Bureau
2 and prisoners of war camps, ordinances and orders issued
3 by the Minister of War concerning the treatment,
4 supplying, employment for labor of prisoners of war,
5 etc. That the Minister for Foreign Affairs had no
6 competence in regard to prisoners of war and similar
7 persons, nor any organization to conduct investigation
8 concerning protests from foreign governments, may be
9 found stated in the testimony of TANAKA and SUZUKI.

10 The foregoing statement applies of course to
11 the employment of prisoners of war for the construction
12 of the Burma-Thailand Railway and to the Bataan Death
13 March. Especially it has been clarified, as to the
14 former, by a prosecution document, exhibit 475, Report
15 of the War Ministry, and the affidavit of the witness
16 WAKAMATSU, ex-Lieutenant General (exhibit 1989), that
17 the employment of prisoners of war was based upon a
18 decision of the Imperial General Headquarters; and
19 further as to the latter, by exhibit 1980-E, it appears
20 not only that it occurred before the inauguration of
21 the defendant SHIGEMITSU as Minister for Foreign
22 Affairs, but that even the accused TOJO, the then
23 Minister for War, had no knowledge of the matter. In
24 brief, no evidence has been adduced to prove the
25 responsibility of the defendant on these counts. And

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2 and prisoners of war camps, ordinances and orders issued
3 by the Minister of War concerning the treatment,
4 supplying, employment for labor of prisoners of war,
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21 the defendant SHIGEMITSU as Minister for Foreign
22 Affairs, but that even the accused TOJO, the then
23 Minister for War, had no knowledge of the matter. In
24 brief, no evidence has been adduced to prove the
25 responsibility of the defendant on these counts. And

1 not only that, but the evidence tendered by the prose-
2 cution has clearly shown that this defendant had no
3 connection with the matter.

4 It may be interesting to note that, although
5 the Foreign Ministry had no competence or responsibility
6 whatever for the treatment or administration of
7 prisoners of war, evidence by the witness SUZUKI has
8 made it clear that the Foreign Ministry did its best
9 to secure amelioration by the competent authorities
10 of the conditions of the prisoners of war.

11 It is also to be noted that SHIGEMITSU is
12 indicted in Count 44, that is, murder of prisoners
13 of war, civilian internees, and similar persons.
14 What has been said above under this heading will
15 prove the defendant's lack of responsibility for any
16 such murder.

17 Conclusion.

18 By this very brief analysis of the evidence
19 we are led to believe that no sufficient evidence has
20 been adduced by the prosecution to warrant a conviction
21 upon any of the counts charged by the indictment
22 against the defendant SHIGEMITSU, and we submit that
23 those parts of the indictment pertaining to this
24 defendant should be stricken and the defendant
25 discharged.

1 THE PRESIDENT: Mr. McDermott.

2 MR. McDERMOTT: Mr. President, and Members
3 of the Tribunal:

4 Comes now the accused SHIMADA, Shigetaro,
5 and at the close of the prosecution's case moves the
6 Court to dismiss each and every count in said
7 Indictment contained for the reason that the evidence
8 is insufficient to sustain a verdict of guilty against
9 him.

10 The prosecution evidence has shown that the
11 accused SHIMADA, Shigetaro, became Minister of the
12 Japanese Navy and a cabinet member only fifty days
13 prior to the commencement of hostilities, December 7,
14 1941. The evidence further has shown that the
15 planning and preparing of the Pearl Harbor attack, as
16 well as the other phases of the commencement of hosti-
17 lities, was under the exclusive control and preparation
18 of the Chief of Naval General Staff. The Indictment
19 alleges that SHIMADA attended only three conferences
20 relative to deciding on the policy of war, and the
21 proof does not sustain his attendance at these.

22 Prosecution evidence further reveals (docu-
23 ment 7512, exhibit 124) that immediately prior to
24 his appointment as Navy Minister the accused SHIMADA
25 served only as the Commander of the Yokosuka Naval

1 Station and was not in a command position sufficient
2 in any sense to engage in a common plan or alleged
3 conspiracy to commit any of the acts set forth in
4 this Indictment. It is clearly indicated that
5 practically all of the naval career of this accused
6 was spent as a man of the sea and that he was not such
7 an officer as did participate in policy formation.

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1 At the time of the entry of this accused
2 into the Cabinet as Minister of Navy, prosecution
3 evidence has shown that the situation between
4 the United States and Japan was so tense that the
5 possibility of war had ceased to exist and in its
6 place the probability of war had succeeded. The
7 prosecution has failed to show that this accused
8 either encouraged the outbreak of war or could
9 have prevented it in any way, and in fact, it is
10 apparent that the pattern of war had clearly been
11 cut prior to his assumption of duties.

12 The evidence of the prosecution's main
13 witness against the Japanese naval accused on trial
14 here was that of Admiral J.O. Richardson of the
15 United States. And his testimony, full of incon-
16 sistencies and incorrect statements, did not affect
17 this accused in any way, but in fact exonerated him
18 of many of the counts in this Indictment for the
19 reason that it was shown that the entire naval
20 strategic operational plans, known as General
21 Order Number One, had been originated and prepared
22 prior to the time this accused assumed office and
23 were carried out under the direction of the Naval
24 General Staff and not the Navy Ministry.
25

 Prosecution has further shown that it was

1 the customary practice of all nations for high-
2 ranking and senior naval officers to succeed to
3 the higher positions in the naval department and
4 they have failed to show that the assumption of such
5 a post is criminal in and of itself.

6 A distinction must be drawn between the
7 Naval Department and others because in a sense the
8 procedure of accepting an assignment to a position
9 is more in the nature of a duty or obligation and
10 not an individual matter of choice.

11 Prosecution evidence clearly indicates a
12 split in naval thought as to even the possibility of
13 successful outcome of war with the United States and
14 has even shown that the Chief of Naval General
15 Staff advised the Emperor to this effect. The
16 evidence shows that Admiral OIKAWA, Minister of Navy
17 under the KONOYE Cabinet, resigned because of the
18 general over-all issue of war or no war. How then
19 could a conspiracy exist with the multitude of
20 divergent thoughts that then existed?

21 In reference to the counts under Group 3
22 entitled "Conventional War Crimes and Crimes Against
23 Humanity," prosecution has failed to show that this
24 accused either ordered, consented or had knowledge
25 of or gave permission to any of the commanders of

1 the navy to commit any of the alleged acts or
2 atrocities complained of. The impossibility of
3 controlling the spontaneous actions of all naval
4 commanders, thousands of miles from the Navy
5 Ministry, is self evident.

6 The Court should take particular notice
7 that the prisoner of war camps were largely under
8 the control of army personnel and not naval. And
9 that the misconduct set forth in the Indictment in
10 reference to the Japanese Navy in this regard has
11 been unsustainable by the evidence presented. A
12 distinction exists between spontaneous acts com-
13 mitted on the battlefield and the housing and keep-
14 ing of prisoners of war far removed from those areas.

15 Therefore, for the reasons stated herein, the
16 accused SHIMADA respectfully requests this Tribunal
17 to dismiss each and every count of the Indictment
18 as heretofore stated and to at this time weigh the
19 entire evidence of the prosecution to the end that
20 it be discovered that the matters herein shown
21 constitute a complete failure of proof of the
22 charges so stated.

23 Thank you, Mr. President.

24 THE PRESIDENT: Mr. Caudle.

25 MR. CAUDLE: If the Tribunal please: Now

comes SHIRATORI, Toshio, through counsel and makes
and enters a formal motion to dismiss each and every
court of the indictment heretofore filed in this
matter as pertains the said defendant SHIRATORI,
and in support of said motion submits the following
facts and contentions:

GROUP ONE -- "Crimes Against Peace"

With reference to Counts 1 to 4, the
defendant SHIRATORI was, during the time such
offenses were alleged to have taken place, a
career diplomat serving in the Foreign Office of
Japan and had no activity whatsoever relative to
these courts. The highest position held by him
during that part of the period to June 1933 was
Chief of the Information Bureau of the Foreign
Ministry under Baron SHIDEHARA, then Foreign Minister,
in which position he exercised a conciliatory attitude
and, according to Baron SHIDEHARA's own testimony
(page 1356 of the record dated 25 June 1946) as a
prosecution witness, cooperated in every respect
with the Baron in an effort to stop all forms of
military aggression.

Inasmuch as these counts cover from January
1928 to September 2, 1945, it will of necessity
require later reference to various dates and the

1 corresponding activities of the accused during this
2 period in later parts of this motion. Inasmuch as
3 the defendant had no connection whatsoever with the
4 charges contained in said Counts 1 to 4, the same
5 should be dismissed.

6 Count 5 relating to world domination by the
7 Tri-Partite Pact and the planning and conspiracy
8 thereof, will be discussed later in this motion.

9 Count 6 should be dismissed on the grounds
10 set forth covering Counts 1 to 4.

11 With reference to Counts 7 to 17, it is
12 called to the attention of the Tribunal that in
13 prosecution exhibit 125, it is shown that the
14 accused was relieved as a diplomatic adviser in the
15 Foreign Office at his own request on July 22, 1941 and
16 thereafter was never again connected with the
17 Foreign Office or with the government. That is to
18 say, inasmuch as he had no part in the government
19 after July 22, 1941 and the alleged offenses
20 occurred December 7, 1941 and thereafter, said
21 Counts 7 to 17 should be dismissed.
22

23 With reference to Counts 18 to 26, the
24 alleged charges are contained in said counts
25 against specific defendants which group does not
contain the name of the defendant SHIRATORI, and

1 it is assumed that in view of this condition,
2 said counts do not in any way involve the accused
3 SHIRATORI. However, for the sake of clarity, it
4 is requested that his status in this regard be
5 officially recognized by the Tribunal.

6 With reference to Count 27, that part of
7 the same relating to waging aggressive war between
8 September 18, 1931 and September 2, 1945 against the
9 Republic of China should be dismissed for the reason
10 set forth covering Counts 1 to 4.

11 With reference to Count 28, the same should
12 be stricken from the Indictment in that this count is
13 covered by Count 27 and is only repetitious.

14 With reference to Counts 29 to 32, the
15 same should be dismissed on the grounds set forth
16 covering Counts 7 to 17.

17 With reference to Count 33, inasmuch as
18 said count charges specific individuals among which
19 the name of the accused SHIRATORI does not appear,
20 it is assumed that the Tribunal will not consider
21 this count as pertains to said accused. However,
22 it is requested that the Tribunal take official
23 cognizance of this circumstance.

24
25 Count 34 should be dismissed on the grounds
set forth covering Counts 7 to 17.

1 Count 35 should be dismissed on the grounds
2 that from April 1937 until September 1928 the accused
3 was on the waiting list at the Foreign Office and
4 had nothing whatsoever to do with governmental
5 operations as shown in prosecution exhibit 125, and
6 further that said count designates specific persons
7 among which the accused SHIRATORI does not appear.

8 Count 36 should be dismissed due to the
9 fact that at the time of the alleged offense
10 contained in said count, the same being the summer of
11 1939, the accused was in Italy as shown by prosecu-
12 tion exhibit 125, and further that said count
13 designates specific persons among which the accused
14 SHIRATORI does not appear.

15 GROUP TWO -- "Murder"

16 Counts 37 and 38 should be dismissed in
17 that said counts contained charges alleging offenses
18 by specific individuals among whom the name of the
19 accused SHIRATORI does not appear and further, being
20 a career diplomat, had nothing whatsoever to do
21 with the alleged atrocities contained in said counts.

22 Counts 39 to 43 should be dismissed on the
23 grounds set forth covering Counts 7 to 18 and Counts
24 37 and 38.

25 With reference to Count 44, the same should

1 be dismissed on the ground that the defendant was
2 a diplomat and had no connections or functions of
3 a military nature whatsoever, and at no time advocated
4 or became a part of any conspiracies to murder
5 prisoners of war, or crews of ships destroyed by
6 Japanese forces, or any other such alleged charge
7 as contained in said count, and there has been
8 absolutely no evidence whatsoever introduced to
9 connect said accused with such atrocities.

10 With reference to Counts 45 to 52, the alleged
11 charges are contained in said counts against specific
12 defendants, which group does not contain the name
13 of the defendant SHIRATORI, and it is assumed that
14 in view of this condition said counts do not in any
15 way involve the accused SHIRATORI. However, for
16 the sake of clarity, it is requested that his status
17 in this regard be officially recognized by the
18 Tribunal.

19 GROUP THREE -- "Conventional War Crimes and
20 Crimes Against Humanity"

21 With reference to Count 53 to 55, it is
22 brought to the special attention of the Tribunal
23 that there are specific persons named in said counts
24 among which the name of the accused SHIRATORI does
25 not appear, and further that these counts come

1 within the province of grounds for dismissal as set
2 forth herein covering Counts 7 to 17.

3 The accused through counsel has substantiated
4 the motions covering all counts with the exception
5 of Count 5 relating to a general plan of conspiracy
6 between Germany, Italy and Japan. Said accused
7 asks that this count be dismissed, and in setting
8 forth the grounds for such dismissal, it will be
9 necessary to relate not only his activities while
10 Ambassador to Italy, but also to give a brief resume'
11 of the action of the accused prior to and after
12 such service as Ambassador to Italy and set forth
13 predominant facts that exist relative to exhibits
14 heretofore introduced in evidence by the prosecution
15 relating to the accused's activities in this regard:

16
17 Prosecution exhibit 125 shows that on June
18 2, 1933, the accused was appointed Minister to Sweden
19 and that on June 28, 1933 he was assigned to similar
20 service in Norway, Denmark and Finland; that he
21 continued in this capacity until April 28, 1937
22 when at which time he was relieved of this assign-
23 ment; that thereafter from April 28, 1937 to
24 September 22, 1938 the accused was placed on the
25 waiting list with no duties whatsoever; that on
September 22, 1938 the accused was appointed

1 Ambassador to Italy by UGAKI, Kazushige, the then
2 Foreign Minister. However, before his arrival in
3 Rome, USAKI resigned as Foreign Minister and
4 ARITA, Hachiro replaced him in this position; that
5 the accused did not arrive in Rome until December
6 29, 1938, and immediately thereafter the entire
7 Cabinet fell on January 3, 1939 with HIRANUMA re-
8 placing Prince KONOYE as Premier. So in view of
9 these facts, that is to say, a new government having
10 been set up after his appointment, of which the Court
11 has ample evidence, it is impossible to believe or
12 even consider that the accused was appointed
13 Ambassador to Italy for the sole purpose of promot-
14 ing and concluding the Tri-Partite Pact as
15 alleged by the prosecution.

16 In various excerpts from CIANO's diary as
17 submitted by the prosecution, being prosecution
18 exhibits 499-A and 501, the prosecution endeavors to
19 show that the accused was attempting to conclude said
20 pact. Exhibit 499-A is dated January 7, 1939, and
21 inasmuch as the Cabinet fell on January 3, 1939, it
22 cannot be successfully concluded that the accused
23 had any idea whatsoever of the attitude of the new
24 government as pertains this pact. Consequently
25 this exhibit or evidence should be concluded to be

1 without any basis of foundation. As to exhibit
2 50i, another excerpt from CIANO's diary, it should
3 be concluded that CIANO was unfamiliar with
4 SHIRATORI's attitude or functions and, consequently,
5 spoke whereof he knew not, inasmuch as in the
6 middle of the second paragraph on the entry of
7 March 8, 1939 CIANO writes as follows: "OSHIMA
8 and SHIRATORI have refused to communicate through
9 official channels. They ask Tokyo to accept the pact
10 of alliance without reservation, otherwise they will
11 resign and bring about the fall of the Cabinet."
12 The absurdity of this statement appears upon its
13 face, and we have to this day to hear of any cabinet
14 or government falling or even tottering upon the
15 resignation of any ambassador.

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According to Prosecution Exhibit 125, the accused SHIRATORI was ordered home from Rome September 2, 1939 and arrived in Tokyo on October 13, 1939 and that on January 9, 1940, was relieved as Ambassador to Italy. He remained in an inactive status in the nominal role of Ambassador with no assignment on one-third salary until August 28, 1940, when upon his own request he was released from this duty. On this date, according to said exhibit, he was appointed adviser in the Foreign Ministry and his activities thereafter bring us to various prosecution exhibits heretofore introduced relating to purported communications from the German Ambassador to Japan, one Eugene Ott, to the German Foreign Office. The Tribunal should bear in mind that Ott for a number of years tried to conclude an alliance between the German Government and the Government of Japan, and remained as Ambassador over a period of several years. During this time, he sent glowing and enthusiastic communications to his Government describing the progress he was making, and in a number of instances mentioned the assistance he was obtaining from the accused SHIRATORI and also from time to time enumerated the power, authority, and influence that the said SHIRATORI carried, but upon

1 consideration of the fact that over this long period
2 of time the said Ott was able to accomplish absolu-
3 tely nothing in the way of any alliance between his
4 Government and that of Japan, it must upon its face
5 be concluded that the said Ott sent communications
6 which belied the facts and distorted the truth in
7 an effort to conceal and cover up his own short-
8 comings.

9 It is further brought to the attention of
10 the Court that fully one year elapsed from the time
11 SHIRATORI left Rome in September of 1939 until
12 September 1940 when the Tri-Partite Pact was con-
13 cluded between Foreign Minister MATSUOKA and the then
14 German Special Envoy Heinrich Stahmer. It is the
15 contention of the defense and should be the general
16 knowledge of the Tribunal that Ambassador Heinrich
17 Stahmer, who first came to Japan as a Special Envoy,
18 was sent here by his Government to determine what
19 the true facts were and indicated very strongly that
20 after such a long period of time and after such glow-
21 ing and enthusiastic reports from the said Ott, as
22 aforesaid, with absolutely no results, the German
23 Government was likewise cognizant of the fact that
24 Ott had been "doctoring" his communications. As to
25 the conclusion of said pact, we think the Tribunal

1 will take judicial notice of the fact that Foreign
2 Minister MATSUOKA was a man of strong and domineer-
3 ing will and did not seek or consider the advice of
4 anyone and acted absolutely upon his own volition
5 and that the accused, as adviser to MATSUOKA, was
6 neither considered, required, nor otherwise used in
7 any respect, form, or manner as an adviser of the said
8 MATSUOKA and in his said capacity, under the cir-
9 cumstances, wielded no influence whatsoever on the
10 Foreign Policy of his government. We therefore
11 request that all communications of said Ott hereto-
12 fore introduced by the Prosecution be adjudged to be
13 not founded on facts, but to have been a ruse and a
14 sham on the part of the said Ott to cover up his
15 failures and shortcomings.

16 The Prosecution has made a great deal over
17 various written articles and statements alleged to
18 have been written or made by the Defendant SHIRATORI,
19 but at no time have they introduced any evidence to
20 show that any article or speech made by the said
21 accused was in behalf of or formed a part of a policy
22 of the Japanese Government. Such speeches and
23 articles were strictly the personal opinion of the
24 said accused and we contend that he was well within
25 his right of exercising that prerogative guaranteed

1 to every man in every democratic country in this
2 world -- that of freedom of speech and expression,
3 and in no way has the Prosecution shown such articles
4 or speeches to be a part of any conspiracy on the
5 part of the said accused or that such influenced
6 in any way the decision and policies of the Japan-
7 ese Government.

8 It is further called to the attention of
9 the Tribunal that throughout the entire presentation
10 of the Prosecution's case the said Prosecution has
11 not produced one live witness to testify against
12 the accused SHIRATORI, nor has the Prosecution pro-
13 duced even one sworn statement against the said
14 accused.

15 And in conclusion we wish to impress upon
16 the Tribunal that the Defendant SHIRATORI never held
17 but one ambassadorial post, his other activities
18 outside of Japan being just a Minister -- and I
19 would like to amend that to say also a secretary;
20 and that this ambassadorial post which was served
21 in Italy was for only a period of a little over
22 eight months. In view of such limited service, it
23 is impossible to conceive that he was a man of such
24 influence and authority and of having such a great
25

1 part in the formulation and direction of the foreign
2 policies of the Japanese Government as the Prosecu-
3 tion tried to lead the Tribunal to believe.

4 Respectfully submitted this 22nd day of
5 January, 1947.

6 THE PRESIDENT: Mr. Levin.

7 MR. LEVIN: Mr. President and may it please
8 the Tribunal:

9 With reference to the motion which I
10 presented on behalf of Okinori KAYA yesterday,
11 I ask that the following corrections be made:

12 1. In the eighth line of the first para-
13 graph, page 1, the numeral be changed to 19, so
14 it may read "resigning on February 19, 1944."

15 2. On page 2, paragraph 2, the sixth line,
16 the words "Count 45 relates to the Nanking attack"
17 should be deleted.

18 These corrections do not change the sub-
19 stance of our argument

20 MOTION OF DEFENDANT SUZUKI, TEIICHI TO
21 DISMISS.

22 Now comes the defendant SUZUKI, Teiichi,
23 by his counsel, and moves the court to dismiss
24 each and every one of the counts in the Indictment
25 against him on the ground that the evidence offered

1 part in the formulation and direction of the foreign
2 policies of the Japanese Government as the Prosecu-
3 tion tried to lead the Tribunal to believe.

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5 January, 1947.

6 THE PRESIDENT: Mr. Levin.

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23 by his counsel, and moves the court to dismiss
24 each and every one of the counts in the Indictment
25 against him on the ground that the evidence offered

1 part in the formulation and direction of the foreign
2 policies of the Japanese Government as the Prosecu-
3 tion tried to lead the Tribunal to believe.

4 Respectfully submitted this 22nd day of
5 January 1947.

6 THE PRESIDENT: Mr. Levin.

7 MR. LEVIN: Motion of Defendant SUZUKI,
8 Teiichi, to Dismiss.

9 Now comes the defendant SUZUKI, Teiichi,
10 by his counsel, and moves the court to dismiss each
11 and every one of the counts in the Indictment against
12 him on the ground that the evidence offered by the
13 prosecution is not sufficient to warrant a convic-
14 tion of this defendant.

15 Dated this 8th day of January, 1947.

16 Accompanying Memorandum in Support of
17 Motion of Defendant SUZUKI, Teiichi, to Dismiss.

18 With reference to Counts 1 to 5: These
19 counts are general counts, charging conspiracy be-
20 tween January 1, 1928, and September 2, 1945. The
21 character of the official position of this accused
22 is indicated by his personnel record, Exhibit 126.
23 From this it must be clear beyond peradventure that
24 this accused, being a regular army officer, on the
25

by the prosecution is not sufficient to warrant a conviction of this defendant.

Dated this 8th day of January, 1947.

Accompanying Memorandum in Support of Motion of Defendant SUZUKI, Teichi, to Dismiss.

5 With reference to Counts 1 to 5: These
7 counts are general counts, charging conspiracy be-
8 tween January 1, 1928, and September 2, 1945. The
9 character of the official position of this accused
10 is indicated by his personnel record, Exhibit 126.
11 From this it must be clear beyond peradventure that
12 this accused, being a regular army officer, on the
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1 basis of the evidence which has been adduced, has
2 not been shown to have participated in the conspir-
3 ecy set forth in these counts.

4 Counts 6 to 17, inclusive, relate to the
5 planning and preparation for a war of aggression.
6 We make the same point with reference to these counts
7 as we make with reference to Counts 1 to 5.

8 Count 19 charges the defendant, among others,
9 with having initiated a war of aggression on or about
10 July 7, 1937, against the Republic of China. From
11 1933 until November 1, 1937, the accused was a
12 Colonel in the regular army and nothing in the evi-
13 dence or the record indicates any implication on
14 his part in regard to a war of aggression against
15 the Republic of China.

16 Counts 20, 21, 22, 24, 25, 26, 27, 28, 29,
17 30, 31, 32, 34, 35, and 36 charge the defendant with
18 initiating a war of aggression against the countries
19 specified in the various counts. It will be specifi-
20 cally noted that the defendant is not charged, under
21 Count 18, as being one initiating a war of aggres-
22 sion against the Republic of China. For the reasons
23 heretofore given, and the fact that the accused did
24 not become the head of the Planning Board and a mem-
25 ber of the Cabinet until April, 1941, it is submit-

1 ted that the evidence offered by the prosecution
2 is not sufficient to warrant a conviction on these
3 counts.

4 Group 2, Counts 37 to 47, inclusive: It
5 is submitted there is no evidence against this defen-
6 dant, nor any responsibility on his part in rela-
7 tion to the matters set forth in these counts. The
8 evidence offered by the prosecution is not suffic-
9 ient to warrant a conviction of this defendant on
10 said counts.

11 Count 51 charges the defendant in relation
12 to the Mongolian Incident on the Khalkhin-gol River
13 in the summer of 1939. Count 52 charges responsibil-
14 ity by ordering and causing and permitting the armed
15 forces of Japan to attack the Union of the Soviet
16 Social Republic, and unlawfully killing and murder-
17 ing certain numbers of the armed forces of the Soviet
18 Union. We submit that in the evidence offered by
19 the prosecution in connection with this phase of the
20 case there is no evidence of any kind or character
21 which in any way connects the defendant with Counts
22 51 and 52.

23 Counts 53, 54 and 55 deal with conventional
24 war crimes and crimes against humanity. We submit
25 that the evidence offered by the prosecution is not

1 only insufficient to warrant a conviction of this
2 defendant, but that there is not the slightest evi-
3 dence in the record to charge any responsibility on
4 the part of the defendant in connection therewith.
5 The matters indicated in these counts are matters
6 of military administration and in the very nature
7 of things this defendant could not possibly have
8 participated in them.

9 In referring to special counts in the In-
10 dictment, it is not intended in any manner to admit
11 the charges against the accused in any of the counts
12 to which no special reference is made. Where no
13 special reference is made to particular counts, it
14 is intended that the general statement in relation
15 thereto shall be considered as a specific argument
16 to each of said counts.

17 Without discussing in detail the nature of
18 the evidence adduced, it seems to us that no respon-
19 sibility can be placed on one who became the head
20 of the Planning Board at a time when whatever action
21 was to be taken by either the War or Navy Depart-
22 ments was already planned. Irrespective of the
23 determination of the Court as to the various issues
24 in this case, no responsibility can be placed in
25 that respect on a subordinate board of a Department

of the Government.

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This is deted this 8th day of January
1947.

1 MR. LEVIN: The following to be added to
2 Memorandum in support of Motion of defendant SUZUKI,
3 Teiichi, to Dismiss:

4 It will be noted from the date on the paper
5 that this Motion and the KAYA Motion were filed on
6 January 8, 1947, and I believe were in the possession
7 of the prosecution shortly thereafter. I feel it
8 my duty to direct the attention of the Tribunal to
9 some additional facts in connection therewith.

10 It is a simple matter to blandly say there
11 is no evidence to sustain a finding against the
12 accused, but I desire to point out to the Tribunal
13 that there is not a modicum of proof in this record
14 as against this accused to show this defendant is
15 guilty of any of the charges set forth in the various
16 counts of the Indictment. We emphasize the absence
17 of proof.

18 I think it is fair to say that General
19 SUZUKI was interrogated by the prosecution on numerous
20 occasions, which interrogations covered many pages of
21 testimony, yet not one word of these interrogations
22 was offered by the prosecution to sustain the charges
23 against the defendant.

24 I pass over his career until 1941, not because
25 I do not want to meet any issue there, but because the

1 evidence adduced in relation to him up to that time
2 simply indicates that his activities were the
3 customary and usual ones of a man who devoted his
4 life to military service and such additional civil
5 assignments as are frequently given to able military
6 men by their governments. Since the preparation of
7 the original motion, evidence has been introduced
8 that in 1931 the 10-year plan was evolved, and in
9 1937 -- the typing there is 1931, but 1937 is
10 correct -- the 5-year plan of total warfare, exhibit
11 No. 841, was created. Whether these plans were for
12 defense or offense is not a subject of argument now,
13 but these plans were the genesis of future conduct
14 by the government of Japan, and developed into
15 fruition long before General SUZUKI became a member
16 of the Cabinet and President of the Planning Board
17 in April, 1941.

18 Throughout the record, however, we see
19 evidence which indicates the position of this accused
20 as being opposed to factions who it is claimed are
21 responsible for the acts charged in the Indictment.
22 In an early part of KIDO's Diary he writes that
23 SUZUKI counsels against certain actions which might
24 lead to war. There is no evidence in the record which
25 shows that SUZUKI favored the Tri-Partite Pact, and I

1 am not now at liberty to discuss his attitude thereto
2 because it is not in the record. If the prosecution
3 had such evidence, there is no doubt that it would
4 have been tendered.

5 The Germans said he was one of the moderates
6 when his name was suggested for a decoration, which
7 ultimately they must have decided not to give, because
8 there is no evidence in the record that it was ever
9 awarded, and in exhibit 2247 introduced subsequent
10 to our original motion, where such awards were given
11 to certain of the Japanese, SUZUKI received no such
12 award.

13 The accused became Minister without Portfolio
14 in the Third KONOYE Cabinet, and became President of
15 the Planning Board in April, 1941. The typing is
16 1944. The correct date is 1941. All the laws referred
17 to in exhibit No. 840, Mr. Liebert's statement, in
18 relation to the preparation, to the acceleration, of
19 Japanese economy and industry for war had already been
20 passed when he assumed those offices. The mere
21 assumption of office and the performance of duties
22 in carrying on that office, in carrying out the
23 functions of a department of the government, without
24 evidence of creating policies and of activities by
25 the individual outside and beyond these functions does

1 not constitute evidence sufficient to warrant a
2 conviction.

3 As I have heretofore called the attention
4 of the Tribunal to the fact that there is no evidence
5 in the Indictment on Counts 53 to 55 -- here it is
6 52 to 55 -- inclusive, I shall not repeat what I
7 said with respect thereto, but call the Tribunal's
8 attention to my statement in the record at pages
9 15,558 to 15,560.

10 This we respectfully submit for the
11 consideration of the Tribunal.

12 THE PRESIDENT: Major Blakeney.

13 MR. BLAKENEY: I present the motion to
14 dismiss of TOGO, Shigenori.

15 NOW COMES the defendant TOGO, Shigenori
16 and moves the Tribunal to dismiss the Indictment
17 and the several counts thereof in so far as they
18 relate to him upon the ground that the evidence adduced
19 by the prosecution is insufficient to warrant a
20 conviction upon any of the counts charged by the
21 Indictment.

22 In support of the motion of TOGO, Shigenori,
23 to dismiss the Indictment I wish to direct the
24 attention of the Tribunal to, and briefly to analyze,
25 the evidence as it bears upon this defendant. For

1 the convenience of the Tribunal, I shall summarize
2 the evidence under a few general points or heads,
3 indicating the specific counts of the Indictment
4 involved in each of such points. (Although reference
5 is made to the page of the record for each citation
6 of evidence, in the interests of clarity I omit them
7 in reading.)

8 Japanese-Russian Relations

9 The counts of the Indictment charging this
10 defendant in connection with offences alleged against
11 the U. S. S. R. are:

12 Count 17, charging the planning and preparing
13 of war of aggression against the U. S. S. R.
14 between the years 1928 and 1945;

15 Counts 25 and 35, charging respectively the
16 initiating and the waging of war of aggression
17 against the U. S. S. R. in connection with the
18 Lake Khasan incident;

19 Counts 26 and 36, charging respectively the
20 initiation and the waging of war of aggression
21 against the U. S. S. R. in connection with the
22 Khalkin-gol or Nomonhan incident;

23 Count 51, charging murder by ordering, causing
24 and permitting attack on the territories of
25 Mongolia and the U. S. S. R. in connection with

1 the Khalkin-gol or Nomonhan incident.

2 It is quite noteworthy that despite inclusion
3 of his name in these counts (and despite his long
4 connection with Russian affairs), no pretense was
5 made in the Russian phase of the case of attempting
6 to connect the defendant TOGO by evidence with any
7 of these alleged crimes. His name does not appear
8 in the opening statement of this phase. Only twice
9 during the presentation of the evidence of the
10 phase was the name of TOGO referred to (and both of
11 those references were purely incidental); one other
12 piece of evidence relates to the Foreign Ministry
13 during his incumbency. These three references in
14 the Russian phase were in exhibits 767, 678,
15 and 683. The first is the agreement between the
16 Japanese and Soviet governments, executed on the
17 9th of June 1940 by Molotov and TOGO, providing for
18 demarkation of the frontier between the Mongolian
19 Peoples Republic and Manchoukuo. This agreement
20 recites that it is the result of negotiations carried
21 on between Molotov and TOGO, and that TOGO had stated
22 that the government of Manchoukuo consented to it.
23 There is nothing of any nature in the document sug-
24 gesting any further connection of the defendant TOGO
25 with the Nomonhan (Khalkin-gol) incident, and patently

1 it has no tendency to prove the commission of any
2 crime, participation in any conspiracy, or indeed
3 anything except that a frontier was agreed upon--
4 and thus to show TOGO in the aspect not at all of a
5 warmonger, but rather of a peace-maker.

6 The other references to TOGO in the Russian
7 phase were in connection with the National Policy
8 Research Association (Kokusaku Kenkyukai), exhibit
9 678 and 683. Exhibit 683 is an extract from the
10 membership list of that association, which includes
11 among those claimed as members "TOGO Shigenori,
12 Member of the House of Peers". Before discussing
13 the character of the association, it might be well to
14 point out that at the time Mr. TOGO held no office
15 in the government, as is evidenced by his description
16 as a member of the House of Peers, a position which
17 he assumed only upon quitting the government; see
18 the Cabinet Secretariat personnel record of TOGO,
19 exhibit 127. Beyond the simple, unvarnished statement
20 of TOGO's membership in the association, there is
21 nothing to connect him with its activities, nefarious
22 or otherwise.

23 However, reference to exhibit 678, the affi-
24 davit of YATSUGI, Kazuo, and his cross-examination upon
25 it will effectually dispose of the National Policy

1 Research Association as a sinister organization. The
2 association was a "private organization", composed
3 of "non-official civilian members" who "had no
4 responsibility to the association except payment
5 of their established membership fees". It is true
6 that funds were solicited -- and received -- from the
7 Foreign Ministry among other sources, governmental
8 and otherwise, even during the time that Mr. TOGO
9 was Foreign Minister. But the witness' statement of
10 the explanation which accompanied the request for
11 funds leaves it very doubtful whether the Foreign
12 Ministry -- or any contributor -- understood what it
13 was spending its money for: that the Association
14 "in pursuing a study of Greater East Asiatic problems"
15 requested support by donation from "both private and
16 official sources". Not only is there a complete failure
17 of proof of any knowledge by the Foreign Minister of
18 the activities of the Association, but there is
19 nothing except the Association's rather ludicrous
20 "research documents" to prove any criminality. The
21 Tribunal will readily recall the impression which the
22 testimony of this witness produced, and will, I think,
23 agree that the National Policy Research Association
24 emerged in the end as a thing far more ridiculous than
25 sinister.

1 It is submitted that there is no substantial
2 evidence to connect the defendant with the counts
3 above mentioned in this phase.

4 THE PRESIDENT: I suggest this is a
5 convenient break, Major Blakeney. We will adjourn
6 until half-past nine tomorrow morning.

7 (Whereupon, at 1555, an adjournment
8 was taken until Wednesday, 29 January 1947,
9 at 0930.)

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Jan 29

29 JANUARY 1947

I N D E X

INDIVIDUAL MOTIONS TO DISMISS

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TOJO, Hideki by Mr. Blewett	16628
UMEZU, Yoshijiro by Mr. Blakeney	16635

I N D E X

Of

MOTIONS AND ARGUMENT

Direction re:

General Motion to Dismiss

- 1) Supreme Commander Motion, not to be read because necessary facts not there 16662
- 2) Motion re Jurisdiction to be read so far as:
 - a) it is based on state of prosecution's evidence;
 - b) it raises new points of law not calling for proof of facts; and
 - c) such points of law go to whole of any count 16662

General Motion to Dismiss the Indictment on behalf of all Defendants (Jurisdiction) 16663

I N D E X
Of
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(cont'd)

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DEFENSE

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Exception granted	16712

PROSECUTION

Statement and Analysis submitted in response to Defense Motions to Dismiss	16713
--	-------

1 Wednesday, 29 January 1947

2 - - -

3
4 INTERNATIONAL MILITARY TRIBUNAL
5 FOR THE FAR EAST
6 Court House of the Tribunal
7 War Ministry Building
8 Tokyo, Japan

9 The Tribunal met, pursuant to adjournment,
10 at 0930.

11 - - -

12 Appearances:

13 For the Tribunal, same as before with the
14 exception of: HONORABLE JUSTICE NORTHCROFT, Member
15 from New Zealand, not sitting.

16 For the Prosecution Section, same as before.

17 For the Defense Section, same as before.

18 - - -

19 The Accused:

20 All present except OKAWA, Shumei, who is
21 represented by his counsel.

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23 (English to Japanese and Japanese
24 to English interpretation was made by the
25 Language Section, IMTFE.)

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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now in session.

3 THE PRESIDENT: Major Blakeney.

4 MR. BLAKENEY: I resume the argument on
5 behalf of the defendant TOGO with Japanese - German -
6 Italian relations, page 3 of the printed copy.

7 The counts charging this defendant in
8 connection with a three-power conspiracy are presumably
9 these:

10 Count 4, charging that all the defendants
11 conspired that Japan should, in concert with other
12 nations, wage wars in pursuance of a plan for domin-
13 ation of East Asia;

14 Count 5, charging that all the defendants,
15 with others, conspired that Japan, Germany and Italy
16 should secure domination of the world.

17 Turning to the evidence, we find ourselves
18 concerned with the Anti-Comintern Pact and the Tri-
19 Partite Alliance, and with the question of economic
20 collaboration between Japan and Germany. First
21 considering the Anti-Comintern Pact, we find from
22 exhibit 485 that the defendant TOGO was present at
23 the meeting of the Privy Council which considered
24 and approved it. As is shown by the personnel record
25 (Exhibit 127), he was at that time, November 1936,

1 director of the European-Asiatic Bureau of the
2 Foreign Ministry. What the functions of the Bureau
3 Director in connection with the pact may have been
4 is not disclosed by the exhibit or by other evidence;
5 but the document at all events contains no suggestion
6 that any action was taken or any word spoken on the
7 subject at that time or at any other time by Mr. TOGO.
8 It is doubtless superfluous to state that TOGO,
9 attending the Privy Council meeting as a "commissioner"
10 and not as a Privy Councillor or a Minister of State,
11 had no vote and no voice in the resulting decisions
12 of the council.

13 Moreover, the record is lacking in proof
14 that the Anti-Comintern Pact was in any sense an
15 instrument of criminal aggression. The Pact itself
16 (Exhibit 36) shows on its face that it is directed
17 against the spread of communist ideology; and while
18 the secret agreement annexed to the Pact (Exhibit 480)
19 relates to measures to be taken in the event of un-
20 provoked attack or threat of attack by the USSR, it
21 appears by its terms to be wholly defensive in nature.
22 That the Soviet government and the Communist Inter-
23 national are separate, discrete entities is a point
24 which need not be labored, since it has always been
25 the Soviet contention; the distinction between anti-

1 Communism and Russophobia was well recognized and
2 preserved during the late war by the several United
3 Nations, for whom it would certainly be extremely
4 difficult to discover aggression in the mere fact of
5 the execution of the Anti-Comintern Pact. Exhibits
6 479 and 484, reports of studies of the Anti-Comintern
7 Pact by Privy Council committees, further expound
8 this distinction and elucidate the point. On the
9 other hand, there is nothing in the record to indicate
10 that the secret agreement to the Pact was intended
11 or treated as other than the defensive agreement
12 which it purports to be. Let it finally be noted
13 that in no event could TOGO have conspired, through
14 execution of this pact with Italy, which adhered to
15 it only in November 1937, and then not to the secret
16 agreement (Exhibit 491) -- this after TOGO had ceased
17 to be connected with the European-Asiatic Bureau.

18
19 Much was made by the prosecution of the
20 fact that the Anti-Comintern Pact was renewed and
21 adhered to by additional nations on 25 November 1941
22 (Exhibit 495) at a time when Mr. TOGO was Foreign
23 Minister. Mr. TOGO was, of course, Foreign Minister
24 at the time; but even if we could concede the existence
25 of an individual responsibility for acts of the
government, much more would still be needed here to

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23 Minister. Mr. TOGO was, of course, Foreign Minister
24 at the time; but even if we could concede the existence
25 of an individual responsibility for acts of the
government, much more would still be needed here to

1 convict him of any offense. The Pact, as has been
2 pointed out, is itself innocuous; its renewal repre-
3 sents only the continuation of a policy already
4 determined upon and adopted long before TOGO's
5 entry into the cabinet (the renewal itself had been
6 orally agreed to in effect by MATSUOKA in Berlin --
7 see the conversations of MATSUOKA with Ribbentrop,
8 Goering and Hitler, Exhibits 577-583); and above all,
9 there is no showing that the secret agreement, which
10 alone might be considered colorable evidence of
11 aggressive intent, was renewed. The evidence
12 actually invites the inference (which is the fact)
13 that the secret agreement was abrogated when the
14 Pact was renewed (see Exhibit 1,182) -- action which
15 shows the opposite of aggressive intent. The Foreign
16 Minister's explanations before the Privy Council
17 committee, as contained in exhibit 1,182, show that
18 he was the vigorous advocate of abrogation of the
19 secret agreement.
20

21 At this point it may be well to anticipate
22 the reply, in the effort to clarify a somewhat complex
23 point. It will doubtless be contended that Mr. TOGO's
24 advocacy of abandonment of the secret agreement of
25 the Anti-Comintern Pact is of no significance by
reason of the fact that the Tri-Partite Alliance,

1 concluded in September 1940, had replaced the secret
2 agreement. (The Tri-Partite Alliance, identified as
3 exhibit 43, was apparently not offered in evidence.)
4 TOGO did indeed, in making his explanation to the
5 Privy Council, state that the secret agreement had
6 no further utility because inter alia of the existence
7 of the Alliance. But this does not at all mean --
8 despite the ambiguity of his language -- that the
9 Alliance had replaced the secret clause as an imple-
10 ment of anti-Soviet policy; for the Alliance specific-
11 ally, by its Article V, excludes the suggestion of any
12 such purpose:

13 "Article V: Japan, Germany and Italy
14 shall confirm that the above stated articles of this
15 alliance shall have no effect whatsoever to the present
16 existing political relation between each or any one
17 of the signatories with Soviet Union."

18 (Exhibit 551 -- explanations given to the Privy Council
19 of the purpose of the Tri-Partite Alliance -- puts it
20 beyond all doubt that the expectation of government,
21 Army and Navy, was that the Alliance would improve
22 Japanese-Soviet relations.) In consequence -- with
23 whatever trivial and unconvincing ring such an argument
24 may fall on our ears -- the only construction which it
25 is possible to put upon these words of Mr. TOGO is

1 that for reasons unexplained Japan desired that some
2 sort of bond with Germany be kept extant, perhaps to
3 forestall a sense of isolation. It is in this sense
4 only that Foreign Minister TOGO's words can be taken,
5 and in this sense they must be taken. So understanding
6 them, we can reiterate that it was TOGO who, from no
7 apparent motive other than proper ones, led in the
8 expunging of the only obligation which was conceivably
9 anti-Russian.

10 It should be mentioned that in the course of
11 this same explanation Mr. TOGO also drew the distinc-
12 tion between the Soviet government and the Communist
13 International. This is the more worthy of note in
14 view of the fact that although it occurred at a
15 secret meeting, where considerable bluntness of ex-
16 pression might be expected, there is nothing in TOGO's
17 words to suggest that he considered the Anti-Comintern
18 Pact to be a covert threat to the USSR. In short,
19 with perfect honesty he accepted at its face value
20 the USSR's contention that the Comintern was a separate
21 entity, with which it had no concern.

22 We are not, of course, directly concerned
23 with the Tri-Partite Alliance, for at the time of its
24 birth Mr. TOGO was Ambassador in Moscow. If there were
25 any real suspicion that he entertained anti-Soviet

1 sentiments, it would be dispelled by reference to the
2 words of Ambassador (to Berlin) KURUSU in June 1940,
3 to a German official, Knoll (Exhibit 522). At this
4 very time when the Tri-Partite Alliance was forming,
5 KURUSU assured the Germans that he and TOGO were
6 "feverishly working" for "improvement in Japanese-
7 Russian relations," and that "the enemy in the North
8 must be made a friend."

9 Much evidence in the record shows affirmatively
10 that with the questions of "strengthening" the Anti-
11 Comintern Pact and arranging the Tri-Partite Alliance
12 Mr. TOGO had nothing to do. Throughout his brief
13 term -- twelve months -- as Ambassador in Berlin
14 these questions were being agitated, but without his
15 knowledge or participation or that of the Foreign
16 Ministry. See the KIDO Diary, exhibit 2,262 (Record,
17 page 16,225): "I heard from the Premier that the
18 German Foreign Minister von Ribbentrop made a very
19 important proposal to Ambassador OSHIMA (Ambassador
20 TOGO was ignorant of this fact)." Reference to exhibits
21 478 and 497, the interrogation of General OSHIMA, makes
22 this clear. OSHIMA -- then military attache, later
23 TOGO's successor as ambassador -- here details the
24 activities of himself and his staff in this matter.
25 He points out that the military attache is not under

1 the jurisdiction of the ambassador but is responsible
2 only to the Army General Staff, and may even carry on
3 negotiations with the military officials of other
4 nations, looking to the conclusion of pacts or
5 treaties relating to military matters, "without
6 going through the ambassador," which, he says, is
7 what was done in this case. Only upon OSHIMA's
8 appointment as ambassador in succession to TOGO
9 were negotiations concerning alliance between Germany
10 and Japan "opened," and only then did they become
11 the concern of the Foreign Ministry. In passing, it
12 might be pointed out that the personnel record,
13 exhibit 127, is inaccurate (as was called to the
14 Tribunal's attention, on 25 September,) in showing
15 TOGO continuing as Ambassador to the USSR after
16 August 1940; thus he was either in Moscow or (if we
17 assume that he quitted his post soon after being
18 relieved) holding no governmental position at the time
19 of the execution of the Tri-Partite Alliance, and
20 obviously he can be charged with no responsibility
21 in connection with it.

22
23 In accordance with Article IV of the Tri-
24 Partite Alliance, Mr. TOGO was on 12 February 1942
25 designated a member of the joint commissions therein
provided for (Exhibit 559). His membership was

1 ex officio and his designation took place a year
2 and a half after conclusion of the alliance, two
3 months after commencement of the Pacific war. There
4 is no evidence from which it can be inferred that
5 the commission ever met or functioned, and on the
6 record nothing can be predicated of Mr. TOGO's
7 membership in it.

