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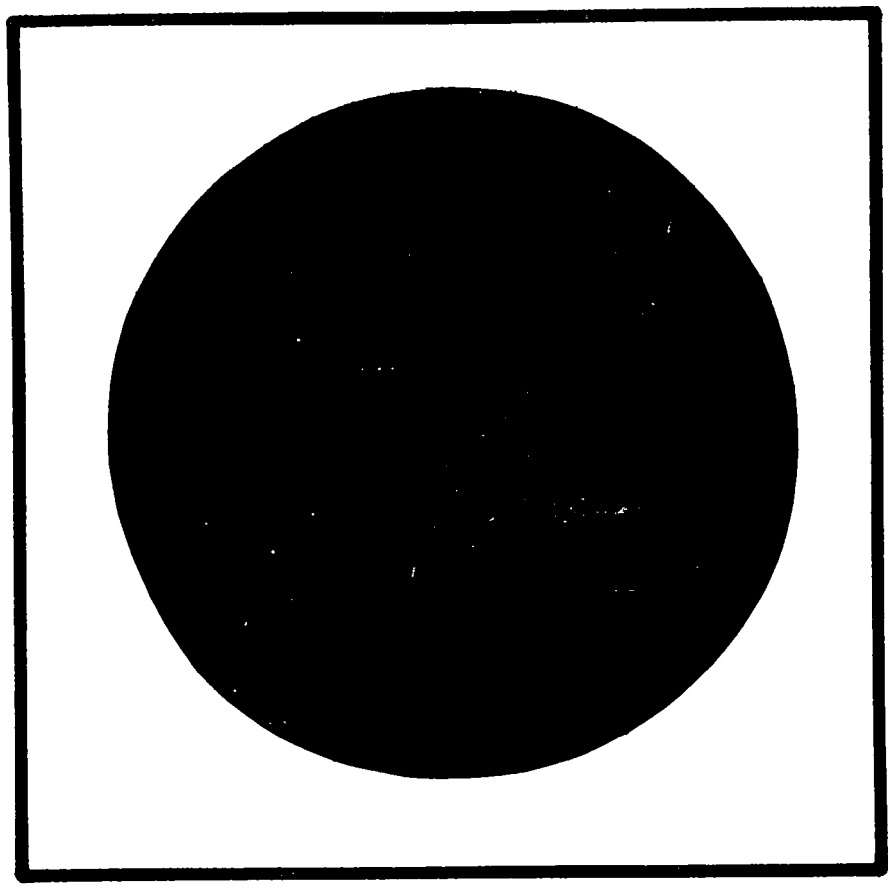

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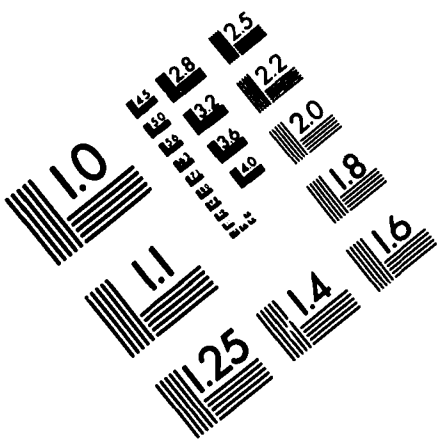

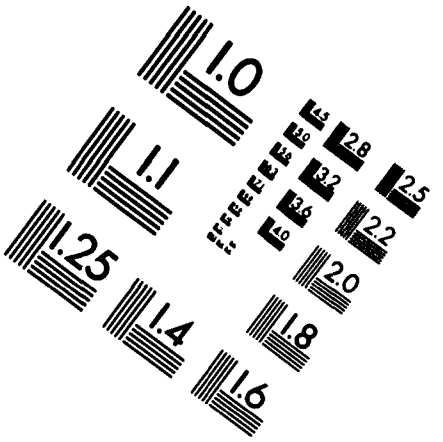

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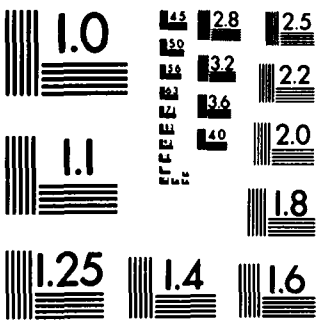

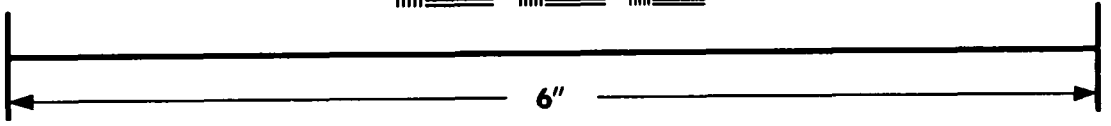

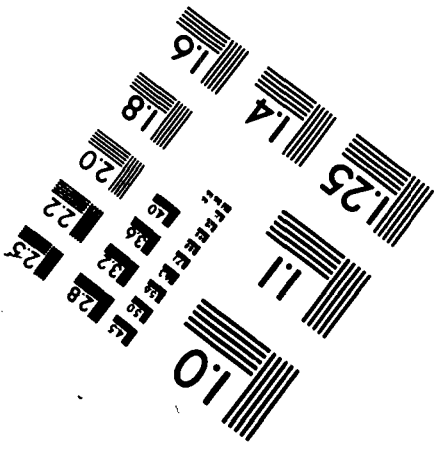

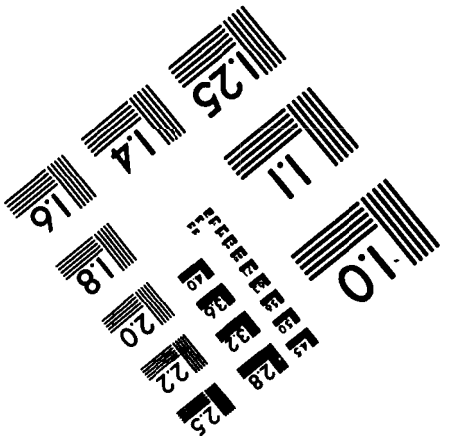

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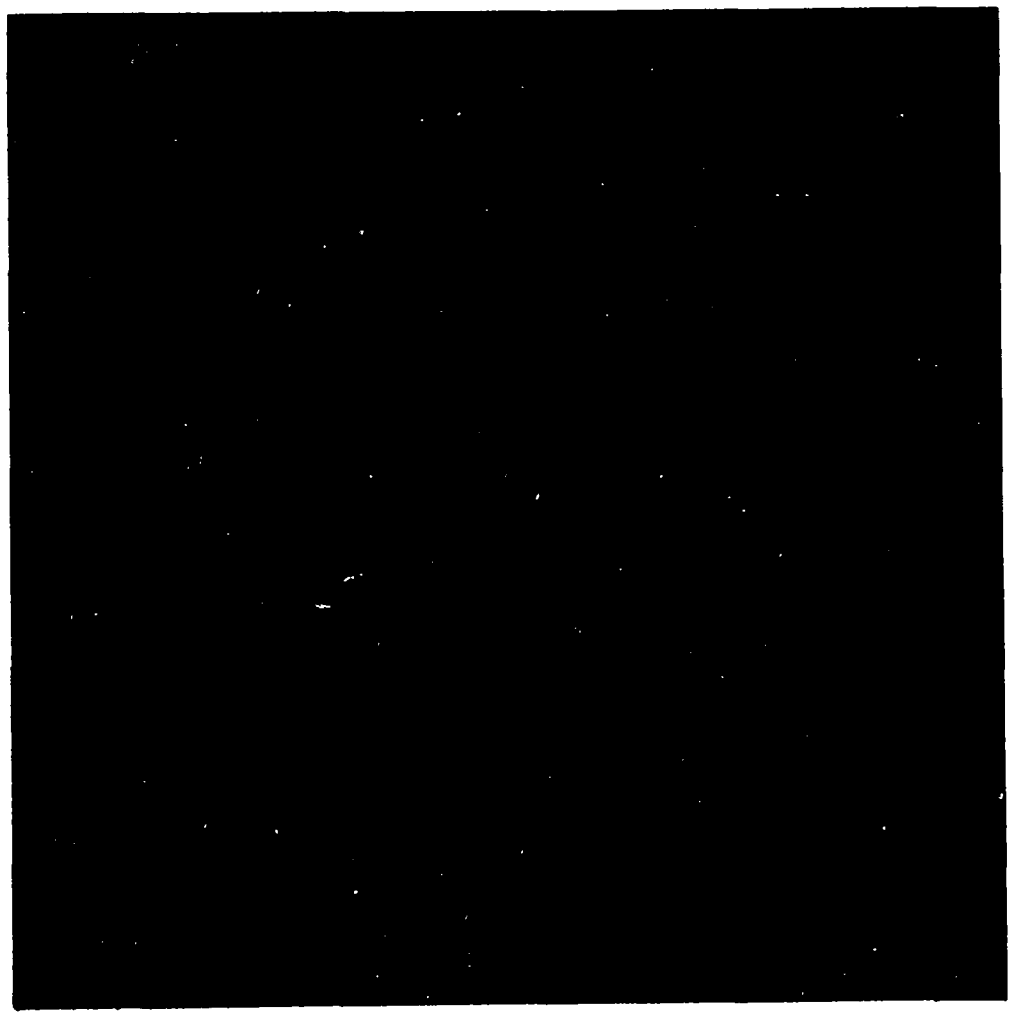

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Of

EXHIBITS

Doc. No.	Def. No.	Pros. No.	Description	For Ident.	In Evidence
1282	2721A		Affidavit of KAGESA, Sadaaki	23975	
	2721B	1005-(4)	Telegram sent by Witness KAGESA, Sadaaki (pseudo name KAWAMURA) to SHIRAISHI dated 19 April 1939	24047	
	2721C-1	1005-(6)	Telegrams (3) sent by Witness KAGESA, Sadaaki (pseudo name KAWAMURA) dated 20 April 1939	24048	
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	2721D	1005-(8)	Telegram sent by Witness KAGESA, Sadaaki (pseudo name KAWAMURA) dated 24 April 1939	24049	
	2721E-1 2721E-2 2721E-3	1005-(11)	Telegrams (3) sent by Witness KAGESA, Sadaaki (pseudo name KAWAMURA) dated 28 April (2) and 30 April (1) 1939	24051	
	2721F	1005-(13)	Telegram sent by Witness KAGESA, Sadaaki to Chief of the 2nd Department dated 3 May 1939	24051	

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I N D E X

O F

EXHIBITS

(cont'd)

Doc. No.	Def. No.	Pros. No.	Description	For Ident.	In Evidence
	2721G	1005-(19)	Telegram sent by Witness KAGESA, Sadaaki dated 23 May 1939 to Chief of General Affairs Section		24052
	2721H	1005-(20)	Telegram sent by Witness KAGESA, Sadaaki dated 30 May 1939 to Chief of the 2nd Department		24052

Wednesday, 11 June 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.

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, IMTFE.)

Duda & Whalen

MARSHAL OF THE COURT: The International Military Tribunal for the Far East is now in session.

THE PRESIDENT: All the accused are present. The accused TOJO will be conferring with his counsel, with the Court's permission, until eleven o'clock this morning.

I have to give the decision of the Tribunal on the application by the defense for a recess.

At the close of the prosecution's case on 3 February last, the defense applied for a thirty-day recess to enable them to consider the prosecution's evidence and make a proper presentation of the defense evidence. They assured the Tribunal that this was necessary and that if granted they would not require another recess before June.

However, the Tribunal granted only twenty days, and at the end of March the defense applied for a further recess to enable them to carry on, as they had completely exhausted their material at that stage. A recess of seven days was then granted.

Now the defense apply for a recess of six weeks from the 23d of June, and they assure us that this is absolutely necessary to enable them to continue to present the defense evidence. They suggest that if the recess is not granted the case will come to a

standstill in any event. They also assure us that if the six weeks they apply for is granted, they will be able to carry on without any further recess.

As the six weeks will terminate long before the not weather is over, we are satisfied the defense do not desire the recess to avoid working in such weather.

(The interpretation section will relay the rest of what I have to say. They have not a copy of it.)

We must accept the solemn assurance of the defense that this recess is essential. We, therefore, have decided to grant the recess to the full extent applied for, but on the faith of the assurance of the defense that no further recess will be necessary to enable them to complete their case.

At page 23,949 of yesterday's transcript, there should be shown the fact that Justice Cramer resumed his seat on the bench after the afternoon recess.

Mr. Roberts.

MR. ROBERTS: I shall proceed to read exhibit 2721, the commission of KAGESA, Sadaaki.

In view of the fact that exhibit 2721 includes the affidavit of the witness, I shall omit the reading of the commission and the formal parts, and begin on

page 5 of the report.

(Reading:)

- - -

S A D A A K I K A G E S A, called as a witness on behalf of the defense, being first duly sworn, testified through Japanese interpreters as follows:

DIRECT EXAMINATION

BY MR. ROBERTS:

May the witness be shown defense document 1282, please?

Q Will you examine this document, Mr. KAGESA, and tell us whether or not it is your sworn affidavit?

A This is my affidavit.

Q Are there any corrections that you desire to make at the present time, Mr. KAGESA?

Perhaps for the record we should have the witness state his name and his address.

A I should like to make a correction.

There is one typographical error.

Q Tell us what page, please.

A Section 12.

THE COMMISSIONER: Can the interpreters tell us where that is in the English translation?

MR. ROBERTS: Is that paragraph 12?

THE MONITOR: That is right, sir; numbered paragraph 12.

THE INTERPRETER: Section 12 begins at the bottom of page 11 in the English text.

Q What was the correction?

A Page 15, 5 in parentheses.

Q That is on page 15 of the English text and the subdivision marked 5?

A It says here that in connection with the address given by Dr. Sun Yat-sen in Kobe, the 12th year of Taisho, this should read the "13th" year of Taisho.

Q Are there any other corrections?

A That is all, sir.

Q Will you please state your name and address for the record, please, Mr. KAGESA?

A KAGESA, Sadaaki.

THE MONITOR: Just a minute, in this Japanese translation here the word "Sun Yat-sen's"

principle -- the Japanese translation says, "Sun Yat-sen's" principle. In his original it says, "Mr. Sun Yat-sen," that is, Mr. or Teacher or Professor Sun Yat-sen. He just pointed out the mistake and wishes to have it corrected in the copies, the Japanese copies.

THE COMMISSIONER: That is unimportant. We all know who Sun Yat-sen was.

MR. ROBERTS: Has he given his name and address?

THE INTERPRETER: Just the name; he just gave his name.

BY MR. ROBERTS (Continued):

Q Please state your address.

A First National Hospital.

Q Are you also known by the name of Yoshiaki?

A No, only Sadaaki.

MR. ROBERTS: I ask that in the English text, the name be changed from "Yoshiaki" to "Sadaaki", wherever it so appears.

THE COMMISSIONER: The affidavit as identified and sworn to by the witness will be received in evidence.

Yes, Mr. Sutton.

MR. SUTTON: May it please your Honor, counsel had not tendered the affidavit.

MR. ROBERTS: No, I am just about to tender it. I formally tender in evidence defense document No. 1282.

MR. SUTTON: May it please the Court, the prosecution objects to and moves to strike out those portions of the affidavit which refer to documents and purport to give their contents, which documents are not produced and no reason is given for the failure to produce them. A number of such references appear in the affidavit. We draw particular attention to the following:

(1) Section 5, pages 3 and 4, the documents entitled, "Tentative Terms of Peace between Japan and China," and "The Policy for the Adjustment of Relations between Japan and China."

(2) Section 10, page 10, the last paragraph of that section which purports to give the contents of the circular telegrams of 16 January 1940.

(3) Section 13, pages 16 and 17, the provisions of the document entitled "request concerning the realization of the principle of respecting sovereignty." This objection applies particularly to items (a) to (e) inclusive in Section 13 on page 17.

(4) Section 14, page 18, the New Year's

statement, being the last paragraph of Section 14.

THE COMMISSIONER: Is that the only objection offered to the document, Mr. Sutton?

MR. SUTTON: Those are the only objections, sir.

THE COMMISSIONER: As a matter of convenience I will accept the affidavit as it stands, have it attached to the depositions, and marked with the letter "A" for identification. That is done without prejudice to the objection raised by the prosecution inasmuch as the decision upon the objection raised is more proper to be determined by the Tribunal than by this Commission.

Have you anything further?

Yes, Mr. Roberts.

MR. ROBERTS: It was my intention to ask the Court's permission to read the affidavit at this time.

THE COMMISSIONER: I assume that all counsel present will have read the English translation and Japanese counsel present will have read the Japanese original. That being so, I do not think it is necessary to detain the witness for the mere formality of reading the document but I will ask the recording staff to record it at this place in the depositions as if,

in fact it had been read and, as it may be referred to page by page, I will ask the recorders to note as they transcribe it where each page commences.

On whose behalf, Mr. Roberts, do you tender the witness?

MR. ROBERTS: He is being examined in the general phase on behalf of defense counsel in general.

THE COMMISSIONER: Do you mean by that he is tendered on behalf of all the accused?

MR. ROBERTS: I cannot say that he is being tendered by all of the accused but I would say that in general he is being tendered on behalf of the accused.

THE COMMISSIONER: I am afraid that is not satisfactory, Mr. Roberts. You who are tendering him should be able to inform the Court as to which of the accused are having him tendered as their witness. Can you tell me?

MR. ROBERTS: I understand that he can be tendered on behalf of all of the accused.

THE COMMISSIONER: You mean by that that he is, in fact, being tendered on behalf of all the accused.

(Whereupon, the document above referred to was marked defense exhibit "A" for identification

and the English translation thereof is copied into the record as follows:)

Page 1

"1. I, KAGESA, Sadaaki, am an ex-Lieutenant General, and now recuperating at the 1st National Hospital from pulmonary tuberculosis.

"2. I had served as Chief of the Chinese Section of the General Staff Office from August of the 12th year of Showa (1937), and was appointed Chief of the Military Affairs Section of the Military Affairs Bureau of the War Ministry in June 1938.

"In accordance with the decision of the HIRANUMA Cabinet's Five Ministers Council in April of the 14th year of Showa (1939) with respect to Mr. Wang Ching-wei's Japan-China peace movement, I assisted Mr. Wang Ching-wei in removing to Shanghai as he, having moved to Hanoi from Chungking at that time, was planning the peace movement. He was beginning to feel his personal danger. I helped him continuously in his movement of establishing the Central Government. At the establishment of Wang's Government towards the end of March in the 15th year of Showa (1940), I became his highest military adviser and held the position till May of the 17th year of Showa (1942).

"Therefore, I am well acquainted with the

Page 1 (Cont.)

details of the establishment and the character of the Nanking Government which had Wang Ching-wei at its head.

"3. I am not very well acquainted with the peace negotiations carried out through the medium of Mr. Trautmann, German Ambassador to China, from the end of 1937 to the beginning of 1938 since they were presided over by the Minister of Foreign Affairs. However, I recollect that the National Government once was about to accept the terms of

Page 2

the Japanese (p. 2) Government but on the 14th of January it suddenly sent an answer contrary to the expectation of the Japanese Government.

"The attitude of the National Government towards these negotiations may be seen from an essay of Wang Ching-wei's entitled 'For An Instance' published on the 27th of March 1939.

"Upon receipt of the National Government's reply of the 14th of January the Japanese Government drew the conclusion that the Chinese Government had no sincerity in the peace negotiations between China and Japan and announced on January 16 that henceforth it would have nothing to do with the National Government. It was not because the Japanese Government abandoned all hopes for an overall peace between

Page 2 (Cont.)

China and Japan. Japan was very eager for it and gave up the peace effort with the National Government which was judged to be unfaithful to the idea of general peace. She intended to accomplish the same purpose in some other way.

"4. In the spring of 1938 Mr. Kao Tsung-wu, former Director of the Bureau of Asiatic Affairs, and Mr. Tung Tao-ning, former Chief of a section of the Bureau of Asiatic Affairs, came to Tokyo in succession. I met them in the capacity of Chief of the Chinese Section of the Military Affairs Bureau. Their purpose of visiting Tokyo was, in fine, to make the Japanese Government understand that 'once the Japanese Government disregarded the Chiang Regime, some other person than Chiang Kai-shek must be sought to invite peace between Japan and China. For that purpose no one was better suited than Mr. Wang Ching-wei, who feeling (p. 3) the necessity of expeditiously settling the problem between Japan and China is advocating peace. His assertion, however, would never be accepted by the National Government. Therefore there was no alternative but to make Chiang Kai-shek listen to peace overtures by launching a national peace movement outside the Government.

"The Japanese Government seemed to have no

Page 3 (Cont.)

particular objections to Mr. Kao's plan.

"After that, however, the Japanese did not make any positive overtures to Mr. Wang Ching-wei.

"5. As we heard nothing further from Mr. Kao Tsung Wu, we thought that his movement had failed and did not take any particular pains to investigate into the matter. But in the autumn of the same year (1938), Colonel IMAI of the General Staff who happened to go to Shanghai on official business, returned to Tokyo with the 'Tentative Terms of Peace between Japan and China' which had been drawn up by Mr. Kao and Mr. Mei Ssu-ping.

"The Central military authorities made some amendments to that tentative plan in accordance with 'the policy for the adjustment of relations between Japan and China' which had already been drawn up, and I together with Colonel IMAI was ordered to proceed with the terms to Shanghai on the 19th of November and transmitted them to Messrs. Kao and Mei. Since they gave us their opinions containing some desires on the part of China, we made several amendments. In form, this plan was different from the KONOE statement of the 22d of December of the same

Page 4 year, but in substance (p. 4) it was almost the same. In addition to that, the Chinese proposed that

Page 4 (Cont.)

'Mr. Wang escape from Chungking according to a pre-arranged plan and thereupon the Japanese Government would be expected to announce the terms of peace.' This was due to the fact that in order to give impetus to the development of Mr. Wang's peace movement it was necessary to clarify what Japan desired of China.

"We transmitted these matters to our respective superiors, and the War Minister reported them to the Five Ministers Council and obtained its assent. I remember it was on the 25th of November.

"6. Mr. Wang agreed to the result of our conversations at Shanghai and escaped from Chungking on the 18th of December 1938, according to a pre-arranged plan and reached Hanoi in French Indo-China on the 20th.

"Premier KONOE announced what is known as 'Konoe's three principles' regarding the policy for the adjustment of relations between Japan and China on the 22d of the same month, while Mr. Wang in response to the KONOE statement sent circular telegrams containing peace representations to the Central Office of the Kuomintang Party, Chiang, President of the Kuomintang Party, and the Central Executive Committee. In these telegrams he argued the necessity

Page 4 (Cont.)

of peace between Japan and China, stated the impossibility of resistance, and explained that, once Japan's attitude had been made clear by the KONOE statement further resistance was useless. Thus he earnestly desired reconsideration of the National Government.

Page 5

(P. 5) "7. At this juncture, I must go into the history of the KONOE statement, and recollect the broad points of view of Premier KONOE, Navy Minister YONAI, War Minister ITAGAKI, Foreign Minister ARITA and Finance Minister ISHIWATARI with respect to the adjustment of relations between Japan and China.

"In view of the attitude of the National Government at that time, a fairly long war was to be expected. It is natural that the Japanese demands upon China would increase, in proportion with the prolongation of the war resulting in the increase of sacrifices and the magnification of victories. But what Japan wanted of China was the co-existence and co-prosperity of Japan and China based on a hearty collaboration between the two nations. At this point, in accordance with the various Ministers' idea that Japan's grand policy embracing what she desired of China must be decided as the National policy, the

Page 5 (Cont.)

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authorities of the War, Navy, Foreign and Finance Ministries commenced to formulate plan from about July 1938 and at length it was referred to an Imperial Conference on the 30th of November. The national policy was decided then. The KONOE statement of the 22d December 1938 was the summary thereof. At that time, not a few people, civilians, government and military circles and like thought that reparations for the sacrifices suffered during the Chino-Japanese Incident should be in the form of acquisition of territory or control of management. It is a remarkable fact that this grand national policy which seemed rather weak-kneed was decided upon under such circumstances utterly abandoning the idea of reparations.

Page 6 (P. 6) "8. On the 1st of January 1939 the Kuomintang Party of the Republic of China decided to strike Mr. Wang's name off the party register and to expel him from all public offices. Special service agents were dispatched to Hanoi by the Chungking Government and they threatened him. Mr. Tseng Chung-ming, Mr. Wang's right-hand man, was assassinated at Mr. Wang's house in Hanoi on the 21st of March. Thus it was reported that his life was endangered every minute. At a meeting of the Five Ministers' Council it was determined that I should see Mr. Wang

Page 6 (Cont.)

and, if necessary, assist him to reach a safety zone if requested. I reached Hanoi on the 17th of April by the 'Hokko Maru' together with YANO, Secretary of the Foreign Office and Mr. INUKAI, Ken.

"9. I met Mr. Wang Ching-wei at his private residence in Hanoi on the 18th of April.

"Mr. Wang regretted the outbreak and the development of the Sino-Japanese Incident, and said, 'I discussed with Mr. Chiang Kai-shek in writing or in direct talk about the necessity of Sino-Japanese cooperation in which I believe, but Mr. Chiang Kai-shek told me that it was impossible to bring about peace partly because he himself was suspicious of Japan's real intentions, and partly because of various circumstances. Just when I thought that there was no way but to attempt to sway the Chungking Government by arousing public opinion from the outside giving up the project of getting Mr. Chiang Kai-shek to change his mind while in Chungking I was notified by Mr. Kao Tsung-wu and Mr. Mei (p. 7) Ssu-ping of Japan's peace policy. I strongly believed that it was not impossible to obtain public opinion, if Japan really abided by that policy.' He also said that the KONOE statement of the 22d of December had a most important effect on the development of the peace move.

Page 71
(Cont.)

"Mr. Wang further stated that, as it was dangerous and meaningless to stay at Hanoi, he wanted to further the movement with the seat of his activities in Shanghai and that he was intending to move from Hanoi to Shanghai with the consent of the French Indo-china authorities. He also hoped to develop the peace move after arriving at Shanghai by a much more advanced method than which had been planned till then. He was considering the plan to be followed.

"Mr. Wang's original plan for the development of the peace move was to instill peace enthusiasm among the people with the members of the Kuomintang as central figures and make the National Government do away with the anti-Japan policy. As already mentioned he had no intention of establishing a government.

"10. Mr. Wang chartered a French ship with the consent of the French Indo-China authorities and boarded it on the 25th of April, 1939, at Katoba Island (T.N. Not clear), guarded by staffs of the Peace Preservation Bureau of French Indo-China. The ship left on the 26th. We, the Japanese members boarded the 'Hokko Maru' at Haiphong. On the 28th we received from Mr. Wang Ching-wei a communication to the effect that he wanted to transfer to the 'Hokko Maru',

Page 7 (Cont.) Page 8

and in the same evening he changed ships presumably in the offing northeast of Bias Bay. Then, (p. 8) after touching at Keelung to replenish coal and provisions, sailed straight for Shanghai and reached the Hongkow wharf in Shanghai on the 8th of May. I often talked with Mr. Wang on board the 'Hokko Maru'. The important things which Mr. Wang told me and Mr. INUKAI during our conversations are as follows:

"(1) Until then the plan of the peace move was to organize a peace body centered around the Kuomintang members, to point out the reason why Chungking's anti-Japanese theory was erroneous, to explain that peace was the only way to save China and East Asia; to enlarge the peace camp by degrees; and ultimately to make Chungking change its policy. But upon careful consideration, it is extremely difficult to make the Chungking Government change its policy by discussion alone.

"Now, the advocation of peace came from his love for China, but anti-Japanism is also an expression of patriotism. However, advocacy for peace cannot easily be distinguished from treason. It is therefore difficult to make the general populace listen to the advocacy of peace quite unlike the advocacy of resistance to Japan which fall on ready ears. Advocacy for

Page 7 (Cont.) Page 8

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Page 81 (Cont.)

peace can shine only when the righteousness and adequacy of Japan's policy are endorsed by facts. That is, if the KONOE statement is actually put into practice, the Chungking Government's advocacy for resistance to Japan will lose its basis. Then, I believe, even the Chungking Government will have no choice but to turn to peace swayed by the general current of public opinion. For that purpose, the shortest way is to establish a peaceful government

Page 9

(p. 9) and cooperate with the Japanese Government in implementing the KONOE statement.

"For this reason, I thought it best to give up the previous plan and establish a peace Government, to arouse public opinion that resistance was meaningless not only through the enlightening movement by speech to Chungking but also through factual proof of the good results of Sino-Japanese cooperation. By doing this the Chungking Government might turn to peace.

"Therefore, if the Government of your country has no objection to this new plan, I wish to change the previous plan and proceed with the establishment of a peace government.

"(2) The establishment of the government does not aim at the destruction of the Chungking

Page 9 (Cont.)

Government. If only peace can be invited, I don't care who holds the political power. The purpose of the peace move is to influence the Chungking Government to turn to peace, and to make it cease the resistance. For that reason, it is not desirable to provoke a civil war such as to fight against Chungking and cause bloodshed though it will be necessary to possess military forces after the establishment of the government. If the Chungking Government join my movement in the future, the purpose of the movement will have been attained and I shall retire to private life without any hesitation. This fact I wish to state definitely and make myself clear.'

"In short, what Mr. Wang intended was to show the Chungking Government and the general public that the advocacy of peace was not groundless (p. 10) by establishing the peace government and creating a living example of cooperation with Japan, and thereby conduct the Chungking Government to peace, and bring about a general peaceful cooperation with Japan in conjunction with the Chungking Government. Therefore, with the establishment of Mr. Wang's new regime, China would be, for a time, divided into two camps -- the peace faction and the resistance group -- but ultimately she would be reunited into one. Without this reunion

Page 10 it is a certainty that general peace cannot be achieved. That was the guiding principle of Mr. Wang's movement.

"This can be seen through the words in his circular peace telegram of 16th January 1940: 'If Mr. Chiang in consideration of the fate of the country and the welfare of the nation, courageously decides upon a farsighted policy, makes peace with Japan, and, in accordance with the principles of the KONOE statement seeks its concrete facts, Chao-ming and his comrades will certainly join forces with him and rapidly bring about peace to the whole country.'

"11. Reaching Shanghai on 8th May 1939, Mr. Wang Ching-wei met his comrades, Chu Min-yi, Chow Fu-hia, Fu Shi-shuo, Mei Ssu-ping, Kao Tsung-wu, etc. As a result of the meeting he decided to visit Japan. He informed me of that determination and requested me to communicate with the Japanese Government at my discretion. He was drawing up the plan of the peace movement and studying the points which he would demand from the Japanese Government. As soon as these plans were completed, (p. 11) he intended to depart.

"The principal points drawn up by Mr. Wang with respect to his visit to Japan were in substance as follows:

Page 11 (Cont.)

"(1) Opinions will be frankly exchanged with Prince KONOE, Premier HIRANUMA and some other ministers concerned, Mr. Wang would personally attend to these matters.

"(2) If, as a result of the meetings, the peace movement is considered hopeful the following articles will be implemented by Chou Fu-hai.

"A. In order to further the movement 'Demands Concerning the Execution of Principles of the Respect of Sovereign Rights' will be presented to the Japanese Government due to the necessity of making the Chinese people understand that Japan has no intention of aggression, control or of interfering with the internal affairs of China.

"B. In order to show that the new government was not formed under the pressure of Japan, it is necessary not to disrupt the previous judicial system and the Japanese Government will be required the consent to the recognition of the following matters as being indispensable terms: The new government shall be called the National Government. The form of its establishment shall be the 'return to the capital'. The San Min Chu-i, Three Peoples' Principles will be made the guiding conception, the 'Sun-in-the-blue-sky-flag' will be used as the national flag.

Page 11 (Cont.)

"12. Mr. Wang and his party left Shanghai for Tokyo by air at the beginning of June, 1939. The party consisted of Chou Fu-hai, Mei Ssu-ping, Kao Tsung-wu, Chou Lung-yang and Tung Tao-ning. On the

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(p. 12) Japanese side, YANO and SHIMIZU, Secretaries of the Foreign Office and Ken INUKAI and I joined the party.

"Soon after our arrival at Tokyo, Mr. Wang had an interview with Premier HIRANUMA. At the interview, the Premier expressed his opinion concerning the Sino-Japanese cooperation to be based upon moral conception and admired Mr. Wang's moral courage in attempting to solve the unfortunate incident between Japan and China. Answering this, Mr. Wang said that further struggle between Japan and China would be meaningless and that he is determined to concentrate all his energies on the materialization of peace. He then asked the Premier whether Japan had a policy for promoting the peace movement with the Chungking Government for the positive solution of the Incident; whether Japan had the policy of directing its activities towards sympathizers in civil circles and excluding the Kuomintang party members; whether Japan had the intention of paving the way to the solution of the incident by welcoming all persons who give thought to the future

Page 12 (Cont.)

of both countries regardless of whether they both are among Government circles or among civilian circles, members of the Kuomintang or and other party. And he stated that he would establish a Peace Government with himself as its central figure if Japan considered this third method appropriate, and that he would serve sincerely for the attainment of the purpose.

"In reply to Mr. Wang, Premier HIRANUMA said that the present cabinet inherited the ideas of the KONOE statement and is adhering to it firmly. He also expressed his approval of the opinion of

Page 13 Mr. Wang and (p. 13) the peace policy, and stated that Japan was ready to lend absolute assistance and support in response to his decisive will. To this interview I was a witness and heard everything from the beginning to the end.

"As for the interview with the other ministers concerned, I have no recollection of anything requiring special mention, except to the statement of the War Minister, ITAGAKI. Acting in the capacity of proxy for Premier HIRANUMA, the War Minister, ITAGAKI, in the morning of June 15 stated just what was expected by Japan and exchanged opinions.

"I was a witness to this interview and was

Page 13 (Cont.)

able to understand well the contents of the conversations. I observed then that the War Minister was especially careful in the choice of his words so as to avoid giving any impression to Mr. Wang of interference in the internal policy of China. Recalling from my memory, the gist of the conversation was as follows:

"(1) The War Minister asked Mr. Wang, "What is your opinion concerning the liquidation of past evils arising out of the doctrine of 'One Nation, One Party' at this opportunity?" Mr. Wang said that he held the same opinion and that he had the desire to live up to the Minister's expectation by directing matters in such a way as to take in members of all parties and factions, Kuomintang or otherwise, inasmuch as it is feared that any dislocation of the juridical system would entail an obstacle to the future development of the movement.

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"(2) The Minister answered, 'persons belonging to the two existing governments, the Provisional and the Restoration, are faithful to the same idea. They have striven for the peaceful cooperation between Japan and China enduring persecution's joy and Japan cannot dissolve them without some consideration. Therefore I want your opinion on the

Page 14 (Cont.)

establishment of a political council with the Provisional Government and Economic Council with the Reformation Government or something of the sort in order to manage Sino-Japanese relations locally.' To this Mr. Wang answered, 'I have no objection to the establishment of a Council in North China which is far from Nanking and in entrusting the local administration thereto to a certain extent. There is an example in Mr. Huang Fu who was once the head of the Political Council there. However, I am unable to consent to the establishment of anything of this nature in Central China. I am ready to consider, of course, the warm treatment of persons thus affected in this region.'

"(3) The Minister said, 'Many people interpret nationalism or the doctrine of the people's welfare in San-Min-Chu-I as if it accepts pro-communism and anti-Japanism. Have you not any opinion as to the adjustment of this at this opportunity and promote Sino-Japanese cooperation and anti-communism?' Mr. Wang answered that he was altogether of the same opinion.

"(4) The minister stated, 'Most of the Japanese people think that the 'Sun in the Blue Sky' flag denotes the sign of anti-Japanism. If the (p. 15)

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Peace Government and its army had the same flag with that of the anti-Japanese Government, unexpected results may occur in actual military actions of the Japanese army. May I ask you for some consideration on this point?' Mr. Wang was absolutely opposed to this but said that he would consider a method by which a distinction may be made between the Nanking and Chungking corps.

"(5) The Minister sought Mr. Wang's opinion as to the problem of the recognition of Manchukuo. To this Mr. Wang answered in the following vein,--'according to the address given by Dr. Sun Yat-sen in Kobe in the thirteenth year of Taisho, recognition of Manchurian independence is not against doctrine. We should recognize Manchukuo as an independent nation in view of her present stage of vivid development. Inasmuch as I am set on the aim of realizing peace with Japan, I am firmly convinced there is no alternative but to recognize Manchukuo.'

"In the above interview, the Minister considered that in so far as the internal affairs were concerned, it would be wise to accept Mr. Wang's opinion, but since the problem of the national flag and that of the dissolution of the Renovation Government are concerned with the prosecution of the war,

Page 15 (Cont.) he perceived that it would be necessary to make the Japanese army in China cognizant of the opinion of Mr. Wang and therefore summoned his staff officers to Tokyo. The staff officers of each army were opposed to 'the Blue Sky and the White Sun Flag,' because the Japanese officers and soldiers have a strong belief that the 'Blue Sky and the White Sun Flag' is the symbol of anti-Japanism and that it Page 16 makes (p. 16) the distinction between the peace army and the anti-Japan army difficult. They were also opposed to the dissolution of the Renovation Government because it would give rise to difficult problems in the maintenance of public peace.

"But as a result of discussions, the staff officers of each army understood the will of the minister who thought that it had better respect fully the will of Mr. Wang concerning such internal problems in China, and they came to agree with the opinion of the minister. Thus they arrived at the conclusion that since the central authorities had resolved to respect Mr. Wang's opinions they must make their subordinates subservient to this decision.

"ITAGAKI, the War Minister, informed the Five Ministers' Conference of these happenings and it was decided to respect without reservations the will

Page 16 (Cont.)

of Mr. Wang.

"After the interview with the Premier and the ministers concerned, Mr. Wang had an interview with Prince KONOE. Without an interpreter Prince KONOE talked with Mr. Wang for hours, and so I could not understand its contents in detail. But it seemed to me that at this interview Mr. Wang was inspired with much courage and hope as to the future of the peace movement.

"13. Following this, the aforementioned 'request concerning the realization of the principle of respecting sovereignty' was submitted by Chou Fu-hai and the contention on the Chinese side was generally admitted by the Japanese Government. The more important items, still in my memory, are as follows:

"(a) Japan will not interfere with China's domestic administration. Therefore all negotiations will be carried out through the regular diplomatic channels. Advisers shall be provided at China's request only in the Central Government and the highest military body. An adviser will answer inquiries and submit his opinion occasionally to the Chief concerned but a decision will be made exclusively by the Chief concerned.

Page 17 (Cont'd)

"(b) As to joint enterprises, improper appraisal of property on the Chinese side shall be corrected and the proportion of Japanese investment shall be limited.

"(c) Surplus customs duties in the custody of the Tax Control Bureau and the Yokohama Specie Bank shall be transferred to the Central Government after its organization.

"(d) The Salt Administration shall regain its pre-war status immediately after the organization of the Central Government.

"(e) Factories, mines and houses under the Japanese Army's control shall promptly be returned to China except those which are necessary from the military viewpoint.

"14. As previously mentioned, the original plan of Wang Ching-wei was to develop a peace movement with Kuomintang members as its leaders, with no intention whatsoever to establish a government. But he changed his mind during his stay in Hanoi and that

Page 18 plan was replaced by a peace movement (p. 18) plan based on establishing a government. The establishment of Mr. Wang's regime entirely depended on his own free will, and the Japanese Government neither requested Mr. Wang to establish a government nor

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persuaded him to do so. This is clear in the talk between Premier HIRANUMA and Mr. Wang Ching-wei during his visit to Tokyo in the first ten days of June, 1937. His New Year's statement issued on January 1, 1940 bore eloquent witness to these circumstances.

"From the following paragraph in the New Year's statement, it is evident that the Nanking Government was established really in accordance with Mr. Wang's free will: 'As to my positive embarkation on the peace movement for saving our country, some of my friends approved it and others opposed it, advising me in various ways. I, myself, was extremely worried about the means and ways. In order to achieve the great mission which is in common with Japan and China for the stabilization and security in East Asia and establishment of a new order in East Asia, was I to stay out of the government and to convert the present thoroughly anti-Japanese government, advocating peace and salvation of our country, or to achieve this by establishing a new political power? Or, even in case of establishing a new political regime, was I first to establish it as a local political power and then enlarge it gradually to make it Central Government or was I to establish the central government from the

Page 18 (Cont.)

beginning? Thus there were many ways conceivable. But comparing all these ways, I reached the conclusion that the most direct and bold way was the most effective and most conducive to future development, and

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(p. 19) finally I decided to head straight for establishing a central political power.'

"15. The KONOE statement of December 22, 1938 is the only datum available to Mr. Wang Ching-wei with regard to Japan's desire towards China. But it was too abstract, that various opinions, both firm and moderate, would arise therefrom if one were to put it in practice.

"If, after Mr. Wang Ching-wei succeeded in organizing a government, great difference should be found between draft treaty submitted by Japan and Mr. Wang's understanding of the KONOE statement, Mr. Wang would face a difficult situation. The result thereof would be the collapse of his government or his being left in the hands of a puppet political power. In either case it was certain that the peace movement would fail.

"It may be said, therefore, that in order to show the Japanese Government's sincerity toward Mr. Wang and also to make the peace movement a success, the Japanese Government should deliberate with Mr. Wang

Page 19 (Cont.)

as to the embodiment of the KONOE statement prior to Mr. Wang's organizing a government.

"However, in case the contentions of both sides do not agree, Mr. Wang has the liberty to suspend establishing his government.

"I presented the above view to the Government and it was approved. In October, 1939, a tentative plan was shown me by the China Affairs Board.

"I, together with Rear Admiral SUGA, Foreign Office Secretary YANO and INUKAI Ken on our side and

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Chou Fu-hai, Mei Ssu-ping, Lin Paisheng, (p.20) and Chou Lung-Hsinang on Wang's side, conducted exhaustive investigations and discussions. Due amendments were made to the said draft plan and a conclusion was reached on December 30. To this amended plan both the Japanese Government and Wang Ching-wei expressed mutual agreement.

"16. It seems that peace negotiations with Chungking, even after the issuance of KONOE's statement, in January 1938 to the effect that Japan will have no further dealings with the national government, were in many instances conducted by non-official Japanese with the understanding of high government authorities, but I am not well acquainted with this matter. From about January 1940 under the supervision of ITAGAKI, Chief of

Page 20 (Cont.)

Staff of the Expeditionary Army in China, peace negotiations with Chungking were actively held. This endeavor was carried on with a view to contributing toward a merger of the Chungking regime and Wang's prospective government and also to bringing about an overall peace. The said peace negotiations were promoted through Sung Tzu-liang.

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"About the end of March it was observed that the possibility of their succeeding was very great so that Chief of Staff, ITAGAKI, after consultation with Wang, decided to postpone the formal establishment of the latter's government for several days. But, finally without achieving the effected results, Wang's government was formally set up on March 30. Even after this, maneuvers for peace through Sung Tzu-liang were enthusiastically continued by Chief of Staff, ITAGAKI. The Sino-Japanese

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treaty negotiations which were started from June 1940 were conducted on a 'dilly-dallying' policy after consultation with Wang. This was also for the purpose of facilitating the success of the said peace maneuvers. Unfortunately, however, these maneuvers also proved unsuccessful, and in October of the same year, it was decided to discontinue the endeavor for peace.

"After the failure of the maneuvers through

Page 21 (Cont.)

Sung Tzu-liang, Foreign Minister MATSUOKA, after consultation with Wang, schemed for peace negotiations through the agency of Chien Yung-ming and until the results thereof were definitely known, the signature of the treaty was withheld. But at last, on November 30 of the same year, there took place the ceremony for the signing of the treaty and Japan granted recognition to Wang's government. As stated above, all through the period covering before and after the setting up of Wang's government, every successive Cabinet was deeply concerned about the establishment of peace with Chungking.

"17. The Japanese government Army and Navy had no organs or mechanism established for the guidance and supervision of the Wang government. Although the Nanking government had advisors in its Military and Economic Council, these advisors were all appointed and engaged by Wang Ching-wei. They were not forced upon or recommended by the Japanese side. These advisors all acted in accordance with the Chinese regulations and gave advice whenever called upon. They offered their opinions occasionally, but never exercised guidance or interference, nor did they make investigations. These advisors, acting as a medium

Page 22 between Wang's (p. 22) government and the Japanese

Page 22 (Cont.)

side, made great efforts for the prosecution of the policies of Wang's government.

"The advisors, in order to avoid as much as possible temptations to interfere, assumed such an attitude that they were rather too passive in their conduct. But this was in accordance with the intention of the Japanese government and the military so as to prevent Wang's government from becoming a puppet. Accordingly, in the Wang government organization and personnel affairs were all left to the free will of the Chinese and no restrictions were exercised with respect to these matters. It was the same with the decision on policies and not a few of them were only brought to the knowledge of the Japanese after the decisions thereon were made some of the policies which Wang's government wanted to put into effect proved infeasible because of military restrictions, but this was unavoidable. It cannot however be denied that the Japanese army assumed an attitude to help the execution of the policies of Wang's government, to the greatest extent permissible under such circumstances. As for the budgets also, the Chinese independently decided on them and, according to what we have heard, the economic advisors were lending their good offices by giving their views regarding financial

Page 22 (Cont.)

resources.

"On the basis of the demand regarding the political independence which had been agreed upon between the Wang government and the Japanese govornment in June 1937, the latter stipulated some restrictions to the economic advance of the Japanese into China. In particular, the reduction and restrictions made in the percentage of the shares to be held

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by the Japanese in Sino-Japanese joint concerns which were national policy companies, created considerable repercussions among the Japanese economic circles. And it was also promised that many of the already established advantages and vested interests would be returned to the Chinese. This caused not a few people among the military, governmental and non-governmental circles to entertain antipathy and scepticism towards Wang's government, and some even went as far as to call Wang's government an anti-Japanese government under the veil of peace. Thus an anti-Wang government atmosphere was created within Japan. This was, after all, a reaction to Wang's government having planned for its political independence and the Japanese government having rendered assistance thereto. This also can serve as a testimony of the fact that Wang's government was not a puppet government.

Page 23 (Cont.)

"On this 15th day of March, 1947, at Tokyo.

"Deponent /s/ KAGESA Yoshiaki (Seal)"

There are one or two questions that Mr. YAMADA would like to put to the witness.

THE COMMISSIONER: Please do so, Mr. YAMADA.

MR. YAMADA: I should like to ask a question on just one point.

THE COMMISSIONER: On whose behalf?

MR. YAMADA: On behalf of the accused ITAGAKI.

DIRECT EXAMINATION (Continued)

BY MR. YAMADA:

Q Mr. Witness, in your affidavit you say that Mr. Wang Ching-wei met General ITAGAKI on June 16 -- June 15 -- that is, in June of 1939, 14th year of Showa, when Wang Ching-wei and his group came to Tokyo. Has General ITAGAKI ever met or spoken, had conversation with Mr. Wang any other time besides this particular conversation that you mention?

A The first meeting that General ITAGAKI had with Wang Ching-wei was the day following Wang Ching-wei's interview with Prime Minister HIRANUMA. This was on the 11th; that is, the first meeting with ITAGAKI was on the 11th of June. Speaking of the contents of that conversation I might say that General ITAGAKI on that occasion told Mr. Wang Ching-wei that

the war aims of the Japanese army were not to regard the Chinese people as an enemy but to fight against the communists and other troops who were working in collusion with them.

THE COMMISSIONER: Will you please stop the witness. I understood the question had relation to the time of this interview. I did not understand that it required also the nature of the interview. Is that so, counsel?

MR. YAMADA: That is so.

THE COMMISSIONER: In that case the witness need not answer further, having given the date that was sought for.

Q Was it not on that day, on the 11th, that Mr. Wang Ching-wei submitted a document to the War Ministry?

A Yes, "document regarding the expedient methods in order to save the situation" was the title of the document.

THE COMMISSIONER: Will you please explain to the witness that he need answer no more than just that which is put to him. If counsel desire more they will ask him further questions.

MR. YAMADA: That is all, sir.

THE COMMISSIONER: Do other counsel for the

defense wish to examine?

MR. ROBERTS: There are no further questions on the part of the defense. The prosecution may cross-examine.

(End of reading.)

MR. ROBERTS: I understand that the cross-examination will be read by Judge Hsiang.

THE PRESIDENT: Judge Hsiang.

JUDGE HSIANG: If it please the Tribunal, I will read the cross-examination proceedings in the absence of Judge Nyi.

THE PRESIDENT: Yes, do so.

JUDGE HSIANG (Reading continued):

JUDGE NYI: If your Honor please, may I request that the witness exchange seats with the attendant so that he can be nearer.

THE COMMISSIONER: I prefer not to disturb it. That has been arranged by the doctor and I think it had better be left as it is.

CROSS-EXAMINATION

BY JUDGE NYI:

Q Witness, you have mentioned in your affidavit the peace negotiations carried out through the German ambassador. Do you remember what were the terms of peace?

A I do not remember. It is not in my recollection.

Q Do you know as a fact that after the fall of Nanking Japan had revised the terms of peace and such terms of peace as offered later were more difficult to be accepted?

A The negotiations through the good offices of the German ambassador, Mr. Trautmann, were conducted just prior to the fall of Nanking and my recollection is that though the terms were made, the terms were

relaxed. It was not heavy -- later terms; the later terms were relaxed, if anything, but not heavier or more strict.

Q Do you also recollect that the terms of peace offered after the fall of Nanking were required by Japan to be accepted before the end of the year?

A There is no such fact.

Q You have stated in your affidavit that you helped Wang Ching-wei continuously in his movement of establishing the Central Government?

THE COMMISSIONER: Mr. Roberts.

MR. ROBERTS: May I ask that the prosecution when he refers to the affidavit please give us the page so that we can follow him easily.

JUDGE NYI: That is page 1, middle of page 1.

Q Are you familiar with the other new regimes before the establishment of the Central Government?

MR. ROBERTS: I want to object to the question because I believe it is outside the scope of the examination.

JUDGE NYI: If your Honor please--

THE COMMISSIONER: You need not reply. The question is well within the field of the affidavit and is to be answered.

Q Please answer the question.

A Yes, I know.

Q Did you participate in the formation of the so-called Ta-Tao Shanghai Municipal Government?

A No.

MR. ROBERTS: Will you please inform the witness that when I stand up not to answer the question until the ruling is made by the Court?

JUDGE NYI: Your Honor, may I have the witness be shown exhibit No. 463-A, on page 5. This is a document purporting to establish Provisional Government at Peking and Restoration Government at Nanking, and in that document it was clearly stated that Colonel KAGESA of the headquarters of the General Staff had been consulted in the formation of this Ta-Tao Shanghai Municipal Government.

MR. ROBERTS: I would like to receive a copy of the document first.

THE COMMISSIONER: Is it an exhibit?

MR. ROBERTS: Yes, it is an exhibit.

THE COMMISSIONER: Then you should have a copy.

MR. ROBERTS: I was not informed that they were going to refer to it.

THE COMMISSIONER: What is the exhibit number?

JUDGE NYI: 463-A, page 5, section 1. I may

read the first sentence?

THE COMMISSIONER: May I interpose? You have it in Japanese? Very well. You have it in Japanese; it may be shown the witness.

JUDGE NYI: May I proceed to read?

THE COMMISSIONER: Yes.

BY JUDGE NYI (Continued):

Q "With regard to the above government, it is reported that Colonel KUSUMOTO of the office of Embassy Military Attache and Colonel KAGESA of the Headquarters of General Staff had consulted with each other and helped towards its formation." Why did you say that you had no part in it?

A I did not participate.

MR. ROBERTS: I object to the question because it is not shown in this exhibit that the witness said anything. It is stated, "it is reported" and does not purport to be a statement from this witness.

THE COMMISSIONER: That is not a proper objection. That is a comment that you could make at a later stage of the trial. That is not a proper objection. The question was properly put and has been answered.

Q As this is an official document, will you

give some explanation why you say that you did not participate in this government?

A May I first have this official document explained -- why this is an official document?

Q This is an exhibit. The original is --

THE COMMISSIONER: It will shorten it, perhaps, Mr. Nyi, if you tell the witness what the origin of the document is and explain to him why you say it is an official document.

JUDGE NYI: The certificate shows that it is part of the Part V, China Incident, and it is part of the records of the General Affairs Section, General Affairs Bureau of the Foreign Ministry of Japan.

Q Does that refresh your mind?

A As an officer in the General Staff Headquarters I received reports -- I received a report with regard to the manner in which the Ta Tao Municipal Government was set up, administrative government was set up, but I did not participate in the establishment of that government.

Q But you were consulted, were you not and helped toward its formation?

A I received a report with regard to the formation of this government and I saw this government after its formation on the spot but never at any

time participated positively in the establishment of this government.

THE MONITOR: Slight correction there: I received a report about this and learned that the government, the administrative government, was set up on the spot in the field; however, I have never taken direct part in the forming of it.

Q It is only the direct part that you deny to take, is that right?

A Yes.

Q Do you know as a fact that the day after the fall of Nanking, that is on the 14th of December, 1937, the Provisional Government was already established in Japanese-occupied Peking?

A Yes.

Q Then the formation of the Provisional Government in Peiping had been planned long before the fall of Nanking, was it not?

A I think it is possible to interpret it that way. You may interpret it that way.

Q Do you know who was the head of this Provisional Government?

A Wang Keh-min.

Q Do you know that Wang Keh-min was at first in Hong Kong and he was instructed by KITA and IMAI

to proceed north and set up this Provisional Government?

A Unfortunately I do not know of the manner in which Wang proceeded north or the circumstances surrounding his going to the north.

Q In the middle of page 2 of your affidavit, in the middle of the page you say that Japan intended to accomplish the peace between the two countries "in some other way." What was the "some other way"?

A With regard to that the Japanese Government--the government on its part had no proposal and among those concerned each had their own, each had its own proposal. As far as the government was concerned it had not received -- arrived at any definite plan on what method to take or what procedure to take.

Q But you seem to be very definite about it. In this paragraph which I have referred to you say that the Japanese would have nothing to do with the National Government and they want to accomplish the same purpose "in some other way."

What was this "some other way" you had in mind when you wrote this affidavit?

THE COMMISSIONER: Yes, Mr. Roberts.

MR. ROBERTS: So that there shall be no misunderstanding I would like to request that the two

preceding sentences be read to the witness so that the thought may be connected.

THE COMMISSIONER: You had better do that, Mr. Nyi.

Q Referring to your affidavit you say that--

THE COMMISSIONER: Please read the two preceding sentences.

MR. ROBERTS: Or the beginning of the paragraph. It would be better to read the whole paragraph.

JUDGE NYI: Yes.

Q You say, beginning of the paragraph: "Upon receipt of the National Government's reply of the 14th of January the Japanese Government drew the conclusion that the Chinese Government had no sincerity in the peace negotiations between China and Japan and announced on January 16 that henceforth it would have nothing to do with the National Government. It was not because the Japanese Government abandoned all hopes for an overall peace between China and Japan. Japan was very eager for it and gave up the peace effort with the National Government which was judged to be unfaithful to the idea of general peace. She intended to accomplish the same purpose in some other way."

(End of reading.)

THE PRESIDENT: We will recess for fifteen minutes.

(Whereupon, at 1045, a recess was taken until 1100, after which the proceedings were resumed as follows, the Honorable Mr. Justice McDougall, Member from the Dominion of Canada, not sitting:)

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

THE PRESIDENT: The accused TOGO, with the permission of the Tribunal, is conferring with his counsel and will continue to do so until the end of this session at noon.

The decision on the recess question this morning was a majority decision.

Judge Hsiang.

JUDGE HSIANG (reading continued):

What was this "some other way" which seemed to be very definitely in your mind?

A The statement of the 16th of January is the KONOE statement. Prince KONOE may have had some other way but as far as I was concerned the "some other way" was an extremely vague matter and since I had nothing concrete in mind I just simply used this expression, "some other way."

THE COMMISSIONER: Doctor, we are going on until twelve. Ordinarily we take a short adjournment at this time but as we started late I would not propose to take it unless you think the witness' condition makes it desirable that we should. What do you say about it?

THE INTERPRETER: The witness does not require recess at this time.

THE COMMISSIONER: Very well, we will continue.

BY JUDGE NYI (Continued):

Q Was it already intended at that time to set up new regimes in various regions occupied by Japanese troops and the peace would be sought through these new regimes instead of the Nationalist Government?

A Is the question whether the peace was to be sought through established regimes?

Q New and established regimes.

A Among "some other way" as I remember there was one plan which sought to make -- sought for peace through already established regimes.

Q Was it the policy of Japanese Government at that time to have separate regimes rather than to have a centralized government?

A Japan's foremost desire vis-a-vis China was the establishment of a government which was strong and unified and friendly to Japan, and one of Japan's foremost wishes was that the National Government at that time change its attitude to one of friendship toward Japan.

Q Was it the policy of Japan that although a central government should be set up under its auspices, that separate regimes, the local regimes, would still be maintained?

A Japanese policy had not advanced to such a concrete stage. The Japanese ideas were in some measure expressed during the Wang Ching-wei-ITAGAKI conversation.

Q Now, as to the "some other way" which we have just asked, you have recalled one instance. Do you recall any other instance or any other way?

A Yes, the plan that I had as Chief of the

Military Affairs Section may be considered one proposal.

Q In the last paragraph of page 2 you mentioned the visit of Mr. Kao Tsung-wu and another gentleman from China in the spring of 1938. How did they come over since the two countries were virtually at war with each other?

A A friend of mine in Shanghai, a refined and well-known cultured gentleman, was very much taken over by the enthusiasm, fire and zeal of Kao Tsung-wu and arranged with the Japanese army to have him transported to Japan and an airplane was provided for the purpose.

Q So it wouldn't be possible for him to come over without the help of the Japanese army, would it?

A Yes, that is so.

Q Was their visit previously informed to the Japanese authorities?

A He came to see me.

Q That is not an answer to my question.

(Whereupon, the question was repeated by the interpreter.)

A The advance notice came only to me as an individual.

Q So the Japanese Government was not informed

previously; only you were informed previously, was it?

A The government had nothing to do with it. It was only to me that this advance notice came.

Q What was your position at that time?

A Chief of the Military Affairs Section, War Ministry.

Q Could you direct an airplane to be ready -- to be prepared for his transportation and the taking of a foreigner whose country was virtually at war with your country without the government having any knowledge of it?

A I did not provide the airplane. The airplane was provided by the Japanese army which had then advanced into China or was stationed in China.

Q But the army was acting not in its private capacity in sending him over, did they?

THE COMMISSIONER: The result will be obtained if you ask whether the visit was to the witness in his official capacity. That is really what you want to know, isn't it?

JUDGE NYI: Yes.

THE COMMISSIONER: Very well, ask him in that way.

THE INTERPRETER: Your Honor, does the "official capacity" refer to the witness or to the

Chinese?

THE COMMISSIONER: Referring to the witness, in the witness' official capacity.

THE WITNESS: To me as an individual, not in my official capacity.

Q What was the name of the Japanese, cultured Japanese, whom you just mentioned?

A Mr. MATSUMOTO, Shigeharu, of the Domei News Agency.

Q And it was this gentleman who arranged for this transportation?

A Yes, he negotiated with the army and gave his good offices in having a plane provided.

Q Were you notified before he actually started on his voyage?

A I had a telegram from Mr. MATSUMOTO.

Q And did you know this gentleman, Mr. Kao Tsung-wu before?

A Yes, I had met him once before in 1932.

Q Was the object of their visit made known to you before they came -- before Mr. Kao came?

A That was unknown; it was unknown to me.

Q But you did receive an advance telegram telling you that he was coming?

A Yes.

Q What were their respective positions in the Chinese government at that time -- Mr. Kao and the other gentleman?

MR. ROBERTS: I believe the information is contained in the affidavit and would be repetitive.

THE COMMISSIONER: The witness must answer the question.

A Mr. Kao Tsung-wu was former Director of the Bureau of Asiatic Affairs of the Foreign Ministry of the National Government of China.

Q Was he holding any position at that time?

A That I do not know well. I am not familiar.

Q You have just stated that you met him as an individual but on page 2, seventh line from the bottom you say, "I met them in the capacity of Chief of the Chinese Section of the Military Affairs Bureau."

A Mr. Kao Tsung-wu and his colleague came to see me as an individual and I met him as an individual; but after talking with him and the subject of general peace came up, then my position changed from that of an individual to that of an official and in that capacity reported my information gathered from the Chinese to my superior officers.

Q How did your capacity change? Do you suggest that you were authorized by some government individual,

high government officer, that you should conduct negotiations with him?

A Having had no authorization or order when I met him, I met him as an individual and he was introduced to me as an individual. After the talk I became cognizant of the fact that this related to the question of general peace between Japan and China, and having learned from these emissaries that they were in positions of influence and that their plan was an acceptable and effective one to use as a reference, I reported the contents of my conversation with them in my official capacity, recommending that something be done in carrying these talks through.

Q To whom did you make the recommendation?

A To the Chief of the Second Division of the Army General Staff Headquarters, Lieutenant General HOMMA and General TADA, Vice Chief of the Army General Staff.

Q And what was their reaction?

A They had no objections with respect to the matters set forth in the affidavit.

Q Did you discuss the topic of general peace with Mr. Kao?

A All questions discussed related to that of general peace.

Q But you did not know exactly what was his official position at home, did you?

A No, I did not know.

Q How could you conduct negotiations with an individual whom you never knew before and whose official capacity was unknown to you?

A They were not negotiations but there should be no hesitation to anybody who is desirous of bringing about peace between Japan and China to engage in such discussions, whether in his private capacity or in his official capacity.

Q Would it be very useful to spend your time discussing with an individual about peace--talks on general peace?

A Yes, all the value in the world. I would welcome hundreds, thousands of such visits. The more the better. I am sorry that there weren't that many.

Q And the army at Shanghai thought it worthwhile to bring him by a special plane?

A Yes, I suppose that is what the army on the spot thought.

Q How many army planes were available for such purposes?

A When not in use there were many planes, any

number of planes.

Q You stated in the first paragraph on page 3 that the Japanese government seemed to have no particular objections to Mr. Kao's plan; now, by the term, "the Japanese government," what particular individuals were you referring to?

A Vice Chief of the Army General Staff TADA reported to the Minister of War, the War Minister reported to the Five Ministers' Conference, and no one entertained any objections.

Q Was ITAGAKI the War Minister at that time?

A General SUGIYAMA.

Q And who was the Foreign Minister at that time?

A I don't remember just at this moment.

Q Was it HIROTA?

A I can't make a positive reply to that question.

Q You say that they entertained no objection to it. Do you mean that they favored Mr. Kao's plans of general peace?

A No, that there was no opposition, no objection to the plan.

Q Did they stop only there and didn't go any further?

A Yes, that is so.

Q On page 3, the second paragraph, you stated that, "After that, however, the Japanese did not make any positive overtures to Mr. Wang Ching-wei." By saying, "after that," do you suggest that before then the Japanese had made frequent overtures to Mr. Wang Ching-wei?

A Before that we had not heard about Mr. Wang Ching-wei and we heard about it only then. I mean that since then no positive overtures were made.

Q But you have just stated that you have met thousands of men, talking about peace?

A You misunderstood my reply. Your question was, wasn't it useless to see such an individual, and my reply to that question is that I would have welcomed hundreds, yea thousands of such persons. I would have welcomed all of them for such talks.

Q You didn't actually see hundreds or thousands of them?

A No, not actually; only two.

Q Only two, Mr. Kao and Mr. Tung Tao-ning?

A Yes, only those two.

Q You have never met anyone during the formation of the Ta-Tao Shanghai Municipal Government?

MR. ROBERTS: May I object at this time because I believe that question has been answered

fully.

THE COMMISSIONER: I think the question ought to be answered. The objection is overruled.

A As I have said before I did not participate in the establishment of the Ta-Tao Administrative Government but I did meet--

Q No, you just stated that you have met only two persons and you talked to them about peace. I am not asking about the mayor, the supposed mayor. I know who he was. You just stated--

THE COMMISSIONER: Let the witness answer the question.

Q Now you say that you have only met these two persons and talked peace with them. My question is, during the time when the Ta-Tao government was being organized have you met any other Chinese and talked about peace with them?

A Yes.

Q Then it is not true. You say you only met two -- then you at least have met three?

A Yes, only two in Japan proper with regard to peace but once during a trip that I made to Shanghai I received a visitor whose name I do not remember, and since his discussion about peace did not amount to much I did not give it any importance and therefore

I did not state it in my affidavit.

Q When did you go to Shanghai?

A I think about September 1937.

Q In the middle of page 3 you mention IMAI of the General Staff and you say that he happened to go to Shanghai on official business. Do you know what was his mission?

A I do not know well.

Q Was he sent there to contact the Chinese interested in the so-called peace movement for the establishment of a pro-Japanese regime, do you recall?

A I do not think that was his assignment.

Q Was he in any way connected with the work on Tang Shao-yi?

A Yes, I have heard of Tang Shao-yi peace movement but I do not know who joined or participated in that movement because this was outside of my own duties.

Q Was he, IMAI, in any way connected with this?

A I do not think he had any connection.

Q Do you know what was the result of the work on him -- Tang Shao-yi?

A Yes, I know that in the end Tang Shao-yi was assassinated and therefore his peace movement collapsed

as a result.

Q In the last paragraph on page 3 you stated that the Central military authorities made some amendments to the plan proposed by Mr. Kao and Mr. Mei Ssu-ping. Now, who are the individuals involved in this when you refer to the Central military authorities?

A The officiers concerned in the Army General Staff and the War Ministry.

Q Who was the Chief of Staff at that time?

A Prince KAN-IN.

Q And who was the War Minister?

A General ITAGAKI was War Minister.

Q Were you in the year of 1938 Chief of the Chinese Section of the Headquarters of the General Staff?

A Yes, up to June, 1938.

THE INTERPRETER: Witness said: I wish to make a correction. I was in that position up to April.

Q On page 2, section 4, you say that you met them in the capacity of Chief of the Chinese Section of the Military Affairs Bureau. Should it read, "the Headquarters of General Staff"? Was there any mistake in it?

A It should be corrected to the General Staff Office.

Q Who was the Vice Chief of Staff at the time when you say some amendment was made to the plan proposed by Mr. Kao and Mr. Mei?

A Lieutenant General TADA.

Q Who was the Vice Minister of War at that time?

A Lieutenant General TOJO.

Q Was this plan proposed by Mr. Kao and Mr. Mei ever referred to the civil authorities of the Japanese government?

A I recall that the matter was reported by the Minister of War to the Five Ministers' Conference.

Q On page 3, the third line from the bottom, you say that Mr. Kao and Mr. Mei gave you opinions containing some desires on the part of China, the third line from the bottom of page 3. Do you mean to say that their opinions can represent opinions of China, desires of China, when you do not know their official position even? How do you explain that?

A Whatever may be the position held by the Chinese, if the proposal advanced by them is reasonable it was our belief that proper measures should be taken to meet them. That is why I stated that I would have welcomed hundreds or thousands of Chinese so that we

would be able to understand what desires and views were entertained by the people of China.

Q But you didn't know exactly whether Mr. Kao's and Mr. Mei's views would represent the Chinese view, did you?

A No, I cannot say so.

Q So how could you put it in the affidavit that they represented the desires of the Chinese?

A Because both of these gentlemen were Chinese. That is why I said "Chinese".

Q You mean these are the desires of these two particular Chinese -- not the Chinese in general?

A That is what I mean, but it was clear and definite that these men had connections with Mr. Wang Ching-wei.

Q Who gave you and Colonel IMAI orders to go to Shanghai on November 19, 1938?

A The order to me was issued by the War Minister after consultation by the War Minister at the Five Ministers' Conference.

Q And who sent IMAI, Colonel IMAI?

A The Vice Chief of Staff of the General Staff ordered Colonel IMAI to go to Shanghai with me at my recommendation in which I stated that inasmuch as I was going as a representative of the War Ministry

there should be one representative from the General Staff Headquarters.

Q Did SATO, the Chief of the Military Affairs Bureau, know anything about your appointment?

A The Director, Chief of the Military Affairs Bureau was Lieutenant General MACHIJIRI.

Q And not SATO?

A No, not SATO. SATO is below me in rank or was below me in rank.

Q What was the scope of your assignment?

A My assignment was to transmit to the Chinese terms which the Chinese desired.

Q Merely to transmit desires -- did you say that you went to transmit the terms which the Chinese would desire?

A Maybe it was my poor expression; maybe it is the fault of the interpreter, I do not know. I meant to say that there was a desire on the part of the Chinese to hear the Japanese terms and therefore I went to convey these terms.

Q And was there any discussion on these terms?

A Of course, there was some discussion but my assignment was to transmit the terms, the Japanese terms, which the Chinese desired to know and also to listen to the desires of the Chinese and bring those

there should be one representative from the General Staff Headquarters.

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Q And was there any discussion on these terms?

A Of course, there was some discussion but my assignment was to transmit the terms, the Japanese terms, which the Chinese desired to know and also to listen to the desires of the Chinese and bring those

desires back to Japan and transmit them to the proper authorities here.

THE MONITOR: Therefore, "to transmit the messages and to listen to their desire" would be the better expression than to use the word "discussion."

Q You say that there was some discussion, was there?

A Yes.

Q What were the points--

A But the point I am making is that that discussion was not the object. The object of my assignment was to convey the Japanese terms to the other party and to carry back the desires of the other.

Q Yes, I know that you told us that the mission was to convey and then to take back views of the Chinese but you say that there was naturally some discussion. Now what I want to know is, what are the points that you discussed with Wang's followers?

A That principally dealt with the question of withdrawal or evacuation of troops.

Q Discussed the evacuation of troops with these two Chinese whose official position was not yet known to you?

A I did not know their official position but as I have said before they were connected with Wang Ching-wei.

Q And what was Wang's position at that time?

A Vice Chairman of the Kuomintang and also Vice Chairman of the National Defense Council, as I recall.

Q Was that all?

A As to some other aspects all I know is that he was the number two man in China, the number two big man in China.

Q And you took it that he had the power to send his followers to discuss with you about evacuation of troops and the military situation in the occupied areas?

A N o, that is not so. Wang Ching-wei was a patriot entertaining ardent desires to realize the ideal of a general peace and tranquillity in China, and in order to realize the peace movement one important condition would be, "What did Japan desire of China?" And because these gentlemen had connections with Mr. Wang Ching-wei I listened to the views conveyed to me by Mr. Kao Tsung-wu and Mei Ssu-ping.

Q Was there any agreement between you and Kao and Mei regarding the situation, the military situation

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in China?

A What do you mean by military situation?

Q Evacuation of troops, and so forth, but you just suggested it.

A Yes, there was agreement of views.

Q And was the commander of the Central China forces advised about these views, the exchange of views?

A Had no connection whatsoever.

Q Who was the commander of the Central China forces at that time?

THE MONITOR: Is that Expeditionary Force or Area Army?

JUDGE NYI: Expeditionary Force.

A I recall the Commander in Chief as being Lieutenant General YAMADA but I may be wrong.

Q YAMADA, Commander in Chief?

A YAMADA, Otozo. At that time there was no supreme headquarters.

Q Was it HATA?

A No, it was not General HATA. The supreme headquarters was not established until the spring of 1940.

Q Who was the successor of MATSUI as Commander in Chief of the Central China Expeditionary Forces?

A My memory is not clear on that. I have forgotten.

Q On the top of page 4 you say that the Chinese proposed that Mr. Wang escape from Chungking according to a pre-arranged plan. What was this pre-arranged plan?

A May I be permitted to speak of this matter in detail? At length?

Q Just sufficient to let us understand.

A On November 11, 1937 Wang Ching-wei had a conference with General Chiang Kai-shek, and Mr. Kao Tsung-wu was present at that conference.

THE MONITOR: This is 9th of November.

A (Continuing) At that time Wang Ching-wei very strongly explained to General Chiang Kai-shek the advantages and disadvantages of war and peace but because Chiang Kai-shek did not lend him an ear Mr. Wang came to the conclusion that there were no -- that there would be no results achieved by carrying on a peace movement within Chungking and that the only alternative for him was to escape from Chungking to the outside in order to carry on this movement. That story was published in the Nan Hua Jih-pao of January 15, 1938. That is the name of a newspaper. At that time Chungking was more or less surrounded

and influenced by the communists, and General Chiang Kai-shek himself had no power of initiative, could not act on his own and such being the case it was impossible to irradicate the influence of communism in Chungking, but that mission could be taken only outside of Chungking. These facts are to be found in Mr. Wang Ching-wei's essays entitled, "For an Example," published on March 27, 1939, and also in his essay on "The Concept of Sino-Japanese Relations and their Future Objective," published on July 6, 1939.

Q Just wait a minute. My question is, tell us what was the pre-arranged plan. I am not asking you about the conditions in Chungking nor Wang Ching-wei's views or his published articles.

A Such being the situation within Chungking Wang Ching-wei entertained the idea that he must, at least before the 9th of November, that he must escape from Chungking.

THE MONITOR: Slight correction: Such being the case and Wang Ching-wei having had this desire to escape from Chungking it is clear that even as early as 9th of November he already had a plan to escape from Chungking.

A (Continuing) This is what I mean by pre-

arranged plan.

THE COMMISSIONER: We will take an adjournment now. We will adjourn now until 1:30.

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

AFTERNOON SESSION

The Commission met, pursuant to recess, at 1330.

THE COMMISSIONER: Are you ready to proceed, Mr. Nyi?

JUDGE NYI: Yes.

- - -

S A D A A K I K A G E S A, called as a witness on behalf of the defense, resumed the stand and testified through Japanese interpreters as follows:

CROSS-EXAMINATION

BY JUDGE NYI (Continued):

Q Witness, just before the recess we were asking you what was the pre-arranged plan. You may explain to us to some extent what this pre-arranged plan was. Now my question is, when the Chinese proposed to you that they were carrying out this pre-arranged plan was this pre-arrangement known to you before?

A I did not know about it at all.

Q Then what was the use of the Chinese to tell you that they want to carry out this pre-arranged plan since they conceived it and they wanted to carry it out?

A This was spoken of after the escape was made by Mr. Wang in accordance with the pre-arranged plan in order to have announced Japan's policy vis-a-vis China.

THE MONITOR: Slight correction: They mentioned this pre-arranged plan in here because they wanted the peace terms to be announced after Mr. Wang escaped from Chungking as per pre-arranged plan. That is the reason that this word was used in that statement.

Q But it was agreed between you and the two Chinese gentlemen that when they carried out this pre-arranged plan of escape from Chungking the Japanese government would be expected to announce the terms of peace?

A Yes.

Q So did you inform your government that the Chinese would expect an announcement of the Japanese government with regard to the terms of peace?

A Yes.

Q So the KONOE statement of December 22, 1938 was prepared in view of the proposed escape of Wang to Hanoi, was it?

A Yes. I have stated in my affidavit if Mr. Wang escaped they would like to have such a plan

announced.

Q When was Wang's response to KONOE's statement made?

A December 29.

Q And that was also pre-arranged, was it?

A I have not heard what the contents of the announcement would be.

Q Did it ever come to your knowledge that Wang's response was made on a previously arranged scheme in order to give the Chinese views with respect to KONOE's statement?

A I have not heard of it and I have never known of it.

Q On page 6, paragraph 8, you refer to the Five Ministers' Conference which decided to send you to see Mr. Wang Ching-wei. Do you recall when was this conference held?

A I do not remember the date but it was in the latter part of March.

Q And do you know who recommended you to do this job?

A I recommended myself for the assignment.

Q How was that done?

A I proposed to War Minister ITAGAKI that I should like to take the assignment.

Q In paragraph 8 on page 6 you say that you were sent to see Wang and assist him to reach a safety zone. Did the instructions specify what would be a safety zone?

A I was ordered by War Minister ITAGAKI that all things should be determined at the initiative of Mr. Wang himself.

Q But the order, you say, did instruct you to assist him to reach a safety zone?

A Yes.

Q What would be the safety zone to construe the meaning of the instructions?

A By safety zone is meant a zone where it would be most convenient and safe to carry on and promote a peace movement, and not a place like Hanoi where the very life of Mr. Wang was endangered by the infiltration of assassins from Chungking.

Q Was it intended that the Japanese-occupied territory would be a safety zone for him?

A At that time the Japanese idea was that it would be most inconvenient for Mr. Wang to come to a Japanese safety zone in order to carry out his peace movement and that some area outside of such a zone would be more preferable. However, the decision was left to Mr. Wang himself.

Q And what was done afterwards with regard to this place where Mr. Wang was to go?

A The place decided upon was Shanghai in accordance with Mr. Wang's own desire.

Q With regard to your trip to French Indo-China, was previous information given to the Japanese consular authorities there?

A Yes.

Q Was it a fact that secret code terms were used to hide your identity during this trip?

A Yes, that is a fact.

Q And did you send a telegram back through the Chief of Staff of the Formosan army soon after your arrival at Hanoi and saying that everything was going on favorably?

A Telegrams were sent direct from Hanoi but it may have been that this telegram, a telegram or telegrams were routed through Formosa.

Q So you do recall that several telegrams were relayed through the Formosan army?

A I do not recall any such. All that I recall is that telegrams sent direct from Hanoi to Tokyo were for technical reasons sent through Formosa. These may have been sent through Formosa for technical reasons.

JUDGE NYI: At this juncture, your Honor, the prosecution will produce a number of telegrams sent by the witness to his home authorities between the period April 19 to May 30, 1939. They were either sent directly from Hanoi or relayed through the Formosan army. These telegrams together with many others were obtained from the Japanese Foreign Office. They will tell the story of how --

THE COMMISSIONER: It is not proper to say what they will do. Put the telegrams and we will see what story the telegrams will tell.

JUDGE NYI: We wish to have them identified by the witness since they have been sent by him.

THE COMMISSIONER: You are entitled to tender the telegrams to him and get him to identify them as ones he sent.

MR. ROBERTS: Are the copies available for the defense?

JUDGE NYI: Yes.

MR. ROBERTS: May I ask, are these in evidence or just that you are expecting to put them in at a later date?

THE COMMISSIONER: Counsel has indicated that he proposes to put them in now through this witness, as he is entitled to do.

JUDGE NYI: We will first have them marked for identification and then we will decide later whether we want to put them in evidence.

MR. ROBERTS: Yes.

JUDGE NYI: We will first ask the witness to identify the prosecution's No. 1005-4, which is a telegram sent by the witness using his pseudo name KAWAMURA. That is the secret code name, "KAWAMURA."

THE COMMISSIONER: Instead of making that announcement the proper thing to do is to ask him whether that is a telegram sent by him and whether he did use that name.

MR. ROBERTS: I was about to request that the statement made by counsel characterizing the document be stricken.

THE COMMISSIONER: That is quite unnecessary. I have already dealt with it. Please do not waste time.

MR. ROBERTS: May I see a copy, please, of the document?

THE COMMISSIONER: Will the witness be good enough to answer the question?

Q Will you answer whether this is a telegram sent by you and under that name?

A Yes.

THE COMMISSIONER: Very well. You tender that as an exhibit, do you?

JUDGE NYI: We will have it marked for identification.

THE COMMISSIONER: Why for identification? Do you not desire to put it in as an exhibit?

JUDGE NYI: No, we will cross-examine him on the contents thereof.

THE COMMISSIONER: But if he recognizes it, acknowledges it as a telegram sent by him you are entitled if you wish to tender it as an exhibit. I do not quite understand why you offer it for identification.

JUDGE NYI: If your Honor please, we anticipate to tender them all at one time because all these telegrams constitute one whole story.

THE COMMISSIONER: Very well. That document then will be marked with the letter "B" at this stage for identification.

(Whereupon, the document above referred to was marked prosecution exhibit "B" for identification and is appended hereto.)

JUDGE NYI: And the next one will be prosecution document 1005-6, which was also a telegram sent under his name--

THE COMMISSIONER: Ask him the question.

JUDGE NYI: And under this number--

THE COMMISSIONER: No, no. Please do not describe it. Ask him the question whether that is a telegram sent by him under that name.

JUDGE NYI: Under this number there are three of them and I am going to ask him:

Q Witness, in this document there are three telegrams sent in your name. Are these the telegrams which you sent?

A I identify all of these.

JUDGE NYI: You sent.

THE COMMISSIONER: So that that can be marked, you say there are three documents there. Have they three separate prosecution numbers?

JUDGE NYI: We have only one prosecution number.

THE COMMISSIONER: For those three?

JUDGE NYI: For the three.

THE COMMISSIONER: Very well. Then that group of three telegrams will be marked with the letter "C-1," "C-2," and "C-3," respectively. That is for identification only.

(Whereupon, the documents above referred to were marked prosecution exhibits

"C-1," "C-2," and "C-3," respectively, for identification and are appended hereto.)

JUDGE NYI: The next document, No. 1005-8. This is a document sent under the name of KAWAMURA--

THE COMMISSIONER: Please do not make an announcement about it. It is much simpler and saves time if you put it to the witness: Is this a document saying so and so.

BY JUDGE NYI (Continued):

Q Was this document, telegram, sent by you?

A Yes.

Q The next one will be No. 1005--

THE COMMISSIONER: Just one moment. That document just tendered, that is 1005-8, is it?

JUDGE NYI: Yes.

THE COMMISSIONER: That will be marked with the letter "D" for identification.

(Whereupon, the document above referred to was marked prosecution exhibit "D" for identification and is appended hereto.)

Q The next one is document 1005-11. Was this telegram sent by you -- under this number there are two telegrams; were these two telegrams sent by you?

A The first one was sent by me; the second one, no.

Q The first and second are both signed "KAGESA"--purported to be signed by "KAGESA;" only the third, the last one, was not signed by you.

THE COMMISSIONER: Will the witness please look at them again?

Q There are three altogether. We want you to identify the first two.

A There are only two telegrams here. The one on the right was sent by me but not the one on the left.

THE COMMISSIONER: And the one on the front page,was that sent by the witness?

THE WITNESS: Yes.

THE COMMISSIONER: Let us be clear. Does that group then contain two telegrams sent by the witness and a third telegram sent by somebody else?

THE WITNESS: I say that there are two telegrams, the first sent by me, the second not sent by me.

THE COMMISSIONER: Very well.

JUDGE NYI: Yes, we understand it. The first sheet contains two telegrams and he said that he sent one and two. Then this on this page--

THE COMMISSIONER: Let it be put to the witness in the form of a question, not a statement from you. You are asking him whether the first sheet

contains on the front page a telegram sent by him, on the back of that same page, another telegram sent by him, and on the second sheet a telegram sent by somebody else. That is your question?

JUDGE NYI: Yes.

THE COMMISSIONER: What do you say to that, Witness?

JUDGE NYI: Is that right?

THE WITNESS: Yes.

THE COMMISSIONER: Very well. That document, 1005-11 will be marked with the letters "E-1," "E-2," and "E-3," for identification.

(Whereupon, the documents above referred to were marked prosecution exhibits "E-1," "E-2," and "E-3," respectively, for identification, and are appended hereto.)

Q The next number is 1005-13. Was this telegram sent by you?

A Yes.

THE COMMISSIONER: That document will be marked with letter "F" for identification.

(Whereupon, the document above referred to was marked prosecution exhibit "F" for identification and is appended hereto.)

Q The next number is 1005-19. Was this

telegram sent by you?

A This telegram was not drafted by me but was sent by me. I am responsible for this telegram.

THE COMMISSIONER: That document will be marked with the letter "G" for identification.

(Whereupon, the document above referred to was marked prosecution exhibit "G" for identification and is appended hereto.)

Q The next document is 1005-20. Was this telegram sent by you?

A Yes.

THE COMMISSIONER: That document will be marked with the letter "H" for identification.

(Whereupon, the document above referred to was marked prosecution exhibit "H" for identification and is appended hereto.)

JUDGE NYI: That is all that we will tender at the present moment.

Q Witness, you testified that YANO went to Indo-China with you on the Hokko Maru. That you stated on page 6, end of paragraph 8. Was it a fact that he flew to Shanghai from Tokyo and went to Indo-China by another ship?

A What you have stated is a fact.

Q So what you have put on the affidavit that

you went together with YANO on the Hokko Maru was not a fact?

A That is a mistake.

THE COMMISSIONER: Let us be clear about that. Does he mean it is a mistake on the part of counsel or a mistake by him in his affidavit?

THE WITNESS: My affidavit is mistaken.

Q Was that steamer, Hokko Maru, especially chartered for the purpose of your trip?

A Yes.

Q And who chartered it?

A Being on very intimate terms with Mr. YAMASHITA, Kamesaburo I made the request to him and he provided it by his generosity.

Q You were supposed to arrive at Hanoi on the 16th, were you, of April but you didn't arrive until 18th, was that right?

A I may have made a mistake by one or two days in my affidavit.

Q But YANO was expected to join you in Hanoi also on the 16th, was that right?

A I do not recall the date but it is a fact that YANO arrived in Hanoi before me.

THE MONITOR: Slight addition: I do not recall the date upon which we promised to meet in

Hanoi but it is a fact that YANO arrived at Hanoi before me.

Q Was it a fact that the Foreign Ministry sent instructions, urgent instructions, to the consular authorities in Hong Kong to bring YANO to Hanoi at the same time as you arrived at Hanoi?

A I have not heard of it.

Q Why didn't you come together on the same ship?

A There is no special reason. It is merely because YANO had the opportunity of going to Hanoi by plane via Hong Kong.

Q Why was it that special instruction was given that he should arrive at Hanoi on the same day as you did? Was it because of the fact that he was in charge of the secret codes?

A No.

Q When you met Wang Ching-wei at Hanoi did you hand him letters from the Foreign Minister ARITA and the War Minister ITAGAKI and the SUZUKI of the Koa-in?

A Yes and also a letter entrusted to me from Navy Minister YONAI.

Q What were the code terms you used for your trip? For instance, what was the code term used for yourself?

A At present I only recall that my name was KAWAMURA but I do not recall other aspects of the code. However, it was a very inferior and weak code.

Q Do you recall that the code term for Wang Ching-wei was "cargo"?

A All I remember is that his name was not "cargo." All I do remember is that his name was not "cargo" or "freight."

Q Was it another name called TAKEUCHI?

A There may have been such a name as TAKEUCHI but I have no recollection whether that was the name given to Mr. Wang Ching-wei.

THE COMMISSIONER: What is the meaning of the Japanese word you have just used?

JUDGE IYI: I don't know. It is a proper name.

THE WITNESS: I think there was a name "TAKEUCHI" but I do not know whether it applied to Mr. Wang Ching-wei.

Q Do you recall he had some other name besides that?

A I think there definitely was but these events having taken place eight years ago I do not remember.

Q Do you also recall that the code name for

your ship, Hokku Maru, was "taxi"?

A I have forgotten that also.

Q Do you also recall that his residence in Shanghai was given the name of a godown?

THE MONITOR: "His residence," you mean Wang's?

JUDGE NYI: Wang's.

A Yes, it came to my recollection also that godown was the code name for Mr. Wang Ching-wei's hiding place in Shanghai when I glanced through the telegram just handed to me.

Q Do you also recall that the code name for Shanghai was "Osaka"?

A That, too, I do not remember.

Q Now, on page 7, under section 10, you related your trip. When did you leave Hanoi?

A I recall that to be the 25th.

Q Did Wang Ching-wei leave on the same boat?

A No.

Q What ship did he take, did he go?

A No, I do not recall the name but it was a rather small French ship which was chartered for him.

Q Did his ship start also on the 25th of April?

A Yes.

Q Did you plan beforehand that the two ships

should meet on the high seas off the Nightingale Island?

A I do not remember the name of the island but it was south of the Island of Hainan, and the two ships were to meet there and were to make the balance of the voyage to Shanghai together.

Q On page 7 of your affidavit, the last four lines, you stated that on the 28th you did receive from Mr. Wang Ching-wei a communication to the effect that he wanted to transfer to the Hokko Maru, and in the same evening he changed ships presumably in the offing northeast of Bias Bay. Did you suggest in the affidavit that the idea of changing ships came from Wang Ching-wei and not because of the pre-arranged plan?

A That is what I mean.

Q But you just admitted that everything was arranged before you started that he will come over to your ship and not by the cable communication from his ship.

A When did I admit that?

Q I asked you whether it was -- did you plan beforehand that the two ships should meet on high seas off Nightingale Island and you say that you do not remember the name of the island but there was some

place that you planned to meet.

A Yes, I said so.

THE PRESIDENT: We will adjourn now until half past one.

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

Duda & Whalen

AFTERNOON SESSION

The Tribunal met, pursuant to recess, at 1330, Honorable Erima Harvey Northcroft, Member from the Dominion of New Zealand, not sitting.

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

THE PRESIDENT: Judge Hsiang.

JUDGE HSIANG: Reading:

A Yes, I said so.

Q Then there is some inconsistency between your statement--

THE COMMISSIONER: That need not be answered. You have established inconsistency. Why waste time about it? Please go on to your next question.

THE WITNESS: I should like to state to your Honor that there is no inconsistency. Perhaps there might be some misunderstanding because of a mistake in expression.

THE COMMISSIONER: Very well, then the matter had better be cleared up.

THE WITNESS: The plan was for both ships to meet at some point south of the Island of Hainan and to proceed to Shanghai side by side.

Q And that was the pre-arranged plan before you started from Hanoi, was that right?

A At the time of the departure from Hanoi, I have heard that although the plan was for both ships to proceed side by side an occasion might arise because of navigation difficulties at which time it may be necessary for Mr. Wang to change ships.

Q What were the navigation difficulties at that time?

A At the time of the departure from Hanoi, I have heard that although the plan was for both ships to proceed side by side an occasion might arise because of navigation difficulties at which time it may be necessary for Mr. Wang to change ships.

Q What were the navigation difficulties at that time?

A Mr. Wang was on a ship, a very small ship, with a displacement of nearly 700 tons and even a slight storm would make it difficult for it to proceed on its voyage, whereas I was on a ship, 5000 tons in weight, and that is why I spoke of the difficulties.

Q Then why didn't you take Mr. Wang along with you in your ship?

THE COMMISSIONER: Just a moment before you answer. Yes, Mr. Roberts.

MR. ROBERTS: I respectfully submit that these questions are immaterial and irrelevant, and it seems to me to be wasting the time of the Court.

THE COMMISSIONER: The questions are entirely proper and must be answered.

A This is a very important point, taking into consideration Mr. Wang's political concepts and philosophy. His idea was that he would like to serve his country, China, by putting into action all matters in accordance with his own initiative without receiving assistance from the outside and that he would take a small ship -- that, if possible, he would not like to entrust his mission to other parties but would even take a chance on a small vessel in making this voyage and would change ships only when travel by such means

became impossible.

Q So you used the code terms and arranged to change ships on high seas in order to evade attention of the public that you or the Japanese are not at the back of the Wang Ching-wei movement; was that your intention?

THE COMMISSIONER: Just a moment. Yes, Mr. Roberts.

MR ROBERTS: I object on the ground that the statement of the prosecutor is not correct and assumes a state of facts which is not in evidence.

THE COMMISSIONER: It is not a statement. It is a question and a perfectly proper question. The question will be answered.

A I speak for my conscience and state that the statement made by the prosecution is a distortion of the facts.

Q What was the object of using code terms and starting on two different ships?

MR ROBERTS: May I ask that one question be asked at a time instead of a double question as this seems to be?

THE COMMISSIONER: If the witness has difficulty in answering a double question he may take that objection. It seems a simple enough question to

answer.

A In going to and returning from Hanoi to fetch Mr. Wang all movements were kept in absolute secrecy. Because Mr. Wang's life was in danger and would be in danger if he continued to stay in Hanoi because of the infiltration of assassins, it is clearer than day that if the fact were known that Mr. Wang were to leave Hanoi his life would be in danger. This is why codes were used.

Q Was not Shanghai just as dangerous or even more so at that time?

A The decision with respect to the degree of the danger was left entirely to Mr. Wang himself.

Q What difference does it make to you if Mr. Wang and you started on two different ships or on the same ship?

A No difference at all to me. We just merely met the desires of Mr. Wang himself.

Q Wasn't it a fact that when Mr. Wang's ship did not join you on the high seas in time you were anxious and urgent measures were resorted to to search for Wang's ship?

A That is a fact.

Q Was it also a fact that the navy had been requested to search for Wang's ship by orders from

Tokyo?

A Yes, I heard of that later.

THE COMMISSIONER: Are you now going to something different, Mr. Nyi?

JUDGE NYI: Yes.

THE COMMISSIONER: Very well, we will take a ten minutes' adjournment at this stage.

(Whereupon, at 1440, a recess was taken until 1450, after which the proceedings were resumed as follows:)

THE COMMISSIONER: Will you please continue, Mr. Nyi?

JUDGE NYI: Yes.

BY JUDGE NYI (Continued):

Q Witness, did anyone suggest to you that Shanghai was not a safe place for Wang Ching-wei before he made plans to go there?

A Not from Japan although I have heard that there was considerable argument among Wang's followers in connection with the matter where he should seek refuge or seek safety.

Q Did you ask the Tokyo authorities, home authorities in Tokyo, that a residence -- residences, more than one -- should be prepared for Wang Ching-wei and his party?

A Yes.

Q And was that done to safeguard Wang Ching-wei's person against any possible danger?

A No, these several residences were established because Mr. Wang Ching-wei's circle was so large that several were required to accommodate them.

Q Was it a fact that you asked for the protection of the guards for his houses and also the marines to be present at the wharf when Wang Ching-wei and his party arrived?

A I have forgotten with regard to the point of landing but I did request that guards be placed tentatively at his provisional place of hiding.

Q In addition to all these preparations made for him you requested the home government that the plan should be carried out according to schedule, did you not?

To refresh your mind I will read to you a short passage in one of the telegrams which you just identified; that is in document 1005-8, which has been marked exhibit "D". You stated: "The negotiation is completed and plans for loading the cargo" (meaning Wang Ching-wei) "have already been arranged. Moreover, as the situation does not permit any change in the

plans, we wish to carry it out according to the fixed schedule."

THE MONITOR: May I see the Japanese version of it?

THE COMMISSIONER: What document is that?

JUDGE NYI: That is document 1005-8.

JUDGE DELL: Exhibit "D" for identification.

Q (Continued) What was the urge on you to prosecute this plan without delay? Do you still say that it was Wang Ching-wei's own idea to carry out this plan?

A The reason why it was stated that the situation did not permit of any delay was that next door to Mr. Wang's residence in Hanoi a group of assassins had rented a house next to Mr. Wang's under the name of Southwest Airlines Company causing danger to the life, to the person of Mr. Wang.

Q Was it also true that Wang Ching-wei would be exposed to the same danger or even more danger if he should enter Shanghai?

A With regard to that, as I have said before, everything was decided in accordance with Mr. Wang's own initiative.

Q Did Mr. Wang himself decide that he should call on Formosa?

A No, that was decided by me.

Q Was Keelung in North Formosa?

A Yes.

Q How many days would it take ordinarily by steamer of your size, of the size of the Hokko Maru, to sail between Keelung and Shanghai, or from Keelung to Shanghai?

A I think about three days.

Q When did you leave Keelung for Shanghai?

A I do not remember but I think it was around the 4th or 5th of May.

Q Was it true that you could have reached Shanghai very much earlier than the 8th of May? Simply because the residences of Wang Ching-wei were not yet prepared you slowed down purposely on the high seas?

A No, that is pure speculation.

Q We have here a document from the Chief of Staff to the Ministry of Foreign Affairs and in that it is said that the sailing had been made slow so that the ship may arrive at Shanghai on the 6th of May. Now, do you--

THE COMMISSIONER: Before that is answered, your objection?

MR. ROBERTS: Object to the prosecutor's

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reading from anything unless it is a document that is offered for identification purposes.

THE COMMISSIONER: That is not a good ground for objection at all. Is that your only objection?

MR. ROBERTS: It does not indicate the nature of the document or whether or not it is an exhibit properly in evidence.

THE COMMISSIONER: That is not a good objection either.

JUDGE NYI: Your Honor, I do not propose to have it tendered in evidence or marked for identification. I just want to show it to the witness to see whether he knows anything of that.

THE COMMISSIONER: You are entitled to do that.

MR. ROBERTS: Nor does it appear that any question has been asked. It is simply a statement made by the prosecutor.

THE COMMISSIONER: Prosecutor has not yet had time to ask the question. We have been dealing with your objections.

Q My question will be: Was it a fact that the Hokko Maru could have arrived at Shanghai by the 4th at normal speed, but as the preparation for

dwelling at Shanghai shall be finished on the 4th, the sailing had been slowed down so that the ship may arrive at Shanghai on the 6th?

A I don't remember about slowing the ship.

Q Would it refresh your memory by showing you this document?

A Perhaps.

THE COMMISSIONER: Then let him see the document to save time.

MR. ROBERTS: May we ask that it be marked for identification?

THE COMMISSIONER: That remains to be seen depending upon the use the prosecution counsel propose to make of it.

A This telegram does not refresh my memory.

Q Do you still say that you started from Keelung on the 4th or 5th of May?

A When I said the 4th or 5th it was based on a presumption calculated according to a ship's usual speed.

Q So that was your guesswork. Could you tell me more definitely when, on which day of May, you started from Keelung to Shanghai?

A To the first part of the question, that is just a guess on my part; to the latter part of the

question, I do not remember that.

Q Did you also request transportation for Wang Ching-wei's comrades to be taken from Hanoi to Shanghai?

A That is separate from Mr. Wang's plan?

Q Yes.

A Do you mean to say in accordance with a plan quite separate from Mr. Wang's own plan?

Q I said, did you ask for transportation for Wang's comrades to be taken from Hanoi to Shanghai?

A Yes, I assisted in their transportation to Shanghai in accordance with Mr. Wang's desire.

Q Were Wang's comrades mostly in Hanoi at that time?

A Perhaps the only influential person in Mr. Wang's circle in Hanoi was Mr. Wang's wife.

Q About how many of them were in Hanoi at that time?

A I recall that Mr. Wang's party, including his boy or valet, was somewhere around twenty.

Q Previously you have stated that Wang issued a telegram in response to when he left -- after he left Chungking. In this exhibit "F" you have mentioned the "war of telegrams." Was the telegram which Wang dispatched after he left Chungking the start of

this "war of telegrams"?

THE COMMISSIONER: Before that is answered, that would appear to be merely an opinion on the part of the witness and therefore not proper to be asked.

Q What did you have in mind when you used this term, "war of telegrams" with Chiang? That "Chiang" is Chiang Kai-shek.

A It was a battle of words between Mr. Wang Ching-wei and General Chiang Kai-shek because General Chiang Kai-shek insisted upon resistance against Japan, whereas Mr. Wang on the other hand insisted upon peace with Japan.

Q In this same telegram you said that, "As to his proposed 'war of telegrams' with Chiang, after his arrival at Shanghai, Wang is, of course, contemplating some 'terroristic' counterplot." And continuing you say, "Accordingly, I wish to set up his headquarters as soon as possible at the place which is convenient for such activities."

MR. ROBERTS: May I suggest that the document referred to be shown to the witness?

THE COMMISSIONER: That is quite unnecessary. It has been read from the very document in Japanese to him. The interpreter is reading from the document

itself.

MR. ROBERTS: All right.

Q Now my question will be, how did you know that Wang was contemplating this terroristic counterplot?

A What is the date of this telegram?

Q May 3. Did Wang himself tell you?

A Yes, some countermeasures against terrorism must be taken in accordance with Mr. Wang's own plans.

THE MONITOR: Correction: In accordance with the plan of Mr. Wang the countermeasures against the terrorism by the Chungking element must be figured out.

Q But according to the wording of the telegram Wang himself was contemplating this terroristic counterplot?

THE COMMISSIONER: Now that something is turning upon the very language, perhaps the witness may see his own telegram.

(Whereupon, a document was handed to the witness.)

A Now I understand.

Q So he was contemplating the terroristic counterplot and in support of his plan you say you wished to set up his headquarters convenient for his

activities?

A Yes, what I mean by terroristic countermeasures is a defensive measure. The various plans, however, do not refer to countermeasures against terrorism but they include all steps necessary to carry on plans for peace.

THE MONITOR: The "verious plans" in your document may be "various measures." What is the exact wording there?

JUDGE NYI: "Convenient for such activities."

THE COMMISSIONER: Does that mean, Monitor, that there is some doubt about the propriety of the translation?

THE MONITOR: Yes, sir.

THE COMMISSIONER: I think the document should be referred to the Language Arbiter who can pass upon it. We will just wait while that is done.

The Arbiter reports that in paragraph 2 of the telegram, "Wang is, of course, contemplating some 'terroristic' counterplot," should read, "Wang had in mind a counterplot against terroristic activities."

The Arbiter reports that the final words of paragraph 2 should read, "which is speedy and convenient for various activities."

The document will read in accordance with

the Arbiter's ~~view upon it.~~

Q Do you call it a defensive measure to counteract against the terroristic activities and set up a headquarters at a place convenient to carry out such activities?

THE COMMISSIONER: The language is to carry out the "various activities;" not "such activities," but "various activities."

Q I change it to "various" then. Will you answer my question?

A Yes, defensive measure.

Q If it was Mr. Wang's own will to do all these things why would it bother you to set up a headquarters for him?

A In accordance with Mr. Wang's wishes.

Q And to what extent did you help him along this line? Did you actually set up a headquarters for him?

A Yes.

Q And where was that?

A On an extension of the International Settlement in Shanghai.

Q Was that No. 76 Jessfield Road? Was that the place where all the terroristic activities originated from Wang's side?

THE COMMISSIONER: Wouldn't it be more satisfactory to put the question: Was that where you set up Mr. Wang's headquarters? That is really what you want to know, isn't it?

JUDGE NYI: Yes.

THE COMMISSIONER: Yes, ask the question in that form then, please.

THE WITNESS: What I set up for Mr. Wang was his residence. No. 76 is the headquarters from which Mr. Wang carried on his anti-terroristic measures.

Q Who was in charge of that No. 76 Jessfield Road headquarters?

A Ting Mu-tsung.

Q To what extent did the Japanese help him in his work in this 76 Jessfield Road headquarters?

A The Japanese assistance principally included liaison with the Kempei Tai in Shanghai and to eradicate any friction between the two parties, that is to say, between the Japanese gendarmerie and Mr. Wang's circle.

Q Were these Japanese closely associated with you?

A Yes, they came under my command after my arrival in Shanghai.

Q Was it true that Japanese terrorists have been sent from Tokyo to Shanghai for the above purpose?

A I heard of the plan and it was rejected, and as a result not a single one came.

Q So it was planned, was it?

A I heard such an information and issued the rejection.

Q But they had come to Shanghai at the time when it came to your knowledge, is that right?

A No.

Q I read to you the part of your telegram dated the 3d of May in this same exhibit: "It is reported that Japanese terrorists"--

MR. ROBERTS: Just a minute, please. I object to reading from this document which is only marked for identification, due to the fact that we have not had a chance to check its accuracy in translation. One correction has already been made -- that is, two of them made already. There may be more.

THE COMMISSIONER: There is no reason why the cross-examination should not continue nevertheless. You have Japanese people about you. You could have done it and, even then, if there be doubt, the witness himself will have the document read to him and if he challenges the propriety of the translation, we have

a Language Arbiter. That is not a good objection.

MR. ROBERTS: May I ask that the witness have the document in Japanese?

THE COMMISSIONER: That is entirely unnecessary because the Monitor is reading from the very document which he has acknowledged to be his.

Will you please continue, Mr. Nyi?

MR. ROBERTS: May I ask that, if possible, we have a copy of this document in Japanese?

THE COMMISSIONER: It is not practicable at this moment. Well, I don't know -- have you a copy in Japanese?

JUDGE NYI: We don't have it now.

THE COMMISSIONER: Can you have one available tomorrow morning?

JUDGE NYI: We can make one.

THE COMMISSIONER: The original is in the possession of the representative of the Secretariat and can be inspected by the Japanese counsel.

Q I read to you paragraph 4 of the telegram: "It is reported that Japanese terrorists have been sent from Tokyo to Shanghai for the above purpose. But, considering the bitter experiences in the past, I wish you would absolutely stop the plan. It may seem a good plan to wait in some place outside Shanghai

until the preparation for guard and protection by Ting Mu-tsung will be finished, but I don't believe it will be finished within two or three months, in view of the general situation."

Taking this whole paragraph together it appears that the terrorists had been sent to Shanghai but you were opposed to it for the reasons you stated in the latter part of the paragraph.

THE COMMISSIONER: What is your question, Mr. Nyi?

JUDGE NYI: My question is yet to be given.

THE COMMISSIONER: You are prefacing your question with rather an unnecessary amount of address. Please try to reach your question more shortly.

JUDGE NYI: I will give him the question now.

Q Was it your intention as expressed in the latter part of this paragraph that if the preparations for guard and the protection by Ting Mu-tsung could be finished it would be an idea to carry out the plan so your difference is not as to matter of policy but as to the time, the right time to carry out the policy, was that right?

A Is that telegram date the 3d or 4th of May?

Q Yes, 3d of May.

MR. ROBERTS: I understand from Japanese

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counsel that there may be a question of the translation in paragraph 4 after the word "plan," as to whom it refers to.

THE COMMISSIONER: I do not think there is. That is not pertinent to the question now being put. What was the witness' answer?

A I recall that telegram as having been sent on the 3d or 4th of May through the Chief of Staff of the Formosan Army, that is to say, when I was in Formosa I received the information that Tokyo, that rightist elements -- there was a plan to send rightist elements from Tokyo to Shanghai.

THE COMMISSIONER: To send what?

THE INTERPRETER: Extreme rightist elements.

THE COMMISSIONER: What is that?

THE MONITOR: Right wing elements.

THE COMMISSIONER: That is politics?

THE MONITOR: Extreme nationalists.

A (Continuing) And this is the telegram I sent in opposition to that. When I arrived in Shanghai on the 8th of May I learned that such a group had not arrived.

Q Do terrorists and rightists mean the same thing?

THE COMMISSIONER: Is that Japanese word

capable of meaning both those things, the word, "It is reported that Japanese terrorists"?

THE MONITOR: Almost, sir. I think the witness used the term "rightest terrorists," or "right wing terrorists."

THE COMMISSIONER: I ask the Arbiter, as we are nearing the time of adjournment, to take that document and this translation and report in the morning what his opinion is of the proper translation of that paragraph. We will not interfere. We will go on with cross-examination in the meantime. We will have that report in the morning. Have you further questions on that same document?

JUDGE NYI: Yes.

THE COMMISSIONER: Please continue.

BY JUDGE NYI (Continued):

Q What were the "bitter experiences in the past" that you referred to in this paragraph?

A From my association with internal problems, that is, internal national problems, I was very familiar with the harm that could be done by the activities of the right wing terrorists.

Q And the terrorist policy had been used before, had it; is that right? On what occasions had such terrorist activities been used?

A I hate terrorists and I have never used them. That is why I objected to them.

THE COMMISSIONER: That is not an answer to the question. Please answer the question.

Q On what occasions had terrorists, terrorism, been used before since you say that there were bitter experiences in the past?

A I am pointing to the many terrorist incidents that have occurred in Japan but I have never written that I used terrorists myself.

Q But the Japanese terrorists had been planned to be sent over so it was not purely a matter of terrorism in Japan in this case--

MR. ROBERTS: I submit that this has been answered by this witness at least once.

THE COMMISSIONER: I have not yet heard counsel's question. There will be time enough to raise an objection.

MR. ROBERTS: I thought he had finished; I am sorry.

Q And apparently you are speaking of a situation in Shanghai. Now, what were these bitter experiences which had been used in the past so that you do not agree to use them in Shanghai?

THE COMMISSIONER: Then I think the objection

is properly taken. That is a question the witness answered a moment ago. Please proceed to your next question.

Q Who were those Japanese terrorists you stated in this telegram?

THE COMMISSIONER: Yes, Mr. Roberts.

MR. ROBERTS: I object to the calling for an opinion. This is just simply a report that the witness referred to -- no one in particular.

THE COMMISSIONER: There is no merit in the objection. The question may be put.

Q Who were these Japanese terrorists who had been sent? Were they in the employ of the Japanese authorities?

MR. ROBERTS: May I further object on the ground the witness has stated that no terrorists actually were sent but there was some idea or plan.

THE COMMISSIONER: Mr. Roberts, I must ask you to raise objections only when they have merit. There is no merit whatever in it. Please do not interrupt needlessly.

The witness will be good enough to answer the question?

A While in Taiwan I received the information, I heard the information from the headquarters of the

Formosan army that there was a report to the effect that a terrorist troup was going to Shenghai and I was not informed as to what type of organization they belonged to or the names of its members.

THE COMMISSIONER: The time has now come for an adjournment and I will ask the Arbiter to take all the translations of that group of telegrams "B" to "H" inclusive and confer with his fellow members and revise the translations of all of them over night because as there has been some challenge to one it is well that they should all be reviewed.

MR. ROBERTS: If the Court please, under the rules is not the defense entitled to copies of documents which the prosecution intends to use in court?

THE COMMISSIONER: These are being used by way of cross-examination and in fullness of time no doubt you will receive copies.

These proceedings are now adjourned until 9:30 tomorrow morning.

(Whereupon, at 1545, an adjournment was taken until Friday, 23 May 1947, at 0930.)

First National Hospital, Tokyo

23 May, 1947

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The Commission met, pursuant to adjournment, at 0945.

Appearances:

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, IMTFE.)

THE COMMISSIONER: I ask the Language Arbiter to report.

LANGUAGE ARBITER (Mr. Sano): With the Commissioner's permission and in compliance with the order, we submit the following language corrections:

Translation of prosecution exhibit Nos. B; C1, 2 and 3; D; and E1, 2 and 3 are generally acceptable to the Board. However, there are two corrections recommended to be made:

Document F, paragraph No. 2, should read as follows:

"Wang is naturally anticipating, after his

arrival in Shanghai, a battle of telegrams with Chiang and also terroristic opposition. Accordingly, he wishes to set himself up as soon as possible at the place most convenient for his various activities."

Paragraph 2, line 4 of document G, prosecution document 1005-19, substitute "would" for "did", and delete translator's note to the end of sentence, and substitute "prematurely".

THE COMMISSIONER: Are those all the corrections?

LANGUAGE ARBITER (Mr. Sano): Yes, sir.

THE COMMISSIONER: I would suggest for the convenience of all counsel, that the arbiter go with my associate in my car to the War Ministry where my typist will type a number of copies of this report which can be handed to counsel and used. That should be back pretty soon.

In the meantime we will continue as far as is appropriate with those which are available.

JUDGE NYI: May I proceed, your Honor?

THE COMMISSIONER: Do, please.

S A D A A K I K A G E S A, called as a witness on behalf of the defense, resumed the stand and testified through Japanese interpreters as follows:

CROSS-EXAMINATION

BY JUDGE NYI (Continued):

Q Witness, toward the end of the session yesterday afternoon I was asking you who were the terrorists about to be sent from Japan. As far as I remember, we haven't got your answer. Will you give us the answer now?

A We learned that there were terrorists in Formosa. But, since we were unable to make thorough investigation, I do not know the names nor to which parties they belong -- which organization they belong.

THE MONITOR: Slight correction there: We learned about the despatching of terrorist gangs from Tokyo in Formosa. Not "we," but "I" learned about this in Formosa. Since then I have not made any investigation. Therefore, I do not know the political affiliation of these terrorist gangs or the names of their members.

Q Did you make any investigation after your arrival at Shanghai?

A I did not think it was necessary to investi-

gate these terrorists gangs, so I did not make any investigation whatsoever.

Q You seem to have been very much concerned about the safety of Mr. Wang and also about the activities -- the various activities you would take. Are you not also concerned about the standing of these -- sending of these Japanese terrorists from Tokyo?

MR. ROBERTS: May I submit that this question has already been answered by the witness at least twice?

THE COMMISSIONER: I don't recall that. However, I think the question does offend, as it is more in the nature of comment than an examination to ascertain the facts.

The witness did answer. An answer having been given, we must be told what his answer was.

THE MONITOR: No, sir. He said, "Should I answer?"

THE COMMISSIONER: I see. Then the witness did not answer.

THE MONITOR: No, sir.

THE COMMISSIONER: Very well, he need not.

Q Were the terrorists and the rightists the same thing?

THE COMMISSIONER: That matter was canvassed yesterday and need not be pursued further.

Q From whom did you learn that terrorists were being sent from Japan?

A I learned this from a member of the Japanese forces in Taiwan -- headquarters of Japanese forces in Taiwan.

Q And how did he know? Did you inquire?

A This person was the man who had recently returned to Formosa from Tokyo.

Q Oh, then he must have the firsthand information. Did you go any further to ask how he got this information in Tokyo?

A There are true and false informations. But, concerning the despatch of terrorists from Tokyo, since I did not think it was necessary, I turned down the offer.

MR. ROBERTS: (To the interpreter) Please speak up. I cannot hear you.

MR. SUTTON: I cannot hear him either.

Q You were not aware of the names of these terrorists, and do you know who was sending these terrorists?

MR. ROBERTS: I submit that this, likewise, had been covered previously.

THE COMMISSIONER: The answer can be given shortly in case there be any doubt about it.

A As I have repeatedly said, I did not take any steps to obtain any information concerning the despatch of terrorist gangs from Tokyo.

Q But, you did take pains to stop the sending of the terrorists, did you?

THE COMMISSIONER: That is a comment and, again, need not be answered. I must ask you, Mr. Nyi, to ask questions which will elicit facts rather than to debate with the witness.

JUDGE NYI: I will withdraw that.

THE COMMISSIONER: Because the debate involves matters of comment which you can make at a later stage.

Q Your telegram of May 3 stated, "I wish you would absolutely stop the plan." Now, was it a fact that a plan was conceived by the very persons to whom you sent the telegram?

A I requested that the despatch of terrorists be stopped, but I did not say anything --

THE MONITOR: But I did not consider that the person to whom I sent the telegram was despatching the terrorists himself.

Q If those persons did not have anything to do

with the plan of sending the terrorists, what meaning would it have for you to send -- to convey your objections to them? I am not calling for any opinion, but I want to ask you if you know any fact in relation to that.

MR. ROBERTS: I submit that the question is more argumentative than a question.

THE COMMISSIONER: The question is perfectly proper, and it is to be answered. I must ask you, Mr. Roberts, not to make idle and unnecessary objections. It is merely time wasting.

MR. ROBERTS: May I respectfully submit that I only make objections, if your Honor please, if I think they have merit.

THE COMMISSIONER: You make a great many unmeritorious objections which waste a good deal of time.

A The telegram was addressed to a section chief of the General Headquarters -- General Head Staff, and this man assisted me in preparations for going to Hanoi, and he had nothing whatsoever to do with the despatch of these terrorist gangs.

Q When did Mr. Wang Ching-wei decide to go to Tokyo?

A He intimated that he wished to go to Tokyo

on the 7th -- on or about the 7th of May while we were on board the ship, but it was formally decided after he arrived in Shanghai.

Q What date was that when he was positively sure that he was to go to Tokyo?

A I think it was about the 9th of May.

Q In your conversation with Mr. Wang did you know as a fact that he could not set up a peace government in occupied China without the support or protection of Japan?

A While we were on board ship, nothing was said about concrete Japanese assistance concerning the establishment of a Central Government.

Q Were you already, at that time, an assistant to him when you were on the way toward establishment of a new government?

A I do not understand the question. Would you kindly repeat it?

THE COMMISSIONER: That need not be necessary. Will the Japanese reporter please read the question back?

(Whereupon, the question was read by the Japanese reporter.)

A Mr. Wang told me of his desire to -- of his wish to establish a Central Government. But, since

I did not know what the Japanese Government -- what the intentions of the Japanese Government was concerning this question, I could say nothing.

THE MONITOR: So, therefore, there was no question of helping or not helping the establishment. The proposition hadn't gone that far yet.

Q Didn't you know that the Japanese Government had long ago decided to set up a Central Government in China?

A I learned of Mr. Wang's desire to set up a Central Government at that time. I learned for the first tire then that Mr. Wang wished to set up a Central Government. That was most surprising both for the Japanese Government and for myself.

Q You didn't answer my question. My question is, didn't you know that the Japanese Government had decided long ago, not whether Wang Ching-wei himself had decided long ago, to set up a government? What is your answer to that?

A When I was Chief of the Military Affairs Section -- while I was Chief of the Military Affairs Section, the Japanese Government did not have any idea of establishing a Central Government in China.

Q Didn't you know, when you went to North China in the middle of May, that Wang Ching-wei had

approached the Italian Ambassador to use the Italian Concession in Tientsin for his activities in North China?

A In the middle of May?

THE MONITOR: Did you say "middle of May"?

THE INTERPRETER: The witness went to Tientsin -- to North China in the middle of May?

Q Yes, during his absence from Shanghai, while he was taking a trip to North China.

A According to my recollection, I was in Shanghai with Wang Ching-wei in the middle of May.

Q Was it a fact that the Japanese consular authorities in Shanghai waited for your return in order to reach a decision about Wang Ching-wei's request to use the Italian Concession in Tientsin?

A In any event, I had no contact with the Italian Embassy.

Q I am not suggesting that you had any contact with the Italian Embassy. I am asking you whether Wang Ching-wei had approached the Italian authorities for the use of Tientsin Concession and whether it was a fact that the Japanese authorities in Shanghai, because of your absence, could not reach a decision.

A I have never heard that Mr. Wang intended to use the Tientsin Concession for his activities.

Q Did Mr. Wang take a trip to North China during that time?

A No.

Q Oh, after his return from Tokyo?

A Yes, that is so.

Q Where did he stay in Tientsin?

A He stayed in the Italian Concession there.

Q Was it a fact that previous arrangements had been made with the Italian authorities for him to stay there and carry out his activities?

A Consul General YANO made arrangements concerning the house, but I do not know what steps were actually taken by him.

Q Do you suggest that he had nothing to do with the arrangement of the Italian authorities with regard to this thing?

A Yes, that is so.

Q I will show you a document which I will hand to you to identify to see whether you agree with the content of this document.

(Whereupon, a document was handed to the witness.)

JUDGE NYI: Your Honor, it is a long document. May I tell him which part that his name appears?

THE COMMISSIONER: If you please.

Q (Continuing) In the fourth paragraph it says that,"according to investigations made thereafter, the situation seemed to be almost as per attached telegram No. 1350. I shall wait for Colonel KAGESA who is scheduled to return to Shanghai tomorrow or the next day to make arrangements," and so forth.

Now, this is one place where your name appears, and it seems that they are waiting for your decision.

MR. ROBERTS: May I suggest that the prosecutor refrain from reading any of the contents until we ascertain the authenticity of the document.

THE COMMISSIONER: I am not concerned with the authenticity. He wants to know what the witness has to say about it. I agree that nothing more should be said until we hear what the witness says about the document.

A I think this is an accurate telegram -- a true telegram. I think this is a true telegram.

THE COMMISSIONER: That is not really what we want to know. What we want to know is whether the witness either saw the telegram before or whether the fact of a telegram having been sent in these terms was communicated to him at any time.

THE WITNESS: No, I have not seen this telegram before, nor do I have any recollection of its contents. However, by looking at this telegram I now recall that I did go to Peking.

THE COMMISSIONER: In view of that answer, Mr. Nyi, if you want to tender this document as an exhibit, it must be done through some other witness and in some other way.

JUDGE NYI: May I have it marked for identification?

THE COMMISSIONER: It will be marked with the letter "I" for identification.

THE WITNESS: There are two telegrams.

JUDGE NYI: It is not two telegrams; it is one telegram and an enclosure. Yes, there are two telegrams; that's right: one is enclosed in the other.

THE COMMISSIONER: In that case, they had better have separate markings. The first one being --

JUDGE NYI: It is one prosecution document, 1005-18.

THE COMMISSIONER: In that case, then, if it is one document with two portions, it will receive one letter only, and that will be the letter "I."

BY JUDGE NYI (Continued):

Q Now, you have admitted that you were in

Peking about the middle of May. But, do you recall, by looking at this telegram, that you had anything to do with the negotiations with the Italian authorities for the use of the Italian Concession by Mr. Wang?

A No, that is not a fact.

Q If that doesn't refresh your mind, then will you look into the second telegram which still goes further -- the end of the second paragraph. It says --

MR. ROBERTS: Just a minute, please.

THE COMMISSIONER: No, that is not proper, Mr. Nyi. You have asked the witness to look at the end of the second telegram. Let him look at the end of the second telegram without your reading.

JUDGE NYI: All right.

THE COMMISSIONER: Is it the last paragraph in the second telegram?

JUDGE NYI: The last paragraph -- in the second paragraph in the second telegram.

THE COMMISSIONER: Will the witness please look at the last part of the last paragraph of the second telegram.

JUDGE NYI: The second paragraph of the second telegram.

(Whereupon, a document was handed

to the witness.)

A I have seen the telegram.

Q Does that refresh your mind? May I also point to you another telegram?

THE COMMISSIONER: Just a minute. We haven't his answer yet.

A I think it would be better if I explain the object of my trip to North China.

Q That's not what I want.

A With the Court's permission --

THE COMMISSIONER: Will the witness please confine himself to the question.

THE WITNESS: I do not know what to answer.

THE COMMISSIONER: Will you please put your question again.

JUDGE NYI: Yes.

Q My question is, were you consulted about Wang Ching-wei's proposed use of the Italian Concession in North China by authorities -- Japanese authorities in Shanghai?

A No, I have no recollection of having been consulted by the Japanese Consul authorities in Shanghai.

THE MONITOR: Strike off the first "no." The answer is not "no."

Q If you still don't remember, I will point to you the last paragraph of the second telegram. Does that refresh your mind? The last paragraph of the second telegram, on page 3 of that telegram. Do you recall anything?

A According to the telegram, it says that I was to be consulted after my return to Shanghai. But I cannot recall having been consulted about the proposed use of the Italian Concession by Wang Ching-wei.

Q On which day did Wang Ching-wei leave Shanghai for Tokyo?

A I believe it must have been the 31st of May.

Q Why did you put in the affidavit that it was the beginning of June?

MR. ROBERTS: I submit that the affidavit, stating "at the beginning of June," is approximately the answer given, "the 31st of May," by the witness previously.

THE COMMISSIONER: If that be the fact, the witness is sufficiently alert to make the corrections himself without counsel having to do it for him.

Q Do you propose to make a correction in the affidavit?

A I request that the affidavit be left as it is

because I am not absolutely sure that it was the 31st of May, and there may be a difference of one or two days; so, I stated in my affidavit, "at the beginning of June," and I request that it be left as it is.

Q In exhibit "H" which was marked for identification yesterday -- may I hand that to you to help your memory -- 1005-20?

(Thereupon, a document was handed to the witness.)

A I have seen it.

Q Are you sure of that now?

A Now I am sure that it was the 31st of May, so I have no objection to the affidavit being corrected from "the beginning of June" to "the 31st of May."

Q I am not asking you to correct. I want to ask you if you want to correct. It is up to you whether you want to correct or not. What is your answer?

A Please correct the document.

Q Now, this telegram was sent by you through what is called the "DOHIHARA Agency." What is this "DOHIHARA Agency"?

A May I see the document again?

JUDGE NYI: Exhibit "H."

(Thereupon, a document was handed to the witness.)

A (Continuing) The DOHIHARA Agency was located in Shanghai. After Lieutenant General DOHIHARA returned to Tokyo at the beginning of April, the office established there was continued to be called the DOHIHARA Agency.

Q What are the functions of the DOHIHARA Agency? What was its mission?

MR. ROBERTS: I submit that that is immaterial and irrelevant and outside the scope of the examination.

THE COMMISSIONER: It is not one of any of the three that you have mentioned. It is entirely relevant and is to be answered.

A The mission of Lieutenant General DOHIHARA was unknown to me as Chief of the Military Affairs Section.

THE COMMISSIONER: That was not the question. The question was, what were the functions of the DOHIHARA Agency? Will the witness please answer that question.

THE MONITOR: "Being Chief of the Military Section of the War Ministry, I had no connection whatsoever with the mission of Lieutenant General DOHIHARA.

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Therefore, I do not know what the mission was.

Q You have many telegrams, more than one, relayed through what was called the DOHIHARA Agency.

A Yes, that is so.

THE COMMISSIONER: What functions was that agency performing at the time you had business with it?

THE WITNESS: The mission of the DOHIHARA Agency had already come to an end when I was in Shanghai, but I used their building. And since, if I did not use the name of the DOHIHARA Agency, I had no access to ciphers, so I had to use that name. But there is no relation whatsoever between the mission of the DOHIHARA Agency and my own mission. To amplify my explanation, I had no right to send the telegrams, so I was forced to use the name of the DOHIHARA Agency which did have this privilege.

Q Now you say that you know the DOHIHARA Agency ended. You must know what was their function.

MR. ROBERTS: I believe the witness has covered that, stating that they were simply using their building, the mission having ended.

THE COMMISSIONER: I prefer that the witness should answer the question.

A Since Lieutenant General DOHIHARA had returned

to Tokyo, his mission had come to an end.

Q Were there other agencies -- Japanese agencies available through which you can send your telegram, for instance, consular authorities or the Japanese expeditionary forces? Why did you have to resort to the DOHIHARA Agency?

A Because the building formerly used by the DOHIHARA Agency was empty, I moved into that building, and I sent telegrams from there because it was the most convenient thing to do.

Q But you say DOHIHARA Agency already ended.

A I entered their premises because their mission was at an end.

Q And why the name of DOHIHARA Agency still used in relaying your telegrams?

A Although Lieutenant General DOHIHARA had returned to Tokyo, his right to send telegrams still existed. In other words, his code address appeared in the table of ciphers.

Q Didn't DOHIHARA --

THE MONITOR: Hold it, please.

A (Continuing) This may be somewhat difficult for amateurs to understand, but for cipher experts it is a simple matter.

THE MONITOR: In short, the name "DOHIHARA

Agency" remained in the code books, and that gave authority to send telegrams under that name in codes. That is why I used this DOHIHARA Agency code.

THE COMMISSIONER: Do you say then, witness, that at the time you speak of there was, in fact, no DOHIHARA Agency, that you merely used the premises which that agency had previously used, and that you merely used the code in the cipher book which that agency had used?

THE WITNESS: Yes, that is so.

Q According to your recollection, when did the DOHIHARA Agency end?

MR. ROBERTS: I object on the ground that it is immaterial and irrelevant and I believe that also has been fully covered.

THE COMMISSIONER: It is neither immaterial nor irrelevant; but if it has been fully covered, that would be sufficient. It may not have been. The witness may answer.

A I believe that Lieutenant General DOHIHARA returned at the end of April. After his departure there were a few members -- there were a few clerks who remained behind. I imagine that his mission came to an end when he returned to Tokyo.

THE COMMISSIONER: Have you finished with

that topic, Mr. Nyi?

JUDGE NYI: I still have some more to ask about that.

THE COMMISSIONER: Very well, then. We will adjourn for fifteen minutes.

(Whereupon, at 1050, a recess was taken until 1107, after which the proceedings were resumed as follows:

BY JUDGE NYI (Continued):

Q Did you, witness, state that the functions of the DOHIHARA Agency were different from yours?

A There was no connection between the two.

Q I'm asking you whether you have stated that the functions of the DOHIHARA Agency were different from yours.

THE COMMISSIONER: By that do you mean, did he state on some other occasion that they were different?

JUDGE NYI: Just before the recess.

THE COMMISSIONER: Very well.

A Since I do not know the mission of Lieutenant General DOHIHARA, I cannot say whether it was the same as mine or different.

Q Did DOHIHARA, around the 22nd or 23rd of April, send a telegram to the Vice-Minister or Vice-

Chief -- Vice-Minister of War and Vice-Chief of the General Staff suggesting that Shanghai was not a favorable place for Wang Ching-wei?

MR. ROBERTS: Just a minute.

THE COMMISSIONER: The question may not be put in that form; but it is a proper question if he is asked, do you know whether DOHIHARA sent such a telegram? Will the witness please answer it in that form.

THE WITNESS: No, I have no knowledge whatsoever of that.

Q Didn't he also suggest that Tsingtao would be a better place?

THE COMMISSIONER: Please put the question more correctly. You can only ask him whether he knows whether he did such and such a thing.

Q Do you know that?

A I don't know.

Q I show you that telegram and see if it will help you to remember.

(Whereupon, a document was handed to the witness.)

A I do not think it will be of any use to show me the telegram because, on the 23rd, I was either on board a ship or in Hanoi.

Q But you may have learned later. Do you recall anything?

A I have heard neither of the despatch nor of its contents.

Q But you have learned the contents now, haven't you?

A I learned of the contents for the first time just now.

THE COMMISSIONER: Well, the document, having been tendered as an exhibit, had better be marked for identification. It will receive the letter "J" for that purpose.

(Whereupon, the document above referred to was marked prosecution exhibit "J" for identification and is appended hereto.)

Q Now, my question is, since you do not know what the DOHIHARA Agency's function was, how it happened that DOHIHARA is making suggestions -- was making such suggestions?

MR. ROBERTS: I object to that because it calls for an opinion from this witness.

JUDGE KYI: That's a fact.

THE COMMISSIONER: The objection is entirely unsound. It asks for the witness' knowledge which is

not a matter of opinion.

A I have no knowledge whatsoever.

Q The telegram speaks for itself that his work was very similar to yours.

MR. ROBERTS: Just a minute, please.

THE COMMISSIONER: Mr. Nyi, this telegram has been denied by the witness. It is not an exhibit, and you are not entitled to import its contents into the proceedings.

JUDGE NYI: I withdraw it.

Q Now, witness, do you have an organ called the "KAGESA Organ"?

A After Wang returned to Shanghai from Tokyo in July, I opened the office commonly known as the KAGESA Agency.

Q Did you use it in any of the documents, the name "KAGESA Organ"?

A I may have used the name.

Q So that it was not only commonly known, but it was adopted by yourself, was it?

A My organ had many names.

Q What are the other names?

A It was also known as Baikado and the Ume Agency.

Q Were they one and the same thing?

A Yes.

Q Did your organ take care of any of the funds to finance the so-called Anti-Comintern National Salvation League?

A No, we did not do so.

Q Was it a fact that the funds for this -- to be supplied to this league shall be -- were appropriated from the surplus fund of the maritime customs revenue? Do you recall that?

A I have no knowledge of that Anti-Comintern National Salvation League. But, if you would give me an explanation of the functions, perhaps I could say more about it.

Q I am asking you. This is no occasion for you to ask me. Do you know that any funds were appropriated to the Wang Ching-wei Government on its formation in March, 1940?

THE MONITOR: From where? Any funds were appropriated from where?

THE COMMISSIONER: Appropriated by whom?

JUDGE NYI: By the Japanese Government.

A In the form of a loan, funds were provided to Wang.

Q Was it a fact that forty million dollars were loaned to the Wang Ching-wei Government upon its

completion?

THE INTERPRETER: Dollars?

JUDGE NYI: Yes, Japanese yen. Forty million dollars -- yen.

A I believe that, by the time it was established, about that sum had already been loaned to him. However, I have no recollection of the accurate figure.

Q Were you in charge of the details of the payment to be made to Wang Ching-wei?

A Yes, that is so.

Q You just stated that you have many names for the organ -- KAGESA Organ, Ume Organ and Bakaido Organ. Why did you adopt so many names?

A I first named it the "Bakaido." It means, house of the plum blossoms. The General Staff took -- from that name the General Staff began to call my office the "Ume Kikan" or Plum Agency. That was done entirely by the General Staff.

Q Now, stop that. Why was it necessary, if you are carrying a proper function, to have so many names besides "Bakaido" or "KAGESA Organ"? Did it ever come to your knowledge?

THE COMMISSIONER: Did what ever come to his knowledge?

JUDGE NYI: Yes.

THE COMMISSION: I am asking you.

JUDGE NYI: What?

THE COMMISSIONER: You say, did it ever come to his knowledge? What do you mean by "it"?

JUDGE NYI: The necessity of adopting so many names.

THE COMMISSIONER: Very well.

You appear to have an objection, Mr. Roberts.

MR. ROBERTS: I submit, the witness should not be stopped in the middle of an explanation as the prosecutor has just done.

THE COMMISSIONER: The prosecutor merely stopped to amplify the answering of his former question, as I judge it. But, if I should be at fault, then it is always open to you in redirect to allow the witness to add what you think he desired to add.

A That was the true nature of my mission, and I should like to give an explanation here -- the true nature of my agency. My agency was not under the orders of myself.

THE MONITOR: No, no; slight correction: My organ was not an organ belonging to one, KAGESA, myself, as an individual. My office consisted of

various elements, from the Army, the Navy, the Foreign Office, the China Affairs Bureau, Members of Parliament and journalists. The members from the Army were under my orders.

Q You are not answering my question.

THE COMMISSIONER: I think the witness should be allowed to explain the Agency so that he will then give a correct picture of the matter you are developing. He must do it shortly, however.

A Because there were many elements which were under my command, I did not like to use the name "KAGESA Agency."

THE MONITOR: Slight correction: Those who were not under my command did not like to refer to this organ as "KAGESA Organ." However, those under my command used the name "KAGESA Agency." Since it was necessary to use a name including all elements, I named it the "Bakaido." The General Staff called it the "Ume Agency" -- the Plum Agency. However, neither the Navy nor the Foreign Office had any obligation to use the same name -- use the name "Ume Kikan" which was the name given by the General Staff Headquarters.

Q Do these names other than "KAGESA" or the "KAGESA Organ" sound like nicknames?

A All of the names of the same value, and they are all common names -- commonly used names.

Q Why did they find it necessary to send official despatches using such names?

A Official documents were the only telegrams sent by me to the Army and telegrams sent by the naval officers there.

Q Under which government department did your agency fall?

A It belonged to various ministries, that is, the War Ministry, the Navy, the Foreign Office and the China Affairs Bureau.

Q Separately or jointly?

A Separately.

Q Separately? Who was responsible in the direction of affairs in your bureau -- in your agency?

A The responsibility was mine.

THE MONITOR: The responsibility rested upon me.

Q Was the Ume Agency in charge of the direction of Wang Ching-wei Government after its formation?

A Simultaneously with the establishment of the Wang Ching-wei Government, my organ was dissolved.

Q Was there also a Matsu Kikan or Pine Agency?

A Yes.

(End of reading.)

THE PRESIDENT: We will recess for fifteen minutes.

(Whereupon, at 1445, a recess was taken until 1500, after which the proceedings 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: Judge Hsiang.

JUDGE HSIANG (reading continued):

Q Was there also a Take Kikan or a Bamboo Agency?

A There well might have been.

Q What were the functions of Matsu Kikan or Pine Agency?

A I am well informed of the functions of the Ume Agency, but I do not know of the functions of other agencies.

Q Who was the responsible member of the Pine Agency?

A I have no recollection.

Q Who was responsible member of the Take Kikan or Bamboo Agency?

A It must have been a small agency. I do not recall its name.

Q Do you have any liaison with these agencies?

A No, I had no relations with them.

Q Who was the President of the National Government at Chungking at the time when Wang Ching-wei formed his government?

A Lin, Sung.

Q Do you know Wang Ching-wei once suggested that Lin, Sung should be named as the President of the new government?

A Yes, that is so.

Q Was it done for the purpose of misleading the people that the National Government had returned to Nanking?

A We believed that at some future date the Chungking Government would merge with the Nanking Government and make possible general peace. And, to prepare for that eventuality, we wished to name Lin, Sung as the President.

THE COMMISSIONER: That is not really an answer to the question. The question was whether that name was sought for the purpose of misleading people into thinking that the Nanking Government was the --

JUDGE NYI: The Chungking Government had come back.

THE COMMISSIONER: Yes, that that the Chungking Government had returned to Nanking. That was the question.

A (Continuing) No, that is not so.

Q So, according to the arrangement you have just stated, Wang Ching-wei would be the acting chairman or acting president, leaving the presidency vacant; was that right?

A Yes, until Mr. Lin, Sung came to Nanking, Mr. Wang was to act as president -- was to be the acting president.

Q Now, on the top of page 16 of your affidavit you stated that the staff officers of the Japanese armies in China were opposed to the dissolution of the Renovation Government because it will give rise to difficult problems in the maintenance of public peace. Now, what would be these difficult problems?

A If both the Provisional and Renovation Governments were to be dissolved, the question of personnel of both governments would present a difficult problem. According to Chinese custom, if the head of one faction were to move, then his followers would create a disturbance. That would affect public peace.

Q Now, you mentioned the Provisional Government. But, in your affidavit, you didn't say that. You only said, "the dissolution of the Renovation Government."

A That was a mistake. I meant only to refer to the Renovation Government.

Q And you intended to include that Provisional Government in the statement, too, although you didn't put it in, is that right?

A The Provisional Government and Renovation Government are entirely different things.

Q I didn't mean that. I say, you stated on

the affidavit that the dissolution of Renovation Government will cause difficulty.

THE COMMISSIONER: Hasn't the witness made it clear that, by Renovation Government, he really has made a mistake and intended to say "Provisional Government"? Could he be asked if that is what he meant?

THE WITNESS: When I said 'Provisional Government," I meant "Renovation Government."

THE COMMISSIONER: Well, the affidavit says "Renovation Government." Does he then say that his affidavit does convey his real intention?

MR. ROBERTS: Ask him the question.

THE COMMISSIONER: That is intended as a question.

THE WITNESS: That is so, yes.

Q Now, you referred to the interview between Wang Ching-wei and Prince KONOYE. How many interviews did Wang have with Prince KONOYE in Tokyo?

A Does that include all interviews with Prince KONOYE or how many times he saw Prince KONOYE on this occasion?

Q Yes, during Wang's visit to Japan in June, 1939.

A Once.

Q Only once. Now, when Mr. Wang interviewed Prince KONOYE, how many people were present?

A On the Japanese side, myself and an interpreter, Secretary SHIMIZU. The interview lasted for one hour. After that everyone retired, and Prince KONOYE and Mr. Wang spoke in private.

Q You say they talked without an interpreter; was that right?

A They spoke without interpreter for three hours.

Q Now, SHIMIZU, in his affidavit -- do you know that SHIMIZU, in his affidavit numbered exhibit 2585, stated that he was the interpreter?

A Yes, that is so.

Q How do you explain that?

THE COMMISSIONER: Put your question more specifically. I am afraid I do not know what it is you are asking him to answer.

JUDGE NYI: Yes.

Q Since you say they talked without an interpreter and SHIMIZU says he was the interpreter during the talk between these two statesmen, now, which is correct?

A If both are read together, parallel, then the truth is revealed.

THE MONITOR: Those two statements combined would constitute the truth. To go into detail, that means that SHIMIZU acted as interpreter for one hour, and then he retired, and the two persons spoke for three hours.

Q And when these two statesmen talked for three hours, you retired, too?

A Yes, I did.

Q How do you know the contents of their talk?

A I have stated in my affidavit that I do not know the details of the conversation.

Q In your affidavit you say they talked without an interpreter and so you could not understand the contents in detail. That would be the --

THE COMMISSIONER: What part of the affidavit are you referring to, Mr. Nyi?

JUDGE NYI: Page 16, the second paragraph from the bottom.

THE COMMISSIONER: What is said there seems to be entirely consistent with what the witness is now saying: that, as he was not present, he does not know what they said.

JUDGE NYI: Yes. He said he was not present when they talked for three hours.

THE COMMISSIONER: Why take time cross-

examining upon it then?

Q In the second paragraph of your affidavit you say that they talked without any interpreter and you did not understand, but it seems to you that the interview Mr. Wang had was inspired with much courage and hope to the future of the peace movement.

THE COMMISSIONER: Perhaps I can help you. What counsel wants to know is this: If you were not present and did not hear what they said, how do you know that what took place inspired Mr. Wang with courage and hope as to the future of the peace movement?

THE WITNESS: I heard that from Mr. Wang.

Q Afterwards?

A Yes.

Q But the affidavit doesn't look that way.

THE COMMISSIONER: Well, that is a matter of construction.

Q Now, on page 20 of your affidavit, near the bottom you mention the inauguration of the new government at Nanking on March 30, 1940.

THE MONITOR: What number paragraph is that, Mr. Nyi?

THE COMMISSIONER: Paragraph 16.

THE MONITOR: The end of 16?

JUDGE NYI: Just the last four lines from the botton.

MR. ROBERTS: The next to the last paragraph -- the date March 30 used there.

JUDGE NYI: The last paragraph on this page; the second paragraph of Section 16.

THE MONITOR: All right, sir. Will you continue, please.

Q My question is, did you attend the inauguration ceremony?

A Yes, I did.

Q Did you go to Nanking the day before the inauguration ceremony from Shanghai?

A I went to Nanking about one week before the inauguration.

Q Do you recall that there was some dispute about the pennant of the national flag, and you were very much displeased about it?

A Yes, I do.

Q And you protested very strongly to Mr. Wang Ching-wei because the pennant was not wide enough; was that right?

A No. There was nothing of the kind -- nothing of the kind occurred. No, I did not have any dispute with Mr. Wang.

Q You just said, before I asked you the last question, that you remembered there was.

A Yes, there was -- a problem did arise, but there was no dispute -- no argument.

Q How did this problem come up? Was it the fact that you made a representation?

A No, that is not so.

Q How did that question come up?

A When Mr. Wang came to Japan it was promised that triangular pennant would be affixed on top of the Chinese national flag. But, at the inauguration ceremony, the pennant was not in accordance with the promise previously given. So, from the Japanese side, it was -- the Japanese side asked me to request that the pennant be affixed in accordance with the previous agreement. I took this matter up with Mr. Chow Fu-hai, and it was immediately settled.

Q Was it a fact that Wang Ching-wei had apologized to you officially for that?

A No, that is entirely untrue.

Q Did he apologize to the expeditionary forces headquarters and to the expeditionary fleet headquarters? Do you know that?

A No that is not so. I acted as intermediary, and everything was settled.

Q Do you mean to say that you didn't know whether such an apology was offered or you know that it was definitely not offered?

A I mean to say that no apology was made.

Q Did you go with Mr. Wang Ching-wei to North China after coming back from Tokyo?

THE MONITOR: Who came back from Tokyo, Wang?

JUDGE NYI: Wang.

A Yes, I did. I went directly from Tokyo to North China.

Q Whom did he see in North China?

A Mr. Wang saw the head of the Provisional Government, Mr. Wang, Keh-ming, and General TADA, commander of the Japanese forces there. He saw only these two persons.

THE COMMISSIONER: You have a number of questions on this phase, I assume, have you?

JUDGE NYI: Yes.

THE COMMISSIONER: Very well. We will adjourn until one-thirty.

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

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AFTERNOON SESSION

The Commission met, pursuant to recess, at 1335.

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S A D A A K I K A G E S A, called as a witness on behalf of the defense, resumed the stand and testified through Japanese interpreters as follows:

CROSS-EXAMINATION

BY JUDGE NYI (Continued):

Q Before the recess I was asking you about Wang's visit to North China. You told me that he saw the mayor, Wang, Keh-ming and the General TADA. Do you know what topics they discussed in their interviews?

A In the interview with Wang, Keh-ming I was not present. In the interview with General TADA, no interpreters were used. Therefore, I do not know what was said between the two. They spoke in Chinese. Therefore, I do not know in details the contents of the conversation. However, I heard from Mr. Wang later that he spoke to General TADA about the Central Government which was to be established later and reached certain understandings.

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Q Was one of the important topics discussed the amalgamation of the two existing regimes and the Renovation Government?

A I believe that this was one of the topics, but that is my guess only.

Q Was this done in accordance with the views of General TADA -- of General ITAGAKI who said that the personnel of the two governments should be given consideration?

A No. That was not so. As far as the personnel problems of both regimes, this was left strictly up to Mr. Wang alone and his policy.

Q Did he discuss it with Mr. Wang, Keh-ming?

THE INTERPRETER: Personnel question?

JUDGE NYI: Yes, about it.

A I suppose they did.

Q You have put in your affidavit that General ITAGAKI told Mr. Wang that the personnel of the two existing regimes should be given consideration, and you also stated this morning that the dissolution of the existing government will give rise to difficulties in the maintenance of peace. And my question is, do you know if anything of that kind, that is, the placing of this personnel of the dissolved governments, was discussed between these two individuals?

A Do you mean in conversation with General TADA?

Q With Mr. Wang, Keh-ming.

A I imagine that such problems were discussed.

Q Do you know it very positively?

A I have not heard anything about it at all. I just imagined that such things took place.

Q Did Mr. Wang never tell you anything about that?

A He has intimated to me that personnel problem would constitute a very serious problem.

THE COMMISSIONER: The question was whether he told you he had discussed it with General TADA.

JUDGE NYI: Mr. Wang, Keh-ming.

THE COMMISSIONER: That was the question.

THE WITNESS: Yes. That's exactly what I mean. I imagined that Mr. Wang, Keh-ming and Mr. Wang Ching-wei spoke -- conversed about the personnel problem, and later, after the conversation, Mr. Wang Ching-wei told me that this personnel problem will constitute a problem of considerable difficulty.

Q And that was done in accordance with the views expressed by General ITAGAKI, is it?

A No, that is not so. General ITAGAKI just stated -- just said that the dissolution of their

Renovation Government would constitute a peace maintenance problem, and Mr. Wang Ching-wei did not converse with Mr. Wang, Keh-ming on the basis of what General ITAGAKI said.

Q But the effect of it was the same, was it?

A Why?

Q It reached the same purpose, did it?

THE COMMISSIONER: Mr. Nyi, is there any advantage in pursuing this? You have specific answers from the witness upon it. You are now merely speculating, taking time and getting no facts that will help the Court in any way that I can see.

JUDGE NYI: I will withdraw it.

Q Did you go to Tsingtao with Mr. Wang Ching-wei when he met the leaders of the existing regimes in January, 1940?

A Yes.

Q Now, what was your purpose of going there?

A The purpose of my going -- the purpose for my having gone to that place was that I was to explain the circumstances under which Central Government was born, and other matters concerning the establishment of the Central Government to the people coming from North China, and also to the newspaper reporters and other such concerned people.

Q Did you also play the part or the role of the mediator between Mr. Wang on the one side and the two leaders -- the leaders of the two existing regimes on the other?

A No. Everything was conducted by Mr. Wang himself.

Q You stated on page 20 of the affidavit that there was no organ or mechanism to guide the Wang Ching-wei Government.

THE INTERPRETER: What paragraph No. is that?

JUDGE NYI: The paragraph before 17.

THE COMMISSIONER: Please go on to your question and let us see whether all this waste of time is justified. What is the question that you are going to ask?

JUDGE NYI: My question was, what were the functions of the Ko-A-In?

THE COMMISSIONER: Well, you can ask that question without taking time by reference to his affidavit.

A The function of the China Affair Board mainly was to decide on the Japanese policy regarding politics, economy and cultural matters.

Q Did it have four liaison offices in China to direct affairs of the new regimes?

A. The China Affair Board was not an organ which directed or led anybody.

Q You haven't answered my question.

A Please, may I have the question repeated?

THE COMMISSIONER: Are you speaking of people, officers?

JUDGE NYI: Offices.

(Thereupon, the the official court reporter read the question referred to as follows:)

"Q Did it have four liaison offices in China to direct affairs of the new regimes?"

A What do you mean by "new regimes"?

Q Regimes which were existing in China; Provisional Government, Renovation Government and, afterwards, the Central Government.

A That is why I answered previously that the China Affair Board had no authority -- no function to lead or guide Chinese affairs -- affairs of Chinese government or regimes.

Q Was it also true that the Ume Organ was also directing affairs of the new regimes?

A No, the Ume Agency has never directed anyone. In fact, the Wang Government directed the affairs -- in fact, Mr. Wang, himself, directed the Ume Agency,

if anything. And, as I have stated before, after the establishment of the Wang Government, the Uno Agency was dissolved.

Q Did you say that Wang was directing the affairs of the Uno Agency?

THE COMMISSIONER: That question need not be answered. It is quite unnecessary.

Q Did you not say in the affidavit that advisers -- the Japanese advisers acted as a medium between the Wang Government and the Japanese side in the prosecution of the policies?

A I have not said anything of that sort.

Q You didn't say that?

THE COMMISSIONER: If he did say it, Mr. Iyi, is it necessary to ask him if he did say it? You can, at an appropriate time, draw attention to it. But, surely it is unnecessary to ask him whether he did or did not say something which, presumably, he asserted in his affidavit. That is just time-consuming.

JUDGE IYI: Yes. Your Honor, I was just trying to ascertain whether there would be misunderstanding of the part which he put in the affidavit which seemed to be contradictory to a previous paragraph in the same affidavit.

THE COMMISSIONER: That is rather the function of counsel in summation and not in cross-examination. If he has made contradictory statements, then you can comment upon it at an appropriate time.

JUDGE NYI: Thank you, sir.

BY JUDGE NYI (Continued):

Q Do you know that there was an understanding between the Ko-A-In and the Foreign Ministry that you should be posted in China to direct affairs of the new regimes?

A That is not true at all.

Q May I show you a document -- this is a report of the conversation between SUZUKI of the Ko-A-In and the Foreign Ministry. That's document 1005-17. It is quite a long document, but a glance over this second paragraph will, perhaps, refresh your memory.

(Whereupon, a document was handed to the witness.)

THE COMMISSIONER: What you refer to is in the paragraph number 2, is it?

JUDGE NYI: Yes.

Q (Continuing) Do you recall anything of that sort?

A If Political Affairs Bureau Chief SUZUKI says these things, he was wrong. I was never posted in China for the direction of affairs of the Chinese regime. Now, just presuming, from the qualifications, it is rather -- it is unthinkable that a person with my qualifications and in my position -- in my low position should direct a big man like Mr. Wang.

Q Do you recall some people proposing to post MATSUOKA, the deceased, to direct it, and SUZUKI thought it is enough to have you there?

A No, I have never heard of that. If I had known that, I would gladly have relinquished my post to Mr. MATSUOKA.

JUDGE NYI: Your Honor, may I have this document, 1005-17, marked for identification?

THE COMMISSIONER: You may. It will be marked with the letter "K" for identification.

(Thereupon, the document above referred to was marked prosecution exhibit "K" for identification and is appended hereto.)

Q Do you know a man by the name of TSUDA, Shizue who was the President of the Shanghai Liaison Office of Ko-A-In?

A Yes, I know him.

Q Was it true that you and the Liaison Office of Ko-A-In in Shanghai were fighting over the nomination of Japanese advisers to the new regime?

A Advisers were appointed to the post by invitation of Mr. Wang. The advisers did not compete to be appointed to that post.

Q Do you recall that there was any dispute between you and the Ko-A-In office in Shanghai over this topic?

A This question, you say?

Q Yes, about the nomination of Japanese advisers in new regime.

A The appointments of advisers were left completely up to the recommendation by Mr. Wang.

Q Now, may I show you a document which was a telegram from KATO in Shanghai to Foreign Minister ARITA, document 1814-7. Excuse me, the number should be 1814-D.

(Whereupon, a document was handed to the witness.)

MR. ROBERTS: Has the witness been asked if he can identify that document?

THE COMMISSIONER: There is no need to ask him that at all. He has been tendered a document and asked to examine it to see whether it will refresh

his memory on some particular matter.

A This question is an entirely different matter from the matter that has been discussed a while ago. This problem involves the proposal which was submitted to the effect that the lower rank advisers of the Renovation Regime be employed as advisers to the new regime; and the answer was given that all appointments of advisers should be left to Mr. Wang's initiative and, therefore, the request refused.

THE COMMISSIONER: Before we proceed further, the witness is referring now to the document in his hands. Does he say that he knows or did know of that telegram?

THE WITNESS: No, I have not.

Q You have stated on page 22, the third line from the top, that there were temptations on the part of the advisers to interfere with the Nanking Government.

A Yes.

Q Since there was the presence of such a temptation, are you sure that they did not at all yield to any of them?

MR. ROBERTS: May we have the line pointed out that you are referring to, doctor.

JUDGE NYI: The third line from the top,

page 22.

THE COMMISSIONER: From what page are you reading?

JUDGE NYI: 22, third line from the top.

THE COMMISSIONER: Thank you.

A I do not know about the advisors heretofore, how they acted, whether they interfered or not; but I do know that the Japanese, as a race, has the habit of interfering into other people's business. That is what I pointed out in the national character -- that is what I pointed out in the affidavit.

Q On page 23, the 7th or 8th line from the top, you mention that there was even an anti-Wang Government atmosphere in Japan.

A That is so.

Q Was it due to the fact that the Wang Government served too much as a tool to the Japanese Army to the exclusion of the interests of the Japanese people so that there was dissatisfaction in some quarters among the Japanese?

A That is completely opposite to the actual reasons for the antipathy.

Q Were the negotiations which you and IMAI carried on with the representatives of Wang Ching-wei referred to by the Army as the WATANABE

Plan?

A I do not remember as to the name.

Q Was not one of the principal terms of this plan that Japan was to take possession of the natural resources of North China?

A I do not have any recollection about this WATANABE Plan. However, the results of the negotiation between Wang's representative and myself and IIMI on this side is virtually the same as the announcement made by Prince KONOYE on 22 of December, 1938.

Q Did the plans finally agreed upon between you and IIMI and the representatives of Wang Ching-wei include the provision that Japan was to take possession of the natural resources of North China?

A Is the negotiation that you are referring to the negotiations conducted in November of 1938?

Q Between you and IIMI and the representatives of Wang Ching-wei on various occasions.

A That did not take place. We only met them once in the fall of 1938.

Q All right. Granting that this was the only meeting that you had with representatives of Wang Ching-wei, was it one of the terms that Japan was to take possession of the natural resources of North

China?

A I do not remember the contents of the negotiations. However, if you will judge the contents of this conversation to be the same as Prince KONOYE's statement made on 22 of December, 1938, you will be right. I have stated that in my affidavit.

Q Was Ken INUKAI with you in Shanghai when you met with the representatives of Wang Ching-wei?

A Yes, he was.

Q And did you and INUKAI, on or about December 21, 1938, have an interview with Prince KONOYE?

A I do not remember. However, I have frequently met Prince KONOYE.

Q Did you not report to Prince KONOYE on that occasion that the secret plot in China would be a success?

A I do not even remember that INUKAI and I, myself, met the Prince -- KONOYE. Therefore, I don't recall at all what conversation took place. Consequently, I do not know what you mean by "secret plot."

JUDGE NYI: This will conclude my cross-examination, sir.

THE COMMISSIONER: Mr. Nyi, there were a number of telegrams, tendered by you to the witness,

given marks for identification only, but the contents of which have been discussed with the witness. It seems to me that those should, in fact, be exhibits, and I will so regard them unless you have some reason to the contrary.

JUDGE NYI: Will your Honor just give us one minute for consultation?

MR. KATO: I would like to say a word, Mr. Commissioner.

THE COMMISSIONER: Is this the witness?

THE MONITOR: Counsel, sir.

THE COMMISSIONER: Yes. I still have to hear from the prosecution.

JUDGE NYI: Your Honor, we have, in addition to those already tendered, a number of other telegrams which, taken together, will build up a more continuous story of how this witness participated in the Wang Ching-wei activities. We think it will not break the continuity if we bring them all together at a later stage. However, if your Honor thinks fit to have them put in now, we are ready to do so.

THE COMMISSIONER: I understand counsel for the defense desires to say something upon this.

MR. ROBERTS: It is the request of the defense that we be furnished with the appropriate

copies in Japanese and English.

THE COMMISSIONER: I was not referring to you, Mr. Roberts. One of the Japanese counsel indicated that he desired to be heard.

MR. ROBERTS: He had a question on redirect.

THE COMMISSIONER: Oh, is that what he was referring to?

MR. ROBERTS: Yes.

THE COMMISSIONER: I misunderstood. Very well. The documents marked for identification from "B" to "H," inclusive, are admitted as exhibits and will be attached to this deposition. When they are processed, the English translation must conform to the modifications recommended by the Language Arbiters.

(Whereupon, prosecution exhibits "B" to "H," inclusive, for identification were received in evidence and are appended hereto.)

JUDGE NYI: Your Honor, in exhibit "C" and "E" -- in each of these there are three telegrams, and they were marked "C-1, 2, 3" and "E-1, 2, 3." May we have it understood that they will be marked separately?

THE COMMISSIONER: They will be marked as

they have already been marked here.

JUDGE NYI: Your Honor, I must ask your tolerance in making a correction. What I meant to say is that "C-1, 2, 3" is one document, and this will be given one number; and "E-1, 2, 3" also in the one, same document, and they will be given one number.

THE COMMISSIONER: That is entirely a matter of administration for the Court. And, as each of them contains three separate documents, it is much more convenient that they should be so marked for reference in examination later.

JUDGE NYI: Do we understand that these documents will be, for the present, attached to the records, and it will be read at the time when the records will be read in the Tribunal?

THE COMMISSIONER: They will be processed and attached to the deposition which will accompany my report as Commissioner.

JUDGE NYI: And it will be read.

THE COMMISSIONER: Please. I can see no reason why they should not be read the same as any other part of the evidence tendered here. But, if there be any question upon that, that is a matter which must be determined by the Tribunal and not by

me as Commissioner.

JUDGE NYI: That is satisfactory. We desire to ask this to be read in the record.

THE COMMISSIONER: That application, if necessary, can be made to the Tribunal.

JUDGE NYI: Thank you sir." (End of reading)

THE PRESIDENT: Mr. Roberts.

MR. ROBERTS (Reading):

THE COMMISSIONER: I understand one of the Japanese counsel, or perhaps more, desires to ask questions in reexamination.

MR. ROBERTS: Yes.

MR. KATO: I am KATO, Takahisa, counsel for the accused DOHIHARA. I would like to ask one question to the witness.

THE COMMISSIONER: Please do so.

REDIRECT EXAMINATION

BY MR. KATO:

Q This morning you stated, Mr. Witness, that while you were in Hanoi in April 22 or 23 of 1939 and after Lieutenant General DOHIHARA had returned to Tokyo, that DOHIHARA --

THE COMMISSIONER: Are you having difficulty in translating the question?

THE MONITOR: Yes, sir. I will try to translate it as he said.

THE COMMISSIONER: No. It would be much more

satisfactory if counsel would frame his question more simply. With faulty translation, we are in danger of misunderstanding.

Q This morning the prosecution stated that on or about 22 or 23 of April, 1939, while the witness was in Hanoi, and after DOHIHARA had returned to Tokyo, someone sent a telegram to Japanese Military Affairs Bureau through the code system of DOHIHARA's Agency that Shanghai was not a safe place for the establishment of Wang Regime.

JUDGE NYI: Your Honor, I wish to make --

THE COMMISSIONER: The question is not yet completed.

Q (Continuing) Now, Mr. Witness, who do you think sent this telegram?

A I do not know whether that telegram was sent or not.

THE MONITOR: I do not even know about the fact that it was sent.

MR. KATO: Thank you. I understand.

THE COMMISSIONER: Are there any other Japanese counsel?

MR. ROBERTS: No. I have just two or three questions on redirect.

THE COMMISSIONER: No other Japanese counsel

desires to ask questions in redirect?

MR. ROBERTS: No. That is correct.

REDIRECT EXAMINATION (Continued)

BY MR. ROBERTS:

Q Mr. KAGESA, on page 18 of your affidavit you refer to a New Year's statement of Wang Ching-wei on January 1, 1940. Was that a written or an oral statement?

THE COMMISSIONER: Where is that?

MR. ROBERTS: Page 18.

THE COMMISSIONER: Thank you.

The question surely doesn't call for that length of a reply. He was asked whether it was verbal or written. He can answer that.

MR. ROBERTS: Yes.

THE MONITOR: I will translate as far as he has said, sir.

A I read this New Year's statement in the Chinese newspaper while I was in Nanking. However, at present there is no Chinese text of this New Year's statement. This is a translation of the section entitled "General Peace". In the book entitled "Road to General Peace", there is a translation of this speech -- Japanese translation of this speech.

Q I shew you this document and ask you if that is the book you now refer to.

(Whereupon, a document wes handed to the witness.)

A That is so.

MR. ROBERTS: I ask that this be marked for identification, if your Honor please.

THE COMMISSIONER: It will be marked for identification with a letter "L".

Q Mr. KAGESA, did Wang Ching-wei consider Chiang Kai-shek as the real representative of the Chinese people in the spring of 1939?

JUDGE NYI: I object.

THE COMMISSIONER: Before that is answered, it is obvious he cannot tell us what anybody thought. He can only tell us what people said. Please frame the question in that form. Will you please reframe your question, Mr. Roberts?

MR. ROBERTS: Yes, your Honor.