8 On the question of German-Japanese economic
9 collaboration (with reference especially to trade
10 and commerce in China), a number of documents refer
11 to activities of the defendant TOGO. These need not
12 be discussed individually, but are listed for conven-
13 ience:--I omit reading the numbers--(Exhibits 591,
14 Record, p. 6,585; 592, Record, p. 6,588; 593, Record,
15 p. 6,591; 594, Record, p. 6,597; 595, Record, p. 6,603;
16 597, Record, p. 6,627; and 39, Record, p. 6,625). I
17 do not discuss these memoranda of conversations between
18 TOGO and German Foreign Ministry officials because they
19 all show TOGO's stubborn refusal to concede to Germany
20 anything more in the China trade than most-favored
21 nation treatment -- which is not the economic collabora-
22 tion of conspirators -- and his inflexible opposition
23 to German demands for special economic concessions.
24 I do not discuss this question in detail because the
25 President of the Tribunal, at the time of the reading

1 of the documents, summed up their significance in
2 the statement that, "it is the sort of material the
3 defense might use to show lack of cooperation between
4 Japan and Germany" (Record, p. 6,621). It unquestion-
5 ably cuts the ground from beneath the feet of any
6 effort to show TOGO as a conspirator with Germany.

7 The agreement among Japan, Germany and Italy
8 not to conclude separate peace, entered into after
9 the beginning of the Pacific war (Exhibit 51) is by
10 the very fact of its date no evidence of any warlike
11 designs; once a war has started such agreements are
12 routine among allies. TOGO's direction to his
13 ambassadors to request conclusion of such an agree-
14 ment, to be prepared for the worst once it appeared
15 to his government that war was most probable, like-
16 wise is not probative of sinister intent.

17 There remains to mention exhibit 486D, a
18 memorandum by von Neurath of a conversation with
19 Ambassador TOGO concerning the China affair. While
20 presumably this is offered to show Japanese-German
21 conspiracy toward China, in fact it shows only that,
22 acting under instructions, the ambassador was stating
23 the policy of his government, which was to try to
24 persuade Germany to use her presumed influence by
25 applying pressure on China to make peace. Ambassador

1 TOGO's assertion of Japan's determination to gain
2 military victory over China, as reported by von Neurath,
3 is likewise no more than the reflection of the Japanese
4 policy embodied in the KONOE Declaration (Exhibit 972-A)
5 of a few days later, but already known to him (as is
6 obvious inferentially from Exhibit 486-F). It is sub-
7 mitted that consideration of all the evidence offered
8 in this phase conclusively absolves the defendant
9 TOGO of all charges of conspiracy with Germany and
10 Italy.

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1 'Conventional War Crimes

2 In "Group 3" of the Indictment the defendant
3 TOGO is charged with "conventional war crimes and crimes
4 against humanity" as follows:

5 Count 53, charging conspiracy to order,
6 authorize and permit certain subordinates to commit
7 breaches of the laws and customs of war, and to abstain
8 from taking adequate steps to secure observance of the
9 conventions relating to prisoners of war;

10 Count 54, charging the authorizing and per-
11 mitting of such acts;

12 Count 55, charging deliberate and reckless
13 disregard of duty to take adequate steps to secure
14 observance of the conventions relating to prisoners of
15 war.

16 Voluminous evidence, much of it of a peculiarly
17 revolting character, has been introduced to prove the
18 widespread commission by Japanese troops of atrocities
19 against prisoners of war and civilians. The question
20 remains, "Who is guilty?" There is nothing in the
21 record to show that the defendant for whom I am speaking
22 bears any part of this burden of guilt.

23 It is proved that it was in the name of Foreign
24 Minister TOGO that Japan's assurances concerning
25 application mutatis mutandis of the Geneva Convention

1 and observance of the Red Cross Convention were given;
2 these communications need not be itemized here.
3 Thereafter the Foreign Ministry received and answered
4 various communications relative to the subject --
5 giving replies which in instances seem on the evidence
6 of the prosecution to have been false. But there is
7 a vast abundance of evidence touching upon the point
8 to show conclusively that neither the Foreign Ministry
9 nor the Foreign Minister had any responsibility for
10 management or control of prisoners of war, nor any
11 facilities for independent ascertainment of the facts
12 concerning their lot, nor indeed any reason to dis-
13 believe nor power to disprove the replies to inquiries
14 and protests prepared by the military bureau concerned.
15 The witness General TANAKA twice unequivocally stated
16 that the Foreign Ministry, in receiving and transmitting
17 these documents, acted as a mere "post office". In
18 explanation of this, he said that the Prisoners-of-War
19 Information Bureau and Prisoners-of-War Administration
20 Bureau -- which between them had, as he had previously
21 fully explained, the whole control of prisoners of war --
22 were "both under the jurisdiction of the War Minister";
23 and that having no organization nor authority for in-
24 vestigating protests, the Foreign Ministry could only
25 "relay the decisions reached at the War Ministry by

1 the Army". See also on this point the testimony
2 of YAMAZAKI, Shigeru, especially his statements that the
3 responsibility for action taken on protests was with the
4 bureau to whom the protest was forwarded and that the
5 replies were prepared within the War Ministry and sent
6 to the Foreign Ministry. The testimony of the witness
7 SUZUKI Tadakatsu explains the procedure for dealing
8 with these documents within the Foreign Ministry, and
9 clarifies further the point that the Foreign Ministry's
10 only function was receipt and transmittal of papers.
11 This testimony as a whole is of great importance on
12 this point, but I refrain from more than quoting its
13 salient points and urging that reading the entirety
14 of it will render this point quite perspicuous.

15 The extent of the Foreign Ministry's authority
16 or power in connection with the prisoner-of-war matter,
17 Mr. SUZUKI testified, was the handling of the correspon-
18 dence -- the incoming protests and inquiries, the outgoing
19 answers. This forwarding was done as expeditiously as
20 possible in every instance, and the War Ministry officials
21 concerned were from time to time requested to hasten
22 the preparation of the replies which the Foreign Ministry
23 was to translate and deliver. The Foreign Ministry had
24 no means of obtaining information concerning prisoners
25 of war except as it was provided by the War Ministry.

1 Notwithstanding the Foreign Ministry had no further
2 authority in the matter, it did on occasion make
3 recommendations to the War Ministry authorities, request
4 reinvestigations of various matters, and in general do
5 everything possible to ameliorate the condition of
6 prisoners. Although Mr. SUZUKI's bureau was established
7 after Mr. TOGO had left the Foreign Ministry, the
8 practice of the Treaty Bureau, which had managed the
9 business theretofore, was in all respects the same.

10 During Mr. TOGO's first incumbency of the
11 Foreign Ministry (to 1 September 1942) occurred the
12 notorious "Bataan Death March". It is significant that
13 even the Premier, General TOJO, concurrently Minister
14 of War and as such the superior official of the bureau
15 concerned with prisoners of war, first learned of the
16 Bataan case as late as the end of 1942 or early in
17 1943 (see his interrogation, exhibit 1,980E) -- after
18 TOGO had quit office. If not even the Minister of
19 War had such information, clearly the Foreign Minister,
20 who had no jurisdiction nor responsibility in the matter,
21 cannot be chargeable with notice.

22 The case of the working of prisoners on the
23 Burma-Thailand railway patently concerns the Foreign
24 Minister even less; the affidavit of General WAKAMATSU
25 (Exhibit 1,989) is explicit that this action was decided

1 upon by the Imperial General Headquarters, at the request
2 of the Southern Army, in the summer of 1942. Exhibit
3 475, a report by the War Ministry, also states that it
4 was the order of Imperial General Headquarters; nowhere
5 is it suggested that the Foreign Ministry, or indeed
6 the government itself, had any knowledge of the plan
7 for using prisoners of war in the work. The actual
8 construction was commenced, according to Exhibit
9 475, in November 1942, which is some time after Mr.
10 TOGO had left the Foreign Ministry.

11 If there is no evidence of TOGO's ordering,
12 authorizing or permitting the commission of atrocities,
13 or conspiring thereto, there is equally a failure of
14 proof of his having deliberately, recklessly or other-
15 wise neglected any duty in the matter. So far as the
16 evidence concerning his only duty -- that of dispatching
17 his share of the business of attending to the diplomatic
18 correspondence -- goes, every duty was discharged fully
19 and faithfully. It would do violence to the principles
20 of judicial proof to hold that the prosecution's burden
21 has been sustained against TOGO on these counts.

22 China, Manchuria and other Asiatic Relations

23 The defendant TOGO is charged by the Indictment
24 with various offences in connection with China, Manchuria,
25 Indo-China and Thailand, as follows:

1 Counts 4 and 5, charging conspiracy to wage
2 war against France and Thailand, inter alia;

3 Counts 6, 15 and 16, charging the planning
4 and preparation of war against China, France and
5 Thailand, respectively;

6 Count 24, charging the initiation of war
7 against Thailand;

8 Counts 27, 28 and 34, charging the waging
9 of war against China and Thailand respectively.

10 This part of the case can be rather summarily
11 dealt with in view of the complete absence of evidence
12 to connect this defendant with those matters.

13 Prior to Mr. TOGO's assumption of the Foreign
14 portfolio he had had no connection with China, Manchoukuo
15 or other Asiatic affairs. In this connection it should
16 be pointed out that although he was, from June 1934 to
17 October 1937, Director of the Foreign Ministry's
18 European-Asiatic Bureau, that Bureau had no connection
19 with the matters here in question. The record of the
20 opening statement on the subject of Foreign Ministry
21 organization is patently garbled, for it states that
22 the duties of this Bureau "pertain only to America";
23 if I may venture to go outside the record to state the
24 fact, the "Asiatic" affairs of concern to this bureau
25 are those other than Chinese and Manchurian.

1 During the short period of time from his
2 installation as Foreign Minister until the outbreak of
3 the Pacific War, TOGO was obviously absorbed with the
4 Japanese-American negotiations, and quite naturally is
5 not shown to have had any concern with Asiatic affairs.
6 With the decision for commencement of the war, of course
7 he requested for his government the cooperation of the
8 governments of Marchoukuo (Exhibit 1,214) and Nanking,
9 China (Exhibit 1,219), but with war once decided upon
10 this is only a formal matter.

11 As to Indo-China, there were no such diplomatic
12 measures as would concern the Foreign Minister at the
13 time of the opening of the war. The conclusion of the
14 military agreement (referred to by the prosecution --
15 Record, p. 6,724 -- but not in evidence). Other
16 measures vis-a-vis Indo-China which occurred in the
17 interim between his two periods as Foreign Minister
18 (October 1941-September 1942, April-August 1945)
19 likewise do not concern him -- especially as they show
20 that by the end of that period military and not diplomatic
21 relationships concerned that country.

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23 THE PRESIDENT: After the words in parentheses
24 in the middle of the paragraph you omitted to read "was
25 of course not within the province of the Foreign Ministry".

MR. BLAKENEY: Yes, I am sorry.

1 THE PRESIDENT: But it will appear in the
2 transcript, no doubt.

3 MR. BLAKENEY: Thank you, sir.

4 Perhaps the most significant evidence concern-
5 ing TOGO's attitude toward other Asiatic countries is
6 to be found in the Foreign Minister's speech before the
7 Diet on 22 January 1942 (Exhibit 1,338A). This speech
8 calls for close cooperation of Eastern Asiatic nations,
9 in that respect being a routine piece of war-time
10 propaganda. But it also clearly shows throughout that
11 Japan entertained no aggressive intentions toward those
12 nations, and that Mr. TOGO insisted upon the necessity
13 of observing the rights and dignity of all Asiatic
14 peoples. Parenthetically, it also reiterated the necessity
15 of maintaining the Neutrality Pact with the U.S.S.R.
16 TOGO's true attitude toward the nations and peoples of
17 Asia is most clearly evident in his vehement opposition
18 to the creation of the Greater East Asia Ministry in
19 1942, which led to his resignation of his office in
20 September of that year. See the KIDO Diary (Exhibit
21 1,273); minutes of the Privy Council (Exhibit 687): as
22 well as the opening statement of this phase, explaining
23 the Greater East Asia Ministry.

24 As is set forth in argument of the general
25 motion to dismiss, there is no sufficient evidence

1 proving or tending to prove aggression against Thailand;
2 hence we need not consider whether any connection of
3 Mr. TOGO individually is shown.

4 The complete dearth of proof against the
5 defendant TOGO in connection with the counts under this
6 head requires that they be dismissed as against him.

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Japanese-American Relations.

The counts charging the defendant TOGO in connection with relations and hostilities between Japan and the United States are:

Counts 1, 4 and 5 charging conspiracy to dominate the Pacific or the world, and in effectuation thereof to wage war against the United States;

Counts 7, 20 and 29, charging respectively the planning, initiating and waging of war against the United States;

Counts 13, 21 and 30, charging respectively the planning, initiating and waging of war against the Commonwealth of the Philippines (a possession of the United States).

Since Mr. TOGO is not a military man, we may say that the charge of his having waged war against enemy nations is sustained by no proof unless it be the contention that all members of the government of a nation at war are "waging" war -- a question to be argued elsewhere. We shall therefore consider here the questions of conspiracy to wage war and the planning and initiating of war.

Mr. TOGO's motives in entering the TOJO ministry upon its formation in October 1941 have been clearly stated by a prosecution witness. The TOJO

1 government has been widely advertised as a war
2 cabinet ab initio, but the evidence fails to bear
3 out this interpretation: rather it shows that TOJO
4 was enjoined by the Emperor upon his appointment,
5 and was expected by those concerned, to make further
6 efforts for a peaceful settlement with America, even
7 so late, when Japan was already upon the brink of
8 war (KIDO Diary, exhibit 1,154). It was upon this
9 understanding that TOGO entered the cabinet as
10 Foreign Minister. The witness SUZUKI Tomin testi-
11 fied that TOGO told him, in a conversation soon
12 after formation of the TOJO government, that he
13 had accepted office solely upon Premier TOJO's
14 assurance that his policy would be to work for
15 peace, and because on the basis of that assurance
16 he believed that he would be able to bring about a
17 peaceful settlement. This fitted in with the
18 belief which SUZUKI explained that he held, that
19 TOGO had always been an exponent of peace. That
20 the prosecution witness TANAKA Ryukichi also
21 considered TOGO to be a leader of pacific and
22 non-militaristic sentiment is interestingly revealed
23 by his testimony that he approached TOGO in 1942 and
24 urged him to start a political movement to oust
25 TOJO, of whose war policies TANAKA seems to have

1 disapproved.

2 Throughout the diplomatic correspondence
3 between the Foreign Ministry and the Embassy in
4 Washington, as it is exhibited in the evidence, are
5 many indications of Mr. TOGO's efforts to conclude
6 the Japanese-American negotiations successfully.
7 From the mass of such evidence, we may select a few
8 points for mention. (Exhibits 1,163 and 1,164).
9 The new Foreign Minister's instructions to the
10 Ambassador at the beginning of his connection with
11 the negotiations contain a clear statement of his
12 policy of making the utmost possible concessions in
13 a spirit of friendship and conciliation. Ambassador
14 KURUSU was specially sent to Washington to contribute
15 to the success of the negotiations (Exhibit 1,166).
16 TOGO invited Great Britain to take part in the
17 negotiations, in order that all interested parties
18 might be available to ensure a complete settlement
19 (Exhibit 1,174). He made numerous concessions to
20 the opposing demands in the course of the negotia-
21 tions, in an apparent effort to bring them to fruition.
22 (Exhibits 1,165 and others).

23 On the other hand, all the evidence clearly
24 shows that the final outbreak of war between Japan
25 and Britain and America was in spite of, certainly

1 not because of, TOGO's efforts. It is quite clear
2 from the record that long before Mr. TOGO took office
3 in October the situation was so tense that there was
4 the ever-present, explosive possibility of war. The
5 decision of the Imperial Conference of 2 July
6 (Exhibit 558) was a grave one which, as was conceded
7 by the prosecution, had a direct bearing upon the
8 ultimate result, war; that of the 6 September
9 Conference (Exhibit 588) even included preparations
10 for either eventuality, of war or peace, so dubious
11 were the prospects. That, in short, the possibility
12 of war at any time was recognized on both sides of
13 the Pacific is plain from this evidence as well as
14 from numerous references -- which I do not pause to
15 collect here -- scattered through the testimony of
16 the witness Ballantine.

17 In these circumstances, what could a newly-
18 appointed Foreign Minister do to avert war except
19 carry on negotiations with the consciousness that
20 if they ended in failure there could be no peace?
21 Limited as he was by the decisions already taken,
22 as well as by those of the subsequent Liaison
23 Conferences which he himself attended -- but in
24 which, as a matter of course, the newer members
25 (those, in other words, who had not participated

1 in the September Imperial Conference decision) were
2 relatively unimportant -- he could do no more
3 than strive, as the prosecution's own evidence
4 shows that he strove, for a satisfactory formula,
5 and in the end accept the result which was not of his
6 doing, but preordained (compare Ambassador Grew's
7 opinion that Japan would be driven to war by such
8 economic measures as the July freezing of assets.
9 If, when the end came, he voted for the inevitable
10 war, shall we then label him a warmonger?

11 There is the charge that Japan perfidiously
12 professed to be still negotiating in good faith for
13 peace, the while she prepared and launched her war.
14 Since the intention of this charge is to incrimi-
15 nate the Foreign Minister, let us examine it to
16 determine what factual basis it has. The decision
17 for war was made at the Imperial Conference of
18 1 December (Exhibit 588). Until that decision had
19 actually been taken -- by the only body competent
20 to take it -- the Foreign Minister was still work-
21 ing for a solution, as is evidenced by his instruc-
22 tions to his Ambassador to attempt to obtain re-
23 consideration by the United States (Exhibit 1,194).
24 Quite naturally, he continued striving, even there-
25 after, so long as there was any faintest hope --

1 just as did Secretary of State Hull on his side.
2 And although in late November the fleet had been
3 given its orders, in case worst should come to
4 worst (no evidence shows knowledge by the Foreign
5 Ministry of this), yet on the 21st and even on
6 2 December -- significant date, the day following
7 the decision for war! -- the Commander-in-Chief of
8 the Combined Fleet was given instructions by the
9 Naval General Staff for its recall and for the
10 cancellation of the war-plans in the event of a
11 successful conclusion of diplomatic negotiations
12 (Exhibit 809). Is this the scheming of perfidy?
13 Rather, it is submitted, the effect of this evi-
14 dence in sum is to show TOGO earnestly endeavoring
15 to save the situation in the face of hopeless odds,
16 and not to raise even the suspicion of insincerity
17 or duplicity.

18 One or two subsidiary questions may be put
19 into proper perspective. Much was made of the
20 delay in delivery of the message (which "might
21 have changed the course of history") from President
22 Roosevelt to the Emperor. Aside from the question
23 of the probable effect on the course of history,
24 question not really of any difficulty in view of
25 Mr. Ballantine's testimony, there is no evidence

1 to connect the Foreign Ministry with the deliberate
2 delaying of the communication. The statement by
3 the prosecution that the contents of the message
4 were known in "Japanese Government offices" by
5 6 P. M. of 7 December is supported by no scintilla
6 of evidence that it was so known to the Foreign
7 Ministry; but the testimony of the witness SHIRIO
8 is specific that the orders which brought about
9 the delay in delivery to Ambassador Grew until
10 10:30 P. M. were those of the General Staff. No
11 knowledge of this arrangement by the Foreign
12 Ministry is shown.

13 On the question of the delivery of the
14 final Japanese note in Washington after the com-
15 mencement of hostilities, the evidence is clear
16 that this was contrary to the direct order of the
17 Foreign Ministry. (Exhibits 1,216 and 1,218).
18 TOGO's instructions to NOMURA to make all necessary
19 preparations without fail and to deliver the note
20 at 1 P. M., leave no doubt of the intention of
21 the Foreign Minister; whatever the reason for the
22 delay in delivery until 2:20, it has not been
23 traced to him.

24 It should be added that, not alone under
25 this branch of the argument but in relation to the

1 motion as a whole, other points of greater or
2 lesser concern to this defendant will be presented
3 in argument of the general motion. To the argument
4 of that motion reference is made to the extent that
5 it is applicable. Other minor points might be
6 adverted to, but at the risk of tedium. Suffice
7 it to say that in my judgment the evidence intro-
8 duced in the Pacific War phase not only does not
9 convict TOGO of any deviousness or disingenuity,
10 but on the contrary affirmatively shows him as
11 a sincere worker for the preservation of a peace
12 which, tragically, could not be preserved.

13 It is respectfully submitted that the
14 analysis of the record offered above, taken in
15 conjunction with that contained in the general
16 motion to dismiss, leads to the conclusion that
17 prima facie proof of none of the offenses charged
18 against the defendant TOGO has been made, and that
19 the indictment should be dismissed as against him.

20 THE PRESIDENT: Mr. Blewett.

21 MR. BLEWETT: If the Court please:

22 Now comes the defendant, TOJO, Hideki, by
23 his counsel of record, and moves the Honorable,
24 the International Military Tribunal for the Far
25 East, to dismiss all the charges and counts against

1 him in the Indictment upon the grounds that all
2 the evidence offered by the prosecution is not
3 sufficient to warrant the conviction of this
4 defendant.

5 The prosecution in its opening statement
6 offered to show by competent legal evidence that
7 every attack made by Japan from 18 September 1931
8 on Mukden down to Pearl Harbor, Manila, Davao, and
9 Hongkong on the 7th and 8th of December 1941 and
10 others were illegal acts, and that everyone of
11 the accused named in the Indictment played a part
12 in these unlawful proceedings, and that they acted
13 with full knowledge of Japan's treaty obligations
14 and of the fact that their acts were criminal.

15 It also represented that it would prove by
16 competent legal evidence that these accused by
17 virtue of their positions in the Japanese Govern-
18 ment conspired to and planned, prepared, initiated
19 and waged illegal wars, and that each accused was
20 personally liable for acts alleged to be criminal.

21 The prosecution also asserted it would
22 set out to prove that only positive orders from
23 those accused made possible crimes against humanity.
24 The crux of the prosecution case, and the ob-
25 jective of its evidence, are charges that the

1 accused participated in the formulation and
2 execution of a common plan or conspiracy to wage
3 declared or undeclared war or wars of aggression
4 and war or wars in violation of international law,
5 treaties, agreements and assurances against any
6 country or countries which might oppose them,
7 with the object of securing military, naval,
8 political and economic domination of East Asia
9 and of the Pacific and Indian Oceans, and all
10 countries bordering thereon and islands therein
11 and ultimately the domination of the world.

12 To prove that charge it was prepared to
13 prove the fact of a conspiracy, and that these
14 defendants were parties to it, which burden it
15 assumed.

16 I. Among other charges, in order to
17 prove the facts of a conspiracy and the participa-
18 tion of this defendant therein evidence was intro-
19 duced to prove that in the public school system of
20 Japan a program was introduced to build up a
21 military spirit and to cultivate a concept that
22 the future progress of Japan depended upon wars
23 of conquest.
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25 It is submitted that the evidence pre-
sented in no manner proves the existence of a

1 conspiracy for any such purpose or that this
2 defendant was in any way involved in such a
3 program.

4 II. A vast amount of evidence was
5 presented concerning the occupation and develop-
6 ment of China and Manchuria by the Japanese and
7 the prosecution attempted here, as was its burden,
8 to prove that the entire movement extending over
9 several years was the direct purpose of a con-
10 spiracy lead and controlled by those accused.

11 It is submitted that the proof offered
12 is insufficient to show the existence of such
13 a conspiracy, and no positive legal evidence was
14 offered to prove that this defendant participated
15 as a leader, organizer, instigator or accomplice
16 in any such plan.
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1 III. Evidence was offered by the prose-
2 cution in attempting to prove as alleged in the In-
3 dictment, that all the defendants acting in a con-
4 certed, specifically directed conspiracy entered
5 into an agreement with Germany and Italy to dominate
6 the world.

7 It is submitted to the Tribunal that there
8 is no conclusive evidence in the record to support
9 this allegation, nor any legal competent evidence to
10 prove that this defendant is criminally responsible
11 for any such enterprise.

12 IV. It is submitted that the prosecution
13 has not presented evidence sufficient to prove that
14 all the defendants, acting in concert, conspired to
15 plan, prepare and wage a war of aggression and a
16 war in violation of international law, treaties,
17 agreements and assurances against China, United
18 States of America, United Kingdom of Great Britain
19 and North Ireland, Australia, New Zealand, Canada,
20 India, Philippines, Netherlands, France, Thailand
21 and Soviet Russia.

22 It is submitted that there is no legal
23 competent evidence in the record to prove that this
24 defendant alone or acting with others initiated or
25 waged a war or wars of aggression against the

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1 aforementioned nations, including the Mongolian
2 People's Republic.

3 V. As was readily accepted by the pro-
4 secution, in order to convict these defendants for
5 murder it was incumbent upon it to prove that the
6 waging of war was the direct result of a conspiracy
7 to wage wars of aggression, with the object ultimately
8 of world domination. To prove that all deaths con-
9 nected with hostilities constituted crimes of murder
10 it was necessary to prove that all these wars were
11 illegal, and to prove, further, that as to this de-
12 fendant he was individually criminally responsible.

13 It is represented that the prosecution has
14 failed to prove by competent evidence that the war
15 or wars enumerated in the Indictment constitute so-
16 called "wars of aggression," waged as the objective
17 of a powerful conspiracy, and therefore they cannot
18 be classed as illegal wars as charged. As a natural
19 consequence, therefore, there is no proof capable
20 of supporting the allegations of murder and con-
21 spiracy to murder.

22 It is suggested that the prosecution's
23 witnesses and documents conclusively indicate that
24 the Japanese Government and these defendants initiated
25 the proposal to the complaining nations in this

1 Indictment for a peaceful solution of all problems
2 in the Pacific area.

3 VI. With regard to the final charges in
4 the Indictment concerning Conventional War Crimes and
5 Crimes Against Humanity, the prosecution undertook
6 the burden of showing that only positive orders
7 from these accused made possible these alleged crimes.

8 It is submitted that nowhere in the record of
9 these proceedings has the prosecution offered any
10 competent legal evidence to prove that the defendant,
11 TOJO, as Premier or War Minister issued a single
12 positive order to any Field Commander or to any
13 Prisoner of War Camp Commander to commit or permit
14 any act or acts averred in Counts 53-55 inclusive of
15 the Indictment.

16 If I may be privileged, your Honor, to make
17 one further comment, which has been translated.

18 The Chief Prosecutor and his extremely able
19 and conscientious staff, consisting of fine jurists
20 and lawyers from many nations, have performed a tre-
21 mendous task with credit.

22 That they have failed to make out a case
23 against the accused is not due in any way to their
24 lack of integrity or resourcefulness. No prosecution
25 in all history, nor all the great prosecutors of all

1 time, combined here in this court of justice, could,
2 with the material at hand, prove these defendants
3 guilty of the acts alleged to be crimes under this
4 Indictment. Under existing law it is humanly im-
5 possible to do so.

6 THE PRESIDENT: Major Blakeney.

7 MR. BLAKENEY: Motion to dismiss of UMEZU,
8 Yoshijiro.

9 Now comes the defendant UMEZU, Yoshijiro,
10 and moves the Tribunal to dismiss the Indictment and
11 the several counts thereof insofar as they relate to
12 him, upon the ground that the evidence adduced by the
13 prosecution is insufficient to warrant a conviction
14 upon any of the counts charged by the Indictment.

15 For the convenience of the Tribunal, the
16 argument of this motion will be presented under a
17 few general heads, with reference in each instance
18 to the specific counts of the Indictment concerned.

19 I must ask the Tribunal's indulgence for
20 making a few slight additions to the printed copy.
21 China Questions.

22 The counts of the Indictment charging this
23 defendant with offenses toward the Republic of
24 China are:

25 Count 2, charging conspiracy to dominate

1 Manchuria through the waging of war of aggression.

2 Count 3, charging conspiracy to dominate China
3 through the waging of war of aggression.

4 Count 6, charging the planning and preparing of
5 war of aggression against China.

6 Counts 18 and 19, charging the initiation of
7 war against China in September 1931 and July 1937
8 respectively.

9 Counts 45, 46, 47, 48, 49 and 50, charging
10 murder in connection with the taking of Nanking in
11 December 1937; Canton in October 1938; Hankow in
12 October 1938; Changsha in June 1944; Hengyang in
13 August 1944, and Kweilin and Liuchow in November 1944.

14 First, considering the Manchuria Incident,
15 we find that General UMEZU had at the time of the
16 Incident been Chief of the General Affairs Department
17 of the General Staff Office (concerned with per-
18 sonnel, organization and mobilization -- Record p.
19 589) for just some six weeks (Cabinet Secretariat
20 personnel record, exhibit 129, Record p. 803). Of
21 the numerous witnesses who testified in extenso to
22 the details of the planning and execution of the
23 Manchuria Incident, not one breathed the name of
24 UMEZU; there is not a suspicion in the record that
25 he had even any knowledge of, far less any part in,

1 this Incident. Counts 2, 18 and 27, therefore, are
2 sustained by no evidence against this defendant.

3 From March 1934 to August 1935 General
4 UMEZU was in China, as Commander-in-Chief of the
5 North China Garrison in Tientsin (exhibit 129).
6 During this time there came into being the "HO-UMEZU
7 Agreement," of which so much has been made in the
8 attempt to establish it as a casus belli and the
9 fount and source of the autonomy movement in North
10 China. The attempt falls very flat. Upon investi-
11 gation, the "agreement" proves to be no more than
12 a military understanding, based upon established
13 treaty rights, made between military commanders in
14 the always troubled arena of North China. So much
15 is conceded by one of the chief witnesses on the
16 subject, TANAKA, Ryukichi (Record pp. 2,144-52).
17 TANAKA says that General UMEZU's purpose in making
18 this agreement was clearly the legal one of im-
19 plementing the Boxer Protocol, under which the North
20 China Garrison had the right and the duty of pro-
21 tecting Japanese nationals and communications, by
22 suppressing anti-Japanese actions in North China; that
23 the intention of the agreement was to establish an
24 atmosphere of peace and quiet; and that "it is a
25 fact that as a result of the HO-UMEZU Agreement

1 the assassination of pro-Japanese Chinese, as well
2 as inflammatory editorials against Japan in Chinese
3 papers, disappeared" (Record pp. 2,145-46).

4 If the object was lawful, what of the means
5 employed? Most of the evidence bearing on the terms
6 and circumstances of the agreement is to be found
7 in the testimony of the witness Goette (Record pp.
8 3,746-50, 3,805-12). This testimony is, to say
9 the least of it, unsatisfactory. The witness says
10 that the agreement was "enacted" on 9 June 1935, but
11 he does not know whether it was written or oral,
12 and in fact confesses that he knows none of its
13 terms (Record p. 3,806), but only "What was carried
14 out thereafter" (Record p. 3,748). By this post hoc
15 ergo propter hoc reasoning we learn that certain
16 Chinese troops were withdrawn from the area; that
17 the political offices which had contributed to the
18 strained ~~Sino~~-Japanese relations were closed; that
19 some Chinese commanders were recalled. But not
20 even the witness himself is entirely convinced by
21 his reasoning; he can't say, for example, whether
22 the removal of the Hopei provincial capital was one
23 of the terms of the agreement, even though the removal
24 followed (Record p. 3,805). Although some Chinese,
25 who remain anonymous, told him that the agreement was

1 forced upon them by the threat of military occupa-
2 tion (Record p. 3,811-12), even after the withdrawal
3 of their 51st Army they still outnumbered the
4 Japanese in the Peiping-Tientsin area by at least
5 25,000 to 10,000 (Record p. 3,807). At the time of
6 the agreement, Ho Ying-chin was "Chinese Minister
7 of War in Peiping" (Record p. 3,746); UMEZU, he
8 "presumes," was "on a special mission" for the Jap-
9 anese Army (Record p. 3,810).

10 In this testimony several points stand out.
11 Ho Ying-chin, as is shown by exhibit 210 (Record p.
12 2,696, from p. 1 of the document, not read into
13 evidence), from Chinese sources, was not Minister of
14 War; he was "Acting Chairman of the Peiping Branch
15 Council of the National Military Council." UMEZU
16 was of course not on a "special mission," and it is
17 almost incredible that a "dean of correspondents,"
18 professing to have an expert knowledge of Sino-Jap-
19 anese affairs of North China, should not know the
20 name of the Commander-in-Chief of the Japanese
21 garrison at such a time of crisis as he alleges this
22 to have been. Mr. Goette is quite sure that the
23 Chinese 32nd Army was withdrawn southward as a
24 "result" of the "HO-UMEZU Agreement" (Record pp.
25 3,748, 3,809), but is again contradicted by exhibit

1 194 (Record, at p. 2,276), which shows it to have
2 been the 51st Army which was withdrawn. It is
3 perhaps a fair deduction from all the evidence that
4 the "HO-UMEZU Agreement" never actually existed as
5 such. No one has seen it; its terms cannot be as-
6 certained; and it appears to have been no more than
7 an agreement between military commanders trying to
8 maintain peace in the face of disturbing incidents.

9 If the "Agreement" did exist, it can scarcely
10 be seriously contended that there has been shown to
11 have been anything sinister in it. The witness
12 TANAKA tried to show that the autonomy movement in
13 North China which followed was grounded upon it, and
14 so it may have been, but that can upon no reasonable
15 construction be imputed to the defendant UMEZU, in
16 view of TANAKA's positive statement of what General
17 UMEZU's motives were during his time as Commander-in-
18 Chief (the first autonomous government was established
19 four months after UMEZU left China -- Record p. 2,147;
20 exhibit 210 -- whence the witness perforce concedes
21 that UMEZU had no responsibility for its establishment.
22 (Record p. 2,151). To what ends those who followed may
23 have perverted his work can be no evidence of way-
24 wardness in him. At all events, there was no sus-
25 pension of Chinese sovereignty as a consequence of

1 this agreement; the army of Sung Che-yuan, who was
2 the appointee of the central government (Record p.
3 3,808) remained in occupation of the area. (Record
4 p. 3,749).

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1 TANAKA, by the way, points out also that
2 whatever responsibility for the agreement rests upon
3 General UMEZU, it is by virtue solely of his position
4 of command, for the ardent advocate of it, to whose
5 hands General UMEZU confided the entire matter, was his
6 Chief of Staff, Colonel SAKAI. That he should have
7 done so is but natural, since he was a man who
8 "dislikes very much to put his finger into politics,"
9 and was "one of our senior officers who has constantly
10 instructed us not to interfere in politics." Thus
11 the much-publicized term "Ho-Umezu Agreement" is a
12 memorial to this defendant's vicarious responsibility
13 for an innocuous settlement which is in large part
14 mythical.

15 One other incident of the North China days may
16 be mentioned. This is the "North Chahar Incident"
17 of June 1935, testified to by the witness Ching
18 Teh-chun (exhibit 199). The only connection with
19 General UMEZU is that according to this testimony the
20 matter was referred for settlement to the headquarters
21 of the garrison force at Tientsin -- where, however,
22 surprisingly, the whole negotiation was controlled by
23 General LOHIHARA. "Surprisingly," because there is
24 no evidence whatever that LOHIHARA was at that time
25 connected in any way with the North China garrison --

1 rather, the personnel record (exhibit 104) shows that
2 he was attached to the Kwantung Army. General Ching,
3 ~~in~~ fact, admitted on cross-examination that when he
4 said that the matter was referred to the Japanese
5 headquarters in Tientsin he meant that it was referred
6 to the Japanese headquarters represented by General
7 DOHIHARA; his surmise that LOHIHARA represented both
8 the North China garrison and the Kwantung Army is
9 hardly evidence of the fact. Ching admits that the
10 matter was not taken up in any other way with the
11 North China garrison headquarters.

12 The commencement of the China Incident in
13 July 1937 found General UMEZU Vice-Minister of War.
14 Since no evidence was proffered to connect him with
15 the hostilities in China, we must assume that it is
16 the contention that his official position establishes
17 his guilt. That the vice-minister has no authority
18 to make important decisions and merely carries out
19 the will of the minister was stated by the witness
20 TANAKA and by the prosecution, and must be self-evident.
21 In no event, of course, had the War Ministry respon-
22 sibility for operations (testimony of TANAKA).
23 Vice-Minister UMEZU is therefore in no way shown to
24 share any responsibility for the China Incident.

25 Lastly, in connection with China, UMEZU is

1 charged with murder as the result of alleged massacres
2 accompanying the taking of a number of cities in China
3 in various years. As to those dating from 1937,
4 the remarks in the preceding paragraph apply -- the
5 vice-minister has no responsibility. As to those in
6 1938, the personnel record (exhibit 129) shows that
7 from May of that year General UMEZU was commander of
8 the 1st Army, the location of which at the time is shown,
9 by exhibit 2282, record at page 16,259, to have been in
10 North China; by no reasoning, therefore, could he be
11 charged on the record with responsibility for events
12 in South China in October of that year. And as to
13 those occurring in 1944, when he was Chief of the
14 General Staff (from July, however; he was in Manchuria
15 when the massacre at Changsha, in South China, is
16 laid by Count 48), there is again no evidence of any
17 order by him or knowledge in him of those events, and
18 it is submitted that there is no ex officio guilt.

19 In connection with Manchukuo, there is much
20 evidence intended to prove that it was but a puppet
21 state under Japanese domination. Two considerations
22 occur here. First, there is the question whether
23 from its inception Manchukuo was a mere false front,
24 rigged by the Japanese for the purpose of furthering
25 their aggressive designs; if this was the fact, then

1 even a commander-in-chief of the Kwantung Army arriving
2 eight years later might be considered a manipulator
3 of the puppets; if it was not, then the position of
4 the commander-in-chief is only that of any military
5 commander carrying out his duties. The chief evidence
6 on this point is that of the witness Pu-Yi. Without
7 taking the time of the Tribunal to analyze it, we
8 may say that cross-examination, together with other
9 surrounding circumstances, shows this testimony to be
10 incredible. The witness repeatedly contradicted him-
11 self, evaded direct answers to questions, took refuge
12 in "I can't remember" and "I said it, but under com-
13 pulsion" and in general made such an impression that
14 even taking his testimony at its face value it is
15 impossible to say that his contentions are borne out
16 by the proof. As to the origin of Manchukuo and his
17 return as a ruler, he is contradicted on the record
18 by the witness Semyonov, who states in his affidavit
19 (exhibit 668) that Pu-Yi suggested to him that he had
20 asked Japanese assistance in restoring him to the
21 throne, and that he himself negotiated with the
22 Japanese on Pu-Yi's behalf. By a curious quirk of
23 procedure, Pu-Yi stands impeached on the record in the
24 matter -- irrelevant in itself, but basically affecting
25 his credibility -- of whether he wrote the letter to

1 General MINAMI, exhibit 278. Inasmuch as the prosecu-
2 tion offered the questioned document in evidence, it
3 assumed the burden of proof of its non-authenticity.
4 This it undertook to prove by the affidavit of a self-
5 styled expert, Chang (exhibits 2176 and 2189).
6 Unfortunately, this "expert" committed the tactical
7 blunder of going beyond the question involved and
8 passing his judgment that another specimen of hand-
9 writing, the Chinese fan (exhibit 282) was not the
10 hand of Pu-Yi. This was a blunder because Pu-Yi him-
11 self had identified the fan as being in his own
12 writing ("That was my own writing I copied from the
13 poem"), which entirely destroys the "expert's"
14 qualifications and leaves the burden of proof assumed
15 by the prosecution unsustainable. On the record we can
16 say only that Pu-Yi is an incredible witness, whose
17 testimony must be ignored.
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1 Otherwise, there is no evidence to prove
2 any charge against UMEZU of "dominating" Manchoukuo.
3 To take one example of many from the evidence, there
4 was much evidence concerning opium-cultivation in
5 Manchoukuo. But this evidence all tends to show
6 that it was the government, not the Kwantung Army
7 nor its commander-in-chief, which was in control.
8 (Incidentally, the opium charges do not in them-
9 selves state crimes even within the purview of the
10 charter; unless some connection with the waging of
11 aggressive war or the domination of Asia is demon-
12 strated, all such evidence is irrelevant to any
13 issue.)

14 Soviet Relations

15 The charges in connection with the USSR
16 are:

17 Count 17, charging the planning and pre-
18 paring of war against the USSR;
19 Counts 26 and 36, charging respectively
20 the initiating and the waging of war
21 against the USSR in connection with
22 the Khalkhin-Gol (Nomonhan)
23 incident;
24 Count 51, charging murder in connection
25 with the Khalkhin-Gol (Nomonhan)

incident.

1
2 Nomonhan is readily disposed of. General
3 UMEZU was appointed Commander-in-Chief of the
4 Kwantung Army on the 7th of September 1939
5 (Exhibit 129). If he arrived at his post in Man-
6 churia on the very day of his appointment, the
7 Nomonhan incident had already been in progress for
8 4 months (Exhibit 766). The last battle occurred
9 in August and the incident itself ended within
10 the week after UMEZU's appointment. This looks
11 far more like the initiating and waging of peace
12 than of war -- an interpretation borne out by the
13 absence of any evidence tending to connect UMEZU
14 with Nomonhan.

15 The other Russian question is in connec-
16 tion with General UMEZU's period as Commander-in-
17 Chief of the Kwantung Army. When we embark upon
18 an analysis of the evidence in this phase, we enter
19 the realm of fantasy. The evidence is a mass of
20 affidavits of absent witnesses, some of them dead
21 by their own hands or by the firing squad, only
22 two of whom were produced (with devastating results)
23 for cross-examination; of conclusions, rumor, hints
24 and hearsay; of tendencious studies by Red Army
25 General Staff deputy chiefs of department,

1 prepared for use in this trial; and of charges
2 of aggression leading up to a war in which Japan
3 was attacked. Analysis of this evidence to disclose
4 contradictions, improbabilities and omissions could
5 be protracted to great length, but is quite
6 unnecessary at this stage; reference to some of its
7 high points should suffice to present purposes.

8 The witness TAKEBE (affidavit, Exhibit
9 670), may be taken as typical of many who pro-
10 fessed to say that Japan was plotting -- especially
11 during the years 1940 to 1945 -- aggression
12 against the Soviet Union. The purpose of occupy-
13 ing Manchuria, he says, was to build up a military
14 base against the USSR; and he heard from Commander-
15 in-Chief of the Kwantung Army UMEZU talk of the
16 problem of preparing for war on the USSR. The
17 purpose of the Kwantung Army, he was led to say,
18 was "for attack against the USSR." But this whole
19 structure collapses when the witness is permitted
20 to explain that "the purpose of the Kwantung Army
21 being stationed in Manchuria was for defence";
22 what now becomes of the whole elaborate theory
23 of aggression? General USHIROKU, commander of an
24 army group in the Kwantung Army, knew of no
25 operations plans except defensive ones (Exhibit 703);

1 General KITA heard explanation from UMEZU in late
2 1941 of the war-time duties of his command, but
3 was not told of any time for the opening of a war
4 (Exhibit 835). Lieutenant-General KUSABA, who
5 killed himself in Tokyo rather than face cross-
6 examination, does not divulge how he knew that the
7 1941-1943 "offensive" operations plans were
8 "decided by SUGIYAMA, TOJO and UMEZU" (Exhibit
9 838). (Just by the way, the two witnesses produced
10 for cross-examination on this question both affirm
11 that there was no operations plan vis-a-vis the
12 Soviet Union for 1943. See the testimony of
13 SEJIMA Ryuzo, and of MATSUMURA Tomokatsu.) Major
14 MATSUMURA heard a rumor that the war against the
15 USSR was to start in 1943, but doesn't say why it
16 did not (Exhibit 833). Lieutenant-General TOMINAGA,
17 who to date has been too sick in Siberia to attend
18 for cross-examination, when Vice-Minister of War
19 "drew an aggressive plan against the USSR in 1940"
20 (Exhibit 705); but his meaning is clear from what
21 follows. He "handed it over to the Commander-in-
22 Chief of the Kwantung Army to put into practice," in
23 April 1940; if it was put into practice, it was not
24 aggressive for no war ensued. The renegade Russian,
25 Semyonov, put to death -- after making his affidavit --

1 for treason against his country, discoursed of two
2 and a half decades and all the Orient; but he makes
3 no mention of General UMEZU, confining his claims
4 like the mercenary which he boasts of being only
5 to having dealt with underlings (Exhibit 668).

6 The Kantokuen, Kwantung Army Special
7 Maneuver, was much discussed. TAKEBE asked War
8 Minister TOJO whether the strengthening of the
9 Kwantung Army meant war, but got no answer (Exhibit
10 670); Lieutenant-General AKIKUSA interprets it as
11 having "the purpose of taking military aggression
12 against the Soviet Union by Japan" (Exhibit 743),
13 but that is only his conclusion; he mentions no
14 act of aggression. All the evidence shows that the
15 Kantokuen was a precautionary reinforcement of
16 the forces in Manchuria at a time when international
17 relations were disturbed. White Russians were much
18 in evidence, but no one of them is alleged ever to
19 have fired a shot against his native country.
20 There were spies, of course; there always are.
21 Numerous documents purport to show that the Manchurian
22 railroads and highways were greatly developed after
23 the foundation of Manchoukuo (Exhibit 712), airfields
24 (Exhibit 713), dumps (Exhibit 715), and barracks
25 (Exhibit 716) were constructed and the borders

1 fortified, (Exhibit 714), and that the seaports of
2 the country exhibited much growth (Exhibit 718).
3 All utterly consistent with TAKEBE's "the purpose
4 of the Kwantung Army is for defence." We know from
5 other evidence (the testimony of SEJIMA, that during
6 1942, at all events, the strength of the Kwantung
7 Army was hardly more than half that of the Soviet
8 Far Eastern Army; and from the summer of 1943 it
9 was steadily depleted.

10 THE PRESIDENT: We will recess for fifteen
11 minutes.

12 (Whereupon, at 1045, a recess was
13 taken until 1100, after which the proceed-
14 ings were resumed as follows:)
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2 the country exhibited much growth (Exhibit 718).
3 All utterly consistent with TAKEBE's "the purpose
4 of the Kwantung Army is for defence." We know from
5 other evidence (the testimony of SEJIMA, that during
6 1942, at all events, the strength of the Kwantung
7 Army was hardly more than half that of the Soviet
8 Far Eastern Army; and from the summer of 1943 it
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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now resumed.

3 THE PRESIDENT: Major Blakeney.

4 MR. BLAKENEY: The Japanese Army, it is
5 charged, had plans for operations against the
6 U. S. S. R. Also, in the eventuality of conflicts,
7 for operations against the United States, Great
8 Britain, the Philippines and perhaps other countries
9 (the testimony of SEJIMA) As the President of the
10 Tribunal noted, general staffs do prepare such plans;
11 such is their function, to be prepared to defend
12 their countries. These plans against Russia were
13 annually drawn and discarded; they were drawn without
14 the assistance of the Kwantung Army, to whom they
15 were sent as its instructions; they contained within
16 themselves no provisions for the commencement of
17 operations, and the Commander-in-Chief of the
18 Kwantung Army was prohibited from commencing operations
19 pursuant to them; and none of them ever did take
20 effect by the initiation of hostilities. The operations
21 plans of the Kwantung Army were drawn by the general
22 staff of that army, in accordance with the orders
23 received from Tokyo (testimony of MATSUMURA). Finally,
24 all such plans after the Nomonhan affair were defensive
25 in nature; see the testimony of TAKEBE that "until the

1 Nomonhan Incident the Kwantung Army had taken an
2 offensive stand towards the U. S. S. R., but after
3 the above incident it changed to an attitude of
4 aggressive defence" (Exhibit 670).