Q Did Wang Ching-wei tell you in the spring of 1939 whether or not he considered Chiang Kai-shek as a real representative of the Chinese people?

A Yes.

Q Will you tell us what he told you in that conversation.

JUDGE NYI: Your Honor, as far as we can recall, this does not arise in the course of the cross-examination.

THE COMMISSIONER: I think that is a proper objection, but I am not disposed to exclude the question. However, if you desire, you may further cross-examine upon it.

A Weng Ching-wei said that the people of China, deep in their hearts, all really desired peace. And he further stated, however, it was regrettable that Chiang Kai-shek was not able to exercise his own initiative and to act according to his own will because of the fact that the communistic influence in Chungking Government was too strong.

THE COMMISSIONER: How much further, Mr. Roberts, do you contemplate this will go? This is now going very much further.

MR. ROBERTS: This answer is all I require on this topic.

THE COMMISSIONER: You have already had the answer to your question?

MR. ROBERTS: Yes, your Honor.

THE COMMISSIONER: Very well. Please tell the witness that is as much as his counsel desires.

THE MONITOR: Shall I translate what he

said -- the last part, sir?

THE COMMISSIONER: I do not think it is necessary.

THE MONITOR: All right.

BY MR. ROBERTS (Continued):

Q In the telegram of May 3, exhibit "F," the prosecutor referred you to a paragraph No. 4 and particularly to the third sentence concerning a plan to wait outside Shanghai.

THE COMMISSIONER: Which document is this?

MR. ROBERTS: Exhibit "F."

Q (Continuing) Does that reference to the plan to wait refer to the terrorists as suggested by the prosecutor or to Wang to wait outside Shanghai?

A Wang himself.

MR. ROBERTS: That is all.

THE COMMISSIONER: Does the prosecution desire to further cross-examine upon that one question which had relation to Wang's observations concerning Chiang Kai-shek?

JUDGE NYI: I do not desire to recross-examine him on the point of Wang's comment on General Chiang Kai-shek, but I do want to cross-examine him as to the last question Mr. Roberts has put regarding the plan.

THE COMMISSIONER: I am sorry. I cannot permit that. Your cross-examination is concluded.

That, then, concludes these proceedings. There will be a report of these proceedings prepared and filed in the office of the Secretariat of the Tribunal.

(Whereupon, at 1450, the proceeding was concluded.)

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THE PRESIDENT: Judge Hsiang.

JUDGE HSIANG: If it please the Tribunal, I will now read the exhibits which were offered and received in evidence and appanded to exhibit No. 2721 the report of the Commissioner, the Honorable Justice Northcroft. (Reading):

"Exhibit B

"IPS DOCUMENT NO. 1005-(4)

"SECRET TELEGRAM NO. 987

"Drafted - April 19, 1939 - Dispatched - 0750 Arrived - 1547.

"To: The Chief of General Affairs Section.

"From: The Chief of Staff of the Taiwan Army.

"HANOI TELEGRAM NO. 50

"From Kawamura (T.N. Code Term for KAGESA) to SHIRAISHI.

"Finished commercial dealings. Everything is favorable. Refer to the TSUCHIDA TELEGRAM for detail. Answer.

"Moreover, inform TSUCHIDA beforehand not to reproduce and distribute that telegram. "

Exhibit C-1:

"IPS DOCUMENT 1005-(6)

"Chief of Section TSUCHIDA (Written in blue

pencil)." I will omit this.

"Confidential Telegram dispatched at 1600 April 20, arrived at 1650.

"To: Chief of General Affairs Section,

"From: Chief of Staff of the Formosan Army.

"Formosan Telegram Extra

"Hanoi Telegram No. 51

"Kagesa Telegram No. 2.

"We wish to retract the part of the Hanoi Telegram No. 50, requesting you to refer to the Foreign Ministry telegram. It is our desire that you be informed of the results of the operation by the present telegram.

"(1) I visited Wang in his hide-out on the 18th with INUKAI and YANO, and had about a three hours talk with them. They said that, as they were already well informed of the details through "KO", they would prefer discussing the main problems at once. They made known to us their firm determination (the results, they trusted to Providence, and our absolute good will, they fully appreciated) and informed us of their desire to remove, as soon as possible, to a place safe and convenient for the development of their activities. They considered this to be a prerequisite condition.

"Thus, after various considerations, it has

been decided that the French authorities should be entirely responsible for the protection, etc. in regard to the escape; that a French steamship should be chartered to carry him safely to a hide-out in the French Concession in Shanghai; that Japan should previously prepare two or three hide-outs in the International Settlement; and that the Japanese policemen from the Shanghai Municipal Council should be placed around them to keep guard.

"In this connection I shall request the authorities of the Foreign Ministry to send appropriate instructions to Shanghai to immediately prepare suitable hide-outs in the International Settlement and to take necessary measures for the protection. (As regards protection, it is believed advisable to secretly contact Vice-Inspector General AKAGI and have Japanese policemen guard him after his arrival.)

"Furthermore, it is Wang's desire that you take proper measures so that he may pass the quarantine procedure incognito.

"(2) ITO, who is here at present, shall be sent immediately to Shanghai. IWAI shall establish connection with SUIKI and take part in the preparations mentioned in the foregoing paragraph.

"(3) The "Hokko Maru" shall sail directly to

Shanghai while secretly escorting Wang's steamer. INUKAI, KAGESA, YANO, OSUZU and others shall be on board the ship. You are requested to make YAMASHITA (T.N.Steamship Co.) understand.

"(4) Von Forenhoben /Phonetic/ (730 tons) has been decided to be the French steamer mentioned above. The time of departure from French Indo-China and the time of arrival in Shanghai have not yet been decided so you shall be informed later."

Exhibit C-2.

"Chief of Section TSUCHIDA

"Confidential Telegram dispatched at 1600, April 20, arrived at 1650.

"To: Chief of General Affairs Section

"From: Chief of Staff of the Formosan Army

"Formosan Telegram No. 996

"Hanoi Telegram No. 52

"Kagesa Telegram No. 3

"1. The hide-out in the French Concession mentioned in the previous telegram is of a temporary nature and it is our intention to remove them to hide-outs in the International Settlement as soon as possible. As regards preparation of houses in three places requested in the previous telegram, it is his desire that you make the following considerations.

"A. All the windows of the houses shall be covered tightly with bullet-proof sheets of iron (the upper half to be made so that they can be folded down at any time)

"B. Small peeping windows shall be made in these iron sheets, the outside of which shall be covered with screens.

"C. Iron grilles that can be opened and closed shall be installed in various places in the houses.

"D. It would be suitable if one of the houses will be provided in the Hongkew district and two in the south of the Soochow Creek district (one of them near the extension)."

Exhibit C-3.

"Chief of Section TSUCHIDA

"Confidential Telegram dispatched at 1600, April 20, arrived at 1655.

"To: Chief of General Affairs Section

"From: Chief of Staff of the Formosan Army

"Formosan Telegram No. 997

"Hanoi Telegram No. 53

"Kagesa Telegram No. 4

"1. As a result of further working, the following corrections shall be made in Kagesa telegram

No. 2 so you are requested to take measures for previous preparations. (Definite decision shall be made after deliberation with French authorities here.)

"A. When the French Steamship arrives at Shanghai (scheduled for the end of this month), the Japanese authorities and Wang's comrades shall be together in charge of the method of disembarkation and transportation of passengers who later boarded the ship.

"B. If possible, it would be convenient if he could be taken directly to the hide-out mentioned in the previous telegram and not to the French Concession in Shanghai.

"2. As ITO and Sergeant-major KAWASHIMI will be sent to Shanghai first, the Army is requested to let the Japanese Agency in Shanghai deliberate with these two persons."

Exhibit D:

"IPS Document 1005-(8)

"Sent from Honoi P.M. 24 April 1939

"Arrived at this office P.M. 24 April 1939

"To: Foreign Minister ARITA.

"No. 93

"From: KAWAMURA

"The negotiation is completed and plans for loading the cargo (T.N. Code Term for Wang Ching-wei) have already been arranged. Moreover, as the situation does not permit any change in the plans, we wish to carry it out according to the fixed schedule.

"In this connection you are requested to demand an immediate completion of preparations for at least one of the warehouses in Osaka (T.N. Code Term for Shanghai); and you are also requested to take charge of preparations for its unloading.

"May 6th has been decided for the arrival of the cargo in Osaka."

Exhibit E-1:

"April 29, 1939.

"The Eighth Section, Army Department, Imperial Headquarters.

"1. The telegram received at 4 p.m., the 28th:

"I have been successful in establishing liaison

with Wang. Accordingly, the course of our ship (Note: the Hokko-Maru of the Yamashita Shipping Co.) has been changed from Takao to Keelung. (Will arrive there at 8:00 P.M. the 30th) Further destination will be decided later. I hope YAMAMOTO, who is at present at Taihoku, will also change his destination and go to Keelung.

"(Signed) KAGESA."

Exhibit C-2:

"2. The telegram received at 4:50 P.M. on the 28th:

"It seems that Wang is somewhere near Hongkong, although not quite certain. I have been successful in establishing liaison with him and have been informed of his safety. (At 1:00 p.m., 28th)

"Please communicate this to all authorities concerned.

"(Signed) KAGESA."

Exhibit E-3:

"3. To Colonel USUI, from Major HARUKI.

"April 30: Dispatched 1030; Received 1310.

"I have received your telegram No. 307.

"Preparations for landing and guard of the residence etc. will be completed with the help of the officials concerned by the evening of the 4th, at the

latest, and it is going on satisfactorily with utmost secrecy. It will be very convenient for me if I shall be informed of the approximate time of arrival off Woosung, since I hope to establish liaison directly with KAWAMURA (T.N. Code Term for KAGESA) prior to landing."

Exhibit F:

"IPS Document 1005-(13)

"Confidential, Top Secret Telegram.

"Dispatched 1900 Hrs. May 3rd.

"Received 2055 Hrs. May 3rd.

"To Chief of General Affairs Department.

"From Chief of Staff of Formosan Army.

"Formosan Army Telegram No. 98.

"From KAGESA to Chief of the 2nd Department.

"1. Wang and his suite will arrive at the 'Pilot Station', Shanghai Port, at 10.00 A.M. on the 6th, in accordance with the pre-arranged plan which I have notified to you recently.

"2. 'Wang is naturally anticipating, after his arrival in Shanghai, a battle of telegrams with Chiang, and also terroristic opposition. Accordingly, he wishes to set himself up as soon as possible at the place most convenient for his various activities.'

"3. Therefore, when Wang and suit arrive at

Shanghai, they shall stay for the time being in a house prepared in Shanghai. We have to rely upon Japanese Navy or Army or some other well organized power for guard and protection.

"4. It is reported that Japanese terrorists have been sent from Tokyo to Shanghai for the above purpose. But, considering the bitter experiences in the past, I wish you would absolutely stop the plan. It may seem a good plan to wait in some place outside Shanghai until the preparation for guard and protection by Ting Mo Tsun will be finished, but I don't believe it will be finished within two or three months, in view of the general situation.

"5. Wang has the intention to call together all his followers (about 30 people) in order to decide the future negotiation plan. Taking the situation in Shanghai into consideration, Wang is also contemplating to hire a Japanese ship and, leaving China for about a month, hold a conference on board the ship while cruising around Singapore, Manila, etc.

"6. According to my (KAGESA's) opinion, the Japanese ship available at present cannot accommodate so many people as thirty and it is necessary to prepare another ship. Therefore, I ask the General Staff Headquarters to study the matter."

Exhibit G:

"IPS Document 1005 (19)

"Confidential and Top Secret Telegram.

"Sent 1630 May 23rd.

"Arrived 1600

"Original Telegram: Central China No. 249.

"From: DOIHARA AGENCY

"To: The Chief of General Affairs Section

"From: Colonel KAGESA

"1. Mr. Wang Ching-wei will dispatch messengers to Peking and Nanking before long with his confidential letters to the Provisional and Renovation Governments and to Wu Pei-Fu, explaining the reasons for his action and requesting their cooperation.

"2. The above is aimed at dispelling the misunderstandings which are based upon the various rumors, particularly the rumor that (Wang's movement) is a camouflaged trick on the part of the Chiang Regime. It will also make clear that Japan would not initiate political negotiations prematurely.

"3. Wang realizes that a friendly relation with Wu would have great influence on the future of his scheme. Wang decided to work on his unpreparedness (original note in pencil: "What is the actual meaning?')."

Exhibit H:

"URGENT AND CONFIDENTIAL

"Sent at 1200, 30 May 1939

"Received at 1320

"Original Central China Telegram No. 276.

"Addressed to the Chief of the General Affairs Section.

"From: DOIHARA Agency

"To: The Chief of the 2nd Department

"From: KAGESA.

"1. WANG and his suite of 13 will fly on the 31st at 9:00 A.M. if weather permits. They will rest at Omura on their way, and then fly directly to Tokyo.

"2. The Navy informed us that their landing-place shall be Yokusuka.

"3. KAGESA, ICHIDA, INUKAI and SUGA of the Navy will accompany them.

(Note: Telephoned by the General Staff:

"1. They will land at Omura at 1:00 P.M., 31st

"2. They will leave Omura at 2:00 and reach Tokyo about 6:00."

That concludes the reading.

THE PRESIDENT: We will adjourn until half-

past nine tomorrow morning.

(Whereupon, at 1600, an adjournment was taken until Thursday, 12 June 1947, at 0930.)

- - -

12th June
Exhibits

12 JUNE 1947

I N D E X
Of
EXHIBITS

Doc. No.	Def. No.	Pros. No.	Description	For Ident.	In Evidence
1313	2722		Telegram from Weizsacker, German Vice-Foreign Minister to Ambassador Ott in Tokyo, dated 21 June 1939		24178
1632	2723		Memorandum signed by Woermann, Director of the Political Department of the German Foreign Office, dated 20 July 1939		24179
1633	2724		Telegram sent by Weizsacker to Schulenberg, German Ambassador in Moscow, dated 22 July 1939		24185
704	2725		The Non-Aggression Pact Between Germany and the Union of USSR concluded 23 August 1939		24187
1634	2726		Telegram from Mackensen, German Ambassador in Rome to the German Foreign Office, dated 23 August 1939		24190
1529	2727		Excerpt from "Peace and War" published by the U. S. State Department, which is a Memorandum signed by Hull re a Conversation with the Japanese Ambassador HORINOUCHI		24195

I N D E X

Of

EXHIBITS

(cont'd)

Doc. No.	Def. No.	Pros. No.	Description	For Ident.	In Evidence
710	2728		Statement of Premier HIRANUMA showing that the HIRANUMA Cabinet resigned as a result of the German-Russian Treaty (previously marked for identification only, transcript page 17,836)		24202
246	2729		Statement of the ABE Cabinet dated 4 September 1939 showing that the Japanese Government made clear that it had abandoned the pro-Axis Policy		24206
			MORNING RECESS		24207
1400-D-3	2730		Excerpt from "Foreign Relations of the U. S.", which is a telegram of Ambassador Grew to Secretary of State dated 18 December, 1939 re Conversation Between Ambassador Grew and Foreign Minister NOMURA on that date		24209

12 JUNE 1947

I N D E X
Of
EXHIBITS
(cont'd)

Proc. No.	Def. No.	Pros. No.	Description	For Ident.	In Evidence
1400-C-3	2731		Excerpt from "Foreign Relations of the U. S., Japan 1931-1941" which is a telegram from Grew to Hull dated 20 December 1939		24213
1631	2732		The 4th Conversation in Tokyo Concerning the Question of Concluding a New Treaty of Commerce Between NOMURA and Grew, dated 22 December 1939		24216
1636	2733		Telegram from Ambassador Mackensen in Rome to the German Foreign Office, dated 27 May 1940		24227
			NOON RECESS		24237
155	2734		Message of the Prime Minister Prince KONOYE, dated 27 September 1940 - excerpt from prosecution document 777-A		24276

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SAITO, Ryoei	24239
Direct by Mr. Cunningham	24239
(Witness excused)	24252
AFTERNOON RECESS	24259

Thursday, 12 June 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, all Members sitting, with the exception of: HONORABLE JUSTICE E. H. NORTHCROFT, Member from the Dominion of New Zealand, not sitting from 0930 to 1600; HONORABLE JUSTICE JU-AO MEI, Member from the Republic of China, not sitting from 1330 to 1600.

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, IMTFE.)

Greenberg & Leffler

MARSHAL OF THE COURT: The International Tribunal for the Far East is now in session.

THE PRESIDENT: Mr. Blewett.

MR. BLEWETT: Mr. President and Members of the Tribunal, the next stage in these proceedings is what the defense terms generally "the Pacific War." The evidence will be quite comprehensive. The opening statement is under revision, outlining the theory of the defense, and it will be read by Japanese counsel. We request the permission of the Tribunal to defer its delivery until after the recess, where it will be more helpful to the court.

At this time, all the evidence is available in one sub-division of the Pacific phase, which has been carefully prepared. We ask the indulgence of the Tribunal for permission to present the proof regarding the Tri-Partite Pact now. No other evidence to come will conflict with it or be repetitive.

I present Mr. Cunningham, who is the chairman of that sub-division.

THE PRESIDENT: How long will that take?

MR. BLEWETT: We expect, sir, that it will take up to the 23rd. We hope to complete it just about that time.

THE PRESIDENT: If we should agree to what

you propose and we finish the Tri-Partite Pact section before the 23rd, the vacation, or recess, will commence as from the time we finish the Tri-Partite Pact section.

MR. BLEWETT: That is quite satisfactory, sir.

THE PRESIDENT: What have you to say, Mr. Tavenner?

MR. TAVENNER: If the Tribunal please, the prosecution does not understand the reason for postponing the opening statement of this phase for a period of nearly two months.

THE PRESIDENT: I suppose if they are not ready to present the phase, they are not ready to open on it. One follows from the other, I would say. You made it clear enough to us, either here or in Chambers -- you, the defense, I mean -- that you were not prepared to go on with that general phase. Not only were you not prepared with the individual cases, but you were not prepared with the general phase. I say that with a purpose, but it is in accordance with fact.

Every alternative to a recess was considered by us. We were told they could not go ahead with that general phase. Therefore, they cannot be expected to open on it properly.

MR. TAVENNER: I had not understood, if the

Tribunal please, that they were not prepared to go ahead with their opening statement; that they merely requested that it be delayed.

THE PRESIDENT: An opening statement implies that you know every essential matter you are going to prove.

We have to take the decision of the Court on this, first.

I understand we will have an opening statement on the Tri-Partite Pact, Mr. Cunningham.

MR. CUNNINGHAM: Yes, your Honor, and I believe you will find it very brief.

THE PRESIDENT: The Tribunal approves of the defense proposal. So, you may open the Tri-Partite Pact section, Mr. Cunningham.

MR. CUNNINGHAM: Opening statement, Tri-Partite Pact, Pacific Division V, Sub-Division 1: the Tri-Partite Pact was concluded between Japan, Germany and Italy on 27 September, 1940.

The prosecution alledged that it was an extension or revival of the abortive negotiations for the so-called "strengthening of the Anti-Comintern Pact," which were conducted between the three countries in 1938 and 1939, and that "this pact in its essence contained the ultimate development of the plot of the

improvement of Japanese-American relations. They made every effort to attain this objective and that the Japanese-German relations during the period remained extremely cool. The efforts of Japan were not reciprocated by the United States. Economic pressure upon Japan increased by the United States and other countries after the expiration of the Japanese-American Commercial Treaty.

The German victory in Europe in May 1940 gave Japan reason to fear the emergence of Germany in East Asia as successor to France and the Netherlands. The coolness of the Japanese-German relations at that time did not permit any possibility of collaboration of the two countries concerning these Far Eastern problems. The prosecution has tendered evidence of Japanese-German contact concerning the question of Netherlands East Indies and French Indo-China, especially conversation between Ribbentrop and SATO, alleging the existence of collaboration. It will be proved that these facts show the contrary; non-collaboration between Japan and Germany. It will also be shown that the negotiations for the Tri-Partite Pact began in September, 1940 under the KONOYE Cabinet, and not in June of the same year as alleged by the prosecution.

The prosecution alleged that the purpose of the Tri-Partite Pact was the establishment of the so-called "new order," which had for its purpose the extinguishment of democracy throughout the world and the subjugation of all the nations by the aggressive states.

In rebuttal of this charge, it will be proved that the Japanese Government concluded the Tri-Partite Pact for the defensive and peaceful purpose of contributing to the world peace; Japan wanted ultimately to improve the relations with all countries of the world, especially with the United States of America, on the basis of equality and mutual respect. She thought it necessary, as the primary step for it, to prevent the deterioration of her political position by getting out of the international isolation which faced her at that time. After the failure of her policy of direct approach to the Anglo-Saxon countries and facing the danger of complete international isolation as a result of increasing American pressure, Japan was compelled to the conclusion that her ultimate goal, the improvement of the Japanese-American relations, could not be attained without first improving her international political situation. By joining with other countries, even if some danger should there be involved, this must be done under the international circumstances

then prevailing, Germany and Italy were the only countries which could be used as allies. That the Japanese Government had no aggressive purpose and took every precaution in order not to be drawn into the European war as a result of the Tri-Partite Pact will be shown by the official record of the negotiations and will be the object of part of our evidence.

On the interpretation of the term "new order" it will be shown by evidence that it meant the establishment of a regional organization as part of the world peace program. It was not aggressive in its nature. It was not in violation of any existing treaties and obligations. Evidence will be tendered proving the fantasy of the allegation that leaders of Japan and Germany contemplated conquest or division of the world. As to the prosecution's charge that the pledge of mutual assistance as provided in the pact would become effective automatically, it will be proved that this was not so.

Concerning the Japanese-German-Italian relations after the conclusion of the Tri-Partite Pact until the outbreak of the Pacific War, the defense will prove that there was no cooperation by pointing out the following facts, namely, that:

(1) Germany wanted Japan to join the war

against Britain;

(2) Germany, after the outbreak of the German-Russian war, wanted Japan to go against Soviet Russia when the German Army was knocking at the door of Moscow;

(3) Germany did not wish a Japanese-American war; Japan acted independently in the war with the United States.

Most of the evidence presented by the prosecution with respect to the Singapore question are documents of the German Government, which by their own nature are one-sided.

Skipping, then, down to the next paragraph.

The defense will tender evidence that Japan always refused in a diplomatic way German request to enter the war against Britain. These requests were contradiction of assurances given by Germany at the time of the conclusion of the Pact. It will be clearly shown that the records of various conversations introduced by the prosecution kept by the German Foreign Office were not official or accurate, and that the German leaders were not telling Foreign Minister MATSUOKA the truth when he visited Berlin in March and April, 1941.

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Towards Soviet Russia, Japan strove to maintain a friendly relation in accordance with the stipulation and spirit of the Tri-Partite Pact. She emphatically refused repeated German demands to join her in the war against Soviet Russia. Evidence will also be t endered to show that Japan considered the German attack on Russia which occurred in spite of her opposition, as a betrayal on the part of Germany, and considered that the very foundation of the Tri-Partite Pact was shattered by this act of Germany.

The prosecution has pointed to the Japanese occupation of French Indo-China as instances of Japanese-German collaboration. It will be shown, that in the solutions of these problems Japan did not utilize German pressure on the French home Government.

Japanese-German relations experiences further set-back when the Japanese Government entered in informal negotiations with the United States in April 1941. Germany entertained doubts as to Japan's intentions, and requested that Germany be informed of the facts about the negotiations and be permitted to participate in them, but Japan did not comply with this. Evidence will also be tendered on this point.

The circumstances which compelled Japan to

decide the war with the United States of America will be clarified thoroughly in other sub-divisions of this phase.

It will be shown that the Japanese decision resulted from consideration of self-defense, independently of any exterior influences, not to mention any consultation with Germany and Italy, and that Japan did not accept any assistance or help from the two countries in setting up her plans of military operations. On the contrary, Japan kept her decision to fight strictly secret, and the attack on Pearl Harbor was most complete a surprise to Germany, to which fact evidence will be tendered. It will also be shown on the other hand that German declaration of war on the United States of America was not connected with the Tripartite Pact, and Germany considered herself to be de facto in a state of war with the United States since the "shoot at sight" order of President Roosevelt in September 1941.

Convincing evidence will be tendered not only from Japanese and German, but also from Allied sources, as to the fact that Japanese-German-Italian relations during the war were not close, making the military convention practically valueless, but in contrast to the intimate cooperation of the Allied

side, politically, economically and militarily, Japan and the two countries of Germany and Italy in fact fought separate wars.

It should be observed by the Tribunal that the effect of the Italian relationship with Germany and Japan is ignored in our presentation of the evidence. History has already shown that Italy was impotent and a useless ally, and even in the optimistic evaluation of her aid in any cause the result would have to be nil. The fact that she surrendered in 1943 and that Germany surrendered in 1945 and that Japan surrendered later precludes any necessity of justifying or explaining No-Separate Peace Pact mentioned so often by the prosecution in their evidence.

With the permission of the Tribunal I present documents and witnesses supporting this brief statement.

Before I present my documents, I would like to say, if the Tribunal please, that I should like to have it definitely understood that my presentation of the evidence in this Tri-Partite Section of the Pacific Division of this case must not be taken to indicate that Mr. OSHIMA had anything to do with the negotiation or the deliberations which brought

about the pact.

To the contrary, I wish to emphasize that Mr. OSHIMA was in complete retirement from November 1939 to February 1941. I would like to have the Tribunal bear that in mind, please.

Before we present the evidence in this matter it would probably be most helpful if Mr. Tavenner would state the prosecution's position with relation to the Tri-Partite Pact in order that we will meet the issue squarely, perhaps eliminate some instead of approaching the matter by tangents and collaterally. This procedure proved most agreeable on the question of the Anti-Comintern Pact.

Our evidence is prepared on the theory that the making of a defensive international agreement by two or more nations through their plenipotentiaries is the exercise of an inherent legal right of nations; that there is absolutely no personal responsibility on the part of individuals for the acts or the consequences. We understand that it is the prosecution's claim that the defendants individually or collectively are charged with violating international agreements. They claim such agreements constitute international law. The offense, we consider, is in breach of agreements, not the execution or negotiation of

them. Their position is far from clear on this question.

THE PRESIDENT: Just tender your evidence, Mr. Cunningham. We will hear all your points later. We have heard most of them. We will hear them again, perhaps.

MR. CUNNINGHAM: In tendering evidence of the first sub-division, I want to prove the breakdown of Japanese-German relations caused by the conclusion of the German-Russian Non-Aggression Treaty on 23 August 1939, in order to show that no continuity existed in the relation between Japan and Germany as charged by the prosecution.

I offer in evidence defense document No. 1313, a telegram from Weizsacker, German Vice Foreign Minister, to Ambassador Ott in Tokyo, dated 21 June 1939, to show that as early as June of 1939 Germany was no more seriously interested in an agreement with Japan, for which negotiations were going on since the summer of 1938.

This document and the next two documents are preliminary, furnishing the basis and background for documents to be tendered later.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1313 will receive exhibit No. 2722.

(Whereupon, the document above referred to was marked defense exhibit No. 2722 and received in evidence.)

Spratt & Yelden

MR. CUNNINGHAM: Skipping the formal parts (reading):

"Personally for the Ambassador only on telegram No. 257.

"The Reich Foreign Minister wishes to tell you that he absolutely agrees to continuing your individual talks in accordance with the information conveyed to you. He wishes, however, to ask you not to press now the question of the conclusion of the treaty with respect to the time."

Signed, "Weizsacker."

We next offer in evidence defense document 1632, one of the three preliminary documents, a memorandum signed by Woermann, Director of the Political Department of the German Foreign Office, dated 20 July 1939, to show bad faith of Germany towards Japan in concealing the fact that negotiations for a non-aggression treaty were going on between Germany and Russia at that time.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1632 will receive exhibit No. 2723.

(Whereupon, the document above referred to was marked defense exhibit No. 2723 and received in evidence.)

MR. CUNNINGHAM: Skipping the formal parts (reading):

"Berlin, 19 July 1939.

"The Japanese Counsellor of the Embassy who was apparently dispatched by his Ambassador to gain information, visited me today and began a talk with an extremely detailed explanation of the late incident which occurred on the border between Manchukuo and Outer Mongolia. The events, according to his explanations, occurred in the area where a river called Halahaho on most maps forms the border line. It is true that there exists no clear agreement on the border line, but the said river has been practically recognized as the border line. Since April of this year Outer Mongolia troops at first appeared on the east side of the river again and again; later they were reinforced with Russian troops. At the same time Outer-Mongolian or Russian airplanes often appeared over Manchurian territory. In one case an airplane flew deep into the land and dropped a bomb upon a bridge about 30 - 40 km to the east of Tsitsihar. Finally the Mongolians and Russians in large formation have appeared on the east side of the river and that with motorized troops and tanks.

"Thereupon, a pitched battle with major units developed, whereby the Japanese gained the upperhand. The fighting activities, however, have not yet entirely ceased along the whole line. The Outer-Mongolians and Russians have lost thousands of men and hundreds of airplanes. On the Manchurian side, Japanese troops have also taken part in the battle. The total loss of our side amounts to about 1000 men. As to the reason of such Russian action, the Japanese Government is entirely dependent upon a supposition: The action might have the aim to ascertain whether the Japanese despite the warlike events in China are still strong enough also in Manchukuo.

"Another possibility might be to give a kind of moral help to the Englishmen in relation to the occurrence in Tientsin. A third interpretation is that the Russians are desiring to display, in consideration of the negotiation in Moscow that they are not interested in the events in Europe but that they are looking toward the Far East.

"Finally, it is even insisted that the Russians are eager to create difficulties between the Anti-Comintern Powers in this way.

"Hereupon, Mr. Usami apparently reached

the point to which he was steering. First he inquired after our information about the English-French-Russian negotiations.

"I have given him our information concerning the negotiation of the Western Powers with Moscow, which coincided with his own.

"Then he inquired after our relation with the Soviet Union in a very emphatic form.

"He referred among others to a report of the 'News Chroncicle,' according to which a non-aggression pact between Germany and Russia is now being negotiated and which mentioned the rumor of the dispatch of prominent German persons to Moscow

"I replied to him that all those news were nothing but a swindle. It is true that we are now keeping contact with Soviet Union because of an economic negotiation. The quantity of trade between us has been reduced to an insignificant sum from its very considerable height in former times. There are plenty of useful things in Russia, which we can utilize quite well, so it is quite natural that we are trying to further our economic relation to some degree. This has lead to nothing more than preliminary diplomatic talks, being held partly in Moscow, partly in Berlin.

"Mr. Usami then inquired after the details on the German credits given to the Soviet Union in former days. I have referred him to Mr. Wiehl for further information on this question.

"Mr. Usami then came out with the following: Between Germany and Japan economic negotiations are also being held at this moment. Japan is extraordinarily capable of accepting German machines. Our negotiations, however, have explained that the German capacity in this connection is restricted and that some sort of machines could not be delivered because of her own requirements. It would make an extremely unpleasant impression in Japan, if those machines which Japan had been denied would yet be sent to the Soviet Union. I have referred Mr. Usami to Mr. Wiehl also in this point. In the end the Counsellor of the Embassy came back again to the rumour on the political rapprochement between Germany and the Soviet Union and said it would be anyway quite good, if a soothing declaration in this regard be given in Tokyo. The Embassy has on its part already reported to that effect.

"During our talk I have also stated upon inquiries that it is a known fact that the German

press does not attack the Soviet Union to such a degree as in the past, and described this as a fact which implies nothing sensational because of the neighborhood of the Soviet Union with Poland."

Signed, "Woermann."

I now offer in evidence defense document No. 1633, the last of the three preliminary documents, a telegram sent by Weizsacker to Schulenburg, German ambassador in Moscow, dated 22 July 1939, to show that Germany was contacting Russia already in July 1939 for a political understanding.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1633 will receive exhibit No. 2724.

(Whereupon, the document above referred to was marked defense exhibit No. 2724 and received in evidence.)

MR. CUNNINGHAM: Skipping the formal parts, (Reading):

"For the Ambassador:

"Referring to the telegraphic information No. 132.

"Barbarin called on Schnurre as announced by you and declared himself as authorized to negotiate here and also to sign the treaty in Berlin. Depending upon the progress of the talks we will reserve the decision to us, whether a part of the negotiations should nevertheless be transferred to Moscow. In any case we will proceed here ready for outspoken concessions, because the conclusion -- and that at an

earliest possible date -- is welcome for general reasons.

"With respect to the purely political side of our talks with Russia, we consider the waiting period ordered to you by the telegraphic instruction No. 134 as expired. You are therefore authorized, without pressing in any way, again to spin the thread further and to utilize for that purpose especially conversations on current affairs.

"In case from the Russian side our relations to Japan should be brought to discussion, it is for you perhaps of interest to know that the Japanese ambassador in Berlin again as late as yesterday described the shootings and skirmishes in Outer Mongolia as not of importance.

"(Signed) Weizsacker"

I now offer in evidence defense document No. 704, text of the non-aggression treaty between Germany and Russia concluded on 23 August 1939, to show that this pact was a clear violation of Article II of the Secret Agreement attached to the Anti-Comintern Pact of 25 November 1936, exhibit No. 480, in which Japan and Germany pledged each other not to enter any agreement with Russia contrary to the spirit of that agreement.

Through this treaty between Germany and Russia the Secret Agreement attached to the Anti-Comintern Pact was abolished politically.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 704 will receive exhibit No. 2725.

(Whereupon, the document above referred to was marked defense exhibit No. 2725 and received in evidence.)

MR. CUNNINGHAM: I now read exhibit No. 2725:

"The Non-Aggression Pact between Germany and the Union of Soviet Socialist Republics.

"The Government of Germany and the Government of the Union of Soviet Socialist Republics, urged by the hope to consolidate peaceful relations between Germany and the Union of Soviet Socialist Republics and proceeding from the basic stipulations in the Neutrality Pact concluded between Germany and the Union of Soviet Socialist Republics in April, 1926, have arrived at the following agreement.

"Article I.

"Both contracting parties are under obligation not to initiate any military movement, any offensive action, or any invasion against each other, either single-handed or in conjunction with any other country.

"Article II.

"In case one of the contracting parties becomes the object of military action by a third party, the other contracting party will in no way give support to the third party.

"Article III.

"The Governments of the two contracting powers, for the purpose of informing each other of whatever problems involving their interests in common, will constantly keep in touch and consult with each other also in the future.

"Article IV.

"Neither of the contracting parties will join any group of countries directly or indirectly hostile to the other contracting party.

"Article V.

"In case any dispute or conflict with regard to some problem arises between the contracting parties, they will settle the said dispute or conflict chiefly through friendly exchange of views or, if necessary, through the establishment of an arbitration board.

"Article VI.

"The present Pact will remain in force for a term of ten years. If neither of the contracting parties notifies the other, a year before the Pact

expires, of its denunciation of the Pact, it will be considered that the operation of the Pact will automatically continue for the following five years.

"Article VII.

"The present Pact is to be ratified in the shortest possible time. The ratification acts will be exchanged in Berlin. The present Pact will come into force as soon as it is signed. Two copies of the present Pact, written in the German and Russian language, were made in Moscow on 23 August 1939.

"On behalf of the Government of Germany,

"Von Ribbentrop

"Authorized by the Government of the Union of Soviet Socialist Republics,

"S. Molotov."

I now call the Court's attention to prosecution's exhibit No. 775, transcript page 7890, KIDO's Diary of 23 August 1939, to show that bad faith in concluding the German-Russia Treaty shocked and surprised Japan. KIDO wrote that he "was astonished at this extremely treacherous act considering the existence of the Anti-Comintern Pact and Secret Pact."

I now offer in evidence defense document No. 1634, a telegram from Mackensen, German Ambassador in Rome, to the German Foreign Office dated 23 August

1939 to show that the German-Russian Treaty stirred deep indignation in Japan as reported by the Italian Ambassador in Tokyo, and a complete breakdown of the Japanese-German-Italian relations was obvious.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1634 will receive exhibit No. 2726.

(Whereupon, the document above referred to was marked defense exhibit No. 2726 and received in evidence.)

MR. CUNNINGHAM: I now read from exhibit 2726, skipping the formal parts:

"Top Secret! No. 364 of 23.8

"Top secret. Referring to my long distance telephone talk with Counsellor of the Legation, Hewel. Count Ciano requested me to come to see him this evening and according to a report of the Italian Ambassador in Tokyo, he related, 'Since this report seems to be of very important nature, please transmit it at the earliest possible moment. It will enable us to take counter measures with speed and force.' The Ambassador's report is based upon a report of his military attache, who was called yesterday (evening) to the Japanese War Ministry, and told that: The Non-Aggression Pact now to be concluded in Moscow has

caused deep indignation in Japan towards Germany; that it will mean betrayal to the German-Japanese friendship and to the spirit of the Anti-Comintern Pact, especially when Japan has never been informed of such intention in advance. The Ambassador anticipates the below-mentioned possible developments: (To what extent is this report based upon the conversation, which the military attache had in the War Ministry? It is not clear whether the report is based upon the ambassador's own opinion. Ciano said the Ambassador, in this connection, is an especially calm observer.) 1. Collapse of the present government and formation of a new pro-British cabinet. 2. Change of the Japanese foreign policy. 3. Recall of the Ambassador from Berlin and probably of that from Rome. 4. Sending of reinforcements to the Kwantung Army to keep balance with the Russian reinforcement of strength.

"The Ambassador's report continues that if the Axis Powers intend to interfere with the attitude of Japan, something must be done, and that the Japanese Army has declared to have received no direct information from Berlin and Rome up to the present. Ciano has immediately sent instructions to the Ambassador in Tokyo requesting him to explain to the Japanese that

1. the Italian Policy has never been changed and her friendliness and understanding towards Japan also remain unchanged, that 2. the Japanese in judging the situation should remember that weakening of either England and France in Europe is only to her advantages, that 3. recall of the Ambassadors would be an unprecedented measure and would only aggravate the situation, which, after all our efforts, has been smoothed out and seems to be in no way unfavorable for Japan.

"Finally it is desired that the Ambassador assure the Japanese that they should continue to have full confidence in Italy as in the past. Attaching an extreme importance to the Ambassador's report, Ciano said that he hope that Germany also would do everything possible through her Ambassador and press to calm down the Japanese. Ciano thus concluded his report.

"(Signed) Mackensen."

I now call the Court's attention to prosecution exhibit No. 486-L, transcript page 6122-6123, a telegram sent by Ott to Berlin on 25 August 1939 to show that Japan protested to Germany upon conclusion of the Non-Aggression Treaty with Russia and broke off the negotiations, Foreign Minister ARITA stating to Ambassador Ott that "the Japanese Government had interpreted the conclusion of the Non-Aggression Pact

as finally terminating the present negotiations between Japan, Germany and Italy."

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: If the Tribunal please, I feel it is necessary to again call to the Tribunal's attention the fact that exhibits are being frequently inserted in the order list as an excuse for making an argument to the Tribunal at this time. Of the 91 documents that appear on this order list 26 are exhibits that have been previously introduced. With the exception of a few instances the documents have been read in entirety. I submit that the only purpose that could be had in placing these exhibits on the order list is to afford the opportunity of making a speech or an argument, and previous references by the prosecution and by the Tribunal to this matter seems not to have corrected the situation.

THE PRESIDENT: Stating a purpose sometimes involves an argument. It will be sufficient merely to refer to some of these exhibits which are being read in extenso. The purpose of tendering some of these documents is so transparently clear that there is no need to state it. We hope that Mr. Cunningham will not, in stating his purpose, resort to argument and that he will state his purpose only when that is

necessary and in the clearest and the fewest terms.

MR. CUNNINGHAM: Your Honor, may I say just a word in explanation?

The purpose in referring to these prosecution documents is to save time. By mere reference to what the document of the prosecution does for us we aim to save putting on a witness or putting on several individual documents, and I think it is more profitable to use the prosecution's document against them than one of our documents against them.

THE PRESIDENT: We seek the fullest cooperation of the defense in saving time.

MR. CUNNINGHAM: Exhibit No. 782 is a note dated 26 August 1939 sent by the Japanese Embassy in Berlin to the German Foreign Office. It is shown in this document that the Japanese Embassy in Berlin had filed, under the direction of the home government, a note with the German Foreign Office protesting against the conclusion of the German-Soviet Non-Aggression Pact. (Transcript page 7912).

I now offer in evidence defense document No. 1529, an excerpt from "Peace and War," published by the United States State Department, which is a memorandum signed by Hull concerning a conversation with the Japanese Ambassador HORINOUCHI, dated 26 August 1939, to show that Japan communicated to the United States Government the breaking off of the negotiations with Germany and declared the intention to adopt a new foreign policy.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1529 will receive exhibit No. 2727.

(Whereupon, the document above referred to was marked defense exhibit No. 2727 and received in evidence.)

MR. CUNNINGHAM (Reading:

"Excerpt from 'Peace and War.'

"Memorandum by the Secretary of State Regarding Conversation with the Japanese Ambassador (HORINOUCHI).

"Washington, August 26, 1939.

"The Ambassador of Japan called at his own request. He proceeded to refer to the reports, already published in the American press, to the effect that American officials were incorrectly

attributing anti-American movements and demonstrations in China to Japanese officials or to their influence in thus instigating the Chinese. The Ambassador handed me the attached paper which I proceeded to read. I thanked him for the attention his Government had given to this matter and the spirit seemingly prompting his Government to seek to clear it up.

"I then said that, having seen in the American press the purpose and nature of his contemplated call on me, I had requested the Far Eastern Division to jot down a list of instances of transgressions by Japanese or due to Japanese influence in China to the detriment and infury of Americans and of American interests. I added that this list of incidents had not been elaborated but that I would proceed to read them. I then read the memorandum prepared by the Far Eastern Division attached hereto and marked "A." The Ambassador appeared somewhat surprised and at a loss for further comment with regard to this paper. He said he would be pleased to have a copy of it. I replied that I would be glad to request the Far Eastern Division to put it in more elaborate form if possible and to send a copy to him at the Japanese

Embassy.

"The Ambassador then said that, speaking personally, he might say his Government yesterday had decided to abandon any further negotiations with Germany and Italy relative to closer relations under the Anti-Comintern Pact to which they have been parties for some time. He added that the change in affairs in Europe made this course manifest, and, furthermore, it was plain that his Government would find it important to adopt new foreign policy in more or less respects. I might say that he prefaced this general reference to his country by reiterating his personal desire to clear up any misunderstandings or differences between our two countries and to restore the friendly relations heretofore existing."

Skipping to the bottom of the page:

"I then referred to his comment about Japan and her purpose to adopt a new foreign policy, and I made observations substantially as follows:

"The principles and practices of American policy in regard to the world in general and the Far East in particular are well known to all governments everywhere.

"During recent years Japanese authorities

Embassy.

"The Ambassador then said that, speaking personally, he might say his Government yesterday had decided to abandon any further negotiations with Germany and Italy relative to closer relations under the Anti-Comintern Pact to which they have been parties for some time. He added that the change in affairs in Europe made this course manifest, and, furthermore, it was plain that his Government would find it important to adopt new foreign policy in more or less respects. I might say that he prefaced this general reference to his country by reiterating his personal desire to clear up any misunderstandings or differences between our two countries and to restore the friendly relations heretofore existing."

Skipping to the bottom of the page:

"I then referred to his comment about Japan and her purpose to adopt a new foreign policy, and I made observations substantially as follows:

"The principles and practices of American policy in regard to the world in general and the Far East in particular are well known to all governments everywhere.

"During recent years Japanese authorities

and or agencies have been pursuing courses which come into direct conflict with those principles and policies and which involve disregard of principles of international law and of treaties between the United States and Japan and also multilateral treaties to which the United States and Japan are parties.

"The United States had made representations over and over and over again in objection to or protest against overt acts of these types. The Japanese Government has given assurances over and over again that it has regard for the principles and the rules and the provisions involved and that it will show its regard for them -- and over and over Japanese authorities have immediately committed other acts in disregard thereof.

"We have clear evidence of inspiration by Japanese authorities or of action by agencies thereof hostile not only to occidental nationals and interests in general, but to American nationals and interests in particular. These courses of action by Japanese have resulted in arousing against Japan feelings of suspicion and attitudes of opposition on the part of almost all of the other powers which have interests in the Far East, especially in China, including the United States.

"It should be evident to Japan that there is something wrong with policies and practices on the part of one nation which arouse antagonism on the part of almost all other nations in contact with that nation.

"The United States wishes to have amicable relations with every other country in the world. We have in the past had very friendly relations with every country in the Far East, including Japan. Our policy is a policy of 'Live and let live.' We seek nowhere any special position; but we seek everywhere equality of opportunity under conditions of fair treatment and security.

"The world is being given today new object lessions with regard to the futility of policies wherein nations plan to take advantage of other nations by use of armed force in disregard of moral principles and legal principles and generally accepted acioms of friendly and profitable general international intercourse.

"The future of American-Japanese relations lies largely in the hands of Japan. American policy is a policy of friendliness and fair dealing toward all nations. It will not change.

"The Ambassador seemed appreciative and

this ended the conversation."

Signed, "Cordell Hull."

Kapleau & Wolf

I now offer in evidence defense document 710, the content of which was marked for identification as exhibit 2346, transcript page 17,836, to show that the HIRANUMA Cabinet resigned as a result of the German-Russian Treaty.

THE PRESIDENT: Brigadier Nolan.

BRIGADIER NOLAN: May it please the Tribunal, in the submission of the prosecution an important announcement of this kind should not be attempted to be placed in evidence through the medium of a newspaper article. Similar instances have arisen on a number of occasions and the Tribunal has, I think, almost always taken the position that when the matter is of importance it must be proved in the proper way.

MR. CUNNINGHAM: Your Honor, I was under the impression that it was the fact in which the Tribunal was interested, not in the manner of its presentation. The form is immaterial whether it is by newspaper article,or whether it is by the spoken word, or whether it is by affidavit. Whether or not it is true is the question and I am only asking you to take it for whatever value it has.

THE PRESIDENT: We can never take the reasons for the resignation of a cabinet from the newspapers. I think this very point has arisen before and we

"(An article of the 'The Tokyo Asahi-Shimbun' on August 29th,)

"Since I took the helm of the government upon receiving the Imperial Command, I, in cooperation with my cabinet members and in conformity with the Imperial wish, have been endeavouring to overcome the prevailing difficulties and establish a New Order in East Asia, whereby to attain the aim of the Holy War.

"Moreover, our diplomatic policy which followed the Imperial plan upon which Japan was founded and was established on the basis of morality, had mainly aimed at contributing to world peace and world culture. Following this principle our policies towards Europe have been formulated and reports thereof have frequently been made to the throne. As the recently concluded German-Soviet Non-Aggression Pact, however, gave rise to a new phase of complexity and grotesqueness in the situation of Europe, it became necessary for our country have in view the abandonment of the policies which have hitherto been prepared and to establish new policies. This means evidently nothing but a change of what I have repeatedly reported to the Throne, and this causes the Emperor's worry again; I am in sincere awe thinking

have made the same pronouncement. You see, it is a question of weight. If better evidence is available, and it ought to be, because I think at least one of the Members of the Cabinet is in the dock, we may take the view eventually as what appears in the press is not supported by those who know -- if that be the case -- that the press report is of no value.

The attitude of my colleagues is that they are prepared to accept it as proof or some proof of the resignation of the cabinet, but not of the reasons for its resignation. The objection is overruled and the document admitted on the usual terms.

We were told that the document was marked for identification only and was not in evidence too. However, I understand it is not in fact in evidence.

CLERK OF THE COURT: Defense document 710 is now marked admitted into evidence and will receive exhibit No. 2728.

(Whereupon, the document above referred to was marked defense exhibit No. 2728 and received in evidence.)

MR. CUNNINGHAM: (Reading)

"Statement of Premier HIRANUMA

"On August 28, the 14th year of Showa

"(An article of the 'The Tokyo Asahi-Shimbun' on August 29th.)

"Since I took the helm of the government upon receiving the Imperial Command, I, in cooperation with my cabinet members and in conformity with the Imperial wish, have been endeavouring to overcome the prevailing difficulties and establish a New Order in East Asia, whereby to attain the aim of the Holy War.

"Moreover, our diplomatic policy which followed the Imperial plan upon which Japan was founded and was established on the basis of morality, had mainly aimed at contributing to world peace and world culture. Following this principle our policies towards Europe have been formulated and reports thereof have frequently been made to the throne. As the recently concluded German-Soviet Non-Aggression Pact, however, gave rise to a new phase of complexity and grotesqueness in the situation of Europe, it became necessary for our country have in view the abandonment of the policies which have hitherto been prepared and to establish new policies. This means evidently nothing but a change of what I have repeatedly reported to the Throne, and this causes the Emperor's worry again; I am in sincere awe thinking

of the grave responsibility for assisting the Emperor by giving advice to him. As a Japanese subject, it is nothing less than becoming familiar with the Emperor and slighting his favour granted upon me to remain'longer in my present post. Moreover, when we intend to tide over this critical situation into which our country is driven by arranging its organization and improving upon its diplomatic devices, it would be, I believe, of urgent necessity to effect conversion of the situation and to bring a renewal upon our minds. For these reasons this day I have reported to the Throne and in awe begged to be relieved of my post."

THE PRESIDENT: Seeing the limited extent to which it is admitted, we have not bothered to ask you for copies of what you read. We have not been served with any. Nevertheless, if you offer us copies, Mr. Cunningham, we won't refuse them.

MR. CUNNINGHAM: Well, I probably misunderstood your intention and your probably misunderstood mine; I don't know. I will supply copies during the recess so that you will have them.

The second group of documents now to follow pertain to the period approximately from September 1939 to July 1940, when the cabinets of General ABE and Admiral YONAI followed consecutively the cabinet of HIRANUMA. It will be shown that no collaboration, not even a friendly relation, existed between Japan and Germany at that time; that the Japanese Government endeavored hard to come to an understanding with the Anglo-Saxon countries. However, lack of any reciprocating attitude on the part of the U.S.A. and the world situation at that time, war in Europe, doomed this policy to failure.

I first call the Court's attention to defense exhibit 2272, transcript page 16,240-16,242, KIDO's Diary of 28 August 1939, to show that the ABE Cabinet was born with the Imperial order to adopt a friendly

foreign policy to Great Britain and the United States. The Emperor instructed Premier ABE, upon bestowing Imperial Order to form a new Cabinet, that 'Diplomatic policy should follow the line of cooperation with Britain and the United States' (transcript page 16,241, Line 23 to 24). That is a prosecution exhibit.

I now offer in evidence defense document No. 246, a statement of ABE Cabinet, dated 4 September 1939, to show that the Japanese Government made clear by this statement that it had abandoned the pro-Axis policy.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 246 will receive exhibit No. 2729.

(Whereupon, the document above referred to was marked defense exhibit 2729 and received in evidence.)

MR. CUNNINGHAM (reading): "STATEMENT OF THE JAPANESE GOVERNMENT.

"September 4, 1939.

"In the face of the European war that has just broken out, Japan intends not to be involved therein: `she will concentrate her efforts on the settlement of the China Affair."

The next document is rather long, your Honor.

THE PRESIDENT: We will recess for fifteen minutes.

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

Morse & Selzer

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

THE PRESIDENT: Mr. Cunningham.

MR. CUNNINGHAM: For the benefit of the interpreters and so on, document No. 206-G hasn't arrived up through the processing yet and therefore I have to put it on later together with document 1635 and 1400 E-3. They will have to be deferred because all three deal with the same subject matter.

I now offer in evidence defense document 1400 D-3, a further excerpt from "Foreign Relations of the United States" which is a telegram of Ambassador Grew to the Secretary of State, dated 16 December 1939, concerning a conversation between Ambassador Grew and Foreign Minister NOMURA on that date, to show that the Japanese Government decided to reopen a part of the Yangze River for navigation for the purpose of improving the Japanese-American relations. Foreign Minister NOMURA handed a memorandum to Ambassador Grew in which it was stated that, if the American Government did not reciprocate to this Japanese effort, Japanese-American relations would undergo a grave set back.

THE PRESIDENT: Admitted on the usual terms.

MR. CUNNINGHAM: I only propose to read point two on page three.

CLERK OF THE COURT: Defense document No. 1400 D-3 will receive exhibit No. 2730.

(Whereupon, the document above referred to was marked defense exhibit No. 2730 and received in evidence.)

MR. CUNNINGHAM: I was cut off by the light -- point two on page three, and starting "With special reference" on page five down to the end. (Reading):

"2. The second point I should like to mention is the problem of navigation of the Yangtze River which has long been under consideration by the Japanese military. It is the intention of the military to open the lower reaches of the Yangtze River as far as Nanking. While military operations continue in that area, and opening of the river will cause various difficulties and inconveniences, it is possible gradually to moderate military requirements. Moreover, with the inauguration of the period for gradual building up of China, it is the intention of the military to open up a portion of China despite the military inconveniences which will have to be endured. However in dealing with the opening of the military (river) to navigation, consideration must be given to the need for consolidating various military establishments in that area and to the continued carrying on of

military operations even at the present time along the banks of the river as far as Nanking, not to mention the upper reaches of the river; it therefore follows that there will be restrictions based upon military necessity. However, these restrictions should gradually be relaxed with the passage of time. While it is desired to effect the opening of the river as early as possible in order to prevent any disturbances to the economic life of the area and to forestall any adverse effects upon the building up of the area, it is a matter (sic) anticipated, in the light of the preparation mentioned above and the necessity of consultation with various powers, that about two months will be required. The matter of the Pearl River is also being considered along the above lines."

And then down to the opposite page -- page five. (Reading):

"With special reference to the questions of reopening the Yangtze River, the view is held in certain quarters that the Japanese forces having made enormous sacrifices to reopen the river after it had been closed by the Chinese, no obligation rests on the Japanese to throw the river open to all. Consequently, as above stated, if at a time when progress is being made toward the adjusting of pending questions and

concrete preparations are being made for the throwing open of the Yangtze River, no effective results are seen from the standpoint of improving international relations, the Government would be attacked by public opinion. In such contingency, adverse criticisms and attacks would certainly arise not only in connection with the reopening of the river but with the settlement of other pending questions, and difficulties would develop in putting such plans of settlement into effect. The result would be that relations between Japan and the United States, instead of improving would, it is feared, (tend toward the opposite direction and so proceed to a point which it would be difficult to estimate. I earnestly hope that Your Excellency will appreciate these considerations.)"

Then to the opposite page -- on the back page. (Reading):

"During our conversation on November 4, Your Excellency referred to measures both negative and positive and I recall Your Excellency's observation that 'In my view it is possible to bring about a speedy reversal of public opinion in the United States and there is possibility of improvement in our relations if these measures can be taken immediately.' It is my expectation that the American Government will especially

appreciate the fact that the Imperial Government is overcoming innumerable difficulties and as above stated is exerting its utmost efforts with a view to opening the way for improvement in American-Japanese relations, and that the American Government will in the same spirit reciprocate the efforts being put forward on our side. It goes without saying that more than anythin else the termination of the Treaty of Commerce and Navigation casts the darkest shadow over American-Japanese relations. There remains but a little more than one month before the treaty expires. On the occasion of our previous conversation I said I personally hope that if it is to be that the treaty must expire, commerce between the two countries may continue in a normal manner so that there may occur nothing which will cause the peoples of the two countries to be penalized. To meet this situation some means must be devised; formalities of various kinds must first be taken, but we cannot afford to postpone due to the time required for these formalities and nearly (other) related matters. I therefore believe that there is need for arranging to enter into negotiations before the Christmas holidays begin and request Your Excellency's consideration of this point." Signed "Grew."

I next offer in evidence defense document

No. 1400 C-3, an excerpt from "Foreign Relations of the United States, Japan 1931-1941," a telegram from Grew to Hull dated 20 December 1939, to show that the American Government was not ready to respond to the initiative taken by the Japanese Foreign Minister as shown by the foregoing document.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document No.1400-C. will receive exhibit No. 2731.

(Whereupon, the document above referred to was marked defense exhibit No. 2731 and received in evidence.)

THE PRESIDENT: Mr. Hull to Mr. Grew.

MR. CUNNINGHAM: (Reading):

"The Secretary of State to the Ambassador in Japan (Grew) Washington, December 20, 1939 - 7 p.m."

Skipping the rest of the formal parts.

"The Department has given careful study to the telegrams under reference. The Department concurs in your view that it would not be advisable in response to the initiative taken by the Japanese Minister for Foreign Affairs to return a categorical negative which would serve to close the door to further discussions and to discourage the efforts of the Japanese Government. At the same time we are not in position to

commit ourselves now to entering upon a negotiation. We are inclined to feel that the negotiation of a new treaty with the thought of holding ratification of such treaty in abeyance until the Japanese Government should have carried out certain assurances would be likely to produce more potentialities of misunderstanding and of disadvantages than would a treatyless condition. We are receiving numerous inquiries with regard to the effect which termination of the treaty will have upon relations between the United States and Japan. To those inquiries we are replying that the absence of a commercial treaty does not of itself cause an interruption in commercial relations; that in such circumstances those relations are governed in each country by its municipal law or practice, subject, of course, to any applicable principles of international law; that in the opinion of the Department the expiration of the treaty of 1911 with Japan will not produce of itself any change in the general customs duties or treatment applicable to imports of Japanese goods into the United States; and that, similarly, there does not appear reason to expect that the termination of the treaty will produce of itself any marked changes in the general customs duties or treatment applicable in Japan to imports from the United States.

"With regard to the proposal made by the Minister for Foreign Affairs that a modus vivendi be entered into, we prefer to leave our attitude toward that proposal open for the time being. We shall give the matter consideration but wish you to know that our tentative thought is that any modus vivendi which might upon further study commend itself to us under existing circumstances would have to be of a very limited scope to relate principally to rights of establishment and not of trade, and to be of a character which would leave this Government free to impose restrictions upon trade in case developments should make such course appear necessary toward better safeguarding American interests.

"The Department is hoping to be able to send you tomorrow in continuation of the above a suggested text of a statement which we feel you might helpfully make orally to the Minister for Foreign Affairs." Signed "Hull."

I now offer in evidence defense document No. 1631, an official document of the Japanese Foreign Office, minutes of conversation between NOMURA and Grew on 22 December 1939, to show that the United States of America did not reciprocate to the aforementioned

Japanese endeavours for improving the Japanese-United States relations, and turned down the Japanese proposal to conclude at least a modus vivendi in case of expiration of the Commercial Treaty, thus placing the Japanese Government in a very difficult position in face of growing public irritation in Japan. I shall not read the appendices.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document No.1631, will receive exhibit No. 2732.

(Whereupon, the document above referred to was marked defense exhibit No. 2732 and received in evidence.)

MR. CUNNINGHAM: (Reading):

"The Fourth Conversation in Tokyo Concerning the Question of Concluding a New Treaty of Commerce. (At the official residence of the Minister, about one hour from 5:30 p.m., 22 December 1939.)

"First of all Ambassador Grew stating that he appreciated the efforts on the part of Japan for the improvement of Japanese-American relations, and that, as to the proposal made by Japan during the last conversation, the United States Government had prepared a statement clarifying its standpoint for the information of the Japanese Government, handed over an unofficial

document as attached hereto (see Appendix A) to Minister NOMURA. This statement points out that the American Government considers the principle of equality of commercial rights and opportunity to be the fundamental condition for concluding a new commercial treaty, and that the establishment of such a principle is a prerequisite to the conclusion of a commercial treaty. In this connection the statement declares not only the policies and practices of the other party, but also the treatment of Americans in third countries under its influence are called into question, and as at present there exist in territories under Japanese occupation various restrictions on commerce, residence, travel, etc., rendering imperative the practice of equality of treatment for American commercial rights and interests, this constituted an obstacle to the conclusion of a new treaty."

THE PRESIDENT: Rendering inoperative.

MR. CUNNINGHAM: Well, as corrected. Did you say inoperative or impossible?

THE PRESIDENT: Inoperative.

MR. CUNNINGHAM: (Reading):

"Regarding the statement, the Ambassador added that he hoped various assurances given to the United States by former Foreign Ministers would be carried into

effect. Then the Ambassador stated that as regards the conclusion of a provisional modus vivendi the American Government proposed that the question be left open for the time being, and that according to the views of the American Government it would be appropriate to continue the discussions which had been going on between Minister NOMURA and Ambassador Grew concerning various questions to be considered in connection with the conclusion of a new commercial treaty or agreement (see Appendix B). The Ambassador stated further that with regard to the 10% ad valorem duties to be imposed as provided by the Tariff Act of 1913, on goods carried by Japanese ships which enter United States ports, the Treasury Department would soon instruct the customs collectors not to collect such duties until further orders had been issued, and as to the levying of discriminatory tonnage dues on Japanese ships, the Department of Commerce would adopt similar measures (see Appendix C).

"In reply to this, Minister NOMURA said that although he appreciated the measure which the United States was going to take to keep Japanese-American trade in a normal condition in spite of the expiration of the treaty, a commercial treaty is not only concerned with foreign trade but also has a bearing on general relations;

that from the viewpoint of stabilizing the relations between the two countries he desired the United States to reconsider the question of the conclusion of a provisional modus vivendi. As Ambassador Grew asked for an unofficial document, saying that he wished to transmit this correctly to his home government, the document as shown in Appendix D was sent to him afterwards.

"Then upon Minister NOMURA's question as to the American attitude towards the "right of establishment," Ambassador Grew replied that he was not in a position to answer the question.

"Lastly, Ambassador Grew referred to the recent conversations between YOSHIZAWA and Dorman and, after saying that Washington knew of the fact that Japan had prepared a draft of a modus vivendi, promised to report the results of the conversation to his home Government.

"As for the question of the press release, Ambassador Grew expressed his wish to publish only to the effect that the conversation had been continued with a constructive attitude for the improvement of Japanese-American relations and that some progress had been achieved, and to refrain from publishing the matter concerning the 10% ad valorem duties, tonnage dues, etc., to which Minister NOMURA agreed."

I now offer in evidence defense document 259, Address of Prime Minister of the new Cabinet, Admiral YONAI, at the 75th Session of the Japanese Diet on 1 February 1940, to show that the YONAI Cabinet also adopted the same foreign policy as the ABE Cabinet of non-intervention in the European war.

THE PRESIDENT: Brigadier Nolan.

BRIGADIER NOLAN: May it please the Tribunal, this document, No. 259, was offered in evidence before this Tribunal and rejected at page 21,817 of the record. The basis of the objection was that the document was full of political platitudes and had no probative value. For the most part it sets out the course of action which, according to the speech, Japan intends to follow. On occasions the Tribunal has admitted speeches made by prime ministers and foreign ministers, but on every occasion the test has been the probative value of the document itself, and on this occasion I submit that there is none.

MR. CUNNINGHAM: Your Honors, I forgot to mention that only the statement on the bottom of page 2 is all that relates to this matter and that is all I expect to read.

THE PRESIDENT: What do you mean by the statement at the bottom of page 2? The whole of the

I now offer in evidence defense document 259, Address of Prime Minister of the new Cabinet, Admiral YONAI, at the 75th Session of the Japanese Diet on 1 February 1940, to show that the YONAI Cabinet also adopted the same foreign policy as the ABE Cabinet of non-intervention in the European war.

THE PRESIDENT: Brigadier Nolan.

BRIGADIER NOLAN: May it please the Tribunal, this document, No. 259, was offered in evidence before this Tribunal and rejected at page 21,817 of the record. The basis of the objection was that the document was full of political platitudes and had no probative value. For the most part it sets out the course of action which, according to the speech, Japan intends to follow. On occasions the Tribunal has admitted speeches made by prime ministers and foreign ministers, but on every occasion the test has been the probative value of the document itself, and on this occasion I submit that there is none.

MR. CUNNINGHAM: Your Honors, I forgot to mention that only the statement on the bottom of page 2 is all that relates to this matter and that is all I expect to read.

THE PRESIDENT: What do you mean by the statement at the bottom of page 2? The whole of the

paragraph --

MR. CUNNINGHAM: That whole paragraph on the bottom of page 2. Oh. Perhaps you have a different copy than I have.

THE PRESIDENT: Do you object to that part, Brigadier?

BRIGADIER NOLAN: May it please the Tribunal, I do object because it so well expresses the point of view that I have been endeavoring to put to the Tribunal, that it is merely a declaration of intention to do something, and, in our submission, the Tribunal is concerned only with what was, in fact, done.

THE PRESIDENT: We have been more liberal in dealing with speeches by one of the accused.

By a majority the objection is upheld and the document rejected.

MR. CUNNINGHAM: I now offer in evidence Defense document 1645, an official document of the Japanese Foreign Office, which is the protest of the Japanese Government to the British Government on the Asama-Maru Incident, dated 13 January 1940, to show that Great Britain took German passengers from the Japanese liner Asama-Maru returning from the United States of America to Japan in the waters near Tokyo Bay, in violation of the international law, and evoked

strong protest from Japan, creating bad will and virtually committing an act of war.

THE PRESIDENT: Brigadier Nolan.

BRIGADIER NOLAN: May it please the Tribunal, this is another statement by a foreign office spokesman, the majority of which have been rejected by the Tribunal. These statements which are produced in English are merely prepared for consumption at home and abroad through the medium of the domestic and foreign press. We submit that this is not the proper method in which to prove the facts of this alleged incident.

MR. CUNNINGHAM: I submit, your Honor, that there is no opinion or anything else in this document. It is a mere statement of the Japanese Government in protest and this is the usual manner in which public protests are made in international relations, and I do not see how we could better the evidence than to give the official protest issued by the Japanese Government through their official spokesman.

THE PRESIDENT: How is it relevant?

MR. CUNNINGHAM: Well, if your Honor please, the prosecution has made great weight of the Ladybird and the Panay as acts of war and as overt acts, and certainly there are reciprocating provocations which

cause international rift and disruption of relations, and this is an off-setting incident which is of the same nature as the Ladybird and the Panay.

THE PRESIDENT: By a majority, the objection is upheld and the document rejected.

Whalen & Duda

MR. CUNNINGHAM: I now offer in evidence defense document No. 1452 and No. 221, official documents of the Japanese Foreign Office which are the explanations of the Asama Maru Incident by Foreign Minister ARITA in the 70th Session of the Diet on the 1st and 6th of February, 1940, to show the strong public indignation in Japan caused by the Asama Maru Incident, giving stimulus to the anti-British feelings in Japan.

THE PRESIDENT: Brigadier Nolan.

BRIGADIER NOLAN: If it please the Tribunal, the prosecution objects to the two documents just referred to, No. 1452 and No. 221. If this were the result of an investigation or if it were a report by someone authorized to make a report, it would be in a very different position. But here we find a speech delivered by a parliamentarian in the Diet, giving his views and opinions on what will be a deterioration in the feelings of the Japanese people towards Great Britain.

In addition, it deals with a matter which has not been raised by the prosecution in this case, and is an incident that bears no relationship and has no similarity with the incidents of the Ladybird and the Panay.

The prosecution submits that the documents should be rejected.

THE PRESIDENT: Mr. Cunningham.

MR. CUNNINGHAM: If your Honors please, the objection seems to have several defects, but the first is that I don't know anyone who could speak more authoritatively on the Japanese position than the Minister ARITA at the time.

On the second proposition, it is misunderstandings between nations which causes wars and certainly the mere fact that the prosecution did not raise this question does not preclude us from setting it up as a mitigating circumstance or as an affirmative defense.

On the third proposition, it does not require shooting to bring about alienation of affection in international feeling.

THE PRESILENT: It seems to me to be covered by the decision on the previous document, Mr. Cunningham; but my colleagues may think otherwise.

MR. CUNNINGHAM: Well, I understood that the objection on the other was the defect in the certification or the source of the document; but there certainly could be no objection to the source of this information.

THE PRESIDENT: By a majority, the objection is upheld and the document rejected.

MR. CUNNINGHAM: I now call the Court's attention to prosecution exhibits 1285, 1286 and 1287, transcript pages 11,675 to 11,680, concerning Foreign Minister ARITA's statement on the status of the Netherlands East Indies and subsequent exchange of opinions with Holland, Britain, France and America, between 13 and 16 May 1941, which show conclusively that the Japanese policy of maintaining and respecting the status quo of the N.E.I. was fully approved by the said countries.

I only propose to read the first paragraph and other marked parts -- to refer to parts that were not read by the prosecution. No -- I don't propose to read any of the document, just call attention to it.

I now call the Court's attention to prosecution exhibits 517 and 518, transcript pages 6157 to 6160, telegrams exchanged between Ribbentrop and Ott on 22 and 23 May 1940, which show conclusively that with respect to ARITA's statement on the status of the Netherlands East Indies, Germany did not express her attitude until specifically asked by Japan, her answer arrived later than that of other governments, and that Germany did not commit anything in favor of Japan.

This shows that no collaboration did possibly exist between Japan and Germany at that time.

I do not propose to read any of it, just refer to it.

I next call the Court's attention to prosecution exhibit No. 521, transcript pages 6166 to 6168, memorandum signed by Wiehl, director of the Economic Department of the German Foreign Office, dated 20 June 1940, which shows that Germany was dissatisfied with Japan's attitude with respect to the economic relations with Germany and was not favorably disposed to Japan's request concerning the French Indo-China question.

I now offer in evidence defense document No. 1636, a telegram from Ambassador Mackensen in Rome to the German Foreign Office, dated 27 May 1940, to show that the visit of Ambassador SATO to Berlin in June of 1940 was only unofficial and incidental and no official mission was given to this visit.

This document is presented in rebuttal of prosecution's exhibits No. 524, 525 and 526, 1020 and 1021, concerning conversation, SATO to Ribbentrop.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1636 will received exhibit No. 2733.

(Whereupon, the document above

referred to was marked defense exhibit No. 2733 and received in evidence.)

MR. CUNNINGHAM: Omitting the formal parts:

"Ambassador SATO told me on his visit of today, that he would accept gladly the invitation of the German Government with four accompanists of the Japanese Foreign Office and director and other representatives of the Manchurian Aircraft Company -- name will subsequently sent by letter -- and come to Germany after the conclusion of the trip in Italy, with the polite reservation that if the development of the near future with respect to the difficulties of his homeward travel should not compel him to change his plans.

"(SATO said that) He can come to Germany only as a private man, because his highly official mission in Italy in response to the equally highly official Italian mission in Japan will find the end in Venice. He asks therefore not to make in Germany any official reception with company of honour and similar things. My suggestion to place from the German side some accompanists at his disposal he took up with thanks. We agreed that he will be treated as Etranger de distinction (foreigner of distinction).

"Departure will not be before 14 June, because SATO will probably go back from Venice to Rome for the

signing of a commercial treaty. The length of stay in Germany will be from 5 to 7 days. SATO repeated the wish to make acquaintance with the German Foreign Minister and to see the Secretary of State Weizsacker, whom he knew from Geneve, but he emphasized that he has full understanding, if the German Foreign Minister could not receive him under the present circumstances. He will be thankful if he could make some sightseeings, but he will leave everything to the discretion of the German Government.

"Director of the Manchurian Aircraft Company, who will accompany SATO, is already in direct contact with the corresponding German authorities.

"SATO, who leaves Rome on 28 May, can be reached through me and the Japanese Embassy here."

Signed "Mackensen."

I now call the Court's attention to prosecution' exhibits No. 525, 526 and 1020, transcript pages 6186 to 6190, and transcript pages 9694 to 9703, telegrams exchanged between Ambassador SATO and Foreign Minister ARITA on the conversation of the former with Ribbentrop on 9 July 1940, which show that no results were obtained by this conversation. No collaboration between Japan and Germany.

I want to read page 4 of exhibit 1020.

Have you the documents?

THE PRESIDENT: Yes, we have them. Thank you.

MR. CUNNINGHAM: (Reading) "As you will understand from what I report with this cable, I could not find any definite attitude on German side as shown by Italian premier regarding Dutch East Indies and French Indo-China. It is also a great regret that I could not get any promises or pledges and on the contrary it was observed that German side rather avoided to give definite previous promises to these problems. As there was a wish from the German side, I hope you would pay attention not to have the contents of this telegram be leaked outside.

"Cabled the same to Italy, the United States, Soviet Union and Britain."

I now call the Court's attention to the prosecution's exhibit No. 545, transcript page 6285 to 6292, outline of conversations between MATSUOKA and Ott, dated 1 August 1940, and read the part which was not read by the prosecution to show that Ott was very much dissatisfied with the unfriendly treatment he received from the Japanese Foreign Office. Again no collaboration between Japan and Germany.

I will read page 4 (last paragraph) and 5.

Read in the light of the evidence of Zorge influence and other evidence offered, Ott's situation would be more understandable.

Page 5:

"And Ambassador Ott said 'Since I have arrived here as Ambassador to Japan, what I had felt has been entirely unpleasant. Until now KASUMIGASEKI has disregarded Germany and never given settlements to the question German Embassy had turned over. For some of them, even a reply has not been given. This may be sufficient reason to be called back home by my government. And you have never given me the chance to see you except on business and I have been treated inferior to British and the United States Ambassadors: I take this for an unendurable insult. In spite of such conditions the German Government has

still a little hope in me and has not called me back home till today.'"

The following third group of witnesses and documents will show that the motives of the Japanese Government in concluding the Tripartite Pact on 27 September 1940, and the purpose of that Pact as interpreted by the Japanese Government, were peaceful and purely defensive, and Germany also assured Japan of her peaceful intention during the negotiations for the Pact. It will further be shown that the Tripartite Pact is entirely different from the abortive treaty negotiated in 1938 and 1939 by the HIRANUMA Cabinet. These in rebuttal of the prosecution's charge that the Pact was concluded as a means of dominating the world by Japan, Germany and Italy, and that the Pact was the final stage of the continuous collaboration between the three countries since 1936.

I first call witness Heinrich Stahmer, the former ambassador of Germany to Japan, who could be considered as one of the best living authorities on Japanese-German relations. As Mr. Stahmer will go back to Germany soon and will not be able to be a witness in the Individual Phase, I wish, with the Court's permission, to ask him also questions pertaining to another matter that probably shouldn't be mentioned now.

I call Witness Stahmer who is in my office.

MR. TAVENNER: If the Tribunal please, we have not received a copy of the affidavit. It has not been served on the prosecution.

THE PRESIDENT: Well, if we adjourn now you will have an opportunity to peruse it before the afternoon. Will that be satisfactory?

MR. TAVENNER: If your Honor please, this is an affidavit I think we should have the rule complied with, the twenty-four hour rule.

MR. CUNNINGHAM: Well, your Honor, the affidavit has been completed for three, four, five or six days, and it is just the fault of the machinery and not my fault.

THE PRESIDENT: Still the rule must be complied with. It was applied as against the prosecution.

MR. CUNNINGHAM: May I suggest, your Honor, that this witness speaks perfect English. There is no reason why he shouldn't testify in English. There is no reason why he should have an affidavit except for convenience purposes.

THE PRESIDENT: The Judges like to have an advance copy of the proposed evidence, too. We were served in time.

The marshal assures me that he doesn't know

the German form of oath which you promised him, Mr. Cunningham.

MR. CUNNINGHAM: I miscalculated five minutes. I expected to get him that in the noon hour.

THE PRESIDENT: Well, we can't take this witness' evidence before tomorrow.

Mr. Comyns Carr.

MR. CUNNINGHAM: Well, now, your Honor, the order of proof is all made up, and certainly it appears to me that we shouldn't put a stop watch on this matter just for technical reasons. I can't go on with my proof very well under the circumstances because these documents have been processed and published, and it is certainly a detail as far as I am concerned.

THE PRESIDENT: We can't give you a privilege not extended to others, Mr. Cunningham. All counsel are equal before us.

MR. CUNNINGHAM: Well, does your Honor wish to postpone this matter, the whole process, until twenty-four hours has expired?

This witness should not have to testify by affidavit at all. It is only a matter of convenience. He is an English-speaking witness and he is exempted from the affidavit rule.

THE PRESIDENT: I have had the advantage of a

discussion with all my colleagues on this matter, and they would like to know in advance what evidence is to be given, and, of course, therefore, the affidavit rule must be applied. In its terms it does not distinguish between English-speaking witnesses and others.

MR. CUNNINGHAM: Your Honor, I understood your discussion with Mr. Logan in chambers specifically excepted English-speaking witnesses and European witnesses, if my memory is correct.

THE PRESIDENT: That is so. Subsequently I discussed the matter with my colleagues who prefer to know in advance what the witness is going to say.

MR. CUNNINGHAM: Well, I don't want to be technical about it, and I don't want to delay the process any. I would like to have this witness testify first, and I have about 150 or 200 questions to ask him in addition to his affidavit.

But still in order that his testimony will be continuous and logical and so on, I will call my second witness who was supposed to come after Mr. Stahmer, Mr. SAITO.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: If the Tribunal please, I would like to offer a protest now to counsel's declared intention of interrogating the witness to the extent of one

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THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: If the Tribunal please, I would like to offer a protest now to counsel's declared intention of interrogating the witness to the extent of one

hundred and some questions.

THE PRESIDENT: Well, my colleagues are insistent that the rule must be complied with, so that we cannot take the evidence today of this witness.

And they are all against, including myself, extensive questioning in addition to the affidavit. Where, say, through some inadvertence the affidavit isn't as full as it might be, then we may allow a question or two in addition, and, indeed, we have done so.

MR. CUNNINGHAM: Well, your Honor please, the testimony of the witness does not lend itself to affidavit form, and, therefore, I have prepared the questions and answers written for the witness and all he has to do is read them, if necessary, which I think is highly improper, but as I have the questions and answers all written out and processed that he can read after he gets through with his affidavit, the questions and answers follow logically after the affidavit. But I couldn't--

THE PRESIDENT: Which completely disposes of the rule against leading questions in the court itself.

You needn't say anything more, Mr. Tavenner. You are only wasting time. We are determined that the rule shall be observed.

We will adjourn until half past one.

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

Greenberg & Leffler

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. Cunningham.

MR. CUNNINGHAM: If the Tribunal please, I wish to state that the change in the order of witnesses totally disrupts the order of proof. The reason the affidavit was not distributed in English is because there is a rule downstairs that the prosecution will not receive the English copy until the Japanese copy is ready for distribution, and the English copies have been ready for a week. I just state that because it looks like a ridiculous situation.

MR. TAVENNER: If the Tribunal please, counsel is certainly misinformed about the rule that he spoke of. Since early in the first week of the defense phase, I gave positive instructions never to hold up delivery because of the absence of Japanese copy. I have checked on that numerous times, and I have never found an instance in which that has been done so far.

MR. CUNNINGHAM: I do not propose to make an issue of it. I merely asked why it was not distributed when they had it so long, and they told me that the

reason it was not distributed was that the Japanese translation was not complete for distribution, and I specifically had to go to the prosecution document section to get a waiver of that rule in order to get a few documents beforehand.

I would like to call now a witness, SAITO, Ryoei, Advisor to Foreign Minister MATSUOKA at the time of the conclusion of the Tri-Partite Pact, affidavit No. 1592.

- - -

R Y O E I S A I T O, called as a witness on behalf of the defense, being first duly sworn, testified through Japanese interpreters as follows:

DIRECT EXAMINATION

BY MR. CUNNINGHAM:

Q Will you state your name and your address, please?

A My name is SAITO, Ryoei, and my address is Tokyo, Shibuya-ku, Shoto No. 42.

Q I ask the Marshal to hand you the document marked defense document 1592, and I ask you if that is your affidavit?

(Whereupon, a document was handed to the witness.)

A There is no doubt it is my affidavit.

Q Are the statements contained therein true and correct as you verily believe?

A I believe the contents are accurate and truthful.

MR. CUNNINGHAM: I offer in evidence defense document No. 1592, the affidavit of SAITO.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: If the Tribunal please, objection is made to the introduction of this affidavit in its entirety. The Tribunal may recall the defense document 1113, which was rejected at page 22,555, consisting of twenty-eight pages of argument, which the Tribunal rejected in entirety.

This affidavit, of course, relates to a different subject matter, but it is open to the same general objections. This is a statement of opinions and conclusions of the witness; and, to the extent that it expresses conclusions of his or MATSUOKA's, it is invading the province of the Tribunal. It is an outstanding example of prolixity and argument which the Tribunal has consistently criticized and upon which it has acted in disallowing evidence of this type.

More specifically, paragraph 2 on page 2 is a statement of the witness' conception of MATSUOKA's general idea regarding peace of the world, which seems

to be based on alleged conversations with MATSUOKA when he was President of the South Manchurian Railway Company.

Paragraph 3, on page 3, attempts to express MATSUOKA's motives in deciding to conciude the Tri-Partite Pact. These expressions of the witness' views of the motive of MATSUOKA, we think, are inadmissible.

Paragraph 4, on page 4, is a statement of the witness of what MATSUOKA considered and the witness' version of MATSUOKA's ideals, opinions, and thoughts. It is followed by a statement of what MATSUOKA did not tell the witness and a statement of what MATSUOKA, in the witness' opinion, did not intend to do.

Paragraph five on page six is a recital of the witness' opinion as to Japanese motives and what Japan thought which, we submit, is clearly an invasion of the province of the Tribunal.

In the paragraph on the top of page 7 an order relating to the China Incident is referred to, the absence of which is neither explained nor accounted for.

On page 8 is an argument by the witness based on the witness' consideration of what MATSUOKA thought about American intervention.

Paragraph numbered 6, beginning at the bottom of page 8 and extending through page 10, is an argument relating to encirclement, and it is called "Shaking Hands with Some Powers."

Paragraph seven on page 11 is a statement by the witness as to what MATSOUKA thought of Japan shaking hands with the USSR, based on another alleged conversation with MATSUOKA when he was President of the South Manchurian Railway Company.

The witness' statement contained in the paragraph at the top of page 12 is irrelevant and immaterial to any issue and, even if true, proves nothing.

Paragraph eight begins with the statement

that the Tri-Partite Pact was not concluded in preparation for war. This, we submit, is a conclusion which invades the province of this Tribunal. As to alleged reservations which are mentioned in this paragraph marked 8, the treaty and the exchange of letters is the best evidence. Reference is also made to a personal message from Ribbentrop which does not afford anything new as far as the issues in this case are concerned, but the absence of it has neither been explained nor accounted for.

In item 9, paragraph No. 9, beginning near the bottom of page 15, we find a recital of what happened at a certain cabinet meeting. We contend that the minutes of the cabinet meeting constitute the best evidence and should be produced for whatever value they have.

Item 10 relates to certain alleged statements that MATSUOKA made on his trip to Germany. I am in error in that appearing in that particular paragraph. But, at any rate, the records of the particular conference were kept and the minutes of that conference are the best evidence.

THE PRESIDENT: If MATSUOKA were alive and went into the box to give evidence, would you object to these statements attributed to him in the affi-

davit here. We cannot talk of the evidence being given by the individual because the individual is dead. If the affidavit were confined to a statement of what MATSUOKA would have said, would you object? We certainly cannot have this witness' conclusions.

MR. TAVENNER: In most of the instances, if the Tribunal please, in which I have objected to the statements of the witness, they were his conclusions based upon alleged conversations that he had with MATSUOKA at some earlier date.

THE PRESIDENT: If the affidavit is limited to what MATSUOKA said, would you object?

MR. TAVENNER: I do not think that we could object to what he said at the time the negotiations were going on. But, as to what was said when he was President of the South Manchurian Railway Company, quite some years before the incidents involved, they are tied together in a rather ingenious way with the statements of the witness relating to conditions at the time of the negotiation for the pact; and, just as the former affidavit, it is impossible to go through this affidavit and determine with any satisfaction that which is not opinion and conclusions. It invades the province of the Tribunal and constitutes, also, opinion testimony. For that reason, we

object to the introduction of this affidavit in its entirety.

THE PRESIDENT: Mr. Cunningham.

MR. CUNNINGHAM: If your Honor please, as a matter of time and a matter of necessity, it is impossible to revise this affidavit to meet certain requirements that we do not know about now but which might be suggested by the prosecution. We have done our best to comply with the Court on this affidavit. This man was the legal adviser to Mr. MATSUOKA when he wrote the Tri-Partite Pact, and I believe that all the considerations which went into that Tri-Partite Pact were known by this man. There is nothing to prevent the Tribunal from eliminating from its consideration the opinions and conclusions as they did in the prosecution's case with the affidavits prepared by Mr. Helm which were purely legal arguments -- by Mr. Darcy.

Spratt & Yelden

THE PRESIDENT: But this inclusion in affidavits of opinions comes many months after the Court has warned against it. The prosecution as far as I recollect did not disregard any warning we gave but we have given this warning repeatedly.

MR. CUNNINGHAM: I firmly state, your Honor, that this was not done in any disregard. It was done on account of the physical impossibility with the language difficulty to do any better job, and I don't know how I could do it any better. I have no facilities in Japanese and I only rely on the Japanese counsel to understand the rulings of the Tribunal and to prepare the documents accordingly; and once the document is prepared, I feel certain, your Honors, that it would be much simpler if your Honors would disregard the opinions and the conclusions. It is not physically possible for me to revise this and go on with my proof.

THE PRESIDENT: Japanese counsel appear to us to be able, scholarly men in most cases and they should understand a simple direction of the Court that we will not allow these opinions to be inserted in affidavits.

MR. CUNNINGHAM: I submit, your Honors, that in our judgment they may be on the border line but they are not conclusions. They are statements of facts

supported by substantial evidence, supported by the record. They are the best statements of fact that we are able to give you and certainly--

THE PRESIDENT: We cannot allow them to assume our function of drawing conclusions. The witnesses tell us the facts; we draw the conclusions.

MR. CUNNINGHAM: Your Honor, it is not physically possible now to comply with that sort of regulation, and what Mr. MATSUOKA said, whether it was a conclusion or a supported fact, it is significant and important. I can't go on with my proof if the affidavit is rejected. It just makes it necessary to postpone the case until we get this witness' affidavit in form. I can't get out of court and do things like that.

THE PRESIDENT: What are we to do with the defense, conducted by able lawyers, if they repeatedly disregard our rulings and if, as a result of our insisting upon our rulings being given effect to, the defense case is brought to a standstill? By repeatedly doing that they could prevent this Court, if this Court were foolish enough to allow them to do so, from ever reaching a verdict. This ruling which has been disregarded for months by able lawyers is a simple one, clearly understood by all, and must be observed. If

not we may have to close the case and come to a verdict.

We want to hear all the individual accused; we want to hear every bit of relevant and material evidence that you have to offer, but we want the case conducted in accordance with our clear, simple rules about the meaning of which nobody is under any misapprehension -- nobody, including the defense counsel.

MR. CUNNINGHAM: If your Honor please, I have four observations to make upon that which bear right on the point. The first is that it is a physical impossibility to comply with that technical rule with all the resourcefulness and legal ingenuity and ability and education that is at the defense command, especially on this document.

THE PRESIDENT: But you asked the Court to apply the rule by editing the affidavit.

MR. CUNNINGHAM: On the second point, your Honor, if I may go to my second point, I consider the exclusion of these points in this affidavit as the application of very technical rules of evidence which it is very, very difficult, if not impossible, to comply with.

THE PRESIDENT: The exclusion of opinions and conclusions which the Court alone is at liberty

to draw is not a technical matter. These witnesses with the collusion of Japanese counsel, so you say, are forming conclusions that we must draw. American counsel see these affidavits with the objectionable conclusions and they do not strike them out but they bring them to us.

MR. CUNNINGHAM: On the third proposition, your Honor, as far as being under a misapprehension, I understand perfectly the rule that you are trying to apply, and I have read this affidavit and I have put behind it my best judgment that I can give and I have received the judgment from some of my co-counsel who are working on it and this is the best we can do under the circumstances.

THE PRESIDENT: I think the position is well expressed in a note to me from one of the Members of the Court while I have been discussing the question with you: We should reject the document in its present form. The Tribunal cannot undertake to edit this document so far as excerpting from it (1) the irrelevant, (2) the immaterial, (3) the expressions of opinion, (4) the passages in which the witness swears the issue. That is undertaking our task.

MR. CUNNINGHAM: If your Honor please, if eleven Members of the Court cannot edit the document and eliminate from it the things by hearing it and reading it, how can you conceivably ask me or another counsel to read it and pass our judgment upon it? We must do our best, and that is all I can do.

THE PRESIDENT: Here for the first time in my experience we have counsel tendering documents which they know cannot be admitted according to the rules we have adopted and asking us to edit them. This is not a case where the admissibility of the particular evidence is in question. No question arises. The evidence is clearly inadmissible, and everybody knows it; and yet we are asked to edit the document. We are to make ourselves servants of the parties in the case instead of acting as judges.

MR. CUNNINGHAM: My colleagues decide that we ought to stand the witness down. Your Honors, I have done my best with the affidavit, and I hate to have to turn it over to somebody. You must realize it is impossible to present the documents in court and also edit them. I just do not have that kind of time or energy.

THE PRESIDENT: The counsel responsible for

these documents are serving their clients badly. It is a hard thing to say about counsel, but the observation is called for.

Mr. Tavenner.

MR. TAVENNER: If your Honor please, due to the importance of this principle, may I be permitted to make an observation.

There is a persistent rumor that it will take probably a year yet to complete this case. That rumor eminates from defense sources. We have been told that there would be hundreds of witnesses. Now it would seem to the prosecution that it should be a comparatively simple matter that affidavits should be perused and edited before they are processed. If we are required to make this type of objection after the processing of documents over the many months that it seems this case may still last, it will prolong this trial many months.

THE PRESIDENT: I make no charges. I voice no suspicions, but if the defense wanted to prevent us from ever reaching a verdict this would be the way to do it.

MR. CUNNINGHAM: Well, your Honor, on the matter of time, it seems to me that if we read this affidavit and got it out of the way, an

hour and a half reading it, and got this witness away, it would certainly save time and not lose it. That is the way I look at it.

I ask that the witness be stood down and we will redraft the affidavit.

THE PRESIDENT: The witness is stood down.

(Whereupon, the witness was excused.)

MR. CUNNINGHAM: I would like to refer at this stage to defense document 1664, the affidavit of Admiral OIKAWA, Koshiro, former Minister of the Navy. Although Admiral OIKAWA will be on the witness stand at the later stage of this Pacific phase of the case, item 2 of his affidavit concerns the Tri-Partite Pact, in which he says that the purpose of the pact was to prevent the United States from entering the European War and thereby to stop the devastations of the war from spreading throughout the world. I should like only to read this one paragraph instead of calling the witness here for this purpose at this time because the rest of his testimony is disconnected with this particular item.

MR. TAVENNER: I may say, your Honor, that

that one paragraph is three or three and a half pages long, probably more than half of the affidavit.

MR. CUNNINGHAM: I just want to avoid calling the witness two times or three times to get this one item, and I offer for identification defense document 1664 and only offer to read the one paragraph, item No. 2.

MR. TAVENNER: May I be heard.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: This affidavit, or that half of it, will be presented during a subsequent phase of the case, and it is now requested that we cross-examine at that stage, which is probably the most feasible thing to do, but we think that the affidavit in its entirety should be admitted at that time rather than dividing it, and for that reason we object to the splitting of the document at this time.

MR. CUNNINGHAM: I submit, your Honors, now is the most orderly time to hear the evidence on this particular question, and I should like to have this part of it into the record now and cross-examination can happen later. I might suggest that one of the reasons I want to do this

now is that I am not going to be here at the time Admiral OIKAWA is on the stand, and I should like to complete my presentation while I am here.

THE PRESIDENT: Well, I am afraid, Mr. Cunningham, the Tribunal is against you on splitting the evidence in this way.

MR. CUNNINGHAM: Well, your Honors, several of the counsel wished to have the Navy's view of the Tri-Partite Pact presented at the time the evidence on the interpretation of the Tri-Partite Pact was offered, and that is the reason why I am now asking that it be received.

THE PRESIDENT: We will allow you the same concession, necessarily, as we allowed in the case of other witnesses. You may call this man on this particular phase, but he must be cross-examined.

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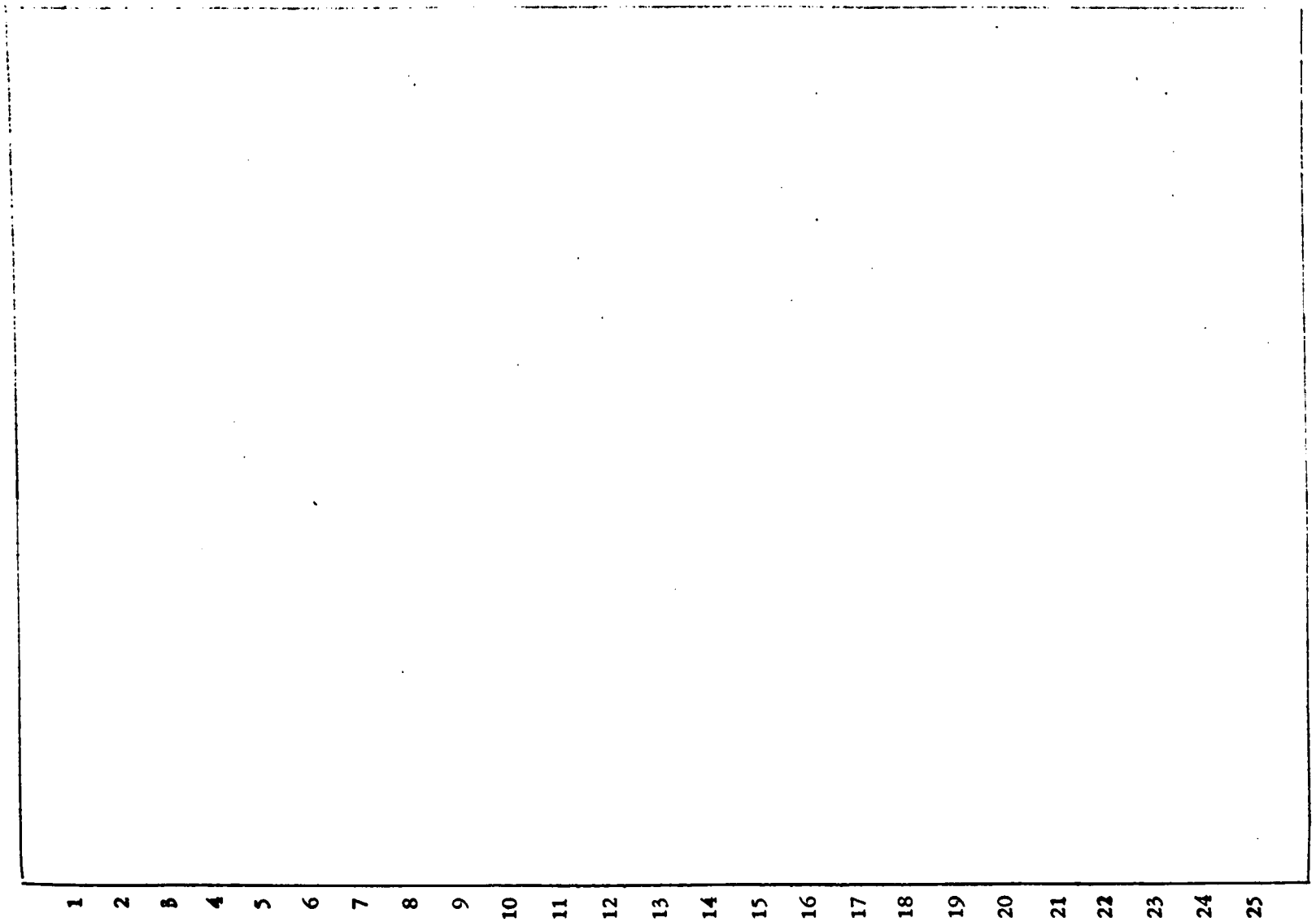
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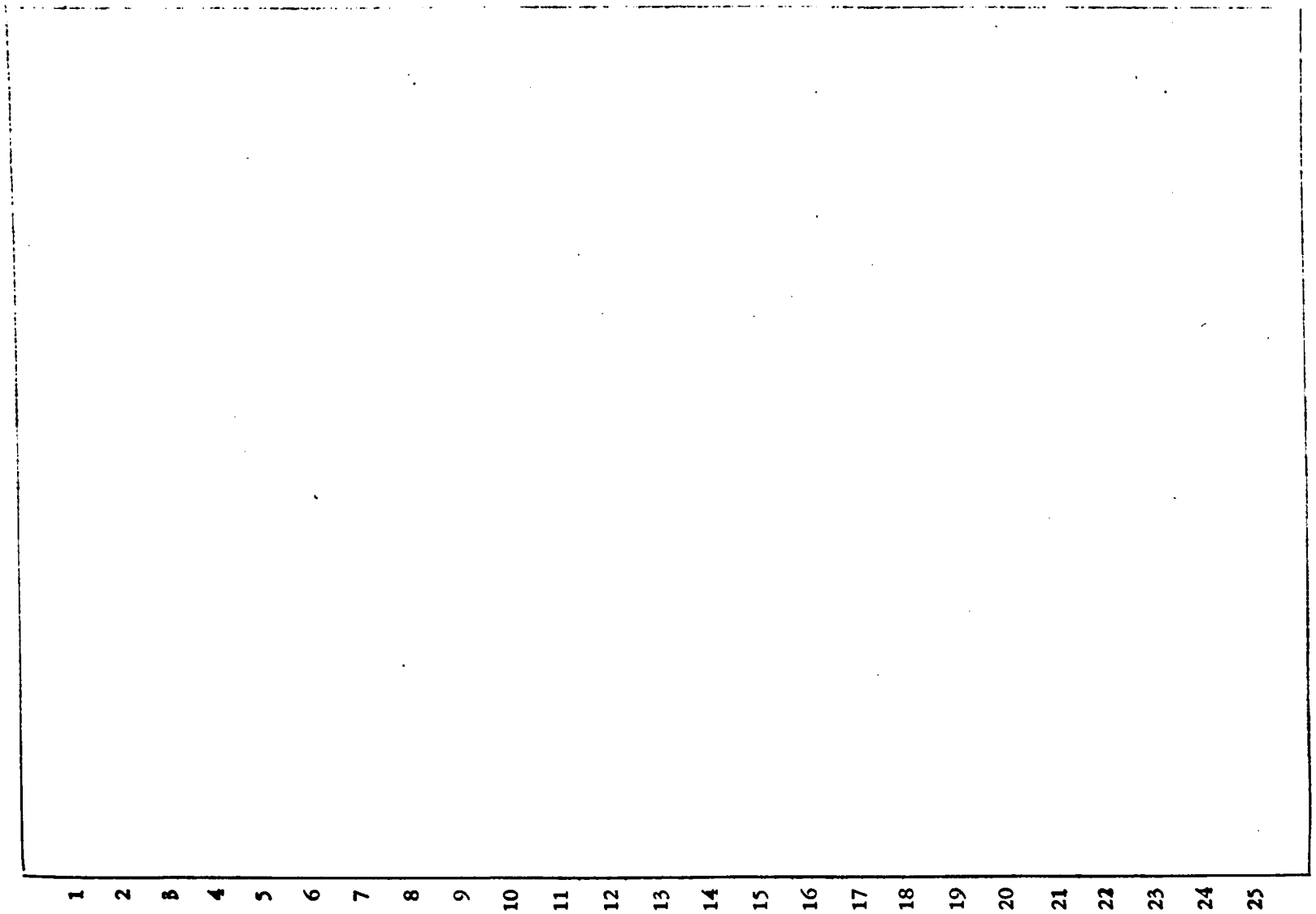
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MATSUOKA and Stahmer on 9 and 10 September 1940, which shows the peaceful intention of the both parties in initiating the negotiations. A greater part of this record was incorporated in the Memoir of Prince KONOYE, which will be offered later. I wish to call the Court's attention especially to point 1, 2, 10, and 11, which show the peaceful understanding between the parties.

I now call the Court's attention to prosecution's exhibit No. 550, transcript pages 6329 - 6343, MATSUOKA's report on the Imperial Conference for the conclusion of the Tri-Partite Pact, in which MATSUOKA declares that this pact was entirely different in nature to the abortive pact negotiated in 1938-1939, and that the most important point in concluding the Pact was to show a firm stand by joining hands with other powers in face of the threatening attitude of the United States, with the ultimate aim of improving the Japanese-American relations.

I now call the Court's attention to prosecution's exhibit No. 552, transcript pages 6,350-6,378, Record of the Investigation Committee of the Privy Council on the conclusion of the Tri-Partite Pact, held on 26 September 1940. Foreign Minister MATSUOKA explained in answering questions by Councillors, among others, that (1) the aim of the Pact is the prevention of war; (2) adjustment of relations with Soviet Russia and the United States was most eagerly sought for; and (3) Japan can choose independently the time and place of participating in the war if the obligation of assistance (Article III of the Pact) should become effective.

I now offer defense document 613, Interrogation of late MATSUOKA, Yosuke, by the International Prosecution Section at the Sugamo Prison, Tokyo, for identification, and tender excerpts therefrom, defense document 613-A(12) and 13 as evidence.

THE PRESIDENT: Mr. Comyns Carr.

MR. COMYNS CARR: May it please the Tribunal, apart from the absence of the processed copies, the other day when my friend was presenting part of the Russian phase of the defense, he tendered an excerpt from this interrogation of MATSUOKA's and I objected

to it successfully and the Court rejected it on the ground that the prosecution had not used any part of MATSUOKA's interrogation, and, therefore, it was in no better position than any other self-serving statement made after the event.

THE PRESIDENT: Well, MATSUOKA's position is different. As I said before this afternoon, that man is dead, and we cannot wait until he gives the evidence as an individual.

MR. COMYNS CARR: That is no doubt true, your Honor, but the Court rejected this other excerpt from the same interrogation on the ground which I am now putting. And, in my submission, a mere statement made after the event cannot be admissible whether the man is dead or alive, or whether he was accused or whether he was not accused.

THE PRESIDENT: Not according to the rules of evidence.

MR. COMYNS CARR: Now that he is no longer here, he is in no different position from any other person who might have happened to die during the course of this trial and whom other defendants -- whose statements taken under those circumstances other defendants wish to use on their behalf.

THE PRESIDENT: Recess for fifteen minutes.

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

Morse & Selzer

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

THE PRESIDENT: Mr. Cunningham.

MR. CUNNINGHAM: If your Honor please, on the first objection of the prosecution that they did not introduce any excerpts from MATSUMOTO's interrogation and therefore we should not, doesn't seem to hold any water. If there was anything good in it they probably would have introduced it, we can rest assured.

THE PRESIDENT: Well, we have discussed this during the recess, Mr. Cunningham, and this is how we view it.

MR. CUNNINGHAM: Well, I would like to give my arguments.

THE PRESIDENT: Well, you can reply to this.

Well, I say this is my contribution and that of two other members. We have decided to exclude evidence -- statements made by any accused as against other accused in answer to the prosecution offices unless, of course, the other accused heard what was said and accepted it as true. The prosecution invited us to take that course and we did. We have taken it in any event. Well, having excluded these interrogations so far as they are adverse to other accused, are we to admit them where they favor other accused? We decided

only the other day we would not. Are we to go back on that decision?

MR. CUNNINGHAM: Well now, your Honors, on that, if you are willing to go back to the beginning of the prosecution's case and withdraw all the statements of each of the defendants that were made against other defendants and the interrogations against other defendants, I say that is a good rule for us.

THE PRESIDENT: That is just what we did, Mr. Cunningham. You must have forgotten.

MR. CUNNINGHAM: No, I haven't.

THE PRESIDENT: I am sure your colleagues can assure you that we did that.

MR. CUNNINGHAM: That is my understanding that the statements of the accused were not taken against the other accused. I say that is good for us and I wouldn't want you to go back on that. But all I am arguing here is what MATSUOKA said about the Tri-Partite Pact, the men who made it, probably should be admitted here because I think it has weight, I think it has relevancy and I think it would throw light on the intention which Japan had in entering into the Tri-Partite Pact.

THE PRESIDENT: Just as we admitted statements, say, in correspondence by accused who were, say,

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THE PRESIDENT: Just as we admitted statements, say, in correspondence by accused who were, say,

foreign ministers.

But these interrogations, of course, are not contemporaneous with the execution of the Tri-Partite Pact but come in answer to the prosecution offices. They are not explanatory of anything but exculpatory of the particular accused who makes the statement. Of course, what MATSUOKA wrote or said about the time of the signing of the pact, and with a view to its execution, would no doubt be material. We have admitted such statements. But here is MATSUOKA saying something to the prosecution offices in explanation of his conduct or in exculpation of himself.

MR. CUNNINGHAM: Well, your Honor, on those observations I would suggest that I can not draw the line very distinctly between explanation and justification. That is a little difficult for me.

Now on the second proposition what MATSUOKA said in explanation of the Tri-Partite Pact is very important when the prosecution is trying to read into the Tri-Partite Pact something which is not there; which is something they are trying to do. Now what is the logical thing to do if a man writes an agreement and you do not understand it or you see it is to be misunderstood; you say to that man, "what did you intend when you made that agreement"? And that is what they said

to him on this occasion. And what he answers is very, very important, especially, when you are trying to get him to say something that he did not intend at the time.

So that I say anything that MATSUOKA said at any time about the explanation of the Tri-Partite Pact would be important. When he said it, only goes to the weight. That is my thought, your Honor, and, if we are interpreting the Tri-Partite Pact, we need the views of the men who wrote the pact.

THE PRESIDENT: Express contemporaneously, certainly, however, we will consider this point, Mr. Cunningham.

MR. CUNNINGHAM: I pass to the next set of documents. I will refer back, your Honor, in the morning to this 613-A.

Next I want to call the witness MATSUMOTO, Shumichi, Director of the Treaty Department of the Foreign Office at the time of the conclusion of the pact and thereafter. Affidavit No. 1547 is the document.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: If the Tribunal please, the prosecution would like to object to this affidavit in its entirety and, therefore, we would like to present it before taking up the time in calling the witness. Paragraph 2 of this affidavit --

THE PRESIDENT: We haven't seen it.

MR. TAVENNER: I beg your pardon.

If the Tribunal please, in the last paragraph of the paragraph marked No. 2, it is at the top of page 2, the witness states the main purposes of the Tri-Partite Pact, quoting the explanations of MATSUOKA at the meeting of the Privy Council. The explanations of MATSUOKA are in evidence as exhibit 552, transcript page 6,350. This is the best evidence and we submit that for that reason paragraph 2 is inadmissible.

THE PRESIDENT: Well, Mr. Cunningham could

agree to strike that out and substitute the reference you gave.

MR. TAVENNER: That would solve the question as to that paragraph. The rest of it is immaterial -- of that paragraph.

In Section 3 of the affidavit the witness purports to construe the several articles of the pact. The pact was introduced in evidence as exhibit 43 and was read into the transcript at page 6,391. The attempted construction by the witness of the provisions of the pact is quite obviously an invasion of the duty of the Tribunal, and the witness' opinion of the meaning of the several articles and phrases is irrelevant. This objection applies to subsections 3 to 6, inclusive, under division 3 of the affidavit.

Section 4 of the affidavit recites the three letters exchanged at the time of the signing of the Tri-Partite Pact and purports to give a summary of each. These three letters are in evidence: exhibit 555-B, transcript page 6,396; exhibit 555-C, transcript page 6,400; and exhibit 556, transcript page 6,402. These exhibits constitute the best evidence and we submit that the summary of the contents of these letters by the witness is of no probative value.

And, finally, we submit that the reference

of the witness, in subsection 3 of section 4 of the affidavit, to an established theory of international law is likewise quite irrelevant.

For the reasons mentioned, we object to the introduction of the affidavit in its entirety.

THE PRESIDENT: Well, Mr. Tavenner, we notice a reference, in paragraph 2 of section 3 on page 2, to an exchange of letters in Tokyo on the day of the conclusion of the pact. Are those letters in evidence?

MR. TAVENNER: Yes, sir.

THE PRESIDENT: Do you know the numbers and the page of the record?

MR. TAVENNER: They are the same documents referred to as exhibits 555-B, 555-C and 556. The page numbers --

THE PRESIDENT: The rest of the affidavit is directed to showing the witness' qualifications, so if you are right there is no need for this affidavit.

MR. CUNNINGHAM: Well, your Honor, if the prosecution's theory of the case is right we don't need any evidence either, but I contend that this witness has to show very definite qualifications. Being the legal adviser to the Foreign Minister of a nation the size of Japan calls for qualifications.

THE PRESIDENT: But all he says in effect is

that certain documents passed between the parties.

MR. CUNNINGHAM: That is right, your Honor. Now we get down to the basis of the thing. The whole question in this cases, as far as the Tri-Partite Pact is concerned, is what interpretation you, as Judges, are going to place upon it. Now, if you only place the interpretation of the pact which is connoted by its phraseology, then I am satisfied; I don't have to have any witnesses or documents to amplify their point of view and other considerations which went into their deliberations and the execution of the pact.

I have tried to give you what MATSUOKA considered in bringing about the pact and that has been refused. My next best is to give you -- I meant taken under advisement; I didn't mean that it had been refused. But my next best evidence is to give you the legal advice upon which MATSUOKA based his action.

Now, the prosecution has alleged that this instrument was directed as an instrument of war to secure the domination of the world, that it was one of the elements of a conspiracy between these three nations to combine their resources to that end. It is our purpose to show that this pact meant nothing of the kind, that it was a peace pact for the prevention of further outspreading of the war. Those issues are sharply joined.

THE PRESIDENT: When a document consists of simple words, the court has to construe. Sometimes it contains technical words and the experts have to be resorted to. As far as we know, this pact was couched in simple language, German, I suppose, or Japanese.

MR. CUNNINGHAM: No, English.

THE PRESIDENT: English? Well, if it were in English, that is all the more reason why we should exclude the evidence of Japanese in the meaning of English terms. We wouldn't allow our own foreign office to tell us the meaning of an English treaty, or a treaty in English terms; why fall back on the Japanese?

MR. CUNNINGHAM: Well, that is my theory, your Honor, and my proof is directed to convince you that the prosecution's theory of this is wrong; and that is why I offer this witness, who knows what that language meant because he approved of it.

THE PRESIDENT: If the language were ambiguous or equivocal, we might have to fall back on his assistance to elucidate it.

MR. CUNNINGHAM: I am corrected, here, that the negotiations, as I understand it, were conducted in English but the pact was finally reduced to the three languages, Italian, German, and Japanese.

THE PRESIDENT: The English translation is not

challenged?

MR. TAVENNER: No, sir, the translation is not challenged; and there was an English copy of the text in the Japanese document that we introduced in evidence. I believe that the original introduced was the English copy.

MR. CUNNINGHAM: Your Honors, I believe it will be helpful to listen to this witness. It is only two pages long, and it certainly forms a basis of Mr. Stahmer, young MATSUOKA, Prince KONOYE, all the witnesses' testimony dovetailed into one theme.

THE PRESIDENT: We want and we need all the help we can get, but we can't abdicate our functions.

MR. CUNNINGHAM: Well, your Honor, the defendants are charged with conspiracy, with doing something that was sinister, and I should like to have you see this witness to see the type of man who participated in the deliberations which went into this document.

THE PRESIDENT: That is the most plaintive argument I have ever heard: He couldn't have been a conspirator -- look at him.

MR. CUNNINGHAM: May the witness be called?

THE PRESIDENT: By a majority, the Court upholds the objection and rejects the testimony which

was about to be offered.

MR. CUNNINGHAM: I now call the Court's attention to prosecution's exhibit No. 554, transcript pages 6294 and 6295, the Imperial Rescript issued on the day of the conclusion of the Tri-Partite Pact, which shows most clearly and authoritatively the peaceful intention of Japan.

I now offer in evidence defense document No. 151--

THE PRESIDENT: Brigadier Nolan.

MR. CUNNINGHAM: I wasn't through with my presentation, your Honor.

The text of the Treaty of Mutual Assistance between Great Britain and Poland concluded on 25 August 1939, to show that more than one year prior to the Tri-Partite Pact this Treaty of Mutual Assistance of even stronger nature was concluded in another part of the world, which fact throws much light on the international situation of 1939 and 1940 as the background of the Tri-Partite Pact.

THE PRESIDENT: Brigadier Nolan.

BRIGADIER NOLAN: May it please the Tribunal, this document, No. 151, and the succeeding document, No. 150, were both offered in evidence before the Tribunal and rejected. They were rejected at

pages 17,460 and 17,463. The basis of the objection made at that time was that the documents themselves were relevant to none of the issues in the case.

We submit that they are no more relevant now than they were then.

MR. CUNNINGHAM: I submit that if the prosecution agrees that the document, Tri-Partite Pact, was a legal exercise of the sovereign right of Japan in executing it, as this document was the legal right of the sovereign nation of Poland and the other nations, then there is no need for it.

THE PRESIDENT: Mr. Cunningham, did you know that that document had been tendered before and rejected?

MR. CUNNINGHAM: No, I must confess that I didn't; but it wouldn't make any difference, your Honor, because it was offered for another purpose and if it had been accepted then it would only be referred to here. But I am offering it for a specific purpose here, and I think it is relevant to the issue, and I think it goes to sustain my view.

THE PRESIDENT: I am afraid that some of my colleagues take an unfavorable view of your action in this matter, in tendering again a document already rejected without referring to the fact. None of my colleagues wants to review his decision. The objection

is upheld and the document rejected.

MR. CUNNINGHAM: I should like to make offer of the next document, 151. What the Tribunal does with it, that is another problem. Of 150, I mean.

I should like to make my offer of proof and then it can be objected to, or whatever. I now offer in evidence defense document No. 150, the text of the Treaty of Mutual Assistance between Great Britain, France and Turkey, concluded on 19 October 1939, to show that as early as October 1939, a mutual assistance treaty was concluded between belligerents and a neutral country, as in the case of the Tri-Partite Pact. This fact will also clarify the background of the Tri-Partite Pact.

THE PRESIDENT: Brigadier Nolan.

BRIGADIER NOLAN: May it please the Tribunal, I would make, if I may, the same objection to this document which was made to the immediately preceding one. There is no difference or distinction between them, and I submit that they are covered by the previous ruling.

THE PRESIDENT: The objection is upheld and the document rejected.

MR. CUNNINGHAM: I now offer in evidence defense document 401 (33), an excerpt taken from "Peace and War," to show the events which were occurring simultaneously with the negotiation and conclusion of the Tripartite Pact in September 1940, affecting the situation of the world.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: If the Tribunal please, we do not question the source of the document, but we object on the ground that it is irrelevant.

I am confident in the course of the decision on similar questions it has been announced that relations of that character were not in issue here, although I do not have in mind the specific ruling of the Tribunal. In any event, the matter is entirely irrelevant to any issue involved in this case, and we object for that

reason.

MR. CUNNINGHAM: If your Honor please, the Tripartite Pact was made as it related to all the events in international political, economic and military situations, and it must be read in the light of history which was going on at the time the pact was executed. It is impossible to understand the pact as of today without at least refreshing our memories on the events which were taking place at the time the pact was being executed and under the conditions which were reflected in it.

THE PRESIDENT: By a majority, the Court upholds the objection and rejects the document.

MR. CUNNINGHAM: I now offer a series of documents in evidence in order to clarify the peaceful intention of Japan in concluding the Tripartite Pact. The first of these is defense document 155, message of the Prime Minister dated 27 September 1940, which is now offered in evidence, and simultaneously with the conclusion of the pact this was made.

It is an excerpt from 777-A. I think it is an excerpt from an exhibit. Anyway it is a message of a Prime Minister.

THE PRESIDENT: KONOYE.

MR. CUNNINGHAM: Prince KONOYE.

THE PRESIDENT: Brigadier Nolan.

BRIGADIER NOLAN: If it please the Tribunal, my document has at the top that it is an excerpt from prosecution document No. 777-A.

MR. CUNNINGHAM: 777 -- no, it is a basic document.

BRIGADIER NOLAN: If it is a basic document it isn't an exhibit, it has only been marked for identification.

MR. CUNNINGHAM: Well, it is a speech -- we can't be bothered with a technicality here -- it is a speech of Prince KONOYE on the day the Tripartite Pact was executed, and it ought to be read in evidence.

BRIGADIER NOLAN: Whether it has been in before or not, your Honor, it merely goes over the old ground again of the advisability of establishing a new order in East Asia.

The document has no certificate attaching to it, and it is a message, to whom I know not. There is no line of it which contains anything of probative value.

MR. CUNNINGHAM: The only question, your Honor, is whether or not Prince KONOYE said it, and we contend he said it. And if the prosecution can prove that he didn't say it, why that maybe is some basis for objection.

It was marked for identification, as I understand it, before, and this is just an excerpt. But I am not sure about that. My colleague says he is sure about it.

THE PRESIDENT: Only exhibits finally admitted are lettered, and according to the defense this document is already in evidence as exhibit No. 777-A.

MR. CUNNINGHAM: Well, just scratch off the A, your Honor, and we will correct that and take it as an excerpt from exhibit 777 for the time being, and if that exhibit number is wrong, we will correct it.

BRIGADIER NOLAN: May it please the Tribunal, there is nothing wrong about the exhibit No. 777, I suppose, but it is quite wrong to say that it is an exhibit in the case. Exhibit 777 is a book from which excerpts were taken. It has only been marked for identification.

MR. CUNNINGHAM: Mr. USHIBA says that that is a correct statement of the record.

THE PRESIDENT: The objection is overruled and the document admitted for what it is worth, by a majority.

CLERK OF THE COURT: Defense document 155 will receive exhibit No. 2734.

(Whereupon, the document above referred to was marked defense exhibit No. 2734 and received in evidence.)

MR. CUNNINGHAM: (Reading) "Message of the Prime Minister."

"On the occasion of the conclusion of the Three-Power Pact between Japan, Germany and Italy, an Imperial Rescript has been issued, setting forth clearly the aims of our Empire and pointing the path our nation should follow. I am greatly moved by the boundless benevolence of our Sovereign.

"To maintain world peace and to insure the stability of East Asia is indeed the immutable national policy of Japan, firmly rooted in the principle on which our Empire was founded.

"With war breaking out in Europe last autumn, conflict and confusion have spread increasingly over the world. It is an urgent necessity of this moment to devise a measure for the cessation of the disturbances and the restoration of peace. Germany and Italy share with our Empire in the same ideal and aspirations. Accordingly, with a view to joining hands with these Powers to establish a new order in the respective regions, and furthermore to cooperate with them toward the restoration of world peace, Japan has now concluded a

Three-Power Pact. The time has come for our nation to proceed with fresh resolve to construct a new order in Greater East Asia.

"However, to carry out fully the conviction of our country and to enable all nations to find each its proper place is indeed a difficult task. The goal lies far. We must expect to encounter numerous obstacles as we go on.

"I confidently hope that, in obedience to the Imperial will, our people, in order to surmount the present emergency, will make clear the concept of our national policy, unite heart and soul, and overcome any and every obstacle -- and thereby set at ease the august mind of our Sovereign.

"27 September 1940.

"Prime Minister, Prince KONOYE"

THE PRESIDENT: We will adjourn now until half past nine tomorrow morning.

(Whereupon, at 1600, an adjournment was taken until Friday, 13 June 1947, at 0930.)

13 June
Exhibit

13 JUNE 1947

I N D E X
Of
EXHIBITS

Doc. No.	Def. No.	Pros. No.	Description	For Ident.	In Evidence
1578	2735		Affidavit of USHIBA, Tomohiko		24286
1580	2735-A		"On the Tri-Partite Alliance" by Fumimaro KONOYE		24289
206-G	2736		Excerpts from "Ten Years in Japan" by Joseph C. Grew (pp. 288-294 incl.)		24311
			MORNING RECESS		24311
1635	2737		Telegram from Ott to the German Foreign Office dated 20 October 1939		24326
1400-E-3	2738		Excerpt from "Foreign Relations of the U.S , Japan, 1931-1941" a telegram from Ambassador Grew to Cordell Hull dated 23 October 1939		24327
1400-B-3	2739		Excerpt from "Foreign Relations of the U.S., Japan 1931-1941" Vol. II, Department of State, Washington, (pp. 171-173 incl.)		24335

I N D E X
Of
EXHIBITS
(cont'd)

Doc. No.	Def. No.	Pros. No.	Description	For Ident.	In Evidence
			NOON RECESS		24341
837	2740		Address by Foreign Minister MATSUOKA at the Governors' Conference 7 October 1940		24357
1072	2741		Premier KONOYE's Address at the 76th Session of the Imperial Diet 21 January 1941		24370
			AFTERNOON RECESS		24373
312	2742		Address of the Foreign Minister, Admiral Teijiro TOYOSA, at the luncheon in Commemoration of the First Anniversary of the Conclusion of the Three-Power Pact 27 September 1941		24374
311	2743		Address of the Foreign Minister Mr. Shigenori TOGO delivered at the Extraordinary Session of the Diet 17 November 1941		24375
1675	2744		Affidavit of Henrich Stahmer		24392

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(Witness excused)	24309
Stahmer, Heinrich	24382
Direct Mr. Cunningham	24382

Friday, 13 June 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, all Members sitting, with the exception of: HONORABLE JUSTICE E. H. NORTHCROFT, Member from the Dominion of New Zealand, not sitting from 0930 to 1600.

For the Prosecution Section, same as before.

For the Defense Section, same as before.

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(English to Japanese and Japanese to English interpretation was made by the 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: Major Moore.

LANGUAGE ARBITER (Major Moore): Mr. President, if the Tribunal please, we present the following language correction: Exhibit No. 849, record page 8414, line 25, substitute "seven or eight fold," for "seventy percent to eighty percent."

THE PRESIDENT: Mr. Cunningham.

MR. CUNNINGHAM: If the Tribunal please, I next call witness USHIBA, Tomohiko, former secretary to the late Prince KONOYE -- USHIBA's affidavit, No. 1578.

T O M O H I K O U S H I B A, called as a witness on behalf of the defense, being first duly sworn, testified through Japanese interpreters as follows:

DIRECT EXAMINATION

BY MR. CUNNINGHAM:

Q Mr. USHIBA, will you state your name and your address, please?

A My name is USHIBA, Tomohiko. My address: No. 79 Iriuda, City of Odawara.

MR. CUNNINGHAM: I ask that the witness be shown defense document 1578.

Q I ask you to look at this document and state whether or not it is your affidavit.

A This is my affidavit.

Q I ask you to state whether or not the statements contained therein are true.

A True and correct.

MR. CUNNINGHAM: I offer in evidence defense document 1578 and I offer to read the same into the record.

THE PRESIDENT: Mr. Comyns Carr.

MR. COMYNS CARR: Your Honor, the prosecution objects to this affidavit in part at this time. The witness was private secretary to the late Prince KONOYE and the object of this affidavit is for him to authenticate two documents to be tendered by the defense. Pages 2, 3 and part of 4 of the affidavit deal with the document 1579, defense number, which has not been served, and we object to the witness referring to that document until it has been served. There are several versions of the document in question known to be in existence and considerable doubt as to their authenticity.

The second document to which the affidavit refers is defense document No. 1580. Prosecution objects to that document in toto and, in particular,

objects to the third sentence on page 5 in which the witness purports to state the motive in the late Prince KONOYE's mind in writing this document. The document, he says in the last paragraph on page 4, was compiled about May or June, 1945; and in the paragraph to which I have referred the witness describes the motive as being a desire on the part of the Prince to argue against an opinion which was at that date, according to the witness, prevailing among the people.

In our submission a document written in May or June 1945 purporting to explain what happened at the time of, or the reasons for entering into, the Tri-Partite Pact in 1940 should not be admitted. A perusal of the document supports the witness' description of it as an argument although in our submission the date also indicates that the Prince must have been well aware of the approaching conclusion of the war and was preparing his argument for Allied consumption as a defense. We submit that such a document is altogether outside the range of contemporary documents written by deceased persons and is a mere self-serving argument compiled long after the event.

To sum up, therefore, we object to the first

part of the affidavit's being read until the document referred to has been served.

THE PRESIDENT: Are you submitting, in effect, that this defense document 1579 is in effect or should be an exhibit or an annexure to this affidavit now tendered and should be served with the affidavit?

MR. COMYNS CARR: Yes, your Honor.

THE PRESIDENT: The rule covers not only the document itself, the main document, but such things as annexures and exhibits which are really part of it.

MR. COMYNS CARR: Yes.

THE PRESIDENT: I think we understand your point, Mr. Carr, on that.

MR. COMYNS CARR: Yes. With regard to the second part of the affidavit where we have had the document served, we object to that and the document altogether for the reasons which I have given.

THE PRESIDENT: Mr. Cunningham.

MR. CUNNINGHAM: On the first point, your Honors, defense document 1579 which is to be tendered to this witness is not ready for distribution on account of translation. I therefore tender at this stage only defense document 1580 which is Prince KONOYE's memoir on the Tri-Partite Pact, and I specifically intended to eliminate that last page of the

memoir which was objected to on account of the few words in it which were objectionable and I didn't propose to read that last part of the memoir.

THE PRESIDENT: I am not clear now what you are doing, Mr. Cunningham. Are you withdrawing this affidavit and offering defense document 1580?

MR. CUNNINGHAM: You could take it, your Honor, that I am offering only such part of the affidavit as relates then to 1580 and this witness will be called later and this other document will have to be tendered then. He will be a witness in the later phase of the case anyway.

THE PRESIDENT: The objection goes to this part of the affidavit as well so to determine it we must see defense document 1580.

MR. CUNNINGHAM: If your Honor please, in regard to 1580, to meet the objection of the prosecution as relates to 1580, the time when it was written, we must appreciate that at the time the Tri-Partite Pact was signed there was no question about its interpretation and all of the responsible people for the Tri-Partite Pact are dead -- KONOYE, MATSUOKA, SUGIYAMA -- and we must rely upon these documents for their points of view.

What I meant to say formerly was that the

question of interpretation of the document, of the Tri-Partite Pact, did not come up in 1940, did not arise until many years later.

THE PRESIDENT: This is the statement of the Prime Minister of the day as to the purposes of the Pact from the Japanese view point, is that so?

MR. CUNNINGHAM: This document is offered for the purpose of showing the Japanese considerations, the purposes of the Pact from the Japanese view point.

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THE PRESIDENT: He was Prime Minister at the time of the execution of the Pact; was he, Mr. Cunningham?

MR. CUNNINGHAM: Prince KONOYE was the Prime Minister at the time of the execution of the Pact; yes, sir.

THE PRESIDENT: The Tribunal admits the document and overrules the objection.

CLERK OF THE COURT: Defense document 1578 will receive exhibit No. 2735.

(Whereupon, the document above referred to was marked defense exhibit No. 2735 and received in evidence.)

MR. CUNNINGHAM: I now offer to read the exhibit, 2735.

"Sworn Deposition (Translation)

"Deponent; -- USHIBA, Tomohiko

"Having first duly sworn an oath as on attached sheet and in accordance with the procedure followed in my country I hereby depose as follows:

"My present address is No. 79 Iriuda, in the City of Odawara.

"In 1934 (Showa 9), when Prince KONOYE travelled to the United States, I accompanied him as his private secretary. During the term of the

First KONOYE Cabinet, between 1937 (Showa 12) and 1939 (Showa 14), and of the Second and the Third KONOYE Cabinets, between 1940 (Showa 15) and 1941 (Showa 16), I served the Prince as Private Secretary to the Prime Minister. Even after the resignation of the Third KONOYE Cabinet in October, 1941 (Showa 16) I continued to serve him as private personal secretary.

"Now I will explain the formation and character of Prince KONOYE's Memoirs relating to the negotiations between Japan and America."

I am going to stop at the last.

THE PRESIDENT: You go to page 5 now.

MR. CUNNINGHAM: I am going to leave out reference to 1579.

On page 4:

"Now I will discuss the writing of Prince KONOYE's article entitled 'Concerning the Tri-Partite Alliance'.

"In the year of the cessation the hostilities, that is, towards May or June of 1945 (Showa 20) Prince KONOYE showed what he himself had written about the above subject to Mr. ITO, Nobufumi, and a few other persons, as well as to myself, and asked for comments upon it. Then, adding some of these

comments to his text, he had it typewritten on Japanese paper. Furthermore a good number of copies were mimeographed for distribution among his friends.

"Defense document No. 1580 (Japanese text, consisting of 13 sheets) is a copy of the above typewritten one, which was kept by the KONOYE family. The motive upon which this was written is as follows:

"At that time there was an opinion among the people that the war against the United States and Great Britain" --

THE PRESIDENT: Mr. Cunningham, we do not want his opinions. We just want his verification of the document. All we want him to state in effect is that this is a document written by Prince KONOYE.

MR. CUNNINGHAM: Well, I will skip that paragraph then and go to the next paragraph, beginning with:

"After Prince KONOYE died, copies of the mimeographed one were seized and taken away from his residence by the International Prosecution Authorities, just as the copies of KONOYE's Memoir were, That which appeared in a series in the Asahi Newspaper and that which was issued by Nippon

Denpo-Tsushin-Sha were reproductions of the mimeographed one, copies of which were distributed among his friends by Prince KONOYE.

"On this 15th day of April, 1947.

"At International Military Tribunal For the Far East.

"/S/ USHIBA."

Now I offer to read defense document 1580, with the exception of that part of the last part which was objected to and which we agreed not to read.

I ask that defense document 1580 be given an exhibit number.

THE PRESIDENT: If it is part of 2376, it should be an annexia or an exhibit. It should bear the same number plus a letter. It will be 2375-A I understand.

CLERK OF THE COURT: Defense document 1580 will receive exhibit No. 2735-A.

(Whereupon, the document above referred to was marked defense exhibit No. 2735-A and received in evidence.)

MR. COMYNS CARR: Your Honor, for the correctness of the record, I would like to point out that my objection was to the whole of this document

and not only to the last page as my friend says.

THE PRESIDENT: I already said your objection is to the whole and that stands.

MR. CUNNINGHAM: I now offer to read exhibit 2735-A with the exception of the last page.

"The idea of a military alliance between Japan, Germany and Italy was proposed by Germany in the summer of 1938, conveyed by Major-General OSHIMA, then Japanese Military Attache in Berlin, and submitted for consideration to the Japanese Cabinet of which I was Prime Minister for the first time. It was a plan to convert the Tri-Partite Anti-Comintern Pact which was in force at that time into a military alliance, the principal target being the U.S.S.R. The matter was handed down to Baron HIRANUMA's Cabinet when it succeeded mine in January 1939. Deliberations were given the matter by the five Ministers Conference of the HIRANUMA Cabinet which met in as many as seventy odd sessions for that purpose. But, in August of that year, before they were able to come to a conclusion, Germany, without previously communicating it to the Japanese Government suddenly announced the conclusion of a non-aggression pact with Soviet Russia against whom the proposed alliance was to be directed. This

wholly unexpected turn of events, which the greatly embarrassed HIRANUMA Cabinet described as 'intricate and baffling', (words now famous in this country) immediately brought to an end the life of the cabinet itself as well as the whole scheme of an alliance against Russia.

"In the spring of 1940, however, when the overwhelming military strength of Germany had swept across western Europe and threatened, as it appeared, the existence of Great Britain, the question of a Tri-Partite military alliance again became a nation-wide topic of great popularity. However, inasmuch as the alliance this time was to be directed against Great Britain and the United States and not against the U.S.S.R. as in the previous year, there was a fundamental difference in nature between the two plans. When I was honored with an Imperial Command to form a cabinet for the second time, anti-Anglo-Saxon sentiments and enthusiasm for a Tri-Partite Alliance were at their height, especially among the military circles and some groups of the people among the nation.

"The Tri-Partite Alliance was formally concluded on 27 September 1940. Minister Stahmer had been sent to Japan by the German Government

as the personal representative of Foreign Minister von Ribbentrop, and on 9th and 10th September he held discussions with our Foreign Minister Mr. MATSUOKA. Since the record of those conversations throws much light upon the specific objectives of the alliance as well as the circumstances in which it was agreed upon, an excerpt of it is given as follows:

"1. Germany does not want the present conflict to develop into a world war, and she wishes to bring it to termination as quickly as possible. She particularly wants the United States to stay out.

"2. Germany does not look for Japan's military assistance at this juncture in connection with her war with England.

"3. What she wants of Japan is to play the role of restraining and preventing the United States from entering the war, by all means. Although Germany does not think at present that the United States will enter the war, she cannot take a chance.

"4. It is, so Germany believes, to the mutual advantage of both Japan and Germany to enter into an understanding or agreement, whereby they will be thoroughly prepared effectively to meet an emergency, at any moment. This only can prevent, if

anything can prevent, America from entering the present war, or entering into an armed conflict with Japan in the future.

"5. A strong and determined attitude, unequivocal and unmistakable, on the part of the three nations, Japan, Germany, and Italy, and the knowledge of it by the United States and the world at large at this juncture. That alone can be of a powerful and effective deterrent on the United States. A weak, lukewarm attitude or declaration at this juncture will only invite danger.

"6. Germany hopes that Japan will also estimate the importance of the situation, realize the magnitude and the reality of the potential (perhaps impending for all we may know) danger coming from the Western Hemisphere, and act quickly and decisively to forestall it by reaching an agreement among the three of such a nature that neither the United States nor the rest of the world would be left in doubt.

"7. It is better first to reach an agreement among Germany, Italy, and Japan and then, immediately to approach Soviet Russia. Germany is prepared to act the part of an honest go-between on the question of rapprochement between Japan and

Soviet Russia, and she can see no unsurmountable obstacles in the path; it may be settled without much difficulty. German-Russia Relations are good, contrary to what the British propaganda claims and Russia is carrying out all her commitments to the full satisfaction of Germany.

"8. Despite the fact that the Axis (including Japan) must be thoroughly prepared to meet the worst emergency, Germany will, on the other hand, make use of every means in her power to prevent a clash between the United States and Japan, and even to improve relations between the two, if it is humanly possible.

"9. Stahmer's words may be regarded as coming directly from Ribbentrop.

"As is clear from the above record of the conversations, there were two specific objectives in concluding the Tri-Partite Pact. The first was to prevent the United States from participating in the war in Europe and thus to forestall the spreading of the war; the second, to secure friendly relations between Japan and the U.S.S.R.

"1. Prevention of the American Participation in the War

"H. M. the Emperor proclaimed in the Imperial Rescript issued in the occasion of the conclusion of the Treaty, 'We earnestly desire that war be terminated and peace restored as quickly as possible.' At that time he had in mind the prevention of a world-wide spread of the war, and especially, the prevention of American participation in it. With reference, however, to whether the Tripartite Alliance would serve that purpose, opinion was sharply divided. At the Imperial Conference immediately preceding the conclusion of the proposed Alliance, a member argued that the United States had hitherto been refraining from bringing pressure upon Japan, lest such an action impel Japan to go over to the Axis side, but any decisive move on our part to draw closer to Germany and Italy, so far from functioning as a warning to America, would greatly stiffen her attitude towards us, inasmuch as she was a proud nation; he concluded that the proposed Alliance would only render the adjustment of our relations with the United States so much more difficult that a situation would finally arise in which a war between the two countries would become unavoidable. Mr. MATSUOKA, however, contended as follows:

"'In the light of our experiences in the past, any attempt to improve friendly relations with the United States by our taking a courteous attitude or of sowing their good-will would not only prove utterly ineffective, but rather precipitate the present estrangement by inviting the feeling of contempt in the United States. If there is any means by which to check the deterioration of relations, and if possible, to improve them at all, that will be to assume what Minister Stahmer called a "determined attitude."'

May I ask Mr. Blewett to continue the reading of this? My throat is raw.

MR. BLEWETT (reading continued): "For that purpose, it will be of the utmost importance to make as many allies as possible, and to proclaim it before the world as soon as possible, thus strengthening our position against the United States. While keeping ever vigilant eyes upon any repercussions which may arise of such a move on our part, I will try at the same time not to overlook any opportunity of restoring our relations with America to a more normal basis. The important point is, first of all, to show unmistakably a firm stand against the United States.'

"Which of these opposing views was right, or whether the conclusion of the Tripartite Alliance

was effective in preventing the American participation in the war, must remain a question never answered; for in December 1941, before the United States joined the war, Japan herself, who had wanted that country to stay out, declared war upon her. One might attribute to the existence of the Tripartite Alliance the fact that, for over one year after the proclamation of it, America did not enter the war. One thing at least is beyond doubt; that is, she persistently sought to rob the Alliance of its practical significance throughout the Japanese-American conversations opened in April 1941. I see in that fact clear evidence that the Tripartite Alliance was proved to be from the American point of view, a considerable obstacle to joining the war which could not easily be overcome.

"2. Establishment of Friendly Relations with the U.S.S.R.

"The second specific objective of the Tripartite Alliance was to adjust our relations with Soviet Russia through the mediation of Germany, who had succeeded in establishing friendly relations with that country with the conclusion of the Non-Aggression Pact, and, if possible, to bring about an alliance of all three by which Japan would be able to make her voice weightier against the Anglo-American combina-

tion and thus facilitate the settlement of the Sino-Japanese conflict.

"For years I had keenly supported the opinion that peaceful relations between Japan and America should be consolidated. It was out of my sincere desire to make a contribution, however meagre, to the peace of the Pacific by discovering a solid basis of mutual understanding between the two peoples that, in the summer of 1934, I had a visit in the United States and met several prominent people in and out of the Government. But since then, against my wishes, Japanese - American relations had deteriorated. Especially, after the outbreak of the conflict in China, they had practically gone into an impasse. After things had taken such a turn there was scarcely any hope of success, as Mr. MATSUOKA pointed out, in the attempt to improve our relations by merely exchanging courtesy and begging for good-will. The Japanese Government had not, of course, always limited itself to such sowing of good-will. On the contrary, the successive Foreign Ministers, notably Mr. ARITA and Admiral NOMURA, made it their principal aim in diplomacy to reach an understanding with the American Government on the greatest issue of all which lay between the two countries, namely, the China problem,

and their efforts to that end were truly painstaking. However, all such efforts having been proved entirely fruitless, it had now become clear that every normal approach to the American Government had been closed. Besides, the danger of Japan being left isolated looked imminent. Under such circumstances, the only possible way left open to Japan was to take sides with the side opposing America, namely, Germany and Italy, and through them, together with the U.S.S.R. as well, to force America to give up the idea of coercing Japan. It was not enough to combine with Germany and Italy. Only when the U.S.S.R. had been induced to join the combination would an equilibrium of power be attained as against the Anglo-American combination, and only when such an equilibrium had been attained would rapproachement with America become possible. The ultimate aim, then, of our attempt to combine with Germany and Russia lay also in the adjustment of our relations with America, and, as the result of such adjustment, the settlement of our long conflict with China. While on the one hand I was an ardent proponent of the adjustment of Japanese-American relations, on the other hand I advocated the opinion that we must be on guard against the U.S.S.R. The reasons for which I, who disapproved a friendship with the U.S.S.R.,

approved the Japanese-German-Russian combination were twofold: first, it was thought under the then prevailing circumstances that this would be the only way to reach an understanding with the United States; second, I believe that the danger from the U.S.S.R., against which we had to be on guard, could be satisfactorily mitigated by restraining her by ourselves in the east and by Germany in the west.

"As is clear from the record od the MATSUOKA-Stahmer conversations, Germany was under commitment to assist Japan in adjusting her relations with Soviet Russia, and Minister Stahmer, on leaving for his home country, reiterated his intention to make an effort for the realization of that objective. There is reason to believe that, at least up until November 1940, when M. Molotov visited Berlin, Germany had been moving in the direction of the Japanese-German-Russian combination. For a memorandum was sent by Herr von Ribbentrop to the Japanese Government, in which he proposed that: A pact shall be concluded between Japan, Germany, and Italy as one party and the U.S.S.R. as the other, in which:

"1. The U.S.S.R. should agree in principle to the Tripartite Alliance as a means of checking the spread of war and speedily restoring world peace;

"2. The U.S.S.R. should recognize the leading position of Germany and Italy in Europe and of Japan in the Far East, and the three Powers should pledge themselves to respect the territorial integrity of U.S.S.R.

"3. The three Powers and U.S.S.R. should pledge themselves not to assist any Power, or join any group or Powers, which are at war with the other contracting party.

"Besides, the four contracting Powers should enter into a secret understanding that the Far East, Iran and India, Central Africa be recognized as the spheres of influence in the future of Japan, the U.S.S.R., Germany, and Italy respectively.

"Our Government accepted the scheme and Herr Ribbentrop presented it to M. Molotov in November of that year.

"Thus the Tripartite Alliance was concluded on the theory that the U.S.S.R. would join the future. A totally different situation, however, awaited Mr. MATSUOKA in Berlin when he visited there in March 1940" -- that should be 1941, your Honor. "Both Herr Hitler and Foreign Minister von Ribbentrop pointed out instances of bad faith and outrageous conducts of Soviet Russia. They revealed to Mr. MATSUOKA, with

reference to the Ribbentrop memorandum mentioned above, that M. Molotov, while accepting it in principle, put forward in return over thirty items as counter-proposals which it was quite out of the question for Germany to consider. They also insisted that the root of European troubles could not be removed unless a severe blow was dealt to Soviet Russia. In short, Germany's Soviet policy had been completely reversed since the conclusion of the Alliance in the previous year.

"Mr. MATSUOKA made it clear that Japan could not easily agree to a German war against Russia because she would be immensely affected by such an eventuality. He further confided his intention to meet the Soviet leaders in Moscow on his way home, with a view to adjusting relations between the two countries. Herr von Ribbentrop commented on this by saying that, since Soviet Russia could not be trusted, any such attempt would be futile, and, when asked by Mr. MATSUOKA what would be the outcome if he succeeded in coming to some concrete agreement with the Soviet Government, replied that there would be no objection to such an agreement, although he could hardly see any use in such negotiations. (Such was the verbal report Mr. MATSUOKA presented to his home government on his return from Europe.)

"MR. MATSUOKA negotiated on his return trip in Moscow with the Russian leaders and succeeded, contrary to the German expectation, in concluding a Neutrality Pact. According to Ambassador OSHIMA's reports to Tokyo, Herr Hitler looked rather astonished at this news, nor did Foreign Minister von Ribbentrop conceal his unpleasant surprise when he told our Ambassador that he found it difficult to understand Mr. MATSUOKA's real intentions in concluding such a treaty with the very country with whom Germany would fight in the near future as he had explained to Mr. MATSUOKA so plainly.

"Thus, great was the discrepancy between Foreign Minister von Ribbentrop's understanding and that of Mr. MATSUOKA on the same subject. Regardless of whether it was due to mutual misunderstanding or to wilful distortion on either side, the fact remained that German-Soviet relations had rapidly become so bad after April that all the reports from Ambassador OSHIMA hinted the imminence of war between the two Powers. Our government could no longer placidly watch the development of the situation. Therefore on 28 May 1941, Foreign Minister MATSUOKA, on behalf of our government, sent a message to Foreign Minister von Ribbentrop to the effect that, in view of the external

as well as internal situation in Japan, he wished the German Government to avoid an armed conflict with the U.S.S.R. by every means at its disposal. The Germen Foreign Minister's reply was that war with the U.S.S.R. was now unavoidable, but he gave assurance that it would not last longer than two or three months at most; and asked that he be trusted on this point. He further reminded that Japan was not being asked to give any assistance in that war and that, besides, she would benefit considerably from its outcome. The highest German military authorities also told Ambassador OSHIMA that the war would probably end within four weeks. It would hardly be called a war, but rather a police action.

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"On the 22nd of June the war broke out. The United States and Great Britain took no time in declaring intention to aid the U. S. S. R; the U. S. S. R. had now unmistakably joined the Anglo-American camp. Although this sudden turn in the international situation did not immediately affect Russo-Japanese relations, the hope that Japan, Germany and the U. S. S. R. might become united - the keynote of the Tri-Partite Alliance had now been shattered, and with communications between Japan and Germany. The Tri-Partite Alliance had been deprived of most of its practical usefulness.

"If we call it the first German breach of faith that, while approaching the Japanese Government headed by HIRANUMA with a proposal for a tri-partite alliance directed against Soviet Russia, she suddenly concluded, without any previous notice to us a non-aggression pact with that very Soviet Russia. Then might we call it the second German act of a similar nature that, notwithstanding the pledge entered into when the Tri-Partite Alliance was concluded to make an ally of Russia, she waged war upon Soviet Russia, disregarding our urgent reminding. Japan, then, might very well claim freedom, legal as well as moral to reexamine her whole policy pertaining to the Alliance.

As a matter of fact, I had informal conversations with the ministers of the fighting services as to the desirability of denouncing it outright in view of the reasons and circumstances of the conclusion of the Tri-Partite Alliance. However, the army leaders who had great confidence in the German High Command would not listen to such opinion. Moreover, Germany's spectacular successes at the first stages of war seemed even to heighten that confidence.

"In such circumstances I reached the following conclusion. Reexamination of the Alliance policy was not feasible because of our internal political situation; besides to abrogate a treaty which had only in the preceding year been concluded would be contrary to our international faith, even though it was due to a perfidious act on the part of a co-signatory Power -- an act which scarcely constituted an excuse publicly acceptable. It was not appropriate, therefore, to challenge the Tri-Partite Alliance itself. But now the war had broken out between Germany and Russia and all hope of the Japanese-German-Russian combination, one of the main aims of the Alliance, had been dashed. Under the conditions it would be extremely grave for Japan if she should be drawn into the danger of a war with the United States, a danger which

might arise in the future from the Tri-Partite Alliance. Above all, this would completely nullify the aim for which we concluded the Alliance. Every precaution should therefore be taken against this danger.

"The way to that end, in my opinion, could be sought nowhere else than in closer relationship between Japan and America. And this possibility, though despaired of a year ago, had now become rather hopeful as the United States, impelled by the necessity of rescuing Great Britain in Europe, had been seeking to avoid at any cost an entanglement with Japan in the Pacific. In fact, the Japanese-American talks had been commenced in April of that year. It was out of such consideration that I made up my mind to bring the Japanese-American conversations to a successful conclusion at any cost -- even at the cost of more or less mitigating the Tri-Partite Alliance."

MR. COMYNS CARR: Your Honor, that passage which has just been read is not in the copy served upon us.

THE PRESIDENT: Well, it is page 9 of ours and looks like an addition.

MR. COMYNS CARR: I am sorry. For some reason, there is a half page left blank, and it is printed with the certificate. I thought it was the certificate, there.

Your Honor, may I point out that the document contains -- this memorandum contains a number of references to documents not produced, particularly on page 7.

THE PRESIDENT: We accepted it only so far as it discloses Prince KONOE's reasons expressed on behalf of Japan for entering into those alliances.

MR. COMYNS CARR: So long as it is not accepted --

THE PRESIDENT: Before we accept any reference to the contents of a document, we must have the document or have its absence accounted for, that is, so far as the references are relied upon as proof of the contents of the document.

MR. CUNNINGHAM: Your Honor, I understood that you mean the affidavits of witnesses, not necessarily reference in documents to other documents.

THE PRESIDENT: What Prince KONOE says as to the contents of the document will not be accepted as proof of those contents.

MR. CUNNINGHAM: The witness may be cross-examined.

THE PRESIDENT: Mr. Comyns Carr.

MR. COMYNS CARR: We do not desire to cross-examine the witness on this part of his affidavit.

The other part we will consider when we have seen the proposed exhibit.

THE PRESIDENT: Is there no contest about the genuineness of this particular document?

MR. COMYNS CARR: No, your Honor, as far as we know, as to the authenticity of this one, as having been written by Prince KONOE at the date the witness states.

MR. CUNNINGHAM: I was under the impression that the witness properly identified defense document 1580. Otherwise, I would like to ask him some questions which clarify that situation, because that is the purpose of the witness being here.

THE PRESIDENT: There is no need to do that in view of Mr. Carr's admission.

MR. CUNNINGHAM: I ask that the witness then be released on the usual terms.

THE PRESIDENT: He is released accordingly.

(Whereupon, the witness was excused.)

MR. CUNNINGHAM: I ask if the Tribunal has reached a decision on defense document 613-A (12) and (13), the interrogation of MATSUOKA.

THE PRESIDENT: We have not yet conferred on that.

MR. CUNNINGHAM: I will defer that until --

THE PRESIDENT: Until we are able to confer.

MR. CUNNINGHAM: I now offer in evidence defense document 206-G, an excerpt from Ambassador Grew's book "Ten Years in Japan," to show --

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document --

BRIGADIER NOLAN: May I be heard? I thought counsel had not finished his remarks in introducing the document.

MR. CUNNINGHAM: Your Honor, I was stopped by the light.

(Continuing) To show that on 19 October 1939 Ambassador Grew, who returned from his vacation in the United States, delivered a speech in the American-Japanese Society in Tokyo, strongly denouncing the Japanese policy in China; that Ambassador Grew knew the speech was a sort of dynamite going directly to the Japanese public over the head of the Japanese Government and outside the usual diplomatic procedure, and would cause strong reaction in Japan. This is a preliminary for the following documents which show bad effects this speech had on the Japanese-American relations.

THE PRESIDENT: Brigadier Nolan.

BRIGADIER NOLAN: May it please the Tribunal, the prosecution object to a portion of this document. The first two paragraphs consist of the reflections and ruminations of a gentleman about to make a speech, and, in our submission, there is nothing in those two first paragraphs which could assist this Tribunal. We make no objection to the report of the speech itself.

THE PRESIDENT: Mr. Cunningham, are you going to say anything in support of those first two paragraphs?

MR. CUNNINGHAM: I was going to suggest that the first two paragraphs explain pretty much the background for the speech, and both should be read together. But, I do not want to insist upon it unless -- the Court can see the value in it by reading it, of course.

THE PRESIDENT: Well, only the speech is admitted. The objection is upheld to that extent.

CLERK OF THE COURT: Defense document 206-G will receive exhibit No. 2736.

(Whereupon, the document above referred to was marked defense exhibit No. 2736 and received in evidence.)

THE PRESIDENT: We will recess for fifteen minutes.

(Whereupon, at 1045, a recess was

taken until 1100, after which the proceedings were resumed as follows:)

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Whalen & Dua

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

THE PRESIDENT: Mr. Cunningham.

MR. CUNNINGHAM: I will ask Mr. Blewett to read exhibit 2736, that part which is to be read.

THE PRESIDENT: Mr. Blewett.

MR. BLEWETT: (Reading) "Straight from the Horse's Mouth."

"(From an Address Before the America-Japan Society, October 19, 1939).

"We have a phrase in English 'straight from the horse's mouth.' I never know why the particular animal chosen was a horse, especially as most horses are generally not very communicative. But the meaning is clear enough. What I shall say in Japan in the ensuing months comes 'straight from the horse's mouth' that it will accurately represent and interpret some of the current thoughts of the American Government and people with regard to Japan and the Far East. I had the privilege of also conferring repeatedly with the President and with the Secretary of State during my stay at home.

"Before I left for America last May a Japanese friend of mine begged me to tell my friends in America the situation in Japanese-American relations as he conceived it. It ran somewhat as follows:

"American rights and interests in China are suffering some minor and unimportant inconveniences in China as a result of Japanese military operations; the Japanese military take every possible precaution to avoid inconvenience to American interests; reports published in the United States in regard to damage to American interests by the Japanese in China are intentionally exaggerated in order to inflame the American people against Japan; in large measure those activities of the Japanese to which Americans object are the result of differences in customs, differences in language, and a legalistic attitude which has been adopted by the United States; the attitude of the Government of the United States in regard to impairment of American rights and interests in the Japanese-occupied areas of China is in large part due to internal political conditions in the United States; in the near future the situation in the occupied areas of China will be so improved that the United States will no longer have any cause for complaint. That was the point of view of my Japanese friend.

"Alas, the truth is far otherwise. The facts, as they exist, are accurately known by the American Government. They are likewise known by the American people, and in the interests of the future relations

between Japan and the United States those facts must be faced. Only through consideration of those facts can the present attitude of the American Government and people toward Japan be understood; only through consideration of those facts, and through constructive steps to alter those facts, can Japanese-American relations be improved. Those relations must be improved.

"Having said all this I do not propose today to deal in detail with the causations which have brought about that feeling in my country. This is not the occasion to enter any 'bill of particulars.' Those facts, those difficulties between our nations, are matters for consideration by the two Governments; indeed, some of them are matters which I have been discussing with the Japanese Government during the past two years, and I shall continue to approach these matters. But I believe that the broad outline of those facts and difficulties are known to you. Some of these difficulties are serious.

"Now, many of you who are listening to me may well be thinking 'There are two sides to every picture; we in Japan also have our public opinion to consider.' Granted. In America, as I have already said, I did my best to show various angles of the Japanese point of view. But here in Japan I shall try to show the American

point of view. Without careful consideration of both points of view we can get nowhere in building up good relations. I wish you could realize how intensely I wish for that most desirable end and how deeply I desire, by pure objectivity, to contribute to a successful outcome. Let me therefore try to remove a few utterly fallacious conceptions of the American attitude as I think they exist in Japan today.

"One of these fallacies is that the American approach to affairs in East Asia is bound by a purely 'legalistic' attitude, a conception which widely prevails in this country today. What is meant by a 'legalistic' attutude? If we mean respect for treaties, official commitments, international law, yes; that respect is and always will be one of the cardinal principles of American policy. But the very term 'a legalistic attitude,' as it has often been used in my hearing in Japan, seems to imply a position where one cannot see the woods for the trees, where one's vision of higher and broader concepts is stultified. Let me therefore touch briefly on a few of the cardinal principles of American policy and objectives, molded to meet the requirements of modern life, which, it is true, are fundamentally based upon but which seem to me far to transcend any purely 'legalistic' approach

point of view. Without careful consideration of both points of view we can get nowhere in building up good relations. I wish you could realize how intensely I wish for that most desirable end and how deeply I desire, by pure objectivity, to contribute to a successful outcome. Let me therefore try to remove a few utterly fallacious conceptions of the American attitude as I think they exist in Japan today.

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to world affairs.

"The American people aspire to relations of peace with every country and between all countries. We have no monopoly on this desire for peace, but we have a very definite conviction that the sort of peace which, throughout history, has been merely an interlude between wars is not an environment in which world civilization can be stably developed or, perhaps, can even be preserved. We believe that international peace is dependent on what our Secretary of State has characterized as 'orderly processes' in international dealing.

"The American people desire to respect the sovereign rights of other people and to have their own sovereign rights equally respected. We have found by experience that the successful approach to the resolving of international disputes lies not so much in merely abstaining from the use of force as in abstaining from any thought of the use, immediately or eventually, of the methods of force. Let cynics look about them and contemplate the consequences of resort to menacing demands as a process in the conduct of international relations! It is being purely 'legalistic' to put to wise and practical use the finer instincts common to all mankind?

"The American people believe that the day is past when wars can be confined in their effects to the combatant nations. When national economics were based upon agriculture and handicraft, nations were to a large extent self-sufficient; they lived primarily on the things which they themselves grew or produced. That is not the case today. Nations are now increasingly dependent on others both for commodities which they do not produce themselves and for the disposal of the things which they produce in excess. The highly complex system of exchange of goods has been evolved by reason of each nation's being able to extract from the ground or to manufacture certain commodities more efficiently or economically than others. Each contributes to the common good the fruits of its handiwork and the bounties of nature.

"It is this system of exchange which has not only raised the standard of living everywhere but has made it possible for two or even three persons to live in comfort where but one had lived in discomfort under a simple self-contained economy. Not only the benefits of our advanced civilization but the very existence of most of us depend on maintaining in equilibrium a delicate balanced and complex world economy. Wars are not only destructive of the wealth,

both human and material, of combatants, but they disturb the fine adjustments of world economy. Conflict between nations is therefore a matter of concern to all the other nations. Is there then any stultification through 'legalistic' concepts when we practice ourselves and urge upon others the resolving of international disputes by orderly processes, even if it were only in the interests of world economy? How, except on the basis of law and order, can these various concepts in international dealing be secured?

"The American people believe in equality of commercial opportunity. There is probably no nation which has not at one time or other invoked it. Even Japan, where American insistence on the Open Door is cited as the supreme manifestation of what is characterized as a 'legalistic' American attitude -- even Japan, I say -- has insisted upon and has received the benefits of the Open Door in areas other than China, where, we are told, the principle is inapplicable except in a truncated and emasculated form. That highly complicated system of world economy of which I have just spoken is postulated upon the ability of nations to buy and sell where they please under conditions of free competition -- conditions which cannot exist in areas where pre-emptive rights are claimed and

asserted on behalf of nationals of one particular country.

"I need hardly say that the thoughts which I have just expressed are of universal applicability.

"Another common fallacy which I am constrained to mention is the charge that the American Government and people do not understand 'the new order in East Asia.' Forgive me if I very respectfully take issue with that conception. The American Government and people understand what is meant by the 'new order in East Asia' precisely as clearly as it is understood in Japan. The 'new order in East Asia' has been officially defined in Japan as an order of security, stability, and progress. The American Government and people earnestly desire security, stability, and progress not only for themselves but for all other nations in every quarter of the world. But the new order in East Asia has appeared to include, among other things, depriving Americans of their long-established rights in China, and to this the American people are opposed.

"There's the story. It is probably that many of you are not aware of the increasing extent to which the people of the United States resent the methods which the Japanese armed forces are employing in China today and what appear to be their objectives. In saying this, I do not wish for one moment to imply that the American people have forgotten the long-time friendship which has existed between the people of my country and the people of Japan. But the American people have been

profoundly shocked over the widespread use of bombing in China, not only on grounds of humanity but also on grounds of the direct menace to American lives and property accompanied by the loss of American life and the crippling of American citizens; they regard with growing seriousness the violation of and interference with American rights by the Japanese armed forces in China in disregard of treaties and agreements entered into by the United States and Japan and treaties and agreements entered into by several nations, including Japan. The American people know that those treaties and agreements were entered into voluntarily by Japan and that the provisions of those treaties and agreements constituted a practical arrangement for safeguarding -- for the benefit of all -- the correlated principles of national sovereignty and of equality of economic opportunity.

"The principle of equality of economic opportunity is one to which, over a long period and on many occasions, Japan has given definite approval and upon which Japan has frequently insisted. Not only are the American people perturbed over their being arbitrarily deprived of long-established rights, including those of equal opportunity and fair treatment, but they feel that the present trend in the Far East, if continued,

will be destructive of the hopes which they sincerely cherish of the development of an orderly world. American rights and interests in China are being impaired or destroyed by the policies and actions of the Japanese authorities in China. American property is being damaged or destroyed; American nationals are being endangered and subjected to indignities. If I felt in a position to set forth all the facts in detail today, you would, without any question, appreciate the soundness and full justification of the American attitude. Perhaps you will also understand why I wish today to exercise restraint.

"In short, the American people, from all the thoroughly reliable evidence that comes to them, have good reason to believe that an effort is being made to establish control, in Japan's own interest, of large areas on the continent of Asia and to impose upon those areas a system of closed economy. It is this thought, added to the effect of the bombings, the indignities, the manifold interference with American rights, that accounts for the attitude of the American people toward Japan today. For my part I will say this. It is my belief, and the belief of the American Government and people, that the many things injurious to the United States which have been done and are being done

by Japanese agencies are wholly needless. We believe that real security and stability in the Far East could be attained without running counter to any American rights whatsoever.

"I have tried to give an accurate interpretation of American public opinion, most carefully studied and analyzed by me while at home. The traditional friendship between our two nations is far too precious a thing to be either inadvertently or deliberately impaired. It seems to me logical that from every point of view -- economic, financial, commercial, in the interests of business, travel, science, culture, and sentiment -- Japan and the United States forever should be mutually considerate friends. In the family of nations, as between and among brothers, there arise inevitable controversies, but again and again the United States has demonstrated its practical sympathy and desire to be helpful toward Japan in difficult times and moments, its admiration of Japan's achievements, its earnest desire for mutually helpful relations.

"Please do not misconstrue or misinterpret the attitude which has prompted me to speak in the utmost frankness today. I am moved first of all by love of my own country and my devotion to its interest; but I am also moved by very deep affection for Japan and

my sincere conviction that the real interests, the fundamental and abiding interests, of both countries call for harmony of thought and action in our relationships. Those who know my sentiments for Japan, developed in happy contacts during the seven years in which I have lived here among you, will realize, I am sure, that my words and my actions are those of a true friend.

"One Japanese newspaper queried, on my return from America, whether I had concealed in my bosom a dagger or a dove. Let me answer that query. I have nothing concealed in my bosom except the desire to work with all my mind, with all my heart, and with all my strength for Japanese-American friendship.

"Today I have stated certain facts, straightforwardly and objectively. But I am also making a plea for sympathetic understanding in the interests of the old, enduring friendship between our two great nations. In a world of chaos I plead for stability, now and in the long future, in a relationship which, <u>if it can be preserved,</u> can bring only good to Japan and to the United States of America."