5 So far as concerns the time that this de-
6 fendant was in Manchuria -- 1939-44 -- not only was
7 there no aggression by Japan against the Soviet
8 Union, but there is no credible evidence of any
9 plans for such aggression. The whole record shows
10 that all Japanese plans were defensive, and these
11 counts should be dismissed for want of proof.

12 Pacific War

13 Participation in the Pacific War is charged
14 against General UMEZU by these counts:

15 Counts 7 and 29, charging respectively the
16 planning and preparing, and the waging, of war against
17 the United States;

18 Counts 8 and 31, charging respectively the
19 planning and preparing, and the waging, of war against
20 the British Commonwealth of Nations;

21 Counts 9-12 and 15, charging respectively
22 the planning and preparing of war against Australia,
23 New Zealand, Canada, India and France;

24 Counts 13 and 30, charging respectively the
25 planning and preparing, and the waging, of war against

1 the Philippines:

2 Counts 14 and 32, charging respectively the
3 planning and preparing, and the waging, of war against
4 the Netherlands;

5 Counts 16 and 34, charging respectively the
6 planning and preparing, and the waging, of war against
7 Thailand.

8 With the Pacific War General UMEZU is shown
9 by the evidence to have had nothing to do prior to
10 his becoming Chief of the General Staff in July 1944.
11 From May 1938 to that date he was out of Japan --
12 commanding the 1st Army or the Kwantung Army -- and
13 if war was planning he is now shown to have been
14 called into council.

15 From July 1944, as Chief of the General Staff
16 of the Japanese Army, he "waged" war beyond any question.
17 This is perhaps not the appropriate time to argue at
18 length the question of the responsibility of a
19 professional soldier for practicing his profession of
20 arms in a war in which he is summoned to participate.
21 Suffice it for now to say, on this point, that in the
22 absence of any evidence that he schemed for war, brought
23 war about, desired war -- or even delighted in war --
24 it seems a shocking judgment which should condemn
25 such a man for merely obeying the command of patriotism

1 and his oath.

2 Prisoners of War

3 The following counts relate to this point:

4 Count 44, charging all defendants with con-
5 spiracy to procure and permit the murder of prisoners
6 of war;

7 Count 53, charging conspiracy to order and
8 permit certain subordinates to commit breaches of
9 the laws and customs of war;

10 Count 54, charging the ordering and permit-
11 ting of breaches of the laws and customs of war;

12 Count 55, charging deliberate and reckless
13 disregard of duty to ensure the observance of the laws
14 and customs of war.

15 The conspiracy is, of course, not proved, but
16 like all charges of conspiracy in the case is con-
17 structive at most.

18 The question of the responsibility of the
19 General Staff, and its chief, for maltreatment of
20 prisoners of war has fortunately been made clear by
21 the testimony of TANAKA, Ryukichi. "In Japan the
22 handling of prisoners is quite different from other
23 countries, and the Prisoners-of-War Information Bureau
24 and administration of prisoner-of-war matters were
25 under the supervision of the War Minister himself."

1 In answer to the inquiry concerning the sort
2 of matters handled by the War Minister, "....where
3 to locate POW camps, how to handle prisoners of war,
4 how to promote the health of prisoners of war, and
5 other general treatment of prisoners of war; how
6 to distribute Red Cross messages and parcels, and
7 the question relating to the exchange of POW letters...".
8 "Outside Japan" the policy is "handled by the Chief
9 of the General Staff after consultation with the
10 War Minister"; but: "it was carried out by the various
11 commanders in the field in accordance with the orders
12 and instructions of the War Minister", and "actually
13 the matters were carried out by the commandants of
14 the various prisoner-of-war camps in the field who
15 communicated directly with the Chief of the Prisoners-
16 of-War Information Bureau where the matters pertaining
17 to POWs were disposed of". ". . . matters pertaining
18 to prisoners of war were not connected in any way
19 with operations, but being a policy matter, these
20 matters could be handled directly with the Prisoners-
21 of-War Information Bureau. . ."

22 Plainly the General Staff had no responsibility
23 for control of prisoners, no voice in determining their
24 treatment, and no opportunity to influence it.
25

I make the following insertion:

1 The considerations pointed out above apply
2 with equal force to the prisoner-of-war question
3 in Manchuria so far as General UMEZU, Commander-
4 in-Chief of the Kwantung Army, is charged in con-
5 nection with it, that the matter was not operational,
6 but being administrative was disposed of by the War
7 Ministry; hence, in the absence of proof of any
8 personal knowledge or participation in atrocities,
9 is not chargeable against the Army Commander.

10 The counts above enumerated, charging
11 General UMEZU with responsibility for atrocities to
12 prisoners of war, should be dismissed.

13 Miscellaneous

14 Various conspiracies are charged by the
15 following counts:

16 Counts 1 and 4, charging conspiracy to
17 bring about domination by Japan of Eastern Asia;

18 Count 5, charging conspiracy with Germany
19 and Italy to bring about domination of the world.

20 The first point, conspiracy to dominate Eastern
21 Asia, will be treated in the general motion to dismiss.
22 Of the second, it will suffice to say that there is
23 not a scintilla of evidence showing UMEZU as a con-
24 spirator with a German or an Italian.

25 It is possibly in connection with these counts

1 that the testimony of KAWABE Torashiro (exhibit 7676),
2 Vice-Chief of the General Staff under General UMEZU
3 at the end of the war, was offered -- "to prove," as
4 the prosecution pointed out, "that the Commander of the
5 General Staff permitted the destruction of all secret
6 documents after the surrender." The point is trivial,
7 perhaps -- especially in view of the cross-examination
8 of KAWABE, who unequivocally states that the destruction
9 of documents was not carried out by order or with
10 knowledge of UMEZU, but was the responsibility wholly
11 of subordinates -- but so is much of the evidence
12 introduced with no apparent purpose other than simply
13 mentioning this defendant's name.

14 THE PRESIDENT: Major Blakeney, there is no
15 such exhibit as 7676. What is the correct number?

16 MR. BLAKENEY: I am sorry, sir. It appears
17 that way in my copy, but I shall try to ascertain the
18 correct number.

19 THE PRESIDENT: Anyhow, you have given us the
20 page of the record.

21 MR. BLAKENEY: That is right, sir.

22 Thus, in the final phase, we find that the
23 subdivision purporting to be "additional proof" against
24 UMEZU consists of:
25

1 that the testimony of KAWABE Torashiro (exhibit
2 2,660), Vice-Chief of the General Staff under General
3 UMEZU at the end of the war, was offered -- "to prove",
4 as the prosecution pointed out, "that the Commander
5 of the General Staff permitted the destruction of
6 all secret documents after the surrender." The
7 point is trivial, perhaps -- especially in view of
8 the cross-examination of KAWABE, who unequivocally
9 states that the destruction of documents was not
10 carried out by order or with knowledge of UMEZU, but
11 was the responsibility wholly of subordinates -- but
12 so is much of the evidence introduced with no apparent
13 purpose other than simply mentioning this defendant's
14 name.

15 THE PRESIDENT: Major Blakeney, there is no
16 such exhibit as 2260. What is the correct number?

17 MR. BLAKENEY: I am sorry, sir. It appears
18 that way in my copy, but I shall try to ascertain the
19 correct number.

20 THE PRESIDENT: Anyhow, you have given us
21 the page of the record.

22 MR. BLAKENEY: That is right, sir.

23 Thus, in the final phase, we find that the
24 subdivision purporting to be "additional proof" against
25 UMEZU consists of:

1 The prosecutor's assertion that UMEZU, "in
2 conjunction with General MINAMI", "engineered the
3 taking over of North China and establishment of
4 the North China Autonomous Government" -- an assertion
5 already dealt with above. There was no evidence of
6 conjoint action by UMEZU and MINAMI. Finally, the
7 prosecution's assertion, the only one supported by
8 any pretence of evidence, that UMEZU was "the leader
9 of the military clique which was responsible for
10 the failure of General UGAKI to form a new cabinet
11 in January 1937." On this point the evidence, con-
12 sists of five documents: two (exhibits 2,208A and
13 2,208B) emanating from the Peace Section of the Home
14 Ministry, and apparently introduced by inadvertence,
15 as they have no connection with UMEZU or this case;
16 a speech (exhibit 2,208C) by War Minister TERAUCHI
17 explaining the reasons for his resignation; a talk
18 (exhibit 2,208D) by Vice-Minister UMEZU, stating that
19 the Army opposed General UGAKI but would take no
20 measures to check the formation of a cabinet by him;
21 and a "Notice to the Ex-soldiers' Organization" from
22 UMEZU, explaining the Army's attitude toward General
23 UGAKI, but not evidencing any plot or anything more than
24 that the Army opposed him, which so far as appears is
25 not a constituent of any crime being tried here. In

1 regard to the various snippets of documents showing
2 disbursement of Army funds to, or through General
3 UMEZU (exhibit 2,209 is typical), we can only echo
4 the wonderment of the President (ibid.), "What is
5 the significance of this?"

6 Conclusion

7 It is most respectfully submitted that in no
8 branch of the case does the evidence rise to the
9 dignity of prima facie proof of guilt of the defendant
10 UMEZU. There being no substantial evidence going to
11 connect him with commission of any of the offences
12 laid in the Indictment, it should be dismissed as
13 against him.

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1 THE PRESIDENT: Mr. Smith.

2 MR. SMITH: If your Honor please, I have
3 the second part of the general motion to dismiss
4 and also an argument which covers some of the major
5 legal points raised in the motion. The second
6 part of the general motion contains seventy-three
7 paragraphs, and I would like to have your Honor
8 indicate whether the motion itself should be read.

9 THE PRESIDENT: The general motion should
10 be read so far as it is based on the state of the
11 prosecution's evidence, so far as it raises new
12 points of law which do not call for the proof of any
13 facts, and so far as such point or points of law
14 go to the whole of any count. We must remember we
15 are dealing with motions to dismiss counts, and
16 further, that we must avoid repetition of arguments,
17 and still further, that the three members of the
18 Court who were not parties to the motion as to
19 jurisdiction in May last have read the record and
20 know the points raised. We have not shut out a
21 single argument which can be raised on the state
22 of the evidence or on facts already established.
23 The argument relating to the Chief Commander cannot
24 be put at this stage because the necessary facts
25 are not there. The matter that you mentioned about

1 the Chief Commander's powers under the United States
2 constitution or legislation may be one entirely
3 between him and the United States and may have no
4 effect whatever as regards the other Allied Powers.
5 That can be decided later, after we have heard argu-
6 ment on both sides.

7 Yes, Mr. Smith.

8 MR. SMITH. Your Honor, the points that I
9 have raised in the second part of the motion to dis-
10 miss I believe are well within the lines which your
11 Honor delineated.

12 THE PRESIDENT: We accept your word for it,
13 Mr. Smith, so you can proceed to read the general
14 motion to that extent.

15 MR. SMITH: Could I also explain to your
16 Honor that the question of the jurisdiction of the
17 Court was in the first part of the motion and was
18 deliberately separated from this part?

19 General Motion to Dismiss the Indictment
20 on Behalf of all Defendants.

21 Now come all the defendants remaining in
22 the above-entitled cause at the conclusion of the
23 evidence on behalf of the prosecution and hereby
24 jointly and severally move the Honorable The
25 Internation Military Tribunal for the Far East

1 to dismiss the alleged indictment heretofore filed
2 with the Tribunal on 3 May 1946 and each and every
3 count thereof as it severally relates to and
4 affects each of said defendants, upon the grounds
5 hereinafter set forth.

6 For clarity of statement the grounds of the
7 motion are divided into five categories, as
8 follows: (1) General Grounds Common to all Defen-
9 dants; (2) Crimes Against the Peace, Counts 1 to
10 36; (3) Murder, Counts 37 to 52; (4) Conventional
11 War Crimes and Crimes Against Humanity, Counts
12 53 to 55; (5) Individual Counts.

13 General Grounds Common to all Defendants.

14 The points to be argued are --

15 THE PRESIDENT: Can you give us the argu-
16 ment without enumerating the points twice? I take
17 it your general argument will refer to the points.

18 MR. SMITH: No, it does not, your Honor.
19 It is going to be almost impossible to handle it
20 that way. I mean, I was brought in at the last
21 minute to draft this motion, and had there been
22 some time it could have been handled in that way.

23 THE PRESIDENT: Other arguments on behalf
24 of individual accused have been so framed, and I
25 thought this one might be so framed, but apparently

1 it isn't. Proceed, Mr. Smith.

2 MR. SMITH: Your Honor, I explained in
3 the argument that it would be impossible to dis-
4 cuss all of these points. We simply were going to
5 argue the major points, but we relied on every
6 point which is made in the motion, even though we
7 didn't argue it.

8 THE PRESIDENT: We can take it that this
9 is a motion on behalf of all the defendants? It
10 says it is, but is there any contest about it?
11 Apparently there is not, so proceed, Mr. Smith.

12 MR. SMITH: Well, your Honor, I didn't
13 want to leave the Tribunal under a misapprehen-
14 sion. This motion is signed by Dr. UZAWA as Chief
15 Defense Counsel, and at one time or another while
16 the papers were being drawn, all the defendants
17 in the case indicated, either in meeting or in-
18 dividually, that they joined in this motion.

19 THE PRESIDENT: Apparently they still
20 join in it. There is no indication to the contrary,
21 so proceed to put the motion.

22 MR. SMITH: Your Honor, I was cut off.

23 THE PRESIDENT: You understand why I am
24 repeating this position, because of what occurred
25 yesterday or the day before when Mr. Levin came to

1 the lectern. But apparently they are listening to
2 me in silence. I may state we are assuming this
3 motion is being put on behalf of all accused, and
4 there is no contradiction.

5 Mr. Levin.

6 MR. SMITH: If your Honor please --

7 THE PRESIDENT: Mr. Levin.

8 MR. SMITH: If your Honor please, I hadn't
9 completed my sentence when the light went on, and
10 I would like to complete it before Mr. Levin is
11 heard.

12 THE PRESIDENT: I have called on Mr.
13 Levin.

14 MR. LEVIN: Mr. President, I should like
15 to state that there has been no change in the
16 position of the gentlemen whose names I indicated
17 as not joining in this motion, and I should like to
18 state further that Mr. Smith is in error in the
19 statement to the effect that all defense counsel had
20 joined in this motion at any time.

21 THE PRESIDENT: I would like each counsel
22 who represents any accused who does not join in it
23 to come to the lectern and say so.

24 MR. LEVIN: I take it, Mr. President,
25

1 there is no further necessity for me to indicate
2 that I do not join in this motion on behalf of the
3 clients I represent.

4 THE PRESIDENT: You might repeat whom you
5 represent.

6 MR. LEVIN: I represent the accused KAYA
7 and SUZUKI.
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1 THE PRESIDENT: Dr. UZAWA.

2 DR. UZAWA: I have signed Mr. Smith's motion
3 on behalf of Japanese counsel -- all Japanese counsel.
4 That is in order to assure smooth progress in the
5 proceedings I had desired to avoid any confusion.

6 THE PRESIDENT: Apparently you had no author-
7 ity to do that.

8 DR. UZAWA: I think I have the authority to
9 affix my signature.

10 THE PRESIDENT: You said you signed it for
11 convenience sake and not because you were authorized
12 by individual Japanese counsel.

13 DR. UZAWA: Mr. President, if you state that
14 I have no authority to make my signature, then I shall
15 reconsider my position or reconsider this matter.

16 THE PRESIDENT: Tell me, please, whether you
17 were authorized by each Japanese counsel to sign
18 that general motion.

19 DR. UZAWA: I believe that I have that author-
20 ity.

21 THE PRESIDENT: I would like each Japanese
22 counsel to come to the lectern and say whether or not
23 you have it.

24 DR. UZAWA: I have been given the authority
25 to defend all accused and their counsel by the

1 signature of all accused -- each and all accused --
2 and the signature of each and all defense counsel.

3 THE MONITOR: Slight correction: I have been
4 given the power to represent all the accused, represent
5 all the Japanese counsels, by signatures of all the
6 defendants and all the counsels.

7 THE PRESIDENT: We will take that to be so
8 until the contrary appears.

9 DR. UZAWA: Thank you.

10 THE PRESIDENT: Now, Mr. Smith, proceed to
11 put the motion on behalf of all the accused because
12 it appears that by their Japanese counsel they are
13 parties.

14 MR. SMITH: Your Honor, in order to save
15 time I was wondering whether this couldn't be copied
16 into the transcript, that is, the points, and treated
17 as though it had been read. Now, there is some
18 duplication as far as the argument goes.

19 THE PRESIDENT: Read it into the transcript,
20 Mr. Smith.

21 MR. SMITH: 1. There is no substantial
22 evidence introduced by the prosecution tending to
23 shown that any defendant individually or in concert,
24 combination, confederation or conspiracy with any
25 other defendant or with any other persons vaguely

1 described as "divers other persons" committed any
2 alleged offense described in any of the fifty-five
3 counts of the alleged indictment and in addition the
4 evidence introduced does not amount to even a scin-
5 tilla of proof and otherwise fails to demonstrate a
6 prima facie showing in that respect.

7 2. There is not and never has been in
8 existence any system or body of laws known as an
9 international code, standard or criterion of criminal
10 justice or an international code, standard or criter-
11 ion of moral conduct carrying with it the right of
12 criminal adjudication and criminal penalties, and
13 the prosecution has wholly failed to show by evidence
14 the existence of any such law or concept.

15 THE PRESIDENT: Those points have been put
16 already. You need not repeat them.

17 MR. SMITH: Well, certainly all of the
18 defendants in the case, your Honor, have not put that
19 before. The only one I ever recall who put it was
20 was Mr. HIROTA in one of his motions last May or June.

21 3. No system or body of law --

22 THE PRESIDENT: Mr. Smith, the motion will
23 be part of the record and any of us who want to refer
24 to it may do so without having to read it in the trans-
25 cript. We want read into the transcript only new

1 points and new matter.

2 MR. SMITH: Well, in my view, your Honor,
3 everything in here is new. Now, I don't know how I
4 am going to cut it up to fit your Honor's point of
5 view about the matter here.

6 THE PRESIDENT: Would it be correct to say
7 that in this general motion you have included every
8 point taken on behalf of any accused?

9 MR. SMITH: The answer is no, Your Honor,
10 so far as I have ever heard.

11 THE PRESIDENT: Well, you could hardly take
12 the points on behalf of the diplomatic section; they
13 would not be particularly concerned. Or perhaps the
14 points on behalf of the chiefs of staff and of the
15 Navy. Would it be correct to say that you have taken
16 every point of general application?

17 MR. SMITH: What I intended to do when I
18 drafted this was to cover every general point common
19 to every defendant in the case irrespective of his
20 personal situation.

21 THE PRESIDENT: Well, you have
22 raised no general point not already put on behalf of
23 some or other of the accused. Is that so?

24 MR. SMITH: The answer to your Honor's
25 question is no. There are some points raised here

1 that I never heard any counsel in the case mention
2 before; I happened to think of them myself and put
3 them in here.

4 THE PRESIDENT: As you read the motion slip
5 over those that have already been put. If you will
6 give us the numbers of the paragraphs we will know
7 at a glance what has been omitted and we can refer
8 to the motion itself if we wish.

9 MR. SMITH: Well, I don't know of any single
10 paragraph which falls within what your Honor just
11 stated about skipping paragraphs. However, I will
12 skip on down to paragraph 5.

13 The defendants and each of them cannot be
14 held to answer for offenses against alleged inter-
15 national criminal or moral standards which have
16 been heretofore defined in such vague, general and
17 indefinite terms, if at all, that no individual
18 could be expected to know what such standard or crite-
19 rion of conduct was and the criminal penalties attendant
20 upon violation thereof; that such alleged standard or
21 criterion has never been defined with the requisite
22 certainty to support criminal intent; and further,
23 that no international standard of criminal or moral
24 conduct has heretofore been defined with the certainty
25 that he who runs may read.

1 6. The alleged body or system of law which
2 this tribunal undertakes to administer under the
3 Amended Charter issued by General MacArthur on 26th
4 April 1946 is entirely ex post facto in character and,
5 hence, abhorrent to and contrary to the practice
6 followed by all civilized nations since time immemorial.

7 7. The defendants with few exceptions are
8 indicted for acts and possibly acts of omission
9 committed while serving in the highest civil or mil-
10 itary offices or both within the gift of the govern-
11 ment of Japan. Their acts were the acts of the govern-
12 ment of Japan acting in its sovereign capacity and
13 the defendants and each of them are not answerable
14 therefor under any body or system of law, national or
15 international, known in the world. Their acts and
16 omissions are beyond the reach of any body or system
17 of law known to the world and are immune to re-examin-
18 ation by any sovereign nation or group of nations. It
19 would have been impossible for any defendant to have
20 committed the alleged offenses without wielding the
21 power of his official office and consequently the
22 defendants and each of them are indicted for alleged
23 acts and omissions which arose entirely out of their
24 official acts.

25 8. The alleged acts and possibly acts of

1 omission charged against the defendants and each of
2 them were acts of the Japanese government acting in
3 the sovereign capacity as a nation and none of the
4 defendants is subject to prosecution as an individual
5 by reason of having been an actor in the performance
6 of his governmental functions.

7 THE PRESIDENT: "ell, that has been put before
8 and repeatedly put, individual responsibility --
9 the doctrine of respondeat superior.

10 MR. SMITH: Respondeat superior has nothing
11 to do with what I am talking about here, your Honor.
12 I am talking about the high sovereign immunity and
13 not any ordinary relation of master and servant.

14 9. None of the fifty-five counts of the
15 Indictment informs any defendant of the nature and
16 cause of the accusation against him and each of
17 said counts is drawn in such broad, general, indefinite
18 and vague form as to amount to a mere dragnet and snare.

19 10. The law of conspiracy has no applica-
20 tion whatever to official actions, compromise, con-
21 sultation, and agreement between the highest officers
22 of the government of Japan acting within the scope of
23 their sovereign authorities for the reason that
24 civilized government necessarily implies and requires
25 cooperation toward the end sought by sovereign action

1 and heretofore criminal conspiracy has never been
2 known to apply to any act or situation except positive
3 acts inimical to the sovereign itself and defined
4 and punished by domestic law.

5 11. No nation or individual can make a
6 law of nations.

7 12. Neither the Potsdam Declaration nor the
8 Japanese Instrument of Surrender generated or estab-
9 lished any law, national or international, and the
10 action taken on those occasions furnished no justi-
11 fication or support for the indictment herein.

12 13. In the light of the unusual character
13 of this trial and the nebulous state of existing
14 international law, even in its civil aspects, there
15 can be no judicial notice of the "law" of this case;
16 hence the law of this case must be proved by the
17 prosecution as a fact and there being no proof in this
18 respect, the Indictment fails in its entirety.

19 THE PRESIDENT: All those points were put
20 in May, last, and subsequently by learned counsel.
21 You are reading nothing new, Mr. Smith. We may
22 have to confine you to a consideration on this general
23 motion of the state of the evidence and that may be
24 difficult, because after twenty-six accused have
25 dealt with that there would seem to be nothing left

1 to be dealt with on a general motion.

2 MR. SMITH: If your Honor will just tell me
3 what to do I will certainly appreciate it. The
4 trouble is that I sometimes have to read a paragraph
5 before I am conscious of the fact that some one
6 counsel may have mentioned it somewhere.

7 THE PRESIDENT: Perhaps we will save time
8 eventually if we adjourn now for luncheon to allow
9 you opportunity to go through the motion, Mr. Smith.

10 We will adjourn until half past one.

11 (Whereupon, at 1155, a recess was
12 taken until 1330, after which the proceedings
13 were resumed as follows:)

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AFTERNOON SESSION

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The Tribunal met, pursuant to recess, at 1330.

MARSHAL OF THE COURT: The International
Military Tribunal for the Far East is now resumed.

THE PRESIDENT: Major Moore.

LANGUAGE ARBITER (Major Moore): Mr. President,
if the Tribunal please, we present the following lan-
guage correction:

Exhibit 1146, Record page 10,242, line 5,
substitute, "for the government to open hostilities"
for, "to declare war."

This correction was to have been made with
corrections presented as found on Record page 11,139.

THE PRESIDENT: Mr. Smith.

MR. SMITH: If your Honor please, during
the recess I have hurriedly gone through the remaining
sections of this motion and I really find nothing that
can be omitted and nothing which has been adequately
covered by any other counsel in the case so far as my
recollection goes.

THE PRESIDENT: Well, read on.

MR. SMITH: 14. The Peace Pact of Paris
(Briand-Kellogg Pact), of 27 August 1928, was conditioned
that, "Nothing in the new Treaty restrains or compromises

1 in any manner the right of self defense. Every
2 nation in this respect will always remain free to
3 defend its territory against attack or invasion; it
4 alone is competent to decide whether circumstances
5 require recourse to war in self defense. Secondly,
6 none of the provisions in the new Treaty is in opposi-
7 tion to the provisions of the Covenant of the League
8 of Nations, nor with those of the Locarno Treaties or
9 the Treaties of Neutrality. Moreover, any violation
10 of the new Treaty by one of the contracting parties
11 would automatically release the other parties from
12 their obligations to the Treaty-breaking States."

13 "Under these conditions" (M. Briand for France);

14 "On this premise" (Signor Mussolini for Italy); and

15 "In the light of the foregoing explanations" (Sir
16 Austen Chamberlain for England), the chief signatory
17 powers signed the Treaty. A similar representation
18 and condition was made to the Empire of Japan which
19 ratified the pact upon the condition set forth in a
20 note of Mr. Kellogg, Secretary of State of the United
21 States, dated 23 June 1928, which reads in part as
22 follows:

23 "(1) Self-Defense. There is nothing in the
24 American draft of an anti-war treaty which restricts
25 or impairs in any way the right of self-defense. (That

1 right is inherent in every sovereign State and is
2 implicit in every treaty (Italicized)). Every
3 nation is free at all times and regardless of treaty
4 provisions to defend its territory from attack or
5 invasion and it alone is competent to decide whether
6 circumstances require recourse to war in self-defense."

7 Consequently, Japan alone was competent
8 to decide whether the circumstances confronting it
9 required recourse to war in self defense and no
10 international tribunal is competent to re-examine
11 that question anew. Moreover, should a nation bona
12 fide believe that war is required as a measure of
13 self defense, it might be an aggressor in fact, but
14 it is not a breaker of the Treaty -- recourse to war
15 in self defense having been expressly excluded by
16 prior agreement from the terms of the Pact, and the
17 definition and circumstances of the exercise of self
18 defense left to the exclusive judgment of each separate
19 signatory power. Consequently, a breach of the fore-
20 going Pact incurred no sanction other than moral
21 disapproval.

22 THE PRESIDENT: Of course, the British and
23 the American approach is to take the words of the
24 agreement and give them their full effect. If they
25 are clear there is no occasion to make any further

1 inquiry, but under no circumstances do you ask the
2 opinion of the makers of the agreement. However,
3 proceed to read what you have written, Mr. Smith.

4 MR. SMITH: 15. The "Convention for the
5 Pacific Settlement of International Disputes,"
6 signed at the Hague, 18 October 1907, imposes no
7 sanctions or penalties other than moral disapproval
8 for violation of said Convention; and the Convention
9 became obsolete and was superseded by the Briand-
10 Kellogg Pact of 1928 as it specifically relates to
11 the determination of what constitutes a war of self
12 preservation and self defense. Many of the signatory
13 nations thereto have in recent years resorted to war
14 to settle disputes without any attempt to follow the
15 prescribed procedures for Pacific settlement and no
16 attempt has heretofore been made to punish or even
17 censure those nations for breach of said Convention.
18 The Convention has fallen into disuse and was obsolete
19 long prior to 1928 by common consent and practice of
20 nations. Since the evidence produced by the prosecution
21 shows beyond doubt that the procedures of conciliation,
22 mediation and arbitration would have been futile in
23 the situation of Japan with respect to the disputes in
24 Manchuria and China and that Japan substantially fol-
25 lowed the procedures prescribed by said Convention in

1 its dealings with the United States and Great Britain
2 in the negotiations preceding the commencement of the
3 Pacific war, the Treaty has no application to the
4 evidence in this case.

5 16. The Treaty of Versailles has no appli-
6 cation to the activities of Japan in Manchuria in
7 that all the evidence showed that Japan complied
8 with the procedures prescribed by said Treaty up to
9 the point of the decision by the League of Nations,
10 a decision Japan was not bound to accept without
11 regard to its merit and fairness and its inalien-
12 able right to act in self defense. The Treaty other-
13 wise provided no punishment other than moral dis-
14 approval for any alleged violation thereof. All the
15 substantial evidence introduced by the prosecution
16 shows that the actions taken by Japan were in self
17 defense, a matter outside the scope of the provisions
18 of the Treaty of Versailles. Japan occupied a special,
19 historical and incontrovertible position in Manchuria
20 which it was entitled to defend. Otherwise the Treaty
21 of Versailles was superseded by the Briand-Kellogg
22 Pact of 1928 in situations relating to self preserva-
23 tion and self defense on the part of Japan.

24 17. The "Convention for the Pacific Settle-
25 ment of International Disputes," signed at the Hague,

1 29 July 1899, is obsolete, was superseded by the
2 "Convention for the Pacific Settlement of International
3 Disputes" signed at the Hague, 18 October 1907, and
4 both Conventions were superseded by the Briand-Kellogg
5 Pact of 1928 in situations relating to self preserva-
6 tion and self defense which conditions Japan alone
7 was competent to finally decide for itself. The
8 Convention of 1899 is so vague, general and indefinite
9 as to be without meaning in the context of this trial
10 and provided for recourse to the procedures mentioned
11 in the Convention "as far as circumstances allow."
12 The prosecution has failed to show either the exist-
13 ence of the foregoing Treaty or its relevancy or
14 application to the facts in this case.

15 18. The so-called "Nine-Power Treaty,"
16 signed at Washington, 6 February 1922, has no appli-
17 cation to the evidence presented by the prosecution
18 in this case for the reason that all the substantial
19 evidence shows that the activities of Japan in Manchuria
20 and China were acts in self defense; that there was no
21 infringement of the territorial integrity of China in
22 any permanent sense; and that otherwise there was no
23 infringement of the so-called "open-door" in China --
24 whatever the loose term "open-door" might be taken to
25 mean in view of the radically altered circumstances

1 and situation in China since 1922, particularly with
2 respect to the hostile attitude of China itself in
3 regard to said Treaty. The "Nine-Power Treaty" was
4 superseded by the Briand-Kellogg Pact of 1928 in
5 situations relating to the self defense of Japan and
6 its citizens and Japan alone was competent to determine
7 finally what facts and circumstances entitled it to
8 act in self defense.

9 19. The assurance given by Japan, the
10 United States, France and the British Empire to the
11 Netherlands government on 4 February 1922 with respect
12 to territorial integrity of insular dominions in the
13 region of the Pacific Ocean has no possible applica-
14 tion to this case for the reason that all the evidence
15 shows that the Netherlands government declared war on
16 Japan on 8 December 1941, which was long prior to the
17 time that Japanese troops entered the Dutch East Indies.
18 Moreover, on 8 December 1941 the Netherlands government
19 and the Netherlands East Indies declared war against
20 Japan "in view of Japan's aggression against two
21 powers with whom the Netherlands maintain particular-
22 ly close relations."

23 20. There is no substantial evidence that
24 any defendant caused Japan to violate the Treaty of
25 amity and respect for each other's territorial integrity

1 between Thailand and Japan, signed 12 June 1940.
2 All the evidence introduced by the prosecution
3 shows that Japanese armed forces entered Thailand
4 territory with the consent and approval of the duly
5 constituted Thailand government.

6 21. There is not even a scintilla of
7 evidence tending to prove that any of the defendants
8 violated the provisions of the Versailles Treaty or
9 the agreement between Japan and the United States,
10 signed at Washington, 11 February 1922, by fortifying
11 the mandated islands of the Pacific at any time prior
12 to the commencement of the Pacific war; nor any evi-
13 dence that any defendant employed or permitted to be
14 employed forced labor without compensation.

15 22. Japan never ratified the "Convention
16 Relative to the Treatment of Prisoners of War," signed
17 at Geneva, 27 July 1929, and is not bound by any pro-
18 vision of that Convention. The undertaking of Japan
19 after the beginning of the Pacific war unilaterally
20 to respect the provisions of that Convention "mutadis
21 mutandis" meant nothing more or less than Japan
22 recognized the spirit and principle involved in said
23 Convention but did not follow the Convention in all
24 its detailed requirements. The aforesaid Convention
25 imposes no criminal sanctions against the heads of

1 government and those occupying high places in govern-
2 ment. Nothing in the aforesaid Convention authorizes
3 an international legal tribunal to sit in judgment
4 upon alleged violations of the Convention or the
5 spirit or principle embodied in the Convention; and
6 otherwise the punishment of breaches of said Conven-
7 tion or the principle thereof by members of the armed
8 forces or belligerents is left to the processes of
9 the individual nation offended by such breach. Nothing
10 in the provisions of said Convention establishes a
11 so-called international code of criminal conduct
12 relating to the treatment of prisoners of war punish-
13 able by an International Military Tribunal. These
14 same considerations apply to the Convention for the
15 treatment of civilian internees.

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1 23. The Hague Convention of 1907 regarding
2 the opening of hostilities has no application to
3 situations involving a war of self-preservation and
4 self-defense; it has no application because the very
5 evidence of the prosecution shows that the United
6 States, Great Britain and the Soviet Union were and
7 had been engaged in a de facto state of war with Japan
8 for several years prior to December 7, 1941, by reason
9 of their substantial and continuous economic, financial
10 and military assistance to China during the Sino-Japanese
11 hostilities which had been in progress since July 7,
12 1937, and that by reason thereof the foregoing nations
13 placed themselves in the status of belligerents against
14 Japan; and further that the foregoing Convention has
15 no application because all of the evidence of the
16 prosecution shows that all nations represented before
17 the Tribunal gave no heed to the provisions of said
18 Convention, either with respect to intervention in the
19 Sino-Japanese hostilities or in the negotiations immed-
20 iately preceding the commencement of the Pacific war.

21 24. There is no substantial evidence to show
22 that any defendant violated any of the treaties,
23 conventions or assurances relied upon by the prosecution.

24 25. As the governments represented by the
25 prosecutors before the Tribunal failed to respect and

1 abide by the provisions of the treaties, conventions
2 and assurances set forth in the Indictment, the afore-
3 said governments are estopped in good conscience to
4 bring into question in this proceeding acts and possibly
5 acts of omission tending to show alleged violations
6 of the same treaties, conventions and assurances.

7 26. All of the evidence introduced by the
8 prosecution is as equally consistent with the hypothesis
9 of innocence as it is with the hypothesis of guilt and,
10 hence, there has been a palpable failure on the part
11 of the prosecution even to make out a prima facie case
12 with respect to any count in the Indictment.

13 CRIMES AGAINST PEACE

14 (Counts 1-36)

15 The Points to be Argued are:

16 27. The prosecution has failed to show by
17 any substantial evidence that any defendant either
18 individually or acting in concert, combination, confed-
19 eration or conspiracy with any other defendant or with
20 persons in the vague category described as "divers
21 other persons" ever planned, prepared or initiated a
22 declared or undeclared war of aggression against any
23 country or people. There has been no attempt on the
24 part of the prosecution to trace any outline of a
25 criminal conspiracy or to show any overt acts in

1 pursuance of an alleged conspiracy. No immediate
2 connection is anywhere shown between acts of the defend-
3 ants and results which transpired in the course of time;
4 that is to say, the connection between isolated acts
5 of the defendants and events which subsequently trans-
6 pired in Manchuria, China and in the Pacific War
7 are too remote to sustain the allegation of conspiracy.
8 As none of the defendants had the final voice in any
9 of the allegations contained in the Indictment,
10 they cannot be held responsible for the final and
11 ultimate decision which was put into action with
12 respect to all matters mentioned in Counts 1-36 of the
13 Indictment.

14 28. The prosecution has wholly failed to
15 prove a war of aggression with respect to any of the
16 Counts 1-36. There has not been the slightest effort
17 on the part of the prosecution to prove the absence of
18 any valid reason or justification for the activities of
19 the armed forces of Japan in Manchuria, China, Indo-
20 China and the countries involved in the Pacific war.
21 On the other hand, with respect to Manchuria and China,
22 all the prosecution evidence shows that the Chinese
23 caused the hostilities and that the surrounding circum-
24 stances were such that Japan was forced to fight a war
25 of self-defense. In any event, the evidence with

1 respect to Manchuria and China is so equivocal that it
2 does not prove anything one way or the other with respect
3 to alleged wars of aggression.

4 29. The prosecution has failed to offer any
5 evidence to overcome the ordinary presumption that
6 armed hostilities comprise legitimate self-defense.

7 30. There is a failure of proof to show that
8 any defendant or defendants or "divers unknown persons"
9 were acting in bad faith in their determination that
10 Japan was entitled to engage in hostilities for the
11 purposes of self-preservation and self-defense and in
12 this respect the prosecution has failed to overcome the
13 ordinary presumption of innocence.

14 MURDER

15 (Counts 37-52)

16 Points to be argued are:

17 31. There is a total failure of proof on the
18 part of the prosecution that any defendant, either
19 individually or acting in concert, combination, confed-
20 eration or conspiracy with any other defendant or with
21 the alleged category of persons vaguely described as
22 "divers other persons" ever "murdered" any of the
23 inhabitants of the nations described in the foregoing
24 counts. There is no international criminal law which
25 defines the crime, standard or criterion, of "murder".

1 At common law, and by the domestic law of all civilized
2 nations "murder" has been heretofore defined as the
3 deliberate, purposeful and premeditated killing of a
4 human being with malice aforethought. There has been
5 a total failure of proof to show that any defendant
6 or defendants ever murdered any human being. "Murder"
7 by its very nature requires a showing of a close,
8 immediate relationship between two human beings and
9 involves all the elements of purpose, premeditation,
10 "cooling time" and above all, the extremely personal
11 element of malice aforethought. It has never heretofore
12 been supposed that the heads of governments of sovereign
13 nations are guilty of "murder" by reason of either
14 legal or extra-legal activities on the part of the
15 armed forces of a sovereign nation. Moreover, a killing
16 by the armed forces of a sovereign nation has never
17 been regarded as "murder", and, hence, there is nothing
18 in international law to support the accusations against
19 any of the defendants. There is a total failure by the
20 prosecution to show that any defendant ordered, caused
21 or permitted the Japanese armed forces to kill any
22 human being in any of the countries designated in any
23 of the foregoing counts. The prosecution has likewise
24 failed to offer any evidence to overcome the ordinary
25 presumption that a killing by a member of the armed

1 forces was a legal act during the continuation of
2 hostilities.

3 CONVENTIONAL WAR CRIMES AND CRIMES AGAINST
4 HUMANITY

5 (Counts 53-55)

6 32. There has been a total failure of proof
7 on the part of the prosecution to show that any defendant,
8 either individually or acting in concert, combination,
9 confederation or conspiracy with any other defendant or
10 with "divers unknown persons" ever knowingly, intention-
11 ally or wilfully violated the rules, customs and usages
12 of land or sea warfare or ever committed any act which
13 might be construed to be an alleged conventional war
14 crime or a crime against humanity. There is an entire
15 failure of proof to show that any defendant had any
16 personal connection with or knowledge of any individual
17 activities on the part of the armed forces of Japan with
18 respect to the treatment of prisoners of war and interned
19 civilians or that any defendant was personally guilty
20 of negligence in that respect. The assurances on the
21 part of Japan that it would recognize the principle
22 involved in the Geneva Convention in regard to the
23 treatment of prisoners of war and civilians of 1929
24 "mutatis mutandis" left Japan almost unbridled judg-
25 ment and discretion within the scope of common, ordinary

1 conceptions of humanity, to apply or not to apply the
2 details of that Convention. The prosecution has failed
3 to show by substantial evidence that any of the defendants
4 were in the chain of command or in the line of respon-
5 sibility which would fasten upon them or any of them
6 legal or criminal responsibility for acts of commission
7 and omission in the treatment of prisoners of war and
8 interned civilians. Nothing in international law
9 holds the high policy making officials of a sovereign
10 nation, especially civilian officials, responsible for
11 the activities of armies in the field. The prosecution
12 has failed to introduce any evidence to overcome the
13 ordinary presumption that the commanding officers of
14 armies in the field have the final and ultimate respon-
15 sibility for the treatment of prisoners of war and
16 civilians coming into their custody during the existence
17 of a state of war. Nothing in the practice of the past
18 entitled an International Military Tribunal to sit in
19 judgment upon averments of breach of the rules, customs
20 and usages of land warfare; heretofore all such violations
21 have been left to trial by the military tribunals of the
22 nation which was offended by such breach of the rules,
23 customs and usages of land warfare. Finally, all the
24 evidence introduced by the prosecution dealing with
25 alleged violations of such rules, customs and usages

1 necessarily have a definite geographical location and
2 by reason thereof are not within the competence of an
3 International Military Tribunal. Nothing in the Potsdam
4 Declaration or the Japanese instrument of surrender
5 undertook or purported to define so-called "war criminals"
6 in other than the traditional sense or to enlarge the
7 category of persons traditionally held to responsibility
8 for such offenses.

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1 Now, your Honor, I come to individual
2 counts and here I see an opportunity to avoid
3 reading. You will notice throughout the discussion
4 of the individual counts that it uniformly says that
5 no defendant, individually or acting in concert
6 with any other defendant, or with any divers unknown
7 persons, ever did any of the things charged in each
8 one of those counts.

9 I hope your Honors will read each one of
10 these statements with respect to the individual
11 counts, especially as I call attention to duplication
12 of counts. For example, there are some counts in
13 the Indictment which are identical except that one
14 count charges all defendants and the other count
15 charges only a part of them by name, and I will ap-
16 preciate it if your Honor will allow the remainder
17 of this motion dealing with the individual counts
18 to be copies into the transcript and treated as
19 though I had read it.

20 THE PRESIDENT: Well, we could do it, but
21 we will have to consider seriously how far we will
22 allow things to be read into the record which were
23 not read. That is what it amounts to. We will have
24 it before us as an exhibit -- we will have it before
25 us as a part of the record, I should say.

1 MR. SMITH: Well, your Honor, I will go on
2 and read it if it can't be handled in that way. I
3 just don't want half of my motion appearing in the
4 record and then have the record show that it ab-
5 ruptly dropped off. I am pressing this point.

6 THE PRESIDENT: You are speaking for all
7 the accused. There are only about six pages, so go
8 ahead.

9 MR. SMITH: (Reading): The Individual Counts.

10 The points to be argued are:

11 (Count 1) 33. There is no substantial evidence
12 tending to prove that any two or more defendants ever
13 engaged in a common plan or conspiracy to "secure the
14 military, naval, political and economic domination
15 of East Asia and of the Pacific and Indian Oceans,
16 and of all countries and islands therein."

17 (Count 2) 34. There is no substantial evidence
18 tending to show that any two or more defendants en-
19 gaged in a common plan or conspiracy to "secure the
20 military, naval, political and economic domination of
21 the Provinces of Liaoning, Kirin, Heilungking and
22 Jehol, being parts of the Republic of China."

23 (Count 3) 35. There is no substantial evidence
24 tending to prove that any two or more defendants
25 engaged in a common plan or conspiracy to "secure

1 the military, naval, political and economic domina-
2 tion of the Republic of China, either directly or
3 by establishing a separate State or States under
4 the control of Japan."

5 (Count 4) 36. There is no substantial evidence
6 tending to show that any two or more defendants en-
7 gaged in a common plan or conspiracy to "secure the
8 military, naval, political and economic domination
9 of East Asia and of the Pacific and Indian Oceans,
10 and of all countries and islands therein." This
11 count appears to be a mere duplication of Count 1,
12 supra.

13 (Count 5) 37. There is no substantial evidence
14 tending to prove that any two or more defendants
15 engaged in a common plan or conspiracy that "Germany,
16 Italy and Japan should secure the military, naval,
17 political and economic domination of the whole world."
18 All the evidence of the prosecution tends to prove
19 the reverse of the foregoing allegation.

20 (Count 6) 38. There is no substantial evidence
21 tending to show that any two or more defendants
22 "Planned and prepared a war of aggression and a war
23 in violation of international law, etc. against the
24 Republic of China." This count appears to be a mere
25

1 duplication of Counts 1, 2, 3 and 4.

2 (Count 7) 39. There is no substantial evidence
3 tending to show that any two or more defendants
4 planned and prepared a war of aggression and a war
5 in violation of international law, etc. against the
6 United States. The evidence of the prosecution
7 clearly shows that the United States acting in con-
8 cert with other great Powers applied economic em-
9 bargoes and sanctions against Japan to the point of
10 strangulation, indulged in military encirclement of
11 Japan and otherwise forced Japan into the position
12 of fighting a war of self preservation and self
13 defense. There is a total failure of proof that
14 Japan engaged in a war of aggression against the
15 United States.

16 (Count 8) 40. There is no substantial evidence
17 tending to prove that any two or more defendants
18 planned and prepared a war of aggression against the
19 United Kingdom of Great Britain and Northern Ire-
20 land and all parts of the British Commonwealth of
21 Nations. All the evidence of the prosecution shows
22 beyond doubt that the United Kingdom itself declared
23 war on Japan and had previously threatened Japan
24 that the United Kingdom would go to war "tihin the
25 hour" of the beginning of hostilities between the

1 United States and Japan.

2 (Count 9) 41. There is no substantial evi-
3 dence tending to prove that any two or more de-
4 fendants planned and prepared a war of aggression
5 against the Commonwealth of Australia. All the
6 evidence shows that Australia itself declared war
7 on Japan long prior to the time that hostilities
8 reached the territory of Australia.

9 THE PRESIDENT: You could add the same thing
10 in respect to New Zealand and Canada and India.

11 MR. SMITH: (Continuing to read):

12 (Count 10) 42. There is no substantial evi-
13 dence tending to prove that any two or more de-
14 fendants planned and prepared a war of aggression
15 against New Zealand. All the evidence shows be-
16 yond doubt that New Zealand declared war on Japan.

17 (Count 11) 43. There is no substantial evi-
18 dence tending to prove that any two or more de-
19 fendants planned and prepared a war of aggression
20 against Canada. All of the evidence shows beyond
21 doubt that Canada declared war on Japan.