BRIGADIER NOLAN: May it please the Tribunal, there is an obvious error in the tenth line on page 3; the words "It is" should obviously be "Is it."

THE PRESIDENT: Mr. Cunningham.

MR. CUNNINGHAM: Defense document 206-E-4, do you have it?

Will you check and see what the situation is on it? It isn't in my list.

We will go to defense document 1635. I now offer in evidence defense document No. 1635, a telegram from Ott to German Foreign Office, dated 20 October 1939, to show the strong reaction of the Japanese public to Ambassador Grew's speech as seen by the German Ambassador in Tokyo, which casted an ill omen for the pro-American policy of the ABE Cabinet.

Skipping the formal parts: "No. 607 of 20.10"

Will you please give it an exhibit number?

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1635 will receive exhibit No. 2737.

(Whereupon, the document above referred to was marked defense exhibit No. 2737 and received in evidence.)

MR. CUNNINGHAM: (Reading) "The top news of the press is the speech in the American-Japanese club here of Ambassador Grew who recently returned from America. The ambassador avowed at the beginning to be a friend of Japan of many years and stated the improvement of the American-Japanese relations as his

life-work. The carrying out is made especially difficult by the Japanese action in China, which hit the American interests most severely. The American public opinion is therefore unanimously against Japan. The ambassador demanded with unusual sharpness respect of the Nine-Powers Treaty and return to the open door, which Japan wishes to concede to the other powers in China only in a completely depreciated form.

"The press described in its first commentaries the speech as a sharp refusal of the China-policy of Japan. The always proclaimed attempt of compromise with America thus began unfavorable for the ABE Cabinet. Telegraphic reports will follow as soon as further effects become visible." Signed "Ott."

I next offer in evidence defense document 1400-E-3, an excerpt taken from "Foreign Relations of the United States, Japan 1931 - 1941," a telegram from Ambassador Grew to Hull dated 23 October 1939, to show the reaction of the Japanese Foreign Office to the aforementioned speech of Ambassador Grew.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1400-E-3 will receive exhibit No. 2738.

(Whereupon, the document above referred to was marked defense exhibit

No. 2738 and received in evidence.)

MR. CUNNINGHAM: Skipping the formal parts: "The Ambassador in Japan (Grew) to the Secretary of State. Tokyo, October 23, 1939 -- 10 p.m. (Received October 23 -- 1:17 p.m.)

"544. Our 543, October 23, 7:17 p.m. Yakichiro SUMA, newly-appointed Foreign Office spokesman and formerly Councillor in Washington, gave a long interview to the foreign correspondents today in regard to Japanese-American relations. While these correspondents are understood to have cabled the significant portions thereof to their papers in the United States, in view of Mr. SUMA's position, it is believed that the Department may wish to have the contents of his interview as reported here which were substantially as follows:

"Question: Are you handling Ambassador Grew's address given at the Imperial Hotel as an official protest, or have you received an official protest with similar contents?

"Answer: We do not regard it as an official protest nor have we received such an official protest.

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"Question: What is Japan's view in regard to that speech?

"Answer: For a diplomat to report accurately the feeling of his country to the country to which he is accredited takes an unusual amount of courage and I am deeply impressed with Mr. Grew's action. However, it is difficult to agree with the Ambassador's statement that the American public has a correct grasp of the situation in East Asia. From my own experiences in America there has been deplorable ignorance among the people concerning conditions in the Far East. Recently, I read Hugh Wilson's book entitled 'Memoirs of a Diplomat' in which he states that as the American people are geographically too well blessed, public opinion in regard to foreign affairs is one of a serious character and I am in agreement with him. American views with regard to the Far East are completely directed by emotion. The American Government and people should pay full attention to actual facts of the situation in East Asia and their opinion should be more constructive and practical.

"Question: As the treaty expires next January 18, the view is strong here, the United States will cease buying Japanese silk and Japan will

cease buying American cotton. What do you think of that?

"Answer: I heard this sort of view quite often while in the United States. I even heard that all trade relations would cease. However, this would amount to aggressive action against Japan and as it would not bring the result desired by the United States the majority of opinion inclined to the view that it could be spoken of lightly. As Walter Lippmann has said, the responsibility for the adjustment of Japanese-American relations rests not only with Japan, the United States also must exert every effort to observe the road to adjustment.

"Question: What do you think about the rumour that a four-power conference including Japan, England, France and the United States will be held to discuss the question of opening the Yangtze River to navigation?

"Answer: That is purely conjecture, France and England would not have to be mentioned. If necessary, discussions could be carried on with the United States. In any case the question of opening the Yangtze to navigation is not to be dismissed lightly."

"Copies by air mail to Shanghai and Peiping. Shanghai requested to repeat to Chungking by naval radio."

Signed "Grew"

MR. CUNNINGHAM: I now offer for identification defense document 1656 and tender excerpts therefrom, defense document 1656A to AD, for evidence. This is an official top-secret document of the Japanese Foreign Office entitled "Outline of the Process of Drafting Various Drafts Concerning the Tripartite Pact of Japan, Germany and Italy, and Pertaining Documents." This document was compiled by Mr. MATSUMOTO, Director of the Treaty Department of the Foreign Office at the time of the conclusion of the Pact, and show that no aggressive intention was expressed by any party during the negotiations.

Annex 1 to 20 are marked as B to Z and AA to AD, which I do not wish to read unless specifically asked by the Court or the Prosecution. However, I believe that the documents supporting the statement will be of valuable assistance to the Tribunal for understanding the background of the Tripartite Pact. I only propose to read the "Outline of the Process of Drafting Various Drafts Concerning the Tripartite Pact."

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: If it please the Tribunal, this document appears to consist of 36 excerpts from a document of which the original is Japanese, although a hasty glance over the original document shows a few to be in English. There has been no service of this document upon the prosecution and no attempt to comply with Rule 6b(1), as amended, until yesterday. The document was lodged with the Clerk yesterday but we have not been able to have access to it, due to its probable use in Court today.

We desire to accommodate the defense in every way we can in cooperating and waiving rules where that can be done safely, but that, we take it, is no reason for totally ignoring the rules in regard to these matters.

THE PRESIDENT: You have not had time, you say to consider whether you should object?

MR. TAVENNER: No sir. We have not read a single one of the documents. We have not compared them with the original, and none of the precautionary matters have been taken which we would ordinarily follow in a matter of this kind, and if I did not so state or make it plain, none of the excerpts have been served on the prosecution.

THE PRESIDENT: The Clerk of the Court tells

me that she does not have copies of the excerpts for distribution.

MR. CUNNINGHAM: Do you have the copies of A656A, the first excerpt?

MR. TAVENNER: There is an indication that possibly the defense counsel do not realize that Rule 6b(1), as amended, must be complied with. We have insisted upon it at all times, but have been very liberal in waiving it wherever it could be done.

THE PRESIDENT: It is obvious that Mr. Cunningham thought the rule had been complied with, but apparently there has been some breakdown.

The Marshal and the Language Section want to see me during the luncheon adjournment, to complain about the failure of the Defense to comply with requirements in respect to their sections. Whose fault it is, I do not know.

MR. CUNNINGHAM: Your Honor, may I answer the objection now to the document? In the first place, I do not think it comes under 6b(1) because I am not asking that the document be admitted and read into the record. I am only asking that the English copy be admitted at this time--a few of the excerpts which are in English, and the original document is in English. As I explained yesterday, these negotiations were

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conducted in English, and that perhaps a few of the excerpts are in Japanese, but the document which I want to read in evidence is in English.

THE PRESIDENT: To say the least, that explanation is inadequate.

MR. CUNNINGHAM: And I contend that 6b does not apply. I shouldn't think the documents which were originally in English--that the excerpts taken from them have to be lodged with the Clerk. Maybe there was some misunderstanding there.

Now, on the proposition of seven days and compliance, I want you to know that we went on a little early with this phase of the case and perhaps some of the machinery did not have a chance to function.

THE PRESIDENT: We think the rules apply, and they must be observed. You had better present some other document, Mr. Cunningham.

MR. CUNNINGHAM: The second document of the series, which was commenced yesterday with exhibit No. 2734, is an excerpt taken from No. 1400-B-3. It is an excerpt taken from "Foreign Relations of the United States and Japan from 1931 to 1941", a telegram from Ambassador Grew to Secretary of State Hull, dated 5 October 1940, which shows the explanation handed by Foreign Minister MATSUOKA to Grew regarding the peaceful and defensive purpose of the Tri-Partite Pact.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1400-B-3 will receive exhibit No. 2739.

(Whereupon, the document above referred to was marked defense exhibit 2739 and received in evidence.)

MR. CUNNINGHAM: Mr. Levin will read the document.

MR. LEVIN (reading):

"Tokyo, October 5, 1940 - 10 p.m. (Received October 5 - 5:31 p.m.).

"948. The Foreign Minister asked me to come this afternoon to his private residence informally and alone "for a cup of tea" and for two hours and a quarter he talked on a variety of subjects. His discourse was largely of a historical and philosophical

"nature but outstanding points will be reported in separate telegrams tonight and tomorrow. At the commencement of the talk Mr. Matsuoka communicated orally in English and handed to me the Japanese text of 'a statement to the United States concerning the three-power alliance' of which our translation follows.

"'A statement to the United States concerning the three-power alliance.

"'The recent three-power alliance is not aimed at any particular country. If Japan, Germany and Italy unite, the probability of being attacked by another country is decreased, the spreading of world disorder may be prevented, and in this sense the alliance contributes to world peace. By this treaty Japan has further clarified its intention to establish a new order in greater East Asia including the South Seas.

"'The construction of a new order in East Asia means the construction of a new order under which Japan establishes the relationship of common existence and mutual prosperity with the peoples of each and every land in greater East Asia, that is East Asia including the South Seas. In a position of equality with every other country, Japan may freely carry on enterprises, trade and emigration in and to each

"'and every land in greater East Asia and thereby be enabled to solve its population problem. This does not mean that these areas are to be exploited and conquered, nor does it mean these areas are to be closed to the trade and enterprises of other countries. Japan has long tried to solve its population problem through emigration, trade and enterprises abroad, but the various countries of Europe and America have nullified Japan's reasonable and peaceful efforts concerning its population problem since those countries have turned back Japanese immigrants to their great territories and have obstructed trade and enterprise.

"'In the greater East Asia sphere of mutual prosperity, the endeavor is being made to abolish such unnatural restrictions on the free activities of mankind. It is expected that this endeavor will be accomplished insofar as possible through peaceful means and with the least possible undesirable change in the status quo.

"'Japan's policy toward China forms an important part of the above endeavor. However, owing to the lack of understanding on the part of some Chinese people and to the attitude taken by England and the United States in not recognizing Manchukuo, which gave rise to Chiang Kai-shek's hope of recovering Manchukuo, an unfortunate

"'clash of arms broke out. This clash is, in fact, war and therefore it is impossible for the Japanese Army during its activities to avoid affecting rights and interests of the powers in China. This is particularly true when such rights and interests hinder the prosecution of Japan's war against China. Accordingly, if the effects upon these rights and interests are to be brought to an end, it is most desirable to enccurage and promote peace between Japan and China. This fact notwithstanding the powers are not only checking Japan's actions through legalistic arguments and treaty pronouncements which have become inapplicable because of changing conditions, but are also oppressing Japan through such means as restriction on the exportation of important commodities to Japan and at the same time are giving positive aid to Japan's enemy, the Chiang Kai-shek regime. These actions spring from hidden motives to keep the Orient under conditions of disorder as long as possible and to consume Japan's national strength. We must believe that these actions are not for the love of peace and are not for the purpose of protecting rights and interests. Japan concluded a defensive alliance with Germany and Italy for no other purpose than to resist such pressure from the powers, and there is not the slightest intention to proceed to

"'to attack another country. If the United States understands the aforementioned conditions and circumstances and Japan's intentions with regard to the establishment of a new order in East Asia, there will be no change whatever in the relationship between Japan and the United States following the conclusion of this treaty. Japan is determined to settle all pending questions and to promote and foster friendship with the United States.'"

"Grew."

We now offer defense document 837. This is the address by MATSUOKA at the Governors Conference on 7 October, 1940 in which MATSUOKA explained the international situation which formed the background of the Tri-Partite Pact and the peaceful purpose of the pact.

THE PRESIDENT: Brigadier Nolan.

BRIGADIER NOLAN: May it please the Tribunal, we object to defense document 837 which purports to set out in great detail the international atmosphere in which the pact was formed. It goes on to point out that the fundamental conflict between Japan and China is ideological and then discusses foreign relations with other countries, mentioning the European War, the Dutch East Indies and French Indo China, and the Soviet Union. This speech, delivered at a Governors Conference, is, in the submission of the prosecution, without any probative value. It is full of political platitudes and, we submit, should be rejected.

MR. CUNNINGHAM: If your Honors please, the document answers all of the objections which the prosecution had to other documents. It is contemporaneous with the signing, or a few days after the signing, of the Tri-Partite Pact. It is the govern-

ment's official communication to the Governors of Japan of the interpretation of the Tri-Partite Pact. Nothing could be more indicative of public opinion and feeling of the time.

THE PRESIDENT: So far as it states the reasons for the signing of the pact, given at the time by the Foreign Minister, it may be useful.

MR. CUNNINGHAM: It definitely gives the background and the considerations which went into the signing and negotiation of the Tri-Partite Pact as uttered by the man who took the responsibility for the negotiation and the conclusion of the pact.

THE PRESIDENT: We think probably it contains a lot of material that is not properly admissible. On the other hand, it may have something in it worth reading or of some value. We will look through it during the luncheon adjournment, and we invite you to do the same, Mr. Cunningham, with a view to cutting it down.

MR. CUNNINGHAM: That is agreeable, your Honor, and I will try to get it right down to rock bottom declaration on the Tri-Partite Pact.

THE PRESIDENT: We will adjourn until half-past one.

(Whereupon, at 1200, a recess was

Spratt & Yelden

AFTERNOON SESSION

The Tribunal met, pursuant to recess, at 1330.

MARSHAL OF THE COURT: The International Military Tribunal for the Far East is now in session.

THE PRESIDENT: Mr. Levin, we notice that according to this speech by MATSUOKA of the 7 October 1940, speeches on the Tri-Partite Pact were delivered about that time by both Prince KONOYE and MATSUOKA. MATSUOKA's speech appears to have been on the day the Pact was signed and Prince KONOYE's on the following day. Those speeches may be in evidence already, but I do not think they are. If they are, what more do we want?

Brigadier Nolan.

BRIGADIER NOLAN: If the Tribunal please, the speech of Foreign Minister MATSUOKA on the 21 January 1941, defense document 310, is an exhibit in the case, number 1300.

MR. LEVIN: Mr. President, it seems to me as I recall, and I follow the record very carefully, that this address does not appear in the record. It is dated October 7, 1940, shortly after the Tri-Partite Pact was executed, and it seems to us that it is perfectly proper to submit it in evidence even though Prince KONOYE's statement has already been introduced

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MR. LEVIN: Mr. President, it seems to me as I recall, and I follow the record very carefully, that this address does not appear in the record. It is dated October 7, 1940, shortly after the Tri-Partite Pact was executed, and it seems to us that it is perfectly proper to submit it in evidence even though Prince KONOYE's statement has already been introduced

in evidence.

THE PRESIDENT: Prince KONOYE's statement was made just before his death. It was not a speech. That is what is being admitted. Now in the document you are tendering and which you ask us to accept it appears that on the day the Tri-Partite Pact was made Prince KONOYE made a speech -- or on the day after -- and on the very day the Pact was made the Foreign Minister MATSUOKA made a speech. Those are the speeches we should have if we have any.

MR. LEVIN: I can't say with reference to the speech of the 28th of September. This is the one of October 7 and comes within ten days after the execution of the Pact, and it seems to me it would be the one that would be most valuable in the consideration of this case.

THE PRESIDENT: There appears in the document now tendered -- I will read it -- "I believe that my speech broadcast on the evening of the same day," -- that is the day the Pact was signed -- "and also the address broadcast by Prime Minister KONOYE on the 28th, the following day, have clearly given the outline of it," -- that is, of the Pact. Where are those two speeches?

MR. LEVIN: The Prime Minister's speech, as

I understand it, is not in evidence but MATSUOKA's speech of the 27th is exhibit 777-A. I think that is the one concerning which there was considerable discussion about yesterday.

THE PRESIDENT: We were told yesterday that exhibit 777-A was not in evidence but tendered for identification.

MR. LEVIN: This particular document, if the Court please, is a more comprehensive speech than the others. It is a statement to the people of Japan and we believe is of great value.

THE PRESIDENT: That is the trouble. The speech that they made as soon as the Pact was signed would probably give their reasons. A speech made much later would probably be influenced by the way the Pact was received by the people of Japan; but we should have the speeches made on the day and the day after the Pact, those two speeches, that of Prince KONOYE and that of MATSUOKA.

MR. LEVIN: I am sure we will give that consideration, Mr. President, and if it is available we will produce it. I might say that during the noon hour we have edited this speech considerably and have deleted a very substantial portion of it, and if it is received I will indicate the portions that are to

be omitted.

THE PRESIDENT: You see, if we had those earlier speeches, we may decide that we had enough.

BRIGADIER NOLAN: May I be permitted to make a remark, Mr. President?

THE PRESIDENT: Yes.

BRIGADIER NOLAN: The radio broadcast of MATSUOKA is marked in the case as 777-A. I have sent for it to ascertain that it was delivered on the night of the 27th of September.

THE PRESIDENT: And is it in evidence?

BRIGADIER NOLAN: 777-A is marked as an exhibit in the case and is in evidence. It is a radio address by Mr. MATSUOKA dated the 27th of September, 1940, at 10:00 p.m.

THE PRESIDENT: The contrary was stated yesterday afternoon.

BRIGADIER NOLAN: What I said yesterday afternoon, Mr. President, was that 777, I assumed, had been marked for identification and that this was an excerpt from a book of radio addresses.

THE PRESIDENT: The contrary was not stated by you, Brigadier, but we were told to strike out the letter "A", that it was not in evidence.

BRIGADIER NOLAN: But I can assure you, sir,

that this 777-A is an exhibit in the case.

THE PRESIDENT: Then we have Prince KONOYE's speech. Now what about MATSUOKA's speech on the same day?

MR. LEVIN: The exhibit which Brigadier Nolan showed us indicated two sentences that were marked and Mr. Cunningham is of the impression that those were the only parts of that which were read. It is my judgment, Mr. President, that as a matter of fact this address should be more valuable than the previous one because it was given a week, about ten days, after the first one and Mr. MATSUOKA undoubtedly had some time for reflection and probably included many things that he said at the other time. This was delivered to men who were very important in the government of Japan, of high standing and influence, and it would seem to be a very considered statement.

THE PRESIDENT: These speeches that come a long time after the event, and which may be colored by the reaction of the public in the meantime, are not the most reliable. As far as I am concerned, we want the speech delivered at the time if we can get it, and nothing else would be as reliable.

MR. LEVIN: Mr. President, we shall make every effort to get it and offer it in evidence. Nevertheless, we feel that this is this is the most important statement in the entire group and believe that it should be admitted in evidence as edited.

THE PRESIDENT: This morning we admitted this statement by KONOYE just before his death, not believing or not knowing that he had made a speech on the very day of the pact, and that part of it at least was in evidence.

MR. LEVIN: Well, there is bound, Mr. President, to be some overlapping. I do not think there has been too much.

THE PRESIDENT: Well, before we admit this document we should know how you have edited it, Mr. Levin.

MR. LEVIN: I intend to read page 1 to the bottom of the last paragraph; page 2, beginning with the word "however" on the 5th line down to the word

"goods" about the middle of the page. I then omit pages 3 to 8, and again read on page 8, beginning on the third line, about six lines, and read the next paragraph, omitting the balance of that page; beginning in the middle of page 9 and reading about half of that page; page 10, reading the second half of the page; reading page 11, the first part of page 12, a paragraph on page 13, the last paragraph on page 14, and page 15.

Mr. President, I would like to call the attention of the Tribunal to the fact that in the record at page 789 appears the excerpt from exhibit 777-A, and General Vasiliev read only one sentence, or rather two sentences, or rather a paragraph of that exhibit.

THE PRESIDENT: According to the excerpt from exhibit 777-A now before us, that speech of the 27th of September, 1940, was delivered by Prime Minister Fumimaro KONOYE and not MATSUOKA. But MATSUOKA said that he delivered a speech on the same day, he also. Where is MATSUOKA's speech of the 27th of September, 1940? We have his speech of January, 1941, being exhibit 1300.

MR. LEVIN: Apparently exhibit 777-A is MATSUOKA's speech of September 27, 1940.

THE PRESIDENT: Well, I can only go on the documents handed to me. If others have been more fortunate I congratulate them. This is defense document 155. It is signed, "Prime Minister Prince Fumimaro KONOYE," and it is expressed to be an excerpt from prosecution document No. 777-A.

MR. LEVIN: I understand that this is part of the group of speeches in relation to the signing of the Tri-Partite Pact, and this is just one of them. The exhibit 777-A is prosecution document No. 823 and is defense document No. 155.

THE PRESIDENT: If you will give me a copy of MATSUOKA's speech of the 27th of September, 1940, I will have no complaint, but I have yet to see it. I have Prince KONOYE's speech of that day but no speech by MATSUOKA.

(Whereupon, a document was handed to the President.)

It appears there is tendered exhibit 777-A, radio address by MATSUOKA, dated 27 September 1940. If that is in evidence why do we want another speech of MATSUOKA?

MR. LEVIN: Mr. President, that exhibit indicates that the only portion that was read into the record was the portion that was marked on the

exhibit, and the page to which I called the attention of the Tribunal a moment ago, that was read by General Vasiliev.

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Kapleau & Wolf

THE PRESIDENT: Read the balance of the speech into the record if it helps you, Mr. Levin. But, why give us an entirely different speech ten days later?

MR. LEVIN: It is our judgment, Mr. President, that the address by MATSUOKA to the Governors was a much more comprehensive and better address. However, if it is the desire of the Tribunal that I shall read this entire document, 777-A, I shall be very happy to do it.

THE PRESIDENT: The prosecution appear to have read only about half a paragraph of a fairly lengthy speech. On a matter of such great importance I think we would like to hear you, if you think the balance of the speech helps you. Having heard his first speech, before he knew the reaction of the Japanese public, perhaps we will think it would be more reliable than one made ten days later.

MR. LEVIN: (Reading)

"Radio address by Mr. Yosuke MATSUOKA, Minister for Foreign Affairs

"September 27, 1940

"Today on the occasion of the conclusion of the Three-Power Pact between Japan, Germany and Italy, an Imperial Rescript -- I am profoundly moved

to say -- has been issued to the nation. What we, His Majesty's subjects, should do has been plainly indicated by the Prime Minister in his message. I sincerely believe that it is incumbent upon all of us to lay to heart the august will of our Sovereign and put forth our best efforts in order to surmount the current emergency.

"Our country is now faced with a most difficult situation, unparalleled in its history. What step we should take at this moment is a grave problem upon which hangs the fate of our nation. The Government, keenly conscious of the gravity of its responsibilities, is seeing to it that nothing shall come amiss.

"The objective of Japan's foreign policy is no other then to dispose of the China Affair, to construct a sphere of common prosperity in Greater East Asia and to contribute thereby to the establishment of true peace for the entire world. But when we look at the actual international situation, we find that this intention of Japan is not yet fully understood. There are countries which have the mistaken idea that peace means the mere maintenance of the old order, or those which, while realizing the inevitability of change, are reluctant to part

with the old order. Moreover, there are countries which attempt to obstruct directly or indirectly, our construction of a new order in Greater East Asia, and even those who resort to all sorts of stratagem in order to block the path of Japan's advance toward the fulfillment of her great historic mission--that of establishing world peace. The Japanese Government has assiduously striven to remedy this regrettable state of affairs. Nevertheless, I regret to say that the situation has not only failed to improve, but it has even shown signs of aggravation in certain quarters.

"Circumstances have now brought Japan to the point where she can no longer permit the international situation to drift as it will. At this juncture, there is only one course for Japan to take. That is to say, internally we should stand resolutely together--one hundred million people as one--by establishing speedily the new state structure for national defense; and externally, we should first unite with Germany and Italy which have the same aspirations and policy as ours and later with those Powers who can cooperate with us. We should thus go fearlessly forward to carry out our conviction, calling at the same time upon those Powers that

obstruct us to reconsider their attitude. In such manner, the Government expects to achieve the ultimate aim of our Yamato race--namely, the establishment of a new order in East Asia.

"Accordingly, we have conducted negotiation with the representatives of Germany and Italy, which have resulted in the conclusion of the Three-Power Pact, made public just a short while ago.

"The establishment of this historic relationship of alliance between the three countries, is, of course, due to the wisdom of our gracious Sovereign. At the same time it owes much to the judgment and decision of the eminent leaders of Germany and Italy--Chancellor Hitler and Premier Mussolini. Again, the German Foreign Minister, Mr. von Ribbentrop, has earnestly made efforts for German-Japanese cooperation from the very day he assumed his present post, while the Italian Foreign Minister, Count Ciano, having been once stationed in East Asia, and understanding fully Japan's position in East Asia, has ceaselessly laboured for the promotion of Italo-Japanese firendship. Needless to say, these two foreign ministers have played important roles in the conclusion of the present pact.

"The pact provides that Japan, Germany and

Italy shall cooperate freely with one another toward the construction of a new order, respectively in Greater East Asia and in the regions of Europe, in which these Powers are at present engaged. It also provides that if any one of the Contracting Parties should be attacked by an outside Power, at present not involved in the European War or in the China Affair, the three Contracting Powers shall render mutual assistance with all possible means, political, economic and military. Accordingly, it does not mean that because of this pact Japan is to enter the European War at present, nor that she intends to challenge any Power without provocation. It may be added also that the present treaty will not affect in any way the existing political status between Japan, Germany and Italy on the one hand and Soviet Russia on the other.

"The treaty also provides that Germany and Italy recognize Japan's position of leadership in regard to the construction of a new order in Greater East Asia. We in turn recognize the leadership of Germany and Italy in the European regions where they are now engaged in the establishment of a new order, staking even their national existence in the undertaking. And thus the Three Powers are to join forces

and help one another to the utmost.

"With the conclusion of this treaty, Japan's responsibilities as leader of the new order in Greater East Asia becomes even greater than before. Although it is the intention of the Japanese Government to fulfill these responsibilities always by peaceful means, there is no telling whether there might not arise occasions and circumstances calling for a momentous decision on the part of our nation. Our future is beset with countless obstacles and difficulties, which, it must be fully realized, no ordinary effort will be sufficient to surmount. Our Government and people, united as one and grasping fully the situation both at home and abroad, should be prepared to endure all hardship and all sacrifices, and redouble their efforts so as to conform to the august will of our Sovereign."

. Now I would like to offer defense document 837, as I have indicated, with the editing and deletion that has been accomplished.

THE PRESIDENT: By a majority the Court overrules the objection and admits the document.

CLERK OF THE COURT: Document 837 will receive exhibit No. 2740.

(Whereupon, the document above referred to was marked defense exhibit 2740 and received in evidence.)

MR. LEVIN (reading): "On September 27, the Tri-partite Pact was concluded between Japan, Germany and Italy, and on the same day His Majesty the Emperor was pleased to issue a gracious Imperial Message indicating the direction which our people should follow concerning this historic event, and we, the subjects of Imperial Japan, are filled with trepidation. We who are in government service should, observing faithfully this Imperial command, be the first to sacrifice ourselves to materialize it. With regard to how to interpret this command, I believe that my speech broadcast on the evening of the same day, and also the address broadcast by Prime Minister KONOYE on the 28th, the following day, have clearly given the outline of it, and I am afraid it is hardly necessary for me here

again to talk about it.

"I believe, however, that in order to understand this Pact correctly, it is necessary to appreciate the international atmosphere in which this Pact was formed. For your information, therefore, I will briefly explain in what international atmosphere, and through what course, our country reached this conclusion."

THE PRESIDENT: Even MATSUOKA thought it wasn't worth while to say anything more about it.

MR. LEVIN: I now proceed to page 2, beginning with the fifth line.

THE PRESIDENT: Brigadier Nolan.

BRIGADIER NOLAN: If it please the Tribunal, as I understand the ruling of the Tribunal, the document itself was admitted in evidence, the whole of it.

THE PRESIDENT: Only the parts that Mr. Levin indicated, and he went through the document and indicated the parts he did not propose to read.

BRIGADIER NOLAN: May I, then, have permission to draw the attention of the Tribunal to one or two passages after Mr. Levin has completed his reading?

MR. LEVIN: I think, Mr. President, we discussed the matter very fully. The Court considered it and decided the matter and there should be no further discussion in relation to it.

THE PRESIDENT: We receive it only so far as it states the reasons for the Pact.

MR. LEVIN (reading continued): "However, when we think of the present situation of our country from the standpoint of our foreign policy, we are confronted with the huge problems of how we should support our ever-increasing population and how we should increase our national wealth, which is remarkably meagre compared with that of the two great western nations, Great Britain and the United States of America. In order to get a solution for these problems, our Government has long been striving for overseas expansion of our people by means of foreign trade, emigration, overseas enterprises, etc. However, several nations both in Europe and America have been and are interferring with our overseas development, using such measures as prohibiting or restricting Japanese emigrants, imposing heavy customs duties on Japanese goods, etc."

I turn to page 8, beginning with the first sentence on that page:

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MR. LEVIN (reading continued): "However, when we think of the present situation of our country from the standpoint of our foreign policy, we are confronted with the huge problems of how we should support our ever-increasing population and how we should increase our national wealth, which is remarkably meagre compared with that of the two great western nations, Great Britain and the United States of America. In order to get a solution for these problems, our Government has long been striving for overseas expansion of our people by means of foreign trade, emigration, overseas enterprises, etc. However, several nations both in Europe and America have been and are interferring with our overseas development, using such measures as prohibiting or restricting Japanese emigrants, imposing heavy customs duties on Japanese goods, etc."

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"However, the governments of Great Britain and the United States have made various protests against our Government because they probably misunderstood that Japan was going to occupy French-Indo China by

force of arms. But it is clear, as the joint statement of Japan and France shows, that we respect the territorial integrity of French-Indo China, and have no intention of occupying that territory."

I go to the second to the last paragraph on the same page:

"It goes without saying that our country has absolutely no intention of purposely fighting with any other country, but at the same time we reject and are determined to fight to the end with any nation which tries to stand by Chiang Kai-shek, and thus protract the China Incident, and prevent East Asia from restoring to peace."

On page 9, the last paragraph:

"This Tripartite Pact is indeed a treaty effected under such circumstances and essentially defensive in its nature. Negatively the Pact aims at checking the aggravation of the world chaos which might be accelerated by the new participation of any country either in the China Incident or in the European War, while, positively, it aims at establishing a new order which enables each nation in the world to live in contentment and peace, and at bringing about permanent peace on the basis of justice and impartiality through the cooperation of the three powers -- Japan, Germany

and Italy. The fact is that the lofty spirit of so-called "HAKKOICHIU" (the world as one household), in other words, this great ideal of the "YAMATO" race (Japanese) manifested in the Rescript of Emperor JIMMU at the foundation of our country, has for the first time been given shape in the modern international treaty. It is really a sincere desire of mankind and also a Providence, I believe, for the three peoples of Japan, Germany, and Italy to unite firmly into one under this great ideal and lofty spirit in the face of the unprecedented chaotic crisis that the world has ever had."

The last two paragraphs on page 10:

"On the other hand, I am not yet in a position to tell you concretely what response has the conclusion of the Tripartite Pact created, or is going to create among the powers. It is certain, however, that the great strength of the Tripartite Pact has given such a deep impression upon the powers that some of them are taking strong attitude in desperation toward us, and we should always look out for it. At the same time, it seems that a reflective view of what made Japan, Germany and Italy effect such a pact is gradually gaining ground. At any rate, we should always make preparations in anticipation of the worst situation.

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"In the Imperial Rescript promulgated when Japan withdrew from the League of Nations, His Majesty the Emperor specially declared: 'However, the advancement of international peace is what, as evermore, we desire, and Our attitude toward enterprises of peace shall sustain no change. By quitting the League and embarking on a course of its own, Our Empire does not mean that it will stand aloof in the extreme Orient nor that it will isolate itself thereby from the fraternity of nations. It is Our desire to promote mutual confidence between Our Empire and all the other Powers and to make known the justice of its cause throughout the world.' Furthermore, in the Imperial Rescript issued when the present alliance was concluded, His Majesty the Emperor said at the outset: 'It is a great instruction of Our Imperial Ancestors which We always observe faithfully to uphold the cause of justice and humanity throughout the world and to change the universe into one household.' In conformity with this Imperial will, we should more positively exert ourselves to improve our diplomatic relations with other nations, and to bring about true peace all over the world. However, we are living in an unprecedented turbulent age and are unable to tell what accident will further happen, when, and where. And jealousy and

suspicion are commonly associated with the age of wars. For example, when we declare that we intend to establish the Greater East Asia Co-prosperity Sphere, some states are apt to doubt if Japan, monopolizing the Greater East Asia including the South Seas, is going to shut out other powers from the area and to deny their rightful actions therein. This is not true. The object thereof is to do away with all the improper conducts and measures which the western powers have hitherto practised as well as all the unnatural restrictions imposed by them upon the rightful actions of human beings in the field of their economic activities such as commerce, enterprise, communications, traffic and the like in the Greater East Asia Co-prosperity Sphere. And our country also wishes to act on the same equal basis with the other powers, in order to promote the prosperity and stabilization of all the races in the Greater East Asia Sphere, so that they may walk along the path of mutual tolerance and welfare with the prerequisite condition of freedom to cut and decide their own respective way to Fortune.

"In short, Japan, unlike the practice hitherto committed by the western powers, neither intends to swallow up any territories nor conquer, nor exploit any people in this sphere. On the contrary, Japan wants

to free the natives from the imperialistic oppressions, to love them as brothers and sisters instead of treating them as slaves, and to establish a relation of mutual existence and prosperity."

I proceed to page 13, the second paragraph:

"The relations between our country and the Soviet Union, heretofore, have not been friendly for various reasons, but I believe that at this critical moment which might be called the time of a world revolution, both countries should not quarrel with each other at the corner of East Asia. I believe that the time has now come when, if there is any misunderstanding or if there are any pending problems between the two countries, we should now try to remove or settle them and should cooperate for a greater mission. In the Soviet Union they are repeatedly saying that they won't pick up chestnuts in the fire for any other state. This to the same with every nation."

I proceed to page 14, the middle of the page:

"The last point I should like to touch upon on this pact is the fact that although it has been effected, it does not necessarily mean that Japan will take part in the European War, or will immediately make an enemy of any power other then Germany and Italy. So long as the powers which have not yet participated

attack any of the three Countries--Japan, Germany and Italy, nor disturb our plan of the Greater East Asia Co-prosperity Sphere, our country is willing to be in friendly terms with them and to share in the godsend benefits. It goes without saying that we have no intention of breeding unnecessary troubles with them. Therefore we should strictly refrain from raising any rash anti-foreign agitation without any justifiable reasons.

"By the way, as there are instances in which a trivial matter resulting in a grave consequence or effect, I should like to add a few more words in this connection. I dare say it is not infrequent that the attitude of our policemen in charge of foreign nationals is apt to be unnecessarily irritating toward them. To be frank with you, this state of affair has so far turned out to be unfavorable to our country in dealing with international problems.

"We are in a period of emergency today and it may be more difficult, I am sure, to deal with this affair than in normal times, but for the very reason that this is an emergency, I hope you will be all the more prudent about this matter. I should like to ask you to stop, as far as possible, any interference or supervision which is apparently not in line with our

common sense. At the same time, I should like to ask you to instruct our people to be magnanimous worthy of a great nation in advancing toward our great aim. I believe that the pact which has been concluded this time shows this direction very clearly. I am now feeling that the dark clouds and fog that had long been hanging low before us since the outbreak of the China Incident have now been swept away, and we can now see a bright future full of hope, though the way to it may be very difficult and steep. I earnestly hope and am counting on you that you officials will make our people understand well what I have said today and at this critical moment when the destiny of the "YAMATO" race, (Japanese) nay, of the entire human beings of the world may be determined, you will render your service to our country together with our whole 100,000,000 people united as one body."

Morse & Lefler

MR. CUNNINGHAM: If the Court please, the fourth document of the series, defense document 1072, is offered in evidence. This is Premier KONOYE's address in the 76th session of the Diet on the 21st of January, 1941, which explains the peaceful purposes of the Pact as the period of time went on. I might suggest that the prosecution has intimated in their proof that the Pact was improperly implemented as time went on and this is one of the documents which shows that the peaceful purposes of the Pact were maintained.

THE PRESIDENT: Bridgadier Nolan.

BRIGADIER NOLAN: May it please the Tribunal, we object to the document. The only reference I can find in it to the Tri-Partite Pact is to be found on page 2 where it says quite briefly that "The purport of the recently concluded Japan-German-Italian Tripartite Treaty was clarified in the Imperial Rescript issued at that time." The rest of the document consists of a threat to destroy those who resist Japan and a call for resolution to establish a new order in Greater East Asia. It deals with education and the productive power of the nation and a low price policy law.

THE PRESIDENT: I don't suppose you object as far as regards that sentence you read and the following

sentence.

BRIGADIER NOLAN: No, I don't object to it, sir.

THE PRESIDENT: In exhibit 1300 the prosecution used a speech on the Pact as late as January, 1941 -- MATSUOKA's. A colleague reminds me of that, and it is relevant, too.

BRIGADIER NOLAN: But of course, your Honor, we submit that there is a vast difference between the purposes for which we may need evidence for a prosecution and the nature of an evidence which may be admitted by the defense in exculpation of the charges against them.

THE PRESIDENT: You tender part of the reasons of those who know; they tender the balance. Why shouldn't they?

BRIGADIER NOLAN: We tender them to show that a speech was made at that time by an individual who made certain remarks. The defense produced these documents, as I understand it, for the purpose of establishing as a fact those matters which are referred to in the speeches themselves.

But the Tribunal has ruled in respect of the last document that it desires to hear what was said in respect of the reasons for entering into this Pact.

In view of that ruling, I cannot and do not object to the references to the Pact contained in this document of which I can only find one.

MR. CUNNINGHAM: That is all I care to read, your Honor. I only want to show that he said the same thing one time that he said another time. And I only want to go from "Our country" on page 1 to "vigorous efforts" on page 2.

THE PRESIDENT: No, the only two that Brigadier Nolan doesn't object to -- the only two sentences are those that I referred to. They are the first two sentences in the third paragraph on page 2.

MR. CUNNINGHAM: Well, I can't find that, but all I want to do is to read those three paragraphs or so from "Our country" down to "vigorous efforts", and they concern the Tri-Partite Pact. Or I might go on page 2 from "The purport of the recently concluded" Pact down to "vigorous efforts" at the end of that paragraph.

THE PRESIDENT: Only the first two sentences relate to the Pact as far as I can judge.

MR. CUNNINGHAM: Well, I will cut it down to the first two sentences of that paragraph.

THE PRESIDENT: The document is admitted to that extent on the usual terms.

CLERK OF THE COURT: Defense document 1072 will receive exhibit No. 2741.

(Thereupon, the document above referred to was marked defense exhibit No. 2741 and received in evidence.)

MR. CUNNINGHAM: I read from exhibit 2741, page 2, middle of the page:

"The purport of the recently concluded Japan-German-Italian Tri-Partite Treaty was clarified in the Imperial Rescript issued at that time. With the conclusion of this treaty, Japan aims to maintain world peace and advance towards the high aim of stabilization of Greater East Asia. Needless to say --"

THE PRESIDENT: That is enough. That is all that is admitted.

MR. CUNNINGHAM: "We do not want any more war --"

THE PRESIDENT: The reporter will not report any more.

MR. CUNNINGHAM: I suggest that that last sentence be stricken from the record, eliminated from the part allowed. I am sorry about that.

THE PRESIDENT: I anticipated you, Mr. Cunningham.

MR. CUNNINGHAM: For the same purpose, I call the Court's attention to prosecution exhibit 558, transcript pages 6412 to 6417, the broadcast of ITO, Nobumi on the 26th of September, 1941, showing the peaceful nature of the Tri-Partite Pact, referring particularly to the bottom of page 2 and the first

paragraph on page 2.

I now offer in evidence defense document No. 312, address of Foreign Minister TOYODA on the first anniversary of the conclusion of the Tri-Partite Pact, to show that despite the change of Japanese Cabinet Foreign Minister TOYODA considered the Pact as the basis of Japanese diplomacy in the understanding that the mission of the Pact was to establish peace and to prevent the extension of the hostilities and dispute.

THE PRESIDENT: Brigadier Nolan.

BRIGADIER NOLAN: May it please the Tribunal, this speech makes three points. The first one is that Hungary and Rumania have joined the pact. That has already been proved in this case.

The second point raised is that difficulties will arise from time to time and must be met. That is mere conjecture.

The third point that the speaker made was that the pact has prevented the spread of hostilities. That is a matter of opinion.

We submit that this document is of no assistance to the Tribunal and should be rejected.

THE PRESIDENT: We will hear you after the recess, Mr. Cunningham.

We will recess for fifteen minutes.

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

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Whalen & Luda

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

THE PRESIDENT: Mr. Cunningham.

MR. CUNNINGHAM: If the Tribunal please, all that I am interested in in this document 312 is page 2, the first four lines of the paragraph.

THE PRESILENT: He was the Foreign Minister of the day?

MR. CUNNINGHAM: Yes, sir.

THE PRESIDENT: And this speech was made on the day -- a year later, was it?

MR. CUNNINGHAM: Anniversary, yes, sir.

THE PRESIDENT: By a majority, the objection is overruled and the document admitted to the extent of those four lines referred to by Mr. Cunningham.

CLERK OF THE COURT: Defense document 312 will receive exhibit No. 2742.

(Whereupon, the document above referred to was marked defense exhibit No. 2742 and received in evidence.)

MR. CUNNINGHAM: I read on page 2 of exhibit 2742, the address of Foreign Minister TOYODA.

"Thirdly, the Three-Power Pact has a lofty mission of preventing the extension of the dispute as well as the spread of hostilities as far as possible.

Whalen & Luda

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

THE PRESIDENT: Mr. Cunningham.

MR. CUNNINGHAM: If the Tribunal please, all that I am interested in in this document 312 is page 2, the first four lines of the paragraph.

THE PRESIDENT: He was the Foreign Minister of the day?

MR. CUNNINGHAM: Yes, sir.

THE PRESIDENT: And this speech was made on the day -- a year later, was it?

MR. CUNNINGHAM: Anniversary, yes, sir.

THE PRESIDENT: By a majority, the objection is overruled and the document admitted to the extent of those four lines referred to by Mr. Cunningham.

CLERK OF THE COURT: Defense document 312 will receive exhibit No. 2742.

(Whereupon, the document above referred to was marked defense exhibit No. 2742 and received in evidence.)

MR. CUNNINGHAM: I read on page 2 of exhibit 2742, the address of Foreign Minister TOYODA.

"Thirdly, the Three-Power Pact has a lofty mission of preventing the extension of the dispute as well as the spread of hostilities as far as possible.

I have no doubt that in the past year the pact has also accomplished a great deal in this respect."

THE PRESIDENT: Have you any more documents of this nature?

MR. CUNNINGHAM: Just one more, as I understand.

I now offer in evidence defense document 311, the address of Foreign Minister TOGO on the extraordinary session of the Diet of the 17th of November, 1941, and read only the part of it which concerns the Tri-Partite Pact, to show that Foreign Minister TOGO, as the second foreign minister after MATSUOKA, also respected and considered the Tri-Partite Pact as the instrument of peace.

I only want to read pages 1 and 2 which concern the Tri-Partite Pact.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 311 will receive exhibit No. 2743.

(Whereupon, the document above referred to was marked defense exhibit No. 2743 and received in evidence.)

MR. CUNNINGHAM: I read from exhibit 2743, the address of the Foreign Minister, Mr. Shigenori TOGO, delivered at the extraordinary session of the

Diet, November 17, 1941.

"With the heavy responsibilities for the conduct of foreign affairs having unexpectedly devolved upon me--"

THE PRESIDENT: We haven't our copies yet.

MR. CUNNINGHAM: Oh, I am sorry.

THE PRESIDENT: But you are reading only part of this, aren't you?

MR. CUNNINGHAM: Yes, sir.

THE PRESIDENT: That is the only part admitted.

MR. CUNNINGHAM: The first two pages, down to "...spread of the war," the middle of page 2.

Starting again:

"With the heavy responsibilities for the conduct of foreign affairs having unexpectedly devolved upon me it is a great pleasure for me to avail myself of this opportunity today of speaking on the foreign policy of the Imperial Government.

"Japan, engaged for the past four years in military operations for the construction of a new order in East Asia, is now marching forward to surmount current difficulties with the unity of the entire nation. First of all, I wish good fortune and success to the officers and men of our gallant fighting services who are distinguishing themselves on the front

under the August Virtue of His Imperial Majesty, paying, at the same time, my humble and sincere tribute to the honoured spirits of many who have fallen.

"It needs no reiteration that the fundamental principle of Japan's foreign policy aims at the establishment of peace in East Asia based on justice, thereby contributing toward the promotion of general welfare of mankind. It is nothing other than the fruit of the constant efforts exerted in espousal of this great principle that our country has witnessed an unceasing development of her national fortune since the Meiji Restoration. It may be recalled that in the past seventy and odd years Japan has, on more than one occasion, successfully overcome national crises. Especially noteworthy is the Russo-Japanese War, in which Japan staked her national existence in order to eliminate an obstacle to the peace of East Asia. She has since been advancing her position as the stabilizing force in East Asia, and is now endeavouring with unflinching courage to accomplish the great task of inaugurating toward the peace of the world.

"Fortunately, Germany and Italy having similar views with Japan, the Three-Power Pact was brought into being. In a little more than a year of its existence, as is well known, the pact has made, as

intended, a great contribution toward the construction of new order in East Asia and Europe, as well as toward the prevention of the spread of the war."

The following third group of witnesses and documents will show that the motives of the Japanese Government in concluding the Tri-Partite Pact on 27 September 1940 and the purpose of that pact as interpreted by the Japanese Government were peaceful and purely defensive, and Germany also assured Japan of her peaceful intention during the negotiations for the pact. It will further be shown that the Tri-Partite Pact is entirely different from the abortive treaty negotiated in 1938 and 1939 by the HIRANUMA Cabinet.

I first call -- skipping down to the middle of the page of the introduction -- I first call Witness Heinrich Stahmer, former ambassador of Germany to Japan, who could be considered as one of the best living authorities on Japanese-German relations.

THE PRESIDENT: It is not within the province of counsel to give certificates of quality to witnesses. After hearing this witness, we will tell you what we think of him if necessary. He may or may not prove to be what you say. You do not know yet, nor do we.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: If the Tribunal please, I want to refer again to the fact that the rule of the Tribunal has not been complied with with regard to service of the affidavit of this witness within the prescribed time.

THE PRESIDENT: Has there been a substantial compliance?

MR. TAVENNER: The affidavit was served at five minutes until 5 o'clock yesterday afternoon -- five minutes before 5. Notwithstanding the fact that it has been stated that this affidavit was prepared about five days ago, it had not been served upon us until as late as it seemed that it could be possible to serve it.

I made an investigation of the situation described yesterday and I find that the document was not tendered to the prosecution section, and I find that both from our own representatives in that section as well as from those whose duty it was to deliver it there.

THE PRESIDENT: If the delivery was a little late perhaps it was due to temporary disorganization, and without committing yourself to the future you might overlook it, Mr. Tavenner.

MR. TAVENNER: We overlooked it, of course, on many occasions.

THE PRESIDENT: We are trying to save time.

We have had the affidavit for three days, of course. I mentioned yesterday the rule was complied with with regard to the Judges.

MR. TAVENNER: Yes, sir. But, unfortunately, that does not help us.

THE PRESIDENT: Well, are you insisting on your objection? If you do, we sustain it.

MR. TAVENNER: The suggestion has been made that we have only the direct examination today. If that is true, I don't object to that, of course.

THE PRESIDENT: It will take until 4 o'clock to read this. We won't take any cross-examination today, or permit any further questioning.

MR. CUNNINGHAM: Well, your Honor, I am just as sorry as I can be that these documents didn't get out. It required a lot of wear and tear on my disposition to get them delivered yesterday afternoon.

THE PRESIDENT: Well, I understand my colleagues want a fuller explanation.

MR. CUNNINGHAM: I went to the document section yesterday afternoon to determine why the document had not been delivered when the American copies were

completed three or four or five days ago. They told me that they were not permitted to deliver the English copy until the Japanese copy was ready, and that they would not do it. With a little persuasion I was able to convince them that that rule should be waived in regard to this affidavit, and the English copies were delivered to the prosecution yesterday.

It was just due to a slight delay in the translation from English to Japanese, as I understand it.

THE PRESIDENT: Proceed.

H E I N R I C H S T A H M E R, called as a witness on behalf of the defense, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. CUNNINGHAM:

Q Will you state your full name and present address, please?

A My name is Heinrich Stahmer. I am living in Atami, Mampei Hotel.

Q Now, I will ask the marshal to hand you defense document 1675 and ask you to state if that is your affidavit.

A Yes, that is my affidavit.

Q I will ask you to state if the contents thereof are true and correct as you verily believe?

MR. CUNNINGHAM: I offer in evidence defense document 1675, the affidavit of--

THE PRESIDENT: He didn't answer.

MR. CUNNINGHAM: (Continuing) Heinrich Stahmer.

THE PRESIDENT: I didn't hear him answer if the affidavit was true.

Q I ask you to state if this affidavit is true.

A Yes, sir, it is true.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: If it please the Tribunal, I desire to object to the introduction of large portions of this affidavit.

I object to the entire section marked with the Roman numeral I in that it is irrelevant and immaterial.

THE PRESIDENT: Well, you can't mean all that. You see the heading is misleading. Under the "Background" he includes his name and the form of oath and his address.

MR. TAVENNER: And, of course, that is also true as to his former position.

THE PRESIDENT: However, we understand what you mean.

MR TAVENNER: Yes. I should have confined my objection to the last three paragraphs on the first page and to the three paragraphs on the top of page 2.

Objection is also made to the last two paragraphs on page 2. What it was usual to do in regard to employment of liaison persons is certainly not proper evidence.

THE PRESIDENT: Do you object to the whole of Section 2?

MR. TAVENNER: I do not object to the first paragraph in that that relates to the relationships

between Ribbentrop and OSHIMA.

I do object, however, to the last paragraph under that Section 2 which appears at the top of page 3.

Under Article 3 on page 3 I object to the second paragraph in which the affiant endeavors to state what the negotiating powers had in mind in 1938 and 1939, on the ground that such statements are an invasion of the province of the Tribunal.

Objection is also made to the following paragraph as being irrelevant and immaterial.

The next paragraph, beginning with the words "The negotiations progressed" and so forth, is objected to in that it refers to a rough draft of an agreement which the affiant attempts to describe, and which is not produced or the absence of which is not accounted for.

Objection is also made to the latter part of the following paragraph, which is the last paragraph on page 3, beginning with the sentence "A deadlock developed over the interpretation of Article III . . ." This is evidently the same agreement referred to in the preceding paragraph and which has not been produced.

GREENBERG&REICHERS

On page 4, in the middle of the second paragraph we find a sentence which says: "In May 1939 the Japanese Prime Minister HARANUMA," and so forth. The document describing that message is in evidence and has been read in its entirety, and we consider it is improper for the witness to attempt to describe it.

The following paragraph deals with the same subject matter and is objected to for the same reason.

The next paragraph, which is the second from the bottom of page 4, refers to the duty of an ambassador, generally, and is objected to as being irrelevant and immaterial.

At the very bottom of page 4, beginning at the middle of the sentence, "However, when Ambassador Ott asked for information," and so forth, it has reference to a telegram which is not produced in evidence and the absence of which is not accounted for, and therefore objection is made.

On page 5, reference is made to the third paragraph from the top of the page. That matter is covered by numerous documents introduced in evidence and therefore is objectionable on the ground that it is repetitive.

The next paragraph, which follows, which is

the last paragraph under 4, is objectionable as expressing the witness's opinion and conclusions.

I will skip now to page 10, the last paragraph on that page. Objection is made to the second sentence in that paragraph, "there was no joint German-Japanese war," and so forth, for the reason that it is a conclusion and that the Tribunal must determine what constitutes joint warfare.

On page 11 reference is made to the last sentence in paragraph one, beginning "the claim that the three nations," and so forth, which is likewise objected to on the ground that it is an invasion of the province of the Tribunal, and it is an expression of opinion or conclusion on the part of the witness.

The next succeeding four paragraphs are, likewise, objected to. They refer to Germany's regard toward the United States, the British Commonwealth of Nations, the Republic of France and the Netherlands which are the result of conclusions and opinions on the part of the witness and the subject matter of which is irrelevant to any issue we are trying here.

No objection is made to the last paragraph on that page.

Now, on the last and 12th page, objection is made to the entire material on that page for the same reasons and on the same grounds as asserted as to the four paragraphs on the preceding page. Germany's interest in Siam, the Philippines and other places mentioned can have no bearing upon the issues in this trial.

This constitutes the objection.

THE PRESIDENT: Mr. Cunningham.

MR. CUNNINGHAM: On the first objection, your Honor, as to the background and qualifications of the witness, I believe that you will find, after the questions have been propounded to the witness by the other defense counsel who have questions and after the additional document, 1714, containing

questions, that each element in his background gives this witness a basis upon which to answer the specific questions, and I believe it is all essential. I cannot help but believe that the qualifications of this witness should be a little more extensive than the average witness. This man was sent out as the representative of his country to make an international agreement. I am perfectly willing to scratch out of that background material anything which you think you do not wish to know.

On the second objection, due to the number of documents which were introduced concerning Japanese-German relations, I think it essential to show the relationship between this witness and the ambassadors from Japan to Germany and the relationship of this witness to the foreign minister of Germany, von Ribbentrop. And, to rebut any suggestion of conspiracy between the two nations or representatives, I merely wanted to show that liaison between the foreign minister and the ambassadors was something that was maintained between the ambassadors of various countries and the foreign minister of Germany. Due to the fact that this witness may be the only foreign ambassador to be called as a witness in this case, I thought, perhaps, the informa-

tion in these paragraphs would be helpful to the Tribunal.

In referring to the middle of page 3, the proposed treaty the negotiating powers had in mind, I suggest that how are we going to know what the contracting parties had in mind besides their agreements unless we call upon witnesses to tell us?

Now, on the negotiations, that progressed, at first, smoothly, and the rough draft, I call your attention to the fact that the rough draft is in evidence and need not be accounted for, as I understand it.

Now, an objection has been made as to the sentance, "a deadlock developed over the interpretation of Article 3." The witness, in answer to the question "What caused the rupture in the negotiations?" -- his natural answer would be, "A deadlock occurred as a result of the interpretation of Article 3." I don't see anything that could be more explicit.

On page 4, the second paragraph, we have the Japanese interpretation of the reasons why certain things happened. This is merely the German interpretation of it from one of the men who was

taking part in the negotiations.

On the next paragraph, although it is the duty of an ambassador, one of the questions in this case is, to what extent an ambassador should be held for the policy of his government, and this paragraph throws a little light upon that.

Now, on the bottom of page 4 it is suggested, when Ambassador Ott asked for information concerning this matter, that ties in with that former paragraph and it supports the evidence which is already in the record, but it gives the point of view from the other side.

On the objection to the third paragraph in page 5, I say that this gives the German view, and we have not had very much on that side of the question, and I think it would be relevant.

On the fourth paragraph on page 5, I believe the Ballantine testimony and the other information hinged more or less upon the statement of the policy of his government, and I think this man is qualified to testify as to what the policy of his government was on certain questions.

Then going to page 10, there is an objection that there was no joint German and Japanese war. In fact, there were two wars. This will be sub-

stantiated in statements by the greatest living authorities on the subject, not as witnesses, but as statements of these witnesses in the best form that we can present them, and they will be corroborated with other documents.

As far as page 11 and 12 are concerned, on the conclusions, it was the thought of the witness, in preparation of the affidavit, that these items were items which went into the considerations -- the attitude shown in the conclusions is a factor which went into the consideration of this witness and his superiors in bringing about the international agreement between Japan, Germany and Italy; and these last two pages are responses to two questions:

No. 1: The charge has been made that Japan and Germany and Italy set out to dominate the world. What was the attitude of the Germany Government toward that question?

No. 2: What was the attitude of the German Government toward the various countries of the world and those specifically mentioned?

These are the answers in the last two pages.

Now, it is a question for the Tribunal, after listening to this witness, to determine whether or not he is qualified to give the answer

to those questions.

THE PRESIDENT: By a majority, the Tribunal upholds the objections and rejects the document to the extent of the objections. Otherwise, the document is admitted on the usual terms.

CLERK OF THE COURT: Defense document 1675 will receive exhibit No. 2744.

(Whereupon, the document above referred to was marked defense exhibit No. 2744 and received in evidence.)

MR. CUNNINGHAM: Your Honors, I have a second affidavit in the form of questions and answers which the witness has sworn to that I would like to offer at the same time in order that there be no interruption in the reading.

THE PRESIDENT: We will not take that this afternoon. We have a conference now. In the meantime, revise the affidavit in the terms of the objections which have been sustained and present the amended copy.

We will adjourn until half-past nine Monday morning.

(Whereupon, at 1555, an adjournment was taken until Monday, 16 June 1947, at 0930.)

16 June
witness

I N D E X
Of
WITNESSES

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I N D E X

Of

EXHIBITS

Doc. No.	Def. No.	Pros. No.	Description	For Ident.	In Evidence
1714	2744-A		Interrogatories of Ambassador Stahmer		24438
1770	2745		Summary of the Conversation Between the Fuehrer and Ambassador OSHIMA in the presence of the German Foreign Minister 4 September 1944		24785

Monday, 16 June 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, all Members sitting, with the exception of: HONORABLE JUSTICE E. H. NORTHCROFT, Member from the Dominion of New Zealand, not sitting from 0930 to 1600.

For the Prosecution Section, same as before.

For the Defense Section, same as before.

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(English to Japanese and Japanese to English interpretation was made by the Language Section, IMTFE.)

Kapleau & Wolf

MARSHAL OF THE COURT: The International Military Tribunal for the Far East is now in session.

THE PRESIDENT: Mr. Cunningham.

H E I N R I C H S T A H M E R, called as a witness on behalf of the defense, resumed the stand and testified as follows:

MR. CUNNINGHAM: If the Tribunal please, I now read exhibit 2744. May it be understood that only that part of the exhibit which is read is considered part of the record?

THE PRESIDENT: The parts objected to and disallowed will not be read and will not be part of the record.

MR. CUNNINGHAM: There is one paragraph that was not objected to, next to the last page, that I want to eliminate due to the fact that I do not wish to divorce it from its context in the rest of the paragraphs in that subdivision.

THE PRESIDENT: Read everything except the parts disallowed on objection. You may not read any paragraph, or parts of, successfully objected to.

MR. CUNNINGHAM: By the same token may I eliminate one paragraph that was not objected to?

THE PRESIDENT: That is a matter entirely for you, Mr. Cunningham. You have complete control over the matter which was allowed.

Mr. Tavenner.

MR. TAVENNER: If the Tribunal please, the prosecution has no objection to the elimination of the paragraph he has mentioned, but I would like to call the Tribunal's attention to the first part of the paragraph on that same page, page 11. I mean to refer to the first paragraph on that page.

In stating my objections at the close of the session on Friday, I failed to object to the residue of that paragraph.

THE PRESIDENT: I have you down as having objected to the last sentence of that paragraph, beginning with the words "the claim."

MR. TAVENNER: Yes. I feel that I should have objected to that entire paragraph.

THE PRESIDENT: Well now, do not bring in your afterthoughts here, Mr. Tavenner, unless it is very vital. It is not. However, you please yourself. You can object, if you wish, but I do not think you should. It sets a bad precedent. However, Mr. Cunningham can drop as much as he likes.

Mr. Cunningham.

DIRECT EXAMINATION

MR. CUNNINGHAM: I now read exhibit 2744, skipping the formal parts.

"AFFIDAVIT OF HEINRICH STAHMER, FORMER GERMAN AMBASSADOR TO CHINA (NANKING) AND JAPAN

"I, Heinrich Stahmer, being just sworn on oath, do hereby depose and say: I was born in Hamburg, Germany, on 3 May 1892. I entered the army in September 1911 as Ensign and became an officer in February 1913. After the war I left the service and became a businessman. In that capacity I was a director in two German industrial companies of the electric branch. I was a member of the National-Socialist Party since 1932, but having been a freemason, without any possibility of a party career.

"In June 1935 Ribbentrop, at that time Ambassador at large, engaged me as an employee of the German Government. Some time after entering upom my duties in the office of Ribbentrop, I received a delegation of British ex-servicemen, the first group of this kind to visit Germany. About a month later I was appointed the official representative of the German Ex-Servicemen's Organization in their

relations to the similar organizations in foreign countries."

Skipping to page two, heading two:

"Duties as Liaison

"When I was Liaison man between Ribbentrop and Ambassador OSHIMA, my function consisted mainly in that I had to see Ambassador OSHIMA from time to time and to explain to him the ideas and wishes of Ribbentrop, while Ambassador OSHIMA gave me his comments on the cables and instructions he received from his Government; then I had to convey his explanations to Ribbentrop who was very often absent from Berlin. Furthermore, I had sometimes to accompany Ambassador OSHIMA when he travelled in Germany, and had to keep social contacts with him and the members of the Japanese Embassy in Berlin. I was not present at the major conferences between Ribbentrop and Ambassador OSHIMA, except on one or two occasions when they conferred on general matters."

Skipping to page three, Paragraph 3, 1st paragraph:

"Participation in 1938-39 Negotiations

"On account of my function as mentioned above I participated from time to time in the German-Japanese negotiations for a consultation and assistance Pact which took place in Berlin in

1938 and 1939. In 1938 the situation in Europe was getting rather tense for Germany after the sensation caused by the 'Anschluss' of Austria, while Japan was in a difficult position as a result of the 'China Incident'. (These circumstances caused the two countries to consider the strengthening of the ties existing between Germany, Japan and Italy since the Anti-Comintern Pact of 1936 and 1937.)"

Skipping now to the top of page four -- I made a mistake -- I wish you would catch the first sentence in the last paragraph on page three.

"However, towards the end of 1938 and especially after the change of the Japanese Cabinet from KONOYE to HIRANUMA at the beginning of 1939, Japan was slowing down the negotiations and Germany got the impression that the administration in Japan was not seriously interested in a closer relation with Germany and Italy."

And then skipping to the top of page four:

"After the end of March, 1939, negotiations continued; but the cables from Tokyo arrived only in long intervals and it seemed no doubt that the new government in Japan had definitely changed its ideas about the aims of the planned treaty. While the negotiations were thus deadlocked, the general

political situation for Germany grew more and more tense. Ribbentrop therefore took the opportunity of the presence of Ambassador OSHIMA and SHIRATORI at Hitler's 50th birthday party on 20 April 1939, to tell them quite frankly that he was not very optimistic concerning the conclusion of the above mentioned agreement; that, as Germany wished under all circumstances to maintain most friendly with Japan, he felt himself obliged to inform them confidentially that under the then prevailing conditions Germany might feel herself forced to approach U.S.S.R. with the aim of concluding a non-aggression pact; he assured them, however, that nothing yet has been done heretofore."

Then, skipping down to the last paragraph on page four.

THE PRESIDENT: I have no objection noted to the first part of the next paragraph.

MR. CUNNINGHAM: Yes. Down through "May and June 1939":

"In order to find a way out of the deadlock, in May and June 1939 some officials of the Japanese Embassy in Berlin had several conversations with the Undersecretary of State D. Gauss, who was the legal expert of the German Foreign Office, but without

success on either side."

That is where your objection began on that.

THE PRESIDENT: Then you go to the bottom of the page.

MR. CUNNINGHAM: Yes.

THE PRESIDENT: "The German Embassy in Tokyo was not informed for some time"; and then you go to the bottom of the page.

MR. CUNNINGHAM: Then I go to the top of page 5.

THE PRESIDENT: No.to the bottom of page 4: "The negotiations were completely broken off when the non-aggression pact between Germany and the Soviet Russia was concluded on 23 August 1939"; and then continue on page 5.

MR. CUNNINGHAM: The top of page 5. paragraph 4:

(Reading) "The negotiations were completely broken off" -- You just read it.

THE PRESIDENT: But you should read it.

MR. CUNNINGHAM (reading): "The negotiations were completely broken off when the non-aggression pact between Germany and the Soviet Russia was concluded on 23 August 1939.

"German-Russian negotiations resulting in this Pact were kept secret from the Japanese. When the matter was agreed upon between Germany and Russia,

I was ordered by Ribbentrop to go to Ambassador OSHIMA and tell him the fact. The Ambassador's attitude was perfectly gentlemanlike, but he could not conceal that he was extremely disappointed, and he told me so."

The next two paragraphs, I understand, are out.

THE PRESIDENT: I have the next one allowed. It may be wrongly marked.

MR. CUNNINGHAM (reading): "5. VISITS TO TOKYO

"I visited Japan for the first time in February, 1940, when I accompanied the President of the German Red Cross, the Kuke of Koburg, on his visit to the United States. We travelled via Siberia and Japan, staying in Tokyo for four or five days only. On the return journey we touched Japan in May 1940 and stayed in Tokyo about a fortnight. That was my second visit. (The Duke of Koburg's visit to the United States was made in order to thank the American Red Cross for its activities in Poland and Germany during the German-Polish War of the American Red Cross to him. No political purpose was hereby pursued.)

"During my stay in Tokyo we made courtesy calls on the Japanese Foreign Office and the Japanese Red Cross. On our way back through Japan the Duke

and I delivered a congratulatory message to the Emperor of Japan on the celebration of the 2600th anniversary of the Dynasty.

"I met my old friend OSHIMA and also SHIRATORI, whom I had met once or twice in Berlin before on social occasions. As far as I remember I saw them twice, once during a dinner in the German Embassy and a second time on occasion of a Japanese lunch in Tokyo, where I do not remember the host. We talked together, but not about political questions. Mr.OSHIMA was then in complete retirement and did not take any part in actual politics to my knowledge.

"During my two visits together with the Duke of Koburg I sent one telegram each time to the Foreign Minister or to the Secretary of State in Berlin, wherein I gave a short survey of my impressions of the general political situation. After my return to Germany I made no further verbal or written report to anybody.

"My third visit to Japan was in the year 1940, when I upon instructions from Ribbentrop, arrived in Tokyo via Siberia on 7 September and stayed there until the beginning of October, 1940. During my stay in Tokyo, I together with Ambassador Ott, negotiated with Foreign Minister MATSUOKA, on the Japanese side,

the Three Powers Pact.

"6. NEGOTIATIONS-TRI-PARTITE PACT

"In July, 1940, in Japan, the YONAI Cabinet was replaced by the KONOYE Cabinet as a result of the increasing American pressure. As far as we know, Germany understood at that time the KONOYE Cabinet was endeavoring to promote the idea of improving the relations with the United States; however, at the same time it wanted a closer contact with Germany with a view of strengthening Japan's political position in consummating the negotiations with the United States. Accordingly, Foreign Minister MATSUOKA began to throw out his feelers very cautiously via the Japanese Ambassador KURUSU in Berlin and the German Ambassador Ott in Tokyo. Incoming telegrams from Ambassador Ott of the German Embassy in Tokyo and verbal information from Ambassador KURUSU in Berlin created a completely confused picture of the Japanese attitude from the viewpoint of the German Government, which eventually could not figure out what the Japanese Government had in mind.

"In view of the confused picture and under the pressure of time, I was ordered by Ribbentrop to go to Tokyo. Ribbentrop's order included the following main points:

"(a) To find out the actual intention of the

Japanese Government towards Germany;

"(b) To take up immediately negotiations in presence of Ambassador Ott, should the Japanese show the intention to conclude a new agreement with Germany;

"(c) To report immediately every detail in case of negotiations, of which every item had to be approved by Berlin before continuing.

"After arriving in Tokyo on 7 September 1940, I was very cautious about my conduct, in accordance with Ribbentrop's instructions. Above all, I avoided to talk to any Japanese other than Foreign Minister MATSUOKA on my mission to Japan. I met him first on 9 September 1940, together with Ott, and explained to him the German intention to avoid any further spreading of the war, to keep the United States out of war, and create, if possible, a platform on which peace could be built. I declared further that Germany had no intention to draw Japan in the European war, and was ready, if requested by Japan, to use her good offices in order to promote friendly relations between Japan and Soviet Russia, and to contribute to the settlement of the China Incident.

"MATSUOKA agreed wholeheartedly. I reported this to Berlin, and received instructions in return from Ribbentrop to begin with the negotiations of an

agreement. The negotiations showed quick progress and the Three Powers Pact was signed on 27 September 1940.

"In the course of the negotiations I had time to get a good personal impression of Minister MATSUOKA. He spoke very good English and was very proud of having had an education in the United States. On the first meeting we had he began to talk about half an hour of his life, his career, his connections and his importance and told me himself" -- and I wish to insert "his nickname," because that was omitted -- "his nickname, which I heard later several times confirmed, 'I, my, me, myself.' He seemed to believe to be just the right man as political leader in this decisive time for Japan and my later private talks with him, when he visited Germany in the next year, confirmed this impression.

"Mr.OSHIMA had no official position at that time, and no concern with these negotiations as far as I know. During my stay in Tokyo I called on him, because he was an old friend of mine, and met him on several social occasions. However, I neither revealed to him the negotiations for the Three Powers Pact nor asked I for his advice concerning the matter.

"7. AMBASSADOR OSHIMA'S RETURN TO GERMANY

"When Ambassador OSHIMA came to Germany for

the second time as Japanese Ambassador on February 1941, I was again Liaison man between Ribbentrop and Ambassador OSHIMA. However, as in the previous time, I seldom attended personally the conversations between them.

"In his conversations with me Ambassador OSHIMA never committed Japan to attack Singapore or U.S.S.R.; I have also no recollection that Ribbentrop ever told me that Ambassador OSHIMA did so in conversation with him.

"Although I always was on friendly terms with Ambassador OSHIMA during the whole period of my contact with him, he never told me any military plans or revealed me any secrets. Besides, I myself had nothing to do with military matters, these being the task of Generals and Admirals; neither did Ribbentrop officially.

"Ambassador OSHIMA was many years in Germany and spoke German well. Being an outspoken personality, he was well liked by the German people generally.

"8. FOREIGN MINISTER MATSUOKA'S CONFERENCE WITH HITLER

"When Foreign Minister MATSUOKA visited Germany in March 1941, I was ordered by Ribbentrop one or two days before his arrival to accompany him during his stay in Germany, and travelled with him on his trip in

in Germany. I was not concerned with the preparation of the program of his trip, which had already been finished by the protocol Chief, Baron Doernburg, when I received the order. Immediately after that I left Berlin by special train and met Minister MATSUOKA at Malkinia, a German-Russian border station. I accompanied him to Berlin and was present when he made his first courtesy call on Ribbentrop; however, I was not present at the subsequent political conversations between Foreign Minister MATSUOKA and Hitler, Ribbentrop and Goering.

"Ambassador Ott had obtained permission to come to Berlin from Tokyo, to be present at the time of Minister MATSUOKA's stay in Berlin. He attended some of these meetings.

"I went with Minister MATSUOKA to Siemens-Schuckert Works in Berlin, which he specially desired to see. When he left Berlin for Italy, I accompanied him as far as the Italian border, and after he returned from Rome I accompanied him again from Berlin to Malkinia. Personally, I had no political talks with Foreign Minister MATSUOKA.

"I did not talk at that time with Ribbentrop as to what purpose he was pursuing in his conversations with Foreign Minister MATSUOKA, also I never heard

from Ribbentrop that Minister MATSUOKA made any commitment. Beside the fact that Ribbentrop was always very seclusive and usually talked to one only of what was absolutely necessary for the work of the moment, my personal relation with Ribbentrop was rather strained at that time.

"Before the arrival of Foreign Minister MATSUOKA in Germany I heard nothing from Ambassador OSHIMA about the arrangements or the items to be taken up by Minister MATSUOKA in Berlin, nor any wishes or ideas which he wanted to convey to Ribbentrop regarding the matter. During Minister MATSUOKA's stay in Berlin I only met Ambassador OSHIMA at various luncheons. I do not believe that Ambassador OSHIMA had much influence on Minister MATSUOKA and I had the feeling that their personal relations were not close, both being very different personalities. Foreign Minister MATSUOKA told me absolutely nothing about Ambassador OSHIMA.

"9. RECORDS KEPT IN GERMAN FOREIGN OFFICE

"It was the practice of the German Foreign Office that no stenographic records were taken of the conversations between Hitler and Ribbentrop and the prominent foreign statesmen or ambassadors. Only unofficial minutes were made afterwards either as dictated

by Hitler or Ribbentrop or by attending interpreters, mostly by Minister Schmidt. These minutes were, as being unofficial, never handed to the foreign participants of the conversations or shown to them for confirmation.

"For internal use these records were only regarded as a sort of aide memoire, but never as documentary proof. I remember that I was present at one occasion during a reception of foreign ex-servicemen, when Minister Schmidt, who acted as official interpreter, wrote down only five or six single words from a discourse of over twenty minutes and then began to translate. Though he had very good memory sometimes arose a difference of opinion between Ribbentrop and Schmidt about what was really said.

"Ribbentrop disliked very much that the foreign representatives would make direct contacts with high German officials other than those in the foreign service. I remember several occasions when I was ordered by Ribbentrop to try as politely as possible to prevent foreign diplomats from this practice. On account of this outspoken wish of Ribbentrop no official relations whatsoever existed in Germany between the foreign Embassies (including Japanese) or Legations and the German ministries other than the Foreign Office.

Morse & Lefler

"10. AMBASSADOR STAHMER SENT TO CHINA

" I was appointed German Ambassador to China (Nanking) in 1941, left Germany with Councillor Bolze on 18 October 1941 and went to Nanking via South America and Japan.

"While I was on the boat in the Pacific, I heard of the outbreak of the Japanese-American war. Until my departure from Germany the German Government, as far as I know, had no notion that the Japanese-American relation was strained to such an extent.

"11. AMBASSADOR STAHMER MOVED TO TOKYO

"I was appointed German Ambassador to Japan in December, 1942 and arrived in Tokyo on 28 January 1943. During my stay as German Ambassador in Japan I had very cordial personal relations with Foreign Minister SHIGEMITSU and other officials of the Japanese Foreign Office. The political collaboration between Germany and Japan was however not close, and the commissions created by the Three Powers Pact was nothing but a formal show without any practical results. In the two or three meetings when I was present I did not hear a single word which was not to be found in the newspapers as well.

"Although I was not concerned with military matters, as far as I know there existed between Germany

and Japan no military or operational collaboration either. The main reason was, as I believe, the fact that while Germany was engaged in a life and death struggle with U.S.S.R. Japan was completely absorbed in the war with the United States and remained neutral to the German-Russian war. Moreover, the two countries were so far apart and no regular means of communications existed except radio, making the personal traffic almost impossible.

"12. ATTITUDE OF AMBASSADOR OSHIMA

"During all of my conversations, negotiations and conferences with him, Ambassador OSHIMA took no positive personal stand on any of the controversial issues which we discussed but reserved his judgment until after he had submitted the matter to his government, unless he had received prior instructions.

"In our discussions personal opinions or suggestions would have no bearing, for in diplomacy it is the government speaking and not the individual.

"With our checks on information we nearly always knew the attitude of the Japanese Government before we received official communication thru Ambassador OSHIMA or any other ambassador.

"When action was taken in Japan we knew of it at the same time or sooner than Ambassador OSHIMA or

his predecessors or successors. Rarely did we find out anything really new from the ambassador. Hearing it from him merely verified or made official what other sources of information had supplied."

Page 10.

THE PRESIDENT: Are you omitting the next paragraph deliberately?

MR. CUNNINGHAM: I beg your pardon.

THE PRESIDENT: I suppose you know what you are doing. I won't say anything.

MR. CUNNINGHAM: Well, I would appreciate any suggestion you have.

THE PRESIDENT: Well, you should know what is -- what should be omitted.

MR. CUNNINGHAM: I go to paragraph 13.

Is there some confusion that I don't know about?

THE PRESIDENT: You control the matter we have admitted. It is for you to read as much or as little as you like of the matter admitted.

MR. CUNNINGHAM: "Paragraph 13. CIRCUMSTANCES SURROUNDING APPOINTMENT OF GENERAL OTT AS AMBASSADOR --"

THE PRESIDENT: You see, you are telling us the page you are reading, and it is different from the copies we have. We are still on page 9, and you are proceeding now to read part of page 9, but you call it 10

MR. CUNNINGHAM: Oh, well, yes. Well, I am reading at the bottom of page 9, and I am now going to the top of page 10 of my copy, paragraph 13 entitled "CIRCUMSTANCES SURROUNDING APPOINTMENT OF GENERAL OTT AS AMBASSADOR."

THE PRESIDENT: I have a note from a colleague that there are two kinds of copies. Apparently, some of us have the same numbering you have, others have not. Colleagues on either side have the same copies as I.

So, proceed to read paragraph 13. I think that is the way to do it.

MR. CUNNINGHAM (Reading continued):

"Ambassador v. Dirksen, who was in Tokyo already some years, could not stand the climate, suffering from bronchial asthma, and had asked several times to be transferred. Ott, who was in Tokyo since 1934 and Military Attache in 1935, was very interested to become ambassador. With the assistance of General Keitel and the party leader in Japan, Mr. Hillmann, who worked closely together, he was appointed Ambassador to Tokyo in the beginning of 1938. Ribbentrop, who became Foreign Minister in February, 1938, did not object. On the contrary, he assured Ambassador Ott several times of his full confidence. When the idea of strengthening the relations with Japan came up Ott was ordered to

Berlin in the summer of 1938, and in his presence the new course was talked over with Hitler and Ribbentrop. At this occasion Hitler made him a member of the party, which he could not become earlier, being an officer, to whom membership of the party was forbidden. It was expected from the German Ambassador in Tokyo to maintain friendly relations with parties in power, to get a survey of the changing political situation, and to report in this line to the Foreign Office.

"14. LACK OF EFFECTIVE COLLABORATION

"The greatest efforts in Germany during my time were expended towards the establishment of closest possible ties with England and France. Much more work, money, propaganda, and persons were used in that line. The German-English Society and the German-French Society were always regarded as more important than the correspondent German-Japanese Society. After the failure of the first negotiations with Japan in 1939, Germany and Japan had not proposed any agreements for more than a year, until Japan from her side again began in July, 1940, to take up new diplomatic negotiations.

"I cannot see any way where Japan assisted Germany in the war in any way."

THE PRESIDENT: You are to leave out a sentence.

MR. CUNNINGHAM: "There was no joint German-

Japanese war, in fact there were two wars, a German and a Japanese."

Then, skipping the next sentence --

THE PRESIDENT: According to my marking, the first sentence is disallowed, and the balance is allowed.

MR. CUNNINGHAM: According to my marking, the second sentence is out.

THE PRESIDENT: Read it that way.

MR. CUNNINGHAM: Going to the third sentence:

"This was due to the fact that there existed no joint high command, no plans for teamwork were worked out or even proposed, because there was no connection between the two countries except cables and occasional visits of submarines. For instance there cannot be even the slightest comparison with the excellent teamwork of the Generals Eisenhower and Montgomery in Europe and Africa, and MacArthur and Mountbatten in the Pacific and India. Besides, the Japanese had their own ideas about the Pacific war and never made serious efforts for instance to stop the transport of United States goods to the Soviet Union. Furthermore, the Japanese ideas of an ally were different than that of other countries. When I was in China, even in the official Japanese proclamations the Germans were noted as 'friendly neutrals,' not as allies."

Going to the top of page 11:

"CONCLUSION

"When I was occupied with the negotiations of the German-Italian-Japanese Agreement it was the general idea in 1938 and 1939 to avoid threatening political isolation and to prevent war through forming a defensive alliance, and thereby strengthening the international political situation in general. In 1940, after Germany was already in the war, the idea was to avoid the further outspreading of the war by preventing the United States from entering the war, and to establish a platform for peace. Never have I heard from any side any word about a plan of dominating the world."

Then, that concludes: signed "Heinrich Stahmer."

MR. CUNNINGHAM: Next, your Honors, I should like to present defense document 1714, an additional sworn statement by the witness, and I ask that the document be presented to the witness.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: I understand counsel does not offer the document at this time but is merely presenting it to the witness.

THE PRESIDENT: It was served on the Judges for the first time today. Of course, he is at liberty to show the document to the witness. Show the document to the witness.

(Whereupon, a document was handed to the witness.)

MR. CUNNINGHAM: I ask you to examine defense document 1714 and ask you to state if that is your sworn statement.

(Addressing Clerk of the Court) The original is there. The original is there with the signature on the back page.

I ask you to examine the document and state whether or not all the statements contained therein are true.

THE PRESIDENT: His signature would relieve him of the necessity to reading the whole document

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THE PRESIDENT: His signature would relieve him of the necessity to reading the whole document

through, Mr. Cunningham. We haven't time to waste while he reads it through.

MR. CUNNINGHAM: Well, the witness is familiar with the document.

THE PRESIDENT: This is a copy, you know. That copy could have been made independently of the document. Before he can be sure he must read the lot, but if he had his signature he need not do so. Of course, if you assume that is a carbon copy of the original that is all right, but you can make no such assumption about carbon copies. Let him assume, if he wants, that it is a carbon copy and let him say, "Yes, that is the same as the original," but it will be an assumption.

MR. CUNNINGHAM: Well, I personally delivered the signed copy to the clerk's office and I can't do any more than that. Now I am trying to substitute a copy of it until they find the one with the original signature on it.

THE PRESIDENT: Is that copy the same as the original you signed?

THE WITNESS: Yes, it is the same copy, and it is true.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: If the Tribunal please, in the interest of saving time, I have a number of objections

to make regarding specific questions and answers and, if counsel is willing, we could proceed with that matter before the document is formally tendered.

THE PRESIDENT: I think that is the desirable thing to do because if it is tendered we will have to take the point that we weren't served twenty-four hours in advance -- I mean three days in advance.

MR. CUNNINGHAM: Well, your Honor, there is a misunderstanding about that. As I understood it, the other day you said that the twenty-four hour rule now applied to affidavits.

THE PRESIDENT: As far as I am concerned, twenty-four hours will do. But that isn't the rule. Three days. That is for judges copies.

MR. CUNNINGHAM: Well, I understand it you changed that rule the other day and said the same thing applied to you as applied to the prosecution -- twenty-four hours in advance. Now I can't keep track it seems.

THE PRESIDENT: All the judges disclaim that any such statement was made. Unfortunately for you, there is a record to correct you.

MR. CUNNINGHAM: Well, anyway the documents have certainly been in circulation for a week and I can't understand why the judges don't get their copies. I can't control that.

But, your Honors, as to the order of making objections, it seems to me that it would be very difficult to sustain an objection in the middle of the testimony, whereas it would be more practicable to rule on the objections as they come in their logical order, because how are you going to take the middle of a document here and say, "This has no bearing," when you can't, unless you read the balance of the document, know what has gone on before?

THE PRESIDENT: The question could not arise if this were in narrative form. The mere fact that it is in the form of questions and answers makes no difference. We would still have to read the lot, perhaps.

Here is the original now, I understand.

MR. CUNNINGHAM: Well, your Honor, the reason the question arises is that I can't see how this particular document could be reduced to narrative form because it doesn't lend itself to that sort of treatment and that is the reason I had to deal with it in this way.

THE PRESIDENT: If, in the course of writing our judgment, we have to deal with this particular interrogation, we certainly shall put it in narrative form and we will have no difficulty.

Mr. Tavenner.

MR. TAVENNER: If the Tribunal please, the prosecution insists on making its objections to these questions and answers before they are actually reached in the reading. The attention of the Tribunal is called to the fact that on the first occasion that this document was mentioned counsel proposed to ask these questions without serving the document on the prosecution. Now an effort is being made to introduce the document piecemeal. The defense was directed by the Tribunal to put this document in affidavit form but, in the interest of saving time, the prosecution doesn't insist on that.

THE PRESIDENT: But we have a strong objection to an affidavit being made and then followed by hundreds of questions as Mr. Cunningham proposed. He anticipates that by getting another affidavit. All we are saying is that copies of that affidavit were not served on the judges three days in advance of the attempt to use it. We can hardly say we won't take two affidavits from the same witness, much as we dislike doing so.

MR. CUNNINGHAM: Well, your Honor, charges are made in the Indictment in specific, short, snappy sentences that certainly cannot very well be answered in narrative form the way I --

THE PRESIDENT: All I can say is that the

affidavit cannot be read as a document in evidence unless that requirement of service is met, but we may have a discussion on the preliminary question of whether such evidence could be admitted at all. That is what Mr. Tavenner wants. Your only reply is that this is an interrogation and not a narrative, and there is no difference in substance between the two for our purposes.

MR. CUNNINGHAM: Well, your Honor, what about this for a compromise: I suggest that the document be offered in evidence, that the prosecution be permitted to make their objections in toto, that we be permitted to read the document and waive the thirty-six or seventy-two hour rule of the Court, and that we be permitted to proceed with this evidence. It is slowing down the procedure.

THE PRESIDENT: In other words, that Mr. Cunningham be placed above the rules but everybody else be left subject to them.

MR. CUNNINGHAM: Well, as I understand it, your Honor, these copies were delivered to the judges on Friday, and I think that the rule of seventy-two hours is probably a technical one. If there is an advantage that we are taking away from the members of the bench on account of it, why, it would be a simple matter for the judges to take this and read it in

fifteen or twenty minutes, which is going to be required of me.

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THE PRESIDENT: The rules must be observed. I will say no more about it. This is obstructionist.

MR. CUNNINGHAM: Well, now, your Honor, I can't follow the position. What are we to do now?

THE PRESIDENT: You will agree to Mr. Tavenner's suggestion. If you don't, we will make you. We also insist on that course ourselves. We have the right to do it. The Charter gives us the power and we will exercise it.

Let us have a discussion on the admissibility of this interrogation straightaway. We will treat this as an argument on the question whether this interrogation can be admitted; and we will hear you first, Mr. Tavenner.

MR. TAVENNER: If the Tribunal please, this interrogation is so drawn that virtually every question is in the form of a leading question, and much of it deals with irrelevant and immaterial matters.

THE PRESIDENT: We have admitted affidavits in the form of interrogations previously, Mr. Tavenner. If I recollect rightly, they came from the prosecution's side as well as from the defense side. We must be consistent.

MR. TAVENNER: I was not objecting on the ground that the document is in the form of questions

and answers, because that procedure has been followed by both the prosecution and the defense. It is not my purpose to rely upon the objection that the questions are leading where that is the sole objection.

THE PRESIDENT: Some of the prosecution's questions in these cases were certainly leading.

MR. TAVENNER: I merely desire that the leading form of the question be taken into consideration along with the other objections which I will make.

THE PRESIDENT: We have repeatedly said that a leading question reduces the value of an answer considerably; sometimes to the vanishing point.

MR. TAVENNER: Specific objection is made to all of the questions and answers on page 1 with the exception of the first question.

As to question 2, the question and the answer elicited are repetitive, in that the same matter is considered in the first paragraph of section 12, page 9 of the affidavit.

Question No. 3 and the answer elicited are objectionable on the same ground in that the matter is covered by the affidavit on page 7.

Question 4 is likewise repetitive in that it is the same matter as is considered in question 2 and on page 12 of the affidavit.

Objection is made to question 5 in that the subject matter of that question is entirely irrelevant and immaterial to any issue here.

Question 6 is objected to on the ground that the witness could not possibly know of the instructions that OSHIMA received or did not receive from his government, and, therefore, his answer proves nothing.

On page 2, objection is made to question 10 in that the interest of OSHIMA in party politics in Japan could not be a matter within the knowledge of the witness; and even if true, the answer is irrelevant and immaterial.

Question 11 is divided into two questions -- I believe it is three questions. Objection is made to the question in so far as it relates to the foreign policies of the various Japanese cabinets, in so far as the witness answers that they had merely different political ideas. It has no probative value. The last part of question 11 refers to the same question of the interest of OSHIMA in political parties in Japan, and for that reason is repetitive in that it is covered in questions 2, 4, 10, and also on page 12 of the affidavit.

Question 12 is objected to. The witness

could not possibly know of the official acts of OSHIMA based upon telegrams and messages and commissions of the Japanese Government. The answer elicited has no probative value.

The next question relates to the expression of views by the witness -- rather, the views of OSHIMA. The witness could not be qualified to express an opinion of that character.

The following question regarding the conflict of views between foreign minister and ambassador is a hypothetical question which is objected to.

THE PRESIDENT: We will recess for fifteen minutes.

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

Reichers & Greenberg

MARSHAL OF THE COURT: The International Military Tribunal for the Far East is now in session.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: If the Tribunal please, objection is made to Question 13, on page 3, which is in two parts, on the ground that the question calls for a construction of international law by the witness.

Question 14 is objected to, or rather, the answer to that question is objected to, on the ground that, after stating that he does not know, he attempts to give his belief about the subject matter of the question; and, in addition, the matter is repetitive.

On page 4, objection is made to the first question on the ground that it is repetitive. The same general subject matter is covered in questions 2, 4, 12 and others.

The second question is objected to on the ground that it is repetitive and the answer, as it is noticed, speaks of the witness' impression, so the additional objection is made that there is no probative value.

Question 3 is likewise repetitive -- I believe I am in error in stating that that is repetitive -- but the answer to the question is of a purely repetitive character and, for that reason,

is objected to.

The 4th question is repetitive, and, in addition, the witness speaks of his impression.

The 5th question -- both the first and second questions under it are repetitive.

On page 5, the answer to the last question is objected to on the ground that it is virtually a repetition of a statement appearing in the affidavit. It is therefore repetitive and should be excluded.

On page 6, the answer to question 3 is repetitive, the same matter having been dealt with in the affidavit, and part of it, in fact, seems to be almost a quotation of the affidavit.

On page 7, the answer to question 8: objection is made to the answer, with the exception of the first four words, "I do not know."

On page 8, question 14, the witness is asked to state his impressions with regard to certain matters relating to the foreign policy of Japan. Objection is made on the ground that the witness is not entitled to state his impressions or opinions.

At the top of page 9, the answer of the witness to question 21 is objected to on the ground that, after having stated that he had never been told

regarding the potential character of the Soviet Union's participation in the Tri-Partite Pact, he proceeds then to state his personal beliefs.

Objection is made to the answer to question 22 in that it is merely a statement of the witness' belief and is made for the purpose of argument, and should be excluded for both reasons.

Question 26 is objected to on the ground that it is repetitive, the same matter having been stated in the affidavit.

The next question even goes so far -- that is 27 --- as to ask whether it was likely that a certain conversation had taken place. It is, of course, objected to on the ground that it calls for a merely speculative answer and is grossly leading.

Question 28 is objected to on the ground that it calls for the witness's opinion as to what MATSUOKA'S opinions were.

This constitutes the objections I had in mind.

THE PRESIDENT: Mr. Cunningham.

MR. CUNNINGHAM: In answer to the objections made by the prosecutor, I suggest that each question seems to tie in very definitely with some specific charge made in the Indictment, and that was the purpose. Each question answers some specific charge

made by the prosecution in their evidence.

On question number 2 OSHIMA is charged with violating instructions. This is to answer that charge.

No. 3: He is charged with participating in the Tri-Partite Pact. This is to answer that charge.

PRESIDENT: I think you overlooked the fact that it is OSHIMA who is charged, not Stahmer.

MR. CUNNINGHAM: No. 4: The question whether or not Mr. OSHIMA did anything else beside his ambassadorial duties involved, and this answer in paragraph 4, question 4, seems to take care of that.

Question 5: There is involved here a question, -- to what extent should an ambassador be held responsible for the policy of his government. This hits that right between the eyes.

No. 6: It is usual and customary in matters of diplomatic procedure for an ambassador to show his telegrams to the representatives of the other government in order to show good faith in their transactions.

Question No. 10, on page 2: There is a question whether or not an ambassador engages in party politics or is above party politics, and this answer takes care of this contention.

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On No. 13, prosecution suggests this is a construction of international law. I deem it a confirmation of international law.

On No. 14 --

THE PRESIDENT: We do not want the witness' imprimatur.

MR. CUNNINGHAM: I did not understand.

THE PRESIDENT: We do not want the imprimatur of any witness.

MR. CUNNINGHAM: Now, on page 4, the first question, the prosecution says it is repetitive. I cannot see that that question was specifically answered before, and that is the test of it being repetitive. On the last part of the question, as to probative value, I think that has to be tested from the whole document and the other documents to be

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MR. CUNNINGHAM: Now, on page 4, the first question, the prosecution says it is repetitive. I cannot see that that question was specifically answered before, and that is the test of it being repetitive. On the last part of the question, as to probative value, I think that has to be tested from the whole document and the other documents to be

received and not from one isolated question.

On No. 3, the defendant is charged with some responsibility for the policy of the Japanese Government. I cannot say that that has been answered before.

On No. 5, if the Tribunal says that that question has been satisfactorily answered before, then, perhaps, it is repetitive, but I cannot believe that any witness or any other document has answered that question before.

On page 5, the last part that is objected to is the statement of the witness which, I submit, is admissible; and, since the Tribunal has ruled it out on the other affidavit, perhaps we may be bound by that ruling.

On page 6, on the question, the charge of the prosecution is stated specifically; the answer to that charge is stated specifically; and I cannot believe that it is a repetition of anything that has been said if the affidavit or elsewhere.

Page 7, question 8, the witness says he does not know, meaning generally, but he does know specifically an instance. I cannot see how he should be excluded from stating his specific information even though he is reluctant to take a general

stand.

On page 8, question 14, these defendants are charged with a conspiracy as being the government of Japan. This question and answer specifically refutes that allegation.

Page 9, question 22, I admit Ambassador Ott would be the best witness on that question. He is not available, and this is the best secondary evidence I can give on that question.

I do not have a note here on my memorandum as to what the specific objection to No. 21 was. Therefore, I will have to pass it.

THE PRESIDENT: Obviously, on the ground that it involves an opinion.

MR. CUNNINGHAM: I believe the witness' opinion on that question is relevant and material and should be admitted.

26 is said to be repetitive. If the Court is satisfied it has heard enough about that, then we will consider it cumulative. But I do not think this witness hsa said that before, which is the test of being repetitive.

On 27, "Is it likely that such a conversation took place?" -- Ribbentrop said it didn't take place. I wanted this witness to state whether or

not it did.

On 28, I was not asking for the personal opinion but the official opinion of the witness which, I think, would be relevant and material.

In order to make question 31 clear, I would like to insert "in 1941" after "Germany."

BY MR. CUNNINGHAM (Continued)

Q Now I would like to have the witness state whether or not that is his signature on the back of the original document and whether or not the contents thereof are true.

Will you look at defense document 1714 and state whether or not that is your signature placed thereon and whether or not the contents of the document are true.

A Yes, that is my signature and the contents of the document are true.

MR. CUNNINGHAM: I now offer in evidence defense document 1714, subject to the ruling of the Tribunal on the objections and the argument on the objections.

THE PRESIDENT: By a majority the objections are upheld and the document admitted subject to the objections. The admission is on the usual terms. You may read only so much of the document as has not been

objected to.

CLERK OF THE COURT: Defense document 1714 will receive exhibit No. 2744-A.

(Whereupon, the document above referred to was marked defense exhibit No. 2744-A and received in evidence.)

THE PRESIDENT: The Judges wish me to tell you, Mr. Cunningham--

MR. CUNNINGHAM: Your Honors, in order to give continuity to the testimony of this witness I suggest that we start at page 6 and go to the end and then start at page 1 to the bottom of page 5.

THE PRESIDENT: I will assume you did not attempt deliberately to interrupt me, Mr. Cunningham. It is a very favorable assumption.

The Judges have asked me to tell you that they insist on the observance of the rule as regards the service of Judges' copies and other copies. You may proceed, however, to read so much of this document as has not been successfully objected to.

MR. CUNNINGHAM: Starting on page 6, top of the page, reading from exhibit 2744-A:

"QUESTIONS AND ANSWERS

for

"AMBASSADOR STAHMER

"Collaboration - Japan, Germany and Italy based upon opening statement of the prosecution on this phase.

"1. To what extent did any Japanese statesmen, other than MATSUOKA, participate in the negotiations with you and Ambassador Ott prior to the conclusion of the Tri-Partite Pact in September 1940?

"A. Only MATSUOKA participated, no other Japanese statesman.

"2. During your negotiations with MATSUOKA did he at any time interrupt conferences or conversations to confer and consult with other Japanese statesmen concerning the content, wording or intent of the Tri-Partite Pact?

"A. No, during our negotiations MATSUOKA did not even telephone with other people."

Going to question 4:

"4. It is stated that the accused OSHIMA and SHIRATORI were sent to Rome for the purpose of inducing Mussolini to enter in to the proposed Tri-Partite Pact. Is this statement true? If not, explain to what extent Ribbentrop and Hitler had previously negotiated and conferred with Mussolini concerning this matter.

"A. It is not true, according to my knowledge, that OSHIMA and SHIRATORI were sent to Rome to induce

Mussolini to enter in the proposed Tri-Partite Pact. The German Government could and would never use Foreign ambassadors for such a purpose. Besides, as I know definitely, Hitler and Ribbentrop had already talked with Mussolini about the idea of a Tri-Partite Pact during the Munich Conference in September 1938 where Mussolini agreed principally.

"5. Were you advised as to the mission of the ITO Commission which was sent to Berlin and Rome relating to the abortive Tri-Partite agreement?

"A. No."

Page 7, question 6:

"6. In Count Ciano's Diary it is related that SHIRATORI and OSHIMA refused to follow the instructions delivered by the ITO Commission. What has been your experience concerning the accuracy of the items set out in the Ciano diary?

"A. I have only read an abridged version of Ciano's diary, but I do not take it as a historical document. He asserts, for instance, that he was against the Italians attacking Greece, but at that time I heard from the Italian Embassy that Ciano assisted this plan very much and was proud of it; only after the Italian defeat in Albania he changed his opinion.

"7. It is charged that the ambassadors asserted that they would resign in the event the pact of alliance was not concluded without reservation. Were you aware of any such condition?

"A. I did not hear of this assertion, if it is true, the Japanese Government must know it. I think I would have known of it, surely, if it were true. The only mention I have ever heard of such a thing was from the one source."

Question 9:

"9. It is charged that negotiations for Japanese-German alliance were renewed by KURUSU on the 19 June 1940. Please explain this statement in the light of the actual circumstances.

"A. KURUSU only told the German Government that the new government in Tokyo wanted a closer contact; he did not begin negotiations otherwise it would not have been necessary to send me to Tokyo, because the situation was too obscure to be analyzed from Berlin. As far as I know, he was during the negotiations in Tokyo only very scantily informed by his own government.

"10. It is charged that on 8 July 1940 Ambassador SATO and KURUSU in conference with you and Ribbentrop conferred concerning the relations between Japan and Germany. Please explain the nature and extent of this

discussion.

"A. That was no conference, but only a courtesy call with a normal conversation, where I got the impression that both sides wanted to avoid any remark concerning unsolved political questions. I remember that the Japanese Minister KAWAI who traveled at that time in Europe was present.

"11. To what extent the French and Dutch East Asia colonies came in for discussion during this conversation?

"A. I have no recollections.

"12. To what extent had the Japanese statesmen manifested their fears concerning the interest of Germany in the Pacific Isles?

"A. Same as question number 11.

"13. To what extent did the appointment of MATSUOKA affect the Japanese Foreign policy towards Germany?

"A. From the new cabinet with KONOYE as Prime Minister and MATSUOKA as Foreign Minister we got the impression that this cabinet was interested to come to a closer contact with Germany. When I arrived in Japan I found that the government had already made preparations for a pact with Germany and Italy."

Eliminating 14, going to 15:

"15. At the time when you arrived in Tokyo for the negotiations of the Tri-Partite Pact did you consider that Japan and the United States would become engaged in war in the Pacific?

"A. No, I wanted to prevent the entrance of the United States into the war.

"16. The prosecution has stated that the 20 million of German-descent Americans were considered to hold an influential position in the United States. Would you please state what you told MATSUOKA concerning this?.

"A. When MATSUOKA asked me about the influence of the German-descent Americans, I told him that I believed they were better American citizens than many other Americans, and informed him of my experiences in that line in Chicago.

"17. Did you discuss the terms of the Tri-Partite Pact with Prince KONOYE or any other cabinet member before or after its completion in Tokyo?

"A. No, neither with Prince KONOYE nor any other cabinet member whom I saw. Only after the signature, during official lunches or dinners was the matter commented upon.

"18. Please explain the circumstances which brought about the signing of the Pact in Berlin rather than in Tokyo.

"A. I do not remember; the German Embassy in Tokyo got a cable some days before the negotiations were finished that Germany and Italy wanted to have the pact signed in Berlin.

"19. Please explain MATSUOKA's idea concerning this matter.

"A. At first he seemed a little reluctant, but very soon he agreed; I believe that, as a sort of compensation, Ribbentrop invited him on the evening of the 27 September to come to Berlin."

I understand 21 is objected to.

THE PRESIDENT: 22 also.

MR. CUNNINGHAM: 22 also; going to 23:

"23. Upon the arrival of Foreign Minister MATSUOKA in Germany in 1941 did he advise you of the principle international question which he desired to discuss with Ribbentrop?

"A. No.

"24. Did you at any time learn of the purpose of his mission?

"A. I only heard shortly after he had left Berlin that he wanted to make a non-aggression pact with the Soviet Union.

"25. As far as you know was Ambassador OSHIMA advised beforehand or during the visit of the object

"A. I do not remember; the German Embassy in Tokyo got a cable some days before the negotiations were finished that Germany and Italy wanted to have the pact signed in Berlin.

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THE PRESIDENT: 22 also.

MR. CUNNINGHAM: 22 also; going to 23:

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"A. No.

"24. Did you at any time learn of the purpose of his mission?

"A. I only heard shortly after he had left Berlin that he wanted to make a non-aggression pact with the Soviet Union.

"25. As far as you know was Ambassador OSHIMA advised beforehand or during the visit of the object

of his tour?

"A. I do not know, because OSHIMA did not tell me."

Going to the top of page 10:

"29. It is stated (p30) that 'On the 24 May 1941 a report was made by German Military Attache in Tokyo to German Foreign Intelligence Office that Japan acknowledged her treaty obligations in the event United States entered the war.' Is this statement based on facts?

"A. I do not know. I never heard of it.

"30. It is charged that 'When the Tri-Partite Pact was concluded 27 September 1940, MATSUOKA in reply to a question stated that an agreement would be negotiated between the three powers for a no separate peace pact in the event of hostilities.' Are you aware of any such statement being uttered at that time?

"A. I do not remember to have talked with MATSUOKA about a 'no separate peace clause.'

"31. Up until the time you left Germany in 1941 were the officials of the government informed of the state of negotiations between Japan and the United States? Please explain this situation.

"A. When I was still in Germany in 1941, the German officials concerned were very nervous, because they never got a clear answer of the state of negotiations

between Japan and the United States, during early 1941 until October when I left. We only heard indirectly and thru unreliable information or rumors.

"32. It is stated that on the 18 January 1942 the armed forces of Japan, Germany and Italy concluded military agreement 'In the spirit of the Tri-Partite Pact 27 September 1940,' and provided for operational coordination among them. Was any such situation contemplated at the completion of the Tri-Partite Pact?

"A. At the time of the signature of the Tri-Partite Pact no such action or situation was contemplated."

Now, going to page 1, I am going to require a little help on this because my notes are not as adequate as they might be. (Reading):

"1. At any time during your conversations, negotiations conferences with Ambassador OSHIMA did he at any time commit himself as favorable to Japanese commencing or participation in any war?

"Answer: No, he did not commit himself in that way."

No. 7 (reading):

"7. Were there any collaboration between Germany and Japan as far as you know that was not provided for by treaty and regulated by some agreement entered into thru the established diplomatic channels?

"Answer: There was no collaboration between Germany and Japan, as far as I know, that was not provided for by treaty and went not through the established channels.

"8. Were all of OSHIMA's dealings with you and with Ribbentrop usual procedure adopted by other diplomats in their relations with Germany?

"Answer: OSHIMA's dealings with me and with Ribbentrop were not different at all from the dealings of other ambassadors with whom I had to work.

"9. Did OSHIMA ever interest himself in matters outside of his diplomatic tasks and duties which were contrary to the best interest of either Germany or Japan and those required of his office?

"Answer: No, not so far as I know."

Now, next to the last part of question 11:

"Q Were new contacts always necessary when a change in Cabinet took place?

"Answer: Yes, in Tokyo the embassy always had to try to keep up contact with the changing ministers."

Then we go to --

THE PRESIDENT: The last two questions on page 4.

MR. CUNNINGHAM (reading):

"Q Was there any definite continuity in the foreign policy of Japan towards Germany over the period of years of your association with this problem?

"A Though the Germany foreign policy towards Japan was unchanged, the Japanese policy as far as Germany was concerned changed several times; the ideas of the Government KONOYE - HIROTA (summer 1938), HIRANUMA - ARITA (January 1939), and KONOYE - MATSUOKA (July 1940) in that line was extremely different.

"Q Did you ever have any conversations or negotiations with Ambassador OSHIMA which would indicate to you that he bore any closer relationship to one of the nine foreign ministers of Japan than to the other eight, who were in charge of foreign affairs during his tour of duty as Ambassador?

"A No, I have never heard him express greater friendship towards any foreign minister particularly; having been absent such a long time from Japan, probably he did not even know them personally.

"Q It is charged that the object of the --

THE PRESIDENT: It is charged as being repetitive.

MR. CUNNINGHAM: I guess that finishes -- signature, Heinrich Stahmer.

Now, your Honor, that concludes the reading of these two documents. Several of the defense counsel say that they have questions they would like to propound to this witness on direct examination concerning individual defendants.

THE PRESIDENT: Mr. Logan.

MR. LOGAN: If the Tribunal please, I desire to ask a few questions on behalf of the accused, Marquis KIDO, pursuant to paragraph 1 of the rules

of this court on or about March 11, 1947.

DIRECT EXAMINATION (Continued)

BY MR. LOGAN:

Q Mr. Stahmer, did you ever meet and talk with Marquis KIDO at any time?

A No, I do not remember having ever met him and talked with him.

Q In your official capacity as a representative of the German Government from 1938 on, was it part of your duties to ascertain the views of persons associated with the Japanese Government with regard to political, international, and military matters, and more especially with regard to German-Japanese relationships?

A Since I became Ambassador here in January 1943 it was a part of my duty to try to find out especially the feeling of the leading statesmen and responsible men toward Germany.

Q Did you make such an investigation with respect to Marquis KIDO's views?

A Yes, I asked, too, about Marquis KIDO at that time.

Q What was the information you received, stating from whom you received it and when?

THE PRESIDENT: Mr. Tavenner.

of this court on or about March 11, 1947.

DIRECT EXAMINATION (Continued)

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Q Did you make such an investigation with respect to Marquis KIDO's views?

A Yes, I asked, too, about Marquis KIDO at that time.

Q What was the information you received, stating from whom you received it and when?

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: Objection has been made if the Tribunal please, to the investigations made by the witness on the ground that it is hearsay testimony.

THE PRESIDENT: That goes to weight only in this court. You had better find a better ground.

MR. TAVENNER: I do not know of any better ground.

THE PRESIDENT: The objection is overruled.

MR. LOGAN: You may answer, Mr. Stahmer.

A I asked about Marquis KIDO, too, and heard from several of my officials that he was always regarded very much pro-Anglo-Saxon and never had proved any especially friendly feeling toward Germany.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: If the Tribunal please, I would like to inquire whether the witness has a memorandum in his hand, to which he is referring.

THE WITNESS: No.

THE PRESIDENT: He says he has not.

MR. TAVENNER: Yes. I would like to object to the answer and move that it be struck on the ground that it is an opinion of his subordinates.

THE PRESIDENT: Mr. Logan.

MR. LOGAN: If the Tribunal please, we have a situation here where these accused, including

Marquis KIDO, is accused to collaboration with the German Government and officials of the German Government. Certainly the opinion of the Ambassador in his investigations would warrant the introduction of evidence at this time from this witness, who was the Ambassador here, as to what the reputation of Marquis KIDO was with the German Government. It is fundamental and only natural that the Ambassador should try to find out just what the situation and views of the men are with whom he intends to deal, and while this is not strictly reputation evidence, it is of that nature, which is fundamentally admitted in any court.

THE PRESIDENT: We will hear you further after lunch, Mr. Logan.

We will adjourn until half-past one.

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

Wolf & Kapleau

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.

H E I N R I C H S T A H M E R, called as a witness on behalf of the defense, resumed the stand and testified as follows:

THE PRESIDENT: Mr. Logan.

MR. LOGAN: If the Tribunal please, the only other observation I have to make is that there was no objection that the answer was not responsive, and in my submission it was responsive to a question to which an objection had unsuccessfully been taken by the prosecution.

THE PRESIDENT: The evidence is really in the nature of opinion entertained by officials about your client. They can tell us through the witness what KIDO said, from which we might draw our conclusions. The evidence is really in the nature of a certificate of character, which is not really relevant to any issue. It might go to mitigation, assuming there should be punishment to be considered later, but it is for the Court to say whether they are prepared to receive this

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evidence at this stage. It is a matter of discretion. It does seem to be anticipating. That is the difficulty.

MR. LOGAN: May I say this in answer to the Tribunal's statement? Of course we all know a person's character is what he is himself. His reputation is what other people believe him to be. In the ordinary lawsuit, of course, where character and reputation evidence is at issue, the test is whether a person's reputation -- what his reputation is for veracity and truth; but that is a little different from the case here. Here we have a situation of an ambassador of a government assuming his functions as such, and in the nature of things he must find out the reputation of the persons of the Japanese Government with whom he has to deal.

I use the word "reputation" in the sense of an expression of the views of that particular person with respect to any relationships between the two governments, that is, whether he is pro-German, pro-American, pro-British, or what his situation is, and of necessity the ambassador must rely on the statements of the others in his department. In so far as the answer he gave relates to the fact that it was based on opinions of others under him, that is no

reason for excluding his answer; it may only go to the weight of the answer.

I might also add that evidence of this kind, I understand, is admissible at any time in a trial.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: If it please the Tribunal, the situation here must not be confused with that of general reputation evidence. What the defense is seeking to do with this witness is to have him testify regarding a third person's opinion regarding the opinion of still another person. It is an effort to establish a specific quality of mind by stating what some other person thought about it. Certainly no court has gone as far as that; and if this Tribunal is to accept that as a gage of the admissibility of evidence, a witness could be placed on the stand to swear the issues as to every accused in the dock. And again, the situation that counsel has described where a witness must act upon what he knows to be the opinion of others is not applicable here, because we are not concerned with the thought or the action of this witness.

For these reasons we respectfully request that the objection be sustained.

THE PRESIDENT: By a majority the Tribunal

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For these reasons we respectfully request that the objection be sustained.

THE PRESIDENT: By a majority the Tribunal

upholds the objection and disallows the question.

MR. LOGAN: Disallows the question or the answer?

THE PRESIDENT: It follows we must disallow both.

MR. TAVENNER: If the Tribunal please, in closing my argument I failed to state what I did state in the beginning, that there was also a motion to strike the answer of the witness.

MR. LOGAN: His objection to the question was disallowed. His motion was directed to the answer, your Honor.

THE PRESIDENT: You can put that question again if you like, Mr. Logan.

MR. LOGAN: That is what I intend to do, your Honor.

Will the Court Reporter read it?

(Thereupon, the official Court Reporter read as follows:)

"Q What was the information you received, stating from whom you received it and when?"

MR. TAVENNER: If it is intended to ask this question again of the witness, I want to make the same objection.

THE PRESIDENT: He can tell us what there

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(Thereupon, the official Court Reporter read as follows:)

"Q What was the information you received, stating from whom you received it and when?"

MR. TAVENNER: If it is intended to ask this question again of the witness, I want to make the same objection.

THE PRESIDENT: He can tell us what there

was reported to him to have been said by KIDO, but we will exclude any opinion.

THE WITNESS: Could you please repeat the question, so that I could get it?

BY THE PRESIDENT:

Q Did your subordinates report to you anything said by KIDO? If so, what was it?

A No, I did not report anything said by KIDO.

BY MR. LOGAN:

Q Did they report anything to you?

MR. TAVENNER: I object, your Honor. That is in the face of the ruling of the Tribunal.

THE PRESIDENT: We will allow hearsay to that extent. We are excluding opinions only, not anything that was said by KIDO to him or his subordinates. He can tell us what was told to him by his subordinates, if anything was said. All we are excluding are the opinions of his subordinates as to KIDO's character or reputation.

MR. TAVENNER: But I understood, if the Tribunal please, that the witness said that no report was made to him of any statement to his subordinates by KIDO.

THE PRESIDENT: We have his answer, but I doubt whether it was as clear as that.

What did the witness say, please, court reporter.

(Whereupon, the answer was read by the official court reporter as follows: "No, I did not report of anything said by KIDO.")

THE PRESIDENT: That certainly is not an answer to what I asked him.

BY MR. LOGAN (Continued):

Q Now, will you answer the question I just had asked you, Mr. Stahmer: Did they report anything to you about KIDO?

THE PRESIDENT: Did they tell him anything about KIDO? If so, what was it?

A No, they did not tell me any definite thing what KIDO said. They only told me how he was regarded.

Q Was that based on actual contacts between the subordinates of yours and KIDO?

MR. TAVENNER: If the Tribunal please, that question assumes that the former question was admitted which the Tribunal ruled out, and I therefore object to it.

MR. LOGAN: I think that question directly follows after the last answer he gave.

THE PRESIDENT: Objection upheld.

Q Did you have any negotiations at all with KIDO from 1938 on?

A No, I had never.

Q Do you know of anybody in the German Government that ever had any negotiations with KIDO?

A No, I never heard of any negotiations from a member of the German Government with KIDO.

Q Do you know of any reasons why they would never negotiate with KIDO?

MR. TAVENNER: If your Honor please, I object to that question as calling for opinion, surmise, speculation on the part of this witness.

THE PRESIDENT: Objection upheld.

Q Do you know of any acts or statements of KIDO which would prevent the German Government from negotiating with him?

MR. TAVENNER: Objection is made in that the

witness has said he had not met the man,he had not had any conference with him, and for the additional reason that the attitude of Germany or the facts necessary for action are not admissible to any issue in this case.

THE PRESIDENT: We can see what you are trying to get at, Mr. Logan, but the witness has professed that he does not know enough to be able to answer you. That is the sum total of his evidence to date.

MR. LOGAN: I think he knows, your Honor. I am trying to get it.

And, with respect to the objection which was just made by my good friend, Mr. Tavenner, I must say it comes as rather a surprise that he is objecting to the opinions and the actions of the German Government in a case where there is conspiracy alleged. We are alleged to have conspired with that government and they are alleged to have done certain acts.

THE PRESIDENT: They are charged with conspiring with others, which might well include individual Germans,including say, Ribbentrop and Hitler.

MR. LOGAN: It may also include Mr. Stahmer

as one of those "divers persons." We do not know, and the prosecution has never disclosed it to date, who they are.

THE PRESIDENT: We have placed no limit on what he can say as to what happened between him and KIDO. It must be something that KIDO said or did, and not some opinion expressed of him by others.

BY MR. LOGAN (Continued):

Q Did you have any reason for not dealing with KIDO?

MR. TAVENNER: I object to it, if the Tribunal please.

THE PRESIDENT: Objection overruled, clearly. It all depends on what the answer is, of course. We may have to strike that.

Q Answer, please.

A Will you please tell me the question again?

(Whereupon, the question was read by the official court reporter as follows: "Did you have any reason for not dealing with KIDO?")

A (Continuing) I did not deal with KIDO, because I did not have the slightest contact with him, contrary to other statesmen and ministers here. Therefore, I could not approach him.

Q Turning now to another subject, Mr. Stahmer. Would you, as a representative of the German Government and the German Government know of the secret military negotiations which were being conducted between Great Britain and the United States in the latter part of 1938 and 1939?

MR. TAVENNER: If the Tribunal please, objection is made on the ground that the question assumes that there was such a type of negotiation.

MR. LOGAN: Subject to further proof --

THE PRESIDENT: The question should be directed to specific matters, Mr. Logan.

Morse & Lefler

Q Mr. Stahmer, do you know of meetings which were held in Washington and London between military officials of Great Britain and the United States -- particularly navy officials -- in the latter part of 1938 and early 1939?

A Yes, I knew of that. I knew that at least two secret negotiations took place, if I remember rightly, when Singapore was taken out for a mutual defense base.

Q Did you and the German Government know that at the time they were being held?

A Yes, the German Government knew that.

Q Did you and the German Government also know of further secret military negotiations, principally between admiralty officials, that were held in the early part of 1941 between Britain and the United States?

A We heard about a meeting in the United States and, if I remember rightly, it was in Washington.

Q Did you hear about that --

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: Objection is made to this line of testimony in that negotiations between the two powers, if they occurred as of the dates mentioned, could not be a matter in defense of the accused in this case. We are not concerned with the Nuernberg trial or the issues involved there. And on the additional

ground that the witness' testimony is in the nature of merely rumor.

THE PRESIDENT: We are not concerned with the Nuernberg trial but we are concerned with some of the subject matter which was passed upon there. If these negotiations suggested took place, we may have to review them here, but the information would be of no value unless we know the source, certainly.

MR. LOGAN: Need I answer?

THE PRESIDENT: The objection is overruled.

Q Did you find out about these negotiations --

THE PRESIDENT: Mr. Logan, you are called upon to show why KIDO is particularly affected by this. If they do concern him with others, but no examination has taken place about that, I do not see that you should be prevented from asking questions. But do show how you are particularly concerned, if you can.

MR. LOGAN: Marquis KIDO is included in fifty-four out of fifty-five counts of the Indictment. The only count with which he is not connected is, I believe, a certain phase of the China Incident. What took place in 1938, '39, '40, and '41 is very material to his case. I might say that it involves an affirmative defense of some of these accused, that is, the ABC encirclement, economically and militarily. Without

saying much more about it, I will be very frank that what I want to bring out from this witness is that the German Government at that time knew about these secret agreements that were being made, which will be shown later in the case, and also to show that they were communicated to and knowledge was had of them by officials of the Japanese Government. So that perhaps knowledge of what was going on and the effect of the economic sanctions and embargoes and the military encirclement, as your Honor has once said, if Japan was driven to the wall that would be in mitigation of what the leaders did at that time. In other words, this is part of that picture which we intend to show.

THE PRESIDENT: These general matters affecting several of the accused should, of course, have been brought out by Mr. Cunningham if he ascertained the witness could depose to them. But if the witness can depose to them are you to be precluded from bringing them out if Mr. Cunningham failed? I am quite sure on further consideration we would find you are not precluded. These rules that we are looking at now were agreed upon by the parties, but you could never have thought, nor could we, that they would cover every possible contingency and here is one that they do not cover.

MR. LOGAN: Well, as I announced, if your Honor please, I am only asking these questions on behalf of my client, not on behalf of anybody else.

MR. TAVENNER: If the Tribunal please, it is almost inconceivable that counsel have not discussed a matter of the importance that they attribute to this -- to these points -- or that the witness had not been examined in regard to it. If Mr. Cunningham refused to go into a general examination of this subject, thenthe situation your Honor pictured would certainly follow.

THE PRESIDENT: There is an additional fact. This witness claims to know there were such negotiations but he hasn't told us the source of his information.

MR. TAVENNER: But we don't think that on the basis of the present explanation that there is a justification for avoiding the rule of the Tribunal of reducing the statement to affidavit form.

THE PRESIDENT: There is a simple way out. We can give full effect to the rules according to their very letter and then let Mr. Logan recall this witness on behalf of KIDO.

MR. LOGAN: I only have two more questions to ask, your Honor.

BY MR. LOGAN (Continued):

Q Did you know about those negotiations at the time they were occurring in 1940 and '41 -- 1941 rather?

THE PRESIDENT: He said he heard there were negotiations.

Q Where did you get that information? From where did you get that information?

A I heard one information from Ribbentrop and some other news I have had in the so-called ministerial office of the Foreign Ministry where all the incoming cables from the different embassies and legations came in.

THE PRESIDENT: Major Blakeney.

MR. BLAKENEY: On behalf of Mr. TOGO.

DIRECT EXAMINATION (Continued)

BY MR. BLAKENEY:

Q Mr. Witness, on page 3 of your affidavit, section 3 thereof, you testified concerning the negotiations in 1938 and 1939 between Germany and Japan. With whom did Ribbentrop conduct those negotiations?

A Ribbentrop conducted these negotiations with OSHIMA.

Q General OSHIMA's position was then Military Attache, was it not?

A He was at that time still Military Attache.

Q Who was the Japanese ambassador at that time?

A Ambassador TOGO.

Q Had Mr. TOGO anything to do with those negotiations?

A No, not so far as I know.

Q When did those negotiations commence?

A I do not remember the exact date, but it was in the summer of 1938.

Q And, do you remember when Ambassador TOGO was transferred from Berlin to Moscow?

A I believe he was transferred in October, 1938.

Q Is it correct to say, as far as your information goes, that from the beginning of those

negotiations until his transfer Ambassador TOGO had nothing to do with them?

MR. TAVENNER: Objection is made on the basis that the question is grossly leading.

Q (Continued) Or not?

THE PRESIDENT: Well, you received your answer from a Member of the Tribunal, Major Blakeney, who told you it was grossly leading and impertinent. The red light prevented me from saying anything.

MR. BLAKENEY: Well, I can see how the question may have been leading but its impertinence I am unable to recognize. I will try to put it in a more unobjectionable form.

Q Mr. Witness, so far as your information goes, what connection had Mr. TOGO, the then Ambassador to Germany, with the negotiations conducted in the summer of 1938, from the beginning thereof until his transfer to the post of Ambassador at Moscow in October, 1938?

A As far as my information goes, Ambassador TOGO has nothing to do with these negotiations from the beginning until he left Berlin -- was transferred to Moscow.

Q Did you ever personally talk with Ambassador TOGO on this subject, that is, in 1938?

A No, I never talked with him personally about

this subject.

Q How did you come to deal with Military Attache OSHIMA on this question?

MR. TAVENNER: Objection is made, if the Tribunal please, on the ground it is covered in the general examination.

THE PRESIDENT: That is so.

Mr. Blakeney, before you go further, I am asked to put this: How could German knowledge of negotiations between England and the United States be any defense or exculpation of the accused? Knowledge of the accused might be. It may be that when that was drafted Mr. Logan was examining the witness.

I could only suggest that you are charged with conspiring with others, obviously including the Germans, and anything that would tend to exculpate them could be relied upon by you. If I understand the charges rightly, the allegation of conspiracy is not confined to the Pacific, but extending to Europe. Neurnberg certainly thought the charges before them embraced the Pacific.

MR. BLAKENEY: Shall Mr. Logan answer?

THE PRESIDENT: He can, if he wishes.

MR. LOGAN: In case there is any doubt, your Honor, in the mind of the Judge who asked the question,

it goes a little further than that, in that we are endeavoring to show in the defendants' case that the actions of the Western Powers, of which Japan and others alleged in the conspiracy had knowledge at that time, resulted in certain acts being taken by Japan. In other words, what was done by the Western Powers, knowledge of it came to the representatives of the so-called Axis, brought about certain results, and that is what we have been trying to show through this witness, that Germany had knowledge of certain things that had taken place, and we will show later that certainly Japan had the same knowledge. In other words, what the Western Powers were doing had a very direct bearing on what Japan did.

THE PRESIDENT: Do you suggest that Japan knew what Germany knew, an idea not even faintly hinted at?

MR. LOGAN: I am trying to show, your Honor, that Germany knew it and that Japan knew it, also that these meetings were not so secret as what they were thought to be at that time. And, they are a matter of public knowledge at this time.

THE PRESIDENT: Well, that is a matter for evidence.

BY MR. BLAKENEY (Continued):

Q Mr.Witness, do you know whether the negotiations between Ribbentrop and OSHIMA were kept secret from Ambassador TOGO?

A I do not know if these negotiations were kept secret from Ambassador TOGO.

Q Did you receive orders from Ribbentrop concerning the question of whether the negotiations should be made known to Ambassador TOGO?

A No, I did not get such an order. I had only to deal with Mr. OSHIMA.

Q Do I understand by that that your orders were to deal only with OSHIMA?

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: Objection is made to the question as being grossly leading. This witness is on direct examination, not cross-examination.

THE PRESIDENT: The question does suggest the answer, Major Blakeney, and is objectionable as being leading.

MR. BLAKENEY: His answer was patently ambiguous, and I was merely trying to resolve the ambiguity.

THE PRESIDENT: That is his task.

MR. BLAKENEY: Reporter, read to the witness the second preceding question.

(Whereupon, the question was read by the official court reporter as follows:

"Did you receive orders from Ribbentrop concerning the question of whether the negotiations should be made known to Ambassador TOGO?")

Q Did you hear that and understand it, Mr. Witness?

A Yes, I understood it. I did not get -- I got an order from Ribbentrop; he made me liaison man to OSHIMA to deal with him about this, the beginning of these negotiations.

Q Are you able to state from your experience in diplomacy whether negotiations of this character are usually conducted with ambassadors or with military attaches?

A Normally these negotiations were made between ambassadors and foreign ministers.

Q Are you able to state why in this instance negotiations were conducted between the foreign minister on the one hand, and on the other, the military attache, rather than the ambassador?

A I do not know the reason. Probably because Ribbentrop knew OSHIMA before and during the negotiations of the Anti-Comintern Pact.

Q Do you know what was the condition of relations between Ribbentrop and TOGO at this time?

A The conditions seemed to me always rather cool, at any rate in this time of summer, 1938. But I do not know why.

Q In your affidavit on page 6, section 6, you

refer to some discrepancy between Ott's telegrams and KURUSU's information concerning the attitude of Japan. When you came to Tokyo at that time to investigate the situation, what estimate did you form of the accuracy of Ott's telegrams to the Foreign Office?

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: Objection is made on the ground that this matter generally is covered in the general examination, and also on the ground that it calls for an opinion from this witness.

THE PRESIDENT: Major Blakeney.

MR. BLAKENEY: First, it is not covered in the general examination, unless I am overlooking something, because the affidavit states that since only a confused impression was gathered by the German Foreign Office, they sent him out to learn the actual conditions. I am now pursuing that subject beyond the point to which he took us in the affidavit, to ask him what he found as a result of the investigation so made.

As to whether the result of his investigation was his opinion, we are not concerned, because if it was opinion, it was opinion officially formed in the course of his official duties, and presumably, as he points out, relied upon by his government in its official acts.

THE PRESIDENT: Well, how does it affect your client, particularly?

MR. BLAKENEY: As the Tribunal will well remember, in many dozens or scores or perhaps more instances, the telegrams of Ott were put into evidence against these defendants, including my client, Mr. TOGO. One example specifically affecting him is of recent memory and I therefore mention it; that is, Ott's telegram purporting to report the contents of a speech made to the Liet by Foreign Minister TOGO in early 1942. Comparison with the actual speech now in evidence will show the importance of knowing the reliability of Ott's reports; and this witness was sent out officially by his government to ascertain that fact of the reliability of Ott's reports, as is inferentially apparent from the statement in section 6 of his affidavit.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: If it please the Tribunal, I submit that there is no section -- or no part of section 6 that warrants such a conclusion. The declaration that the witness was sent to check up on Ott's telegrams is apparently intended to be read into section (a), which says "To find out the actual intention of the Japanese Government towards Germany."

The whole purpose in sending the witness to Japan was to conclude this pact if it could be concluded, according to the witness' testimony, and it is submitted the claim of the defense now that he was sent there for another purpose certainly requires a very strained construction.

MR. BLAKENEY: May I point out, in answer to Mr. Tavenner's second argument, paragraph 6 of the affidavit, the last sentence thereof, as follows:

"Incoming telegrams from Ambassador Ott of the German Embassy in Tokyo and verbal information from Ambassador KURUSU in Berlin created a completely confused picture of the Japanese attitude from the viewpoint of the German Government, which eventually could not figure out what the Japanese Government had in mind."

And in view of the confused picture, he was ordered to go and investigate.

THE PRESIDENT: To shorten the matter, Major Blakeney, I think we are all prepared to hear what he found out about Ott and what he told Germany about Ott.

MR. BLAKENEY: Answer the question, please.

THE PRESIDENT: To that extent: What you found out about Ott and what you told your government about him.

Reichers & Greenberg

We will hear your answer after the recess. We will recess for fifteen minutes.

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

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

THE PRESIDENT: Mr. Blakeney.

BY MR. BLAKENEY (Continued:)

Q Mr. Witness, will you please answer the question asked by the President before the recess?

A I never had any order to investigate Ott or any other person. I had only to study the political situation here and, of course, I talked it over with Ott personally. Then he told me that his telegram -- there was a certain mistake, and he told me a lengthy story why, and so I did not make any report to Ribbentrop or any other man.

Q By report, you mean on the question of accuracy of telegrams?

A Yes.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: It is too late now.

MR. BLAKENEY: I was trying to get the President's question fully answered, that he did not make

a report, that's all.

MR. PRESIDENT: Mr. Caudle.

DIRECT EXAMINATION (Continued:)

BY MR. CAUDLE:

Q Mr. Stahmer, will you please state where, when and under what conditions you first met the accused, SHIRATORI?

A I met Mr. SHIRATORI first in 1939 when he was invited to Berlin during the birthday of Hitler.

Q Did you talk with him at that time, sir?

A I saw him twice during lunch and dinner, and we talked together, but not politically.

Q When did you next see the accused?

A The next time I saw him was in February, 1940 during my short, first stay in Japan.

Q Was that when you were on your Red Cross tour?

A Yes, that was during that time.

Q And I believe at that time you sent a wire back --- I think it was signed "Ott-Stahmer," exhibit 511 --- wherein you stated that you found SHIRATORI, OSHIMA, ISHII and others in the same friendly attitude, is that correct, sir?

A Yes, that is correct.

Q Will you please explain the wire,-- the

a report, that's all.

MR. PRESIDENT: Mr. Caudle.

DIRECT EXAMINATION (Continued:)

BY MR. CAUDLE:

Q Mr. Stahmer, will you please state where, when and under what conditions you first met the accused, SHIRATORI?

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A Yes, that is correct.

Q Will you please explain the wire,-- the

nature of that wire?

THE PRESIDENT: That doesn't call for that. I am addressing you, Mr. Caudle.

MR. CAUDLE: Excuse me, sir.

THE PRESIDENT: Is the wire ambiguous or equivocal?

MR. CAUDLE: Well, sir, I would just like to know under what circumstances he saw him.

MR. PRESIDENT: You asked him to explain a telegram. I don't know what you mean.

Q Will you explain under what circumstances you saw the accused SHIRATORI at that time?

A I saw him together with some other Japanese gentleman whose name I do not remember, and we talked about general topics together with this other gentleman.

Q When did you next see the accused?

A I do not remember if I saw him on my way back from the United States, but at any rate I saw him during or after the conclusion of this Tri-Partite Pact, because there were several invitations; many people appeared.

Q Will you please state, if you know, what part the accused took in the formulation or the conclusion of the Tri-Partite Pact?

A I knew that he was an adviser of the Foreign

Minister, but I don't know what part he took in the negotiations; I did not talk with him.

Q Did he ever sit in on any of the discussions?

A No, he was not present. There were always only MATSUOKA and Ott present, and in the end I saw Mr. SAITO and Mr. MATSUMOTO; only for technical small details, not in the meeting.

Q Did you ever discuss the Tri-Partite Pact in any way whatsoever with the accused?

A I do not remember. It may be that we talked it over during these dinners and lunches after the signatures to the Pact.

Q Did you have any discussion with him prior to the conclusion of the Pact?

A No, I talked only with MATSUOKA.

Q Do you know how many times Mr. SHIRATORI met Mr. Ribbentrop?

A He could have met him only during the fiftieth birthday of Hitler, in April 1938 -- 1939.

Q Then you mean they met only once?

A Only during those two or three days -- I donnot know exactly how long he stayed -- in April 1939.

Q Then, under the circumstances, Mr. Ribbentrop could not have known Mr. SHIRATORI very well, is that correct?

Q With respect to the strengthening of the Anti-Comintern Pact, you state that most of the negotiations were made with Italy through Germany. Will you please explain that, sir.

A During the negotiations in Munich, in September, 1939, Ribbentrop and Hitler talked at first about this idea with Mussolini, and Mussolini agreed immediately, principally, and told them he must think it over when a suitable time would become to go on with these negotiations -- to begin with these negotiations from the side of Italy. As far as I remember, he told that in beginning of January, 1940 -- not 1939.

I was wrong. This was in beginning of 1939.

Q Those negotiations were carried on strictly between Germany and Italy through either Mussolini or Ciano or Ribbentrop or Mr. Hitler, is that correct?

A That is correct. In October, 1938 Ribbentrop again -- Ribbentrop went to Rome and talked again with Mussoline and with Ciano; and later -- at that time Italian Ambassador in Berlin, Attolico, was informed, too, and worked together in these negotiations.

MR. CAUDLE: Thank you.

THE PRESIDENT: Major Furness.

MR. FURNESS: Direct examination on behalf of the defendant SHIGEMITSU.

DIRECT EXAMINATION (Continued)

BY MR. FURNESS:

Q Stahmer, in your conversations with Foreign Minister SHIGEMITSU, did you conduct them in English or in some other language?

A We talked together in English.

Q And were writings which you presented to him in English or in some other language?

A Mostly in English. Of course, official communications were made in German with an English translation.

Q Towards the end of August, 1938, did you have a conversation with Foreign Minister SHIGEMITSU?

A In 1938 --

Q I'm sorry; in 1944.

A Yes, in 1944 I had, in August, several conversations with him.

Q What was this conversation about?

A It was, I believe, in the second half or against the end of August, a conversation about the necessity of -- or possibility of coming to an understanding between Germany and Russia with the idea to

make peace.

Q Did such discussion relate only to peace between Germany and Soviet Russia or did it also include that as a first step towards general peace?

A The idea was to try to come to peace between Germany and Russia and then to use this situation for a common peace between all nations concerned.

Q Did you report this conversation to your government?

A I reported this conversation to my government.

Q Later, about the middle of September, did you have another conversation with Foreign Minister SHIGEMITSU?

A Yes, I had another conversation; and, after, I got answer on my cable to Berlin.

MR. FURNESS: I ask that the witness be shown the original of defense document 1770.

(Whereupon, a document was handed to the witness.)

Q Do you recognize that document?

A Yes, I recognize the document.

Q Did you bring it with you to this conference about the middle of September?

A Yes, I had that document especially translated in English and brought it to Mr. SHIGEMITSU.

Q And you delivered it to him as an official communication?

A Oh, I gave him my official communication verbally, but I gave him this written paper so that no misunderstanding could arise, as a sort of aide memoire.

Q And that document is the document which you now have in the box?

A Yes, that is this document.

MR. FURNESS: I offer in evidence defense document 1770.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1770 will receive exhibit No. 2745.

(Whereupon, the document above referred to was marked defense exhibit No. 2745 and received in evidence.)

MR. FURNESS: I will read defense exhibit 2745, beginning on page 2, paragraph numbered 3:

"Ambassador OSHIMA informed the Fuhrer about the Japanese Government's suggestion concerning a separate peace between Germany and the Soviet Union. The Fuhrer explained the German point of view as

follows:

"a) We have no indications that the Soviet Government is ready for an understanding with Germany. We believe that Stalin will try to come to an understanding with Germany only then, when he is convinced that he cannot successfully continue the war or that, at least, his forces are not sufficient to defeat Germany.

"b) If this should happen, a new political situation will be created.

"c) The German Government fully appreciate the Japanese Government's suggestion. However, on account of the above-stated explanations, the German Government would be obliged, if the Japanese Government in this matter would refrain from all steps with the Soviet Government.

"On the question of Ambassador OSHIMA, if the German war aims vis a vis Soviet Russia have changed, the Fuhrer replied, that Stalin did not ask for peace negotiations when the German troops were on the Don and that the same holds good for Germany under the present circumstances."

Q At that time, did you have a discussion with Foreign Minister SHIGEMITSU?

A Yes, we had a discussion.

Q Did it relate to this proposal of peace between Soviet hussia and Germany?

A Yes.

Q Did you include that as the first step towards general peace between all countries involved in the war?

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: If the Tribunal please, this, in the prosecution's view, is an inexcusable use of a leading question to which we object.

THE PRESIDENT: The objection is upheld.

Spratt & Yelden

Q Did the discussion relate only to peace between Germany and Soviet Russia or did it relate to peace with any other countries?

MR. TAVENNER: If the Tribunal please, I would like to make the same objection to this question.

THE PRESIDENT: Objection upheld.

What was the discussion about, Witness?

THE WITNESS: The discussions were about these possibilities of coming to an understanding and peace with Russia. I was mostly interested to know if there was any background or any knowledge from the side of the Japanese government which I could never find out. The general idea was that when such an understanding was possible it should be a platform for making peace with the other nations too.

Q Were these talks initiated by the Foreign Minister SHIGEMITSU?

A Yes, they were.

Q Was he for or against negotiation of peace between Germany and Russia and with other countries?

A He was for it and he proposed it.

MR. FURNESS: There is no further direct examination, if your Honor please, on the part of the defense counsel.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: If the Tribunal please, do I understand that there will be no further cross-examination -- or redirect examination -- on the part of the first counsel who examined, Mr. Cunningham?

THE PRESIDENT: That question is premature, if I appreciate the situation. Neither defense counsel nor the Tribunal can answer that question yet. The defense announced there would be no further examination.

MR. TAVENNER: I did not intend, your Honor, to use the word "cross-examination."

THE PRESIDENT: But you spoke about redirect.

MR. FURNESS: On that I meant "direct examination." I think I said "redirect examination."

THE PRESIDENT: Do not be so sharp on the uptake, Mr. Tavenner.

CROSS-EXAMINATION

BY MR. TAVENNER:

Q Mr. Stahmer, you explained in your affidavit the reasons why you were without the possibility of a party career. Did you not arise to the rank of ambassador at large in Germany?

A I became ambassador at large in Germany and later ambassador in China and here, but that has nothing to do with party career. What I meant was I was never

promoted in the party; I couldn't be promoted in the party and I got no rank there.

Q You were also named consul general in 1940, were you not?

A I became the character consul general in January 1940 -- the character as consul general, the title.

Q To whose influence in Germany was your preferment in the various positions of ambassador at large, ambassador to China, ambassador to Japan, and consul general due?

A I was proposed from Ribbentrop, the Foreign Minister, in 1938 and promoted from Hitler as the other officials from the German Embassy here too.

Q Was it due then to this special influence and friendship of Ribbentrop that you, a person not entitled to receive or to have a party career, that was responsible for your various elevations?

A I was promoted because Ribbentrop was satisfied with my work.

MR. TAVENNER: I cannot help but observe that you have a document of some type in your hands.

THE WITNESS: This is the affidavit.

MR. TAVENNER: I would appreciate it if you not refer to it during my questions on matters that

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MR. TAVENNER: I cannot help but observe that you have a document of some type in your hands.

THE WITNESS: This is the affidavit.

MR. TAVENNER: I would appreciate it if you not refer to it during my questions on matters that

are contained in the affidavit.

Q Upon the conclusion of the German-Soviet Non-Aggression Pact on August 23, 1939, did the Japanese continue in their efforts to effect a Japanese-German alliance?

A No, after the conclusion of the Russian-German Non-Aggression Pact we got a cable in which the Japanese government told us that the negotiations were broken off.

Q Did you have access to the files of Ribbentrop or the Foreign Office?

A Most generally I could only read what was offered to me to read.

Q But generally speaking you had access to those files for the reading of matters that you were interested in and which were connected with your assignments, were you not?

A Of course, I could get these cables, documents, which were necessary for my work.

Q Did you see in the files of the German Foreign Office a telegram from Mackensen, German ambassador to Rome, directed to Ribbentrop, regarding a conversation between Ambassador SHIRATORI and Mackensen on the 2d day of September 1939 in which SHIRATORI expressed the opinion that with a new Japanese cabinet

are contained in the affidavit.

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there was a well-founded chance for successful continuation of the stalled rapprochement with the Axis powers and for the purpose of being able to work more effectively he was returning to Tokyo?

A No, I have not seen the telegram.

Q Were you advised of the contents of that telegram?

A No, I am not advised.

Q Were you informed or did you learn that SHIRATORI soon after his return to Tokyo, in a conference with Ambassador Ott, offered close cooperation in working toward a non-aggression pact between Japan and Russia with the further aim of active cooperation between Germany, Japan, Russia and Italy?

A No, I was not informed of that telegram.

Q Now, the first telegram that I mentioned, that is the one of September 2, 1939, is prosecution's exhibit 2232 and is found at page 16,003 of the transcript. As to this second telegram relating to the conference between SHIRATORI and Ambassador Ott in Japan, let me see if I can refresh your recollection.

Do you recall whether you heard that SHIRATORI was counting on an early failure of the ABE cabinet soon after his return to Japan?

A No, I did not hear that.

Q The date of the matters I am referring to was in October 1939. Do you recall receiving the information at this same time that SHIRATORI considered that there had been a weakening in the army circles due to the costly military defeat at Nomonhan? Does that refresh your recollection?

A No, I am sorry. I cannot recall any connection between SHIRATORI and the incident at Nomonhan.

Q Do you have any knowledge of the political activities of SHIRATORI in Japan between the time of his return as Ambassador from Italy and the time of your trip to Japan in 1940?

MR. CAUDLE: I would like to object to this line of questioning. Mr. Stahmer was in Germany in 1939 and Mr. SHIRATORI came to Tokyo in October, 1939. How could he know?

THE PRESIDENT: He could know, and he was merely asked whether he did know.

The objection is overruled.

A No, I did not know. I only heard in 1940 that he became adviser of MATSUOKA.

Q Was that legal adviser?

A That is a very difficult position which I only found here in Japan. I heard there were different

types of advisers. Some of these advisers would be nominated by the ministers themselves, and some, as far as I heard, were nominated by the Prime Minister or the Governor or the Government. I do not know if there were what you call "legal advisers."

THE MONITOR: Mr. Tavenner, by "legal advisers" do you mean that they were legally appointed advisers, not the adviser on legal matters? I would like to ascertain that in our translation.

THE PRESIDENT: Adviser on legal matters.

Q Do you know whether SHIRATORI was appointed adviser by the Foreign Minister?

A I do not know. I only know that he was adviser of MATSUOKA.

Q The German-Soviet Non-Aggression Pact was concluded on the 23rd of August, 1939. What was the date of your alleged conversation with Ambassador OSHIMA in which you claimed that you notified him that the pact had been signed?

A I cannot recollect the exact date, but I know that it was immediately after the first return of Ribbentrop from Moscow.

Q And can you not fix the date?

A No, I am sorry. I remember Ribbentrop went to Moscow twice, and after his first trip he told me

to inform Ambassador OSHIMA. I cannot remember exactly.

Q Where was Ribbentrop at the time that you claimed that you notified OSHIMA?

A As far as I remember he came back from Moscow. I was in Berlin, and he took the plane, I suppose, to Bertchesgaden.

Q Well, was it before the signing of the pact on the 23rd of August or after the signing of the pact that you notified OSHIMA?

A I believe after the 23rd, after the signing of the pact.

Q About how many days?

A Very shortly after the return of Ribbentrop.

Q As a matter of fact, Mr. Stahmer, had not Ambassador OSHIMA been notified of the proposed pact by Ribbentrop himself as early as the evening of August 21, 1939?

A I know that Ribbentrop told me to inform Ambassador OSHIMA because it was a very difficult task for me, and that he ordered me to tell him that the German-Russian Aggression Pact was concluded and he, Ribbentrop, would come to see OSHIMA as soon as possible and talk the situation over with him.

THE PRESIDENT: We will adjourn until half-

past nine tomorrow morning.

(Whereupon, at 1600, an adjournment was taken until Tuesday, 17 June 1947, at 0930.)

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MR. CUNNINGHAM: Next, your Honors, I should like to present defense document 1714, an additional sworn statement by the witness, and I ask that the document be presented to the witness.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: I understand counsel does not offer the document at this time but is merely presenting it to the witness.

THE PRESIDENT: It was served on the Judges for the first time today. Of course, he is at liberty to show the document to the witness. Show the document to the witness.

(Thereupon, a document was handed to the witness.)

MR. CUNNINGHAM: I ask you to examine defense document 1714 and ask you to state if that is your sworn statement.

(Addressing Clerk of the Court) The original is there. The original is there with the signature on the back page.

I ask you to examine the document and state whether or not all the statements contained therein are true.

THE PRESIDENT: His signature would relieve him of the necessity to reading the whole document

through, Mr. Cunningham. We haven't time to waste while he reads it through.

MR. CUNNINGHAM: Well, the witness is familiar with the document.

THE PRESIDENT: This is a copy, you know. That copy could have been made independently of the document. Before he can be sure he must read the lot, but if he had his signature he need not do so. Of course, if you assume that is a carbon copy of the original that is all right, but you can make no such assumption about carbon copies. Let him assume, if he wants, that it is a carbon copy and let him say, "Yes, that is the same as the original," but it will be an assumption.

MR. CUNNINGHAM: Well, I personally delivered the signed copy to the clerk's office and I can't do any more than that. Now I am trying to substitute a copy of it until they find the one with the original signature on it.

THE PRESIDENT: Is that copy the same as the original you signed?

THE WITNESS: Yes, it is the same copy, and it is true.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: If the Tribunal please, in the interest of saving time, I have a number of objections

to make regarding specific questions and answers and, if counsel is willing, we could proceed with that matter before the document is formally tendered.

THE PRESIDENT: I think that is the desirable thing to do because if it is tendered we will have to take the point that we weren't served twenty-four hours in advance -- I mean three days in advance.

MR. CUNNINGHAM: Well, your Honor, there is a misunderstanding about that. As I understood it, the other day you said that the twenty-four hour rule now applied to affidavits.

THE PRESIDENT: As far as I am concerned, twenty-four hours will do. But that isn't the rule. Three days. That is for judges copies.

MR. CUNNINGHAM: Well, I understand it you changed that rule the other day and said the same thing applied to you as applied to the prosecution -- twenty-four hours in advance. Now I can't keep track it seems.

THE PRESIDENT: All the judges disclaim that any such statement was made. Unfortunately for you, there is a record to correct you.

MR. CUNNINGHAM: Well, anyway the documents have certainly been in circulation for a week and I can't understand why the judges don't get their copies. I can't control that.

But, your Honors, as to the order of making objections, it seems to me that it would be very difficult to sustain an objection in the middle of the testimony, whereas it would be more practicable to rule on the objections as they come in their logical order, because how are you going to take the middle of a document here and say, "This has no bearing," when you can't, unless you read the balance of the document, know what has gone on before?

THE PRESIDENT: The question could not arise if this were in narrative form. The mere fact that it is in the form of questions and answers makes no difference. We would still have to read the lot, perhaps.

Here is the original now, I understand.

MR. CUNNINGHAM: Well, your Honor, the reason the question arises is that I can't see how this particular document could be reduced to narrative form because it doesn't lend itself to that sort of treatment and that is the reason I had to deal with it in this way.

THE PRESIDENT: If, in the course of writing our judgment, we have to deal with this particular interrogation, we certainly shall put it in narrative form and we will have no difficulty.

Mr. Tavenner.

MR. TAVENNER: If the Tribunal please, the prosecution insists on making its objections to these questions and answers before they are actually reached in the reading. The attention of the Tribunal is called to the fact that on the first occasion that this document was mentioned counsel proposed to ask these questions without serving the document on the prosecution. Now an effort is being made to introduce the document piecemeal. The defense was directed by the Tribunal to put this document in affidavit form but, in the interest of saving time, the prosecution doesn't insist on that.

THE PRESIDENT: But we have a strong objection to an affidavit being made and then followed by hundreds of questions as Mr. Cunningham proposed. He anticipates that by getting another affidavit. All we are saying is that copies of that affidavit were not served on the judges three days in advance of the attempt to use it. We can hardly say we won't take two affidavits from the same witness, much as we dislike doing so.

MR. CUNNINGHAM: Well, your Honor, charges are made in the Indictment in specific, short, snappy sentences that certainly cannot very well be answered in narrative form the way I --

THE PRESIDENT: All I can say is that the

affidavit cannot be read as a document in evidence unless that requirement of service is met, but we may have a discussion on the preliminary question of whether such evidence could be admitted at all. That is what Mr. Tavenner wants. Your only reply is that this is an interrogation and not a narrative, and there is no difference in substance between the two for our purposes.

MR. CUNNINGHAM: Well, your Honor, what about this for a compromise: I suggest that the document be offered in evidence, that the prosecution be permitted to make their objections in toto, that we be permitted to read the document and waive the thirty-six or seventy-two hour rule of the Court, and that we be permitted to proceed with this evidence. It is slowing down the procedure.

THE PRESIDENT: In other words, that Mr. Cunningham be placed above the rules but everybody else be left subject to them.

MR. CUNNINGHAM: Well, as I understand it, your Honor, these copies were delivered to the judges on Friday, and I think that the rule of seventy-two hours is probably a technical one. If there is an advantage that we are taking away from the members of the bench on account of it, why, it would be a simple matter for the judges to take this and read it in

fifteen or twenty minutes, which is going to be required of me.

THE PRESIDENT: The rules must be observed. I will say no more about it. This is obstructionist.

MR. CUNNINGHAM: Well, now, your Honor, I can't follow the position. What are we to do now?

THE PRESIDENT: You will agree to Mr. Tavenner's suggestion. If you don't, we will make you. We also insist on that course ourselves. We have the right to do it. The Charter gives us the power and we will exercise it.

Let us have a discussion on the admissibility of this interrogation straightaway. We will treat this as an argument on the question whether this interrogation can be admitted; and we will hear you first, Mr. Tavenner.

MR. TAVENNER: If the Tribunal please, this interrogation is so drawn that virtually every question is in the form of a leading question, and much of it deals with irrelevant and immaterial matters.

THE PRESIDENT: We have admitted affidavits in the form of interrogations previously, Mr. Tavenner. If I recollect rightly, they came from the prosecution's side as well as from the defense side. We must be consistent.

MR. TAVENNER: I was not objecting on the ground that the document is in the form of questions

and answers, because that procedure has been followed by both the prosecution and the defense. It is not my purpose to rely upon the objection that the questions are leading where that is the sole objection.

THE PRESIDENT: Some of the prosecution's questions in these cases were certainly leading.

MR. TAVENNER: I merely desire that the leading form of the question be taken into consideration along with the other objections which I will make.

THE PRESIDENT: We have repeatedly said that a leading question reduces the value of an answer considerably; sometimes to the vanishing point.

MR. TAVENNER: Specific objection is made to all of the questions and answers on page 1 with the exception of the first question.

As to question 2, the question and the answer elicited are repetitive, in that the same matter is considered in the first paragraph of section 12, page 9 of the affidavit.

Question No. 3 and the answer elicited are objectionable on the same ground in that the matter is covered by the affidavit on page 7.

Question 4 is likewise repetitive in that it is the same matter as is considered in question 2 and on page 12 of the affidavit.

Objection is made to question 5 in that the subject matter of that question is entirely irrelevant and immaterial to any issue here.

Question 6 is objected to on the ground that the witness could not possibly know of the instructions that OSHIMA received or did not receive from his government, and, therefore, his answer proves nothing.

On page 2, objection is made to question 10 in that the interest of OSHIMA in party politics in Japan could not be a matter within the knowledge of the witness; and even if true, the answer is irrelevant and immaterial.

Question 11 is divided into two questions -- I believe it is three questions. Objection is made to the question in so far as it relates to the foreign policies of the various Japanese cabinets, in so far as the witness answers that they had merely different political ideas. It has no probative value. The last part of question 11 refers to the same question of the interest of OSHIMA in political parties in Japan, and for that reason is repetitive in that it is covered in questions 2, 4, 10, and also on page 12 of the affidavit.

Question 12 is objected to. The witness

could not possibly know of the official acts of OSHIMA based upon telegrams and messages and commissions of the Japanese Government. The answer elicited has no probative value.

The next question relates to the expression of views by the witness -- rather, the views of OSHIMA. The witness could not be qualified to express an opinion of that character.

The following question regarding the conflict of views between foreign minister and ambassador is a hypothetical question which is objected to.

THE PRESIDENT: We will recess for fifteen minutes.

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

Reichers & Greenberg

MARSHAL OF THE COURT: The International Military Tribunal for the Far East is now in session.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: If the Tribunal please, objection is made to Question 13, on page 3, which is in two parts, on the ground that the question calls for a construction of international law by the witness.

Question 14 is objected to, or rather, the answer to that question is objected to, on the ground that, after stating that he does not know, he attempts to give his belief about the subject matter of the question; and, in addition, the matter is repetitive.

On page 4, objection is made to the first question on the ground that it is repetitive. The same general subject matter is covered in questions 2, 4, 12 and others.

The second question is objected to on the ground that it is repetitive and the answer, as it is noticed, speaks of the witness' impression, so the additional objection is made that there is no probative value.

Question 3 is likewise repetitive -- I believe I am in error in stating that that is repetitive -- but the answer to the question is of a purely repetitive character and, for that reason,

is objected to.

The 4th question is repetitive, and, in addition, the witness speaks of his impression.

The 5th question -- both the first and second questions under it are repetitive.

On page 5, the answer to the last question is objected to on the ground that it is virtually a repetition of a statement appearing in the affidavit. It is therefore repetitive and should be excluded.

On page 6, the answer to question 3 is repetitive, the same matter having been dealt with in the affidavit, and part of it, in fact, seems to be almost a quotation of the affidavit.

On page 7, the answer to question 8: objection is made to the answer, with the exception of the first four words, "I do not know."

On page 8, question 14, the witness is asked to state his impressions with regard to certain matters relating to the foreign policy of Japan. Objection is made on the ground that the witness is not entitled to state his impressions or opinions.

At the top of page 9, the answer of the witness to question 21 is objected to on the ground that, after having stated that he had never been told

regarding the potential character of the Soviet Union's participation in the Tri-Partite Pact, he proceeds then to state his personal beliefs.

Objection is made to the answer to question 22 in that it is merely a statement of the witness' belief and is made for the purpose of argument, and should be excluded for both reasons.

Question 26 is objected to on the ground that it is repetitive, the same matter having been stated in the affidavit.

The next question even goes so far -- that is 27 --- as to ask whether it was likely that a certain conversation had taken place. It is, of course, objected to on the ground that it calls for a merely speculative answer and is grossly leading.

Question 28 is objected to on the ground that it calls for the witness's opinion as to what MATSUOKA'S opinions were.

This constitutes the objections I had in mind.

THE PRESIDENT: Mr. Cunningham.

MR. CUNNINGHAM: In answer to the objections made by the prosecutor, I suggest that each question seems to tie in very definitely with some specific charge made in the Indictment, and that was the purpose. Each question answers some specific charge

made by the prosecution in their evidence.

On question number 2 OSHIMA is charged with violating instructions. This is to answer that charge.

No. 3: He is charged with participating in the Tri-Partite Pact. This is to answer that charge.

PRESIDENT: I think you overlooked the fact that it is OSHIMA who is charged, not Stahmer.

MR. CUNNINGHAM: No. 4: The question whether or not Mr. OSHIMA did anything else beside his ambassadorial duties involved, and this answer in paragraph 4, question 4, seems to take care of that.

Question 5: There is involved here a question, -- to what extent should an ambassador be held responsible for the policy of his government. This hits that right between the eyes.

No. 6: It is usual and customary in matters of diplomatic procedure for an ambassador to show his telegrams to the representatives of the other government in order to show good faith in their transactions.

Question No. 10, on page 2: There is a question whether or not an ambassador engages in party politics or is above party politics, and this answer takes care of this contention.

On No. 10, the question arises, did the Japanese leaders carry on a continuity of foreign policy or did the foreign policy change from time to time. This answer deals with this matter emphatically.

I think question 11 and the answer is probably the most significant statement in this whole series of questions and answers and, certainly, is relevant and material.

On No. 10, the question arises, did the Japanese leaders carry on a continuity of foreign policy or did the foreign policy change from time to time. This answer deals with this matter emphatically.

I think question 11 and the answer is probably the most significant statement in this whole series of questions and answers and, certainly, is relevant and material.

On No. 12, as I stated, it is customary for an ambassador to confer closely with the liaison and to show the information which he gets from his country in order to show good faith in the transaction. The last part of No. 12 shows that it may be hypothetical, but it certainly indicates that it is the foreign minister whose policy is being carried out and not the ambassador in carrying on foreign relations with third parties.

On No. 13, prosecution suggests this is a construction of international law. I deem it a confirmation of international law.

On No. 14 --

THE PRESIDENT: We do not want the witness' imprimatur.

MR. CUNNINGHAM: I did not understand.

THE PRESIDENT: We do not want the imprimatur of any witness.

MR. CUNNINGHAM: Now, on page 4, the first question, the prosecution says it is repetitive. I cannot see that that question was specifically answered before, and that is the test of it being repetitive. On the last part of the question, as to probative value, I think that has to be tested from the whole document and the other documents to be

received and not from one isolated question.

On No. 3, the defendant is charged with some responsibility for the policy of the Japanese Government. I cannot say that that has been answered before.

On No. 5, if the Tribunal says that that question has been satisfactorily answered before, then, perhaps, it is repetitive, but I cannot believe that any witness or any other document has answered that question before.

On page 5, the last part that is objected to is the statement of the witness which, I submit, is admissible; and, since the Tribunal has ruled it out on the other affidavit, perhaps we may be bound by that ruling.

On page 6, on the question, the charge of the prosecution is stated specifically; the answer to that charge is stated specifically; and I cannot believe that it is a repetition of anything that has been said if the affidavit or elsewhere.

Page 7, question 8, the witness says he does not know, meaning generally, but he does know specifically an instance. I cannot see how he should be excluded from stating his specific information even though he is reluctant to take a general

stand.

On page 8, question 14, these defendants are charged with a conspiracy as being the government of Japan. This question and answer specifically refutes that allegation.

Page 9, question 22, I admit Ambassador Ott would be the best witness on that question. He is not available, and this is the best secondary evidence I can give on that question.

I do not have a note here on my memorandum as to what the specific objection to No. 21 was. Therefore, I will have to pass it.

THE PRESIDENT: Obviously, on the ground that it involves an opinion.

MR. CUNNINGHAM: I believe the witness' opinion on that question is relevant and material and should be admitted.

26 is said to be repetitive. If the Court is satisfied it has heard enough about that, then we will consider it cumulative. But I do not think this witness hsa said that before, which is the test of being repetitive.

On 27, "Is it likely that such a conversation took place?" -- Ribbentrop said it didn't take place. I wanted this witness to state whether or

not it did.

On 28, I was not asking for the personal opinion but the official opinion of the witness which, I think, would be relevant and material.

In order to make question 31 clear, I would like to insert "in 1941" after "Germany."

BY MR. CUNNINGHAM (Continued)

Q Now I would like to have the witness state whether or not that is his signature on the back of the original document and whether or not the contents thereof are true.

Will you look at defense document 1714 and state whether or not that is your signature placed thereon and whether or not the contents of the document are true.

A Yes, that is my signature and the contents of the document are true.

MR. CUNNINGHAM: I now offer in evidence defense document 1714, subject to the ruling of the Tribunal on the objections and the argument on the objections.

THE PRESIDENT: By a majority the objections are upheld and the document admitted subject to the objections. The admission is on the usual terms. You may read only so much of the document as has not been

objected to.

CLERK OF THE COURT: Defense document 1714 will receive exhibit No. 2744-A.

(Whereupon, the document above referred to was marked defense exhibit No. 2744-A and received in evidence.)

THE PRESIDENT: The Judges wish me to tell you, Mr. Cunningham--

MR. CUNNINGHAM: Your Honors, in order to give continuity to the testimony of this witness I suggest that we start at page 6 and go to the end and then start at page 1 to the bottom of page 5.

THE PRESIDENT: I will assume you did not attempt deliberately to interrupt me, Mr. Cunningham. It is a very favorable assumption.