22 (Count 12) 44. There is no substantial evi-
23 dence tending to prove that any two or more defendants
24 planned and prepared a war of aggression against India.
25 All of the evidence shows beyond doubt that India

1 declared war on Japan in line with the policy of the
2 United Kingdom.

3 (Count 13) 45. There is no substantial evi-
4 dence tending to show that any two or more defendants
5 planned and prepared a war of aggression against the
6 Commonwealth of the Philippines. As the Philippines
7 had not attained its independence at any time during
8 the continuance of the Pacific war and was subject
9 to the sovereign jurisdiction of the United States
10 and its inhabitants were nationals thereof, this
11 count appears to be a mere duplication of Count 7
12 which avers a planned and prepared war of aggression
13 against the United States of America.

14 (Count 14) 46. There is no substantial evi-
15 dence tending to show that any two or more defendants
16 planned and prepared a war of aggression against the
17 Kingdom of the Netherlands. All the evidence shows
18 beyond doubt that the Netherlands itself declared
19 war upon Japan.

20 (Count 15) 47. There is no substantial evi-
21 dence tending to show that any two or more defendants
22 planned and prepared a war of aggression against the
23 Republic of France. All of the evidence in the
24 case shows that there was no war of aggression against
25 France and that the landing of troops in Indo-China

1 was pursuant to a voluntary agreement between the
2 Vichy French Government and Japan, the Vichy Govern-
3 ment having exercised both de jure and de facto
4 authority over Indo-China after the capitulation of
5 France.

6 (Count 16) 48. There is no substantial evi-
7 dence tending to show that any two or more defendants
8 planned and prepared a war of aggression against
9 Thailand. There is a total failure of proof in this
10 respect. All the evidence shows beyond doubt that
11 the entry of Japanese troops into Thailand after the
12 commencement of the Pacific war was pursuant to a
13 voluntary agreement with the Thailand Government.
14 Moreover, the Kingdom of Thailand is not a party to
15 the prosecution and nowhere does it appear by what
16 authority the existing prosecutors undertake to
17 carry on a prosecution without the consent of the
18 Kingdom of Thailand.

19 (Count 17) 49. There is no substantial evi-
20 dence tending to show that any two or more defendants
21 planned and prepared a war of aggression against the
22 Union of Soviet Socialist Republics. All the evi-
23 dence in the case demonstrates beyond doubt that
24 Japan never entertained the slightest intention of
25 attacking the Soviet Union and that Japan for many

1 years had been genuinely disturbed by Soviet aggressive-
2 ness, large preparations for war and desire to fasten
3 its communistic philosophy upon Japan and China, as
4 well as other nations throughout the world.

5 (Count 18) 50. There is no substantial evi-
6 dence tending to show that any two or more of the
7 named defendants initiated a war of aggression against
8 the Republic of China. All the evidence of the pro-
9 secution shows that China caused the hostilities
10 against Japan and that China had otherwise been en-
11 gaged for many years in hostile actions against
12 Japanese citizens, anti-Japanese propaganda and boy-
13 cotts, and had otherwise been engaged in a long period
14 of civil war and internal chaos which threatened the
15 lives and property of Japanese citizens.

16 (Count 19) 51. There is no substantial evi-
17 dence tending to show that any two or more of the
18 named defendants initiated a war of aggression against
19 the Republic of China. This count appears to be a
20 mere duplication of Count 18 with the exception that
21 several additional defendants are named in this count.
22 No reason appears why the Indictment was split in
23 this respect.

24 (Count 20) 52. There is no substantial evi-
25 dence tending to show that any two or more of the

1 named defendants initiated a war of aggression
2 against the United States of America. This count
3 is a duplication of Count 7, with the exception
4 that Count 7 names all defendants, whereas the in-
5 stant count names only fifteen defendants.
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(Count 21)

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53. There is no substantial evidence tending to show that any two or more of the named defendants initiated a war of aggression against the Commonwealth of the Philippines. This count appears to be a duplication of Counts 4, 5, 7 and 13.

(Count 22)

54. There is no substantial evidence tending to show that any two or more of the named defendants initiated a war of aggression against the British Commonwealth of Nations. This count appears to be a duplication of Counts 4, 5, 8, 9, 10, 11 and 12. As previously pointed out, the British Commonwealth of Nations themselves declared war on Japan.

(Count 23)

55. There is no substantial evidence tending to show that any two or more defendants initiated a war of aggression against France. This count appears to be a mere duplication of Counts 4, 5, and 15.

(Count 24)

56. There is no substantial evidence tending to prove that any two or more named

1 defendants initiated a war of aggression against
2 the Kingdom of Thailand.

3 (Count 25)

4 57. There is a total failure of proof
5 that any two or more of the named defendants
6 initiated a war of aggression against the Union
7 of Soviet Socialist Republics. There is no evidence
8 in the record to show that any such war transpired.

9 (Count 26)

10 58. There is no substantial evidence
11 tending to show that any two or more of the named
12 defendants initiated a war of aggression against
13 the Mongolian People's Republic. The Mongolian
14 Republic is not a complainant before the Tribunal
15 or represented among the prosecutors. Nowhere does
16 it appear that the Mongolian People's Republic has
17 given its consent to a complaint before the Tribunal
18 and otherwise it does not appear by what authority
19 the instant prosecutors present a case on behalf
20 of such Republic.

21 (Count 27)

22 59. There is no substantial evidence
23 tending to show that any two or more defendants
24 waged a war of aggression against China. This
25 count appears to be a duplication of Counts 1, 3, 4,

1 5, 18 and 19.

2 (Count 28)

3 60. There is no substantial evidence
4 tending to show that any two or more defendants
5 waged a war of aggression against the Republic of
6 China. This count appears to be an exact dupli-
7 cation of Count 27 and all the previous counts
8 identified under Count 27.

9 (Count 29)

10 61. There is no substantial evidence
11 tending to prove that any two or more defendants
12 waged a war of aggression against the United States.
13 This count appears to be an exact duplication of
14 Count 20, except that Count 20 names only part of
15 the defendants.

16 (Count 30)

17 62. There is no substantial evidence
18 tending to show that any two or more defendants
19 waged a war of aggression against the Commonwealth
20 of the Philippines. This count appears to be an
21 exact duplication of Count 21 except that Count 21
22 names less than all the defendants.

23 (Count 31)

24 63. There is no substantial evidence
25 that any two or more defendants waged a war of

1 aggression against the British Commonwealth of
2 Nations. This count appears to be a mere duplica-
3 tion of Count 22.

4 (Count 32)

5 64. There is no substantial evidence
6 tending to show that any two or more defendants
7 waged a war of aggression against the Kingdom of
8 the Netherlands. This count appears to be a mere
9 duplication of Counts 1, 4 and 5.

10 (Count 33)

11 65. There is no substantial evidence
12 tending to show that any two or more of the named
13 defendants waged a war of aggression against the
14 Republic of France. This count appears to be a
15 duplication of Counts 1, 4 and 23.

16 (Count 34)

17 66. There is no substantial evidence
18 tending to show that any two or more defendants
19 waged a war of aggression against the Kingdom of
20 Thailand. This count appears to be a mere duplica-
21 tion of Counts 1, 4 and 24.

22 (Count 35)

23 67. There is no substantial evidence
24 tending to show that any two or more defendants
25 waged a war of aggression against the Union of

1 Soviet Socialist Republics.

2 (Count 36)

3 68. There is no substantial evidence
4 tending to show that any two or more defendants
5 waged a war of aggression against the Mongolian
6 People's Republic and the Union of Soviet Socialist
7 Republics. Moreover, no authority appears for the
8 representation of the Mongolian People's Republics
9 in the complaint before the Tribunal.

10 (Count 37)

11 69. There is no substantial evidence
12 tending to show that any two or more of the named
13 defendants made a common plan or conspiracy to
14 unlawfully kill and murder inhabitants of the
15 named countries; nor any evidence tending to show
16 the personal responsibility of any defendant for
17 the death of any such persons.

18 (Count 38)

19 70. There is no substantial evidence
20 tending to show that any two or more named
21 defendants made a common plan or conspiracy to
22 "murder" any persons within the designated terri-
23 tories.

24 (Counts 39-43)

25 71. There is no substantial evidence

1 tending to show that any two or more defendants
2 made a common plan or conspiracy to effect the
3 "murder" on a wholesale scale of prisoners of war,
4 members of the armed forces of countries opposed
5 to Japan who might lay down their arms, and
6 civilians or crews of ships destroyed by Japanese
7 forces.

8 (Counts 45-52)

9 73. There is no substantial evidence
10 tending to show that any two or more defendants
11 ordered, caused or permitted the armed forces of
12 Japan to slaughter the inhabitants of the city
13 of Nanking, the City of Canton, the City of Hankow,
14 the city of Changsha, the city of Hongyang, the
15 cities of Kweilin and Liuchow, or to unlawfully
16 "murder" certain members of the armed forces of
17 Mongolia and the Union of Soviet Socialist
18 Republics. There has been a total failure of
19 proof to show the personal responsibility of any
20 defendant for the death of any of the foregoing
21 inhabitants of said territories as alleged.

22 (Counts 53-55)

23 74. There is no substantial evidence
24 tending to show that any two or more of the named
25 defendants ever made a common plan or conspiracy

1 to commit conventional war crimes and crimes
2 against humanity as alleged in the foregoing counts
3 or to commit breaches of the laws, customs and
4 usages of war in any of the named territories.
5 There is not a scintilla of evidence in the case
6 to show that any individual defendant personally
7 committed any of the acts and omissions alleged in
8 said counts. The responsibility for the commis-
9 sion of any such acts lay with the immediate
10 military commanders of Japan in the field and by
11 the Geneva Convention for the treatment of
12 prisoners of war and internees of 1929, and by im-
13 memorial practice the responsibility for such acts
14 was always fastened upon the individual guilty of
15 the particular act or omission in question and the
16 immediate, active commander of such offender in
17 the field of operation. Furthermore, such vio-
18 lations were not subject to trial before an
19 international military tribunal and were solely
20 and exclusively punished under the domestic
21 processes of the nation offended by such offense
22 if and when the offender came under the power of
23 such offended nation; and the indictment in the
24 instant case cannot be sustained in those respects
25 because all such alleged offenses necessarily have

1 a definite geographical location.

2 Now, your Honor, I have an argument
3 which I would like to make on some of the major
4 points. They are arguments in support of general
5 motion to dismiss on behalf of all defendants.

6 THE PRESIDENT: Will there be any
7 repetition? We are obliged to hear you, but
8 not to allow you to repeat yourself.

9 MR. SMITH: Necessarily, your Honor,
10 there is a duplication to the extent that I
11 have mentioned some of the points and then taken
12 them up for argument.

13 THE PRESIDENT: Well, go ahead with
14 your argument, Mr. Smith; but we do trust you to
15 behave reasonably to avoid repetition, which we
16 are not bound to tolerate.

17 MR. SMITH: The argument will not attempt
18 to cover each of the points made in the seventy-
19 three paragraphs of the motion to dismiss. How-
20 ever, even though it has not been possible to
21 argue each point, counsel wish to make it plain
22 that the defendants and each of them rely on
23 every point made in said motion to dismiss. The
24 argument has been necessarily limited to a brief
25 outline argument of some of the major points

1 because of the pressure of time, lack of personnel
2 and other matters.

3 1. Upon a careful examination of the
4 treaties and conventions relied upon by the
5 prosecution, as well as other treaties and con-
6 ventions not mentioned by them, and the opinions
7 of jurists and text-writers, counsel have been
8 unable to discover the existence of any system or
9 body of law which provides an international penal
10 code, or an international standard or criterion of
11 criminal justice, or an international standard or
12 criterion of moral conduct which carries with it
13 or supports the right of criminal adjudication
14 and criminal penalties.

15 THE PRESIDENT: That point has been heard
16 and reheard, and you have pages devoted to it. We
17 are not going to hear any more on that point at this
18 stage.

19 MR. SMITH: Well, your Honors, that is
20 merely an opening to the argument. That is
21 simply stating the basic fact in connection with
22 this rather extended argument as to whether there
23 is any law --

24 THE PRESIDENT: The framing of the argu-
25 ment in different terms does not make it a new

1 argument. As regards the Kellogg Pact, you have
2 quoted word for word what you have said already.
3 As far as I can discover from a hasty perusal of
4 this document now before us, there is nothing new.

5 MR. SMITH: Well, your Honor, I would like
6 to tender this written argument for filing and let
7 the record show what I sought to argue before your
8 Honors and ask your Honors to allow me an excep-
9 tion.

10 THE PRESIDENT: It is already a part of
11 the record, and you can have an exception, whatever
12 that means.

13 Where are the prosecution?

14 Mr. Williams.
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1 MR. E. WILLIAMS: Mr. President, Members of
2 the Tribunal:

3 To answer the motions to dismiss made by
4 the several defendants by treating each motion
5 separately would involve a lengthy and in our judg-
6 ment, unnecessary repetition. For that reason it is
7 our purpose to make one series of arguments which
8 will answer collectively all points presented by the
9 motions of all defendants and each point made by
10 the motion of each defendant.

11 It is well to bear in mind something of
12 the structure and contents of the Indictment which
13 may be summarized as follows:

14 Counts 1 to 5 charge that the defendants
15 entered into unlawful conspiracies having as their
16 object the domination by unlawful aggression in
17 violation of treaties etc. (1) All of East Asia,
18 Pacific and Indian Oceans, against any country or
19 countries which might oppose that purpose; (2)
20 that part of the Republic of China commonly known
21 as Manchuria; (3) all of the Republic of China;
22 (4) all of East Asia and of the Pacific and Indian
23 Oceans etc. against the United States, British
24 Commonwealth, France, Netherlands, China, Portugal,
25 Thailand, Philippines, and the Soviet Union; and

1 (5) a conspiracy between the defendants and Germany
2 and Italy to secure military, naval, economic and
3 political domination of the whole world against any
4 country or countries which might oppose such pur-
5 pose, and particularly the United States, British
6 Commonwealth, France, Netherlands, China, Portugal,
7 Thailand, Philippines, and the Soviet Union.

8 Counts 6 to 17 inclusive, allege that all
9 of the defendants planned and prepared the wars
10 of aggression and in violation of international
11 law, treaties, agreements, etc. against various
12 nations separately named in each count, and in-
13 cluding in addition to the nations engaged in this
14 prosecution, the Kingdom of Thailand.

15 All of the defendants are named in each
16 of the 17 counts above enumerated.

17 Counts 18 to 26, inclusive, allege that
18 certain of the defendants initiated wars of
19 aggression and in violation of international law,
20 treaties, etc., against China, United States,
21 Philippines, British Commonwealth, France, Thailand,
22 Soviet Union and the Mongolian Peoples Republic.

23 Counts 27 to 36, inclusive, charge the
24 defendants with waging wars of aggression and in
25 violation of international law, treaties, etc.

1 All of these counts except 33, 35 and 36,
2 name all of the defendants. Count 33 alleging the
3 waging of war against France, Count 35 alleging
4 the waging of war against the Soviet Union, and
5 Count 36 alleging the waging of war against the
6 Mongolian Peoples Republic and the Soviet Union, do
7 not include certain defendants.

8 Counts 37 and 38 allege that certain defend-
9 ants therein named conspired together to murder any
10 and all such persons, both military and civilian,
11 as might be present at the place attacked in the
12 course of initiating of unlawful hostilities against
13 the United States, the Philippines, British Common-
14 wealth, Netherlands and Thailand.

15 Counts 39 to 43, inclusive, include
16 specific murders at specified places, including Pearl
17 Harbor, Kota Bahru, Hongkong, and the attack on
18 H.I.S. PETROL at Shanghai, and at Davao in the
19 Philippines, in which many persons were murdered.

20 Count 44 alleges that all of the defendants
21 participated in a conspiracy for the murder of
22 prisoners of war and civilians on land and at sea.

23 Counts 45 to 50, inclusive, allege specific
24 acts of murder against defendants named in said
25 counts, at various places in the Republic of China.

1 Counts 51 and 52 allege that certain named
2 defendants murdered members of the armed forces of
3 the Mongolian and Soviet Republics.

4 Count 53 alleges that certain named defend-
5 ants conspired to commit breaches of the law and
6 customs of war in respect of the treatment of
7 prisoners of war and civilian internees.

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1 Count 54 alleges that certain named defend-
2 ants ordered, authorized and permitted such offenses.

3 Count 55 alleges that certain named defend-
4 ants deliberately and recklessly disregarded their
5 legal duty to take adequate steps to prevent such
6 breaches and thereby violated the laws of war.

7 In this analysis no effort has been made
8 to name the particular defendants charged in spe-
9 cific counts which include any less than all of the
10 defendants. The reason for this will appear from
11 a consideration of the theory and procedure followed
12 by the prosecution in establishing its case.

13 The prosecution has presented its case in
14 accordance with the well recognized "Conspiracy"
15 method of proof. That is to say, it has proceeded
16 to prove that an overall conspiracy of a comprehen-
17 sive character, and of a continuing nature, was
18 formed, existed and operated during the period from
19 1928 to 1945 covered by the Indictment, and that
20 the object and purpose of said conspiracy consisted
21 in the complete domination by Japan of all of the
22 territories generally known as Greater East Asia
23 described in the Indictment; that it was the
24 purpose to secure such domination by war and wars
25 of aggression and in violation of international law,

1 treaties, etc., at whatever places and against
2 whatever nations and persons should be convenient
3 or necessary to accomplish the overall purpose of
4 the conspiracy.

5 It followed, of course, as an incident,
6 and as a necessary part of such conspiracy, that in
7 pursuing the object of the conspiracy, and in the
8 planning, initiating and waging of wars of aggres-
9 sion, and wars in violation of international law,
10 treaties, etc., that numerous individuals, both
11 military and civilian, would be killed.

12 The killing by a belligerent who has planned,
13 initiated, or is waging an unlawful war, constitutes
14 murder.

15 It, therefore, follows from fundamental,
16 universal principles of the law of Conspiracy, that
17 any and all persons who were members of the overall
18 conspiracy which I have just described, became
19 individually and severally criminally responsible
20 and liable to prosecution and conviction for each
21 and every act committed in the course of the con-
22 spiracy, whether that act be the unlawful planning,
23 initiation, or waging of war, or whether it be a
24 murder or other atrocity in violation of law com-
25 mitted in the course of the carrying out of the

1 conspiracy.

2 In view of the adoption of this method of
3 proof, it becomes unnecessary to do more than to
4 examine into and determine two questions:

5 FIRST: Has a general and continuing con-
6 spiracy of the character and scope set forth in
7 Count 1 of the Indictment been established?

8 SECONDLY: As to any particular defendant,
9 was he a member of the conspiracy at the time the
10 specific crime set forth in any count, (other than
11 a conspiracy count), was committed?

12 If these two questions are answered in the
13 affirmative, it follows that any defendant who was
14 a member of the conspiracy at the time any specific
15 act charged as a crime was committed, is guilty of
16 that crime, whether he personally participated there-
17 in or not. "Who does through another, he does it
18 himself."

19 It is perhaps an unnecessary precaution, in
20 view of the wide learning and experience of the
21 Members of this Tribunal, for me to do so; but, as
22 indicating the prosecution theory in presentation of
23 this case, and the legal basis therefor, I take the
24 liberty of quoting an approved instruction given to
25 the jury in the California case of People v. Sacramento

1 Butchers' Association, 12 Cal. App. 471, at P. 495,
2 which is as follows:

3 MR. BROOKS: If the Tribunal please, we
4 would like to object to the introduction of statutory
5 law, as the prosecutor has put forth here at the
6 bottom of page 7 which is based wholly upon statu-
7 tory law, and the introduction of cases based upon
8 such statutory law before an International Military
9 Tribunal of this kind on conspiracy.

10 THE PRESIDENT: Criminal conspiracy in the
11 law of my country and, I believe, in the law of all
12 British countries and of America is not based upon
13 statute but is the development of the common law;
14 and we may be very much helped by decisions and
15 directions to juries by eminent American judges.
16 Certainly, we will disregard any American decision
17 which was based and based alone on American statute.

18 MR. E. WILLIAMS: Shall I proceed?

19 THE PRESIDENT: Proceed, yes.

20 We will recess now for fifteen minutes.

21 (Whereupon, at 1445, a recess was
22 taken until 1500, after which the proceed-
23 ings were resumed as follows:)
24
25

1 member of the conspiracy, although the part he was to
2 take therein was a subordinate one, or was to be
3 executed at a remote distance from the other conspira-
4 tors."

5 I also quote from the opinion of the United
6 States Circuit Court of Appeals for the Seventh
7 Circuit, in the case of Allen vs. The United States,
8 4 Fed. (2) 688 as follows:

9 "A conspiracy may be established by circum-
10 stantial evidence or by deduction from facts. The
11 common design is the essence of the crime, and this
12 may be made to appear when the parties steadily pursue
13 the same object, whether acting separately or together,
14 by common or different means, but ever leading to the
15 same unlawful result. If the parties acted together
16 to accomplish something unlawful, a conspiracy is
17 shown, even though individual conspirators may have
18 done acts in furtherance of the common unlawful design
19 apart from and unknown to the others. All of the
20 conspirators need not be acquainted with each other.
21 They may not have previously associated together.
22 One defendant may know but one other member of the
23 conspiracy. But if, knowing that others have combined
24 to violate the law, a party knowingly cooperates to
25 further the object of the conspiracy, he becomes a

1 member of the conspiracy, although the part he was to
2 take therein was a subordinate one, or was to be
3 executed at a remote distance from the other conspira-
4 tors."

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14 by common or different means, but ever leading to the
15 same unlawful result. If the parties acted together
16 to accomplish something unlawful, a conspiracy is
17 shown, even though individual conspirators may have
18 done acts in furtherance of the common unlawful design
19 apart from and unknown to the others. All of the
20 conspirators need not be acquainted with each other.
21 They may not have previously associated together.
22 One defendant may know but one other member of the
23 conspiracy. But if, knowing that others have combined
24 to violate the law, a party knowingly cooperates to
25 further the object of the conspiracy, he becomes a

1 party thereto."

2 Another case which indicates the prosecution
3 theory of proof is the case of People v. Walker, 17 Cal.
4 App. (2) 372, which was a case in which the defendant
5 was convicted of the crime of grand theft, a specific
6 offense. Proof was made by showing that he was a
7 member of a conspiracy in the course of which the
8 theft was committed. The defendant claimed that
9 he was not responsible because while the theft had
10 admittedly been committed, it had been committed
11 by another person.

12 The court, in disposing of this contention,
13 stated as follows:

14 "On the trial of the action it was neither
15 asserted nor attempted to be proved by the prose-
16 cution that defendant either directly participated
17 in the actual commission of the offense for the com-
18 mission of which he was being prosecuted, or even that
19 he was personally present at the time when and the
20 place where the crime was actually committed. To
21 the contrary, defendant's conviction depended upon
22 legal proof of his membership in the conspiracy, or
23 of his having been a party to an agreement to commit
24 the crime.

25 "Appellant concedes the fact that on the

1 occasion in question the crime of grand theft was
2 committed.

3 "Apparently without conflicting authority
4 with reference thereto, as a matter of common know-
5 ledge, the law recognizes the fact that where two
6 or more persons have engaged in the commission of
7 some criminal act, their antecedent agreement or
8 common understanding, one with the other or the
9 others, so to do, ordinarily has been entered
10 into in secret; but manifestly, where the crime is
11 shown to have been committed by two or more individuals
12 who in its commission have acted in concert, one with
13 the other or the others, it is an inevitable conclusion
14 that the crime was the result of an agreement of
15 conspiracy between or among the participants therein
16 that the crime should be committed."

17 Having in mind the theory of the prosecution,
18 as above expressed and the legal principles set forth
19 in the cases just quoted, we have proceeded to prove
20 the existence of the conspiracies alleged, and the
21 membership in the conspiracy, of each and all of the
22 defendants.

23 I purpose now, very briefly, to point out
24 a sufficient amount of the evidence produced over
25 these many months of trial, to show that such a

1 conspiracy as described in the Indictment has been
2 proved to have existed, and to point out to the
3 Court the evidence which shows the object, purpose
4 and scope of this conspiracy.

5 When I have completed this presentation,
6 I believe it will appear to the satisfaction of
7 the Court that the answer to the First Question,
8 namely:

9 "Has a conspiracy been proved?"
10 must be answered in the affirmative.

11 Following this presentation, my brother,
12 Mr. Comyns-Carr, Prosecutor for the United Kingdom,
13 will point out to the Court so much of the evidence
14 in respect of the activity of each of the defendants
15 as is sufficient to show that that defendant was at
16 the times involved in the various counts, a member
17 of the conspiracy and therefore liable for the com-
18 mission of the crimes specifically set forth.

19 We feel that this presentation will adequately
20 answer all contentions made by the defense, and that
21 in addition thereto, it will serve to point out and
22 clarify the issues and will be of some assistance
23 to the Court in passing upon such questions of
24 admissibility as may arise in the course of the
25 presentation of the defense.

1 As seen from the quotations just read, the
2 cardinal requirement on the prosecution in a con-
3 spiracy case is to prove the common design. In
4 some cases the common design is difficult to find
5 while in other cases it is comparatively easy. How-
6 ever, in either case, once the common design has
7 been established, all the evidence, regardless of
8 how disconnected it may seem to be, or regardless
9 of how disconnected the actions of the various
10 defendants may seem, falls easily into its proper
11 and logical sequence.

12 In this case, it is submitted, it is not
13 at all difficult to locate and spell out the common
14 design. Aside from the evidence on Class B and C
15 Offences, almost each and every document and the
16 testimony of each and every witness highlights the
17 common design as being nothing less than to obtain
18 political, military and economic domination of what
19 has come to be known as the Greater East Asiatic
20 Area by and through any and all methods whatsoever
21 including the fighting of aggressive wars. If one
22 grasps this common design as the key string of
23 the mosaic of the evidence, one must inevitably
24 recognize that between the years 1928 and 1945 a
25 conspiracy among certain of the militaristic class

1 of Japan and certain civilians was formed and put
2 into operation. The prosecution, of course, is unable
3 to name all of the members of that conspiracy. We
4 do know, and the evidence has established, that
5 even prior to 1928 and continuously on down to
6 the end of the conspiracy the defendant OKAWA was
7 engaged in promoting, publicizing and inciting the
8 people of Japan to join in a militaristic and ultra-
9 nationalistic "renovation" of Japan for the purpose
10 of bringing about the subjugation and domination
11 by the Japanese Empire of all of East Asia and
12 the Islands of the Pacific and Indian Oceans and
13 the ousting of all the whites from that territory.
14 The purpose was to start by taking Manchuria, then
15 the rest of China, then (dependent as to order upon
16 current conditions) to move northward and take
17 Siberia, and to move southward and to take Malaya,
18 Thailand, French Indo-China, the Netherland Indies,
19 Burma and India, the Philippines, Australia and
20 New Zealand. The grandiose object of the conspiracy
21 is adequately expressed in exhibit 2182A.

22 This exhibit, taken from the book, "The
23 Establishment of Order in Greater East Asia", by
24 OKAWA, was published 20 August 1943 during the course
25 of the conspiracy and was an expression by one of

1 the conspirators of its object and purpose. I quote
2 as follows:

3 "If I were to write a modern history of
4 Japan, I should begin it with a description of
5 Shin-en SATO's ideas. This is because in the soul
6 of this great scholar had already been conceived
7 a new Japan in the most concrete form. (From page
8 9)

9 "Shin-en SATO, first of all, thought Japan
10 'the foundation of the world' and believed that
11 Japan would be able to make all the rest of the
12 world her countries or prefectures if she succeeded
13 in 'ruling over the foundation of the world'. With
14 a view to carrying out this 'great work of renovating
15 the world', he advocated a drastic political reno-
16 vation of the interior Japan and the order of uni-
17 fying all nations. 'In order to develop other coun-
18 tries, it is best for the Empire /i.e. Japan/ to
19 make a start by absorbing China into her first of
20 all,' he advocated '....Even the powerful China is
21 no match for the Empire, not to speak of other
22 barbarous countries.... If China becomes our pos-
23 session, is it possible for the other countries in
24 the East, Siam and India not to come gradually under
25 the sway of the Empire yearning for her power of

1 commanding love and respect, being overawed and
2 falling prostrate before her?' Besides, it was
3 his opinion that in order to control China, 'no other
4 place is easier to occupy than Manchuria.' And at
5 the same time he thought it necessary to obtain the
6 whole 'area in the South Sea covering thousands of
7 ri starting with the Philippines so as to prepare
8 for the northward aggression of the European Powers,
9 especially of Great Britain and then obtain gradual
10 control of India and its neighbors and various
11 islands in the Indian Ocean, following the occupation
12 of China, Annam, Shan-Cheng and Cambodia.' (From
13 pages 10-11)."

14 The conspirators, for the purpose of trying
15 to bring about the dominance of a military class in
16 Japan, planned the so-called March and October Inci-
17 dents, as well as other incidents, and planned an
18 occurrence at Mukden on September 18, 1931 which made
19 an excuse for the KWANTUNG ARMY, poised in preparation
20 for such an event, to sweep over Manchuria and effect
21 its military conquest.

22 Something of the course of the conspirators'
23 plans is shown in the book written by the accused
24 HASHIMOTO (published in 1936 during the course of the
25 conspiracy), in which he states that in 1930 while

1 returning to Japan from Turkey:

2 "During my thirty days' voyage I pondered
3 on how to reform Japan, and as a result I succeeded
4 in drawing a definite plan to a certain degree.
5 And on returning to the General Staff Office, my
6 former haunt, I devised several schemes in order
7 to put my ideas into execution. Although I dare
8 not say it was the only cause of such results,
9 however, the Manchurian Incident, secession from
10 the League of Nations, and renunciation of the Dis-
11 armament Treaty, took place successively and within
12 the country, May 15 Incident, Shinpei Tai Incident,
13 and the February 26 Incident took place in success-
14 ion."

15 The evidence shows clearly that the defendants
16 OKAWA, HASHIMOTO, DOHIHARA and ITAGAKI and others
17 were members of this conspiracy and that they helped
18 bring about the incident which was intended to, and
19 did, lead to the military aggressions in Manchuria
20 beginning September 18, 1931. See:

21 Testimony of OKADA; testimony of TANAKA.

22 I may say, if the Court please, I have the
23 citations in the left-hand column of the prepared
24 matter. I am not reading them.

25 The testimony of OKAWA at his trial in

1 Tokyo in 1934 (during the existence of the conspiracy)
2 showed the relation of the March and October Inci-
3 dents to the Manchurian Incident and the aggressions
4 in Manchuria. He stated that he (OKAWA) and the
5 accused HASHIMOTO, ITAGAKI and DOHIHARA were all
6 in the conspiracy.
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1 OKAWA's defense in the Tokyo Court of
2 Appeals sets forth some of his activities in the
3 conspiracy to set off the Manchurian aggressions,
4 and in particular his close cooperation with the
5 KWANTUNG ARMY in selecting Japanese "officials"
6 for Manchuria.

7 The purpose of the Manchurian Incident was
8 to seize Manchuria by military aggression, to reform
9 it politically as a part of the Japanese Empire,
10 and to consolidate and integrate its economy and
11 finance with that of Japan so that its raw and manu-
12 factured materials and labor might be used as a
13 supply and its soil as a base for further aggressions.

14 That the high military command of Japan and,
15 in particular, the KWANTUNG ARMY were involved in
16 this conspiracy to seize and dominate Manchuria is
17 shown by the fact that within twenty-four hours
18 of the Incident at Mukden large Japanese armies were
19 spreading out over Manchuria. Such immediate ac-
20 tion (in view of our knowledge of logistics) must
21 have been preceded by many weeks or months of
22 preparation. This is also indicated by General
23 MINAMI's strong militaristic speech at a conference
24 of Division Commanders concerning Manchuria and
25

1 Mongolia August 4, 1931.

2 That the Mukden Incident was a planned one
3 is shown not only by the evidence concerning the
4 plot to which reference has already been made, but
5 is also strongly indicated by the written report of
6 the League of Nations Committees, the testimony of
7 the witness John B. Powell, the reports of Consul
8 General HAYASHI to Foreign Minister SHIDEHARA, and
9 the testimony of the witness MORISHIMA.

10 All of the evidence concerning what the
11 Japanese did in ruling the territory, politics, and
12 economy of Manchuria, together with the circumstances
13 of the establishment of the puppet governments in
14 Manchuria (the latter designed to deceive the other
15 powers), shows that it was at all times the intent
16 of the Japanese conspirators to take permanent
17 physical, political and economic possession of Man-
18 churia, and that this was to be accomplished, and in
19 fact was accomplished, by means of aggressive war-
20 fare, in violation of international law and treaties
21 and assurances and, in particular, in violation of
22 the Nine-Power Treaty and the Kellogg-Briand Pact.

23 At the time of the Mukden Incident the ac-
24 cused MINAMI was War Minister. He claimed to know
25

1 nothing of the activities of the Kwantung Army and
2 the troops from Korea who were spreading over Man-
3 churia. He claimed he could not control them. It
4 is significant, however, that no action to control
5 the supply of morey, material or reinforcements to
6 those armies was undertaken by MINAMI. He was short-
7 ly followed as War Minister by the accused ARAKI
8 who actively supported the additions to and reinforce-
9 ments of the Japanese Armies fighting in Manchuria.
10 ARAKI was engaged in propoganda, seeking to whip
11 up the militaristic spirit of the Japanese, to
12 glorify the Japanese Army, to point out its goal
13 in conquering all of East Asia, to point out the
14 probability of war with the United States, and by
15 means of flags and airplanes to show that Japan
16 could conquer and dominate the whole world. This
17 was done by means of a motion picture entitled
18 "Japan in Time of Emergency" which was made and
19 distributed in 1933.

20 During the period from 1932 to 1936 Japan
21 completed its conquest of Manchuria (including
22 Jehol Province); expanded its Governmental, economic
23 and industrial control for that territory and pre-
24 pared for the next step which was further Armed
25

1 advance into China.

2 With Korea and the Provinces of Manchuria
3 and Jehol as bases for operations, Japan was in
4 a position to prosecute her plans against the Soviet
5 Union to the north or against the remainder of
6 China to the south. If she elected to proceed first
7 against the Soviet Union, a hostile China more and
8 more united under the strong leadership of Chiang
9 Kai-shek was a threat from the rear, and if she
10 elected to proceed first against China there was
11 danger of unified opposition by China and Russia.
12

13 In this dilemma, the accused or their leaders
14 sought the political strength and bargaining power
15 which would be acquired by military alliance with
16 Germany, a nation then engaged in a program of mili-
17 tary preparedness for aggressive action in Europe.
18 The result was the conclusion of the Anti-Comintern
19 Pact on 25 September 1936. The Pact on its face
20 was directed against the activities of the Communist
21 International, but it was converted into a military
22 alliance aimed at the U.S.S.R. by an accessory
23 protocol and secret agreement. The Anti-Comintern
24 Pact was designed and intended, through the threat
25 of joint military action between Japan and Germany,

1 to operate as a check against the Soviet Union,
2 to strengthen the hand of Japan in China and to
3 afford an excuse for continued Japanese military
4 aggression.

5
6 Japan, thus fortified in her international
7 situation, was in a position where she could proceed
8 in comparative safety with the execution of her so-
9 called divine mission of renovating the world, the
10 first step of which was the creation of a New Order
11 in East Asia. The accused or their leaders, by
12 the conclusion of this Pact, laid the groundwork for
13 further cooperation of aggressive nations in the
14 accomplishment of the objects of the conspiracy.

15 On July 7, 1937, occurred the so-called
16 "Marco Polo Bridge Incident." From that time on
17 aggressive warfare against the rest of China con-
18 tinued with the Japanese gaining month by month and
19 year by year additional territory throughout the
20 balance of the period of the conspiracy. The
21 aggressions of the Japanese Army during this
22 period may best be stated in the language of the
23 witness Goette as follows:

24 "The military aim of the Japanese Army as
25 reiterated to me by such Japanese officers was not

1 so much the acquisition of territory as the anni-
2 hilation, submission, and killing of Chinese
3 Nationalist Armies."

4 This view is verified by one of the accused,
5 HIRANUMA, who, in his speech before the Diet on 21
6 January 1939, when as Prime Minister he stated:

7 "In regard to the China affair upon which
8 both the Government and the people are concentrating
9 their endeavors there exists an immutable policy,
10 for which ample sanction was obtained by the previous
11 Cabinet, and in accordance with which necessary
12 steps have been taken in various directions. As
13 the present Cabinet is, of course, committed to the
14 same policy, it is determined to proceed at all
15 costs to the achievement of the final purpose."***

16 I skip something and end with this:

17 "I hope the above intention of Japan will
18 be understood correctly by the Chinese so that
19 they may cooperate with us without the slightest
20 apprehension. Otherwise the construction of the
21 new order would be impossible. As for those who
22 fail to understand to the end and persist even
23 hereafter in their opposition against Japan, we have
24 no alternative than to exterminate them."
25

1 It may be stated in passing that as indica-
2 ted by ARAKI's speech in the motion picture above
3 referred to, the "extermination" of those who stand
4 in the way or who do not understand the high spiritual
5 purpose of Japan's military aggressions is called
6 "self-defense."

7 As the Japanese armies fought the Chinese
8 in an "Incident" which lasted from September 1931
9 to September 1945, and which included from 1937 to
10 1945 a total casualty list of Chinese soldiers in
11 excess of three million as well as uncounted numbers
12 of civilians killed, wounded and rendered homeless,
13 the Government of Japan undertook to take over the
14 Government, the soil, the economy and the industry
15 of each part of China as it was conquered.

16 The railways were taken over and put under
17 the joint control of the Kwantung Army and the South
18 Manchurian Railway Company.

19 At the same time the economy of China was
20 being integrated with that of Japan in accordance
21 with the policy expressed by the accused HOSHINO,
22 in which he envisaged the development of the resour-
23 ces of Manchuria, China and all East Asia for the
24 benefit of Japan (which lacked necessary resources).

25 Through the organization and operation of

1 the China Affairs Board, the North China Development
2 Company, Ltd., and Central China Promotion, Ltd;
3 through tremendous investment in Chinese industry;
4 through the setting up of puppet governments in
5 Feiping and Nanking; through the obtaining of special
6 rights and privileges under secret agreements in
7 contravention of the Nine Power Treaty, Japan took
8 possession of all of the resources of such parts of
9 China as she conquered.

10 At the same time she proceeded to embarrass
11 and humiliate the Governments of the United States
12 and England and to kill and destroy the property
13 of nationals of those and other European countries.

14 It was Japan's policy not only to establish
15 her "new order" in East Asia, but to drive out Anglo-
16 Americans from China. In 1935 the accused MATSUI,
17 in a conversation with General Ching, "advocated that
18 Asia should be the Asia of the Asiatics and that
19 European and American influences should not be ex-
20 panded."

21 In 1940 the accused HASHIMOTO wrote:

22 "The moment we establish a policy to drive
23 out all Anglo-Americans from China, China will be-
24 gin to move toward a new order."
25

1 In 1941 the accused MATSUOKA said:

2 **** The work of the establishment of
3 Manchukuo is the first step of the reconstruction
4 of the new order in East Asia, and at the same time
5 was a herald of the construction of the world new
6 order and its position in the world history should
7 be said to be very important. The true significance
8 of the Manchurian Incident will be realized for the
9 first time when the construction of the new order
10 in East Asia will be accomplished for which we are
11 now making every endeavor."
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1 In 1944 the accused KOISO in an address
2 before the Diet stated:

3 "The real intention of Japan lies in the ex-
4 pulsion of Anglo-American influence, the emancipation
5 of China by those countries which has continued for
6 one hundred years and the construction of a Greater
7 East Asia based upon morality and a mutual cooperation."

8 A prominent Chinese, General Ching, correctly
9 interpreted Japan's intentions by stating:

10 "I was afraid that what he (MATSUI) meant
11 by Asia of the Asiatics was actually the Asia of the
12 Japanese."

13 The League of Nations report of 8 October
14 1937 concludes:

15 "After examination of the facts laid before
16 it, the Committee is bound to take the view that the
17 military operations carried on by Japan against China
18 by land, sea and air are out of all proportion to
19 the incident that occasioned the conflict; that such
20 action cannot possibly facilitate or promote the
21 friendly cooperation between the two nations that the
22 Japanese statesmen have affirmed to be the aim of
23 their policy; that it can be justified neither on the
24 basis of existing legal instruments nor on that of
25 the right of self-defense, and that it is in

1 contravention of Japan's obligations under the Nine
2 Power Treaty of February 6, 1922, and under the Pact
3 of Paris of August 27th, 1928."

4 Sometimes the conspirators have spoken
5 pleasingly of their desire to stabilize East Asia and
6 to bring peace to troubled peoples.

7 The all-pervading vice of this contention
8 is that Japan in her aggressions in Manchuria and the
9 rest of China undertook to decide in Japan (and with-
10 out consulting China) what territory belonging to China
11 she would occupy and how, what form of government
12 should exist and by whom it shall be organized, what
13 industrial, commercial and financial systems should
14 be established, how transportation, communications,
15 press, radio, propaganda, censorship, customs and
16 foreign relations should be controlled and conducted.
17 Yet, neither by custom, International law, treaty,
18 precedent nor otherwise were any of these matters
19 in the slightest or most remote degree the business
20 of Japan. She had no more right to arrogate to her-
21 self powers such as these in China than China had to
22 do so in Japan. Her acts were those of a lawless,
23 aggressive invader and conqueror. They were in
24 violation of Chinese sovereignty and of Japan's
25 solemn obligations to China and the other signatories

1 of the Nine Power Pact and other treaties.

2 These acts were the result of the plotting and
3 planning of these conspirators and a part of the over-
4 all plan for the conquest of "Greater East Asia."

5 Military operations in 1937 and 1938 proved
6 that Japan was engaged in a major war against China.
7 Although Germany protested against Japan's aggression
8 in China under the guise of fighting communism in
9 third states, the accused who were directing and in-
10 fluencing the course of Japanese aggression in East
11 Asia, by the early part of 1938 had won the unreserved
12 support of Germany in her plans against China as well
13 as against the Soviet Union.

14 Germany was promised preferential trade treat-
15 ment in China in consideration of the special relations
16 which existed between Japan and Germany after the con-
17 clusion of the Anti-Comintern Pact. The controversy
18 which arose out of the division of spoils in China
19 afford a high degree of proof of the Japanese plan of
20 subjugation and exploitation by aggressive warfare.

21 Japan and Germany embarked upon extensive
22 programs of preparation for military operations and
23 demonstrated similar intentions to wage aggressive
24 warfare in their respective spheres of the world. Japan,
25 acting through and under the influence of the accused,

1 and Germany conceived the idea of strengthening their
2 respective international positions by inducing other
3 nations to unite in close association with them.
4 This plan first took shape in the form of recruiting
5 Italy as a member of the Anti-Comintern Pact on
6 6 November 1937, and was followed by the admission of
7 Manchukuo and Hungary to the Pact on 22 February 1939
8 and Spain on 27 March 1939. The Pact was renewed on
9 25 November 1941, at which time Bulgaria, Denmark,
10 Finland, Croatia, Rumania, Slovakia and the puppet
11 Nanking regime, under the name of "National Chinese
12 Government," were admitted by declarations of ad-
13 herence. The next move was to obtain closer cooper-
14 ation between the people of the Axis Powers by resort-
15 ing to the device of concluding so-called cultural
16 treaties.

17 Although the accused, acting through their
18 leaders, mobilized the entire strength of the nation
19 for its war against China and won many naval and
20 military victories, they were unable to conclude the
21 so-called China Incident. Consequently, they were
22 brought to the realization of the necessity for closer
23 collaboration of Germany, as demonstrated by the
24 future course of negotiations. In the words of OSHIMA,
25 the accused wanted a military alliance with Germany

1 "which would help to conclude the China Incident and
2 (1) to clarify the Russian situation so that troops
3 could be deployed elsewhere, (2) to strengthen Japan's
4 international position, and (3) to receive technological
5 and economic aid from Germany."

6 A division of opinion developed in the
7 Japanese government as to the extent to which Japan
8 should be committed to participation in a German war
9 against England, France and the United States. In
10 April 1939 the conclusion was reached that a limited
11 interpretation of the Pact was necessary from Japan's
12 standpoint for the reason that Japan "was at the
13 moment not yet in a position to come forward openly
14 as the opposer of the three democracies." Negotiations
15 continued until the conclusion of a non-aggression
16 treaty between Germany and the Soviet Union, the re-
17 action from which caused the downfall of the Japanese
18 Cabinet.

19 The expediency of quickly concluding the
20 German-Russian non-aggression pact became apparent
21 upon the dramatic German invasion of Poland on
22 1 September 1939. Notwithstanding the temporary set-
23 back to the conclusion of a Japanese-German-Italian
24 military alliance, efforts were continued by the
25 accused to develop closer Japanese-German relations

1 with the view to ultimate conclusion of a tri-partite
2 military alliance.

3 As the day of world conflagration approached
4 the conduct and declarations of the accused, or their
5 leaders, revealed more and more the common plan for the
6 accomplishment of the so-called divine mission which
7 they were preparing to impose upon East Asia and the
8 world by resorting to aggressive warfare to the ex-
9 tent necessary for the accomplishment of their objec-
10 tives.

11 In the southern areas French Indo-China
12 occupied a strategic position of the highest importance
13 over which Japanese control was necessary for any
14 contemplated military operations against Malay,
15 Singapore and the Netherlands East Indies and the
16 Philippines. In addition, Indo-China was rich in
17 natural resources vitally needed by the Japanese
18 economy for the continuance of war. OSHIMA, timing
19 his action with Hitler's initiation of war against
20 Poland, advised military aggression in the southern
21 areas of Greater East Asia and against Hong Kong, for
22 which he declared the Japanese navy was prepared.

23 Within two days after the German invasion of
24 Belgium, Luxembourg, and the Netherlands on 9 May
25 1940, and within two days after the fall of France on

1 17 June 1940, the accused asked German assurances
2 of a free hand in the Netherlands East Indies and
3 French Indo-China. This was followed by a Japanese
4 ultimatum to French Indo-China relative to transpor-
5 tion of materials to Chiang Kai-shek. At the same time
6 negotiations were renewed with Germany for the con-
7 clusion of the military alliance. So strong was the
8 demand for conclusion of a military alliance that a
9 joint conference of the Japanese Army, Navy and Foreign
10 Office officials was held on 12 July 1940 for the pur-
11 pose of intensifying efforts to procure such a pact.
12 In this conference it was determined that "it is
13 our object to realize the expansive purpose of the
14 Japanese Empire and strengthen our international
15 position by embodying an ultimate cooperative connec-
16 tion between our Empire, which is establishing a 'New
17 Order' in East Asia, and Germany, which is fighting
18 for a 'New Order' in Europe.