The Judges have asked me to tell you that they insist on the observance of the rule as regards the service of Judges' copies and other copies. You may proceed, however, to read so much of this document as has not been successfully objected to.

MR. CUNNINGHAM: Starting on page 6, top of the page, reading from exhibit 2744-A:

"QUESTIONS AND ANSWERS

for

"AMBASSADOR STAHMER

"Collaboration - Japan, Germany and Italy based upon opening statement of the prosecution on this phase.

"1. To what extent did any Japanese statesmen, other than MATSUOKA, participate in the negotiations with you and Ambassador Ott prior to the conclusion of the Tri-Partite Pact in September 1940?

"A. Only MATSUOKA participated, no other Japanese statesman.

"2. During your negotiations with MATSUOKA did he at any time interrupt conferences or conversations to confer and consult with other Japanese statesmen concerning the content, wording or intent of the Tri-Partite Pact?

"A. No, during our negotiations MATSUOKA did not even telephone with other people."

Going to question 4:

"4. It is stated that the accused OSHIMA and SHIRATORI were sent to Rome for the purpose of inducing Mussolini to enter in to the proposed Tri-Partite Pact. Is this statement true? If not, explain to what extent Ribbentrop and Hitler had previously negotiated and conferred with Mussolini concerning this matter.

"A. It is not true, according to my knowledge, that OSHIMA and SHIRATORI were sent to Rome to induce

Mussolini to enter in the proposed Tri-Partite Pact. The German Government could and would never use Foreign ambassadors for such a purpose. Besides, as I know definitely, Hitler and Ribbentrop had already talked with Mussolini about the idea of a Tri-Partite Pact during the Munich Conference in September 1938 where Mussolini agreed principally.

"5. Were you advised as to the mission of the ITO Commission which was sent to Berlin and Rome relating to the abortive Tri-Partite agreement?

"A. No."

Page 7, question 6:

"6. In Count Ciano's Diary it is related that SHIRATORI and OSHIMA refused to follow the instructions delivered by the ITO Commission. What has been your experience concerning the accuracy of the items set out in the Ciano diary?

"A. I have only read an abridged version of Ciano's diary, but I do not take it as a historical document. He asserts, for instance, that he was against the Italians attacking Greece, but at that time I heard from the Italian Embassy that Ciano assisted this plan very much and was proud of it; only after the Italian defeat in Albania he changed his opinion.

"7. It is charged that the ambassadors asserted that they would resign in the event the pact of alliance was not concluded without reservation. Were you aware of any such condition?

"A. I did not hear of this assertion, if it is true, the Japanese Government must know it. I think I would have known of it, surely, if it were true. The only mention I have ever heard of such a thing was from the one source."

Question 9:

"9. It is charged that negotiations for Japanese-German alliance were renewed by KURUSU on the 19 June 1940. Please explain this statement in the light of the actual circumstances.

"A. KURUSU only told the German Government that the new government in Tokyo wanted a closer contact; he did not begin negotiations otherwise it would not have been necessary to send me to Tokyo, because the situation was too obscure to be analyzed from Berlin. As far as I know, he was during the negotiations in Tokyo only very scantily informed by his own government.

"10. It is charged that on 8 July 1940 Ambassador SATO and KURUSU in conference with you and Ribbentrop conferred concerning the relations between Japan and Germany. Please explain the nature and extent of this

discussion.

"A. That was no conference, but only a courtesy call with a normal conversation, where I got the impression that both sides wanted to avoid any remark concerning unsolved political questions. I remember that the Japanese Minister KAWAI who traveled at that time in Europe was present.

"11. To what extent the French and Dutch East Asia colonies came in for discussion during this conversation?

"A. I have no recollections.

"12. To what extent had the Japanese statesmen manifested their fears concerning the interest of Germany in the Pacific Isles?

"A. Same as question number 11.

"13. To what extent did the appointment of MATSUOKA affect the Japanese Foreign policy towards Germany?

"A. From the new cabinet with KONOYE as Prime Minister and MATSUOKA as Foreign Minister we got the impression that this cabinet was interested to come to a closer contact with Germany. When I arrived in Japan I found that the government had already made preparations for a pact with Germany and Italy."

Eliminating 14, going to 15:

"15. At the time when you arrived in Tokyo for the negotiations of the Tri-Partite Pact did you consider that Japan and the United States would become engaged in war in the Pacific?

"A. No, I wanted to prevent the entrance of the United States into the war.

"16. The prosecution has stated that the 20 million of German-descent Americans were considered to hold an influential position in the United States. Would you please state what you told MATSUOKA concerning this?.

"A. When MATSUOKA asked me about the influence of the German-descent Americans, I told him that I believed they were better American citizens than many other Americans, and informed him of my experiences in that line in Chicago.

"17. Did you discuss the terms of the Tri-Partite Pact with Prince KONOYE or any other cabinet member before or after its completion in Tokyo?

"A. No, neither with Prince KONOYE nor any other cabinet member whom I saw. Only after the signature, during official lunches or dinners was the matter commented upon.

"18. Please explain the circumstances which brought about the signing of the Pact in Berlin rather than in Tokyo.

"A. I do not remember; the German Embassy in Tokyo got a cable some days before the negotiations were finished that Germany and Italy wanted to have the pact signed in Berlin.

"19. Please explain MATSUOKA's idea concerning this matter.

"A. At first he seemed a little reluctant, but very soon he agreed; I believe that, as a sort of compensation, Ribbentrop invited him on the evening of the 27 September to come to Berlin."

I understand 21 is objected to.

THE PRESIDENT: 22 also.

MR. CUNNINGHAM: 22 also; going to 23:

"23. Upon the arrival of Foreign Minister MATSUOKA in Germany in 1941 did he advise you of the principle international question which he desired to discuss with Ribbentrop?

"A. No.

"24. Did you at any time learn of the purpose of his mission?

"A. I only heard shortly after he had left Berlin that he wanted to make a non-aggression pact with the Soviet Union.

"25. As far as you know was Ambassador OSHIMA advised beforehand or during the visit of the object

of his tour?

"A. I do not know, because OSHIMA did not tell me."

Going to the top of page 10:

"29. It is stated (p30) that 'On the 24 May 1941 a report was made by German Military Attache in Tokyo to German Foreign Intelligence Office that Japan acknowledged her treaty obligations in the event United States entered the war.' Is this statement based on facts?

"A. I do not know. I never heard of it.

"30. It is charged that 'When the Tri-Partite Pact was concluded 27 September 1940, MATSUOKA in reply to a question stated that an agreement would be negotiated between the three powers for a no separate peace pact in the event of hostilities.' Are you aware of any such statement being uttered at that time?

"A. I do not remember to have talked with MATSUOKA about a 'no separate peace clause.'

"31. Up until the time you left Germany in 1941 were the officials of the government informed of the state of negotiations between Japan and the United States? Please explain this situation.

"A. When I was still in Germany in 1941, the German officials concerned were very nervous, because they never got a clear answer of the state of negotiations

between Japan and the United States, during early 1941 until October when I left. We only heard indirectly and thru unreliable information or rumors.

"32. It is stated that on the 18 January 1942 the armed forces of Japan, Germany and Italy concluded military agreement 'In the spirit of the Tri-Partite Pact 27 September 1940,' and provided for operational coordination among them. Was any such situation contemplated at the completion of the Tri-Partite Pact?

"A. At the time of the signature of the Tri-Partite Pact no such action or situation was contemplated."

Now, going to page 1, I am going to require a little help on this because my notes are not as adequate as they might be. (Reading):

"1. At any time during your conversations, negotiations conferences with Ambassador OSHIMA did he at any time commit himself as favorable to Japanese commencing or participation in any war?

"Answer: No, he did not commit himself in that way."

No. 7 (reading):

"7. Were there any collaboration between Germany and Japan as far as you know that was not provided for by treaty and regulated by some agreement entered into thru the established diplomatic channels?

"Answer: There was no collaboration between Germany and Japan, as far as I know, that was not provided for by treaty and went not through the established channels.

"8. Were all of OSHIMA's dealings with you and with Ribbentrop usual procedure adopted by other diplomats in their relations with Germany?

"Answer: OSHIMA's dealings with me and with Ribbentrop were not different at all from the dealings of other ambassadors with whom I had to work.

"9. Did OSHIMA ever interest himself in matters outside of his diplomatic tasks and duties which were contrary to the best interest of either Germany or Japan and those required of his office?

"Answer: No, not so far as I know."

Now, next to the last part of question 11:

"Q Were now contacts always necessary when a change in Cabinet took place?

"Answer: Yes, in Tokyo the embassy always had to try to keep up contact with the changing ministers."

Then we go to --

THE PRESIDENT: The last two questions on page 4.

MR. CUNNINGHAM (reading):

"Q Was there any definite continuity in the foreign policy of Japan towards Germany over the period of years of your association with this problem?

"A Though the Germany foreign policy towards Japan was unchanged, the Japanese policy as far as Germany was concerned changed several times; the ideas of the Government KONOYE - HIROTA (summer 1938), HIRANUMA - ARITA (January 1939), and KONOYE - MATSUOKA (July 1940) in that line was extremely different.

"Q Did you ever have any conversations or negotiations with Ambassador OSHIMA which would indicate to you that he bore any closer relationship to one of the nine foreign ministers of Japan than to the other eight, who were in charge of foreign affairs during his tour of duty as Ambassador?

"A No, I have never heard him express greater friendship towards any foreign minister particularly; having been absent such a long time from Japan, probably he did not even know them personally.

"Q It is charged that the object of the --

THE PRESIDENT: It is charged as being repetitive.

MR. CUNNINGHAM: I guess that finishes -- signature, Heinrich Stahmer.

Now, your Honor, that concludes the reading of these two documents. Several of the defense counsel say that they have questions they would like to propound to this witness on direct examination concerning individual defendants.

THE PRESIDENT: Mr. Logan.

MR. LOGAN: If the Tribunal please, I desire to ask a few questions on behalf of the accused, Marquis KIDO, pursuant to paragraph 1 of the rules

of this court on or about March 11, 1947.

DIRECT EXAMINATION (Continued)

BY MR. LOGAN:

Q Mr. Stahmer, did you ever meet and talk with Marquis KIDO at any time?

A No, I do not remember having ever met him and talked with him.

Q In your official capacity as a representative of the German Government from 1938 on, was it part of your duties to ascertain the views of persons associated with the Japanese Government with regard to political, international, and military matters, and more especially with regard to German-Japanese relationships?

A Since I became Ambassador here in January 1943 it was a part of my duty to try to find out especially the feeling of the leading statesmen and responsible men toward Germany.

Q Did you make such an investigation with respect to Marquis KIDO's views?

A Yes, I asked, too, about Marquis KIDO at that time.

Q What was the information you received, stating from whom you received it and when?

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: Objection has been made if the Tribunal please, to the investigations made by the witness on the ground that it is hearsay testimony.

THE PRESIDENT: That goes to weight only in this court. You had better find a better ground.

MR. TAVENNER: I do not know of any better ground.

THE PRESIDENT: The objection is overruled.

MR. LOGAN: You may answer, Mr. Stahmer.

A I asked about Marquis KIDO, too, and heard from several of my officials that he was always regarded very much pro-Anglo-Saxon and never had proved any especially friendly feeling toward Germany.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: If the Tribunal please, I would like to inquire whether the witness has a memorandum in his hand, to which he is referring.

THE WITNESS: No.

THE PRESIDENT: He says he has not.

MR. TAVENNER: Yes. I would like to object to the answer and move that it be struck on the ground that it is an opinion of his subordinates.

THE PRESIDENT: Mr. Logan.

MR. LOGAN: If the Tribunal please, we have a situation here where these accused, including

Marquis KIDO, is accused to collaboration with the German Government and officials of the German Government. Certainly the opinion of the Ambassador in his investigations would warrant the introduction of evidence at this time from this witness, who was the Ambassador here, as to what the reputation of Marquis KIDO was with the German Government. It is fundamental and only natural that the Ambassador should try to find out just what the situation and views of the men are with whom he intends to deal, and while this is not strictly reputation evidence, it is of that nature, which is fundamentally admitted in any court.

THE PRESIDENT: We will hear you further after lunch, Mr. Logan.

We will adjourn until half-past one.

(Whereupon, 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.

H E I N R I C H S T A H M E R, called as a witness on behalf of the defense, resumed the stand and testified as follows:

THE PRESIDENT: Mr. Logan.

MR. LOGAN: If the Tribunal please, the only other observation I have to make is that there was no objection that the answer was not responsive, and in my submission it was responsive to a question to which an objection had unsuccessfully been taken by the prosecution.

THE PRESIDENT: The evidence is really in the nature of opinion entertained by officials about your client. They can tell us through the witness what KIDO said, from which we might draw our conclusions. The evidence is really in the nature of a certificate of character, which is not really relevant to any issue. It might go to mitigation, assuming there should be punishment to be considered later, but it is for the Court to say whether they are prepared to receive this

evidence at this stage. It is a matter of discretion. It does seem to be anticipating. That is the difficulty.

MR. LOGAN: May I say this in answer to the Tribunal's statement? Of course we all know a person's character is what he is himself. His reputation is what other people believe him to be. In the ordinary lawsuit, of course, where character and reputation evidence is at issue, the test is whether a person's reputation -- what his reputation is for veracity and truth; but that is a little different from the case here. Here we have a situation of an ambassador of a government assuming his functions as such, and in the nature of things he must find out the reputation of the persons of the Japanese Government with whom he has to deal.

I use the word "reputation" in the sense of an expression of the views of that particular person with respect to any relationships between the two governments, that is, whether he is pro-German, pro-American, pro-British, or what his situation is, and of necessity the ambassador must rely on the statements of the others in his department. In so far as the answer he gave relates to the fact that it was based on opinions of others under him, that is no

reason for excluding his answer; it may only go to the weight of the answer.

I might also add that evidence of this kind, I understand, is admissible at any time in a trial.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: If it please the Tribunal, the situation here must not be confused with that of general reputation evidence. What the defense is seeking to do with this witness is to have him testify regarding a third person's opinion regarding the opinion of still another person. It is an effort to establish a specific quality of mind by stating what some other person thought about it. Certainly no court has gone as far as that; and if this Tribunal is to accept that as a gage of the admissibility of evidence, a witness could be placed on the stand to swear the issues as to every accused in the dock. And again, the situation that counsel has described where a witness must act upon what he knows to be the opinion of others is not applicable here, because we are not concerned with the thought or the action of this witness.

For these reasons we respectfully request that the objection be sustained.

THE PRESIDENT: By a majority the Tribunal

upholds the objection and disallows the question.

MR. LOGAN: Disallows the question or the answer?

THE PRESIDENT: It follows we must disallow both.

MR. TAVENNER: If the Tribunal please, in closing my argument I failed to state what I did state in the beginning, that there was also a motion to strike the answer of the witness.

MR. LOGAN: His objection to the question was disallowed. His motion was directed to the answer, your Honor.

THE PRESIDENT: You can put that question again if you like, Mr. Logan.

MR. LOGAN: That is what I intend to do, your Honor.

Will the Court Reporter read it?

(Thereupon, the official Court Reporter read as follows:)

"Q What was the information you received, stating from whom you received it and when?"

MR. TAVENNER: If it is intended to ask this question again of the witness, I want to make the same objection.

THE PRESIDENT: He can tell us what there

was reported to him to have been said by KIDO, but we will exclude any opinion.

THE WITNESS: Could you please repeat the question, so that I could get it?

BY THE PRESIDENT:

Q Did your subordinates report to you anything said by KIDO? If so, what was it?

A No, I did not report anything said by KIDO.

BY MR. LOGAN:

Q Did they report anything to you?

MR. TAVENNER: I object, your Honor. That is in the face of the ruling of the Tribunal.

THE PRESIDENT: We will allow hearsay to that extent. We are excluding opinions only, not anything that was said by KIDO to him or his subordinates. He can tell us what was told to him by his subordinates, if anything was said. All we are excluding are the opinions of his subordinates as to KIDO's character or reputation.

MR. TAVENNER: But I understood, if the Tribunal please, that the witness said that no report was made to him of any statement to his subordinates by KIDO.

THE PRESIDENT: We have his answer, but I doubt whether it was as clear as that.

What did the witness say, please, court reporter.

(Whereupon, the answer was read by the official court reporter as follows: "No, I did not report of anything said by KIDO.")

THE PRESIDENT: That certainly is not an answer to what I asked him.

BY MR. LOGAN (Continued):

Q Now, will you answer the question I just had asked you, Mr. Stahmer: Did they report anything to you about KIDO?

THE PRESIDENT: Did they tell him anything about KIDO? If so, what was it?

A No, they did not tell me any definite thing what KIDO said. They only told me how he was regarded.

Q Was that based on actual contacts between the subordinates of yours and KIDO?

MR. TAVENNER: If the Tribunal please, that question assumes that the former question was admitted which the Tribunal ruled out, and I therefore object to it.

MR. LOGAN: I think that question directly follows after the last answer he gave.

THE PRESIDENT: Objection upheld.

Q Did you have any negotiations at all with KIDO from 1938 on?

A No, I had never.

Q Do you know of anybody in the German Government that ever had any negotiations with KIDO?

A No, I never heard of any negotiations from a member of the German Government with KIDO.

Q Do you know of any reasons why they would never negotiate with KIDO?

MR. TAVENNER: If your Honor please, I object to that question as calling for opinion, surmise, speculation on the part of this witness.

THE PRESIDENT: Objection upheld.

Q Do you know of any acts or statements of KIDO which would prevent the German Government from negotiating with him?

MR. TAVENNER: Objection is made in that the

witness has said he had not met the man,he had not had any conference with him, and for the additional reason that the attitude of Germany or the facts necessary for action are not admissible to any issue in this case.

THE PRESIDENT: We can see what you are trying to get at, Mr. Logan, but the witness has professed that he does not know enough to be able to answer you. That is the sum total of his evidence to date.

MR. LOGAN: I think he knows, your Honor. I am trying to get it.

And, with respect to the objection which was just made by my good friend, Mr. Tavenner, I must say it comes as rather a surprise that he is objecting to the opinions and the actions of the German Government in a case where there is conspiracy alleged. We are alleged to have conspired with that government and they are alleged to have done certain acts.

THE PRESIDENT: They are charged with conspiring with others, which might well include individual Germans,including say, Ribbentrop and Hitler.

MR. LOGAN: It may also include Mr. Stahmer

as one of those"divers persons." We do not know, and the prosecution has never disclosed it to date, who they are.

THE PRESIDENT: We have placed no limit on what he can say as to what happened between him and KIDO. It must be something that KIDO said or did, and not some opinion expressed of him by others.

BY MR. LOGAN (Continued):

Q Did you have any reason for not dealing with KIDO?

MR. TAVENNER: I object to it, if the Tribunal please.

THE PRESIDENT: Objection overruled, clearly. It all depends on what the answer is, of course. We may have to strike that.

Q Answer, please.

A Will you please tell me the question again?

(Whereupon, the question was read by the official court reporter as follows: "Did you have any reason for not dealing with KIDO?")

A (Continuing) I did not deal with KIDO, because I did not have the slightest contact with him, contrary to other statesmen and ministers here. Therefore, I could not approach him.

Q Turning now to another subject, Mr. Stahmer. Would you, as a representative of the German Government and the German Government know of the secret military negotiations which were being conducted between Great Britain and the United States in the latter part of 1938 and 1939?

MR. TAVENNER: If the Tribunal please, objection is made on the ground that the question assumes that there was such a type of negotiation.

MR. LOGAN: Subject to further proof --.

THE PRESIDENT: The question should be directed to specific matters, Mr. Logan.

Morse & Lefler

Q Mr. Stahmer, do you know of meetings which were held in Washington and London between military officials of Great Britain and the United States -- particularly navy officials -- in the latter part of 1938 and early 1939?

A Yes, I knew of that. I knew that at least two secret negotiations took place, if I remember rightly, when Singapore was taken out for a mutual defense base.

Q Did you and the German Government know that at the time they were being held?

A Yes, the German Government knew that.

Q Did you and the German Government also know of further secret military negotiations, principally between admiralty officials, that were held in the early part of 1941 between Britain and the United States?

A We heard about a meeting in the United States and, if I remember rightly, it was in Washington.

Q Did you hear about that --

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: Objection is made to this line of testimony in that negotiations between the two powers, if they occurred as of the dates mentioned, could not be a matter in defense of the accused in this case. We are not concerned with the Nuernberg trial or the issues involved there. And on the additional

ground that the witness' testimony is in the nature of merely rumor.

THE PRESIDENT: We are not concerned with the Nuernberg trial but we are concerned with some of the subject matter which was passed upon there. If these negotiations suggested took place, we may have to review them here, but the information would be of no value unless we know the source, certainly.

MR. LOGAN: Need I answer?

THE PRESIDENT: The objection is overruled.

Q Did you find out about these negotiations --

THE PRESIDENT: Mr. Logan, you are called upon to show why KIDO is particularly affected by this. If they do concern him with others, but no examination has taken place about that, I do not see that you should be prevented from asking questions. But do show how you are particularly concerned, if you can.

MR. LOGAN: Marquis KIDO is included in fifty-four out of fifty-five counts of the Indictment. The only count with which he is not connected is, I believe, a certain phase of the China Incident. What took place in 1938, '39, '40, and '41 is very material to his case. I might say that it involves an affirmative defense of some of these accused, that is, the ABC encirclement, economically and militarily. Without

saying much more about it, I will be very frank that what I want to bring out from this witness is that the German Government at that time knew about these secret agreements that were being made, which will be shown later in the case, and also to show that they were communicated to and knowledge was had of them by officials of the Japanese Government. So that perhaps knowledge of what was going on and the effect of the economic sanctions and embargoes and the military encirclement, as your Honor has once said, if Japan was driven to the wall that would be in mitigation of what the leaders did at that time. In other words, this is part of that picture which we intend to show.

THE PRESIDENT: These general matters affecting several of the accused should, of course, have been brought out by Mr. Cunningham if he ascertained the witness could depose to them. But if the witness can depose to them are you to be precluded from bringing them out if Mr. Cunningham failed? I am quite sure on further consideration we would find you are not precluded. These rules that we are looking at now were agreed upon by the parties, but you could never have thought, nor could we, that they would cover every possible contingency and here is one that they do not cover.

MR. LOGAN: Well, as I announced, if your Honor please, I am only asking these questions on behalf of my client, not on behalf of anybody else.

MR. TAVENNER: If the Tribunal please, it is almost inconceivable that counsel have not discussed a matter of the importance that they attribute to this -- to these points -- or that the witness had not been examined in regard to it. If Mr. Cunningham refused to go into a general examination of this subject, thenthe situation your Honor pictured would certainly follow.

THE PRESIDENT: There is an additional fact. This witness claims to know there were such negotiations but he hasn't told us the source of his information.

MR. TAVENNER: But we don't think that on the basis of the present explanation that there is a justification for avoiding the rule of the Tribunal of reducing the statement to affidavit form.

THE PRESIDENT: There is a simple way out. We can give full effect to the rules according to their very letter and then let Mr. Logan recall this witness on behalf of KIDO.

MR. LOGAN: I only have two more questions to ask, your Honor.

BY MR. LOGAN (Continued):

Q Did you know about those negotiations at the time they were occurring in 1940 and '41 -- 1941 rather?

THE PRESIDENT: He said he heard there were negotiations.

Q Where did you get that information? From where did you get that information?

A I heard one information from Ribbentrop and some other news I have had in the so-called ministerial office of the Foreign Ministry where all the incoming cables from the different embassies and legations came in.

THE PRESIDENT: Major Blakeney.

MR. BLAKENEY: On behalf of Mr. TOGO.

DIRECT EXAMINATION (Continued)

BY MR. BLAKENEY:

Q Mr. Witness, on page 3 of your affidavit, section 3 thereof, you testified concerning the negotiations in 1938 and 1939 between Germany and Japan. With whom did Ribbentrop conduct those negotiations?

A Ribbentrop conducted these negotiations with OSHIMA.

Q General OSHIMA's position was then Military Attache, was it not?

A He was at that time still Military Attache.

Q Who was the Japanese ambassador at that time?

A Ambassador TOGO.

Q Had Mr. TOGO anything to do with those negotiations?

A No, not so far as I know.

Q When did those negotiations commence?

A I do not remember the exact date, but it was in the summer of 1938.

Q And, do you remember when Ambassador TOGO was transferred from Berlin to Moscow?

A I believe he was transferred in October, 1938.

Q Is it correct to say, as far as your information goes, that from the beginning of those

negotiations until his transfer Ambassador TOGO had nothing to do with them?

MR. TAVENNER: Objection is made on the basis that the question is grossly leading.

Q (Continued) Or not?

THE PRESIDENT: Well, you received your answer from a Member of the Tribunal, Major Blakeney, who told you it was grossly leading and impertinent. The red light prevented me from saying anything.

MR. BLAKENEY: Well, I can see how the question may have been leading but its impertinence I am unable to recognize. I will try to put it in a more unobjectionable form.

Q Mr. Witness, so far as your information goes, what connection had Mr. TOGO, the then Ambassador to Germany, with the negotiations conducted in the summer of 1938, from the beginning thereof until his transfer to the post of Ambassador at Moscow in October, 1938?

A As far as my information goes, Ambassador TOGO has nothing to do with these negotiations from the beginning until he left Berlin -- was transferred to Moscow.

Q Did you ever personally talk with Ambassador TOGO on this subject, that is, in 1938?

A No, I never talked with him personally about

this subject.

Q How did you come to deal with Military Attache OSHIMA on this question?

MR. TAVENNER: Objection is made, if the Tribunal please, on the ground it is covered in the general examination.

THE PRESIDENT: That is so.

Mr. Blakeney, before you go further, I am asked to put this: How could German knowledge of negotiations between England and the United States be any defense or exculpation of the accused? Knowledge of the accused might be. It may be that when that was drafted Mr. Logan was examining the witness.

I could only suggest that you are charged with conspiring with others, obviously including the Germans, and anything that would tend to exculpate them could be relied upon by you. If I understand the charges rightly, the allegation of conspiracy is not confined to the Pacific, but extending to Europe. Neurnberg certainly thought the charges before them embraced the Pacific.

MR. BLAKENEY: Shall Mr. Logan answer?

THE PRESIDENT: He can, if he wishes.

MR. LOGAN: In case there is any doubt, your Honor, in the mind of the Judge who asked the question,

it goes a little further than that, in that we are endeavoring to show in the defendants' case that the actions of the Western Powers, of which Japan and others alleged in the conspiracy had knowledge at that time, resulted in certain acts being taken by Japan. In other words, what was done by the Western Powers, knowledge of it came to the representatives of the so-called Axis, brought about certain results, and that is what we have been trying to show through this witness, that Germany had knowledge of certain things that had taken place, and we will show later that certainly Japan had the same knowledge. In other words, what the Western Powers were doing had a very direct bearing on what Japan did.

THE PRESIDENT: Do you suggest that Japan knew what Germany knew, an idea not even faintly hinted at?

MR. LOGAN: I am trying to show, your Honor, that Germany knew it and that Japan knew it, also that these meetings were not so secret as what they were thought to be at that time. And, they are a matter of public knowledge at this time.

THE PRESIDENT: Well, that is a matter for evidence.

BY MR. BLAKENEY (Continued):

Q Mr.Witness, do you know whether the negotiations between Ribbentrop and OSHIMA were kept secret from Ambassador TOGO?

A I do not know if these negotiations were kept secret from Ambassador TOGO.

Q Did you receive orders from Ribbentrop concerning the question of whether the negotiations should be made known to Ambassador TOGO?

A No, I did not get such an order. I had only to deal with Mr. OSHIMA.

Q Do I understand by that that your orders were to deal only with OSHIMA?

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: Objection is made to the question as being grossly leading. This witness is on direct examination, not cross-examination.

THE PRESIDENT: The question does suggest the answer, Major Blakeney, and is objectionable as being leading.

MR. BLAKENEY: His answer was patently ambiguous, and I was merely trying to resolve the ambiguity.

THE PRESIDENT: That is his task.

MR. BLAKENEY: Reporter, read to the witness the second preceding question.

(Whereupon, the question was read by the official court reporter as follows:

"Did you receive orders from Ribbentrop concerning the question of whether the negotiations should be made known to Ambassador TOGO?")

Q Did you hear that and understand it, Mr. Witness?

A Yes, I understood it. I did not get -- I got an order from Ribbentrop; he made me liaison man to OSHIMA to deal with him about this, the beginning of these negotiations.

Q Are you able to state from your experience in diplomacy whether negotiations of this character are usually conducted with ambassadors or with military attaches?

A Normally these negotiations were made between ambassadors and foreign ministers.

Q Are you able to state why in this instance negotiations were conducted between the foreign minister on the one hand, and on the other, the military attache, rather than the ambassador?

A I do not know the reason. Probably because Ribbentrop knew OSHIMA before and during the negotiations of the Anti-Comintern Pact.

Q Do you know what was the condition of relations between Ribbentrop and TOGO at this time?

A The conditions seemed to me always rather cool, at any rate in this time of summer, 1938. But I do not know why.

Q In your affidavit on page 6, section 6, you

refer to some discrepancy between Ott's telegrams and KURUSU's information concerning the attitude of Japan. When you came to Tokyo at that time to investigate the situation, what estimate did you form of the accuracy of Ott's telegrams to the Foreign Office?

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: Objection is made on the ground that this matter generally is covered in the general examination, and also on the ground that it calls for an opinion from this witness.

THE PRESIDENT: Major Blakeney.

MR. BLAKENEY: First, it is not covered in the general examination, unless I am overlooking something, because the affidavit states that since only a confused impression was gathered by the German Foreign Office, they sent him out to learn the actual conditions. I am now pursuing that subject beyond the point to which he took us in the affidavit, to ask him what he found as a result of the investigation so made.

As to whether the result of his investigation was his opinion, we are not concerned, because if it was opinion, it was opinion officially formed in the course of his official duties, and presumably, as he points out, relied upon by his government in its official acts.

THE PRESIDENT: Well, how does it affect your client, particularly?

MR. BLAKENEY: As the Tribunal will well remember, in many dozens or scores or perhaps more instances, the telegrams of Ott were put into evidence against these defendants, including my client, Mr. TOGO. One example specifically affecting him is of recent memory and I therefore mention it; that is, Ott's telegram purporting to report the contents of a speech made to the Liet by Foreign Minister TOGO in early 1942. Comparison with the actual speech now in evidence will show the importance of knowing the reliability of Ott's reports; and this witness was sent out officially by his government to ascertain that fact of the reliability of Ott's reports, as is inferentially apparent from the statement in section 6 of his affidavit.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: If it please the Tribunal, I submit that there is no section -- or no part of section 6 that warrants such a conclusion. The declaration that the witness was sent to check up on Ott's telegrams is apparently intended to be read into section (a), which says "To find out the actual intention of the Japanese Government towards Germany."

The whole purpose in sending the witness to Japan was to conclude this pact if it could be concluded, according to the witness' testimony, and it is submitted the claim of the defense now that he was sent there for another purpose certainly requires a very strained construction.

MR. BLAKENEY: May I point out, in answer to Mr. Tavenner's second argument, paragraph 6 of the affidavit, the last sentence thereof, as follows:

"Incoming telegrams from Ambassador Ott of the German Embassy in Tokyo and verbal information from Ambassador KURUSU in Berlin created a completely confused picture of the Japanese attitude from the viewpoint of the German Government, which eventually could not figure out what the Japanese Government had in mind."

And in view of the confused picture, he was ordered to go and investigate.

THE PRESIDENT: To shorten the matter, Major Blakeney, I think we are all prepared to hear what he found out about Ott and what he told Germany about Ott.

MR. BLAKENEY: Answer the question, please.

THE PRESIDENT: To that extent: What you found out about Ott and what you told your government about him.

We will hear your answer after the recess. We will recess for fifteen minutes.

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

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

THE PRESIDENT: Mr. Blakeney.

BY MR. BLAKENEY (Continued:)

Q Mr. Witness, will you please answer the question asked by the President before the recess?

A I never had any order to investigate Ott or any other person. I had only to study the political situation here and, of course, I talked it over with Ott personally. Then he told me that his telegram -- there was a certain mistake, and he told me a lengthy story why, and so I did not make any report to Ribbentrop or any other man.

Q By report, you mean on the question of accuracy of telegrams?

A Yes.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: It is too late now.

MR. BLAKENEY: I was trying to get the President's question fully answered, that he did not make

a report, that's all.

MR. PRESIDENT: Mr. Caudle.

DIRECT EXAMINATION (Continued:)

BY MR. CAUDLE:

Q Mr. Stahmer, will you please state where, when and under what conditions you first met the accused, SHIRATORI?

A I met Mr. SHIRATORI first in 1939 when he was invited to Berlin during the birthday of Hitler.

Q Did you talk with him at that time, sir?

A I saw him twice during lunch and dinner, and we talked together, but not politically.

Q When did you next see the accused?

A The next time I saw him was in February, 1940 during my short, first stay in Japan.

Q Was that when you were on your Red Cross tour?

A Yes, that was during that time.

Q And I believe at that time you sent a wire back --- I think it was signed "Ott-Stahmer," exhibit 511 --- wherein you stated that you found SHIRATORI, OSHIMA, ISHII and others in the same friendly attitude, is that correct, sir?

A Yes, that is correct.

Q Will you please explain the wire,-- the

nature of that wire?

THE PRESIDENT: That doesn't call for that. I am addressing you, Mr. Caudle.

MR. CAUDLE: Excuse me, sir.

THE PRESIDENT: Is the wire ambiguous or equivocal?

MR. CAUDLE: Well, sir, I would just like to know under what circumstances he saw him.

MR. PRESIDENT: You asked him to explain a telegram. I don't know what you mean.

Q Will you explain under what circumstances you saw the accused SHIRATORI at that time?

A I saw him together with some other Japanese gentleman whose name I do not remember, and we talked about general topics together with this other gentleman.

Q When did you next see the accused?

A I do not remember if I saw him on my way back from the United States, but at any rate I saw him during or after the conclusion of this Tri-Partite Pact, because there were several invitations; many people appeared.

Q Will you please state, if you know, what part the accused took in the formulation or the conclusion of the Tri-Partite Pact?

A I knew that he was an adviser of the Foreign

Minister, but I don't know what part he took in the negotiations; I did not talk with him.

Q Did he ever sit in on any of the discussions?

A No, he was not present. There were always only MATSUOKA and Ott present, and in the end I saw Mr. SAITO and Mr. MATSUMOTO; only for technical small details, not in the meeting.

Q Did you ever discuss the Tri-Partite Pact in any way whatsoever with the accused?

A I do not remember. It may be that we talked it over during these dinners and lunches after the signatures to the Pact.

Q Did you have any discussion with him prior to the conclusion of the Pact?

A No, I talked only with MATSUOKA.

Q Do you know how many times Mr. SHIRATORI met Mr. Ribbentrop?

A He could have met him only during the fiftieth birthday of Hitler, in April 1938 -- 1939.

Q Then you mean they met only once?

A Only during those two or three days -- I donnot know exactly how long he stayed -- in April 1939.

Q Then, under the circumstances, Mr. Ribbentrop could not have known Mr. SHIRATORI very well, is that correct?

Minister, but I don't know what part he took in the negotiations; I did not talk with him.

Q Did he ever sit in on any of the discussions?

A No, he was not present. There were always only MATSUOKA and Ott present, and in the end I saw Mr. SAITO and Mr. MATSUMOTO; only for technical small details, not in the meeting.

Q Did you ever discuss the Tri-Partite Pact in any way whatsoever with the accused?

A I do not remember. It may be that we talked it over during these dinners and lunches after the signatures to the Pact.

Q Did you have any discussion with him prior to the conclusion of the Pact?

A No, I talked only with MATSUOKA.

Q Do you know how many times Mr. SHIRATORI met Mr. Ribbentrop?

A He could have met him only during the fiftieth birthday of Hitler, in April 1938 -- 1939.

Q Then you mean they met only once?

A Only during those two or three days -- I donnot know exactly how long he stayed -- in April 1939.

Q Then, under the circumstances, Mr. Ribbentrop could not have known Mr. SHIRATORI very well, is that correct?

Q With respect to the strengthening of the Anti-Comintern Pact, you state that most of the negotiations were made with Italy through Germany. Will you please explain that, sir.

A During the negotiations in Munich, in September, 1939, Ribbentrop and Hitler talked at first about this idea with Mussolini, and Mussolini agreed immediately, principally, and told them he must think it over when a suitable time would become to go on with these negotiations -- to begin with these negotiations from the side of Italy. As far as I remember, he told that in beginning of January, 1940 -- not 1939.

I was wrong. This was in beginning of 1939.

Q Those negotiations were carried on strictly between Germany and Italy through either Mussolini or Ciano or Ribbentrop or Mr. Hitler, is that correct?

A That is correct. In October, 1938 Ribbentrop again -- Ribbentrop went to Rome and talked again with Mussoline and with Ciano; and later -- at that time Italian Ambassador in Berlin, Attolico, was informed, too, and worked together in these negotiations.

MR. CAUDLE: Thank you.

THE PRESIDENT: Major Furness.

MR. FURNESS: Direct examination on behalf of the defendant SHIGEMITSU.

DIRECT EXAMINATION (Continued)

BY MR. FURNESS:

Q Stahmer, in your conversations with Foreign Minister SHIGEMITSU, did you conduct them in English or in some other language?

A We talked together in English.

Q And were writings which you presented to him in English or in some other language?

A Mostly in English. Of course, official communications were made in German with an English translation.

Q Towards the end of August, 1938, did you have a conversation with Foreign Minister SHIGEMITSU?

A In 1938 --

Q I'm sorry; in 1944.

A Yes, in 1944 I had, in August, several conversations with him.

Q What was this conversation about?

A It was, I believe, in the second half or against the end of August, a conversation about the necessity of -- or possibility of coming to an understanding between Germany and Russia with the idea to

make peace.

Q Did such discussion relate only to peace between Germany and Soviet Russia or did it also include that as a first step towards general peace?

A The idea was to try to come to peace between Germany and Russia and then to use this situation for a common peace between all nations concerned.

Q Did you report this conversation to your government?

A I reported this conversation to my government.

Q Later, about the middle of September, did you have another conversation with Foreign Minister SHIGEMITSU?

A Yes, I had another conversation; and, after, I got answer on my cable to Berlin.

MR. FURNESS: I ask that the witness be shown the original of defense document 1770.

(Whereupon, a document was handed to the witness.)

Q Do you recognize that document?

A Yes, I recognize the document.

Q Did you bring it with you to this conference about the middle of September?

A Yes, I had that document especially translated in English and brought it to Mr. SHIGEMITSU.

Q And you delivered it to him as an official communication?

A Oh, I gave him my official communication verbally, but I gave him this written paper so that no misunderstanding could arise, as a sort of aide memoire.

Q And that document is the document which you now have in the box?

A Yes, that is this document.

MR. FURNESS: I offer in evidence defense document 1770.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1770 will receive exhibit No. 2745.

(Whereupon, the document above referred to was marked defense exhibit No. 2745 and received in evidence.)

MR. FURNESS: I will read defense exhibit 2745, beginning on page 2, paragraph numbered 3:

"Ambassador OSHIMA informed the Fuhrer about the Japanese Government's suggestion concerning a separate peace between Germany and the Soviet Union. The Fuhrer explained the German point of view as

follows:

"a) We have no indications that the Soviet Government is ready for an understanding with Germany. We believe that Stalin will try to come to an understanding with Germany only then, when he is convinced that he cannot successfully continue the war or that, at least, his forces are not sufficient to defeat Germany.

"b) If this should happen, a new political situation will be created.

"c) The German Government fully appreciate the Japanese Government's suggestion. However, on account of the above-stated explanations, the German Government would be obliged, if the Japanese Government in this matter would refrain from all steps with the Soviet Government.

"On the question of Ambassador OSHIMA, if the German war aims vis a vis Soviet Russia have changed, the Fuhrer replied, that Stalin did not ask for peace negotiations when the German troops were on the Don and that the same holds good for Germany under the present circumstances."

Q At that time, did you have a discussion with Foreign Minister SHIGEMITSU?

A Yes, we had a discussion.

Q Did it relate to this proposal of peace between Soviet hussia and Germany?

A Yes.

Q Did you include that as the first step towards general peace between all countries involved in the war?

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: If the Tribunal please, this, in the prosecution's view, is an inexcusable use of a leading question to which we object.

THE PRESIDENT: The objection is upheld.

Spratt & Yelden

Q Did the discussion relate only to peace between Germany and Soviet Russia or did it relate to peace with any other countries?

MR. TAVENNER: If the Tribunal please, I would like to make the same objection to this question.

THE PRESIDENT: Objection upheld.

What was the discussion about, Witness?

THE WITNESS: The discussions were about these possibilities of coming to an understanding and peace with Russia. I was mostly interested to know if there was any background or any knowledge from the side of the Japanese government which I could never find out. The general idea was that when such an understanding was possible it should be a platform for making peace with the other nations too.

Q Were these talks initiated by the Foreign Minister SHIGEMITSU?

A Yes, they were.

Q Was he for or against negotiation of peace between Germany and Russia and with other countries?

A He was for it and he proposed it.

MR. FURNESS: There is no further direct examination, if your Honor please, on the part of the defense counsel.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: If the Tribunal please, do I understand that there will be no further cross-examination -- or redirect examination -- on the part of the first counsel who examined, Mr. Cunningham?

THE PRESIDENT: That question is premature, if I appreciate the situation. Neither defense counsel nor the Tribunal can answer that question yet. The defense announced there would be no further examination.

MR. TAVENNER: I did not intend, your Honor, to use the word "cross-examination."

THE PRESIDENT: But you spoke about redirect.

MR. FURNESS: On that I meant "direct examination." I think I said "redirect examination."

THE PRESIDENT: Do not be so sharp on the uptake, Mr. Tavenner.

CROSS-EXAMINATION

BY MR. TAVENNER:

Q Mr. Stahmer, you explained in your affidavit the reasons why you were without the possibility of a party career. Did you not arise to the rank of ambassador at large in Germany?

A I became ambassador at large in Germany and later ambassador in China and here, but that has nothing to do with party career. What I meant was I was never

promoted in the party; I couldn't be promoted in the party and I got no rank there.

Q You were also named consul general in 1940, were you not?

A I became the character consul general in January 1940 -- the character as consul general, the title.

Q To whose influence in Germany was your preferment in the various positions of ambassador at large, ambassador to China, ambassador to Japan, and consul general due?

A I was proposed from Ribbentrop, the Foreign Minister, in 1938 and promoted from Hitler as the other officials from the German Embassy here too.

Q Was it due then to this special influence and friendship of Ribbentrop that you, a person not entitled to receive or to have a party career, that was responsible for your various elevations?

A I was promoted because Ribbentrop was satisfied with my work.

MR. TAVENNER: I cannot help but observe that you have a document of some type in your hands.

THE WITNESS: This is the affidavit.

MR. TAVENNER: I would appreciate it if you not refer to it during my questions on matters that

are contained in the affidavit.

Q Upon the conclusion of the German-Soviet Non-Aggression Pact on August 23, 1939, did the Japanese continue in their efforts to effect a Japanese-German alliance?

A No, after the conclusion of the Russian-German Non-Aggression Pact we got a cable in which the Japanese government told us that the negotiations were broken off.

Q Did you have access to the files of Ribbentrop or the Foreign Office?

A Most generally I could only read what was offered to me to read.

Q But generally speaking you had access to those files for the reading of matters that you were interested in and which were connected with your assignments, were you not?

A Of course, I could get these cables, documents, which were necessary for my work.

Q Did you see in the files of the German Foreign Office a telegram from Mackensen, German ambassador to Rome, directed to Ribbentrop, regarding a conversation between Ambassador SHIRATORI and Mackensen on the 2d day of September 1939 in which SHIRATORI expressed the opinion that with a new Japanese cabinet

there was a well-founded chance for successful continuation of the stalled rapprochement with the Axis powers and for the purpose of being able to work more effectively he was returning to Tokyo?

A No, I have not seen the telegram.

Q Were you advised of the contents of that telegram?

A No, I am not advised.

Q Were you informed or did you learn that SHIRATORI soon after his return to Tokyo, in a conference with Ambassador Ott, offered close cooperation in working toward a non-aggression pact between Japan and Russia with the further aim of active cooperation between Germany, Japan, Russia and Italy?

A No, I was not informed of that telegram.

Q Now, the first telegram that I mentioned, that is the one of September 2, 1939, is prosecution's exhibit 2232 and is found at page 16,003 of the transcript. As to this second telegram relating to the conference between SHIRATORI and Ambassador Ott in Japan, let me see if I can refresh your recollection.

Do you recall whether you heard that SHIRATORI was counting on an early failure of the ABE cabinet soon after his return to Japan?

A No, I did not hear that.

Q The date of the matters I am referring to was in October 1939. Do you recall receiving the information at this same time that SHIRATORI considered that there had been a weakening in the army circles due to the costly military defeat at Nomonhan? Does that refresh your recollection?

A No, I am sorry. I cannot recall any connection between SHIRATORI and the incident at Nomonhan.

Q Do you have any knowledge of the political activities of SHIRATORI in Japan between the time of his return as Ambassador from Italy and the time of your trip to Japan in 1940?

MR. CAUDLE: I would like to object to this line of questioning. Mr. Stahmer was in Germany in 1939 and Mr. SHIRATORI came to Tokyo in October, 1939. How could he know?

THE PRESIDENT: He could know, and he was merely asked whether he did know.

The objection is overruled.

A No, I did not know. I only heard in 1940 that he became adviser of MATSUOKA.

Q Was that legal adviser?

A That is a very difficult position which I only found here in Japan. I heard there were different

types of advisers. Some of these advisers would be nominated by the ministers themselves, and some, as far as I heard, were nominated by the Prime Minister or the Governor or the Government. I do not know if there were what you call "legal advisers."

THE MONITOR: Mr. Tavenner, by "legal advisers" do you mean that they were legally appointed advisers, not the adviser on legal matters? I would like to ascertain that in our translation.

THE PRESIDENT: Adviser on legal matters.

Q Do you know whether SHIRATORI was appointed adviser by the Foreign Minister?

A I do not know. I only know that he was adviser of MATSUOKA.

Q The German-Soviet Non-Aggression Pact was concluded on the 23rd of August, 1939. What was the date of your alleged conversation with Ambassador OSHIMA in which you claimed that you notified him that the pact had been signed?

A I cannot recollect the exact date, but I know that it was immediately after the first return of Ribbentrop from Moscow.

Q And can you not fix the date?

A No, I am sorry. I remember Ribbentrop went to Moscow twice, and after his first trip he told me

to inform Ambassador OSHIMA. I cannot remember exactly.

Q Where was Ribbentrop at the time that you claimed that you notified OSHIMA?

A As far as I remember he came back from Moscow. I was in Berlin, and he took the plane, I suppose, to Bertchesgaden.

Q Well, was it before the signing of the pact on the 23rd of August or after the signing of the pact that you notified OSHIMA?

A I believe after the 23rd, after the signing of the pact.

Q About how many days?

A Very shortly after the return of Ribbentrop.

Q As a matter of fact, Mr. Stahmer, had not Ambassador OSHIMA been notified of the proposed pact by Ribbentrop himself as early as the evening of August 21, 1939?

A I know that Ribbentrop told me to inform Ambassador OSHIMA because it was a very difficult task for me, and that he ordered me to tell him that the German-Russian Aggression Pact was concluded and he, Ribbentrop, would come to see OSHIMA as soon as possible and talk the situation over with him.

THE PRESIDENT: We will adjourn until half-

past nine tomorrow morning.

(Whereupon, at 1600, an adjournment was taken until Tuesday, 17 June 1947, at 0930.) - - - -

17 June
witness

17 JUNE 1947

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I N D E X

Of

EXHIBITS

Doc. No.	Def. No.	Pros. No.	Description	For Ident.	In Evidence
4047	2746		German Text of a Memorandum to Weizsaecker dated 28 August 1939 from Stahmer		24504

Tuesday, 17 June 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, all Members sitting, with the exception of: HONORABLE JUSTICE E. H. NORTHCROFT, Member from the Dominion of New Zealand, not sitting from 0930 to 1600 and HONORABLE JUSTICE JU-AO MEI, Member from the Republic of China, not sitting from 0930 to 1045.

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, IMTFE.)

Morse & Lefler

MARSHAL OF THE COURT: The International Military Tribunal for the Far East is now in session.

THE PRESIDENT: Yes, Counselor.

MR. KANZAKI: I have heard, as a most reliable report, that HARADA, Kumakichi has recently been executed. He was formerly Chief of the Special Service Organ in Nanking and was later Commander in Chief of the Japanese forces in Java. He was to be one of the most important witnesses in the Chinese phase, the Pacific phase, and the individual phases. The appearance of HARADA before this court as a witness has already been requested by the defense and the Court has already issued a subpoena for his appearance. Since he was not permitted to appear here during the Chinese phase, I requested the authorities concerned to permit his appearance several times.

Now, not only has he not obeyed the subpoena, but he has finally been executed. I believe this is a grave infringement on the authority of this Tribunal. The Tribunal has often stated that the best evidence should be forthcoming in this historic trial --

THE PRESIDENT: Now, we have heard enough from you. I want you to tell me whom you mean by "the authorities concerned." You say you approached them and they would do nothing. I can not approach

the authorities concerned. The authorities concerned would probably be the Chinese Government or some other governments. I can only approach the Supreme Commander, and then by way of subpoena, and I have not heard his side of the story.

You are, in effect, pronouncing judgment without hearing both sides. All the subpoenas issued by the Tribunal, and I signed them, are directed to the Supreme Commander who alone can tell me, and tell you, and tell the Tribunal, what the position is. Only the Supreme Commander has contacts with the people outside Japan; you have none, the Tribunal has none, and I have none.

I suggest you approach me in Chambers and tell me your story, and I shall repeat it to the Supreme Commander. And, if necessary, we will then state in open court the facts as we have ascertained them.

MR. KANZAKI: Thank you, sir.

THE PRESIDENT: Mr. Tavenner.

- - -

H E I N R I C H S T A H M E R, called as a witness on behalf of the defense, resumed the stand and testified as follows:

CROSS-EXAMINATION

MR. TAVENNER: If the Tribunal please.

BY MR. TAVENNER (Continued)

Q At the close of the session yesterday, Mr. Stahmer, we were talking about the notification of OSHIMA of the conclusion of the German-Russian Pact. Where is Berghof, B-E-R-G-H-O-F?

A Do you mean Berghof?

Q B-E-R-G-H-O-F.

A That was the name of the house where Hitler lived very often, near Bertchesgaden.

Q Did Ribbentrop call OSHIMA from Berghof on the evening of August 21, 1939?

A I do not know if he called him.

Q On the night of the following day, August 22, did the Secretary of State, Weizsaecker, have a conference with Ambassador OSHIMA on the matter of the conclusion of the non-aggression pact?

A I do not know. The only think I know is that I got the order, and I forget the exact date, to tell OSHIMA that the German-Russian Non-Aggression Agreement was signed. I had nothing more to do in any way with this whole thing.

Q Let me see if I can refresh your recollection. Do you not know that on the night of August the 22nd that there was a discussion between Weizsacker and OSHIMA in which Weizsacker explained the reasons for the pact and OSHIMA his objections to it, at the end of which OSHIMA assured Weizsacker of his unchanged intention to continue working for German-Japanese friendship notwithstanding the non-aggression pact?

A No, I do not know.

Q ell, did you learn of it or hear of it?

A No, I did not hear of it.

Q Do you recall any other instance shortly after the conclusion of the non-aggression pact in which Ambassador OSHIMA gave his assurance that he would continue to work for an improvement of German-Japanese relations?

A I really cannot remember. I was most of the following time not in Berlin but in Salzburg.

Q Let me see if I can refresh your recollection. Do you recall a conversation between you and OSHIMA on or prior to August 28, 1939, in which he gave you information regarding General ABE, the new Japanese Prime Minister, and among other things stated that he and General ABE served together on the general staff and that General ABE at one time was acting military

attache in Berlin? Do you recall that Ambassador OSHIMA gave you that information?

A That is possible but I do not remember it, and in the end that is now about eight years ago and I had many conversations with many different people.

Q Possibly I can refresh your recollection further about it. Do you recall that Ambassador OSHIMA advised you that General ABE should be considerably more favorable as Prime Minister than HIRANUMA and that he would furnish you later with information about other members of the cabinet?

A That is possible but I do not remember any details.

THE PRESIDENT: If you are referring to an exhibit, just mention the number, Mr. Tavenner. It will be helpful.

MR. TAVENNER: I am not referring to an exhibit.

Q Do you recall that you had a conference with OSHIMA regarding the new cabinet?

A I even cannot remember that.

Q Now do you recall whether Ambassador OSHIMA advised you that the Japanese press was gradually returning to reason and not to take the press articles too seriously? Does that refresh your recollection?

A I am sorry. I cannot remember.

Q Did Ambassador OSHIMA advise you that he was working as before with all his power on the maintenance and improvement of Japanese-German relations?

A No, I do not remember. I had the feeling that Ambassador OSHIMA still was a friend of Germany. The only thing I remember of the whole time, that was a farewell lunch of Ribbentrop where I saw him the last time in Germany and there were short, formal speeches exchanged of which I do not remember the contents.

THE PRESIDENT: This is a matter I feel constrained to mention from the Bench. It amounts to contempt of court.

The Chinese Judge is not here this morning because his driver was called up without telling him. The Member from China was left to his own resources to get another car, but he failed to get one in time to enable him to be here this morning.

Proceed, Mr. Tavenner.

Duda & Whalen

Q I hand you the German text of a memorandum allegedly prepared for Weizsaecker, bearing date August 28, 1939, purportedly signed by you, and ask you if that is your signature.

(Whereupon, a document was handed to the witness.)

Q Is that your signature?

A Yes, that is my signature.

MR. TAVENNER: I desire to offer in evidence prosecution document 4047 presented to the witness for his identification.

If the Tribunal please, this document has not been processed, but it will be processed and copies delivered to defense counsel and to the Tribunal as soon as it can be done.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Prosecution document 4047 will receive exhibit No. 2746.

(Whereupon, the document above referred to was marked prosecution exhibit No. 2746 and received in evidence.)

MR. TAVENNER: I will read in evidence exhibit 2746.

"Berlin, 28 August 1939

"Note for State Secretary Von Weizsaecker

"Ambassador OSHIMA informed me about the personality of the new Japanese Prime Minister as follows:

"General ABE is 64 years of age and has had an excellent military career. He is an artillery man and served together with OSHIMA on the General Staff. Mr. ABE belonged, furthermore, for a long period of time, as a captain to a German Artillery Regiment in Thorn, and was acting as military attache in Berlin.

"OSHIMA is a personal friend of General ABE and believes that he is considerably more favorable as Prime Minister than the present Prime Minister, Baron HIRANUMA. The Ambassador will get information about the other members of the cabinet which have been named up to now, War Minister ISOGAI and Navy Minister JOCHIDA, and will inform me then.

"OSHIMA informed me further that in his opinion the Japanese Press is gradually returning to reason, and asked not to take the articles in the Press too tragically, /and that/ he is working as before, with all his powers, on the maintenance and improvement of German-Japanese relations.

"/Signed/ STAHMER"

Q Was not Ribbentrop advised on or before the 26th day of August 1939 that although the Japanese army

was hard hit by the surprising Russian pact, the leader of the army was exerting himself most strongly for a military alliance with Germany?

A At what time should that have been?

Q On or before the 26th day of August 1939.

A I do not remember.

THE PRESIDENT: A Member of the Tribunal is interested in knowing whether the telegram was written by the witness personally or drafted by a subordinate and only signed by the witness. Answer, please, Witness.

THE WITNESS: This was no telegram, but only a memorandum note given over to the Secretary of State. I do not remember if I dictated that. Normally I let my secretary write these notes and gave him some short indications what he should write, and then I signed it if it was right.

Q The information contained in that memorandum for Weizsaecker was, in fact, furnished by you, was it not?

A Yes.

Q I referred to information being given Ribbentrop on August the 26th 1939. Was Ribbentrop also advised at that time that the army was striving, that is, the army in Japan, for a change of cabinet in the direction of closer relations with Germany, and that

they were awaiting concrete German proposals?

A I do not know.

Q Was not a suggestion made to Ribbentrop at this time by Ambassador Ott and Military Attache MATSUKI that the German armed forces issue an early declaration of sympathy for the Japanese army in order to strengthen their pro-German army policy?

A That is possible, but I did not see that telegram.

Q Were you told that that had occurred? Do you recall that you learned of that fact?

A No, I was not told of the fact.

Q What do you mean when you say it was possible?

A I mean I cannot say that such a telegram did not exist; I can only say that I do not know it.

Q Were you told about it?

A No, I cannot remember.

Q Did you learn of the conference in September 1939 between Ribbentrop and OSHIMA in which Ribbentrop expressed the view that close cooperation between Germany, Italy and Japan was not in the least dead, to which statement OSHIMA agreed?

A I do not remember this conference. But I remember that Ribbentrop told me in that time that the cooperation between Japan, Germany and Italy must

go on if possible, and must be strengthened.

A And were you not likewise told that OSHIMA agreed to that?

A That is possible, but I cannot recollect it.

MR. TAVENNER: That question is based on prosecution exhibit 507, pages 6128 and 6129 of the transcript.

Q Is it not a fact that Ribbentrop considered it of great importance for his policy that OSHIMA remain as ambassador in Berlin, and that OSHIMA enjoyed the complete confidence of Hitler and the German Army?

A I had always the impression that Ribbentrop liked OSHIMA very much, and I heard that Hitler did the same. How the position of OSHIMA was concerned with the German Army, I do not know; but I believe that he was on quite good terms with them, too, having been military attache several times.

Q Did Ribbentrop tell you that the presence of OSHIMA in Germany was very necessary for the German policy?

A I remember only that he told me once that it was very bad and that he was very sorry that OSHIMA had to go away.

Q Will you please answer my question?

A I do not remember what you told -- what you asked me.

Q Do you know it is a fact that Ribbentrop considered it necessary for the extension of his policy that Ambassador OSHIMA remain in Germany?

THE PRESIDENT: You better put the words of the telegram if you are referring to exhibit 507.

According to that telegram, Ribbentrop said, "I deem it to be of great importance for the policy I have in mind that OSHIMA remain Ambassador," not that it is necessary.

Q Do you recall that Ribbentrop stated that it was of importance, of great importance, for the policy he had in mind that OSHIMA remain ambassador in Berlin?

A I do not remember that he told me so.

Q Mr. Stahmer, was it not a fact well known to you from your access to the records in the German Foreign Office that OSHIMA and SHIRATORI continued, after the non-aggression pact was concluded, to promote a German-Japanese alliance?

A I had the impression that OSHIMA, and I believe that SHIRATORI, too, would always work to keep up and even to embetter German-Japanese relations. But I did not get the idea that they were going on to work for the alliance. And as I told yesterday, I had no full access to the files of the German Foreign Office. I only got some telegrams from Ribbentrop when I had to work.

Q By whom was the Duke of Koburg chosen for the trip to Japan and the United States?

A Ribbentrop told me in January 1940 that at

first the general manager of the I.G. should be sent. But he believed that was wrong, and then he told me the Duke of Koburg had to go. I do not know if it was the idea of Ribbentrop or the idea of Hitler. And he asked me, because I had worked together with the Duke of Koburg, and I told him I believed that was a very good idea because the duke has been in Japan and in the United States before.

Q Do you mean that you were recommended or selected by Ribbentrop?

A You mean the Duke of Koburg?

Q I mean you.

A I got the order to accompany the duke on that trip because we had worked together since 1935, and I remember that the duke asked Ribbentrop to give the permit to accompany him, the permission to accompany him.

Q My question was whether or not Ribbentrop recommended or selected you for this trip to Japan with Koburg.

A Of course; and he told me and he gave me the order to accompany him.

Q Ribbentrop was your immediate superior at that time, was he not?

A Yes, he was.

Q Is it true that the Luke of Koburg was a very old man and was not interested in diplomacy at this time?

A Well, he was not a very old man. He must have been at that time 47 or 48 -- 57 or 58.

Q On the other hand, you were the political and diplomatic adviser of Ribbentrop, weren't you?

A No, I was not the political and diplomatic adviser of Ribbentrop.

Q Had not you been his main adviser in politics and diplomacy for a number of years?

A No. That is absolutely wrong. I have not been his main adviser in politics or diplomatics for several years.

Q If not the main adviser, you were, nevertheless, one of his advisers?

A No, I was none of his advisers. I was one of his employees and I worked with him and under him.

Greenberg & Reichers

Q Well, tell us the character of your employment.

A I got an order from Ribbentrop, for instance, to become liaison man with OSHIMA, and then I had to fill out my work,-- but an adviser is a man who tells his superior how to do this and how to do that, and who makes him political and diplomatic proposals. That's what I never did.

Q How many different countries had Ribbentrop sent you to on diplomatic missions?

A On diplomatic missions I was sent to Italy; then, in this ex-service men work; I was sent to England and France, and twice in Hungary; and then I was sent with the Duke of Coburg to Japan and the United States.

Q When you state, Section 5, page 5 of your affidavit, that there was no political purpose pursued in the trip of the Duke of Coburg to the United States in 1940, did you intend to imply that there was no political purpose in your accompanying him?

A I really had absolutely no political order except that I should use this opportunity to see how situation in Japan is. That was all.

Q Then I understand there was a political purpose in your trip to Japan?

A Well, I would not call that a political order, but that is a difference of opinion.

Q If this were not a trip for political purposes, what was the purpose of your trip?

A The trip to Japan was absolutely secondary. The only important thing was the trip to the United States, and we wanted to do everything to keep up friendship with the American Red Cross because there was no other way to travel via Siberia. And we used this opportunity especially to make this congratulatory mission to the Emperor of Japan on the occasion of the 2,600 years anniversary, to avoid to send over a special commission later.

Q Then do I understand correctly that one political purpose of your trip was to lay the groundwork for commissions that were to follow?

A No, that is not right. I did not have the idea or the order to lay any groundwork at all here.

Q Now, you stated that the trip to Japan was purely a secondary matter, that the real object of your trip was to go to the United States; but you have stated in your affidavit that there was no political purpose for your trip to the United States.

A Yes, and I still believe that cannot be

called a political purpose because we avoided everything which could be used for political propaganda, or which could make the impression that we had any political work to do. We even went so far to refuse money which was offered to us for the German Red Cross, to prevent making the impression of collecting money.

Q Did you learn before your trip to Japan that Ribbentrop had advised Ambassador Ott that Ambassador OSHIMA, after his return, would do further work for the German-Japanese friendship and that Ribbentrop requested that the German Embassy facilities be extended to OSHIMA for the transmittal in code of telegrams delivered there by OSHIMA for Ribbentrop personally?

A I did not hear it that time, but I read it later in the documents of the Embassy after I had to take over the Embassy.

Q Then you read and studied the files in the German Embassy in Japan after you arrived here?

A I studied some --- very few of this old file.

Q You carefully selected those that you would read and those that you would not be informed about, is that it?

A No, that was not the idea, but in this

case I was very much interested who had any right to use telegram possibilities and cypher possibilities. That was the reason why I studied these.

Q And you mean to state that as the employee of Ribbentrop, whose business was diplomacy, you did not look at the telegrams on file there to see what was going on diplomatically?

A You mean in the time when I was in Berlin?

Q No, we are speaking now of the Embassy files in Japan, which you say you had access to.

A Well, I had to work every day and I did not have the time to study all these old files. For my recreation I took some files out concerning the time after -- before the war, 1914. On the other hand, my secretary can always be witness and state what I studied or not.

Q Do you seriously state, Mr. Stahmer, that you came to Japan to find out the then present-day conditions and then you read only the files of the German Embassy relating to the war of 1914?

A No, I do not want to state that. I said I had taken out those old files to study them as a sort of recreation, but I want to say that I did not study all those files from 1938 to 1942 or 1943 or before. I always took out what I needed for my

immediate work, for my work.

Q Well, when you arrived here----

THE PRESIDENT: We will recess for 15 minutes.

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

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

THE PRESIDENT: I give the judgment of the Tribunal on the defense motion praying for production of witnesses for cross-examination or, alternatively, to strike their affidavits.

The Tribunal will not take into consideration the evidence of Semyonav or Rodzaevsky except de bene esse the affidavits of deponents MIYAKE, KUSABE and NOHARA; orders the prosecution to produce for cross-examination the other witnesses mentioned in the said defense motion within a period of two months from this date or within such longer period as may on cause shown be approved by the Tribunal or, alternatively, to give convincing reasons within the said period why they are not able to produce the said witnesses. The Tribunal will disregard the affidavits of any one or more of the deponents last mentioned in respect of whom the prosecution fails

Scott & Yelden

to comply with the present order.

As regards the decision not to take into consideration the evidence of the two first named witnesses, this decision would have been the same no matter what section of the prosecution offered the affidavits. There is no evidence justifying Major Blakeney's suggestion at page 23,791 of the transcript that duress was employed to secure the evidence. The Tribunal issued and repeats its warning against such unwarranted assertions by counsel.

Mr. Tavenner.

CROSS-EXAMINATION

BY MR. TAVENNER (Continued):

Q Mr. Stahmer, at the time you examined the telegram in the German Embassy files on your trip to Japan in 1940 as you previously testified to, did you examine the other files of telegrams covering the period from the close of the Non-Aggression Pact to the time of your arrival?

A There must have been misunderstanding from my side. I did not study any documents in 1940. The documents I studied, that was in 1943 and 1944.

Q I at no time have asked you any question about what you did in 1944. When was it that you saw the telegram about the use of Embassy facilities for

the sending of messages by OSHIMA?

A That was after I had taken over the Embassy in 1943 or 1944.

Q Did not your political purpose in coming to Japan include an interview with OSHIMA and SHIRATORI whom you say you met on two occasions while in Tokyo?

A I wanted very much to see them again because I knew them in Berlin and Germany, but I was very careful to make a political interview with them. I had two reasons. At first the situation between Japan and Germany at that time was not very good and there was no possibility of making progress, and the second reason was that I did not want to trouble the work of the Embassy and the ambassador here to make him difficulties in his work.

Q Let me refer back for a moment to the question of examination of the documents in the German Embassy. You say when you became ambassador that you examined those documents?

A Yes, after I became ambassador in Tokyo.

Q Did you then examine the documents from the period of the conclusion of the Non-Aggression Pact between Germany and Russia on up through 1940 during which time you found the one that you have described to us?

A No, I didn't study these documents at that time because already two years before the war between Russia and Germany had broken out and that was of no interest for my daily work.

Q Russia was not in the war at that time and weren't you bending every effort in 1943 to bring Japan into the war against Russia?

A Excuse me, I didn't quite understand it -- that I should bring -- that I intended to bring Russia into war with Japan?

Q No, that there may be no misunderstanding as to what I said I will endeavor to repeat the question.

A Thank you.

Q Were you not bending every effort in 1943 to bring Japan into war with Russia?

A No, I cannot remember a single conversation in that line because that was tried before my time and failed completely, and I knew that there was no possibility, even if I would have liked to do that, to try to get Japan into the war with Russia.

Q Do you state that you took no action after becoming Ambassador to Japan to induce Japan to attack Russia?

A No, I cannot remember a single action. I believed always that it was quite useless.

Q Wasn't it necessary for you at that time when the matter of possible war between Japan and Russia was being considered that you examine the files to study the relationship between Germany and Russia in so far as Japan was concerned?

A I have never got an order from Berlin to work in that line, and I did not believe it necessary to study these documents. I knew in the big lines the events, and the only important thing was the situation of the day.

Q On your arrival in Japan in 1940 did you discuss political matters with OSHIMA and SHIRATORI?

A No, I cannot remember. We talked over the

general situation and I told them much about the war in Germany and many friends, especially OSHIMA had in Germany, and then, so far as I remember, we were never alone.

Q Exhibit 511, page 6141 of the transcript, is a top secret telegram of 23 February 1940, sent from you to the State Secretary, in which you state that upon your arrival in Japan you found OSHIMA, SHIRATORI, and TERAUCHI in an unchanged friendly attitude and ready for every support.

Are we to believe that you talked to OSHIMA and SHIRATORI about political matters as shown by your telegram of the 23rd or your statement to the contrary near the bottom of page 5 of your affidavit?

I did not hear your answer.

A I regarded that conversation as a general conversation over the whole situation, and of course OSHIMA, SHIRATORI, and TERAUCHI, to use this word, were always regarded as pro-German. What I call a political conversation, that is a conversation about a serious political problem or about certain political plans like that, and the report I made in that telegram was a combination of everything I heard from the Japanese whom I knew, from the people in the German Embassy, and from the German journalists.

Q Wasn't Ribbentrop's policy of an alliance between Germany and Japan one of the vital concerns to Germany at that time?

A That is right. At that time we saw a very small possibility, but the idea was always most important.

Q Isn't it true that the support for which OSHIMA and SHIRATORI were reported by you to be ready was not the support of the German-Japanese alliance?

I desire to correct that statement and strike out the last negative, the word "not."

A Well, I believe, from their side, they had exactly the same idea as the German side had, that the German-Japanese Alliance would be very favorable.

Q And they were ready for every support on that proposal, were they not?

A I do not know what support means, but since I had the idea they were, they had the same idea, and they wanted to go on and to help, that this alliance could be made later.

Q Did you confer on political matters with persons other than OSHIMA and SHIRATORI?

A Once, I believe, at the first opportunity

I met them, the Count TERAUCHI was present, who had visited Germany in September and October, 1939, and some other people were present, too, whose names I do not remember, although they took part in that conversation.

Q General TERAUCHI, or Count TERAUCHI --

A General Count TERAUCHI.

Q He was sent to Germany by the Japanese Army, was he not?

A I know that he was sent to Italy as sort of commission accompanied by some officers, and later he came to Germany, too.

Q And that was immediately upon the conclusion of the Non-Aggression Pact; was it not?

A I believe he must have been in Italy already, or in Europe already beforehand.

Q In the 14 days in which you stayed in Japan on this particular occasion, that is, in May, 1940, your second trip --

A Yes.

Q --did you discuss political matters with numerous persons in the political, military, naval and economic spheres of Japanese life?

A Yes, I saw much more poeple that time. There were some bigger invitations in the German Embassy because this congratulatory mission of the Duke of Cobalt which became official the time of the mission, so, many high officials were present.

Q Did Joseph A. Meissinger, Colonel in the Gestapo branch of the German police arrive in Japan while you were here or shortly thereafter?

A No, he arrived about one year later as far as I know.

Q Did Von Duerkheim arrive in Japan in the spring of 1940, while you were here, for the purpose of strengthening the cultural cooperation between the two countries?

A He was here in 1938. Then he went back to Germany for a short time as far as I remember. At any rate, he was already here when I arrived.

Q Did Helffrich, President of the Hamburg-American Shipping Lines, arrive in Japan in the spring of 1940 while you were here for the purpose of obtaining close cooperation with Japanese economic circles?

A He arrived sometime before I came to Japan.

Q But in the spring -- But during the year 1940?

A Yes, probably in the very beginning of 1940.

Q When did Rheinhardt Schultze, a leader in the Hitler Youth Movement, arrive in Japan?

A I do not know exactly. It must have been in '37 or '38.

Q What was your official position in July, 1940?

A In July 1940 I had the title of -- no -- 1940 I still had the title of Consul-General.

Q Were you in Japan at the time of the fall of the YONAI Cabinet in July, 1940?

A No, I was not in Japan.

Q Were you personally in communication in July 1940 with any members of the Japanese Cabinet?

A No, July 1940 I had no connection.

MR. TAVENNER: If the Tribunal please, in view of the witness' answers to the last three questions, I would like to call the Tribunal's attention to prosecution exhibits which set forth the prosecution evidenc relating to the fall of the YONAI Cabinet:

Exhibit 515, page 6,115 of the transcript; exhibit 520, page 6,162; exhibit 523, page 6,175; exhibit 529, page 6,233; exhibit 530, page 6,238; exhibit 531, page 6,239 and exhibit 532, pages 6,240, 6,243, 6,248, 6,250 and 6,254.

Q Were you not fearful that the YONAI Cabinet would improve the Japanese relations with the United States and England, and for that reason did you not desire that the YONAI Cabinet be replaced by one more favorable to Germany?

A Oh, of course I would have liked to have the YONAI Government replaced if it is for a more favorable government for Germany.

Q Did you not express the hope that it would be replaced by a new government, in fact, a government

Q Were you personally in communication in July 1940 with any members of the Japanese Cabinet?

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Q Were you not fearful that the YONAI Cabinet would improve the Japanese relations with the United States and England, and for that reason did you not desire that the YONAI Cabinet be replaced by one more favorable to Germany?

A Oh, of course I would have liked to have the YONAI Government replaced if it is for a more favorable government for Germany.

Q Did you not express the hope that it would be replaced by a new government, in fact, a government

under the leadership of Prince KONOYE or a group you considered to be more friendly to Germany?

A That is very possible. I only do not remember when.

MR. TAVENNER: I refer to exhibit 515, page 6,151 of the transcript as the basis for that question.

Q Did not Ambassador Ott in June, 1940, advocate Japanese annexation of Indo-China as being in the German interest, and in connection with which he assigned as the supporting reason, that the failure of Japan to accept responsibility for making such a decision would probably result in the replacement of the Cabinet by one which would be close to Germany?

A I do not know that telegram because I came back to Berlin not before, in the second half of June, and then had some time leave at home.

Q You did not review the files of the Foreign Office upon your return from vacation?

A No, I really did not and I could not without a special permission.

MR. TAVENNER: The question is based on exhibit 520, page 6,162 of the transcript.

Q In the last paragraph on page six of your

affidavit, vou state that you arrived in Tokyo on 7 September 1940. Is it not a fact that you arrived in Japan on the 23rd day of August, 1940?

A I assure you I arrived in Tokyo on the 7th of September, 1940, together with my wife.

Q My question was,did you arrive in Japan on the 23rd day of August.

A No, I did not arrive in Japan on the 23rd of August. I came directly via Manchukuo to Tokvo without any interruption or any stay anywhere.

Q When did you arrive in Manchukuo?

A I cannot say exactly. I believe at the 23rd of August I still must have been in Moscow or in Berlin.

Q You testified that MATSUOKA had a pact drawn up and prepared at the time of your conference on September 9. Am I correct in that recital of your testimony?

A Yes, as far as I remember, already,on the 2nd negotiation, MATSUOKA had a short draft and a sort of preamble which we talked over,

Q Do you know from your conversation with MATSUOKA or other Japanese, of the action that had been taken by the Japanese Foreign Ministers' Conference prior to your arrival with regard to the

proposed alliance?

A No, I did not hear that. I did not know that.

Q Did you learn from MATSUOKA of the various revisions of the plan that he himself proposed --

THE MONITOR: Mr. Tavenner, shall we take it that he proposed the revision or the plan itself?

MR. TAVENNER: Proposal of the revisions.

THE MONITOR: Revisions.

Q -- as early as the 4th day of September?

A No, I knew nothing of the revisions of the plan. He didn't tell me and he did not tell me at all that they had meetings before and talked it over.

Q When was the decision reached that you should be sent from Germany to Japan?

A I cannot remember exactly, but it must have been the middle of August maybe -- yes, about the 15th of August, because I had to take my visa very quickly and had to take a plane to Moscow.

Q Do you know what word had been received from Japan which led Ribbentrop to make the hasty decision to send you?

A No, I do not know. He only told me that he couldn't get a clear picture because the telegrams,

incoming telegrams from the German Embassy here, and the communication of Ambassador KURUSU was so unclear that he did not know how the situation really was and that he believed that it would be necessary for me to go over and try to find out.

Q In the last paragraph of page 6 of your affidavit you enumerate the matters which you explained to MATSUOKA at your meeting with him on September 9. Did you also ask that Japan join the Axis in the fullest sense of the word, and that quickly?

A When MATSUOKA asked me after we had talked over the whole situation, what would be the best way to do, I told him that my idea of the best thing would to make an alliance and a defensive alliance and to go together.

Q And you were urging that that be done quickly, did you not?

A Excuse me, I didn't --

Q And you urged that that be done quickly, did you not?

A Oh, that is possible, but that has another reason. The Ambassador KURUSU in Berlin asked me how long I wanted to stay in Tokyo, and, of course, I didn't know what to say and the whole situation

was -- and I said "Well, I don't know, maybe 3 or 4 weeks." He cabled that to Tokyo and that was the reason why MATSUOKA believed it must be done so very quickly. He told me that later. I did not tell him it was so very, very necessary.

Q Do I understand you to say then, that you did not call upon Japan to join the Axis quickly?

A Oh, it is very possible that I said "That is just the time to do that." That is very possible. I do not remember the wording.

Q Did you also state that Germany was taking a long view of carrying on the stupendous struggle against Anglo-Saxondom, including America, and that this great struggle would go on for tens of years in one form or another?

A I told MATSUOKA that we in Germany must be prepared for a very long war against France and England, and that we want to do everything to keep the United States out of the war.

Q Now, will you please answer my question? Did you make the statement that I recited to you?

A I did not make the statement as far as the United States is concerned, and I cannot remember if I said how long this war would probably be -- go on.

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.

THE PRESIDENT: Mr. Tavenner.

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H E I N R I C H S T A H M E R, called as a witness on behalf of the defense, resumed the stand and testified as follows:

MR. TAVENNER: If the Tribunal please.

CROSS-EXAMINATION

BY MR. TAVENNER (Continued):

Q Mr. Stahmer, in your conversation with MATSUOKA on September 9, did you not make a request that Japan come into the Axis alliance quickly before the war against England closed?

A That is very possibly so. I do not remember the wording, but I told him that if an alliance with Germany was contemplated it must be done quickly because when the war with England was finished it would be of no help for the Japanese political situation.

Q Then, did you not follow with a statement that Germany was taking a long view of carrying on a stupendous struggle beyond, presumably, the close of

the war with England, that the struggle would be against Anglo-Saxondom, including America, and that it would last for tens of years?

A I said, as far as I remember, that we must be prepared in Germany for a very long war, that we do not know how long this war will go on, maybe for years. And, then I emphasized that the United States must be kept out of the war, and that it would be necessary to make a platform for a coming peace. He told me the next day that he had repeated that to his prime minister.

Q You state, now, that you represented that it would be a long war?

A I said that the war in which Germany was involved already at that time would be probably a very long one.

Q Is that not inconsistent with your previous statement in which you were endeavoring to persuade Japan to come into the Axis quickly before the close of the war with England? Now, tell us which is right. Did you expect the war with England to be over quickly, or did you expect a long war?

A We had a long discussion. For two hours I explained to him our idea of the situation in the world, and I again told him, "Of course, it may be

possible that Germany will attack England and then this war will be ended very soon. In that case, it would be very good for Japan, if she intended to make an agreement with Germany, to do it now." That would be a good moment. Then, I said, "But, we do not know that, and we must be prepared for war which will last many years and to avoid that is the only way to try to keep the United States out of this war, and by this way make a platform for a coming peace."

Q I ask you again, in this connection, did you not state that Germany was taking a long view of carrying on a stupendour struggle against Anglo-Saxondom, including America?

A I do not remember the words. I only remember that I told him that we must be prepared for a very long struggle. I do not know what words I used, England or Anglo-Saxon. I really cannot remember, but I remember definitely that I said it our most important thing to keep the United States out of the war.

Q I am not asking you now what else you may have said. I asked you a specific question. Will please answer it?

A I do not remember this exact wording you said.

Q Did you also state that Germany, Italy, and Japan should stand together, knitted very closely,

possible that Germany will attack England and then this war will be ended very soon. In that case, it would be very good for Japan, if she intended to make an agreement with Germany, to do it now." That would be a good moment. Then, I said, "But, we do not know that, and we must be prepared for war which will last many years and to avoid that is the only way to try to keep the United States out of this war, and by this way make a platform for a coming peace."

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Q I am not asking you now what else you may have said. I asked you a specific question. Will please answer it?

A I do not remember this exact wording you said.

Q Did you also state that Germany, Italy, and Japan should stand together, knitted very closely,

until the great aim is achieved?

A That is possible.

Q Was that great aim to which you referred the conquering of the democratic nations, one by one, as envisaged in Hitler's Mein Kampf?

A No, I had only in mind the victory and not an attack on the different democratic countries.

Q With regard to your explanation to MATSUOKA that Germany had no intention to draw Japan into the European War, as shown in your affidavit, did not you state that Germany does not look for Japan's military assistance at this juncture --

A Yes, I told him --

Q (Continuing) -- in connection with her war against England?

A Yes, I told MATSUOKA at that time that Germany did not want Japanese military assistance in this war in Europe.

Q Did you say "did not want it at this moment"?

A That is what I do not remember. I only wanted to tell him, "We do not need your military help now, at this moment."

Q I believe you stated in your affidavit that you had no knowledge of the later effort made by Ribbentrop to induce Japan to attack Singapore, but I desire to ask you if in November, 1940, within about two months after the conclusion of the Tri-Partite Pact, KURUSU, ambassador in Germany, in a conversation with Weizsacker stated that a Russo-Japanese neutrality pact and peace between Japan and China were required prerequisites for a Japanese advance through the regions south of China, including Siam, without the

use of which Singapore could hardly be brought to a fall?

A That is very possible, but I was never present at any conversation between Weizsacker and KURUSU and I did not get a memorandum of such a meeting, and he did not talk about this idea with me.

Q Then you state you have no knowledge, either from the German or the Japanese side, of contemplated assistance by Japan in the war against England within a few months after the conclusion of the Tri-Partite Pact?

A No, I heard nothing at that time. I was rather ill and I did not work practically since December, '40, and then the only order I had was to accompany MATSUOKA when he came to Germany and stayed in Berlin, and then I got on leave -- on sick leave -- and was in Italy from immediately after the return of MATSUOKA till the end of June.

Q In your conference with MATSUOKA on September 9th, did you agree that Germany would cooperate with Japan to further Japanese aims in Greater East Asia?

A Yes. I said, "We are willing to acknowledge the Japanese position in Greater East Asia and we are willing to help with our -- in an economic and industrial line, and we hope we get raw materials from

Japan in this sphere in exchange, and this would develop a very healthy economic situation later."

Q And did not that offer of aid also extend to the promise to immediately furnish Japan with materials for war such as airplanes, tanks, war tools and technicians?

A That is possible, but I do not remember how far we went into details at that time. The general idea which I told him was that Japan is a country with an undeveloped industry and Germany was a country with a very developed industry. So we were willing to help in building and development of the Japanese industry and receiving raw materials against it.

Q Was it your idea to help Japan in building her industry to supply her with airplanes, tanks and war tools?

A No, that was not my idea, but I know that even in wartime Germany sold rather a lot of arms and ammunitions into other countries, even into countries who were not involved, who were neutral at the time.

Q When you said that Germany was ready to co-operate with Japan to further Japanese aims in Greater East Asia, you meant to furnish war materials in order to aid Japan in her expansion program in East Asia, did you not?

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Q When you said that Germany was ready to co-operate with Japan to further Japanese aims in Greater East Asia, you meant to furnish war materials in order to aid Japan in her expansion program in East Asia, did you not?

A I did not have the idea to assist in this expansion idea. I only wanted to create a better economic situation between these two countries.

Q A better economic situation that would be acquired by the use of force. Is that what you mean?

A No, that is definitely not what I mean and that is why I hoped to Minister MATSUOKA that a military sort of attack on Indo-China, during the time of my presence here, could be avoided.

Duda & Whalen

Q I will ask you a question or two about that. MATSUOKA informed you, did he not, during the course of these negotiations that the Japanese army would march into North Indo-China within three days if the French did not accept Japanese demands; is that true?

A Yes, he said every governor-general of Indo-China did not accept, and sent a sharp ultimatum the army would, as far as I remember, march in within three days. He wanted me to help him to avoid that.

Q That was on September 20th, wasn't it?

A I do not remember the exact date, but it was at that time.

Q Another request had been made of Ambassador Ott on August the 15th to assist the Japanese in bringing the French to terms?

A That is possible, but I do not know because that was before my arrival here.

Q Did you request Ribbentrop to bring pressure on the French Vichy Government to accede to the Japanese demands?

A Yes. I sent them a telegram implying that hostilities could be avoided here.

Q Then the Japanese army marched into North Indo-China, did it not?

Duda & Whalen

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Q Then the Japanese army marched into North Indo-China, did it not?

A Then I remember that MATSUOKA told me it had helped a lot, and he was very glad that no incident had happened, and he thanked me for my help.

Q You state in the first paragraph under Section 12, page 9, of your affidavit that OSHIMA took no positive personal stand on any of the controversial issues which you discussed. Prosecution exhibit 501, page 6,096 of the transcript, which is an excerpt from Count Ciano's diary, shows that OSHIMA acting with SHIRATORI threatened to bring about a fall of the Japanese cabinet by resigning from his post unless the Japanese Government fell in line with his desire for a Japanese-German military treaty without reservations on the part of Japan.

How do you explain this inconsistency between this documentary evidence and the statement in your affidavit?

A OSHIMA did not tell me anything about these ideas which are contained in the diary of Count Ciano, and I did not see SHIRATORI at all at that time. I had the impression the whole time I worked with OSHIMA that he was already very cautious and what he told to me that was always based upon telegrams from his government, and that was, more or less, all the topic of our negotiations, of our talks. And several times when I

asked him what do you believe, what is your government's idea, or what do you believe what will happen now, he answered "Well, I do not know, I must send a telegram and ask my government." That was my personal impression as far as I recollect.

Q I was not asking you your general impressions. I asked you how you explained the contradiction between the documentary evidence I read you and your statement in your affidavit.

A If this diary of Count Ciano is documentary evidence I cannot explain the difference. I only know what I talked over and how I talked with OSHIMA.

Q In other words, you did not know about this documentary evidence in the Count Ciano diary, is that it?

A Yes, I have read some parts of this diary of Count Ciano, not the whole.

Q Exhibit 502, page 6,100 of the transcript, is a top secret telegram from Ribbentrop to the ambassador in Japan, bearing date 26 April 1939, and shows at the beginning of March both OSHIMA and SHIRATORI received instructions from the Japanese Government with regard to the proposed pact, and that both ambassadors on their own accord immediately refused to present the Japanese proposed change of the German-Italian draft,

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and declared that they would have to resign from their posts in the event of a different decision of the Japanese Government -- Cabinet.

How do you explain the inconsistency between this documentary evidence and the statement in your affidavit?

A I cannot explain the difference. I can only repeat that OSHIMA did not tell me these ideas.

Q As intimately connected as you were with those transactions in April 1939 acting as the liaison between OSHIMA and Ribbentrop, you did not know of this incident?

A I remember that I heard later, but that was some time later, that OSHIMA had difficulties with his government, but I was not present when he had a conversation in these lines; probably was Ribbentrop -- or I do not know.

And I was not asked, nor did I see this telegram.

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And I was not asked, nor did I see this telegram.

Q According to the last-mentioned document, the Japanese ambassadors, OSHIMA and SHIRATORI, received further instructions from their government in which an earlier Japanese suggestion was retained in a weakened form. The reason assigned by the Tokyo cabinet for the necessity of the limited interpretation of the pact was stated to be the fact that Japan, for political and in particular for economic reasons, was at the moment not yet in a position to come forward openly as the opposer of the three democracies. With regard to this statement by the Japanese Government, OSHIMA and SHIRATORI informed Count Ciano and Ribbentrop that the wish of the Japanese Government was impossible.

How do you explain the inconsistency between this documentary evidence and the statement in your affidavit?

A I cannot explain that. I do not know.

Q In prosecution exhibit No. 2230, page 15,990 of the transcript, a confidential conversation between Ambassador Ott and von Ribbentrop is described, in which -- That is a mistake; instead of Ambassador Ott it is Ambassador OSHIMA -- in which Ambassador OSHIMA stated that he had received a telegram from Foreign Minister ARITA, according to which the Japanese Government wished to reserve entrance into a state of war in

case of a European conflict. Ambassador OSHIMA refused to officially pass this matter on to the German Government, and advised ARITA of this by telegram.

How do you explain the inconsistency between this documentary evidence and the statement in your affidavit?

A I do not know that document, and I do not know this fact.

Q Prosecution exhibit No. 506, page 6,124 of the transcript, a memorandum by Weizsaecker, bearing date 18 September 1939, shows that Ambassador OSHIMA was directed to file a protest to Germany's action in concluding the pact, but he disobeyed his government's instructions by postponing delivery of the Japanese memorandum of protest until 18 September 1939.

How do you explain the inconsistency between this documentary evidence and the statement in your affidavit?

A I did not know that fact.

Q Prosecution exhibit 587, page 6,562 of the transcript, is a telegram from Ribbentrop to Ambassador Ott of June 28, 1941, stating that Ribbentrop had obtained an agreement with OSHIMA that he, OSHIMA, will influence Japan towards speedy military action against Russia.

How do you explain the inconsistency between this documentary evidence and the statement in your affidavit?

A I do not know that document. I was still on leave and I returned to work later.

Q You referred in your testimony to a proposal made by the accused SHIGEMITSU to take Russia out of the war with Germany by compromise.

Did that occur after the battle of Midway and Saipan -- and the battle of Saipan?

A I do not remember the dates of these battles. It was at any rate in the second half of August.

Q On page 7, question 10 of the interrogatories, your document 1714--

THE PRESIDENT: Exhibit 2744-A.

Q (Continuing) You state that the conference of 8 July 1940 between Ambassador SATO, KURUSU, you and Ribbentrop was actually no conference, and that you do not recall that any matter relating to the French and Dutch East Asia colonies was discussed and that no matter relating to the interest of Germany in the Pacific was discussed, according to your recollectio

Is that statement in your affidavit correct?

A Yes, that statement is correct. I recollect practically nothing what was talked about. I sat

aside and was present, but I knew, of course, the character of the whole visit.

Q If you do not remember what was talked about, why is it that you say there was no conference?

A I say that because it was not planned as conference, and it was no conference. Ambassador SATO was not on any official mission in Germany, and he was announced as an ambassador travelling for Germany as a foreigner of distinction, and Ambassador KURUSU had asked me to try to prepare a visit of this Ambassador SATO meeting with -- visit to -- a courtesy call to the German ambassador.

MR. TAVENNER: The attention of the Tribunal is called to prosecution exhibit 522, page 6,170 of the transcript, for a record of this discussion or conference.

Q On page 11 of your affidavit you state that it was the general idea in 1938 and 1939 to prevent war through forming a defensive alliance. I want to ask you if it was on the 12th day of March, 1938 that German troops marched into Austria --

A Yes, that is right.

Q (Continuing) --- on the 1st day of October, 1938 that the German troops marched into Sudetenland --

A That's right.

Q (Continuing) --- the 15th day of March, 1939 the German troops began occupation of Czechoslovakia?

A Yes.

Q Is it not also true that on April 16, 1939 there was a conference between Goer ing, Mussolini and Count Ciano in Rome, at which Mussolini declared a general war was unavoidable, asked for the most favorable moment, and inquired as to who would sieze the initiative; that Goer ing expressed the opinion that the Axis Powers should still wait a bit, and that it was agreed that the motto for the behavior of both countries should be to speak of peace and to prepare for war? I refer to prosecution exhibit 505, page 6,111 of the transcript. Is that correct?

A As far as the Goer ing conference, I can say nothing; I didn't -- knew nothing about this

conference.

Q You did know that in 1938 and 1939 Germany had decided to go to war, did you not?

A I did not know that Germany had decided at that time to go to war. Nobody had me told.

Q On the basis of the information you now have, you know that Germany had prepared to go to war in 1939, do you not?

A Now I must believe that a war was prepared.

Q Then you know that your statement in your affidavit is wrong when you say that it was the general idea in 1938 and 1939 to prevent war by forming a military alliance with Japan --

A That was the idea which we heard from every side with whom we talked, my colleagues and I, and even from our superiors.

Q (Continuing) --- and which you now know and recognize was false.

A Yes.

MR. TAVENNER: I have no further questions.

THE PRESIDENT: Mr. Cunningham.

MR. CUNNINGHAM: If the Tribunal please.

REDIRECT EXAMINATION

BY MR. CUNNINGHAM:

Q Mr. Stahmer, you stated on Monday, in answer to Mr. Blakeney's question, that you acted in August and September, 1938 as liaison between Ribbentrop and OSHIMA, the then Japanese military attache in Berlin, in a negotiation for a German-Japanese agreement. What was the nature of this negotiation?

A As far as I remember, there were at that time only preliminary talks about the possibility of a closer understanding between Germany and Japan, and Ribbentrop wanted to know what the Japanese Army was thinking.

Q And did Ribbentrop ask you to determine the intention of the Japanese Army by taking the matter up with OSHIMA?

A Yes, we talked together.

Q Did you or Ribbentrop get an answer from OSHIMA to your inquiry as to the intention of the Japanese Army?

MR. TAVENNER: If the Tribunal please, I do not see how this is any matter arising out of cross-examination.

THE PRESIDENT: Nor can we, but Mr. Cunning-

ham may convince us that it does.

MR. CUNNINGHAM: For this purpose, may we consider the examination of Mr. Blakeney as cross-examination and direct examination in respect to it?

THE PRESIDENT: As the rules say, Mr. Blakeney's examination and other examinations by the defense counsel is direct.

MR. CUNNINGHAM: Yes. We will pursue the matter through another witness on that question.

Q Much was said of the telegram that you and Ott sent from Tokyo to Berlin on the 23rd of February, 1940, exhibit 511, and I ask you to help me clarify some confusion. It is stated in this telegram that "I found such Japanese already known to me, as OSHIMA, SHIRATORI, TERAUCHI, ISHII, and so forth, in an unchanged, friendly attitude and ready for every support." Is this a statement or summary of your personal opinion, or was this a reiteration of what you heard from them?

A That was my personal opinion and the impression I got from my conversation with these gentlemen who were all known as pro-German, of course.

Q Did you talk with any of these people concerning the alliance of Germany and Japan at that time?

A No, because at that time there was no possi-

bility. I had at that time given up any hope, and I avoided that talk on that line.

Q Did any of these Japanese, including OSHIMA and SHIRATORI, express any readiness to you at that time to support an alliance with Germany?

A No, no.

THE PRESIDENT: We will recess for fifteen minutes.

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

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

THE PRESIDENT: Mr. Cunningham.

BY MR. CUNNINGHAM (Continued):

Q Mr. Stahmer, you stated that in answer to the question by Mr. Tavenner that you know the contents of the telegram in exhibit 508, which was discovered in the files of the German Embassy when you took over the Embassy in 1943. Did you ever investigate whether or not OSHIMA conducted any correspondence with Ribbentrop through the German Embassy in Tokyo or not?

A Yes, I ordered my personal secretary, Mr. Klimek, Secretary of Legation, to investigate whosoever could send letters or cables via the German Embassy

Y e l d e n & S p r a t t

with or without use of the cipher code.

Q From your investigation did you determine whether or not Mr. OSHIMA had ever exercised the privilege described in that telegram?

A I heard this after his investigation, that OSHIMA had never sent any telegram or letter using these possibilities.

Q You state that Ambassador OSHIMA was popular with the German people. Can you give us the reasons why you state that?

MR. TAVENNER: Objection is made, if the Tribunal please, on the ground that was not the witness's statement. The question relates to the German Army and Hitler -- not the German people.

Q Well, I will change that to read, "in Germany." Will you give us the background for that, please?

A OSHIMA was very well liked in Germany everywhere. He was very sociable. He spoke very good German, and he made a good appearance; and he was a very good host and invited many people in his Erbassy to enjoy his hospitality.

Q Do you know whether or not OSHIMA resigned as Ambassador in September, 1939, after the Russian-German Non-Aggression Pact?

A I do not know.

MR. CUNNINGHAM: Now, in order to show the background for a document which we wish to introduce as an exhibit, and to show the participants in the negotiations on the Tri-Partite Pact which have been described to this witness, I ask that the witness be shown defense document 1664 for identification purposes.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: If the Tribunal please, objection is made to the attempt to introduce a document in redirect examination.

THE PRESIDENT: That alone could be no ground for objection. It would be possible to get in a document on redirect examination, but whether this document can be got in is another question.

MR. TAVENNER: I had not completed my statement, "which is not based upon any evidence in cross-examination."

THE PRESIDENT: It looks like a photograph, and without Mr. Cunningham's help I cannot see how any question put in cross-examination or how the answer given in cross-examination could justify the admission of a document like this, a photograph, in re-examination.

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that I was offering it as part of the re-examination. I am only offering it for identification so that I can offer it later as an exhibit.

THE PRESIDENT: Without our permission you are there to conduct only a redirect examination.

MR. CUNNINGHAM: Well, I am sorry. I will do that later.

I did have a couple more questions to propound, your Honor.

Q On this description of the SATO-KURUSU luncheon you failed to mention the man's name who made the report -- Mr. Knoll, I believe. Can you tell us of his title, his responsibility, and whether or not he was in a position of authority to negotiate for the German Government on any kind of political matter?

A I do not remember his name and I do not know his position, but I remember that a Minister KAWAI was present there, who was in Berlin sometime beforehand, and I told Ribbentrop because it was a courtesy visit to use this opportunity and invite Mr. KAWAI, too. Of course, Ribbentrop at first says he has no time for such visits.

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Now, Mr. Stahmer, there seems to be some discrepancy between the interpretation of the Tribunal and the interpretation of the prosecution on the question, the application of count 5 of the Indictment on the attitude of Germany and Japan toward the other nations of the world and toward the individuals.

MR. TAVENNER: If the Tribunal please, I object to this type of a statement being made by counsel and suggest that it is only proper for him to examine the witness and not to make statements of the character he has made.

THE PRESIDENT: Judging from what we have heard from Mr. Cunningham this witness has been asked to arbitrate between the Court and the prosecution. We will let Mr. Cunningham complete what he has to say.

MR. CUNNINGHAM: Your Honor has suggested that you are perhaps interested in Ribbentrop's and Hitler's attitude toward the other countries of the world because they are involved perhaps as divers other persons contained in the conspiracy, whereas the prosecution has stated that they are not interested in Germany's attitude toward the other nations of the world. I would like to clarify the distinction by asking this witness if the attitude expressed in his affidavit of Germany toward the other nations of the world was also Von Ribbentrop's and Hitler's attitude as well as the attitude of the German government and then proceed.

THE PRESIDENT: We do not desire the witness' assistance on such a matter.

MR. CUNNINGHAM: Your Honor, then may I take it as a statement of the law of this case that--

THE PRESIDENT: You take nothing except listen to our decision and abide by it. We do not want any dissertation from you.

MR. CUNNINGHAM: I did have some further questions along this line on the attitude of the German leaders towards the other nations of the world in refutation of the charge of the prosecution that these three nations started out to dominate the world under a conspiracy but in the light--

THE PRESIDENT: We do not want him to swear what may well be an issue.

MR. CUNNINGHAM: That concludes the redirect examination of this witness and I ask that this witness be released permanently as he is expected to leave Japan for his homeland soon.

THE PRESIDENT: He is released on the usual terms.

(Whereupon, the witness was excused.)

THE PRESIDENT: General Vasiliev.

GENERAL VASILIEV: If the Court please, before the midday recess the Tribunal announced its judgment and order as to the application of defense counsel for the production of witnesses for cross-examination whose affidavits were presented in the Soviet phase. The first item of the judgment and order says that the

affidavits of Semyonov and Rodzaevsky will be disregarded, in other words excluded, if I understand it correctly.

I have carefully reread the application of the defense (Mr. Blakeney's statement on June 9, pages 23,788-23,805 of the record) and could find no application of the defense for the exclusion of the affidavits of Semyonov and Rodzaevsky. Mr. Blakeney said: "I therefore respectfully renew our often made motion that the witnesses be ordered produced for cross-examination or their testimony stricken from the record and disregarded for all purposes."

It is true that in his application Mr. Blakeney mentioned the affidavits of Semyonov and Rodzaevsky but on page 23,803 of the record, but Mr. President made a remark (pages 23,803-23,804 of the record) that: "Major Blakeney, as regards those men who are dead and can't be called for cross-examination, you could deal with their case in your summation, but not now. We are now about to determine what if any witnesses who are still living should be called for cross-examination."

Continuing the idea contained in Mr. President's words I should like to say that for the defense it is a matter for summation while for the Tribunal it is a matter for the final judgment.

In accordance with that, in my reply I did not deal with the witnesses who are not living; consequently the Tribunal made its decision without giving me an opportunity of stating my views on such an important matter. With all due respect for the Tribunal I must express my deep surprise at this decision also on the following grounds:

When the prosecution tendered the affidavits of Semyonov and Rodzaevsky (the first one on October 8, 1946 and the second on October 11, 1946), the Court was well informed that those witnesses were dead and the defense based their objections on that assumption, but the objections were overruled and the affidavits were admitted without any reservations (page 7319 of the record). That decision was the decision of the majority of the Tribunal and in reply to the repeated objection of the defense Mr. President stated: "The decision disposes of all objections raised." (Page 7319 of the record).

Thus the question of the admissibility of Semyonov's affidavit was not left open. The affidavit of Rodzaevsky was also admitted (page 7603 of the record). Now a decision to the contrary was taken which has no procedural grounds and is the more embarrassing as no reasons for it are given and the other party say the

prosecution was deprived of the opportunity of stating its views.

The last portion of the decision relates to the attack made by Mr. Blakeney against the USSR. The handling of this question in the decision amounts to finding out whether or not Mr. Blakeney had any evidence concerning the duress allegedly employed by us on the witnesses. I carefully looked through the transcript once more and was unable to find in Mr. Blakeney's words (page 23,191) anything else except his offensive remarks, "iron curtain," "a man with the gun in his back." It appears that all that it amounts to is that Mr. Blakeney did not produce evidence to corroborate that horrible picture depicted by his imagination that it actually took place.

With all due respect for the Tribunal I can't apply to myself the warning of the Tribunal addressed to both sides because in no case have we allowed ourselves to attack any nation or to make any attacks upon any of the defense counsel, but I have repeatedly heard attacks directed by the defense counsel against my country. Unfortunately the present decision is no adequate measure of combating such attacks and presents the matter as though these attacks are of reciprocal nature.

THE PRESIDENT: The decisions of the Court must, of course, be accepted by counsel on both sides without any question. The decision this morning, I should say, was a decision of the majority. No decision of this Tribunal has received more consideration than that decision received. We considered all the matters to which you referred, General Vasiliev. That was the only determination that was satisfactory in the view of a majority, a substantial majority.

The remark of Major Blakeney called for the decision that the Court arrived at and embodied in the memorandum read this morning. We resent any gratuitous, unwarranted attack on any of the Allied Powers. We can say no more than that.

Mr. Cunningham.

MR. CUNNINGHAM: If the Tribunal please, I now offer defense document 1656 for identification and tender excerpts therefrom, defense document 1656 A to AD, for evidence. This is an official top-secret document of the Japanese Foreign Office entitled "Outline of the Process of Drafting Various Drafts Concerning the Tripartite Pact of Japan, Germany, and Italy, and Pertaining Documents." This document was compiled by Mr. MATSUMOTO, Director of the Treaty Department of the Foreign Office at the time of the conclusion

of the Pact, and show that no aggressive intention was expressed by any party during the negotiations.

Annex 1 to 20 are marked as B to Z and AA to AD. I do not wish to read the annexes, but I do specifically ask the Tribunal to consider them in their consideration of the Tripartite Pact. I only offer to read the first two pages, or the outline of the negotiations.

THE PRESIDENT: Mr. Comyns Carr.

MR. COMYNS CARR: May it please the Tribunal, the prosecution would not object to these documents if they were as my friend describes and were arranged in an intelligible manner. We have only my friend's word for it that the document numbered 1656-A was compiled by MATSUMOTO and was compiled contemporaneously. The copy served upon me shows no signature, no date, and no certificate. Furthermore, the annexes numbered 1 to 20, referred to in that document, are nowhere identified in the accompanying documents except one or, by possible inference, two. They include a mass of repetition and it is impossible to discover, for instance, a very important point: Which of the draft letters alleged to have been attached to the Pact was the one which was ultimately signed?

If the defense will take this bundle of docu-

ments away and get it into proper order, we shall probably have no objection, but in its present form it is open to all the objections I have mentioned.

THE PRESIDENT: Mr. Cunningham.

MR. CUNNINGHAM: Well, your Honor, I think anybody who takes this document and reads it in the order in which it has been arranged will have no difficulty. That is the way I understand it. As I understand it, the documents are arranged in exactly the same way they are arranged in the book from which they were taken.

THE PRESIDENT: Is the book certified to in the usual way?

MR. CUNNINGHAM: The book is an official document book of the Japanese Foreign Office, with the certificate attached.

THE PRESIDENT: We are not insisting on copies if the certificates be given to us, but we do want to be satisfied that these things are authenticated as far as they can be. Have you looked at the original, Mr. Carr?

MR. COMYNS CARR: Your Honor, I haven't seen the original. The person who is alleged to have prepared the summary is alive, and surely it must be possible for the defense to get him to show, if the

book does not show, which of the various attached documents are the numbered annexes referred to in the summary.

There has been served upon us with the document a mysterious note, which has obviously been recently compiled and is not part of the document, but which only makes confusion worse confounded. I would suggest that the defense would be wise to adopt the proposal I made, that they should have the annexes properly identified to the summary, and then it might be a convenient and useful document.

MR. CUNNINGHAM: Well, your Honor, I had the man who compiled the book the other day and he was rejected because his affidavit was not in proper form. But the book certainly ought to be the best evidence of what was said, not what the author says he said.

THE PRESIDENT: Mr. Carr's objection can be very readily met, Mr. Cunningham, by a short certification in a document or by some individual called here. In a matter of this magnitude we naturally look for complete authenticity.

MR. CUNNINGHAM: Well, I don't know what more I can do. I offered the man who wrote the book, I offered the book in three languages, and I offered a certificate by the party responsible for the control

and custody of the book, and I offered the copies from the books, which give it also in the order in which it appears in the book. I wonder what more I can do.

THE PRESIDENT: There is only one thing you haven't done, Mr. Cunningham, that is, observe the rules. My colleagues are perusing these documents and they find that important dates are omitted, opinions are given and the names of persons responsible do not appear. Things like that make these documents useless.

MR. COMYNS CARR: Your Honor, I have now had an opportunity of looking at the original book, and I find that what appears from what has been siad to be the parent document, 1656-A, does not appear in the book in English at all. Some Japanese is shown to me which I am informed is the Japanese of this. The book does not appear to identify any of what is alleged to be the annexes to the summary. I can only repeat my suggestion that they should be properly identified and then the thing might be useful.

THE PRESIDENT: I do not understand a word or a letter even of the original, which is handed to me, seeing it is in Japanese.

MR. CUNNINGHAM: Well, your Honor, there was a purpose in translating it so that we would each have the English of it, and the English translation is in our hands in the order in which it

appears in your book. But, I will be glad to comply with anything you have to suggest about how it would be acceptable.

THE PRESIDENT: Call Mr. MATSUMOTO to certify these things. That is the shortest way.

MR. CUNNINGHAM: Will his oral testimony of identification be sufficient?

THE PRESIDENT: The rules must be observed, the simple rules. A child can follow them and apply them. We need an affidavit.

MR. CUNNINGHAM: Your Honor, may I ask about, say, the revision of the affidavits? We offered Mr. MATSUMOTO's affidavit the other day, and you know it is difficult to revise them and give 3 days and still copy the continuity. Does your rule say that we have to serve a revised affidavit in 3 days, or the original affidavit as revised, and cover the 3-day period in the original service?

THE PRESIDENT: It is the first time in my experience that I have heard a court asked whether its published rules do this or do that. You read our rules and if you have any doubt about them, maybe you can have that doubt discussed and perhaps removed, if one exists.

MR. CUNNINGHAM: I now offer defense document

613 for identification, Interrogation of the late MATSUOKA, Yosuke, by the International Prosecution Section at Sugamo for identification, and tender excerpts therefrom, defense document 613-A, 10-13 and 2 for evidence.

Now, I am not sure whether your Honors have decided on whether or not to accept MATSUOKA's interrogation, but they come in logical order now, and I would like to know if there is a ruling on it.

THE PRESIDENT: Mr. Carr.

MR. COMYNS CARR: Your Honor, the position as far as I recollect it is, certainly on the first occasion, when an excerpt from MATSUOKA's interrogation was tendered the Tribunal rejected it on my objection that the only basis or justification for using a part of this interrogation could be that the prosecution had used a part of it and therefore that the defense was entitled to do so; and, as the prosecution did not use any part of MATSUOKA's interrogation, I successfully objected to the defense doing so.

THE PRESIDENT: We have fully considered that matter, and by a majority we came to the conclusion that the interrogation of any of the accused can be used for or against himself only. That is what it amounts to. Of course, where one of the

other accused heard what he said and admitted its truth, it could be used against him. But, we know of no such case yet.

MR. COMYNS CARR: MATSUOKA no longer being amongst the accused I assume the ruling means that his interrogation cannot be used by either side.

THE PRESIDENT: That is the Court's decision and we will hear no discussion about it.

MR. CUNNINGHAM: Will the reporter read what the President said? I didn't hear it.

(Whereupon, the statement of the President was read by the official court reporter.)

THE PRESIDENT: We will adjourn now until half-past nine tomorrow morning.

(Whereupon, at 1600, an adjournment was taken until Wednesday, 18 June, 1947, at 0930.)

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I N D E X
Of
EXHIBITS

Doc. No.	Def. No.	Pros. No.	Description	For Ident.	In Evidence
1691	2747		Affidavit of NAGAI, Yatsuji		24578
1638	2748		Telegram from Ott to the German Foreign Office dated 18 April 1941		24584
1637	2749		Telegram from Rintelen to Stahmer dated 23 April 1941		24584
			MORNING RECESS		24599
			NOON RECESS		24610
1629	2750		Official Transcript of the IMTFE sitting at Nuernberg, Germany on 15 January 1946		24612
1643	2750-A		Excerpt from Book entitled "Nazi Conspiracy and Aggression"		24612
1519	2751		Affidavit of Alfred F. Kretschmer		24615

18 JUNE 1947

I N D E X
Of
WITNESSES

Defense' Witnesses	Page
NAGAI, Yatsuji	24578
Direct by Mr. Cunningham	24578
(Witness excused)	24583
Kretschmer, Alfred F.	24615
Direct by Mr. Cunningham	24615
Cross by Mr. Tavenner	24619
AFTERNOON RECESS	24634
Cross by Mr. Tavenner (cont'd)	24635

Wednesday, 18 June 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, all Members sitting, with the exception of: HONORABLE JUSTICE E. H. NORTHCROFT, Member from the Dominion of New Zealand, not sitting from 0930 to 1600 and HONORABLE JUSTICE HENRI BERNARD, Member from the Republic of France, not sitting from 1120 to 1600.

For the Prosecution Section, same as before.

For the Defense Section, same as before.

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(English to Japanese and Japanese to English interpretation was made by the Language Section, IMTFE.)

Duda & Whalen

MARSHAL OF THE COURT: The International Military Tribunal for the Far East is now in session.

THE PRESIDENT: Mr. Cunningham.

MR. CUNNINGHAM: If the Tribunal please, I now offer in evidence defense documents 1437, 1438 and 1439, statements prepared by the late MATSUOKA, Yosuke during the time of the 1st to the 22d of January 1946, accompanied by the affidavit of his son, or certificate of his son, MATSUOKA, Kenichiro. I will only read now the second document, No. 1438, entitled "How the Tripartite Pact was made," to show the circumstances which led to the conclusion of the pact.

I want to add this: MATSUOKA was not charged at the time the statement was made as an accused in this case. The issue which this is to meet is the issue concerning the policy of Japan while MATSUOKA was one of the leaders of the Japanese Government, together with his views and reasons for the policy which he advocated.

THE PRESIDENT: Mr. Carr.

MR. COLYNS CARR: May it please the Tribunal, the prosecution objects to these three documents and submits that they are in principle covered by the ruling given yesterday with regard to interrogations.

THE PRESIDENT: They can only be tendered on behalf of other accused. Therefore, they are covered by the ruling and are inadmissible.

The objection is upheld and the documents rejected.

MR. CUNNINGHAM: Well, your Honor, shouldn't I be permitted to point out the distinction between this document and the one that was covered by the ruling yesterday?

THE PRESIDENT: You said they were statements made to prosecuting officers although before any charge was made. That's enough.

MR. CUNNINGHAM: But I should think I should be entitled to answer the objection of the prosecution.

THE PRESIDENT: That was your answer, although you elected to put it before you heard the objection by Mr. Carr.

MR. CUNNINGHAM: Your Honor, I think it is highly unfair to rule--

THE PRESIDENT: If you use that expression again I will suspend you, or the Tribunal will. You will withdraw it, too.

MR. CUNNINGHAM: I didn't understand.

THE PRESIDENT: You will withdraw that expression "It is unfair."

MR. CUNNINGHAM: Well, I hadn't completed my thought and my reasons, but I withdraw that statement for the reason that I was not permitted to go on and explain my reasons for making the statement.

THE PRESIDENT: It is clearly covered by the Court's well-considered decision given yesterday, the decision given after hearing the parties fully.

MR. CUNNINGHAM: Well, your Honor, I assure you if I had any idea that this document was covered by your ruling yesterday I would not have offered the document into evidence. No. 1.

No. 2, several of my associate counsel have suggested to me that they did not feel the matter had been given considered judgment, and that it should be reopened for consideration.

THE PRESIDENT: The record is the answer. The discussion is closed.

MR. CUNNINGHAM: The next group of witnesses and documents covering the period approximately from the beginning of 1941 until December of the same year will show that after the conclusion of the Tripartite Pact Japan was always faithful to the original peaceful ideal of the pact despite German urgings to attack Singapore and Soviet Russia, and that between Japan and Germany there was no close collaboration.

As the first item of this group I take up the trip of Foreign Minister MATSUOKA to Europe in April 1941, and call witness NAGAI, Yatsuji, with the Court's permission, concerning affidavit defense document 1691. The testimony of this witness will concern prosecution's exhibits 567, 568, 569, 573 and 584.

I ask the bailiff to call Witness NAGAI.

Y A T S U J I N A G A I, called as a witness on behalf of the defense, being first duly sworn, testified through Japanese interpreters as follows:

DIRECT EXAMINATION

BY MR. CUNNINGHAM:

Q Witness, will you give your full name and your address?

A My name is NAGAI, Yatsuji. My address, 776 1 chome, Kamiuma-machi, Setagaya-ku, Tokyo.

MR. CUNNINGHAM: I ask that the witness be handed defense document 1691.

(Whereupon, a document was handed to the witness.)

Q I ask you to look at defense document 1691 and state whether or not that is your affidavit?

A This is my affidavit.

Q And I ask you to state whether or not the statements contained therein are true?

A Yes.

MR. CUNNINGHAM: I offer in evidence defense document 1691, the affidavit of NAGAI, Yatsuji, and offer to read the same in evidence.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1691

will receive exhibit No. 2747.

(Whereupon, the document above referred to was marked defense exhibit No. 2747 and received in evidence.)

MR. CUNNINGHAM: Skipping the formal parts:

"Leponent: NAGAI, Yatsuji.

"In accordance with the procedure in my country having first sworn an oath as on attached sheet, I hereby depose as follows.

"I, NAGAI, Yatsuji, state under oath as follows:

"1. My present address is No. 776, 1-chome," and so-and-so, "Tokyo.

"I was serving since June 1938 in the Military Affairs Bureau of the War Ministry. In February 1941, when Foreign Minister MATSUOKA's visit to Europe was decided, I was ordered to accompany him. At that time I was a Colonel. On this occasion I received no special instruction from the Army, but was simply told that as I have never been to Europe I should take this opportunity to go and see Europe by this chance.

"As far as the army was concerned, the Chief of Staff made a request to Foreign Minister MATSUOKA not to make any operational or strategical commitment to Germany, and I was specifically reminded by the Chief of Staff to assist MATSUOKA concerning this point to the best of my ability and to see to it with utmost care that the operational activities of the army in the future would not be shackled in any respect.

"When General SUGIYAMA, then Chief of Staff, came

to the Tokyo station on the night of 12 March 1941 to see Foreign Minister MATSUOKA off, he reminded me again of this point.

"In connection with this matter I had an intimate talk with Foreign Minister MATSUOKA on the boat between Shimonoseki and Fusan.

"At that time Foreign Minister MATSUOKA told me, 'Concerning this point I am also well informed of the intention of the army, and I will give no commitment whatsoever, and tnis is quite natural considering the purpose of this trip to Europe. So you need not be worried at all.'

"We were met by Mr. Stahmer at a station on the border of the German and Russian spheres of influence.

"Concerning the question of what Foreign Minister MATSUOKA told Hitler, Ribbentrop, Goering and others after the arrival in Germany, I never personally attended the conferences between them and cannot say anything with responsibility. MATSUOKA, however, told us from time to time of the conversations in an informal manner. I remember that Foreign Minister MATSUOKA told me on those occasions that, although the question of Singapore had been raised by the German side, I could be well assured as he had made no commitment whatsoever.

"Upon my return to Tokyo I reported this fact to

War Minister TOJO and Chief of Staff SUGIYAMA.

"2. As far as I remember, Ambassador OSHIMA attended only the first courtesy call of Mr. MATSUOKA on Hitler and Ribbentrop. Whether Mr. OSHIMA was consulted beforehand or informed afterwards regarding the conversations of Mr. MATSUOKA which he did not attend, I do not know. I know that relation between MATSUOKA and OSHIMA in Berlin were rather cold.

"I had in Berlin several conversations with Mr. OSHIMA. What I heard from Mr. OSHIMA was merely various information concerning Germany and the European War, and Mr. OSHIMA never expressed opinion with respect to political and military measures to be taken by Japan in connection therewith.

"On this 29th day of May, 22nd Year of Showa (1947)."

Signed "NAGAI, Yatsuji."

You may cross-examine.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: If the Tribunal please, the prosecution does not desire to cross-examine the witness, but the Tribunal's attention is called to prosecution exhibit 569, page 6,452 of the transcript, which is a telegram from Ott to the Reich Foreign Minister of February 10, 1941, stating--

THE PRESIDENT: A mere reference is sufficient.

MR. TAVENNER: That is right.

MR. CUNNINGHAM: Your Honor, this practice has been engaged in in the past, and I object to the prosecution inserting a review of their case in the defense case.

THE PRESIDENT: There is no need for your protest. The Tribunal itself took action.

I don't suppose you want the witness again today?

MR. CUNNINGHAM: I presume the witness may be excused on the usual terms?

THE PRESIDENT: He is excused accordingly.

(Whereupon, the witness was excused.)

MR. CUNNINGHAM: I now offer in evidence defense document No. 1638, a telegram from Ott to the German Foreign Office, dated 18 April 1941, and defense document No. 1637, a telegram from Rintelen to Stahmer dated 23 April 1941. These documents show that the minutes of conversations in Berlin were not handed to MATSUOKA by the German Foreign Office despite MATSUOKA's request, and that the records of conversations tendered by the prosecution as evidences were considered by the German Foreign Office as not official and accurate.

THE PRESIDENT: Admitted on the usual terms.

MR. CUNNINGHAM: Has distribution been made? The document has not been given an exhibit, I presume.

CLERK OF THE COURT: Defense document 1638 will receive exhibit No. 2748, and defense document bearing the same document number but a separate telegram will be given exhibit No. 2749.

THE PRESIDENT: We can't follow that.

CLERK OF THE COURT: Defense document 1637 will receive exhibit No. 2749.

MR. CUNNINGHAM: I now read exhibit 2748.

THE PRESIDENT: Not yet, Mr. Cunningham. Defense document 1637 has been given exhibit No. 2748. Defense document 1638 has been given exhibit No. 2749.

MR. CUNNINGHAM: I have it just the opposite, your Honor.

THE PRESIDENT: The numbers will be as I have said.

(Whereupon, document No. 1637 was marked defense exhibit No. 2748 and received in evidence; and document No. 1638 was marked defense exhibit No. 2749 and received in evidence.)

MR. CUNNINGHAM: I now read defense document

1638, which has been given exhibit No. 2749, as I understand it.

"Harbin, 18 April 1941, 5.20 hours.

"Arrival, 18 April 1941, 15.45 hours.

"No. 21 of 18.4. Urgent! For the Secretary of State.

"The Japanese Foreign Minister cabled to me a request from the Russian train that the official memorandums concerning the conversations with the Fuehrer and the Foreign Minister during the visit in Berlin be handed to him. I request telegraphic answer to Tokyo, whether such memorandums have been dispatched with a courier and can be handed over. Otherwise I propose to cable to me short words also concerning individual questions. The Foreign Minister arrives in Tokyo on 22 April with an aeroplane on the next day of my arrival."

Signed "Ott Ponschab."

Ponschab was the German Consul-General in Harbin. Ott was on his way from Berlin to Tokyo in Harbin at the time.

I now read from defense document 1637, exhibit 2748:

"Telegram

"(open)

"Special Train: 23 April 1941 2235 hours

"Arrival: 23 April 1941 2300 hours

"Teletype to the Minister-Bureau Berlin

"Through the Secretary of State and C. S. Pol. to Ambassador Stahmer.

"No. 300

"The Foreign Minister requests you to tell conclusively to Ambassador OSHIMA, concerning the misunderstandings occured to Mr. Matsuoka about the promise presumably given by the Foreign Minister to place the excerpts of the records of conversations with the Führer and the Foreign Minister at his disposal, that here must have been in this matter a misunderstanding. Such a promise on the part of the Foreign Minister was not given and could also not at all be given, because such excerpts are not made by us as a matter of principle. The Minister Schmidt took note only of catchwords for the purpose of translation. Ambassador OSHIMA will be asked to inform Mr. Matsuoka in this sense.

"In the same sense Ambassador Ott is also to be informed telegraphically.

"Wien, 23 April 1941

"Rintelen"

Rintelen was an official in the German foreign office accompanying Ribbentrop in German GHQ special train.

I now offer in evidence defense document 1449, taken from the official transcript in Nuernberg on the 28th, 29th and 30th of March and 1st of April, 1946, which is a record of the examination of accused Ribbentrop as witness, by defense counsel. Official transcripts of the proceedings at Nuernberg of 28 and 29 March and 1 April 1946 are now offered for identification. Official transcript of March 30, 1946 is already marked as exhibit 2692, and I might point out that a part of defense document 1449, that is, the second paragraph of page 4, is in evidence as exhibit 2692A.

I wish at this stage only to read from the last paragraph of page 5, to the end (question by counsel Siemers for Admiral Raeder), to show that Ribbentrop revealed that he did not tell the truth to MATSUOKA. This particular conversation between MATSUOKA and Ribbentrop is in evidence as

exhibit 580, transcript page 6522-6532, in which Ribbentrop informed MATSUOKA of the opinion of Raeder about the Singapore question. According to our documents now to be tendered, Ribbentrop says that he never discussed with Raeder the Singapore question.

THE PRESIDENT: Mr. Comyns Carr.

MR. COMYNS CARR: May it please the Tribunal, we desire to object to this document as a whole and, alternatively, to the first two pages of it, which my friend does not now propose to read, but which, if admitted in evidence, might be read at some other time.

First of all, as a whole, in our submission, the statements by Ribbentrop were made in the course of his own trial in Nuernberg and are, in principle, just as much objectionable as similar statements of Japanese alleged conspirators. In our submission, the principle of the ruling given yesterday applies to this. I think that there has been one extract from Ribbentrop's evidence which was admitted without objection, but at this stage we desire to raise the question for consideration.

If this had been a contemporaneous state-

ment by Ribbentrop we would not have raised any objection to it, but, in our submission, a statement made after the issue has been raised, and made in his own defense, cannot be any more admissible because it was made in Nuernberg and not in Tokyo, nor because it was made in the course of his trial instead of in the course of a private interrogation.

The second objection applies to the whole of page 1, and to the whole of page 2 with the exception of the last two questions. In that part of the evidence Ribbentrop describes, or purports to describe, the circumstances under which Germany entered into a Non-Aggression Pact with Russia in 1939, and other arrangements made between Germany and the USSR in that connection, with regard entirely to European questions. In our submission, that subject matter is irrelevant to any question which this Tribunal has to consider.

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THE PRESIDENT: Mr. Cunningham.

MR. CUNNINGHAM: Your Honors, in response to the first objection, that the statement was not made contemporaneously with the documents which are concerned, it is utterly impossible for the witness to make a contemporaneous statement about a matter until it becomes an issue; and, if Mr. Ribbentrop were alive today, I believe that he would be able to come to court and testify as to the explanation of these telegrams and the information which he sent to Japan at the time he was carrying on these negotiations just as Mr. Stahmer was permitted to testify as to his part in the negotiations. What he said on direct examination at Nuernberg in explanation of these matters is the best evidence available, and he was ably and thoroughly cross-examined, and that is available to the prosecution.

I call attention to Article 14, Section d of the Charter, which says: "The Tribunal shall neither require proof of facts of common knowledge, nor of the authenticity of official government documents and reports of any nation, nor of the proceedings, records and findings of military and other agencies of any of the United Nations," indicating that that evidence was admissible.

On the second objection, concerning the Non-Aggression Pact, that is a serious question here because we contend that the German-Russian Non-Aggression Pact disrupted the relations between these two nations, creating an impossible situation and preventing any collaboration or agreement between them for a definite period of time. I submit that evidence of this nature would be admissible in any court of record. The prosecution has certainly taken excerpts from trials which are advantageous to them, and, certainly, we should be able to take the best evidence available as to what the individuals involved in the issues here have said under oath before a high tribunal.

You must appreciate that it would be impossible for Mr. Ribbentrop to explain the prosecution's evidence here. Under the circumstances, we must go back and find what he said before to explain what they have introduced, after his death, into the record. I submit that this evidence goes to the very heart of Count 5 of the Indictment and, certainly, it has a very direct and intimate bearing upon all of the issues raised in that count. I cannot see how the Court could possibly reject this evidence in order to get both sides of the question when it is given by the man who is charged under the Court's own admission

as being one of those divers other persons included in the charge in this Indictment. The Court has already accepted the prosecution's explanation of their evidence. We offer the defense explanation of their documents and of the evidence by the best authority available.

THE PRESIDENT: I am not making any pronouncement on this but putting points to you for elucidation, Mr. Cunningham. What an alleged conspirator says in the course of carrying out the conspiracy is undoubtedly admissible; but, what a suspected conspirator says in answer to interrogation by the police is not admissible as we decided yesterday in the case of MATSUOKA. Now, what Ribbentrop said during his trial at Nuernberg was said in answer to a charge and was exculpatory of him. Is there any substantial difference in principle between the deposition of Ribbentrop and that interrogation of MATSUOKA?

As I am reminded by a colleague, if we admit Ribbentrop's statements under those circumstances on behalf of any of the accused here, won't we be obliged to admit his statements against them for the same reason?

MR. CUNNINGHAM: Taking your five points,

your Honor, in their order, I would say as to the first one, what he says in the course of carrying out the conspiracy is admissible. There is no doubt about that because that is the prosecution's proof of the allegations which they must establish.

Now, your second point, what a suspected one says is not admissible: By the same token, what a suspected person says in explanation and exculpation of what he is charged with saying in carrying out the object of the conspiracy is admissible because you cannot charge a man with a crime and not give him an opportunity to explain the circumstances surrounding the acts with which he is charged as being criminal.

THE PRESIDENT: When the suspect is being interrogated by the police, of course, the conspiracy is long over, and what he says to the police is not in the course of carrying out the conspiracy.

MR. CUNNINGHAM: Your Honor, you and I are as far apart as the poles on that proposition because I cannot see, by the same token, where you charge a man with something, that you do not give him -- you must give him the opportunity to explain and to amplify and to look beyond and see what his object and his purpose was; and the only manner that I can show now what Ribbentrop says in explanation of his

acts and deeds with which he is charged is to bring what he said when the charge was proposed against him.

THE PRESIDENT: Ribbentrop is not indicted here; he is dead, in any case. You are attempting to use his statements at Nuernberg on behalf of others. If Ribbentrop were in that dock today, of course, we would allow what he said previously in exculpation of himself, that is in his own favor, but not in behalf of other accused, as we decided in MATSUOKA's case.

MR. CUNNINGHAM: Well, I am still on your second point, your Honor, and I would only have this to say: that, if Ribbentrop were alive today, whether he be an accused or not an accused, he would be the logical man to come here to explain the prosecution's evidence, what they said against him, what they say against these individuals, and to mitigate and to show the intention of the parties concerning these documents; and this is the only way we can explain them, by the man who originated them.

You see, that resolves itself down to the simple question, your Honor, does the fact that Ribbentrop is dead determine whether or not his evidence should be admissible here? That is your second

proposition.

On the third proposition which you have suggested, what he said excuses him: Ribbentrop is not charged here. He is just like any other individual here, unless I must take, from what you said yesterday, that he is considered as one of those divers other persons who conspired with these individuals.

Spratt & Yelden

Now, still on the third proposition, if Ribbentrop were alive I would not have found it necessary to call Ambassador Stahmer to testify and his testimony would be much more valuable as explaining the German participation in the 3-way conspiracy charged against the leaders of the three nations. There is no doubt but what we must have in this case both sides of this question before we can make any kind of a determination. We have the prosecution's side and now I am offering the defense side and by the best authorities, what they have said concerning the vital issues in this case. This case cannot be determined without first knowing what the other side of this question is by the men who were carrying on the negotiations, the agreements, with which the parties are charged were not proper for nations to do.

I believe that on your third proposition this evidence is clearly admissible to explain and to enlarge upon these documents and the evidence of the prosecution as to what the real facts and situation was in Germany at the time, not just what the prosecution's documents say it was.

On the fourth proposition, the difference between Ribbentrop and MATSUOKA is quite a marked difference, I think. We have many witnesses here in

Japan who can testify as to what MATSUOKA thought, what MATSUOKA said and what MATSUOKA did, but we are a little handicapped in bringing witnesses from Germany and getting statements from Germany of people who understood what the German side of this 3-way charged conspiracy thought, said and did. If I could have Minister Schmidt or someone who was in the German Foreign Office with Ribbentrop, I believe his testimony would be admissible as to what Ribbentrop said and what Ribbentrop did and how Ribbentrop explained this matter after the charge was made in order that he could throw light upon the significance of things which were being misinterpreted.

Continuing with your fourth suggestion on the difference -- I think that is my main difference between Ribbentrop and MATSUOKA but I cannot help but believe, your Honors, that if MATSUOKA were alive today what he would say from that witness box would be significant in this case and the fact that he is dead I cannot avoid, but I cannot believe that his testimony would be rejected if he were alive.

THE PRESIDENT: If he were alive he would be an accused and he would go into the box and be allowed to give that evidence, of course, on his own behalf.

MR. CUNNINGHAM: Ribbentrop was alive when this

case started and I have only preserved his testimony by using the Nuernberg testimony. It would be certainly unnecessary for him to say the same thing for me in an interrogation to use in this trial as he said in Nuernberg in response to the questions by some other defense counsel or prosecutor. That is the way I look at that.

THE PRESIDENT: If Ribbentrop were alive he would still not be an accused here and so not be in the same position as MATSUOKA, but I am tired of making the obvious clear.

MR. CUNNINGHAM: On the fifth suggestion made by your Honor on whether or not the evidence should be for or against, I am not interested in whether evidence is for or against. All I am interested in is showing to this Tribunal the facts and let the Tribunal determine whether or not it is for or against. All I am interested in is enlightening, explaining, and showing the background and the significance in the only explanatory manner which we have and that is what the parties involved said.

I contend that this evidence is in favor of these gentlemen in the dock and will help to acquit them, and I certainly ought to be entitled to introduce that evidence and I am not concerned whether or not

the prosecution has been eliminated from showing something which might have been against on account of some technical rules of evidence which might have precluded that because I am not in favor of applying technical rules of evidence which prevent statements coming in which might be against.

Now on the last proposition, I think that anything that can be said or anything that can be shown or anything that can be mustered which is favorable to the acquittal of these defendants is admissible in evidence in this Court under the Charter, under the rules and by all fair standards of democratic trial of cases. That is the way I feel about this document. I think it ought to be admitted. I think it has a direct bearing and I think under our system that we have adopted in the Charter that we cannot conscientiously reject it.

THE PRESIDENT: We are interested only in your submissions so far as they can be properly made by a lawyer and in appropriate language, the language a lawyer uses. We are not concerned about the individual opinions and thoughts of any lawyer. We want his submissions.

We will recess for fifteen minutes.

(Whereupon, at 1047, a recess was

taken until 1120, after which the proceedings were resumed as follows:)

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

THE PRESIDENT: Mr. Cunningham, have you finished your argument?

MR. CUNNINGHAM: Yes, sir.

THE PRESIDENT: We so understood.

By a majority, the Tribunal sustains the objection in full and rejects the document wholly.

MR. CUNNINGHAM: I now offer in evidence defense document 1629, another excerpt from official transcript of the proceedings at Nurnberg on 15 January, 1946, official transcripts of the Proceedings at Nurnberg of 15 January. That is a statement made by prosecutor Mr. Eluyn Jones in tendering evidence against the accused Raeder, in which it was made clear that Hitler's communication to MATSUOKA was designed entirely as a camouflage measure. This refers to prosecution's exhibit No. 577, transcript pages 6485-6498; and No. 582, transcript pages 6537-6545, which are records of conversations between MATSUOKA and Hitler.

THE PRESIDENT: Mr. Comyns Carr.

MR. COMYNS CARR: The prosecution is astonished that this document should be tendered in the face of the Tribunal's ruling just delivered.

It consists of three parts. The last is a further extract from Ribbentrop's testimony at the Nuernberg trial, the middle one is an excerpt from Keitel's testimony at the Nuernberg trial, and the first one, which alone my friend has mentioned, is a portion of the speech by counsel at the Nuernberg trial.

MR. CUNNINGHAM: Well, your Honors, I can understand how the prosecutor would be astonished to find that one of his documents was only used by Hitler as a camouflage measure, but I cannot understand why he is astonished at us introducing evidence.

You see, this document was commented upon at Nuernberg in the trial, and I should think that if they introduce it for one purpose and this prosecutor introduces it for another purpose, and they show it was only a camouflage, and you are asked to believe that the contents of the documents are true, and the lives of men should depend upon it, I think it is material.

THE PRESIDENT: On what ground can we possibly

admit part of counsel's speech at Nuernberg?

MR. CUNNINGHAM: Well, your Honor, you are being asked to take this document at its face value by the prosecutor here, and the Tribunal at Nuernberg was asked to take the document at just the opposite. That is very significant to me. It may not be to you. Now, you rely pretty much upon what the prosecutor -- introduction of documents, what it does for the parties, and I presumed that you would follow that same practice in relying, or at least observing, what other prosecutors think about that particular document when they are introducing it for another purpose.

THE PRESIDENT: Are the documents referred to by the Nuernberg counsel already in evidence in this trial? They may be, and in those circumstances we might invite the prosecution here to consider what was said, but that is another matter entirely. The prosecution here, as you must understand, are not controlled by the prosecution in Nuernberg. There were four nations represented there; there are seven represented here -- eleven I should say, seven more. Only a minority of the nations represented here were represented in Germany.

MR. CUNNINGHAM: Well, your Honor, I call your attention to the first page here; it is C-152, Great

Britain 122, which is prosecution exhibit 574 here. On the first page. There is no question but our later evidence will show that this conversation reported by Ribbentrop and MATSUOKA was camouflage and propaganda, but I want to show as background here that the document is not actually what it is supposed to be as represented by the prosecution here.

THE PRESIDENT: Mr. Cunningham, I want you to answer this question I will put to you: are the documents referred to by the Nuernberg counsel -- I take it he was an Englishman for the prosecution -- namely, C-170 and C-66, in evidence here?

MR. CUNNINGHAM: I can say definitely that C-152 on page 1, GB-122, is our exhibit 574, and C- 66 is our exhibit -- C-66 on the following page is not our exhibit.

THE PRESIDENT: There is this consideration, Mr. Cunningham and Mr. Comyns Carr, that if those documents just referred to are not immediately available we may waive that rule we have about documents because you could get no greater verification in favor of the defense at all events than the statement of English counsel for the prosecution where it favors the accused, and we may accept the statement so far as it discloses the contents of the two documents that I just referred to.

MR. COMYNS CARR: Your Honor, if that is the sole purpose we should raise no objection. C-152 is in evidence, as my friend says -- the document referred to on page 1. C-170, the first document referred to on page 2, is not in evidence in this trial. C-66, the document referred to at the bottom of page 2, is not in evidence at this trial but I understand it is the next document my friend is offering, his defense document No. 1643.

What my friend is seeking to do here is to put in a document which we haven't used and then to put in another document to attribute a different meaning to the document we haven't used from the meaning which he says we attributed to it and for which reason, of course, as we didn't use it, we never attributed a meaning to it.

However, if my friend likes to put in both documents, the prosecution has no objection but we submit they should go in in full rather than the very short extracts to be found here.

THE PRESIDENT: That is the correct way to do it. We do not admit parts of documents as a rule. And Mr. Cunningham can adopt English counsel's argument if it helps him.

MR. CUNNINGHAM: Well, your Honor, it is the

absolute theory of our defense in this Singapore question of the case that it was a matter of propaganda and not a matter of real genuine agreement between the parties, and the propaganda emanated from Germany; and that is the purpose of showing these documents, to show it was not a genuine agreement between the parties but it was only propaganda on the part of Germany to draw Japan into the war against Britain.

MR. COMYNS CARR: Your Honor, in my submission either my friend puts in the documents and puts them in in full or he doesn't. This is not the occasion for making a speech about them.

MR. CUNNINGHAM: Well, your Honor, I, of course, do not take my orders from my friend here on my right and I disregard what he has said. I only take my orders from the Tribunal.

THE PRESIDENT: Nearly always.

MR. CUNNINGHAM: I will make a search for this document. I brought back all of the documents from Germany that I had available there which bore on this particular subject, and I can only offer the ones which I have and account for the ones which are not available.

THE PRESIDENT: We will admit C-170 and C-66 if they are tendered. Of course, we are admitting no part of Mr. Jones' statement. So far as it helps you, you can adopt his argument. Even the prosecution may give it respectful consideration, but that is a matter for them.

MR. CUNNINGHAM: Well, your Honor, I am quite sure that the prosecutor does not want to claim for a document anything that it does not mean, and an outright statement by this British counsel, I thought, since it was a part of the official transcript of the Nuernberg proceedings, would be admissible in this case.

THE PRESIDENT: We admit the documents if tendered.

MR. CUNNINGHAM: Well, I now offer a book "Nazi Conspiracy and Aggression," Vol. VI, for identification and tender an excerpt therefrom, defense document 1643, in evidence. This book is a compilation of documents of the Nuernberg trial, issued by the office

of the United States chief of counsel for prosecution of Axis criminality and printed by the United States Government. Defense document 1643 is an excerpt from an evidence accepted and marked as GB-81 by the International Tribunal at Nuernberg, to which prosecutor Jones refer..d in his statement, which has been offered.

MR. COMYNS CARR: Your Honor, the prosecution has no objection to this document if it is tendered in full. No explanation has been made under rule 6-B-1, as far as we are aware, for the excerpt to be allowed, and in our submission it is misleading without the context and also without document C-170, on which it is supposed to be a comment.

THE PRESIDENT: Well, it may be a lengthy document, and only the excerpt may be relevant. Subject to compliance with the rules, we may be prepared to admit the excerpt and allow the prosecution to tender the balance later.

MR. COMYNS CARR: Your Honor, I have looked at the balance and in our submission, in order to understand the excerpt, it is necessary to look at the balance.

THE PRESIDENT: Well, we have permitted one side to tender merely an excerpt and to leave the other side tender the balance, but that is subject to our

rules, of course, which have not been complied with, I understand.

MR. CUNNINGHAM: Well, your Honor, I submit that the document has been on file.

THE PRESIDENT: Formerly, you required a specific order of the Court in Chambers, but laterally that was obviated by getting an agreement of the parties, and I understood there was some common understanding about those matters.

MR. CUNNINGHAM: Well, that is my understanding, your Honor, that we deposit the document, or the book from which it is taken, and if the prosecution looks it over and wants the rest of it and makes a demand, that we furnish it. But, it is my submission that the other features of this document are irrelevant, and they would not do you any good, and that is the reason why I have not offered the rest of the document.

THE PRESIDENT: Well, the admission at this stage would appear to need an order in Chambers or an agreement of the parties.

MR. CUNNINGHAM: That is definitely not my understanding of the rule, your Honor. My understanding is that if the prosecution makes a demand upon us, that we give them the balance and not wait until we present it in court and then objection is made to it and then we

find ourselves in a situation where we have to go back and backtrack.

THE PRESIDENT: Are you pressing your objection, Mr. Carr, on the ground of non-compliance with the rules or the absence of an agreement?

MR. COMYNS CARR: Not if I may be just allowed to explain why, in our submission, the excerpt is misleading by itself. The document from which it is extracted was written on the 10th of January, 1944, by Raeder, addressed to another German admiral, and is a long argument designed to show that Raeder had opposed the attack upon Russia in June, 1941, and was not responsible for the disasters which had resulted from it and that it occurred by the personal insistence of Hitler.

Furthermore, this excerpt is meaningless without the document with which counsel at Nuernberg was contrasting it and with which my friend seeks to contrast it, but which we have not so far used here at all.

THE PRESIDENT: Of course, if it is Raeder's self-justification, I think we should have the lot, Mr. Cunningham, if it is not very lengthy. He might write ten volumes on that subject, and we would not care to read them all, but we should have the other document in any event.

Well, think it over during the luncheon adjournment to see if you cannot arrive at some sensible agreement.

We will adjourn until half past one.

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

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Duda & Whalen

AFTERNOON SESSION

The Tribunal met, pursuant to recess, at 1330.

MARSHAL OF THE COURT: The International Military Tribunal for the Far East is now in session.

THE PRESIDENT: Mr. Cunningham.

MR. CUNNINGHAM: If your Honor please, I believe we have arrived at a solution of the problem, to begin reading on page 2 of defense document 1629 down to "...Singapore." And read document 1643 as it appears, with the explanation that Mr. Carr makes of the Raeder matter acceptable.

MR. COMYNS CARR: I agree, your Honor. Of course, that doesn't let in the remainder of defense document 1629.

THE PRESIDENT: Wait until the Judges get their copies, Mr. Cunningham.

MR. CUNNINGHAM: I ask that document 1629 be given an exhibit number.

THE PRESIDENT: Both documents are admitted on the usual terms.

CLERK OF THE COURT: Defense document 1643, being the book entitled "Nazi Conspiracy and Aggression" will receive exhibit No. 2750. The excerpt therefrom

will be given exhibit No. 2750-A.

THE PRESIDENT: Well, this will be the numbering: Defense document 1629 will be given exhibit No. 2750; defense document 1643 will be given exhibit No. 2750-A, and will be admitted on the usual terms to the extent agreed upon.

The parent document is not required to be marked for identification unless either party insists. In view of the agreement of counsel the Tribunal does not require it for verification purposes.

(Whereupon, defense document 1629 was marked defense exhibit No. 2750 and received in evidence; defense document 1643 was marked defense exhibit No. 2750-A and received in evidence.)

MR. COMYNS CARR: But as I understand it, your Honor, it is only the first sheet of 1629 that is being admitted. The other pages which contain extracts from the interrogations of Keitel and Ribbentrop were excluded.

THE PRESIDENT: I said, as the transcript will show, that it is admitted only so far as the parties agreed.

Proceed to read, Mr. Cunningham.

MR. CUNNINGHAM: Well, now, as I understand it

we start to read on page 2, beginning with the fourth line of the paragraph stating:

"I refer the Tribunal again to Document C-170 and to an entry at page 56 of the document book, for the 20th of April, 1941.

"A few sentences from that reads:

"'Naval Supreme Commander with the Fuehrer: Navy Supreme Commander asks the result of MATSUOKA's visit, and evaluation of Japanese-Russian pact. Fuehrer has informed MATSUOKA, that Russia will not be touched if she behaves friendly according to the treaty. Otherwise, he reserves action for himself. Japan-Russian pact has been concluded in agreement with Germany, and is to prevent Japan from advancing against Vladivostok, and to cause her to attach Singapore.'"

Now, I offer to read defense document 1643, exhibit 2750-A.

"Excerpt from 'Nazi Conspiracy and Aggression.'

"VOL. VI, Page 887, 889."

Skipping the rest down to the figure 3:

"At that time (a 1 above), the Fuehrer was <u>firmly resolved</u> on a surprise attack on Russia, regardless of what was the Russian attitude to Germany, --- this, according to reports coming in, was frequently

changing. The communication to MATSUOKA was designed entirely as a camouflage measure and to insure surprise. Concern lest a note to MATSUOKA which stated his telling MATSUOKA the whole truth. He told me so at the time at a party!"

In order to show that the commissions provided by the Tripartite Pact did not function practically and Japanese-German collaboration before and during the war was almost non-existent, I now call, first, witness Alfred F. Kretschmer, former German Military Attache in Japan, affidavit, defense document 1519.

A L F R E D F. K R E T S C H M E R, called as a witness on behalf of the defense, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. CUNNINGHAM:

Q Will you state your name and your present address?

A Alfred Kretschmer, Atami, Kanko Hotel.

MR. CUNNINGHAM: I ask that the witness be shown defense document 1519.

(Whereupon, a document was handed to the witness.)

Q I ask you to examine defense document 1519 and state whether or not that is your affidavit?

A This is my affidavit.

Q Are the statements contained therein true?

A The statements contained in that are true.

MR. CUNNINGHAM: I offer in evidence defense document 1519, and offer to read the same in the record.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1519 will receive exhibit No. 2751.

(Whereupon, the document above referred to was marked defense exhibit No. 2751

A L F R E D F. K R E T S C H M E R, called as a witness on behalf of the defense, being first duly sworn, testified as follows:

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(Whereupon, a document was handed to the witness.)

Q I ask you to examine defense document 1519 and state whether or not that is your affidavit?

A This is my affidavit.

Q Are the statements contained therein true?

A The statements contained in that are true.

MR. CUNNINGHAM: I offer in evidence defense document 1519, and offer to read the same in the record.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1519 will receive exhibit No. 2751.

(Whereupon, the document above referred to was marked defense exhibit No. 2751

and received in evidence.)

MR. CUNNINGHAM: Skipping the formal parts:

"AFFIDAVIT. Name: Alfred F. Kretschmer. Address: Kanko Hotel, Atami, Japan.

"Concerning Military Commission mentioned in Document 955.

"I was German military attache in Tokyo from December 4, 1940 until May 8, 1945.

"During this time the military commission, as such, was never talked about. The General, Military and Economic Commissions were assembled twice as far as I remember; for the first time in 1943 before Mussolini's fall, and for the second time in 1944. Both of these meetings, I am sorry to say, were only empty propagandistic performances. The intentions of these ineffective gestures were to camouflage that nothing was done here in Tokyo which could be called a cooperation between the German and Japanese High Commands. Whether these two meetings were sponsored by the Japanese Prime Minister or the Japanese Foreign Office I do not know. They were not proposed by the German side. All my urgings for a closer cooperation between the German and Japanese High Commands were in vain. Both Supreme Headquarters seemed to be intent on waging their own wars. The bases for this assertion

are:

"1. The outbreak of a German-Soviet hostility surprised me. Within the two months previous to the German attack on Russia, I had sent two telegraphic inquiries to the German General Staff asking whether a German-Soviet war was imminent and how I should answer corresponding hints made by the Japanese General Staff. Both times I had been answered in the negative and was emphatically ordered to oppose such silly rumors.

"2. The start of the Japanese war against the U. S. and Great Britain, and especially the Japanese attack on Pearl Harbor and the Philippines was not expected by me. Although I had been visiting the Japanese General Staff nearly daily at this time because of the precarious situation on the Russian front, I had not been informed about the Japanese intentions in the south, neither officially nor privately. By my various impressions, a Japanese invasion of Siam and sudden occupation of important oil sources in the Dutch East Indies had seemed most likely to me. But I was convinced that the Japanese would in any event do everything possible to keep U.S.A. out of their undertakings in the south. Germany then had to make the best of the situation that Japan had created on December 8, 1941. Just as before, Japan had to put up with the situation created by Germany on June 22, 1941.

"3. When in the summer and autumn of 1941 Germany approached Japan asking her to intervene in the German-Russian war, there never was a clear-cut Japanese reply of 'yes' or 'no.' I could guess that Germany could not reckon with Japan's help against Soviet Russia. It was not before autumn 1942, after the German Foreign Office had approached Japan for

the third and last time, asking that Japan enter the war against Soviet Russia that the Japanese General Staff let me definitely understand that a Japanese interference into the German-Soviet war was out of the question. The almost daily explanations of the situation in the Far Asiatic theater of a war were confined to just what had happened. Future events were hardly ever mentioned. The Japanese information to us about Soviet Russia was always very sparse and often worthless. The same reluctance as in Tokyo was manifested, as far as I know, by German High Command concerning the war in the European theater. All of my endeavors to persuade both sides to be more frank were in vain."

Signed "A. F. Kretschmer."

You may cross-examine.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: If it please the Tribunal.

CROSS-EXAMINATION

BY MR. TAVENNER:

Q Mr. Witness, are you familiar with the military agreement between Germany, Italy and Japan concluded in January 1942?

A I am only a little -- I have only a little knowledge about it because I came to Tokyo in

December 1940. That means after this pact had been signed.

Q Is your information regarding that treaty sufficiently broad that you know that operational cooperation between the two nations was to be divided into zones of operations?

A Yes. In a comparatively late time -- I suppose it might have been in January 1942 -- the then Deputy Chief of Staff, G-2, of the Japanese Army, General OKAMOTO, proposed a division between a Japanese zone of operations in the east and a German zone of operation in the west, in the Indian Ocean. I cannot say now the exact degree, but I think it was something about--

Q Under the military agreement referred to it was a fact, was it not, that the Japanese Army and Navy was required to conduct operations within the zone assigned to that nation?

A As far as I know, this frontier line, this limitation line between the operation zones of the Japanese in the east and the Germans in the west never was effectual because both the fighting forces did not come so close to each other.

Q That is not my question. I am not asking you to define the exact limits of the boundaries of the

two zones. I am asking you if you did not know that under the terms of the military agreement, the Japanese Army and Navy was to conduct operational war in the zone assigned to Japan?

A I am sorry, I don't know such a paragraph in the treaty. But it may be my mistake, because I don't know this treaty well enough. I only know a telegram of which I was speaking, perhaps in January, 1942, in which this proposition was made from the Japanese side; and as far as I know, it was agreed from the German side.

Q If you did not know of such a provision in the treaty I will now read it to you. Exhibit 49, page 6,681 of the transcript: "Divisions of the Zones for Operations. The German and Italian armed forces, as well as the Japanese Army and Navy, will carry out the required operations within the zones assigned to them as follows." Now, I understood you to state that you did not know that that was the plan for operations.

A I really do not know this treaty. It was signed before I came and I had no special need to read it.

Q When did you arrive in Japan?

A I arrived in Japan in the last days of November 1940, and became Military Attache the 4th of December, 1940.

Q Then you are wrong in your statement that this treaty was signed before your arrival. I gave you the date of it as being January 1942. Did you make a reply?

A I do not understand it totally. We were speaking of the Tri-Partite Pact, and this Tri-Partite Pact, as far as I know, was signed in autumn of 1940, but --

Q Mr. Kretschmer, I made no reference what-

ever to the Tri-Partite Pact, but I plainly stated the Military Agreement between Germany, Italy and Japan, of January 1942.

A Now, after you mention the date, I know what you mean, and you are quite right in what you said. But it is quite the same what I mention about this telegram which was proposed and what gave the lines between German and Japanese operations.

Q I have not asked you a single question about the boundaries of the zones. I merely asked you if you know that there were zones created.

A Yes, there were zones created.

Q And, roughly speaking, Japan's zone was in the South Pacific and East Asia, was it not, including also India?

A As far as I know, yes, it was east of the 7th degree, as far as I know now.

Q Now, when Japan attacked Singapore, was that attack made through the Malay Peninsula?

A Will you please repeat once more your question "When Japan attacked Singapore was -- ?

Q Was the attack made through the Malay Peninsula.

A Through the Main?

Q Malay. Malay Peninsula.

A They attacked Singapore from the north and east; that means through the Malay Peninsula.

Q Was that attack made in accordance with the plan that you and General Ott submitted to Ribbentrop in 1941?

A I am sure that there is not the least connection between this so-called strategic study and the real Japanese attack on Singapore.

Q Will you answer my question, please?

MR. TAVENNER: Will you repeat the question to him?

(Whereupon the question referred to was repeated by the official court reporter as follows: "Was that attack made in accordance with the plan that you and General Ott submitted to Ribbentrop in 1941?"

A I must answer this your question in the negative. This study in, I think, February 1941, had a purpose only for our internal -- for us themselves. At this time, as often afterwards, we did not know anything about the Japanese intentions, and therefore the Ambassador, Ott, wished to find out which were the possibilities the Japanese had, and further to find out which would be the consequences of Japanese actions; and for this purpose

Ambassador Ott asked me to prepare-- how to call it-- a sort of war game, on maps and strategical study, and which we wished to speak through with members of the German Embassy. I deliberately stated about this strategical study in my report I handed Mr. Keenan in January 1945. As far as I know, the contents of this study was sent by Ambassador Ott to the German foreign office, but I am sure that the Japanese were not influenced by this strategical study in this war, and I am sure that the Japanese did not receive any informations about this strategical study via the German Embassy. Besides this, I am sure that at this time the Japanese would never have been willing to be influenced by some other country.

Q In preparing your strategical study of a proposed attack upon Singapore, you obtained information regarding Japanese strength in men and materials, did you not?

A We used for this, our study, only the little knowledge we had about the strength of the Japanese fighting forces and, further, our own suggestions, but I never received at this time any special additional dates.

Q Did you not collect material from German representatives through China?

A We did not --

Q Just a moment. I meant to say, "in China."

A We did not receive any news from German representatives living in China.

Q Did you not, at the time, call certain German representatives to furnish you with information?

A I am sorry, I don't know what you mean. Are you speaking, for instance, of Mr. Erhardt, and so on? Then I must say that I, personally, was -- in my character as military attache, was strictly forbidden to be in connection with him. I read, I think, in yesterday's Nippon Times, that there was spoken here about German spy ring in Tokyo. I must state from

my side that I don't know anything about a German spy ring acting in Japan. Maybe that someone was talking about this Dr. Sorger. But I, personally, am convinced that this Mr. Sorger, who was arrested, as far as I know, in summer, 1940, was not working for Germany and was not working on German order.

Q Now, have you any other information you would like to volunteer?

THE PRESIDENT: We do not want to hear it unless it is relevant and material.

Q (Continuing) Then, let us return to the question that I asked you. Did you receive from German representatives in China information used by you in preparing your strategical study of an attack upon Singapore?

A No. I did not receive any such news from China or from anywhere else. I can only repeat what I said in my report to Mr. Keenan, that the Japanese attack on December, 1941 was a total surprise for me, and this, too, as to Singapore -- as to the attack on Singapore.

Q It would save a great deal of time if you would confine your answers to my questions, Mr. Kretschmer. You stated that this strategical study was solely for internal purposes of the German

Government. Was not the internal purpose that you referred to of a purpose of inducing Japan to enter the war by the capture of Singapore?

A I am convinced that this was not the purpose. I was at this time only two months in Japan; and, before going to Japan, I had paid, for instence, a visit to the German Foreign Office in Berlin and was received there by Secretary of State, von Weizsaecker. Von Weizsaecker had told me that Germany was much interested to prevent the war from spreading, and he told me further that the German Foreign Office disliked that the Japanese wished to enlarge their sphere of interest to French Indo-China and to the Dutch East Indies. I am sure that the Ambassador Ott had quite the same instructions as I had received in Germany at the end of November, 1940. Besides this, I know that Ambassador Ott wished only to know what can be done by Japan. We didn't hear anything, neither by official nor by unofficial sources.

Q You say it was about two months before you left Germany that you had this conference with Weizsaecker regarding Indo-China and the Dutch East Indies?

A It was two days, perhaps, before I started for Japan that I paid my official visit to the German

Government. Was not the internal purpose that you referred to of a purpose of inducing Japan to enter the war by the capture of Singapore?

A I am convinced that this was not the purpose. I was at this time only two months in Japan; and, before going to Japan, I had paid, for instance, a visit to the German Foreign Office in Berlin and was received there by Secretary of State, von Weizsaecker. Von Weizsaecker had told me that Germany was much interested to prevent the war from spreading, and he told me further that the German Foreign Office disliked that the Japanese wished to enlarge their sphere of interest to French Indo-China and to the Dutch East Indies. I am sure that the Ambassador Ott had quite the same instructions as I had received in Germany at the end of November, 1940. Besides this, I know that Ambassador Ott wished only to know what can be done by Japan. We didn't hear anything, neither by official nor by unofficial sources.

Q You say it was about two months before you left Germany that you had this conference with Weizsaecker regarding Indo-China and the Dutch East Indies?

A It was two days, perhaps, before I started for Japan that I paid my official visit to the German

Foreign Office. I was ordered to do this, and I got this instruction by the representative of the German Foreign Minister.

Q What was the date of your leaving Germany?

A I left Germany the 10th of November, 1940.

Q And at that time Weizsaecker told you that the Japanese were extending their influence to the Dutch East Indies?

A Not that they were extending their influence, but that he feared they would do so. And when I came to Tokyo, my predecessor, called Metzger, told me only that he had the impression that he guessed that the Japanese would take possession of French Indo-China. But he could not agree that there were even the slightest signs that the Japanese wishes to get influence in the Dutch East Indies. This was the opinion of my predecessor, Colonel Metzger.

Q Now, will you let me --

THE PRESIDENT: Witness, you must not read anything in the box unless you are invited to do so by the Court or with its permission.

MR. TAVENNER: If it please the Tribunal, I was asking at the moment you were speaking, or just a little after, that I be presented with the notes that the witness is referring to in the course of his answer for inspection of them.

THE PRESIDENT: Mr. Cunningham.

MR. CUNNINGHAM: We object to that, of course, a very unusual request, and I don't know what right he would have even to make such a request.

THE PRESIDENT: I have no doubt about it. The witness read from a document apparently in answer to you and you are entitled to see it.

MR. TAVENNER: Yes, sir.

THE WITNESS: This is my report to Mr. Keenan and I wish only to read you what I stated in it answering his corresponding questions.

MR. TAVENNER: Of course, I object to the witness' voluntary offer to present any document in evidence unless it is in response to my question.

THE PRESIDENT: That objection is well taken.

Q Did you make a report to Ribbentrop that a Japanese attack on Singapore through the Malayan Peninsula would likely be successful?

A I did not. I never made a report to the German Foreign Minister at all, but as far as I know the German ambassador gave notice of this strategical study to Minister von Ribbentrop.

Q And did that report reflect that a Japanese attack on Singapore through the Malayan Peninsula would be successful?

A I have not read this report but I am sure that every well-educated soldier would come to the same conclusion to which the Japanese came.

MR. TAVENNER: If the Tribunal please, in the interest of saving time I feel that I will have to ask that the witness be directed to answer the questions rather than to argue them and to volunteer additional answers not called for by the question.

THE PRESIDENT: Be satisfied to answer the questions yes or no, Witness. If an explanation is called for you may with our permission add it, or it may be extracted from you in re-examination by counsel for the defense.

MR. TAVENNER: Will you read the previous question to the witness?

(Whereupon, the last question was read by the official court reporter as follows:)

Q And did that report reflect that a Japanese attack on Singapore through the Malayan Peninsula would be successful?

A I am sure that this sentence was written in it.

Q Did the attack by Japan on Singapore take place in that manner?

A Yes, it took place this way but I am sure there was no other way. The fortress, for instance,

could not be attacked from the seaside.

Q Shortly after making the report to Germany, was any message received regarding this question of attack on Singapore by the German Embassy?

A I can only speak for my office. I did not receive such an answer.

Q Did Ambassador Ott shortly thereafter go to Germany and have a private conference with Ribbentrop?

A Yes, Ambassador Ott went to Germany in March, but I think for another purpose. He accompanied the Japanese Foreign Minister to Germany.

Q And do you know that before leaving for Germany he received a request from MATSUOKA to forward in advance a description of the subject matters he desired to discuss in his conference, that is, MATSUOKA's conference with Ribbentrop?

A I did not hear about it.

Q You mean that Ambassador Ott did not discuss in your presence?

A No, in my presence I am sure this question was not discussed afterwards.

Q Were you told by Ambassador Ott upon his return from Germany of the discussions relating to the Japanese proposed attack on Singapore?

A No, he did not talk to me about this, and I am sure that he didn't talk about this with the naval attache either because we never heard anything about it.

Q Do you know that Germany furnished Japan with two model submarines for use primarily in their

construction program?

A Yes, although it was quite a secret matter I heard about it, but I must emphasize that it was very much later. I suppose that it was in 1944, perhaps. The question could be better answered by the naval attache.

Q The transfer of those two submarines was effected through the high commands of the German and Japanese governments, was it not?

A I am sorry I can't answer just your question because I don't know enough about it. I am neither naval attache nor was I the so-called Wehrmacht attache.

Q Do you know whether German engineers and technicians were put at the disposal of Japan to assist in submarine construction?

A This being a matter of the naval attache, I merely never heard anything about it. I only have sufficient knowledge about the actions of those German engineers who tried to help to promote the armament of the Japanese Army.

THE PRESIDENT: We will recess for fifteen minutes.

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

wolf Kapleau

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

THE PRESIDENT: Mr. Tavenner.

BY MR. TAVENNER (Continued):

Q You stated you were only familiar with the work of the technicians and personnel sent here in connection with military or army construction work. Please tell us about that, briefly.

A In the summer of 1942, Colonel Niemoeller, from the German Ordnance Department was sent by blockade runner to Tokyo to handle special ammunition we call in German "Hohl Roeper Geschap." When Colonel Niemoeller had no chance to return to Germany he received, perhaps a year afterwards, the order to put to work those German engineers living in Japan who had no other business.

Q And isn't it a fact that those engineers were assembled and that they gave technical assistance to the Japanese armament industry?

A No, they worked together. They were not dispatched to different industries, but worked together in Tokyo.

Q But that work was designed to aid the Japanese armament industry, was it not?

A It was.

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omitted it.

Q Then, in January 1944, did you and the German Naval Attache visit the Burma Theatre of War?

A Not the Naval Attache, but the Air Attache and I were allowed to pay a visit to Burma, but in Burma we had different trips.

Q On this trip did you make similar reports to your superiors in Germany?

A Yes, quite the same reports.

Q What theatres of war did you visit in the Burma Theatre?

A In Burma we saw first the environs of Rangoon. Afterwards, Mandalay, Mendyo, and part -- the direction of Lashio, and then, Akyab and Sundaway.

Q The military agreement of January 18, 1942, to which I first referred, provides the main points of military cooperation and among them it includes collaboration in economic warfare. What was done by Germany in Japan relating to economic matters?

A Before the German-Soviet Russian war started Japan was able to sell us tungsten, rubber, soy beans, and to transport all this via Manchuria and Soviet Russia. Afterwards these same materials were sent via blockade runner. But I must point to the fact that I don't know any details about this. Those things lie out of my sphere of business.

Q Do you know whether or not the German Government, pursuant to this provision regarding economic warfare in the military agreement, sent to Japan what was known as the economic mission?

A I don't know any details about it.

Q Well, you know who was in charge of it, do you not?

A I think that that was Staadsrat Wohltat's special job.

Q You know that to be a fact, do you not?

A I beg your pardon; I couldn't catch the meaning of your words.

Q Your answer implied that you were somewhat

in doubt about its being Wohltat who was in charge of this commission.

I will state it another way: You know definitely of your own knowledge that Wohltat was in charge of this economic mission to Japan, do you not?

A He was here as an economic man -- Oh, I didn't see the light.

I am sorry I can't answer this, your question, because I don't know enough about it.

Q Did this mission have branches in many cities in Japan?

A As far as I know, not, but I repeat once more that I don't know any details about it.

Q In your travels through the countries of the South Seas, which were those occupied by Japan at the time of your trip, did you not find branches of this economic mission?

A I didn't find any in the first trip. In the second trip there was a submarine -- commercial submarine base in the South, but that is quite another thing.

Q When did this commission arrive in Japan?

A Mr. Wohltat arrived here before the German-Soviet war, but I can't say which month.

Q Did not this commission become a permanent organization from the time it was formed until the close of the war?

A As far as I know, this commission was stopped here in Japan by the start of the German-Soviet war.

Q Did not this commission secure great quantities of raw materials for use by Germany in its war effort?

A I am sorry I can't give you any dates, as I don't know anything about the selling or transport of the materials.

Q Due to the fact that this commission was handling a matter of great importance to your country, can you not say whether it was considered successful?

A I am sorry I cannot, but I think all this was more a question of transportation than of the work of the commission.

Q Near the middle of paragraph 2, on page 2, of your affidavit, you state that a "Japanese invasion of Siam and sudden occupation of important oil sources in the Dutch East Indies had seemed most likely to me." Before this sudden occupation of the Dutch East Indies to which you referred do you know that Japan established airports or air bases and naval bases in Indo-China?

A Yes, I know it.

Q Did it seem to you, according to this statement, that those air bases would be used to assist in this sudden occupation of the Dutch East Indies?

A The Japanese authorities kept their secrets strictly and we had only to guess, and seeing that the Japanese had great difficulties in getting the oil necessary for them, we supposed that it might be possible -- I repeat once more we had only to guess -- we supposed that it might be possible that the Japanese would try to get this oil where it could be get without really fighting.

Q So that it was a matter of the use of force if force could become effective in seizing oil in the Dutch East Indies?

A I can't answer this, your question, because all what I said was the guess we then had. Our conviction was that the Japanese side would do everything possible to avoid a conflict, at least with the United States.

THE PRESIDENT: What advantages are there to cross-examine him at this great length only to prove that he was deceived by the Japanese? I know he disclaims that there was cooperation to the extent that you allege, but you rely on your documents, I take it, Mr. Tavenner. If these documents state the facts,

they disclose co-operation among persons much higher than this witness.

MR. TAVENNER: The purpose of cross-examining, if the Tribunal please, on the matter of co-operation is to establish facts that he has already give us in evidence, that is, in the course of cross-examination, some of which is documentary evidence and some of which is not.

Morse & Lefler

Q You disclaim knowledge in paragraph 2 of your affidavit that you had any -- that the German ambassador or at least yourself had no knowledge that there would be an attack or that war would begin in December, 1941, is that correct?

A It is.

Q You state that you had no knowledge that there would be an attack on Pearl Harbor and the Philippines.

A We were totally surprised by this attack.

Q And the start of the Japanese war against the United States and Great Britain was not expected by you?

A It wasn't expected.

Q I refer to exhibit No. 602, page 6,640 of the transcript, in which Ambassador Ott notified the Foreign Minister on 23 November 1941 that the Japanese Minister of War expressed his deepest gratitude for the statements made through the military attache. You were the military attache at that time, were you not?

A Yes. Will you please repeat once more the date?

Q The date was November 23, 1941.

A This was without any doubt the German answer on the question put to me by Major General OKAMOTO.

Q And what was that question?

A Major General OKAMOTO had asked me to his office and put the following question to me: "Please ask your government if Japan -- if Germany would enter a war -- would enter the war -- Please ask your government if Germany would declare war against the United States in case there should be a war between the United States and Japan."

I asked General OKAMOTO about the circumstances which could give origin to such a war and he told me that it could be possible that in consequence of Japanese operations in the southern regions there could be a war between Japan and the United States.

I asked him, thereupon, "Do you intend to attack the United States territory?" And he answered that his question was quite a theoretical one because -- he answered that his question was quite a theoretical one and that till now there was never a war in which not both sides pretended to have been attack.

Then I asked General OKAMOTO about the movements Japan intended in the southern regions, but he declined to answer this, my question. I answered General OKAMOTO that it was quite out of my business to put such a question to the German Government and that if he wished to do so he had to talk to the ambassador himself. He wished to do so but I had

the clear feeling that he wasn't under any pressure of time. As far as I know, General OKAMOTO was received by the ambassador the next day.

Q Do you recall that about four days earlier, on the 18th of November, the matter of concluding a no separate peace pact had been discussed with the Japanese?

A I don't know it and I wish to emphasize that I don't know if this, my conversation with General OKAMOTO, wasn't before this date. I don't know now how these events followed chronologically.

Q Let me see if I can refresh your recollection. Exhibit 601, page 6,637 of the transcript, is a telegram from Ribbentrop to Ambassador Ott, bearing date of 21 November 1941. After referring to a telegram of November 18, Ribbentrop states:

"I ask you to inform verbally the leader of the division of Foreign Armies yourself, or, if you consider it to be more correct, through the military attache, of the following in regard to his remarks:"

And I continue to read: "You had made a report on this statement to Berlin and you were told that the idea there of concluding peace or armistice only jointly in case Japan or Germany becomes involved in war against the United States, no matter for what

reason, is looked upon as natural and that one would be entirely willing to put down a corresponding statement in an agreement to be made for this case."

Now, you were familiar with this telegram, were you not?

A I suppose that this was the answer the German Foreign Minister gave on the question put by General OKAMOTO first to me and afterwards to the ambassador who had sent the corresponding telegram.

Q So, you were familiar with this entire matter and assisted in the handling of it?

A I answered this -- I gave this answer to General OKAMOTO.

Q Now, on the 5th day of September, 1941 -- of December, 1941, according to exhibit 608, page 6662, Ambassador Ott telegraphed Ribbentrop that the deliberations were under way in the Foreign Ministry in which manner Japan should open a conflict which could not be avoided.

A This telegram I do not know.

Q You are familiar, aren't you, with the telegram of November 21, 1941?

A I don't know its contents.

Q In which it is stated that "should Japan become engaged in a war against the United Stated, Germany, of course, would join the war immediately. There is absolutely no possibility of Germany's entering into a separate peace with the United Stated under such circumstances. The Feuhrer is determined on that point."

This is prosecution exhibit 603-A.

A This must be part of Ribbentrop's answer too. I, myself, do not remember this telegram.

Q Now, having pointed out to you the documentary

evidence relating to the negotiations that took place at this time, do you still contend that the Japanese -- that the German embassy in Japan, including yourself, did not know that the war was about to break out between Japan -- that Japan was about to attack the United States and Great Britain?

A I speak first for me, but I think that I can speak at the same time for the embassy. We had at this time, when Ambassador KURUSU was in Washington, the full impression still that Japan wished to do everything possible to avoid conflict with America, and I, as an officer, could have no understanding at this time for creating a new enemy; that means at a time when the German forces were fighting a very, very hard battle in Russia.

THE PRESIDENT: We you a general officer?

THE WITNESS: At this time I was a colonel. I became a colonel in 1942.

Q But Germany, with the assistance that you gave it, encouraged Japan to enter into war at the time that Japan should choose by agreeing not to sign a separate peace pact regardless of what the reason for the war between Japan and the United States might be.

A I must express emphatically that I did not

stir up Japan to attack America and so did not my comrades in arms. The soldiers had only -- I, in this case, had only to hand this answer, and I am sure that Japan at this time would never have allowed anyone of us to stir her up, for whatever purpose it might be.

(Whereupon, a document was handed to the witness.)

MR. TAVENNER: I have no further questions, your Honor.

THE PRESIDENT: Mr. Cunningham.

MR. CUNNINGHAM: I should like to ask the prosecution to tender the document which they took from the witness for identification.

THE PRESIDENT: As no use was made of it, it cannot be tendered unless you tender it. You, Mr. Tavenner, I mean.

MR. TAVENNER: If the Tribunal please, I did not use the document in cross-examination, and I do not propose to offer it. But, I returned it to the witness.

MR. CUNNINGHAM: I will peruse the document and see whether or not I wish to use it.

Now, your Honor, we have just a very few questions to ask the witness, and he lives a long distance, and we have no facilities for taking care

of him over night.

THE PRESIDENT: There is no sufficient reason for sitting beyond the hour appointed for adjournment, four o'clock.

We will adjourn until half past nine tomorrow morning.

(Whereupon, at 1600, an adjournment was taken until Thursday, 19 June 1947, at 0930.)

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I N D E X
Of
"ITNESSES

Defense' "itnesses	Page
Kretschmer, Alfred F. (resumed)	24658
Redirect by Mr. Cunningham	24658
("itness excused)	24666

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I N D E X
Of
EXHIBITS

Doc. No.	Def. No.	Pros. No.	Description	For Ident.	In Evidence
1698	2752		"Tokyo Record" by Otto D. Tolischus, 1943, Reynal & Hitchcock, New York		24675
1698-A	2752-A		Excerpt therefrom (pp.102-103)		24675
			MORNING RECESS		24675
1640	2753		Memorandum signed by Woermann dated 23 July 1941		24687
1683	2754		Proceedings of the Talks Between Minister TOYODA and Ambassador Grew concerning the Entry of Forces into French Indo-China on 26 July		24691
			NOON RECESS		24700
1682	2755		The Record of the Conversations between Minister TOYODA and Ambassador Grew on 27 July.(These conversations were conducted strictly confidentially and informally off the record at the request of the American Ambassador)		24701
206-E(93)	2756		Admiral TOYODA's Peace Offer		24709

I N D E X
Of
EXHIBITS
(cont'd)

Doc. No.	Def. No.	Pros. No.	Description	For Ident.	In Evidence
401-B(55)	2757		Excerpt from "Foreign Relations of the U. S., Japan 1931-1941" Vol II (pp. 184-185)		24717
1659	2758		Summary of the Opinion of the German Government as told by Ambassador Ott in Tokyo on 11 May 1941		24721
1658	2759		Instruction of the German Government to the German Ambassador in Tokyo (brought by the German Ambassador in Tokyo, Ott, on the occasion of a conversation with Foreign Minister MATSUOKA on 17 May 1941)		24724
1641	2760		Telegram from Ott to the German Foreign Office dated 30 August 1941 re conversation with Japanese Foreign Minister TOYODA		24727
1500	2761		Volume entitled "Pearl Harbour Attack"		24730
1676	2761-A		Excerpt therefrom: "Hearings before the Joint Committee on the Investigation of the Pearl Harbour Attack"(pp.1363-1364)		24732

I N D E X
Of
EXHIBITS
(cont'd)

Doc. No.	Def. No.	Pros. No.	Description	For Ident.	In Evidence
1662	2762		Affidavit of Joachim V. Ribbentrop		24737
			AFTERNOON RECESS		24746
1450	2763		Transcript from the Interrogation of Dr. Paul Schmidt at Nuernberg, Gerrany, on 28 March 1946	24749	
1450	2763-A		Excerpt therefrom		24749
1642	2764		Note of 11 December 1941 handed by the German Foreign Minister to the American Charge d'Affaire prior to the Session of the Diet		24751
1674	2765		Book entitled "The Winning of the War in Europe and the Pacific" by General Marshall	24754	
1674	2765-A		Excerpt therefrom		24754

Thursday, 19 June 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, all Members sitting, with the exception of: HONORABLE JUSTICE E. H. NORTHCROFT, Member from the Dominion of New Zealand, not sitting from 0930 to 1530; HONORABLE JUSTICE E. STUART McDOUGALL, Member from the Dominion of Canada, not sitting from 1100 to 1530 and HONORABLE JUSTICE JU-AO MEI, Member from the Republic of China, not sitting from 1500 to 1530.

For the Prosecution Section, same as before.

For the Defense Section, same as before.

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(English to Japanese and Japanese to English interpretation was made by the Language Section, IMTFE.)

MARSHAL OF THE COURT: The International Tribunal for the Far East is now in session.

THE PRESIDENT: The accused TOGO is, with the permission of the Tribunal, conferring with his counsel and will continue to do so until the end of this session at noon today.

Mr. Cunningham.

MR. CUNNINGHAM: Your Honor, before we start with the re-direct examination of this witness I want to call your attention to page 24,575 of the record yesterday and make a correction, in the middle of that page, page 24,575. I am quoting the President: "You said they were statements made to prosecuting officers although before any charge was made. That's enough."

I want to state that I had been misquoted there, that I did not say that statement, and I refer you back to the previous page. Apparently you, and perhaps other Members of the Tribunal, were under misapprehension in ruling on those documents. The documents 1437, 1438 and 1439 were not made to prosecuting attorneys or members of the staff; they were made to the son of MATSUOKA. I had no opportunity to correct the misapprehension at that time, but I wanted to be sure before I

called it to your attention, what the true state of the record was.

THE PRESIDENT: What you said is open to both constructions, obviously, but we accept your correction.

MR. CUNNINGHAM: Then, in the light of the correction, I suggest a reconsideration of the ruling, and I should like to argue the documents because I did not have an opportunity to answer the objection of the prosecutor yesterday.

THE PRESIDENT: In all events, it is one of those self-serving statements, made after the prosecution was well under way, although not formerly launched, isn't that so? In that respect it differs from the statement of KONOYE, which was made during the war. However, it is for the Tribunal to say whether they will take into account the technical difference which is now revealed by your further explanation. I make no pronouncement about it, Mr. Cunningham.

MR. CUNNINGHAM: I should like, your Honor, to at least answer the objection of the prosecutor to that document and to show the distinct difference. And I wish to state that your observation on the document is not in any way similar to my observation

about it.

THE PRESIDENT: If you like to address us in obscure, equivocal language, well, you take the risk of being misunderstood, but we accept your correction today. It appears now from what you say that this statement of MATSUOKA'S was made to his son in January 1946, after the prosecution of alleged Japanese war criminals was decided upon and when the prosecution were fully represented and were here in Tokyo. The statement was, in fact, made to a prosecuting officer. Is that the position, Mr. Cunningham?

MR. CUNNINGHAM: No, your Honor, that is not the position.

THE PRESIDENT: Well, that is the most favorable construction that can be put on what you said yesterday.

MR. CUNNINGHAM: Well, of course, this is developing into one-sided. If I may have just five minutes to explain my position, I think it will not be ambiguous or obscure.

THE PRESIDENT: It should not take five minutes, but we will hear it.

MR. CUNNINGHAM: I refer you to the previous page of this record and I can see nothing ambiguous

or obscure about the presentation which I made of this document.

On the second proposition of whether or not this defendant made -- the accused MATSUOKA made this statement as a self-serving declaration, I am convinced that he made that statement for history, and in the wildest stretch of his imagination I feel that he was not considering himself a war criminal under the Potsdam Declaration.

THE PRESIDENT: We do not want your convictions. All we want is a simple statement of the facts bearing on this statement, and unless you give them, and give them at once, we won't hear another word from you. We have asked you to make a simple statement of the facts. If you are not prepared to do that we won't hear you. We are not obliged to accept from you any more than a simple statement of the facts. You make submissions to us; you do not tell us what your convictions are. No lawyer does that.

MR. CUNNINGHAM: I should like to go to the second point which your Honor made, and that is, that the statement was made after the prosecution had arrived in Tokyo. That has no bearing, as I see it, because the prosecution of war criminals

and war crimes had no bearing upon the relations of MATSUOKA to his son, and the statement he was making for historical purposes.

On the third proposition, you must be aware that the Indictment in this case, charging the accused, was not entered for months after this statement was made, and there can be no connection.

THE PRESIDENT: Proceed. There is nothing to prevent you.

MR. CUNNINGHAM: On the following proposition, if I had been permitted to answer yesterday, as I think I had the right to do, to answer the objections of the prosecution on these specific documents, these are the observations I would have made at the time.

THE PRESIDENT: Calling it sacred won't make it admissible. When was he first approached by the prosecution? No doubt he expected the approach before it was made.

MR. CUNNINGHAM: That is an assumption, your Honor, and I understand that he was approached by the prosecution some time in February of 1946, after this document had been completed, long after. I believe the original interrogation is in the hands of the clerk here, 1643, parent document.

Those are my observations on the matter, your Honor, and I submit that the matter should be given more serious consideration because I believe, in my presentation of these documents, that anything that Yosuke MATSUOKA said in explanation of the Tri-Partite Pact, no matter when he said it, is of the most relevant material and consequence of any document to be offered in this Tribunal.

One last sentence. Yosuke MATSUOKA was the Foreign Minister of Japan at one of the most crucial periods in the history of the nation.

THE PRESIDENT: Having heard you fully again, a majority of the Tribunal are convinced that they should adhere to their decision.

MR. CUNNINGHAM: I will now proceed with the

redirect examination of the witness.

- - -

A L F R E D F. K R E T S C H M E R, called as a witness on behalf of the defense, resumed the stand and testified as follows:

REDIRECT EXAMINATION

BY MR. CUNNINGHAM:

Q General Kretschmer, yesterday Mr. Tavenner completed his cross-examination. Now I ask you, what were your instructions, when you came to Tokyo, from the German Foreign Office?

A I had no special instructions. My task here was quite the same as the task of every military attache, whatever nation he may belong to.

Q At any time, General, prior to the Pearl Harbor attack, did you have any intimation that a war was imminent between the United States and Japan?

MR. TAVENNER: If the Tribunal please, objection is made to this question inasmuch as it is the same question that he covered in his direct examination, and nothing new -- please strike the words "and nothing new" -- and I desired to add that it is mere repetition.

MR. CUNNINGHAM: I merely wanted to correct any confusion that might have been created by the

redirect examination of the witness.

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MR. CUNNINGHAM: I merely wanted to correct any confusion that might have been created by the

cross-examination by Mr. Tavenner on that subject.

THE PRESIDENT: That does not warrant him repeating what he said in examination in chief. The objection is upheld and the question disallowed.

MR. CUNNINGHAM: That was a forerunner to the next question.

Q In what manner did you learn of the attack on Pearl Harbor?

A The morning after this attack I was instructed by, as far as I remember, Lieutenant Colonel AKITA that the Japanese attack had been started against the different strategical aims known to everyone here.

Q In what manner were you engaged around and about the time the Pearl Harbor attack occurred?

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: If it please the Tribunal, objection is made to this line of redirect examination in that it does not relate to a matter that in any way arises out of cross-examination. There was no mention at any time of any matter relating to what occurred on the day of the Japanese attack on Pearl Harbor.

MR. CUNNINGHAM: As I understood the prosecution's cross-examination, they tried to show that

the Embassy here knew long before the hostolities commenced that they would be commenced.

THE PRESIDENT: What I cannot see is how what he happened to be doing on that occasion could throw any light on his knowledge.

MR. CUNNINGHAM: I thought I would let the witness enlighten you on that instead of my enlightening you, your Honor. The witness was entertained by the Japanese authorities at the time to prevent him from knowing what was going on, if you want me to suggest to you.

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THE PRESIDENT: The question is disallowed as irrelevant.

Q Then may I ask this question: Did the Japanese officials take any action to prevent you from knowing that the attack on Pearl Harbor was being made?

A Japanese authorities didn't give us any knowledge at all and especially at this time they proposed for us traveling, I don't know for what places. Those of us who were in Tokyo were invited this evening first to the Kabuki, afterwards to a dinner which lasted perhaps until ten o'clock in the evening.

Q I will pass that now. By what means could you communicate with Germany after December 9, 1941?

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: Objection is made, if the Tribunal please, on the ground that this is not redirect examination arising out of anything that occurred during cross-examination.

MR. CUNNINGHAM: Your Honor, if I remember correctly, Mr. Tavenner specifically went into the question of the reports which this witness made to his government as a result of his trip through the South in 1942.

THE PRESIDENT: But Mr. Tavenner brought out nothing bearing on this matter of the way the witness communicated with his government. Such a matter may, perhaps, have been brought out by you in direct examination but redirect examination, I need hardly say, must be on matters brought out by the cross-examination and to clear up obscurities or uncertainties created by the cross-examination, and this particular matter was not adverted to in the cross-examination either directly or indirectly.

MR. CUNNINGHAM: Your Honor, if there is no misunderstanding that this witness had difficulty in communicating with his government and that he had to use the ordinary channels of communication, and so on, I would like to find out from the witness just how he

communicated these reports which he made, in answer to the question of the prosecutor, to his government.

THE PRESIDENT: We can allow you to do that only if we disregard the rules agreed upon by yourself and which must be applied to all counsel without discrimination.

MR. CUNNINGHAM: When the rules interfere with the discovery of the facts I say suspend the rules.

THE PRESIDENT: At all events, for Mr. Cunningham's benefit, the objection is upheld and the question disallowed.

MR. CUNNINGHAM: All right. Now the next question.

Q General, did anyone from the Japanese General Staff ever talk with you about operational plans after the outbreak of the Pacific War?

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: If the Tribunal please, that was matter covered by the examination in chief and the only purpose now is to attempt to have this witness repeat his testimony.

MR. CUNNINGHAM: I understood that the prosecution tried to intimate that there was an operational plan in existence and that it was functioning. If they

deny that then there is no sense in asking the question.

THE PRESIDENT: The objection is upheld.

Q Did you or any of the members of your staff make investigations concerning the Japanese war potential before Pearl Harbor?

A We wished to know but we could not receive any dates from the Japanese side.

Q By "dates" do you mean "data"?

A I beg your pardon, I could not--

Q By "dates" do you mean "data"?

A I mean data. I am not a master of your language.

Q What was the nature of your reports on your trip South in 1942, General?

A Strategical and especially technical questions. For instance, the technique of Japanese landings and defense against them; the technique of night attacks and the defense against them.

Q Did your reports include anything that was going to happen?

A I never received from the Japanese sides any news of what would happen, therefore my reports dealt with what had happened or what I supposed that it might happen.

Q Are the air and naval attaches whom you mentioned yesterday still in Japan?

A The naval attache living at Karuizawa; the air attache at Hakone.

Q In your communications did you communicate with Germany through the ambassador or directly with your superior officers?

A The normal way for my cables was through the ambassador. Besides this I had the chance to send military telegrams which had been shut up by my own office.

Q Now the last few questions: When did Ambassador Ott leave Japan?

A He left in spring, 1943.

Q Do you know where he is at the present time?

A As far as I know, in Peking.

Q General, you stated yesterday in answering Mr. Tavenner's question that Mr. Wohltat and his economic mission arrived in Japan sometime before the outbreak of the German-Russian war. Had this mission, as far as you know, anything to do with the military agreement which was concluded much later, namely, in January 1942?

A I don't know of any connection between this Wohltat commission and the Tri-Partite Pact.

MR. CUNNINGHAM: That concludes the redirect. Mr. Howard has a statement to make to the Tribunal before the witness is released.

THE PRESIDENT: Mr. Howard.

MR. HOWARD: May it please the Tribunal, I should like to inform the Tribunal that the defense expects to use General KRETSCHMER as a witness on two or three more occasions during the trial. We ask that he be presently released but in the custody of the Supreme Commander, subject to being recalled as needed.

THE PRESIDENT: Before we make an order we want to be sure of the need for its terms. What is the reference to the "custody of the Supreme Commander" due to? We understood from Mr. Cunningham yesterday that this man was at liberty now.

MR. HOWARD: Your Honor, he is under subpoena, but he lives in Itami, and rather than state in here that he be required to remain in Tokyo I stated "in the custody of the Supreme Commander." However, that request, "in the custody of the Supreme Commander," that really is not important so far as I am concerned.

THE PRESIDENT: He is released on the usual terms.

(Whereupon, the witness was excused.)

THE PRESIDENT: Mr. Cunningham.

MR. CUNNINGHAM: Next, I would like to take up the relations between Japan and Soviet Russia after the conclusion of the Tri-Partite Pact.

I first call to the Court's attention Article V of the Tri-Partite Pact which says: "Japan, Germany and Italy affirm that the aforesaid terms do not in any way affect the political status which exists at present as between each of the three contracting parties and Soviet Russia" -- exhibit 43.

Exhibit 2735A, Prince KONOYE's Memoir "On the Tri-Partite Pact," transcript pages 24,290-24,307.

I next call the Court's attention to defense exhibit 2735A, Memoir of Prince KONOYE "On the Tri-Partite Pact," and specifically refer to KONOYE's statement that one of the principal aims of the Pact was the improvement of Japanese-Russian relations, pages 4 and 5. The same peaceful intention of the Japanese Government and understanding with Germany in this regard at the time of the conclusion of the Pact is also shown in prosecution's exhibits Nos. 549, 550, 552, and 555, transcript pages 6323 to 6343, 6350 to 6379, 6396 to 6399; and also on 13 April 1941 the Neutrality Pact between Japan and Soviet Russia was concluded (exhibit No. 45).

I now offer in evidence defense document

No. 1639, a telegram sent by the German Ambassador in Moscow to the German Foreign Minister in Berlin on 13 April 1941, to show the cordial relations between Japan and Russia at the time of the conclusion of the Neutrality Pact, that is, more than half one year after the conclusion of the Tri-Partite Pact.

THE PRESIDENT: Brigadier Nolan.

BRIGADIER NOLAN: May it please the Tribunal, with this document the point has arisen that, although on its face a document may be admissible, having no probative value it becomes inadmissible before this Tribunal. In paragraph 1 we find a German diplomat, Schulenburg, informing the Foreign Minister what the Italian Ambassador had told him that MATSUOKA -- what MATSUOKA had informed the Italian Ambassador was contained in a letter from MATSUOKA to Molotov. In the second paragraph we find the same German diplomat, Schulenburg, informing the Foreign Minister of a question put to MATSUOKA by the Italian Ambassador in Moscow concerning a discussion which took place between MATSUOKA and Stalin. The third paragraph describes the scene at a railway station from which it is sought to draw some conclusions upon international

relations.

The prosecution submits that the Tribunal is entitled to better proof of the facts sought to be proved by this document and that it should be rejected in its entirety.

MR. CUNNINGHAM: Your Honor, the Russian prosecution has asserted that the Tri-Partite Pact was aimed at them. This answers in some respect that allegation. You cannot possibly determine the probative value of this document by reading it isolated from all other powerful political documents which preceded it and which come later.

THE PRESIDENT: What bearing has it on Soviet-Japanese relations? It has some bearing on Soviet-German relations. Schulenburg apparently was, according to him, the recipient of a cordial greeting but he does not say whether what he heard about MATSUOKA came to him from the Italian Ambassador or through somebody else. There certainly is a reference to a Japanese concession at Sakhalin, but how that knowledge came to Schulenburg does not appear.

MR. CUNNINGHAM: Well, if it appears from the later documents that that same information came from other sources, I think it is rather immaterial how it came to Schulenburg if it is a fact. And this is the best evidence of this that we have available on this particular topic, aside from the corroboration which comes in the later documents.

THE PRESIDENT: At best, you are tendering out of order. The only parts that bear on the issues are paragraphs 1 and 2, and we do not know really the source of that information.

MR. CUNNINGHAM: Well, let's take 1 and 2 --

THE PRESIDENT: There is a link missing between Schulenburg and the Italian Ambassador.

MR. CUNNINGHAM: Well, let's take 1 and 2 and tie it in later with other documents and I am satisfied that our proof is in order. I had hoped that this short document would be read into the record without many minutes of argument so that we could go on to our next element of proof. It really doesn't justify a half hour of all of our time.

THE PRESIDENT: That is the test, is it, brevity? You can get the most malicious, irrelevant lie in one line, sometimes.

By a majority the Court upholds the objection and rejects the document.

MR. CUNNINGHAM: I now offer in evidence defense documents 1698 A-H, excerpts taken from a book "Tokyo Record" by Otto D. Tolischus. The parent document is tendered for identification. Mr. Tolischus was a correspondent of the New York Times in Tokyo succeeding Mr. Byas, who is one of the best experts on oriental affairs, in the crucial days of 1941, and met often with responsible people of Japanese public life. His observations will undoubtedly help the Tribunal in understanding the atmosphere of Japan at that time. I might add that Mr. Tolischus had been expelled from Germany on account of his anti-Nazi correspondence before he came to Japan. I will offer the first one first and I want to offer them individually for what each one represents.

I now offer defense document 1698-A as a preliminary document to show the approach of Mr. Tolischus to Japan.

THE PRESIDENT: Brigadier Nolan.

BRIGADIER NOLAN: If it please the Tribunal, to say that this document has no probative value would be to flatter it. In the submission of the

prosecution, it has no value whatsoever in this case.

THE PRESIDENT: A Colleague regards it as an insult to the Court to tender such a document.

MR. CUNNINGHAM: Your Honor, that is a sharp difference of opinion.

THE PRESIDENT: The objection is upheld and the document rejected.

MR. CUNNINGHAM: I now offer in evidence defense document 1698-B, an excerpt from the same book, for the purpose of showing the approach of Mr. Tolischus to the Tokyo atmosphere when he arrived.

THE PRESIDENT: Brigadier Nolan.

BRIGADIER NOLAN: If it please the Tribunal, if that be the purpose for which this document is offered, I submit it ought to be rejected out of hand. I submit that the approach of the author to the Tokyo atmosphere does not concern this Tribunal.

So far as the document itself is concerned, it is pure journalism, an account of a conversation at a luncheon party. If it had appeared in a newspaper, we submit it would have been rejected, and the fact that it appears in a book adds nothing to its probative value.

THE PRESIDENT: We note that MATSUOKA played with his moustache.

MR. CUNNINGHAM: Well, that was a characteristic of MATSUOKA. Your Honor, he also engaged in power politics, which is the subject at hand here for investigation, and I think that what MATSUOKA said to the reporter of the New York Times was making history at that time contemporaneously with the happening of these great historic events.

THE PRESIDENT: I notice, too, that observations of MATSUOKA did nothing more than draw smiles from the people who heard them, including this man. We are asked to believe what they found incredible.

MR. CUNNINGHAM: No, your Honor --

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MR. CUNNINGHAM: No, your Honor --

THE PRESIDENT: If this is admitted at all it must be for what MATSUOKA said bearing on issues, and one of those things the people who heard him did not believe.

MR. CUNNINGHAM: Well, your Honor, what MATSUOKA said about the Tripartite Pact in this second page seems to hit right on the nose what we are trying to show here and he said it then, he said it again and again and again, and he wasn't making people smile later on when he said it.

THE PRESIDENT: Why should all these irrelevancies be read into the record? There may be a statement of fact here and there, but why put in all this rubbish?

MR. CUNNINGHAM: Your Honor, that is the observation I made when you were admitting the prosecution's evidence, but I had no control over that.

THE PRESIDENT: That is not so. The prosecution read their material down to what was relevant and material, and we saw to it.

MR. CUNNINGHAM: Your Honor, if you will read my objections then you will see they are just exactly the same contentions as I contend now. I ask that parts be read into the record, on page 2, about what MATSUOKA said about the writing of the Tripartite Pact.

Now, he didn't say that to anybody else in the world probably, that one statement he made to this reporter, and that specific language was probably the only utterance MATSUOKA ever made exactly stating those particular words, and that is what I would like to have in the record.

THE PRESIDENT: By a majority the Court upholds the objection in part, but it admits the document on the usual terms to this extent only: that part on page 2 commencing with the words "What about the alliance?" down to the end of the document.

MR. CUNNINGHAM: I would like to read it after the recess.

CLERK OF THE COURT: Defense document 1698, being the Tokyo Record, will receive exhibit No. 2752, and the excerpt therefrom will receive exhibit No. 2752-A.

(Whereupon, the document above referred to was marked defense exhibit 2752; the excerpt therefrom being marked defense exhibit 2752-A. and received in evidence.)

THE PRESIDENT: We will recess for fifteen minutes.

(Whereupon, at 1049, a recess was taken until 1100, after which the proceedings were resumed as follows:)

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

THE PRESIDENT: Mr. Cunningham.

MR. CUNNINGHAM: I now offer to read exhibit 2752-A, page 2, commencing with the words:

"'What about the alliance with Germany and Italy?' I asked. 'America feels very strongly about it.'

"MATSUOKA looked up sharply. Then he said:

"'I wrote that treaty myself and I conducted all the final negotiations with the Germans. I know just what that treaty means. And I can tell you that there is nothing in that treaty compelling Japan to go to war in the Pacific. I told the Germans so, and they accepted my interpretation. We'll decide for ouselves what we are going to do.'

"'Ah,' I thought, 'a proviso I did not know about.'

"'But will the Army agree?' I ventured to suggest.

"MATSUOKA played with his mustache.

"'Well,' he finally replied, 'it's a question of personal trust. I am willing to stake my whole political career on this. If I should fail, I would withdraw from politics entirely. But if President Roosevelt would only trust me, I can guarantee that I

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to show that the purpose of MATSUOKA's visit was something else. We are trying to show, by this, the real purpose. This is the manner in which the people of the United States of America were informed as to the purpose of MATSUOKA's visit to Moscow and Berlin.

THE PRESIDENT: By a majority, the objection is upheld and the document rejected.

MR. CUNNINGHAM: I now offer in evidence defense document 1698-E, which I do not care to take too much time to debate. I just ask the Court to consider it for what light it throws upon, and I ask that I be permitted to read it without explanation.

THE PRESIDENT: Brigadier Nolan.

BRIGADIER NOLAN: If it please the Tribunal, we object to the document. It purports to contain an account of what appeared in a Japanese newspaper concerning an interview with Prince KONOYE. The Tribunal, we submit, would not admit the newspaper containing the interview and will not admit a secondhand account such as this.

THE PRESIDENT: The Tribunal upholds the objection and rejects the document.

MR. CUNNINGHAM: I now refer to defense exhibit No. 2735-A, at pages 24,280 and 24,307, Prince KONOYE's memoir on the Tri-Partite Pact, in which Prince

KONOYE stated that Germany went to war against Russia despite the Japanese urging not to do so, and that the German-Russian war shattered the very foundation of the Tri-Partite Pact.

I now offer in evidence defense document 206-E (82), an excerpt taken from Ambassador Grew's book "Ten Years in Japan," which is his diary of 26 June 1941, to show that Grew recognized that the German-Russian war had shattered the foundation of the Tri-Partite Pact.

THE PRESIDENT: Brigadier Nolan.

BRIGADIER NOLAN: If it please the Tribunal, the first paragraph, as will be observed, commences with the two words "we learn." The source of this information is not divulged. The second paragraph sets out the opinion of Mr. Grew of the consequences of the Soviet-German war.

We submit that the document has no probative value and should be rejected in its entirety.

MR. CUNNINGHAM: Well, your Honors, if Mr. Grew was here, this question would be put to him, and we cannot help but assume that he would answer the question now just as he noted the question in his book so many years ago when the events were taking place. It was his responsibility to keep his government

informed on the political significance of the historic events which were taking place at that time. Until a better authority comes along, we must take his word as the best living authority on Japanese-American relations and reactions. These two statements go pretty much to the heart of a couple of the vital issues involved in this case.

THE PRESIDENT: The Tribunal upholds the objection and rejects the document.

MR. CUNNINGHAM: I next call the Court's attention to prosecution exhibit 805, transcript pages 7,981-7,982, telegrams sent from the Foreign Office in Tokyo to the Japanese Embassy in Berlin on 6 December 1941, which shows that Japan wanted absolutely to keep peace with Russia, even at the risk of postponing the conclusion of the No-Separate Peace Treaty. I will read from exhibit 805 the part not read by the prosecution. Page 1, marked --

THE PRESIDENT: Mr. Comyns Carr.

MR. COMYNS CARR: Your Honor, if my friend reads the first paragraph it will be apparent that his description of the contents is entirely inaccurate.

THE PRESIDENT: Read the part not read by the prosecution but in evidence. We will form our own conclusion.

MR. CUNNINGHAM: I read from exhibit 805 of the prosecution:

"From the standpoint given"---

Page 1, beginning with the second paragraph. The first paragraph was read by the prosecution, as I understand it.

"In doing this, explain to them at considerable length that insofar as American materials being shipped to Soviet Russia through any point lying within

the scope of our intelligence are concerned, they are neither of high quality nor of large quantity, and that in case we start our war with the United States we will capture all American ships destined for Soviet Russia. Please endeavor to come to an understanding on this line.

"However, should Foreign Minister Ribbentrop insist upon our giving a guarantee in this matter, since in that case we shall have no other recourse, make a -- statement to the effect that we would, as a matter of principle, prevent war materials from being shipped from the United States to Soviet Russia via the Japanese waters and get them to agree to a procedure permitting the addition of a statement to the effect that so long as strategic reasons continue to make it necessary for us to keep Soviet Russia from fighting Japan (what I mean is that we cannot capture Soviet ships), we cannot carry this out thoroughly.

"In case the German Government refuses to agree with 1 and 2 and makes their approval of this question absolutely conditional upon our participation in the war and upon our concluding a treaty against making a separate peace, we have no way but to postpone the conclusion of such a treaty. This point is intended for you to bear in mind."

I now call the Court's attention to prosecution exhibit 812A, transcript page 8014 to 8020, memorandum regarding conversation between OSHIMA and Ribbentrop on 6 March 1943, which shows clearly that the Japanese Government also in 1943 refused the German request to go to war against Soviet Russia.

I call the Court's attention to exhibit 2693, transcript page 23,559-23,560, excerpts from the interrogation of OSHIMA, Hiroshi on the 22nd of April 1946, which shows that Japan continued to refuse the German request to join in the war against Soviet Russia.

THE PRESIDENT: Mr. Comyns Carr.

MR. COMYNS CARR: May it please the Tribunal, the prosecution must again protest against the defense introducing comments on prosecution exhibits which entirely misrepresent their character. If the Tribunal will look for themselves at exhibit 812A they will see that my friend's comment is misleading.

THE PRESIDENT: We will decide these matters for ourselves. Mr. Cunningham does not follow the conventional form of making submissions, but he makes assertions.

MR. CUNNINGHAM: Well, if your Honor please, I hope you don't think I have the time or energy to

peruse all the documents and the recommendations that are made to the documents.

MR. COMYNS CARR: Your Honor, that is why the prosecution objects to misleading comments upon other parts of the case.

THE PRESIDENT: They offend and provoke, but they do not mislead, rest assured.

MR. CUNNINGHAM: Well, there is no intention to do either, your Honor, and we are only adopting the same procedure which was followed by the prosecution.

THE PRESIDENT: The prosecution did not offend in that respect, nor did other defense counsel -- American defense counsel.

MR. CUNNINGHAM: I didn't hear that last.

(Whereupon, the statement of the President was read by the official court reporter.)

MR. CUNNINGHAM: Well, I should like to have your particularize, your Honor, if you are making an allegation against me.

THE PRESIDENT: The transcript is your answer.

MR. CUNNINGHAM: Well, by the same token, that is my only answer to the Tribunal.

I now call attention of the Court to exhibit

2676, transcript pages 23,303-23,345, affidavit of TANAKA, Shinichi, to show that the Tri-Partite Pact never affected in any way the annual operational plan of the Japanese Army against Russia, and that Japan did not feel obliged to help Germany in case of German-Russian war. Page 6, item 9, of the affidavit concerns this point.

Proof will now be offered as to the lack of Japanese-German cooperation in the matter of Indo-China. Prosecution's charge that Japan utilized German pressure in the negotiations with the French Government concerning French Indo-China will be refuted. I should modify that to say at least attempt at refutation.

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Whalen & Duda

Defense document 1646, the statement of the Governor- General of French Indo-China, 24 September 1940. First, I offer in evidence a statement of the Governor-General of the French Indo-China, 24 September 1940, which appeared in the Asahi Shimbun, to show that the entry of Japanese troop in northern French Indo-China in September 1940 was voluntarily agreed between the governments of Japan and France.

THE PRESIDENT: Mr. Oneto.

MR. ONETO: We object to document 1646, and ask the Court to reject it. This document has no probative value. It deals with information published in a Japanese newspaper emanating from the Domei News Agency, which, in turn, claims to have received it from another news agency. It is not even hearsay, but hearsay from hearsay. Such a document ought not to be taken into consideration by the Tribunal in view of its usual ruling in this case. It is not the proper method of proof, and such a matter must be proved in the proper way.

MR. CUNNINGHAM: I only offer to read the quotation, the statement of the man who was responsible for stating the policy and the situation as he found it.

If the French prosecutor can say that this statement is not true, then perhaps it should not be

admitted, but until they show evidence to the contrary, I think this should be admitted.

THE PRESIDENT: By a majority, the Court upholds the objection and rejects the document.

MR. CUNNINGHAM: I now offer in evidence defense document No. 1640, a memorandum signed by Woermann dated 23 July 1941, to show that the French Government came to an agreement with Japan concerning joint defense of French Indo-China without any pressure from the German Government, and that therefore no collaboration between Japan and Germany existed with respect to this matter.

Mr. Levin will take this over for a minute.

MR. LEVIN: (Reading) "Berlin, 23 July 1941."

THE PRESIDENT: Mr. Levin, it hasn't been dealt with yet.

MR. LEVIN: Yes.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1640 will receive exhibit No. 2753.

(Whereupon, the document above referred to was marked defense exhibit No. 2753 and received in evidence.)

MR. LEVIN: I now read defense document 2753 -- rather, defense exhibit.

"Berlin, 23 July 1941.

"Minister Cosmelli brought out today, as announced by the telegram No. 636 of 22 July from Rome, the following:

"The Japanese Ambassador asked upon instruction the Italian Government to take steps to the French Government in order to support the Japanese note to France concerning the concession of fleet bases, etc., in Indo-China. Anfuso answered that Italy is not represented in Vichy and that (which is not mentioned in the telegram from Rome) the contact with the French Government exists only through the armistice commission, which cannot usually be appealed concerning such questions.

"Mr. Cosmelli inquired upon instruction whether we received corresponding Japanese request and whether we had taken a step in Vichy.

"I told Mr. Cosmelli that the Japanese Government informed us of the matter and also expressed the wish that we may use our influence on Vichy. Meanwhile however the French Government has" -- there is a word there that is not readable -- "accepted the Japanese requests, although with some changes and with the statement that this happened under duress. The French Government declared to us that it wanted to

make contact with us beforehand, but the Japanese requests were so urgent that it could not do so. Under these circumstances there was no case for us to use our influence on the French Government. The Japanese Government knows that we shall not obstruct her in the matter."

We now offer in evidence defense document 206-E(87), an excerpt taken from Ambassador Grew's book, "Ten Years in Japan," which is his diary of 25 July 1941, to show that the official spokesman of the French Government declared at that time that the occupation of strategic points in southern French Indo-China by Japan was carried out as a result of voluntary agreement between Japan and France without German pressure.

THE PRESIDENT: Mr. Oneto.

MR. ONETO: If the Tribunal please, we object to this document and ask the Tribunal to reject it.

It is an excerpt from the diary of former United States Ambassador Grew, entitled "Ten Years in Japan." Mr. Grew did not hear this declaration directly. By the context, we assume that he learned it from newspapers or from some other undeclared source. Therefore, Mr. Grew does not know it from his own knowledge. It is mere hearsay. This excerpt is

without probative value and does not constitute the proper method of proof. For this reason, I ask the Tribunal that this document be rejected.

MR. LEVIN: We submit, if the Tribunal please, that the reasons assigned for not admitting this document in evidence are not very valid. The principal argument of the French prosecutor is that this is largely hearsay, and naturally we will concede that to be a fact. However, the ambassador from the United States obtained his information in the course of his duties, made a note of that information, and has recorded it; and, therefore, it is certainly admissible here. It seems to be a record of contemporaneous information which he received.

THE PRESIDENT: By a majority, the Court upholds the objection and rejects the document.

MR. LEVIN: I now offer in evidence defense document 1683, an official document of the Japanese Foreign Office, which is the record of conversation between Foreign Minister TOYODA and Ambassador Grew on 26 July 1941 concerning entry of Japanese forces into southern French Indo-China and American countermeasure thereto. Foreign Minister TOYODA explained the purpose of Japanese advance and denied any German pressure or collaboration with regard to this question.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1683 will receive exhibit No. 2754.

(Whereupon, the document above referred to was marked defense exhibit No. 2754 and received in evidence.)

MR. LEVIN: I now read exhibit 2754. I omit the formal part.

"1. The Minister first asked the Ambassador if he reported to his government on the matters dealt with in detail last night, and Ambassador Grew replied to the effect that he had 'telegraphed the whole text of your memorandum.'

"2. Then the Minister asked, 'Have you made any efforts to exert some of your influence upon your government in this respect?' To this the Ambassador replied, 'I am very sorry that the situation has become too seriously strained to allow any individual influence to compromise the measures taken by America; now all is out of my hands.' Saying that the Minister should have been informed by the report of Ambassador NOMURA, Ambassador Grew read out the full text of the copy of a telegram concerning the talks at the interview between Ambassador NOMURA and Mr. Welles, the Under Secretary of State, on July 23.

"To the question of the Minister as to whether there was any room for consultation about the measures taken by the American Government with regard to the arrangement which the Japanese Government had adopted toward French Indo-China, the Ambassador replied as follows:

"'Under the present situation, there seems to be no room for it. America has offered a period of time in which Japan might arrange according to the principle of free trade and economical equality and make some orientation of internal public opinion for that purpose. This proposal of America should have been, at the same time, useful for Japan too. As such is the situation, I should like to ask you whether there is no room to refrain from the recent occupation by the Japanese forces.'

"To this the Minister instantly and definitely replied, 'No.'

"3. Then the Minister related that the recent advance of Japanese forces into Southern French Indo-China was, as explained in detail last night, nothing but an unavoidable measure forced upon Japan for the maintenance of peace in the Pacific in consideration of the circumstances strengthening the anti-Japanese enveloping campaign and implied no other intention.

"To this Ambassador Grew replied that he could not help regretting the difference of opinion with regard to the so-called anti-Japanese envelopment the Minister referred to. Though America had firmly held the policy of 'no threat' toward Japan, she couldn't help but feel that, in view of the attitude which had

hitherto been taken by the Japanese Government, Japan was preparing for a southward advance policy at the sacrifice of other countries in each case.

"So the Minister repeatedly emphasized that there were misunderstandings in this regard on the side of America. Ambassador Grew, however, persistently repeated that America had no choice than to resort to 'acts and facts' as the standpoint from which to judge the attitude of Japan.

"4. Then the Minister referred to the substance of the copy of the telegram which Ambassador Grew has just read and revealed his views on the matter in detail, asking the Ambassador's explanation on the following points:

"(a) According to the view of Under Secretary Welles, the recent measures taken by Japan toward French Indo-China seemed as if taken under the pressure of Nazi Germany. This, however, is a false view absolutely contrary to the facts. Japan adopted the recent measures as the result of peaceful agreement between the governments of Japan and France for the defense of French Indo-China. (Ambassador Grew declared on this point that he was very glad to hear the Minister make this explanation and that he would report on this point by wire to his home government without fail.)

Frankly, French Indo-China authorities themselves are so anxious that they cannot be sure that French Indo-China in the future would not follow the same course as Syria.

"(b) Under Secretary Welles regarded the recent advance of Japanese forces into Southern French Indo-China decisively as if it implied the intention of making it an advance base for another area. This is also an absolute misunderstanding. As I stated repeatedly, the aim of our recent measures is nothing but the maintenance of peace in the Pacific and implies no false intention. I feel the utmost regret that America took such measures as the recont ones in spite of the sincere desire of the Japanese Government not ot provoke such ones on the part of America.

"(c) The statement of Under Secretary Welles contains the term 'no basis for continuing, etc.' as Secretary of State Hull's words. Does it mean the closing of the talks which are now in progress concerning the readjustment of the diplomatic relations between Japan and America? (To this Ambassador Grew replied that although he had not sufficient knowledge about the contents of this talk and was not in a position to say anything on this matter, it can be construed, according to his merely private opinion, as not to have

meant the closing of the talk, because it contains the term 'unable to see, etc.' In short, nothing can be said so far as the telegram is concerned.)

"The Minister then asked the Ambassador to disclose his unreserved private opinions on this talk under tacit agreement as being off-the-record, which the Ambassador refused to do on the pretext that he knew nothing about the matter.

"The part of the telegram which the Minister referred to reads as follows: 'Mr. Hull was unable to see that any basis was offered for continuing the talks which Admiral NOMURA and Mr. Hull had been conducting.'

"5. The Minister stated that he sincerely regretted to see American-Japanese diplomatic relations reaching the recent stage within a week after the formation of the new cabinet in Japan. This was utterly to be attributed to the misunderstanding by America of the true intention of the Japanese Government. Considering its firm desire to check such a result, the Imperial Japanese Government deeply regretted to see it.

"To this Ambassador Grew replied that he had regretted seeing public opinion in Japan emphasizing only American misunderstanding of Japan's real intention and the newspapers reporting merely on discussions among

leading circles in all quarters in Japan to blame the so-called misunderstanding on the part of America with some degree of unwillingness to report on the real policy of America. He was very glad to know that the recent entry of Japanese forces into French Indo-China was, according to what the Minister had just expressed, nothing but a peaceful advance. He had deeply deplored that America had been forced to take the recent measures against Japan. He heartily hoped that the relations between the two countries would not become worse than ever.

"6. The Minister stated that he was afraid that the American-Japanese relations would face the unhappiest stage in case more irritating measures against Japan should be taken by the American Government. He wished especially to emphasize this point. Frankly, the Japanese Government had made every effort to suppress the unpleasant feeling cherished by its nation at the enforcement of aid to the Chiang Regime by the American Government. But it would fall into a more difficult stage if the situation should become worse than ever.

"To this Ambassador Grew replied that in this regard the situation had been just the same in America. In spite of the daily intensifying pressure of public opinion demanding the government to take more rigorous

measures against Japan, such as the anti-Japanese petroleum embargo, the American Government had not yet gone so far as to carry out the petroleum embargo. In this regard the public in Japan had not been given any knowledge of the real facts concerning the American policy or her true intention of aiming to keep friendly relations with Japan. The Ambassador, however, had been optimistic regarding the improvement of American-Japanese relations. At the time of the YONAI Cabinet, he held strictly confidential talks in camera with Foreign Minister ARITA to improve the diplomatic relations between the two countries. This talk, however, met with failure on the very eve of its closing as the cabinet unfortunately clashed. This time there occurred the recent entry of the Japanese forces into French Indo-China too, when the conversation on the readjustment of American-Japanese diplomatic relations was going on. He could not help denouncing it as contrary to the whole spirit of the conversation. But he did not necessarily regard it as doing away with hope for the future. He wished to be relied upon as he would do his best in this regard.

"7. The Minister related that he was sorry to see the recent stage, considering especially that it was immediately after his assumption of the post of

Foreign Minister. He wished to ask the Ambassador for his cooperation with the Minister's effort to do his best. To this Ambassador Grew replied that he wished as well not to give up hope for the future despite the present situation.

"The interview was closed with the promise of Ambassador Grew to send a report on today's talks by wire to his home government."

THE PRESIDENT: Will you finish this section of the defense case tomorrow, Mr. Cunningham, or can we expect to be still sitting on Monday?

MR. CUNNINGHAM: The answer to that, your Honor, lies here more than here (indicating). But I shall try very hard to finish today, but--

THE PRESIDENT: We have heard enough. We don't want any further discussion.

MR. CUNNINGHAM: May I say one more word that has been provoked? I should not like to penalize my colleagues by hurrying to get through today and take a day off their recess, don't you see.

THE PRESIDENT: It is not necessary to get through today to save that day of the recess; you still have tomorrow.

MR. CUNNINGHAM: Well, my thought was, does the recess begin on the 23d whether I finish this

afternoon or tomorrow noon?

THE PRESIDENT: It is fixed to begin on the 23d of June. If you finish many days before we will regard the recess commencing as of the time you finished. But don't keep us here just for the sake of giving your colleagues another day's recess.

We will adjourn until half past one.

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

Greenberg & Reichers

AFTERNOON SESSION

The Tribunal met, pursuant to recess, at 1330.

MARSHAL OF THE COURT: The International Military Tribunal for the Far East is now in session.

THE PRESIDENT: Mr. Cunningham.

MR. CUNNINGHAM: If the Tribunal please, I now offer in evidence, on the same subject as the one before lunch, defense document No. 1682, an official document of the Japanese Foreign Office, record of conversations between Foreign Minister TOYODA and Ambassador Grew on the 27th of July, 1941 concerning the entry of Japanese forces into Southern French Indo-China, and to show that TOYODA, in the conversation, also denied emphatically any German pressure in the matter.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1682 will receive exhibit No. 2755.

(Whereupon, the document above referred to was marked defense exhibit No. 2755 and received in evidence.)

MR. CUNNINGHAM: I now offer to read defense exhibit 2755, the record of the conversation between Minister TOYODA and Ambassador Grew on the 27th of

July. These conversations were conducted strictly confidentially and informally, off the record, at the request of the Ambassador. (Reading)

"AMBASSADOR GREW: 'The reason why I wanted to see you today is because I have just received a telegram from my Government, which I have just read and found it to be of great importance and I wanted to inform you of it immediately. I am doing this at my own discretion and not by any instructions from my Government. Therefore, I should like to talk with you strictly confidentially and informally "off the record". Then he read the entire copy of the telegram concerning the contents of the strictly confidential, informal and "off the record" conversations between Ambassador NOMURA and the American President, conducted on 24 July at the White House at the request of the Ambassador.

"'The points referred to by the President in the conversations are as follows:

"1. 'As the American President, I have still been permitting the export of oil to Japan in spite of the strong pressure of American public opinion, because I earnestly hope that the relations between Japan and America should not become worse.'

"2. 'The ambition of the Nazi Germans to conquer the whole world is now menacing more than

ever and this menace will not only affect the Western World but will extend to the Far East.'

"3. 'With regard to the encirclement against Japan, America is not taking these steps in the sense of turning against Japan but merely to guarantee the acquisition of her industrial raw materials. And therefore the steps taken by America are ones of self-defense.'

"4. 'In case Japan should send her forces to the Netherland Indies, Great Britain would immediately stand up to help them and, in view of the present close relations between Great Britain and America, we too would be obliged to wage war against Japan.'

"5. 'My proposal at this moment is that if Japan would refrain from occupying French Indo-China or, in case such steps have already been begun, would withdraw such forces, I as the President, am prepared to guarantee to the Japanese government that I would do everything in my power to obtain from the Chinese government, the British government, and the Netherlands government, and the Government of the United States would of course itself give a binding and solemn declaration to regard French Indo-China as a neutralized territory.'

"FOREIGN MINISTER: 'I should like to say on a few points that have caught my attention regarding the contents of the telegram.

"1. 'The steps taken by the Japanese government this time to advance her troops to French Indo-China were never enforced by the pressure of the Nazi Germans, but were taken according to Japan's own independent view. Moreover, ours is not such a state that would do anything because of the pressure of Nazi Germans.'

"Regarding this point, Ambassador Grew replied:

"'I had already reported in detail to my Government on the point you have just made, because you strongly asserted the point in our previous conversations.'

"The Foreign Minister reiterated:

"'According to my opinion, I am afraid the American Government has a prejudice against the Nazi Germans.'

"Then Ambassador Grew replied:

"'The American Government is obliged to acknowledge through experience the fact that the Nazi Germans have a scheme to conquer the world and are putting the plan into practice.

"'As I already reiterated in the past two meetings, the purpose of the steps taken this time to advance our troops to French Indo-China was nothing but defensive and precautionary measures on our part to cope with the situation which indicated a formation of an encirclement against Japan and we had no other intention whatsoever.'

"Ambassador Grew replied that concerning encirclement, the President had touched upon it in his talk with Ambassador NOMURA.

"Then the Foreign Minister, in order to confirm again the contents of the latest American proposal, requested him to paraphrase a part of the copy of the telegram.

"Thereupon, Ambassador Grew consented to his request to take notes on condition that the Minister should keep it absolutely secret and for his own information only.

"'At this juncture when the relations of Japan and America are getting worse and worse and are even threatening to deteriorate, Ambassador Grew reiterated and expressed his hope that the Foreign Minister would dwell upon the American proposal and use his statesmanship to tide over the present crisis.

"'The Foreign Minister replied:

"'I understood well all that your Ambassador has said just now. To my regret, however, it is too late to think over the proposal. Besides concerning the proposal of the President, I have received no report yet from Ambassador NOMURA, and therefore I cannot give the proposal any consideration immediately. But I promise you that I will give the matter careful consideration upon receipt of a report from Ambassador NOMURA.'

"Here Ambassador Grew repeatedly called the attention of the Minister and said:

"'I have absolutely no intention of interfering in the internal affairs of Japan. Up to this moment, the Japanese government has tried to check the excited feelings of the nation, but the report that the American Government has recently frozen the Japanese funds in America greatly stimulated the feelings of the Japanese people. Under such circumstances it is absolutely impossible to take up immediately the proposal of the American President. Anyhow, I regret very much to say that the proposal is too serious for me to handle it single-handed.'

"Then Ambassador Grew said:

"'Of course, I know quite well how important the time element is in a matter such as this. Besides, I myself am here with no authority whatsoever. The contents of the telegram however, are so serious that I did not wish to lose even a moment in seeing and informing you of them. So whenever you want my assistance, please do not hesitate to call me.'

"With that the interview came to an end."

I now offer in evidence defense document 206E(93), an excerpt from Ambassador Grew's book, "Ten Years in Japan," which is his diary of the 18th of August, 1941 concerning the conversation with Foreign Minister TOYODA, to show that Ambassador Grew was told categorically that no Japanese-German collaboration existed, in Indo-China matter, and Japan kept the negotiation with the United States of America secret to Germany. I might note that no place else is this conversation reported, as I understand it.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 206E(93) will receive exhibit No. 2756.

(Whereupon, the document above referred to was marked defense exhibit No. 2756 and received in evidence.)

MR. CUNNINGHAM: I think I will cut it and go from page 1 to the middle of page 2, and then from No. 11 on page 4. The rest is perhaps somewhat repetitious.

I now offer to read defense document 206E(93) which is exhibit No. 2756. (Reading)

"The Foreign Minister asked me to call this afternoon and we had the longest conversation that I have ever had with any Foreign Minister anywhere. It lasted for two and a half hours and the boys in the Code Room finished encoding my report at 5:35 A.M., while I myself was on the job until long after midnight.

"Apropos this conversation, it was a fearfully hot day, and as I wrote down his remarks, it was drip, drip, drip, so after the first hour Admiral Toyoda ordered cold drinks and cold wet towels to swab off with. He made a gesture to take off his coat and looked at me smilingly and questioningly. Of course I nodded, so we both took off our coats, rolled up our sleeves, and again pitched in to the work. The Minister speaks English moderately well and understands whatever I say without interpretation, but he always has INAGAKI, one of the American Bureau of the Foreign Office, present to interpret his own remarks after he gets to the "on-the-record" stage.

"Today the talk was so important that I wrote down everything he said, about a dozen pages of foolscap, and I almost had writer's cramp at the end. He is a sympathetic and very human type and

I think I like him more than any other Foreign Minister I have ever dealt with. Our personal relationship is very friendly. Today, while we were swabbing off with the cold towels, I said, "Admiral, you have often stood on the bridge of a battleship and have seen bad storms which lasted for several days, but ever since you took over the bridge of the Foreign Office you have undergone one long, continuous storm without any rest. You and I will have to pour some oil on those angry waves." The Minister laughed heartily and I guess he will relate that remark in cabinet, but he missed the opportunity to say: "All right, but if you stop sending us the oil, what are we going to do about it?"

"Our conversation began at 4 o'clock this afternoon and in an oral statement which took two hours and a half to be delivered, interpreted from Japanese into English and transcribed by me, Admiral TOYODA set forth a proposal of prime importance for solving the present critical situation between Japan and the United States. He pointed out the supreme importance of avoiding any leakage, especially, he said, to the Germans or Italians, and he hoped that in my report to Washington no risk would be incurred

of my telegram being read by others. I said that the telegram would be sent in a code which I hoped and believed was unbreakable: I said that so far as I was concerned the only persons who would be informed of the proposal would be Mr. Dooman and my confidential secretary, Miss Arnold, who would transcribe the conversation. The Minister seemed to be entirely satisfied with these assurances.

"The Minister commenced by stating that this was to be a long and strictly confidential talk on a very important matter in which he asked for my cooperation. He said that he would speak to me frankly as a naval officer and not as a career diplomat. I replied that I myself had no use for Old World diplomacy and was accustomed to speaking also with the utmost frankness and straight from the shoulder. What follows is a paraphrase of the summary of Admiral TOYODA'S remarks:

"1. The stationing of Japanese forces in Indo-China, resulting from the protocol for the joint defense of Indo-China, was a peaceful and protective step taken on Japan's own initiative and no German or other pressure had been exerted.

"2. In spite of the foregoing assurances

conveyed to me and also to Admiral NOMURA, the United States had assumed that this was the exercise of armed force at the instigation of Germany and had taken an economic step (our freezing order) which had brought our countries very near to a complete severance of economic relations and had left a big black spot on the long history of peaceful relations between the United States and Japan.

"3. The Japanese people, said the Minister, share his view and public opinion has become extremely excited, but the Government has done all in its power to repress this excitement by prohibiting posters, public gatherings, and hostile press comment.

"4. The reply of the Japanese Government to the President's proposal of July 24 was sent immediately to Washington, and when Secretary Hull returned to Washington on August 6 Ambassador NOMURA had handed him the reply. This reply had been drafted after careful and complete study and with a view to meeting as far as possible the intentions of the American Government.

"5. The Japanese reply contains important proposals which would bind both Governments; Japanese forces in Indo-China would be immediately withdrawn when the China affair is settled; it contains

three points binding each party.

"6. Nevertheless, the President's proposal was an independent one dealing exclusively with the joint-defense measure of Indo-China. The Japanese reply was also accordingly restricted to that subject and was to be dealt with independently of the general adjustment of relations which had been discussed between Secretary Hull and Admiral NOMURA."

Paragraph 11 on page 4:

"Admiral TOYODA fears that the breakdown of peace between the two countries would not only be an extremely miserable matter in itself; Japan and the United States, as the last two countries which hold the key for maintaining world peace in the present state of the world, would make a bad situation still worse by failing to practice statesmanship. This would leave the blackest spot on human history, and future historians would find themselves unable to understand the nature of the breakdown. Finally, if we as statesmen allow such a situation to arise it will mean that we have failed in our responsibilities to both peoples."

No. 20 on page 6:

"The foregoing is the substance of the highly serious and absolutely secret proposal for which the Minister especially asked me to visit him today. In view of its importance and delicate nature he does not need to ask me to keep this only to myself, as it is not difficult to imagine what would occur if it should leak out. This is the reason why he has so far been instructing only Admiral NOMURA to discuss and to dispose of the matter in the United States, but in order to make this proposal realized he has most frankly expressed his opinion to me so

that he may have my h.lpful cooperation, and, if there should be any question concerning this proposal, he will be very glad to talk it over with me."

Next I propose to show that the Japanese Government, right after the conclusion of the Tri-Partite Pact, reopened the efforts for improving the Japanese-American relations, and that during the informal negotiations between Japan and the United States, which was kept secret to Germany, German suspicion as to the attitude of Japan grew and the Japanese-German relations suffered set-back.

I now offer in evidence defense document No. 401B(55), an excerpt from "Foreign Relations of the United States," which is a telegram from Steinhardt, United States Ambassador in Moscow, to the Secretary of State, dated 11 April 1941, to show that MATSUOKA endeavored in Moscow to spin a thread of negotiations with the United States of America through Steinhardt, and also declared that he did not commit anything in Berlin to the Germans. This is a telegram of the same nature as the one sent on 24 March 1941, which is prosecution's exhibit No. 1289, transcript pages 11,686-11,687, to which I call the Court's attention.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 401B(55) will receive exhibit No. 2757.

(Whereupon, the document above referred to was marked defense exhibit No. 2757 and received in evidence.)

MR. CUNNINGHAM: I read exhibit 2757, excerpt from "Foreign Relations of the United States," skipping the formal parts. (Reading)

"The Ambassador in the Soviet Union (Steinhardt) to the Secretary of State (Substance)

"Moscow, April 11, 1941 - 5 p.m.

"(Received 9:50 p.m.)

"This afternoon I called on MATSUOKA and, with reference to the conversation I had with him on April 8, I read to him the following set of excerpts from the report I had drawn up of what he said in the conversations:

"'(1) Mr. MATSUOKA had made no commitments either to Berlin or to Rome.

"'(2) Japan's reason for entering the Tri-Partite Pact was preservation of the peace.

"'(3) Japan was not under an obligation to go to war with the United States, but the situation might not be the same if the United States declar war on Germany.

"'(4) The Japanese Minister does not expect

a declaration of war on the United States by Germany, but if that action does take place, the Minister hopes that the United States will not make any more in the Pacific until Japan shall have made here position clear.

"'(5) Japan's obligation under the Tri-Partite Pact will be adhered to by the Government.

"'(6) Both Ribbentrop and Hitler had expressed to the Minister their desire that the sphere of war be limited, and had stated to him that involvement in a war with the United States was not their desire.

"'(7) The suggestion had been made to the Minister by Ribbentrop and Hitler that steps be taken by him leading to the discouragement of anti-American agitation in Japan.

"'(8) All three men had expressed desire for peace.

"'(9) Hitler's personal impression on the Minister had been favourable.

"'(10) Admiration for the way the British were fighting was expressed by Ribbentrop.

"'(11) Hitler would not attempt an invasion of Britain unless it became necessary, as his expectation was that he would win the war by aerial and

submarine activities against that country.

"'(12) Mr. MATSUOKA was unable to see any possibility that Britain would drive a wedge between Italy and Germany, Italy being in large measure already under German control.

"'(13) Russian demands had been so excessive that Mr. MATSUOKA had not made any real progress in his talks with the Russians.

"'(14) It was possible for the United States to be indifferent to the USSR, but Japan's alternatives were either to reach an agreement or to become embroiled.

Spratt & Yelden

"(15) The Minister desired that the war in China be terminated, and he had suggested that President Roosevelt could bring this about if he indicated to General Chiang Kai-Shek that further assistance would not be forthcoming from the United States should the latter refuse a just and honorable peace.

"(16) The Minister had expressed his desire for trust in him by President Roosevelt and the Secretary of State.

"MATSUOKA categorically indicated his approval as I read each statement. The only times he commented was when I read items (3), (8), (10), and (15), of which he gave the following amplifications.

"(a) Under item (3) Mr. MATSUOKA said that in his view Japan is obliged under the Tri-Partite Pact to go to war with the United States if the latter should declare war on Germany, but that Japan would first confer with Germany.

"(b) Under item (8) the Minister said that while they had expressed their desire for peace, Ribbentrop and Hitler had left him in no doubt that at the present time there was no possibility for peace and that several times Hitler had said to him emphatically that unless Britain capitulated there would be no peace.

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"(b) Under item (8) the Minister said that while they had expressed their desire for peace, Ribbentrop and Hitler had left him in no doubt that at the present time there was no possibility for peace and that several times Hitler had said to him emphatically that unless Britain capitulated there would be no peace.

"(c) Under item (10) he added that in Ribbentrop's opinion, as expressed to him, Britain at the present moment was in a stronger position defensively than she had been when the war started.

"(d) Under item (15) he expanded what he had previously said by stating that peace between China and Japan could come only as the result of direct negotiation between them; an intermediary would not be accepted by the Japanese public.

"Steinhardt"

I now offer in evidence defense document 1659, an official document of the Japanese Foreign Office which is an opinion of the German government handed to the Japanese government on 11 May 1941 that Germany was opposed to the Japanese-American negotiations unless certain conditions were met.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1659 will receive exhibit No. 2758.

(Whereupon, the document above referred to was marked defense exhibit No. 2758 and received in evidence.)

MR. CUNNINGHAM: I offer to read in evidence exhibit 2758:

"Summary of the Opinion of the German

Government as told by Ambassador Ott in Tokyo on 11 May 1941.

"It goes without saying that the Japanese Government itself would be in the best position to decide to what degree the proposal of the American President would restrict future Japanese action in Greater East Asia Co-prosperity Sphere. The German Government cannot but consider the proposal as originating from a far-reaching deliberation of the American President aimed at bringing about the relaxation of tension in the Pacific, in order to relieve the anxieties of the anti-war elements in the USA, and to advance in the established direction of participation in the war. The only way to check the determination of the leaders of the American Government to go to war has been to clarify the fact that American entry into the war will necessarily cause Japanese participation in the war. Therefore, there is no doubt that the American President is planning first to neutralize this fact and then to facilitate positive action on the European front.

"The policy of the American Government is to intensify de facto unneutral actions (patrol or convoy) without declaring war, to wait for counter-actions by Germany and Italy, and thus to shift the

responsibility of starting the war to the axis side. Therefore, the German Government thinks it proper for the Japanese Government in its reply to the USA (1) to emphasize that the continuance of actions contrary to international law such as patrol or convoy, now being taken by the American Government will be considered as intentional measures of the USA to provoke war, and that it will necessarily force Japan to enter the war, (2) to state clearly that the Japanese Government is ready to study American proposals if the USA refrains from such actions.

"In view of the grave effects this matter can have on the powers of the Tri-Partite Pact, the German Government asks of the Japanese Government that the content of the Japanese reply before being dispatched be confidentially shown to the German and Italian Government and that their opinions thereof be hard." "Heard," I presume that is.

I next offer in evidence defense document No. 1658 which is an official document of the Japanese Foreign Office, instruction of the German government to the German ambassador in Tokyo which was presented by Ambassador Ott to Foreign Minister MATSUOKA on 17 May 1941 to show that Germany was strongly displeased that Japan sent her reply to the United States without

waiting for German opinion, as shown by exhibit 2758, and requested full participation in the Japanese-American negotiations which request the Japanese government, as will be proved later, never complied with.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1658 will receive exhibit No. 2759.

(Whereupon, the document above referred to was marked defense exhibit No. 2759 and received in evidence.)

MR. CUNNINGHAM: I read from exhibit 2759, skipping the formal parts:

"Instruction of the German Government to the German Ambassador in Tokyo (brought by the German Ambassador in Tokyo, Ott, on the occasion of a conversation with Foreign Minister MATSUOKA on 17 May 1941)

"The German Government is of the opinion that the best way to prevent American participation in the war would have been for Japan to refuse decisively to negotiate on the American proposal. The German Government regrets that the Japanese Government did not wait the German opinion before sending its answer for the American Government. The Tri-Partite Pact was concluded last year as a political and moral union of

the three powers Japan, Germany and Italy, and its great aim was to prevent third countries from participating in the war. The Pact has attained its aim heretofore and it will show its effectiveness also in the future if the United front of Japan, Germany and Italy can be closely maintained. Any treaty entered upon by one of the signatories of the Tri-Partite Pact with third countries outside the Pact can be taken to mean a weakening of the Tri-Partite front and therefore a diminishing of the political effect of the Pact. If, nevertheless, the Japanese Government thinks it unavoidable to negotiate with the U.S. government concerning Japanese-American relations, it will at least be necessary to forestall the possibility of such an unfavorable effect as mentioned above, since the USA is virtually an enemy of the Axis powers (although according to the international law she is not).

"Therefore it must be made the cardinal point of the Japanese-American agreement that the obligation of the US government not to interfere in the war between Britain and the Axis (in a much clearer form than before) and the obligation arising for Japan from the Tri-Partite Pact are established clearly and unequivocally. All other stipulations must be dependent

on this cardinal point. Under these circumstances, the question of form would have the most important meaning. The second paragraph of the Japanese reply, which relates to the existence of the Japanese obligation arising out of the Tri-Partite Pact, set out the minimum of which should be referred to in a Japanese-American agreement; to deviate from or to weaken that minimum would bring matters to a downfall and, as a result, would contradict the spirit and meaning of the Tri-Partite Pact, ultimately making the Pact illusory.

"The German Government now has to assert the request that it be permitted to participate fully in the Japanese-American negotiations and be informed immediately of the answer of the USA. It will not comply with the relations of the Tri-Partite Pact if the Japanese Government receives American communications and decides the Japanese position in the future without first reaching an understanding with the German Government as to all of there important questions." "There," I think, is "t-h-e-i-r."

I now offer in evidence defense document 1641, a telegram from Ott to the German Foreign Office dated 30 August 1941 concerning a conversation with the Japanese Foreign Minister TOYODA to show that

Toyoda refused to communicate to Ott the contents of the message sent by Premier KONOYE to President Roosevelt and that the Japanese government did not take Germany in confidence regarding the Japanese-United States negotiations.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1641 will receive exhibit No. 2760.

(Whereupon, the document above referred to was marked defense exhibit No. 2760 and received in evidence.)

MR. CUNNINGHAM: I offer now to read in evidence exhibit 2760:

"Telegram (Secret Cipher process)

"Tokyo, 30 August 1941, 10.00 hours p.m." -- 10:00 p.m., it must be --

"Arrival, 30 August 1941, 20.00 hours" -- so it must not be "p.m." above --

"No. 1660 of 30.8 most urgent!

"Following the telegram of 29, No. 1657+)

"The Foreign Minister received me this afternoon in the presence of an interpreter. I described to him at first according to the telegraphic instruction of 25 August No. 1383*)the picture of the general situation, emphasized the weakening which the

Soviet Union meanwhile experienced, and pointed out to the unreadiness of the American armaments. (I told him that) in this situation Japan can freely make necessary decisions for the maintenance of her position and her prestige without risking anything.

"I requested the Foreign Minister to inform me of the details of the message of KONOYE to President Roosevelt. (I said that) I was afraid that this step might rouse in the U.S.A. the impression as if Japan is ready to give up an active action in the Pacific, and repeated our well-known argument as to the conclusions which can be drawn in the U.S.A. from the above impression only very easily, TOYODA answered that he could only confirm the statement of the Vice Foreign Minister AMAU of the previous day concerning the character of the KONOYE's message, and avoided to enter into a discussion on the expediency of the Japanese step. Japan wishes only in accordance with the aim of the Tri-Partite Pact to prevent America from entering the war. On my question about the first impression caused by the KONOYE's message he answered that the first conversation was only short and in view of the general character of the message no attitude of the American government have surely not yet expressed. A report of Ambassador

NOMURA has not arrived yet; he will however comply with me in view of the importance urgently expressed request for information of the American answer, as soon as such arrives. TOYODA did not comply with my request to have the text of the message of KONOYE.

"TOYODA was during the conversation strongly reserved as it suits his nature. As I hear, the expediency of the message of KONOYE is livelily discussed in the army and circles. Although in view of the attitude of the KONOYE cabinet one expected attempts to establish, if only temporarily, modus vivendi with the U.S.A. the news of a message of the Premier Minister to Roosevelt came unexpectedly. The publicity given to this step in the American press reflected here painfully and also left in the governmental circle an uncertain feeling, that possibly a different than the hoped for reaction might ensue. The government is endeavoring to keep the treatment of this matter in the press within a limited scope.

"(Signed) Ott"

I now offer in evidence an excerpt from "Hearings before the Joint Committee on the Investigation of the Pearl Harbor Attack," part 33, pages 1363-1364, an intercepted Japanese message from Berlin to Tokyo, dated 1 October 1941, to show that the German leaders were deeply suspicious of Japanese attitude in connection with the negotiations with the United States, and Japanese-German relations were very much strained at that time.

The parent document is tendered for identification.

CLERK OF THE COURT: Defense document No. 1500, being the volume entitled, "Pearl Harbour Attack," will receive exhibit No. 2761 for identification only.

(Whereupon, the document above referred to was marked defense exhibit No. 2761 for identification only.)

MR. CUNNINGHAM: I offer in evidence defense document 1676 as an excerpt from that volume.

THE PRESIDENT: Brigadier Nolan.

BRIGADIER NOLAN: May it please the Tribunal, we object to this document on the ground that there is nothing upon it to indicate by whom or to whom it was sent, and we submit that these

are matters about which the Tribunal should be informed.

MR. CUNNINGHAM: Well, your Honor, it indicates that it was from Berlin to Tokyo, and certainly the subject matter, Tri-Partite Pact and other documents, indicates that it was an official document which was intercepted, and naturally signatures are not attached to intercepted messages; and I submit that you have already accepted intercepted messages, unsigned as I understand it, from the prosecution, which should alleviate any objection on that. I refer to 802 and 803A.

THE PRESIDENT: They were messages I recollect, I think, intended for the Envoys KURUSU and NOMURA.

MR. CUNNINGHAM: I can tell you here in just a second who they were from and who they were to, but it is apparent that this was from the German Foreign Office to the German Ambassador here in Tokyo.

I have the information here. Exhibit 802 was an intercepted message from TOGO to OSHIMA; 802A was from TOYODA to OSHIMA, but they were unsigned.

THE PRESIDENT: At all events, we know the individuals to whom they were addressed. Here we

just have from Berlin to Tokyo.

MR. CUNNINGHAM: This is from OSHIMA to TOYODA.

THE PRESIDENT: It does not appear so on the face of the document.

Brigadier Nolan.

BRIGADIER NOLAN: If that explanation is acceptable to the Tribunal we will withdraw our objection.

THE PRESIDENT: Well, you should satisfy yourself, Brigadier Nolan, and not leave it to us to make a determination of fact unassisted. The only question is, who was the addressee.

BRIGADIER NOLAN: We are satisfied, sir, that the information is correct.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1676 will receive exhibit No. 2761A.

(Whereupon, the document above referred to was marked defense exhibit No. 2761A and received in evidence.)

MR. CUNNINGHAM: I now read from exhibit 2716A, skipping the formal parts at the top:

"From: Berlin.

"To: Tokyo.

"1 October 1941.

"On this the occasion of the first anniversity of the Tri-Partite Pact, Foreign Minister Ribbentrop has come to Berlin from the Imperial Headquarters especially and I have had several visits with him. Using this opportunity I, and the other members of the staff, have mingled with people from all classes of society and visited with them. I am endeavoring to sum up all these experiences and analyze the present state of feeling toward Japan held by Germany in this report to you.

"1. Ribbentrop said that he had absolute proof that, while reports of the content of the Japanese-American negotiations were withheld from Ambassador Ott, America was in secret communication with England in regard to the Japanese-American negotiations. Even Ribbentrop, who is supposed to understand Japan's position, expressed great dissatisfaction on regarding Japan's attitude.

"2. That the Foreign Office staff from Weizsacker down and also everyone in general were thoroughly disgusted with Japan was very apparent from their attitude toward myself and other members of the staff. Everyone who feels kindly disposed toward Japan is deeply concerned over this state of

affairs. Even those who do not come to the same conclusion that Ambassador Ott did in his telegram are outspoken in their dissatisfaction and expression of pessimistic views.

"I am trying to take the position in interviews with newspaper correspondents and others concerned with the outside that Germany is cognizant of the Japanese-American negotiations and that they are no indication of an alienation between Japan and Germany.

"3. Foreign diplomats and newspaper correspondents of third countries show great interest in the Japanese attitude and seem to consider it in a certain sense as a barometer by which the course of the European war can be judged. However, we receive the impression that the greater number feel that Japan is avoiding war because of the impoverishment resulting from the China incident and is taking a pessimistic attitude toward the course of the European war.

"4. Even though it might be said that Germany is prepared for these machinations of estrangement by third countries and that she is keeping up the pretense that there is no change in her feelings toward Japan, the fact that the

feeling of German leaders and the people in general toward Japan is getting bad is one that cannot be covered.

"Please bear this fact in mind. If Japan takes a wishy-washy attitude and goes ahead with her negotiations without consulting Germany there is no telling what steps Germany may take without consulting Japan.

"Please convey this to the army and navy.

"Relayed to Rome."

I now offer in evidence defense document 206 E(112), an excerpt from Ambassador Grew's book, "Ten Years in Japan," which is his diary of 29 October 1941, to show that at the time when the TOJO Cabinet was formed there was no close contact between Japan and Germany and that this fact was obvious to the American Ambassador in Japan.

THE PRESIDENT: Brigadier Nolan.

BRIGADIER NOLAN: May it please the Tribunal, the document does not disclose the source of the information contained in the items in the document other than to say "by members of another country's mission in Tokyo." I submit that this is not sufficient for the purposes of this Tribunal and that the document should be rejected in its entirety.

MR. CUNNINGHAM: I do not wish to argue the matter; I merely wish to read it if it is considered of any value.

THE PRESIDENT: By a majority the Tribunal sustains the objection and rejects the document.

MR. CUNNINGHAM: In order to show the lack of any collaboration between Germany and Japan, I would like to tender now defense document 1662, the affidavit of von Ribbentrop, signed by him on the 15th of October, 1946, the day before he was executed.

THE PRESIDENT: Mr. Comyns Carr.

MR. COMYNS CARR: May it please the Tribunal, the Tribunal has already rejected interrogations of Ribbentrop and extracts from his evidence before the Nuremberg Tribunal. While this affidavit is, indeed, entitled, "In these proceedings," it was taken under circumstances which obviously preclude cross-examination, which is invited by every line of it.

THE PRESIDENT: Does it comply with the essential requirements of a dying declaration? Can we say that he had a settled, hopeless expectation of death? Had the time for reprieve passed? We can't treat it as a dying declaration unless certain requirements have been met.

MR. COMYNS CARR: Your Honor, I am not quite sure about the position with regard to that.

THE PRESIDENT: We don't want to exclude these matters if we can possibly admit them, you understand, but we want to be sure where we are. My colleagues seem to think that at this stage he would have known that he was to be executed. The absence of cross-examination is not conclusive, of course, Mr. Carr.

MR. COMYNS CARR: No, your Honor. It is very much a matter of the desire of the Tribunal. If the Tribunal feel they would like to have it read, I shan't press the objection.

THE PRESIDENT: In the very special circumstances we overrule the objection and admit the document on the usual terms.

CLERK OF THE COURT: Defense document 1662 will receive exhibit No. 2762.

(Whereupon, the document above referred

to was marked defense exhibit 2762 and received in evidence.)

MR. CUNNINGHAM: I offer to read exhibit 2762 into the record.

"INTERNATIONAL MILITARY TRIBUNAL FOR THE FAR EAST.

"THE UNITED STATES OF AMERICA et al.

-Against

"ARAKI, Sadao et al

"A F F I D A V I T

"I, Joachim V. RIBBENTROP, being sworn on oath, do hereby depose and say that I was appointed by the Fuehrer the Ambassador at Large and the Plenipotentiary for Disarmament in April blank. Before that time I was a foreig political advisor to Hitler in non-official capacity. I was the German Ambassador to Great Britain from the summer of 1936 to 4 February 1938, when I was appointed the Foreign Minister of Germany.

"I met OSHIMA, Hiroshi for the first time in the summer of 1935. At that time OSHIMA was the Japanese Military Attache in Berlin. Thereafter we had several meetings at which German-Japanese relations were discussed principally. When OSHIMA was appointed the Ambassador to Germany in October 1938, I was the

Foreign Minister. He resigned his post and went home in November 1939 and returned again as Ambassador in February 1941.

"I. Anti-Comintern Pact

"The Anti-Comintern Pact was primarily an ideological pact. We Germans did not want to let Communism spread. Of course, there was also a political weight against Soviet Russia that was more or less the background of the pact. It is not true that this pact was directed against the democratic countries of the world. On the contrary. I tried hard after the conclusion of the pact to get Great Britain to join it, but was unsuccessful. I never had an impression that Japan might use the pact in her policy toward China or the South Sea area.

"II. China Incident

""hen in 1937 the China Incident broke out, I was in London and did not follow it very closely. Afterwards, I tried repeatedly to settle the dispute. I urged several times the Japanese to try to come to terms with China; I contacted the Chinese Ambassador in Berlin for that purpose. I remember also talking quite frequently to OSHIMA about the attempts to make peace with China, and OSHIMA showed a desire in the same direction.

"III. German-Italian Military Alliance

"OSHIMA did not in any way contribute to the German-Italian Military Alliance in 1939.

"IV. OSHIMA's Resignation

"OSHIMA resigned his post as Ambassador in 1939 after the Russo-German non-aggression pact was signed. No special reason was given by him to me officially for doing so.

"V. Tripartite Pact

"I can definitely say that our view in concluding the Tripartite Pact was to keep the United States out of the war. At the same time I may perhaps point out that we always wanted to be friendly with Japan. I wanted to get Russia to join the pact, but I did not succeed.

"VI. German-British War

"In the early part of 1941 I urged OSHIMA to ask that Japan go to war with Great Britain, but I wanted it done in such a way as not to include the United States. This conversation was merely diplomatic talking, but not planning. In Germany the right to plan such things was only held by the Fuehrer. I myself could not plan. OSHIMA, of course, as Ambassador, could do it still less than I.

"I cannot imagine that OSHIMA told me that

in February 1941 that the plan to attack Singapore would be ready by the end of May 1941. In the first place, OSHIMA would hardly have known. If OSHIMA had known, he most certainly would not have told me, because the Japanese never tell such things. If this was said it was for propaganda purposes and was not proposed by OSHIMA.

"VII. German-Russian War

"After the Russian war broke out, I tried to get Japan against Soviet Russia. I told OSHIMA that it would be most useful if Japan would go against Soviet Russia. Judging from the attitude of OSHIMA and the Japanese Government, I got the impression that Japan did everything possible to keep out of the conflict with Soviet Russia and to keep from antagonizing Soviet Russia in any way.

"VIII. Pearl Harbor

"Neither I nor OSHIMA had any advance notice of the Japanese attack on Pearl Harbor. It came as a complete surprise to all of us. We learned about it through the radio. It was such a surprise that it was hard to believe. OSHIMA gave me the very clear impression that it was a complete surprise and he told me so. For diplomatic reasons we had to express our pleasure about the event. This feeling was not genuine.

"OSHIMA had no part in the decision of Hitler to declare war on the United States. Hitler considered that a virtual state of war existed between the United States and Germany since President Roosevelt's Navy Day speech in which he ordered the United States Navy to 'shoot on sight'.

"IX. U-Boat Warfare

"On the occasion of the transfer of the two U-Boats from Germany to Japan in 1943 no operation program was agreed upon between the two countries, and OSHIMA never handled the transfer. It was conducted through the Navy channel. OSHIMA neither considered nor subscribed in any way that shipwrecked crews be killed. Such a matter was, as not belonging to the diplomatic field, never discussed between us.

"X. Relation Between Germany and Japan

"The relation of Germany with Japan was never very close. Japan was very far away and we never were really aware of everything which was going on over there.

"So far as I became aware of the relationship between German and Japanese forces during the war I believe that little or no collaboration was practical or possible; at least none existed so far as I know. When General Marshall said that there was no actual collaboration between Germany and Japan, it is exact.

"XI. Miscellaneous

"No agreement was ever suggested between OSHIMA and me concerning division of spoils of the

war. Such matters are completely beyond the pale of all diplomatic discussions.

"It has been charged that Japan and Germany, together with Italy, planned to dominate the world. Such a claim is as ridiculous as it is untrue, because such a thing has never been dreamed of by the three Powers.

"/S/ Joachin V. Ribbentrop

"Sworn to and subscribed by the above-named Ribbentrop, Joachin V. before the undersigned officer at Nurnberg Germany 15 October 46

"/S/ Robert B. Starnes

"Captain Infantry 0-1284783."

I should like to read the certificate into the record.

"OFFICE OF THE GENERAL SECRETARY

"October 18, 1946

"Mr. Owen Cunningham

"Hq. GHQ SCAP IMTFE

"APO 500

"c/o Postmaster

"San Francisco, California

"Dear Sir:

"Inclosed find one signed copy of affidavit of Ribbentrop with annotations initialed by Ribbentrop.

"It may interest you to know that this affidavit was received and accomplished the day before the execution.

"Respectfully,

"JOHN E. RAY

"Colonel, FA

"General Secretary"

The last group of documents will now be produced for the purpose of showing that the Pearl Harbor attack was a complete surprise to Germany, that the German declaration of war against the United States was not connected with the Tri-Partite Pact, and that collaboration between Japan and Germany during the war was almost non-existent.

THE PRESIDENT: Mr. Cunningham, would you care to disclose by whom and upon what information Ribbentrop's affidavit was drawn?

MR. CUNNINGHAM: Yes, your Honor. I left Tokyo on the 7th of August 1946 and arrived in Nuernberg on the 20th of August, I think, and I had a conference, three-hour conference, with Ribbentrop on the evening of the 27th, I believe, and took a 40-page transcript. And then, I returned to Tokyo and arrived here on the 17th of September, and on the 10th or 12th, or on the 5th or 8th, I mailed

this affidavit, which was prepared by me here from the information received from Mr. Ribbentrop, to him and it was accomplished there.

THE PRESIDENT: We will recess for fifteen minutes.

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

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

THE PRESIDENT: Mr. Cunningham.

MR. CUNNINGHAM: If your Honors please, I now offer in evidence defense document 1450, an excerpt from the transcript of the Nuernberg trial on 28 March 1946, which is part of the direct examination of the witness Paul Schmidt, to show that the Pearl Harbor attack was a complete surprise to the German Government. The parent document, the official transcript of the Nuernberg trial for the 28th of March, 1946, is tendered for identification. I only propose to read the last question and answer on page 2 and the top of page 3.

THE PRESIDENT: Mr. Comyns Carr.

MR. COMYNS CARR: May it please the Tribunal, the Tribunal has already ruled against other excerpts from the testimony given at Nuernberg. In this particular case, there is the distinction, which appears to us to make it worse, that Dr. Paul Schmidt is alive and could have sworn an affidavit and been brought here for cross-examination if desired.

THE PRESIDENT: Well, he was not an accused at Nuernberg.

MR. COMYNS CARR: No.

THE PRESIDENT: And, if you want him cross-examined, you can apply to have him brought here.

MR. COMYNS CARR: I was going to add, your Honor, that the matter appears to us in any event to be irrelevant whether Ribbentrop was or was not surprised on hearing the news of Pearl Harbor.

THE PRESIDENT: Surprise can always be feigned, but this man may have known Ribbentrop's mind. It all depends.

MR. COMYNS CARR: I was not on the question of whether surprise was feigned or not but on the question of whether it mattered whether he was surprised or not.

THE PRESIDENT: Well, if he did not know that Pearl Harbor was to take place, or that the attack was to take place, it shows that the cooperation was not as great as the prosecution is alleging.

MR. COMYNS CARR: Your Honor, I was just going to add that he knew this attack upon the United States was going to take place is clear from exhibit 608. He may well not have known it was not going to take place at Pearl Harbor.

THE PRESIDENT: Well, we will have to weigh one document against the other if we admit this.

MR. COMYNS CARR: This document does not say that he was surprised at an attack upon the United

States. It merely says he was surprised at the news of Pearl Harbor. It is a very different thing.

THE PRESIDENT: Well, if there is some doubt about it, we ought to give the defense the benefit of it.

The objection is overruled and the document is admitted to the extent indicated by Mr. Cunningham, the last question and answer.

CLERK OF THE COURT: Defense document 1450, a transcript of the International Tribunal at Nuernberg for March 28, 1946, will receive exhibit No. 2763 for identification only. The excerpt therefrom, bearing the same document number, will receive defense exhibit No. 2763-A.

(Whereupon, the document above referred to was marked defense exhibit No. 2763 for identification, the excerpt therefrom being marked defense exhibit No. 2763-A and received in evidence.)

MR. CUNNINGHAM: I now offer to read from exhibit No. 2763-A, on page 2, the last question and answer:

"Q Witness, did you have an opportunity to observe just how Ribbentrop reacted to the news that Japan had attacked Pearl Harbor?

"A I didn't have a direct opportunity, no, but the Foreign Office knew generally that the Foreign Minister, just like the whole Foreign Office, was completely surprised by the news of Pearl Harbor. As far as I am concerned, that impression was confirmed by news regarding a member of the press section. The press section had department concerning itself with radio news, and in the case of important news, the official on duty had orders to inform the Foreign Minister personally and at once. When the first news regarding Pearl Harbor was received by that section of the press, the official on duty considered it important enough to report to his chief, that is to say, the chief of the press section, who in turn intended to pass it on to the Foreign Minister. But, as I was told, the Foreign Minister turned him down rather harshly and he said that that was surely some invention of the press or some 'red herring,' and that he didn't wish to be disturbed by our press section with stories like that.

"After that, a second and third new bulletin regarding Pearl Harbor was received, I think a Reuter report, and that had been received by that department. At the stage the chief of the press section gathered his courage together, in spite of the order not to

disturb the Foreign Minister, and informed him of this news."

I now offer in evidence defense document 1642, the German note of declaration of war on the United States, dated the 12th of December, 1941, to show that the German declaration of war, according to this note, was not related to the Tri-Partite Pact.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1642 will receive exhibit No. 2764.

(Whereupon, the document above referred to was marked defense exhibit No. 2764 and received in evidence.)

MR. CUNNINGHAM: I now offer to read exhibit 2764:

"Note of 11 December 1941. Handed by the German Foreign Minister to the American Charge d'Affaire prior to the session of the Diet.

"Mr. Charge d'Affaires:

"After the Government of the United States of America, since the outbreak of the European war called into being by the English declaration of war to Germany of 3 September 1939, had violated most flagrantly all rules of neutrality in a steadily increasing degree in favour of the enemies of Germany, and committed continuously gravest provocations against Germany, it went over to open military aggressive actions.

"On 11 September 1941 the President of the United States of America declared publicly that he had given an order to the American fleet and air forces to shoot on sight any German warship. In his speech of 27 October of this year he again confirmed emphatically that this order was effective.

"According to this order American warships since the beginning of September systematically attacked German naval forces. So the American destroyers, for instance the Greer, the Kearney and the Reuben James, opened fire deliberately on German U-boats. The Secretary of the American Navy, Mr. Knox, himself confirmed that American destroyers attacked German

U-boats.

"Furthermore the naval forces of the United States of America, upon order of their government, treated and captured German merchant ships on the open sea as enemy ships contrary to the international law.

"The German Government therefore recognizes the following fact:

"Notwithstanding Germany on her side observed strictly towards the United States of America during the whole present war the rules of international law, the government of the United States of America went over from the violations of neutrality in the beginning to ultimately open war actions against Germany. It has thereby practically created the state of war.

"The German Government therefore severs the diplomatic relations with the United States of America and declares that Germany under these circumstances caused by President Roosevelt considers herself also from today as being in the state of war with the United States of America.

"Allow you, Mr. Charge d'Affaire, the expression of my regards.

"Ribbentrop"

Now, your Honors, as my last document on this phase of the case, I offer in evidence defense document No. 1674, which is an excerpt from General Marshall's Report "The Winning of the War in Eruope and the Pacific," for identification, and tender the excerpt therefrom as evidence, to show that the military authority on the allied side came to a conclusion that there was no close strategic collaboration, to say nothing of an unified strategic plan, between Japan, Germany and Italy, a fact which contributed much to the victory of the Allies.

THE PRESIDENT: Admitted on the usual terms.

MR. CUNNINGHAM: I only want to read from the middle of the page down to the end.

CLERK OF THE COURT: Defense document 1674, a volume entitled "The Winning of the War in Europe and the Pacific," by General Marshall, will receive exhibit No. 2765 for identification only, the excerpt therefrom bearing the same number will receive exhibit No. 2765A.

(Whereupon, the document above referred to was marked defense exhibit No. 2765 for identification, the excerpt therefrom being marked defense exhibit No. 2765A and received in evidence.)

MR. CUNNINGHAM: I now read from exhibit

2765A starting with:

"Nor is there evidence of close strategic coordination between Germany and Japan. The German General Staff recognized that Japan was bound by the neutrality pact with Russia but hoped that the Japanese would tie down strong British and American land, sea and air forces in the Far East.

"In the absence of any evidence so far to the contrary, it is believed that Japan also acted unilaterally and not in accordance with a unified strategic plan."

THE PRESIDENT: Are we to take even General Marshall's opinion? However, the document is not objected to.

MR. CUNNINGHAM: With the exception of a few witnesses whose affidavits were not prepared in time for presentation, and with the exception of the document which had so many annexes and so on which will have to be arranged and presented later, that concludes my presentation of evidence in this phase of the case.

THE PRESIDENT: Mr. Comyns Carr.

MR. COMYNS CARR: May it please the Tribunal, with reference to exhibit 2762, the affidavit of Ribbentrop, I am reminded that I should have called the attention of the Tribunal to the fact that the

other day two affidavits by Russian witnesses, Rodzievski and Semyonov, the Tribunal announced its decision to disregard those affidavits. We are not sure how far that decision was governed by the fact that those witnesses had been executed before they could appear for cross-examination, but if that was the governing consideration we would ask that Ribbentrop's affidavit be treated on the same basis as those two affidavits.

THE PRESIDENT: There is this vast distinction. Ribbentrop's affidavit was established to our satisfaction as a declaration made at the point of death and with the hopeless expectation of death. There was no proof before us that when these witnesses to whom you refer made their affidavits they knew they were going to die. They may then have been sentenced. We don't know. Even if they were under sentence, we have no evidence one way or the other as to whether they might anticipate a reprieve. The possibility of a reprieve was precluded in Ribbentrop's case.

I have no more to say about this evidence. I must consult my colleagues. But I can make that statement because it is a fact beyond all question.

Do I understand from you, Mr. Cunningham, that you are not prepared to go ahead tomorrow?

MR. CUNNINGHAM: Your Honor, I think that the balance of the defense is prepared to start after the recess.

THE PRESIDENT: Well, we will adjourn now until 0930 -- Mr. Carr.

MR. COMYNS CARR: Your Honor, there is one other matter I wanted to mention before the Tribunal adjourned.

Some days ago Mr. Furness raised a question to an observation of mine with regard to the accused SHIGEMITSU which I was not then able to deal with. I have investigated it now and I find he was quite right. SHIGEMITSU was not decorated for services in connection with the Anti-Comintern Pact. The mistake arose owing to a confusion between SHIGEMITSU and SHIRADA, who was.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: If the Tribunal please, I think it is advisable that there be no uncertainty on the situation regarding the completion of the Tri-Partite phase of the defense case.

THE PRESIDENT: Well, it isn't complete. There are some rag ends, if I may call them so. Have you any suggestion, Mr. Tavenner?

MR. TAVENNER: The statement by counsel was

of such a general character that I though it should be made more specific.

THE PRESIDENT: Well, I take it there will be very little to finish it.

MR. CUNNINGHAM: I have been handed a note, your Honor. The SAITO affidavit, and MATSUMOTO affidavit, and document 1656 is all we know now that will be tendered, and I believe that completes the presentation of that phase of the case.

MR. TAVENNER: That answers my question.

At page 24,504 of the transcript I introduced exhibit 2746 which is a statement by Stahmer. I served it upon the defense counsel, and I have the required copies for the Tribunal now.

THE PRISIDENT: Circulate them, please.

MR. TAVENNER: That is all, your Honor.

THE PRESIDENT: Does any other counsel desire to address the Court before we adjourn?

(There was no response)

THE PRESIDENT: We will adjourn until half past nine on Monday morning, the 4th of August, next.

(Whereupon, at 1530, an adjournment was taken until Monday, 4 August 1947, at 0930.)

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Letter 3 Sept.

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501	2766		Far East Year Book of 1941	24827	
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Monday, 4 August 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, all Members sitting, with the exception of: HONORABLE JUSTICE JU-AO MEI, Member from the Republic of China; HONORABLE JUSTICE E. STUART McDOUGALL, Member from the Dominion of Canada; HONORABLE JUSTICE I. M. ZARYANOV, Member from the USSR; and HONORABLE JUSTICE E. H. NORTHCROFT, Member from the Dominion of New Zealand, not sitting from 0930 to 1600.

For the Prosecution Section, same as before.

For the Defense Section, same as before.

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(English to Japanese and Japanese to English interpretation was made by the Language Section, IMTFE.)

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

THE PRESIDENT: Mr. Blewett.

MR. BLEWETT: On 12 June the Tribunal courteously granted to the defense the privilege of presenting one sub-division of the Pacific War, namely, the evidence relating to the Tri-Partite Pact, at that time, and to defer the general opening statement until after the recess.

We are now ready to offer that opening statement and to proceed with the defense according to the prepared outline.

I present Mr. Takahashi, counsel for Admiral SHIMADA.

THE PRESIDENT: Do you like to make any observations on the time this defense is going to take?

MR. BLEWETT: Sir, the defense has worked during the recess and worked very diligently, with particular emphasis upon the screening of documents and with reference to presenting only that testimony which we thought admissible and pertinent to the case. It is very difficult, sir, even to estimate the time within which it will take us to present the matter.

THE PRESIDENT: The length of this trial is a serious matter for all of us. In Germany the prosecution took three months and the twenty-one defendants took five months. In Tokyo the prosecution took nearly seven months. Based on that, the defendants in Tokyo should have up to April or May next year to complete their evidence alone. Favorable comparisions are made between the progress in Tokyo and the progress in Germany, in Germany's favor. The people who make these comparisons don't know the facts. Hitler's wars commenced in 1939. The wars that we are dealing with are alleged to have commenced eleven years earlier. The defense have been giving evidence for four months in Tokyo. In Germany they gave evidence for five months.

The defense here are not responsible for the length of this trial. Individual defense counsel may have spent more time on their sections than was justified, but that applies to prosecution counsel also.

There is another difference between this trial and that in Germany. In Germany the accused were not merely allowed to give evidence themselves in the box, but they were allowed to address the Court either by themselves or by counsel, and in

addition they were allowed to have the last word. Under this Charter the defendants are deprived of the right to have the last word. If they had that right the trial might be considerably shortened. It might shorten the evidence the defendants would otherwise give in the box. During the recess I have frequently discussed with defense counsel and prosecution counsel means of shortening this trial, and I have been informed by defense counsel, by quite a few of them, that if the defendants had the same rights as they had in Germany this trial would be shortened by two months. I express no opinion on that. I don't know.

MR. BLEWETT: Sir, with the determined effort which the defense has thus far put in on the Pacific War Phase, and which determined effort we shall continue throughout, I think a fair estimate would be four court weeks.

THE PRESIDENT: Mr. TAKAHASHI.

MR. TAKAHASHI: I am counsel Mr. TAKAHASHI.

I shall now deliver the opening statement with reference to the Pacific War Phase.

Mr. President and Members of the Tribunal:

We now move into the final phase of the general defense which concerns the events relating to the Pacific War. The evidence to be presented will establish that Japan and these accused, acting in their representative capacities, did not wage a war of aggression but in reality were involved in a conflict of self-defense which jeopardized national existence. Much of the matters to be related will drive at the prosection charge that this was a premeditated and long-prepared war. And in so destroying this allegation it will be clearly established that the resultant hostilities were against the wishes of the accused.

For expediency and because of its logical sequence, the defense has divided the matters to be presented now into separate sub-divisions, each of which will be preceded by a concise and enlightening opening statement.

The prosecution claims that Japan's industrialization was planned and pointed for aggressive war. As opposed to this our evidence will show the following state of facts. Japanese industrial economy was conceived out of necessity; developed in accordance with civilian requirements and, only as a last

resort and after she found herself involved in war, the necessary part thereof was converted for war usage.

A proper understanding of Japan's industrial development will necessitate the presentation of background matters showing Japanese economic conditions which necessessitated industrialization for her survival. As the years rolled by the population increased and the land became insufficient to support the people. Various measures undertaken to overcome its economy of scarcity failed to alleviate this condition, and industrialization was the natural result. Japan, being an island nation, however, with a paucity of resources, it became imperative for her to import raw materials and manufacture them into finished products for export. This, of necessity, required dependence on trade with other nations and the re-establishment of credits abroad.

It will further be shown that from 1931 onward, through the medium of high tariffs, import restriction regulations, quota systems, surtaxes and trade blocs, the freedom of Japan's international trade was impeded. Economic pressure increased in severity with each passing month culminating in the violent reaction of December 7, 1941. These encroachments on the Japanese right of economic intercourse

with the other nations of the world most bitterly expressed themselves in July 1941 with a complete blockade of Japan's import and export trade in those areas outside of East Asia. It was recognized by many in Japan at that time that a continuation of this blockade spelled economic ruin.

Paralleling this economic strangulation, a policy of military encirclement of Japan was steadily being pursued by the Western Powers. Commencing with naval rearmament, followed by the mobilization of the manpower of America for both the production of armaments and weapons of war and for the conscription of Army and Navy personnel, the United States feverishly made preparations for war with Japan.

With the Russian Five-Year Plan hanging as an ever-present menace over Japan's head, the United States, pursuing its policy of interference in the conflict between Japan and China, not only gave all-out aid in the way of materials and money but also actively aided Chinese fighting strength by the back-door procedure of providing aerial assistance and military advice to the Chiang Kai-shek regime. Troop reinforcements were being concentrated in the Pacific. Fortifications were being strengthened and new ones constructed. Waters surrounding strategic island

positions were being mined, and Singapore had been fortified beyond the necessities of ordinary defense. The United States was not alone in her plans for war against Japan but had consulted for a number of years with Great Britain and the Netherlands, with the resultant effect of having formulated elaborate plans for future hostilities. This then was the picture of events from the Japanese point of view.

To escape the imminent danger of extinction as a power threatened by these economic and military measures, Japan earnestly sought a way out by peaceful means. From early 1941 diplomatic negotiations were intensively carried on by three successive Japanese cabinets. Japan exerted every effort to achieve a pacific settlement of matters in dispute, even going to the extreme of twice changing her government to further the negotiations.

Throughout the prolonged and complicated diplomatic efforts, conditions continuously worsened. The military high command, faced with the almost certain fact of a complete disruption of diplomatic negotiations and the ultimate failure of pacific solution to the difficulties involved, insisted that if war was inevitable, that war should be commenced without delay, before the full effect of

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Allied economic warfare against Japan should have resulted in depletion of Japanese reserves and before Japanese power to defend herself vanished. To this end, the government was strongly urged to reach a decision as to whether they could achieve by negotiation the ends so greatly desired by the nation. Realizing the reasonableness of this request of the Military High Command, the Government renewed its efforts by advocating further concessions.

In July 1941, after Japan sent troops into Southern French Indo-China by virtue of agreement for a common defense with the Vichy Government, American, British and Dutch reaction expressed itself in the freezing of Japanese assets and the temporary suspension of the American-Japanese negotiations. By these events, relations became strained almost to the breaking point and change from possibility of war to probability of war was felt on both sides of the Pacific. Thus while the Government was discharging its duties in the diplomatic field, the Military High Command was charged with the responsibility of providing prudent and adequate military safeguards predicated upon the probability of a complete collapse of diplomatic negotiations. Although the highly trained and competent Japanese military command could

have, at any time, prepared operational plans against the Western Powers, the evidence will show that even when circumstances dictated that danger of hostilities was imminent, no preparations in reality for a war against the United States and Britain had been made. It was not then until 6 September 1941 that serious steps in this regard were taken.

Diplomacy having by that date arrived at a stalemate, the Government, while still hoping for a peaceful solution, was compelled to make more definite provisions for the eventuality of war. While contingent operational plans were accordingly made, the evidence will be that, nevertheless, no decision for war was reached even on 6 September. In October, the Government again changed because of a split of opinion between the then leaders as to what course to pursue in face of the increasing diplomatic dilemna. The incoming cabinet undertook to and did reexamine the situation with a view to bringing the negotiations to fruition. By that time international relations had reached such a point that the best of intentions and sincerity, together with the making of all possible concessions by the Government, could not avail to save the situation. Every possibility of saving the situation was thoroughly studied in the

Liaison Conferences, and formula after formula based on them was tried. Although the Military High Command could not agree to the immediate and total withdrawal of forces from China in face of the tremendous sacrifices thus far made to achieve settlement of that problem, the government as the result of feverish endeavors finally succeeded in obtaining the consent of the Military High Command to the Proposals A and B as presented to the United States Government.

The 26 November note from the United States to the Japanese Government was accepted as an ultimatum and brought a virtual end to the Japanese hopes of a pacific settlement of the issues confronting them. That the American demands could not be accepted by Japan was apparent not only to Japanese leaders but to the American authorities and others as well. The United States and her Allies knew that for Japan to accept the conditions therein laid down would have meant literally her disappearance as a power militarily, industrially and commercially. What hopes for peace remained in the minds of the governmental leaders of Japan at that time died after the receipt of this unyielding dictate from the United States. When on 1 December 1941 Japan, hope all but abandoned, decided on war, it was a decision long anticipated by

the United States. The attack which followed a week later proved the correctness of the opinions of the highest American authorities as to what the natural consequence would be. That the final Japanese note to the United States was not delivered until after the attack on Pearl Harbor and other points was not the result of intention or design on the part of the Japanese authorities but resulted from circumstances in Washington beyond the control of any of these defendants.

The defense has elected to present both the Army and Navy picture relative to their participation . the vital matters at issue before this Tribunal. The prosecution has represented that preparations for aggressive war were made by the Army from 1932 onwards, with the final objective of waging war against the United States and Great Britain. Substantial proof will show the fallacy of this allegation. The evidence will be, as previously stated, that no plans or preparations reflecting this objective were made prior to 6 September 1941. Before that time, as was the universal custom among nations, annual operation plans were drafted against hypothetical enemies. These plans were of purely military and technical nature. Moreover, Japan was fighting in China. She was

menaced by a huge and powerful Army in the North; with nations around her creating large armies and greater navies. She was threatened from every direction. The evidence will reveal that even though Japan desperately needed oil and supplies for her civilian economy she was at the same time warned that if she moved south in quest of it, it meant war. The military leaders of Japan were faced with the duty of carrying out their obligations to their country, of providing for her national security. Although utilizing every means to achieve a peaceful solution by the diplomatic negotiations before mentioned, it was only prudence on those responsible to prepare for the eventuality of war in the event other measures for peace failed.

In order to comply with the military needs then presenting themselves, the Army was compelled to extract troops and materials from various units in Manchuria and Japan proper, and especially from China where actual hostilities were in progress. The evidence to be presented will, we submit, clearly indicate lack of preparedness and lack of planning on the part of the Army for purposes alleged by the prosecution, and that operational collaboration with the Axis powers was non-existent.

The organization of the Japanese Navy,

together with its chain of command, will be duly explained and proven. In refuting certain charges of the prosecution relative to the part played by educational propaganda for war, as so alleged, certain matters will be revealed touching upon the training and teaching of navel personnel. The Washington and London Naval Conferences which have been the subject of considerable evidence thus far adduced against the accused will be treated with emphasis on the sincerity and reasonableness of Japan in supporting the proposals there made.

The prosecution allegation and proof adduced thereunder, that the so-called mandated islands were fortified by Japan prior to the outbreak of hostilities and in violation of covenant provisions will be totally refuted through the production of witnesses testifying as to the actual status of affairs in these areas.

It further will be shown that there existed a cleavage of thought between the Army, Navy and civilian officials as to the course of conduct to be followed in dealings with the United States and Great Britain as well as other countries. In portraying this disunity in military circles, the striking impossibility of a conspiracy to wage

aggressive war through a combination of mutual intent will be shown.

Regarding naval preparations for war, the evidence will be that naval advisors exercised their inherent right to provide adequate naval defense for a nation entirely surrounded by water and that its actions in improving and modernizing this branch of the armed forces was not inconsistent with the actions then being taken by all of the other great powers of the world. It will be shown that the attack on Pearl Harbor was not long in preparation nor was it a premeditated act indicating aggressive tendences. Rather it was adopted to meet the current situation and reveals a desperateness of thought regarding war with the great Western Powers in face of the overwhelming odds confronting Japan from a military viewpoint.

Greenberg & Barton

The thought that, in so far as naval action was concerned, Japan collaborated with Germany for the purpose of waging a war or wars of aggression will be utterly dispelled by the testimony of Chief German Naval Attache in Tokyo during this period.

The defense will produce documents and witnesses to show that the Japanese Government and leaders of the High Command lived up to the benevolent and chivalrous spirit and that violences and mistreatments to prisoners of war and the civilian population were furthest from their wishes. It will be established by competent evidence that neither the Japanese Government nor the accused ever permitted or condoned such offenses.

Relative to the treatment of prisoners of war, Japan was bound by the Hague Convention of 1907 and by the Red Cross Convention of 1929. While not having ratified the Geneva Convention of 1929 and hence not bound by it, Japan gave notice of its intention to apply mutatis mutandis the provisions thereof to prisoners of war under its control, and also as far as possible to interned civilians. It will be shown through army and navy regulations and excerpts from exhibit 1965 that at no time was there any regulation issued which could even be remotely considered prejudicial to the welfare

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and well-being of prisoners of war and civilian internees.

Evidence will be further adduced to show that the problem of supplies and transportation, as a result of unrestricted submarine warfare and allied bombing, were the primary cause for the suffering not only by prisoners of war and civilian internees, but by Japanese soldiers as well. It will be shown by witnesses that instances of suffering and mistreatment were isolated, and that prisoners of war and civilian internees were given equal treatment with Japanese soldiers.

Just as various defendants had opposed the commencement of war but had agreed to it only as a last resort measure of self defense, so during its progress it was believed by some that the war must be ended as soon as possible, and some of them in various ways made attempts even as early as 1942 to bring about its termination. By the spring of 1945, when the SUZUKI Government came into office, some of the ministers entered it on the understanding that the government would attempt to bring about the end of the war. The attempts which had been made, through the USSR and otherwise, prior to July were unavailing. The issuance, however, of the Potsdam Declaration gave rise to very serious dispute in the highest circles of Japan con-

cerning the continuation of the war; and in the end, after much violent debate, decision to accept the Potsdam Declaration was reached on the basis of the interpretation made by Japan of the conditions contained in that declaration. Japan, therefore, announced her surrender on 15 August 1945, and the Instrument of surrender was signed on 2 September.

The evidence in this general phase, then, will show that Japan was not engaged in preparing and waging any war of aggression or in deliberate violation of any existing international treaties and conventions; and that the complex state of international relations existing at the time of the opening of the Pacific War furnished ample support and reasonable grounds for the decision of Japan that it was inevitably driven, notwithstanding strenuous efforts to maintain the peace, to wage a war of self-preservation and in self defense.

These are the facts which the evidence to be adduced will establish. Evidence later to be introduced on behalf of the defendants individually will clarify the connection of those individuals with these states of facts and what actions each of them took or proposed as a result.

THE INTERPRETER: Mr. TAKAHASHI is about four pages behind in the reading.

(Mr. TAKAHASHI continued his opening statement.)

THE PRESIDENT: Mr. Logan, come to the lectern, please.

Mr. TAKAHASHI, will you stop reading.

What is the cause of this long statement in Japanese? We have nothing corresponding with it in English as far as we are aware.

MR. LOGAN: This is the same statement, your Honor. It takes a little longer to give it in Japanese, but he has about one page more to go.

THE PRESIDENT: I have never known such a difference between the Japanese and the English as this.

(Mr. TAKAHASHI completed his opening statement.)

MR. TAKAHASHI: Mr. Logan will now proceed with the presentation of the initial subdivision of this phase.

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(Mr. TAKAHASHI completed his opening statement.)

MR. TAKAHASHI: Mr. Logan will now proceed with the presentation of the initial subdivision of this phase.

MR. LOGAN: If the Tribunal please, we now present a statement for the Tribunal's consideration in order that it may be the better enabled to understand in detail the proof about to be offered of the Japanese view of Allied pressure against Japan. The principal object is to show the effect on Japan of the economic legislation which was passed by the Western Powers commencing in 1930, in disregard of the rights of others, and that in the years immediately preceeding Pearl Harbor the economic and military pressure of the Western Powers was deliberate, premeditated, and coordinated, and they acted with full and expressed knowledge of the consequences - War, As an affirmative defense it will be shown that the situation became so increasingly oppressive and acute that, true to expectations and desires of the Western Powers that Japan strike the first blow, Japan ultimately was forced to make a decision to fight for her very existence. History alone will decide in the years to come whether in the larger sense that hope was justifiable in view of the results. But we are concerned here with the means used to obtain the immediate end of provoking Japan into a state of war.

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A proper conception of the effects of the pressure applied first requires an understanding of

the domestic economic conditions in Japan as they existed for some years prior to December 7, 1941. These conditions will demonstrate why Japan established a civilian, industrial economy. After the presentation of those conditions we will then present evidence relating to the paralyzing impact of the economic pressure applied by the Western Powers and lastly the military encirclement of Japan.

As the Tribunal will readily understand, this subject covers a large field and deals with many conditions of a specialized nature. Counsel has made every effort to obtain the best evidence and to narrow the volume of evidence consistent with a fair understanding by the Tribunal of the magnitude and true facts of the subject. Some of the evidence consists of expert studies made by the United States Tariff Commission and the United States Department of State, and, in so far as such studies are confined to factual statements supported by the statistical tables, they are heavily relied upon by the defense. Other evidence from Japanese sources is based on the testimony of experts and expert economic studies and are urged by the defense as entirely reliable and persuasive. Undisputed records from the Pearl Harbor Investigation Report of the Joint Congressional Committee of the

Unites States will also be offered.

The following facts constitute the evidence we will present. Japan is a rugged, mountainous country of approximate size of the State of California. Not more that 16 per cent of all the land area in Japan is arable and much of the arable land is subject to a slope of 15 degrees or more, which makes agriculture extremely difficult. It was early recognized by the Japanese Government that, in the face of a large increase in population annually, the arable land available in Japan was not sufficient to support its people. The population of Japan proper increased from 37,689,000 in 1884 to 73,114,000 in 1940. Within the past decade the population has been increasing by approximately 800,000 to 1,000,000 persons a year. It has a greater density per arable square mile than any other country.

A solution of Japan's population problem was undertaken by the Government. An attempt was made to increase the food supply by expanding the area of arable land and a certain amount of success was obtained in this direction. A second measure was undertaken by encouraging agricultural development in Korea and Formosa which also met with a certain amount of success. The third method of improving the situation, by emigration, was encouraged but it proved a failure,

one of the principal reasons being the bars erected by many of the Western Powers. The last policy adopted by Japan was domestic industrialization.and foreign trade. In connection with the industrialization, evidence will be presented of industries which are native to Japan and those producing commodities of the kind that have been introduced from Western countries.

The development of industrialization in Japan was a gradual process. It was not a creation pointed towards militarism nor geared for conversion into militarism. Because Japan is an island nation with a deficiency in practically every mineral and other raw material resources to support a normal civilian economy, those materials had to be imported from many regions of the world for manufacture and exportation as finished products. It was necessary to sell in export markets in order to obtain the necessary foreign exchange to pay for these vital imports. Japan was practically and substantially limited in what it could buy for importation by her sales in the export markets. Thus the ability of Japanese industry to expand was automatically limited by the foreign exchange situation which was always acute for the period of at least 1925 to 1940. Japan had no cotton,

negligible quantities of wool, no metallurgical coal, practically nothing in the way of cattle and hides, no rubber, no iron ore containing a substantial percentage of iron content, insufficient quantities of copper, no tin, zinc, bauxite (principal raw material for making aluminum), insufficient food production, serious deficiency in timber and building lumber, and in many respects it was economically vulnerable both from the standpoint of maintenance of an ordinary civilian economy and livelihood of the people on the one hand and a modest potential for self-defense on the other.

The studies to be presented will show the production, imports, exports and the consumption of the pertinent industries in Japan between the years 1928 and 1939, and for comparative purposes, in some instances, will be carried through the year 1945. These studies include industries, among others, which have a direct bearing upon the civilian economic potential and for self-defense as iron and steel, oil, cotton, wool, rubber, hides, metallurgical coal, iron ore, scrap iron, copper, lead, zinc, cement, food, timber, electrical equipment, tanks, aircraft, trucks, bicycles, shipbuilding and the shipping industry. The industrial potential Japan posssessed at the time of Pearl Harbor

was barely adequate for the support of a modest self-defense and the requirements of a poverty stricken civilian economy which had virtually been living a hand-to-mouth but progressive existence for at least twenty years.

Figures will be presented showing the production of iron and steel between 1928 and 1945; the amounts allocated in various years to the Army and Navy; the approximate amount of iron ore on hand December 7, 1941, and the iron content of the ore; the fact that in 1932 Japan had the lowest per capita consumption of iron and steel of any of the principal nations; that during the period 1931 to 1941 Japanese production of iron and steel was woefully insufficient compared to the production of the U.S.S.R., Germany, France, England, and, of course, the United States. At the time of Pearl Harbor the total annual production of the Japanese iron and steel industry was less than the total monthly production of the United States alone. At all times prior to December 7, 1941, Japan was entirely dependent on the United States, Netherlands East Indies and Burma for the supply of petroleum. Facts and figures will be introduced to show the true condition of the shipbuilding industry in Japan; the scrap and build program; the reasons for government subsidy which paralleled subsidies granted by other lead-

ing nations of the world; the conditions of unemployment in the shipyards and other industries during the depression; the fact that Japan never had an excess of bottoms and that the merchant fleet was not designed or constructed for the purpose of war against any nation; that the merchant and fishing tonnage was not at any time excessive in view of the fact that Japan is an island nation whose population in the main resides principally along its sea coast and relies upon seafood for sustenance; the total truck and trailer production of Japan was absolutely infinitesimal compared with that of other leading nations of the world; that its tank production at all times prior to 1941 was insignificant and that Japanese armored divisions had only one-fifth as many tanks and motorized equipment as an American armored division and one-third the motorized and tank strength of a German division. 1935 marked the humble beginning of the aircraft and aluminum industry in Japan. She was unable to produce sufficient aircraft of her own design until 1937 and that its production up to December 7, 1941, was pathetically weak.

In the two decades before 1941, Japan was unable to produce or sell in the export markets of the world virtually anything other than cotton textiles, raw silk, rubber goods, canned sea food, toys, pottery, pencils, matches, electric light bulbs, agar-agar, and a few other minor items. From 1932 to 1940, however, Japan was a substantial exporter of machinery, tools and other commodities which would ordinarily be stockpiled in this precarious economic situation of Japan if there had been a plan for large scale war.

The world wide depression seriously impaired the market for raw silk and other exports of Japan. Economic nationalism which became progressively rife in the world after 1930, among other factors, precipitated Japanese export - import trade into a struggle in order to procure the raw materials necessary for the export industry. This trade was vital and indispensable to her existence as a modern nation and the very sinews of civilian life in Japan. Following a bottom depression year in Japan in 1931, she began to recover from her depression in late 1932. At that time, when practically the entire world was still suffering from the depression, Japan was able to move some goods in old and newly acquired export markets because of lower prices. The fact that Japan was able to sell at

lower prices was caused in part by lower labor costs which were not cheap by Oriental standards and by the depreciation of the Yen which occurred notwithstanding strenuous and expensive efforts on the part of the Government to stabilize the value of the Yen.

A considerable amount of evidence will be directed to the expansion of governmental responsibilities in Japan over a period of years prior to 1941. It will be shown that various governmental regulations directed to selected businesses paralleled similar actions in other foreign countries and were necessary and reasonable measures taken in view of the economic exigencies at the time. Those laws were passed by the Diet. The regulatory measures which were taken prior to July 7, 1937 had no direct or immediate relation to preparation for wars. Those measures taken after July 7, 1937, when hostilities in China assumed serious proportions, were necessary and reasonable measures taken to meet the then urgent requirements.

To refute an inference from prosecution testimony that these laws were passed for the purpose of preparation and waging of aggressive warfare and world domination, the purpose of these laws will be shown by statements made by responsible governmental officials at the time the bills were introduced in the Diet. There

is no reason to suppose that at that time the purposes of the bills were otherwise than as stated by their sponsors. Some of these laws were to be operative only for a period of time until one year after the termination of the China Incident. Even during the continuation of the Pacific War, the regulation of industry in Japan was not so severe or so extensive as the regulations which were promulgated and enforced in the United States and Great Britain. The economy of Japan was not a "regimented" economy in any totalitarian sense whatsoever prior to the surrender in 1945.

Commencing with the Hawley-Smoot Tariff Bill in 1930 and the Ottawa Conference in 1932, Japan began to be directly affected by legislation passed and enforced by Western Powers. Some of the governmental regulations in Japan were passed because of the foreign pressure. For example, Japan being faced with prohibitory tariff regulations in various countries with respect to cotton textiles, rayon, canned tuna fish, pencils, electric lightbulbs, and so forth, was able to alleviate such action to her detriment only by voluntarily enforcing quantitative and qualitative quotas; this in turn required governmental intervention to put those Japanese export industries on a quota basis and to

fairly apportion the export quota among the producers.

For at least two decades prior to 1941 Japan had the largest number of small and middle sized independent business men in proportion to population known to any country in the world. Because of this very nature of things, it was impossible at any time to channel the economy of Japan along totalitarian lines. Even during the continuance of the Pacific War, it will be shown that the government faced insurmountable problems in endeavoring to synchronize raw materials, production and labor for an efficient prosecution of the war. The economy of Japan was ill equipped and ill prepared for the China Incident of 1937 and between that date and the middle of 1941 there had been no economic preparation in Japan to fight a Pacific War or any other economic preparation which would indicate that Japan had set out to dominate the world or even a small portion thereof.

Knapp & Yelden

It is true that the figures between 1932 and 1937 show an increase in the production of virtually every industry in Japan. This is true of industries which have no possible relationship to a war potential as well as some of those industries which have a direct relationship and some of those industries which might be converted to wartime usage. Nevertheless, documentary evidence and the testimony of witnesses will be offered that this increased production in the main went into the civilian economy of Japan and improved the livelihood and economic situation of the people of Japan who for many years had been living on a subnormal standard compared to many leading countries of the world. To say that this increased production was a premeditated and designed preparation for a war potential is flirting with the truth.

Japan, like other nations of the world, did not desire to live in a status quo or a vacuum. Like other progressive nations, its governmental leaders have constantly sought to improve the standard of living of its people and one of the methods adopted was by international trade and industrialization. Such advance as Japan was able to make in the decade prior to 1941 in the standard of living of its people and

increase in civilian consumption was an extremely modest advance and at no time prior to 1938 was the civilian consumption curtailed in order to build up a so-called war potential. Between 1938 and the middle of 1941 there was little interference by the government with ordinary civilian consumption except to the extent the government was driven to intervene in limited situations because of the international credit condition and the need to curtail nonessential imports in favor of imports indispensable to the prosecution of the China Incident.

In 1939 the Treaty of Commerce and Navigation which had been in existence between Japan and the United States since 1911 was abrogated by the United States, effective January 1940. Embargoes against exportation of materials to Japan were adopted as a policy by the United States. Month after month more and more articles and commodities were added to this list. Vigorous protests were made by Japan at this discriminatory treatment.

The military and State Department officials of the United States worked together, although often not in agreement, regarding moves against Japan. When the final July 26, 1941 economic sanctions against Japan were under serious study by the President of the

United States he asked the opinion of his military heads as to the advisability of such a step. The opinion given him was definitely that "trade with Japan should not be embargoed at this time" as "an embargo would probably result in a fairly early attack by Japan on Malaya and the Netherlands East Indies and possibly would involve the United States in early war in the Pacific." Not only did "practically all realistic authorities" agree "that imposition of substantial economic sanctions or embargoes" against Japan would "involve serious risk of war," but frank Japanese comment to United States State Department officials was to the effect that such action would create a situation where "Japan would have no alternative sooner or later but to go to Malaya and the Dutch East Indies for oil and other material." This known reaction of Japan coupled with the President's frank admission that the United States was committed to the "policy of assisting Great Britain" produces an obvious answer to the question of whether the attack on Pearl Harbor really started the war. When the freezing order finally issued on July 26, 1941, the British Empire and the Netherlands East Indies lost no time in following suit. In fact, they took similar steps immediately in violation of their treaty

obligations. The terrific impact of these freezing orders was immediately felt in Japan. It was recognized that if continued for any appreciable period of time the Japanese economy would be crippled. These embargoes and freezing orders were deliberately designed to paralyze, and in themselves were capable of paralyzing within a short space of time, the entire economy of Japan. They were designed to force Japan's capitulation in China from sheer industrial and raw material exhaustion. One of the principal commodities vitally affected was oil. Without it civilian economy and her entire national security would be strangled. Previous peaceful attempts to obtain sufficient oil from the Netherlands East Indies had failed. From the Japanese point of view those embargoes and freezing orders assumed the gravity and proportions of the denial of a right to live. The reported success of the Russian 5-Year Plan presented another threat to Japan.

The picture is not complete if it tells only of the economic isolation of Japan from the family of nations. There is more to the story. Simultaneously, the military minds of the great powers were plotting a course of warfare against "Orange." "Orange" was in their war parlance Japan.

It might well be said the military plans against Japan reflected two philosophies which varied with the time and turn of events. The first of the plannings simply denoted great countries' military minds performing a routine function of their profession with the actual execution of such preparations considered exceedingly remote. The second of the plannings in a later period recognized the great probability of armed conflict with Japan and expressed strategic measures to meet that situation. It might be restated to say that the initial war plans were based upon the theory "if war comes" and the second plans, dropping the conditional attitude, changed to "when war comes." Thus it will be shown that the wording of the Indictment, "* * * Japan continued at a feverish pace to prepare for war," does not beg its existence of Japanese actions alone but could be applied to those of the Allied Powers. As early as the latter part of 1938 high-ranking Navy officials of the United States and Great Britain held secret conferences in London, discussing and laying plans for mutual cooperation and strategy in the Pacific against Japan. These plans were further discussed and made more definite and certain in a further secret meeting in Washington in early 1941. In addition, in American,

Dutch and British conversations held in April 1941, Great Britain was organizing "* * * subversive activities, sabotage and corruption in Japan and Japanese occupied territories" and recommended that the United States do likewise and "coordinate them with those of the British." Great Britain also recommended at that time that the United States follow the steps also being undertaken by her of operating Chinese guerrilla forces, armed, equipped and directed by the Associated Powers.

In addition to the formulation of war plans against Japan, it will be shown that upon the insistence of the United States State Department in 1940, the United States fleet in the Pacific was moved from California to Hawaii for no other reason than to threaten Japan into submission to American demands. It will be revealed that the tension between the United States and Japan even at this time was so acute that the commander of the United States fleet did not know whether he was being ordered to actual combat against the enemy or not.

Further, the evidence to be adduced will describe the intervention of the United States in the Sino-Japanese conflict to a degree unprecedented between non-belligerent powers. All-out aid to China

became a bold policy of the United States, even though the effect of such assistance literally meant the spilling of more Japanese blood on China soil. The assistance to China took form in the granting of outright loans with little expectancy of repayment, the subtle closing of official eyes and even silent approval while American fighter pilots with American planes engaged in aerial combat against Japanese forces on behalf of China, the sending of economic and military advisors to Chiang Kai-shek and the shipments of war and food materials.

During this period the United States was not sleeping in the Pacific. Troop reinforcements were being continuously sent to the Philippines, the laying of mines in the waters surrounding this Island, the fortification of Singapore, the hurried improvement of outflung bases were in progress.

This is the picture of affairs in the Far East before the revealing day of December 7, 1941. The powder keg of war with its many fuses was plainly visible for all to see. Who lit the first fuse is all important -- not which fuse set off the first blast.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: If the Tribunal please, in the view of the prosecution the opening statements contain many matters irrelevant and immaterial to any issue in the case. A study of the documents proposed to be tendered, we submit, will demonstrate an aggravated rather than an improved situation with regard to the tendering of evidence of a material and relevant nature which can only have the effect of unduly and unnecessarily prolonging judgment or deferring judgment in this case.

Mention is made of these matters now, in this general way, that silence on the part of the prosecution may not be construed as approval of the allegations made in the opening statements relative to materiality and relevancy. Specific objections will be made and argued when the documents are tendered in evidence. In several instances the admissibility of hundreds of pages of material will be determined by the ruling of the Tribunal on one document.

THE PRESIDENT: The sooner we consider that document, the better. We will adjourn for fifteen minutes.

(Whereupon, at 1045, a recess was

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taken until 1100, after which the proceedings were resumed as follows:)

THE PRESIDENT: Captain Brooks.

MR. BROOKS: On the opening statement read by Mr. TAKAHASHI on page 10, if your Honor please, the first paragraph, it was read, I think through error, "Just as the defendants had opposed the commencement of war but had agreed to it only as a last-resort measure of self-defense . ." I think that it is correct to read, "Just as various defendants had opposed the commencement of war but had agreed to it only as a last-resort measure of self-defense ..."

I would like to ask that that correction be inserted.

THE PRESIDENT: Well, you started to suggest the correction before I had time to find the particular part, but it reads now, "Just as various defendants had opposed the commencement of war ..."

MR. BROOKS: That is correct, your Honor, and it was read, "Just as the defendants ..." The word "various" was not used when it came over the microphone.

THE PRESIDENT: Well, it is as you want it.

MR. BROOKS: Yes, sir.

THE PRESIDENT: Mr. Logan.

MR. LOGAN: If the Tribunal please, we now

offer for identification Japan Yearbook of 1941 - 1942, and offer in evidence excerpt therefrom -- defense document 1694, pages 35 and 36, showing census figures of the population of Japan from 1920 to 1940.

THE PRESIDENT: Brigadier Quilliam.

MR. LOGAN: We do not wish to read this document but call the Tribunal's attention to the increase in population in Japan proper from 56,000,000 in 1920 to 73,000,000 in 1940; that the number of births had been approximately 2,000,000 each year and the number of deaths approximately 1,200,000 each year. The natural increase in population varies from 600,000 to 1,000,000 each year.

THE PRESIDENT: Mr. Logan, Brigadier Quilliam got up to take an objection and you didn't allow him to take it but you proceeded to tell us what was in the document. I assume that the Brigadier didn't get up any sooner than was necessary.

MR. LOGAN: I am sorry, your Honor.

BRIGADIER QUILLIAM: May it please the Tribunal, as my objection applies not only to this document but to the two following ones, I will go on with the objection, if it please the Tribunal.

It is our submission that this kind of evidence is too remote and therefore objectionable.

THE PRESIDENT: Well, you cannot help yourself to another person's possessions because you have not enough of your own. But Mr. Logan may have been referring to the restrictions on Japanese immigration. The same objection may be taken to that also.

BRIGADIER QUILLIAM: May it please the Tribunal, we suggest that kind of evidence can offer no kind of justification in any circumstances. May I direct the attention of the Tribunal to the fact that the prosecution showed in evidence that in January 1941 the Cabinet actually took measures to increase for war purposes the population of Japan.

THE PRESIDENT: As the reasons were read by Mr. TAKAHASHI and Mr. Logan I was trying to recall how many of them appeared in the records of the proceedings of the Japanese Privy Council giving the cause for war. But the defense may, of course, be able to satisfy us that the real reasons for the war did not appear in the minutes of the Privy Council, in the minutes of the proceedings before the Emperor himself, in the minutes of meetings attended by the highest people of Japan over two decades. All I am suggesting now is it is very difficult, perhaps, to satisfy us that the real reasons for Japan's action do not appear in the Privy Council minutes and elsewhere in their official records but in documents about

to be produced by the defense.

BRIGADIER QUILLIAM: The particular document, if it please your Honor, that I wish to refer to with reference to the policy for increase in the population, which we suggest is quite inconsistent with the defense present attitude, is exhibit 865, and is contained in the transcript at page 8807.

THE PRESIDENT: If I recollect rightly, there is in evidence of the prosecution a document from the highest sources, which, if it is to be believed, shows that the Japanese aimed at a population of one hundred million for purposes of war. Every observation of mine is directed to the real question, probative value.

BRIGADIER QUILLIAM: I can respectfully assure your Honor that your Honor's recollection as to the contents of this document is correct. We submit, if it please the Tribunal, that this document should be rejected.

THE PRESIDENT: Mr. Logan.

MR. LOGAN: I thought I had made it abundantly clear in my opening statement what we intended to prove by the documents we are about to offer. In the first place, this is background material, which should not take very long to offer in evidence, and it is offered to contradict and contravert the prosecution contention

that industrialization in Japan was for the avowed and express purpose of building up a plan for aggressive war.

THE PRESIDENT: Mr. Logan, as a matter of common sense, what is the use of overloading us with population statistics from the Japanese Yearbook when you have that document from the highest sources showing the Japanese aimed at one hundred million for war purposes? Your real purpose should be to attack that document, to show that it does not state the facts, to show, if you can, that it is not an authentic document at all. You are not going to contradict it by these statistics from Japanese Yearbooks.

MR. LOGAN: I am afraid the prosecution has steered the Tribunal off on a tangent. I am not interested in that document. I do not think any of these men in the box here are interosted in it. I am interested in showing that the sinister aspect that the prosecution placed on industrialization in Japan is not true. Because a few men in the Privy Council say something which is not concurred in or voted for or approved of by many of these accused, if not most and if not all of them, that has nothing to do with the facts as I am trying to present them here, to show that that industrialization in Japan was an absolute necessity and not for war purposes.

I have just been handed exhibit 865. It is not a document of the Privy Council. It is something that belonged to the Planning Board.

BRIGADIER QUILLIAM: May it please the Tribunal, I had come to the microphone in order to correct the misstatement that it was a document of the Privy Council. It is, in fact, a decision of Cabinet.

THE PRESIDENT: And a decision made before the war started, and not after.

BRIGADIER QUILLIAM: May I be permitted, your Honor, to correct another misstatement made unconsciously, no doubt, by my learned friend.

to remind the Tribunal, though probably that is quite unnecessary, that Mr. Liebert came here as a witness and was subject to cross-examination. He brought with him and had in court with him all the material upon which his statistics were based.

THE PRESIDENT: While he was giving evidence we repeatedly said we would disregard his opinions.

BRIGADIER QUILLIAM: Yes. Although the defense were invited to ask questions with regard to his facts, to his statistics, practically none was asked. Later in the case Japanese counsel, when a witness was giving evidence with regard to electricity undertakings, confirmed the accuracy expressly of Mr. Liebert's figures. It is therefore submitted that the comparison suggested by Mr. Logan is invalid.

THE PRESIDENT: Mr. Logan.

MR. LOGAN: If the Tribunal please, I made no comparison between the author of this document and Mr. Liebert. I did mention it in connection with Mr. Fahs.

In the case of Liebert, we tried to ascertain on direct and on cross-examination from where he got his information, and we never did get it.

An offer was made by the prosecutor, Brigadier Quilliam, that they would produce him whenever we asked for him. Two men from our section went up to see Liebert after he completed his testimony, and he had sent all his documents back. He did not give us the information.

THE PRESIDENT: You said you were not relying on the reception of Liebert's evidence when you pressed this. Don't let us get into a debate about Liebert's evidence unless it is necessary.

MR. LOGAN: I didn't intend to until my friend raised the question here. I mentioned Liebert on a previous document, not on this one. But I did wish to point out that Liebert did not draw up all the evidence himself. He got it from some documents and this may be one of the documents he got it from. I don't know; I can't tell.

As far as his facts and figures are concerned, he submitted an affidavit over 127 pages long. There are very few charts in it. It contains statements of fact, opinions, and conclusions. Your Honor said you would disregard his opinions and conclusions, but where did he get his facts? That is exactly what we are trying to prove in the documents we are offering -- facts. The mere fact that Brigadier Quilliam says

it is opinion and conclusion doesn't make it so. I ask the Tribunal to read this document we are offering, to see if it has opinions and conclusions. It is a fair comment by the author.

THE PRESIDENT: Perhaps TAKAHASHI can do for you what Liebert did for the prosecution -- come here and take the box. We can't prevent you replying to Liebert. Why not call TAKAHASHI, if he is available, and let him make an affidavit as Liebert did. Let him go into the box and stand up to it.

MR. LOGAN: The situation is entirely different, your Honor. Liebert prepared a document and obtained the information from other documents. Now, we do not know what documents he got his information from.

THE PRESIDENT: That is a matter you can press on us in summation. If Liebert had given no source for his figures, you may have induced us to disregard even what Liebert said. However, we do not want the strength or weakness of Liebert's evidence to be debated now.

MR. LOGAN: I ask the Tribunal to examine this document. The author of this issued it in 1937 at a time when there was no reason for him to tell anything other than the truth, and there is no opinion in there forswearing any decision of this Court.

I might say that I think the prosecution is carrying this question of opinion evidence a good deal far afield. I do not think it was meant to apply to an observation by an author. It originally referred, as I understood it, to opinions and conclusions which were for the Court to draw.

THE PRESIDENT: A Member of the Tribunal would like you to indicate shortly what you have to prove by this document, Mr. Logan.

MR. LOGAN: We intend to prove through this

the factors which underlay the development of industrialization in Japan and to show that it was not developed for any war purposes as the prosecution contends.

In showing this development of industrialization, the author takes into account the geographical condition of Japan; the advantages and disadvantages in connection with Japan's geographical location, and exports and imports from foreign countries; the effect on the industrialization of the population of Japan; the effect on industrialization by reason of Japan's late entrance into the family of nations as an industrial nation; the direct causes and effects of her industrialization in recent years such as the world depression, the budgetary expansion of the Japanese Government, and the depreciation of the Yen; the fact that Japan as a nation was composed of more small-scale industries and businessmen than any other nation in the world, which would lead to an opposite inference from that drawn by the prosecution of totalitarianism -- the reason why Japan was able to manufacture and export goods cheaply was because of the cheapness of labor which was not cheap according to Oriental standards; the characteristics of the development of Japanese industry in recent years which underlay its development

and definitely showed that it was not built up for a military purpose as shown by the prosecution.

THE PRESIDENT: By a majority, the Court upholds the objection and rejects the document.

MR. LOGAN: We now offer in evidence defense document 683A, an excerpt from the book "Problems of the Pacific", 1936, exhibit 261 for identification. This except is an official report of the Conference of the Institute of Pacific Relations and shows succinctly the obstacles to Japan's export trade and the principal commodities affected.

I might add that it states facts, your Honor; and, if the prosecution claims it states opinions, I would like to have them point them out.

THE PRESIDENT: Brigadier Quilliam.

BRIGADIER QUILLIAM: May it please the Tribunal, the prosecution objects to this document on the same grounds as in the previous two documents, but I would point out that for anything there that can be called a fact in this document, no authority is given. It is, in other words, an anonymous publication. But it is submitted, as a matter of fact, that the smallest perusal will show that it is really an argument by the writer.

MR. LOGAN: I do not know where counsel gets

"an argument" when the document, on its face, shows facts. It sets forth the various imports and the various countries which imposed import quotas and tariff increases on Japanese goods. Since he has failed to point out a single opinion in the document, I assume that he agrees that there are none.

THE PRESIDENT: The author of this document is unknown to us. It appears that this was an address delivered at Yosemite National Park. Well, that could be by anybody. The objection seems to be very sound, Mr. Logan.

MR. LOGAN: It was printed by the Institute, your Honor. This particular portion is the introduction to the book, and it was issued by the Conference itself.

THE PRESIDENT: The conference would not have checked up on the facts used by the authors.

BRIGADIER QUILLIAM: It was pointed out, may it please your Honor, this morning, when I read from that book of the Institute, the Institute disclaims responsibility for these articles.

THE PRESIDENT: All we know is, this is a statement by somebody at a conference in America. That would never do.

MR. LOGAN: That statement that Brigadier

Quilliam just made, that is not so. That does not appear in this book at all. It is in the other one, Fahs' book.

THE PRESIDENT: The objection is upheld and the document rejected.

MR. LOGAN: We now offer in evidence defense document 1161(1) which is an excerpt from a book, "Problems of the Pacific" dated 1936, exhibit 2611 for identification, relating to aims and results of social and economic policies in Japan. This excerpt is offered for the purpose of showing that Japan, faced with prohibitory tariff legislation in the United States, was required to institute voluntary export quotas with respect to various articles of export such as pencils, cotton piece goods, canned and frozen tuna fish, potteries, matches, and so forth. Faced with the probability of a complete shut out of certain imports, Japan was required as the only alternative to institute export quota controls; this, in turn, required the Japanese Government to regulate certain export industries in order to stay within the controls and fairly allocate the distribution among the merchants of Japan.

THE PRESIDENT: Brigadier Quilliam.

BRIGADIER QUILLIAM: May it please the Tribunal, this document is on all fours with previous

documents. It is another document prepared by an unnamed author. It deals with matters that arose in connection with trade conditions some time prior to 1936. We say it has no probative value and it is quite irrelevant to the issues in the case.

THE PRESIDENT: The author of this document does disclose the name of the author of another document, but his own name remains unrevealed. The position is exactly the same. The objection is upheld and the document rejected.

MR. LOGAN: I did not have an opportunity to call to the Tribunal's attention before the ruling was made that this document -- I would like to read from the preface: "More than ever before, Yosemite Conference --"

THE PRESIDENT: No, you cannot. The document has been rejected because there is no difference between that and the preceding document.

MR. LOGAN: We now offer for identification Far East Year Book of 1941.

CLERK OF THE COURT: Defense document 501, entitled "Far East Year Book of 1941," will receive exhibit No. 2766 for identification only.

MR. LOGAN: We offer in evidence an excerpt from 2766 for identification only, defense document

501A. This document is a graph showing the foreign trade of Japan proper between 1938 and June 1940. The graph is self explanatory, but we call the Tribunal's attention to the fact that the graph shows an unfavorable trade balance between exports and imports in every year except 1938 and 1939 and January to June of 1940.

THE PRESIDENT: Brigadier Quilliam.

BRIGADIER QUILLIAM: May it please the Tribunal, it would appear that this and the following document to be presented are entirely useless for any purpose in connection with this trial. Were it not for one factor, we would not waste time in objecting to these two papers. But they are taken from a publication called the "Far East Year Book," a publication of which we have had no previous knowledge, and there are other documents to be presented which are taken from this publication.

According to the book itself, it is published by the Far East Year Book, Inc. There is nothing to indicate that it is an official publication or has any official support. It has the appearance of a commercial calendar or directory. So, we object to this document, and we will object to the subsequent documents unless this objection is overruled, on the ground that

the document -- the parent document has no probative value.

THE PRESIDENT: The mere size of these year books, the range of subjects dealt with, and the amount of money obviously spent on them is some guarantee that they have some value, surely.

MR. LOGAN: The Japan Year Book is not an official publication of the Japanese Government either. They do not claim it is. With regard to this other question of notice, we gave the prosecution notice that that excerpt came from that book. The same objection that was made by the prosecution to this book was identical to those we made to the Japan Year Book, and that was admitted.

THE PRESIDENT: Your only objection is that we have no guarantee that this particular year book is a reliable publication.

BRIGADIER QUILLIAM: If it please your Honor, I contended in addition that this document is too remote, too irrelevant to any issue in this case, to have any value.

THE PRESIDENT: I understood you to say -- perhaps I was wrong -- that you would not have taken any objection but for the fact that this comes from a document about the authenticity or the value of which

we have no evidence. If you have any other grounds of objection, Brigadier, we would like you to state them, and we would like to hear Mr. Logan's reply.

BRIGADIER QUILLIAM: What I did say, if it please your Honor, was that we regarded those two papers, this one and the one to be introduced, as so valueless that we would not have objected for that reason only, particularly as no time could be employed in reading them; they cannot be read. But we do contend that they are irrelevant to the issues in the case. We cannot see what issue it is suggested this particular paper is related to. I do not know whether the Members of the Tribunal can understand the information that is on the piece of paper. I have found, I, myself, confess, the greatest difficulty in understanding it.

MR. LOGAN: I think, your Honor, that this document is quite simple and capable of being understood. It shows the unfavorable trade balance between exports and imports in every year except 1938 and '39 and January to June of 1940. That has a significance. It further shows exports and imports of Japan by kinds, by countries and by political units in 1939. It has direct bearing on what started this war. There may be some who smile at this, but it is a fact. We have a

country here which depended on importation for manufacturing and exportation of finished products. This chart shows the commodities imported and exported and from what countries they came. And when the economic pressure was applied by these various Western Powers, the effect of it can be readily seen from this chart; and, when the pressure was applied to such an extent that Japan was not receiving any imports and her entire life line was threatened, then it is up to this Tribunal to determine whether or not that was the cause of this war.

THE PRESIDENT: I can follow the document. I have no difficulty in reading it. I suppose the purpose is to show that their exports were vastly exceeded by imports. The objection is overruled and the document admitted.

CLERK OF THE COURT: Defense document 501-A will receive exhibit No. 2766-A.

(Whereupon, the document above referred to was marked defense exhibit No. 2766-A and received in evidence.)

MR. LOGAN: We now offer in evidence defense document 501-B which is an excerpt from the Far East Yearbook of 1941, exhibit 2766 for identification. This document shows Japan's position in the foreign trade of leading countries in the year 1938. This chart too is self-explanatory.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 501-B will receive exhibit No. 2766-B.

(Whereupon, the document above referred to was marked defense exhibit No. 2766-B and received in evidence.)

MR. LOGAN: We now offer in evidence defense document 598(5), an excerpt from exhibit 2361 for identification (Government in Japan by

Charles B. Fahs of the Institute of Pacific Relations) which contains a concise factual account of Japan's finances from 1931 - 1939.

THE PRESIDENT: Brigadier Quilliam.

BRIGADIER QUILLIAM: If it please the Tribunal, we object to this document on the same grounds as have been heard with other Pacific Institute documents and Dr. Fahs' publications. In substance it is no different from the other documents. It is merely Dr. Fahs' views on finance in Japan.

MR. LOGAN: I might say, if the Tribunal please, that we have an affidavit from Charles B. Fahs if there is any question in the Tribunal's mind as to his qualifications as an expert.

THE PRESIDENT: We have yet to decide that the evidence he gives should be given by an expert. We did not regard Liebert as an expert in the sense that he could draw conclusions for us.

MR. LOGAN: In view of the fact that there have been some previous excerpts from his book accepted by the Tribunal, we did not feel it would be necessary to serve this affidavit. We served it today at noontime in view of the rejection this morning. If it is a question of his qualifications,

your Honor, I withdraw the offer of this document until the twenty-four hour period has run out and we can offer it again tomorrow. But I might say --

He has said, in effect, that the prosecution claim that the whole of the industrialization of Japan was for war preparations. That is not and never has been the prosecution contention. We contend that the evidence showed that a considerable part of this industrialization was purely for war purposes, but we recognize that much of it was for ordinary civilian economy, was in connection with the ordinary civilian economy.

I wish to mention that point now, your Honor, because it is thought by the prosecution that much of the evidence which we suggest is irrelevant, which is about to be introduced, is based on that misapprehension.

THE PRESIDENT: By a majority, the Court upholds the objection and rejects the document.

MR. LOGAN: I might say, your Honor, that on page 8807 when this document was introduced, that is, exhibit 865, the purport does not say that population increase was for war. I shall read it:

"It is the mission of the Empire to establish the East Asia Co-Prosperity Sphere and promote its everlasting healthy development. In order to accomplish this mission, it is especially and urgently necessary to promote, by establishing

a population policy, the rapid and permanent development of our country's population and the drastic improvement of its quality..."

THE PRESIDENT: We are thoroughly familiar with that document, Mr. Logan. Proceed to tender your next one.

MR. LOGAN: There are three papges of explanation of it, your Honor.

We now offer for identification, Japan-Manchukuo Yearbook of 1940, and offer in evidence defense document 1703, which is an excerpt therefrom, which shows Japan's position in the birth and death rate from 1932 to 1938 as compared with other countries.

THE PRESIDENT: Brigadier Quilliam.

BRIGADIER QUILLIAM: May it please the Tribunal, we object to this document on the same grounds as have been previously urged.

MR. LOGAN: May I add this, if the Tribunal please?

It must be borne in mind that this Planning Board recommendation was in April 1941. Of course, the industrialization plan in Japan had been in existence for many, many years before that; and I am trying to show the necessity for industrialization in Japan. In other words, I am trying to show how

Japan set about to solve its population problem. In order to do that, of course, I must show that there was an overpopulation in Japan first. What methods Japan took in order to overcome this difficulty, such as by farming and emigration, proved unsuccessful, and it was necessary that they industrialize. Now, beyond peradventure of a doubt, the prosecution's inference is that her industrial plan was set up for the purpose of a war machine. I believe they have used those exact terms during the course of the presentation of their evidence.

THE PRESIDENT: We allow for normal industrialization, which of course is a common feature of the economy of all civilized nations in modern times. But an industrialization of an abnormal nature all directed to war and followed by war is in a different category.

MR. LOGAN: That is exactly what I am trying to disprove, your Honor.

THE PRESIDENT: We invite you to establish, if you can, that Japan's industrialization was normal, having regard to all the circumstances. We must take into consideration Japan's special position. But there is a short way of doing it, Mr. Logan, if it can be done.

MR. LOGAN: I am trying to do that in the most logical way possible, your Honor, by showing the necessity for it in the first place, to show that it was a civilian economy and not a military economy that was built up in Japan and that is why our industrial plan was established. I thought I had clearly explained that in my opening statement just how I intended to prove it and how I was going about it.

THE PRESIDENT: That ought to be clear on your purposes, Mr. Logan. One of your reasons for war was the blockage of immigration. Now you say you did not really want immigration, you wanted more poeple for ordinary industrial development. What do you mean? I dislike argument with you at this stage, Mr. Logan, but I would like the defense to make its position clear. Perhaps it may be made clear.

MR. LOGAN: At no time have I advocated more people for the development and industrialization of Japan. Our position is this: That Japan is an island nation, she was overpopulated, she tried to overcome that difficulty by various means such as increasing the amount of arable land by increasing the amount of arable land in Formosa and Korea and also

by immigration. The first two of those methods met with little success, the third none at all. It was therefore necessary for Japan to devise some means to afford some sort of economy for the people so that they could live in a decent, respectable way. Some industrialization, which came from the Western Powers, was devised as a means of improving livelihood and affording an ordinary civilian economy for the people of Japan. In other words, without industry the people in Japan would have starved. They needed some additional means of earning a livelihood and it was industrialization that was hit upon, not for a war-machine as the prosecution contends. We will show that, in order to "baby" this economy along, in order to help it out, the Government of Japan passed laws to assist it, not for the purpose of a military-machine as the prosecution contends; that this industrialization was a normal, gradual development, not a hurry-up machine for war as the prosecution contends; and that when the freezing orders occurred in July, 1941 the normal civilian economy of Japan was threatened to be shut off and that is what brought about the war. And, as I say, we cannot show the effect of her industrialization unless we are permitted to show the cause.

THE PRESIDENT: Brigadier Quilliam.

BRIGADIER QUILLIAM: May it please the Tribunal, we submit first of all, that the evidence with regard to the decision to increase the population prior to the freezing of assets is quite inconsistent with the present attitude of the defense.

Secondly, we submit, that it is altogether unnecessary and too remote to give evidence of population statistics to prove the matters for which the defense are contending.

The third point I wish to make is that our criticism of the industrialization policy followed by Japan is the way that industrialization was distorted, perverted for war purposes. We do not challenge the statement that it was desirable in accordance with modern ideas of economy of a country to bring about in a country greater industrialization. What the defense have to answer is the prosecution evidence that this industrialization of Japan came to be used for war purposes. That is the real point in issue and, we submit, the determination of that issue is not assisted by bringing out masses of statistics which nobody is interested in.

THE PRESIDENT: We are all prepared to allow for the normal industrialization of Japan from time to

time, having regard to her circumstances. That will not be overlooked. It does not require the over-elaboration suggested by the list of documents now being directed to it by the defense.

By a majority the Court upholds the objection and rejects the document.

MR. LOGAN: We now offer in evidence defense document 1702, an excerpt from the Japan-Manchukuo Year Book for 1940. This excerpt shows the population increase in Japan and the population density of Japan compared with other countries.

BRIGADIER QUILLIAM: May it please the Tribunal, we object to this on the same ground.

THE PRESIDENT: Obviously it is covered by our previous rulings. The objection is upheld and the document rejected.

MR. LOGAN: We now offer defense document 598(3), an excerpt from exhibit 2361 for identification, being the introduction to the book "Government in Japan" by Charles B. Fahs of the Institute of Pacific Relations, which sets forth factual historical background of Japan's economic policies, regulations, need for industrial development, economic control, foreign trade and the depression.

THE PRESIDENT: Brigadier Quilliam.

BRIGADIER QUILLIAM: May it please the Tribunal, this is the first of seven documents of a similar kind proposed to be introduced. These seven documents comprise a total of over one hundred pages. They comprise either publications issued by the Institute of Pacific Relations or the reports of proceedings of that Institute. I desire to read, if it please the Tribunal, from a publication of the Institute the following: "The Institute of Pacific Relations is an unofficial and non-political body, founded in 1925 to facilitate the scientific study of the peoples of the Pacific Area."

I omit a small portion and proceed: "The Institute as such and the National Councils of which it is composed are precluded from expressing an opinion on any aspect of national or international affairs; opinions expressed in this study are, therefore, purely individual."

These documents, therefore, are purely individual opinions about various matters effecting Japan. The particular document now submitted, 598(3), is an extract from a publication written by a Professor Fahs, F-A-H-S, Professor of Oriental Affairs.

THE PRESIDENT: Assistant Professor where?

BRIGADIER QUILLIAM: The document does not show, if it please your Honor, but it is issued by this unofficial body, the Institute, with the disclaimer of collective responsibility.

Even a short, cursory perusal of the document will show that it contains the opinions, the arguments, the conclusions of Professor Fahs with reference to the matters he is discussing. As the prosecution submitted in the first place, the document has no probative value.

THE PRESIDENT: We have the burden of drawing conclusions in these matters. We have no authority to shift the burden to any professor.

BRIGADIER QUILLIAM: That, if it please the Tribunal, was the submission the prosecution desired to make. I should like to add that in addition to its being objectionable on the ground of its containing opinions, arguments, and matters not a fact, it is objectionable because so much of the material is irrelevant to the issues in this case.