19 A unified policy based on the opinions of the
20 Army and Navy was adopted in which it was determined
21 that the area to be embraced within the "New Order in
22 the Far East" should extend from Burma and the eastern
23 part of India to New Zealand; that the fundamental
24 principle of the coalition should be cooperation with-
25 in the respective spheres intended to be established

1 by the Axis Powers; that the Japanese conception of
2 "political leadership" was considered to be "occupation"
3 of the areas in question; and that necessity existed
4 for immediate execution of their plans.

5 The YONAI Cabinet was considered too weak to
6 carry out the foreign policy, so the accused forced
7 its resignation and such men as KONOYE, MATSUOKA,
8 TOJO, HIRANUMA, OHASHI, OSHIMA, and SHIRATORI were
9 put in responsible government positions. Thus the
10 stage was set for the enactment of the final scene in
11 carrying out that part of the conspiracy which was
12 designed to secure Axis help in accomplishing the
13 objects thereof.

14 At a Four-Minister conference on 4 September
15 1940 it was determined that the time was ripe for
16 speedy initiation of conversations for strengthening
17 of collaboration among Japan, Germany and Italy. The
18 basic principles for such conversations were declared
19 to be the making of a fundamental agreement for mutual
20 cooperation "by all possible means," which included
21 "recourse to armed forces."

22 On 27 September 1940 the Tri-Partite Pact
23 between Japan, Germany and Italy was concluded with
24 unprecedented speed. By its provisions the Axis Powers
25 attempted to apportion the world by establishing areas
in which the leadership of the respective powers was

1 recognized. Each pledged full cooperation in the
2 establishment of leadership within the sphere of the
3 others, and political, economic and military aid was
4 pledged in the event of an attack against any one of
5 the signatories by a nation not then involved in the
6 European war or in the war with China. Letters were
7 secretly exchanged providing for consultation among
8 the signatories for the purpose of determining whether
9 action or a chain of actions would constitute an
10 attack within the meaning of the Pact. This Pact in
11 its essence contained the ultimate development of the
12 plot of the aggressive powers directed toward the
13 division of the world and the establishment of the so-
14 called New Order, which had for its purpose the
15 extinguishment of democracy throughout the world and
16 the subjugation of all the nations by the aggressive
17 states. It was the culmination of years of effort
18 on the part of the accused or their leaders to form
19 a military alliance in which the participating powers
20 would by solemn agreement recognize Japan's so-called
21 divine mission and agree to link their fate in the
22 accomplishment of its objectives. Without this
23 coalition the accused could not have risked the fate
24 of the Japanese Empire in initiating the final phases
25 of their plan to establish a New Order in East Asia

1 and the South Seas. In the atmosphere of the Privy
2 Council meetings held prior to the conclusion of the
3 Pact and in the light of the declarations made by the
4 accused and their co-conspirators in such meetings,
5 there is no room left for doubt that the accused or their
6 leaders had planned aggressive warfare and were seeking
7 the political and military aid that such a treaty would
8 afford.

9 Almost immediately after the conclusion of
10 the Pact a rapprochement with Russia was suggested as
11 a prerequisite for a Japanese advance in the regions
12 south of China. The accused, or their leaders, seized
13 the opportunity to mediate in the Indo-China-Thailand
14 border dispute as a device by which both Powers could
15 be placed under obligation to the Japanese Government.
16 In the spirit of the Tri-Partite Pact, Germany extended
17 valuable and effective aid in coercing Indo-China to
18 its submission to Japanese demands.
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1 Close collaboration continued between the
2 Axis Powers until the attack against American and
3 British possessions on 7 December 1941. Foreign Min-
4 ister MATSUOKA and Ambassador OSHIMA in conferences
5 with Hitler, Ribbentrop, Goering and Funk discussed
6 plans for an attack on Singapore, the coordination of
7 operations in the Pacific with operations in Europe,
8 the exchange of technical information, and information
9 derived from military operations in the field, and
10 cooperation required by the Axis Powers in all spheres
11 after the completion of the war. General commissions
12 and commissions of a technical character, one military
13 and one economic, were formed under the provisions of
14 the Tri-Partite Pact in order to effectuate full
15 collaboration among the Axis Powers.

16 Acting in full collaboration with their Axis
17 partners, the accused unified the Japanese Government
18 and nation behind the Tri-Partite Pact, and by their
19 declarations and conduct put into motion forces
20 designed to accomplish the objects of the conspiracy.
21 On 18 November 1941, Germany was asked if she would
22 consider herself at war with the United States if Japan
23 initiated the attack and whether Germany would enter into
24 an agreement not to conclude separately peace or an
25 armistice in case of war with the United States, and

1 Germany, without hesitation and in accord with the
2 spirit of the Tri-Partite Pact, replied favorably to
3 both inquiries. On 28 November 1941, Ribbentrop de-
4 clared, "There never has been and probably never will be
5 a time when closer cooperation under the Tri-Partite Pact
6 is so important." He also stated, "Should Japan become
7 engaged in a war against the United States, Germany of
8 course would join the war immediately." Italy made
9 the same commitments.

10 The efforts of the accused to obtain Axis
11 assistance in the executions of their plans bore
12 fruit. The Pearl Harbor attack occurred. Japan, Ger-
13 many and Italy concluded a "No Separate Peace Pact" on
14 11 December 1941 to remain in force during the life of
15 the Tri-Partite Pact. In this treaty the three Powers
16 also agreed after the termination of the war to "coop-
17 erate most closely for the purpose of realizing a
18 righteous new order in the meaning of the Tri-Partite
19 Pact." "A military agreement in the spirit of the
20 Tri-Partite Pact" was concluded by the three Powers on
21 18 January 1942 by which the world was divided into
22 zones for military operations.

23 The conduct and declarations of the accused and
24 their co-conspirators relating to the negotiations for
25 the Anti-Comintern Pact, the various trade and collateral

1 agreements, the Tri-Partite Pact, the No Separate
2 Peace Pact, and the Military Operational Agreement
3 between the Axis Powers and collaboration under the
4 same, we submit, constitute indubitable proof of the
5 existence of the conspiracy charged.

6 In so far as the conspiracy included plans to
7 prepare for, initiate and wage wars of aggression
8 against the Soviet Union, ample evidence has been of-
9 fered to show that at all times included in this case
10 it was the intention of the conspirators to attack
11 Russia and to seize and permanently hold parts of her
12 territory lying in East Asia (particularly Siberia.)
13 The only differences which existed among the conspira-
14 tors were as to when this should be done -- whether the
15 advance should first be north or south. It has already
16 been shown that the decision was to go south. This did
17 not involve any abandonment of the plans to attack
18 Russia -- it merely delayed their execution.

19 Throughout the period of the conspiracy many
20 things were done in the planning of the aggressions
21 against Russia. Within the limits of this presentation
22 it is not possible or even desirable to make an ex-
23 haustive analysis of the evidence. It is sufficient
24 to state that the evidence clearly shows that in the
25 course of this conspiracy the following things were done:

1 During the period of 1928-1945 propaganda for
2 war of aggression against the Soviet Union was spread.

3 The seizure of Manchuria and turning it into a
4 military base for an attack either on the Soviet Union
5 or China in violation of the Portsmouth Treaty and the
6 Peking Convention of 1925.

7 The establishment of a military base for an
8 attack on the USSR in Korea in violation of the Ports-
9 mouth Treaty and the Peking Convention.

10 The preparation of the population of Manchuria
11 for war against the USSR, including the formation of the
12 "Kyo-wa-kai" Society. Subverisve activities of the
13 Japanese military and the employment of White Russian
14 emigrants against the USSR in violation of the Peking
15 Convention.

16 Sabotage activities of the Japanese on the
17 Chinese Eastern Railroad.

18 Systematic violations of the state frontier of
19 the USSR.

20 An undeclared war of aggression against the
21 USSR in the Lake Khassan area during July and August
22 of 1938.

23 An undeclared war of aggression against the USSR
24 and the Mongolian Peoples Republic in the Nomongham area
25 in May-September 1939.

1 Refusal to accept Russia's proposal to conclude
2 a non-aggression pact as a manifestation of hostile
3 aggressive policy of Japan against the USSR.

4 The conclusion of the Anti-Comintern Pact.

5 The conclusion of the Tri-Partite Pact.

6 As the day drew near for the offensive which
7 she believed would remove the last obstacles from the
8 path of her conquest and control of Greater East Asia,
9 Japan's preparations for war mounted to huge proportions,
10 entailing a complete reorganization and greater control
11 and centralization of her entire industrial, economic
12 and financial structure and the closer integration of
13 her political and economic systems with those of
14 Manchuria and China. These preparations included overall
15 mobilization of all of Japan's manpower.

16 In carrying out her plans Japan, in 1933, with-
17 drew from the League of Nations; in 1934 she gave notice
18 of her withdrawal from the Washington Naval Treaty; she
19 withdrew from the 1936 Naval Conference; she refused to
20 adhere to the Fourteen-Gun Limitation which had been
21 agreed to by Britain, France and the United States.

22 Military and naval plans not only required the
23 mobilization, training and arming of vastly increased
24 numbers of soldiers and sailors, acquisition of war
25 ships, carriers, aircraft, tanks, artillery and the

1 countless impedimenta of modern war, but demanded the
2 accumulation of vast stores of materiel and long range
3 plans for the acquisition of replacements as these were
4 used.

5 The Mandated Islands were fortified and other-
6 wise prepared for tactical and strategic use in war.
7 This was in direct violation of the mandate and of
8 Japan's treaty obligations with the United States.

9 The proposed wars being of an aggressive charac-
10 ter, involving the invasion of other countries, military
11 currency to be used in such other countries in denomina-
12 tions of dollars, pesos and guilders was ordered printed
13 and held for use.

14 The true scope of the grand design of the con-
15 spirators to achieve political, military and economic
16 control of the Asiatic continent and adjacent areas was
17 fully developed in the evidence presented during the
18 phase which covered the relations of Japan with the
19 United States and Great Britain during the period of the
20 Indictment.

21 This evidence showed that apart from the resist-
22 ance of the Chinese and other peoples of Asia, these two
23 powerful nations were the great and formidable obstacles
24 to the successful achievement of all that the conspirators
25 planned. They were obstacles not only because of the

1 vast financial and economic interests which they or
2 their nationals possessed in China and the rest of Asia,
3 which had to be expelled or limited and subordinated to
4 those of Japan if the conspiratorial plan was to be
5 successful, but also because through solemn treaty and
6 agreement Japan stood firmly bound with them to forego
7 the aims and ends of the conspiracy and to forbear from
8 any and all of the actions required to effectuate it.

9 The evidence has shown that so long as the pro-
10 visions of the various treaties remained in full force,
11 so long as the parties signatory to them felt themselves
12 firmly bound to respect them both in letter and in spirit,
13 the conspiracy to dominate the East Asiatic and Pacific
14 worlds could not be fully carried out. The object of
15 the conspiracy could be successfully accomplished only
16 if the formidable obstacles of the United States and
17 Great Britain could be removed, and this could be
18 accomplished only if these treaty provisions and their
19 co-relative duties and obligations could be evaded,
20 abrogated, altered, redefined, or broken.

21 The evidence in this phase of the case from
22 the period from 1931 on told the story of the efforts
23 of the conspirators to rid Japan of the duty of carry-
24 ing out the various obligations which they had volun-
25 tarily undertaken of respecting the rights of others

1 in the Asiatic-Pacific world and of the resistance of
2 the United States and Great Britain to such efforts. To
3 free Japan of her duties and obligations under these
4 treaties so as to eliminate Britain and the United States
5 from the Asiatic world or to subordinate their rights
6 there to those of Japan within the limits allowed by
7 Japan, the evidence shows that the conspirators resorted
8 to every known or conceivable method to evade, alter,
9 abrogate or redefine the treaties.

10 They used intimidation, fraud, artifice and
11 chicanery, subtle redefinition of terminology, negotia-
12 tion, and when all else failed they resorted to the
13 use of armed force in an aggressive war against these
14 two western powers.

15 The evidence showed that by the beginning of the
16 year 1941 the situation had reached a critical stage
17 and at this juncture the conspirators decided to finally
18 accomplish their purpose of dominating the Asiatic-
19 Pacific world and remove the obstacles to that project
20 presented by Great Britain and the United States. To
21 accomplish this they adopted a two-fold policy; on the
22 one hand they negotiated with Britain and the United
23 States on certain specific outstanding problems in
24 accordance with certain proposals which, if accepted,
25 would have left Japan the master of the Asiatic-Pacific

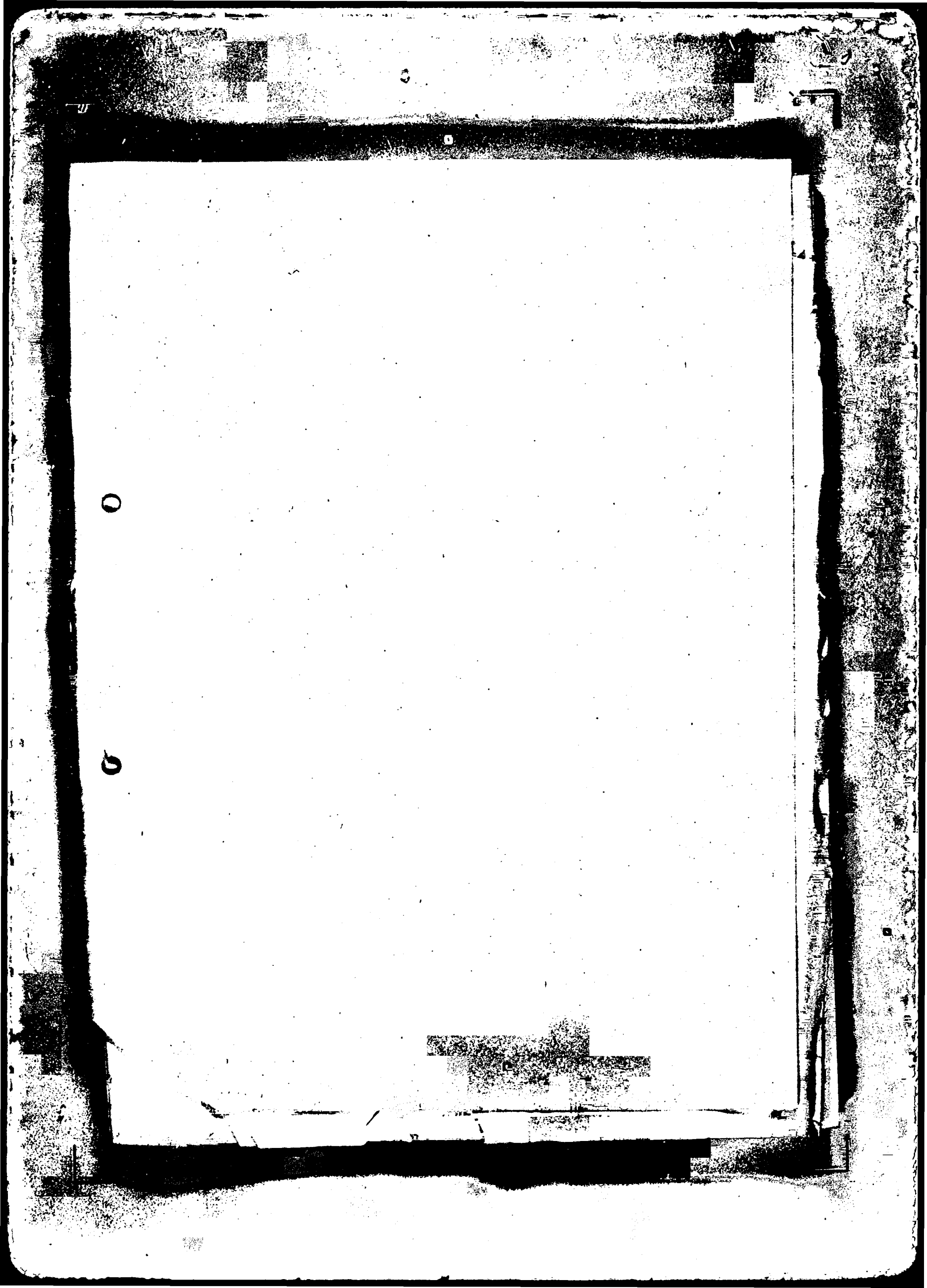
1 world, with Britain and the United States relegated to
2 whatever position Japan might allow; on the other hand
3 they actively prepared for war with these countries with
4 the same objectives and results. Both programs had the
5 same objectives, and while some felt that they could
6 accomplish the objectives of the conspiracy through
7 negotiation, others viewed them as impossible from the
8 beginning and regarded them only as useful camouflage
9 for active war preparations, to lull the United States
10 and Britain into a false feeling of security. To this
11 latter group the negotiations were an integral part
12 of the preparation for war.

13 Perhaps we who are Americans or British are
14 inclined to regard the sudden and unprovoked attacks on
15 Pearl Harbor, Kotabahru, Hong Kong, and Davao as the
16 culmination of this conspiracy. This is not true. The
17 attacks on Britain and the United States were but steps
18 in the grand design to become the masters of all East
19 Asia. This was the true objective - the end and purpose
20 of every act of the conspirators at home and abroad.

21 THE PRESIDENT: We will adjourn now until half
22 past nine tomorrow morning.

23 (Whereupon, at 1600, an adjournment
24 was taken until Thursday, 30 January 1947, at
25 0930)

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30 JANUARY 1947

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30 JANUARY 1947

I N D E X

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1 Thursday, 30 January 1947

2 - - -

3
4 INTERNATIONAL MILITARY TRIBUNAL
5 FOR THE FAR EAST
6 Court House of the Tribunal
7 War Ministry Building
8 Tokyo, Japan

9 The Tribunal met, pursuant to adjournment,
10 at 0930.

11 - - -

12 Appearances:

13 For the Tribunal, same as before with the
14 exception of: HONORABLE JUSTICE NORTHCROFT, Member
15 from New Zealand, not sitting.

16 For the Prosecution Section, same as before.

17 For the Defense Section, same as before.

18 - - -

19 The Accused:

20 All present except OKAWA, Shumei, who is
21 represented by his counsel.

22 - - -

23 (English to Japanese and Japanese
24 to English interpretation was made by the
25 Language Section, IMTFE.)

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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now in session.

3 THE PRESIDENT: Mr. Williams.

4 MR. E. WILLIAMS: Mr. President, Members of
5 the Tribunal.

6 The machinations, the threats, the pressure,
7 the military action, all under cover of misleading
8 and false explanations, by which Japan forced large
9 armies first into northern and later into southern
10 Indo-China were but steps in the plans to acquire
11 the complete control of that rich territory. (Ex.
12 612-665. R. 6731-7194).

13 The attempts to force concessions, the
14 subservice activities, the spreading of propaganda,
15 the military invasion of the Netherlands East Indies,
16 the forcing of Japan's political structure, of Jap-
17 anese education, of Japanese propaganda, and the
18 cultivation of Japanese inspired political movements
19 within that country were but part and parcel of the
20 objective to become its masters. (Ex. 1284-1354.
21 R. 11669-12342).

22 In the course of the overall conspiracy
23 which I have been discussing which is pleaded in
24 Count 1 of the Indictment, the lesser conspiracies
25 alleged in Counts 2, 3, 4 and 5 were involved. They

1 were but part and parcel of the overall plan. The
2 preparations for war alleged in Counts 6 to 17 in-
3 clusive, the initiation of the wars alleged in
4 Counts 18 to 26 inclusive, the waging of the wars
5 set forth in Counts 27 to 36 inclusive were all
6 crimes committed within the scope and course of the
7 overall conspiracy pleaded in Count 1 and con-
8 cerning which I have been addressing the Tribunal.

9 The charges of murder set forth in Counts
10 37 to 52 inclusive, were perpetrated in the course
11 and as a part of the carrying out of the conspiracy.
12 Each of these murders and countless tens of thousands
13 not pleaded were but the ordinary, customary, ex-
14 pected and foreseen results of the wars of aggression
15 contemplated by the conspirators.

16 The conventional war crimes and crimes
17 against humanity set forth in Counts 53 to 55 in-
18 clusive were but the obvious, necessary and in-
19 tended results of the kind of warfare planned and
20 intended by these conspirators.

21 No one of the accused can disassociate him-
22 self from his participation in the overall criminal
23 conspiracy alleged and proved. No reasonable con-
24 tention that any of the specific crimes charged
25 was not within the scope, purpose or intent of that

1 conspiracy can be made. It follows that each of the
2 defendants is criminally liable for each act com-
3 mitted during the course of the criminal conspiracy.

4 It is no defense that the position of any
5 accused was "subordinate," or that he but obeyed
6 orders - neither under common law, nor the Charter,
7 is such claim a defense, and who can say in a con-
8 spiracy of this magnitude, what role was "subordi-
9 nate"?

10 As we come now to a consideration of the
11 evidence showing the connection of the several
12 defendants with the over-all conspiracy and their
13 individual guilt, it is well to bear in mind that
14 the object of the plan or conspiracy upon which these
15 defendants and others entered, was that Japan should
16 secure and hold the military, naval, political and
17 economic domination of all East Asia and the Pacific
18 and Indian Oceans and all countries bordering thereon
19 and islands therein, and at the same time drive the
20 "whites" out; that this object should be effected
21 by means of declared or undeclared wars of aggression
22 and in violation of International law, treaties,
23 agreements and assurances, against any country or
24 countries, including the countries sought to be
25 seized, which might oppose that purpose.

1 The conspiracy envisaged and required the
2 preparation of the people of Japan by means of
3 propaganda and censorship to accept and join in the
4 program intended. It involved the economic and
5 political renovation, coordination and integration
6 of Japan itself. It involved the keying of the
7 Japanese economical and financial system to the
8 expanded requirements of aggressive war, and the
9 integration of that system with those of conquered
10 territories. It involved vast preparation by ac-
11 quisition, manufacture and storing of arms, munitions
12 and military and naval equipment. It involved the
13 training of soldiers and sailors in vast numbers,
14 and the mobilization for agriculture and industry
15 of the man and woman power of Japan. It involved
16 the organization and use of the communication and
17 transportation system of Japan and all conquered
18 territories. It involved the organization and use
19 of the man power of conquered territories for the
20 benefit of Japanese military and civilian industrial
21 and economic requirements. It involved the over-all
22 integration of all of the people, the territory, the
23 men and material of Japan and her conquered ter-
24 ritories for the single purpose of further military
25 aggression and domination, while at the same time it

1 required that in her International relations Japan
2 should on the one hand conceal her true purpose and
3 her war-like preparations and on the other hand seek
4 by means of diplomacy to lull the other nations of
5 the world into a sense of security and at the same
6 time to obtain from them any and all concessions
7 which would enable Japan to proceed with her grand
8 objective.

9 To accomplish this purpose there were re-
10 quired not only military men such as ARAKI, MINAMI,
11 TOJO, and others, but naval officers such as NAGANO,
12 SHIMADA and OKA, and propagandists such as OKAWA,
13 HASHIMOTO, ARAKI and SHIRATORI; politicians such as
14 KIDO and MATSUOKA; industrial and economic experts
15 such as KAYA; diplomats such as HIROTA, TOGO, SHIGEMITSU,
16 OSHIMA; makers of puppets, such as DOHIHARA and
17 ITAGAKI; and countless others.

18 The efforts of all these men in their many
19 and varied fields were required in order that their
20 grand objective might be attained, and while the
21 roles of some were more spectacular and dramatic
22 than those of others, each in his place and at the
23 times required performed his part and contributed
24 effectively to the development of the plans, strategy
25 and the action of the conspiracy.

1 My brother, Mr. A. S. Comyns-Carr, Associate
2 Prosecutor from the United Kingdom, will soon present
3 to the Tribunal an analysis of the evidence showing
4 the connection of each of the individual accused with
5 the conspiracies here alleged and their criminal
6 responsibility for each of the specific crimes charged

7 Under the Charter, it would seem not timely,
8 or even proper, at this stage of the trial for the
9 prosecution formally to sum up, or fully to analyze
10 the evidence. (Charter: IV, 15). We have, there-
11 fore, made no effort to present our full views in
12 respect of all of the evidence so far offered. This
13 presentation and that to follow are intended simply
14 and only to show:

15 (1) That there is sufficient evidence, if
16 uncontradicted or unexplained, to prove the existence
17 of the conspiracies and the commission of the sub-
18 stantive crimes alleged in the Indictment;

19 (2) That each of the accused was a res-
20 ponsible member of the conspiracy and as such crimi-
21 nally answerable as a conspirator and also for the
22 substantive crimes committed, whether in the course
23 of the conspiracies or otherwise.

24 If more than this is required we submit
25 that under the express provisions of the Charter the

1 time to do so is after all evidence from the defense,
2 as well as the prosecution, has been heard.

3 At any rate, it should be borne in mind
4 that in considering a motion to dismiss at the end
5 of the prosecution case, it is the duty of the Court
6 to take as true all evidence and to draw all in-
7 ferences therefrom favorable to the prosecution; and
8 at the same time to disregard all conflicts, whether
9 of evidence or inference.

10 The arguments made by the defense have
11 obviously disregarded this fundamental rule.
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1 THE PRESIDENT: There is a statement
2 made by Mr. Williams at the end of his reply
3 which, to say the least, is arguable. That is
4 all I propose to say about it. I do not let it
5 pass without comment.

6 Mr. Comyns Carr.

7 MR. COMYNS CARR: May it please the
8 Tribunal, we have been in some difficulty in
9 preparing our answer to these motions partly
10 because of the short notice we have had with re-
11 gard to almost all of them, and partly because
12 we have not known in how much detail the Tribunal
13 would desire us to answer them. In the ordinary
14 way we should neither be required nor allowed to
15 sum up our case at this stage.

16 We propose, however, for the convenience
17 of the Tribunal and subject to its approval, to
18 handle the matter in the following way.

19 First, we propose to hand in and circu-
20 late to the defense for the convenience of all
21 concerned a chronological summary of the whole
22 of our evidence so far as it is reasonably capable
23 of being dealt with in that way, down to the close
24 of the Netherlands phase of the case on December 10,
25 1946. This is a somewhat formidable document, the

1 main part of which consists of 314 pages, the
2 preparation of which has involved considerable
3 labor. Great care has been taken to avoid errors
4 and omissions, but some may unavoidably have
5 occurred. Bulky as it is, every item is necessar-
6 ily much condensed, but we have given the reference
7 to the page of the record and the exhibit number
8 for every statement so that the reader can check
9 and amplify it at will. At the end there are two
10 appendices; A gives a general indication of mat-
11 ters omitted because of their character not lend-
12 ing themselves to chronological treatment. This
13 is, of course, particularly true of much of the
14 oral testimony. We have also deliberately re-
15 served the Class B and C offenses for separate
16 treatment. At the end of Appendix A is a list
17 of the exhibits which are extracts from "Foreign
18 Relations" dealing with the negotiations from
19 April to December 1941 leading up to the Pacific
20 War. Appendix B deals separately with each ac-
21 cused, giving the pages of the main summary on
22 which he is actually named, a list of his offices,
23 etc., with dates and reference to the pages of the
24 main summary covering those periods; the exhibit
25 numbers of extracts from his interrogation; and

1 of speeches or writings by him (other than
2 correspondence), if any; and the dates on which
3 he received decorations for specific services form-
4 ing part of the case.

5 We have not had time to include anywhere
6 the evidence introduced since the close of the
7 atrocities phase. I am incorporating a good
8 deal of it in the following remarks, as well as
9 correcting one or two errors which have been
10 discovered in the summary.

11 In asking you to accept this document
12 we are following the practice prevailing in some
13 courts, particularly in America, of handling in
14 written briefs, but we would urge you to remember
15 what it does, and what it does not, purport to
16 include. May it be handed around?

17 THE PRESIDENT: Mr. Carr, we have called
18 upon the prosecution to reply to the defense. We
19 expect a reply and nothing else. It may be the
20 material which you are going to place before us
21 is a reply. We do not know. We have not seen it.
22 So far we have no objections to take. You may
23 hand it around unless the defense objects.

24 Mr. Logan.

25 MR. LOGAN: If the Tribunal please, we

1 have not seen the document in question. I asked
2 Mr. Carr for a copy of it, and he refused to give
3 it to us.

4 THE PRESIDENT: There is no obligation
5 upon him to do so. It does not come within the
6 rules. But I am sure the Tribunal would like for
7 you to have a copy or copies. It is very difficult
8 to follow these things as they are read unless you
9 have a copy; we find it so, at all events.

10 MR. LOGAN: That is right. Until we
11 have seen it, your Honor, may we reserve our
12 objections to it? It may be he is presenting it as
13 a part of his argument; I do not know.

14 THE PRESIDENT: If it is a reply we can
15 take no exception to it, and neither can you.

16 MR. LOGAN: That is right. It may be
17 of value to all of us if it is a true chronology;
18 I don't know; I haven't seen it.

19 THE PRESIDENT: I am sure the Tribunal
20 would like to have it, Mr. Carr, subject to the
21 defense' objections.
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1 MR. COMYNS CARR: Would it be convenient,
2 your Honor, if we give them copies now to look at so
3 that they can decide whether they propose to take any
4 further objection?

5 THE PRESIDENT: It will take them some time
6 to make up their minds. I suggest you give them
7 copies now, Mr. Carr, and then proceed to read the
8 material.

9 MR. COMYNS CARR: If your Honor pleases.

10 Your Honor, may I say that we are handing
11 them copies now on the understanding that if they
12 object to the Tribunal having the document, the copies
13 will be returned?

14 THE PRESIDENT: We made no order for copies,
15 so you can make your own terms, Mr. Carr.

16 Captain Brooks.

17 MR. BROOKS: If the Tribunal please, in
18 accepting these we are not accepting them on those
19 terms as presented by the prosecutor. I think that
20 he has already delivered this morning copies to each
21 one on the bench of the court, and I thought at the
22 time it was improper to do so until this matter was
23 at least called to our attention, because it is really
24 a summary and excerpts of the record and we have a
25 court record here that is very concise, I think.

1 THE PRESIDENT: We saw them before us when we
2 took our seats. None of us read them. We put them
3 to one side.

4 MR. COMYNS CARR: I did not know that they
5 had actually been put on your desks. I thought they
6 were still in the custody of the Clerk of the Court.

7 THE PRESIDENT: No harm was intended, and
8 none was done.

9 MR. COMYNS CARR: Next I propose to address
10 you on these motions as a whole, covering generally
11 the position of each accused in relation to the Indict-
12 ment. If, when I have finished what I have prepared
13 for simultaneous translation, any member of the
14 Tribunal wishes me to deal with anything which I have
15 omitted, I shall be pleased to answer to the best of
16 my ability.

17 I will deal first of all with the Indictment
18 generally, beginning with Group One, Crimes against
19 Peace. These consist, first, of five conspiracy counts,
20 the first count general, the other four stressing
21 particular aspects of the conspiracy as it developed.
22 We have alleged that each of them began on 1 January
23 1928 and ended on 2 September 1945, in my submission
24 rightly, especially as to the latter date, because
25 although, for example, the Manchurian aggression

1 may be said to have been accomplished in 1934, or
2 even earlier so far as the four provinces themselves
3 were concerned, the domination of them lasted to
4 the end and they were used to the end to assist in
5 further aggressions. Good examples of this are to be
6 found in exhibits 1214 and 1219, where TOGO is giving
7 instructions on 4 and 7 December 1941 (and changing
8 them within a few days)--

9 THE PRESIDENT: Mr. Carr, we haven't copies
10 of what you are reading now.

11 MR. COMYNS CARR: I am very sorry, your
12 Honor, but until we received the defense motions
13 it was impossible to prepare answers to them, and it
14 has been a very severe task to achieve even as much as
15 we have done and there has just not been time to have
16 them stenciled so that copies would be available for
17 everybody.

18 THE PRESIDENT: Will you read slowly,
19 Mr. Carr, please?

20 MR. COMYNS CARR: If your Honor please.

21 I will begin that sentence again.

22 Good examples of this are to be found in
23 exhibits 1214 and 1219 where TOGO is giving instructions
24 on 4 and 7 December 1941 (and changing them within a
25 few days) as to the parts which Manchuria and occupied

1 China were to play in the Pacific War and the Chinese
2 and Russian evidence (extending right up to 1945) as
3 to the preparations going on there and the use of
4 Manchuria as a base for the further invasion of China
5 and the actual and contemplated invasion of the U.S.S.R.
6 It follows that the guilt of the Manchuria conspiracy
7 is not confined to those such as OKAWA, HASHIMOTO
8 and ITAGAKI, who are proved to have taken part in the
9 original plot, and MINAMI, ARAKI, LOHIHARA and KOISO,
10 who were active in it at an early date, but extends
11 to all the other accused some of whom may not have
12 been active in it or even in favor of it at the
13 beginning, provided they are proved to have adopted
14 it later. Counts 6 to 17 inclusive allege against
15 all the accused the planning and preparation of
16 aggressive wars against a number of countries. Here
17 again the charges cover the whole period, in our
18 submission rightly. Planning and preparation do not
19 cease when actual war begins, nor are they, or the
20 conspiracy to wage them, any the less offences because
21 in a particular case the actual war may never have
22 occurred at all or may technically have been started
23 by the other party.
24

25 Basically, our proposition as explained by
my friend, Mr. Williams, is that from the moment when

1 a particular accused is proved to have joined the
2 conspiracy until the moment, if any, when he is proved
3 definitely to have severed his connection with it, "as
4 leader, organizer, instigator or accomplice," to quote
5 the Charter, he is guilty as a principal, not only of
6 the conspiracy, but also of all substantive offences
7 contemplated by the conspiracy, which may be "performed
8 by himself or any person in the execution of such
9 plan." In this and other respects the Charter only
10 emphasizes legal propositions familiar to most of us.
11 Therefore, it is not, in our submission, necessary to
12 prove direct participation by any individual in the
13 particular act or acts the subject of any count, pro-
14 vided they occurred after we prove that he joined the
15 conspiracy, and were within its scope, and he is not
16 shown to have repudiated the conspiracy at that date.
17 That being our view, I do not think it would be helpful
18 to deal with each accused count by count, which would
19 involve endless repetition.

20 With regard to Counts 18 to 26, Initiating
21 Aggressive Wars, we may perhaps have been unduly
22 meticulous in drawing the Indictment in not following
23 that principle to its logical conclusion. We have
24 not charged every accused in each of these counts
25 with "initiating" at specific times, unless we expected

1 to have evidence connecting him with the immediate
2 responsibility for those acts at the relevant dates.
3 However, if we have failed in that in any individual
4 case, but given you sufficient evidence to show that at
5 the date in question each named accused had joined the
6 general conspiracy, we submit that that is enough. We
7 have been perhaps too meticulous also in another respect,
8 namely, that in the cases where an actual declaration
9 of war came from another country before an attack by
10 Japan we have made no charge in this category, even
11 though, as in the case of the Netherlands, we have
12 submitted ample proof of Japan's aggressive intention
13 and have, therefore, made a charge of "waging aggressive
14 war." This does not apply to cases such as the
15 United States and the British Commonwealth; the dec-
16 laration of war came from them, but only because Japan
17 had made her attack first without any declaration.
18 Most of the above remarks apply to the "waging" class
19 of Counts 27 to 36.

20 I would like to say a few words about the
21 contention that because declarations contemporary with
22 the Kellogg-Briand Pact showed that it was not intended
23 to exclude self-defense, and left each nation free to
24 decide whether it was obliged to have recourse to war
25 in self-defence, therefore this Tribunal has no

1 jurisdiction to inquire into that decision. This has
2 been dealt with in the Nuernberg judgment at pages 28
3 to 30. I would concede that some latitude must be
4 allowed in this matter. If you find on the facts
5 when the evidence of the accused has been given, that
6 such a view was both genuinely held and reasonable, it
7 might afford a defense even if you did not agree with
8 it. But we have given evidence to show that it was
9 neither. It could only be entertained by giving to the
10 words "self-defense" a meaning which they obviously can-
11 not bear, namely, "the enforcement of the policy of
12 Japan in any part of the world." Such a meaning is
13 sought to be given to them in a number of Japanese
14 documents and statements by the accused which are in
15 evidence. Some of them will be mentioned when I deal
16 with the cases of those accused. But it can be found
17 very clearly in the amusing exhibit 1270-A, in which
18 a committee of Japanese lawyers working for the Foreign
19 Minister TOGO tried to manufacture an excuse for the
20 failure or deliberate omission to give warning before
21 the attacks on December 8, 1941. In so doing they
22 destroyed most of those which have been suggested and
23 fell back upon "self-defense." In truth there is not
24 the slightest pretext for this contention. We have
25 given evidence of planned aggression by Japan, acting

1 by these accused, at every stage. In the approach to
2 the Pacific War every act of each of the Allies during
3 1940 to 1941 was merely provoked by some new aggressive
4 move of Japan, obviously designed as a threat against
5 one or more of them. There is not the smallest evidence
6 of an intention by any of them to attack Japan, or
7 even to interfere by armed force with her aggression
8 in China, which they might have been well justified in
9 doing.

10 I do not propose to go through all the nego-
11 tiations leading up to the Pacific War. The position
12 at the beginning of them was that Japan had accomplished
13 her aggression in Manchuria and had achieved large
14 successes in, but had failed to complete, her aggression
15 in the rest of China. If you accept our contention
16 that this was actually an unjustified aggression, that
17 view must be the touchstone in considering the subsequent
18 negotiations. The members of the League of Nations,
19 and of the Brussels Conference, including the United
20 States and Britain, had so declared and refused to
21 recognize these conquests. There was the Tri-Partite
22 Pact and the advance to the south had begun. The
23 European War was in progress and France and the Nether
24 land overrun. Russia and the United States were not yet
25 involved.

1 Japan was in essence seeking, so far as her
2 negotiations were genuine at all, to do something which
3 was obviously impossible. She was like a burglar in
4 possession of his spoils, who wants to be received
5 back into respectable society not only without punish-
6 ment but with the retention of part of his ill-gotten
7 gains. The only point on which she was prepared to
8 compromise was how much of the gains, repeatedly
9 described as "the fruits of four and a half years of
10 sacrifice in China," she should be allowed to keep.
11 Any intelligent person must have known that on this
12 basis there was never any hope of success.

13 I think it is sufficient to examine the
14 question whether the United States note of November 26,
15 1941, exhibit 1245-I, provided any legitimate excuse,
16 as alleged by the accused concerned, for Japan to go
17 to war. In my submission there is none. On the
18 contrary, every proposal put forward is one which the
19 United States and those who later became its allies
20 had every right to demand, and Japan every moral and
21 contractual obligation to concede. But even if this
22 were not so, it does not contain the slightest hint
23 of a threat that if it is not accepted the United States
24 or any of the other countries concerned would attempt
25 to enforce it by war. It was only Japan, represented

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by some of these accused, which regarded and used
the breakdown of the negotiations as a cause for war.

1 I now come to group two: Murder, the in-
2 evitable consequence of aggressive warfare, and the
3 greatest of all "Crimes Against Peace." These
4 counts in our submission reduce this matter to its
5 simplest and most conclusive form. The argument
6 that the crime of aggressive war involves ex post
7 facto law is invalid for, among others, the reasons
8 given in the Nuremberg Judgment. But when the
9 charge is framed as murder it simply has no appli-
10 cation. Every statesman or commander who is a
11 party to ordering his army to attack and kill an
12 enemy, even in legitimate warfare, fulfills all the
13 conditions of murder if it was done without lawful
14 justification. However, if it appears that this was
15 done in lawful belligerency he is not guilty. Now
16 we must recognize the distinction between that
17 which is unlawful and that which is criminal. Every
18 criminal act is unlawful, but not every unlawful
19 act is criminal. In charging that aggressive war
20 is a punishable crime in the individual who launches
21 it, we have to establish that it is in itself such
22 a crime, a burden which we claim here, and the
23 Nuremberg Tribunal has found there to have been
24 discharged. But when the matter is viewed as common
25 law murder the point does not arise. The accused

1 who necessarily fulfils all the other elements of
2 murder, in that he has purposely ordered the kill-
3 ing of human beings, has to rely upon a lawful
4 justification. He says war is such a justification,
5 but if the war is unlawful his justification fails.
6 Now even if it were not established, as we claim
7 it is, that aggressive war, in breach of a treaty,
8 is itself a punishable crime, it is certainly not
9 lawful, and therefore cannot afford a justification
10 for what is otherwise plain murder. If this has
11 never been recognized before it is only because the
12 circumstances have never arisen before, and it is
13 high time it was recognized now. It has always
14 been implicit in the definition of murder in every
15 civilized country. It disposes finally of the last
16 vestige of plausibility in the ex post facto argument.
17 In group two we have alleged that various acts of
18 warfare were illegal, and the killings murder, for
19 one or two or all of three reasons.

21 First that the war was undeclared and in
22 the nature of a treacherous surprise. Second,
23 that it was in breach of the treaties against
24 aggressive war. Third, that the manner in which it
25 was conducted was contrary to the laws of war.

This brings me to group three in the

1 Indictment. Conventional war Crimes and Crimes against
2 Humanity. Our legal argument on this subject is
3 rather fully set out in Appendix D to the Indictment
4 itself. We have proved all the facts there
5 alleged. We claim to have shown that the govern-
6 ment of Japan was in effect bound by the Geneva
7 Conventions of 1929. But failing that we say they
8 were unquestionably bound by the Hague Conventions,
9 particularly numbers 4 and 10, of 1907, and that
10 all the Conventions are merely declaratory of
11 International Law. Every outrage we have alleged
12 comes in our submission within all of them.

13 These are the ways in which we claim to
14 have proved the responsibility of the accused for
15 these outrages.

16 1. Article 4 of the Hague Convention and
17 Article 2 of the Geneva Convention provide that
18 prisoners of war are in the power of the hostile
19 government and not of the individuals or corps
20 which capture them. No government or member of it
21 in face of this can evade responsibility by trying
22 to shift it on to a particular department such as
23 the War or Navy Ministry, or onto individual
24 commanders in the field, though the latter and the
25 officials of those Ministries may and do thereby

1 acquire a responsibility of their own. The main
2 responsibility remains with every individual member
3 of the government.

4 2. Every one of the accused must have been
5 aware of the horrible notoriety attached to the
6 Japanese army by the outrages at Nanking and else-
7 where in China, and of the danger that this might
8 recur.

9 3. We have proved a general similarity in
10 the character of the outrages prevalent over all
11 the theatres of war in which the Japanese army or
12 navy operated during the Pacific War, both with
13 one another and with what happened in China, which
14 establishes a universal plan or pattern, and indi-
15 cates that this was a recognized policy of terrorism.

16 4. We have proved a long series of protests
17 over the air and through the Protecting Powers
18 which must have brought to the attention of all the
19 accused the necessity of using their authority to
20 improve the conditions, a duty which lay upon them
21 in any case. In so far as these were addressed to
22 Foreign Ministers SHIGEMITSU and TOGO, we say that
23 they by no means discharged their responsibility
24 by merely passing the complaints on to the
25 Ministries directly concerned, and forwarding such

1 few, meagre and obviously unsatisfactory replies
2 they received, to the Protecting Powers. Their
3 duty was to bring the matter before the Cabinet,
4 which presumably they did, and if they could get
5 no satisfaction, to resign.

6 5. In a number of cases we have proved
7 direct personal responsibility of individual accused
8 for outrages in general or in particular, including
9 MATSUI, HATA, DOHIHARA, MUTO, ITAGAKI, KIMURA and
10 SATO, who held commands in areas concerned, and
11 TOJO, KIMURA, MUTO, SATO and SHIMADA, who held posts
12 immediately responsible at the centre. I should
13 have added there: and OKA. The idea that commanders
14 in the field were alone responsible is unfounded.
15 But they had a responsibility.

16 It is contended that by reason of the use
17 of the words mutatis mutandis the Japanese government
18 was only bound to apply the provisions of the 1929
19 POW Convention in so far as they were not inconsistent
20 with the provisions of Japanese internal laws and
21 in so far as the exigencies of the war situation
22 permitted or indeed at their discretion. The
23 answer to this contention, however, is that, in so
24 far as the Convention is binding or sets out inter-
25 national common law, the Japanese government could

1 not shelter itself behind any domestic legislation
2 which would be inconsistent with it.

3 It has never been denied that persons may
4 be criminally liable for violation of international
5 law.

6 In the YAMASHITA case, the responsibility
7 of a commanding officer was considered. The charge
8 was that the commanding officer "unlawfully disregarded
9 and failed to discharge his duty as commander to
10 control the operations of the members of his command,
11 permitting them to commit brutal atrocities against
12 people of the United States and its allies and he
13 thereby violated the laws of war." The Supreme Court
14 of the United States stated that in its opinion an
15 army commander had the duty "to take such appropriate
16 measures as are in his power to control the troops
17 under his command in the prevention of the specified
18 acts which are violations of the law of war and
19 which are likely to attend the occupation of hostile
20 territory by an uncontrolled soldiery." Responsi-
21 bility, according to this case, and, it is contended,
22 according to international law, is based upon the
23 "power to control."
24

25 The general proposition may, therefore,
be stated that all persons who have the power to

1 control the acts of others who commit breaches of
2 the laws of war and who, knowing that such breaches
3 have been committed, take no steps to prevent their
4 repetition; or who, having reason to anticipate
5 violations of the laws of war by persons under
6 their control, fail to take proper measures to prevent
7 their occurrence; or who, having a duty to ensure
8 that their colleagues conform to the laws of war,
9 neglect to perform that duty, are themselves guilty
10 of offences against the laws of war.

11 In fixing the responsibility for violations
12 of the laws of war upon persons who, by reason of
13 their official position, have power to control the
14 acts of subordinates, and who may be remote from
15 the places where the atrocities are actually com-
16 mitted by the forces under their control, it may be
17 contended that it is necessary that such persons
18 should have knowledge that atrocities are likely
19 to be committed or have been committed before any
20 responsibility for their failure to prevent the
21 commission or the repetition thereof can be imposed
22 upon them. Once it is shown that a person has
23 the knowledge or ought to have the knowledge that
24 atrocities are likely to be committed or have been
25 committed by others under his control, it is

1 submitted, that a duty immediately arises to exercise
2 the power of control so as to prevent the commission
3 or repetition of such offenses. No person can rid
4 himself of responsibility if he deliberately fails to
5 make inquiries and by reason of such failure does
6 not acquire actual knowledge of atrocities. If this
7 were so, every member of a government could gain
8 immunity simply by neglecting to inform himself.

9 It is also contended that, when a state of
10 things is widespread and notorious, there is a prima
11 facie presumption of knowledge which calls for
12 rebuttal by the accused. In the absence of such
13 rebuttal, knowledge may be inferred.