MR. LOGAN: I did not expect any objection to this document, your Honor. The Tribunal has already passed on, and it has received three exhibits from it already, 2361-A, B, and C, and they have been read to the Tribunal. This is an extremely impartial

study, and I would like to read what the Brigadier omitted from the little preface. "It is composed" -- the Institute, "is composed of National Councils in eleven countries;" America, Australia, Canada, China, France, Japan, Netherlands, New Zealand, the Philippines, Great Britain, and U.S.S.R. The foreword, which the Brigadier did not read to you, is two and a half pages long, and from that it appears that this Institute meets and studies various problems, and when an article is written by one of the members, it is submitted to the other members for criticisms, suggestions, and corrections, and this foreword was written by the Secretary-General of the Institute.

THE PRESIDENT: It is well and favorably known in all Pacific countries, including my own. I do not think any of us want to be told just what the Institute does. It is a very valuable society. But the question for us is, can we allow this proof to form conclusions which it is our duty to draw.

Your strongest point, Mr. Logan, is that excerpts from this very book, or by this particular man, have already been received. But, it depends on what the majority thinks from time to time. There is no way of controlling what the majority thinks.

MR. LOGAN: I am afraid the Tribunal has been mislead by the Brigadier's characterization of this document as opinions and conclusions. It is extremely factual.

Need I call the Tribunal's attention to the fact that when the prosecution witness, Liebert, took the stand and testified, he did not reveal to the Tribunal, and the Tribunal does not know to this day, from what books and documents he got the information? It may have been from this book. I know some of the documents from which he got it, and they are entirely different than the documents which I will present later.

THE PRESIDENT: Is there any connection between these excerpts and those already tendered, Mr. Logan?

MR. LOGAN: Yes, they are different. The book is divided into various subjects, and we selected this book out of many because it is very short and concise, and it contains the facts that we want. Rather than burden the Court with a number of excerpts from various books, we thought that this particular one, which is very short, would present it to the Tribunal in the shortest possible manner. It is factual, not opinions.

THE PRESIDENT: By a majority, the Court upholds the objection and rejects the document.

We will adjourn now until half past one.

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

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AFTERNOON SESSION

The Tribunal met, pursuant to recess, at 1335.

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

THE PRESIDENT: Mr. Logan.

MR. LOGAN: If the Tribunal please, I would like to address the Tribunal for a moment.

We of the defense feel that this phase of the case is particularly vital to all the accused. We have examined the evidence put in by the prosecution and carefully prepared the documents which we are offering in this phase, and we have tried to --

THE PRESIDENT: Mr. Logan, you can't lecture Judges like that. We know how vital the whole case is to the accused and every part of it, and no warning about consequences will have any effect on us. We don't need it. We do our duty regardless of consequences. Every Judge must and does.

MR. LOGAN: Far from trying to lecture the Tribunal, I am trying to seek some advice. That was the farthest thing from my mind, your Honor.

THE PRESIDENT: You began to tell me how vital it was to you. We know it is, not only this

but every other. There is not a charge made that may not have vital consequences for you.

MR. LOGAN: Well, the point I wanted to speak about was this: Your Honor mentioned several times that the admission of evidence more or less depends on the composition of the Court at the time the evidence is offered. For example, as to this book by Fahs, three excerpts were accepted when the composition of the Court was different. I have further excerpts from that same book which I think are necessary to introduce and present to the Tribunal for consideration. There were seven members of the Tribunal this morning and there are six this afternoon, which makes quite a difference, I think, in the final result from the Tribunal's previous decisions.

THE PRESIDENT: It could make a difference; I told you that before the recess.

MR. LOGAN: We do not feel at liberty to ask for a further recess. We have the case prepared, but we do think that if we could receive some sort of information from the Tribunal as to when the balance of the Tribunal will be back, we could withhold the offering of those documents until they return.

THE PRESIDENT: There is no principle that

we must act when the Court is most favorably constituted for the defense. We must sit while we have a quorum, and the quorum is six. You must present your case regardless of the constitution of the Court at the time. It may be in your favor to have the Court constituted as it is now, or it may not. I cannot say, and would not say if I knew. I don't know exactly what reasons influenced each Member when he gives his decision. I don't keep a record. Nearly always he doesn't give reasons; he just says yes or no. So proceed, Mr. Logan, regardless of the constitution of the Court for the time being.

MR. LOGAN: We now offer in evidence defense document 1161 (4), which is an excerpt from the book Problems of the Pacific, 1936, exhibit 2611 for identification. This document impartially reviews the underlying factors affecting the industrial development of Japan up to 1936, the immediate factors involved, the time factor, the world depression, small-scale industries of Japan, Japanese labor, Japanese organization and legislation, depreciation of the Yen, and the characteristics of the development of Japanese industry. I do not propose to read that part of the excerpt

referring to labor organization and legislation.

THE PRESIDENT: Brigadier Quilliam.

BRIGADIER QUILLIAM: May it please the Tribunal, we object to this document on the same grounds as were urged for the preceding document.

THE PRESIDENT: Excuse me, Brigadier Quilliam. Justice Jaranilla has just arrived. I think we will wait until he comes in. He has had some transport difficulties.

(Whereupon, at 1348 hours, Justice Jaranilla resumed the bench.)

Brigadier Quilliam.

BRIGADIER QUILLIAM: May it please the Tribunal, this document is another product of the Conference of the Institute of Pacific Relations, held in 1936. In this instance the author is a certain TAKAHASHI, a director of an economic research institute in Tokyo. It is submitted that the grounds urged in respect of the previous document apply with equal if not stronger force to this document. I do not propose to repeat those reasons, but I desire to make this additional comment: Mr. Logan has compared the author of a document such as this one of Professor Fahs , and that applies also to the author of this document. He has compared this document with Mr. Liebert's. I desire

THE PRESIDENT: In my humble opinion this is not a matter for an expert to testify about. We want the facts and we will draw the conclusions.

MR. LOGAN: Well, these are facts, your Honor.

THE PRESIDENT: We do not want an expert on facts.

MR. LOGAN: Well, whether Fahs is an expert or not I am not qualified to say myself, but here is a document that sets forth the facts with regard to Japan's finances. That is all we are offering it for.

THE PRESIDENT: Can't you get them from the Japan Yearbook instead of taking them second hand from this Professor? It would be tragic if the Professor were wrong about his facts and we accepted his reasoning on that basis. Perhaps I should say his oditions are full of big sums. We would not take his reasoning in any event. Why should you go to Fahs for a matter that you can get in the yearbook?

MR. LOGAN: If the Tribunal please, this Institute of Pacific Relations we consider just as reliable a source as the Far Eastern Yearbook or any other yearbook. When we offer something from the Yearbook they object to it; if we offer something from Fahs they object to it. What are we going to do?

We are trying--

THE PRESIDENT: We could, if we would like, take a risk and perhaps we will say we will accept these statements of fact and let the prosecution rebut them later if they are not correct.

I think some of my colleagues are of the opinion that they are not relevant in any case but we have not heard you on that.

MR. LOGAN: This document goes into the amount of money that was set forth for military expenditures, comparison between Japan's budget and that of the United States showing that they increased at about the same rate of speed. It also talks about the bonds and the gold and silver production, mobilization of supplies of precious metals. It also explains the purpose of the Emergency Capital Adjustment Law of September 1937, which was expounded fully by Liebert with a different connotation attached to it. It also explains some other tax laws and acts which were touched on by Liebert.

THE PRESIDENT: Brigadier Quilliam.

BRIGADIER QUILLIAM: May it please the Tribunal, I suggest that the question of the relevancy of this document can be tested quite simply. I suggest that Mr. Logan show the Tribunal where this

document disagrees or agrees with Mr. Liebert. He says he deals with matters touched upon by Mr. Liebert. If he agrees with Liebert there is no need for the document; if he disagrees, let us know where it is.

THE PRESIDENT: That is a good suggestion. You might consider it during the recess, Mr. Logan.

We will recess for fifteen minutes.

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

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

THE PRESIDENT: Mr. Logan.

MR. LOGAN: I have not been able to find this particular one in the short space of time that I had in Liebert's testimony, but there are other laws mentioned in this document, too, as well as that particular one.

THE PRESIDENT: By a majority, the Court upholds the objection and rejects the document.

MR. LOGAN: We offer in evidence thirty-seven defense documents from 500-A-1 to 500-A-37, inclusive. These are studies of special Japanese trades and industries prepared for the Foreign Economic

Spratt & Duda

Administration by a member of the staff of the United States Tariff Commission in 1944 and 1945. We do not propose to read these documents, but we are offering them for future reference and for the assistance they will be to the Tribunal.

These studies show the large number of trades and industries in Japan whose very existence depended on the importation of raw material and the exportation of finished products. It will be shown later that economic sanctions were aimed to strangle these industries.

As these studies were made during the progress of the war they do contain biased opinions with respect to the purposes of the industries. We are offering the documents for the factual information therein and are requesting that the opinions be disregarded by the Tribunal. The products, trades, and industries listed in these documents in numerical order are as follows:

Cement, aluminum, lead, copper, coal, rice, pottery, toys, glass and glassware, menthol, tea, soybeans, phosphate rock, fats, oil and oil-bearing material, hides and skins, tanning materials, leather and leather manufactures, special industries analysis, potassium salts, wheat and wheat flour, zinc, sugar,

lumber, textile machinery, sulphur and sulphuric acid, wool and wool manufactures, marine products, soda ash and caustic soda, chemical nitrogen, rayon yarn and staple fibre, bicycles, electrical equipment, silk fabrics, cotton textiles, rubber and rubber manufactures, rayon fabrics, and raw cotton.

THE PRESIDENT: Brigadier Quilliam.

BRIGADIER QUILLIAM: May it please the Tribunal, as Mr. Logan has said, there are no less than thirty-seven documents in this present offer. The reproduction is on photostatic paper, and each document has from fifteen to twenty-five pages.

In a note under the cover page of the first document it is pointed out that the reports were not reviewed by the Tariff Commission. It also states that all statements of fact or opinion in these reports are attributable to the individual staff members who prepared them. In the foreword on the next page, a warning is given. It is pointed out that errors and inconsistencies frequently have been detected in the official and semi-official Japanese sources upon which the data are built, and that much of the data is irreconcilable.

As has been pointed out, they cover a very wide range of subjects. They were prepared in 1944

lumber, textile machinery, sulphur and sulphuric acid, wool and wool manufactures, marine products, soda ash and caustic soda, chemical nitrogen, rayon yarn and staple fibre, bicycles, electrical equipment, silk fabrics, cotton textiles, rubber and rubber manufactures, rayon fabrics, and raw cotton.

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As has been pointed out, they cover a very wide range of subjects. They were prepared in 1944

and 1945, obviously in anticipation of the occupation of Japan. In other words, they were not prepared in any way in anticipation of these proceedings.

They undoubtedly contain some material that is relevant. They contain, however, very, very much more that is quite irrelevant to the issues in this case. They contain full surveys and analyses of various trades whether related to war purposes or not. They discuss production and productive capacity, imports, exports, supply and demand, consumption and stocks, all without reference to the issues here. They discuss postwar problems and other matters that have no application.

May it please the Tribunal, we respectfully submit that this is not the way to present evidence. I recognize that my learned friend has said that he does not propose to read from this mass. That great big pile is tossed to the prosecution and the Tribunal, and the prosecution and the Tribunal are left to find out what parts of all this information are relevant. I suggest that Mr. Logan has failed to inform us adequately of the purpose of putting in these documents. And the pile that the Members of the Tribunal have before them now is only one of several piles of the same kind. One contains 220 pages of single-line

typing, and another, sixty-eight.

It is submitted that these documents should be rejected and the defense required to produce them in some kind of proper order.

THE PRESIDENT: Would that make them acceptable to you, or to us, in your opinion?

BRIGADIER QUILLIAM: If it please your Honor, if the relevant material were extracted, then I haven't any doubt whatever we would welcome them.

THE PRESIDENT: But the cover note says that the statements are irreconcilable.

BRIGADIER QUILLIAM: But I am conceding, if it please your Honor, that there are, scattered through the documents, pieces of information that might be termed relevant.

THE PRESIDENT: Can't we get them in Japan from Japanese sources, or in Washington from other sources than this?

BRIGADIER QUILLIAM: We were thinking, if it please your Honor, of endeavoring to save time in this instance. If the defense would come to us and show us precisely what uses they propose to make, what parts it is proposed to use, we would be in a position to consider the matter properly. As it is, an enormous amount of paper has been used -- we submit,

unnecessarily -- and the very object of this long recess has not been taken advantage of in respect of these documents.

THE PRESIDENT: Well, you suggest that these documents contain a lot of material upon which you are prepared to agree with the defense.

BRIGADIER QUILLIAM: Not a lot, if it please your Honor. I merely say that there is relevant evidence contained in this big mass.

THE PRESIDENT: Perhaps you will admit enough of it for the defense purposes, and can agree on a separate statement than appears here.

BRIGADIER QUILLIAM: We would be very happy, sir, to consider a request to admit parts of these documents, but we object to their being admitted in their present form without any intimation as to what use is to be made of them, and containing as they do so much that is quite irrelevant.

THE PRESIDENT; Well, we cannot accept that bundle in that condition. The cover note is a warning.

MR. LOGAN: If the Tribunal please, you have made a suggestion that we might get some data from Washington. That is where this comes from.

THE PRESIDENT: I said from other sources in Washington, from sources that wouldn't be the discussion of a cover note, "This material is irreconcilable in parts." I think, Mr. Logan, you had better try to arrange with the prosecution to accept as much of this as you think will help. At this stage of the case we have no time to read that mass of material with a view to extracting what is relevant and helpful. Speaking for myself, that cover note would prevent me from reading a line of it, and yet we are told there may be some valuable material in it.

MR. LOGAN: I might say this that might clarify the Tribunal's position: that these documents have been offered and that they will be referred to later. I don't intend to burden the Court by reading any part of them, but they do contain factual information by which we intend to show that the economic sanctions as applied by the Western Powers hit these particular industries which are vital to Japan.

THE PRESIDENT: Could you indicate the pages you would like us to read, Mr. Logan?

MR. LOGAN: I don't ask the Tribunal to read any

of them at this time. All I ask is that they be introduced into evidence, and later on when we refer to these documents we will refer to the pages and particular subject matter included in the documents.

THE PRESIDENT: Will you refer to them for the first time during your summation?

MR. LOGAN: That is right.

THE PRESIDENT: Every Member of this Court wants to read all the evidence that you are going to address the Court on; every Member wants to read the evidence from day to day, the evidence upon which you are relying. We do not want to wait for your summation.

MR. LOGAN: Can we prepare a summary of all we expect to rely on and refer to it, refer to the pages where the information appears?

THE PRESIDENT: Well, I think it is a matter for agreement between the parties, actually. We do not want to tell you now that we will accept a summary only to find the prosecution raising later on sound objection to it.

MR. LOGAN: I have just been informed that the original document is marked at the parts we intend to rely on. We could mark the copies.

THE PRESIDENT: Well, the prosecution may, if they see what is marked, agree to accept it.

MR. LOGAN: I might mention that the biased statements that are contained in this are in favor of the United States and against Japan, which I ask the Tribunal to disregard.

THE PRESIDENT: I am afraid, Mr. Logan, that you had better withhold this document or withdraw it for the time being and attempt an agreement.

MR. LOGAN: All right, I will withdraw it for the time being.

Defense document 500-E is offered in evidence, that is, that part which is marked on all copies. This is a study of the trade of Japan proper, including that with Korea and Formosa, prepared for the Foreign Economic Administration by members of the staff of the United States Tariff Commission, September 1945. The factual information and data contained in this document is offered in evidence, or the parts marked, and it is requested that any opinions contained therein be disregarded by the Tribunal. We propose to read only the marked portions referred to on certain designated pages.

THE PRESIDENT: Brigadier Quilliam.

BRIGADIER QUILLIAM: May it please the Tribunal, this voluminous document, 220 pages, has been marked in certain places which one can find by careful examination -- marked portions. I think the first is under the heading

"Rice." Unfortunately, there is no page number to distinguish it. And then on the following page, a small piece. And then one goes on for several pages before discovering another marked portion. We say that all except the marked portions -- and I don't admit that the marked portions are all relevant -- but certainly everything except the marked portions is wholly irrelevant. Why,then, put in 220 pages of a document to use, perhaps, half a dozen pages? We suggest that the same procedure should be adopted with this and the other documents of this kind as has been adopted in connection with the preceding ones.

MR. LOGAN: I really am at a loss, your Honor. Documents that are not marked, they object to. Ones in which we have marked the parts we want to read; that is all we are offering -- not unmarked parts. He says the parts unmarked are irrelevant. Of course they are. We are not offering them. All we are offering is the unmarked parts.

THE PRESIDENT: But why did you photostat scores of pages without any markings, if you did?

MR. LOGAN: If the Tribunal please, under 6-1(b) we have to go through a good deal of time and trouble in getting excerpts. We thought we would present the entire document to the Court so that the

Court could see we are not offering parts of a document covering up half a sentence here and half a sentence there. We are giving the entire document for the benefit of the Tribunal and only reading and only offering those portions that we think are material.

THE PRESIDENT: Well, do meet the prosecution with a view to reducing the bulk of this material. I see there is another lot of photostatic copies coming in. The same would apply to that.

MR. LOGAN: There is only a portion of about 25 pages that I intended to read from this document. They are all marked on the prosecution's copy and I believe the portions I intended to read are all marked on the Tribunal's copies.

THE PRESIDENT: Are you pressing any objection on the ground of irrelevancy, Brigadier?

BRIGADIER QUILLIAM: If it please your Honor, yes. We submit that all the marked portions are irrelevant. They contain material that has no real relation to the issues in this case about economic matters. But, we hope that the defense will see the wisdom of trying to suggest a small part of this bulk of 220 pages and we will do our best to meet them.

THE PRESIDENT: Well, do you think that some of them, or part or parts may be relevant?

BRIGADIER QUILLIAM: Yes, your Honor, I think it might be found by a careful examination, but if one takes the very first marked portion about rice, I suggest there isn't a single word in that that is relevant to this case. And I must confess that I myself haven't had time to go through this bulk, especially as I started first on the 37 documents, to determine just what is relevant and what is not in

every instance.

MR. LOGAN: Of the 26 pages marked, your Honor, I do not think there is a total of 10 complete pages that we intended to read. I cannot see what more careful selection could have been made than that.

THE PRESIDENT: Do try to settle it between yourselves. We waste too much time here on details.

MR. LOGAN: Well, I think the material contained in this particular document is very material and relevant to the issues of the case. Brigadier Quilliam cannot see the materiality of rice in this case, but I think the Japanese understand the materiality of it.

BRIGADIER QUILLIAM: I suggest, may it please your Honor, that the Tribunal examine the relevancy of the information about cattle on page 15.

MR. LOGAN: It seems to me, if the Tribunal please, that the prosecution by making derogatory remarks do not quite understand what we are trying to prove in this case. We are trying to show Japan's economy. It was necessary for her in order to support the population that she have certain imports and that her own economy was not sufficient to take care of the people of Japan, and that later on, when

she was choked off from obtaining those imports which were vital to her economy and her welfare and her livelihood, she had to go somewhere to get that food. And we cannot show the effect of those economic sanctions and embargoes and show which materials were choked off from Japan without showing the necessity for the materials she needed.

THE PRESIDENT: The prosecution having grasped the points you are making, may now be more ready to admit some of the material to which they objected. But, to save the time of this Court do try to agree on it, Mr. Logan. If you cannot, we will have to decide, but I hope not. I suggest you withdraw this document for the time being with the view to getting an agreement, if you can, to save us time. If you cannot agree, we must then decide.

MR. LOGAN: I withdraw it for the time being, your Honor, but I do not think there is any chance of agreeing with the prosecution on anything.

We offer in evidence defense document 500C, which is a report prepared for the United States Foreign Economic Administration on the Shipbuilding Industry of Japan and is dated July 4, 1945. This document is a comprehensive study of the shipping

industry. This document contains maps setting forth the principal Japanese steamship routes, portrays the part which the shipping industry played in the economy of Japan in the prewar period.

In setting forth the merchant ship construction, it traces the historical background of Japan's shipping industry, the availability of shipbuilding material, costs and reasons for subsidies. It also presents facts with respect to merchant ship operation, its development, ownership, and reasons for government aid to shipping, commodities carried in the export-import trade throughout the world, and trade in the regional areas of the world. It will be noted that this document also contains bias in the form of opinions unsupported by the factual statements contained in the report. It is respectfully submitted that the Tribunal reject these biased opinions. Obviously this report was not prepared for use in these proceedings and the bias expressed invades the province of the Court.

I intend to only read certain marked excerpts in the document.

THE PRESIDENT: Brigadier Quilliam.

BRIGADIER QUILLIAM: May it please the Tribunal, it is not pleasant to have to come forward

and make exactly the same kind of representations time and time again. This is exactly on all fours with the previous document. This traces the development of Japanese shipping since 1885 and goes into a whole lot of other irrelevant matters. We suggest that this document should be withdrawn as were the others and an attempt made to put before the Tribunal only the relevant portions.

THE PRESIDENT: Mr. Logan, do you wish to say anything?

MR. LOGAN: I do not know what else we can do, if the Tribunal please. We marked the portion we intend to use. I mean we weren't consulted by the prosecution as to what evidence they should introduce or not. I withdraw it and will try to get together with them, but I have no hopes.

We now recall the witness Kikusaburo OKADA.

- - -

K I K U S A B U R O O K A D A, recalled as a witness on behalf of the defense, having previously been sworn, testified through Japanese interpreters as follows:

THE PRESIDENT: You are still on your former oath, witness.

DIRECT EXAMINATION

BY MR. LOGAN:

MR. LOGAN: May the witness be shown defense document 1786?

(Whereupon, a document was handed to the witness.)

Q With the exception of two changes on page 3 and one on page 4, which I will read and call the Tribunal's attention to when I come to it, is that your affidavit?

A Yes.

Q Are the statements contained in that affidavit true and accurate?

A Accurate and true.

MR. LOGAN: I offer it in evidence.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1786 will receive exhibit No. 2767.

(Whereupon, the document above

referred to was marked defense exhibit No. 2767 and received in evidence.)

MR. LOGAN: "I, OKADA, Kikusaburo, having first duly sworn according to the customary form as in attached formula depose and state as follows:

"I had been in the service with the Mobilization Plans Bureau of the War Ministry since 1935, and was the Chief of the Preparation Section since March 1940 to March 1943. Because of my position, I am acquainted with the status of Japan's war resources prior to the outbreak of the Pacific War.

"I. On Storage of Oils and Other War Resources.

"1. The Japanese Army had stored some of the important war resources which Japan lacked, under the term of 'Materials for War Preparations.' It was merely a small amount of materials that had originated from the remains of materials after the Russo-Japanese War. Especially, as to oils which had been the vital resource for Japan, she was completely lacking in storage until the outbreak of the China Incident.

"2. It was with the six-year plan of completion of armament starting in 1937 that the army intended to store oils for the first time. According to the plan merely 200 thousand Koku, i.e. approximately 36,000 k.l. odd was planned to be stored

until 1943. (1 kilolitre makes 5.54 koku.) Even this small-scale storage of oils had not actually come underway until the day of the Lukouchiao Incident.

"3. At the outset of the China Incident it became impossible for the army to neglect the lack of storage of oil. American crude oil was rapidly bought up in the fall of 1937, and the minimum of aviation oil was secured for the Army. This was the first occasion of the Army's storage of oil. With this increased activity, the amount obtained was barely sufficient to satisfy the needs of the Army's air power for a year at that time, even if the civilian storage of oil was put together with the Army's.

"Although the Navy had been storing oils previously and civilians also were under obligation to storing oil, Japan, as a whole, was woefully lacking in oil.

"4. Since then, because the China Incident, contrary to our expectations, had not simply settled, and because the United States had gradually strengthened the 'moral embargo' on the other hand, Japan also had to store strategic resources as much as possible. She repeated special importations of oils

and other resources that she was lacking, in addition to the ordinary importation of them.

"The 'initiative' of the special importations had every time been taken by the army, whose sponsor was always the Preparation Section of the Mobilization Plans Bureau of the War Ministry of which I was the responsible person. Japan had no idea of general embargo of the foreign trade before the summer of 1940.

"5. In January, 1940, the Commercial Treaty between Japan and the United States lapsed. As aggravated economic pressure was applied to Japan --" the next clause is deleted -- "Japan made a further jump in its policy of storing strategic resources.

"In the summer of the same year I had proposed a study of supply and demand of materials in case of the worst to the director-general, TAKEUCHI --" his name is inserted there -- "of the Planning Board, which was subsequently adopted. It was a study, subject to a certain assumption, for Japan to maintain the current conditions of national economy for at least two years in case she should be under economic blockade. By utilizing this study thereafter --" insert the word "thereafter" -- "I conceived an idea to reinforce the strategic fragality of Japan's

economy --" strike out the rest of that sentence and insert this, "and arrive at a certain plan. With an approval of the cabinet, the special imports to some extent were made and the storage was notably increased. For the first time there had been thus arranged the minimum preparation to face the economic blockade.

"In spite of the fact that the first study was simply a study, Admiral YOSHIDA, the minister of the Navy at that time, had strictly prohibited participation of the staff of the Navy Ministry with it.

"Besides I hereby make it clear that I had never taken any order or directive from my superiors beforehand concerning the proposals I made on these two occasions.

"II. Attempts to Surmount the Crisis by Pushing Synthetic Oil Industry.

"6. I have already testified to the circumstances, in which development of peacetime economy and plan for industrial construction for the purpose of securing safety against Soviet were seriously hampered because of the China Incident. Above all the synthetic oil industry was the hardest hit.

"The synthetic oil industry, which to start out with needs an immense volume of steel for (factory) construction, became incompatible with military demand for steel for the China Incident. Especially manufacturing of high pressure response pipes and assorted pipes was restricted by the domestic capacity of production. Because of the China Incident, additional demand for enormous volume of coal presented a puzzle for the future of the industry. Difficulties in getting cobalt as a catalyst could not be belittled. What is more, as a fundamental problem there was even a technical incompletion.

"In order to tide over these obstacles once and for all, it was planned to import technique, equipment and materials largely and widely by taking advantage of the Trade Agreement between Japan and Germany. However, this plan also resulted in failure due to the outbreak of the European War in August 1939.

"7. After that, early in 1941, when diplomatic relations with the United States became worse, a rapid attempt was made to develop the synthetic oil industry to avert the crisis, disregarding the fact that the synthetic oil industry was in such

difficulties as above-mentioned.

"That is to say, in early 1941 the KONOYE Cabinet - in the cabinet meeting, omitting the traditional conference between ministries - once and for all decided the matter of rapidly expediting the synthetic oil industry, which was planned originally by the Commerce and Industry Ministry. The goal of production was set at 2,000,000 tons annually, but after attaining that goal it was intended to increase further up to 4,000,000 tons annually. We believed then that the plan could not be materialized without adjusting such fundamental national policies to face the China Incident as to the attitude of the state, scale and speed in completing armaments, and so on. The plan, however, was decided in the cabinet meeting, giving us no time to process such opinion fully to our superiors.

"As anticipated, the government before long came to a sad plight in endeavoring to decide in the cabinet meeting the annual mobilization plan of materials, whose contents were quite contrary to the above plan. On making the decision, however, the government had been so seriously worrying politically that the government had no intention of

abandoning the previous plan.

"The method appearing in Prince KONOYE's memoirs, to surmount the crisis with 4 million tons of synthetic oil was based on the above mentioned plan, which never materialized.

"8. In October 1941 when the TOJO Cabinet was formed various investigations were urgently and seriously conducted by the demand of the prime minister himself, in order to find out the final decisions on national policies. Among the subjects of the investigations were the one to avoid war by rapid and large-scale expansion of the synthetic oil industry. We were ordered to investigate as to the possibility of the idea.

"Finance Minister KAYA proposed on the floor of the Liaison Conference on 28 October 1941 that the government should tide over the crisis and avert war by executing the 4 million ton plan of synthetic oil and by putting it together with storage of oils of the army and the navy. That is, in early morning of the next day, the 29th, I was informed by the Chief of the Bureau of the matter and asked for my opinion on it.

"In response to our report of 'impossible,' War Minister TOJO expressed dissatisfaction, ordered

more fundamental investigation, and requested the Planning Board to make a thoroughgoing investigation of it in his capacity as Prime Minister.

"Finance Minister KAYA further suggested production of 2,500,000 tons of synthetic oil by 1946 - putting the rest off for later years, and to make clear the quantity to be allocated each year. Director-general SUZUKI of the Planning Board, also, expressed his view that he would like to execute a plan to produce 2 million tons of the synthetic oil - using 500,000 tons of steel in two years. I was informed by the Bureau Chief of this and conducted the investigation.

"The foregoing statement is the enumeration of the facts that there were continued efforts to avoid the Pacific War, even in the last stage, in the form of economic or technical counter-measure of pushing the synthetic oil industry, as well as the efforts in diplomatic activities.

"9. After that, even the Planning Board reached the conclusion that rapid and major development for the synthetic oil was impossible at that stage.

"The following is the outline of the part relating to the synthetic oil in the report which

the Director-General SUZUKI of the Planning Board submitted to the Imperial Conference of 5 November 1941 and which for the first time put an end to discussions among government officials on synthetic oil.

"(1) Assuming that 5,200,000 tons of synthetic oil would be produced, the necessary personnel and materials were:

"Steel	2,250,000	tons
"Cobalt	1,000	"
"Coal	30,000,000	"
"Funds	¥ 3,800	millions
"Coal Workers	380,000	persons

"(2) Assuming to have been able to obtain them, necessary time for construction of the plants was:

"Approximately 6 months - for low-temperature carbonization plant.

"Approximately 2 years - for synthetic plant and hydrogen-attaching plant.

"(3) Besides when closely examing the domestic capacities to produce high-pressure reaction pipe and various 'pipes' it was nearly impossible to secure self-supporting policy of liquid fuel in a short time by solely depending upon synthetic oil.

And even though to invoke power of authorities, it would take at least 7 years.

"(4) Therefore it is not proper under the urgent situations to depend solely upon synthetic oil.

"III. Judgement on National Power under Hypotheses to Open War in April, 1941.

"10. Since January 1941, the Preparation Section of the Mobilization Plans Bureau, War Ministry, reached a conclusion that they should avoid the commencement of war, as a result of making an investigation of the national power in regard to the two hypotheses of 'opening war on April 1, 1941' or 'maintaining the status quo.' The findings of the ingestigation were reported to War Minister TOJO and Chief of General Staff SUGIYAMA, both of whom approved the conclusion to avoid the opening of war. I was the person who had supervised and commanded the investigation, and had explained and reported the findings of the investigation to the Minister and the Chief of Staff, and after my report they approved it.

"As is seen in the attached certificate (a), the originals of these two reports were burnt. But as I retain in my possession the copies of these

reports distributed to me as sectional chief at that time, I am able to produce them.

"Besides, prior to the investigation, no other organization in our country had conducted an investigation of that kind. And also I had never taken orders nor directives in advance concerning the investigation from the superiors.

"11. 'Absolutely no war with the Soviet' was the condition in investigating what happens in case of 'opening war.' The judgement in the report - which I wrote personally - was that 'the national strength of the Empire viewed from the aspect of the materials in our country cannot be safe in carrying out a protracted war against Britain and the United States,' and also that 'we will have enough strength roughly about the end of two years to crush the enemy. However, there is an apprehension that at about that time a shortage of liquid fuel, at least for a limited period of time, may be experienced and that the economic potential will be much disturbed if the war should be protracted.'

"As an official document the entire judgement does not exist today as stated above, but from a copy in my possession I am submitting a portion that contains the judgement as Annex I.

"Moreover the part of the investigation concerning liquid fuel recognized that 'there will be no shortcomings for various operations for the first year,' and judge 'for the second year, though there will be no difficulties for air operations, heavy oil allotted for sea operations is likely to meet the demand for a decisive battle.' We presumed, however, that in case resources in the Netherland Indies could be caught intact and in good condition, the fuel crisis would not arise in the latter half of the second year."

THE PRESIDENT: There you finish with fuel. You next go on to shipping.

We will now adjourn until half past nine tomorrow morning.

(Whereupon, at 1600, an adjournment was taken until Tuesday, 5 August 1947, at 0930.)

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5 AUGUST 1947

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1763	2771-A		Excerpt therefrom - Statement of Minister HAMAGUCHI re the Gold Embargo		24949
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	2772		Book entitled "Stenographic Record No. 28 of the proceedings of the 59th Session of the House of Representatives, the Imperial Diet, 28 February 1931		24968
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	2773		Book entitled "Stenographic Record No. 4 of the proceedings of the 62nd Session of the House of Representatives, the Imperial Diet, 4 June 1932		24969
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	2774		Book entitled "Stenographic Record No. 14 of the proceedings of the 64th Session of the House of Representatives, the Imperial Diet, 16 February 1933		24971
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	2777		Book entitled "Stenographic Record No. 18 of the proceedings of the 65th Session of the House of Representatives, the Imperial Diet, 3 March 1934		24998
1750	2777-A		Excerpt therefrom - Speech of Minister MATSUMOTO re the Petroleum Control Bill		24998
1752	2777-B		Excerpt - Statement of Minister TAKAHASHI re Adjustment of Trade and Protection of Commerce Bill		25000
	2778		Book entitled "Stenographic Record No. 7 of the proceedings of the 69th Session of the House of Representatives, the Imperial Diet, 12 May 1936		25002
1734	2778-A		Excerpt therefrom - Statement of Minister OGAWA re Automobile Industry Control Bill		25002

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	2779		Book entitled "Shorthand Record No. 3 of the proceedings of the 70th Session of the House of Representatives, the Imperial Diet, 22 January 1937		25005
1766	2779-A		Excerpt therefrom - Speech of Mr. SAKURAUCHI re Policies aimed at promoting and development of Industry		25005
	2780		Book entitled "Stenographic Record No. 3 of the proceedings of the 70th Session of the House of Representatives, the Imperial Diet, 22 January 1937		25008
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	2781		Book entitled "Stenographic Record No. 5 of the proceedings of the 71st Session of the House of Representatives, the Imperial Diet, 29 July 1937		25013
1724	2781-A		Excerpt therefrom - Speech of Minister YOSHINO re the Synthetic Oil Industry Bill and Imperial Fuel Development Company Bill		25013
1933	2782		Affidavit of OKAZAKI, Ayakoto		25017

Tuesday, 5 August 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, all Members sitting, with the exception of: HONORABLE JUSTICE JU-AO MEI, Member from the Republic of China, sitting from 1330 to 1600; HONORABLE JUSTICE STUART McDOUGALL, Member from the Dominion of Canada; HONORABLE JUSTICE I. M. ZARAYANOV, Member from the USSR; and HONORABLE JUSTICE E. H. NORTHCROFT, Member from the Dominion of New Zealand, not sitting from 0930 to 1600.

For the Prosecution Section, same as before.

For the Defense Section, same as before.

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(English to Japanese and Japanese to English interpretation was made by the Language Section, IMTFE.)

Greenberg & Barton

MARSHAL OF THE COURT: The International Military Tribunal for the Far East is now in session.

THE PRESIDENT: Dr. KIYOSE.

DR. KIYOSE: Mr. President, in the latter part of the second paragraph of the opening statement made by my esteemed colleague, Mr. Logan, yesterday, there is a sentence which has been mistranslated into English, and I should like to have this section corrected -- mistranslated into Japanese.

THE PRESIDENT: Point it out to Major Moore, and he will report to us. We do not want to know what it is now. Point it out to Major Moore.

DR. KIYOSE: I have already spoken of the matter to Major Moore, and I expect that he will make the correction.

THE PRESIDENT: When he is ready, he may do so.

LANGUAGE ARBITER (Major Moore): If the Tribunal please, sir, Dr. KIYOSE spoke to me just before Court was to sit. The Board has not had a chance to look at the correction. It is from English into Japanese, and the correction will be noted in the Japanese copy.

THE PRESIDENT: Mr. Logan.

K I K U S A B U R O O K A D A, recalled as a witness on behalf of the defense, resumed the stand and testified through Japanese interpreters as follows:

MR. LOGAN: I shall continue reading from OKADA's affidavit, page 12, the English copy, where we left off yesterday:

"Again concerning the shipping which is the motive power of Japan's production, we stated in the investigation that, assuming a war would be opened in April, the vessels to be drafted by the army and navy should be fixed at the limit of about 2,500,000 tons, which was far short of the demands for operations. We thought it possible, however, to open war in winter on the ground that, taking advantage of the slack season of shipping in winter, the additional one million tons of vessels would be available, even admitting some of the drafted vessels would be lost on the way. In the investigation at that time we merely estimated that the loss of vessels would be no more than 400,000 tons at the beginning of war, but there was no small anxiety over securing transportation if situations of war occurred contrary to our expectations. This was because we had heard influential opinions from some officials of the Navy concerning estimated loss of vessels, which estimated 800,000 tons the first year,

600,000 tons for the second year, and 700,000 tons for the third year. Yet we opined that reduction of transport capacity resulting from drafting vessels corresponded to the loss of 6 million tons of coal, 2,350,000 tons of iron ore and other no small amount of materials. As for iron, the level of 4 million tons of production can be maintained by using iron ore stocked previously, whereas much importance should be attached to the result due to the loss of 6 million tons of coal over various fields of industries. Again, as the materials stocked were bound to be almost consumed during the two years after war opened (68 per cent in the first year, 17 per cent in the second year of hostility), there were anxieties over our resiliency after the third year.

"In the investigation with the assumption that the status quo would be maintained, we also arrived at a judgment. Although the official document is not in existence, as stated above, the part containing the judgment is attached to this affidavit as Annex II, copied from the duplicate in my possession.

"Explaining the judgment, firstly we pointed out that, assuming the following conditions, i.e., Japan would not enter into economic rupture with Britian and the United States, that trading with their colonies in the East Asia would also be continued to a certain ex-

tent, and that economic negotiations of Japan with various regions in the South would also make certain progress, the national power of our country, in case the status quo was maintained, would continue to drop in 1941 and 1942, but would take a little upward trend in later years. Secondly, we pointed out that national power would seriously be lowered if the foregoing assumptions did not happen due to a decrease of storage of oil, our national defense would be weakened extremely.

"Finally we have reported, under the title 'Combined' judgment on investigations carried out on assumptions of 'opening war' and 'maintaining status quo', which was to compare the two investigations, that so long as import of oil was not to be interrupted by an all out embargo we should bear the situation in patience. However, regarding that part there are no official documents as certified by the 1st Demobilization Bureau (attached certificate (b)), nor is my copy in existence.

"IV. Freezing of Assets and Catastrophe of Japan.

"With the freezing of assets on 26 July 1941, Japan was driven into a completely blockaded economy and indeed entered into a position facing catastrophe after the time when she would have consumed her stocked re-

sources in two years. To explain the situation regarding oils which were vital to Japan, the total amount of oils stocked by the army, navy and civilians were:

"Aviation gasoline approx. 1,700,000 k.l.
"Ordinary " 830,000 "
"Kerosene " 320,000 "
"Light oil " 320,000 "
"Heavy oil " 4,430,000 "
"Machine oil " 360,000 "

"As against this, volume consumed in 1941 were:

"Aviation gasoline approx. 150,000 k.l.
"Ordinary " " 80,000 "
"Kerosene " 10,000 "
"Light oil " 4,000 "
"Heavy oil " 1,050,000 "
"Machine oil " 150,000 "

"In consequence, if the China Incident continued, aviation gasoline would be only 870,000 k.l. and heavy oil 2,330,000 k.l. in two years, which amounted to merely being capable of sustaining as little as one year for battle in the air against a strong power and for one year of protracted operations on the sea, already too short for decisive battle on the sea.

"Thus Japan fell into the so-called sagging difficulties. We were judging, when the army and the

navy faced the decisive battles or operations, the amount of aviation gasoline which would be needed would be about 400,000 k.l. each year, i.e., 800,000 k.l. for both Army and Navy. This exceeded the above-mentioned amount of storage. The amount of heavy oil which would be needed for the navy would be more than 2,000,000 k.l. in protracted operations, which would in two years leave little of the aforementioned stock of heavy oil.

"V. Judgment upon the national strength on the basis of assumption of opening war in November 1941.

"Encountered with hardship through the freezing of funds and the stoppage of oil importation, the Preparations Section of Mobilization Plans Bureau, the War Ministry, had been rectifying the investigations of the former judgment on the national strength on the basis of assumption of 'opening a war on November 1, 1941' since September of 1941, but about the last period of the KONOYE Cabinet, War Minister TOJO requested our Section to reexamine its investigations and asked for a clear prospect, concerning particularly, oil, shipping, iron, coal and foodstuffs.

"By that time similar investigations were being conducted in the Navy Ministry, too, and discussions had been made between the two Ministries with regard to oil, shipping, etc., but no such investigations had been made in the Planning Board up to that time.

"The above investigations did not differ so much in substance from the judgment on the basis of assumption of 'opening a war in April,' but the situation has become more serious than ever, with the decrease in stock of oil resulting from the stoppage of

oil importation.

"Through the investigations made at that time, it was judged that oil could be obtained from the Netherlands Indies to the extent of 1,000,000 K.l. in the first year and 3,000,000 K.l. in the second. But in the subsequent discussion between the Army and the Navy, this estimate was rectified by the Army to the lowest, i.e., 300,000 K.l. in the first year and 2,000,000 in the second, adding special ingenuities to the method of consumption to overcome somehow that shortage.

"As for the result of this discussion, there was, of course, no change at all in the desire to reach an agreement through diplomatic negotations. The authorities concerned in both Ministries were to continue further investigations, taking into consideration a war which might have to be waged in order to get rid of the danger in national defense, resulting from oil blockade, in case the diplomatic negotiations should fail to bring about agreement.

"Next, with regard to the shipping problem, the shipping capacity to be requisitioned by the Army and Navy, and their periodic increase or decrease were ascertained for the first time as the result of that investigation, in consequence of which the prospect of

the transportation of goods became gradually apparent, vis.

"Firstly, shipping capacity needed:

"(1) In order to continue the import of supplies, a monthly average of 3,000,000 tons of shipping capacity available for goods was needed;

"(2) But when that shipping capacity was reduced to 2,500,000 tons, and if (A) iron and steel and rice were given the allocation of 100% transporting capacity, (B) coal, salt, fertilizer, soya beans, ores, brick and raw cotton could not be given more than 80%, and (C) other resources, 44%.

"(3) When it was reduced to 2,000,000 tons, and if 100% and 70% were maintained for iron and steel and rice in (A) and the important resources in (B) respectively the other resources in (c) could not be given more than 8%.

"(4) When it was still further reduced to 1,500,000 tons, and even if iron and steel and rice in (A) were cut down to 80%, and the important resources in (B) to 40%, the other resources in (C) could be given but 1%.

"From the foregoing it was generally surmised that the situation was serious, although the above ratio could be adjusted among (A), (B) and (C) with one

another.

"Secondly, shipping capacity available:

"(1) According to the investigation in August, 1941 the actual capacity of ships with more than 1,000 tons was 5,980,000 tons at the end of July, 1941; in addition to this, the total capacity of small-sized ships and controllable steam-launches was 650,000 tons, which were obtained after having been converted by taking into account their availability. The grand total of the above capacity early in November, including 90,000 tons of new ships to be built by October would be 6,720,000 tons;

"(2) If this grand total shipping capacity was reduced by the total capacity of 1,100,000 tons of ships, such as those in deck or detained, tankers, government ships, fishing boats, repair ships and store ships (excluded from requisition);

"Thirdly, increase and decrease of available capacity:

(1) Ships lost:	800,000 tons	(1st year)
(2) Ships seized:	100,000 "	(" ")
(3) Ships newly	430,000 "	(" ")
built:	550,000 "	(2nd year)
	600,000 "	(3rd year)

"Fourthly, shipping capacity requisitioned by the Army and Navy:

Navy: 1,600,000 tons

Army: 1,800,000 " for first 4 months

900,000 " after 7th month, as result of gradual decrease.

"(Afterwards the Navy and Army still plan to increase requisition.)

"Fifthly, shipping acpacity needed for transporting goods on public demand based on the above calculation:

"(1) Supposing that much damage would be sustained early in the first year,

Minimum: 1,670,000 tons.

Of this, if passenger ships (540,000 tons) were converted into cargo boats (100,200 tons) the actual capacity would become 1,270,000 tons.

"Monthly average: Actual capacity 1,300,000 tons for first 4 months. Actual capacity 2,200,000 tons for the subsequent 8 months.

"(2) If no damage was sustained after the second year, the actual converted capacity of ships for

public demand would reach as much as 3,000,000 tons, but if otherwise, the figures would be changed. If, however, 600,000 tons were lost in the second year and 700,000 tons in the third, the above figure, 2,200,000 tons, would decline to some extent. In order to cover this deficit, the only way is to build new ships.

"Sixthly, in summing up the foregoing, we judged as follows:

"(1) The transporting capacity 1,300,000 tons early in the first year was indeed too small to hope for anything, but if we had recourse to the compulsory store of iron ores and the utilization of various stocks, and especially if such were limited to the quiet transportation period of winter, production could be maintained, and if that transporting capacity were restored to that subsequent actually converted 2,200,000 tons, the supply of goods of actually converted 2,500,000 tons' space inclusive of various counter-measures would probably be possible.

"(2) After the second year, if no large number of ships were lost through the successful military and naval operations, that transporting capacity would gradually increase."

THE PRESIDENT: How do all these details tend to exculpate the accused? They show nothing more than

very, very careful preparation for war and war soon. One would expect that kind of thing from the prosecution but not from the defense in such detail. This man might be a prosecution witness from all he says. We are not interested in the details of this man's work. It was all directed at preparation for war on a large scale and war in the immediate future, you might say.

MR. LOGAN: On the contrary, if the Tribunal please, it shows that investigation was made; and, if you will wait until I arrive at the end of the affidavit, I think you will find definitely that, on the basis of this careful estimate, it was definitely pointed out that there could be no war, based on the materials that they had on hand.

THE PRESIDENT: I have not heard the whole of the affidavit, but how does it help the accused to show that that man in the box advised against war and yet war was resorted to? A thousand Japanese may have weighed the situation and advised against war. Suppose they did. Would they be called here to show their advice was disregarded?

MR. LOGAN: On the contrary, your Honor, the Indictment charges these accused with planning and preparing for aggressive war. This testimony shows --

pardon.

THE PRESIDENT: As a colleague just stated, this man is not an accused.

MR. LOGAN: He is not an accused, but he is the one who made these studies and submitted them to one of the accused at least.

THE PRESIDENT: How does it help any of the accused if this man made a careful study and gave advice against war which was disregarded? How can it help?

MR. LOGAN: I am trying to explain it, your Honor.

THE PRESIDENT: I had better let you finish reading the affidavit, Mr. Logan, and I would like to know what you are driving at through this witness.

MR. LOGAN: I think, perhaps, if I'd explain it, you would understand.

We are accused, in the Indictment, of planning and preparing to wage an aggressive war. This testimony and other testimony to be offered will show that there was no such plan and no such preparation. There couldn't be because Japan didn't have the resources. And that -- may I finish? -- and that later on, after the freezing orders went into effect and diplomatic negotiations broke down and there was a danger of Japan

being strangled, then, as a last resort, she went to war. There was no preparation or planned war.

THE PRESIDENT: Well, your case is, you waged war but you didn't plan it or prepare for it.

MR. LOGAN: We were driven to it. As I said in the opening statement, your Honor, Japan was provoked into this war.

THE PRESIDENT: And not having planned or prepared for war, her defeat was inevitable.

MR. LOGAN: The prosecution evidence also shows that, your Honor. They knew that they couldn't last more than a year and a half at the time the war was forced on them.

THE PRESIDENT: According to KIDO's Diary -- I forget the number of the exhibit -- on the 30th of November Prince TAKAMATSU is supposed to have told the Emperor that the Navy thought they had no chance of success. The Emperor then consulted the War Minister, the Chief of the Naval General Staff and the Prime Minister, the accused TOJO, who expresssed confidence in the result. The Emperor then directed that the program be carried out.

MR. LOGAN: If the Tribunal please, as far as the Emperor is concerned, he was following constitutional government.

THE PRESIDENT: I am dealing with another phase of that diary, the confidence of the Japanese and the result of the war they were about to declare or to engage in. But I don't share your view of the constitutional position of the Emperor. If a cabinet advises a king to commit a crime, and the king directs that it be committed, there is no constitutional protection.

MR. LOGAN: But if the cabinet advises the Emperor--

THE PRESIDENT: The king can do no wrong under the constitution.

MR. LOGAN: If the cabinet advises the Emperor that it is necessary for the country to go to war for self-preservation and self-defense, self-defense is a good defense to any crime. They didn't want to go to war, your Honor. All the evidence points against it. They knew that they couldn't win the war and the prosecution evidence so shows it and so does ours. They were driven to it.

THE PRESIDENT: When you raise self-defense you change the constitutional ground. That is a different matter. It still remains that the men who advised the commission of a crime, if it be one, are in no worse position than the man who directs the crime be committed.

MR. LOGAN: Of course, that is based on the assumption that a crime has been committed.

Getting back to this affidavit, your Honor, I might also say that it also shows lack of conspiracy among these accused.

May I continue reading?

THE PRESIDENT: I still think it is a waste of time.

MR. LOGAN (Reading):

"19. With regard to various important goods, I investigated the matter from the above shipping condition, and taking the utilization of their stock into account.

"20. In order to explain the above points, I prepared a diagram and reported it verbally on its basis to the War Minister.

"This diagram, however, does not exist at present, as is certified by the 1st demobilization official certificate (C).

"The War Minister ordered us to refer it to the Military Affairs Section, as it was closely related with other various problems, and studied my report from every angle. The attitude of the War Minister, TOJO, at that time, as far as we subordinates took it, was nothing but to order us to make various investigations.

"At that time, although the military circles at large felt a great unrest in regard to making a war, particularly to the shipping situation, there was an atmosphere that Japan could not face the future danger which might be caused by the blockade of oil.

"VI. Judgment on the national strength by the TOJO Cabinet prior to the opening of the war.

"21. When the TOJO Cabinet was formed in October of 1941, it was decided that all the arguments concerning national policies were put aside for the present, and all the problems should be investigated from the very beginning. Thorough-going investigations of the national strength, therefore, without being satisfied with those hitherto made by the military authorities, were instituted, making the Planning Board as the center of examination, and the result was submitted to the Liaison Council, in order to formally form a final estimate of the national strength.

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"As has already been stated, the problem of

synthetic oil was also thoroughly investigated at this time.

"22. The following were the judgment of the Planning Board in case war might be avoided:

"(1) Supposing the standing requisitioned ships to be 2,150,000 tons, and newly constructed ships 500,000 tons in the first year, 700,000 tons in the second and 900,000 tons in the third, goods on civil demand of the self-supplying sphere could be transported monthly 5,770,000 kilotons in the first year, monthly 7,770,000 in the second and monthly 8,970,000 in the third.

"On the basis of this calculation, 4,820,000 kilotons of ordinary steel and steel material may be needed in the first year, 4,970,000 in the second, and 5,200,000 in the third.

"(2) Next, although goods from French Indo-China and Thai, which are the only supplying spheres for Japan, absolutely needed, because of the world-wide suspension of trade, the procurement of them was expected to become difficult through machination and interference on the part of Britain and America.

"(3) In conclusion, the stocks of various goods for domestic consumption will gradually decrease, and particularly so with those of liquid fuel. As an

example I may cite the case of crude oil.

"The following are quantities of crude oil for supply:

"Home production, 1st year, 360,000 K. L.
2nd " 400,000 "
3rd " 440,000 "

"Synthetic oil, 1st " 300,000
2nd " 500,000 "
3rd " 700,000 "

"Against the above supply, its civil demands amount to 1,800,000 K. L. If the deficit were to be covered by the military stock, the civil demands can be met until the third year, but at the end of that year, will it become difficult to do so. If classified, the above deficit will be in kerosene, ordinary machine oil, high class machine oil and diesel crude oil. Even though a fundamental reestablishment of the synthetic oil enterprise is planned, satisfactory results cannot be expected at present.

"23. Next, the prospect of the Planning Board in case of war being waged was that the oil difficulties might be overcome by the procurement from newly occupied areas, and the shipping problem, too, might be solved somehow or other; thereby it was judged that minimum quantities of supply of important

goods might also be maintained, viz.

"(1) Oil: According to the joint investigation of the Army and Navy, the total quantities of supply were 850,000 K. L. in the first year, 2,600,000 in the second and 5,300,000 in the third. If the prospect of supply and demand is made on the basis of these figures plus 8,400,000 K. L. of domestic stock, there will be a balance of 2,550,000 K. L. in the first year, 150,000 in the second and 700,000 in the third year, which will meet the need though not satisfactorily. According to the estimate on the 1st of December, air-fuel was 1,110,000 K. L. This will cause some shortage in the second or third year.

"(2) Shipping: Transporting capacity was judged on the basis of the supposition that, in order to maintain the supply of goods, a monthly average of 3,000,000 tons of ships for civilians were needed; damages, estimated from 800,000 tons to 1,000,000 tons in the first year, could be supplemented by 3-year consecutive shipbuilding of yearly average 600,000 tons; and the requisition quantity by the Army and Navy would be 3,900,000 tons in the first period, but would decrease to 2,800,000 afterwards.

"(3) Important goods: After taking into consideration the current production quantity of iron

and its future decrease, as well as the decrease in rice import from abroad, the procurement of important goods from the occupation areas in the South was anticipated.

"(4) After summing up the above, the judgment on the national strength was made in a concrete shape.

"24. It was at the end of October that the foregoing estimates were finally agreed upon, and it was on the 1st of November that this was approved by the Liaison Council. And it was on the 5th of November that the President of the Planning Board SUZUKI reported it in the Imperial conference. It is, however, regrettable that this record does not exist at present.

"On this 18th day of July, 1947, at I. M. T. F. E.

"Deponent: (S) OKADA, Kikusaburo."

"Appendix I

"Excerpt from a copy of the titled document, prepared by the Mobilization Plans Bureau of the War Ministry, investigated on June 1 in the 16th Year of Showa (1941), reinvestigated in March and rectified in April of the same year.

"Hypothetical appreciation of the Empire's material strength.

"Judgment.

"1. The national strength of the Empire as viewed from the aspect of materials cannot be free from anxiety in carrying out a protracted war against Britain and the U.S.A.

"As long as the enemies prefer to resort to decisive battles and challenge us accordingly, we should be able to maintain resiliency to destroy them until about the end of the second year. However, there is an apprehension that at about that time a shortage of liquid fuel, at least for a limited period of time, may be experienced and that the economic war potential will be much disturbed if the war situation should be protracted.

"This shortcoming will arise from the stoppage of importation and slackness in amplifying productivity. Production of steel and light metal may become brisk

later unless bottoms for transportation are very much depleted, but the expansion of domestic production will not in any way compensate for the stoppage of importation of the materials for the specific steel and non-iron metals; the gradual consumption of the present stock may barely patch up the need of the first two and half years, but will result in an extreme shortage of supply from the third year onward.

"As for the supply of liquid fuel, apprehension that there may exist a non-supply period between the time of restoration and development of the Dutch East Indies resources and that of the complete attrition of the hoard has not been quieted. This will emphasize the importance of shipping bottoms and will subsequently cause decreased coal transportation, with the result that industry as a whole will slump and the straightened circumstances in the field of light industry materials will pile difficulties on already existing anxieties concerning domestic problems.

"2. However, if circumstances so necessitate and Japan, with a view to deliberately seeking a way out of the difficulties, should decide to seize an opportunity of resolutely entering into war against Britain and the U.S.A., the operations should be executed in such

a way that the warfare in the southern regions be terminated in the quickest possible manner and the resources in the Dutch East Indies be captured in the best condition, so that the above-mentioned apprehensions may be eliminated.

"With regard to the question of bottoms for transportation, the most discrete attention will be required to coordinate the operations and the economic problems, and, in particular, to secure the existing bottoms.

"Needless to say, in determining upon the resolution to wage war against Britain and the U.S.A., the present state of material strength makes it absolutely necessary for Japan to adhere to the fundamental necessity in this war of giving no rise to a Soviet-Japan war and of stabilizing domestic problems.

"Moreover, when the resolution upon war is reached, the following points should be thoroughly studied beforehand and counter measures must be prepared to the fullest extent:

"1. Because of the protracted war against Britain and the U.S.A., both the means of increasing army and navy armament and establishment of industries will not develop along the expected course.

"2. There will be a considerable declination for

a time in supply of various materials.

"3. As long as the requirement of materials can be covered with the resources available within the Greater East Asia, the shortage can be filled sooner or later by devising some competent measures to utilize those resources, but the supply of non-ferrous metals and the metals as raw materials for the specific steel will be bound to experience an extreme shortage.

"After the occupation of the southern regions, attention should be concentrated upon making the most effective use of such materials as are exclusively found in those regions alone (tin, rubber, quinine) and of the special products of tropics. It is suggested that by offering those items to Germany, Italy and other axis countries as well as to the Soviet and other neutral countries, efforts should be made to obtain in exchange from them or from other parts of the world through their intermediation the required materials to promote the war potentials of the Empire. Attention must also be drawn to the surplus materials of that area which will have to lose their world's market through Japan's occupation, and a new trade policy should be established in such a way as would minister to each other's wants among Japan, Manchoukuo, China and the southern regions. The question of

bottoms for transportation has great influence upon practice of this policy, and its outlook so far is not quite reassuring.

"Before making any determination in relation to the above appreciation as to the propriety and the time of execution of war against the southern regions, the separate report entitled 'Deduction of Empire's strength based on the appreciation of the present situations' should also be studied and a synthetic decision be made thereupon.

"Appendix II

"'Hypothetical appreciation of the Empire's material strength on the basis of the present conditions.'

"(Excerpt from a copy of the titled document, prepared by the Mobilization Plans Bureau of the War Ministry in March in the 16th Year of Showa (1941).

"1. Decision

"Japan should expedite economic negotiations with the Netherlands Indies as soon as possible to devote herself to the establishment of the self-supplying sphere of East Asian countries. Simultaneously, she should avoid provoking Britain and America meaninglessly, relying to the end upon the resources of their 'block,' to foster her national strength, thus

prepare herself for possible war in the future."

The certificates with respect to the current documents are also attached, (a) and (c).

You may examine.

THE PRESIDENT: Brigadier Quilliam -- Mr. Levin.

MR. LEVIN: Mr. President.

BY MR. LEVIN:

Q I would like to direct your attention, Mr. Witness, to paragraph 24 of your affidavit on page 26 of the English copy.

This is further examination, your Honor.

THE PRESIDENT: On whose behalf?

MR. LEVIN: On behalf of SUZUKI.

Q You state there, "It was at the end of October that the foregoing estimates were finally agreed upon." Will you please name the persons and officials who finally agreed upon those estimates that you mentioned in this portion of the paragraph?

A It was toward the end of October that the competent ministers of the government agreed to this estimate and the agreement which included members of the high command was reached on the first of November.

Q Will you state the names of the persons and the official positions that they held when they finally

agreed on the estimates at the end of October?

A At the end of October the ministers of the ministries of the government concerned.

Q Will you please state who they are, or who they were?

A I can state positively that the officials were included: the War Minister, the Navy Minister, and the President of the Planning Board.

Q Was the Minister of Transportation there?

A On the whole the transport minister would not have a very profound relationship with these matters but they would naturally have connection in connection with the question involving shipping. However, the Ministry of Communications would not have a very great connection in connection with the problem of losing ships or having ships requested by the army and navy.

Q Was he there? Did he participate in this agreement that occurred in the latter part of October?

A I generally consider that the ministers who participated in the agreement were those who were present at the liaison conference on the first of November.

Q And is this the best information that you can give to the Tribunal in relation to those

persons who were there at the end of October that the estimates that you gave were finally agreed upon?

A I do not know what kind of a discussion went on when the high officials of the government met at the end of October; however, when the liaison conference was held in the Imperial Palace on the first of November it was necessary that I be there awaiting the members attending this conference in an anteroom, or a waiting room, in the Palace and I had occasion to listen to their conversation while they took meals during the recess. However, with respect to your last question as to who participated in the agreement at the cabinet conference toward the end of October, I cannot say.

MR. LEVIN: That is all.

MR. LOGAN: I would like to point out, if the Tribunal please, a typographical error on page 28, appendix I: "June 1," should be "January 1."

THE PRESIDENT: Mr. Comyns Carr.

MR. COMYNS CARR: May it please the Tribunal, it appears that there are two documents in the witness' possession -- at least two -- of which he has produced only extracts and the prosecution would like to have the opportunity of examining the documents in full. We do not want to take up the time of the Tribunal by

asking questions about them now, but if the witness will produce the whole documents so that they can be identified and we can afterwards examine them, that would be sufficient.

CROSS-EXAMINATION

BY MR. COMYNS CARR:

Q Mr. Witness, have you them with you?

A It is in the hands of counsel, Dr. KIYOSE.

MR. COMYNS CARR: I call for their production.

THE WITNESS: I should like to present it on the condition that it would be returned to me.

Q Mr. Witness, would you explain -- I am informed that all that we have here are these extracts which you have attached to your affidavit. Where are the original copies which you say are in your possession?

A I have left the originals in the hands of Dr. KIYOSE.

MR. COMYNS CARR: I do not want to waste time over this. Can my friend undertake that they will be produced to us?

MR. LOGAN: You ask that we produce originals. His affidavit says that the originals were burned. He has the copies of those originals and we will produce those. They were filed in the clerk's office.

Duda & Knapp

Q Are those two which you say are with Dr. KIYOSE, are those two the only documents referred to in your affidavit of which you have copies?

A I happen to have a carbon copy of the manuscript typed at that time.

Q But what I was asking you was, have you got similar copies of any other of the documents which are referred to in your affidavit besides the two which you have undertaken to produce?

A I do not.

Q Now, I have only one other question to ask you. Who were the persons who were present at the liaison conference of the 1st November, 1941?

A Usually the members of the liaison conference were fixed, but from time to time other members attended for special reasons.

Q Will you now answer my question, if you can. Who were present on this occasion?

A Those attending this liaison conference included the Prime Minister, the War Minister, the Navy Minister, the Foreign Minister, the Finance Minister, the President of the Planning Board, the Chief of the Army General Staff, the Chief of the Naval General Staff, the Vice Chief of the Army General Staff, the Vice Chief of the Naval General

Staff, the Director of the Military Affairs Bureau of the War Ministry, the Director of the Mobilization Plans Bureau of the War Ministry, the Director of the Naval Affairs Bureau of the Navy Ministry, the Director of the Mobilization Plans Bureau of the Navy Ministry, and according to problems involved, some bureau chiefs of the Foreign Office also attended.

MR. LOGAN: May the witness be released on the usual terms?

THE PRESIDENT: He is released accordingly.

(Whereupon, the witness was excused.)

THE PRESIDENT: Mr. Comyns Carr.

MR. COMYNS CARR: Subject to the possibility of our having some more questions when we have examined those documents, we have no objection to the witness being released.

THE PRESIDENT: Mr. Logan, have you many more affidavits like that of the last witness?

MR. LOGAN: In what respect do you mean like them?

THE PRESIDENT: Tending to show the Japanese were not prepared for war.

MR. LOGAN: We have other affidavits, your Honor, with respect to other industries. We have

very few of them.

We now offer in evidence defense document 500-F which contains studies of the overseas trade of Japan proper prepared for the Foreign Economic Administration by a member of the staff of the United States Tariff Commission in October 1945. This is a general study relating to the trade and individual commodities with certain countries to the whole prewar trade situation. This document presents a picture of the position of trade in the Japanese economy, Japan's trade and world trade and the direction thereof, the nature of the trade, the import and export of commodities. This document also is offered only for the factual statements contained therein and any opinions should be disregarded. I shall read only the marked portions, found on pages 1 to 3, 6 to 15, 18 to 22.

THE PRESIDENT: Brigadier Quilliam.

BRIGADIER QUILLIAM: May it please the Tribunal, I was under the impression that my learned friend was going to defer offering this document and the next one, a similar set of documents, until a further examination of them had been made.

THE PRESIDENT: We may receive hundreds of documents tending to show the true economic position

of Japan, yet there may be no doubt about it. The thing could perhaps be dealt with in a very short compass. We know that she has limited resources apart from labor power, and we know that they have a teeming population here. All those things are well known to us.

MR. LOGAN: I will be glad to take this and the next document up with the prosecution the same as we did yesterday.

Defense document 880 is now offered in evidence. This is a United States Department of State Interim Research and Intelligence Service Report issued October 31, 1945, on the Japanese shipbuilding industry. This report discusses the entire shipbuilding industry, its corporate structure, history of government control, and the capacity and technological aspect of the industry.

THE PRESIDENT: Brigadier Quilliam.

BRIGADIER QUILLIAM: May it please the Tribunal, we object to this document, but I must confess that the prosecution is in somewhat of a dilemma. Some of the contents of the document are relevant, but very much more is quite irrelevant. It is plain, on a perusal of the document, that Mr. Liebert's evidence on the matters contained in the document was taken from this very publication. What he did was to summarize in a convenient form the strictly relevant and material parts.

Examining the document, the first page is, we submit, irrelevant because it deals with the period after December 1941.

Page 2 is irrelevant because it deals with a period too remote to have any application in this case.

As regards pages 3 to 8, the whole of this information is summarized in exhibit 840, and in paragraphs 48 and 50. Exhibit 840 is Mr. Liebert's statement.

I don't know whether it is the desire of the defense that the Tribunal should satisfy themselves that Mr. Liebert has made an accurate statement, but it would appear to be quite unnecessary to overload the case with the full material.

THE PRESIDENT: If this document supports Liebert, why, as a matter of tactics, do you object, Brigadier? Without it, you see, Liebert may have no support; I don't know. Mr. Logan alleged yesterday that Liebert's figures had no support other than his mere say-so. If that is true, you shouldn't object to this document if it gives the necessary support.

BRIGADIER QUILLIAM: May it please your Honor, I emphatically disagree with Mr. Logan's statement on that point, of course. But your Honor's comments point to the dilemma in which I explained we are placed.

If I may just refer to the balance of the

document, bottom of page 8 to page 14, we submit the whole of that is irrelevant by reason of being concerned with the period after December 1941. In many respects, if it please the Tribunal, we would like the relevant portion that I have referred to to be admitted into evidence; but we have felt it our duty to inform the Tribunal that this is merely the full text from which the summary has been prepared.

THE PRESIDENT: There is one feature we must always keep in mind, Brigadier Quilliam, that I am inclined to overlook. There is a charge of a huge conspiracy starting in 1928 and ending in 1945, and, as I am reminded, the war of course is alleged to have been waged right up to September 1945 or August 1945.

BRIGADIER QUILLIAM: The place for the prosecution, if it please your Honor, on this point, that is, the economic preparations for war, was all based on what took place up to December 1941.

THE PRESIDENT: The Indictment does not place that time limitation, as far as I recollect. However, we will go into the matter after the recess.

We will recess for fifteen minutes.

(Whereupon, at 1050, a recess was taken until 1105, after which the proceedings

Lefler & Wolf

were resumed as follows:)

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

THE PRESIDENT: Brigadier Quilliam.

BRIGADIER QUILLIAM: May it please the Tribunal, as regards the evidence relating to the period after the 7th of December, 1941, all I wish to say is that, in fact, the prosecution limited its case to the period prior to that date, and, therefore, the defense has nothing to meet. In dealing with that period it is suggested the defense are pushing an open door.

As regards the relevant part of the document, I must repeat that we have felt it our duty to direct the Tribunal's attention to the matters that I have mentioned. So far as we can see, no attempt is made to suggest that Liebert's summary is wrong in any way or inadequate, and, therefore, it appears to be unnecessary to admit it into evidence. But, I can appreciate that if there is any doubt on that point it may be better to have that in the case.

MR. LOGAN: I can appreciate the prosecution's dilemma in regard to this document.

THE PRESIDENT: Yes, Mr. Logan.

MR. LOGAN: I say I can fully appreciate

the prosecution's dilemma with regard to this document. We were unable to unearth one of the documents which Liebert used in the preparation of his testimony, not because the information was given by him to us. And among other reasons why we are offering this document, one of which is very important, that is to show how inadequate Liebert's testimony is and how favorable it is to the prosecution as compared to the document from which he got his information.

With regard to the prosecution's specific objection on page 1, that it deals with the period after 1941, apparently they forget that there is still in this case a conspiracy and also a charge of our failure to feed prisoners of war. This is one of the answers.

THE PRESIDENT: For different reasons we think the whole of this document might well be admitted. The part that is probably too remote in time is very, very small. That is the beginning. And that last point you make seems to be sound, about the absence of shipping to feed prisoners of war.

The objection is overruled and the document is admitted on the usual terms.

CLERK OF THE COURT: Defense document 880

will receive exhibit No. 2768.

(Whereupon, the document above referred to was marked defense exhibit No. 2768 and received in evidence.)

MR. LOGAN: I shall read exhibit 2768, being defense document 880.

"RESTRICTED

"DEPARTMENT OF STATE

"INTERIM RESEARCH AND INTELLIGENCE SERVICE

"Research and Analysis Branch

"JAPANESE WAR PRODUCTION INDUSTRIES

"Part IV

"The Shipbuilding Industry

"31 October 1945

"By the middle of 1944, Japan's losses of merchant and naval vessels had so reduced the number of oceangoing ships that she was unable to find the transport required both to supply military forces committed in various areas and to move the volume of raw materials necessary to maintain 1943 levels of industrial output. In order to make ship construction equal losses, Japan would have had to build merchant vessels at the rate of at least 2,500,000 gross tons in 1944.

"Latest figures as revealed by the Japanese

Diet (5 September 1945) indicate that the nation had no more than 200,000 odd gross tons of operable merchant tonnage (over 100 tons) left at the cessation of hostilities. Diet figures for wartime naval building and losses are given in Table 10.

"B. Organization of the Shipbuilding Industry

"1. Brief History and Economic Considerations.

"a. Review to 1932. In addition to considering the specific questions of security and convertibility in the Japanese shipbuilding industry, it is necessary that we review historically and briefly the economic aspects of the shipbuilding industry in Japan with a view to determining to what extent the industry has been expanded along uneconomic lines.

"Ever since the Restoration of 1868, the Japanese Government has paid close attention to shipping problems, and soon after the war of 1895 in China, it embarked on a program of subsidies governed by laws enacted in 1896. The abnormal boom conditions prevailing during World War I, when (in 1919) 612,000 gross tons of merchant ships were launched, diminished the need for subsidies, but soon afterwards the annual amount of operating subsidies tended to revert to dimensions of 1914.

"During the 1920's the shipbuilding industry entered a long period of depression. Merchant ship construction dropped to a low of 42,000 gross tons in 1927, and operating subsidies amounted to about ten million yen a year. During this period, the Government did not give direct shipbuilding subsidies, but assisted shipbuilders by means of bounties on domestic steel production and certain exemptions from import duties. In 1929 the Government framed a program for the assistance of shipping in the form of loans on easy terms for shipbuilding. A loan fund of thirty million yen was made available, but owing to the world economic depression which followed, little use was made of this facility. A slow increase then began; the rate of increase was greatly accelerated in the early 30's by a government subsidized program of merchant ship construction. Under government direction Japanese lines acquired fast cargo ships which were the equal of any in their class in the world.

"b. Scrap and Build Schemes; Shipbuilding During the 1930's. In 1932, the Japanese Government made an important decision when, with a view to improving the unfavorable age distribution of the Japanese Merchant Marine and to reducing the frequency of marine casualties, it introduced the first of three 'Scrap and Build' Schemes. The first scheme, which took effect as of 1 October 1932, provided for the construction of 200,000 gross tons of new shipping, on condition that two tons of vessels of twenty-five years and over were scrapped for each ton of new vessels built under subsidy. Each new vessel had to be 4,000 gross tons or over, capable of at least thirteen and one-half knots speed, and built in a Japanese yard.

"The scheme resulted in the scrapping of ninety-four vessels of about 400,000 gross tons and in the building of thirty-one new vessels of about 200,000 gross tons.

"It was estimated that the expenditure involved in building the thirty-one ships was a little less than 55,000,000 yen. The total government subsidy was nearly 11,000,000 yen.

"The second and third schemes, which took effect in 1935 and 1936 respectively, were on a smaller scale than the first. Their combined result was the

scrapping of 100,000 gross tons and the construction of seventeen vessels of about 100,000 gross tons, the rate of subsidy being little more than half that under the first scheme. The vessels built had a gross tonnage of 4,000 tons or more and were capable of over fifteen knots speed.

"By the early part of 1937, the three Scrap and Build Schemes had resulted in the scrapping of some 500,000 gross tons of old tonnage and the construction of forty-eight new fast ships of some 300,000 tons gross. These forty-eight included more than four-fifths of the total number of Japanese vessels of over 4,000 gross tons and less than five years old. At that time Japan had more tonnage less than five years old in proportion to her total tonnage than any other country. The following table shows the ships constructed and scrapped in accordance with the three ship improvement plans.

"Table 17

"Ships Constructed and Scrapped in Accordance with the Three Ship Improvement Plans

"Ships Constructed

"Plan	Number	Total Tonnage
"First	31	198,989
"Second	8	49,760
"Third	9	50,690
"Total	48	299,439

"Ships Dismantled

"Number	Total Tonnage	Fiscal Year
" 94	399,122	1931-34
" 12	52,798	1935-36
" 13	47,235	1936-37
" 119	499,155	

"Note: It was not possible to ascertain the number of vessels actually dismantled under the third plan.

"The cost of the three ship improvement plans totalled ¥ 14,000,000 ($4,062,800), including ¥ 11,000,000 for the first plan and ¥ 1,500,000 for each of the next two plans.

"A fourth scheme came into operation in April 1937 and provided for the subsidized construction of superior passenger and passenger-crago liners of not less then 6,000 gross tons and nineteen knots speed, at rates of subsidy approximating in some cases half the building cost. In a supplement to the Official Gazette of July 1937, it was stated that the subsidies, though payable by installments spread over eighteen years, would be paid during the next four years for the construction of 150,000 gross tons of passenger vessels and 150,000 gross tons of passenger-cargo vessels. It was proposed to spend a total of over fifty million yen on this scheme during the eighteen years beginning with 1937-1938.

"Table 18 gives the total launchings of

vessels of 100 gross tons and upwards for selected years between 1913 and 1938:

"Table 18

"Total Launchings of Merchant Vessels (in tons)

"Date	Number	Tonnage
"1913	152	64,664
"1920	140	456,642
"1930	37	151,272
"1932	44	54,422
"1934	155	152,420
"1936	180	294,861
"1937	180	451,121
"1938	146	441,720

"Source: Shipbuilding in Japan, 1940 (Japan Economic Federation).

"The trend in the middle thirties was towards the construction of luxury passanger liners for deep-sea service, but was reversed after the outbreak of the war with China. The shipbuilding industry directly reflected the change in shipping needs from large-sized vessels for deep-sea service to small and medium-sized bottoms for coastal trade. Of the total orders placed up to the end of May 1939, 165 cargo vessels accounted for 808,670 tons. Of those, thirty-four vessels larger than the 7,000-ton class amounted to 306,600 tons, while 133 under 6,000 tons totalled 502,070 tons. Compared with the figures for 30 November 1938 or six months earlier, the former class showed a decline of two in number and 27,930 in tonnage, but the

latter class gained eighty-five in number and 325,420 in tonnage.

"Table 19 shows the ships launched by 1,000 ton classes between 1932 and 1938. Little change in emphasis is visible here.

"Table 19" --

THE PRESIDENT: I think we can take this as read.

MR. LOGAN: I just wanted to call your Honor's attention -- I won't read all of those figures -- to the fact that a great majority of those ships were smaller tonnage. I shall read the totals:

"No. of Ships	1932 tons	No. of Ships	1934 tons	No. of Ships	1936 tons
" 10	43,760	20	124,180	63	270,710

"No. of Ships	1937 tons	No. of Ships	1938 tons
" 93	419,665	77	414,090

"c. Naval Construction; Comparison with Merchant Vessel Construction.

"Naval vessel construction was of course also stressed during this period, as is shown by the following table (Table 20). Merchant ship launchings are also shown in this table and it will be noted that minor variations exist between these figures and those previously given in Table 19. These differences are

not significant, but largely reflect different source material. The information below is carried over into 1940."

THE PRESIDENT: I notice that the shipping figures are from the Far East Yearbook, 1941. Does that mean that Mr. Liebert took his figures from that yearbook?

MR. LOGAN: He didn't take his figures from this yearbook, your Honor, and I wish to call your attention to page 8,318 to the top of page 8,322. That is four pages of the record which constituted his entire testimony with regard to shipbuilding. I think if you follow the wording on page 3 of the document from which I am reading with Liebert's testimony on page 8,318 and 8,319, you will find that he used this document, from which he extracted some of the material. For example, he failed to tell the Court about the number of gross tons and the number of ships which were scrapped. He just told, on his direct testimony, the number that were built.

Kapleau & Reichers

THE PRESIDENT: I merely want to know where Liebert got his figures. If he took them from the Far East Yearbook, he took them from a book which the prosecution said yesterday should not be relied on.

MR. LOGAN: As I say, your Honor, if you will follow the wording of Liebert's testimony and the wording of this document, you will see that it is practically word for word, with the exception of parts he skipped, and he skipped quite a great deal.

THE PRESIDENT: Brigadier Quilliam.

BRIGADIER QUILLIAM: May it please your Honor, with reference to your Honor's comment about Mr. Liebert using figures from the Far East Yearbook, may I be permitted to remind the Tribunal of the following?

THE PRESIDENT: I didn't say he took them from the Far East Yearbook. I asked whether he did. Perhaps Mr. Logan can't say yes or no.

BRIGADIER QUILLIAM: I think in any one instance he may well have done so, but what I wanted to remind the Tribunal was Mr. Liebert's statement that he had used every source and checked a lot of figures in every possible way before submitting them to the Tribunal.

MR. LOGAN: I only wish we knew what other books he used, your Honor.

THE PRESIDENT: I wouldn't carry on the discussion any further, Brigadier; there is no need to. I shouldn't have made that inquiry perhaps, but I was interested to know whether he did use a book which you said had no value.

BRIGADIER QUILLIAM: I abide of course by your Honor's ruling, but I was prevented yesterday, or rather, I refrained yesterday, because I didn't want to take up more time, from challenging the completely misleading statement, now repeated by my learned friend, that the defense have not been fairly treated in connection with the sources of Mr. Liebert's evidence.

MR. LOGAN: The statements I made yesterday are just as true today, your Honor. I wish we knew the sources of the rest of his testimony. With the exception of a few charts, we don't know.

THE PRESIDENT: There is no need to say anything, Brigadier. We are clear about the position.

Proceed with the reading of the affidavit.

"TABLE 20

Total Tonnage of Steel Merchant Ships and Naval Vessels Launched by Yards in Japan and Japanese-Controlled Territory, 1934-1940.

	Naval Ships (displ. tons)	Merchant Ships (Gross tons)
1940	157,510	208,014
1939	118,790	342,880
1938	53,812	438,890
1937	52,258	487,357
1936	53,305	305,803
1935	39,762	145,901 a/
1934	30,274	154,860 a/

Source: Glasgow Herald, Annual Trade Review, 1936, 1937, 1938.
Lloyd's Register of Shipping. London, Special tabulation supplied in March, 1943.
Janes' Fighting Ships, 1941. Oriental Economist (Tokyo) April, 1936.

a/ Includes only the output in Japan proper.

"2. Government Encouragement and Supervision; Laws.

a. Shipbuilding Industry Law. 1/ The China and European Wars necessitated a large increase in the military shipping of Japan. It was necessary to make up for war losses in shipping as well as for the decreases in neutral and world shipping. For the most part Japan had to rely upon her own power

1/ Passed by the 74th Session of the Diet in 1939.

'and ability for further shipbuilding.

"To cope with this newly arisen situation, Japan enacted several important shipping acts including the Emergency Shipping Control Act, the Shipbuilding Industry Act, and the Shipbuilding Control Act. Of these laws, the most fundamental is the Shipbuilding Industry Act, whose nature and function it will be well to describe in detail. The law has been described by a semi-official Japanese source in this way:

"(i) Purpose of the Law. 'The purpose of the Law is to increase the supply of vessels at low costs and the maintenance of adequate shipbuilding capacity from the viewpoint of national defense. The law as passed by the 74th session of the Diet in 1939 provides measures for Government protection and control of the shipbuilding industry.'

"(ii) Government Supervision. 'By this Law the shipbuilding industry is brought under strict Government supervision. The establishment of new enterprises, amalgamation, and cessation of work of shipbuilding companies are subject to permission from the Government.'

"(iii) Shipbuilders' Privileges. 'Shipbuilders, however, are given the right of eminent

domain and are allowed to issue debentures to an amount twice their paid-up capital. The government may issue instructions as regards the building of hulls, engines, and equipment not yet made in this country, and may grant subsidies in such cases. It may also order shipbuilders to use domestic products in building hulls, engines, and equipment. The government may set standards for quality and may disqualify products which do not conform to this standard.'

"(iv) Government Subsidy and Indemnity. The Government may, if necessary for the promotion of the shipbuilding industry, grant subsidies to either shipbuilders or shipowners. The Government may, in the public interest, order shipbuilders to effect changes in prices for vessels, hulls, engines and equipment, as well as in repair costs, etc. The Government may also, when deemed necessary in the public interest, demand the installation, enlargement and improvement of equipment, the repair of vessels, hulls, engines, and equipment, and the establishment of facilities for research on specified subjects. The Government may indemnify shipbuilders for any losses incurred by shipbuilders in the execution of these orders.

"(v) The Right to Organize Compulsory Cartels. 'The Law also contains provision for cooperative associations which may be organized by shipbuilders for collective purchasing, administration of materials, establishment of facilities for common use, control of business activities of members, and research work for the common benefit. The Government may order members of these associations to comply with regulations and may instruct outsiders to join the organizations. Finally, the Government may instruct such organizations to undertake certain activities for the healthful development of the industry.'

"b. Fundamental Shipbuilding Regulations. While thus strengthening the control over shipping and shipbuilding on the one hand, Japan adopted six measures in 1939 describing the standard for cargo vessels in order to encourage construction of these vessels on the other. Out of this a new national shipping policy grew up, under which a number of plans were put into execution.

"But as an aftermath of 7 December 1941 a demand for more rapid increase in Japan's shipbuilding arose. To meet the situation, a set of fundamental systematic shipbuilding regulations were

adopted and made public in May 1942. These regulations were drawn up on the assumption that shipbuilders were to build, according to government plan and with powerful government assistance, as many ships within a certain period of time as the demand warranted. For the realization of this program, the following technical qualifications were considered essential:

"(i) For a determined standard-size ship, certain fixed specifications of the ship's hull, engine equipment, and other parts were to be furnished to the builder along with the necessary drawings. The idea was to help facilitate mass production of ships. It was, in short, to standardize the planning, so that complications would no longer arise as they had in the past when different shipbuilders presented individual ideas, plans and drawings.

"(ii) With regard to the order for a non-standard ship, construction work would not be accepted generally, except in such a special case as the building of a passenger boat.

"(iii) In order to obtain the highest degree of efficiency from every individual shipyard, each yard would be assigned the building of a certain class of ship under the standardization plan, and would

make the construction of such a type its speciality. There were nineteen classes, all told, running as follows: six classes or grades for cargo vessels, three for oil tankers, one for ore-carrying ships, five for wooden vessels, and four for wooden barges. The classes were divided as follows:

Freighters:

Type A	Total Tonnage	6,300 tons
Type B	Total Tonnage	4,400 tons
Type C	Total Tonnage	2,700 tons
Type D	Total Tonnage	1,900 tons
Type E	Total Tonnage	830 tons
Type F	Total Tonnage	495 tons

Tankers: Total tonnage of 10,000 tons, 5,000 tons and 1,000 tons.

Mineral ore freighters: Total tonnage of 5,500 tons.

The above vessels are made of steel. Vessels of smaller types, due to the lack of steel, are made of wood. They are called standard wartime wooden ships. They may be divided into two kinds:

Wooden freighters: Total tonnage of 250 tons, 200 tons, 150 tons, 100 tons and 70 tons.

Light wooden ships: Loaded tonnage of 300 tons, 200 tons, 150 tons and 100 tons.

"c. Other Rationalization Techniques.

Aside from the point that individual builders were to come under the standardized shipbuilding scheme, the following points were also stressed:

"(1) Standardized specification for steel used in shipbuilding, (ii) development to the utmost of the scope within which substitute materials are used, (iii) simplification of the ship's hull, engine, and equipment, (iv) expansion of the scope within which electric welding is applied, and (v) general saving of materials by improving shipbuilding technique.

"3. Administration

a. The Navy Ministry (Kaigun-sho). On 5 February 1942, the Government promulgated the Imperial Ordinance relating to the special wartime case of jurisdiction with regard to the business of shipbuilding. This (a) limited the authority of the shipbuilding industry to regulate the supply and demand of important materials used for ships (i.e., set up a priority system); and (b) transferred to the jurisdiction of the Ministry of the Navy, for the duration of the war only, jurisdiction (hitherto in the hands of the Minister of Communications (Tsushin-sho)) over construction and repair of merchant vessels.

"Besides insuring elasticity between materials for naval construction and materials for merchant ship construction, this change made a single system out of the two construction plans, and in general contrived to regulate both. This put the construc-

tion of naval and merchant vessels fundamentally on the same footing. For it was desirable that the question of the relative percentage of naval and merchant craft to be constructed should be governed by a unified plan, in accordance with the availability of materials, building facilities, and current requirement.

"Only general schedules, however, were to be set up by the Navy Ministry, while the allocation of orders and raw materials for specific yards were to be handled by the Industrial Equipment Management Corporation on the one hand, and by the Shipbuilding Control Association (Zosen Toseikai), on the other.

"b. Industrial Equipment Management Corporation. Under the system of standard production and unified design which we have already described, ordering of ships by a single authority was inescapable, and the machinery that was set up to play the part of the single ordering authority was the Industrial Equipment Management Corporation. This National Policy Company took over the wartime standard-pattern ship program, on the basis of the government ship construction plans, and gave contracts to all the shipyards.

"Aside from these activities, the corpor-

ation became the main instrument for financing Japanese shipbuilders and guaranteeing them against loss. In effect, it was at the same time a device for subsidizing the industry and for providing it with compensation in the case of loss, all at public expense.

"According to the charter of this corporation, the necessary number of ships are to be assured as long as the country needs them. This the government accomplishes, on the one hand, by making part of the cost of building new ships a direct national burden, and, on the other hand, by supplying floating capital for shipbuilding. By revising the ordinance concerning compensation of losses, the Government raised the limit of the floating capital it would supply from two-thirds to four-fifths of the capital value of any one shipyard. By lowering the sphere of application of these provisions it extends them to all ships classified as small wartime standard-pattern ships. It has also equalized compensation for loss of capital through its monetary organ, the Industrial Bank of Japan. (In connection with shipbuilding finances it is interesting to note that the Bank of Japan allegedly supplied ¥ 192,000,000 in 1942, in addition to the capital coming from other government agencies).

"In the event that there ceases to be a

national need for the finished ships and the corporation shall have occasion to sell them for private use, it has been decided that the Government shall pay compensation for losses incurred by the corporation and that the standard prices for constructing ships and for transferring them shall be decided by the Government.

"The foregoing practices, besides establishing a financial policy, made the IEMC responsible for the positive expansion of shipbuilding through the application of two pivotal principles, namely, simplification of pattern and unitary construction -- one yard, one type. (See Appendix IVe for additional details).

"c. Shipbuilding Control Society. The Shipbuilding Control Society is the central body directing the control associations in this industry. (To the Society is appended a consultative association which includes the related industrial control associations). The Shipbuilding Control Society assists in handling the supply of materials under a priority system. Affiliated with the central Shipbuilding Control Society are five regional shipbuilding consultative associations made up of the medium and small scale manufacturers.

"According to a semi-official Japanese source, the Shipbuilding Control Society has been described as one of the planning agencies for general advancement of national power which has been established in Tokyo in accordance with the Major Industries Association Ordinance of September 1941. Member organizations of this society are designated by the Navy Ministry (formerly by the Ministry of Communications) on the basis of the following requirements:

(i) Any shipbuilding association which builds ships over 100 meters long or constructs engines for ships, or both, may be admitted as a member organization.

(ii) Any shipbuilding proprietor who cannot meet the foregoing requirements is not to be admitted.

(iii) Any proprietor who manufactures or repairs parts for ships of the required length as mentioned above may become a member.

(iv) Exceptions to the above regulations may be made upon the approval of the Navy Ministry (formerly upon approval of Communications Ministry).

"The principal aim of the control society is to construct and repair ships within the framework of national planning of the Japanese Government. In order to carry this program into effect the society

has also to secure the necessary raw materials and apply expert technique. The leading personnel members of the Shipbuilding Control Society include the President of the Society, the Chairmen of the Board of Directors, several Directors, several Supervisors, and several Advisers. The President of the Society is appointed by the Navy Minister (formerly by the Communications Minister). The Chairman and Members of the Board of Directors are appointed by the President of the Society, but with the approval of the same Minister, who, as he sees fit, may order the dissolution of the Shipbuilding Control Society. The Society holds an annual meeting at its General Headquarters within two months following the end of each year. Provisional meetings may be called upon the suggestion of the President.

"Each member organization is required to make reports to General Headquarters concerning its construction progress, the condition of ships which it is repairing, the nature of the furnishings of its ships, establishment of new branches or various changes, relating to the ships themselves, labor, capital, and planning. (See Appendix IVf for a list of members of the Shipbuilding Control Society).

"d. Local Associations (Kumiai) in

'Wooden Shipbuilding. At the outbreak of war, Japan's wooden shipbuilding industry consisted of over 3,000 yards, most of them employing less than ten workers and building small vessels by traditional handicraft methods. To unify and expand them to an industry capable of building a cargo fleet of significant dimensions has meant a drastic reorganization of the industry.

"The first step was the forced consolidation of these yards under centralized government control. The 3,000 yards were reduced by merger to 500 and these in turn organized into 41 local associations, or Kumiai (in all urban and rural prefectures). These wooden shipbuilding associations were further organized into one unit, the Japanese Federation of Wooden Shipbuilding Associations.

"Quotas of wooden vessels designed according to standard specifications were then allotted to each firm by the Japanese Federation of Wooden Shipbuilding Associations (later merged in or affiliated with the Shipbuilding Control Society under the "New Economic Structure"), under the direct control of the Ministry of Communications (later probably under the Navy Ministry.) The Navy, which controls steel ship construction, was given supervisory power over the building of vessels under fifty meters, as well as

the control over the supply of engines and fittings. Quotas of materials, machinery, tools, etc., were allocated under the national economic mobilization plans. Low-cost financing and bonuses for production afforded financial incentives."

"Excerpts, pages IV-239; IV-252 - IV-257; IV-259 - IV-269."

THE PRESIDENT: Mr. Logan, we gave the prosecution the right to submit synopses of documents -- affidavits in their case. I suggest that you also exercise the right, which is extended to you. Your case is not improved by smothering us with a welter of details like these. It would be better for you to pick out the things that really matter and put them in the form of a synopsis, which the prosecution could not object to, because we allowed them to do it. They tendered the whole document, which was an affidavit in every case if I recollect rightly, and read a synopsis of it. I think only the synopsis went into the transcript.

MR. LOGAN: That was only with regard to atrocities, your Honor. They had such a volume of evidence as to that that it was thought advisable to do that at that time. But no suggestion has been made to us prior to this. If it had been made six weeks ago, we would have endeavored to do something along that line.

THE PRESIDENT: You can still tender all these documents you have prepared and they will be admitted, subject to any objections. You will give us in addition a synopsis and read only the synopsis, not the documents. That won't take a lot of time.

MR. LOGAN: Of course we have communications and letters in addition to these basic documents on economics. Do you mean a summary of those too?

THE PRESIDENT: I am just telling you you have the right to do it. I am advising you to exercise it. It is for you to decide whether you will.

MR. LOGAN: We now offer in evidence defense document 501-E, which is an excerpt from the Far East Yearbook for 1931 that was marked for identification yesterday.

This excerpt succinctly sets forth the highlights of Japan's financial policy from 1931 to 1938. I didn't intend to offer this, if it please the Court, if the document I had offered from Fahs yesterday had been accepted, but you suggested at that time that we get this information from the Far East Yearbook and this is that document.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 501-E will receive exhibit No. 2769.

(Whereupon, the document above referred to was marked defense exhibit 2769 and received in evidence.)

MR. LOGAN: Reading from exhibit 2769: "FROM THE FAR EAST YEAR BOOK 1941.

"THE RECENT SITUATION

"GENERAL REMARKS

"The military outbreak in Manchuria in 1931 marked the first turning point in the financial policy of the Japanese Government. The change had to be made to meet the emergency conditions brought about by the country's advance on the continent. The new state born in Manchuria had to be financially aided. For her defense Japan assumed full responsibility. Manchuria's natural resources had to be developed at a high tempo to supply raw material for the expanding needs of Japan's heavy industries. All these and other undertakings involved heavy capital outlays. Japan's financial operations rapidly expanded, and the situation was met almost entirely by means of public borrowing. There was a definite departure from the deflationist policy rigidly enforced by Finance Minister INOUYE under the HAMAGUCHI administration. But this period of stringent economics and low costs had laid the foundations for the period of productive expansion that was to follow under the so-called "semi-wartime conditions' of the country and that continues under the full wartime conditions imposed on the country by the undeclared war with China. The growing

financial requirements were also met in good part by extending trade activities abroad.

"SECOND TURNING POINT

"The second turning point in the financial policy of the country was seen in the period of which the now historic 'incident on February 26,' 1930 was the most outstanding landmark. With the rise of military influence, emphasis was laid upon the defense adjustment of the country. Under the policy of Finance Minister Baba the growing state expenditures were met partly by increased taxation and partly by borrowing. The plan, however, of extensively managed economics which he was to have embarked upon proved unpopular. Finance Minister Yuki who followed him chiefly directed his policy to 'The expansion of productive capacity.'

"THIRD TURNING POINT

"The third turning point was noted after July, 1937 when the undeclared war broke out with China. Under the wartime conditions now imposed on the country the popular legislature met and approved the fiscal program involving an increase of taxes and further public borrowings. A total of ¥ 2,500 million was voted as was expenses for the period July, 1937 to January, 1938. The wartime financial policy

of the country was now based on three fundamental principles, namely, 'expansion of productive power,' 'the maintenance of the country's international payment balance,' and 'the adjustment of supply and demand of commodities.'

"FOURTH TURNING POINT

"The fourth and last turning point came when on January 16, 1938, the Japanese Government declared that 'it would no longer deal with Chiang Kai-shek or his Government.' In plain language this statement meant two things: first, that Japan had definitely broken diplomatic relations with the Nationalist regime of China; and second, that Japan was to prepare herself for any 'long term resistance' that China might offer. Under these wartime conditions the Government had to re-examine its financial policy and reshape it. The Imperial Diet, meeting in session in January, 1938, approved a number of legislative measures involving sweeping changes in the fields of state economy, corporate finance, foreign trade, industries, and labor.

"PREVENTION OF INFLATION

"Next, emphasis is laid on the prevention of inflationary developments, which are thought likely, and even inevitable in some quarters, as a result

of heavy bonded borrowings. One of the first steps taken in the same direction is the encouraging of savings. This was made definite when ex-Finance Minister KAYA spoke at the meeting of savings banks in April, 1938, shortly after the conclusion of the Diet session. He said that the savings made annually through the financial institutions amounted to something like ¥2,500 million. This amount should be raised to ¥7,000 and even to ¥8,000 million for 1938. He gave the annual income of the nation at approximately ¥15,000 million. Popular savings are also to be encouraged, a special bureau being established for this purpose with an independent budgetary appropriation of ¥1 million.

"ECONOMIES IN CONSUMPTION

"Since any undue inflation of the circulation is to be avoided, the official policy is now chiefly directed toward rigid economics in consumption. The restriction of imports is now leading to the control of consumption in the country, as seen in the cases of cotton goods, rubber, petroleum, etc. The investment of capital reserves in any lines outside the province of wartime industries has been checked under the revised law for regulation on capital, effective since January, 1938. Capital payment and

debenture issuance are also now subject to strict control. At the same time the corporations capitalized at over half a million were one and all required to report their capitalization schemes for 1938 by the middle of February, 1938. The operations of capital reserves held by the life insurance companies were placed by Imperial Ordinance, issued on January 11, 1938 under the joint supervision of the three Ministers of Commerce-Industry, Finance and Welfare. This system practically enforces on the insurance companies the duty of purchasing national bonds."

THE PRESIDENT: I think the Second Turning Point was in February 1932 -- 1936.

MR. LOGAN: Yes.

THE PRESIDENT: We will adjourn until half-past one.

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

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MR. LOGAN: Yes.

THE PRESIDENT: We will adjourn until half-past one.

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

Greenberg & Barton

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

THE PRESIDENT: Mr. Logan.

MR. LOGAN: If the Tribunal please, we now offer in evidence defense document 501D which is an excerpt from the Far East Year Book of 1941. This document is offered for the purpose of showing the national debt of Japan up to 1940.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 501D will receive exhibit No. 2770.

(Whereupon, the document above referred to was marked defense exhibit No. 2770 and received in evidence.)

MR. LOGAN: I now read exhibit 2770, being defense document 501D from the Far East Year Book of 1941, page 239.

"NATIONAL DEBT

"The Russo-Japanese War 1904-05 increased the debt by 1,500 millions, making a total of 2,189 millions. For the railway nationalization, 606 millions was raised in 1906, the total rising to 2,585 millions on the level of which the debt was stabilized with no remarkable increase until the end of the World War. From the Armistice, the national debt began to increase rather steadily.

the amount swelling to 1,800 millions in 1923. The earthquake of 1923 caused an enormous increase of 545 millions for the rehabilitation and restoration of the stricken area. The financial crisis of 1927 added a further sum of 700 millions. The Sino-Japanese hostilities which broke out in 1937 is fully responsible for the rapid increase in the total outstanding. The total outstanding at the end of 1936 was 10,395 million Yen which had advanced to 21,520 millions in 1939 and to 25,622 millions at the end of September 1940.

"For repayment of the national debt a sum equivalent to 1.16 per cent of the total funded debt outstanding at the beginning of each financial year is yearly budgeted for the Sinking Fund. In practice, budget surplus do not automatically go to the debt redemption, but under an Act of 1927 no less than a quarter of each year's surplus is made applicable for such purposes."

I offer in evidence defense document No. 1678 -- it is a corrected copy -- which is an excerpt from Japan's Statistic Year Book of the 59th Session of the Imperial Japanese Statistics in 1940. This excerpt shows the import and export trade of Japan from 1935 to 1939. We shall read the figures referring to total amounts of Netherlands Indies, Great Britain, United States, Canada and Australia.

THE PRESIDENT: Brigadier Quilliam.

BRIGADIER QUILLIAM: May it please the Tribunal, we object to this document which, we submit, has no application to the issues in this case. It is merely a collection of import and export statistics not related, in our submission, to any issue raised by the Indictment or the evidence.

MR. LOGAN: If the Tribunal please, we are presenting these figures to show the effect which the sanctions had later on on the import and export trade of Japan, the tremendous --

THE PRESIDENT: You gave us these figures yesterday, didn't you, in the form of a graph? And you showed, I think, the trade with each country in circles.

MR. LOGAN: That was in percentages, your Honor. This is in figures.

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MR. LOGAN: That was in percentages, your Honor. This is in figures.

THE PRESIDENT: The graph is probably sufficient. I think the figures were given, also, for particular countries. I remember the Australian figure, seventy-one millions. It is just as helpful to us as this.

MR. LOGAN: I may have been mistaken, but I thought it was just percentages.

THE PRESIDENT: Yes, the Australian figure appears here, "71 million." That is unnecessary duplication.

MR. LOGAN: They are percentages, your Honor, to exhibits, and they are only for the two years, '38 and '39. These are the figures from '36 to '39.

THE PRESIDENT: There is no desire manifested by any of my colleagues to have this additional information.

MR. LOGAN: May I say this, your honor: that, we are offering these figures to show the total export and import trade for these years primarily with respect to the five nations which I have named, and to show that, by the imposition of these sanctions in July 1941, the greater part of Japan's import-export trade was strangled.

THE PRESIDENT: For that purpose the graphs are just as effective as this document now tendered.

The objection is upheld and the document rejected as cumulative.

MR. LOGAN: We offer in evidence defense document 1763 which is an excerpt from the Official Gazette, dated January 22, 1930, reporting the statement of Minister HAMAGUCHI before the Diet on January 21, 1930 on the Gold Embargo.

THE PRESIDENT: Brigadier Quilliam.

BRIGADIER QUILLIAM: May it please the Tribunal, this is the first of thirty-three documents which contain speeches in the Diet by various members of the government with respect to measures submitted. We submit that this document is irrelevant and immaterial and would direct attention in the first place to its date, 1930. The first part, about four pages, deals with the reasons for the lifting of the Gold Embargo in 1930. The balance consists of various general observations regarding commerce and industry in Japan. It is submitted that none of these matters assist the determination of the issues and that all the matters are too remote for the consideration of the Tribunal.

MR. LOGAN: When prosecution's witness Liebert presented his report he covered forty-five laws passed by the Japanese Diet and made comments on them favor-

able to the prosecution. While this particular exhibit is a little long, all the others we have with respect to the laws which we deem pertinent and that the Court should have information on are very short. These are all statements made by the ministers of state who introduced these bills in the Diet at the time they were introduced to set forth the purpose of the bills. They are statements which were made upon which the government acted. It sheds an entirely different light upon these bills than what is endeavored to be portrayed by the prosecution.

THE PRESIDENT: Did the prosecution tender these bills?

MR. LOGAN: No.

THE PRESIDENT: Liebert gave resumes of them all?

MR. LOGAN: The bills --

BRIGADIER QUILLIAM: They are not bills.

MR. LOGAN: I didn't say it was a bill. The bills are not in evidence yet. These are the statements made by the ministers of state who introduced the bills in the Diet at the time they were introduced.

This particular document shows how the controls and industries came into existence with regard

to Japan's industrialization policy. And you will recall that the prosecution's contention is that Japan's industrialization was built up for the purpose of establishing a totalitarian regime. Certainly, the best evidence as to the purpose of the bill is the statement made by the minister of the responsible party who introduces it at the time it is introduced, when there is no reason for him to state anything else other than the truth.

Some of the bills, of course, Liebert just mentioned and let it go at that, and others he made a great deal of comment about. Now, this is the best evidence of what the purpose of those bills was. In other words, the prosecution will try to convey the picture that Japan deliberately, with premeditation, set out during the years covered by the Indictment to build up a planned economy for military, war purposes in preparation for aggressive war. This shows that that is not so.

THE PRESIDENT: The minister's explanation is not conclusive. It would be if we must assume he told the truth. But, of course, we make no such assumption. However, you are entitled to prove the purpose of the bill if it is alleged by the prosecution that its purpose was war and you say its purpose

was not war.

MR. LOGAN: That's right.

THE PRESIDENT: But why in this roundabout way? Couldn't you have a summary showing what was said about each bill by the minister introducing it?

MR. LOGAN: As I say, unfortunately, this first one is rather long, but the rest of them are rather short. I might also add that all these statements by these ministers go to the question of conspiracy, whether these accused conspired to build up this planned, regimented economy for waging aggressive war.

THE PRESIDENT: Well, this particular minister became Prime Minister, did he not? He was assassinated because he was opposed to war. He would hardly be within the ambit of any conspiracy.

BRIGADIER QUILLIAM: May it please the Tribunal, this particular document does not deal with a law or ordinance before the Diet. It deals with the lifting of the embargo which is not a matter put in issue in any way in the prosecution's case. Liebert, at paragraph 123 in exhibit 840, made merely passing reference to the failure of the lifting of the gold embargo -- to the failure of that step. That was

merely preliminary to other matters which were relevant. Our point is that this subject of the lifting of the gold embargo in 1930 and these other matters in 1930 are too remote to be helpful to the Tribunal. That is all.

THE PRESIDENT: Perhaps a bit of Japanese history may be helpful, but why trace it at such great length? Why don't you summarize it for us?

MR. LOGAN: I do not think a summary could be put any shorter than the documents we are introducing with respect to these laws, and this is the beginning of the industrialization that this particular document refers to.

THE PRESIDENT: Are the other documents very lengthy?

MR. LOGAN: No.

THE PRESIDENT: By a majority, the Court overrules the objection and admits the document.

CLERK OF THE COURT: Book entitled "Stenographic Record of the House of Representatives, 57th and 58th Session," in Japanese, will receive exhibit No. 2771 for identification; and the excerpt therefrom, bearing defense document No. 1763, will receive exhibit No. 2771A.

(Whereupon, the book above referred

to was marked defense exhibit No. 2771 for identification; and the excerpt therefrom, defense document No. 1763, was marked defense exhibit No. 2771A and received in evidence.)

MR. LOGAN: (Reading).

"The stenographic Record No. 3 of the proceedings at the 57th session of the House of Representatives, the Imperial Diet.

"January 21st, 1930.

"The minister of State (Mr. HAMAGUCHI Osachi.

"The government long ago declared, both at home and abroad, the lifting of the gold embargo as one of the most important policies, and since the formation of the Cabinet, preparations have been made steadily toward this end. As I have already stated, the government has put into practice various policies such as financial retrenchment, consolidation of public loans and economy on consumption, and, at the same time, had strived to gradually fill up the specie abroad. As the result of our effort to gradually increase the balance abroad by taking advantage of the recent strong tone of the exchange market, the total sum of the specie abroad, which was only about 83,000,000 Yen at the end of June, last year, that is, just before the formation of the present Cabinet, already passed the three hundred million Yen mark in November 1929, last year, namely, at the time when the Finance Ministry ordinance regarding the lifting of the gold embargo was issued. Thus the position of our specie abroad has become very strong,

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and in addition to it, in order to establish a closer connection with the key money markets abroad as well as to set the people's mind fully at ease, the government has taken measures so that a credit of one hundred million Yen be contracted on the British and American markets between the Yokamaha Specie Bank and the Anglo-American banking syndicate. Moreover, the leading British and American bankers have shown their special goodwill toward the lifting of the gold embargo by Japan, stating that they would render every spiritual support to it. On the other hand, our foreign trade for last year was remarkably improved, and whereas the total sum of exports and imports amounted to about 4,364,000,000 Yen, the amount of the excess of imports over exports was only about 67,000,000 Yen. As compared with the total sum of exports and imports of 4,168,000,000 Yen for the year 1928, the above-mentioned adverse balance of trade showed a decreasd by 156,000,000 Yen. Again, even if the adverse balances of trade for Chosen and Taiwan be added to that for Japan proper, the total sum of excess of imports over exports is less than 170,000,000 Yen. Thus the international trade of Japan has been quite remarkably improved recently. As the situation turns favorably toward us, the exchange rate of the Yen has risen slowly but steadily, and gradually approached the

exchange rate at par. All internal and external preparations have been completed, and we have come to be firmly convinced that there is absolutely no fear of causing an economic crisis even if we carry out the lifting of the gold embargo. Accordingly, the government issued the Finance Ministry ordinance regarding the lifting of the gold embargo on November 21st, last year, which has been enforced since January 11th, this year. Thus our country has returned to the gold standard both in theory and in fact. Twelve years have elapsed since September 1917. It is a matter for hearty congratulation that the obstacles of the gold embargo have been lifted and our country has returned to normal condition in the international economy. This is the result of the understanding and co-operation on the part of the whole nation to which I wish to express my hearty gratitude.

"In putting the lifting of the gold embargo into practice, the government has made, with the co-operation of the people, full preparation for it, as I have stated above. So it was the firm belief of the government that nothing deplorable would happen as a result of the lifting of the embargo. As a matter of fact, after the announcement of the forthcoming lifting of the gold embargo in November, last

year, and at the time of and after the actual lifting in January 11, this year, the financial situation has generally been progressing smoothly to the great satisfaction of the government. But the lifting of the gold embargo is no more than the first step in the regeneration of the economy of Japan which has returned to its normal state. From now on, our nation must continue, on the basis of this regenerated economy, a sincere effort towards the solid development of the national economy, and endeavor to improve international trade and to support the gold standard. This is indeed the joint responsibility imposed upon both government and people. Therefore, the government desires to continue the policy of strict economy in central and local finance hereafter as well, and further concentrate our efforts in the direction of the promotion of industry and the development of trade, with the cooperation of the people.

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"In order to rationalize industry and to investigate important matters concerning the promotion of industry with that in view, the government has decided to establish the Temporary Industry Investigation Commission and at the same time a special department in the government as its executive organ. What the government intends to ask at this moment for investigation as urgent problems are the control of enterprises, the increase of efficiency, the establishment of fundamental construction, the improvement of primitive industrial management, the promotion of home products, the improvement of industrial circulation of money, the rationalization of selling methods, etc. Under the present condition of our industrial world which is in confusion and disorder, and tends to fall into the evil practice of careless and abundant manufacture indulging in reckless competition, I think it is necessary to control enterprises by promoting their union or incorporation in order to avoid multiple investments, to lower production costs and to ensure the completeness and excellence of the quality of products. It goes without saying, however, that such evils as the unreasonable curtailment of operation or the wilful oppression of consumers by stipulating prices should be avoided as

much as possible. As for the increase of efficiency, there are many things to investigate such as the scientific control and management of enterprises, the standardization of products, the simplification of the process of production, etc. In regard to the improvement of industrial circulation of money, the most pressing problem is to make the money market smooth for farmers, manufacturers and tradesmen who are below average. For this purpose, such plans as the accommodation of low interest funds, the improvement of credit associations, the increase of public pawnbrokers and others, indeed, should be investigated and put into practice, but I believe one effective method will be to make ordinary banks contribute to the circulation of money in that direction by suitable methods. The government will not neglect an earnest investigation in this respect. To state the case briefly, unless we occupy a commanding position in competing with the commodities of the various countries in the world's trading markets by lowering our production costs, the fundamental improvement of international loans will be impossible to realize. Therefore, to attain the purpose, the government attempts to cooperate with the people trying every means. In addition, the government has presented special estimates

in the budget for 1930 to increase expenditure with regard to the promotion of home production to increase the manufacturer's bounty in important fundamental industries and at the same time to materialize the export compensation system. We believe that is the most opportune policy to materialize the compensation system of exports to open markets for our commodities and to promote our export trade as a policy for the improvement of international loans. I shall talk about the system in detail some other day. On the basis of the report of the International Loan Investigation Commission, the government is also planning the establishment of facilities concerning the circulation of money for shipping which has been demanded for many years, in order to promote the development of sea transportation which has brought in the principal income excepting that from our trade.

"Gentlemen! In view of the present social and economic situation, I believe that it is extremely obvious that the solution of the unemployment problem has a tendency to occupy the most important objects (for study) among social political institutions. Properly speaking, the fundamental solution of this problem must solely depend on the stability of

financial circles and the prosperity of industry. Accordingly, the government, investigating and carrying out the various financial and economic policies including the lifting of the gold embargo, intends to make every effort toward the revival of national economy and the sound development of industry and trade. Still more, the government will not fail to investigate and establish facilities as a plan toward the prevention and the relief of the present unemployment though we strictly observed a general policy of strict economy in the budget for 1930, we endeavored to equip and perfect employment agencies by increasing employment offices or by other means and also to give full play to their function; and moreover, adopting the substance of the reply of the Social Policy Investigation Commission, we established the Industry Control Committee in the metropolis and important districts, and have already had them investigate matters concerning the control of government and private enterprises in this fiscal year so as to contribute to the neutralization of unemployment, and have appropriated for the estimates in the coming budget. Since 1925, the 'big six' cities have been taking proper measures for the relief of winter unemployment of free laborers; the government has

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extended considerably the period of execution, the regions, the kinds of work, maximum number of unemployed who shall be relieved, etc. and is endeavoring to raise the fruits of the relief. Much more, as to the prevention and the relief of unemployment, the government has received proper and useful reports from the Social Policy Investigation Commission, and so we are ready to take proper measures as far as the circumstances permit taking their purport into consideration. And also, it is our desire to put the relief law into practice as soon as our financial circumstances permit."

We now offer in evidence defense document 1753 which is an excerpt from the Official Gazette of April 28, 1930, setting forth the statement of Minister TAWARA on the industrial policies of the government before the House of Representatives on April 27, 1930.

THE PRESIDENT: Brigadier Quilliam.

BRIGADIER QUILLIAM: May it please the Tribunal, all we wish to say about this document is that it is another dissertation in the year 1930 about import and export conditions and the possibilities of trade and intentions with regard to trade in the future. It is not related to any bill and it is suggested that it is no more helpful than the last document was to the

Tribunal in determinirg the issues here.

THE PRESIDENT: The last document was admitted, of course. The conspiracy is alleged to go back to 1928.

MR. LOGAN: Yes, to '28.

What I said with respect to the last document applies with equal force to this one.

THE PRESIDENT: We are far from clear as to the value of this testimony but we give you the benefit of any doubt, Mr. Logan.

Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1753 will receive exhibit No. 2771-B.

(Whereupon, the document above referred to was marked defense exhibit No. 2771-B and received in evidence.)

MR. LOGAN: Reading defense exhibit 2771-B, record of the proceedings of the House of Representatives of the 58th Imperial Diet Session, April 27, 1930.

"Minister of State TAWARA: Mr. HORIKIRI interpellated concerning the industrial policies. Various remedies are conceivable against the present depression and unemployment. However, industrial development is the only basic policy to cope with the difficulties. For the development of our industries

a great deal of effort has been exerted since the organization of the present Cabinet. Briefly the basic policy for developing industries amounts to restricting imports and promoting exports. Little attention has been paid in the past to the question of how to prevent imports. We can prevent imports by producing their substitutes in Japan. According to statistical tables, the present stage of our industrial development permits imports to the value of 500 to 600 million yen to be replaced by home manufactured substitutes. To prevent the importation of 500-600 million yen worth of goods by manufacturing their substitutes constitutes an important matter. With this object in view we are encouraging the domestic production of these goods. In the first place, governmental offices have made special efforts in substituting domestic articles for foreign goods which they were using in connection with their operations. To cite the instance of the Railway Ministry, the Ministry after investigation adopted the policy of consuming home-made articles instead of foreign and saved 10 million yen. Other governmental offices are making similar efforts in replacing as much as possible foreign goods which they have been consuming with domestic goods. It is our desire not only to have used domestic

substitutes for imported goods, but also governmental offices propagate the thought and encourage the practice of patronizing home industries among the general public. Thus the additional appropriations introduced now to the Diet include expenditures for such items. If we should fortunately be able to produce additional articles as substitutes to one-half the value of such imports, if not the entire 600 million yen, the increase of 300 million yen worth of additional production would have a great effect upon our industrial development. I believe that, should the articles worth 300 million yen be additionally produced in this country, and one-half of their value or 150 million yen should be converted into wages, it would strike at the root of the unemployment problem of today. Apart from the prevention of the imports, as I have just mentioned.....

"Minister of State TAWARA, (continuing):

"With regard to encouraging exports, the Government have included in the additional appropriations expenditures for the execution of such policy. The measure proposed is the so-called export compensation system. We contemplate an early introduction to the Diet of a bill covering this export compensation system. Explanations as to its contents shall be made then. Next ....

"Minister of State TAWARA, (continuing):

"With respect to the exportation of these goods, the Government proposes to despatch manufacturers concerned to all promising parts of the world for having them conduct investigations, with a view toward developing new markets and encouraging exportation of various commodities. For this purpose we are requesting the Diet's approval of expenditures covering subsidies to be given. We intend to strive hard for checking import on the one hand, and for encouraging export on the other hand. For attaining these objectives, we can find no alternative than the rationalization of industries, that is, to sell articles of high quality at low prices. Needless to say, the rationalization of industries means control over the enterprises of one and the same kind, improvement of technique and management, and simplification of production. The weakest point of our manufacturing industries of today may be that wasteful competition is conducted among different enterprises thereby forcing down the market price of their respective products. Thus our exportation of such goods have resulted in a meaningless competition of price in foreign markets, degradation of their qualities and loss of credit and markets abroad. This is the evil common to our productive industries at

present. It is urgent for the industrial development to effect control over these enterprises and to establish coordination among them. The fundamental policy for the development of our industries lies in the expansion of domestic production and consumption and the increase of volume of export of high quality articles abroad, outwards. Mr. HORIKIRI expressed his opinion that there is a contradiction between the industrial rationalization policy and the Cabinet's retrenchment policy. We believe the policy of rationalizing industries is by no means contradictory to that of retrenchment. The policy for reducing consumption should of course be pursued. What I mean by saying that we should increase consumption is that the people are devoted to imported goods and are apt to use them even for daily needs; that we should from now on encourage them to patronize home industries and to consume home-made substitutes for them. We believe that the industrial rationalization policy is by no mean contradictory to the retrenchment policy which an important policy of Government."

I shall skip the next document, 1748. It adds a little more to the gold embargo but is not exactly necessary.

We next offer in evidence defense document 1765, an excerpt from the Official Gazette of May 9,

1930. This document sets forth the speech of Mr. MAEDA on the introduction of the Shipping Guild Law Bill before the House of Representatives May 8, 1930.

THE PRESIDENT: Brigadier Quilliam.

BRIGADIER QUILLIAM: May it please the Tribunal, we object to this document which is more about shipping. There has been defense evidence on this subject of shipping and in addition a long document was admitted this morning and read. In our submission this particular document contributes nothing further and should be rejected as unnecessary.

THE PRESIDENT: Mr. Logan.

MR. LOGAN: What I said with respect to the last two documents applies to this one; in addition, that this particular document explains the control of the shipping industry by the government. It was not covered by the documents this morning.

THE PRESIDENT: It is not very enlightening. What particular purpose does it serve?

MR. LOGAN: Exactly the same purpose as the previous documents, your Honor, to show that there was no conspiracy with regard to the control of the shipping industry by these accused or by anyone else. It certainly shows that the control of the shipping industry was not for the purpose of aggressive war as claimed by

the prosecution.

THE PRESIDENT: Did Liebert deal with shipping in 1930?

BRIGADIER QUILLIAM: No, if it please your Honor, and it is not the claim of the prosecution that the control of shipping was for the purposes of war.

MR. LOGAN: Does the prosecution contend that the industrialization of Japan was not for the purposes of war? Shipping is part of the industrialization.

THE PRESIDENT: The whole lot is contained in the last paragraph, isn't it?

MR. LOGAN: Just about, your Honor. I will read that.

THE PRESIDENT: All right, I am certainly not clear about this. It is admitted on the usual terms; objection is overruled.

CLERK OF THE COURT: Defense document 1765 will receive exhibit No. 2771-C.

(Whereupon, the document above referred to was marked defense exhibit No. 2771-C and received in evidence.)

MR. LOGAN: Defense exhibit 2771-C, "Record of proceedings in the House of Representatives in the 58th Session of the Imperial Diet. May 5th, 1930.

"Mr. MAEDA" -- the last paragraph:

"In short, this bill aims at giving the guild compulsory power, to get all shipping agencies to join it. However, there may be some who are planning to utilize a low-interest loan, or prevent the lowering of freightage, through the enactment of this law, but such is not the reason for the introduction of this bill; it is to realize common interest of the shipping agencies; that is, to increase their welfare by the rationalization of the shipping circles, and not to envisage such special interest as alleged by the foregoing. Such being the case, I earnestly hope that this bill will receive your approval and be enacted as soon as possible."

We now offer in evidence defense document 1737 which is an excerpt from the Official Gazette of March 1, 1931 reporting the statement of Minister TAWARA upon the introduction of the major industries control bill in the House of Representatives on the 28th day of February 1931.

THE PRESIDENT: Brigadier Quilliam.

BRIGADIER QUILLIAM: May it please the Tribunal, this is a typical instance of a discussion of a bill which has been dealt with by Mr. Liebert in his evidence. He dealt with it in exhibit 840 at paragraph 94. As we regard the matter, this contributes nothing further nor is it in contradiction to anything that Mr. Liebert has said, and that is our reason for objecting.

MR. LOGAN: I think the Tribunal should be more interested in accepting a statement of State Minister TAWARA instead of an interpretation placed on it by Mr. Liebert.

THE PRESIDENT: Here again you have got the whole of it in the last couple of sentences. The purpose of this bill may have been the stabilization of industries but the motive may have been war. It is such a neutral type of thing. I think the whole purpose is in the second last sentence, is it not?

MR. LOGAN: I will read the last part of it, then.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1737, being a book entitled "Stenographic Records of the House of Representatives for the 59th Session", in Japanese, will receive exhibit No. 2772 for identification only, and the excerpt therefrom, bearing the same document number, will receive exhibit No. 2772-A.

(Whereupon, defense document No. 1737 was marked defense exhibit No. 2772 for identification; the excerpt therefrom was marked defense exhibit No. 2772-A and received in evidence.)

MR. LOGAN: I shall read defense document 1737, just admitted in evidence, "Stenographic Minutes of the House of Representatives at the 59th Imperial Diet, 28th February 1931. State Minister TAWARA" -- the last few sentences:

"Therefore it becomes most urgent, in view of the conditions, stated above, to place our major industries, at least, under strict order and control in order to secure stabilization. For such reasons, we have come to lay this bill before you, whose

speedy approval we hope will be granted after mature consideration."

We now offer in evidence defense document 1736 which is an excerpt from the Official Gazette of June 5, 1932, reporting the speech of Minister of State, Mr. TAKAHASHI, explaining the Capital Flight Prevention Bill at the time it was introduced in the Diet.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1736 being a book entitled "The Stenographic Records of the House of Representatives for the 60th, 61st, 62nd and 63rd Sessions," in Japanese, will receive exhibit No. 2773 for identification only, and the excerpt therefrom, bearing the same document number, will receive exhibit No. 2773-A.

(Whereupon, defense document No. 1736 was marked defense exhibit No. 2773 for identification; the excerpt therefrom was marked defense exhibit No. 2773-A and received in evidence.)

MR. LOGAN: I shall now read exhibit 2773-A being defense document 1736, "Stenographic Records of the Proceedings of the House of Representatives, 62nd Imperial Diet, Saturday, 4th June, 1932.

"State Minister TAKAHASHI:

"I shall now give some explanation of the Capital Flight Prevention Bill listed No. 10 on the order of the day. Since the year before last, we have seen the overseas efflux of a good amount of our domestic capital, as a result of the general anticipation of fall in the value of yen currency and of the difference in the rate of interest between domestic and foreign securities. This trend became particularly notable subsequent to Great Britain's abolition of the gold standard system in September last year. Recently our foreign loan bonds have shown a decline in market price, causing the flight of capital, which is being resorted to even today. In the future, too, if the issue of currency increases in amount, we fear there will be a growing number of people who attempt to promote the flight of capital overseas. We need not mention that in time of peace the international movement of capital should always be allowed unrestrictedly. However, today world economy is confronted by an extraordinary situation, and to prevent the overseas efflux of our capital is a measure necessary for securing national welfare. Besides, such a step has already been taken by quite a number of countries.

"At present, however, there exists no legal grounds upon which to prevent the flight of capital. Hence we deem it urgent to introduce a bill relating to such measures."

Defense document 1721 is offered in evidence. This is an excerpt from the Official Gazette of February 17, 1933, recording the statements of Minister TAKAHASHI upon the introduction of the Foreign Exchange Control Bill in the Diet on February 16, 1933.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1721 and 1722, being a book entitled "The Stenographic Records of the House of Representatives, 64th Session," in Japanese, will receive exhibit No. 2774 for identification only, and the excerpt therefrom, being defense document 1721, will receive exhibit No. 2774-A.

(Whereupon, defense document No. 1722 was marked defense exhibit No. 2774 for identification; the excerpt therefrom was marked defense exhibit No. 2774-A and received in evidence.)

MR. LOGAN: I shall now read exhibit 2774-A, being the stenographic record of the proceedings of the House of Representatives on February 16, 1933.

"State Minister TAKAHASHI:

"Concerning the Foreign Exchange Control Bill which has come up for discussion now, I would like to explain the reasons for its presentation. Japan's foreign exchange rate gradually declined since the enforcement of the second gold embargo towards the end of the year before last, and finally dropped, in November last year, as low as $20 against the United States. In view of Japan's present international financial balance, such a decline as this of our foreign exchange rate cannot be called normal at all. This is merely a kind of full market founded chiefly on the general uneasiness coming both out of the present unstable international relations and the feared inflation of currency. Suppose no counter measures had been taken and each individual had been allowed to indulge in his own way of declination and fluctuation of our exchange rate would have been much greater than what it is now on account of the possible flight of our capital into foreign countries and the domestic

and foreign speculations on the 'Yen'. Fortunately, the Capital Flight Prevention Law, which has been enforced since July last year by the approval of the 62nd Session of the Diet, has proved quite effective. I believe it has been quite fortunate for Japan that the evil influences, which could be caused by the outflow of capital from our country, could have been checked at such a stage as we have seen them today. However, the above Capital Flight Prevention Law chiefly aims at preventing capital from escaping into foreign countries, especially the outflow of our capital in the form of purchases of foreign currencies and foreign currency securities outside of Japan, and keeps itself as much out of the way as possible of the normal course of our foreign trade. Therefore, there are not a few points in this Law that are inconvenient from the viewpoint of checking speculative dealings in exchange business and effectively preventing capital from escaping out of our country. Moreover, when we look at the present international financial conditions, we find that most countries are practising exchange control or trade control, and are taking various measures in order to raise customs duties, and in this way each

country is jealously protecting her own economy and domestic industries. Thus, the future development of the world situation is beyond our prediction. We must expect that there will arise the necessity in the near future also for our country to take some definite measures to meet the changing economic conditions of the world. For the reasons above-mentioned, the Government has presented this bill to the Diet, in order to obtain a right to issue ordinances for the purpose of exercising adequate control over all phases of foreign exchange according to the development of the national as well as international situations. With regard to gold export, the existing Finance Ministry Ordinance and other orders are not satisfactory in their effective control, and therefore, we have incorporated new regulations in this bill so that a way may be opened for the Government to deal severely with offenders."

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MR. LOGAN: We now offer in evidence defense document 1722, an excerpt from the Official Gazette of March 1, 1933. This document sets forth the speech of State Minister NAKAJIMA on the introduction of the Bill to Establish Japan Iron Manufacturing Company before the House of Representatives February 28, 1933.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1722 will receive exhibit No. 2774B.

(Thereupon, the document above referred to was marked defense exhibit No. 2774B and received in evidence.)

MR. LOGAN: I now read exhibit 2774B, being the stenographic record of the proceedings of the House of Representatives, February 28, 1933.

"State Minister (Mr. NAKAJIMA, Kumakichi):

"I would like to explain the reason for introducing the Bill to Establish Japan Iron Manufacturing Company which is now placed on the agenda. The iron manufacturing industry in our country made a rapid progress, with the European War as a turning point, under the government's protective and encouraging policy on one hand and through the painstaking and persevering management of the industrialists concerned on the other, and it has gradually reached the stage of

self-sufficiency. However, an observation of the nature of the management of this industry shows that its foundation can hardly be called to be sufficiently firm. Except the prosperous days during the European War, it went through the lean years on the whole until recently when it has shown a rather favorable tendency due to the exchange rate and the increased supply of steel, although the future of this industry does not warrant optimism. If the production cost should rise following the rise of prices, this industry will again be affected by imported goods; further, should the matter be left as it is, it would become extremely difficult to supply sufficient steel at a low price to meet an ever-increasing demand in the future. The reason why the foundation of the iron manufacturing industry in our country is not so firm as stated above can be attributed to the fact that most of our private iron manufacturing undertakings were founded or expanded during the European War, and that improvements of their equipments and adjustment of their capital were generally unsatisfactory; furthermore, the depression which has been continuing since the war has been preventing them from working out their own industrial rationalization. Again, the iron works being government managed, their operations were subjected to various restraints, which,

it must be admitted, brought about several facts that interfered with the development of this industry. This proved to be a great obstruction in the way of accomplishing a unified development of the iron manufacturing industry, as a whole, in our country. In other words, such disadvantages as the double investment of capital and the unbalanced installations of equipments were caused on one hand, and at the same time there was always a menace, on the other hand, from imported goods which were ready to take advantage of high cost of production resulting from independently operated small-scale enterprises. In view of such present condition of the iron manufacturing industry in our country, various measures for its promotion have been advocated in the past. But a practical measure for the firm establishment of the iron manufacturing industry, considering the fact that a systematic operation on a large scale is particularly advantageous in view of the very nature of this industry, is to achieve a joint company based upon the government-managed as well as important private owned iron manufacturing industries. The most appropriate method in this connection is believed, with the assistance of special funds from the Government, to plan a thorough rationalization of this industry, to promote a lower cost of production, to

improve and expand installations and thus to place the iron manufacturing industry in our country on a stable basis. Particularly in the light of the fact that steel is a basic material for various important industries, it is also exceedingly important from the standpoint of developing national industry and economy to secure an ample supply of it at a cheap price. I believe that the resolution to plan a complete readjustment and rationalization of the iron manufacturing industry for the purpose of lowering production cost, adopted by both Houses in the 62nd Session, in June last year, no doubt was prompted by the same idea; and I regard the establishment of the Japan Iron Manufacturing Co., Ltd., an outcome of the above resolution, as the most appropriate measure. With such an object as mentioned above in view, the Japan Iron Manufacturing Co., Ltd., based on the iron manufacturing industry managed by the government and civilians has been established. And the present bill is introduced for the purpose of achieving the firm establishment of this industry. I earnestly request that you will be good enough to speedily approve of it after full deliberation."

I now call as a witness ADACHI, Yasuo.

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Y A S U O A D A C H I, called as a witness on behalf of the defense, being first duly sworn, testified through Japanese interpreters as follows:

DIRECT EXAMINATION

BY MR. LOGAN:

Q Will you let us have your name and address, Mr. ADACHI?

A My name is ADACHI Yasuo; my address, 7458 Tsujido, Fujisawa, Kanagawa Prefecture.

Q Will you examine defense document 1688 being handed to you by the Clerk of the Court?

Is that your affidavit?

A Yes, that is mine.

Q Are the statements contained in that affidavit accurate and true?

A Yes.

MR. LOGAN: I offer in evidence defense document 1688 and exhibits attached thereto.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1688 will receive exhibit No. 2775.

(Whereupon, the document above referred to was marked defense exhibit No. 2775 and received in evidence.)

MR. LOGAN: I shall now read exhibit 2775, being defense document 1688.

"Sworn Deposition of ADACHI, Yasuo."

THE PRESIDENT: Omit the formal parts, Mr. Logan, please.

MR. LOGAN: All right.

"I graduated from the metallurgy section in the Engineering Department of the Imperial University in 1919; in the same year, I was given the position of assistant engineer in the Mining Bureau of the Ministry of Agriculture and Commerce; in 1921 I was made an engineer of the Mining Bureau as well as of the Ministry of Agriculture and Commerce; in 1926 I assumed the additional post of engineer of the Investigation Institute of Fuel; in 1929 the additional post of the Secretariat Statistics Section of the Commerce and Industry Department. In 1937 I was made

the manager of the Iron Industry Committee. In 1938 I became an engineer of the Temporary Commodities Readjustment Bureau as well as engineer for the Bureau of Commerce and Industry. In 1939 I was made secretary of the Production Expansion Committee, and in the same year, I took the position of expert member of the Shipbuilding Committee; thus until the time of my resignation from the position of the chief of the Steel Section of the Metal Bureau of the Ministry of Commerce and Industry in 1943, I served in planning out administrative work concerning iron and steel of the Japanese Government. After resigning from public office I held the position of director of the Nittetsu Mining Joint Stock Company from 1943 to 1946. During those years I was head of the investigation department of that company, and later head of the investigation department and of the mining department. In 1946 I became director of the Kanto Dolomite Industrial Joint Stock Company and continued in the position until 1947 when the company was dissolved. At the present time I am the director of an engineering and construction company.

"I have factual knowledge of the iron-steel administration of the Japanese Government and the condition of production and consumption of iron and

steel. All the tables attached to and made part of this affidavit were prepared by me from statistics and sources enumerated herein.

"(2) After the first European War, the price of iron and steel dropped abruptly. The fall in the price of steel material during the period from 1918 to 1934 is shown in Table I."

I might state to the Tribunal that the tables mentioned here are attached to the affidavit and we will refer to them either now or later.

"As is shown in the 'Reference Materials Concerning Iron Manufacture' compiled by the Metal Bureau of the Department of Commerce and Industry in August, 1934, the average price of bars and plates in each year is shown in the table in index numbers with the standard of 100 for 1918. As the table shows, the price of bars was 100 in 1918, depreciated to 33 in 1921 and continued to depreciate year after year until in 1931 it had become 15. Its depreciation thus was 85 per cent. The price of plates was 17 in 1921 and 8 in 1931. Thus the depreciation was 92%. In addition to this, in those years Japan was menaced by the import of iron and steel from foreign countries. For this reason the immature iron and steel work of Japan suffered a staggering blow. For instance, among

about 200 iron and steel manufacturers operating during the first European War, about 150 went into bankruptcy. The other 50 or so manufacturers were for a long time suffering extraordinary hardship at no commercial profit. Accordingly the Ministry of Commerce and Industry in about the year 1931 considered how to overcome the crisis and at the same time investigated means of bettering iron and steel manufacture as a step toward remedying these conditions in Japan.

"The main points of consideration in the days when Japanese iron manufacturers were in this chaotic situation are as follows:

"(a) According to the iron and steel statistics compiled by the Yahata Iron Factory in December, 1931, the annual consumption of steel material by one American, Belgian, Frenchman, German, Englishman and Japanese is as set forth in Table II," also attached to the affidavit. "To make the table much plainer, index numbers are shown as follows:

"Japan, 1. America, 7.24. Belgium, 3.45. France, 3.12. Germany, 2.98. Britain, 2.45.

"Accordingly, it was predicted that Japan's consumption of iron and steel would increase to a certain extent in accordance with the development of

her civilian economy. As for practical methods from the standpoint of economical consideration, it was prearranged that for the most part, raw material would be supplied from foreign countries and that iron materials would be manufactured in Japan to meet Japanese needs.

"(b) The industrial rationalizing movement and the increased production movement which took place in all nations after the first European war were examples of world-wide tendency. Japan thought then that she would be left far behind financially unless she followed this tendency. For instance, according to the statistics made by the Mining Bureau, the status of steely production in America, England, the Soviet Union, Australia, Germany, and Japan was as shown in Table III expressed in real numbers, in index numbers, and in a graph of index numbers. This index-number graph starts in 1932 with 100 and continues until 1940.

"During the above term, each nation listed shows a generally rising line. In 1940 the index for America rose to 4.26, England rose to 2.54, Soviet Union rose to 3.40, Australia rose to 5.44 (1939), Germany rose to 4.65 and Japan rose to 2.84. Authorities of the Ministry of Commerce and Industry thought

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it appropriate to take measures as follows as the method of attaining the purpose described in the above (a) and (b).

"(a) Revision of Tariff. As shown on Table 4, 1920-1925, there was an import tariff of 15% on the most useful steel material. This was increased to 20% on bars and plates in 1926 and in 1932 it was further raised to 25% ad valorem but conditions did not improve. To meet war economics after the China Incident in 1937, the import duty was lifted.

"(b) Establishment of the planning system.

"This problem had been considered by experts in iron and steel for a very long time. The government finally decided to establish an investigation society for the promotion of iron manufacture, and this society held several conferences after 1915. All the reports indicated the need for concerted effort among iron manufacturers. A plan finally materialized in 1933 as follows."

THE PRESIDENT: Well, this is a convenient break. We will adjourn for fifteen minutes.

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

Wolf & Keller

"The purpose of this planning system was to establish a company able to compete with foreign countries from the standpoint of economic consideration. For instance it was necessary to make the economic foundation of planned accounts of the new company firm and stable. For the purpose, six companies had to be dissolved in order to form a new company. The property valuation of those companies was calculated in a reasonable manner, and from their estimated values one third was discounted.

"(3) The above enterprise was materialized solely for the purpose of dealing with an urgent problem which Japan faced at that time and had not any other special purpose. The next step was to establish a scheme for expansion to prepare for an increase of demand in the future. Essential points of consideration in the plan were as follows:

"(a) Japan was extremely poor in natural resources both in quantity and in quality. Accordingly real sulf-sufficiency was almost impossible. About in 1934, since there were few able persons in the military and naval forces who had the knowledge of this kind of enterprise -- the Ministry of Commerce and Industry planned it out merely from the standpoint of economy.

"At that time, as a method of measuring the demand in the future, the demand for steel-material in each year from 1896 to 1930 (including export and internal consumption) was shown in a diagram and from it the amount of demand in the future was calculated mathematically as a standard. In the above figure was included the amount of military and naval demand, which was estimated approximately less than 10 percentage of the whole. However, judging from the condition of natural resources and geographical environment in Japan, the Commerce and Industry Ministry was of the opinion that while there was room for the increase of steel production, Japan had no choice but to depend upon the import of raw materials, especially minerals. As the collateral security for these imported minerals, Japan was forced to increase the amount of exported steel and machinery. Consequently, the Commerce and Industry Ministry, taking these conditions into consideration, estimated that the future demand and supply would be at such a level as shown by the aforementioned calculated standard. Accordingly, the presupposed demand of the army was calculated at the same rate as that of the period from 1896 to 1930, and no more. There was no demand ~~from military or naval forces for a larger amount.~~

"The plan as above, based purely upon an economic view, was expected to come to an end about in 1938. The actual results were as presupposed. They are given as follows:

"(a) The production of pig-iron and steel material definitely increased. (Table V & VI.) The production of steel-material went up to the maximum in 1938, the year after the outbreak of the Chinese incident. However, owing to the unexpected outbreak of the Pacific War, production decreased despite the demand during war time. The under-production was caused by the decrease in the supply of scrap. The consumption of scrap-steel during the period from 1932 to 1942 is as follows according to page 308 of the above stated statistics. (Mining Bureau.)"

On page 9, we have the chart showing the consumption in unit 1000 tons and, incidentally, throughout this affidavit when tons are mentioned, they are metric tons.

"1932	1933	1934	1935	1936	1937
1,301	1,905	2,538	3,121	3,336	4,393

"1938	1939	1940	1941	1942
4,264	4,660	4,405	3,299	3,829

"The source of supply for this consumption was import, and the largest place of supply was America.

The amount of import was as follows: (3 pages from No. 2420 of the above statistics)"

I shall read the totals only for this here. This is also in metric tons. This is per 1000 metric tons.

"Year	1932	1933	1934	1935	1936	1937
"Total	559	1012	1412	1692	1692	2419
"Year	1938	1939	1940	1941	1942	
"Total	1357	2555	1390	203	38"	

Those figure refer to America, Australia, India, and others.

"The production of pig-iron increased year after year from 1932 to 1942. Accordingly the consumption of iron-ore increased naturally. However, the supply of ore had to come from other countries. (Table VII) Since Japan is situated geographically in a most convenient place for importing iron-ore from the East and the South, she imported it from those regions. The method was purchasing the ores or procuring mining rights through economic negotiations.

"(b) Except in 1937, the import of steel material decreased exactly as presupposed by the Ministry of Commerce and Industry. (See Table VIII.)

"(c) The export of steel-material increased as presupposed by the Department of Commerce and Industry. In 1937 export decreased because of the

Chinese incident, but until the outbreak of the Pacific War, steel-material was exported to a certain extent. (Table IX)

"(d) Export of machines. The export of machines, that is, export of transformed steel material, was extremely large. (Table X)

"The expansion plan which was established by the Ministry of Commerce and Industry was for civil economy I know of no plan for promoting war. Accordingly, it is impossible to say that self-sufficiency was attained. Larger production was planned out of necessity since Japan was destined to turn from a farming country to an industrial country, as a counter-measure to the increase of population. Therefore the plan had to be established upon ample consideration of the general economic situation. Thus the above (a) to (d) are the natural results that the expansion plan brought about, and it is based completely upon economic views. We authorities of the Ministry of Commerce and Industry believed firmly that we were able to guide the subconscious power of the Japanese people in contributing to the elevation of their economic life.

"(4) In 1937, the old peace time economy turned into war time economy. Accordingly the

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"(4) In 1937, the old peace time economy turned into war time economy. Accordingly the

consumption of iron was greatly revolutionalized. There were no complete statistics of consumption in Japan. Consequently the Ministry of Commerce and Industry estimated the amount of every year's consumption by the following formula:

"Consumption = production + import - export.

"This is accurate as long as there is no variation in the amount in storehouses at the end of the year. Its result is given in table XI its tendency describes plainly the fact which was stated in (3), namely, that complete self-sufficiency is virtually impossible. Moreover, the production of steel-material decreased side by side with the development of the Chinese incident. The degree of decrease was affected greatly by the prohibition of export of scrap-iron by America in 1940. Monthly import of scrap-iron is shown as follows:

"(Unit - 1000 Tons)

"Import Statistics (The finance department)"

1940, monthly amounts are shown running from 156 in January decreasing generally, except in October that year, to 89 in December. In 1941, the monthly reports show a decrease from 50 in January to 3 in December of that year.

"As opposed to this, the production of

pig-iron went on increasing. This was caused by the need for taking a counter-measure to the decrease in import of scrap-iron. As the same time, however, it was inevitable that the amount of iron-ore in the storehouse must decrease rapidly. For instance, the amount in store at the YAWATA Foundry, which held 90% of the entire amount of stored ore in Japan, was as follows:

"(Unit 1000 Tons)

"(Iron-ore cooperative council)

"March 1940	March 1941	Sept 1941	March 1942	Sept 1942
3,324	2,900	2,049	1,177	882

"Accordingly, combination rate of pig-iron and scrap-iron at the iron manufactory had to be changed to prevailing conditions. Combination rates of pig-iron and scrap-iron in steel-ingot are as follows every year from 1935 to 1941.

"From data of the iron-ore cooperative council

"(Unit 1000 Metric Tons)

	Consumption of pig-iron	Consumption of scrap-iron	Combination pig-iron	Scrap-iron
1935	2075	2981	41	59
1936	2358	3213	42	58
1937	2336	4085	36	64
1938	2276	4142	35	65

"Steel manufacturing met with extreme difficulty in operation. Production inevitably decreased gradually. Moreover, hand in hand with the progress of the Chinese incident, the demand of the army gradually increased. Accordingly the demands of the people were compelled to decrease extremely. For instance the demand of the people in 1945 was 2,150,000 tons. This amount is almost the same as the demand in about 1925. The comparative consumption of the fighting forces and the people cannot be set forth as no figures are available as there are no statisties of the Department of Commerce and Industry we will use 'The plan for Mobilizing Materials' from 1935 - 1944. These results are shown in Table XII. As I stated before, the military demand had been ten percent or so of the total consumption from old days to 1936. Since 1937, in order to respond to the urgent need of completing the China Incident many war measures were taken to meet the increasing Military demand. Still more, together with the expansion of the fronts, there was a reason that the exports in the past should be directed to the occupied territories (Yen bloc) to meet an urgent demand. I do not know the proportion of military and civilian exports used in these yen bloc areas. Internal

supplies in Japan were limited. As stated above, the supply for the people in 1941 was reduced to the degree of about twenty years ago. But as the Table XI shows, because of the decrease of production, it was necessary to give only minimum supply to the people, and in spite of the war, measures were taken to relieve the assignment-rate to a certain extent. However, in such a situation, it was extremely difficult for the prosecution of the war and the operation of the civil economy to go on side by side smoothly.

"On this 28th day of May, 1947.

"At Tokyo.

"DEPONENT /S/ ADACHI"

I shall not read these charts, if it please the Tribunal, but I would like to have them reproduced in the record for future reference by the Tribunal.

You may examine.

THE PRESIDENT: Brigadier Quilliam.

BRIGADIER QUILLIAM: May it please the Tribunal, we do not wish to cross-examine.

MR. LOGAN: May the witness be released on the usual terms?

THE PRESIDENT: He is released accordingly.

(Whereupon, the witness was excused.)

MR. LOGAN: We next offer in evidence defense document 1839, an excerpt from the official Gazette of January 24, 1934. This document sets forth the speech of Mr. TAKAHASHI, State Minister, concerning the general trend of the world economy, before the House of Representatives on January 23, 1934.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1839 will receive exhibit No. 2776.

(Whereupon, the document above referred to was marked defense exhibit No. 2776 and received in evidence.)

MR. LOGAN: I now read from exhibit 2776, being a Stenographic Record of the Proceedings of the House of Representatives of the 65th Session of the Imperial Diet, the statement of Mr. TAKAHASHI.

"Next glancing over the general trend of the world economy, we see that the International Economic Conference which was held in London in June last year adjourned in July for a while, without attaining the expected results on account of discord among the leading powers, and it was decided to reconvene the convention at some suitable future date. Originally the conference made it its mission to overcome the

present world depression by the mutual cooperation of powers, to bring about the perfect working and development of international economy through the stabilization of currency and planning the reopening of international transfer of capital on the one hand, and through eliminating various commercial impediments and installing control of production on the other. However, because of the aforesaid adjournment, the overcoming of the depression by means of international cooperation became impossible. Accordingly, since the adjournment of the conference, all powers have strengthened their self-protection policies more and more, and besides planning thoroughly to carry out their self-sufficiency principles of national economy at home had really elevated trade barriers against the foreign countries. Consequently, the number of countries who have made impartiality their motto in international trade as heretofore are now very small, and the tendency of the powers to enter into a special agreement between two nations or several countries with whom they are closely interested is conspicuous. Since the panic in March, the United States with whom we have close economic relations had devoted itself to the restoration of trade and the raising of prices, and has been taking various measures relating thereto.

However, in international harmony and coalition the same country has not come to terms as yet with such powers as Great Britain, France and others pertaining to policies concerning currency, foreign exchange, etc. She had deemed the stabilization of economic life of her own people and the re-establishment of domestic economy the most urgent of questions, and from this point of view, taking various measures. So the present economic condition of the world is still in chaos, and not only is there as yet any prospect of overcoming depression, but it is not easy to tell how the situation may develop in the future."

We now offer in evidence defense document 1750, which is an excerpt from the Official Gazette of March 4, 1934, recording the speech of Mr. MATSUMOTO, Minister of State in the House of Representatives in 1934. This excerpt explains the purpose of the Petroleum Control Bill at the time it was introduced in the Diet, and which was referred to by Mr. Liebert in his testimony.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: The book entitled "Stenographic Records of the House of Representatives, 65th Session," in Japanese, will receive exhibit

No. 2777 for identification only. The excerpt therefrom, being defense document No. 1750, will receive exhibit No. 2777-A.

(Whereupon, the document above referred to was marked defense exhibit No. 2777 for identification; the excerpt therefrom being marked defense exhibit No. 2777-A and received in evidence.)

MR. LOGAN: I now read from exhibit 2777-A, being an excerpt from the Official Gazette, the Stenographic Record of the Proceedings of the House of Representatives, 65th Imperial Diet.

"March 3, 1934" -- This is a typographical error in the document. It says "'35," it should be "'34."

"I am going to mention the reasons for which the Petroleum Control bill has been introduced. With regard to the security in the supply of petroleum, one of the important material from the view point of industry as well as national defense, the Government, which has so far established various requisite facilities, has now prepared a budget of more than 1,800,000 yen for next year. And is by all means going to construct facilities necessary for liquid fuel supply. My opinion as to the petroleum policy of

Japan is that, in view of the situation of the domestic petroleum resources, more and more effort should, of course, be concentrated upon the security and development of both domestic and foreign petroleum resources and also on the promotion of the substitute fuel industry. While, on the other hand, considering the present situation of the oil refining industry in this country and the national tendency toward self-sufficiency in petroleum products, I cannot but deem it of urgent necessity for Japan to take a course towards the firm establishment of the oil refining industry and in securing her petroleum supply along with these facilities.

"The oil refining industry in Japan has, of late, made steady progress year by year. However, Japan as yet remains in the poor status of having to rely upon foreign countries for more than half of her demand at home on benzine and crude petroleum which form the main part of her petroleum consumption. So that, in order to establish the oil refining industry in Japan and to attain self-sufficiency in various petroleum products, the necessary steps for us to take are I believe to regulate imports into this country properly on the one hand and to establish facilities to assure control over the domestic oil

refining industry on the other. In short, we look forward to systematic development of the petroleum industry of this country, by controlling both the import and oil refining industry under the Government authorization."

We offer in evidence defense document 1752, which is an excerpt from the Official Gazette of the stenographic report of the proceedings of the House of Representatives of the statement by Minister TAKAHASHI on the purposes of the adjustment of trade and protection of commerce bill which was introduced on March 10, 1934.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1752 will receive exhibit No. 2777-B.

(Whereupon, the document above referred to was marked defense exhibit No. 2777-B and received in evidence.)

MR. LOGAN: I now read the exhibit 2777-B.

"The Stenographic Report of Proceedings of the House of Representatives.

"March 10th, 1934

"Mr. TAKAHASHI, Korekiyo, the Minister of State, goes on the platform)

"I will give an explanation of the adjustment

of Trade and Protection of Commerce Bill which has just been introduced for discussion. Recently there is no sincerity for international cooperation in world commerce, and there is a marked tendency among the respective countries to adopt selfish policies. Especially the tendency, spurred by extremely active advance of Japanese commodities in the markets abroad, has become more conspicuous. This situation is that those countries are gradually increasing which attempt to build a wall against our export trade through such methods like restricting their import from Japan. In view of such a situation, it may, when we think of the future become necessary for our country to take such steps, depending on what measures the various countries will adopt hereafter, like regulating trade in conformity with such measures and thereby strike for the balance of international incomings and outgoings; or like increasing or decreasing the import duty or prohibiting and controlling the import and export to protect our commerce. Such measures must be put into effect according to circumstances. Therefore it is the intention of the Government today to establish beforehand a system for the above, and thereby prepare for the future. Of course we have no intention to assume an attitude of

voluntarily disturbing the international relations, but it is our hope rather that such an occasion will not occur which will necessitate the application of this Law. In view of the current situation, I think it is unavoidable for us to make arrangements of this degree as a temporary measure. This is the outline of the reason why the Government has proposed this Bill."

We offer in evidence defense document 1734 which is an excerpt from the Official Gazette of the report of the proceedings of the House of Representatives of the statement by Minister of State OGAWA on May 11, 1936 on the automobile industry control bill.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1734, being a book entitled "The Stenographic Records of the House of Representatives, 69th Session," in Japanese, will receive exhibit No. 2778 for identification only and the excerpt therefrom, bearing the same defense document number will receive exhibit No. 2778-A.

(Whereupon, the document above referred to was marked defense exhibit No. 2778 for identification; the excerpt therefrom being marked defense exhibit No. 2778-A and received in evidence.)

MR. LOGAN: I now read exhibit No. 2778-A, being a Stenographic Record of the Proceedings of the House of Representatives, May 11, 1936.

"Minister of State OGAWA, Goraro: I will explain the reasons for proposing the Automobile Industry Control Bill which has just been placed before the House. The automobile industry is indispensable to a secure national defense and industrially ranks highest as one of what may be called basic industries. Its development or otherwise seriously affects both industry and national defense. In our country, however, we find the industry is not yet built on a firm foundation and the necessity of establishing it on a sound foundation has been keenly felt for a long time.

"Especially recently the various situation both at home and abroad has necessitated an urgent establishment of this industry on a truly sound foundation to complete national defense and to promote this industry. In my opinion, the fundamental measures for the successful development of the automobile industry should be in the direction of mass-production. Not only this for this purpose stress must be laid on the manufacture of what may be called automobiles for the general people which are

in great demand. As for the industry in Japan, however, the making of automobile part and the automobile industry on a small scale has been developed to a measure, and the industry based on the mass-production system has just taken a step forward but is still in an infant stage. At present, most automobiles produced in Japan are supplied by foreign companies here which assemble parts of foreign-make. Therefore, after careful examination and investigation of various phases of the matter, the Government decided and made public the fundamental measures adopted for the making of automobiles for the general people in the summer of the 10th year of Showa (1935). The Automobile Industry Control Bill now proposed has been drafted with the foregoing fundamental measures as its nucleus, taking full consideration of later changes in the industry and the situation both at home and abroad I think it is extremely important and urgent for the establishment and development of the automobile industry in Japan."

MR. LOGAN: We next offer in evidence defense document 1766, an excerpt from the Official Gazette of January 22, 1937. This document sets forth the speech of Mr. SAKURAUCHI in regard to the policies aimed at promoting and development of industry, before the House of Representatives on January 21, 1947.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1766 will receive exhibit No. 2779.

(Whereupon, the document above referred to was marked defense exhibit No. 2779 and received in evidence.)

MR. LOGAN: I now read exhibit 2779, being a record of the proceedings of the House of Representatives on January 21, 1937.

"Mr. SAKURAUCHI: Next, together with the national defense question, the problem of stabilization of people's lives is said to be most urgent. Accordingly, a number of vital policies aimed at promoting the development of industry and the stabilization of people's lives are being dealt with in the present budget. I am afraid, however, that the result of this colossal budget might affect the national life more deeply than the results of these policies

of the government. Essentially, this bulky budget itself is the cause of the high cost of living. Furthermore, should the present day financial policy and the plans for increasing taxation impede the development of trade and industry, cause a nasty inflation of currency, and bring soaring high prices, those policies concerning the industry and the national life introduced into the Diet today would yield no effect at all. Apart from this, comparing the price index and the wages of 1931 with those at the end of last year, we find the prices really increased by more than 32%, while the wages increased only by 15%. Despite the fact that this alone has been the cause of considerable pain to the masses of wage earners, the conditions that have been created by the radical jump of prices since the end of last year which occurred as a consequence of the announcement of this colossal budget are getting worse with indeterminable force. In addition to the above, an exorbitant increase has been made in the taxes levied on sake, sugar, tobacco, gasoline, and other necessities of life, and the postage rates and various sorts of other expenses to the masses have been increased. Should the prices go up still higher, the life of the people will absolutely be menaced. In

my opinion herein lies a fearful germ that will defeat the purpose of the financial plans. Such a radical jump in prices will inevitably bring about high wages, and, correlation to the increase of the cost of materials, the budget will be forced to expand still more. Expansion of the budget will naturally boost the prices. If such cause and effect endlessly circulate, nothing will surpass the distress of the state and the hardships of the nation. In view of the precedents in Russia and Germany, I can not help being struck with horror. By what means and measures does the government intend to stop adequately the terrible jump in prices which is the inevitable result of the execution of policies according to this budget? Should the means be unreliable or inappropriate, it may bring more frightful results, and the responsibility of the Government will be most grave, I believe. Since this is the point that the people would like to know about most, I wish the government would fully express its views on this question."

We now offer in evidence Defense Document 1768, which is an excerpt from the Official Gazette for January 22, 1937, reporting a statement by Minister of State BABA in the Diet on January 21, 1937, with respect to the Foreign Exchange Act.

THE PRESIDENT: Admitted on ute usual terms.

THE CLERK: Defense Document 1768 will receive Exhibit No. 2780A.

(Whereupon the document above referred to was marked Exhibit No. 2780A and received in evidence.)

MR. LOGAN: I will now read Exhibit 2780A:

"The 70th Imperial Diet. The Stenographic Record of Proceedings of House of Representatives, No.3.

"The Session Opened at 1:18 p.m. Thursday, Jan. 21, 1937.

"The Minister of State (Mr. Eiichi, BABA): (Continued)

"To maintain the stabilization of our Yen value in the recent complicated international economic situation, we are depended small degree upon the operation of the Foreign Exchange Act. The Government, towards the end of last year, has revised the decree based on the Foreign Exchange Act; however, again in view of the recent tendency toward the increase in speculative importations, we have taken

temporary emergency measures. The Government will hereafter always take heed to the International shifting of capital and will take all possible steps to meet the situation, to prevent the flight of capital and also the fluctuation of exchange rates. At the same time, the Government will exercise the utmost care in the actual application of the exchange control lest industry and trade be hindered. But to attain good results from it is needless to say that the cooperation of the nation is extremely important."

I next offer in evidence Defense Document 1767, an excerpt from the Official Gazette of February 16, 1937. This document sets forth the speech of State Minister YUKI before the House of Representatives on February 15, 1937, concerning the development of foreign trade.

THE PRESIDENT: Admitted on the usual terms.

THE CLERK: Defense Document 1767 will receive Exhibit No. 2780B.

(Whereupon the document above referred to was marked Exhibit No. 2780B and received in evidence.)

MR. LOGAN: I will now read Exhibit 2780B: "Stenographic Record, State Minister YUKI, Toyotaro: It is due to our past few years activities in the world markets by means of good and cheap com-

modities that our foreign trade has been developed to a remarkable extent. But in the future good quality and low prices solely are impossible to be relied upon. Control must be properly enforced hereafter to avoid intensification of foreign obstacles to overseas trade and, externally, reciprocal treaties must be concluded through diplomatic negotiations as the occasion demands, absorbing needed imports on the one hand and striving to increase exports all the more on the other.

"Though the exchange rates were a little abnormal from the end of last year to the beginning of this year, they are gradually regaining stability. And I intend to adopt a prudent policy for maintaining the exchange rates which are recognized to be most necessary. As to the emergency measures concerning foreign exchange, it shall be continued for a while and its development shall be observed for some time yet. It goes without saying that the utmost care shall be taken not to impede industry and trade in its practical operation.

"I think fundamental consideration shall be required of international economy. A glance over the recent situation, and you will find that the ideology of economic nationalism is still dominant and there

is hardly any one who gives ear to that of international economy. The obscure atmosphere now internationally brewing may be said to be due to this economic seclusionism. It will alleviate the acute situation of international relations and contribute not a little to world peace to break the deadlock of international economy and brighten commercial intercourses. Therefore I think the recovery of international economy is the urgent necessity of the moment."

We now offer in evidence Defense Document 1764, which is an excerpt from the Official Gazette of 21 February 1937 recording the speech of Minister of State YUKI at the time of the introduction of the Bill Concerning Exports Control Tax Law before the House of Representatives, 20 February 1937.

THE PRESIDENT: Admitted on the usual terms.

THE CLERK: Defense Document 1764 will receive Exhibit No. 2780C.

(Whereupon the document above referred to was marked Exhibit 2780C and received in evidence.)

MR. LOGAN: I will now read Exhibit 2780C: "Stenographic Record, Minister of State (Mr. YUKI, Toyotaro): In conclusion, I would like to explain the Bill concerning Exports Control Tax Law. Viewing

recent trade policies of various countries, there is a large number of countries which takes measures such as extremely raising Customs duties, limiting imports, etc. by resorting to the claim-for-compensation principle or an economic isolation principle, etc. These preventive measures are increasingly being taken especially against Japanese exports. In order to improve our Export trade under such a trade situation, it is thought of very urgent necessity to enlarge the Export Compensation system by establishing a new Import Compensation system and other appropriate measures. Now that a considerable amount of expenses is required for the execution of these measures, it is thought proper to look for a source of revenue to cover the expenses by imposing for the time being the exports control tax on rayon cotton fabrics, etc. among the export goods which have close relations with these measures."

We now offer in evidence Defense Document 1724, for identification, which is an excerpt from the Official Gazette of July 30, 1937. This document sets forth the speech of Minister of State YOSHINO at the time of the introduction of the Synthetic Oil Industry Bill and the Imperial Fuel Development Company Bill before the House of Representatives

July 29, 1937.

THE PRESIDENT: Admitted on the usual terms.

THE CLERK: The book entitled "Stenographic Records of the House of Representatives, 71st and 72nd Session, in Japanese, will receive Exhibit No. 2781 for identification only, and the excerpt therefrom, being Defense Document No. 1724, will receive Exhibit No. 2781A.

(Whereupon the document above referred to was marked Exhibit No. 2781A and received in evidence.)

MR. LOGAN: I will now read Exhibit No. 2781A:

"No. 5, stenographic records of the proceedings of the House of Representatives in the 71st session of the Imperial Diet, July 29, 1937.

"Minister of State (Mr. YOSHINO, Shinji): As for the bills now under discussion, I will first explain the reasons why we have submitted the Synthetic Oil Industry Bill as well as the Imperial Fuel Development Company Bill. Liquid fuel is among the fundamental resources indispensable to our national industry and defense. It is a great pity, however, that our country is very poor in oil resources and is obliged to depend mainly on foreign countries for supplies of oil in the form of raw materials or manufactured goods. Every year we are paying abroad a large sum

of money and the demand for oil is showing a rapid increase. In view of the present situation, home or abroad, I believe that the most urgent business for us to do is to free our oil industry from the yoke of foreign countries, to accelerate the attainment of self-sufficiency with regard to liquid fuel, and thereby to promote our industrial development and national defense security, as well as the improvement of the balance of international payments.....

"Next I will explain the reasons why we have submitted the Iron and Steel Industry Bill. Our iron and steel industry has recently made rapid progress, but it remains substantially at the stage of dependence on foreign countries, as it requires the import of a large amount of pig-iron, scrap iron and iron ore, as well as other raw materials for iron manufacturing. I therefore believe that the fundamental policy toward iron manufacturing is to accelerate the advance toward self-sufficiency in iron and steel in order to contribute to the development of all industries, to improve the present condition of dependence upon foreign countries, to develop further overseas markets for our iron and steel products, to establish a means of securing raw materials, and thereby to bring our industry and national defense to perfection.

In the light of the present condition of our iron industry, our government, having taken various previous measures, considers it indispensable to take further steps, on the one hand, toward exhaustive efforts in integrated pig-iron work, expansion of logical facilities and encouragement of the use of iron sands or low-grade ores, and, on the other, toward the prevention of building too many facilities dependent upon foreign scrap iron as well as toward the promotion of the sound development of the iron industry through suitable control and adjustment. This is the reason for which we are attempting adequately to protect and promote our iron industry through suitable supervision by enacting a new Iron Industry Law in place of the Iron Industry Encouragement Law."

MR. LOGAN: I now call as a witness OKAZAKI Ayakoto.

A Y A K O T O O K A Z A K I, called as a witness on behalf of the defense, being first duly sworn, testified through Japanese interpreters as follows:

DIRECT EXAMINATION

BY MR. LOGAN:

Q Will you tell us your name and address, Mr. OKAZAKI?

A My name is OKAZAKI Ayakoto. My address: No. 1710 Hojo, Tatayama City, Chiba Prefecture.

Q Will you examine document 1933 being handed to you by the Marshal of the court and tell us whether or not that is your affidavit?

A I should like to have some -- a few corrections made in this affidavit. In the English deposition it would be the fourth line from the top.

I should like to have "to 1938" made to read "to 5 December 1938."

The next change I should like to have made appears in the second page, seventh line of the Japanese text. Instead of "separate sheet" I should like to have that passage read "separate chart."

Also, the "column on consumption" I should like to have read "column on civilian consumption."

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That is all the correction I have to make.

Q With those corrections are the statements contained in this affidavit accurate and true?

A Yes.

MR. LOGAN: I offer in evidence defense document 1933 and the charts attached thereto.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1933 will receive exhibit No. 2782.

(Whereupon, the document above referred to was marked defense exhibit 2782 and received in evidence.)

MR. LOGAN: I now read exhibit 2782, the affidavit of OKAZAKI Ayakoto.

"My career is as follows:

"From 1 December 1936 to 1938 I was in charge of matters relating to research concerning munitions industries and natural resources as a member of the Naval Affairs Bureau of the Navy Ministry, and in addition was concurrently secretary of the Natural Resources Board and participated in matters relating to national general mobilization planning.

"From 6 December 1938 to 15 June 1939 I was secretary in the Temporary Materials Research Bureau of the Ministry of Commerce and Industry.

"From 16 June 1939 to 15 November 1940 I participated in matters pertaining to annual materials mobilization planning in the Planning Board as a materials research secretary of the Ministry of Commerce and Industry. At the same time I served as the official in charge of determining the effectivation plan of periodic (every three months) materials mobilization in the Ministry of Commerce and Industry.

"From 16 November 1940 to 8 April 1941 I was in charge of supervising matters concerning the supply of materials relating to the Naval Technical Department as chief of the Third Section of that department.

"From 9 April 1941 to 31 October of the same year, I assisted the Minister of Commerce and Industry as materials research secretary of the Ministry and concurrently acting private secretary of the Minister.

"From 15 November 1941 to 5 June 1943 I was in charge of supervision of matters relative to the supply of materials to the navy in general as chief of the Second Section of the Arms and Equipment Bureau of the Navy Ministry.

"From 3 December 1945 up to the present I have been engaged, as I still am, in the assembling

and collation of data relative to the various plans concerning the industrial economy of Japan, especially from the beginning of the China Incident to the end of the Pacific War, and their results as a councillor of the National Economic Research Association, a juridical foundation.

"I should like to state about petroleum as it is generally called, especially about fuel and diesel oil, in the following order:

"1. First of all I should like to speak of the basic data upon which I base my testimony.

"The basic materials which I am using, in other words, the materials contained in the annex attached herewith, have been prepared using also as reference the materials submitted to the United States Strategic Bombing Survey in compliance with its directive. The materials submitted to the USSBS were assembled from all the data available at that time and coordinated by the joint conferences of the officials in charge of matters pertaining to petroleum of the Ministry of Commerce and Industry and the First and Second Demobilization Boards. However, considerable revisions of the materials submitted to the USSBS were made necessary as a result of new data obtained by the above-mentioned government departments concerned and so I have also used the materials prepared by these

offices on the basis of such newly acquired data.

"2. In connection with the materials above referred to I shall speak only of fuel and diesel oil. My reason for so doing is to simplify the subject on hand and because it is fuel and diesel oil which have a vital connection with naval warfare.

"Of the foregoing two items, the total amount of diesel oil which could be supplied in 1931 (See Annex I) was 1,331,220 kilolitres. As against the army's consumption of 6,000 kilolitres and the navy's consumption of 30,000 kilolitres, the civilian consumption was 1,240,000 kilolitres (See Annex I. A denotes the army, B the navy, and C civilians.) This proportion continued since that time up to the outbreak of the Pacific War. Furthermore, the figures in the column on consumption in Annex I -- I indicate the fact that there was a conspicuous drop since 1941. This was because as a result of war the army and navy demands increased while the supply thereof, especially imports, became nil.

"Civilian consumption in 1941 was 1,066,150 kilolitres which was considerably less than the consumption in 1931 of 1,240,000 kilolitres. Although the increase in the army and navy requirements may be considered as one of the causes of the drop in civil-

ian consumption, the primary cause was the fact that the import of this item in 1941 was no more than 465,000 kilolitres as against 1,346,000 kilolitres which was imported in the previous year. This was due to the United States embargo on the export of petroleum to Japan. As a result, not only was marine transportation of vital materials seriously handicapped, but civilian industries also were considerably affected.

"3. Next I should like to speak of fuel oil.

"This item is necessary as fuel for naval vessels and for important industries, especially steel.

"The volume of imports of this item appear in Annex 2 to be small,but this is because it is included in the natural oil in the column on consumption on the extreme left. It is so included because crude oil was imported from abroad and refined in Japan.

"The volume of naval consumption of fuel oil registered some increase from year to year since 1931 because of the increase in naval vessels and because vessels with boilers using coal or coal and fuel oil combined were gradually changed to those exclusively using fuel oil. Moreover, the increase after 1937 was caused to some extent by the effect of the China

Incident.

"The total amount of oil in stock in 1941, which is shown in the affixed Table No. 2, was 3,701,300 kilo (i). Researches were then made about what would happen in case of failure in acquiring oil from abroad. According to the research, the annual consumption of fuel oil in Japan was, for example, 1,387,360 kilo in 1941. Consequently, if the remaining stock of 3,122,386 kilo were to be used for the following year, the whole stock of oil would be entirely spent up within two years or so.

"4) In conclusion, I want to add some explanations about fuel and diesel oil from the standpoint of naval war preparations.

"Just before the outbreak of the Pacific War the stock of fuel and diesel oil in the hands of the Navy was 3,624,000 kilo and that of crude oil was 1,435,000 kilo. These figures were shown to the GHQ Officials by Colonel HARA, who then acted as representative for Lt. Gen. HOSHINO of the Second Demobilization Bureau, after the termination of war. These accord with the figures that I obtained through investigations in December, 1941, soon after the outbreak of the war, when I was Chief of the Section of Supervision of Supply and Demand of Materials.

"The problem of when overseas oil cannot be obtained was studied from the standpoint of a wartime problem. The study revealed that the average monthly supply of fuel and diesel oil needed by the Navy in wartime would be 250,000 kilo. Accordingly, if the overall total of 4,600,000 kilo, consisting of 3,624,000 kilo of fuel and diesel oil, which had already been in stock before the war, and that which was to be obtained from crude oil were to be alloted to the Navy, it would be consumed within one and a half years. And in this estimate no consideration was given to the demand of private enterprises."

It is signed by OKAZAKI Ayakoto.

I ask that the two tables be spread in full on the transcript in the record. I won't take the time of the court to read them.

BRIGADIER QUILLIAM: If your Honor please, we don't wish to examine.

MR. LOGAN: May the witness be released on the usual terms?

THE PRESIDENT: He is released accordingly.

(Whereupon, the witness was excused.)

Well, you are getting on to a new section, I suppose. You are starting something fresh now?

MR. LOGAN: Well, more excerpts.

THE PRESIDENT: We will adjourn until half-past nine tomorrow morning.

(Whereupon, at 1600, an adjournment was taken until Wednesday, 6 August 1947, at 0930.)

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6 AUGUST 1947

I N D E X
Of
WITNESSES

Defense' Witnesses	Page
HASUMI, Yasushi	25047
Direct by Mr. Logan	25047
(Witness excused)	25052

6 AUGUST 1947

I N D E X

Of

EXHIBITS

Doc. No.	Def. No.	Pros. No.	Description	For Ident.	In Evidence
1745	2783		Excerpt from the Official Gazette of 3 August 1937 - Speech of Mr. KOGURE re the Introduction of the Bill Concerning Adjustment of Foreign Trade Before the House of Representatives on 2 August 1937		25027
1746	2784		Extract from the Official Gazette of 6 August 1937 - Statement of Government Commissioner OTA re the Gold Production Law		25033
1723	2785		Excerpt from the Official Gazette of 5 September 1937 - Speech of Mr. YOSHINO re the Bill relating to Imports and Exports		25039
1751	2786		Excerpt from the Official Gazette of 6 September 1937 - Speech of Mr. NAGAI re the Bill for the Temporary Control of Shipping		25041
1797	2787		Excerpt from the Official Gazette of 10 September 1937 re Law Providing for Emergency Trading in Rice		25044

I N D E X

Of

EXHIBITS

(cont'd)

Doc. No.	Def. No.	Pros. No.	Description	For Ident.	In Evidence
1843	2788		The Temporary Fund Adjustment Law No. 86, passed 10 September 1937		25045
1955	2789		Affidavit of HASUMI, Yasushi		25050
1798	2790		Excerpt from the Official Gazette of 10 September 1937 - re the Temporary Law Controlling Shipping		25052
1799	2791		Law Relating to Temporary Measures Concerning Exports and Imports promulgated on 10 September 1937		25053
	2792		Book entitled "Stenographic Record No. 6 of the proceedings of the 73rd Session of the House of Representatives, the Imperial Diet, 25 January 1938		25054
1726	2792-A		Excerpt therefrom - Speech of Minister NAGAI re the Introduction of the four Bills re Control of Electric Power		25055
1727	2792-B		Excerpt from the Official Gazette of 23 February 1938 - Statement of Committeeman KOGURE re Bill to promote the production of important Minerals		25058

I N D E X

Of

EXHIBITS

(cont'd)

Doc. No.	Def. No.	Pros. No.	Description	For Ident.	In Evidence
1738	2792-C		Excerpt from the Official Gazette of 25 February 1938 - Speech of Mr. SAITO re the National General Mobilization Bill		25061
1729	2793		Excerpt from the Official Gazette - Statement of Committeeman KOGURE re the Introduction of the Bill for the Machine Tool Industry		25063
1749	2794		Excerpt from the Official Gazette of 18 March 1938 - Statement of Prince KONOYE re the National Mobilization Bill		25065
	2795		Book entitled "Stenographic Record No. 24 of the proceedings of the 74th Session of the House of Representatives, the Imperial Diet, 17 March 1939		25072
1769	2795-A		Excerpt from the Official Gazette - Speech of Minister YOSHIAKI re the Introduction of the Bill for Light-Metals Manufacturing Industries		25073
			MORNING RECESS		25076

I N D E X

Of

EXHIBITS

(cont'd)

Doc. No.	Def. No.	Pros. No.	Description	For Ident.	In Evidence
	2796		Book entitled "Stenographic Record No. 24 of the proceedings of the 75th Session of the House of Representatives, the Imperial Diet, 11 March 1940		25076
1840	2796-A		Excerpt from the Official Gazette - Speech of Minister FUJIWARA re the Bill for Coal Supply Control Law		25076
1841	2796-B		Excerpt from the Official Gazette - Statement by Mr. KATO re the Bill relating to Synthetic Chemical Industries		25078
755	2797		U.S. Dept of State Interim Research and Intelligence Service Report, 31 October 1945 - Japanese War Production Industries, Part I - Development of War Production Controls		25090
			NOON RECESS		25104
1836	2798		Book entitled "Imperial Economic Conference at Ottawa in 1932"	25108	
			AFTERNOON RECESS		25130

Wednesday, 6 August 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, all Members sitting, with the exception of: HONORABLE JUSTICE STUART McDOUGALL, Member from the Dominion of Canada; HONORABLE JUSTICE I. M. ZARAYANOV, Member from the USSR; and HONORABLE JUSTICE E. H. NORTHCROFT, Member from the Dominion of New Zealand, not sitting from 0930 to 1600.

For the Prosecution Section, same as before.

For the Defense Section, same as before.

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(English to Japanese and Japanese to English interpretation was made by the Language Section, IMTFE.)

Knapp & Yelden

MARSHAL OF THE COURT: The International Military Tribunal for the Far East is now in session.

THE PRESIDENT: I would like to point out that the Member from China was present during the whole of the day yesterday. He was present at all sessions. The record suggests otherwise.

Mr. Logan.

MR. LOGAN: If the Tribunal please, we next offer in evidence defense document 1745, an excerpt from the Official Gazette of August 3rd, 1937. This document sets forth the speech of Mr. KOGURE on the introduction of the Bill Concerning Adjustment of Foreign Trade before the House of Representatives on August 2nd, 1937.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1745 will receive exhibit No. 2783.

(Whereupon, the document above referred to was marked defense exhibit No. 2783 and received in evidence.)

MR. LOGAN: I will now read exhibit 2783, "Shorthand Records of the Proceedings of the House of Representatives in the 71st Session of the Imperial Diet," August 2, 1937.

"The Government Delegate (Mr. KOGURE, Budayu):

"I shall explain the reason for the Bill Concerning Adjustment of Foreign Trade and its

related Industries which comes foremost of the four bills now placed on the agenda. It goes without saying that to expect our national economic development, it is necessary to plan for the expansion of foreign trade. As you all know, fortunately our trade in these past years has continued comparatively favorably. However, measures taken lately by foreign countries for preventing our goods from being imported is a situation not easily pacified. Under these circumstances in order to plan for the maintenance and development of our foreign trade, it is necessary to have preparations made so as to quickly establish effective and appropriate measures in preventing or pacifying these preventative measures as much as possible by considering the various conditions of the country concerned. Moreover in viewing the present foreign and domestic situations our situation necessitates amplification of productive power, and for this purpose, we must bring about an increase in importing a great deal of necessary raw materials, etc., and international transactions do not by any means permit a situation of optimism. Moreover, the necessity for planning in conformity with international transactions is originally to necessitate the supply of important

commodities properly. In achieving these purposes, the application of control to both the importing and exporting becomes necessary and as a result the adjustment of interests of industries concerned is also necessary. The government, however, in bringing this about, would like to enforce it as much as possible as the autonomous control of the firms concerned. In the event the control of foreign trade becomes necessary, or in regards to the control already enforced, if there arises a clash in interests between foreign trade groups and that of the domestic industries trade, we would like to enforce it so that it would open a way towards a policy of adjusting interests, or autonomous control by the firms concerned in an appropriate way. In the event the firms concerned are not able to autonomously enforce these policies, and the government particularly recognizes its necessity, then we would like to open a way so that the government can order its enforcement for the entire firms concerned with the approval of the authoritative investigation organ. Moreover recently, since the foreign and domestic economic situation is unstable, there may arise a case where it is unable to wait for the enforcement of the autonomous

control of the firms concerned as in the above, and we can also expect a case of insufficiency in their control. In these circumstances, the government still would like to open a way so that it can limit or prohibit the import and export with the approval of the authoritative investigation organ. As this is a bill relating to the adjustment of industries concerned and the foreign trade, it is originally a temporary measure to cope with the pending international situation; therefore its effective period has been limited to five years.

"Secondly, I shall explain the reason for the trade guilds and its proposals. The government has heretofore, along with adequate measures, and the Employment of Export Association System, enforced for instance, the joint-enterprises in investigation, development, etc. of foreign markets, and the control of export in compliance with the foreign situations, and in this manner has continued to this day by planning for the expansion of export trade. However, summoning the actual results of the employment of the Export-Guilds, it is recognized, at this instance, the necessity for continued adjustment of export control mechanism. For example, in order to enforce export control

without delay by coping with the impending overseas conditions there are circumstances where the voluntary establishment of the guild cannot be awaited. In those circumstances it is necessary for the government to be able to order coercive establishment, and actually it is also necessary that there will be no gap in the control upon the extension of the sphere to which the control of the guild is to be exercised. And on the other hand, in the case of import trade, we have come to systematize the import trade by newly establishing an import guild system as it was necessary to enforce control on import in order to restrict import from some countries, and also to have import goods markets dispersed from the standpoint of trade adjustments, national policy for raw materials, and others. And towards those countries reciprocating trade by requesting the buying of goods of their country, through the mutual cooperation of the import and the export guilds, it is necessary to also enforce joint undertakings of opening the market, etc. together with planning for the purchase of goods of that country. Furthermore, in order to plan for the liaison, development, and propagation of the federation of the import and export

guilds, it is necessary to establish a central society of the trade guilds. This bill was legislated for these purposes and the present export guild law is intended to be abolished.

"Next I shall explain the reasons for the proposal of a bill for the amendment of the Industrial Guilds Law. Upon observing the conditions of the medium and smaller scale industries of our country, the greatest defect lies in the manufacture and sale of salt where the non-control and disorder of industrial circles originates. This is a matter of great import where it eventually impedes the development of trade. These evils are gradually being reformed through the development of the industrial guild system, but as there is a regrettable point in connection with the method of securing control, we recognized the need for planning this arrangement. Particularly since, in the recent situation of international trade, as I have already mentioned, there is an urgent nature of securing the import and export control. Therefore, in order to plan for the smooth enforcement, an appropriate system is necessary for control on the part of the industrialists concerned in coping with the trade control. Hence, at this juncture, by realizing

afresh the industrial guild system which makes control its principal, together with expanding the applicable sphere of the industrial guild law, we shall devise a method of securing control and the amplification of the industrial guild control system. At the same time, together with this, we here are planning an appropriate control to cope with the present actual situation of industrial economy by arranging the industrial guild system such as supplementing the superintendence regulations toward the industrial guilds."

We offer in evidence defense document 1746 which is an extract from the Official Gazette setting forth the stenographic record of statement of Government Commissioner OTA on the Gold Production Law which was introduced on August 5, 1937, and seven other bills.

THE PRESIDENT: Admitted on the usual terms.

All that is of value in these documents could be reduced to a few lines, and we have to listen here to the whole of this meandering stuff.

MR. LOGAN: I only have about seven more, your Honor.

CLERK OF THE COURT: Defense document 1746

will receive exhibit No. 2784.

(Whereupon, the document above referred to was marked defense exhibit No. 2784 and received in evidence.)

MR. LOGAN: Exhibit 2784, "Stenographic Records of Proceedings of the House of Peers," held on August 5, 1937.

"Government Commissioner OTA, Masataka, --- I will explain the government intention in proposing the Bill of the Gold Production Law and seven other bills now under discussion. First, I will begin with the Bill of the Gold Production Law.

"In view of the present circumstances at home and abroad, there is a pressing need to improve and adjust the international trade of Japan.

"In order that this may be successfully carried out, I think we must first increase the national output of gold and concentrate it in the hands of the government, and thus enhance the nation's paying power in foreign trade and at the same time consolidate the foundation of the gold reserve. The government has been endeavoring to increase and concentrate the domestic production of gold by frequently raising the price of gold to be purchased by the Bank of Japan. Nevertheless, we

are facing the necessity of more intensive production of gold. At present, however, taking a step further, the government deems it necessary in the future to place the whole process of gold production, up to the final refinement, under government supervision, in order to attain the aim of concentration. As for domestic demands for gold, the government is planning to take adequate measures to meet the demands, provided that these demands are just and well-grounded. As for the melting down of gold articles we are not intending to change the present regulations. But I think it is reasonable that, if necessary, a certain restriction should be laid upon the use of gold. The government will supervise the industry of gold production on one hand. On the other hand, however, it should encourage enterpreneurs to produce more gold, by means of government protection and assistance, by granting subsidies for discovery of new mines or of plants and refineries etc., within the limits of the budget, or by granting exemption from import taxes on tools and machinery which are needed. It is for the above reasons that this bill has been proposed.

"Next I shall explain the Bill of the

Gold Reserve Revaluation Law. The gold to be reserved as guarantee of our convertible banknotes, the banknotes of the CHOSEN Bank and those of the TAIWAN Bank is at present valued at the rate of one yen per 750 milligrammes of pure gold, according to Article II of the Currency Law, notwithstanding the fact that the current price of gold has risen remarkably. Therefore it will be a fit measure to revalue the gold kept as the reserve fund at a price near the international current quotation so that the gold reserve fund may be valued at its actual quotation. By this bill, however, we only intend to adjust the price of gold to be appropriated as the reserve fund, because we don't think the time is yet ripe for us to revise the Currency Law, and to determine the value of our currency through devaluation. Accordingly, we intend to revalue the yen at the rate of 290 milligrammes of pure gold per yen, leaving ten per cent of the current price in reserve. Surplus sums accruing from the revaluation to the Bank of Japan, the CHOSEN Bank and the TAIWAN Bank will be transferred to the government, and a special fund will be established with these surplus sums to be managed under a special account, as will be shown later. A part of the gold bullion held by

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reason of the necessity for creating a special account for this reserve fund revenue, the expenditure of which must be distinguished from that of the general account."

We now offer in evidence defense document 1723 which is an excerpt from the Official Gazette of September 5, 1937 recording the speech of Mr. YOSHINO, Shinji, Minister of State, explaining the bill relating to imports and exports at the time it was introduced in the Diet.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1723 will receive exhibit No. 2785.

(Whereupon, the document above referred to was marked defense exhibit No. 2785 and received in evidence.)

MR. LOGAN: I shall now read exhibit 2785, excerpt from the shorthand records, House of Representatives, September 5, 1937:

"State Minister (Mr. YOSHINO, Shinji): "With regard to the bill under discussion, which is the 8th item on today's agenda, I shall now explain the reasons why we propose it.

"In view of the development of the present incident, it is self-evident that we must mould our economic and industrial system into a form suitable to the present emergency. Especially, since there is a vast demand for the materials which are necessary for military and national defense purposes and for various

branches of industry which are vital to the present emergency, we must make efforts to supply these materials fully and smoothly. However, due to the present condition of our national resources, there are not a few materials which must be imported from foreign countries to meet the imminent demand. Then there arises the necessity, in view of our international trade balance, to increase the import of necessary materials by means of a curb on export of materials and a curb on import not only of materials which are not needed vitally but also of those which are useful more or less to our national industry. This is the reason that this bill provides that the Government prohibit or restrain the export and import as occasion demands. And if we were to place the import of materials under control without taking any special measure, the movement of the national economy would suffer great difficulties, due to unreasonable rise of prices and insecurity of supply, etc. Therefore this bill provides that the Government may, as occasion calls, take proper measures in the case the materials which need regulation in connection with the supply and demand for them.

"The above mentioned are the two key points of this bill. Inasmuch as the working of such a law

will vitally affect our national industries, we hope that in enforcing it, we shall be favored with the fullest cooperation of all those concerned and that we shall be able to take measures most suitable to the actual condition of our industries and trades in order to attain our aims.

"Further, this bill was drafted temporarily only for the present emergency, and if the emergency is terminated, the bill is to be abolished as soon as possible. I hope you will approve it after fully examining it."

We next offer in evidence defense document 1751, an excerpt from the Official Gazette of September 6, 1937. This document sets forth the speech of Mr. NAGAI, Minister of State, before the House of Representatives on September 5, 1937, concerning the bill for the temporary control of shipping.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1751 will receive exhibit No. 2786.

(Whereupon, the document above referred to was marked defense exhibit No. 2786 and was received in evidence.)

MR. LOGAN: We now read exhibit 2786, being stenographic record of proceedings in the House of

Representatives on September 5, 1937:

"Minister of State (NAGAI, Ryutaro): I should like to make a brief explanation of the reason for presenting the bill for the temporary control of shipping which had just come up for discussion. It goes without saying that the marine transportation industry hold an extremely important position not only from the standpoint of economics but also from one of national defense; especially in case of a war or time of emergency it grows increasingly important. With the gradual aggravation of the situation due to the outbreak of China Affair in July, many vessels of our country have come to be commandeered for military purposes. This meant a severe increased oppression on shipping circles in our country which has always suffered from a shortage of vessels; consequently it was anticipated that if this condition were to be left as it was, it would cause a considerable disturbance in shipping assignments and the freight market. So the Government, as an emergency measure, authorized for coastwise trade with our country foreign ships and those ships registered in the Kwantung leased territory with a view to balancing supply and demand of coastal ships, while the Government urged the industry to restrain themselves and had them make every possible

effort to rationalize shipping assignments so that they might voluntarily prevent a sudden rise in the freight market. The Government has thus made its utmost efforts to minimize its possible effect upon economic activity. At present the interests concerned, in accordance with the Government's intention, are endeavoring, in close cooperation, to accomplish their mission. But in case the present situation continues for a long time or worsens, we can never be sure that there will be no apprehension that the unity of the industry might be endangered and unexpected difficulty caused in the fields of economy of national defense. Under these circumstances the Government has presented the foregoing bill to exercise proper supervision over the shipping industry of our country so as to cope with any difficult situation whatsoever which might come in the future and for the successful operation of the shipping business along the lines of national necessity in the present emergency, such as transportation of staple goods, control of prices or maintenance of the right of overseas navigation. But it is a matter, of course, that in executing the said bill successfully, that the Government should make the best use of it with discretion, facing squarely the present state of the shipping business and in the

light of the actual conditions of the industry. On this point, the Government is now paying special attention."

We offer in evidence defense document 1797 which is an excerpt from the Official Gazette of September 10, 1937 recording the law providing for emergency trading in rice which became effective December 1, 1937.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1797 will receive exhibit No. 2787.

(Whereupon, the document above referred to was marked defense exhibit No. 2787 and received in evidence.)

MR. LOGAN: I shall now read from exhibit 2787. I shall only read Article 2 and Supplementary Law, Law Providing for Emergency Trading in Rice, September 10, 1937, effective December 1, 1937:

"Article II. Since the Government maintains a necessary amount of rice in connection with the China Incident, when it is especially considered necessary it shall be authorized, in accordance with the provisions set forth in the Imperial Ordinance, and after consultation with the Rice Control Committee, to purchase rice in case current prices are lower than

that which correspond to the rate of 'standard maximum prices' which are fixed by orders issued based upon the Rice Control Regulations. The purchase price of the above shall be decided in accordance with current prices. * * *

"Supplementary Law. The date of enforcing this law shall be decided by an Imperial Ordinance and the law shall be abolished within a year after the China Incident terminates."

We now offer in evidence defense document 1843 which is the Temporary Fund Adjustment Law No. 86 passed September 10, 1937 and effective September 15, 1937 and September 27, 1937. I shall read only Article 1 and the supplementary provisions.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1843 will receive exhibit No. 2788.

(Whereupon, the document above referred to was marked defense exhibit No. 2788 and received in evidence.)

MR. LOGAN: I shall now read from exhibit 2788, the Temporary Fund Adjustment Law:

"(Article II was put into force on September 15, 1937 and the remaining Articles were put into force on September 27, 1937.)

"Article 1. This Law is aimed at adjusting the use of domestic funds so as to conform to the demand and supply of commodities and funds in connection with the China Incident."

And the supplementary provisions on page 8:

"The dates on which each Article of this Law will be put into force shall be determined by Imperial Ordinance.

"With the exception of Articles 14 and 15, this Law shall be repealed within one year following the cessation of the China Incident."

I now call the witness, HASUMI, Yasushi.

Y A S U S H I H A S U M I, called as a witness on behalf of the defense, being first duly sworn, testified through Japanese interpreters as follows:

DIRECT EXAMINATION

BY MR. LOGAN:

Q Will you tell us your name and address?

A HASUMI, Yasushi; 56 Nakadoji-machi, Suginami-ku, Tokyo City.

Q Will you examine defense document 1955 which is now being handed to you and tell us if that is your affidavit?

A Yes.

Q Are the statements contained in that affidavit true and accurate?

A Yes.

MR. LOGAN: I offer in evidence defense document 1955.

THE PRESIDENT: Brigadier Quilliam.

BRIGADIER QUILLIAM: May it please the Tribunal, the prosecution submits that this affidavit should be rejected in its entirety as being irrelevant and immaterial. It deals solely with the food problems of Japan and shows the steps taken to increase food production. It contains a mass of statistics. Apparently the conclusion is reached that Japan needs to

import some food. The deponent goes back to the year 1926 and even earlier in his examination. It is submitted that if every statement in the affidavit were accepted as true, it should be rejected as being too remote to the issues in the case. In our submission it is on exactly the same footing as the statistics and other material with respect to population that were submitted and rejected by the Tribunal earlier.

Duda & Spratt

THE PRESIDENT: If it be relevant, the actual rice situation in Japan, the supply and the demand, over the years could be dealt with in a few lines and could be the subject of an admission by the parties.

MR. LOGAN: With regard to the statistics contained in the document, your Honor, I don't intend to read them to save time, except to refer to the totals and the statistics on page 3.

THE PRESIDENT: I understand that the whole affidavit is summed up in two paragraphs on page 5. The two paragraphs cover ten lines. Probably the truth is not contested.

MR. LOGAN: Which two paragraphs does your Honor refer to?

THE PRESIDENT: The one commencing, "The above explanation ..." and that following.

MR. LOGAN: Of course, the balance of the affidavit gives a background of the rice situation in Japan, which always has been important and very critical. I would be content to read the balance of page 5, commencing with that first paragraph, "The above explanation ..." I think we are all content with that.

THE PRESIDENT: Well, we admit the document to that extent.

Duda & Spratt

THE PRESIDENT: If it be relevant, the actual rice situation in Japan, the supply and the demand, over the years could be dealt with in a few lines and could be the subject of an admission by the parties.

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THE PRESIDENT: Well, we admit the document to that extent.

CLERK OF THE COURT: Defense document 1955 will receive exhibit No. 2789.

(Whereupon, the document above referred to was marked defense exhibit No. 2789 and received in evidence.)

MR. LOGAN: I shall read exhibit 2789, deposition of HASUMI, Yasushi, commencing on page 5:

"The above explanation tells the fact that the food production in our country has been always lack of supply equal to her demand. Accordingly, our government has made great efforts for the improvement of agriculture, the improvement and enlargement of farms, the guarantee of farmers' reproduction costs by maintaining of the price of rice, main food in Japan, and so forth, and the government has obtained good results.

"Nevertheless, in spite of the government's great efforts for many years, the sufficient food production to feed out large population has not been successful.

"Therefore, the amount of shortage has been brought in from Korea and Formosa, as well as imported from abroad every year to supply the demand.

"The latest problem of food shortage has become more important under the circumstances of the

continuous dry weather in Japan proper and Korea in 1939.

"The standard highest price of rice, regulated by the Control Law for Cereal, in December 1938, has been kept at the same price as that of the preceding year according to the low price policy, so that the appearance of cereal in markets became worse. Then, in 1939, the damage by draught in Japan proper created a shortage of the crops of rice. In addition to this the great draught in Korea decreased the supply more and more.

"In order to moderate this condition the government raised the standard highest price of rice to 38 yen on 25 August 1939. Nevertheless, as the influence of the draught became apparent and the supply condition did not improve, then the government made an effort by raising again the standard highest price of rice on 1940 for the rice year (beginning of November of preceding year, ending of October) to 43 yen, 5 yen higher than the former price, commencing of the rice year on 6 November 1939. But it was reported that the production in Korea might be 10,000,000 koku, less as the production in 1939 would be 14,078,842 koku and that of the preceding year was 23,484,867 koku. Furthermore, the consumption in Korea itself was gradually increasing, resulting in a great decrease of

supply from there, thus the extreme shortage of food in Japan proper became serious.

"Under this condition, the only way to increase food supply was to import from abroad food supply by saving expenses on the one hand, an import plan through the cereal fiscal year was not fixed owing to the financial condition of the import fund. On the other hand, it was necessary to supply cereal by importing some portion divided into several periods through the fiscal year."

You may examine.

THE PRESIDENT: Brigadier Quilliam.

BRIGADIER QUILLIAM: We do not cross-examine, if it please your Honor.

MR. LOGAN: May the witness be released on the usual terms?

(Whereupon, the witness was excused.)

MR. LOGAN: We now offer in evidence defense document 1798, which is an excerpt from the Official Gazette of September 10, 1937, setting forth the Temporary Law Controlling Shipping. We shall read only Article 1 on page 1 and supplement on page 5.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1798

will receive exhibit No. 2790.

(Whereupon, the document above referred to was marked defense exhibit No. 2790 and received in evidence.)

MR. LOGAN: We read from exhibit 2790:

"Temporary Law Controlling Shipping.

"Law No. 93 of 10th Sept. 1937.

"Effective 1st Oct. 1937.

"Art. 1. The purpose of this law is to regulate hereby maritime communications and traffic at large in connection with the China Incident."

And, "Supplementary Provisions.

"The date of enforcement of this law shall be fixed by an Imperial Ordinance.

"This law shall be abolished within a year after the China Incident terminates."

We offer in evidence defense document 1799, being the Law Relating to Temporary Measures Concerning Exports and Imports, promulgated on 10 September 1937 and going into effect the same day. I shall read Article 1 and Supplementary Provisions.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1799 will receive exhibit No. 2791.

(Whereupon, the document above

referred to was marked defense exhibit No. 2791 and received in evidence.)

MR. LOGAN: I now read exhibit 2791:

"Law Relating to Temporary Measures Concerning Exports and Imports.

"Law No. 92, promulgated on 10 September 1937, and coming into force on the same day.

"Article 1. If particularly necessary for safeguarding the working of national economy in connection with the China Incident, the Government may, in conformity to order, restrict or prohibit the export or the import of the specified articles.

"Supplementary Provisions.

"This Law shall come into effect on the day of its promulgation. This Law shall be abrogated within one year after the termination of the China Incident."

We now offer in evidence defense document 1726, which is an excerpt from the Official Gazette of January 26, 1938, recording the speech of Minister of State NAGAI at the time of the introduction of the four bills relating to state control of electric power.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: The book entitled, "The Stenographic Records of the House of .

Representatives, 73rd Session," in Japanese, will receive exhibit No. 2792 for identification only, and the excerpt therefrom, bearing defense document No. 1726, will receive exhibit No. 2792A.

(Whereupon, the book above referred to was marked defense exhibit No. 2792 for identification; and the excerpt therefrom, being document No. 1726, was marked defense exhibit No. 2792A and received in evidence.)

MR. LOGAN: I shall read:

"Stenographic Records of the Proceedings in the House of Representatives, January 25, 1938.

"Minister of State, NAGAI.

"I would like to explain en bloc the purport of the four bills just presented relating to the projected state control of electric power. Electricity is not only indispensable to national life for lighting and heating purposes but also plays a very important part as a motive power for all industries, and at the same time as essential factor in the newly rising chemical industry which is growing more and more in importance both for national defense and industrial purposes. It is charged with no less important mission in agricultural and fishing communities to help increase productive capacity, promote subsidiary occupations and make up the shortage of labor through facilitating and increasing power supply, and thus contribute to stabilizing the living of people on the home front. The uses of electricity, as a public utility, are so manifold and extensive, and, as regards its supply it is so peculiarly monopolistic in nature, that matters relating to the development of electric power resources and its supply should not be determined from the standpoint of mere profit-making

or private economy. Appropriate plans for the development of this industry should be established from a national and public point of view, so as to meet the requirements of national defense, national economy and the people's livelihood. Such, I hold, should be the true spirit underlying the state policy concerning electric power supply. In our country at present, however, the electric industry is carried on for profit by many different companies independently from one another, and in addition, the conflict of interests among these companies grievously interfere with unity and coordination among themselves. The result is that their mission as a national and public utility is, in so far as their management is concerned, far from being executed satisfactorily. For this reason it is necessary that the electric industry should be placed under state control and conducted systematically and coordinately in accordance with a single directive will, so as to provide against war as well as for peace. And by doing so the electric enterprise can be, from their characteristic nature, carried on this way the most economically also.

"The Japan Electric Power Generation and Transmission Company (Nippon Hassoden Kabushiki Kaisha) is charged with an important mission to make effective

use of private capital and individual ability and to carry on its business under state control. It has been decided therefore that on one hand the company be accorded facilities for raising necessary funds, granted guarantee for payment of dividends, allowed reduction or exemption of taxes and given various other privileges necessary for the conduct of its business, while on the other it be subject to government supervision much in the same way as special companies of similar nature."

Defense document 1727 is offered in evidence. This is an excerpt from the Official Gazette of February 23, 1938, reporting Committeeman KOGURE's statement upon the introduction of the bill to promote the production of important minerals, in the House of Representatives on February 22, 1938.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1727 will receive exhibit No. 2792-B.

(Whereupon, the document above referred to was marked defense exhibit No. 2792-B and received in evidence.)

MR. LOGAN: I now read from exhibit No. 2792-B.

"Stenographic minutes of the proceedings in the House of Representatives on February 22, 1938.

"Government committeeman, Mr. KOGURE: Now, I shall explain the reasons for the introduction of the Bill to Promote the Production of Important Minerals now in process of deliberation. It is hardly necessary to mention that mineral resources are most important from the viewpoint of national defense and industry, and therefore is of urgent necessity to promote the production of these resources in the current situation. Not a few important minerals have hitherto been imported from foreign countries, but fortunately from various surveys hitherto made, it is thought probable that these important minerals are still considerably underground in Japan as yet. It is indeed for the purpose of promoting their production that this bill has been introduced at this time. First of all, as a measure for attaining this purpose the government is going to urge mine owners who, though possessing mining rights at present, are remaining idle without exercising the same -- mine owners of the so-called sleeping mine areas -- to exercise the right, or to accelerate the adjustment of mine areas which exist together in a complex manner, thereby making mine owners of important mine areas submit a business plan for exploiting them, and furthermore, in case of necessity, take adequate measures to make facilities

for promoting the production of such minerals.

"Next I shall explain the purport of the introduction of the bill to establish the Japan Gold Production Promotion Company now under deliberation. It goes without saying that it is necessary to promote the production of gold in our country. The government has therefore taken every effort for the encouragement and furtherance of various gold production since the 7th year of Showa (1932). As you all know in the Imperial Diet before last, that is, the 71st Session of the Diet, simultaneously with the further expansion of facilities for encouragement for gold production, the government introduced the Gold Production Law which was passed. Fortunately the output of gold in this country has recently showed a favorable upward trend. The promotion of gold production in this country will become more important in the future in carrying out our national policy. From this point of view the government is hoping to make even further efforts towards it. At this juncture, therefore, in order to promote gold production, the government has planned to establish the semi-official Japan Gold Production Promotion Company. In this way the government is opening a way to amply supply the capital to this industry, to encourage the disposition of minerals of inferior quality and at

the same time to have the company carry on various contributory businesses necessary in gold production. This bill is for the establishment of the above company."

I now offer in evidence defense document 1738, which is an excerpt from the Official Gazette of February 25, 1938, recording a speech of Mr. SAITO with respect to the National General Mobilization Bill in the Diet on February 24, 1938.

THE PRESIDENT: What has happened to the witness, KUKURA, Kogoro?

MR. LOGAN: There has been a change made in his affidavit, your Honor, and the errata sheet has not come around yet, so we will put him on later this afternoon, if it is agreeable.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1738 will receive exhibit No. 2792-C.

(Whereupon, the document above referred to was marked defense exhibit No. 2792-C and received in evidence.)

MR. LOGAN: I now read exhibit 2792-C.

"Stenographic minutes of the House of Representatives, February 24, 1938.

"Mr. SAITO, Takao: The Sino-Japanese Incident has assumed serious proportions beyond our imagination.

Our policies of non-expansion principle and settlement on the spot were rendered useless immediately by the enemy's provocation. The situation since then has expanded almost incessantly by day and by month until at last it has led to the present state of affairs. Viewing matters from this present situation, we can by no means foretell the future of the incident. It must be considered as an extremely long way off before we can expect to see a complete restoration of peace in the Far East. Moreover, the incident is proving to be the source of all troubles, bringing about one wave of issue after another in succession and it has also caused some changes in the situation of the powers of the world.

"It is an undeniable fact that we are now finding ourselves in a very complicated and delicate international situation. Indeed our country's future is beset with great difficulties. On this occasion we must, above everything else, strengthen our national defense. For this reason we shall have to enforce a certain degree of control over personnel resources throughout the country in order to carry out the up-to-date intensification of national defense. And we shall also have the necessity of controlling material resources. From these requirements the government is

intending to enact the National General Mobilization Law. This intention of the government is really worthwhile listening to."

I shall omit the next document.

Now we offer in evidence defense document 1729. This is an excerpt from the Official Gazette of March 11, 1938, reporting the statement of Committeeman KOGURE upon the introduction of the bill for the Machine Tool Industry in the House of Representatives, March 10, 1938.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1729 will receive exhibit No. 2793.

(Whereupon, the document above referred to was marked defense exhibit No. 2793 and received in evidence.)

MR. LOGAN: I now read exhibit 2793.

"Stenographic Reports of Proceedings of the House of Representatives, March 10, 1938.

"Government Committeeman (Mr. KOGURE) will explain the reason for the introduction of the Machine Tool Industry Bill which has been just brought up for discussion. Needless to say, the machine tool industry occupies a most important position in industry as the basic industry of the general machine industry as well

as being an indispensable one for national defense reasons; and its development is of great significance for national defense and industry. But the fact is that the machine tool industry in Japan has been developed but recently and there are many regrettable defects from the point of the manufacturing ability and manufacturing techniques. That is, it is an undeniable fact that not only are there many machine tools whose manufacture would be difficult in this country but generally the capacities of domestic manufactured machine tools are considerably inferior to those of foreign goods, and every year, Japan depends on overseas import for a large quantity of machine tools.

"So that although the necessity of promotion of this industry has hitherto been keenly felt, I think the firm establishment of this industry is the most pressing need of the hour, especially in view of the present situation. As a policy of the establishment of machine tool industry, it is necessary to take various proper plans to encourage and to promote the producing capacity in conformity with the character of this industry. Also in order to expect the steady development of this industry, it would be most proper to contribute to the improvement of the techniques of

this industry by placing management on a rational foundation by adequate guidance and control.

"The reason for the introduction of this bill is as generally mentioned above."

We offer in evidence defense document 1749, which is an excerpt from the Official Gazette of March 18, 1938, recording statement by Prince KONOYE in the House of Peers on March 17, 1938, with respect to the National Mobilization Bill.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1749 will receive exhibit No. 2794.

(Whereupon, the document above referred to was marked defense exhibit No. 2794 and received in evidence.)

MR. LOGAN: I now read from exhibit 2794.

"Minutes of the House of Peers, the 73rd Session of the Imperial Diet No. 25."

THE PRESIDENT: Could you condense this?

MR. LOGAN: I don't think I could very well, your Honor.

"March 17, 1938.

"State Minister (Prince KONOYE): I will explain the reason for introducing the National Mobilization Bill which is now the subject under

discussion. The so-called contest of national power characterizes modern warfare. In order to attain the war objective, the efforts of a nation's army and navy must be accompanied by a complete national mobilization setup. In other words, in the event of war or an incident similar to war, all available resources, both material and mental, must be mobilized, not only to replenish the munitions of war but also to secure the national life and render smooth all national activities necessary for the prosecution of war and thereby give full and effective play to total power of the nation. This is an indispensable condition to win the victory. This bill has been drafted in consideration of these facts and provides a basis which would enable the government to take the necessary measures in case of war or an incident similar to war. The general principles of the authority of the government which requires, when necessary, a declaration of a state of wartime, may generally be arranged beforehand along with the progress of the preparatory work in connection with national general mobilization if such a basis has already been laid.

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"Therefore, we consider it to be proper to establish the general principles after obtaining the approval of the Diet, so that the Government may be enabled, within the scopeof the provisions, to take such emergency measures as would be consonant with the actual demands of the wartime situation. It is my belief that a previous understanding of a people of the manner in which the exercise of the State's authority is to be carried out with respect to national general mobilization will not only contribute to expediting the progress of preparations for national mobilization but is also necessary in facilitating the voluntary cooperation of the people in the event of an emergency and in rendering effective the enforcement of laws and regulations. Considering, especially, the state of our resources as well as our lack of experience in national mobilization, we feel keenly the necessity of enacting this law. As to existing laws on national mobilization, we have the Munitions Industry Mobilization Law enacted in 1918. But the principal aim of this law is the mobilization of the domestic industrial power for the purpose of meeting the numitions requirements and, therefore, it is obviously, inadequate both in its purpose and the scope of its provisions, in attaining the purpose of

the national mobilization which I have already pointed out. Moreover, as regards the present China Incident, we are, for the moment, supplementing the deficiencies of the Munitions Industry Mobilization Law and taking other emergency measures on the basis of the various provisional laws with regard to which we previously obtained your sanction. However, in consideration of the possible eventuality of a situation which, according to developments, would necessitate greater national control, we regard it as a matter of urgency that this law be enacted. The contents of this bill are, on the whole, based on matters provided for in the Munitions Industry Mobilization Law and in the various provisional laws relative to the (China) Incident. That the bill, in its form, stipulates only the general principles and leaves the details to ordinances is due to the difficulty of arranging the details in advance, as its contents are subject to change according to the extent of the situation. From the very nature of war, it is necessary to take prompt and proper measures in conformity with the changes of wartime situation. Moreover, we do not consider it advisable to make public the details of these measures before they are formulated from the standpoint of preserving secrets pertaining to

national defense. This bill, furthermore, also contains provisions which are applicable in peacetime. This is because these matters require peacetime preparations and, at the same time, are also indispensable in wartime. All items of the provisions of this bill are closely related to one another and form a single, overall structure of national mobilization. The contents of this bill relate to such matters as personnel, installations, funds, etc., and have a strong relationship with the people's livelihood. It is a matter of the utmost importance therefore, that it be applied and enforced properly. The very fact that special provisions have been created for a deliberation council indicates the bill's intention to ensure proper enforcement. In short, national mobilization can obtain its desired results only by the united cooperation of the whole nation based upon the sense of patriotism of the people. The Government has hereby introduced the bill, because we realized, in view of the situation, the need of providing a legal basis for the enforcement of national mobilization."

THE PRESIDENT: What is the purpose of this speech?

MR. LOGAN: I beg your pardon?

THE PRESIDENT: That speech doesn't help any of the accused, does it? It is just a wartime speech, simply.

MR. LOGAN: We are accused, your Honor, in the Indictment and charged with the preparation and planning of an aggressive war for the China Incident and for the Manchurian Incident. Here, apparently, for the first time, the mobilization law was passed after both of those incidents had occurred.

THE PRESIDENT: Within two months after the incident occurred, you have the Japanese Parliament legislating, obviously, for a long war. That is the whole effect of the legislation you have tendered this morning.

MR. LOGAN: It certainly demonstrates, your Honor, that -- this legislation demonstrates that there was no preparation for these wars, and this legislation was passed after they had started. Furthermore, your Honor, it will be shown later on in this proof that other nations in the world were doing the same thing as Japan at this particular time.

THE PRESIDENT: I just want to know why you are tendering those documents. We would like to understand the purpose.

MR. LOGAN: I might also state that that

particular bill was passed in March, 1938, which was a considerable period of time after the start of the China Incident and more than three years before the start of the Pacific War. So, they could not have had that in mind at that time. I might also mention, for the Tribunal's information, that some of these bills and explanations which I have read this morning -- you have probably noticed that they were only passed after the start of the China Incident and were only to be effective until one year after the China Incident, which is an entirely different interpretation put on them by our prosecution friends' witness, Liebert.

THE PRESIDENT: We are satisfied to know your purpose in tendering those documents. It is too early to debate these matters.

MR. LOGAN: Yes.

I might state for the Tribunal's information that in my commentary I do not state the purpose of the introduction of these documents. I think they speak for themselves. Any time the Tribunal wants to know why I am doing it, I will be glad to do it. I think it saves time this way.

THE PRESIDENT: It does, I agree with you.

MR. LOGAN: We next offer in evidence defense document 1840, an excerpt from the Official Gazette of March 12, 1940. This document sets forth the speech of Mr. FUJIWARA, State Minister, concerning the Bill for Coal Supply Control Law before the House of Representatives on March 11, 1940.

THE PRESIDENT: Admitted on the usual terms.

MR. LOGAN: I wish to hold that up just a minute, your Honor. I skipped one document. I would rather offer them chronologically.

We offer in evidence defense document 1769 which is an excerpt from the Official Gazette of March 18, 1939 and which records the speech of Minister YOSHIAKI before the Diet at the time of the introduction of the bill for Light-Metals Manufacturing Industries.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1769, being a book entitled "A Stenographic Record of the House of Representatives, 74th Session," in Japanese, will receive exhibit No. 2795 for identification only; and the excerpt therefrom, bearing the same defense document number, will receive exhibit No. 2795-A.

(Whereupon, the document above referred to was marked defense exhibit

No. 2795 for identification; the excerpt therefrom being marked defense exhibit No. 2795-A and received in evidence.)

MR. LOGAN: I now read exhibit 2795-A, being the "Stenographic Record of the Proceedings of the House of Peers, March 17, 1939," Minister of State HATTA.

"I should like to explain the reason for introducing the bill for light-metals manufacturing industries which has just been laid before the House. Light-metals, that is, aluminum and magnesium, as materials for light alloys such as duralumin, are indispensable in the manufacture of aircraft, and it goes without saying that they are extremely important items in the consolidation of national defense. Apart from the requirements of national defense, aluminum and magnesium, as materials for various machines, instruments, and equipment, and also as substitutes for copper and other metals, are important for developing various industries. With the consolidation of national defense, in the future, the trend of demand for aluminum and magnesium should become increasingly greater. However, since our light-metal manufacturing industry was developed and in recent years, its present productive capacity is far from meeting the

current demand. In fact, Japan has been obliged to import a considerable amount of these materials every year. Ours is inferior to the same industry in European countries and America not only in output but also in both productive technique and quality of products, and it is to be regretted from the standpoint of a national defense industry that its weaknesses are not few. In the plan for raising productive capacity, which was recently decided by the present Cabinet, aluminum and magnesium were taken up as important objectives in this raising of productivity and we are expecting long strides to be taken in output. I think at this time that it is a matter of great urgency that we should establish and develop our light-metal manufacturing industry to such a level that the production can meet not only the domestic demand but also become so great that a considerable amount could be exported in peacetime, taking into consideration a shift in time of war, to the manufacture of munition materials. And I believe it is the pressing need of the moment that we should raise the level of productive technique as high as possible in an attempt to get it to compare favorably with the light-metal manufacturing industry in Europe and America. For attaining this, we

ought, in addition to granting various measures for protection and support for the light-metal manufacturing industry, to take adequate steps by way of encouragement in an attempt to raise the productive capacity, to exercise necessary guidance and control with a view to improving its productive techniques and management, and to secure the balance of supply and demand as well as the just and fair prices of aluminum and magnesium. In this connection, it is necessary for us to set up a special kind of corporation with all the manufacturers of the industry as members, to conduct a joint sale of aluminum and magnesium together with a control over their distribution, and at the same time to secure our enterprises so that they will be strong enough to compete with those in foreign countries. This is the main reason in substance for introducing this bill in the Diet. I sincerely wish you will fully deliberate on this bill and give your approval to it."

We next offer in evidence defense document 1840, an excerpt from the Official Gazette of March 12, 1940. This document sets forth the speech of Mr. FUJIWARA, State Minister, concerning the Bill for Coal Supply Control Law before the House of Representatives on March 11, 1940.

THE PRESIDENT: Admitted on the usual terms.

With regard to this speech, during the recess you may be able to condense it, Mr. Logan.

MR. LOGAN: All right, sir. Thank you.

THE PRESIDENT: We will recess for fifteen minutes.

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

THE PRESIDENT: Mr. Logan.

MR. LOGAN: I have cut that down to about eight sentences, your Honor, which I shall read as I go along,-- that is, Defense Document 1840.

THE CLERK: The book entitled "Stenographic Records of the House of Representatives, 75th Session," in Japanese, will receive Exhibit No. 2796 for identification only, and the excerpt therefrom, bearing Defense Document No. 1840, will receive Exhibit No. 2796A.

(Whereupon the document above referred to was marked Defense Exhibit 2796 for identification; and the excerpt therefrom, being marked Defense Exhibit No. 2796A, was received in evidence.)

MR. LOGAN: I shall now read portions of

K a p l e a u & R e i c h e r s

Exhibit No. 2796A, Stenographic Record of the Proceedings of the House of Representatives, No. 24, 75th Imperial Diet, Minister of State, Mr. FUJIWARA, commencing with the second line from the bottom of page 1: "Turning however to the actual demand-and-supply condition of coal in Japan, we cannot but note that while the demand for coal has been on a sharp increase since the outbreak of the China Incident, the supply has been lagging far behind, due to many difficult circumstances at the mines."

Then skip two sentences, to the one beginning: "Above all it is a matter of sincere regret regarding the coal supply to power plants and other industries the situation has come to such a critical stage as you all know well, menacing all fields of our national life."

Now, the last paragraph on page 3, beginning: "For these purposes the Government is now studying measures to encourage extended development of mines, by granting, for example, subsidies for increased output or to newly developed mines. Expenditures for these measures are also prepared in the form of an additional budget. However, there are still questions that cannot be solved by such measures only."

And on page 4, commencing with the second

sentence: "Unfortunately, however, the actual production conditions at the mines and the quality of coal produced does not always coincide with the above mentioned gradings."

On page 5, first paragraph: "Therefore, considering also the above mentioned requirements in controlling the supply of coal, the Government is now planning to establish a special central organization to monopolize the purchase and sale of coal."

And, again on page 5, the last three lines: "This is why the Government is planning for this purpose to establish by law the Japan Coal Co. Ltd., which is to be a special company of semi-governmental and semi-popular character."

I now offer in evidence Defense Document 1841, an excerpt from the Official Gazette of March 16, 1940, reporting the statement made by KATO at the time the bill relating to Synthetic Chemical Industries was introduced in the Diet on March 15, 1940. I may say, your Honor, that I have tried to cut this one down, but it covers so many different chemicals that it was impossible to do so.

THE PRESIDENT: Admitted on the usual terms.

THE CLERK: Defense Document 1841 will receive Exhibit No. 2796B.

(Whereupon, Defense Document 1841 was marked Defense Exhibit No. 2796B, and received in evidence.)

MR. LOGAN: I shall now read from Exhibit No. 2796B, being an excerpt from the proceedings of the House of Peers, Marcy 15, 1940, a government bill relating to synthetic chemical industries, Mr. KATO speaking:

"Among the remarkable developments of our chemical industries in recent years, the technical progress in the Synthetic Chemical industry using acetylene gas and liquid gas as raw materials is especially conspicuous. Although these synthetic chemical enterprises have developed in comparatively recent years, they are very comprehensive in extent and rich in variety. A remarkable development is expected in this field as an important branch of our chemical industry. A country like ours which is lacking in natural resources depends a great deal on these synthetic chemical enterprise. Among those industries the manufacture of acetic acid, acetone, butanol and methanol has already been industrialized, but due to the marked increase in the demand after the outbreak of the present Incident, they have become confronted with the need of prompt increase of

production, but it cannot be said as yet that the basis thereof has been fully established. The fundamental studies have become practically completed in regard to the manufacture of synthetic rubber, which is being discussed about recently; as well as regarding various kinds of high-grade alcohol which can become converted into high performance airplane fuel; also regarding benzol and triol (PHONETIC), which are the essential constituents of explosive compounds, dyestuff and drugs; and on various synthetic resins which have special utility as substitutes for metals, glass and natural resins, and these items are on the verge of becoming industrialized shortly. Further, great hopes are entertained for the appearance hereafter of synthetic fibres like nylon and other new organic compounds. As I have mentioned above, there are many materials among the organic compounds which are indispensable to national defense and industrial requirements. Therefore the promotion of these industries is deemed as a truly urgent necessity of the moment. Moreover, as these organic compounds are closely connected with each other in the process of production it is considered extremely important and urgent to hit upon an over-all plan to promote the production of synthetic rubber, synthetic triol

and synthetic fiber -- which we are intending to industrialize -- together with acetic acid, acetone, butanol and methanol. But these organic compound industries need extremely complicated and high technique and laborious study concerning the method of synthesis and manufacturing equipment. Moreover they need large sums of capital for their industrialization so that they cannot be considered as profitable investments at least in the beginning. On account of that, it is deemed that these industries cannot be developed to the expected degree without adequate protection and necessary guidance and control by the Government. This Bill relating to the Synthetic Chemical Industry was drafted in accordance with the above object. The outline of this Bill is as follows: 1) The more important enterprises in this field will be carried out only by those who are licensed by the government, in order to prevent the wanton establishment of such enterprises, to make only those who are really able to conduct these enterprises from both technical and industrial viewpoints, and to make them attain the expected level of production. 2) As regards the manufacturing of organic compounds of special national importance, those which are not yet industrialized

will be subsidized for their expenditure for test manufacturing, be granted manufacturing bounties, and be exempted from taxes. 3) The Government will restrict the import of materials likely to obstruct the consolidation of this industry, and will levy additional duty on them. It is hoped that this Bill will meet with your approval after thorough deliveration."

MR. LOGAN: We now offer in evidence defense document 500. This is a report of the United States Tariff Commission on the United States imports from Japan and their relation to the defense program and to the economy of the United States, and is dated September, 1941. This report is made of the principal commodities imported from Japan and shows the United States would be affected not at all by the cessation of imports from Japan.

THE PRESIDENT: Brigadier Quilliam.

BRIGADIER QUILLIAM: May it please the Tribunal, we object to this document, which, we suggest, is quite immaterial and irrelevant. As has been explained, this is one of the Tariff Commission publications, but this time it is concerned with the trade position in the United States and not in Japan. There is a long detailed examination of various industries in the United States to determine what the effect would be if imports totally ceased from Japan.

The subjects considered included silk products, fish products, lily bulbs, bamboo sticks, pearl shells, and many others. The fact that the students came to the conclusion eventually that the total cessation of imports of that kind would not affect the defense program or the economy of the United States

is evidently regarded as something sinister. We are forced to assume that it is contended that an inquiry of this kind indicates the planning and preparation of the agressive country the United States to wage war against the unfortunate victim Japan.

THE PRESIDENT: It is quite consistent with America thinking Japan was about to attack.

BRIGADIER QUILLIAM: Exactly, your Honor.

It is suggested by the prosecution that it does not assist this case in the slightest degree and that it does not even support the fantastic suggestion that America was preparing to attack Japan.

THE PRESIDENT: Mr. Logan.

MR. LOGAN: I have no desire to take up the Tribunal's time by reading a document of this kind. All I want the Tribunal to know is that such a report was made, after due investigation, and the conclusion reached was that the cessation of imports from Japan would not affect the United States at all. If they will concede that such a report was made and that that was the conclusion reached, I will withdraw it.

BRIGADIER QUILLIAM: May it please the Tribunal, we respectfully suggest that we should not be asked to make an admission with respect to a patently immaterial matter.

THE PRESIDENT: You could admit the report was made and that that conclusion was reached, and also confend that the report and the conclusion are immaterial.

BRIGADIER QUILLIAM: We are prepared to do that, if it please your Honor.

THE PRESIDENT: That is a sensible attitude to take.

MR. LOGAN: On the materiality and relevancy of this, your Honor, I think it will become apparent in the next section we are about to present.

It is withdrawn.

We offer in evidence defense document 755. This is an official report of the United States Department of State, Research and Analysis Branch, and contains a comprehensive study and analysis of war production controls in Japan. This document will show beyond doubt that there was no economic preparation for war in Japan prior to the Liuchow Incident of 7 July 1937, and that controls were adopted only when the strategic war time needs created urgent requirements. This study also shows that even during the height of the Pacific War, even at that late date, the Japanese Government had not synchronized industry. Throughout the entire period the business men of Japan

had a large independent voice in the organization of that part of the economy required for war production.

I might say that this document comes from the same source as the document which we read yesterday with regard to shipbuilding and which was used by prosecution witness Liebert.

THE PRESIDENT: Is there anything to show that Liebert used any part of this document?

MR. LOGAN: I haven't been able to find that, your Honor. He may have.

THE PRESIDENT: If he had we would allow you to read omitted but connected parts, in accordance with the usual rule.

MR. LOGAN: I might say, your Honor, I only intended to read about the first eighteen pages and briefly refer to the laws which are attached to it from there on.

THE PRESIDENT: Is it an American publication, from the Department of State?

MR. LOGAN: That is right, your Honor. It is admissible on that ground alone, because that is where it comes from.

THE PRESIDENT: I will have to hear Brigadier Quilliam.

Brigadier Quilliam.

BRIGADIER QUILLIAM: May it please the Tribunal, we don't challenge the authority of the document. What we challenge is its materiality and relevance in this case. It is a voluminous document of fifty-five pages. The first seven pages deal with matters that are perhaps relevant except that they have already been sufficiently dealt with in various other parts of the case.

THE PRESIDENT: By the defense?

BRIGADIER QUILLIAM: By both sides, sir. It will be observed that on page 7 there commences an examination into Japan's wartime production control from 1941 to 1945, and in substance, the whole of the rest of the document is concerned with that subject.

When one comes to the appendices, commencing on page 21 --

MR. LOGAN: May I interrupt? I have already said with respect to this that I will only briefly refer to the laws; I don't intend to read all of it.

BRIGADIER QUILLIAM: We consider, if it please your Honor, it is our duty to draw attention to what has been reproduced in this document. Commencing at page 21 there is reproduced, in more than seven pages, the provisions of the National General Mobilization Law, which have already been put into evidence

in exhibit 84. Commencing at page 24, there are more than sixteen pages dealing with the major industries association ordinance.

THE PRESIDENT: Mr. Logan said he desired to read only eighteen pages. What they were, I do not know. Perhaps there is not much difference between what you suggest and what he intends to do.

MR. LOGAN: In the first eighteen pages I said I would only briefly refer to the laws. I know that there are two of them already in evidence; I know that. I only intend to refer to the caption of the laws and the balance of the document.

THE PRESIDENT: A majority of the Court is in favor of allowing you to read the first seven and a half pages, but I cannot find a majority to agree you should read any more because it relates to matters during the war.

MR. LOGAN: The purpose of reading that part which relates to during the war is that it shows that even at that late date Japan had not synchronized its business for any war purposes which, of course, goes to the question of conspiracy. In addition, it also shows that during the entire period the independent business men of Japan had a large voice in the conduct of the business of Japan, and it was not all controlled and centralized in the Japanese Government as the prosecution has contended.

THE PRESIDENT: The Court upholds the object-

ion except to the extent of the first seven and a quarter pages. To that extent the document is admitted on the usual terms.

CLERK OF THE COURT: Defense document 755 will receive exhibit No. 2797.

(Whereupon, the document above referred to was marked defense exhibit No. 2797 and received in evidence.)

MR. LOGAN: Exhibit 2797:

"Department of State. Interim Research and Intelligence Service, Research and Analysis Branch.

"Japanese War Production Industries.

"Part I. Development of War Production controls."

Dated "31 October 1945.

"During the World War I Japan fought on the side of the Allies. Although Japan's military activities were limited, state expenditures were high (increasing from 668 million yen in 1913 to 1,591 million yen in 1921), and Japan entered a period of unprecedented prosperity. This prosperity was a result of the marked decrease of imports of manufactured goods from Western powers, the rise of Japanese exports, the substantial increase in munitions supplied to the Allies, and the spectacular expansion of the Japanese merchant marine and shipbuilding industry due to the world-wide shortage of bottoms caused by the war. The sudden decrease of Western imports caused a rapid rise of new enterprises to replace them; this tendency was most conspicuous among the mining, machine and chemical industries.

"3. The 'Manchurian Incident:' Encouragement by Subsidy and Legislation in the Recent Past.

Although a major Japanese aim during the Meiji era was to create a defense against foreign economic penetration and internal disturbance, it was realized that, in addition to devoting a large part of the limited capital resources of the nation to the development of strategic industries, it was also necessary to support manufacturing industries which were expected to compete against foreign products domestically or in the international market.

"The textile industry was the most important of these export industries. In the first half of the 1920's textiles accounted for over half of the factory employment and almost half of the value of factory production. Textiles began to decline in importance slowly after 1925; by 1929 the industry still accounted for half of factory employment and 40 per cent of the value of factory production. In the depression, production dropped sharply, but approximately the same proportion of employment was maintained until 1939. With some fluctuation, the textile industry's share of production continued to decline to about 30 per cent in 1935 and 20 per cent in 1939; thereafter the decline was even more rapid.

"Although the expansion of heavy industry has, of course, been closely related to the requirements

of the military services, the reorganization in the period previous to the China War of the Japanese industrial structure, i.e., a marked shift from light to heavy industry, was also advocated to support the export market. Japanese exports, the argument went, have consisted almost exclusively of the products of light industry, a large proportion of which have been shipped to China and other backward nations. Should these nations become industrialized, it is probable that light industries would be established first, thus substantially reducing the Japanese export market. Accordingly, it was recommended that Japanese industrial reorganizations in favor of heavy industry be carried out as the only means of enabling Japan to continue as an industrial nation.

"For several months after the outbreak of the China Incid nt (7 July, 1937), it is true, the Japanese economy remained ostensibly on a peacetime basis in practically all its aspects; wartime control measures were adopted only when strategic needs created urgent requirements.

"As a result of the operation of these control measures and the inflationary fiscal policies of the government, an increasingly large portion of Japan's resources was steadily diverted into the strategic in-

dustries, to the detriment of the home industries and the export trade.

"The export industries also suffered from increasing production costs and restrictions imposed in foreign markets against Japanese goods. By the end of 1936 the yen was beginning to depreciate. Since further depreciation of the yen would have increased the cost of the vast quantities of imported raw materials and machinery needed for the expansion of the heavy industries, the government in 1937 imposed import and exchange control measures designed to restrict imports of 'non-essential' materials and conserve Japan's foreign exchange reserves. Thus, even before the war it became obvious that Japan could not develop a 'war economy' and also trade in manufactured goods in keeping with the avowed program of her rulers.

"In order to develop industrial facilities vital to aggressive warfare, it was necessary to supply strategic industries with capital. The Temporary Capital Funds Adjustment Law of September 1937 was the first major step in this direction. Designed to channel the flow of new capital (and, therefore, materials), from non-essential to strategic industries, this act authorized the government to regulate the allocation of capital funds for the incorporation of new projects and

for capital increases and debenture issues of various branches of industry. One result of the act was a noticeably marked shift of funds to the munitions industry by the end of 1939. For the period from September 1937 to December 1939, permission had been obtained and loans advanced for 8,330 million yen. Only 7 per cent of this sum went to 'C' class or non-urgent enterprises. Investments for the principal industrial categories in 1939 are presented in summary form in the following table:

"Table I. Investments Authorized under the Temporary Capital Adjustment Law in 1939. (In million yen).

"Mining	587
"Manufacturing	2,724
"Agriculture	10
"Fishing	13
"Transportation	499
"Commerce	42
"Miscellaneous	337
"Total	4,214

Various percentages are also set forth.

"This shift did not mark a radical point of departure in Japan's industrial life; it was a part of a well-defined trend. The 'national defense' indus-

tries in 1931 accounted for only 34.6 per cent of all promotion capital (including capital in new establishments, capital increase, and debenture issues), with the 'non-defense' industries accounting for as much as 65.4 per cent. By 1935 there was already a marked increase in the proportion of capital investment in heavy industries. In 1937 the position of 'national defense' and 'non-defense' industries was reversed as compared with 1931, the former accounting for 61.7 per cent of the whole and the latter for 38.3 per cent. High Japanese officials not only reported a trebling in the value of output of heavy industries in the 1931-35 period, but also claimed in 1942 that the productive capacities of the metal and machinery industries had increased thirteen and eleven times respectively over the levels of 1931.

"Something of the effect which this trend must have had on Japan's consumption, economy, and industry may be learned from a study of the relationship between military and total Japanese government expenditure. In proportion to Japan's total expenditures under the General Act and China Incident Special Act, total estimated military expenditure rose from 47 per cent in the last pre-war year, 1936-37 to a peak of almost 75 per cent in 1937-38. The proportion

declined slightly (to 73 per cent) in 1939-40 and 1940-41. A considerable relative rise was again scheduled for 1941-42. The proportion of total estimated military expenditures remained at about 75 per cent for 1942-43 and 1943-44, and rose to about 80 per cent for 1944-45. Civilian consumption which absorbed over 40 per cent of the national income in 1941-42 accounted for under 20 per cent in 1944-45.

"4. National General Mobilization Law of 1938. The National General Mobilization Law was adopted at the seventy-third session of the Imperial Diet on 24 March 1938. The 'backbone of Japan's wartime national structure', it provides for the control and utilization of all human and commodity resources for purposes of 'national defense'. In time of war, it provides for government control of labor, raw materials, land, equipment, business agreements, investment and capital increases, prices, and publications; in time of peace it provides for the conscription of labor, the training of technicians, and the storage and conservation of materials, compulsory planning for wartime increases in production, and research and experiment. In addition the government was empowered to grant subsidies, guarantee a

ning of military control of all private industrial phases of Japanese life. Originally the law was to be invoked and enforce by Imperial Ordinance without requiring action of the Diet. However, the decision to set up a National Mobilization Council of fifty members (largely from the two houses of the Diet) to review the measures applied under this statute tended to nullify its effectiveness as a weapon of the military in the struggle for nationalized industry. A mugh greater though more indirect influence was weilded bv the larger and larger war budgets spondored by the Army and Navy authorities. A number of military leaders wished to establish much more than this indirect control over the Japanese production system but the Zaibatsu offered a stubborn opposition to every measure which threatened to infringe upon their ownership and major prerogatives in the industries which they dominated.

"As late as September 1941 a leading Japanese economic publication was able to sum up this period as follows:

"'Japan's wartime controlled economy has hitherto been based on three important laws - the Law for Temporary Control of Imports and Exports, the Temporary Capital Adjustment Law, and the National Mobil-

ization Law, none of which contains clauses that give any inkling of planned economy.'

It concludes:

"'On the whole, even in 1940-41, Japan's economy was financed and operated by private enterprise, which disposed of profits and dividends with relatively slight government interference. Control, in the sense of comprehensive state plans enforced on industry, was still in embryonic form.'"

I am sorry I cannot read the rest of that document. I think it is very informative to the Tribunal, but the ruling has been made.

I now offer in evidence defense document 1905.

THE PRESIDENT: Brigadier Quilliam.

BRIGADIER QUILLIAM: May it please the Tribunal, I suggest that this document should be considered with the next one proposed to be offered, which is document 598(11). Document 1905 is merely the affidavit of Professor Fahs, the author of the other document, 598(11), with respect to how he came to write the book and with respect to his qualifications. In other words, document 1905 by itself has no value. I assume that probably my learned friend, Mr. Logan, will agree with me.

THE PRESIDENT: A couple of excerpts from Fahs' book were tendered earlier, but we know this is tendered in order to show his qualifications to write 598(11) which is No. 11 on your order of proof. You had better tender 598(11), I think, Mr. Logan.

MR. LOGAN: We also offer in evidence defense document 598(11). This is an excerpt from the book, "Government in Japan," which bears exhibit No. 2361 for identification. This is an excellent, impartial

and comprehensive economic study of all the factors which required Japanese governmental intervention in various lines of industry. The study shows that the Japanese economy was never at any time regimented and had no resemblance whatsoever to a totalitarian economy geared for war. The study also shows that Japan was required to expand governmental responsibilities with respect to industry largely as a result of foreign pressure and the need to conserve international credits because of her large dependence on foreign sources for basic raw materials in which Japan was seriously deficient. It also deals with the promotion and regulation of foreign trade, trade associations, exchange control, semi-official corporate monopolies, economic recovery and security, agricultural security, overseas development and domestic control, national defense and electric power.

THE PRESIDENT: Brigadier Quilliam.

BRIGADIER QUILLIAM: We object to document 598(11) on the ground that it has no probative value and, secondly, that it is irrelevant. There are, undoubtedly, facts stated in the document and, perhaps, some of them are relevant, but they are so mixed with the author's opinions and conclusions in developing his argument which is the basis of the

book that they cannot be separated. Strong evidence of that is given by the commentary which has just been made on the introduction of this document by my learned friend.

THE PRESIDENT: Is Fahs still in Tokyo?

BRIGADIER QUILLIAM: No, he is not. He was, recently, until the 14th of July, but he has gone to the States.

I suggest, sir, that the strongest -- the best way of testing whether this is material proper to be accepted by the Tribunal is to look at the deponent's own statement towards the end of his affidavit. He says there that the book, "Government in Japan," gives an accurate and representative statement of the facts, and he goes on, "and a fair interpretation of their significance." And, commencing at the very first sentence of the document, and it appears the same all the way through there, is the clear evidence of his being an interpreter.

THE PRESIDENT: And even if we could separate facts from opinion, you say the facts are irrelevant, is that so?

BRIGADIER QUILLIAM: No, your Honor. It is our difficulty so often in these mixed documents that one cannot say that all the facts are irrelevant

that are mentioned there.

THE PRESIDENT: Perhaps he got his facts from Year Books, too. Why can't we get them from the same source? Lord Patrick says he did get them from Year Books.

BRIGADIER QUILLIAM: We submit that this is not the way in which evidence of this kind should be presented to a tribunal of this importance. We could submit dozens of books on Japan, but the Tribunal is asked to accept this particular author as being the authority.

THE PRESIDENT: We are not at liberty to accept his opinions, and the facts on which he bases them are more readily available in Japanese Year Books and such publications.

MR. LOGAN: May I reply after the noon recess?

THE PRESIDENT: Yes. 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.

THE PRESIDENT: With the Tribunal's permission the accused ARAKI will be absent from the Court this afternoon while conferring with his counsel.

Mr. Logan.

MR. LOGAN: With respect to these two documents, 1905 and 598 (11), in its objection to the use of this excerpt the prosecution stated it contained some facts which were relevant. Actually the entire document is replete with statements of fact. On an objection by Mr. Comyns Carr to the introduction of a previous excerpt from this book on March 11, 1947, the Court stated on page 18,122 of the record: "It contains a number of statements of fact the probative value of which the Tribunal may wish to consider. This further excerpt is admitted on the usual terms."

An examination of the document will verify our contention that any interpretations by Professor Fahs are of matters upon which this Court will not be required to render an opinion. No opinion is expressed in the excerpt by the writer on the question which the

Court will have to decide as to whether or not Japan's industrialization was formulated along totalitarian lines for the conduct of aggressive war as contended by the prosecution. In other words, he does not forswear any of the issues to be decided by the Court.

In addition, the excerpt is heavily documented as showing the sources of the author's information. On the parts of this document we desire to read there are 111 footnotes of which there are about five from the Japan Yearbook. As pointed out there are a few interpretations by the author, but may we state that from document 1905 it appears that Professor Fahs is eminently qualified to testify as an expert on economic matters.

THE PRESIDENT: We decided in Liebert's case that the subject matter did not call for expert testimony. We did not treat Liebert as an expert and we will not treat this man as one.

MR. LOGAN: As stated to the Tribunal previously, this book has been selected by the defense from a large number of economic studies available and it sets forth--

THE PRESIDENT: This looks like a hard way of getting at some facts which are very readily

available otherwise.

MR. LOGAN: It is our contention that this document does set forth the facts and the subject matter in a concise, accurate and in an objective manner. The prosecution admits that it does contain facts and we submit it should be received for its probative value on the same grounds as which other excerpts from it were received; and if the Tribunal feels that it does contain any conclusions they can be ignored. If this excerpt is not accepted it will be incumbent upon the defense to supplement the proof already offered by a large number of other documents to which perhaps this author has referred and witnesses which would further burden the Court and delay the trial.

THE PRESIDENT: We are not shutting out any of the facts that he uses but no doubt you desire us to accept this statement not merely because of the facts that it contains but because of the way they are used in the statement, that is, because of the opinions formed on that basis.

MR. LOGAN: I ask that it be accepted for the facts contained in it for their probative value the same way as previous excerpts from the same book were received in evidence. If the Tribunal feels there are

any opinions I have no objection to their disregarding them.

THE PRESIDENT: By a majority the Court upholds the objection and rejects the document.

MR. LOGAN: I now offer in evidence defense document 1836 for identification. This is a summary of proceedings and copies of the trade agreement at the Imperial Economic Conference at Ottawa in 1932.

CLERK OF THE COURT: Defense document 1836, a book entitled, "Imperial Economic Conference at Ottawa in 1932," will receive exhibit No. 2798 for identification only.

(Whereupon, the document above referred to was marked defense exhibit No. 2798 for identification.)

MR. LOGAN: I now offer in evidence defense document 1836-A, an excerpt from exhibit 2798 for identification. This is the agreement between the United Kingdom and Canada dated August 20, 1932. We shall read only articles 1 and 2.

MR. COMYNS CARR: May it please the Tribunal.

THE PRESIDENT: Mr. Comyns Carr.

MR. COMYNS CARR: This is the first of a considerable number of documents which is concerned with the question of the steps taken, rightly or

wrongly, wisely or unwisely, by a large number of countries to cope with the economic depressions which occurred in the period between the two wars.

THE PRESIDENT: Is this an Ottawa conference document?

MR. COMYNS CARR: This particular one is, yes, but there are a large number relating to steps of a similar character taken by other countries. In our submission the whole subject is completely irrelevant and all documents relating to it should be excluded.

THE PRESIDENT: Yesterday we received quite a number of documents and it was common ground that these steps were taken by different nations to protect their own interests. There is no doubt about most of the nations of the earth having resorted to tariff barriers to protect what they thought were their legitimate rights and interests.

MR. COMYNS CARR: Right, your Honor.

THE PRESIDENT: Even if it were necessary to prove those things, it would not be necessary to go to this length to do so.

MR. COMYNS CARR: I entirely agree, your Honor, but I would go further and submit that the whole subject has nothing whatever to do with this inquiry.

Yesterday you did receive documents showing similar steps taken in Japan, and I understood that those were supposed to be tendered by way of explanation of Japan's own industrial policy, but to proceed to prove at great length that other countries were doing the same thing is, in my submission, beyond all bounds of possible relevance. There is nothing to lead one to suppose that any of these physical steps were taken in relation to Japan -- by any particular country by way of attack upon

Japan or protection against Japan more than any other country. They applied to all. But even if they were, in our submission they could not afford any possible excuse or justification for going to war on that account.

We ask the Tribunal to decline to burden this record with any documents relating to this topic.

MR. LOGAN: I assume when the prosecution states that this whole subject is completely irrelevant, he is referring to my order of proof headed "Economic Pressure Against Japan." I do not know what else he may have had in mind. If he wants to correct that statement, he may do so now before I continue.

MR. COMYNS CARR: I am much obliged.

I did not intend the objection I was taking at the moment to cover the whole of the documents contained under this head "Economic Pressure Against Japan."

THE PRESIDENT: Mr. Logan made the suggestion that the rejection of one involves the rejection of the rest.

MR. COMYNS CARR: It involves the rejection of a large number, not the whole list on which my

friend is at present embarking. That is what I wish to --

THE PRESIDENT: You are not objecting to all of them?

MR. COMYNS CARR: Not all.

THE PRESIDENT: We will have to do it as they are presented.

MR. COMYNS CARR: I am at the moment only objecting to the large number which deal with the question of tariffs and other measures taken by various countries to meet the economic depression. Other documents in the list will be objected to on other grounds.

THE PRESIDENT: Have you anything to add to what you said?

MR. LOGAN: I have not started to answer yet, your Honor. I did not know what he was objecting to -- how far his objection went. He said the whole subject was completely irrelevant, and I assumed he was referring to economic pressure against Japan, but if he is only referring to laws and regulations that were passed by certain countries during the depression, it is quite apparent from these documents that we are about to introduce that some of them were aimed directly at Japan, and all of

them did affect Japan.

It has been the contention of the prosecution, by the interpretation and testimony they have introduced through Liebert, concerning the 45-odd laws that were passed by Japan, that those laws were passed for purposes of aggressive war. We have already introduced evidence to contradict that in so far as the actions of Japan are concerned, but in order to understand and obtain the true facts it is necessary for us to go a step further and show these laws that were passed by these various countries, and how they did affect Japan and why it was necessary for her to pass those laws.

THE PRESIDENT: This note from a Member of the Tribunal seems to state the position accurately.

(Reading): "There has already been admitted uncontradicted evidence that many nations imposed restrictions on foreign trade which in fact adversely affected Japan."

If the prosecution say that is contradicted we would like to hear from them now.

MR. LOGAN: I would like to know, before they answer that, if the Tribunal please, just how

far that observation is to take us. In other words, we think it commenced back in 1932, and we want to show the course of the events because economics is the foundation of all wars. I think that is agreed to by many, many people. We want to show the beginning, here.

THE PRESIDENT: The foundation of all aggressive wars, trade wars.

MR. LOGAN: Defensive wars too, your Honor.

Duda & Spratt

MR. COMYNS CARR: Your Honor, in answer to the question that was put to the prosecution, we do not dispute the proposition that economic measures taken by other countries to meet the depression affected Japan in common with all other countries.

THE PRESIDENT: Beginning at Ottawa in 1932, if you like.

MR. COMYNS CARR: Beginning long before that, your Honor.

THE PRESIDENT: Why have all these things about which there is no contest proved in detail?

MR. COMYNS CARR: Your Honor, in my submission, if the matter were relevant there would be no need to prove it in detail.

THE PRESIDENT: We can take judicial notice of it under the Charter.

MR. COMYNS CARR: In my submission, it is irrelevant, and if certain documents already admitted have already referred to it, amongst other subjects, that part of those documents was irrelevant.

THE PRESIDENT: Mr. Logan, at the beginning of the trial the prosecution used to apply in Chambers to have certain facts judicially noticed, and hundreds of facts were, at least one hundred facts were judicially noticed as a result.

MR. LOGAN: May I go back a minute to what the prosecution said a minute ago? I am not trying to prove anything in detail. I am doing it as rapidly as I can. This exhibit I offer I only want to read two articles out of the entire document. I think there are about twenty-three articles in it. I am trying to avoid detail rather than go into it. I have the best proof possible. I have the agreement itself. I can't do any more than that.

THE PRESIDENT: I suggest that you are working harder than you need, Mr. Logan, because you could have come into Chambers with request to have certain facts judicially noticed; there would have been no difficulty, and you would have been spared the trouble of preparing all these documents.

MR. LOGAN: With all due respect to the Tribunal, the facts upon which we agreed to accept judicial notice were major events, which we all knew about. Now, for example, one of these next documents I am offering in evidence here, the prosecution would under no circumstances admit that that Canada Conference had such a vast import that even India objected to it because they were losing their export trade to Japan, and things like that we can't agree upon. The far-reaching effect of these laws which were passed by these various countries,

we expect to show the effect on Japan, directly tie it up, and why this legislation was passed in Japan.

THE PRESIDENT: No, there is no need to go into proof to this extent on such matters. We could take judicial notice of those facts, if asked. The prosecution would be heard. Probably they would not raise any objection. Why should they want this agreement proved in the ordinary way? There is no contest about it and never could be.

MR. LOGAN: I have no more to say on it, your Honor. Is the document rejected?

THE PRESIDENT: By a majority the Court upholds the objection and rejects the document.

MR. LOGAN: We now offer in evidence defense document 1836B, an excerpt from the same exhibit for identification. This is the agreement between the United Kingdom and Australia dated 20 August 1932. We intended to read only Articles 1 and 2. Under the previous ruling we will assume it rejected.

We now offer in evidence defense document 1836C, an excerpt from the same exhibit for identification. This is the agreement between the United Kingdom and India dated 20 August 1932. We only intended to read Articles 1 and 2. Under the previous ruling we will assume it rejected.

THE PRESIDENT: Well, we will not reject them unless we are satisfied they are cumulative or the prosecution objects and we sustain the objection. We must do things in an orderly way.

MR. LOGAN: I assumed the prosecution was objecting to those three documents, your Honor.

MR. COMYNS CARR: Your Honor, in my submission, when the first document was rejected exactly similar documents should not be tendered and the time of the Court should not be taken up by tendering them and the necessity of repeating the objection.

THE PRESIDENT: We hadn't time to find out what they were about.

MR. COMYNS CARR: I would suggest that a great deal of time might be saved if the defense would respect the rulings of the Tribunal and not tender documents of exactly the same kind as those already rejected.

THE PRESIDENT: We have already dealt with that fully. We said if they wanted a record of an objection if the ruling was against them on a point there was a way to do it, to get it without wasting time.

MR. LOGAN: If the Tribunal please, I object to the prosecution trying to chastise the defense. I try to abide by the rulings of this Court.

MR. COMYNS CARR: Well, your Honor, I can only say that if documents 1836-B and C are tendered I will repeat my objection on the same grounds as to 1836-A.

THE PRESIDENT: A Member of the Tribunal has expressed a desire to see all documents tendered, including rejected documents, and we must of course comply with his wishes.

MR. LOGAN: We offer in evidence defense document 1836-B, an excerpt from the past exhibit for identification. This is an agreement between the United Kingdom and Australia, dated 20 August 1932. We only intend to read Articles 1 and 2.

THE PRESIDENT: Mr. Comyns Carr.

MR. COMYNS CARR: I object on the same grounds as before.

THE PRESIDENT: The objection is upheld and the document rejected.

MR. LOGAN: We now offer in evidence defense document 1836-C, an excerpt from the same exhibit for identification. This is the agreement between the United Kingdom and India, dated 20 August 1932.

THE PRESIDENT: Mr. Comyns Carr.

MR. COMYNS CARR: I object on the same grounds as before.

THE PRESIDENT: The objection is upheld and the document rejected.

MR. LOGAN: We offer in evidence defense document 1835, which is the Indian Merchants' Chamber, Bombay, views of the comment on the report of the Indian Delegation to the Imperial Economic Conference at Ottawa, dated 2 November 1932.

There are only a few sentences that we wish to read from this document.

THE PRESIDENT: Mr. Comyns Carr.

MR. COMYNS CARR: I object on the same ground as before, and on the further ground that this is merely the opinions of a private body of traders in India.

MR. LOGAN: It is an opinion of a private body of traders, but it was sent to the Secretary to the Government of India, Department of Commerce, New Delhi, and it shows the effect of that conference directly on exports to Japan.

THE PRESIDENT: Mr. Logan, would you indicate the parts you intended to read if the document is admitted?

MR. LOGAN: I had a number of parts marked, but the principal part that I wish to call to the Tribunal's attention, which I think is directly on point, is on page 9, starting about the middle of the page, "A scheme of preference..." There are other parts of the document which show the effect on Japan, but it doesn't name Japan specifically.

THE PRESIDENT: The objection is upheld and the document rejected.

MR. LOGAN: We now offer in evidence defense document 1668, which is the address of Count ISHII on June 13, 1933, as Japan's representative at the Plenary Meeting of the Monetary and Economic Conference held in London in 1933.

In this address Count ISHII set forth the official position of the Japanese Government in favor of the elimination of trade barriers and restrictions of foreign trade, free interchange of world commodities on the basis of equality, and sounded a warning that there could be no political peace without economic peace.

THE PRESIDENT: Mr. Comyns Carr.

MR. COMYNS CARR: Your Honor, we object to this on the same grounds, in effect, as before, that the subject matter is irrelevant and merely contains

views put forward by Count ISHII about international trade and gold standard problems at the abortive conference, economic conference of 1933. In our submission it has no bearing on the matters at issue here.

THE PRESIDENT: Mr. Logan.

MR. LOGAN: If the Tribunal please, here we have the statement by Japan's official delegate to that conference. I think we all know what happened at that conference, and it seems to me that the attempt that was made by Japan at that time at that conference should receive the consideration of this Tribunal as a foundation for what happened subsequently. He is an official of the Japanese Government speaking for the government.

THE PRESIDENT: By a majority, the Court upholds the objection and rejects the document.

MR. LOGAN: We offer in evidence defense document 1908(1), which is the testimony of the Hon. Cordell Hull, Secretary of State, before the Committee on Ways and Means in the House of Representatives, March 8-14, 1934. This testimony indicates the serious dislocation of international trade for many years prior to 1934; the general existence throughout the world of foreign exchange control laws, quotas,

as having any bearing on Japanese preparation for war. He made reference to some matters of that kind which occurred after 1937 and which were subject to different considerations. But these matters of general world trade depression and efforts, good or bad, to meet it he did not deal with and they are, in our submission, irrelevant.

MR. LOGAN: If the prosecution will examine page 95 of Mr. Liebert's affidavit, they will find there reference to the Foreign Exchange Control Law of March 1933. If they will refer to page 94 in his affidavit, they will find reference to the Capital Flight Prevention Law of 1932. If they will refer to page 73, they will find reference to the Major Industries Control Law of August 1931. If they will refer to page 35, they will find reference to Japan Iron Manufacturing Company Law of April 6, 1933. And if they will examine his testimony and the statements made by the prosecution in their opening statement with respect to that particular phase -- I believe Brigadier Quilliam made the statement -- they will find that the object of all the evidence which was introduced on that phase was to show that the Japanese Government regimented the economy of Japan in support of a plan for aggressive war.

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THE PRESIDENT: Mr. Logan, will you come to the lectern?

We are most anxious to give you the benefit of any doubt in these matters, and we are having some difficulty about this: whether there is, in this statement by Mr. Hull, anything that contradicts anything that Liebert says?

MR. LOGAN: The entire tenor of his testimony was to support the prosecution's statement which I just made, and included in that was all the laws that Japan passed. Now, we propose to show by this testimony of Honorable Cordell Hull that at least sixty-five countries of the world passed legislation similar to what Japan passed in those early days, and certainly they cannot be accused of aggressive war. In other words, what all these countries were trying to do at that time of depression was, each country was trying to protect its own interests, not planning a preparation for war as the prosecution claims Japan was doing. And the effect of that legislation of the other countries, which started some years later, will show the economic pressure that was put on Japan. That is a different subject. I am talking now about these early laws.

Of course, I fully realize that the Tribunal

has disregarded Liebert's opinions, if any were given in there, but his words are shaded, and the way he wants the Court to interpret that is there was something wrong in the way Japan passed these laws. You can take sentences and perhaps read them to the Tribunal. They do not mean anything to the Tribunal if standing along, but the entire tenor of his statement is to that effect.

Page 6 of this particular document sums up pretty well there, after setting forth the different types of legislation which was passed. Mr. Hull says that there were sixty-five countries in the world and that all of them were suffering. "Everybody is suffering from everybody else's trade barriers."

On page 2 of that affidavit where Mr. Hull is talking about the twenty-five nations whose very economic lives depend upon international trade, it is our position that Japan is one of those twenty-five.

I might also say that in the previous document that was rejected, the statement made by Count ISHII sounded the warning which Cordell Hull picked up the next year.

THE PRESIDENT: By a majority, the Court upholds the objection and rejects the document.

MR. LOGAN: We offer in evidence defense

document 1908(2), which is the report of the United States Tariff Commission offered at a hearing before the Committee on Ways and Means in the House of Representatives from March 8 to March 14, 1934. This report of the United States Tariff Commission shows in detail the powers resting in the executives of many countries to deal effectively with foreign exchange, quotas, license, etc., and which were exercised by many other countries. We do not propose to read any part of this document.

THE PRESIDENT: Mr. Comyns Carr.

MR. COMYNS CARR: Your Honor, we object to this document on the same grounds as the last one, and we object further to the burden being put upon the Tribunal of reading a document which the defense themselves do not think worth reading. It is exactly the same effect.

MR. LOGAN: If it is admitted and the prosecution insists on my reading it, I will read it.

THE PRESIDENT: It seems to be covered by our previous decision.

By a majority the Court upholds the objection and rejects the document.

MR. LOGAN: We offer in evidence defense document 401-11 which is an excerpt from Peace and War, Official Publication, Department of State, United States of America, with respect to the United States neutrality legislation.

THE PRESIDENT: Brigadier Quilliam.

BRIGADIER QUILLIAM: May it please the Tribunal, the prosecution object to the admission of this document on the ground that it is both irrelevant and immaterial. The document, and other documents to be introduced, deal with the attitude

of the United States regarding neutrality. The documents involve an interpretation of the United States' actions, conduct and the speeches of its representatives. That interpretation may indicate that the United States was genuinely afraid, on proper ground, that there were going to be wars waged by aggressor nations. The interpretation may show that the United States was genuinely concerned, not only lest she herself should be involved, but in the interests of the world as a whole.

Whatever was the correct interpretation, it is obvious that on a subject as to how to stop war, opinions as to the proper course to be followed may well differ and they may change from time to time in good faith. At one time it might be thought proper to adopt active steps; at another appeasement might be considered the proper policy.

Is Japan to be justified in going to war by being able to show that America adopted the wrong method? Or, if it is suggested that a document of this kind is the beginning of the conspiracy on the part of the United States to attack Japan, it is submitted that nothing in the document could support such a contention.

For these reasons, it is submitted that the

document is immaterial and does not assist the determination of the issues.

THE PRESIDENT: Mr. Logan.

MR. LOGAN: I do not think the speculation and inference that the prosecution has tried to draw from this document are its proper function. I think it is up to the Tribunal to determine that. Its materiality and relevancy are quite apparent from reading the document itself, what effect the legislation had on Japan. And this is the forerunner of the evidence which will be shown later, the modification of that act and the assistance rendered to China which is all part of the economic and military pressure against Japan by the Allied and Western Powers. As I stated in our opening address, this is an affirmative defense on the part of the accused.

THE PRESIDENT: By a majority the Court upholds the objection and rejects the document.

We will recess for fifteen minutes.

(Whereupon, at 1445, a recess was taken until 1500, after which the proceedings 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: Mr. Logan.

MR. LOGAN: We offer in evidence defense document 401(13), which is an excerpt from "Peace and War" with respect to the warnings by President Roosevelt and Secretary Hull of the dangers developing in 1936 and 1937.

THE PRESIDENT: Brigadier Quilliam.

BRIGADIER QUILLIAM: May it please the Tribunal, this document is on all fours with the document that was rejected immediately before the recess, and on the same grounds as were urged in respect of that document we urge that this one should also be rejected.

THE PRESIDENT: Have you anything to say, Mr. Logan?

MR. LOGAN: It is a special document of the United States Government referring to statements made by the President and the Secretary of State with respect to the Neutrality Act of 1935 as amended February 29, 1936. More with respect to that Act will be introduced in a few minutes.

THE PRESIDENT: It seems to be covered by our decision on defense document 401(11). The objec-

tion is upheld and the document rejected, by a majority.

MR. LOGAN: Defense document 158 is offered in evidence. This is a proclamation issued by the President of the United States on May 21, 1936, increasing the rates of duty on cotton cloth. On its face it shows that the import duty on cloth was raised and that this increase in the tariff was aimed at Japan's exports.

THE PRESIDENT: Mr. Comyns Carr.

MR. COMYNS CARR: If it please the Tribunal, we object to this document on the same ground as the series of documents previous to the last two.

I should say that although it is true that the low cost of production is Japan is mentioned in this proclamation as the reason for the increase of duty by the United States, of course in fact the increase in duty when imposed applied to cotton cloth from all countries.

THE PRESIDENT: Will you admit the contents of that document but contest its relevancy?

MR. COMYNS CARR: Yes, your Honor, the same reasons.

MR. LOGAN: As far as relevancy is concerned, this is the beginning of the economic depression that

was enforced on Japan, and of course Japan's cotton exports were very vital to the continuance of Japan's economy.

I might say that practically the same objection was raised by the prosecution to a previous document and the Tribunal said, on page 20,914 of the record: "We are all clear that you cannot justify an attack on another country because the other country decides not to trade with you, unless perhaps that trade is vital to your very existence."

While it is true that the proclamation applies to other countries, it is aimed directly at Japan, and on its face it shows that the Commission knew that the principal competing country is Japan, as the document itself states. We claim it is very material to the affirmative defense of these accused with respect to the declaration of war in self-defense. It is the beginning of the economic squeeze.

THE PRESIDENT: The prosecution's documents themselves show the embargo or embargoes and the freezing of assets, and that kind of thing.

MR. LOGAN: I know of no evidence to that effect, your Honor, that the purport of this document is in the record so far..

THE PRESIDENT: It appears, among other

places, in the negotiations with the United States Secretary of State.

MR. LOGAN: I don't recall it in the evidence at all, your Honor.

THE PRESIDENT: It is impossible to prove the negotiations without referring to them.

MR. LOGAN: I know this is an original document and I know it wasn't in evidence before.

THE PRESIDENT: By a majority the Court upholds the objection and rejects the document.

MR. LOGAN: We now offer in evidence defense document 1400-A-4, which is a press release issued by the Department of State on September 14, 1937, stating, in effect, that merchant vessels owned by the United States Government are prohibited from transporting to China or Japan arms, ammunition or implements of war.

THE PRESIDENT: Brigadier Quilliam.

MR. LOGAN: I might say, your Honor, that all these excerpts in the 1400 series come from the foreign relations of the United States and Japan

THE PRESIDENT: Brigadier Quilliam.

BRIGADIER QUILLIAM: May it please the Tribunal, it will be observed that this is another neutrality document and is exactly on the same principle as the two previous neutrality documents which have been

rejected. On the same grounds that we urged in respect of those we ask the rejection of this document.

THE PRESIDENT: Mr. Logan.

MR. LOGAN: I don't think there is any question about the admissibility of the document. As to relevancy and materiality, it certainly is material. It shows further action taken by the United States which was later restricted just to Japan and not to China.

THE PRESIDENT: By a majority the Court upholds the objection and rejects the document.

MR. LOGAN: We now offer in evidence defense document 1400-B-4, a letter from the Department of State to various persons and companies, dated July 1, 1938. This letter explains the position of the United States Government as being opposed to the sale of airplanes or aeronautical equipment which would aid or encourage the practice of any country in bombing of civilians and discussing the obtaining of licenses for the export of such commodities.

THE PRESIDENT: Brigadier Quilliam.

BRIGADIER QUILLIAM: May it please the Tribunal, in one respect this is more objectionable than the other neutrality documents, because it is made perfectly clear that the United States is speaking to

nations that bomb the public, without regard to any particular country. In principle it is open to the objection that applied to the other neutrality documents, and we submit it should not be received.

THE PRESIDENT: It is directed against bombing civilian populations from the air, as I read it, Mr. Logan.

MR. LOGAN: It is directed to opposing the sale of any airplanes or aeronautical equipment which would aid or encourage that practice, as I previously stated.

THE PRESIDENT: The prosecution's evidence shows that about that time the Americans were complaining about the bombing by the Japanese of American institutions in China. I think that evidence is about 1937; I am not sure.

MR. LOGAN: The previous documents which were rejected show that the merchant vessels were prohibited from transporting to Japan or China arms or munitions listed on the President's proclamation of May 1, 1937, and that press release was issued on September 14, 1937.

THE PRESIDENT: By a majority the Court upholds the objection and rejects the document.

MR. LOGAN: I want to call the Tribunal's attention to Prosecution Exhibit 994, which shows that on July 26, 1939 the United States gave notice of the termination of the Treaty of Commerce and Navigation of 1911 at the end of the 6 month period prescribed by the Treaty.

We offer in evidence Defense Document 1821 which is an excerpt from the Annual Report of the Trade Bureau of the Japanese Foreign Office, 1938, with respect to foreign trade with the United States.

THE PRESIDENT: Mr. Comyns-Carr.

MR. COMYNS-CARR: If it please the Tribunal, we object to this document on the same grounds which we have been taking to the other documents. It is dealing entirely with the question of trade depression and is, in our submission, irrelevant for the reasons already given.

THE PRESIDENT: Mr. Logan.

MR. LOGAN: There is nothing further to say, your Honor, I don't think the objection is valid.

THE PRESIDENT: By a majority the court upholds the objection and rejects the document.

MR. LOGAN: We offer in evidence Defense Document 401-B-4, an excerpt from Peace and War, showing that on November 4, 1939 the arms embargo

was repealed by the Congress of the United States.

THE PRESIDENT: By a majority of the court, the court upholds the objection and rejects the document-- oh, I am sorry. I gave that decision before one of the members of the court had received his copy. I wasn't aware of the fact that he had none. I had it and assumed the others had it.

You have nothing to add, Mr. Logan?

MR. LOGAN: Which document are you referring to?

THE PRESIDENT: 401-B-4.

MR. LOGAN: 401-2-4?

MR. PRESIDENT: B-4.

MR. LOGAN: I think it is material, your Honor. I expressed my view on this before and I don't want to waste any more time.

THE PRESIDENT: By a majority, the court upholds the objection and rejects the document.

MR. LOGAN: We offer in evidence Defense Document 401(24), an excerpt from Peace and War, dealing with United States arms embargo.

THE PRESIDENT: Brigadier Quilliam.

BRIGADIER QUILLIAM: May it please the Tribunal, this is another neutrality document. It is rather longer than the others, but it is to the same

effect, and we ask that this be rejected also.

THE PRESIDENT: Mr. Logan.

MR. LOGAN: Well, I don't know how the Tribunal is looking at these and I don't know what to say to them to express my views.

THE PRESIDENT: We cannot see the relevancy -- at least a majority of us can not.

MR. LOGAN: Well, may it be accepted for its probative value if the majority cannot see the relevancy?

THE PRESIDENT: By a majority, the court upholds the objection and rejects the document.

MR. LOGAN: We offer in evidence 401(26), being an excerpt from Peace and War which contains further information with respect to the arms embargo legislation.

I call the court's attention particularly to the last sentence of that document.

THE PRESIDENT: Brigadier Quilliam.

BRIGADIER QUILLIAM: May it please the Tribunal, I suggest that that sentence does not assist the defense to make this document relevant. It is merely another -- this document is exactly on all fours with those previously rejected and we ask that it be rejected.

THE PRESIDENT: By a majority, the court upholds the objection and rejects the document.

MR. LOGAN: We refer to Defense Document 1400-C-3, being Exhibit 2731, which is a telegram from the Secretary of State to Ambassador Grew, dated December 20, 1939. This telegram shows that the United States did not wish to enter into negotiations for a new treaty to replace the commercial treaty of 1911, which was abrogated in July 1939.

We also refer to Defense Document 1631, being Exhibit 2732, concerning a new treaty of commerce which was never consummated.

THE PRESIDENT: Brigadier Quilliam.

BRIGADIER QUILLIAM: May it please the Tribunal, this document is exactly the same as those which have been rejected. It merely gives the opinion of certain responsible officials as to the proper action to be taken or as to the results of action that might be taken. We submit it should be rejected.

MR. LOGAN: If the Tribunal please, if the responsible officials of the government, as the prosecution says here, are of the opinion that a certain action of that government will involve that country in war, and if that is not material to this case, I do not know what is.

THE PRESIDENT: That is only the opinion of an official, and we are not going to take opinions in that matter. It is for us to decide what justifies war, not for any official in the State Department in Washington.

MR. LOGAN: This book from which this document is taken, if the Tribunal please, is an official publication of the State Department, "Peace and War."

THE PRESIDENT: Suppose he said it wouldn't lead to war. Would we be bound by that opinion of his?

MR. LOGAN: If the responsible officials of

the government, including the highest military and naval authorities, are of the opinion that, if the government takes a certain step, it will lead to war, and that step is taken, it seems to me that that evidence is admissible in this particular case especially.

THE PRESIDENT: Your case for the accused is self defense. We are not going to allow anybody to decide for us when self defense is warranted.

MR. LOGAN: I certainly have no intention of taking away from this Tribunal, or even endeavoring to do so, the fact that it has the right to determine when self defense arises, but that is not the purport of this document.

THE PRESIDENT: What does he say? If you take these steps against a strong country, you may precipitate war. That is all he says. That is his opinion. We, if we wanted to, cannot delegate our functions to others.

MR. LOGAN: No, but the answer to it is, your Honor, that we are trying to show the facts, and here we have one country that knows that, if it does certain acts, that those acts will result in war. And in this particular case, the imposition of these embargoes and sanctions were well known to

the Western Powers as something which, if they took these steps, would result in war. Now, those are facts that we are trying to prove. I am not asking the Tribunal at this time to draw any decision from these facts, but I think the facts should be known to you. In other words, what we are trying to show here is a course of conduct. Acts were taken with full knowledge and expectation of the results -- a provocation. In other words, these acts were deliberate, premeditated, with full knowledge of the consequences.

THE PRESIDENT: We alone must decide whether any action taken by the United States justified a war by Japan, a war of self defense. That is the issue here: whether Japan acted in self defense. We are not going to allow Washington officials to decide that for us.

MR. LOGAN: This document does not purport to show that, if the Tribunal please. We are not trying to take away the function of the Tribunal by this document. What we are trying to show -- there is nothing in this document that makes any decision such as is left to the Tribunal.

THE PRESIDENT: We would not allow them to decide that it wasn't in self defense. The matter

is beyond their province as far as we are concerned.

MR. LOGAN: This document does not make any decision as to whether those acts were in self defense or not in self defense. It merely shows knowledge of the responsible officials of the government, including the highest military and naval authorities, as to the effect of the acts which they were about to commit.

THE PRESIDENT: I think you are confusing provocation with self defense. They are tow distinct matters in the law. Provocation may lead to a mitigation of punishment or something like that, reduction of the nature of the offense some times. It may go to mitigation. That is all as far as I can judge.

MR. LOGAN: Self defense also might go to a complete defense.

THE PRESIDENT: Self defense, if successfully established, obliterates the offense.

MR. LOGAN: That is what I say, complete defense.

THE PRESIDENT: I should say it negatives the offense because it prevents it from coming into existence.

MR. LOGAN: And that is what we are trying to do here, your Honor, is to present the facts so

that the Tribunal will be able to determine, first, whether there was provocation, and, second, whether the act was in self defense. In the commission of any crime with respect to the people involved, if there are two involved, the question of the state of mind of the parties is of paramount importance. In so far as provocation is concerned, the question is, did the party know what would be the actual result of the acts he was doing? What was his intent? That is what this document shows.

THE PRESIDENT: In some jurisdictions, of course, provocation may be a complete answer on charges of minor offenses, but not in offences involving death. Provocation may reduce murder to manslaughter.

MR. LOGAN: Even on that basis of mitigation, this document would be admissible.

THE PRESIDENT: You can give that later, if it becomes necessary. I think that, if we receive evidence in mitigation now, it may prolong the trial unnecessarily. We can always receive evidence of mitigation at the proper time. We have received it, I know, but at a stage when we did not expect the trial to last so long. We have the discretion.

By a majority, the Court upholds the object-

ion and rejects the document.

MR. LOGAN: We offer in evidence defense document 401-B-2, corrected, which is an excerpt from Peace and War showing the effects of the 1939 moral embargo.

THE PRESIDENT: Brigadier Quilliam.

BRIGADIER QUILLIAM: May it please the Tribunal, this is another embargo document. It stands in the same footing as the one which has been rejected, and I ask that this one also be rejected.

THE PRESIDENT: Any argument, Mr. Logan?

MR. LOGAN: All I can say, if the Tribunal please, is that if we are not permitted to show our affirmative defense here on the effects of these moral embargoes here on Japan, I do not know just what we can do. We are offering this evidence to show that the Western Powers took steps to choke off Japan economically.

THE PRESIDENT: This refers only to the export of arms to Japan, Mr. Logan.

MR. LOGAN: That's right. I believe this is the same time that we were sending some arms and ammunition and implements of war to China.

THE PRESIDENT: And your case is, because America would not supply you with arms, you were

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THE PRESIDENT: And your case is, because America would not supply you with arms, you were

justified in attacking, and then goes on to require her to attack some other nation.

MR. LOGAN: That is not my point at all, your Honor. I have never made such a statement to this Tribunal. I have said that the acts of the Western Powers, enforcing embargoes and passing of legislation where Japan was strangled economically, is our defense, and that at the same time it became the bold policy of the United States to send arms, money and materials to China who was engaged in war with Japan at that time; and that that strangulation of Japan led to the war.

THE PRESIDENT: By a majority, the Court upholds the objection and rejects the document.

MR. LOGAN: Defense document 401(36) is now offered in evidence. This is an excerpt from Peace and War and contains a resume of the address by the President of the United States on "arsenal of democracy."

THE PRESIDENT: Brigadier Quilliam.

BRIGADIER QUILLIAM: May it please the Tribunal, it is submitted by the prosecution that the contents of this document are irrelevant to the issues in this case as were the documents which have been rejected this afternoon relating to neutrality,

arms embargo, and some other matters.

It is suggested that Japan can hardly plead, as a justification for waging war, the consideration shown by America with regard to the aggressions that were going on in different parts of the world.

THE PRESIDENT: Yes, Mr. Logan.

MR. LOGAN: If the Tribunal please, nations act with regard to preparation for war on what their neighbors are doing.

THE PRESIDENT: This is an argument by the President, Mr. Roosevelt, in support of sending arms to Britain. At that time Japan was not in the war at all.

MR. LOGAN: That is not the only point covered in the document, your Honor.

THE PRESIDENT: It certainly was not directed at Japan.

MR. LOGAN: That part wasn't, no, but the prosecution's contention is that everything Japan did was directed toward aggressive war, and I wanted to show through this document that Japan was not the only nation that was preparing for war, and that the actions of Japan when other nations were also arming does not necessarily prove aggressive war. The last part of that document shows it is not directed toward

Great Britain.

THE PRESIDENT: By a majority, the Court upholds the objection and rejects the document.

MR. LOGAN: Defense document 401-42, an excerpt from Peace and War, is offered in evidence to show the restrictions on exports to Japan.

THE PRESIDENT: Brigadier Quilliam.

BRIGADIER QUILLIAM: May it please the Tribunal, we object to this document. It is merely another embargo document, and I urge the same grounds apply as applied to the documents previously rejected.

THE PRESIDENT: Mr. Logan.

MR. LOGAN: I would like to have a direction from the Court as to whether or not they intend to receive any evidence on this self defense -- affirmative defense of the accused in this case.

THE PRESIDENT: You cannot expect me to answer that question in that form. That is deliberately offensive. We will receive all relevant and material evidence directed to self defense, all evidence that has probative value, if there is any difference. But, in the honest opinion of the majority of the Judges today, you have not tendered any such evidence since the recess.

MR. LOGAN: I certainly had no intention of being offensive.

THE PRESIDENT: We will hear you on every document you tender. I invited you to speak, and you put that question to me, which was in an offensive form.

MR. LOGAN: As I said, I had no intention of being offensive, if the Tribunal please, and that I have been working on these documents, offering the best documents we have been able to find on this affirmative defense, the statements made by the responsible leaders of the United States. This one here refers to a protest by Japanese Ambassador HORINOUCHI --

THE PRESIDENT: Do not ask me any more questions like that. Just put before us reasons why this document should be accepted.

MR. LOGAN: I am stating that this document contains a statement by Japanese Ambassador HORINOUCHI protesting to Secretary Hull about the embargo applied on iron and steel which, I think, is material and relevant to the affirmative defense.

THE PRESIDENT: It seems to be an embargo on arms, too, or war equipment and material.

MR. LOGAN: That's right. It also refers

to that. But it goes to other material besides.

THE PRESIDENT: What are they? Strategic commodities.

MR. LOGAN: Machine tools, scrap iron, pig iron, iron and steel manufactures, lead, aluminum and a variety of others.

THE PRESIDENT: By a majority, the Court upholds the objection and rejects the document.

We will adjourn until half-past nine tomorrow morning.

(Whereupon, at 1600, an adjournment was taken until Thursday, 7 August 1947 at 0930.)

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Of
WITNESSES

Defense' Witnesses	Page
UEMURA, Kogoro	25197
Direct by Mr. Logan	25197
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I N D E X

Of

EXHIBITS

Doc. No.	Def. No.	Pros. No.	Description	For Ident.	In Evidence
1400-D-4	2799		Letter from Ambassador HORINOUCHI to the U.S. Secretary of State dated 6 January 1940		25153
	2800		Book entitled "Peace and War", an official publication of the Department of State, USA	25168	
401(39)	2800-A		Excerpt therefrom - Instructions to Ambassador Grew		25168
			MORNING RECESS		25180
1400-F-4	2801		Proclamation No. 2413 signed by President Roosevelt 2 July 1940		25181
1400-G-4	2801-A		Press Release issued by the White House on 2 July 1940 re HR Bill 9850 signed by President Roosevelt		2519?
1400-H-4	2801-B		Proclamation No. 2417 signed by President Roosevelt 26 July 1940		2519?
1400-I-4	2801-C		Regulation signed by President Roosevelt 26 July 1940 re Petroleum Products, Tetraethyl lead and Iron and Steel		2519?

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Of
EXHIBITS
(cont'd)

Doc. No.	Def. No.	Pros. No.	Description	For Ident.	In Evidence
			NOON RECESS		25196
1924	2802		Affidavit of UEMURA, Kogoro		25198
1400-L-4	2803		Proclamation No. 2423 signed by President Roosevelt 12 September 1940		25219
	1400-N-4	2804	Press Release issued by the White House on 26 September 1940		25222
	1400-O-4	2805	Regulation signed by President Roosevelt 30 September 1940 defining use of "iron and steel scrap"		25227
	1400-R-4	2806	Press Release issued by the White House on 15 October 1940		25227
	1400-W-4	2807	Executive Order No. 8607 signed by Prosident Roosevelt 10 December 1940		25233
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I N D E X

Of

EXHIBITS

(cont'd)

Doc. No.	Def. No.	Pros. No.	Description	For Ident.	In Evidence
1400-Y-4	2808		Proclamation No. 2451 signed by President Roosevelt 20 December 1940		25240
1400-B-5	2809		Executive Order No. 8631 signed by President Roosevelt 10 January 1941		25250
1400-C-5	2810		Executive Order No. 8668 signed by President Roosevelt 4 February 1941		25251
1400-D-5	2811		Executive Order No. 8669 signed by President Roosevelt 4 February 1941		25252
1400-E-5	2812		Executive Order No. 8693 signed by President Roosevelt 25 February 1941		25253
1400-F-5	2813		Executive Order No. 8694 signed by President Roosevelt 25 February 1941		25254
1400-G-5	2814		Executive Order No. 8702 signed by President Roosevelt 4 March 1941		25255

Thursday, 7 August 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, all Members sitting, with the exception of: HONORABLE JUSTICE STUART McDOUGALL, Member from the Dominion of Canada; HONORABLE JUSTICE I. M. ZARAYANOV, Member from the USSR; and HONORABLE JUSTICE E. H. NORTHCROFT, Member from the Dominion of New Zealand, not sitting from 0930 to 1600.

For the Prosecution Section, same as before.

For the Defense Section, same as before.

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(English to Japanese and Japanese to English interpretation was made by the Language Section, IMTFE.)

Duda & Spratt

MARSHAL OF THE COURT: The International Military Tribunal for the Far East is now in session.

THE PRESIDENT: Mr. Logan.

MR. LOGAN: If the Tribunal please, we now offer in evidence defense document 1400-D-4, a letter from Ambassador HORINOUCHI to the Secretary of State dated January 6, 1940.

THE PRESIDENT: Brigadier Quilliam.

BRIGADIER QUILLIAM: May it please the Tribunal, in our submission this is merely another embargo document, this time taking the form of a protest by the Japanese against America's embargoes. We suggest that this is irrelevant, as the documents that were excluded yesterday.

THE PRESIDENT: Perhaps, this ought to go in as part of the negotiations, as part of the evidence of the negotiations.

BRIGADIER QUILLIAM: May it please the Tribunal, if the Tribunal takes that view we do not press the objection.

THE PRESIDENT: The document is admitted on the usual terms.

CLERK OF THE COURT: Defense document 1400-D- will receive exhibit No. 2799.

(Whereupon, the document above

referred to was marked defense exhibit No. 2799 and received in evidence.)

MR. LOGAN: We now read exhibit 2799, being a letter from the Japanese Ambassador, HORINOUCHI, to the Secretary of State, Washington, January 6, 1940.

"Sir: I have the honor to state that, as the result of a communication through a circular letter of July 1, 1938, addressed by the Department of State to manufacturers and exporters of aircraft and aircraft parts, in which it was mentioned that 'the Department of State would with great regret issue any licenses authorizing exportation, direct or indirect, of any aircraft, aircraft armament, aircraft engines, aircraft parts, aircraft accessories, serial bombs or torpedoes to countries the armed forces of which are making use of airplanes for attack upon civilian populations,' it has virtually become impossible for Japanese firms to import any airplanes and airplane parts of American make.

"As repeatedly stated by my Government, military operations of the Japanese air forces in China have been directed solely against warlike organizations and establishments of the Chinese. No bombing or machine-gunning has been resorted to against

civilian population as such. The Japanese Government, therefore, cannot but take exception to any treatment of Japan as a country 'the armed forces of which are making use of airplanes for attack upon civilian population.'

"The above-mentioned measures employed by the Department of State, which, in view of the great influence that can be wielded by a central government upon private manufacturers and exporters, have the effect of a discriminatory export embargo. My Government considers that such measures applied to Japan are in derogation of the provision of Article V, paragraph 3 of the Treaty of Commerce and Navigation between Japan and the United States of February 21, 1911, and at variance with the general purposes of the Treaty as a whole.

"While my Government was keenly alive to the unfortunate consequences of the said communication to American exporters, it did not relinquish the hope that the United States Government, in harmony with its fair and just trade policy, would before long retract it.

"However, on December 26, 1939, another letter was addressed by the Department of State to manufacturers and exporters to the effect that the

Department hoped that it would not receive any application for a license to authorize the exportation, direct or indirect, of articles enumerated in the letter of July 1, 1938, and, in addition thereto, of aeronautical equipment of all kind and materials essential to airplane manufacture. In order to point out that molybdenum and aluminum should be included among such materials, a letter was addressed by the Department to all producers of these two materials.

"Still further, it was announced on December 20, 1939, from the Department of State that the decision had been reached that there should be no further delivery to certain countries of plans, plants, manufacturing rights, or technical information required for the production of high quality aviation gasoline and that this decision has been communicated to the interested American oil companies. The announcement cited the decision as an extension of the United States Government's policy in regard to the sale of airplane, aeronautical equipment, and materials essential to airplane manufacture to countries the armed forces of which were engaged in unprovoked bombing or machine-gunning of civilian populations from the air.

"Of late there occurred a number of cases

in which the purchase of certain articles and materials under negotiation between Japanese firms and interested American companies has been rendered impossible as the result of the Department of State's letters.

"To cite one of the most outstanding cases, a memorandum of a contract was drawn and initialed August 19, 1938, by representatives of Japan Gasoline Company on the one part and Universal Oil Products Company on the other.

"It was stipulated that Universal Oil Products Company, which since 1928 had maintained close business connection with Japan Gasoline Company, should grant a license in Japan covering their polymerization processes for the production of iso-octanes and rights under all of their processes in the entire petroleum field, in return for which Japan Gasoline Company should pay $1,000,000 United States funds to Universal Oil Products Company.

"It was understood that, during the progress of the negotiations in connection with the above agreement, the representatives of Universal Oil Products Company approached and laid the pertinent facts before the Department of State, which made no objection to the transaction.

"Under the terms of the agreement Japan

Gasoline Company paid to Universal Oil Products Company a sum of $300,000 on October 30, 1938, and $400,000 on July 8, 1939. It was agreed that further payment of $100,000 was to be made at the time of delivery of plans and specifications for a plant and a final payment of $200,000 upon completion and test of such a plant. In essence, Universal Oil Products Company was bound to guarantee, within the limit of the money it was to receive in payment, complete working of the plant in Japan under polymerization processes.

"Recently Universal Oil Products Company proposed that a final agreement should be made along the lines of the provisional agreement, and accordingly the two parties continued their negotiations.

"On December 19, 1939, however, Universal Oil Products Company informed the representatives of Japan Gasoline Company that they had received a letter from the Department of State which left no alternative for them but to withhold further fulfillment of the terms of the contract.

"The consummation of this contract, under which the greater part of the payment involved has already been made and other obligations required have been completely fulfilled by one of the parties, has for

all practical purposes been frustrated.

"Entertaining the belief that steps taken by your Government, causing a situation not dissimilar in effect to that which might obtain under an export embargo discriminating against Japan, are in contravention to the provisions of Article V, paragraph 3, of the Treaty of Commerce and Navigation between Japan and the United States and at variance with the spirit of the Treaty as a whole and fearing that the continuation of such measures may affect the present earnest efforts of Japan and the United States for the improvement of mutual friendly relations through the maintenance and promotion of commerce between the two countries, my Government greatly deplores the herein referred to actions of the authorities of the United States Government.

"I avail myself (etc.)

"Kensuke HORINOUCHI."

We offer in evidence defense document 1400-U-2 being an excerpt from a telegram dated March 24, 1940, from Ambassador Grew to Secretary of State Hull, dealing with the problem of embargoes, loans to China, and reporting in part speech by the Prime Minister of Japan and the Foreign Minister.

THE PRESIDENT: Brigadier Quilliam.

BRIGADIER QUILLIAM: May it please the Tribunal, we object to this document which is concerned with the embargo question. It reports the press report of certain discussions in the Diet with reference to that question, and in our submission does not assist the determination of the issues.

THE PRESIDENT: This is how the Japanese put their viewpoint to one another. What they said to the Americans is in quite a different class.

MR. LOGAN: This shows the Japanese point of view on the effect of the embargoes, if the Tribunal please, and it is an official telegram which was sent by Mr. Grew to the United States Secretary of State; and its materiality is to disprove the allegations of the claims of the prosecution that Japan was building up an industrial plan for aggressive war. All this evidence goes to that point, to show that she wasn't able to get the material as claimed by the prosecution;

not only goods for military purposes but civilian goods as well.

THE PRESIDENT: Mr. Logan, anything worthwhile, any point worthwhile, was made in the course of the negotiations by the Japanese with the Americans.

You see, otherwise, where do we finish if we let in all these things said by the Japanese to one another? We should have all the negotiations, and every point worthwhile was made in the course of them.

MR. LOGAN: But this goes a step further, if the Tribunal please. We have in this case a charge of conspiracy, and here is a statement made by the Prime Minister in the Lower House; and the question which this Tribunal will have to decide is, did these accused know the situation as reported to them by the officials of their government, what did they believe, and what did they do as a result of it?

THE PRESIDENT: This subdivision is called, "Allied Pressure against Japan."

MR. LOGAN: That is right.

THE PRESIDENT: And what you are endeavoring to establish is the fact that there was allied pressure. For that purpose, isn't it enough to tell us all you said to the Americans?

MR. LOGAN: No. That comes under two points.

One is the pressure which was applied, and I think later documents will show that it was admitted that there was pressure applied. I do not think there is any question about that.

And the other two points in addition to that pressure are, one, that Japan was not able to get the materials to build up a war machine or for civilian economy. Of course, the prosecution have claimed that in their opening statement of that particular phase of the case.

THE PRESIDENT: Who was the Prime Minister and who was the Foreign Minister on the 24th of March, 1940?

MR. LOGAN: YONAI.

THE PRESIDENT: He is not charged with conspiracy.

MR. LOGAN: We assume he isn't, your Honor, although we do not know on account of that divers other persons allegation in the Indictment. We don't know who is or who isn't. But that, I think, is beside the point.

THE PRESIDENT: He is alive in Japan, I understand, and if they thought he was guilty they would charge him.

MR. LOGAN: But the third point I wished to

make was that here is a statement by the Prime Minister and, say, where there is a charge of conspiracy and the information was given to Japan through the responsible official, the Prime Minister, what did these accused think of this information? Did they conspire after they heard it?

THE PRESIDENT: We have repeatedly told you, Mr. Logan, or told the defense, that you can raise that on the individual cases. What each individual is influenced by is a matter to be dealt with in the individual case.

MR. LOGAN: That is one of the three points. But with respect to that, here is the statement that was made. There would be no question of that when it comes to the individual case. They can refer back to this statement that was made by the Prime Minister and the Foreign Minister.

THE PRESIDENT: We will wait until the individual case comes before we decide what influenced them.

By a majority, the objection is upheld and the document rejected.

MR. LOGAN: I now offer in evidence defense document 220. This was processed for the defense, BR. 133A, by the prosecution out of some of the

excerpts which the prosecution introduced into evidence.

THE PRESIDENT: Mr. Comyns Carr.

MR. COMYNS CARR: May it please the Tribunal, it is quite true that Foreign Relations Volume II is an exhibit as a whole. But in our submission this excerpt from it is irrelevant. It adds nothing to what we know already, namely, that at this stage, April 1940, all parties were agreed that the war in Europe should not interfere with the status of the Netherlands East Indies.

MR. LOGAN: The Tribunal will recall that when the prosecution was presenting its case, application was made by them to present excerpts, and at that time we were given permission to have the excerpts which the prosecution omitted processed by the prosecution for the defense. We were told at that time that we could read into the record when our time came the parts that the prosecution omitted to make a complete story.

THE PRESIDENT: What bearing has it on this phase, Mr. Logan?

MR. LOGAN: It has this bearing, that at that time Japan was trading with Netherlands East Indies and they were endeavoring to get oil from then, which

we will show later in negotiations that were made at that time, and prosecution also introduced evidence with respect to those oil negotiations.

THE PRESIDENT: We can't see where it suggests any pressure on Japan.

MR. LOGAN: As I said, your Honor, not only is this evidence offered with respect to pressure on Japan, but it is also offered with respect to the efforts made by the Japanese to get civilian goods and materials as well as what the prosecution calls war materials to build up a war machine. Now, if they could not get the materials, they certainly could not build up a war machine for aggressive war.

THE PRESIDENT: The Tribunal upholds the objection and rejects the document.

MR. LOGAN: Defense document 401-39. This is an excerpt from "Peace and War" which sets forth instructions to Ambassador Grew from Secretary Hull, and admitting that economic pressure had been exerted on Japan for a year and that everything was being done by the United States short of a risk of military hostilities. This is set forth in defense document 401-39, now offered in evidence.

THE PRESIDENT: Brigadier Quilliam.

BRIGADIER QUILLIAM: May it please the

Tribunal, we object to the admission of this document. It is not part of the negotiations. It is merely a justification by the United States of its own policy. It contains nothing new, it throws no fresh light on anything, and, we suggest, is of no assistance whatever to the Tribunal.

THE PRESIDENT: Mr. Logan.

MR. LOGAN: It certainly comes right under the heading of what we are trying to prove and the Secretary admits that the United States had been exerting economic pressure on Japan for a year.

BRIGADIER QUILLIAM: May it please the Tribunal, may I be permitted to say that there can be no dispute that America did impose certain embargoes. That was part of the prosecution case.

THE PRESIDENT: Well, that would save a lot of argument and evidence. We realize that. The embargoes and the freezing of assets could have no other purpose.

MR. LOGAN: Of course, there is no evidence in the case yet, your Honor, as to the extent and the effect of those embargoes on Japan. Throughout the Indictment the prosecution always talks about the acts of Japan.

THE PRESIDENT: There is no doubt, really, as

to their extent.

MR. LOGAN: Well, there is no evidence as to the extent and the effect. In other words, all we have is a situation where an allegation is made against Japan that she was building up a war machine. That is prosecution's claim. We are trying to show, in this division, that Japan could not get those materials which they claim we did get. Somehow or other this is one of the avenues through which they might have gotten them, through the United States, one of their biggest exporters. They didn't get them. That is one point.

THE PRESIDENT: Perhaps you would be satisfied with the second paragraph, if it is admitted.

MR. LOGAN: Well, that contains the most important part of it, of course.

THE PRESIDENT: Yes. Well, the objection is overruled, and the document is admitted as to the second paragraph only.

CLERK OF THE COURT: The book entitled, "Peace and War, an official publication of the Department of State, United States of America, will receive exhibit No. 2800 for identification only, and the excerpt therefrom, bearing defense document No. 401-39, will receive exhibit No. 2800-A.

(Whereupon, the document above referred to was marked defense exhibit No. 2800 for identification only; the excerpt therefrom being marked defense exhibit No. 2800-A and received in evidence.)

MR. LOGAN: I now read exhibit 2800-A, Instructions to Ambassador Grew, the second paragraph:

"On June 28, 1940 the Secretary of State discussed the Far Eastern situation with the British Ambassador and the Australian Minister. In discussing

possible steps to oppose Japanese aggression in the Far East, the Secretary declared that the United States had been exerting economic pressure on Japan for a year; that the United States Fleet was stationed in the Pacific; and that everything possible was being done 'short of serious risk of actual military hostilities' to keep the Japanese situation stabilized. This course, he added, was the best evidence of the intentions of the United States in the future."

THE PRESIDENT: Do you want any more?

MR. LOGAN: I think this is also material, your Honor.

"In regard to a possible settlement between Japan and China, he set forth two points; first, that for such a settlement the principles underlying Japanese policy would have to be negatived or at least seriously modified; second, that properties or interests of China must not be offered to Japan, or in other words that peace must not be made with Japan at the expense of China or of the principles of international policy to which the United States was committed."

We offer in evidence defense document 1400-V-2 being a report from Ambassador Grew to Secretary Hull dated June 4, 1940, being a summary of a press report of an address by the Japanese Minister of Foreign

Affairs at the Pacific Society with respect to the Netherlands East Indies trade.

THE PRESIDENT: Mr. Comyns Carr.

MR. COMYNS CARR: May it please the Tribunal, in our submission this document is merely a summary of a press report of a speech by Foreign Minister ARITA. It contains nothing whatever which can be of the slightest assistance to the Tribunal in this case.

MR. LOGAN: If the Tribunal please, this shows the policy of Japan toward the Netherlands East Indies at that time for maintaining the status quo in that region.

THE PRESIDENT: By a majority, the Court upholds the objection and rejects the document.

MR. LOGAN: We offer in evidence defense document 1400-F-4, being a proclamation signed by President Roosevelt on July 2, 1940. This is a proclamation prohibiting the export of certain articles and materials unless licenses are obtained.

THE PRESIDENT: Brigadier Quilliam.

BRIGADIER QUILLIAM: May it please the Tribunal, this is the first of a very large number of similar documents. They deal with the various proclamations issued by the United States Government in connection with the export and import of goods.

That they are authoritative, genuine documents we can not dispute. As I have already said, we cannot dispute that an embargo was placed on exports and imports. We suggest that the putting into evidence of these documents containing the details of the goods affected by the embargoes is a waste of time and effort. We also suggest that if this is considered to be in any way material or of assistance to the Tribunal, the proper method would have been to have submitted an admission or stipulation covering, in a few sentences, the whole of these documents.

THE PRESIDENT: Well, this document is restricted to war materials -- it is called "strategic commodities" in some places -- and includes all or practically all such materials. That is conceded, I suppose, Brigadier, including steel and wool?

BRIGADIER QUILLIAM: I was going to ask permission to add, if it please the Tribunal, that it is shown at the commencement of this document the powers exercised for the purposes of national defense.

THE PRESIDENT: Well, if you admit all that, there is no need for this document, although we understand you to be conceding its relevancy.

BRIGADIER QUILLIAM: May it please the Tribunal, in answer to your question, we certainly

challenge the relevancy of it.

THE PRESIDENT: Well, we are always prepared to judicially notice proclamations by the American President.

MR. LOGAN: Does that include the articles covered by each proclamation?

THE PRESIDENT: That is part of the proclamation which we would judicially notice.

MR. LOGAN: Well, I would be willing to accept that, your Honor, if the transcript would show each of these articles. My reason for that is this, that Liebert in his testimony has set forth practically all of the same articles covered in all of these proclamations of the President and showing the vital necessity of all these articles for what he called "war purposes." Now, this is the evidence that --

THE PRESIDENT: All I can say is this: we are going to judicially notice all proclamations by the President of the United States, and in your summation you can treat them as part of the evidence and refer to them. In that way, you will get into the transcript, as part of your address, whatever you think should be in it, but for the time being I want to keep all of this out of the transcript. It takes too much time.

MR. LOGAN: I therefore ask the Tribunal to take judicial notice of the proclamation No. 2413, signed by President Roosevelt on July 2, 1940, and all the materials and products contained therein.

THE PRESIDENT: We have judicially noticed all the proclamations imposing embargoes. You need not refer to them again until in the course of your summation.

MR. LOGAN: May we have the defense document numbers and dates of each one of these proclamations set forth -- a list of those prepared and set forth in full in the transcript? We can read it perhaps from the lectern tomorrow.

THE PRESIDENT: I do not think there will be any objection if you can put them in some commodious form. I do not think it is necessary to itemize every figure.

MR. LOGAN: Well, we will prepare such a list, your Honor.

If the Tribunal please, it might be better, in a chronological order, to refer to each one of these briefly, the defense document number and the date of the proclamation, as we go along here.

THE PRESIDENT: Yes. You could hand in those proclamations to the Judges. Some of them may want

to read them before you refer to them later in your summation.

MR. LOGAN: That last proclamation is set forth in defense document No. 1400-F-4.

Defense document 1400-G-4 is offered in evidence. This is a press release issued by the White House on July 2, 1940, on the license proclamation --it refers back to defense document 1400-F-4, which was just mentioned -- and advising that the Minister of Export Control has been designated to administer the provisions of the aforesaid law. We do not intend to read any part of that.

THE PRESIDENT: Yes, Brigadier.

BRIGADIER QUILLIAM: May it please the Tribunal, our object was to endeavor to save time and labor. If my friend is going to read what he is -- make statements such as he just made with respect to every document, a great deal of time will wasted.

THE PRESIDENT: This is a military order, but the Tribunal may consider taking judicial notice of all orders and proclamations under the hand of the President.

MR. LOGAN: Yes, I asked your Honor to take judicial notice of that. I didn't intend to read any part of it.

THE PRESIDENT: Well, Mr. Logan, you understand that although we are prepared to judicially notice the document it does not follow that we will receive it in evidence. Under the statutes in our own countries certain documents may be judicially noticed, documents signed by a Prime Minister or Minister among other things. It does not follow they are always in evidence. They are only in evidence so far as the court decides they are relevant.

MR. LOGAN: Well, I don't want to make any

mistake about this, your Honor, because I am just presenting this evidence on behalf of the defense here at this particular moment.

THE PRESIDENT: If I were trying a case in Australia, these proclamations by, say, the Governor-General of Australia, would be judicially noticed. They would not be tendered in evidence. They would only be referred to; in fact, anything signed by the Governor-General or the Minister of the Crown. I thought we might apply that here. Although an international court is not bound to do it, we might well do that in the case of the President of a country, head of a country represented on this Court. That would shorten the proceedings tremendously. I don't know why we shouldn't do it.

MR. LOGAN: Of course, that judicial notice practice in the United States is practically the same as what you have just mentioned and the effect of it is to avoid the necessity of proving the genuineness of the document. And, as far as its materiality and relevancy is concerned the rules are practically the same. I want to understand just exactly what we are doing here. If the Court will take judicial notice that on such a date the President issued an order and that it was included in this order these various

commodities, if they will accept that as being relevant to the case, that is what I would like to have.

I might state that in so far as the materials mentioned in all these proclamations that Mr. Liebert spent 3 days on his direct testimony alone covering practically all these materials, showing the great necessity for them in building up a war machine. This evidence shows we couldn't get them.

THE PRESIDENT: Perhaps we should all know in the course of the Trial and before the summations just what we are going to apply of those documents which we can judicially notice.

MR. LOGAN: That is why I say I don't want to be under any misapprehension as to exactly what we are doing here.

THE PRESIDENT: You can tell us by numbers or by handing in copies of the documents upon which you intend to rely and which we are prepared to judicially notice if relevant and material. They won't go into the transcript, except the numbers of them, except the description of them. That refers to the proclamations and orders of the President imposing embargoes. We want a record of them at the proper time, now, in the course of the proceedings,

but we do not want them in the transcript. It takes too much time and too much labor. All you have to say as you go along, Mr. Logan, "We invite the Tribunal to take judicial notice of the following document, being --" Just describe them very shortly.

MR. LOGAN: Yes, I will be glad to do it. It will only take a few lines.

We ask the Tribunal to take judicial notice of the release signed by Franklin D. Roosevelt, Commander-in-Chief, on July 2, 1940, being contained in defense document 1400-G-4, showing that the Minister of Export Control has been designated to administer the provisions of the license law of July 2, 1940.

With respect to defense document 1400-I-4 -- I am sorry, I skipped 1400-H-4 -- We ask the Tribunal to take judicial notice of the fact that on July 6, 1940 further proclamation No. 2417 was signed by President Roosevelt, stating that certain other materials have been added to the list requiring licenses for exportation and the document sets forth the list of those materials. This is contained in defense document 1400-H-4.

We ask the Tribunal to take judicial notice of the regulations, dated July 26, 1940, covering the exportation of articles designated in President Roosevelt's proclamation of July 2, 1940. These

regulations define the terms used in the proclamation of July 26, 1940 as are set forth in defense document 1400-I-4.

If the Tribunal please, I don't know whether this is going to work or not. The accused don't know the terms mentioned in this document.

THE PRESIDENT: We are discussing that, Mr. Logan. We are determined to shorten the matter, but, just in what way, is the question we have to decide.

It seems to be now about the details of embargoes which are admitted to have existed, which have been proved by the prosecution evidence and about matters which are referred to by Liebert, and it may be that when you complete tendering all these proclamations and orders relating to embargoes we will admit them as one exhibit. But, they are not going to be read into the transcript. There is clear determination about that. I think the position may be put this way. You can think over it during the recess.

MR. LOGAN: We may have a suggestion, your Honor.

THE PRESIDENT: I will put it this way to you: The prosecution have given evidence of these

embargoes, but, you say, not of the extent of the embargoes. Now you are giving the evidence of their extent. We assist you by judicially noticing the President's proclamations and orders, but these proclamations and orders should be marked in some way, and I suggest as exhibits. They could be marked as one exhibit with letters, but we are determined they won't be read. Your position is fully protected because it will be in the transcript as numbers, as exhibit numbers. Think it over, Mr. Logan.

We will recess for fifteen minutes.

(Whereupon, at 1045, a recess was taken until 1110, after which the proceedings were resumed as follows:)

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

THE PRESIDENT: Mr. Logan.

MR. LOGAN: My suggestion is that each one of these documents be given an exhibit number and that we ask the Court to take judicial notice of the fact that the orders or proclamations were signed by the President on that date and that they cover the following materials, and then read the materials. I think that would shorten it considerably.

THE PRESIDENT: We have that list, but it is too long.

MR. LOGAN: I might say I do not intend to read every item. Where they are classified as a group -- for example, chemicals or irons -- I will just read the title without going into which type of iron or which type of chemicals.

THE PRESIDENT: We will try it for one document and see how it works.

MR. LOGAN: We will get back to the first one, 1400-F-4. We ask that document 1400-F-4 be given an exhibit number.

CLERK OF THE COURT: Defense document 1400-F-4 will receive exhibit number 2801.

(Whereupon, the document above referred

to was marked defense exhibit No. 2801 and received in evidence.)

BRIGADIER QUILLIAM: May it please the Tribunal, we understand that the question of relevancy is in no way being determined in what we are now discussing -- that that is left open.

THE PRESIDENT: I am afraid we must give our decision on that as we proceed. Otherwise we would have to concede what the defense frequently asked us to do, reserve our decisions on relevancy until the end of the case.

BRIGADIER QUILLIAM: May it please your Honor, we object to the admission of this document on the ground that it is irrelevant.

THE PRESIDENT: I understand you object to all of them, Brigadier. We have always understood that you object to all of these proclamations and orders by the President in relation to embargoes.

BRIGADIER QUILLIAM: That is the position, if your Honor pleases.

MR. LOGAN: On the question of relevancy, these documents show the economic warfare that was being conducted against Japan. They also show, in opposition to the prosecution's contention that Japan was building up a war machine, that these materials

which the witness Liebert said were necessary to build up a war machine were not being received by Japan because of these embargoes, and that the United States was the principal country from which Japan received such materials. In fact, the United States was the sole source of supply of many of them; so that in addition to the moral embargoes and the embargo which followed July 2, 1940, it is our contention that this testimony directly controverts that offered by the witness Liebert in so far as the inability of Japan to obtain the materials which he claimed were necessary to build up a war machine are concerned.

THE PRESIDENT: But Japan did build up a war machine and did attack, and therefore must have gotten materials. That seems to be irrelevant.

MR. LOGAN: Well, according to the Indictment, we are accused of conspiring to and actually preparing for agressive warfare. Now, if as early as 1938 and 1939 and shortly after July 2, 1940, we were not getting the materials which they claim were necessary to build up a war machine, although there is considerable question as to the weight of that testimony of Liebert's, then we say these documents all show the extent of the embargoes and the vast variety of commodities -- not only war commodities

but civilian commodities -- which were affected by the embargoes.

THE PRESIDENT: They don't show quantities. They do show that war materials were prevented from leaving the United States for Japan. That is a common ground. But what more can you do?

MR. LOGAN: Of course, they don't show quantities, your Honor, but they do show a total bar of exportation of these goods to Japan, which means that they did not get any at all.

THE PRESIDENT: That is common ground. The prosecution admit it.

MR. LOGAN: I would like to read for your Honor's consideration this statement which was made by Brigadier Quilliam, and tie that up with Liebert's testimony, that these materials were necessary to build up a war machine -- these very materials contained in these documents.

THE PRESIDENT: Well, I think it is sufficient to admit that America deprived you of all materials from the United States and that they did so because you were waging a war against China.

MR. LOGAN: The United States does not claim that, your Honor; they claim they were withholding the sending of these materials for reasons of the national defense of the United States.

THE PRESIDENT: Now, it was you that suggested that you wanted the arms for use against China. You could assign no other reason for getting them.

MR. LOGAN: There was a war going on with China at that time and we have admitted that part

of the importations received were being used for that purpose, but that a great part of it was being used for the economy of the Japanese people.

May I read this statement made by Brigadier Quilliam? Pages 8,183 and 8,184 of the record:

"It is, of course, well known that modern warfare requires the use of vast quantities of equipment of all kinds, and it is obvious that Japan's attack against Pearl Harbor, Malaya, and other places from December 1941 onwards must have been preceded by large scale industrial preparations. The evidence of Mr. Liebert will show the comprehensive nature of those preparations during the years prior to 1942, how they affected Japan's whole economy and every aspect of the life and activities of its people, and how they were directed to the object of achieving by the year 1941 not only the maximum production of the equipment and supplies necessary to enable her aggressive plans to be executed, but also the maximum potential for future maximum production.

THE PRESIDENT: I wouldn't read any more of it, Mr. Logan.

MR. LOGAN: I don't intend to. Bearing in mind that Liebert testified to the whole gamut of materials which he claimed necessary to build up

of the importations received were being used for that purpose, but that a great part of it was being used for the economy of the Japanese people.

May I read this statement made by Brigadier Quilliam? Pages 8,183 and 8,184 of the record:

"It is, of course, well known that modern warfare requires the use of vast quantities of equipment of all kinds, and it is obvious that Japan's attack against Pearl Harbor, Malaya, and other places from December 1941 onwards must have been preceded by large scale industrial preparations. The evidence of Mr. Liebert will show the comprehensive nature of those preparations during the years prior to 1942, how they affected Japan's whole economy and every aspect of the life and activities of its people, and how they were directed to the object of achieving by the year 1941 not only the maximum production of the equipment and supplies necessary to enable her aggressive plans to be executed, but also the maximum potential for future maximum production.

THE PRESIDENT: I wouldn't read any more of it, Mr. Logan.

MR. LOGAN: I don't intend to. Bearing in mind that Liebert testified to the whole gamut of materials which he claimed necessary to build up

the war machine, this evidence which lists these very self-same items shows that Japan was not receiving from the United States at this time or prior thereto the very materials which prosecution claims was necessary to build up a war machine and the United States was the largest exporter of these materials to Japan, and in many instances the sole exporter. In addition to that it also, of course, goes, as I said, to the economic warfare and the defense of these accused that this economic strangulation of all these vital materials not only for the war she was engaged in with China but also for civilian consumption which resulted in Japan's being driven as a last resort for her own self-preservation and self-defense to get involved in the Pacific war.

THE PRESIDENT: We know your contention; we know the contention of the prosecution. It is common ground that the League of Nations declared the war against China to be an aggressive war and thereby imposed obligations on the United States. We know the respective contentions very well, Mr. Logan. I could see no objection to your proving just what the embargo is against, but you are not satisfied to do that. You want to go on giving a lot of documents, wasting our time quite unnecessarily.

MR. LOGAN: I thought the suggestion I made would shorten it considerably.

THE PRESIDENT: The prosecution gave evidence of the embargo's existence. The only thing that has not been established is the exact nature of the--

MR. LOGAN: That is right.

THE PRESIDENT: --war materials that were not allowed to be exported to Japan.

MR. LOGAN: And civilian materials too.

THE PRESIDENT: It is common ground that the embargo was against everything that could be used in war but did include things that could be used for civilian purposes as well as for war purposes. If you are allowed to state just what these goods were -- there is only a short category -- that would save a lot of trouble. It would save all this argument. The question of its relevancy is contested, of course.

MR. LOGAN: That is all I intend to read, your Honor; just the title of it, the date of it, and the subjects covered.

THE PRESIDENT: Brigadier Quilliam.

BRIGADIER QUILLIAM: May it please the Tribunal with reference to the question of relevancy, which I understand the Tribunal is going to deal with now, I desire to make one or two comments. The evidence of

Mr. Liebert in this respect has, I suggest, been totally misconstrued by Mr. Logan. His evidence paid full account to the difficulties of getting certain goods from America and other countries. May I remind the Tribunal that a great part of his evidence deals with the desperate efforts made by Japan to get those things in other ways? His evidence showed and other evidence has shown the efforts made to exploit other countries in order to get these goods. The suggestion that this kind of evidence answers anything of the evidence given by Mr. Liebert is quite unsound.

As regards the so-called economic strangulation aspect, we submit, as we have submitted previously, that what was done by the United States could afford no justification to Japan for starting a war. As I pointed out yesterday, the United States was obviously actuated by more than one motive, by several motives.

THE PRESIDENT: But she was not bound by the League of Nations covenant, of course. That declaration by the League may have imposed moral obligations on the United States under the Pact of Paris and certainly gave her rights.

BRIGADIER QUILLIAM: The point I wish to make, those obligations under the Pact of Paris extended not only to the East but to Europe. It is a complete

misstatement, we suggest, to say that all these embargoes were directed merely against Japan. The United States was properly concerned with the aggression that was taking place in Europe. She was properly concerned with the threat to her own national security that all this aggression was bringing about. We therefore say that it is quite irrelevant to the issues in this case to point to what is called "economic strangulation" as justifying what my friend somewhat euphemistically called "becoming involved in the Pacific war."

THE PRESIDENT: You see the difficulty we are in today. We have a Court of eight. We are faced with a very major issue and we are inclined to be as liberal as possible for the time being in receiving evidence, subject to rejection later, of course. When we have a full bench it may be that they will not be inclined to act on some of the evidence we would otherwise receive here. We are inclined to receive this evidence you are tendering but we expect you to put it before us in the briefest form and we may delay our decision on it until we have a full bench which will be before the end of this month. We are dealing with the major issue of self-defense. Although a majority of us may have a certain view about the

relevancy of this evidence we feel that we should refrain from stating that view or giving effect to it until we are all here.

Could you proceed with some other matters and withhold this proclamation material to be heard before all the Judges?

MR. LOGAN: I have it all arranged chronologically, your Honor. I would like to present it that way.

THE PRESIDENT: We had better receive it subject to the objection of the prosecution but without giving our decision.

MR. LOGAN: All right. I shall read from exhibit 2801, proclamation signed by President Roosevelt, July 2, 1940. This is a proclamation prohibiting the export of certain articles and materials unless licenses are obtained.

THE PRESIDENT: It is understood that these documents are admitted tentatively only.

MR. LOGAN: Yes. (Reading):

"1. Arms, ammunition, and implements of war as defined in my Proclamation No. 2237, of May 1, 1937.

"2. The following basic materials and products containing the same:

"Aluminum, antimony, asbestos, chromium,

cotton linters, flax, graphite, hides, industrial diamonds, manganese, magnesium, Manila fiber, mercury, mica, molybdenum, optical glass, platinum group metals, quartz crystals, quinine, rubber, silk, tin, toluol, tungsten, vanadium, wool;" chemicals as listed in the document, and the following products:

"Aircraft parts, equipment, and accessories other than those listed in my proclamation of May 1, 1937; armor plate, other than that listed in my proclamation of May 1, 1937; glass, nonshatterable or bullet proof; plastics, optically clear; optical elements for fire control instruments, aircraft instruments, etc."; and machine tools as set forth in the document.

I ask that document 1400-G-4 be given an exhibit number.

CLERK OF THE COURT: Defense document 1400-G-4 will receive exhibit No. 2801-A.

(Whereupon, the document above referred to was marked defense exhibit No. 2801-A, and received in evidence.)

MR. LOGAN: I shall summarize that document by saying that exhibit 2801-A shows that on July 2, 1940 the President signed House of Representatives bill and issued military order as Commander in

Chief designating Lieutenant Colonel Russell L. Maxwell, United States Army, as administrator of Export Control to administer the bill of July 2, 1940.

I ask that defense document 1400-H-4 be given an exhibit number.

CLERK OF THE COURT: Defense document 1400-H-4 will receive exhibit No. 2801-B.

(Whereupon, the document above referred to was marked defense exhibit No. 2801-B and received in evidence.)

MR. LOGAN: Exhibit 2801-B is a proclamation signed by President Roosevelt July 26, 1940 and the following products were added to the embargo list: petroluem products, tetraethyl lead, iron and steel scrap.

I ask that defense document 1400-I-4 be given an exhibit number.

CLERK OF THE COURT: Defense document 1400-I-4 will receive exhibit No. 2801-C.

(Whereupon, the document above referred to was marked defense exhibit No. 2801-C and received in evidence.)

MR. LOGAN: Exhibit 2801-C is a regulation signed by President Franklin D. Roosevelt July 26, 1940 wherein he defines in greater detail petroleum

products, tetraethyl lead, and the iron and steel scrap as set forth in his proclamation of July 26, 1940.

We now offer in evidence defense document 401-B-5, corrected, being an excerpt from "Peace and War." This document shows that Ambassador HORINOUCHI vigorously protested that the Export Control Act of July 2, 1940, under which licenses were refused beginning in August 1940, was considered an unfriendly act by Japan.

THE PRESIDENT: Brigadier Quilliam.

BRIGADIER QUILLIAM: May it please the Tribunal, I am not clear whether the Tribunal proposes to treat a document like this in the same way as the other documents that have just been put in. In our submission it is irrelevant.

THE PRESIDENT: We are dealing only with the President's proclamations and orders. This is not one. I think we will have to give our decision on this as we have previously. We have dealt with these "Peace and War" things.

BRIGADIER QUILLIAM: In addition to this being irrelevant we suggest that this is immaterial, but as it appears to us this must stand or fall with those other documents.

THE PRESIDENT: This is not on the same level as a Presidential act or proclamation. We are not reserving our decision on all documents bearing on this particular issue of defense; that is not our intention.

BRIGADIER QUILLIAM: I did not mean, your Honor, to suggest that it was on the level of a proclamation. What I meant was that relevancy of this document is challenged on the same grounds as the proclamations. If the proclamations--

THE PRESIDENT: I think that probably we will decide now on whether this particular document should be admitted or rejected. We will not reserve that for the consideration of the other three; but didn't we have a similar document yesterday?

BRIGADIER QUILLIAM: My attention is directed, your Honor, to defense document 401 (42) which was rejected yesterday afternoon.

THE PRESIDENT: How do you distinguish, Mr. Logan?

MR. LOGAN: I had not realized, your Honor; I think both of these refer to the same protest. The other one is a much longer document but refers to the same thing so I guess the ruling of the Court yesterday will apply to this document.

THE PRESIDENT: What do you do, Mr. Logan?

MR. LOGAN: I suggest that this one should be admitted, your Honor, on the ground that here is a direct protest by the Japanese ambassador to the very actions that the United States was taking. I think it all goes to the fact that Japan was -- it shows the expression by a representative, duly representative authority, of Japan that they vigorously protested the actions that were being taken by the United States at that time. I think it all goes to our defense. It must be remembered that Japan's action taken in many instances was based on the reaction to the actions that were taken by other A, B, C, and D powers.

THE PRESIDENT: I cannot recall the exact terms of the document rejected yesterday; however, we will adjourn until half-past one.

(Whereupon, at 1205, a recess was taken.)

Spratt & Duda

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. Logan.

MR. LOGAN: I don't want the Tribunal to be under a misapprehension. That last document we offered is part of defense document 401-42, which was previously rejected.

THE PRESIDENT: The objection is upheld and the document rejected.

MR. LOGAN: We have a witness from yesterday's section. I would like to call him now, UEMURA, Kogaro, defense document 1924.

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K O G O R O U E M U R A, called as a witness on behalf of the defense, being first duly sworn, testified through Japanese interpreters as follows:

DIRECT EXAMINATION

BY MR. LOGAN:

Q Will you give the Tribunal your full name and address?

A My name is UEMURA, Kogoro. My address, Tokyo City, Shibuya Ku, Sendagaya, 3 Chome 496.

Q Will you examine defense document 1924 and the errata sheet attached thereto, and tell us if that is your affidavit?

A Yes, it is my affidavit.

Q Are the statements contained therein accurate and true?

A Yes, it is accurate.

MR. LOGAN: I offer in evidence defense document 1924 and the errata sheet attached to it.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1924 will receive exhibit No. 2802.

(Whereupon, the document above referred to was marked defense exhibit No. 2802 and received in evidence.)

MR. LOGAN: I shall now read exhibit 2802, affidavit of UEMURA, Kogoro.

"I, UEMURA, Kogoro, immediately after being graduated from the Law College of the Imperial University in 1918, entered the service of the Commerce Bureau of the Agriculture and Commerce Ministry, and successively filled the posts of factory supervisor, commissioner of the Patent Bureau and private

secretary of the Minister of Agriculture and Commerce.

"In 1925, when the Commerce and Industry Ministry was separated from the Agriculture and Commerce Ministry, I was attached to the Engineering Bureau, and concurrently held the posts of commissioner and secretary of Commerce and Industry.

"In 1925 I went abroad to Europe and America to investigate the industrial conditions there and returned in 1926.

"In 1927, when the Bureau of National Resources was established in the Cabinet, I was attached thereto and occupied the post of Chief of the Research and Investigation Section. Later, I was promoted to Chief of the General Affairs Section, and then to Chief of the Executive Department.

"In October, 1937, when the Planning Board was created, I was appointed Chief of the Research and Investigation Department, and in July, 1938, became the Chief of the Industry Department. In 1939, when the structure of the Planning Board was reformed, I became the Chief of the 4th Section of the Planning Board with industrial affairs in its charge. In January,1940, I became the Vice-Director of the

Planning Board, and resigned on August 13, 1940.

"Circumstances connected with the Establishment of the Planning Board. It was made clear by various inquiries and reports that, in view of the experiences in World War I, every European and American country is striving after the war towards research and investigation of industrial and the general mobilizations. In our country, too, the Munitions Bureau was established in the Cabinet a year after I entered the government service, that is, in 1919, under the jurisdiction of which were placed the enforcement of the Munitions Industry Mobilization Law enacted in 1916, and other affairs concerning the preparation for the general mobilization in industry, communication, etc. Later on, this bureau was merged with the Statistics Bureau of the Cabinet to form the Census Bureau. But later on this, too, was abolished and the affairs in its charge were allocated to various ministries.

"In 1927, it was deemed necessary to conduct fundamental investigations of not only the munitions mobilization, but also the promotion of general industries and national wealth, and formulate plans based on this. Therefore, for the planning of controlled application of the resources in general and

conducting investigations, the National Resources Bureau was established and put under the jurisdiction of the local Minister. The business of the National Resources Bureau was divided into three groups:

"(1) to conduct investigations necessary for the control of national resources;

"(2) To frame plans for the controlled application of national resources and preparation of control laws, etc. relative thereto;

"(3) matters concerning a domestic establishment relative to the above, for instance, measures for complementing the shortage of national resources.

"The meaning of the last-mentioned 'matters concerning a domestic establishment' was to frame some specific plans which were deemed necessary for an increase of the national strength, and refer them to the ministry concerned, recommending their materialization.

"However, as the National Resources Bureau was a minor bureau attached to the Cabinet without any specific authority over any ministry, the ministry would not do anything more than merely listen to the plan for its information in case such was referred

thereto by the Bureau.

"Thus, nothing could be accomplished in this line except a partial standardization of industrial technical terms then used in Japan. On the other hand, the investigations of the national resources made gradual progress after passage of the National Resources Investigation Law in 1929. About the plan for the control of national resources, the representatives of the Army, Navy, and other departments concerned met in a conference, and the plan including the rough estimate of the wartime demand submitted by the Army and Navy Departments has been drafted since 1929 or so, but it was nothing more than an extremely rough, so-called desk plan.

"After 1931, as the international situation gradually worsened, the remarkable economic depression in Japan centered in the rural communities broke out and consequently the social and political insecurities became aggravated during the Cabinets of WAKATSUKI, INUKAI, SAITO, and OKADA. As a result the government deeply felt it necessary that the Cabinet should have a department or bureau directly attached to it to investigate thoroughly the important national policies, and at the same time to promote the said national policies by unifying the opinions of each department,

so that the government might cope with or overcome such situations.

"For this purpose the Cabinet Investigation Bureau was established. This was in May, 1935, that is, during the OKADA Cabinet. After this Investigation Bureau was set up, matters concerning the political and economic measures which the National Resources Bureau was unable to carry out came in essence under the jurisdiction of this Bureau. However, this Investigation Bureau was reformed into the Planning Bureau in May, 1937.

"As soon as the North China Incident broke out in July, 1937, the general public felt uneasy about the prospect, and the tendency to import cotton, etc. in speculation became more and more conspicuous. If this matter were to be left to take its own course there might arise a remarkable deficit in the exchange fund which had been in deficit heretofore, and the maintenance of exchange rate might become difficult. Fear increased. Therefore, the Finance Department established a commission and subcommissions for each respective item to regulate the import and made them regulate the imports upon drafting the import plan. But, contrary to the expectations, the incident expanded more and more, and the government

keenly felt the necessity of establishing synthetic plans and measures throughout all departments, in order to cope with this situation. A proposal to establish a larger scale office by merging the existing Pl anning Bureau and the National Resources Bureau was brought forward. In so far as the executive officials of the then National Resources Bureau were concerned, they simply considered that by simply increasing the personnel of the bureau the needs would be met. However, the two offices were merged in accordance with the government's views and in October, 1937, the Planning Board was established.

"Functions of the Planning Board. The powers of the Planning Board were essentially the same as those of the National Resources Bureau and Planning Bureau combined for the reason that the Planning Board was instituted by the merger of those two offices as stated above. Its major powers were to plan out the matters concerning the development and application of the synthetic national strength as the premier's staff; to investigate any reports that the premier would tender and all matters that were presented by each ministry; to state opinions at cabinet conferences upon such reports and matters;

and to regulate and unify all the affairs of each ministry in regard to certain matters. However, the Planning Board was to the end the premier's staff, and it had no authority to give orders to the various ministers or to enforce anything. Furthermore, it had also no function whatsoever to execute such. The national policies were all decided at cabinet conferences and, consequently, every ministry brought it in operation according to its jurisdiction.

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"The Plan for Expanding the Production Potential.

"The establishment of the plan for expanding the production potential was another important task assigned to the Planning Board among the matters concerning commodities. This plan for expanding the production potential was taken up later than that for the mobilization of materials. At that time, the need of military expansion was strongly advocated as an unavoidable measure to cope with the prolongation and extension of the China Incident, and the aggravation of the international situation. Primarily, however, the development of our basic industries was markedly lagging behind the world powers', so the necessity of all-out development of national resources, by means of expansion of the basic industries, was acutely felt by all.