14 As to knowledge that atrocities were likely
15 to be committed after 7th December 1941, it is an
16 important fact that the Japanese government was at
17 war with China from 1931 until 1945 and that during
18 that period many atrocities and other flagrant
19 breaches of the laws of war were committed by the
20 Japanese Forces against prisoners of war and
21 civilians, and that notifications and protests
22 concerning such atrocities were sent to the Japanese
23 government in Tokyo and the general facts, if not
24 the exact details, were notorious throughout the
25

1 world and particularly in Japan. Evidence of such
2 protests was given, for example, by Dr. Bates.

3 After 7th December 1941 many letters of
4 protest setting out details of breaches of the laws
5 of war were sent by the Swiss Minister on behalf of
6 Allied governments to the Japanese Foreign Minister.
7 In most cases there was no reply at all, while in
8 others, after repeated reminders, replies were
9 forthcoming only after great delay. In no case was
10 any satisfactory answer ever received. Many requests
11 to visit camps in Japan and elsewhere were made by
12 the Protecting Power but, with a few exceptions,
13 visits were always refused. When reasons were given
14 for refusal, they were, in most cases, fictitious.

15 Permission to visit camps in Thailand,
16 where the prisoners of war and native labourers were
17 held under the most appalling conditions, was
18 frequently requested, but consistently refused by
19 the Japanese government on grounds which are clearly
20 unreasonable. Exhibits 473 and 475, with Colonel
21 Wild's evidence, establish that the operation on
22 which these unfortunate men were forced to work was
23 of strategic importance, ordered by Imperial General
24 Headquarters, under the financial control of the
25 Japanese government. The welfare of these men was

1 deliberately sacrificed to so-called strategic
2 necessity, which in itself made their employment,
3 even under good conditions, unlawful.

4 In many cases, the conduct complained of by
5 the Allied powers was the direct result of deliberate
6 action by Japanese officials in passing laws and promul-
7 gating orders governing the discipline and punishment
8 of Allied prisoners of war in Japanese hands.

9 The United States and British governments on
10 many occasions reminded the defendants of their obli-
11 gations in matters concerning prisoners of war and
12 reference may be made to the occasions on which they
13 informed the Japanese government that it could not
14 escape responsibility for the consequences of its
15 disregard of the principles of international law.

16 With reference to the contention that the
17 Potsdam Declaration and instrument of surrender did
18 not refer to any war criminals other than those
19 guilty of what are called "Conventional War Crimes."
20 Not only is this unfounded as a matter of construction,
21 but we have now proved that it is not based on fact,
22 but that the then Japanese government fully understood
23 that it included those responsible for the war, by
24 the entry from KIDO's diary, exhibit 1283, of August
25 9, 1945.

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1 MR. COMYNS-CARR: I will now deal with
2 some further points in the General Motion of the
3 defense. Most of them I do not think it necessary
4 to answer unless requested to do so by the Tribunal.
5 The legal points were mostly dealt with on the
6 motions directed against the Indictment itself,
7 and are in our submission out of place at this
8 stage. But I will add a few words on some of
9 them. Practically all of them are contrary to
10 the plain-terms of the Charter, but we prefer to
11 meet them on their merits.

12 I will take paragraphs one to six together.
13 We repudicate altogether the idea that International
14 Law is a matter to be proved by evidence. So far
15 as we rely upon particular treaties we have proved
16 them, or more correctly, placed them before you.
17 The only kind of law which requires evidence is
18 the law of a country foreign to that in which the
19 Tribunal has jurisdiction. This is an International
20 Tribunal. International Law is your law. As to an
21 international code and the right to establish an
22 International Tribunal to enforce it, Japan and most
23 of the countries here concerned recognized this at
24 Versailles.

25 The code is well defined in the Treaties

1 existing at that time or agreed upon since then and
2 in the common standards of humanity. This subject
3 was dealt with in the judgment of the Nuremberg
4 Trial, pages thirty-six to forty-two, and although
5 it is not binding upon you, and could, of course,
6 if you wish it be amplified, for the present I
7 adopt that passage. It also disposes of the con-
8 tentions in paragraphs seven to eight and ten. These
9 I submit are peculiarly absurd: "You cannot indict
10 a nation", it has been said, the reason being that
11 the acts are those of the individuals who held power
12 in that nation. Now the converse is suggested:
13 "You cannot indict the individual criminals, because
14 they committed their crimes in the name of their
15 nation". So is the idea in paragraph ten that be-
16 cause you cannot conduct a government without agree-
17 ment among the individuals who form it, they cannot
18 be guilty of a criminal conspiracy. It obviously
19 depends upon the question whether the policy on which
20 they agree is criminal or not. The statements about
21 Thailand in paragraphs twenty and forty-eight are
22 contrary to the evidence. Exhibits 1186, 155, 602
23 and 1275 with the evidence of Colonel Wild, show that
24 it was the intention to invade Thailand and that it
25 was done, before any agreement was reached. The

1 contention in paragraph forty-eight with regard to
2 Thailand and in paragraph fifty-eight with regard
3 to the Mongolian Republic that the Tribunal cannot
4 deal with offenses against them because they are
5 not represented in the prosecution and are not
6 proved to have consented to it is, in our submission,
7 equally absurd. In no legal system that I know is
8 the right of prosecution limited to the injured
9 party.

10 Coming now to the motions with regard to
11 individual accused we observe a general tendency to
12 suggest that many of them cannot be guilty because
13 they were career officers or officials. It is
14 necessary to distinguish carefully between the
15 people of such position in the Japan of this period
16 and in some of our own countries. In Japan the
17 service ministers always had to be senior officers
18 nominated by their colleagues, and from 1936 onwards
19 they had to be on active service. With regard to
20 the civilian ministers, many of them from the begin-
21 ning, and from February 1937 onwards almost all of
22 them were also career officials. In each case the
23 practice was for these men to hold career positions
24 one day, become Ministers of State another day, and
25 revert to career positions again after they retired

1 from what we should regard as political office.

2 Sometimes, after they had retired from one cabinet
3 or command, they became Cabinet Councillors or
4 Military Councillors to a later one. Moreover, even
5 in their career positions they did not maintain the
6 tradition of such men in our countries that they
7 merely carried out their instructions. We find
8 service officers, both senior and junior, taking
9 part in plots directed to alter the course of
10 politics in Japan, and carrying out policies of their
11 own in their commands, with the sometimes reluctant
12 acquiescence of the governments whom they were sup-
13 posed to obey. We find the Army issuing officially
14 statements of its views on questions of general as
15 well as army policy. We find ambassadors threatening
16 to resign, and resigning, when they did not see eye
17 to eye with the government at home. There was no
18 discipline among them. Under all these circumstances
19 it is idle for these accused to shelter behind the
20 excuse, which might be valid in some countries, that
21 they were merely career men.

22 When considering individual responsibility
23 of each of these men it is our submission that as long
24 as they held their respective positions with knowledge
25 of what was happening or with a duty to inquire into it,

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and without any attempt to relieve themselves of that responsibility, it attaches to them. This applies to all of them, whatever the nature of the position. A soldier can ask to be relieved of his command, if he disapproves of that which he is called upon to do. We have two instances given to us by the TANAKA of men, himself and one other whom he mentioned but did not name, who resigned important positions in the War Ministry, the latter specifically upon the ground that he disagreed with the War Minister's policy. In the last resort it is the duty of even a soldier or a sailor, and equally certainly of a civilian, to disobey an order which he knows to be contrary to International Law. We have so many instances in the evidence of such men disobeying orders or acting contrary to the policy of their official superiors when they did not think it was aggressive enough, that it is idle for them to say they could not have done the same when it was manifestly unlawful.

1 In the case of cabinet ministers, members
2 of the Privy Council, and men summoned to the Liai-
3 son Conferences, Imperial Conferences, and meetings
4 of ex-premiers, they could have done much more.
5 Not only could they have absolved themselves from
6 personal guilt by voicing their protest, if they
7 really dissented from the policies pursued, and
8 resigning any offices they held. They might easily
9 by so doing have altered the whole course of events.
10 The Japanese system was very stringent in the matter
11 of cabinet unity and responsibility. One dissentient
12 could, by refusing either to resign or withdraw his
13 opposition, force the resignation of the whole
14 cabinet. This is well illustrated by contrasting
15 what happened in the cases of MATSUOKA in July 1941
16 (Ex. 1115-6) and Togo in September 1942 (Ex. 1273).
17 In the case of the Army and Navy Ministers, they
18 could, and Army Ministers did, break up cabinets
19 merely by resigning.

20
21 We have in the evidence rather stressed the
22 fact, because it is unusual, that certain individuals
23 in the Army and Navy outside the government could
24 prevent the formation of a cabinet, or break it up
25 when formed, by the exercise of their power of nom-
inating, or refusing to nominate, or forcing the

1 resignation of an officer in the service to those
2 cabinet posts. Further the evidence shows that this
3 power was actually used to more effect by the Army
4 than by the Navy, coupled with the occasional out-
5 break and constant threat of insurrection in the
6 Army to a greater extent than in the Navy. The
7 Navy Chiefs, therefore, if they had wished to stop
8 a particular policy on conscientious or prudential
9 grounds, could at any time have done so by using the
10 same methods which the Army found so effective.
11 Among the civilian ministers there was no outside
12 organization which could interfere in the way the
13 services could, but each individual minister had his
14 own power of action.

15 Nor is it of any use for any individual to
16 show that his opinion was opposed to a particular
17 aggression, whatever the grounds of that opposi-
18 tion, if he acquiesced in it and retained his posi-
19 tion.

20 Coming now to the Privy Council, that body
21 had a right to examine treaties and other matters
22 of importance. Their meetings were attended by
23 members and officials of the government to explain
24 their views and the reasons for them. The respon-
25 sibility for their decisions, which invariably

1 supported the government, rests, in our submission,
2 both upon the members and the explainers.

3 The ex-premiers had the responsibility from
4 July 1940 onwards, of consulting with Kido, as Lord
5 Keeper of the Privy Seal, on the advice he should
6 give to the Emperor as to the choice of a succes-
7 sor to an outgoing premier. It was his duty to
8 report their views individually to the Emperor. On
9 each of these occasions, therefore, they had the
10 opportunity of testing the policy of each suggested
11 candidate and influencing it by their choice. This
12 was particularly important in the choice of TOJO
13 in October 1941, and only less so in the war-time
14 changes in July 1944 resulting in the appointment of
15 KOISO, and April 1945 resulting in the appointment
16 of SUZUKI, Kantaro. On each of these occasions
17 HIROTA and on the last two also HIRANUMA as ex-prem-
18 iers had opportunities of making a firm stand for
19 peace. They did not. On the first occasion HIROTA,
20 according to KIDO (Ex. 1154), definitely supported
21 KIDO's recommendation of TOJO against WAKATSUKI's
22 proposal of UGAKI, who might really have stopped
23 it. On the last two both of them supported fighting
24 the war to a finish and concurred in the choices
25 made.

1 Even more vital were the Liaison and Imper-
2 ial Conferences in 1941 and the ex-premiers meeting
3 on November 29th of that year (Ex. 1196 which gives
4 the views expressed by HIROTA and HIRANUMA). Every
5 one who attended those shares with the cabinet
6 and with KIDO the responsibility for what happened.
7 If any one who was opposed to war, especially any
8 one who was opposed to it on moral grounds, had
9 spoken out boldly against it, regardless of internal
10 repercussions, it is more than possible that the
11 Emperor would have refused to sanction war. No one
12 did, if indeed there was anyone who held such views
13 in his heart.

14 I notice a suggestion that three of the ac-
15 cused, HOSHINO, MUTO, and OKA, merely attended the
16 conferences in a secretarial capacity. If that were
17 true, in our submission it does not absolve them.
18 But actually, the evidence, in our submission, shows
19 that, even if that is technically true, they were
20 all persons of much greater position and influence
21 than the word would imply.

22 The decorations received by the various
23 accused during the period, some of which are noted
24 in Appendix B to the Summary, are, in our submission,
25

1 of particular significance. They vary, of course,
2 in importance with the rank and position of each
3 accused at the time they were awarded. Particulars
4 will be found in the personnel records. We suggest
5 that it is difficult for an accused to deny respon-
6 sibility for a particular matter, when he has accep-
7 ted a decoration for his services in respect of it,
8 especially a high decoration. Particularly im-
9 portant are the decorations of certain of the ac-
10 cused by Germany, the detailed reasons for which are
11 given in Exhibit 1272, and the actual award of some
12 of which is recorded in Exhibit 2247.

13 I now come to take the cases of the accused
14 one by one.

15 THE PRESIDENT: We will recess for fif-
16 teen minutes.

17 (Whereupon, at 1045 hours a recess
18 was taken until 1100 hours, after which the
19 proceedings were resumed as follows:)
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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now resumed.

3 THE PRESIDENT: Mr. Comyns Carr.

4 MR. COMYNS CARR: Your Honor, I am afraid
5 it won't be possible for me to take these individual
6 cases in strict alphabetical order owing to the dif-
7 ficulties of time, and to avoid repetition I have had
8 to alter the order somewhat.

9 THE PRESIDENT: We leave it to you entirely,
10 Mr. Comyns Carr.

11 MR. COMYNS CARR: First of all ARAKI. The
12 particulars with regard to him are to be found on
13 page 319 of the Summary. To paragraph 3, further
14 extracts -- all in the small volume, your Honor; the
15 thin volume. I shall only be referring to the thin
16 volume.

17 The particulars with regard to him are to be
18 found on page 319 of the Summary. To paragraph 3
19 further extracts from his interrogations have to be
20 added. They are exhibits 2216, 2217, 2218, 2219, 2220,
21 2221, 2222. To paragraph 4 is to be added exhibits
22 671 and 2223A.

23 This account of the part played by ARAKI in
24 the conspiracy is necessarily an account as given in
25 evidence before this Tribunal. With so vast a story

1 to tell any account must be incomplete but, though
2 nothing is here stated which has not been proved, this
3 statement does not purport to be a complete account,
4 for all purposes, of the part he played.

5 It is impossible to say exactly when ARAKI
6 became a party to this conspiracy but, if he was not
7 one already he entered the conspiracy at least in
8 December 1931 when he became Minister of War. For the
9 five months before this appointment he had been Chief
10 of the General Affairs Department of the Inspectorate
11 General of Military Training and President of the
12 Permanent Examination Committee for Army Officer
13 Students so that he held both these senior positions
14 at the beginning of the invasion of Manchuria. He
15 must, therefore, have clearly understood what the
16 Japanese forces were doing in Manchuria and, by
17 accepting the Post of Minister of War whilst the
18 invasion was in progress, accepted at the same time
19 responsibility for the invasion. Moreover not merely
20 did he, by accepting this position, accept responsi-
21 bility for the military policy which was already being
22 pursued but by ordering further acts of aggression
23 showed how fully he participated in the whole con-
24 spiracy.

25 He stated, during interrogation, that he

1 himself decided on the occupation of General Chang's
2 four provinces shortly after becoming War Minister and
3 obtained the agreement thereto both of the cabinet and
4 of the Privy Council (exhibit 187A). He further stated,
5 during interrogation, that he received a request from
6 the Kwantung Army to set up Manchuria as an independent
7 state, that he could have refused to forward this re-
8 quest to the Prime Minister, but that he forwarded it
9 (exhibit 187). ITAGAKI told TANAKA, according to the
10 latter's testimony (record page 15854) that the Cabinet
11 was opposed to Manchuria being proclaimed an independent
12 state but that ARAKI was in favor of it and told him
13 (ITAGAKI) so.

14 During interrogation ARAKI stated, in rela-
15 tion to the Shanghai Incident on January 28th, 1932,
16 that: he first heard at a Cabinet meeting that the
17 Japanese Navy had landed there; that, as the Navy
18 Minister, who made the announcement, "said it (the
19 incident) could be settled quickly no one was worried;"
20 that the Navy Minister later told him that the naval
21 forces might be destroyed, he (ARAKI) thereupon agreed,
22 as did the Cabinet, that more than a division (about
23 ten thousand troops) should be sent in support and
24 that when the first division sent suffered difficulties
25 he sent another division in support (exhibit 2221).

1 An affidavit by Mr. Stimson, the then United
2 States Secretary of State, stated that on June 23rd,
3 1932, he heard from Mr. Grew, the then United States
4 Ambassador to Japan, that ARAKI had stated that the
5 League of Nations resolutions about Manchuria and the
6 Japanese Government's statements about Manchuria made
7 before Manchukuo was proclaimed independent were not
8 binding on Japan (exhibit 1104).

9 ARAKI's responsibility for the acts of
10 aggression during the period he was Minister of War
11 is also shown by his statements during interrogation
12 that (1) forces cannot be sent overseas without the
13 consent of the War, Navy, and Foreign Ministers and
14 the Premier (exhibit 2216) and (2) if war had ensued
15 as the result of Japan rejecting another government's
16 protest the whole Cabinet would have been held respon-
17 sible (exhibit 2219).

18 If the government and ARAKI, the War Minister,
19 had desired only peace with Russia is it conceivable
20 that the Japanese Military Attache in Moscow should
21 have spoken, in a report of July 14th, 1932, of being
22 "ready to appeal to arms against Russia, China, and
23 under certain circumstances against America"?
24 (Exhibit 701).

25 Perhaps even more significant, in this

1 connection, is the despatch of July 16th, 1932, by the
2 Chief of the Russian Section of the 2nd Department
3 of the Japanese General Staff to the Japanese Military
4 Attache in Moscow of a statement that "it was decided
5 that. . .preparations for waging war against Russia
6 should be completed before the middle of 1934"

7 (exhibit 702).

8 Moreover exhibit No. 670, an affidavit of
9 TAKEBE, Rozuko, stated that, as a Governor, he heard
10 ARAKI's speech to the Prefectural Governors in 1933
11 and that ARAKI, on a map of the U.S.S.R. and Manchuria,
12 explained Japan's need for the maritime provinces of
13 Siberia and Zabaikalyo.

14 Significant for more than one reason is ARAKI's
15 speech in the film "Critical Period for Japan." (Exhibit
16 No. 148A) It is significant both because of the
17 aggressive sentiments it contains and perhaps even
18 more so, because ARAKI should have been the govern-
19 ment's spokesman to the public in this connection. It
20 is evidence of the leading position he held as an
21 exponent of aggressive nationalism.

22 ARAKI was a member of the Cabinet Advisory
23 Council, which, on his own admission during interro-
24 gation, was set up to advise on the China Incident,
25 from "almost immediately after its formation" in

1 October 1937 till he became Minister of Education and
2 again from September 1939 (a month after he ceased to
3 be Education Minister) till August 1940. On his own
4 admission the Council sat once a week and it was
5 compulsory to attend (exhibit 2217). One incident
6 which occurred during his membership of this Council
7 was the Rape of Nanking.

8 As Minister of Education, a position he held
9 from May 1939 to August 1939 ARAKI is clearly respon-
10 sible for the actions of the Japanese Government
11 during that period. Not merely is his statement,
12 already quoted, about the responsibility of the whole
13 Cabinet for a policy resulting in war, relevant in
14 this connection, but, on his admission, during the
15 time he was Minister of Education foreign affairs
16 were usually discussed at the usual Cabinet meetings
17 held once a week, where the Prime Minister, Foreign
18 Minister and Army and Navy Ministers would also bring
19 up matters of importance (exhibit 2218). During this
20 period the following incidents occurred:

21 ARAKI, as Minister of Education, made a
22 speech on Japan's determination to fight to a finish
23 with China and U.S.S.R. (Exhibit 671).

24 Successive attacks on Soviet territory took
25 place (exhibits 753, 757)..

1 The Japanese Government issued an official
2 declaration about China (exhibit 1291) stating that
3 Japan had practically achieved her end in China, with
4 the national government reduced to a local regime and
5 the main territory conquered but would fight on until
6 it was completely destroyed.

7 A cultural agreement was made with Germany
8 (exhibit 589).

9 Military training in boys' schools was
10 increased by an ordinance issued on November 30th,
11 1938 (exhibit 135).

12 The Premier KONOYE on 22 December 1938 stated
13 Japan's determination to exterminate the Kuomintang
14 Government (exhibit 972).

15 The Anti-Comintern Pact was strengthened by
16 first Hungary and Manchuria and then Spain being
17 admitted.

18 Hainan Island was seized by the "forcible
19 landing of Japanese forces."
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1 It was whilst such a policy was being pur-
2 sued that ARAKI was appointed President of the General
3 National Mobilization Committee on 28 March 1939.

4 It is clearly inconceivable that such a post should
5 have been confided at such a time to anyone who
6 was not heart and soul in sympathy with, and an ac-
7 tive supporter of the criminal conspiracy for world
8 conquest on which the Japanese Government was en-
9 gaged.

10 It is submitted that the confidence thus
11 shows in ARAKI by his fellow conspirators after all
12 these years of aggression is very significant of their
13 confidence in him. It is further submitted that his
14 whole record shows that this confidence was fully de-
15 served.

16 Although he protests that he was friendly to
17 Britain and America, this is not in accord with his
18 speeches or the teaching of the film in which he ap-
19 peared, and we submit that the war against them was
20 the logical result of the policy he all along advo-
21 cated.

22 I am told that I gave a wrong date with re-
23 gard to his position as Minister of Education, I
24 should have said from May 1938, I believe I said 1939 --
25 May 1938 to August 1939.

1 DOHIHARA. The particulars with regard to
2 him are on page 319 of Appendix B. In addition he
3 is mentioned in the following pages of the record:
4 2024, 2028-9, 2034, 2036-8, 2041, 2104-5, 2113, 2120,
5 2124-6, 2130-3, 2139, 2284 (Exhibit 197), 2312-6,
6 2334-7, 2336-7, 2362-3, 2367-70, 2374, 2381, 2436-40,
7 2442-3, 2448, 2794, 2815-6, 3018, 3102-3, 3211-12,
8 3231-33, 3237, 3729, 3730, 3756-9, 3816, 3962, 4124,
9 5491, 14273-8, 15713-30 (Exhibit 2190-A), 15857,
10 15921-15937 and 16258 (Exhibit 2282).

11 Prior to 1931 DOHIHARA had spent almost 18
12 years in China. In July 1931 he left Tokyo to take
13 charge of the Special Service Organization at Mukden
14 and to investigate the death of Captain NAKANUKA. He
15 arrived in Mukden on 18 August but was again back in
16 Tokyo early in September (Exhibit 2190-A). There he
17 was quoted by the press as "the advocate of a solution
18 of all pending issues if necessary by force and as
19 soon as possible "(Exhibit 57, Lytton Report, at page
20 66). DOHIHARA was then a Colonel.

21 He arrived back in Mukden a few days after the
22 Incident had broken out and was made Mayor of Mukden,
23 a position which he held until 26 November 1931.

24 At the end of October we find him at Tientsin
25 with instructions from the Kwantung Army to interview

1 Pu-Yi and to tell him that the Kwantung Army would wel-
2 come his return to Manchuria (Exhibit 2190-A). If
3 these were his only instructions he greatly exceeded
4 them. A series of consular telegrams to Foreign Min-
5 ister SHIDEHARA (Exhibits 181, 288-294, 300 and 303)
6 show him as actively engineering the return of Pu Yi
7 and family to Manchuria against the wishes of his gov-
8 ernment and its national policy; they show him as ad-
9 mitting that the state of affairs in Manchuria had been
10 brought about by the Japanese military authorities in
11 Manchuria; they show him hinting that, if the govern-
12 ment intervened in Manchuria, the Kwantung Army would
13 separate from the government and assassinations would
14 break out in Tokyo, and they show him as engineering
15 an outbreak at Tientsin to prevent evacuation of Japane-
16 se forces therefrom. Exhibit 57, Lytton Report, at
17 pages 75 to 6 shows that trouble did break out in
18 Tientsin on 8 and 26 November 1931.

19 At the end of November he took charge of the
20 Special Service Organization at Harbin (Exhibit 2190-A).
21 Shortly after this he is endeavoring to arrange for
22 Chinese General Ma Chan-Shan to accept the post of
23 Minister for War in the Changchun puppet government
24 (Witness Powell 3231 and following). In April 1932,
25 his work in Manchuria completed for the time being, he

1 returned to Japan where he remained until July 1934.

2 Ching Teh Chin at page 2334 characterizes
3 him as the instigator of the Mukden Incident, and on
4 page 2438 tells the Tribunal that a week before the
5 Incident mutual friends of DOHIHARA and himself had
6 told him that DOHIHARA was going to Manchuria to em-
7 bark on some big project. Pu Yi, who would be in a
8 position to know, states that at the time of the
9 Incident he was reliably informed that for whatever
10 accident or incidents that then happened DOHIHARA was
11 the man who was pulling the strings behind (page 4124).
12 His own government in 1934 was happy to give him the
13 credit of playing an important role as, on the 29th
14 of April, he was "decorated with the Order of Double
15 Rays for Meritorious Service in the Incident between
16 1931 and 1934" (Exhibit 104). But from April 1932 to
17 July 1934 he was a Major-General commanding a brigade
18 at Hiroshima, Japan, so obviously the services that
19 were being requited were those rendered before May 1932.

20 From the foregoing it appears that DOHIHARA
21 was an instructor and very active participant in the
22 Manchurian Incident. So far is he from a soldier car-
23 rying out his duties that many of his actions were in
24 defiance of and against the wishes of the government
25 by whom he was employed.

1 In July 1934 he is back at Mukden with the
2 Special Service Organization and again attached to the
3 Kwantung Army. Throughout the period from 1931 to
4 1935 the control of opium was vested in the Special
5 Service Organization of the Army. Large revenues were
6 delivered from it, and these presumably remained with
7 the Army until 1935 when the Opium Control Board was
8 set up and revenue went to the Manchukuo Government
9 (Record pages 15855-8). After the Chahar Incident of
10 June 1935 he goes to Peiping and represents the Japan-
11 ese in negotiations to settle the Incident. The final
12 terms were such as to greatly weaken the Chinese
13 National Government in Chahar (page 2313). On orders
14 of the Commander-in-Chief of the Kwantung Army he
15 endeavored to set up an autonomous regime in North
16 China. To do this he attempted to estrange the local
17 government from the National Government. He succeeded
18 in setting up the Hopei-Chahar Regime and the East
19 Hopei Regime in November 1935, but failed to establish
20 the North China autonomous government (2028-2034).
21 He exerted pressure on General Sung to proclaim a
22 North China autonomous government and made political
23 and economic demands the rejection of which, according
24 to the evidence of General Ching Teh Chun (2323-2334),
25 led up to the Marco Polo Bridge Incident. Confirmation

1 of the attempt to form autonomous government in North
2 China is contained in consular telegram to Foreign
3 Minister HIROTA on 2 October 1935 (Exhibit 197).

4 In February or March 1936 he returned to
5 Japan where he remained as Lieutenant General command-
6 ing a division until 25 August 1937. He then went to
7 North China as Commander of the 14th Division and took
8 part in the drive from Peiping towards Hankow. He
9 went to Japan on 1 June 1938, but was sent back to
10 China by his government from August 1938 to June 1939
11 to see what he could do about settling the war. As
12 Chief of the Mission he conducted some negotiations
13 with Chiang Kai-Shek, through intermediaries, but
14 nothing came of them. From that time onwards he com-
15 manded the 5th Army in Taonan, Manchuria until June
16 1940 (Exhibit 2190-A).

17 On 29 April 1940 he was decorated with the
18 2d Class of the Golden Kite for meritorious service
19 in the Chinese Incident.

20 He became Supreme War Councillor on 28 Septem-
21 ber 1940, a post which he seems to have held sometimes
22 concurrently with other appointments, until March 1944.
23 He was promoted to General on 28 April 1941, appointed
24 Chief of the Air Inspectorate General on 9 June 1941.
25 On 17 May 1942 (Exhibit 1272) he was recommended for

1 the German Grand Cross, and I quote from the citation:
2 "By constant, close and friendly cooperation with the
3 Air Attache he has in a leading position contributed,
4 in the true sense of the Tri-Partite Pact, to the ex-
5 tension and deepening of the military alliance." He
6 became Commander of the Eastern District Army on 1
7 May 1943 (Exhibit 104). This army command embraced an
8 area around Tokyo (Exhibit 2282) in which prisoners
9 of war camps were situated. There is evidence of his
10 having visited the Naoetsu Prisoner of War Camp in
11 Nigata Prefecture in September or October 1943. At
12 this camp 60 prisoners died from starvation and ill-
13 treatment. Conditions did not improve after his visit
14 (page 14270-14280). Article 3 of the Prisoner of War
15 Internment Camp Ordinance (Exhibit 92) places respon-
16 sibility for administration of the camp on the Army
17 Commander, and, therefore, LOHIHARA has a direct
18 responsibility for conditions at this camp and others in
19 his area of command and the deaths that resulted
20 therefrom.
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1 In March 1944 he became commander of 7th
2 Area Army at Singapore and retained that appointment
3 until early April 1945 (Exhibit 104). This command
4 embraced Malaya, Sumatra, Java and Borneo (Exhibit
5 2282). It is sufficient to direct attention generally
6 to evidence given as to treatment of prisoners of
7 war in those areas and the thousands of murders and
8 unnecessary deaths that took place there. For the
9 reasons above stated DOHIHARA must take direct re-
10 sponsibility for treatment of prisoners of war in
11 those areas between March 1944 and early April 1945.
12 Examples are exhibits 1513A - 1516A, 1518A, 1528A,
13 and Colonel Wild's evidence, page 5491.

14 It is submitted that DOHIHARA was an active
15 participator in the conspiracies alleged at least
16 from some time prior to the Manchurian Incident,
17 that he continued to participate in them until the
18 end, and that he was one of the instigators of the
19 Manchurian and Marco Polo Bridge Incidents, that as
20 a professional soldier he furthered the conspiracies
21 and committed the crimes alleged against him sometimes
22 by exceeding his instructions and duties and at others,
23 notably in connection with treatment of prisoners of
24 war, by failing to carry out the obligations imposed
25 on him by virtue of his military command.

HASHIMOTO

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2 His particulars are in Appendix B, page 320.
3 The additional documents particularly relating to him
4 are exhibits 2185 to 2188.

5 His main function in this conspiracy was as
6 a propagandist -- his proved activities in this
7 direction extending from 1931 (See e.g. Exhibits 1290A
8 and 2185) to January 1942 (Exhibit 675A). If OKAWA
9 was rather the man who provided the ideas behind the
10 conspiracy, HASHIMOTO was a principal among those who
11 popularized them.

12 Exhibit 734A shows that as early as 1929 he
13 was advocating sabotage in the USSR and possible
14 military occupation of the Caucasus.

15 The evidence of TANAKA, together with that
16 given at OKAWA's trial (Exhibits 2177-2178A and 2231),
17 and exhibit 179F from KIDO's diary, establish the
18 leading part he played, while a lieutenant colonel
19 in the Army General Staff, in the plotting of the
20 Mukden Incident and in all the associated plots of
21 that period for the overthrow of the comparatively
22 peaceful cabinets in office then in Japan. He
23 organized in 1931 the Sakura-Kai and later the
24 Dai-Nippon Senen-to, both extremist societies.

25 He was serving as an artillery commander in

1 Forces (Exhibit 115).

2 MATSUI was released from service on 5 March
3 1938 and on 20 July 1938 was appointed a Cabinet
4 Councillor, which appointment he held until 23 Jan-
5 uary 1940 (Exhibit 115).

6 On 5 July 1939 he was appointed to the
7 Committee of the East Asia Commission.

8 Exhibit 168, page 1674, dated 8 July 1942,
9 discloses that he was vice-president of the Greater
10 Japan East Asia Prosperity Alliance and advisor to
11 the Japan Imperial Rule Assistance Headquarters Adult
12 Corps. The same exhibit discloses that he was advisor
13 to the Central Headquarters of the Greater Japan
14 Imperial Rule Assistance Association.

15 On 29 April 1934 he was decorated with the
16 Grand Cordon of the Rising Sun for meritorious service
17 during the war 1931-1934; and 29 April 1940 he was
18 decorated with the First Class Order of the Golden Kite
19 for meritorious war service during the China Incident
20 (Exhibit 115).

21 At the time of the Ladybird and Panay
22 Incidents, MATSUI was commander of the Central China
23 Expeditionary Forces, which consisted of two armies,
24 one commanded by Prince ASAKA and the other by Lieuten-
25 ant General YANAGAWA. While it is clear from the

1 interrogation of the accused HASHIMOTO that the order
2 to sink all vessels proceeding towards Nanking,
3 without regard to their nationality (Exhibit 2188,
4 page 15,678), was issued by Lieutenant General YANAGAWA,
5 it is submitted with or without that evidence that as
6 commander of the entire forces responsibility for the
7 order falls upon the accused MATSUI.

8 Prior to the attack upon Nanking, MATSUI
9 issued a proclamation which was widely distributed by
10 airplane, declaring that the Japanese Army had only
11 good will for the peaceful citizens of China and would
12 do no harm to those who did not resist the Imperial
13 Army (page 2632, Dr. M. S. Bates).

14 The troops that entered Nanking from the
15 13th to 16th of December 1937 were experienced troops
16 officered by experienced men (Exhibit 257, page 3460,
17 interrogation of MATSUI).

18 The evidence discloses that there was no
19 resistance in the city on the part of the Chinese
20 (page 2628, Dr. M. S. Bates).

21 Page 3894, John G. Magee, there is also
22 evidence that on the 13th of December all Chinese
23 soldiers had left the city (page 2558, witness Hsu-Chuan-
24 Ying).

25 On the 17 December 1937 MATSUI entered the

1 city and a military review was held which was followed
2 on the 18th of December by a memorial service and a
3 press release by General MATSUI dated the 18th December
4 1937 (Exhibit 262, page 3510) states that the army
5 having become considerably exhausted it is necessary
6 for troops in general to take a little rest because
7 the army has been engaged in unremitting landing oper-
8 ations for four months.

9 The accused MATSUI left Nanking one week
10 after his entry on 17 December when he returned to
11 Shanghai. (Exhibit 257, page 3459, interrogation of
12 MATSUI).

13 Evidence of Dr. H. O. Wilson (page 2536),
14 G. A. Fitch (page 4460), Dr. M. S. Bates (pages 2629,
15 2630) and John G. Magee (page 3894) makes it clear
16 that thousands of civilians, including women and
17 children, were killed by Japanese soldiers inside the
18 walls of the city and thousands more were marched to
19 the bank of the Yangtze River and mowed down by machine
20 gun fire.

21 The witness, Dr. M. S. Bates, further states
22 that more than 30,000 soldiers who had surrendered and
23 laid down their arms were cut down by machine gun fire
24 within the first seventy-two hours immediately outside
25 the walls of the city. (Page 2630).

1 .Exhibit 324, page 4537, being a chart showing
2 victims buried, shows a total of 155,337, while exhibit
3 327, page 4547, being a report on war crimes at Nanking
4 prepared by the procurator of the district court, states
5 that the number of victims killed totalled 278,586.

6 There were thousands of cases of rape (page
7 2634, Dr. M. S. Bates) and looting was carried on on
8 a vast scale. In some cases it was well organized
9 and fleets of armed trucks under the direction of
10 officers were used to remove the stolen property
11 (page 2635). Approximately one-third of the city was
12 destroyed by fire (page 4592, Exhibit 329).

13 A German Foreign Office in China report
14 (page 4604, Exhibit 329) states that the fall of Nanking
15 clearly shows a lack of discipline, atrocities and
16 criminal acts not of an individual but of an entire
17 army. In our submission much of it must have been
18 deliberately ordered.

19 Both Dr. Bates (page 2644) and John G. Magee
20 (page 3928) state that there were an inadequate number
21 of military police available in Nanking and that the
22 gendarmes began to do the same things the soldiers
23 were doing.

24 The evidence shows that complaints were made
25 almost daily to the Japanese Embassy at Nanking (page

1 3922) and reports from members of the diplomatic corps
2 and their press men that the Japanese Army at Nanking
3 had committed atrocities were reported to the Foreign
4 Office (ITO, page 3506).

5 The atrocities continued for weeks after the
6 fall of the city and Dr. Bates states (page 2644) that
7 after February 6 and 7 there was a notable improvement
8 in the situation and although many serious cases occurred
9 between then and the summer they were no longer of a
10 mass or wholesale character.

11 Mr. Magee (page 3922) states that after about
12 six weeks it began to taper off, although many individ-
13 ual things happened after that.

14 The witness, Hsu-Chuan-Ying at page 2954
15 says that the Japanese authorities did not try to
16 stop the atrocities and not a single proclamation or
17 notice was put up on the street to stop them. Both
18 John G. Magee (page 3941) and Dr. Bates (page 2642)
19 say that there was no serious effort made to stop the
20 atrocities.

21 It is interesting to note that so far as
22 punishments were concerned, MATSUI's recollection is
23 that the only entries in his diary concerned the
24 court martial of an officer, and perhaps three soldiers,
25 in connection with rape of Chinese women in Nanking.

1 MATSUI returned to Japan in February of
2 1938 and was succeeded by General HATA on the 17
3 February 1938 (Exhibit 256, page 3445). Upon his
4 return, according to his interrogation (page 3464)
5 MATSUI was not asked to make a report but states that
6 while he does not know for certain there must have
7 been investigations and reports. That his recall
8 was merely window-dressing is shown by his appoint-
9 ment within a few months as Cabinet Councillor and
10 his subsequent high decoration for his services.

11 With regard to his political activities, in
12 1929 MATSUI, in his capacity as director of the
13 Second Section of the General Staff, called a meeting
14 in Berlin of all the military attaches in European
15 countries (interrogation of MATSUI, Exhibit 733A,
16 page 7644) at which meeting there was discussed
17 sabotage measures to be taken in case of war with
18 the USSR and a survey of the future activities of
19 White Russians in foreign countries and the intelligence
20 work against the USSR by Japanese military attaches
21 stationed outside of that country.

22 Exhibit 732A, page 7658, the witness, General
23 Ching Teh-chun, states that in the autumn of 1935
24 MATSUI was in Peiping hoping to establish a branch of
25 the Greater East Asia Association and advocated in his

1 conversation with General Ching that Asia should
2 be the Asia of the Asiatics and that European and
3 American influences should be expelled (page 2317).

4 On the 14 July 1937, according to KIDO's
5 diary, MATSUI called and he talked on matters such as
6 discontinuing the dispatch of troops to North China
7 and became indignant (Exhibit 2254, page 16217) and
8 the affidavit of YAMAGITA, commander of the Kwantung
9 Province Defense Army, describes MATSUI as one of the
10 military authorities in Tokyo active in the occupation
11 of Manchuria (Exhibit 723, page 7580).

12 At the time of his arrest MATSUI was president
13 of the League for the Revival of Greater East Asia
14 and belonged to a number of Pan-Asiatic organizations
15 (interrogation of MATSUI, Exhibit 733A, page 7644).

16 It is submitted that MATSUI was a member of
17 the conspiracy throughout the entire period charged
18 and the motion made on his behalf should be dismissed.
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1 HATA

2 The particulars with regard to HATA, Shunroku
3 are to be found in Appendix B, page 321 of the Summary.
4 No additional documents were presented at the conclusion
5 with regard to this accused.

6 It appears from his interrogation (Exhibit
7 256) that the date given in these particulars for the
8 termination of his first period in China, taken from
9 his personnel record, is inaccurate and that he was
10 in fact there until November 1938, being a Military
11 Councillor concurrently. On the other hand his command
12 was during that period confined to Central China.

13 This accused participated in Japan's overall
14 aggression in at least three different ways: (1) He
15 carried on aggressive warfare in China at two different
16 periods of time as commander of various armies in China.
17 (2) As Minister of War from August 30, 1939 to July
18 22, 1940, he helped determine the national policy and
19 worked on the plans and preparations for aggressive
20 war during that period; and (3) He was one of the
21 prime movers in the overthrow of the YONAI Cabinet
22 thus giving new direction and expansion to the entire
23 conspiracy.
24

25 After serving for many years in the Army, the
accused at the time of the outbreak of the Marco Polo

1 Bridge Incident was commander of the Formosan Army.
2 In August 1937, shortly after the outbreak, he was
3 recalled to Tokyo to become Inspector General of
4 Military Education, one of the three highest offices
5 in Japan which controlled army policy and, through
6 its control of the War Minister, could effectively
7 control cabinet and other governmental policy and
8 decision. (Exhibit 102). At the very outset of the
9 China Incident, the accused was in a strong strategic
10 position to affect policy. On February 14, 1938, the
11 accused was appointed to succeed the accused MATSUI
12 as Chief of the Expeditionary Forces to Central China
13 (Exhibit 102) and admittedly assumed command on
14 February 17th. (Record 3445). He remained there until
15 November and while there he directed the seizure and
16 capture of the city of Hangkow (Record 3447-3451; Exhibit
17 256).

18 After his return from China he occupied the
19 position of military counsellor and from May 25, 1939
20 to August 30, 1940, he was chief aide de camp to the
21 Emperor. On August 30, 1939 he became Minister of War
22 in the ABE Cabinet and remained as such throughout
23 the ABE and YONAI Cabinets until July 22, 1940. During
24 his administration several of the important acts involving
25 furtherance of the conspiracy were carried out. Certain

1 industries such as the Cast Iron Manufacturing Facilities
2 industry were brought under control. (Record, page
3 8327, 8403, 8299). On October 12, 1939, the accused
4 appointed the accused MUTO as Chief of the highly
5 important Military Affairs Bureau in the War Ministry
6 and as a member of several government bodies such as
7 the Planning Board, Manchurian Affairs Board and the
8 Cabinet Information Board (Exhibits 102 and 118).

9 In November, Imperial General Headquarters, which had
10 never been established heretofore except in case of
11 war, was set up (Exhibit 80). During the ABE Cabinet
12 in November 1939, pressure was put on France to give
13 Japan special rights in French Indo-China (Exhibits
14 616-A, 618-A). Shortly after the YONAI Cabinet was
15 formed on January 16, 1940, pressure was put on the
16 Netherlands for special rights in the Dutch East
17 Indies (Exhibit 1309-A). On February 16th, the Military
18 Mission at Harbin drew up a plan for establishing a
19 Far Eastern Anti-Comintern to unite sabotage activities
20 against the Soviet Union (Exhibit 736). During this
21 administration the economic policy for relieving Japan
22 of its dependency on the United States for military
23 goods necessary to carry out the divine war was
24 adopted (Exhibit 1007). During the same month of March
25 the program of the Kwantung Army for Aggression against

1 the Soviet was sanctioned (Exhibit 705). On March 30th
2 the puppet Central Government of Wang Ching Wei at
3 Nanking was established (Exhibit 276-A). Severer
4 regulations were put into effect by the War Ministry
5 with respect to military training in schools (Exhibit
6 137). The accused attended the four ministers conference
7 of June 18, 1940, which decided to make certain requests
8 upon France, and in the event of refusal to use force
9 (Exhibit 619). Following this a further program
10 of pressure was put into effect against France (Exhibits
11 615-A, 618-A).

12 In the meantime the aggressive war was being
13 pushed ahead in China. In March 1940, the accused as
14 War Minister made it clear that Japan's progress would
15 not be stopped by the Nine Power Treaty (Exhibit 514).

16 Throughout his administration, efforts at
17 reviving the proposed pact with Germany were constantly
18 being made. On July 12th and 16th, 1940, there were
19 joint conferences between the War, Navy and Foreign
20 Offices, in which it was decided that there was a
21 strong demand for the conclusion of a military alliance
22 with Germany and Italy to realize Japan's plan for
23 expansion in East Asia and the South Seas, whereby
24 Japan and Germany would respectively support each
25 other's policies (Exhibits 527, 528).

1 To bring about an agreement with Germany
2 and Italy the military had decided that the YONAI
3 Cabinet was unfitted for the task. On July 8th this
4 accused had let it be known that the YONAI Cabinet was
5 not suitable to negotiate with Germany and Italy
6 (Exhibit 532) in view of the then world situation.
7 On July 16th HATA submitted his resignation and at the
8 Three Officers Meeting of which the accused was a
9 member, it was found impossible to name a successor and
10 the Cabinet was compelled to resign en masse (Exhibit
11 532). As War Minister the accused was one of the three
12 men who determined whether or not the War Minister
13 would resign and who, if anyone, would be allowed to
14 become his successor. While it is true that control
15 of the army was divided between matters of administration,
16 being handled through the Cabinet and matters of high
17 command, it should not be overlooked as learned counsel
18 for the defense has overlooked that the War Minister
19 himself had a dual role. The evidence is clear that
20 on the one hand he was in charge of administration for
21 the cabinet, while on the other hand he was a member
22 of the high command. So far as policy is distinguished
23 from operations is concerned, in the carrying out of
24 which function he was not subject to cabinet control.
25 HATA, as a member of the group of Three Officers Meeting

1 had to concur in all three actions taken: (1) the
2 determination of his own resignation; (2) the refusal
3 to appoint a successor, and (3) the designation of a
4 successor in the new cabinet. In all three decisions
5 the accused HATA played an active role. As his last
6 official act as War Minister he put into office as
7 War Minister the accused TOJO, having designated him
8 to the Emperor before KONOYE had made known his new
9 cabinet. (Exhibit 532).

10 From March 1, 1941 to November 22, 1944, the
11 accused was commander in chief of the Expeditionary
12 Forces to China (Exhibits 102, 106). Exhibits 1887
13 to 1915, describe the conditions and treatment of
14 prisoners of war and civilian internees during his
15 administration and while he was commander in the area
16 with basic responsibility for the handling of prisoners
17 of war there. (Exhibit 1991) HATA on 13 August 1942
18 issued regulations for punishment of enemy air crews
19 providing for death penalty.

20 He is charged in Count 45 with responsibility
21 for the attack upon and rape of Nanking, when he held
22 his important post at the War Ministry, and in Counts
23 47-50 with similar attacks upon and outrages in other
24 cities in China which have been proved to have taken
25 place at dates when by his own account he was commander

1 in chief of the Expeditionary Forces in the parts
2 of China concerned. See record, page 3392-9 and
3 4609 as to Hankow, Count 47; page 4612-3 as to Changsha,
4 Count 48; page 4611-2 as to Hangyang, Count 49; page
5 4653-4 as to Kweilin and Liuchow, Count 50; see also
6 Exhibits 331-42, 344, 350, 351, 360. The attack on
7 Canton, Count 46 was made by the South China force and
8 he can only be held responsible for that on the basis
9 that it was an act of the conspiracy of which we contend
10 he was a member. Evidence is page 4648-50. In our
11 submission these charges, which are based both upon
12 the unlawful character of the war and the barbarous
13 manner of conducting it, are adequately established,
14 as well as the charges under Counts 44 and 53-55.

16 THE PRESIDENT: Would you suggest this is
17 a convenient break, Mr. Carr? This might be a con-
18 venient break.

19 MR. COMYN^S CARR: If your Honor please.

20 THE PRESIDENT: We adjourn until half-past one.

21 (Whereupon, at 1200, a recess was taken.)
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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now resumed.

3 THE PRESIDENT: Mr. SHIMANOUCI.

4 MR. SHIMANOUCI: Mr. President, on
5 Thursday last I made a statement to the Tribunal
6 which is an error. In tendering exhibit 2230,
7 Associate Prosecutor, Mr. Tavenner stated that
8 in May 1939 OSHIMA refused to carry out certain
9 instructions from his government. To this I
10 replied that OSHIMA shortly afterwards communi-
11 cated the instructions from the Japanese Govern-
12 ment to the German Government, and that this was
13 clear from the document introduced by the prosecu-
14 tion last year. However, after examining the
15 record, it was found that the document introduced
16 by the prosecution last year and the document
17 referred to by me was exhibit 506. It states:
18 "It had not been possible for OSHIMA to act
19 directly contrary to his Government..... OSHIMA
20 had postponed the fulfillment of the demarche until
21 now." Moreover, this relates to other matters in
22 September 1939, and does not concern matters in
23 May 1939, as referred to by Mr. Tavenner.

24 I respectfully request, therefore, that
25 my statement found on page 15,992 of the record,

1 lines 20 to 25, be stricken, and I hereby tender
2 my humble apology. I spoke of this matter to
3 Mr. Tavenner two or three days ago when I met him,
4 and I had intended to make this correction yester-
5 day morning and had handed the draft of my state-
6 ment to the interpreters, but I was unable to find
7 the occasion until now.

8 Thank you.

9 THE PRESIDENT: The correction is noted.
10 There is no need for your apology, as you spoke
11 in all good faith.

12 Mr. Comyns Carr.

13 MR. COMYNS CARR: Your Honor, before I
14 proceed with the next case, I would like to men-
15 tion a matter with respect to MATSUI. I under-
16 stand that the defense challenged the statement
17 that the accused MATSUI is the person referred to
18 in exhibit 2254, a KIDO Dairy entry of July 14,
19 1937. The diary entry only gives the surname,
20 but as the only other MATSUI who has so far been
21 mentioned in this case was in China on that date
22 there is some material for saying that this
23 entry must be this MATSUI. But I am content that
24 you should disregard the matter until it is
25 cleared up.

KAYA

1 The particulars in his case are on page
2 326 of the summary. There are no additional
3 documents.

4 He was a finance official throughout,
5 one of those who passed to and fro between what
6 we should call Parliamentary and Civil Service
7 positions. We submit that this was part of the
8 pernicious system by which the government of
9 Japan was taken in 1937 out of the hands of those
10 who had some kind of responsibility to the people
11 of Japan, and handed over to bureaucrats such
12 as KAYA. But we also submit that those bureau-
13 crats had just as much responsibility for their
14 acts as any other holder of Parliamentary office.
15 The extracts given do not indicate more than a
16 few of the numerous offices he held, which may
17 be seen in exhibit 11, and show that from time
18 to time he had a finger in a great many pies.

19 He was Vice-Finance Minister 2 February -
20 4 June 1937 in the HAYASHI Cabinet, and Minister
21 from then until 26 May 1938 in the 1st KONOYE
22 Cabinet. The first period saw adoption of the
23 5-year plan for steel, of the 3rd Administration
24 policy towards China (exhibit 218) the idea being
25

1 to obtain material for munition industries. Many
2 measures relating to the control of Japanese in-
3 dustry and development for war purposes were
4 started. No sooner had he become Finance Minis-
5 ter than the main 5-year plan was adopted and
6 vigorously put into execution throughout his
7 period. When the new "China Incident" broke out
8 he was a party to the Cabinet decision of July
9 11th to extend it. From then on he shares the
10 responsibility which I have already described in
11 other cases for the whole course of the Chinese
12 aggression and the rape of Nanking. I do not
13 propose to repeat even the very brief account of
14 this period which I have already given. It can
15 be more fully studied in the summary, pages 45-71,
16 and by reference to the evidence there quoted.
17 We submit that it was one of the worst periods
18 of Japan's career of aggression. Soon after he
19 left the post of Finance Minister he became an
20 adviser to his successor, and on 14 August 1939
21 he became president of the North China Develop-
22 ment Company. This was an official organization
23 formed to promote the Japanese policy of control-
24 ling and developing the economics of North China
25 in the interest of the Japanese forces and for

1 building up munitions supply. See the testimony
2 of Liebert, page 8474, and exhibit 459A. We sub-
3 mit that in this office he was promoting the
4 conspiracy just as much as if he had continued to
5 hold Cabinet rank.

6 On October 18, 1941 he again became
7 Finance Minister in the TOJO Cabinet, and so con-
8 tinued until February 19, 1944. He was thus a
9 member of the Cabinet responsible for starting
10 and continuing the Pacific War. He was responsible
11 for the decision on 31 October to issue the
12 military currency for the areas proposed to be
13 occupied (exhibit 852). He was one of the four
14 Ministers who answered at the same time the question
15 propounded by the Liaison Conference (exhibits
16 1328, 1329) as to the probable effects of war.
17 The Cabinets of which he was a member decided on
18 4 November (exhibit 1167) to conceal from the
19 Japanese public all information as to war prepa-
20 rations and give them hope for the future, and
21 on 28 November to put the press on a war-time
22 basis. He attended the Imperial Conference of
23 5 November which in effect decided on war. He
24 was present at the fatal Imperial Conference of
25 December 1st, and assented to the final decision

1 to make war (exhibits 588, 1107); and shares the
2 responsibility with other members of the Cabinet
3 for all that was done in that connection.

4 He attended the Privy Council meeting
5 on December 8th (exhibit 1241) which approved the
6 issue of the declaration of war when they knew
7 very well the war had started some hours earlier,
8 and heard TOJO say that the negotiations had only
9 been continued since December 1st for the sake
10 of strategy, and that the avoidance of a decla-
11 ration against the Netherlands was for strategic
12 convenience. He took part in this discussion.
13 He heard the secretaries report that they had been
14 informed by TOJO at 8:00 p. m. on December 7th
15 that the declaration would come during the day.
16 He made no protest, expressed no surprise, and
17 retained office. We submit the irresistible
18 inference is that none of it was news to him.
19 He attended the Privy Council meeting on 10
20 December on the agreement with Germany and Italy
21 for joint waging of war against United States
22 and Britain, no separate peace, and collaboration
23 for a new order (exhibit 1267).

24 Both these meetings he attended, not
25 as a member of the Privy Council, to receive

1 information and pass upon it, a responsibility
2 serious enough, but as a member of the govern-
3 ment, to explain and defend their action.

4 When he finally left office on 19
5 February 1944 he again promptly became an ad-
6 viser to the Finance Ministry until the surrender.

7 With regard to B and C offenses he not
8 only had the responsibility of every member of
9 the Cabinet during his two main periods of of-
10 fice, which I have described above, but it is
11 impossible to conceive that such a large opera-
12 tion as the construction of the Burma-Siam
13 railway could have been carried out without
14 consultation with and consent of the Minister
15 of Finance. If he was ignorant of the outrages
16 in China, and throughout the theatres of the
17 Pacific War, which is incredible, it could only
18 have been by deliberate abstention from using
19 the obvious sources of knowledge, which it was
20 his duty to invoke.
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HIKANUUA

1 The particulars with regard to him are on
2 page 322 of the Summary. Additional document spe-
3 cially relative to him is exhibit 229, speech as
4 Premier in March 1939.

5 He was the founder and president of the
6 Kokuhonsha, a rightist society (Ex. 164), and at the
7 same time vice-president of the Privy Council from
8 1926 until he became president on March 13, 1936.
9 For that purpose he was compelled to resign from the
10 Kokuhonsha which was dissolved. He remained presi-
11 dent of the Privy Council and also a cabinet
12 councillor -- pausing there, there seems to be some
13 doubt as to whether the entry in the personnel re-
14 cord concerned cabinet councillor or some other kind
15 of councillor -- until he became Premier on 5 January
16 1939. During all his service in the former capacities
17 we submit that the positions he held not only gave
18 him the opportunity of passing judgment upon all the
19 principal decisions taken, especially with regard to
20 international agreements, but gave him the power to
21 register his objections, if any, to the general
22 policies pursued. As he continued to hold his
23 offices he must be taken to have accepted them.
24 In particular on 13 September 1932 (Ex. 241) he
25

1 approved the proposed agreement between Japan and
2 Manchukuo, based on recognition of the latter's so-
3 called independence. On 3 July 1935 he approved a
4 similar agreement for a joint economic committee
5 (Ex. 850). On 25 November 1936 he approved the
6 Anti-Comintern Pact (Ex. 485). On 20 January 1937
7 he approved the bill relative to the formation of
8 a South Seas government department (Ex. 909-A). On
9 6 November 1937 he approved the admission of Italy
10 into the Pact (Ex. 492). On 2 November 1938 he
11 agreed to the final withdrawal of Japan from the
12 League of Nations because of the attitude of the
13 League to the "China affair." On 22 November 1938
14 he approved the cultural agreement with Germany,
15 the political influence of which was mentioned at
16 the meeting. As a councillor he was there to advise
17 on the whole of the early stages of the China affair,
18 and could have made his protest, but he retained
19 his offices. In exhibit 2265 KIDO records a talk
20 with him on 26 December 1938 about a plot to establish
21 the puppet government of China, and he insisted that
22 KONOYE should remain Premier to see it through.

23 His Premiership from 5 January to 30 August
24 1939 was chiefly remarkable for the negotiations for
25 a military alliance with Germany and Italy, which only

1 fell through because of the German-Russian Non-
2 Aggression Pact, which caused his resignation.

3 At the outset SHIRATORI reports him to
4 Ciano as openly in favor of it (Ex. 499-A). On 22
5 February he attended as Premier a Privy Council
6 meeting which approved the admission of Hungary and
7 Manchukuo to the existing pact. On May 6th Ott
8 reports that he has reconciled the conflicting views
9 of ITAGAKI and others in his cabinet and that the
10 treaty may therefore go through. He seems to have
11 wanted the alliance to be directed mainly against
12 Russia (Ex. 501).

13 In the speech to the Diet above mentioned
14 (Ex. 2229-A) he said that those who resisted Japan
15 in China must be exterminated.

16 During this period the 5-year plans, the
17 narcotization of China, the consolidation of pro-
18 Japanese regimes there, the interference with the
19 trade of other countries, and the Chinese aggression
20 generally (see for example Ex. 998 and 272) made
21 steady progress. The hold of the government over
22 means of propaganda was strengthened by the Motion
23 Picture Law (Ex. 155).

24 Other major events of this period were (1)
25 the forcible occupation of Hainan Island in February

1 in spite of protests from the United States, Britain
2 and France (Ex. 613-A). (2) The aggression against
3 the U.S.S.R. and Mongolian Republic in May (Ex.766).

4 In June occurred the mistreatment of British
5 subjects in Tientsin (Ex. 1003). In fact, the
6 HIRANUMA Cabinet was no less aggressive in every
7 direction than its predecessor.

8 HIRANUMA returned to office as Minister of
9 State in the second KONOYE Cabinet, on 6 December
10 1940, becoming Home Minister on 21 December until the
11 formation of the third KONOYE Cabinet on 17 July
12 1941, when he again became Minister of State until
13 its fall on 17 October. He was not included in the
14 TOJO Cabinet. By joining KONOYE (Whose appointment
15 he had supported, Ex. 532) he adopted the Tri-Partite
16 Pact which he had tried to negotiate himself, and while
17 he held office he was responsible for the whole of the
18 aggressive preparations, acts, and resolutions of
19 that long period. In particular he attended almost
20 all of the many Liaison Conferences in the first
21 six months of 1941 (Ex. 1103), and the Imperial Con-
22 ference of July 2 (Ex. 588, 779 and 1107). Whether
23 he continued to attend Liaison Conferences after
24 July we do not know, because publication was stopped.
25 He did not attend the Imperial Conference of September

1 6th, but as a member of the cabinet was responsible
2 for its momentous decision. We would again point
3 out that the subsequent attempt of some members of
4 the KONOYE Cabinet to recede from this was not a
5 matter of principle but purely of expediency, owing
6 to the doubts of OIKAWA, the then Navy Minister as
7 to the success of war. We do not know HIRANUMA's
8 part, if any, in this discussion. He attended the
9 fateful ex-premiers' meeting of November 29th
10 (Ex. 1196). He made no protest against war. On the
11 contrary he said that public sentiment must be
12 braced up to face it.

13 His next appearance is on 17 July 1944,
14 when a meeting of ex-premiers was held at his house
15 to consider replacing the TOJO Cabinet, not to bring
16 the war to an end, but "to build a powerful national
17 cabinet which will surge forward unswervingly."
18 (Ex. 1277). The next day, TOJO having resigned he
19 attended the official conference to choose his
20 successor (Ex. 1278). He advocated a military man,
21 suggested Admiral SUZUKI, Kantaro, and finally re-
22 commended TERAUCHI, Koiso, HATA, or a naval man.

23 When KOISO resigned he again attended the
24 Conference (Ex. 1282) and said they must fight to
25 the end. He wanted to recommend the principal

1 ministers as well as the Premier. He strongly
2 opposed any advocacy for peace. He again recommended
3 a military or naval man, finally proposing Admiral
4 SUZUKI, Kantaro, who had expressed his readiness
5 to die fighting for the Emperor.

6 In our submission HIRANUMA was a member of
7 this conspiracy and every phase of it, from start to
8 finish.

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KIDO

1 The particulars with regard to him are to
2 be found on page 329 of the summary. To paragraph
3 3, the exhibit numbers of extracts from his diary
4 now have to be added: 1985, 1986, 1987, 2191, 2192
5 and 2251 to 2280. Exhibit 2250 is a writing by
6 him, and exhibits 266, 1189, which is replaced by
7 2249, and 1193 particularly refer to him.
8

9 These documents are the main source of
10 information about him. In our submission when one
11 reads them (as a whole and not by quoting half-
12 sentences, as in the motion) one is driven to the
13 following conclusions:

14 1. He was a strong and influential
15 character. From the beginning, when he held the
16 comparatively minor office of Chief Secretary to
17 the Lord Keeper of the Privy Seal he was frequently
18 consulted by people then more important than him-
19 self, who took his advice. Every office that he
20 held he made more important than it would have
21 been in the hands of most men. In his later offices
22 he was almost always consulted, not only about
23 policy, but frequently about appointments to Cabinet
24 office.
25

 2. He was a cautious man. He was not so

1 much concerned with the right or wrong of any
2 policy as with the risks accompanying it.

3 3. His particular concern was always to
4 avoid internal quarrels in Japan. He did not so
5 much mind what they agreed upon as long as they
6 agreed. He was in the early days against consti-
7 tutional innovations, but changed this attitude
8 later.

9 4. His attitude to the Emperor was to
10 dissuade him from taking a firm line about any-
11 thing for fear it should bring him into controversy.

12 5. He was a whole-hearted adherent of
13 KONOYE until KONOYE fell, when he transferred
14 his allegiance to TOJO.

15 6. He was or became in favor of Japanese
16 aggression, but also of caution and delay in apply-
17 ing it.

18 In the beginning he was anti-militarist
19 and we do not suggest that he was one of the original
20 conspirators. Even then, however, the above-
21 mentioned attitudes are illustrated by exhibits
22 179-E, of September 10, 1931, 179-I, of September
23 22 and 2251 of January 28, 1932, which show that
24 he was not against the Manchurian aggression on
25 principle, but because the army was getting too

1 powerful, and was against the Emperor doing anything
2 to stop it.

3 We submit that he fully joined the con-
4 spiracy in 1937, when he became Education Minister
5 on 22nd October and Welfare Minister on 11th
6 January 1938 (concurrent until 26th May). By the
7 time he joined, the domination of Manchuria was
8 complete, the cabinet was fully committed to the
9 extension of the China aggression, having decided
10 on 11th July to send more troops and push forward
11 although the original incident was being settled
12 locally. The cabinet was also committed to the
13 five-year plan in Japan and Manchuria. The offices
14 held by KIDO had no direct connection with war
15 policy, but exhibits 2255 to 2261 show that he took
16 a prominent part in it and approved of all the fatal
17 decisions taken. Exhibit 2257 in particular shows that
18 he knew this was an offensive operation and that the
19 talk of self defense was all humbug.

20 It is remarkable that he makes no reference
21 to the horrors of Nanking, although they were in
22 full force from 11 December 1937 to 6 February 1938,
23 when the situation began to improve. The indigna-
24 tion of the world cannot have been unknown to him
25 and the cabinet, but nothing was done to stop them

1 until MATSUI was recalled on 5 March and made an
2 adviser to the cabinet of which KIDO was a member
3 on 20 July. KIDO may not have been responsible for
4 the outbreak of this orgy of atrocities, but he was
5 certainly to blame for its continuance.

6 During his time as Minister of Education
7 there was published in the Tokyo Gazette exhibit
8 266, "The Japanese Spirit." We submit that it is
9 inconceivable that this would have appeared without
10 the full knowledge and approval of the Minister,
11 especially a man of KIDO's character as revealed by
12 his diary. The article preached full support of all
13 that had happened in China down to and including the
14 refusal to deal with Chiang Kai-Shek. Also, the ideal
15 of Greater East Asia under Japanese leadership, and
16 the welding of all Japanese into a unified state.

17 That these were his opinions is shown by the diary
18 extracts quoted.

19 He continued in the HIRANUMA cabinet as
20 Home Minister, thus having an unbroken period of
21 cabinet office from 22 October 1937 to 30 August
22 1939. We submit that he has a general responsibility
23 for all the events of this period, shown on pages
24 55 to 100 of the summary. In particular for the two
25 aggressions against the USSR, in the summers of 1938

1 and 1939. During this period the following exhibits
2 show his activities in support of military alliance
3 with Germany and Italy and his knowledge of Germany's
4 aggressive intentions: 2262, 2268 to -71, 775..

5 We submit that if his activities had stopped
6 here there is ample material on which he should be
7 convicted on the conspiracy and the counts relating
8 to China. These are in fact the guide to understand-
9 ing later events.

10 KIDO was one of the protagonists in the
11 formation of the new one-party political system in
12 Japan on the Fascist model. Exhibits 2263, 2274 to
13 2276. He would have been its Vice-President under
14 KONOYE, had he not decided on 1 June 1940 (exhibit
15 2276) to accept the office of Lord Keeper of the
16 Privy Seal instead. His position in this office was
17 largely made by himself. His views as to the duties
18 of his position are to be found in exhibits 2273
19 and 1066; it amounted to this, that the Lord Keeper
20 was the Emperor's principal adviser, especially on
21 foreign affairs. He developed a new function, that
22 of advising the Emperor on the choice of every new
23 premier, with the assistance of the ex-premiers and
24 the president of the Privy Council. When he was out
25 of office (exhibit 2273) he thought the Lord Keeper

1 should not interfere in this, but when he became
2 Lord Keeper he dropped this idea and took upon
3 himself the duty of advising the Emperor on this
4 question, attaching such weight as he thought fit to
5 the views of the ex-premiers and managing to bring
6 at least a majority of them to the view he had usually
7 formed in advance. By these means he was responsible
8 for the choice of KONOYE on 17 July 1940 (exhibit 532)
9 and again on 17 July 1941 (exhibit 1117); of TOJO on
10 17 October 1941 (exhibit 2250); of KOISO on 18
11 July 1944 (exhibit 1278); and of Admiral SUZUKI,
12 Kantaro, on 5 April 1945 (exhibit 1282).

13 His attitude towards the United States,
14 Great Britain and the Netherlands appears from ex-
15 hibits 2272, 2277, 619, 1294, 627, 1065, 1095, 1125,
16 1129, 1130, 1146, 1239, 1276. It may be summarized by
17 saying that it was at least from 1940 on, hostile
18 though cautious. It is quite clear that he supported
19 the expansionist policy at the expense of these
20 countries but considered that Japan needed a longer
21 period of preparation before putting it into effect.
22 But when those favouring immediate action prevailed,
23 he fell in with their view.

24 Perhaps the most important of these is
25 exhibit 1130, where he advocates a ten-year post-

1 ponement of the advance to the southern regions,
2 and meanwhile friendly relations with the United
3 States while intensive preparations are pushed on.
4 No doubt if his advice had been taken we should not
5 be holding this trial today; and if he had resigned
6 when it was rejected we might not have included him
7 except with regard to China. He did not, and this
8 document proves him an aggressor at heart. Even in
9 exhibit 1270 of January 1944, when he was consider-
10 ing the possibility and necessity of a compromise
11 peace, though he did nothing about it, he suggested
12 that after peace Japan should build up cooperation
13 with the USSR and China against Britain and America.

14 An important aspect of his case centers
15 round the appointment of TOJO as premier on October
16 17, 1941. It is quite clear from exhibit 2250
17 that he had determined on this before the ex-premiers
18 met to consider it. He knew very well that TOJO
19 had been pressing for immediate war, and was only
20 restrained by the cautious attitude of the navy. It
21 is true that he succeeded in inducing TOJO to abandon
22 the resolution of the Imperial Conference of
23 September 6 for war in mid-October, and to prolong
24 the negotiations, but he made no attempt to induce
25 him to adopt an attitude towards them which would

offer the slightest hope of their success. The

1 crucial point is that in this dispute between the
2 army and the navy, which was not concerned with the
3 merits of war, but only with its prospects of
4 success, he not only procured TOJO's appointment as
5 premier, but induced the Emperor to give, or gave in
6 the Emperor's name, an instruction to the navy which
7 could only mean that they should appoint a Navy
8 Minister who would do whatever TOJO told them. They
9 appointed SHIMADA--and he did. KIDO was intelligent
10 enough to know that there was not the slightest
11 hope of or justification for the United States adopt-
12 ing any terms to which TOJO would agree, and that the
13 arrangements which he made could not postpone war for
14 more than a few weeks. It is significant that he
15 makes it clear in exhibits 1196 and 2250 that he
16 rejected the appointment suggested by WAKATSUKI and
17 others, of General UGAKI, the only man who might
18 perhaps have averted war altogether. It is also
19 significant that in exhibit 2250, written in November,
20 he abandoned altogether the excuse for appointing
21 TOJO which he had given the Emperor on 2 October
22 (exhibit 1155).

23 On 26 November NOMURA and KURUSU suggested
24 to TOGO (exhibit 2249, replacing exhibit 1189) that
25

1 they should induce President Roosevelt to send a
2 peace telegram to the Emperor, which he later did,
3 and asked him to consult KIDO. On 28 November TOGO
4 rejects the suggestion, saying that he had consulted
5 him.

6 The entry which convicts KIDO of entire
7 complicity in the plot for the surprise attacks of
8 December 8 is exhibit 1239, which shows that at the
9 very time when he was taking part in the farce of
10 delivering the President's long delayed telegram to
11 the Emperor, if it was delivered even then, he knew
12 very well of the plans for the surprise attack.

13 With regard to the B and C offences we
14 submit that the guilt of KIDO is shown not only by
15 his position of adviser to the Emperor on foreign
16 affairs, and by his knowledge of the way in which
17 Japanese forces carried on warfare as shown at
18 Nanking while he was in the cabinet, but by exhibits
19 1185 to -7, which show that he was well aware of
20 what was happening. It is hardly conceivable that
21 TOGO and SHIGEMITSU should not have told him of the
22 complaints coming in through the Swiss Legation, or
23 that he should not have known of Eden's broadcast in
24 January 1944, which was heard by Colonel Wild in the
25 prison camp at Singapore (especially as he admits

1 knowing of Eden's broadcast about the Hong Kong
2 atrocities in 1942). We submit it was his duty to
3 advise the Emperor to insist on having these outrages
4 investigated and put right, and in any case to insist
5 on adequate steps being taken to prevent a recurrence
6 of what had happened earlier in China.

7 From start to finish it does not appear
8 that he ever drew the attention of the Emperor,
9 whose adviser he was, to the moral aspect either of
10 the initiation of the Pacific War or of the manner
11 in which it was conducted. His whole mind was on
12 expediency.

13 We submit that from at least October 1937 he
14 was a member of this conspiracy and responsible for
15 all that was done in pursuance of it.

16 I am told that in quoting the exhibit which
17 shows KIDO's knowledge of the atrocities I read 1185
18 to -7. Should be 1985 to -7.
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HIROTA

1 The particulars with regard to him are to be
2 found on page 323 of the summary and the additional
3 exhibits which directly affect him are 2208-A, B, C,
4 2226-8, 2260.

5 While ambassador to the U.S.S.R. in 1931, he
6 advocated a firm policy towards the Soviet Union and
7 readiness for immediate war, not to preserve Japan
8 from communism but to get possession of Eastern Siberia
9 (exhibits 692-3). On 31 December 1931 Litvinov
10 offered Japan a non-aggression pact (through HIROTA
11 and YOSHIZAWA) but it was not accepted (exhibit 744).

12 He was continually in office, first as Foreign
13 Minister in the SAITO and OKADA cabinets, and then as
14 Premier, from 14 September 1933 to 2 February 1937, from
15 9 March 1936 as Premier.

16 During that period and especially during his
17 premiership, although his utterances to other powers
18 were often conciliatory enough, his actual policy and
19 the events for which we submit he is responsible were
20 of a different character.

21 Pu-Yi was appointed Emperor of Manchukuo
22 (exhibits 234, 437-A), and the control of Japan over
23 that territory consolidated, especially in the direction
24 of economic monopoly. (For Example, see exhibits 965,
25

1 939, 941, 850, 445, 948.) The Manchurian Affairs
2 Board was established (exhibit 451).

3 The policy of controlling and developing
4 Japanese and Manchurian industry for war was initiated
5 and carried on.

6 The so-called "independence movements" in
7 various parts of North China and Mongolia were insti-
8 gated and encouraged by Japan. HIROTA actively
9 supported this (exhibit 215). The object was both
10 anti-Chinese and anti-Soviet. The stimulation of the
11 sale of narcotics in China proceeded rapidly.

12 Japan denounced the Washington Naval Treaty,
13 and put forward at the London Naval Conference the
14 proposal for a common upper limit in place of the
15 5-5-3 ratio, which of course meant that unless Britain
16 and America neglected their responsibilities in other
17 parts of the world, Japan would dominate the Pacific.
18 When this was rejected, Japan withdrew from the con-
19 ference and HIROTA assumed responsibility in
20 exhibit 2226, in which he attempted to cover up the
21 position with fair words, in spite of which Japan
22 steadily and secretly increased her naval armaments.

23 After HIROTA succeeded OKADA as Premier,
24 following the 26 February rebellion, the power of the
25 military was increased, especially by restoring the

1 rule that War and Navy Ministers must be on active
2 service (exhibit 93).

3 In the summer of 1936 a most important
4 series of ministerial conferences were held (exhibits
5 978, 977, 216, 704, 217, 979), at which national
6 policies were laid down covering the whole gist of the
7 conspiracy we allege. HIROTA was personally present
8 at three of them, and, of course, responsible for all.
9 They envisaged an aggressive policy in China, East
10 Asia, and the South Seas, and steps to be taken
11 against U.S.S.R., Britain and U.S.A. This was to be
12 achieved by joint efforts of diplomatic skill and
13 "national defense" -- thus showing plainly that in
14 HIROTA's mind "national defense" did not stop at
15 defending Japan or resisting attack, but meant
16 aggression. This was the first time that these policies
17 were formally adopted by a government, and show
18 HIROTA as their official godfather, if not their ori-
19 ginator. Some of them were secret. In the autumn
20 the Anti-Comintern Pact was negotiated and signed on
21 25 November with secret protocol (exhibit 36). Its
22 real objects may be better gathered from exhibits 482,
23 479, 484, and 485, Privy Council Meeting attended by
24 HIROTA, than from its text. It was accompanied by
25 border raids on Soviet territory (exhibits 753, 751).

1 The cabinet fell on 2 February 1937 as the
2 result of simultaneous attacks from the Seiyukai
3 Party for being too militaristic and bureaucratic
4 (exhibit 2208-A) and from the army (exhibits 2208-B
5 and C), because of those attacks and because it still
6 contained some representatives of political parties.
7 The army made prompt use of the new powers HIROTA had
8 given them to prevent the formation of a UGAKI cabinet.

9 On 4 June 1937 HIROTA was back as Foreign
10 Minister in first KONOYE cabinet and President of the
11 first Planning Board, and on 11 July was responsible
12 for the decision to take advantage of the Marco Polo
13 Bridge Incident by launching an invasion of China.
14 He was also responsible for the "Five-Year Plan"
15 (exhibits 841, 842 and especially 2227 and 239), which
16 elaborated the industrial measures begun in his former
17 period of office.

18 The whole course of the Chinese aggression of
19 1937-8 I have already dealt with in the case of KIDO
20 and will not refer to here. HIROTA was directly
21 responsible from the beginning until he left office
22 on 29 May 1938. As Foreign Minister he was parti-
23 cularly to blame for the rejection of all outside
24 efforts to mediate the conflict (e.g., exhibits 949,
25 950), and protests (e.g., exhibits 988, 955, 957 and

1 innumerable others from then on), and of the interven-
2 tions of the League (exhibits 958, 962, etc.) and of
3 the Brussels Conference (exhibits 954-A to B). The
4 only attempt at mediation which he tolerated was
5 German and that was killed by the intransigent
6 attitude of the cabinet on 16 January 1938 (exhibits
7 486-C, 978-A, 266, 268, 2260). The German Foreign
8 Office had no doubt that the oft-repeated experience
9 of HIROTA, or other Japanese Foreign Ministers, saying
10 one thing and the army doing another was a trick
11 (exhibit 486-E). They should know.

12 After this Japan proceeded to set up a
13 series of puppet regimes in the parts of China
14 progressively occupied, and to establish a commercial
15 system by which in China, Japan came first, Germany
16 second, and the rest might have the leftovers, if any.
17 (Exhibit 2268 shows HIROTA's personal responsibility
18 for this.)

19 We have a speech by him about China in the
20 Diet on 22 January 1938 (exhibit 972-G).

21 On 18 June 1937 (exhibit 946), and again on
22 12 February 1938 (exhibit 58, record pages 9230 and 9236)
23 he was taking a hand in Japanese naval plans. On the
24 latter occasion he refused a request by the United
25 States, Britain and France to disclose or give an

undertaking about her building program.

1 HIROTA tried to dispel American apprehensions
2 about Japanese intentions in the South Seas after the
3 occupation of Hainan and Spratley Islands, although
4 this was really the policy he had himself laid down
5 as Premier in August 1936.
6

7 From 13 March to 3 August 1940 HIROTA was
8 a cabinet councillor: at this time Japanese moves
9 with regard to French Indo-China and the Netherlands
10 East Indies were initiated.

11 After August 1940, HIROTA's only activities
12 at present known to us are his appearances at the
13 vital ex-premiers' conferences. On 22 July 1940
14 (exhibit 532) and 17 July 1941 (exhibit 1117), he
15 advocated a military premier and cabinet, though KONOYE
16 was, in fact, appointed with army support. On
17 17 October 1941 (exhibit 2250) he gave firm support
18 to TOJO. On 29 November 1941, when called upon to
19 advise the Emperor as to the Pacific War, he agreed
20 that war was inevitable, but suggested a postponement
21 and possible diplomatic solution after its outbreak.
22 On 17 and 18 July 1944 (exhibit 1278) he said the
23 prosecution of the war was first and foremost and
24 suggested a member of the Imperial family as Premier
25 but agreed to TERAUCHI, KOISO or HATA. On 5 April 1945

1 (exhibit 1282) he was still emphatically in favor of
2 fighting through to win the war, and thought it could
3 be done. He advocated the War or Navy Minister as
4 Premier.

5 In our submission he was an aggressor from
6 start to finish, and the contrast between his public
7 and private words and acts shows that he was a par-
8 ticularly clever one.

9 ITAGAKI

10 The particulars with regard to him are on
11 page 325 of the summary. Additional documents having
12 special reference to him are exhibits 1973-6, 1998,
13 2177-A, 2178-A and B, 2231, 2191 to 2201, 2214, 2262,
14 2263, 2266 and 2271. He is shown to have been one of
15 the original planners of the Mukden Incident (evidence
16 of TANAKA, record pages 1960 and 15,853; exhibits
17 2191, 2193-6) and related plots (exhibit 2177-A,
18 page 22 of that exhibit), as a member of the Kwantung
19 Army Staff, on which he remained until 1 March 1937,
20 rising from colonel to major general and chief of
21 staff on 23 March 1936.

22 He took part in the appointment of DOHIHARA
23 as major of Mukden (exhibit 2194), and in the detachment
24 of Manchukuo from China (exhibits 303, 2191, 2195,
25 2196).

1 He was a founder of Kye-wa-Kai, a society
2 to create the Manchukuo state to help Japan in her
3 fight against Anglo-Saxon and Comintern aggression
4 (exhibit 731-A).

5 At the time of the Marco Polo Incident he was
6 a lieutenant general on the General Staff, and became
7 War Minister under KONOYE on 3 June 1938, remaining
8 in that office until the fall of the HIRANUMA cabinet
9 on 30 August 1939. I have dealt several times with
10 the events of these periods, for which we submit he
11 was responsible, and will not repeat.

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1 Personal activities of his at the time are
2 shown in exhibits 856, 857, 271, 589, 612, 491, 504,
3 and 761, all of which are included in the Summary,
4 and 2197, 2198, 2199, 2201 and 2214, which are not.
5 They prove what could properly be assumed without
6 them, his active participation in the aggressive
7 moves and preparations of his period of office.

8 From 7 July 1941 to 7 April 1945 he was
9 commander of the Korean Army, and as such responsible
10 for the illegal sending of prisoners of war to Korea
11 for exhibition purposes (exhibits 1173-5), for
12 enforcement of illegal regulations with regard to
13 them in that area (exhibit 1976), and for illegal
14 sentences upon them (exhibit 1998).

15 From 7 April 1945 until the surrender he
16 was in command of the 7th Army in Malaya. While he
17 held this command at the end of the war serious
18 outrages against prisoners of war occurred. It
19 covered Malaya, Java, Sumatra and Borneo (exhibit
20 2282). As an example, out of 827 prisoners of war
21 at Sandaken camp, Borneo, on 29 May 1945 only five
22 survived, the rest having been murdered or died of
23 ill treatment or starvation.

24 Some other exhibits covering prisoners of
25 war offences in the area at this time are: 1513 A

1 (Record page 12,914), 1514 A, 1516 A, 1517 A (ITAGAKI's
2 visit to camp), 1518 A, and Colonel Wild's evidence
3 (Record page 5491).

4 We submit that there is ample evidence
5 against him at all periods.

6 KOISO

7 The particulars with regard to him are on
8 page 329 of the Summary and the additional documents
9 directly referring to him are exhibits 2202A, 2210-14.

10 KOISO was one of the original leaders of
11 the Manchurian plot and the related internal plots
12 (exhibits 179F, pages 18 and 20 of exhibit 2177A,
13 2178A).

14 May I interpose there that I should also
15 have adverted to those exhibits in the case of
16 DOHIHARA since they implicate him equally in those
17 plots.

18 He was a major-general, director of the
19 important Military Affairs Bureau (exhibit 2177A,
20 not "war service bureau" as stated in the particulars)
21 from 21 August 1930 to 29 February 1932, and as
22 such responsible for the Military budget, without
23 which no reinforcement could have been sent to
24 Manchuria (TANAKA, Record page 15, 859). He then
25 became Vice War Minister until 8 August, then Chief

1 of Staff, Kwantung Army until 5 March 1934. He was
2 decorated in connection with the Manchurian affair.

3 Before the incident occurred he attended
4 with MINAMI a meeting with the directors of the
5 South Manchuria railway to discuss problems in
6 Manchuria and Mongolia (exhibit 2202A). He handled
7 very substantial sums from Manchurian incident
8 Secret Service Funds from time to time (exhibits
9 2210-3).

10 On 4 June 1932 he received a secret cable
11 from the Chief of Staff, Kwantung Army about the
12 taking over of customs in Manchuria to acquire
13 revenue (exhibit 227).

14 On 3 November 1932 he was corresponding with
15 his successor as Vice War Minister about an outline
16 for guiding Manchukuo (exhibit 230).

17 On 5 December 1935 to 15 July 1938 he
18 commanded the Korean Army.

19 From 7 April - 30 August 1939 he was Overseas
20 Minister in the HIRANUMA Cabinet, and again from
21 16 January to 22 July 1940 in the YONAI Cabinet.

22 On 8 May 1939 he was discussing with ITAGAKI
23 the Military Alliance with Germany and Italy (exhibit
24 2214).
25

1 The particulars with regard to General
2 MINAMI are to be found on page 331 of the Summary,
3 and the additional exhibits which directly affect
4 him are: Exhibits No. 186, 3202-A, 2203-A, 2204-A,
5 2205-A, 2206-A, 2207, 1973, 1974, 1975 and 2251.

6 While General MINAMI was Minister of War
7 (14 April 1931 to 13 December 1931) there are several
8 occasions which indicate his participation in the
9 aggression against China, not only in the "Incident"
10 of 18 September 1931, but in the further aggression
11 in taking over North China in 1935-1936. Previous
12 to the Manchurian Incident of 18 September 1931
13 is noted the conference of 30 June 1931 for the dis-
14 cussions of the Manchurian-Mongolian problems (Ex-
15 hibit 2202-A). Shortly following this, on the 4th
16 of August 1931, occurred his speech to the Army
17 Commanders and the Commanding Generals of Divisions,
18 which indicated his attitude toward Manchuria
19 (Exhibit 186) (Page 1, Exhibit 2207).

20 Then followed the Manchurian Incident of
21 18 September 1931. His attitude concerning that
22 Incident is shown by Exhibit 2204-A.

23 He approved General HONJO's aggressive
24 action in Manchuria (Exhibit 2207, page 2).

25 His attitude toward the extension of the

1 Incident into occupation of all Manchuria is shown
2 by the Privy Council meeting of 9 December 1931
3 (Exhibit 2205-A). Marquis KIDO's Diary shows that on
4 28 January 1932 General MINAMI delivered a lecture
5 before the Emperor on the situation in Manchuria,
6 which shows his aggressive plans toward Manchuria
7 (Exhibit 2251, Record pages 16213 - 16214).

8 While Commander in Chief of the Kwantung
9 Army and concurrently Ambassador to Manchukuo - 10
10 December 1934 to 6 March 1936 - he conspired to
11 further aggression against China, which resulted in
12 the acquiring of the four provinces of North China.
13 This is indicated by the excerpts from the records
14 of the Japanese Foreign Ministry (Exhibit 2206-A),
15 and he admitted that his troops went beyond the
16 "Great Wall" (Page 3 of Exhibit 2207). He further
17 admitted that "his advice" to the Government of
18 Manchukuo was, in substance, "a direction" (same
19 reference).

20 He was a member and President of the
21 Greater Japan Political Association, one of the
22 principal aims of which was the extension of the
23 Greater East Asia Co-Prosperity Sphere, which
24 included India, Burma, the Dutch East Indies and
25 the Philippines, and he believed in Asia for the

1 Asiatics (page 2 of Exhibit 2207).

2 While Governor-General of Korea he
3 approved the sending of Prisoners of War to Korea for
4 illegal purposes, as is shown by the correspondence
5 between General ITAGAKI and the War Ministry (Ex-
6 hibits 1973, 1974 and 1975).

7 It is believed that General MINAMI was one
8 of those at the bottom of the conspiracy for ag-
9 gression against China, and that he was an impor-
10 tant figure in future plans for aggression.

11 On 24 June 1940 he and MUTO were discussing
12 with the German Ambassador such matters as military
13 aggression in Indo-China, mutual support of Germany
14 and Japan against America, and a Japan-Russia non-
15 aggression pact to free Japan economically from
16 America (Exhibit 523), and advocating these courses.

17 From 29 May 1942 to 22 July 1944 he was
18 governor-general of Korea, and from then to 7 April
19 1945 he was Premier.

20 During the latter period he made a speech
21 which is Exhibit 277.

22 As Premier he bears a very heavy respon-
23 sibility with regard to outrages against prisoners
24 of war and others.
25

1 By the time he took office the whole matter
2 had become notorious. Eden's first broadcast had
3 taken place two years before and his second six months
4 before.

5 As Premier he obtained the right to attend
6 Imperial General Headquarters (Exhibit 1282).

7 The following are a few of the Exhibits
8 having particular reference to offences against
9 prisoners of war during his term of office: 2012-4,
10 2016A, 2022, 2025A, 2110-2, record page 15, 221,
11 2092, record page 15, 154, 15148-50.

12 If he didn't know of all these things, we
13 say it was his duty to enquire into them and prevent
14 them.

15 We submit that we have made out an ample
16 case against him on all Counts.

17 THE PRESIDENT: I think we might recess
18 now. We will recess for fifteen minutes.

19 (Whereupon, at 1445 hours a recess
20 was taken until 1500 hours, after which the
21 proceedings were resumed as follows:)
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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now resumed.

3 THE PRESIDENT: Mr. Comyns Carr.

4 MR. COMYNS CARR: Your Honor, in regard to
5 MINAMI, the last one I dealt with, I am told there is
6 some doubt as to whether the statement on page 331 of
7 the summary that he was a Cabinet Councillor is
8 correct. He was appointed by the Cabinet to be a
9 councillor but it may be it was some other council than
10 the Cabinet.

11 MUTO. The particular with respect to MUTO,
12 Akira, are to be found in the Summary, Appendix B,
13 page 332. Additional documents in relation to him are
14 exhibits 2239 to 2247.

15 It is readily apparent that the answers of
16 MUTO in his interrogation (exhibit 2239) and other
17 documentary and oral evidence support each count of
18 the Indictment in its allegations against MUTO. The
19 evidence, likewise, substantiates the accuracy of the
20 statement of MUTO's individual responsibility as set
21 out in the Indictment, Appendix E, page iv.

22 The accused MUTO is shown by the evidence to
23 have participated in Japan's over-all aggression in at
24 least two capacities or lines of activity: (1) As
25 an Army officer in the field. (2) As an Army officer

1 in the War Ministry at Tokyo.

2 The evidence is sufficient to show that the
3 accused has a responsibility for the Manchuria, and
4 still more the China Affairs. He is shown to have
5 been one of the so-called younger Army officers, a
6 Major on the Army General Staff (record 2006) at the
7 time of the incident of 18 September 1931. He was a
8 Colonel and Staff Officer of the Kwantung Army in
9 1936 to 1937 (record 16,118). He was Adjutant of the
10 General Staff, NorthChina Army, in 1938 to '39 (record
11 16,118). His services against China are indicated by
12 the evidence (exhibit No. 1272) that he was decorated
13 in 1934 for his services in the 1931 to 1934 "war" and
14 in 1940 for his services in the China "Affair."

15 The Military Affairs Bureau is shown to have
16 been headed by the accused as Director or Chief from
17 October 1939 to April 1942 (record 16,118) throughout
18 the period of preparation and initiation of the
19 aggressive attacks by Japanese armed forces against
20 the United States, Great Britain, Netherlands East
21 Indies and French Indo-China. The accused first served
22 in this Bureau, as a Section Chief in 1935 to '36
23 (record 16,118). On 12 October 1939 MUTO was appointed
24 (Summary, pages 103-298; exhibits 102 and 118) Chief
25 of the Bureau, Secretary of the National General

1 Mobilization Council and a member of other bodies,
2 including Planning Board, Manchurian Affairs Board
3 and Cabinet Information Board. The accused in these
4 official positions is shown to have exercised directing
5 or possibly controlling influence over domestic and
6 international policies and politics, over propaganda
7 and press control (record 15,870-1), and over military
8 and naval action. For instance, in June 1940 he was
9 with KOISO in a discussion with the German Ambassador
10 of various aggressive schemes (exhibit 523).

11 The accused participated regularly in liaison
12 conferences and conferences before the Throne in 1941.
13 On 13 January 1941 he attended a liaison conference
14 with TOJO and OKA. MUTO attended a liaison conference,
15 with TOJO and others, on 30 January 1941 (record 11,057),
16 on 3, 13 and 20 February (record 11,057), on 2, 6-7
17 and 11 March, on 10 April, on 3, 8, 12, 15, 22 and 29
18 May, and on 6, 16-17, 23, 25, 26, 27 and 28 June (page
19 332, Appendix B of the Summary). At the conference
20 on 25 June it was decided to make aggressive advances
21 to the south, first by diplomacy if possible, then if
22 necessary by arms (record 11,753). MUTO attended the
23 Privy Council Meeting on 28 July 1941 (record 7,069),
24 and Imperial Conferences on 6 September (record 8,814),
25 5 November (record 10,333), and 1 December (record

1 10,519). MUTO attended also the Inquiry Committee
2 meeting of the Privy Council at 7:30 a.m. on 8 December,
3 at which the belated declaration of war against the
4 United States and England was discussed.

5 The last evidence of TANAKA about him is so
6 fresh in the mind of the Tribunal that I will not
7 quote it.

8 MUTO was recommended to Ribbentrop for the
9 decoration of the Great Cross by Germany because of
10 his contribution to German-Japanese cooperation
11 (record 11,352, exhibit 1272).

12 I quote from the Military Attache's words --
13 the German Military Attache's words: "Without regard
14 to the vacillations of Japanese policy, he always
15 advocated the conclusion of a German-Japanese alliance
16 in a most important position," and from the Ambassador's
17 comments: "MUTO, as head of the political section of
18 the War Ministry has often been mentioned in my reports.
19 In view of the political influence wielded by the
20 Japanese army, his attitude was and is of great
21 importance."

22 According to TANAKA's evidence which is
23 corroborated by the witness SUZUKI and the numerous
24 documents passing between the Foreign Ministry and the
25 War Ministry about prisoners of war it is clear that

1 his bureau had a great responsibility with regard to
2 them, although in his case for a rather short time.
3 As one of those entitled to attend Imperial General
4 Headquarters he must, we submit, have been aware of
5 the entries in the War Diary about the outrages at
6 Singapore in February and March 1942 (exhibit 476),
7 before he proceeded on 20 April to command the 2nd
8 Imperial Guards Division in Sumatra which was in the
9 same army area, of which the Commander in Chief was
10 General YAMASHITA. He was there until October 1944
11 during which period there is much evidence of
12 atrocities in the command, and then joined the same
13 General in the Philippines as Chief of Staff until
14 the surrender. It is during this period that some
15 of the worst atrocities were committed there.

16 The evidence now in the record is such that
17 the motion to dismiss the Indictment with respect to
18 the accused MUTO should, it is submitted, be over-
19 ruled.

20 KIMURA. The particulars with regard to him
21 are on page 328 of the Summary.

22 He was decorated for his services in both
23 the Manchuria and China "incidents", but apart from
24 the fact (exhibit 2282) that the 32nd Division which
25 he commanded was serving in China, and that he was

1 Chief of Staff of the Kwantung Army, October 1939 to
2 October 1940, and member of a number of Japanese
3 Manchurian joint committees, we have no knowledge of
4 what he did.

5 On 10 April 1941 he became Vice War Minister.
6 You have heard evidence to the effect that there were
7 limitations upon the importance of this office. Never-
8 theless it placed him in a position not only to know
9 but to take an active part in, and to assume responsi-
10 bility for the events of his period of office. It may
11 be judged best from exhibit 1272, which shows the
12 reasons why he was recommended for the German decoration
13 of the Great Cross in May 1942. The German Military
14 Attache says: "He was in Germany 1922-4. In his
15 position of Chief of Staff of the Kwantung Army October
16 1939 to October 1940 (which is omitted from his
17 personnel record, but is mentioned in exhibit 102
18 though without a date) he has especially worked on
19 behalf of Germany. Vice Minister of War since 10
20 April 1941, he is one of the principal advocates of
21 German-Japanese military cooperation." The Ambassador
22 adds his own comment: "KIMURA has closely cooperated
23 with Minister of War and Prime Minister TOJO already
24 on the Kwantung Army. His personal relationship to
25 TOJO as well as his (i.e. TOJO's), primary

1 preoccupation in his position of Prime Minister have
2 enhanced his (i.e. KIMURA's) influence in the leader-
3 ship of the War Ministry, as well as his position in
4 regard to the other Vice-Ministers to a marked degree."

5 We submit that these remarks are obvious common sense,
6 and that having regard to the predominant position of
7 the army at this period even the Vice-Minister has a
8 greater share of responsibility than the Minister of
9 some other departments. At all events that he has
10 enough. During his period of office he was also a
11 Councillor of numerous other official bodies, includ-
12 ing the Planning Board and the Total War Research
13 Institute. The activities of the latter at this time
14 are shown in exhibits 870A and 871 from August to
15 October 1941, which shows clearly that the lack of
16 clarity in Japan's communications to the United States
17 was intentional, because the object of them was not
18 peace but delay while war preparations were completed.
19 Exhibits 686A, 688A and 1336 also come from this body,
20 and the two latter sketch the "Co-Prosperity Sphere,"
21 and plans to annex the Soviet Maritime Provinces. When
22 we come to the questions of prisoners of war offenses
23 we have much more direct evidence of KIMURA's activities.
24 It was he who communicated to the Foreign Minister of
25 January 23, 1942, the undertaking which was transmitted

1 to the Allied Governments to observe the Geneva
2 Convention mutatis mutandis and to give due consider-
3 ation in regard to food and clothing to the racial
4 habits and customs of interned prisoners (exhibit 1958).
5 Yet he retained his office until March 1943 while this
6 undertaking was daily and flagrantly disregarded. He
7 had access to all the information and attended
8 Imperial General Headquarters and the meetings of
9 bureau chiefs where these matters were discussed and
10 decided. He must share responsibility for the decision
11 of April or May 1942 to make prisoners of war work
12 regardless of rank and to send them for exhibition
13 to places in Japan, Korea (record 14,288), for TOJO's
14 speeches about "no work no food" (exhibits 1960 and
15 1962), for the failure to answer and the untruthful
16 answers sent to allied protests which he had to
17 approve (record page 14,287). As a member of Imperial
18 General Headquarters he must we submit have had access
19 to the War Diary and seen the account of outrages past
20 and intended in Malaya quoted in exhibit 476.

21 Above all he must have been a party to the
22 illegal decision to use prisoner of war labor on the
23 rushed construction of the Burma-Siam railway, with
24 its inevitable tragic consequences.

25 He also shares the responsibility for

1 exhibits 1964 to 1976. He personally issued the
2 order for the death penalty on captured airmen,
3 exhibit 1992. He was responsible for the prisoner
4 of war punishment law, exhibit 1998. He personally
5 ordered the illegal employment of 1500 prisoners of
6 war on munition work in Manchuria in August 1942
7 (exhibit 1970).

8
9 From 30 August 1944 to the surrender he was
10 commander of the army in Burma. The outrages which
11 took place there during that period are described
12 in exhibits 1573A, 1574A, 1552A, 1553A, 1555A, 1558A.
13 For these we submit he is directly responsible, and
14 that the motion by him should be dismissed.
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1 OKAWA. Particulars are on page 334 of the
2 Summary. Additional documents are Exhibits 2177-A-2184,
3 2231.

4 The main case against him is that he was one
5 of the originators of the pernicious ideas which gave
6 birth to the conspiracy and took a lead by speech and
7 writing in popularizing them.

8 Exhibits 2179-A and 2180-A show that as early
9 as 1925 and 1926 he was preaching a war between East
10 and West, denouncing the League of Nations and the
11 Anglo-Saxon races, and calling upon Japan to arouse
12 Asia against them.

13 Later in Exhibit 2181-A, published in 1939,
14 he explains that the foundation of Manchukuo was
15 merely the beginning of the Greater East Asia plan,
16 and roused a great nationalistic spirit in Japan, and
17 welcomes the victories following the Marco Polo Inci-
18 dent. In spite of the assistance of England, France
19 and the USSR to China, Japan must use irresistible
20 force over a long period to establish the New Order.

21 In Exhibits 2182-A, published in 1943, he
22 lauds the ideas of a former writer who foresaw Japan
23 "ruling over the foundation of the world," advocating
24 that she should absorb China first, then Siam and
25 India, the whole area of the South Seas, the Phillippines,

1 opposing Britain, and obtaining the control of the
2 Islands in the Indian Ocean and French Indo-China.
3 He refers to a number of former writers who had preached
4 similar ideas. He then describes at length and with
5 enthusiasm the development of the Manchurian and
6 Chinese aggressions, and traces it as the precursor
7 of the Pacific War, maintaining that the most important
8 thing for Japan is to complete the subjugation of
9 China.

10 In Exhibit 2183-A he approves of the same
11 writer's view that the maritime provinces of Siberia
12 must be occupied against Russia and the South Sea
13 Islands against England.

14 In the evidence which he gave at his trial in
15 September 1934 for his part in the various plots of
16 1931 to '32 he boldly justifies his actions and gives
17 a description of the parts played by himself, the
18 accused HASHIMOTO, ITAGAKI, DOHIHARA, KOISO and others
19 in those plots and in the Manchurian affair with which
20 he says they were linked, and of the propaganda he
21 had carried on at public meetings as well as by writing
22 in their support. He also explains in detail the ideas,
23 similar to those above-mentioned, which they were advo-
24 cating (Exhibits 2177-A, 2178-A). He also put in a
25 document (Exhibit 2178-B) describing his work as fol-

1 Director of the East Asia Research Institute of the
2 South Manchuria Railway, a post he appears to have
3 occupied throughout the period of the Indictment, ex-
4 cept when in prison as a result of this trial, carrying
5 on an elaborate propaganda to stir up the Japanese
6 people to take action in Manchuria, in cooperation
7 with the chiefs of the Kwantung Army.

8 He was thus both a thinker, a propagandist and
9 an active plotter.

10 We submit that he was one of those responsible
11 for this conspiracy and all its results.

12 THE PRESIDENT: Before you leave OKAWA's case,
13 Mr. Carr, we note the action taken by the Nuernberg
14 Tribunal in respect of the accused before them, Gustave
15 Krupp von Bohlen und Hallbach. We may have to take
16 similar action in respect of OKAWA. That is a matter
17 for consideration later.

18 MR. COMYNS CARR: OSHIMA. The particulars
19 with regard to OSHIMA, Hiroshi are to be found on page
20 335 of the Chronological Summary, and the additional
21 exhibits which directly affect him are: Exhibit No.
22 2106 (Record page 15186); 2230 (Record page 15990);
23 2232 (Record page 16003).
24

25 From 1st August 1931 to 5 March 1934 he was
a member of the Army and Navy General Staffs and was

1 Director of the East Asia Research Institute of the
2 South Manchuria Railway, a post he appears to have
3 occupied throughout the period of the Indictment, ex-
4 cept when in prison as a result of this trial, carrying
5 on an elaborate propaganda to stir up the Japanese
6 people to take action in Manchuria, in cooperation
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14 Tribunal in respect of the accused before them, Gustave
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18 MR. COMYNS CARR: OSHIMA. The particulars
19 with regard to OSHIMA, Hiroshi are to be found on page
20 335 of the Chronological Summary, and the additional
21 exhibits which directly affect him are: Exhibit No.
22 2106 (Record page 15186); 2230 (Record page 15990);
23 2232 (Record page 16003).

24 From 1st August 1931 to 5 March 1934 he was
25 a member of the Army and Navy General Staffs and was

1 decorated for his services in the "Incident."

2 The requirement that Japan secure the politi-
3 cal strength and bargaining power which a military
4 alliance with Germany would afford, and the reasons
5 therefor, have been fully discussed. The first step
6 in the accomplishment of this desired end was taken
7 in the Spring of 1935 by the accused OSHIMA who was
8 then Japanese Military Attache to Germany. The original
9 negotiations were not initiated through diplomatic
10 channels but were conducted by the Military Attache.
11 It was not until the Spring of 1936 that the negotia-
12 tions were conducted through regular diplomatic chan-
13 nels. The accused OSHIMA assisted in these negotia-
14 tions. (Exhibit No. 477, Record page 5913). This
15 resulted in the conclusion of the Japanese-German
16 Anti-Comintern Pact on 25 September 1936, the purpose
17 and importance of which have been explained. He was
18 again decorated for this.

19 Close collaboration was maintained between
20 the Japanese and Germans under the provisions of the
21 protocol of the Anti-Comintern Pact which took the
22 form of espionage and subversive activities against
23 the Soviet Union. It was shown in a report of
24 Reichsfuehrer, H. Himmler, on 31 January 1939, that
25 the accused OSHIMA had succeeded in sending ten Russians

1 with bombs across the Caucasian frontier in an unsuccess-
2 cessful attempt to kill Generalissimo Stalin, and that
3 OSHIMA had purchased a tract of real estate in Fal-
4 kensee in the name of a middle man, where Russians
5 were employed in writing propaganda pamphlets which
6 were conveyed from Poland into Russia by means of
7 small balloons. (Exhibit No. 489, Record page 6026).

8 Germany at first opposed military aggression
9 by Japan in China under the guise of fighting commu-
10 nism in third states, but upon Japan giving evidence
11 in January 1938 of a determination to wage a major
12 war with China, Germany reoriented her policy and
13 Japan thus gained the support of Germany in her
14 plans against China as well as against Russia.

15 At this time, 4 February 1938, Chancellor
16 Hitler assumed supreme command of the armed forces in
17 Germany. In line with the expressed desire to strengthen
18 the Anti-Comintern Pact, Ribbentrop and OSHIMA, still
19 Military Attache to Germany, discussed the advisability
20 of closer collaboration between Germany and Japan
21 which resulted in a proposal for a mutual aid treaty
22 aimed at the entire world. (Exhibit No. 497, Record
23 page 6051). OSHIMA, elevated to the rank of Ambassa-
24 dor Plenipotentiary to Germany on 8 October 1938, con-
25 ducted the negotiations for a Japanese-German military

1 alliance. Italy temporarily refused to unite in such
2 an alliance. OSHIMA, after obtaining the approval of
3 the Foreign Office of the Japanese Government, went
4 to Italy in December 1938 for the purpose of inducing
5 Mussolini to unite in such an alliance. (Exhibit No.
6 487, Record page 6061).

7 As a result of the division within the Japanese
8 Cabinet as to the extent to which Japan should commit
9 herself in the proposed alliance, OSHIMA was advised
10 in December 1938 that the ITO Commission would be sent
11 to Europe to make known the Government's exact posi-
12 tion. (Exhibit No. 487, Record page 6062).

13 OSHIMA and SHIRATORI conferred on matters
14 pertaining to the proposed alliance and, contrary to
15 the views of the Japanese Cabinet, they advocated an
16 all-out military alliance aimed at the world. They
17 endeavored to impose their convictions upon the
18 Japanese Government and exercised the utmost pressure
19 in their endeavor to influence and direct Japanese
20 policy in this regard.

21 The ITO Commission on its arrival in Berlin
22 instructed OSHIMA that he must work within the views
23 of the Government (Exhibit No. 487, Record pages 6072
24 to 79), but OSHIMA, desiring a military treaty without
25 reservations on the part of Japan, refused to follow

1 the advice of the ITO Commission and refused to communi-
2 cate through official channels a Japanese compromise
3 proposal. Acting with SHIKATORI, then Ambassador to
4 Rome, OSHIMA threatened to bring about a fall of the
5 Japanese Cabinet by resigning from his post unless
6 the Government reconsidered its stand. (Exhibit No.
7 499, Record page 6096).

8 In April 1939 the Japanese Government recon-
9 sidered its stand and presented a new draft of the pro-
10 posed treaty in connection with which it requested
11 an agreement that in the publication of the Pact an
12 explanation be made which would tend to soften the
13 attitude which would likely result on the part of
14 England, France and America. The reason assigned by
15 the Tokyo Cabinet for the necessity for such a limited
16 interpretation of the Pact was that both for political
17 and economic reasons Japan "was at the moment not yet
18 in a position to come forward openly as the opposer of
19 the three democracies."

20 OSHIMA, for the second time transcending the
21 role of a ministerial officer, refused to officially
22 communicate the Japanese Government's proposal to the
23 nation to which he was accredited. (Exhibit No. 502,
24 Record page 6100). By this action he endeavored to
25 impress upon the Japanese nation the policy which he

1 impress upon the Japanese nation the policy which he
2 and the accused advocated and which was necessary to
3 assure Japan the political and military support for
4 their aggressive action in East Asia.

5 Ribbentrop informed Ambassador OSHIMA that a
6 German-Italian pact would be signed during the month
7 of May, and that it was desirable that the Japanese
8 Government reach its final decision quickly, so that
9 it would be possible to formulate secretly the Tri-
10 Partite Pact simultaneously with the signing of the
11 German-Italian Pact (Exhibit No. 486, Record page 6115).
12 Such a pact was concluded on 22 May 1939 (Record page
13 6120). In the last days before its conclusion the
14 Japanese Cabinet made strenuous efforts to come to a
15 final decision. In a strictly confidential and unof-
16 ficial conversation, Ambassador OSHIMA advised von Rib-
17 bentrop that he had received a telegram from Foreign
18 Minister ARITA, according to which the Japanese
19 Government wished to reserve entrance into a state of
20 war in case of a European conflict. For the third
21 time OSHIMA endeavored to influence the policy of his
22 government in line with his view and that of his asso-
23 ciates by refusing to pass this matter on to the German
24 Government. He advised ARITA of this by telegram,
25 whereupon War Minister ITAGAKI intervened and requested

1 OSHI... to hold up further action with regard to
2 Foreign Minister AKITA in order not to disturb the
3 discussions among the various factions in Tokyo,
4 promising that the Army was "firmly resolved to fight
5 the matter out quickly and even at the risk of a
6 Cabinet overthrow." (Exhibit No. 2230, Record page
7 15990).

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1 As early as April 1939 Ribbentrop advised
2 Ambassador OSHIMA that if negotiations for the Tri-
3 Partite Alliance were delayed too long it might become
4 necessary for Germany to consider a non-aggression
5 pact with Russia. (Exhibit 487, Record, page 6080).
6 Such a pact was concluded between Germany and the
7 Soviet Union on 23 August 1939 (Record, page 6122).
8 Ambassador OSHIMA was directed to file a protest to
9 Germany's action in concluding the pact, but in order
10 to preserve his own policy and that of most of the
11 accused with regard to Japanese-German relations and
12 collaboration for which he had so energetically worked,
13 he disobeyed his government's instructions for the
14 fourth time by postponing delivery of the Japanese
15 memorandum of protest until 18 September 1939, when
16 the matter was handled in a surreptitious and un-
17 official manner. (Exhibit No. 506, Record, page 6124).

18 The expediency of quickly concluding a German-
19 Russian non-aggression pact on 23 August 1939 became
20 apparent upon the dramatic German invasion of Poland
21 on 1 September 1939. Notwithstanding the temporary
22 set-back to the conclusion of a Japanese-German-
23 Italian alliance, OSHIMA continued in his efforts to
24 develop closer German-Japanese relations. In September
25 1939 he agreed with Ribbentrop that Japan's fate was

1 linked with Germany's fate and that if Germany could
2 succeed in mediating for a settlement between Japan
3 and Russia, the result would be that Japan would
4 be free to extend her power in East Asia toward the
5 South in which direction her vital interests lie.
6 Ribbentrop considered it would be of great import-
7 ance for the policy of collaboration that General
8 OSHIMA remain as Ambassador to Germany, in which
9 capacity he had enjoyed the complete confidence of
10 Hitler and the German Army. (Exhibit No. 507, Record,
11 page 6127).

12 When General OSHIMA resigned as Ambassador,
13 Ribbentrop advised the German Ambassador to Japan that
14 General OSHIMA on his return would work further for
15 German-Japanese friendship and requested that OSHIMA
16 be allowed to transmit in code telegrams to the Reich
17 Foreign Minister personally and to forward letters
18 addressed to the Reich Foreign Minister unopened.
19 (Exhibit No. 508, Record, page 6131).

20 OSHIMA, timing his action with the initiation
21 of war by Hitler against Poland, advised the Japanese
22 Government to proceed with military aggression in the
23 Southern areas of Greater East Asia and against Hong
24 Kong, for which the Japanese Navy, in his opinion, was
25 prepared. (Exhibit No. 509, Record, page 6136).

1 After OSHIMA's return to Japan, the German
2 Ambassador reported on 23 February 1940 that OSHIMA
3 and others remained "in an unchanged friendly attitude
4 and ready for every support." (Exhibit No. 511,
5 Record, page 6141).

6 The downfall of the YONAI Cabinet and its
7 replacement by a stronger pro-alliance and pro-German
8 Cabinet has been discussed elsewhere. The new Cabinet
9 concluded the Tri-Partite Pact of 27 September 1940,
10 the final milestone in the carrying out of that part
11 of the conspiracy directed toward German and Italian
12 assistance in the accomplishment of Japan's so-called
13 divine mission. Upon the conclusion of the Pact,
14 Foreign Minister MATSUOKA offered OSHIMA the appoint-
15 ment of Ambassador to Germany. General OSHIMA at
16 first declined reappointment to this position on the
17 ground that it would interfere with the continuance
18 of his politically active work in Japan for the Tri-
19 Partite Pact. However, upon the exertion of pressure
20 by the Foreign Minister and upon insistence by the
21 Army, supported also by important Navy circles, General
22 OSHIMA accepted reappointment. (Exhibit No. 560,
23 Record, page 6422).

24 Foreign Minister MATSUOKA, at a farewell
25 party for OSHIMA on 15 January 1941, stated that, "The

1 efforts exerted by our country for establishing the
2 New Order in East Asia which began with the Manchurian
3 Incident, and the efforts exerted by Germany and Italy
4 to break down the Versailles system both have a funda-
5 mental common cause which, in turn, will contribute
6 to the establishment of the New Order of the World."
7 With German-Japanese relations destined to become
8 closer, he said that OSHIMA's ability would be relied
9 upon in an extensive way. (Exhibit No. 473-C, Record,
10 page 6423).

11 OSHIMA, in a conference with the State
12 Secretary of German Foreign Ministry on 22 February
13 1941, stated with regard to British possessions in
14 East Asia that Singapore must be seized in grand
15 style from the sea and from the land, although he
16 considered it necessary to take Hong Kong first.
17 (Exhibit No. 570, Record, page 6457). On the following
18 day, in a conference with Ribbentrop, OSHIMA asserted
19 that preparations for the occupation of Singapore would
20 be completed by the end of May; that prudence required
21 preparations for war against both England and America;
22 that the moment for the occupation of Singapore must be
23 coordinated with operations in Europe and that the
24 occupation of Hong Kong and the Philippines had been
25 provided for in case of need. (Exhibit No. 571, Record,

1 page 6459). OSHIMA promised Ribbentrop that he would
2 procure maps of Singapore in order that Hitler, con-
3 sidered as the greatest expert on military questions
4 at that time, could advise Japan on the best method of
5 attack against Singapore. (Exhibit No. 580, Record,
6 page 6529).

7 OSHIMA was a member of the General Commission
8 established under the provisions of the Tri-Partite
9 Pact. (Exhibit No. 121, Record page 768).

10 On 22 June 1941 Germany invaded Russia.
11 Hitler had informed OSHIMA of his intention as early
12 as 6 June (Exhibit No. 1084). Shortly thereafter,
13 OSHIMA agreed with Ribbentrop that he would influence
14 the Japanese Government in the direction of speedy
15 military action against the Soviet Union. (Exhibit
16 No. 587, Record, page 6562).

17 Between the first and third of December 1941
18 Ambassador OSHIMA began the definite negotiations for
19 a "no separate peace pact" between Japan, Germany
20 and Italy, which was concluded on 11 December 1941.
21 The question had been raised by the General Staff as
22 early as 18 November and an assurance given by Ribben-
23 trop on 21 November (Exhibit No. 601).

24 On 14 December 1941, Chancellor Hitler gave
25 a reception in honor of Ambassador OSHIMA at which

1 OSHIMA was awarded the Grand Cross of the Order of
2 Merit of the German Eagle in Gold. At this reception
3 Hitler acknowledged OSHIMA's services in the achieve-
4 ment of German-Japanese cooperation which had culminated
5 in a close brotherhood in arms. In the discussion
6 that followed, Ambassador OSHIMA explained the progress
7 of the war in the Pacific and stated that after the
8 capture of Singapore Japan must turn toward India and
9 that it was important for Germany to synchronize its
10 attack against India from the west as Japan attacked
11 from the east. (Exhibit No. 609, Record, page 6670).

12 In March 1943, OSHIMA attended a conference
13 with Ribbentrop in which Ribbentrop suggested that
14 Japan institute similar warfare as Germany had been
15 doing and in which Ribbentrop discussed with OSHIMA
16 the German U-boat order of September 1942 in regard to
17 failing to rescue survivors of torpedoed merchant
18 vessels. OSHIMA conveyed to the Japanese submarine
19 authorities information regarding the German operating
20 policy, namely, complete destruction of personnel as
21 well as the ship. (Exhibit No. 2106, Record, pages
22 15,187, 15,189). While OSHIMA is particularly concerned
23 with the conspiracy alleged in Count 5 of the Indictment,
24 we submit that the evidence shows that he was linked
25 with the more general conspiracy from the beginning,

1 or at least from an early date, and responsibility
2 for all the acts alleged in the counts in which he
3 is charged.

4 SHIGEMITSU

5 The particulars with regard to SHIGEMITSU,
6 Mamoru, are to be found on page 337 of the chrono-
7 logical summary, and the additional exhibits which
8 directly affect him are: Exhibits Nos. 123, 2279,
9 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025-A,
10 2026, 983, 1017 (Record, page 9683), 1018 (Record,
11 page 9688), 1023, (Record, page 9712), 2016-A, 1275
12 (Record, page 11,364), 773-A (Record, page 8061), 973
13 (Record, page 7876), 829-A (Record, page 8007), 662
14 (Record, page 7169), 664 (Record, page 7183), 1274.

15 This able diplomat, after service in the
16 Foreign Ministry and China, was appointed in 1935
17 as Councillor of the Board of Manchurian Affairs,
18 having previously been decorated for his services in
19 China, 1931-1934; in 1936 was appointed Ambassador to
20 the USSR; in September, 1938 was appointed Ambassador
21 to Great Britain; in 1941 (February) he became Ambassador
22 to the Republic of China, and finally, on the 20th of
23 April 1943, Minister of Foreign Affairs, which position
24 he held until 7 April 1945 (Exhibit 123).

25 While still Ambassador to the USSR (2 January

1 1938) he was rewarded for services in concluding
2 the Anti-Comintern Pact (Exhibit 983).

3 In May 1940, while Ambassador to Great Britain,
4 he cabled ARITA (Foreign Minister) to apply National
5 Policy to the South Seas Areas (This after the German
6 conquest of Belgium and Holland) (Exhibit 1017). On
7 5 August 1940 he cabled MATSUOKA (Foreign Minister)
8 to dispose of France and the Netherlands in East Asia
9 first to profit Japan most (Exhibit 1023).

10 In September 1941 he talked with KIDO about
11 United States negotiations (Exhibit 2279).

12 While Foreign Minister he consistently denied
13 requests of protecting powers to visit POW camps, which
14 was in violation of treaties and assurances (Exhibits
15 Nos. 2016-A, 2017, 2018, 2019).

16 He refused to permit the protecting power
17 to ask certain questions of POW in the few visits
18 permitted to POW camps (Exhibits Nos. 2020, 2021).

19 He was at Privy Council meeting which
20 supported the annexation by Thailand of Shan States from
21 Burma (violation of treaties) (Exhibit No. 1275) and
22 heard without protest TOJO's cynical remarks about
23 international law, a matter peculiarly within his
24 province.

25 In September 1943 he made a speech glorifying

1 the Tri-Partite Pact (Exhibit No. 773-A); and in
2 December, 1943, he made another speech accusing the
3 United States and England of being forces of aggres-
4 sion (Exhibit No. 973).

5 He was notified by the Swiss (protecting
6 power) of the ill-treatment of POW continuously --
7 1943-1945 (Exhibit No. 2022).

8 He was notified particularly of mistreatment
9 of POW in Thailand and denied same, although report of
10 bad conditions had been made to the Japanese Government
11 (Exhibits Nos. 473, 2023, 1989).

12 He received protests through the Swiss of
13 the mistreatment of United States interned civilians,
14 but made false reports concerning their treatment
15 (Exhibit No. 2024).

16 He received protests through the Swiss as
17 to the use of United States POW for labor in connection
18 with operations of war, but made false answers thereto
19 (1943-1945) (Exhibit No. 2025-A).

20 He received protests through the Swiss and
21 International Red Cross as to the lack of food for
22 POW and refused to make a change (Exhibit No. 2026).

23 On 21 January 1945 he made a speech in the
24 Diet saying, " . . . sacred mission to keep fighting
25 for common war aims of international justice in war of

self-existence and self-defense" (Exhibit No. 829-A).

1 On 3 March 1945 he received a telegram from
2 Saigon about the camp in French Indo-China (Exhibit
3 No. 662) and made no objection to Japan taking over
4 control there 10 March 1945, although in violation of
5 treaties and assurances (Exhibits Nos. 662, 664).

6 While the aggressions against China were
7 going on in Manchuria, he was Councillor of the
8 Embassy and Consul-General in China -- 1930-1934;
9 then after the aggression in Manchuria was a "fait
10 accompli" he became Councillor to the Board of
11 Manchurian Affairs -- 1935-1936, and thereafter was
12 decorated for services in the China "Affair."

13 (Page 337 of the summary -- of the narrative summary).

14 During the crucial period, 1936-1938, when
15 it was essential to keep the USSR quiet while further
16 territory of China was seized, he was there as Ambassa-
17 dor. Then 1938-1941 he was Ambassador to Great Britain
18 wiring back to Japan advocating further aggression in
19 Southeast Asia against the weak powers. He was part
20 and parcel of the conspiracy to wage a war of aggres-
21 sion from 1931 on.

22 He became a member of the government as
23 Foreign Minister 20 April 1943 and continued as such
24 until 7 April 1945. To protests about the mistreatment
25

1 of POW and violation of treaties and assurances he
2 turned a deaf ear. He delayed responses to, he
3 denied, he treated with contempt, and he lied about
4 the protests from the United States and Britain,
5 submitted through Switzerland, the protecting power.
6 He cannot now be permitted to hide behind such a
7 defense as that submitted in his motion that the
8 Army "misinformed him." He was responsible for per-
9 mitting to continue the violations of treaties and
10 assurances and the customs and laws of war. As
11 Foreign Minister it was his duty to see that Japan
12 abided by her treaties and assurances. He failed in
13 his duty, either through wilful ignorance or design;
14 the evidence points to the latter.

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1 I am told there are two mistakes that I have
2 made in the reading of that, your Honor.

3 In the first place, when SHIGEMITSU was
4 appointed Ambassador in China, it was not to the
5 Republic of China, it was to the China puppet govern-
6 ment. That was in 1941, February 1941.

7 The other is when I said he was decorated
8 for services in China I gave a reference to the narrative
9 summary. It should be to the chronological summary
10 which you had this morning and on which you will see
11 the exhibit number concerned.

12 SHIMADA

13 The particulars with regard to him are on page
14 338 of the summary. The only additional document
15 specially relating to him is exhibit 2248.

16 The defendant SHIMADA joined the Navy in the
17 year 1901 when 18 years of age, and remained in that
18 service as an active officer until January 1945. It
19 is probably unnecessary to refer to his career prior
20 to the year 1929 excepting to point out that his promotion
21 up to that time had been fairly rapid and that for a
22 period during the first World War he served as a
23 Naval Attache in Italy. In 1929 he was promoted to the
24 rank of Rear Admiral and from that year onwards he held
25 increasingly important appointments and received

1 numerous honors and awards. He was at various times
2 associated with the Naval General Staff and was Vice-
3 Chief in 1935. Among the appointments held by him
4 were those of membership of the Investigation Council
5 of National Resources and of the Naval Preparedness
6 Board of Supreme Headquarters. He received awards in
7 1934 for his services in connection with the 1931-
8 34 war, in 1938 for his services in connection with the
9 Anti-Comintern Pact, and in 1940 for his services in
10 the China War. It is suggested that the award to a
11 naval officer for his services in connection with the
12 Anti-Comintern Pact has special significance. He was
13 promoted to the rank of Admiral in November 1940.

14 The defendant held no political office until
15 he became Naval Minister and Vice-President of the
16 China Affairs Board in the TOJO Cabinet formed in
17 October 1941. He continued to hold the appointment
18 of Naval Minister until July 1944 and from February
19 to August 1944 he was chief of the Naval General Staff.
20 In August 1944 he was appointed to the Supreme War
21 Council.

22 It will be recalled that the Imperial Conference
23 of 6th September 1941 had decided on war if by early
24 October the negotiations with the United States were
25 not successfully concluded (Transcript page 10,252),

1 and early in October the Supreme Command Group stated
2 that they would not wait beyond the 15th October
3 (Ibid). When the time came the then Naval Minister
4 OIKAWA while refusing a definite opinion was prepared
5 to leave the decision to KONOYE who wished the negotiations
6 to continue, and would not support TOJO who contended
7 that there was no hope of a diplomatic success and that
8 war was inevitable. (Transcript pages 10,246 and
9 10272). The KONOYE Cabinet accordingly resigned on the
10 16th October (Transcript page 10,285) and on the 18th
11 October TOJO formed a new cabinet in which SHIMADA
12 became Navy Minister in the place of OIKAWA.

13
14 When KIDO had procured the appointment of
15 TOJO he also delivered to him and OIKAWA messages in
16 the name of the Emperor ordering that agreement should
17 be reached between the Army and Navy (Exhibit 2250).
18 As the new premier was the Army Minister the only
19 possible conclusion was that a new Navy Minister must
20 be chosen who would agree with TOJO. SHIMADA was chosen.

21 It is submitted that the evidence shows that
22 in addition to SHIMADA carrying out his duties as Navy
23 Minister and a member of the cabinet, he attended the
24 numerous Liaison Conferences which were held after
25 TOJO became Premier, and also the Imperial Conferences
held on 5th November and 1st December. As regards

1 the Liaison Conferences exhibit 1103 shows that in
2 respect of the period to the end of June 1941 the
3 Navy Minister was present at every conference excepting
4 one and on this occasion the Vice-Minister attended.
5 It must be inferred that the Navy Minister continued
6 to attend the conferences held from October onwards.
7 Exhibit 1163, Transcript page 10,316, strongly supports
8 this. This document is a telegram sent by TOGO to
9 NOMURA on 2nd November and states that "since the
10 formation of the new cabinet, the government has been
11 holding conferences for a number of days with the
12 Imperial Headquarters". The irresistible conclusion
13 is that as an important member of the government the
14 Navy Minister was present.

15 As regards the Imperial Conferences, the
16 attendance of the defendant is established by Exhibit
17 1107.

18 It will be recalled that these conferences
19 were concerned with the negotiations with the U.S.
20 and the policy to be adopted towards the U.S., Great
21 Britain and the Netherlands. They show throughout that
22 it was intended to go to war with these countries,
23 the final decision being made at the Imperial Conference
24 on 1st December when it was decided to open hostilities
25 (Transcript page 10,519).

1 Plans and preparations for war against these
2 countries had been formulated and executed for several
3 years. In particular, plans had been adopted in June
4 1937 which had as their object the achieving by the
5 year 1941 not only the maximum production of equipment
6 and supplies necessary for waging the wars but also the
7 maximum potential for future maximum production. To
8 carry out these plans, steps were taken to bring about
9 national self-sufficiency at a cost which normal
10 legitimate enterprise would not justify. In order
11 that Japan could wage war it became in substance a
12 totalitarian state and abandoned normal economic standards
13 substituting an economy which was based solely on her
14 schemes for expansion and domination. The evidence of
15 Mr. Liebert and the documents produced by him show in
16 detail the nature of these production, economic and
17 financial plans, the extent to which they were realized
18 and the controls that were exercised and the other
19 methods employed to give effect to them.

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21 But there was not only economic planning and
22 preparation for war. In addition there were military
23 and naval preparations which were directed towards the
24 same end, namely the wars intended to be waged against
25 any country which opposed Japan's schemes for domination
and expansion.

1 For example the evidence established that
2 in violation of treaty obligations, Japan's mandated
3 islands were secretly fortified over a period of several
4 years prior to December 1941, and it is submitted that
5 these fortifications were an essential part of the
6 plans and preparations for aggressive war. It is also
7 submitted that the Tribunal should draw the inference
8 that the defendant was well aware of the fortifications
9 and of their object.

10 It is submitted that the defendant joined the
11 TOJO Cabinet because he was, and was known to be, an
12 active supporter of the TOJO policy and that his par-
13 ticipation in the conspiracy prior to October 1941,
14 must be inferred from his joining the cabinet at that
15 juncture. It is also submitted that the award made
16 to him in 1938 for his services in connection with the
17 Anti-Comintern Pact is further proof of his participa-
18 tion in the conspiracy at that time.

19 However, whatever part SHIMADA took in these
20 matters before he joined the TOJO Cabinet and even if
21 it be assumed that he took none, by his joining that
22 Cabinet and by his subsequent actions he adopted all
23 that had been done, and lent his assistance to the
24 furtherance of the aggressive plans.

25 SHIMADA has admitted that he knew that YAMAMOTO

1 had prepared his plan for the attack early in 1941
2 and that the plan was adopted in May or June. (Trans-
3 cript page 10,194). He also admitted that he knew that
4 early in 1941 the Navy commenced the development of
5 a shallow water torpedo because the water at Pearl
6 Harbor was shallow and that the fleet practised the use
7 of this torpedo during the summer of 1941 (Ibid).
8 On the 5th November 1941 NAGANO (Chief of the Naval
9 General Staff) issued the first order for the putting
10 into execution of the YAMAMOTO plan (Transcript page
11 10,347). Soon after that date an order was issued
12 that X-day, the day of the opening of hostilities,
13 should be 8th December (Exhibit 809, page 11). SHIMADA
14 knew that the task force for the attack moved on the
15 27th November (Transcript page 10,422).
16

17 The evidence shows that in addition to
18 SHIMADA taking part in the Cabinet meetings and confer-
19 ences, he performed various acts and had various
20 matters referred to him as Navy Minister which had
21 direct reference to the war preparations. For example,
22 in November 1941 he authorized expenditure from the
23 special "War Expenditure Account" (Transcript, page
24 8542), and his approval was sought at the end of
25 October 1941 for the issue of military currency notes
for use in the countries intended to be attacked

1 (Transcript, page 8446).

2 Special significance must be given to
3 KIDO's statement that the Emperor on 30 November
4 1941 on his advice consulted SHIMADA and the Chief
5 of Naval General Staff with regard to a suggestion
6 that the Navy wished to avoid war, and that they
7 having answered the Emperor's question with consider-
8 able confidence, the Emperor had instructed KIDO to
9 tell the Premier to proceed as planned (Transcript,
10 page 10,468 and page 12,480).

11 The defendant was a signatory to the
12 Imperial Rescript declaring war (Transcript, page
13 10,686) and as Navy Minister he reported to the
14 inquiry committee meeting of the Privy Council
15 concerning the declaration of war which was held at
16 7:30 o'clock on the morning of 8th December 1941
17 (Transcript, page 10,690).

18 This support of the policy of aggression
19 and expansion is clearly shown in the speech made by
20 him at a Diet committee meeting on 10 February 1942
21 when he strongly advocated expansion and Japan's
22 leadership in Greater East Asia and the elimination
23 of any element not conforming to the Japanese will
24 (Transcript, page 16,183, Exhibit 2248)..

25 That he was a politician as well as a naval

1 officer is shown by Exhibit 1273, where KIDO records
2 that it was he who in September 1942 persuaded TOGO
3 to resign rather than break up the cabinet over his
4 dissatisfaction with the formation of the new Greater
5 East Asia Ministry.

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1 It is also to be observed that SHIMADA was
2 a member of the Imperial Rule Association Political
3 Society and that when in June 1944 the reorganization
4 of the Cabinet was under consideration, including a
5 change of Navy Minister, TOJO according to KIDO's
6 diary (Exhibit 1277, Transcript, page 11,376) sug-
7 gested the advisability of SHIMADA being appointed
8 Welfare Minister in order to have a member of that
9 society in the Cabinet.

10 The general reasons why we submit he must
11 be held responsible for war atrocities have already
12 been given, and in addition the following comments
13 should be made. The evidence shows that copies of
14 the complaints lodged by the Swiss Legation were
15 sent by the Foreign Ministry to the Navy Ministry
16 (Evidence of SUZUKI, Tadakatsu, Transcript, page 15,506
17 and following pages, and Exhibits 2170, 2173, 2174).
18 It is also submitted that the Navy Minister must be
19 held responsible for the top secret naval order for
20 submarine operations (Exhibit 2105, Transcript, page
21 15,184) requiring the complete destruction of the
22 crews of the ships sunk by submarines, particularly
23 as OSHIMA has stated that this was the German policy
24 and that after discussions with Ribbentrop the German
25 policy was communicated to the Japanese Naval Attache

1 at Berlin (Exhibit 2106, Transcript, pages 15,186,
2 15,195).

3 THE PRESIDENT: We will adjourn until half-
4 past nine tomorrow morning.

5 (Whereupon, at 1600, an adjournment
6 was taken until Friday, 31 January 1947, at
7 0930).

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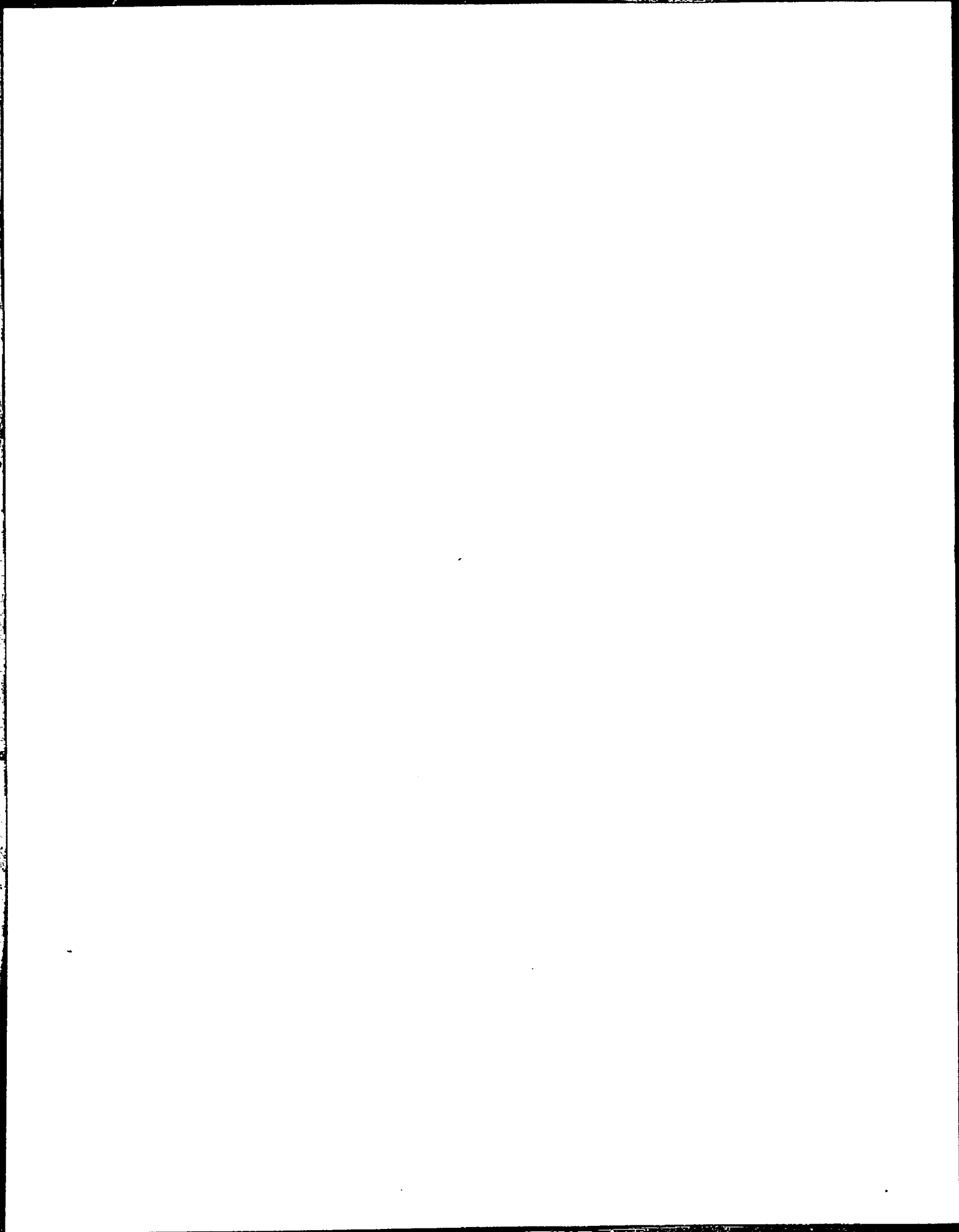
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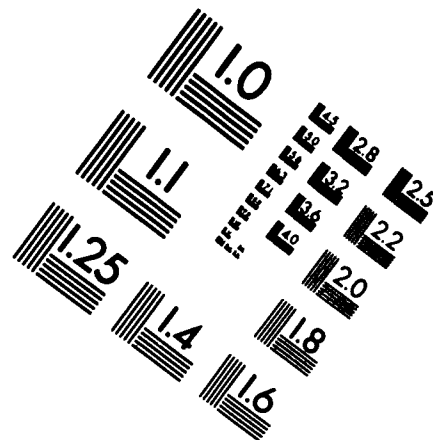
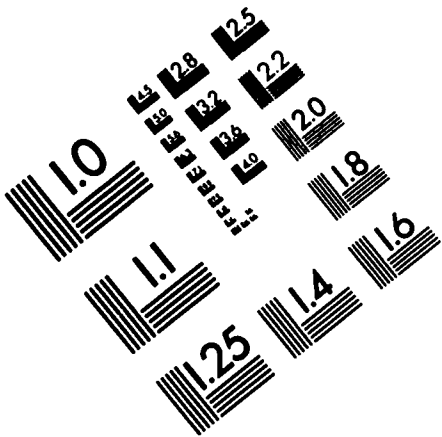
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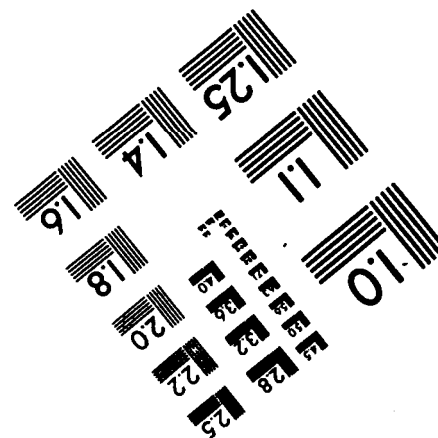
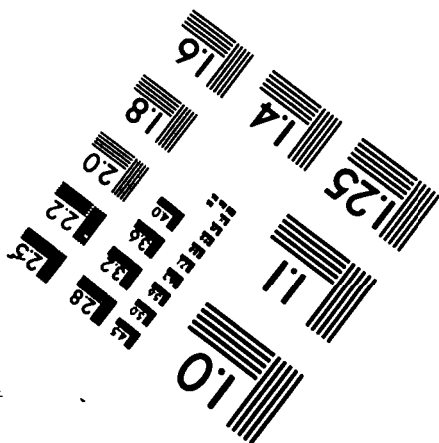
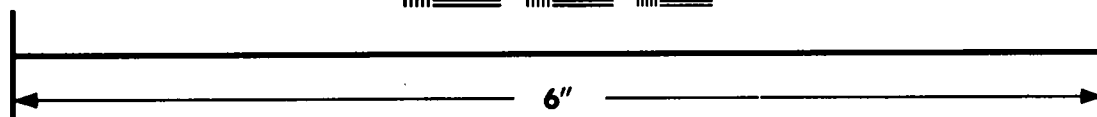
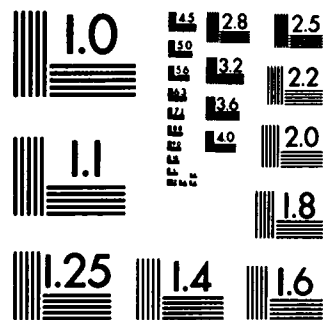
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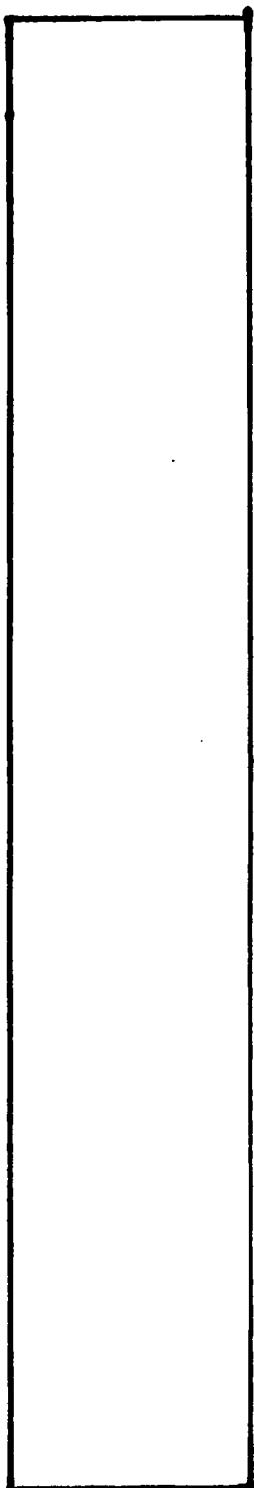
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