"It was July of the 13th year of Showa (1938) when I was made the Chief of the Industrial Section that I first occupied myself with the plan for expanding of the production potential. At that time the draft of each industry placed under each planning scheme was almost completed. These drafts had been under study since the time of the Planning Bureau and I was told that the Industrial Section was continuing

these studies. When I took the post of the Chief of the Industrial Section I found that the five-year plan for Manchukuo had already been begun in the 12th year (1937).

"As it was considered necessary to set up a year plan in Japan, too, we at last came to establish the plan based upon the synthetic readjustment of the drafts already compiled. At first we modeled ours also along the lines of a five-year plan. But as we had to draft a collective plan in coordination with that of Manchukuo and in order to make both terminal periods correspond so that we could start our second plan together with Manchukuo, we had in our case to adopt a four-year plan. On the other hand, this point was most appropriate in view of the rapidly changing economic conditions of the time.

"It was in January of the 14th year of Showa (1939) that the cabinet positively decided on the matter, so that only three months remained of the 13th fiscal year. Accordingly the plan became substantially three-year one. Not everything was to be embraced by the plan, of course. It was intended as stated before, to establish a second plan after the expiration of the first."

We will skip a sentence.

"The duty of the Planning Board was to adjust the demands of the Army and Navy Departments, as well as those of other departments. Candidly speaking, the primary reason why the Planning Board established the plan for the expansion of the productive potential was to aspire to a well-balanced development of the industries of our country. So the Planning Board has always endeavored its utmost to secure the materials allocated for the expansion of productive potential. However, on account of increasing demand for war materials caused by the extension of China Incident, the allocations of the materials for the expansion of capacity productive potential were not carried out as expected by the Planning Board. So the plan for the expansion of the productive potential did not progress as it was planned.

"For what we call the fixed year for planning, the fiscal year is adopted as a matter of course, in view of its relation to the budget and the yearly material mobilization plan, etc. Therefore, the last year of the four-year plan of the productive potentials for the expansion commenced in the month of April, of the 16th year of Showa (1941) and finished on the last day of March of the 17th year of Showa (1942). I should think that this plan was

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adequately studied at the Army Department. But I have no notion at all of the existence of a five-year plan for manufacture of the war materials of the War Ministry dated June 23, 1937 (the 12th year of Showa), nor that of a five-year plan for the important industries, dated May 29, of the same year, both of which are now being brought in issue at the Tokyo Military Tribunal for the Far East.

"The National Mobilization Law.

"One of the important items with which the Planning Board was concerned was the National Mobilization Law. The National Mobilization Law was prescribed at a cabinet council meeting on 9 November 1937, after the outbreak of the China Incident, was approved by the 73rd Session, and was brought into force on and after 5 May 1938.

"Mr. TAKI, Masao, President of the Planning Board at that time, was ordered by the Prime Minister, KONOE, after the decision of the cabinet meeting regarding its establishment, to the effect that the Planning Board should devise the National Mobilization Law cooperating with other departments, and take charge of its drafting after frequent negotiations with the other departments concerned. The bill thus drafted was further approved formally by the cabinet council

meeting, and was presented to the Diet under the joint signatures of each minister, according to my recollection.

"As a law regarding the general mobilization at the time, the Ammunition Industries Mobilization Law passed in 1918 was still valid. It included the provisions applicable to a considerably wide scope to the mining industry and to communications. Thus, in order to correspond with the development of the China Incident, this Ammunition Industries Mobilization Law was applied for the time being, under Law No. 88, dated 10 September 1937, and there was further established an Imperial decree, based upon the same law, which is called the Industry and Business Control Ordinance, on 25 September to control some munition workds. Besides, in the 73rd session of the Imperial Diet at that time, a great number of extraordinary measures was enacted and put into effect, such as remedial ones for the future change of conditions anticipated with the occurrence of the China Incident. The China Incident, however, expanded more and more until it was clearly indicated that it would be prolonged. International relations too became so serious as to bring about an unforeseen state of affairs. In order to take complete action to cope with such a situation, the Ammunition Industries

Mobilization Law enacted some 20 years previously and the separate temporary measures were by no means sufficient. Besides, Japan was backward in preparation for national mobilization as compared with other countries. So, it was decided to enact speedily the National Mobilization Law.

"Available at that time were the laws and regulations of European and American countries during the time of World War I, such as Britain's uniform National Defence Law, and subsequent legislation, such as Italy's and Czechoslovakia's National Mobilization Law, and the U. S. National Mobilization Law Bill (Bill 5,539, introduced by the Lower House in the 74th Session of Congress, in 1935, and then under the consideration of the Upper House) to which we referred for our drafting of the Mobilization Law. I remember that Czechoslovakia's Mobilization Law and also the U. S. Mobilization Law Bill were so perfect as to furnish us with much information.

"The National Mobilization Law of Japan thus enacted went into effect in May 1938, and the Munitions Industry Mobilization Law was abolished at the same time.

"Later on, in conformity to this National Mobilization Law were issued a number of Imperial

Ordinances which were proposed and executed by each of the competent ministries, but the Planning Board, as previously stated, has absolutely no authority to execute the policies of the government."

Signed, "UEMURA, Kogoro."

You may examine.

THE PRESIDENT: Mr. Williams.

MR. G. WILLIAMS: If the Tribunal please, I have a couple of additional questions on direct examination.

THE PRESIDENT: On behalf of--

MR. G. WILLIAMS: On behalf of the defendant HOSHINO, sir.

DIRECT EXAMINATION (Continued)

BY MR. G. WILLIAMS:

Q Witness, you testified that the President of the Planning Board acted as part of the Premier's staff. Would you further elaborate briefly on the relation between the Premier and the President of the Planning Board?

A The President of the Planning Board is a subordinate officer to the Premier. This is specifically stated in the official organization law. The President of the Planning Board is under the jurisdiction of the Premier. Furthermore, under the

official organization law, the Planning Board was entitled to express its views or opinions with regard to the various comprehensive plans set up by the various individual ministries and also to express its views in these matters which were brought up before cabinet meetings, and similarly it was permitted to express views with regard to matters pertaining to the budget which had connection with such matters. But at all times the Planning Board was obligated to speak or express its views through the Premier and not directly.

Q Why did you resign from the Planning Board in August of 1940?

A The reason that I resigned was that Mr. HOSHINO, who was the President of the Planning Board at that time, had expressed his wish that henceforth the Planning Board must be operated under a close collaboration between the military, the officials, and the civilians, together. Accordingly, he felt that the vice director of such a board should be selected from an influential person from business circles, not from official circles. Therefore, I resigned.

Q Who replaced you, Mr. UEMURA?

A Mr. OBATA, Tadayoshi, from the SUMITOMO firm.

MR. G. WILLIAMS: You may cross-examine.

THE PRESIDENT: Brigadier Quilliam.

BRIGADIER QUILLIAM: May it please the Tribunal, there will be no cross-examination.

MR. LOGAN: May the witness be released on the usual terms?

THE PRESIDENT: He is released accordingly.

(Whereupon, the witness was excused.)

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MR. LOGAN: May the witness be released on the usual terms?

THE PRESIDENT: He is released accordingly.

(Whereupon, the witness was excused.)

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MR. LOGAN: Defense document 1400-J-4 is offered in evidence. This is a protest dated August 3, 1940 issued by the Japanese Embassy to the Department of State against the virtual embargo of July 2, 1940.

THE PRESIDENT: Brigadier Quilliam.

BRIGADIER QUILLIAM: May it please the Tribunal, we submit that this document is covered by the ruling with respect to the last document offered in this section which was rejected.

THE PRESIDENT: Mr. Logan.

MR. LOGAN: In view of subsequent events, your Honor, I think it is incumbent upon the defense to show that they took exception to these actions of the United States, that Japan took exception to those actions and that they certainly did not acquiesce in them.

I only wish to read the last 2 paragraphs, your Honor.

THE PRESIDENT: Mr. Logan, can you answer whether Germany was included among the nations to whom gasoline could be sent?

MR. LOGAN: I believe that was barred at the same time, your Honor, but I would have to look back at my documents to ascertain that definitely.

Brigadier Quilliam says that it is quite clear. Brigadier Quilliam says that it is so, Germany was barred.

THE PRESIDENT: By a majority the Court upholds the objection and rejects the document.

MR. LOGAN: I shall omit the next document, which was an answer to the previous protest.

We offer in evidence defense document 1874, being an extract from a telegram dated September 12, 1940 from Ambassador Grew to Secretary Hull.

THE PRESIDENT: Mr. Comyns Carr.

MR. COMYNS CARR: If it please the Tribunal, the prosecution objects to this document which is nothing from beginning to end except the opinion entertained by Mr. Grew at that time.

MR. LOGAN: If the Tribunal please, this is an official document, an extract of a telegram sent by Ambassador Grew to Secretary of State. It is an official announcement of the Ambassador to his superior. It certainly is entitled to be admitted in this case in view of the many, many telegrams which were introduced by the prosecution of similar nature. It is a warning of which I think the defense should be entitled to introduce in this case.

MR. COMYNS CARR: Your Honor, no telegrams

of a similar nature were introduced by the prosecution. Telegrams passing between Japanese Ambassadors and Ministers were no doubt introduced even if they did contain opinion, but as between United States or Allied Ambassadors and their Ministers only by way of proof of facts.

MR. LOGAN: If the Tribunal please --

MR. COMYNS CARR: One minute, I haven't finished.

MR. LOGAN: It is my understanding that once the prosecution made an objection they wouldn't have two chances to come back again.

MR. COMYNS CARR: It comes rather oddly from my friend who has argued the same point over and over again on almost every objection, but in this case, I submit, I am particularly entitled to intervene to correct a misstatement of fact.

MR. LOGAN: There is no misstatement.

THE PRESIDENT: We said yesterday we wouldn't allow Washington officials to form our opinions as to what the Japanese were likely to do as the result of the embargo. This is exactly the same, is it not?

MR. LOGAN: This is proof of fact that the United States was warned as to the probable consequences.

THE PRESIDENT: That was everybody's guess.

Everybody was entitled to one. The most particular virtue attached to his.

MR. LOGAN: The virtue attached to it, your Honor, is that Ambassador Grew is on the spot here, and knew what was going on and that it was part of his duties to convey his impressions and interpretations of the affairs that were taking place in Japan at that time and convey them to his Government.

THE PRESIDENT: By a majority the Court upholds the objection and rejects the document.

MR. LOGAN: We offer in evidence defense document 1400-L-4.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1400-L-4 will received exhibit No. 2803.

(Whereupon, the document above referred to was marked defense exhibit No. 2803 and received in evidence.)

THE PRESIDENT: This is to be admitted tentatively in view of what we said this morning.

MR. LOGAN: This proclamation was signed by President Roosevelt September 12, 1940. The list of commodities included in the embargo was as follows:

"1. Equipment which can be used, or adopted

to use, for the production of aviation motor fuel from petroleum, petroleum products, hydrocarbons, or hydrocarbon mixtures, by processes involving chemical change.

"Equipment which can be used, or adopted to use, for the production of tetraethyl lead; and any plans useful in the design, construction, or operation of any such equipment, or in connection with any such processes.

"Plans, specifications, and other documents containing descriptive or technical information setting forth the design or construction of aircraft or aircraft engines."

Defense document 1400-M-4 which is a press release issued by the Federal Loan Agency September 25, 1940 is offered in evidence. This release demonstrates the economic assistance which was granted to China by the United States at a time when China and Japan were engaged in hostilities.

THE PRESIDENT: Brigadier Quilliam.

BRIGADIER QUILLIAM: If it please the Tribunal, we contend that this document comes within the principle of the documents, which have been rejected, dealing with the embargo. We claim that it is irrelevant to the issues in this case to bring in evidence relating to assistance given to China by America.

THE PRESIDENT: Any argument on this, Mr. Logan?

MR. LOGAN: Well, I think it is almost self-evident that this should be admitted. It certainly is very material to the defense that it is economic, and this borders somewhat on the military sentiment of Japan. It is certainly material to show the actions of other nations, assistance rendered to China, which at that time was engaged in a war with Japan, especially when that aid was rendered by a neutral nation to one of two belligerents. Such actions would certainly tend toward the Japanese regarding it as a provocation of war.

THE PRESIDENT: By a majority, the Court upholds the objection and rejects the document.

MR. LOGAN: We now offer defense document 1400-N-4. This is a proclamation issued by the White

THE PRESIDENT: Brigadier Quilliam.

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House, September 25, 1940.

THE PRESIDENT: Tentatively admitted.

CLERK OF THE COURT: Defense document 1400-N-4 will receive exhibit No. 2804.

(Whereupon, the document above referred to was marked defense exhibit No. 2804 and received in evidence.)

MR. LOGAN: This is exhibit 2804 and refers to the control, effective October 15, 1940, of the exportation of iron and steel scrap, the exportation of No. 1 heavy melting steel scrap, and all grades of iron and steel scrap. It also shows that effective October 16, 1940, "licenses will be issued to permit shipments to the countries of the Western Hemisphere and Great Britain only."

We now offer defense document 1400-0-4.

THE PRESIDENT: Tentatively admitted.

CLERK OF THE COURT: Defense document 1400-0-4 will receive exhibit No. 2805.

(Whereupon, the document above referred to was marked defense exhibit No. 2805 and received in evidence.)

MR. LOGAN: This is a regulation signed by President Roosevelt on September 30, 1940, defining the use of the term "iron and steel scrap" as

contained in the regulation of July 26, 1940, to mean "all iron and steel scrap of every kind and description, classified or unclassified."

We now offer in evidence defense document 1400-P-4. On October 7, 1940, the Japanese Embassy wrote to the Department of State complaining about the regulation dated September 30, 1940, prohibiting the exportation of iron and steel scrap, contesting the American position that the measure was motivated in the interest of national defense and further stating that the regulations must be regarded as an unfriendly act.

THE PRESIDENT: Brigadier Quilliam.

BRIGADIER QUILLIAM: If it please the Tribunal, Mr. Logan's explanation has shown the Tribunal that this is merely another protest against the United States exportation regulation, and we submit it should be rejected on the same grounds as caused the rejection of the other documents.

MR. LOGAN: I might say, if the Tribunal please, that it seems to the defense that a protest such as this is clearly admissible, not only on the grounds of the affirmative defense that a war was conducted in self defense, but it is also closely allied and connected with the diplomatic negotiations,

and it also --

THE PRESIDENT: It is admitted that you did not accept these embargoes without protest. That appears in the negotiations. There is ample evidence of that. That is all you need. Even if relevant and material, it is surplusage, it is accumulative.

MR. LOGAN: I don't recall any other evidence in the case at the present time, your Honor, where it was brought to the United States' attention of the Japanese regarding the imposition of these embargoes as an unfriendly action.

THE PRESIDENT: By a majority, the Court upholds the objection and rejects the document.

MR. LOGAN: On October 8, 1940, the Japanese Ambassador handed an undated note to the Secretary of State wherein he pointed out that the regulation of September 30, 1940, restricting the granting of licenses for shipment of iron and steel scrap for exportation to the Western Hemisphere and Great Britain was causing a widespread depression in Japan, that it was motivated by a desire to bring pressure on Japan and expressing fear that it would be a forerunner to severance of economic relations between Japan and the United States, and that future relations

between those two countries would be unpredictable. This message is set forth in defense document 1400-Q-4 which is offered in evidence.

THE PRESIDENT: Brigadier Quilliam.

BRIGADIER QUILLIAM: May it please the Tribunal, this document is almost precisely the same as the document which has just been rejected. It deals with the same subject matter, the same article. I regret that I was unable to intervene earlier because I could not see what Mr. Logan was doing, what document he was reading.

MR. LOGAN: They are entirely two different documents, your Honor. The first one is a letter that was sent, and this is entirely different. It is an undated statement which was handed at the same time the previous document was given to the Secretary of State.

THE PRESIDENT: Another protest or something of the kind. By a majority, the objection is upheld and the document rejected.

MR. LOGAN: As evidence of further tightening of the economic pressure of Japan, we offer a press release issued by the White House on October 15, 1940, defense document 1400-R-4.

THE PRESIDENT: Brigadier Quilliam.

BRIGADIER QUILLIAM: May it please the Tribunal, this is a reply to protests about the exportation regulations, and we submit, therefore, that it must fall under the principle laid down by the Tribunal. We ask for its rejection.

MR. LOGAN: I don't know whether I understood the Brigadier correctly. This is not a reply to the protests, as I see it.

BRIGADIER QUILLIAM: No, I regret, your Honor, it is not a reply. It is the same kind of thing as we have been dealing with before, namely, the export regulations.

THE PRESIDENT: Well, should it be admitted tentatively, Brigadier? That is what I want to know.

BRIGADIER QUILLIAM: If it please the Tribunal, this is not a proclamation.

THE PRESIDENT: No, it isn't.

BRIGADIER QUILLIAM: And the next document to be submitted, which is the one I confused it with, is the reply to -- is a protest about this.

THE PRESIDENT: We admitted a press release some minutes ago, where it really contains some presidential act. It should go in tentatively.

MR. LOGAN: This will be difficult to summarize, if the Tribunal please. I think it would be easier to read it. We have a translation of it.

THE CLERK: Defense Document 1400-R-4 will receive Exhibit No. 2806.

(Whereupon Defense Document 1400-R-4 was marked Exhibit No. 2806 and admitted in evidence.)

MR. LOGAN: (reading) "Press Release

Issued by the White House on October 15, 1940.

"The President on October 10 approved an act which confers on him authority to requisition arms, ammunition, implements of war, machine tools, and other articles and meterials which are needed for the national defense.

"Under the Neutrality Acts of 1935, 1936, 1937, and 1939, and under the Export Control Act of July 2, 1940, certain articles and materials needed for the national defense have been subject to the export-licensing system. Since the passage of the last-named act, many applications for licenses have been refused as a result of decisions by the Administrator of Export Control that the proposed exportation would be contrary to the interests of the national defense. The articles or materials for which export licenses have been refused have in many cases already been sold and the title has passed to a foreign purchaser. It has been found that, in some of these cases, purchasers did not desire to sell the article or material in the United States or, because they were acting in a representative capacity, they were not legally in a position to do so. This situation has been particularly acute in the case of some exportations of machine tools.

A great many of these tools for which export licenses have been refused are especially needed to meet national-defense requirements.

"The President on October 15 issued an Executive order directing the Secretary of War and the Secretary of the Navy, acting jointly through the agency of the Army and Navy Munitions Board, to determine the necessity for the requisitioning of any equipment, munitions, or machinery tools, materials, or supplies necessary for the manufacture of munitions, or the servicing, or operation of facilities for the national defense, and to determine whether in any case it is in the public interest to sell, or otherwise dispose of, any of the articles and materials so requisitioned. The administration of the other provisions of the act has been vested in the Administrator of Export Control.

"The President at the same time issued the necessary regulations for the carrying out of his Executive order.

"As a result of his approval of this act and the issuance of this Executive order and these regulations, the President is assured the use of the critical articles and materials required in the national-defense program which might otherwise

be unobtainable."

On October 23, 1940, the Department of State answered the note of October 7, 1940, from the Japanese Embassy, setting forth the reliance on national defense as the reason for the restrictions on the export of iron and steel scrap. This is defense document 1400-S-4, which is now offered in evidence.

THE PRESIDENT: Brigadier Quilliam.

BRIGADIER QUILLIAM: May it please the Tribunal, this is the reply to defense document 1400-P-4 which was rejected a moment or two ago, and we submit this should be rejected also.

THE PRESIDENT: Obviously this must be rejected.

MR. LOGAN: On November 19, 1940, the Assistant Secretary of State issued a memorandum setting forth the principal points raised by the Japanese Charge d'Affaires in an interview had with him. These are set forth in defense document 1400-T-4, which is now offered in evidence.

THE PRESIDENT: Brigadier Quilliam.

BRIGADIER QUILLIAM: May it please the Tribunal, this is another protest about the export regulations, and we submit is covered by the previous ruling. We ask for its rejection.

THE PRESIDENT: This is covered by the previous ruling, Mr. Logan.

MR. LOGAN: Except, your Honor, you must remember that the time these protests were made the Treaty of Commerce and Navigation was still in force and effect and the six-month period had not yet expired, and that treaty contained a most-favored nation clause.

THE PRESIDENT: Is that treaty in evidence?

MR. LOGAN: Yes, your Honor.

THE PRESIDENT: If we know the treaty we know what America did. We don't need this. It is rejected.

MR. LOGAN: On November 30, 1940, the Assistant Secretary of State issued another memorandum setting forth conversation between him and the Japanese Charge d'Affaires with respect to certain exports. This memorandum is defense document 1400-U-4, which is now offered in evidence.

THE PRESIDENT: Brigadier Quilliam.

BRIGADIER QUILLIAM: May it please the Tribunal, this is another protest about the export regulations, and we submit is covered by the previous ruling. We ask its rejection.

THE PRESIDENT: The objection is upheld and

the document rejected.

MR. LOGAN: Defense document 1400-V-4 is offered in evidence. This is a memorandum of the Secretary of State to the Japanese Charge d'affaires dated December 9, 1940, setting forth the United States Government position with respect to the issuance of export licenses for machine tools.

THE PRESIDENT: Brigadier Quilliam.

BRIGADIER QUILLIAM: May it please the Tribunal, this is the reply of the Secretary of State to the protest that has just been rejected. We ask that this document be rejected also.

MR. LOGAN: I think the Tribunal should be informed of the views of both governments in regard to this exportation license problem.

THE PRESIDENT: By a majority the objection is upheld and the document rejected.

MR. LOGAN: I refer to defense document 1400-W-4 and offer it in evidence. It is another executive order, your Honor.

THE PRESIDENT: Admitted tentatively.

CLERK OF THE COURT: Defense document 1400-W-4 will receive exhibit number 2807.

(Whereupon, the document above referred to was marked defense exhibit 2807 and received

in evidence.)

MR. LOGAN: This is an executive order signed by President Roosevelt on December 10, 1940, defining the terms "iron" and "steel" as used in the previous order.

THE PRESIDENT: There is no need to read it.

MR. LOGAN: I just want to read the heading.

"A. Iron ore.
"B. Pig iron
"C. Ferro Alloys.
"D. Semi-Finished Products
"E. Finished Products."

That is all.

I now offer in evidence defense document 1500-M-5, which is an excerpt from the testimony of Joseph C. Grew before the Congressional Investigating Committee on November 27, 1945, wherein he recited a letter he wrote to the President of the United States on December 14, 1940.

THE PRESIDENT: Mr. Comyns Carr.

MR. COMYNS CARR: May it please the Tribunal, this again is a piece of Mr. Grew's opinion, and amusing as it may be it is, in our submission, irrelevant.

MR. LOGAN: Maybe I have a warped sense of humor, if the Tribunal please, but I don't see any humor about it. It is a letter written by the Ambassador to the highest-ranking official in the United States.

It bears directly on the so-called question of conspiracy where he advises the President that in the Japanese Government the right hand doesn't know what the left hand is doing.

The Tribunal probably will recall that as far as presentation of views and opinions are concerned, the views of the German ambassador were accepted by this Tribunal, and his opinions were taken and accepted for whatever probative value they may have. But here is a warning, or at least, a letter written direct to the President of the United States by Ambassador Grew. What higher authority could we seek for?

THE PRESIDENT: But what is there in this to suggest that the accused in the dock were not cooperating? It is purely a neutral thing.

The objection is upheld and the document rejected.

MR. LOGAN: I might briefly answer your last question, your Honor. This refers to the bickerings that were going on, the controversies that were going on within the government itself, and some of these accused were in the government at that time. It certainly does not show any conspiracy among them if they are bickering all the time, and it was recognized by

the United States Government that that was so by an authority right here in Japan who knew it was going on.

THE PRESIDENT: We will recess for fifteen minutes.

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

Greenberg & Barton

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

THE PRESIDENT: Mr. Logan.

MR. LOGAN: A memorandum from the Secretary of State to the Japanese Charge d'Affaires is set forth in defense document 1400-X-4 which is offered in evidence. This memorandum further explains the situation with respect to machine tools.

THE PRESIDENT: Brigadier Quilliam.

BRIGADIER QUILLIAM: May it please the Tribunal, this is a further reply to the protest made in defense document 1400-U-4 which was rejected shortly before the recess. We submit this document is covered by that ruling.

MR. LOGAN: If the Tribunal please, I don't want to appear pugnacious about this, but it seems to me that all this evidence of the protests that were made by the Japanese Government about these embargoes are material because, if I remember correctly, in Mr. Keenan's opening statement, in defining aggressive war he said it was an unprovoked attack. So, I am trying to present evidence here to show what the provocation was and the protests that were made by the Japanese Government against these various measures that were taken, whether or not that was suffi-

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cient to provoke them into an attack. Furthermore, this evidence is being presented to the Tribunal so that it can decide whether or not the determination by Japan, which it had the right to do under the Kellogg-Briand Pact, to determine whether it was a war of self defense -- whether or not they were actually justified in these provocations which were presented against them.

THE PRESIDENT: Do you contest what I said, that it is common ground that the Japanese protested against what the Americans did?

MR. LOGAN: But it goes a little further than that, your Honor. If it was just one little incident and one protest, perhaps that would not be sufficient to justify a finding that there was provocation. But where you have many acts of the United States, imposing different embargoes on different goods and many protests and many warnings by the Japanese Government as to how they considered these embargoes, that all goes to the weight, and it is for the Court to determine whether or not their attack was justifiable.

While we all know in a general way that protests were made, there is no evidence before the Tribunal as to the number of protests that were made and the extent of them and the effect that the embargoes

were having on the Japanese Government and the fact that the Japanese officials told the Americans just what that effect was. And I also wish to point out that the documents I have been offering are not the Japanese side alone; I have been offering the protests that were made and the replies that were made by the American Government so that the Tribunal can get the full picture of this.

THE PRESIDENT: I suppose the prosecution are prepared to admit that you protested against all these embargoes and that you purported to point out what effect it would have on you, but they wouldn't admit the relevance of it, naturally. Self defense must be established objectively, not subjectively. You telling them what you proposed to do is not relevant.

MR. LOGAN: It goes further than that, your Honor. We are telling them the effect of these embargoes. Of course, the prosecution wouldn't agree to its relevance, but I think that it is relevant and that the Tribunal should so decide. It might also be pointed out that these documents clearly show that the United States knew just what the effect these embargoes was going to be on the country of Japan which was not a self-sufficient nation, which depended

largely on the United States for its livelihood.

Yet, notwithstanding that knowledge, notwithstanding the protests that were made month after month, they added more and more commodities to the list on the embargo which they knew would finally squeeze Japan into a position where she would have to do something about it. That is the picture we are trying to show.

THE PRESIDENT: By a majority, the Court upholds the objection and rejects the document.

MR. LOGAN: I now offer in evidence defense document 1400-Y-4.

THE PRESIDENT: Admitted tentatively.

CLERK OF THE COURT: Defense document 1400-Y-4 will receive exhibit No. 2808.

(Whereupon, the document above referred to was marked defense exhibit No. 2808 and received in evidence.)

MR. LOGAN: This is a proclamation issued by President Roosevelt on December 20, 1940, and the following commodities were added to the embargo list: Bromine, ethylene, ethylene dibromide, methylamine, strontium metals and ores, cobalt, abrasives and abrasive products containing emery, corundum, as well as abrasive paper and cloth, plastic molding

machines and presses, measuring machines, gauges, testing machines, balancing machines, hydraulic pumps, tools incorporating industrial diamonds, equipment and plans for the production of aviation lubricating oil.

On December 21, 1940 the Japanese Embassy delivered a memorandum to the Department of State bitterly complaining about the discriminatory treatment respecting licensing for export of certain materials. This is contained in defense document 1400-Z-4 which is now offered in evidence.

THE PRESIDENT: Brigadier Quilliam.

BRIGADIER QUILLIAM: May it please the Tribunal, this is a further protest about the export regulations that the United States was imposing and falls within the decisions already given.

MR. LOGAN: I have nothing further to add to what I said about the other documents, your Honor.

THE PRESIDENT: The objection is upheld and the document rejected.

MR. LOGAN: I now call as a witness MIZUNO, Itaro.

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I T A R O M I Z U N O, called as a witness on behalf of the defense, being first duly sworn, testified through Japanese interpreters as follows:

DIRECT EXAMINATION

BY MR. LOGAN:

Q Will you let us have your full name and address.

A My address is Tokyo, Nakano-Ku, Saginomiya, 1-chome, 21; my name, MIZUNO, Itaro.

Q Will you examine defense document 1918 and all the exhibits attached to it and tell us if that is your affidavit.

(Whereupon, papers were handed to the witness.)

A There is no question; this is my affidavit.

Q Are the statements contained therein accurate and true?

A I believe the contents are true and accurate.

MR. LOGAN: I offer in evidence defense document 1918 and all the appendices attached thereto; I believe there are about twenty-one documents.

THE PRESIDENT: Mr. Comyns Carr.

MR. COMYNS CARR: May it please the Tribunal, the prosecution objects to this entire consignment of

documents as wholly irrelevant from the first word to the last. Of the twenty-one appendices, four or five have not yet been served at all, and none were served within the time limited by the rules. But, I am in a position to deal with the objection because the nature of them appears from the affidavit itself.

THE PRESIDENT: It reads like a judgment on issues we have for trial.

MR. COMYNS CARR: Well, your Honor, it is a judgment on certain issues but, in my submission, not those which the Tribunal has to try. It is concerned entirely with the economic history of the world during the period of the two wars.

Part one, which deals with the whole of the twenty-one appendices, is headed, on page 3, "The Economic Conditions After the World War I." It begins by citing, as an appendix, extracts from the League of Nations World Economic Survey for 1931 to 1932. Then it deals with the Monetary and Economic Conference of 1933 with regard to which the Tribunal yesterday rejected a document on the ground that that was not a relevant topic.

Then it deals at immense length with the abandonment of the gold standard by various countries

one after the other, another subject which the Tribunal declared to be irrelevant.

Then Part two is headed, "Barriers in International Trade set up by Various Countries." And it deals with increase of import duties in Great Britain and with the Ottawa Conference and agreements made thereunder which the Tribunal rejected yesterday. Then it deals with economic conditions in France in a paragraph of the affidavit and an appendix, including various tariff and quota regulations.

Then there are similar paragraphs and appendices dealing with tariff and such like regulations in Germany, Holland, the United States of America, Canada, China, India, and the Dutch East Indies, mostly, if not entirely, in years down to 1936.

Then there is a Part three headed, "The Efforts of Japan In Order to Alleviate Economic Pressure" which, however, makes it clear that the economic pressure referred to is the general increase of tariffs and such like previously dealt with and not any particular measures alleged to have been directed against Japan for political purposes.

Finally, on the bottom of page 22, it begins for the first time to refer to matters arising

out of the war in China, such as the United States' moral embargo. And, on page 23, there is a brief reference to trading difficulties after the outbreak of the European War arising from the ordinary contraband rules.

Finally, it makes brief reference to, but conveys no information about, negotiations with the Dutch East Indies in 1940 and negotiations with the United States of America in 1941.

In our submission, there is not one word in this affidavit or in any one of the appendices which could possibly be of any assistance to this Tribunal in deciding this case.

Knapp & Yelden

THE PRESIDENT: Mr. Logan.

MR. LOGAN: I am sure after listening to Mr. Carr that the Tribunal must be convinced that all these matters he has mentioned are in issue before this Tribunal and all practically referred to by Mr. Liebert in his testimony. Furthermore when we presented what we thought were well-recognized books on this situation the prosecution objected and thought we should produce a witness. Here he is. I am referring particularly to rejection of Fahs' book. A large number of exhibits conforms to the requirements of the prosecution and the rulings of the Tribunal that whenever a report is referred to it should be attached to the affidavit. They are all there. The counteracts that were taken by Japan as mentioned in this affidavit are those which we are charged with having perpetrated for aggressive purposes. I have no intention of reading all the appendices and exhibits attached to the affidavit. There are three or four perhaps I wish to read small parts from in addition to the affidavit of the witness.

THE PRESIDENT: You are entitled to answer Liebert fully and this man may be qualified to do so, but is that the nature of his evidence?

MR. LOGAN: I think it is, your Honor, when we consider the forty-five laws which Liebert went into

and tried to have the Tribunal draw an inference that they were passed for the purpose of promoting and waging an aggressive war.

THE PRESIDENT: We refused to take any of Liebert's opinions. We cannot take any of this man's opinions. His affidavit and annexures appear to be full of opinions. I think there are observations made by him as a result of the official positions that he held, but I was glad to hear Mr. Carr say that the judgments or opinions contained in this affidavit are on issues the Tribunal does not have to try and I think that is a proper interpretation of the Tribunal's ruling. I thoroughly agree that no witness should try to forswear any issue which the Tribunal has to decide but opinions on matters within the sphere of work done by this man which are reasonable and necessary I think the Tribunal should accept.

THE PRESIDENT: After all, the only way to meet Liebert's evidence is to contradict the facts relied upon by him.

MR. LOGAN: I might also add, your Honor, that we of the defense do not consider Liebert's testimony as the touchstone by which the relevancy of all evidence that we put in should be gauged.

THE PRESIDENT: All you have to do as the

defense is to contradict the prosecution's evidence by other evidence.

MR. LOGAN: When we assume the burden of trying to prove an affirmative defense we also assume the burden of proof of evidence to support it which does not necessarily have to be touched by Liebert.

THE PRESIDENT: You just meet the evidence for the prosecution; that is all.

MR. LOGAN: And we have the burden to go forward on an affirmative defense.

THE PRESIDENT: Mr. Carr.

MR. COMYNS CARR: Your Honor, may I correct a misapprehension? As far as we can trace there is nothing whatever in this affidavit which has any bearing at all upon any of the allegations made by Mr. Liebert.

THE PRESIDENT: He is the only prosecution's witness that dealt with this phase, as far as I recollect. We are reluctant to reject an affidavit prepared at such great length and with such great labor but it must be relevant.

MR. LOGAN: Perhaps the Tribunal does not understand what I have been trying to explain with regard to--

THE PRESIDENT: I know you are talking about

defense. I know it is an affirmative defense.

MR. LOGAN: Yes, the extent and presentation of evidence in support of it goes beyond the evidence the prosecution has presented.

THE PRESIDENT: I understand from my colleagues that this does not meet Liebert's evidence in any way.

MR. LOGAN: It is much broader than Liebert's testimony, if the Tribunal please. It is greater in scope and it gives the Tribunal a better understanding of the economic picture in Japan.

THE PRESIDENT: By a majority the Court upholds the objection and rejects the document.

MR. LOGAN: May the witness be excused on the usual terms?

THE PRESIDENT: He is excused accordingly.

(Whereupon, the witness was excused.)

MR. LOGAN: Defense document 206-E-54 being an excerpt from the diary of former Ambassador Grew entitled "Ten Years in Japan" dated January 1, 1941 is now offered in evidence. This sets forth his observations with respect to American embargoes.

THE PRESIDENT: Mr. Comyns Carr.

MR. COMYNS CARR: May it please the Tribunal, this is another of Mr. Grew's opinions and is objected

to for the same reasons as before.

THE PRESIDENT: The objection is upheld and the document rejected by a majority.

MR. LOGAN: The Department of State of the United States issued a memorandum dated January 7, 1941 to the Japanese Embassy as set forth in defense document 1400-A-5 now offered in evidence. It answers the Japanese Embassy's protest of December 21, 1940 by referring the Embassy to the State Department notes of August 9, 1940 and October 23, 1940 heretofore offered in evidence.

MR. COMYNS CARR: May it please the Tribunal, this is a reply to the rejected document 1400-Z-4 particularly and we submit should fall with that document.

THE PRESIDENT: The objection is upheld and the document rejected.

MR. LOGAN: Notwithstanding the last mentioned protest of the Japanese -- perhaps I should not say that because it was rejected. I am sorry. We offer in evidence defense document 1400-B-5.

THE PRESIDENT: Admitted tentatively.

CLERK OF THE COURT: Defense document 1400-B-5 will receive exhibit No. 2809.

(Whereupon, the document above referred to was marked defense exhibit

No. 2809 and received in evidence.)

MR. LOGAN: This is an executive order signed by President Roosevelt, January 10, 1941, adding the following commodities to the embargo: (1) Copper, (2) Brass and Bronze, (3) Zinc, (4) Nickel, (5) Potash. There is also contained in this document a large list of various items being the construction of the materials just mentioned which I shall not read.

On February 4, 1941 additional regulations governing the exportation of articles and materials were imposed by executive order 8668 as set forth in defense document 1400-C-5 which is now offered in evidence.

THE PRESIDENT: Admitted tentatively.

CLERK OF THE COURT: Defense document 1400-C-5 will receive exhibit No. 2810.

(Whereupon, the document above referred to was marked defense exhibit No. 2810 and received in evidence.)

MR. LOGAN: The second executive order of President Roosevelt, dated February 4, 1941, defining and construing the materials as set forth in the proclamation of February 4, 1941, adds:

"(1) Oil and refining machinery
Petroleum and gas well equipment and parts including well drilling machinery and parts
Petroleum refining machinery, equipment and parts
(2) Radium
Metal
Salts and compounds
(3) Uranium
Metal
Salts and compounds
Minerals
(4) Calf and kip skins
Calf skins
Kip skins"

Defense document 1400-D-5, on the basis of strengthening the national defense, executive order 8669 was issued on February 4, 1941, prescribing additional regulations covering the exportation of a large number of iron and steel materials. These are set forth in defense document 1400-D-5 which is now offered in evidence.

THE PRESIDENT: Admitted tentatively.

CLERK OF THE COURT: Defense document 1400-D-5 will receive exhibit No. 2811.

(Whereupon, the document above referred to was given exhibit No. 2811 and admitted in evidence.)

MR. LOGAN: Defense exhibit 2811 is an executive order signed by President Roosevelt, February 4, 1941, setting forth additional regulations covering exportation of iron and steel to include the following forms, conversions and derivatives. I shall only read the heading of each one of these and not go into detail.

(Reading) "Iron Ore, Iron and Steel Semimanufactures, Tin-plate scrap, Tin-plate circles, etc., Waste-Waste tin plate, Terneplate waste-waste, clippings, and scrap, Iron and Steel Products, Iron and Steel Bars and Rods."

On February 25, 1941, another executive order was issued covering additional regulations respecting the exportation of certain articles set forth in defense document 1400-E-5, now offered in evidence.

CLERK OF THE COURT: Defense document 1400-E-5 will receive exhibit No. 2812.

(Whereupon, the document above referred to was given defense Exhibit No. 2812 and admitted in evidence.)

MR. LOGAN: Executive order signed by President Roosevelt February 25, 1941. The following articles and materials -- this order

defines the materials to include various types of commodities: Belladonna, Atropine, Sole Leather, Belting Leather.

On the same day, February 25, 1941, another executive order was issued, prescribing additional regulations covering exportation of certain articles as set forth in defense document 1400-F-5, now offered in evidence.

THE PRESIDENT: Admitted tentatively.

CLERK OF THE COURT: Defense document 1400-F-5 will receive exhibit No. 2813.

(Whereupon, the document above referred to was given defense exhibit No. 2813 and admitted into evidence.)

MR. LOGAN: Executive order signed by President Roosevelt, February 25, 1941, stating that the articles and materials set forth in his proclamation of the same date shall be construed to include: "Beryllium, Ores and concentrates (except gem varieties), Metal, alloys and scrap, Beryllium salts and compounds; Graphite electrodes; Aircraft Pilot Trainers, Trainers for ground instruction of pilots, student pilots, and combat crews for aircraft in instrumental flying, navigation, bombing, or gunnery."

Further restrictions were imposed by executive order signed March 4, 1941, as set forth in defense document 1400-G-5, now offered in evidence.

THE PRESIDENT: Admitted tentatively.

CLERK OF THE COURT: Defense document 1400-G-5 will receive exhibit No. 2814.

(Whereupon, the document above referred to was given defense Exhibit No. 2814 and admitted in evidence.)

MR. LOGAN: Exhibit 2814 is executive order signed by President Roosevelt, March 4, 1941, in which he construes the articles and materials as named in the proclamation issued on the same date: "Cadmium, Ores and concentrates, Metal, Alloys, Cadmium Salts and Compounds; Carbon Black; Coconut Oil: Edible, Inedible; Copra; Cresylic Acid and Cresols; Fatty Acids produced from vegetable oils under export control; Glycerin; Palm-Kernel Oil; Pine Oil; Petroleum Coke; Shellac, Lac, crude, seed, button, and stick; Titanium, Ores and concentrates."

THE PRESIDENT: We will adjourn until nine-thirty o'clock tomorrow morning.

(Whereupon, at 1600, an adjournment

was taken until Friday, 8 August 1947
at 0930.)

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1400-I-5	2816		Proclamation No. 2468, signed by President Roosevelt 27 March 1941		25259
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1400-G-6	2819		Excerpt from "Foreign Relations of the U. S. Japan: 1931-1941 Vol II - Memorandum of a Conversation, Washington, 28 May 1941		25267
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1400-K-3	2825		The Director of the War Plans Division of the Navy Department (Rear Admiral Turner) to the Chief of Naval Operations (Admiral Stark) - Memorandum dated Washington, 21 July 1941		25308
1500-E-3	2826		Excerpt from Exhibit No. 33 of the Joint Committee on the Investigation of the Pearl Harbour Attack - Congress of the U.S., 79th Congress, First Session - Memorandum from Brigadier General Sherman Miles to the Chief of Staff, dated 25 July 1941		25311
1400-R-5	2827		Excerpt from Radio Bulletin No. 176 issued by the White House on 25 July 1941		25316

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(cont'd)

Doc. No.	Def. No.	Pros. No.	Description	For Ident.	In Evidence
			NOON RECESS		25317
1500-K-2	2828		Excerpt from Exhibit No. 32 of the Joint Committee on the Investigation of the Pearl Harbour Attack - Congress of the U. S., 79th Congress, First Session - Messages Between War Department and Hawaii from 8 July to 7 September 1941		25319
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220	2830		The Japanese Minister for Foreign Affairs (Toyoda) to the American Ambassador in Japan (Grew) dated Tokyo, 25 July 1941		25323
401-(59)	2831		Freezing of Japanese Assets in the United States		25326
1400-O-5	2832		Executive Order No. 8832, signed by President Roosevelt 26 July 1941		25327
	2833		Publication "Pearl Harbour Attack - Part 5"		25335
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1980	2834		Affidavit of SHIINA, Etsusaburo		25353
206-E-94	2835		Excerpt from the former U. S. Ambassador Grew's Diary entitled "Ten Years in Japan" - Conversation between Mr. Grew and Mr. TERASAKI		25359
206-E-(95)	2836		Excerpt from the former U. S. Ambassador Grew's Diary entitled "Ten Years in Japan" - Conversation between Mr. Grew and Prince KONOYE		25368
206-E-(99)	2837		The Ambassador in Japan Reports to the Secretary of State		25375

Friday, 8 August 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, all Members sitting, with the exception of: HONORABLE JUSTICE STUART McDOUGALL, Member from the Dominion of Canada; HONORABLE JUSTICE I. M. ZARAYANOV, Member from the USSR; and HONORABLE JUSTICE E. H. NORTHCROFT, Member from the Dominion of New Zealand, not sitting from 0930 to 1600.

For the Prosecution Section, same as before.

For the Defense Section, same as before.

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(English to Japanese and Japanese to English interpretation was made by the Language Section, IMTFE.)

MARSHALL OF THE COURT: The International Military Tribunal for the Far East is now in session.

THE PRESIDENT: Mr. Logan.

MR. LOGAN: If the Tribunal please, more pressure against Japan was brought to bear on the same day, March 4, 1941, when Executive Order 8703 was signed, prescribing additional regulations governing the exportation of certain articles and materials as set forth in defense document 1400-H-5, which is now offered in evidence.

THE PRESIDENT: Admitted tentatively.

CLERK OF THE COURT: Defense document 1400-H-5 will receive exhibit No. 2815.

(Whereupon, the document above referred to was marked defense exhibit No. 2815 and received in evidence.)

MR. LOGAN: Exhibit 2815, "Executive Order No. 8703, Signed by President Roosevelt, March 4, 1941." The articles set forth in this executive order, on which embargoes were placed, are as follows: "Jute, fiber, burlaps, bags, lead, ore and matte, pigs and bars, sheets and pipes, solder, borax, boric acid, borates, phosphates, phosphoric acid, phosphorus, phosphate rock, and superphosphate."

On March 27, 1941, a proclamation was issued

by President Roosevelt stating that in the interests of national defense certain articles and materials were prohibited from being exported from the United States except when authorized by license as provided by proclamation of July 2, 1940. This proclamation is set forth in defense document 1400-I-5 which is now offered in evidence.

THE PRESIDENT: Admitted tentatively.

CLERK OF THE COURT: Defense document 1400-I-5 will receive exhibit No. 2816.

(Whereupon, the document above referred to was marked defense exhibit No. 2816 and received in evidence.)

MR. LOGAN: Exhibit 2816, "Proclamation No. 2468, Signed by President Roosevelt, March 27, 1941." The articles added to the embargo list include: "Animal fats and other types of oil, vegetable oils, vegetable oilseeds, fatty acids, bristles, nylon, kapok, purified wood pulp, cork, carbon electrodes, petrolatum, alkyd resins, explosives, detonators, napthalene, phenol, aniline," and a list of thirty-two chemicals to which I invite the Tribunal's attention.

On April 14, 1941, Proclamation No. 2475 was issued prohibiting exportation, except by license,

of machinery from the United States. This proclamation is set forth in defense document 1400-J-5 which we now offer in evidence.

THE PRESIDENT: Admitted tentatively.

CLERK OF THE COURT: Defense document 1400-J-5 will receive exhibit No. 2817.

(Whereupon, the document above referred to was marked defense exhibit No. 2817 and received in evidence.)

MR. LOGAN: We read from exhibit 2817, a proclamation signed by President Roosevelt, April 14, 1941. According to this exhibit, machinery was added to the embargo list.

Another proclamation, No. 2476, was issued on the same day, April 14, 1941, prohibiting exportation of more materials except pursuant to a license as set forth in defense document 1400-K-5 which we now offer in evidence.

THE PRESIDENT: Admitted tentatively.

CLERK OF THE COURT: Defense document 1400-K-5 will receive exhibit No. 2818.

(Whereupon, the document above referred to was marked defense exhibit No. 2818 and received in evidence.)

MR. LOGAN: I now read from exhibit 2818, a

proclamation signed by President Roosevelt, April 14, 1941. It shows that these further articles were added to the embargo list: "Vegetable fibers and manufactures, theobromine, caffein, sodium cyanide, calcium cyanide, and casein."

We now offer in evidence defense document 1400-G-6, which is a memorandum of a conversation held between the Japanese Ambassador and the United States Secretary of State. We shall only read the first two lines of the first paragraph and the last two sentences of the second paragraph.

THE PRESIDENT: Admitted.

CLERK OF THE COURT: Defense document 1400-G-6 will receive exhibit No. 2819.

(Whereupon, the document above referred to was marked defense exhibit No. 2819 and received in evidence.)

MR. LOGAN: I shall now read portions of exhibit 2819, being a "Memorandum of a Conversation, Washington, May 28, 1941.

"The Japanese Ambassador called at the Secretary's apartment at 8:30 by appointment made at the Ambassador's request.

"He," meaning Mr. MATSUOKA, "added that the Japanese people were heartily sick of the idea of an

economic bloc and desired to return to the spirit of the MEIJI restoration in which their horizon had been broadened to intercourse and trade with the whole world. He said that the American embargoes had made the Japanese feel that there was no alternative at present to seeking an economic bloc, but they were feeling the pinch of a restricted economy and would welcome a resumption of normal trade."

On May 28, 1941, a press release was issued by the Department of State stating the control of the export of strategic and critical articles and materials was extended by proclamation to the Philippine Islands as of May 28, 1941. This release is set forth in defense document 1400-L-5, which is now offered in evidence.

THE PRESIDENT: Brigadier Quilliam.

BRIGADIER QUILLIAM: May it please the Tribunal, this is really, although a press release, a proclamation that I suggest should be dealt with as the other proclamations have been; admitted tentatively.

THE PRESIDENT: Admitted tentatively.

CLERK OF THE COURT: Defense document 1400-L-5 will receive exhibit No. 2820.

(Whereupon, the document above

referred to was marked defense exhibit No. 2820 and received in evidence.)

MR. LOGAN: "Press Release Issued by the Department of State on May 28, 1941."

As shown in exhibit 2820, "Control of the export of strategic and critical articles and materials needed in the national defense program was extended May 28, by proclamation of President Roosevelt, to the Philippine Islands, as the President signed a joint resolution of Congress authorizing such extension."

We now call as a witness, ISHIZAWA Yutaka.

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the prosecution objects to paragraph 1, the numbered paragraph 1 of the affidavit, beginning on page 3 and continuing to the middle of page 5 ; and to exhibits "A" and "B", which relate to that part of the affidavit, on the ground that they relate --

THE PRESIDENT: I can see only exhibit "B" and "C". There may be an "A".

MR. COMYNS CARR: Your Honor, I should have said exhibits "B" and "C", not "A " -- on the ground that they relate entirely to trade negotiations of a perfectly ordinary commercial character, down to and including the year 1936.

Those negotiations have not been the subject of any evidence or attack by the prosecution and resulted in agreements which are the two exhibits. In our submission, those negotiations are entirely irrelevant and evidence with regard to them can be of no assistance whatever to the Tribunal.

THE PRESIDENT: You say that they are in the same position as the Ottawa Conference proceedings?

MR. COMYNS CARR: Yes.

With regard to the remainder of the affidavit, the numbered paragraph 2 beginning on page 5 , we have no objection to that, but exhibit 1731-A which relates to it, is merely a repetition of part of

prosecution exhibit 1309-A, as appears on its face. I gather that the defense desire to read certain parts of that exhibit which were not read by the prosecution, but that they can do as has always been done before without burdening the record with an extra copy of it.

Your Honor, I am told I am mistaken about that and I withdraw the objection to 1731-A. The exhibit doesn't contain the parts they want to read. My objection is to the first part of the affidavit.

THE PRESIDENT: To paragraph 1 of the affidavit and --

MR. COMYNS CARR: Paragraph 1 of the affidavit and exhibits "B" and "C."

THE PRESIDENT: Mr. Logan.

MR. LOGAN: This Division I stands in a different category, although we think that the Ottawa Conference was equally admissible, but is entirely different than that.

Although there are various charges of conspiracy in the Indictment, I shall just refer the Tribunal to Count I, the very first one, wherein it states that all the defendants between January 1, 1928 and the 2nd of September 1945 "participated as leaders, and instigators, or accomplices in the formulation

of a common plan or conspiracy" and "the object of such plan or conspiracy was that Japan should secure the military, naval, political and economic domination of East Asia and of the Pacific and Indian Oceans, and of all countries and islands therein and bordering thereon." In addition, the Netherlands East Indies, of course, comes squarely within that. But, in addition thereto Mr. Mulder, in his opening statement of this phase for the prosecution stated, "However, a more ambitious program had been drawn up aiming at the domination of the whole of the Netherlands East Indies through the latter's compliance with far reaching Japanese demands." It is not restricted to any one period and the purpose of this paragraph 1 of the affidavit is to show that negotiations between Japan and the Netherlands East Indies were conducted in a peaceful manner.

THE PRESIDENT: But Mr. Comyns Carr says the contrary is not suggested by the prosecution.

MR. LOGAN: Well, it is still alleged in the Indictment. It has not been withdrawn at all and we must assume from the fact that our motions to dismiss were denied that there is some evidence on each and every count of the Indictment. If the prosecution wishes to withdraw its charges in the Indictment with respect to any conspiracy regarding the Netherlands East Indies, I will withdraw the affidavit.

MR. COMYNS CARR: Your Honor, there is no allegation in the Indictment or anywhere else relating to these early negotiations with the Netherlands East Indies, and there is therefore nothing to withdraw.

THE PRESIDENT: A Member of the Tribunal puts the position this way, Mr. Logan: Is there any question that the negotiations in 1936 resulted in the conclusion of a fruitful commercial treaty between the Netherlands and Japan?

MR. LOGAN: I haven't been able to find any evidence in the case that the negotiations during that period of time were anything else than peaceful, contrary to the charges in the Indictment.

THE PRESIDENT: They are not relying on those negotiations, so you have not to establish their innocent quality.

MR. LOGAN: But as I say, there may be some evidence in the case that we don't know about, and if the prosecution is willing to admit that there isn't and withdraw that part of the Indictment, it is all right with me.

THE PRESIDENT: By a majority the Court upholds the objection and rejects paragraph 1 of the affidavit and Annexes B and C thereto. The balance will be admitted on the usual terms.

CLERK OF THE COURT: Defense document 1731 and exhibit A attached thereto will receive exhibit No. 2821.

(Whereupon, the documents above referred to were marked defense exhibit 2821 and received in evidence.)

MR. LOGAN: I shall now read exhibit 2821, deposition of ISHIZAWA, Yutaka, omitting the formal parts.

"I graduated from the School of Jurisprudence of the Tokyo Imperial University in March, 1922, and immediately entered the Diplomatic Service. I then held office consecutively at the Japanese Embassies

in Washington and London, and not long after returning to Japan from London in March, 1934, received appointment to the Bureau of Commercial Affairs. In November, 1935, I was appointed Consul-General at Batavia, and arriving at my post on January 27, 1936, remained in that office until May 13, 1937. During this period I negotiated with the competent authorities of the Government of the Netherlands East Indies, with a view to cementing commercial relations between Japan and the Netherlands, and succeeded in concluding an agreement concerning commercial and economic questions with Dr. G. H. C. Hart, the Director of Economic Affairs of the Government of the Netherlands East Indies, on April 9, 1937. In June, 1937, I returned to Japan, and in October was ordered to the post of Chief of the Third Section, Bureau of European-Asiatic Affairs. On October 15, 1940, however, I was again appointed Consul-General at Batavia, and leaving Tokyo on November 3, 1940, arrived at my new post in Batavia on the 28th of the same month. At that time there were negotiations in progress concerning the commerce between Japan and the Netherlands. Delegate KOBAYAHI left Java in October and Ambassador YOSHIZAWA, succeeding KOBASHI, arrived at Batavia at the end of December. I assisted him as an associate

delegate. Unfortunately, the conference between Japan and the Netherlands failed to reach a conclusion, and Delegate YOSHIZAWA, closing the negotiation, returned to Japan in June, 1941. I remained in the office of the Consul-General at Batavia. After the outbreak of the Pacific War, on December 8, 1941, I was interned at Batavia by the authorities of the Netherlands, but as the Japanese forces occupied Java in March, 1942, I was freed, and leaving Batavia early in April, returned to Japan on the 25th of the same month. After that I was ordered to work in the Foreign Office temporarily, and served until November 1, 1944, when I was appointed Director of the Bureau of Southern Affairs of the Greater East Asia Ministry. With the termination of the war on August 15, 1945, I tendered my resignation towards the end of the month.

"As stated above, I was deeply concerned in the problems between Japan and the Netherlands Indies while in office, and was directly in charge of the negotiations concerning the commercial relations between them."

Now page 5, paragraph 2:

"2) The negotiations between Japan and the Netherlands Indies in the years 1940-1941.

"During the first part of these negotiations

I was serving at the Foreign Ministry and accordingly I was not directly in charge of the negotiations with the authorities of the Netherlands Indies. Nevertheless, conducting the business concerning the Southern areas as the Chief of the Third Section of the Bureau of European-Asiatic Affairs, I was well acquainted with the progress of the negotiations through telegrams and documents and through conversations later with the members of the delegation there.

"Our delegate KOBAYASHI arrived at Batavia on September 12, 1940, and met Governor-General STARKENBORGH on that same day. He made it clear on that occasion that the conference was to be held with a view to strengthening the economic relations between Japan and the Netherlands Indies through the spirit of co-prosperity, and requested that the Governor-General endeavour to effect an amicable conclusion to the negotiations. He further pointed out the inefficiency of discussing various problems en bloc, and expressed his desire to settle the petroleum question first of all. The Governor-General agreed to it, and they began with the petroleum question.

"The Japanese-American Commercial Treaty had already been abrogated by this time, and the economic pressure of the United States against Japan was being

gruadually stiffened. Japan, which had thus far been depending upon the United States for petroleum and other important resources, had now to import all these resources from the Southern areas. And petroleum was especially important, either from the standpoint of national defense or from the necessity of supplying the home industries, and Japan was especially uneasy about it. For such reasons, the negotiations were begun with the question of petroleum. With respect to the purchase of petroleum, it was left chiefly to the negotiation of Mr. MUKAI, who had been put in charge of the oil business by the Japanese, and the oil companies of the Netherlands Indies, as it was necessary to make a technical study of the ability on the part of the Netherlands Indies to provide petroleum. In the beginning of the negotiations there were some differences of opinions between the two parties, but by the middle of October, 1940, an agreement was reached through the acceptance by the Japanese side of the proposals of the Dutch side of the purchase and sale for one year of -- this addition is on an errata sheet -- of 1,185,000 tons of oil, including

120,000 tons of aviation crude oil

100,000 tons of crude oil for lubricants

540,000 tons of other types of crude oil

116,500 tons of Diesel oil and a spot sale of 33,000 tons of aviation volatile oil. Though this was not of satisfactory quality, as well as not enough in quantity, the Japanese side acceded to the proposals of the Netherlands -- this is also added to an errata sheet -- and an agreement was thus reached.

"In the meantime the negotiations between our delegate KOBAYASHI and Dr. Van Mook, the representative of the Netherlands Government, which looked at first as though it would progress satisfactorily, took an unfavorable turn upon Japan's entering into an alliance with Germany and Italy. Delegate KOBAYASHI offered his opinion to Foreign Minister MATSUCK that there was little hope of conclusion of the negotiation and returned to Japan, leaving Surabaya on October 22.

"But the Japanese government, especially the Foreign Office, had firm intentions to bring the negotiations to an amicable conclusion, and was looking in vain for a person of state minister class to succeed Mr. KOBAYASHI as the Japanese delegate. Meanwhile, there was a request by Consul-General SAITO to return to Japan on the grounds of ill-health. Hereupon an idea occurred to Foreign Minister MATSUOKA to appoint me Consul-General at Batavia prior to deciding the head delegate, and have me continue the negotiations with the Government of the Netherlands in my capacity of associate delegate.

"It was at the beginning of October that the Foreign Minister privately revealed this idea of his to me. I thought it was necessary to ascertain the aim of the Government, especially the intention of Foreign Minister MATSUOKA, and called upon him at his private residence at Sendagaya to discuss the matter with him. He told me that the negotiations in question between Japan and the Netherlands was aimed at promoting the economic cooperation between Japan and the Netherlands Indies through respecting Netherlands' sovereign rights, negotiation peacefully, and securing thereby the acquisition of the resources necessary to Japan. Thereupon I told

the Foreign Minister that I considered it impossible to see a successful conclusion of the negotiation between Japan and the Netherlands Indies if Japan intended to ally with Germany, the enemy of the Netherlands, and assist it positively, but there was some hope of successful conclusion if Japan intended, by concluding the Tri-Partite Pact, only to prevent the United States from participating in the European war and at the same time rendering no positive assistance to Germany, and if Japan could convince the Government of the Netherlands on this point. The Foreign Minister confessed that he was of the same opinion. Thereupon, I made up my mind to accept the appointment, and start for my new post at Batavia.

"As soon as I arrived at Batavia, I called on Governor-General Starkenbough, head delegate Dr. VAN MOOK, and associate delegate Dr. VAN HOGSTRATEN, to explain the intention of the Japanese Government. They all understood the Japanese stand well. Meanwhile, in Japan, Mr. YOSHIZAWA Kenkichi was appointed the head delegate, and the plenipotentiary arrived at Batavia on December 28. And the general proposition, apart from the petroleum question, was presented to Dr. VAN MOOK on January 16, 1941.

"The prosecution has produced and read in

court the so-called Japanese demands from the Netherlands Indies Government as Pros. Doc. No. 2748A (2) (Exhibit 1311). But, in reality, this document was nothing more than a mere draft. The memorandum of general proposals presented by the Japanese delegation to the Netherlands Indies Government on January 16, 1941 was another and different document. The said memorandum, contained in Exhibit 1309A (Pros. Doc. No. 2611), was read to the Court on December 4, 1946. The reply of the Netherlands Indies Government to these proposals was given on February 3, 1941, but there were many differences with the Japanese views. Preliminary conversations were held, therefore, between Dr. VAN HOGSTRATEN and myself, exchanging views with each other, during the period from February to May, 1941. As a result of these conversations, a compromise was drafted by the Japanese Government, taking into consideration as much of the opinion of the Netherlands Government as possible into it, and was submitted to the Netherlands Government. A part of this draft compromise was contained in Exhibit No. 1309A.

"On June 6 we received the reply of the Netherlands Government, which had many points of differences with ours and the negotiation proved abortive.

On June 17, 1941 Plenipotentiary YOSHIZAWA and I called on Governor-General STARKENBORGH (Dr. VAN MOOK and Dr. VAN HOGSTRATEN were also there in his company) to urge reconsideration on the part of the Netherlands Government. The reply was, however, that there was no room left for reconsideration. Mr. YOSHIZAWA, thereupon, made up his mind to return to Japan. Nevertheless, we suggested the publishing of a joint communique, because we considered it desirable to take proper measures to maintain the friendly relations between Japan and the Netherlands Indies even on leaving Batavia, and showed a draft. To this the Governor-General agreed, and the joint communique was published. (See Page 37 of Exhibit 1309A).

"Throughout the negotiations the Japanese Government respected the Netherland's sovereign rights and took a conciliatory attitude consistenly with a view to reaching an agreement which would promote the economic cooperation between Japan and the Netherlands Indies.

"Signed on the 5th day of June, 1947, at Tokyo. ISHIZAWA, Yataka."

I will now read Defense Document 1731A, which is Exhibit No. 1309A, and call the Tribunal's attention to the fact that the prosecution only

read the introductory first paragraph, and for continuityI would like to read it:

"In reconsideration of the memorandum which the Japanese Delegation presented to the Netherlands Delegation on the 16th Jan. 1941, they herein present to the Netherlands Delegation the following new proposal. They wish to make it clear, however, that the Japanese viewpoint expressed in the preamble of the above-mentioned memorandum is firmly held by the Japanese Government.

"1. The entry of Japanese Nationals.

"(a) With regard to the entry of Japanese employees, when employers concerned apply for labour permits for their employees, the Government of the Netherlands Indies will give favourable consideration for speedy granting of as many permits as possible, as far as circumstances allow, within the limits of existing regulations, and the permits to be granted will be at least 1600 per annum.

"(b) Employees for whom their employers apply for labour permits in order to replace existing employees, and employees for whom their employers apply for the extention of labor permits, and those whose purpose of entry is of temporary nature, are not included in the number cited above in the paragraph (a).

"(c) In consideration of the necessity in various districts, the Government of the Netherlands Indies will permit, as a whole, a certain number of Japanese doctors (including dentists) to enter the Netherlands Indies, if their object is to practise medical treatment solely to Japanese residents.

"It is also understood that Japanese doctors (including dentists), who are permitted to practise medical treatment to Japanese employees working for Japanese enterprises in outer regions, can extend their medical treatment, when necessary, to employees or servants of other nationalities working in the same enterprises.

"II. Enterprise and business.

"Whenever Japanese nationals concerned submit concrete applications for consent or permission for establishment or extention, etc. of various enterprises and businesses, either in their own account or in joint account with Netherlands enterprisers, the Government of the Netherlands Indies will give favourable consideration to the said applications, and as far as there are no special obstacles owing to the reasons of national defense or to the necessity of reservation for the subjects of the Netherlands Indies, they will allow previous investig-

ations, which are deemed necessary for the execution of their plans, and will give consent or permission for the said establishment or extention, etc.

"When the said consent or permission has once been given, the Government of the Netherlands Indies will give favourable treatment and necessary facilities as much as possible for the engagement of employees, the building up of transportation equipments, and other needed establishments, etc.

"(a) With regard to the mining, when Japanese enterprisers apply for the permission for exploration and exploitation of mineral resources, the Government of the Netherlands Indies will give favorable consideration thereto and will grant required permission, as far as there are no special obstacles.

"The same will be the case when Japanese enterprisers apply for the permission for exploration or exploitation according to article 5A of the Mining Law in order to participate in the mining within the area reserved for the Government.

"(b) With regard to the fishery, when concrete applications for permission are submitted by Japanese nationals concerned, the Government of the Netherlands Indies will grant permission, provided that there are no special obstacles owing to the reasons of national

defense or to the necessity of reservation for the subjects of the Netherlands Indies, especially for the natives, and they will give favourable treatment and necessary facilities for the engagement of employees working for Japanese fisheries as well as for the establishment of accessory installations necessary for the operation of the said fisheries, etc.

"With regard to commercial and other businesses, when applications are submitted by Japanese nationals, the Government of the Netherlands Indies will grant permission, provided that there are no special obstacles, and also concerning warehouse business and others, which are already subjected to the Business Regulation Ordinance, they will give favourable consideration to each case, when concrete applications are submitted and they will grant permission, provided that there are no special obstacles.

"III. Traffic and communication.

"(a) From the viewpoint that the development of air services between Japan and the Netherlands Indies will greatly contribute to the strengthening of economic relations between both countries, the Government of the Netherlands Indies Indies will, at a suitable opportunity in the future, cooperate with the Japanese Government for the open-

ing of direct air service between Japan and Netherlands Indies, but, for the time being will cooperate with the Japanese Government for the improvement of connection between Japanese and Netherlands aeroplanes at Bangkok, Saigon, and other places.

"(b) With regard to the telegraphic communication between Japan and the Netherlands Indies, the Government of the Netherlands Indies will cooperate with the Japanese Government for laying of technically most up-to-date submarine cables, under Japanese management, in order to establish a safe and efficient means of communication, at suitable opportunity in the future, but for the time being they will cooperate with the Japanese Government for the improvement of the radio telegraphic connection between Malabar and Japan, as well as for the utilization of the submarine cable between Yap and Menado.

"(c) With regard to the coastal navigation, when applications are submitted timely by existing Japanese enterprisers, who feel the necessity of their own coastal navigation, owing to the growth of their enterprises, and also when applications are submitted at the beginning as a part of their whole plans by new Japanese enterprisers, who foresee the necessity of their own coastal nav-

igation, the Government of the Netherlands Indies will grant permission, provided there are no special obstacles owing to the reasons of national defense.

"The Government of the Netherlands Indies state that, with regard to the coastal navigation already permitted to Japanese nationals, when Japanese nationals concerned, feeling the necessity of the increase in number of or in tonnage of ships, apply for the permission for the said increase, they will grant permission, provided that there are no special obstacles, and they further state that they have no intention to make difficult the navigation and the coastal trade of the ship, which is already permitted to engage herself in the said businesses.

"(b) When Japanese nationals concerned, feeling the necessity to have certain closed ports opened for special products or for general trade, in accordance with the development of Japanese enterprises or the increase of products or the furtherance of trade between Japan and the Netherlands Indies, apply for the permission for opening of those closed ports, the Government of the Netherlands Indies will grant permission provided that there are no special obstacles.

"(c) When Japanese Nationals concerned, feeling the necessity of Japanese ships to call at closed

ports for the shipment of products destined for Japan, apply for permission to that end, the Government of the Netherlands Indies will grant permission, provided that there are no special obstacles, and they will treat the matter as promptly as possible.

"IV. Trade and commerce.

"The Government of the Netherlands Indies state that, in view of the circumstances that the demand of Japanese industries on the products of the Netherlands Indies is rapidly increasing and the increasing import of Japanese articles will contribute towards the promotion of the welfare of the people of the Netherlands Indies, they recognize the importance of the position Japan is now occupying and will occupy in the future in the foreign trade of the Netherlands Indies, and will take the following measures to be effected for one year ending ..... 1942.

"1. (a) the quotas and or the percentages as shown in the attached Tables I and II shall be allotted to articles to be imported from Japan into the Netherlands Indies.

(b) Japanese importers in the Netherlands Indies shall be given import percentages ranging from ten to thirty per cents according to the kinds of articles.

"2. Unconditional and prompt permission shall be given for the exportation to Japan of the products of the Netherlands Indies mentioned in the attached list.

"3. With regard to the import duties, export taxes, surtaxes and official prices (including the prices in the Price List) , not only no discriminatory treatment shall be given to the articles imported from or exported to Japan, but also favourable treatment shall be accorded to them.

"V. In case neither of the Government of Japan nor the Government of the Netherlands will give notice to terminate the above-cited measures three months before the expiration of the period of one year as mentioned above, the said measures will continue to be operative for successive years, unless notice will be given three months before the expiration of each year.

14 May 1941."

You may cross-examine.

THE PRESIDENT: Mr. Comyns Carr.

MR. COMYNS CARR: May it please the Tribunal, there is only one matter about which the prosecution desires to ask a question.

Q On page 9, the first sentence of the second paragraph, Mr. ISHIZAWA, you refer to prosecution exhibit 1311, and you say that in reality it was nothing more than a mere draft. Would you look at this document which I have here -- this is a copy, another copy of Exhibit 1311 -- which comes from the Foreign Office, Japanese Foreign Ministry, with the pencilled note on it which you see on the first page.

(Whereupon a document was handed to the witness).

Now, just follow, would you, the pencilled note and tell me if this is what it says. I will read in English the translation which I have: "Explained by MATSUOKA at the Cabinet conference of 29 August 1940 -- I beg your pardon, 27 August -- after getting approval at the above, this was handed to Delegate KOBAYASHI as reference." Is that what the pencilled note says?

MR. LOGAN: If the Tribunal please, I would like to know if this is also on the original exhibit which is in evidence. In other words, he has handed him a copy here of something. I do not know what it is. I would like to know if that notation he is reading is on the original exhibit in evidence.

MR. COMYNS CARR: I carefully explained that it is not.

THE PRESIDENT: This note must be proved by the prosecution.

MR. COMYNS CARR: If necessary.

THE PRESIDENT: Yes, if necessary. They could cross-examine with a view to getting an admission.

BY MR. COMYNS CARR (Continued):

Q First of all, have I correctly represented the effect of the note as you see it there, Mr. ISHIZAWA?

A I think the English translation of the Japanese note in pencil is correct.

MR. LOGAN: If the Tribunal please, we contest the examination of this witness on a pencil notation on a copy. The copy has not even been proved to be a proper copy received from any Japanese authority. We do not know what it is. It is not the original that

they used.

THE PRESIDENT: He was asked, in effect, whether he recognizes this pencil notation, and he said he does. You did not hear him say that; you were walking about. You were not listening to what the witness was saying. If I understand him rightly, he said it was the pencil note.

MR. COMYNS CARR: He says that I have given a correct translation of the pencil note as it appears there. I now want to ask him --

MR. LOGAN: There is no evidence, if the Tribunal please, as to who put this pencil note on there or when it was put on. At least they might offer it for identification so we could look at it.

THE PRESIDENT: If he disclaims any knowledge about this pencil note, who put it there, then it must be proved otherwise.

BY MR. COMYNS CARR (Continued):

Q On the 27th of August, 1940, Mr. ISHIZAWA, you were in the Foreign Office in Tokyo, were you not?

A Yes, I was serving at the Foreign Office.

Q In the department dealing with this very matter.

A Yes, that is so.

Q And does not that note correctly represent

what happened on the 27th of August, 1940?

A I do not know who made this pencil notation. However, as to the matter described in the pencil note, as I was Chief of the Third Section of the European-Asiatic Affairs Bureau, I can say that it was so.

(In English) No, I mean I know about the fact regarding this notation.

THE PRESIDENT: Well, tell us what you know about it. Who made it?

THE WITNESS: I do not know who made the notation, but I do know of the fact --

THE MONITOR: Of the fact mentioned in the notation.

Q Do you say that the statement in the notation is true?

A The notation is far too simple and does not fully describe the situation. If I may be allowed, I would like to explain -- I am ready to explain in detail the situation existing at that time.

Q First of all, answer two questions about it: Did MATSUOKA submit it to the cabinet -- submit this document to the cabinet on the 27th of August, 1940?

A The Foreign Minister told me after the cabinet meeting that he explained orally this demand

vis-a-vis the Netherlands East Indies. His explanation was understood by the cabinet, he said.

THE MONITOR: This draft plan.

Q Was it not only understood by the cabinet but also approved by the cabinet?

A The Foreign Minister told me at the time that it was understood, but he did not say that it was approved.

THE MONITOR: Correction: He told me that they understood, but he did not tell me any further than that.

Q Was exhibit 1311 then handed to Mr. KOBAYASHI to take with him as his instructions?

A Concerning this matter, I did not hear directly from the Foreign Minister, but I did hear from the Vice-Minister, Mr. Chuichi OHASHI, who explained to me that this draft was handed to delegate KOBAYASHI merely for his information or as a reference. The draft was not handed to Mr. KOBAYASHI as an instruction. With reference to the Japanese-NEI negotiations, delegate KOBAYASHI was given full powers, and the Foreign Minister had no intention of ordering or instructing KOBAYASHI.

MR. COMYNS CARR: May it please the Tribunal, prosecution does not desire to cross-examine this

witness any further but desires to draw the attention of the Tribunal to the following exhibits: No. 523, recrod page 6174; 550, record page 6329; 552, record page 6350; and especially the series, part of which is referred to in the affidavit, 1309A to 1323, inclusive, record pages 11,717 to 11,883.

With regard to the document about which I have been asking the witness, I have no objection to it being marked for identification or shown to the defense, as the Tribunal considers most convenient.

THE PRESIDENT: The Clerk should mark it for identification and retain it subject to inspection.

We will adjourn for fifteen minutes.

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

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

THE PRESIDENT: Mr. Comyns Carr.

CLERK OF THE COURT: Copy of prosecution exhibit 1311 printed in Japanese with pencil markings thereon in Japanese will receive exhibit No. 2822 for identification only.

(Whereupon, the document above referred to was marked prosecution exhibit No. 2822 for identification.)

MR. COMYNS CARR: Your Honor, I wish to correct a slight misstatement which I made about that document. I described it as a copy. I understand it omits the last three pages of exhibit 1311 as it is before the Tribunal. That being so, may I ask the witness a further question?

CROSS-EXAMINATION

BY MR. COMYNS CARR (Continued):

Q Mr. ISHIZAWA, the document you have just been looking at omits the last three pages of the document 1311 containing what is described as "Second Proposal." Can you tell us whether the document which Mr. MATSUOKA told you he had explained to the cabinet was the whole document or only the part of it which is there now -- which is on the document you have been looking at?

A I did not see the contents of the document. I gave my particular attention only to the pencil notations and therefore I do not know whether the last three pages had been omitted or not.

Q You may take it from me that the last three pages of exhibit 1311 described as "Second Proposal" are not on the copy you have been looking at just now. I was not aware of that this morning but it so appears. What I want to know is, did Mr. MATSUOKA explain to the cabinet the whole document with both proposals or only the first proposal?

A In my recollection I think he explained only parts thereof.

Q Yes, but of both proposals or of only one proposal?

A I do not recall the details; however, it is my understanding that Mr. MATSUOKA as Foreign Minister explained to the cabinet the entire plan which had been drafted by the authorities concerned.

THE PRESIDENT: Mr. Logan.

REDIRECT EXAMINATION

BY MR. LOGAN:

Q Mr. ISHIZAWA, do you know of any reason why Mr. MATSUOKA did not instruct Mr. KOBAYASHI about these trade negotiations, and if you know of any

reason will you tell us what it was?

A I know of those circumstances quite well. I heard of them prior to Mr. KOBAYASHI's departure from Vice Minister OHASHI.

Q Tell us what he said.

A According to what Mr. OHASHI told me Mr. KOBAYASHI at that time was an active Minister of State holding the portfolio of Minister of Commerce and Industry. The precedent was rare for any active Minister of State to represent Japan as a delegate in a foreign negotiation. Because of the fact that Mr. KOBAYASHI was an active Minister of Commerce and Industry in charge of the economic problems of Japan at the time, and because a man of such a status was especially requested to go to the Netherlands East Indies to take charge of the negotiations between the Netherlands East Indies and Japan, and because he was directly in charge of economic and commercial problems, he was the most versed and qualified member of the cabinet in this respect and therefore on the part of the cabinet as well as on the part of the Foreign Minister it was the desire before the departure of Mr. KOBAYASHI to the negotiations not to issue any instructions or to put him into -- or to bind him with certain strict orders which would make it difficult

reason will you tell us what it was?

A I know of those circumstances quite well. I heard of them prior to Mr. KOBAYASHI's departure from Vice Minister OHASHI.

Q Tell us what he said.

A According to what Mr. OHASHI told me Mr. KOBAYASHI at that time was an active Minister of State holding the portfolio of Minister of Commerce and Industry. The precedent was rare for any active Minister of State to represent Japan as a delegate in a foreign negotiation. Because of the fact that Mr. KOBAYASHI was an active Minister of Commerce and Industry in charge of the economic problems of Japan at the time, and because a man of such a status was especially requested to go to the Netherlands East Indies to take charge of the negotiations between the Netherlands East Indies and Japan, and because he was directly in charge of economic and commercial problems, he was the most versed and qualified member of the cabinet in this respect and therefore on the part of the cabinet as well as on the part of the Foreign Minister it was the desire before the departure of Mr. KOBAYASHI to the negotiations not to issue any instructions or to put him into -- or to bind him with certain strict orders which would make it difficult

for the chief delegate to participate in the negotiations on behalf of his country. It was the desire of the cabinet, not only the cabinet but also of Foreign Minister MATSUOKA, not to issue any instructions to Mr. KOBAYASHI prior to his departure but to permit him to meet the authorities of the Netherlands East Indies and to engage in free discussions with them in order that he might demonstrate his peculiar talents in this particular field and to arrive at some amicable solution to the problems on hand. It was the policy of the government as well as the Foreign Minister not to issue instructions at first but upon receipt of a detailed report to the Japanese government from chief delegate KOBAYASHI following his discussion with the Netherlands authorities if the Japanese government felt it necessary to issue instructions, then instructions would be issued. That was the policy of the government. It was felt necessary that the draft plan of Japanese demands or requests vis-a-vis the Netherlands East Indies as prepared by the government departments concerned should at least be explained in its entirety to the cabinet and to secure the understanding of the members of the cabinet thereto. After that it was the aim of the government as well as of the Foreign Minister to hand this particular plan to

Mr. KOBAYASHI upon his departure merely as his reference but not to issue any instructions -- but not as an instruction. T hat was what Mr. OHASHI, the Vice Minister, told me directly.

MR. LOGAN: No further questions, your Honor. May the witness be released on the usual terms?

THE PRESIDENT: He is released on the usual terms.

(Whereupon, the witness was excused.)

MR. LOGAN: We offer in evidence defense document 1400-I-3 being a memorandum of a conversation in Washington, dated July 2, 1941, between Mr. Ballantine, Mr. Schmidt, Mr. Hamilton, Colonel IWAKURO and Mr. WIKAWA on July 2, 1941.

THE PRESIDENT: Brigadier Quilliam.

BRIGADIER QUILLIAM: May it please the Tribunal, in our submission this document is quite immaterial. Apparently all it consists of is an unsupported charge by Mr. WIKAWA against a private financial firm which acts as agent for the Japanese Government.

MR. LOGAN: The Tribunal will probably recall that Mr. Ballantine testified about various conversations that he had with the gentlemen mentioned in this memorandum and we are offering it for the purpose of showing that as early as July 2, 1941, there was information from the United States State Department about the freezing orders which were to be made effective July 26, 1941.

THE PRESIDENT: The United States is not identified with Morgan and Company, certainly.

MR. LOGAN: There is a statement there, Mr. Ballantine was present, with regard to information from the State Department.

THE PRESIDENT: This merely suggests possible leakage to Morgan and Company who acted on the strength of it. The fact is the freezing took place later. This does not seem to be relevant at all.

MR. LOGAN: Mr. Ballantine, as you probably recall, was a representative of the State Department. He was here at this conversation. There is no denial by him of it.

THE PRESIDENT: The freezing of assets is established. It was established by the prosecution's evidence. This is purely a collateral matter affecting a company.

MR. LOGAN: On the contrary, if the Tribunal please, the prosecution's contention, as I understand it, is that the freezing orders went into effect after Japan went into Indo-China. Now, this definitely shows that as of July 2, 1941 the State Department in a conversation at which Mr. Ballantine was present, and a member of the State Department, it appeared that the State Department had resolved to put those freezing orders into effect as early as July 2, 1941.

THE PRESIDENT: As I am reminded, that should have been put to Mr. Ballantine.

MR. LOGAN: If we had had the information at that time, your Honor, we would have been glad to do that.

THE PRESIDENT: We notice this excerpt is from "Foreign Relations of the United States," Volume 2, page 495.

MR. LOGAN: That is right.

THE PRESIDENT: Was that not in existence while Mr. Ballantine was here?

MR. LOGAN: Yes, your Honor, that was, as well as a large number of other books, and it is unfortunate that we were unable to uncover this particular memorandum at that time.

THE PRESIDENT: How is it relevant if the United States, even in July, 1941, contemplated freezing, under some circumstances about which we know nothing, but did not carry it out until later?

MR. LOGAN: The prosecution has contended, if the Tribunal please, that the imposition of the freezing orders was a retaliatory measure for Japan's advance into Indo-China. Now, this shows that as early as July 2, 1941, there was information that they were expected to be imposed in the near future. It would be for the Tribunal to determine

whether or not it was a retaliatory measure.

BRIGADIER QUILLIAM: May I respectfully point out to the Tribunal that there was a lot of evidence that Japan intended to go into French Indo-China before she actually did.

THE PRESIDENT: By a majority, the Court upholds the objection and rejects the document.

Duda & Spratt

On July 18, 1941 a memorandum by the Acting Secretary of State was issued regarding a request by the Japanese Ambassador with respect to certain Japanese steamers which had been held up at the Panama Canal. This is set forth in defense document 1400-M-5, which is offered in evidence.

THE PRESIDENT: Brigadier Quilliam.

BRIGADIER QUILLIAM: May it please the Tribunal, it is submitted that this document is also quite immaterial. It is merely a request for assistance in getting some Japanese ships through the Panama Canal and a promise to investigate the position and see what could be done. It is submitted that it contributes nothing whatever to the case.

MR. LOGAN: It shows, if the Tribunal please, that as early as July 18, 1941 economic pressure was also applied against Japanese shipping by holding up ships coming through the canal.

THE PRESIDENT: Well, you have given evidence on the embargo against the use of American goods. This is evidence of an embargo against the use of American canals or canals controlled by America. We admit it is an embargo against goods tentatively.

BRIGADIER QUILLIAM: May it please your Honor, it is suggested that this does not show an

embargo against Japan at all. It shows conduct on the part of the Japanese, which is quite general in its application. I am sorry. I should have said conduct on the part of the Americans who controlled the canal. And it is pointed out that if ships of other nations were going through the canal they must be carrying important cargoes for the United States, and that is why they should be allowed to go through.

MR. LOGAN: It shows discriminatory treatment, if the Tribunal please, against Japan. Other ships of other nations were permitted to go through; Japanese ships were held up.

THE PRESIDENT: By a majority the objection is overruled tentatively and the document admitted tentatively.

CLERK OF THE COURT: Defense document 1400-M-5 will receive exhibit No. 2823.

(Thereupon, the document above referred to was marked defense exhibit No. 2823 and received in evidence.)

MR. LOGAN: Exhibit 2823 (reading):

"Memorandum by the Acting Secretary of State (Washington), July 18, 1941.

"The Japanese Ambassador called to see me

this evening at his request. The Ambassador asked if I would lend my good offices in helping to solve a situation which had been created owing to the fact that three Japanese steamers had been held up at Cristobal on the Atlantic side of the Panama Canal and that some six other Japanese steamers were now headed for the Canal for the purpose of transiting. The Ambassador said that these steamers could not transit, although he had word from Japanese shipping sources that ships of other nationalities were being permitted to transit.

"I said to the Ambassador that I would be glad to investigate and if I had any information which would be useful to him, I would be glad to have it transmitted. I said that it was my understanding that about July 11 the Canal authorities had issued an order notifying shipping that repairs had to be undertaken in the Canal and that for that reason merchant shipping which desired to transit the Canal would have to be prohibited or severely restructed for an indefinite period. The Ambassador inquired with regard to the report he had concerning the fact that other flagships were being enabled to come through. I said that if this were in fact the case, I assumed that they must be merchant ships

carrying material required for the United States defense program and I said I was of course sure the Ambassador would agree that it was entirely logical to suppose that if any exceptions were made, ships carrying cargoes urgently required for our defense program would be granted preference.

"(S) Sumner Welles."

Defense document 401-B-7, corrected, being an excerpt from "Peace and War," and relating to a conversation on July 21, 1941 between President Roosevelt and the Japanese Ambassador, is now offered in evidence. This conversation refers to the oil situation.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 401-B-7 will receive exhibit No. 2824.

(Whereupon, the document above referred to was marked defense exhibit 2824 and received in evidence.)

MR. LOGAN: Exhibit 2824, "Excerpt from 'Peace and War,' United States Foreign Policy, 1931-1941." This is a conversation held July 21, 1941, between President Roosevelt and the Japanese Ambassador.

"In the course of this conversation the

President reminded the Japanese Ambassador that the United States had been permitting oil to be exported from the United States to Japan; that this had been done because we realized that if these oil supplies had been shut off or restricted the Japanese Government and people would have used this as an incentive or pretext for moving down upon the Netherlands Indies in order to assure themselves of a greater oil supply; that the United States had been pursuing this policy primarily for the purpose of doing its utmost to preserve peace in the Pacific region; that our citizens were unable to understand why, at a time when they were asked to curtail their use of gasoline, the United States should be permitting oil supplies to go to Japan when Japan had given every indication of pursuing a policy of force and conquest in conjunction with the policy of world conquest and domination being carried on by Hitler. The President said that if Japan attempted to seize oil supplies by force in the Netherlands Indies, the latter would undoubtedly resist, the British would immediately come to their assistance, and war would then result. In view of our own policy of assisting Great Britain, 'an exceedingly serious situation would immediately

result.' The President stated that with these facts in mind oil had up to this time been permitted to be shipped from the United States to Japan, notwithstanding the bitter criticism leveled against the administration.

"President Roosevelt discussed this question in an informal talk at the White House on July 24. He explained the essential necessity, from the standpoint of our own defense and of that of Great Britain, of preventing war from breaking out in the South Pacific. He said that if oil supplies from the United States had been cut off, Japan probably would have attacked the Netherlands Indies to obtain oil and war would have resulted; that the policy of the United States in allowing oil to go to Japan had succeeded in keeping war out of the South Pacific, 'for our own good, for the good of the defense of Great Britain, and the freedom of the seas.'"

We offer in evidence defense document 1400-K-3, being a memorandum dated Washington, July 21, 1941, from Rear Admiral Turner to Admiral Stark, Chief of Naval Operations, with respect to aid to China.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1400-K-3 will receive exhibit No. 2825.

(Whereupon, the document above referred to was marked defense exhibit No. 2825 and received in evidence.)

MR. LOGAN: Exhibit 2825, "The Director of the War Plans Division of the Navy Department (Rear Admiral Turner) to the Chief of Naval Operations (Admiral Stark).

"Memorandum, Washington, July 21, 1941.

"1. On July 20, 1941, about 3 P. M., Ambassador NOMURA called on me at my residence.***

"5. He then talked at length on the points which Japan considered essential for an agreement between the United States and Japan. The fundamental basis of such an agreement necessarily would be that either Power would be free to take such steps as seem to be required by its own responsibility for self-defense. He mentioned that, owing to export restrictions against Japan by the United States and the Philippines, and owing to a reduction in shipping tonnage available for trade, Japan's present economic position is bad and steadily getting worse. It is essential that Japan have uninterrupted access to necessary raw materials, particularly iron ore and

iron products, oil, rubber, cotton and food. There are other important items as well.

"6. The second point is that the United States is constantly providing greater support to China. If China is left without industrial and military support, it will not be long before the Chungking regime will be unable to continue the present 'China Incident'; Japan will then be able to withdraw from the greater part of China. However, Ambassador NOMURA noted that the United States is improving the Burma Road, and is supplying airplanes and pilots to be sent to Chungking. He understands that there are over a hundred American pilots now en route, who have been supplied from the armed forces of the United States. Japan must make some arrangement through which support of this nature will be reduced rather than increased. The British are also contributing more and more to measures designed to sustain the Chungking regime. ***

"8. He then informed me that within the next few days Japan expects to occupy French Indo-China. How the occupation would be made he is not informed; presumably, it would be chiefly by an overland march from Hanoi southward, but on this he is not yet informed. In any case, for the immediate future

security of Japan, both against a possible attack from the south and for a better control over the activities of Chungking, this occupation has become essential.

"9. It was evident that Ambassador NOMURA had some apprehension that the United States would take further action against Japan, either economically or militarily, as soon as Japanese troops were known to be occupying French Indo-China. He anticipates an intensification of the present press campaign against Japan in the United States. It seems, though he did not so state categorically, that Japan contemplates no further move to the south for the time being. He made no mention of possible activity against Siberia. ***"

Signed, "R. K. Turner."

"Transmitted to President Roosevelt and to the Secretary of State by Admiral Stark."

THE PRESIDENT: This is only three days after Mr. Sumner Welles' memorandum.

MR. LOGAN: Defense document 1500-E-3 is an excerpt dated July 25, 1941, and deals with sanctions against Japan. This is a memorandum from Brigadier General Sherman Miles to the Chief of Staff. Copies were also sent to the Secretary of War,

Secretary Joint Board, Deputy Chief of Staff, War Plans Division. It deals with the Japanese Government's decision to take over control of capital funds because of the deplorable economic conditions in Japan. This document is offered in evidence.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1500-E-3 will receive exhibit No. 2826.

(Whereupon, the document above referred to was marked defense exhibit No. 2826 and received in evidence.)

MR. LOGAN: (Reading) "Military Intelligence Estimates Prepared by G-2, War Department, Washington, D. C.

"July 25, 1941. Subject: Sanctions against Japan. (Excerpt)

"July 25, 1941. Memorandum for the Chief of Staff. Subject: Sanctions against Japan.

"Discussion.

"1. On July 12, 1941 the Japanese Government announced that it had decided to take over control of the nation's capital funds which are to be mobilized in the interests of the state. The new policy apparently discards the past economic setup and calls for mobilization and distribution of capital at the will of the government in order to attain maximum production as well as to bolster the defense structure.

"2. The new policy is obviously a belated attempt to improve the deplorable economic conditions in Japan -- conditions pointed out in confidential Economic Estimate, Japan, May 27, 1941, compiled in the Far Eastern Section, this division, a copy of which is attached hereto as Tab I.*

"* Omitted.

"Sherman Miles, Brigadier General, U. S. Army, Acting Assistant Chief of Staff, G-2.

"1 Enclosure: Tab I. Copies to: Secretary of War; Secretary, Joint Board; Deputy Chief of Staff; War Plans Division.

"(Pencilled notation:) This memo was written prior to receipt of information regarding embargo decision. S.M. H."

On July 25, 1941, President Roosevelt issued a radio bulletin setting forth that the reason why the United States continued to send oil to Japan was with the hope -- which had worked for two years -- of keeping war out of the South Pacific. This excerpt, defense document 1400-R-5, is from Foreign Relations of the United States, and is offered in evidence.

THE PRESIDENT: Brigadier Quilliam.

BRIGADIER QUILLIAM: If it please the Tribunal, this is a piece of United States propaganda in support of its embargo policy. It is submitted that in addition to being irrelevant it has no probative value and it does not assist the Tribunal. We ask for its rejection.

MR. LOGAN: If the Tribunal please, this is the complete speech which is briefly mentioned in exhibit 2824 which was just offered in evidence and which was not objected to by the prosecution. It refers to the same conversation, your Honor. I think

if we read this we will find this true. It is the reason why oil had been prohibited from being sent to the Netherlands East Indies. Furthermore, I do not think there is any possibility of its coming within the classification of propaganda as related here by my friend.

THE PRESIDENT: No, it wouldn't be rejected on that ground. But it seems to be the same speech as made by the President on the 24th of July as appears in exhibit 2824 just admitted. I should say, it is a comment on the President's speech the day before.

MR. LOGAN: Except it gives it in more detail. It is just briefly mentioned in 2824, and this just gives it more completely.

BRIGADIER QUILLIAM: There can be no doubt, your Honor, that this does refer to the second paragraph of exhibit 2824. We did not object to 2824 primarily because we considered that the Tribunal would hold it as part of the negotiations between the parties because that is what the document in substance deals with.

THE PRESIDENT: We should be satisfied with the President's speech or conversation. We do not look for expositions of it by somebody else.

MR. LOGAN: This is a radio bulletin issued

by the White House.

THE PRESIDENT: Are you asking us to prefer this to the President's speech?

MR. LOGAN: Apparently this is the President's speech. It is in quotations.

THE PRESIDENT: This is not the President's speech, as we understand it.

MR. LOGAN: I understand it is, your Honor.

THE PRESIDENT: We will allow you to prove the exact words of the President if you get them. We cannot assume that these are the exact words.

MR. LOGAN: I firmly believe they are, if the Tribunal please, but if you wish me to I will check it to make absolutely certain.

THE PRESIDENT: Do you undertake to establish that they are his exact words?

MR. LOGAN: I will check it from the book to make absolutely certain, but I understand that they are, yes, sir.

THE PRESIDENT: We could admit it provisionally.

MR. LOGAN: All right; and then I will check it.

Prosecution just informed me, if the Tribunal please, that they believe it is his speech, too.

THE PRESIDENT: The objection is overruled --

I suppose it is withdrawn, really -- and the document admitted on the usual terms.

CLERK OF THE COURT: Defense document 1400-R-5 will receive exhibit No. 2827.

(Whereupon, the document above referred to was marked defense exhibit No. 2827 and received in evidence.)

MR. LOGAN: I will now read exhibit 2827.

"Excerpt from Radio Bulletin No. 176, Issued by the White House on July 25, 1941.

"'All right. Now the answer is a very simple one. There is a world war going on, and has been for some time -- nearly two years. One of our efforts, from the very beginning, was to prevent the spread of that world war in certain areas where it hadn't started. One of those areas is a place called the Pacific Ocean -- one of the largest areas of the earth. There happened to be a place in the South Pacific where we had to get a lot of things -- rubber, tin, and so forth and so on -- down in the Dutch Indies, the Straits Settlements, and Indo-China. And we had to help get the Australian surplus of meat and wheat, and corn, for England.

"'It was very essential from our own selfish point of view of defense to prevent a war from starting in the South Pacific. So our foreign policy was --

trying to stop a war from breaking out down there. At the same time, from the point of view of even France at that time -- of course France still had her head above water -- we wanted to keep that line of supplies from Australia and New Zealand going to the Near East -- all their troops, all their supplies that they have maintained in Syria, North Africa and Palestine. So it was essential for Great Britain that we try to keep the peace down there in the South Pacific.

"'All right. And now here is a nation called Japan. Whether they had at that time aggressive purposes to enlarge their empire southward, they didn't have any oil of their own up in the north. Now, if we cut the oil off, they probably would have gone down to the Dutch East Indies a year ago, and you would have had war.

"'Therefore, there was -- you might call -- a method in letting this oil go to Japan, with the hope -- and it has worked for two years -- of keeping war out of the South Pacific for our own good, for the good of the defense of Great Britain, and the freedom of the seas.'"

THE PRESIDENT: This is a convenient break. We will adjourn until half-past one.

(Whereupon, at 1200 a recess was taken.)

Lefler & Wolf

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: With the Tribunal's permission, the accused TOGO will be absent from the courtroom this afternoon conferring with his counsel.

Mr. Logan.

MR. LOGAN: If the Tribunal please, we offer in evidence defense document 1500-K-2. This is a message from the United States Chief of Naval Operations to Admiral Kimmel, and others, which shows that the military authorities in the United States were acting in concert with the State Department in regard to imposition of sanctions against Japan on July 26, 1941.

THE PRESIDENT: Brigadier Quilliam.

BRIGADIER QUILLIAM: May it please the Tribunal, we submit this document is irrelevant. It is merely the instructions given on the imposition of sanctions to the United States Navy and were instructions as to the necessary precautions to be taken.

THE PRESIDENT: The implementing of their freezing order?

BRIGADIER QUILLIAM: That is our submission, if it please your Honor, that it is merely a routine matter and does not carry the issue any further.

MR. LOGAN: It goes a little further than that, your Honor. You will note that it also refers to action being initiated calling the Philippine Army into active service. It shows the beginning of some real active military preparations as well as the commencement of these sanctions.

THE PRESIDENT: The objection is overruled and the document admitted on the usual terms.

CLERK OF THE COURT: Defense document 1500-K-2 will receive exhibit No. 2828.

(Whereupon, the document above referred to was marked defense exhibit No. 2828 and received in evidence.)

MR. LOGAN: I might point out at this time, for the Tribunal's convenience, that all documents in the 1500 series come from the Congressional Investigation of the Pearl Harbor Attack.

"25 July 1941 from CNO to Kimmel et al. Subject: Economic Sanctions against Japan.

"This is a joint dispatch from the CNO and the Chief of Staff US Army X Appropriate adees deliver copies to Commanding Generals Hawaii Philippines and

Caribbean Defense Command and to General Chaney in London XX You are advised that at 1400 GCT July twenty-sixth United States will impose economic sanctions against Japan X It is expected these sanctions will embargo all trade between Japan and the United States subject to modification through a licensing system for certain material X It is anticipated that export licenses will be granted for certain grades of petroleum products cotton and possibly some other materials and that import licenses may be granted for raw silk X Japanese assets and fund in the United States will be frozen except that they may be moved if licenses are granted for such movement X It is not repeat not expected that Japanese merchant vessels in United States ports will be seized at this time X United States flag merchant vessels will not at present be ordered to depart from or not enter ports controlled by Japan X CNO and COS do not anticipate immediate hostile reaction by Japan through the use of military means but you are furnished this information in order that you may take appropriate precautionary measures against possible eventualities X Action being initiated by the United States Army to call the Philippine Army into active service at an early date XX This despatch is to be kept secret except from immediate Navy and

Army subordinates X SPENAVO informs CNS but warn him against disclosure X Action addees this dis are Cincpac Cinclant Cincaf Com Fifteen Spenavo London XX Secret"

A press release was issued by the White House on July 25, 1941 stating that the Executive Order was issued on that date freezing Japanese assets in the United States and that this measure was bringing all financial, import and export trade transactions in which Japanese interests were involved under the control of the Government. It also shows that the Chinese assets were frozen at the same time at the request of Chiang Kai Shek. This release which is defense document 1400-N-5 is now offered in evidence.

This document is a tentative document.

THE PRESIDENT: Admitted tentatively.

CLERK OF THE COURT: Defense document 1400-N-5 will receive exhibit No. 2829.

(Whereupon, the document above referred to was marked defense exhibit No. 2829 and received in evidence.)

MR. LOGAN: I shall read from exhibit 2829:

"Press Release Issued at Poughkeepsie, New York, by the White House on July 25, 1941

"In view of the unlimited national emergency

Army subordinates X SPENAVO informs CNS but warn him against disclosure X Action addees this dis are Cincpac Cinclant Cincaf Com Fifteen Spenavo London XX Secret"

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THE PRESIDENT: Admitted tentatively.

CLERK OF THE COURT: Defense document 1400-N-5 will receive exhibit No. 2829.

(Whereupon, the document above referred to was marked defense exhibit No. 2829 and received in evidence.)

MR. LOGAN: I shall read from exhibit 2829:

"Press Release Issued at Poughkeepsie, New York, by the White House on July 25, 1941

"In view of the unlimited national emergency

declared by the President, he has today issued an Executive Order freezing Japanese assets in the United States in the same manner in which assets of various European countries were frozen on June 14, 1941. This measure, in effect, brings all financial and import and export trade transactions in which Japanese interests are involved under the control of the Government, and imposes criminal penalties for violation of the Order.

"This Executive Order, just as the Order of June 14, 1941, is designed among other things to prevent the use of the financial facilities of the United States and trade between Japan and the United States, in ways harmful to national defense and American interests, to prevent the liquidation in the United States of assets obtained by duress or conquest, and to curb subversive activities in the United States.

"At the specific request of Generalissimo Chiang Kai-shek, and for the purpose of helping the Chinese government, the President has, at the same time, extended the freezing control to Chinese assets in the United States. The Administration of the licensing system with respect to Chinese assets will be conducted with a view to strengthening the foreign trade and exchange position of the Chinese government. The

inclusion of China in the Executive Order, in accordance with the wishes of the Chinese government, is a continuation of this Government's policy of assisting China."

Defense document 220, processed for the defense by the prosecution, BR 146A, is an excerpt from exhibit 58, being a document handed by Japanese Minister TOYODA to American Ambassador Grew on July 25, 1941 is offered in evidence. In this document TOYODA sets forth the reaction of the Japanese people to the economic sanctions, aid to Chiang Kai-shek and the Netherlands East Indies-Japanese negotiations.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 220 will receive exhibit No. 2830.

(Whereupon, the document above referred to was marked defense exhibit No. 2830 and received in evidence.)

MR. LOGAN: I shall read exhibit 2830:

"THE JAPANESE MINISTER FOR FOREIGN AFFAIRS (TOYODA) TO THE AMERICAN AMBASSADOR IN JAPAN (GREW)

"(TOKYO) JULY 25, 1941.

"Between the Japanese Government and the Vichy Government there was amicably reached an agreement of views on the twenty-first of July, 1941,

concerning the joint protection of French Indo-China, and an announcement on the agreement is soon to be made.

"I asked for an appointment with Your Excellency this evening in order to take this opportunity, on behalf of the Japanese Government of informing Your Excellency in advance of the measure just referred to, and of making the situation clear so that there may be no unnecessary misunderstanding which may arise from this question, in view of the foreign press reporting unfounded rumors such as that the Japanese Government had sent the Vichy Government an ultimatum.

"The relations between Japan and French Indo-China have recently become more friendly by the so-called MATSUOKA-Henri Pact of August, last year, and several other Franco-Japanese agreements; and in view of the fact that it is to the common interest of both Japan and France to insure the safety of French Indo-China and to prevent the disturbance of peace in the same area under the existing complicated international situation, the Japanese and French Governments have, at this time, as already stated, arrived at an understanding as regards joint protection of French Indo-China.

"As a matter of fact, we are receiving numerous reports that America should adopt more stringent anti-Japanese economic measures such as the freezing of Japanese capital in America and a complete embargo of petroleum oil as retaliatory steps against the measure just mentioned; and if the above should ever be realized, I deeply apprehend that it will be difficult to prevent the unexpected agitation of antagonism among the Japanese people against aid to the Chiang Kai-shek regime and the encirclement campaign against Japan which antagonism the government has so carefully repressed until today.

"It seems that in the United States there is an element which possesses an unpleasant feeling against the measure which I have just mentioned, but viewing it in a fair and composed attitude from an objective standpoint, such a measure is truly unavoidable from a broad viewpoint of maintaining peace in the Pacific by preventing a more serious aggravation of the feelings of the Japanese people, which are steadily being excited by such facts as the unsatisfactory result of the Netherlands East Indies-Japanese negotiations, and as is well known, the almost daily reports from abroad about the tightening of the encirclement campaign against Japan. I earnestly hope that Your Excellency will

fully comprehend the disposal at issue being necessitated by sincere hope for the maintenance of the peace in the Pacific and cooperate in keeping the door open for my hope and further efforts directed toward amicable solution of Japanese-American relations."

Defense document 401-59 relating to the freezing of Japanese assets in the United States, being an excerpt from Peace and War, is now offered in evidence. Although the evidence of this freezing order is already in, I am just offering the last several lines there, the effect of the freezing orders.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 401-59 will receive exhibit No. 2831.

(Whereupon, the document above referred to was marked defense exhibit No. 2831 and received in evidence.)

MR. LOGAN: I shall read exhibit 2831:

"FREEZING OF JAPANESE ASSETS IN THE UNITED STATES

"On July 26, 1941 President Roosevelt issued an Executive Order freezing Japanese assets in the United States. This order brought under control of the Government all financial and import and export

trade transactions in which Japanese interests were involved, and the effect of this was to bring about very soon the virtual cessation of trade between the United States and Japan."

The next day on July 26, 1941 Executive Order 8832 was signed which amended Executive Order 8839 of April 10, 1940 to include China and Japan. This is set forth in defense document 1400-0-5. This document will be a tentative one.

THE PRESIDENT: Admitted tentatively.

CLERK OF THE COURT: Defense document 1400-0-5 will receive exhibit No. 2832.

(Whereupon, the document above referred to was marked defense exhibit No. 2832 and received in evidence.)

MR. LOGAN: Exhibit 2832, "Executive Order No. 8832, Signed by President Roosevelt, July 26, 1941," shows that the act of October 6, 1917, as amended by executive order of April 10, 1940, as amended, includes, as of June 14, 1941, China and Japan.

We now offer in evidence defense document 1733 which is an official note of the British Ambassador in Japan to Foreign Minister TOYODA, dated July 26, 1941, abrogating the Anglo-Japanese Treaty of Commerce and Navigation.

THE PRESIDENT: Brigadier Quilliam.

BRIGADIER QUILLIAM: May it please the Tribunal, we desire to point out that the matters covered in this document have already been proved, as in the case of two or three other documents which have just been presented.

MR. LOGAN: I don't know whether there is any evidence of this in the case, your Honor.

THE PRESIDENT: I think there is evidence that this particular treaty was abrogated.

MR. LOGAN: I can't recall any in the case at all.

THE PRESIDENT: It is admitted that it is, so we need not bother about this.

BRIGADIER QUILLIAM: This was proved, may it

please your Honor, by Mr. Ballantine, page 10,763, where he dealt with all the freezing orders.

MR. LOGAN: Well, this evidence certainly, your Honor, doesn't show that this agreement was terminated in accordance with the terms of it and was to continue for a further period of time, which was subsequently disregarded by the United Kingdom. In other words, there is no evidence in the case that the notice of termination was given under the agreements themselves, that the agreements were to continue in force for a further period, and that is what we are trying to show by this, and that that was subsequently abrogated by the cutting off of trade between these countries and Japan.

THE PRESIDENT: But, why have it proved to this extent? It is not denied at this point. I think we ought to reject this as unnecessary.

MR. LOGAN: There is no evidence in the case, your Honor.

THE PRESIDENT: You have an admission by the prosecution.

MR. LOGAN: Will the prosecution admit that, contrary to the terms of these agreements, when the notice was given, that they were to be terminated at the further period of one year and a further period

of six months, depending on which agreement they were referring to, but not --

BRIGADIER QUILLIAM: May it please your Honor, we say that the whole of this evidence has been proved in the prosecution's case, that this is unnecessary. We certainly do not admit that there was any breach.

THE PRESIDENT: Nor does this document establish one.

The objection is upheld, and the document is rejected.

MR. LOGAN: If the Tribunal please, I would just like to refer back to this a minute, with your permission. The prosecution objects to a document we offer and makes a statement to the Court that it is already proven. We ask for a stipulation as to the facts we are trying to prove by this document, and they refuse us, which definitely shows that it is a tacit admission on their part that the facts we are trying to prove have not been introduced in the case so far.

THE PRESIDENT: You are fully protected, Mr. Logan. If, in fact, these facts have not been proved, they are now admitted by the prosecution.

MR. LOGAN: Thank you, your Honor.

Defense document 1708 is now offered in

evidence. This is a statement issued by the British Exchequer, dated July 26, 1941, prohibiting certain transactions of banks with Japan.

THE PRESIDENT: Brigadier Quilliam.

BRIGADIER QUILLIAM: If it please the Tribunal, this also was proved by Mr. Ballantine.

THE PRESIDENT: If it is not, we will take it as admitted.

The document is rejected.

MR. LOGAN: We offer in evidence defense document 1707, which is a telegram from the Japanese Charge D'Affaires in England to Foreign Minister TOYODA, dated July 26, 1941, informing him of the British Government's freezing order against Japanese funds.

THE PRESIDENT: Admitted tentatively, is it? Is that a tentative one?

MR. LOGAN: No.

THE PRESIDENT: Admitted on the usual terms.

BRIGADIER QUILLIAM: The facts, the essential facts in this document, Sir, have already been proved by Mr. Ballantine.

MR. LOGAN: I don't recall that it is in there. The Brigadier may be correct, your Honor, I don't know.

THE PRESIDENT: Well, we will give the same

decision as in the last document.

It is rejected.

Reichers & Kapleau

MR. LOGAN: The next document, 1706, falls in the same category. Will we have the same ruling on it?

THE PRESIDENT: We would like to know what it is, though. We want the transcript to show what it is.

MR. LOGAN: Defense document 1706 is now offered in evidence. This is an order from the British Treasury to the Yokohama Specie Bank, notifying it of the freezing orders.

THE PRESIDENT: It is rejected.

MR. LOGAN: We offer in evidence defense document 1500-S-4. This is an excerpt from the testimony of Admiral Harold R. Stark. It is offered in evidence as showing the American High Command concept of the effect of the July 25, 1941 oil embargo on Japan. It also contains a letter dated July 22, 1941, from Admiral Stark to Mr. Welles, of the United States State Department, relating to embargoes, together with a study on the embargo problem prepared by Admiral Turner for the Chief of Naval Operations.

THE PRESIDENT: Brigadier Quilliam.

BRIGADIER QUILLIAM: May it please the Tribunal, we object to this document on the ground that it is irrelevant and also that it has no proba-

tive value. It merely gives the opinions of certain United States offices as to the possible consequences of the embargo policy being followed by the United States. As may well be expected, there was a difference of opinion as to whether a strong line or a weak line should be taken. This document shows that at least one senior American naval officer thought that a strong line might be more successful than a weak one in avoiding war. The document carries the matter no further than that, and we suggest that the Tribunal will not be interested in the opinion even of a senior United States Naval officer on this subject.

THE PRESIDENT: Other American admirals may have had a different opinion. We don't know.

MR. LOGAN: If the Tribunal please, this is the testimony of Admiral Stark before the Congressional investigation on the Pearl Harbor attack. In it he was question about a conference he had at the White House with President Roosevelt, the Secretary of State, and Under-Secretary of State Mr. Wells, in which not only Admiral Stark's opinion is set forth -- and he at that time was Chief of Naval Operations, the highest position in the Navy, I believe -- it not only sets forth his opinion but statements made by the President and the Secretary of State.

It shows that the highest-ranking governmental officials both of the State and Navy Department knew the effect of the embargoes and freezing orders, and that the State Department knew and agreed with the military that these sanctions would bring war on ultimately -- in other words, that the government knew that these sanctions would provoke Japan into an act of war, which has a direct bearing and is material and relevant to the point we are trying to prove in this case.

THE PRESIDENT: I can only repeat that acting under provocation and acting in self-defense are two distinct matters.

We are going to make this the subject of a tentative admission. It is admitted tentatively.

CLERK OF THE COURT: The publication entitled "Pearl Harbor Attack, Part 5" will receive exhibit number 2833 for identification only, and the excerpt therefrom, bearing defense document number 1500-S-4, will receive exhibit No. 2833-A.

(Whereupon, the document above referred to was marked defense exhibit 2833 for identification; the excerpt therefrom being marked defense exhibit 2833-A and received in evidence.)

MR. LOGAN: I shall read exhibit 2833-A that has been tentatively admitted.

"Excerpt from Testimony of Admiral Harold R. Stark - Friday, January 4, 1946.

"Senator Ferguson: About the oil question and your attitude toward Japan. Did you not testify before the Navy court, on page 43, question 117, that after the imposition of economic sanctions upon Japan in the summer of 1941 you stated that Japan would go somewhere and take it (oil), and that if you were a Jap you would?

"Admiral Stark: I think that is correct. You are reading from the record, and I stand back of it. I stated it, and I stated in the State Department, as I recall, that if a complete shut-down was made on the Japanese, throttling her commercial life and her internal life and her essential normal peace life by stopping her from getting oil, that the natural thing for a Jap was to say, 'Well, I will go down and take it.'

Senator Ferguson: Did you attend the White House conference on the 24th of July 1941 with President Roosevelt and the Secretary of State, or Under Secretary Mr. Welles, where it was indicated to the Japanese Ambassador that the British, the Dutch, and American Governments were about to impose upon Japan

an oil embargo? That is in Foreign Relations, volume 2, on page 527, to refresh your memory.

"Admiral Stark: Well, I recall a good many discussions about economic sanctions. I do not recall that particular one. I remember very clearly one meeting in the White House about that period with the Japanese Ambassador, and I think it was Mr. Welles and not Mr. Hull, in which we were struggling to keep the peace in the Pacific, when NOMURA stated it was necessary for them to secure themselves regarding certain products in Indo-china, food, rice, and the President proposed that, so far as his position could have influenced he would endeavor to see that they got food and their minimum needs, provided they would stop their aggression.

"Senator Ferguson: Well, I got this quote from the official record, and I wondered whether that would refresh your memory.

"Admiral Stark: I do not recall that particular meaning to which you refer.

"Senator Ferguson: Do you remember on that same occasion that the President did tell Japan, that is, through the Ambassador, that should she then attack to get oil by force the Dutch and British would go to war against her? That is on page 527.

"Admiral Stark: That the President said 'if" -- What, sir?

"Senator Ferguson: That on that occasion he said to the Japanese Ambassador should she attack to get oil by force the Dutch and British would go to war against her?

"Admiral Stark: I do not recall that particular statement.

"Senator Ferguson: On page 527.

"Admiral Stark: I do not recall that particularly.

"Mr. Mitchell: Senator, I have here papers that we very recently dug out of the State Department files, a letter of July 22, 1941, by Admiral Stark to Mr. Welles, about the possible effect of an embargo, and attached to it, on July 19, 1941, is Admiral Turner's analysis of the embargo problem which was sent to Mr. Welles, with the notation at the bottom 'I concur in general. Is this the kind of picture you wanted? HRS.'

"Senator Ferguson: That will help. I will quote from page 527 of Foreign Relations:

"'The President said that if Japan attempted to seize oil supplies by force in the Netherlands East Indies, the Dutch would, without the shadow of

a doubt, resist, the British would immediately come to their assistance, war would then result between Japan, the British and the Dutch, and in view of our own policy of assisting Great Britain, an exceedingly serious situation would immediately result.'

"Do you remember that? I do not think you and I have the same volume.

"Admiral Stark: I think we have.

"Senator Ferguson: It is at the bottom of page 527.

"Admiral Stark: I do not recall it. But it undoubtedly took place, being in here.

"Senator Ferguson: Now, do you know whether or not shortly after that, in fact about 48 hours, the embargo did go on?

"Admiral Stark: The embargo went on, as I recall, on the 26th. This is the 24th. Yes, sir.

"Senator Ferguson: Now, referring to page 531 of that same book, that is, the conversation between Colonel IWAKURO and Mr. WIKAWA and Mr. Ballantine, were you informed on that day that the Japanese military attache told Mr. Ballantine that Japan would have no alternative sooner or later but to go to Malaya and the Dutch East Indies for oil and other material?

"Admiral Stark: I do not recall that, but it is in line with the thought I had as to what to do.

"Senator Ferguson: Now, Admiral, taking the high-ranking officials in our Government, you said that you thought sanctions such as this oil, and so forth, would bring war on ultimately. Who else agreed with you?

"Admiral Stark: Well, according to Peace and War, which I read into my statement, I think the State Department also agreed with it.

"Senator Ferguson: Well, did General Marshall?

"Admiral Stark: Well, I would rather you asked him. My recollection is there was no difference of opinion amongst us with regard to that, and this Peace and War states:

"'Practically all realistic authorities have been agreed that imposition of substantial economic sanctions or embargoes against any strong country, unless that imposition be backed by a show of superior force, involves serious risk of war. The President and heads of the Army and Navy and Department of State were in constant consultation through this period regarding all the aspects of the diplomatic and military situation.'

"(The matter referred to follows:)

"Navy Department

"Office of the Chief of Naval Operations,

""ashington, 22 July 1941.

"Dear Mr. Welles: The latter part of last week the President asked my reaction to an embargo on a number of commodities to Japan. I expressed the same thought to him which I have expressed to you and to Mr. Hull regarding oil, but as to the subject in general I would be glad to have War Plans Division make a quick study. This study was finished yesterday. I sent it to the President and told his Aide I should also like to send you a copy. The President expressed himself as pleased with it and asked me to send a copy to Mr. Hull, which I have done, and to talk it over with you.

""ill you send for me at your convenience?

"Sincerely, H. R. STARK

"Honorable SUMNER WELLS

"Under Secretary of State

"State Department, Washington, D. C.

"July 19, 1941.

SECRET

"From: The Director, War Plans Division.

"To: The Chief of Naval Operations.

"Subject: Study of the effect of an embargo of trade between the United States and Japan.

"Enclosures:

(A) Copy of the following tables:

(1) Exports to Japan--December 1940 through May 1941.

(2) Exports from Hawaii to Japan--December 1940 through May 1941.

(3) Exports from the Philippines to Japan--December 1940 through May 1941.

(B) Copy of the following tables:

(1) Imports from Japan--December 1940 through May 1941.

(2) Imports from Japan to Hawaii--December 1940 through May 1941.

1. Purpose.-- The purpose of this study is to determine the effect that would be produced by the enforcement of an absolute or partial embargo on trade between the United States and Japan. Detailed consideration has not here been given to the trade between the Philippines and Japan.

2. United States exports to Japan in 1940.-- United States exports to Japan in 1940 were valued at $227,000,000, a decline of $5,000,000 from 1939, and

of $13,000,000 from 1938. During the first ten months of 1940 the value of exports advanced, due to higher commodity prices and Japan's increased demand for American products as a result of enforced curtailment of her purchases from Europe. However, sharp recessions in export trade during the last two months of 1940, occasioned in part by the application of export license control to certain products, wiped out earlier gains. In November and December, particularly sharp declines were registered in machine tools, ferro-alloys, and refined copper, while scrap-iron exports were practically negligible."

"3. Present trends of exports -- (a) United States exports to Japan during the first five months of 1941 were valued at $47,000,000 as compared with $91,500,000 for the same period of 1940. During the current year trade has declined steadily from $11,336,000 in January to $6,594,000 in May.

"(b) The principal factor affecting exports to Japan during the past year has been the progressively restrictive effect of export control measures. The virtual disappearance from the trade in 1941 of iron and steel products and of metal-working machinery, which together accounted for shipments valued at $67,000,000 in 1940, was the direct result of an embargo on shipments of these commodities to Japan. The sharp drop in Japanese purchases of raw cotton during1940, however, was the result of other influences.

"(c) (1) During 1939 Japan purchased American raw cotton valued to $42,500,000, while in 1940 her purchases amounted to only $29,500,000. This drop was due to the large quantity of piece goods then on hand in Japan, the relatively high price of American cotton compared to that of India and of Latin America, and shipping requirements for items needed more urgently. In November 1940 American exports of

raw cotton were valued at only $157,000; they have risen steadily since then, reaching $881,000 in May 1941.

"(2) Declines in luxury items, including automobiles, are due to a decline in purchasing power in Japan and to Japanese action in placing restrictions on the importation and use of these items, rather than to United States export restrictions.

"(d) Petroleum exports during 1940 increased by $9,300,000 or 21%, over the figure for 1939. Exports for the first five months of 1941 were valued at $27,200,000, or 50% of the total for the entire year 1940. This is contrary to the general trend of exports.

"(e) Sharp reductions in available ship tonnage has contributed to the fall in exports. Due to withdrawals from trade of additional vessels, future exports to Japan will be even less, regardless of export restrictions.

"4. Imports from Japan. -- (a) Imports from Japan to the United States during 1939 were $161,000,000 and in 1940 $158,000,000. For the first four months of 1941, imports amounted to $40,000,000, a decline of only $8,200,000 from the same period in 1940;

this compares with a decline in our exports of $37,300,000. Our exports to Japan exceeded our imports from that country during the period of 1 January to 30 April 1941, by only about $500,000, much less than usual. One result of the system of export control is thus seen to be the arrival at a balance between our exports and imports. This fact permits Japan to pay in kind for all goods sent to her from this country, and a continuation of the present trend may soon make her our creditor.

"(b) The following table shows items of imports valued at more than $1,000,000 during 1940:" I shan't read these figures, but will read the total of $120,356,000, and just the one item of Raw Silk, $105,311,000.

"These eight items account for 76% of our imports and indicate where curtailment might start if it is decided to take steps to reduce Japan's markets.

"5. Effect of further restrictions on exports. -- (a) The most important fields for exercising further restrictions on exports are petroleum products and raw cotton, which accounted for 74% and 13% respectively, of the trade in May, 1941.

"(b) It is generally believed that shutting off the American supply of petroleum will lead promptly to an invasion of the Netherlands East Indies. While

probable, this is not necessarily a sure immediate result. Japan doubtless knows that wells and machinery probably would be destroyed. If then engaged in war in Siberia, the necessary force for southward adventures might not be immediately available. Furthermore, Japan has oil stocks for about eighteen months war operations. Export restrictions of oil by the United States should be accompanied by similar restrictions by the British and Dutch.

"(c) Restrictions on the export of raw cotton would probably be serious for Japan only if India, Peru, and Brazil should apply the same restrictions. Cotton stocks in Japan are believed to be rather low at present.

"(d) It will, of course, be recognized that an embargo on exports will automatically stop imports from Japan.

"(e) An embargo on exports will have an immediate severe psychological reaction in Japan against the United States. It is almost certain to intensify the determination of those now in power to continue their present course. Furthermore, it seems certain that, if Japan should then take military measures against the British and Dutch, she would also include military action against the Philippines, which would

immediately involve us in a Pacific war. Whether or not such action will be taken immediately will doubtless depend on Japan's situation at that time with respect to Siberia.

"(f) Additional export restrictions would hamper Japan's war effort, but not to a very large extent since present restrictions are accomplishing the same result, except with regard to oil, raw cotton and wood pulp. Thus, the economic weapon against Japan has largely been lost, and the effect of complete embargo would not be very great from a practical standpoint.

"6. Effect on the United States of a loss of imports from Japan. -- (a) As previously mentioned, exports and imports are approaching a balance. If exports cease, imports will also cease, as Japan would not have the means to continue her purchases. The same effect would be produced if we stopped buying from Japan, but attempted to continue our exports.

((b) In 1940, raw silk formed 69% of United States imports from Japan. Silk is processed here. It is used in industry and for certain munitions, particularly powderbags. The armed services have large stocks of raw silk, and could get along without further imports, though silk substitutes are not entirely satisfactory. Doubtless industry could manage without silk,

although the lack of it would cause a considerable dislocation of labor now employed in the industry. The effect of stopping the purchase of silk would also have an adverse psychological reaction on the part of Japan, though possibly not so great as would an export embargo.

"(c) Stopping other imports from Japan would not cause any great hardship in the United States, although the general effect on industry would be adverse.

"7. Conclusions. -- (a) Present export restrictions, plus reduction of available ship-tonnage for use in Japanese trade have greatly curtailed both exports and imports.

"(b) The effect of an embargo would hamper future Japanese war effort, though not immediately, and not decisively.

"(c) An embargo would probably result in a fairly early attack by Japan on Malaya and the Netherlands East Indies, and possibly would involve the United States in early war in the Pacific. If war in the Pacific is to be accepted by the United States, action leading up to it should, if practicable, be postponed until Japan is engaged in a war in Siberia. It may well be that Japan has decided against an early attack

on the British and Dutch, but has decided to occupy Indo-China and to strengthen her position there, also to attack the Russians in Siberia. Should this prove to be the case, it seems probable that the United States could engage in war in the Atlantic and that Japan would not intervene for the time being, even against the British.

"8. Recommendation. -- That trade with Japan be not embargoed at this time. R. K. TURNER."

"(Written in longhand:) I concur in general. Is this the kind of picture you wanted. H.R.S."

We offer in evidence Defense Document 1400-J-3, being a memorandum by Ambassador Grew, dated July 27, 1941, of a conversation he had with the Japanese Minister.

THE PRESIDENT: Mr. Comyns Carr.

MR. COMYNS CARR: May it please the Tribunal, this document is entirely useless. It merely informed Mr. Grew that the Minister did not know what his government was going to do about this Order

MR. LOGAN: It also sets forth the statement by the Minister to Ambassador Grew, pointing out that resentment was felt in Japan on the freezing of Japanese assets.

THE PRESIDENT: It is not material. The objection is upheld and the document is rejected.

MR. LOGAN: We offer in evidence Defense Document No. 1712, which is the official note from the British Ambassador to Foreign Minister TOYODA dated July 29, 1941, abrogating the Anglo-Japanese commercial treaty and its supplements.

MR. LOGAN: I understand from the prosecution that this is also covered in Ballantine's testimony, and I withdraw it on that understanding.

Greenberg & Barton

MR. LOGAN: We now offer in evidence defense document 1732A and 1732B which are telegrams to Foreign Minister TOYODA from Consul General ISHIZAWA, dated July 30, 1941, with respect to freezing orders of the Netherlands East Indies.

BRIGADIER QUILLIAM: May it please the Tribunal, this we are sure is covered by prosecution evidence, but some of the later documents may not be specifically covered. What I wish to suggest is that Mr. Logan should withhold all these documents and, on Monday morning, submit one short admission which would cover the lot.

MR. LOGAN: We will get together on that, your Honor, to save time.

THE PRESIDENT: 1732A and B are withdrawn.

MR. LOGAN: I now call as a witness SHIINA, Etsusaburo.

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E T S U S A B U R O S H I I N A, called as a witness on behalf of the defense, being first duly sworn, testified through Japanese interpreters as follows:

DIRECT EXAMINATION

BY MR. LOGAN:

Q What is your name and address?

A My name is SHIINA, Etsusaburo. My address is Tokyo City, Shibuya Ward, Hanezawa 14.

Q Would you examine defense document 1980, which is now being handed to you, and advise us if that is your affidavit?

(Whereupon, a document was handed to the witness.)

A Yes, this is the affidavit, and this is the affidavit I wrote without mistake.

Q Are the statements contained therein accurate and true?

A They are true.

MR. LOGAN: I offer in evidence defense document 1980.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1980 will receive exhibit No. 2834.

(Whereupon, the document above referred to was marked defense exhibit 2834 and received in evidence.)

MR. LOGAN: I will now read exhibit 2834, the deposition of SHIINA, Etsusaburo:

"I was born in January 1898. After I graduated from the Law Department of the Tokyo Imperial University in 1923, I joined the Agriculture and Commerce Ministry. When the Ministry was divided into two Departments, namely, the Department of Commerce and Industry and the Department of Agriculture and Forestry, I served in the former Ministry. From October 1933 to March 1939, I assumed an office, as an official of Manchoukuo, and was responsible for the execution of various policies chiefly with regard to the mining industry. In April 1939 I reassumed the office in the Commerce and Industry Ministry. Since then I filled various posts successively as the chief of the Fifth Section of the Provisional Material Coordination Bureau, a collateral bureau of the Ministry of Commerce and Industry from April 1939 to June of the same year and as the chief of the General Affairs Section of the General Bureau about three and half months since July of the same year; as the Director of the General Bureau about two years since October of the same year, and then I was appointed the Vice-Minister of Commerce and Industry in October 1941.

"With reference to the demand and supply con-

dition of raw rubber of this country, prior to the outbreak of the Pacific War, as I was connected with the execution of policies pertaining to this particular industry as the head of the Fifth Section of the Provisional Material Coordination Bureau as follows on my own responsibility.

"The demand for raw rubber in peace time in Japan was, according to the research made sometime about 1937, said to be about 60,000 tons. The ratio of the demand between the civil and the military (direct need by the military) was roughly 5 to 1 and out of the private demand about one third was assigned for re-export to the foreign countries as a raw material for the export goods or an export to Manchuria.

"On account of, however, the sudden run of an acute course of decline of the foreign exchange condition of Japan after the year of the outbreak of the China Affairs, and the Japanese Government's policy to strengthen the restriction over every imported goods one after another, the import of the raw rubber, therefore, also became difficult.

"However, as for that demanded by the military, it was under such circumstances that the projected quantity by the military should preferentially be secured since the China Affairs was in progress. So all

the shortage in supply had to be supplemented by a restriction on the civil demand. The actual enforced rate of the constriction in 1938 and in 1939 was about 20 per cent of the private demand in peace time, and in 1940 it became as much as 50 per cent of the volume demanded by the people. Thus the ratio between the civil and military demands became 3 versus 1.

"Facing such situation, the Japanese government had naturally to exert every possible effort so as to economize the rubber and execute such pretty strong policies as the prohibition of use of material in certain kinds, and the suspension of the management for those enterprises whose business efficiency is not high, and so forth.

"In spite of the foregoing, the future prospect was still exceedingly dark and there were some among the government authorities concerned who were fearful lest a serious breakdown might be resulted from the cause of demand and supply of rubber alone, should the condition be left untouched. I recall that some urgent measure was frequently called for at the government meeting.

"Such sad plight was relieved for the time being by the import of a great deal of raw rubber from Thailand and French Indo-China from the summer to the

winter 1941 where we had very little import from these countries heretofore. That is to say, we had about 20,000 tons each, about 40,000 tons altogether, imported from Thailand and French Indo-China, and adding those imported from other countries, it was totalled about more than 70,000 tons. The increase thus made in the import from Thailand which was used to be 2,000 to 3,000 tons annually, was due to the financial agreement with that country, and the import of 20,000 tons from French Indo-China which had none hitherto was because of the Japan-French Indo-China Treaty, concluded in May 1941. I am aware of the fact, however, that the imports of raw rubber based on these two arrangements accompanied no small disadvantage in price and some other points, and required exertion on the part of the financial authorities in making these arrangements.

"On this 4th day of August 1947."

Signed:"SHIINA Etsusaburo".

You man cross-examine.

BRIGADIER QUILLIAM: May it please the Tribunal, we do not desire to cross-examine.

MR. LOGAN: May the witness be released on the usual terms?

THE PRESIDENT: He is released accordingly.

(Whereupon, the witness was excused.)

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MR. LOGAN: July 30, 1941 the Chief of the Division of Far Eastern Affairs issued a memorandum with respect to conversation with Mr. IGUCHI of the Japanese Embassy in which the question of treatment of cargo aboard Japanese vessels was discussed. This is set forth in defense document 1400-P-5 which is now offered in evidence.

BRIGADIER QUILLIAM: May it please the Tribunal, this document contains some unimportant information with regard to the embargo on shipping. The fact of the embargo on shipping has already been given in evidence today; and these discussions with regard to a particular question or questions that arose carries the matter, we submit, no further.

MR. LOGAN: This refers to shipping already on Japanese ships a few days after the imposition of the freezing orders.

THE PRESIDENT: It doesn't really help, Mr. Logan, does it?

MR. LOGAN: It is not too important. I will withdraw it. I am omitting defense document 1482 at this time. It will be offered next week. I withdraw document 1400-Q-5.

Defense document 206-E-94 being an excerpt from former United States Ambassador Grew's Diary, entitled "Ten Years in Japan," is now offered in evidence. This document sets forth conversation between Mr. Grew and Mr. TERASAKI about a meeting between the responsible heads of the American and Japanese Governments, the sending of tankers to the Soviet Union by the United States and the suspension of the order freezing Japanese assets and other matters.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 206-E-94 will receive exhibit No. 2835.

(Whereupon, the document above referred to was marked defense exhibit No. 2835 and received in evidence.)

MR. LOGAN: It is another long document. Can we start reading it after the recess?

THE PRESIDENT: We will adjourn now for

fifteen minutes.

(Whereupon, at 1445, a recess was taken until 1510, after which the proceedings were resumed as follows:)

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

THE PRESIDENT: Mr. Logan.

MR. LOGAN: I shall now read exhibit 2835:

"The Oil Embargo and Financial Freezing Have Their Effects on Japan. August 29, 1941.

"Mr. TERASAKI, the Director of the American Bureau, telephoned me this afternoon shortly before three o'clock to tell me that although the Foreign Minister had asked me to call upon him at three o'clock this afternoon, a recent development had made the Minister fear the publicity that might follow such a visit. He therefore requested Mr. TERASAKI to deliver the Foreign Minister's message to me on his behalf. Mr. TERASAKI accordingly called at the Embassy and on behalf of the Minister conveyed to me for my information the text of the communication from the Japanese Prime Minister to the President which had been delivered by Admiral NOMURA in Washington on August 28.

"Mr. TERASAKI's visit was substituted for my

call on the Foreign Minister because the Japanese press had learned from Washington that a message from the Japanese Prime Minister had been delivered to the President and the news had reached Japan in such a form that it was impossible for the Government to conceal from the Japanese public the fact of such a message.

"Mr. TERASAKI, speaking on behalf of the Foreign Minister, dwelt on the unfortunate effect of the publicity which had been given to this matter in Washington.*"

A footnote says: "*It was Admiral NOMURA himself who announced to the American press on emerging from the White House that he had just delivered to the President a message from the Prime Minister of Japan."

(Continuing): "Although the reports had not disclosed the contents of the Prime Minister's message to the President, they did reveal to the Japanese public and to the pro-Axis and extremist elements that Prince KONOYE had taken the initiative in what was obviously a conciliatory move at a time when indignation was high in Japan as a result of the progressive steps recently taken by the American Government. These steps included the initial order freezing Japanese assets in

the United States, the announcement that American tankers bearing oil to the Soviet Union had departed from Californian ports, and the decision to send a military mission headed by General Magruder to Chiang Kai-shek. Mr. TERASAKI pointed out that the publicity given to the Prime Minister's message is consequently of direct advantage to the extremists and pro-Axis elements in this country. It has not only rendered further moves in the direction of conciliation very difficult but has in addition immeasurably augmented the possibility of an attempt on the life of Prince KONOYE. He added that the Chief of Police this afternoon had indicated the increased risk to the Prime Minister's life.

"Mr. TERASAKI conveyed an appeal to me from Admiral TOYODA that I ask my Government to take the following three steps. Unless these are taken, the Foreign Minister feared that Prince KONOYE would meet with serious obstacles in his efforts to bring about an understanding between the United States and Japan:

"(1) The meeting between the two responsible heads of the American and Japanese Governments should take place without delay. Delay would afford those elements who oppose any attempt to conciliate the United States an opportunity to organize their adherents

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"(1) The meeting between the two responsible heads of the American and Japanese Governments should take place without delay. Delay would afford those elements who oppose any attempt to conciliate the United States an opportunity to organize their adherents

and to spread the idea to the Japanese public that Prince KONOYE is yielding to American pressure and, in seeking to reach an understanding with the United States in the teeth of what is publicly regarded as provocative American measures, is exposing Japan to humiliation.

"(2) The United States Government should postpone the sending of tankers to the Soviet Union at least pending the outcome of the proposed meeting between the President and the Japanese Prime Minister. Mr. TERASAKI told me that the Foreign Minister felt that the dangerous temper of public opinion on the question of the tankers could not be exaggerated. He added in this connection that according to information reaching Japanese authorities five American tankers destined for Vladivostok have already passed through Tsugaru or Soya Straits.

"(3) The American Government, pending the proposed meeting between the heads of the two Governments, should suspend the order freezing Japanese assets in the United States.

"Mr. TERASAKI, again speaking for the Minister, emphasized to me that the Japanese Government has dealt in complete frankness with the American Government and has assured us that upon the settlement of the China

Incident Japanese troops at present in French Indo-China would be withdrawn; that the Japanese troops in Indo-China would make no further move in that area; and that Japan would observe the treaty of neutrality with the Soviet Union so long as that country adhered equally to the letter and spirit of the same treaty. He explained that these were the maximum assurances and commitments which the Japanese Government was in a position to assume at the present time. Since the Japanese Government has gone the limit in giving these assurances, the Foreign Minister believes that the American Government for its part should make a maximum effort, along the lines of the three points outlined above, in order to assist the Prime Minister in the course which he is pursuing, a course which is now fraught with extreme difficulties and dangers as a result of the Washington publicity.

"Mr. TERASAKI told me that the Foreign Minister was appealing to me in an endeavor to have the situation confronting the Prime Minister fully explained to the President and the Secretary and to request that the United States Government approach the suggested concessions not from a legalistic but from a psychological point of view.

"When Mr. TERASAKI concluded the foregoing

outline I acquainted him first of all with the substance of the first section of the Department's telegram of August 28, which had just been received, setting forth the Secretary's views upon the objections raised by the Japanese Government to the shipment of oil to the Soviet Union. I took occasion to emphasize the logical and compelling force of the position adopted by the Secretary on this matter. In order that there might be no misunderstanding in regard to the accuracy of the Japanese Ambassador's reports of his recent conversations in Washington, I communicated orally to Mr. TERASAKI the substance of the Department's telegrams reporting these conversations.

"In touching on the question of the reciprocal freezing regulations now in force I emphasized once more to Mr. TERASAKI the disparity between the very liberal administration of the freezing regulations in the United States in respect to Japanese nationals and the exacting and harsh treatment meted out to American citizens and interests in Japan. Mr. TERASAKI in reply merely reiterated that the Foreign Minister's request had been that such questions be dealt with from the point of view of their psychological effect in Japan, since at this period of intense crisis in relations between our two countries the psychological

effect was an especially strong one. I then drew Mr. TERASAKI's attention to the mounting anti-American attitude of the Japanese press, to which Mr. TERASAKI replied that he could tell me in strictest confidence that certain members of the Cabinet Information Board, which was charged with matters relating to publicity, are distinctly pro-Axis in their sentiments and that the Japanese Government is encountering real difficulties in handling this question.

"In discussing with Mr. TERASAKI the three points, outlined above, raised by the Foreign Minister, I left him under no illusion that the United States Government would find it possible to agree to either of the preposterous requests contained in points (2) or (3) above."

Defense document 502 (Excerpt 58) is offered in evidence. This document is taken from the book entitled, "Behind the Japanese Mask," by the Right Honorable Sir Richard Craigie with respect to the food situation in Japan, trade and industry as it existed in the summer and autumn of 1941.

THE PRESIDENT: Mr. Comyns Carr.

MR. COMYNS CARR: May it please the Tribunal, in our submission this document is merely the late

Ambassador's opinions and a description of the state of food supplies in the Embassy and, in our submission adds nothing factual to the information already before the Tribunal.

MR. LOGAN: This document, written by Right Honorable Sir Richard Craigie who was here in Japan at that time, shows the conditions in Japan as a result of the effect of the embargoes. It is a statement of facts from an impartial source and from a highly responsible person in the British government. It does not only refer to food in the Embassy; it also refers to food conditions in Japan proper. It also--

THE PRESIDENT: Was there any food embargo? There was no food embargo, was there?

MR. LOGAN: The effect of it, your Honor, affected the entire civilian life in Japan. It also talks about trade and industry which was the subject of the embargo.

THE PRESIDENT: By a majority the Court upholds the objection and rejects the document.

MR. LOGAN: We offer in evidence defense document 206-E-(95) which is an excerpt from Ambassador Grew's book entitled "Ten Years in Japan" regarding the conversations he had with Prince KONOYE in which the latter requested that his statements be transmitted personally to the President of the United States.

THE PRESIDENT: No objection. Admitted on the usual terms.

CLERK OF THE COURT: Defense document 206-E-(95) will receive exhibit No. 2836.

(Whereupon, the document above referred to was givendefense exhibit No. 2836 and admitted in evidence.)

MR. LOGAN: (Reading) "Dinner with Prince KONOYE," exhibit 2836. "September 6, 1941.

"This evening the Prime Minister invited me to dine at a private house of a friend. Only Mr. Dooman and Mr. USHIBA, the Prime Minister's private secretary, were also present. The conversation lasted for three hours and we presented with entire frankness the fundamental views of our two countries. The Prime Minister requested that his statements be transmitted personally to the President in the belief that they might amplify and clarify the approach

through diplomatic channels which he had made in Washington through Admiral NOMURA.

"Prince KONOYE, and consequently the Government of Japan, conclusively and wholeheartedly agree with the four principles enunciated by the Secretary of State as a basis for the rehabilitation of relations between the United States and Japan."

Footnote "(1) Respect for the territorial integrity and the sovereignty of each and all nations; (2) Support of the principle of noninterference in the internal affairs of other countries; (3) Support of the principle of equality, including equality of commercial opportunity; and (4) Non-disturbance of the status quo in the Pacific except as the status quo may be altered by peaceful means.

"Prince KONOYE recognizes that the responsibility is his for the present regrettable state of relations between our two countries but, with appropriate modesty as to his personal capabilities, he likewise recognizes that only he can cause the desired rehabilitation to come about. In the event of failure on his part, no succeeding Prime Minister, at least during his own lifetime, could achieve the results desired. Prince KONOYE is therefore determined to spare no effort, despite all elements and factors opposing him, to crown his present

endeavors with success.

"The Prime Minister hopes that as a result of the commitments which the Japanese Government is prepared to assume as communicated to me by Admiral TOYODA, a rational basis has been established for a meeting between the President and himself. The Prime Minister, however, is cognizant of the fact that certain points may need clarification and more precise formulation, and he is confident that the divergencies in views can be reconciled to our mutual satisfaction, particularly by reason of the favorable disposition on the part of Japanese naval and military leaders who have not only subscribed to his proposal but who will also be represented at the suggested meeting. The Prime Minister stated that both the Ministers of War and of the Navy have given their full agreement to his proposals to the United States.

"The reports which the Prime Minister has received from the Japanese Ambassador concerning the latter's conversations with the President and the Secretary have led the Prime Minister to think that the administration in Washington entertains serious doubts as to the strength of the present cabinet and that the administration is not certain

that in the event that the cabinet should adopt a peaceful program, it could successfully resist the attacks of opposing elements. Prince KONOYE told me that from the inception of the informal talks in Washington he had received the strongest concurrence from the responsible chiefs of both the Army and the Navy. Only today he had conferred with the Minister of War, who had promised to send a full general to accompany the Prime Minister to the meeting with the President; the Minister of the Navy had agreed that a full admiral should accompany the Prime Minister. Prince KONOYE added in confidence that he expected that the representative of the Navy would probably be Admiral YOSHIDA, a former Minister of the Navy. In addition the Premier would be accompanied by the Vice-Chiefs of Staff of the Army and the Navy and other high-ranking officers of the armed services who are in entire accord with his aims. He admitted that there are certain elements within the armed forces who do not approve his policies, but he voiced the conviction that since he had the full support of the responsible chiefs of the Army and Navy it would be possible for him to put down and control any opposition which might develop among these elements.

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"Prince KONOYE repeatedly stressed the view that time is of the essence. It might take half a year to a year to work out all the details of the complete settlement and since resentment is daily mounting in Japan over the economic pressure being exerted by other countries, he could not guarantee to put into effect any such program of settlement six months or a year from now. He does, however, guarantee that at the present time he can carry with him the Japanese people to the goal which he has selected and that should difficulties be encountered in working out the details of the commitments which he may assume, these difficulties can be overcome satisfactorily because of the determined intention of his Government to see to it that its present efforts are fully successful.

"In the course of our discussion I outlined in general terms the bitter lessons of the past to our Government as the result of the failure of the Japanese Government to honor the promises given to me by former Japanese Ministers for Foreign Affairs apparently in all sincerity, as a result of which the Government of the United States had at long last concluded that it must place its reliance on actions and facts and not on Japanese promises or assurances.

The Prime Minister did not attempt to refute this statement but stressed the fact that his Government now wished to bring about a thoroughgoing reconstruction of American-Japanese relations and he assured me that any commitments which he would undertake would bear no resemblance to the 'irresponsible' assurances which we had received in the past and that such commitments if given would be observed. The Prime Minister concluded his presentation of this point by giving me to understand that given the will the way can be found.

"Prince KONOYE stated that should the President desire to communicate any kind of suggestion to him personally and confidentially he would be glad to arrange subsequent secret meetings with me, but he expressed the earnest hope that in view of the present internal situation in Japan the projected meeting with the President could be arranged with the least possible delay. Prince KONOYE feels confident that all problems and questions at issue can be disposed of to our mutual satisfaction during the meeting with the President, and he ended our conversation with the statement that he is determined to bring to a successful conclusion the proposed reconstruction of relations with the United States regardless of cost or personal risk."

We offer in evidence defense document 200-E-99, which is an excerpt from the diary of former United States Ambassador Grew entitled "Ten Years in Japan," being the substance of a paraphrase of an original text prepared by the Department of State September 29, 1941.

THE PRESIDENT: Mr. Comyns Carr.

MR. COMYNS CARR: May it please the Tribunal, in our submission this is merely a lengthy statement of Ambassador Grew's opinions about the proposal that there should be a personal meeting between Premier KONOYE and the President. In our submission it adds no fact which can be of the slightest assistance to the Tribunal in determining the issues here.

MR. LOGAN: It is an official document, if the Tribunal please, paraphrased, text prepared by the Department of State and involves a very important proposed meeting, and not only does it contain some opinions of the Ambassador, but there are a great deal of facts in it.

THE PRESIDENT: Well, it is still merely the views of the Ambassador. It hasn't the imprimatur of the Department of State.

MR. LOGAN: It is a paraphrase of an original text prepared by the Department of State. It is a

very important meeting, the subject of this document, and I think the Tribunal should receive it. It contains no opinions upon which this Tribunal must make a decision. It is no attempt to forswear any issues here. Certainly, the Government of the United States had to act on the advice of someone over here, and this was the advice on which they acted.

THE PRESIDENT: It is only a paraphrase.

MR. LOGAN: That is right. We can't find the complete document.

THE PRESIDENT: I notice the Ambassador published this paraphrase in his book.

MR. LOGAN: That is right. And it should also be noted that this paraphrase was prepared by the Department of State. Of course, that doesn't exclude the document, the mere fact that it is paraphrased, because the prosecution has introduced paraphrases of certain documents, too.

THE PRESIDENT: By a majority the Court overrules the objection and admits the document, but only so far as it contains statements of fact.

CLERK OF THE COURT: Defense document 206-E-99 will receive exhibit No. 2837.

(Whereupon, the document above referred to was marked defense exhibit

No. 2837 and received in evidence.)

MR. LOGAN: Defense document 206-E-99, exhibit 2837, "The Ambassador in Japan Reports to the Secretary of State (Substance) (Paraphrase of original text prepared by Department of State) September 29, 1941.

"In regard to the preliminary conversations taking place at Washington and Tokyo, the Ambassador points out that a review of telegraphic correspondence on this subject since last spring reveals the Japanese Government's efforts, increasing steadily and intensified lately, to arrange a meeting between Prince KONOYE and President Roosevelt without further delay. While admitting his role to be chiefly that of a transmitting agent in these conversations, the Ambassador naturally wishes to aid in any constructive way, particularly by endeavoring to appraise accurately for the President and the Secretary of State the Japanese factors and conditions having direct or indirect bearing on the subject and also by trying to bring the Japanese Government to adopt measures and policies such as the United States Government deems to be essential for a mutual understanding or agreement between Japan and the United States. Since the fall of Admiral YONAI's Cabinet in July of 1940, American diplomacy in Japan has been in eclipse temporarily through force

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of circumstances. However, when the KONOYE-TOYODA regime began last July, American diplomacy obtained a very active new lease of life. The Ambassador expresses his earnest hope therefore that so propitious a period be not permitted to slip by without a new foundation having been laid with enough stability to warrant a reasonable amount of confidence that the structure to be erected gradually and progressively thereon can and will endure.

"The Ambassador recalls his statements in the past that in Japan the pendulum always swings between moderate and extremist policies; that it was not then possible under the existing circumstances for any Japanese leader or group to reverse the program of expansion and expect to survive; that the permanent digging in by Japanese in China and the pushing of the Japanese advance to the south could be prevented only by insuperable obstacles. The Ambassador recalls likewise his views that the risks of taking positive measures to maintain United States security in the future were likely to be far smaller than the risks of not taking such measures; that only respect for potential power of the United States has deterred Japan from sending more liberties with American interests; and that Japan's program of forcible expansion

could be brought to a halt only by a show of force and by a demonstration of American willingness to use this force if necessary. The Ambassador recalls also his statement that if Japan's leadership could be discredited eventually by such American action, there might take shape in Japan ultimately a regeneration of thought which would allow Japan to resume formal relations with the United States, leading to a readjustment of the entire problem of the Pacific.

"The Ambassador suggests that the United States has been following very wisely precisely this policy which, furthered by other developments in the world, has helped to discredit Japanese leadership, notably that of former Foreign Minister MATSUOKA. The Ambassador cites as work developments arousing a positive reaction from the United States the conclusion by Japan of the Tripartite Alliance and Japan's recognition of the Wang Ching-wei regime at Nanking, which preceded Germany's attack on the Soviet Union. Germany's action upset the basis for the Tripartite Pact, Japan having joined the Italo-German Axis in order to obtain security against Russia and thereby to avoid the peril of being caught between the Soviet Union and the United States. At the present time Japan is attempting to correct this

miscalculation by getting out of an extremely dangerous position. The Ambassador recalls his reports to the Department to the effect that Japanese foreign policies are inevitably changed by the impact of events abroad and that liberal elements in Japan might come to the top in due course as a result of the trend of events. He considers that such a time has arrived. He sees a good chance of Japan's falling into line if a program can be followed of world reconstruction as forecast by the declaration of President Roosevelt and Prime Minister Churchill. American policy -- of forbearance, patient argumentation, efforts at persuasion, followed for many years, plus a manifest determination of the United States to take positive measures when called for -- plus the impact of world developments upon Japan, has rendered Japan's political soil hospitable to the sowing of new seeds which, the Ambassador feels, if planted carefully and nourished, may bring about the anticipated regeneration of Japanese thought and a complete readjustment of relations between Japan and the United States.

"Certain quarters have advanced the thought -- and no doubt it is prominently in the mind of the United States Government -- that at this juncture an agreement between Japan and the United States will serve

merely as a breathing spell to Japan. During such a breathing spell, Japan, having successfully untangled itself with American aid from the China conflict, will recoup and strengthen its forces in order to resume at the next favorable opportunity its expansionist program. This thought cannot be gainsaid with certainty. The same school of thought also holds that Japan will be forced to relinquish its expansionist program because of the deterioration of Japanese domestic economy and because of the threat of financial, economic, and social collapse due to a progressive intensifying of economic measures by the United States, Great Britain, and the Netherlands against Japan. The Ambassador adds that should this thesis be accepted as reasonably sound, the position will confront the United States of choosing one of two methods to approach its objective, namely, either the method of progressive economic strangulation or the method of constructive conciliation, not so-called appeasement.

"The Ambassador sees the second method as the definite choice of the United States Government following the beginning of the Washington preliminary conversations and President Roosevelt's acceptance in principle of the Japanese Prime Minister's proposed meeting. Indeed, the Ambassador remarks, the United

States has never departed from its readiness to negotiate on any issues with Japan despite the fact that Japan already had embarked at that time on its expansion-by-force program. He feels that, from the viewpoint of far-seeing statesmanship, the wisdom of the American choice seems to be beyond cavil. Should failure greet the constructive, conciliatory method of approach now or later, there will always be available the other method, the application of progressive economic sanctions. In the opinion of the Ambassador, whether the trend of American relations with Japan is for better or for worse, the United States obviously will have to remain for a long time to come in a state of preparedness. The thought that eventual British victory in the world war will solve automatically many problems may, meanwhile, afford whatever degree of encouragement is justified."

"The Ambassador, while admitting that risks will inevitably be involved no matter what course is pursued toward Japan, offers his carefully studied belief that there would be substantial hope at the very least of preventing the Far Eastern situation from becoming worse and perhaps of ensuring definitely constructive results, if an agreement along the lines of the preliminary discussions were brought to a head by the proposed meeting of the heads of two governments. The Ambassador mentions his previous expressions of opinion that the principal point at issue between the United States and Japan is not whether the former must call a halt to the expansionist program of the latter, but when. He raises the questions whether the United States is not now given the opportunity to halt Japan's program without war, or an immediate risk of war, and further whether, through failure to use the present opportunity, the United States will not face a greatly increased risk of war. The Ambassador states his firm belief in an affirmative answer to these two questions.

"Certain quarters hold the view that it is altogether improbable under the existing circumstances that counter-action will be deliberately taken by Japan in response to any American action likely to be taken in the Pacific which would bring about war with

the United States. The Ambassador states his inability to agree that war may not supervene following actions, whether irrational or deliberate, by elements either in Japan or in the United States tending so to inflame public opinion in the other country concerned as to make war unavoidable. He recalls in this regard the cases of the Maine and the Panay.

"The Ambassador stresses the importance of understanding Japanese psychology, fundamentally unlike that of any Western nation. Japanese reactions to any particular set of circumstances cannot be measured, nor can Japanese actions be predicted by any Western measuring rod. This fact is hardly surprising in the case of a country so recently feudalistic. The Ambassador conceives his chief duty to be an attempt to interpret accurately Japanese psychology, and he states that he has aimed to do this in his numerous reports during the last several months and years to the department. Keeping this thought constantly before him, the Ambassador ventures at the risk of repetition to advance the considerations set forth below.

"Should the United States expect or await agreement by the Japanese Government, in the present preliminary conversations, to clear-cut commitments which will satisfy the United States Government both as to

principle and as to concrete detail, almost certainly the conversations will drag along indefinitely and unproductively until the KONOYE cabinet and its supporting elements desiring rapprochement with the United States will come to the conclusion that the outlook for an agreement is hopeless and that the United States Government is only playing for time. If the abnormal sensitiveness of Japan and the abnormal effects of loss of face are considered, in such a situation Japanese reaction may and probably will be serious. This will result in the KONOYE Government's being discredited and in a revulsion to anti-American feeling, and this may and probably will lead to unbridled acts. The eventual cost of these will not be reckoned, and their nature is likely to inflame Americans, while reprisal and counter-reprisal measures will bring about a situation in which it will be difficult to avoid war. The logical outcome of this will be the downfall of the KONOYE cabinet and the formation of a military dictatorship which will lack either the disposition or the temperament to avoid colliding head on with the United States. There is a question that such a situation may prove to be more serious even than the failure to produce an entirely satisfactory agreement through the proposed meeting

between President Roosevelt and Prince KONOYE, should it take place as planned. Worded otherwise, the question remains whether it will not prove to be a less serious case for the negotiations undertaken in good faith to fail of complete success than for the United States to demonstrate its unwillingness to enter any such negotiations.

"The Ambassador continues by stating that he has been emphatically told on numerous occasions -- and such declarations he considers must be accepted at their face value -- that prior to the proposed Roosevelt-KONOYE meeting and formal negotiations it is impossible for the Japanese Government to define its future assurances and commitments more specifically than hitherto stated. The Ambassador explains that one reason for this Japanese position, as given him very confidentially, is that former Foreign Minister MATSUOKA, after his retirement in July, recounted in complete detail to the German Ambassador in Japan the course of the Washington conversations up to that time. Because many supporters of MATSUOKA remain in the Tokyo Foreign Office, the fear has been expressed that these men will not scruple to reveal to both the Germans and the Japanese extremists any information which would render the present cabinet's position

untenable.

"Although certain basic principles have been accepted provisionally by the Japanese Government, the definitions and formulae of Japan's future objectives and policy, as advanced so far during the preliminary conversations, and the statements supplementary to those definitions, are so abstract or equivocal and are open to such wide interpretation that they rather create confusion than clarify commitments which the Japanese Government is ready to undertake. The Ambassador states that at the same time he has been told that Prince KONOYE is in a position in direct negotiations with President Roosevelt to offer him assurances which, because of their far-reaching character, will not fail to satisfy the United States. The truth of this statement cannot be determined by the Ambassador, who, however, points out that, in regard specifically to Japan's Axis relations, the Japanese Government, though refusing consistently to give an undertaking that it will overtly renounce its alliance membership, actually has shown a readiness to reduce Japan's alliance adherence to a dead letter by its indication of willingness to enter formally into negotiations with the United States. The Ambassador therefore does not consider unlikely the possibility

of Prince KONOYE's being in a position to give President Roosevelt directly a more explicit and satisfactory engagement than has already been vouchsafed in the course of the preliminary conversations.

"In the opinion of the Ambassador, on the basis of the above observations which he has every reason to regard as sound, American objectives will not be reached by insisting or continuing to insist during the preliminary conversations that Japan provide the sort of clear-cut, specific commitments which appear in any final, formal convention or treaty. Unless a reasonable amount of confidence is placed by the United States in the professed sincerity of intention and good faith of Prince KONOYE and his supporters to mold Japan's future policy upon the basic principles they are ready to accept and then to adopt measures which gradually but loyally implement those principles, with it understood that the United States will implement its own commitments pari passu with the steps which Japan takes, the Ambassador does not believe that a new orientation can be successfully created in Japan to lead to a general improving of Japanese-American relations and to the hope that ultimate war may be avoided in the Pacific. The sole way to discredit the Japanese military machine and

army is through wholesale military defeat, and the Ambassador sees no present prospect of this. The only alternative (and the only wise one in the view of the Ambassador) is an attempt to produce a regeneration of Japanese thought and outlook through constructive conciliation, along the lines of American efforts at present. The Ambassador inquires whether the better part of wisdom and of statesmanship is not to bring such efforts to a head before the force of their initial impetus is lost, leaving it impossible to overcome an opposition which the Ambassador thinks will mount inevitably a: teadily in Japan.

"In submitting the foregoing discussion, the Ambassador does so in all deference to the much broader field of view of President Roosevelt and Secretary Hull and in full awareness that the Ambassador's approach to the matter is limited to the viewpoint of the American Embassy in Japan."

We offer in evidence defense document 206-E-(114), an excerpt from the diary of former Ambassador Grew, entitled "Ten Years in Japan." This is a substance of a paraphrase of an original text prepared by the Department of State, November 3, 1941.

THE PRESIDENT: Mr. Comyns Carr.

MR. COMYNS CARR: May it please the Tribunal, this document is subject to exactly the same objection as the last. The last objection was overruled on my friend's assurance that facts of importance and relevance would be found in the document. If the Tribunal was satisfied, on hearing it read, that that was so, I won't press an objection to this one. If, on the other hand, the Tribunal was disappointed with the last one, I would submit that this one should be rejected.

THE PRESIDENT: Well, you can't distinguish between the two, Mr. Carr.

MR. LOGAN: I wish to correct an error, if the Tribunal please. I did not say that the last document contained all facts. I frankly admitted it did contain opinion. There are other grounds upon which I urged its admission.

MR. COMYNS CARR: I did not accuse my friend of saying it contained all facts, but he said it contained some of importance. I found it difficult to discover them.

MR. LOGAN: It stands in the same category as the last document, your Honor. It is a paraphrase from the original text prepared by the Department of State.

THE PRESIDENT: The last document, of course, is just a long argument. I think there is a majority against this, Mr. Logan. By a majority, the objection is upheld and the document rejected.

MR. LOGAN: Defense document 401-B-10 is offered in evidence. This is an excerpt from "Peace and War" with reference to Ambassador Grew's report to the Department of State on the current situation in Japan on November 3, 1941.

THE PRESIDENT: Mr. Comyns Carr.

MR. COMYNS CARR: May it please the Tribunal, this one is much shorter and consists in my submission entirely of Mr. Grew's opinion.

MR. LOGAN: It also states facts, if the Tribunal please, with respect to the effect of the embargoes.

THE PRESIDENT: By a majority, the Court upholds the objection and rejects the document.

We will adjourn, now, until half-past nine on Monday morning.

(Whereupon, at 1600, an adjournment was taken until Monday, 11 August 1947, at 0930.)

11 AUGUST 1947

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Of
WITNESSES

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ISHIBASHI, Tansan	25413
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I N D E X

Of

EXHIBITS

Doc. No.	Def. No.	Pros. No.	Description	For Ident.	In Evidence
1400-H-3	2838		Memorandum by the Ambassador in Japan (Grew), dated 10 November 1941		25394
401-B(8) and (9)	2839		Excerpts from "Peace and War" - U. S. Foreign Policy, 1931-1941		2539?
			MORNING RECESS		2541E
1762-A	2841		Affidavit of ISHIBASHI, Tansan		2542J
401-(12)	2842		Excerpt from "Peace and War" - National Defense		2543?
401-(22)	2843		Excerpt from "Peace and War" - European Crisis 1938 - U. S. Rearmament		2544(
			NOON RECESS		2544?
	2844		Proceedings of the Joint Committee on the Investigation of the Pearl Harbour Attack - Congress of the U.S., 79th Congress, First Session		25447

I N D E X

Of

EXHIBITS

(cont'd)

Doc. No.	Def. No.	Pros. No.	Description	For Ident.	In Evidenc
1500-0-4	2844-A		Excerpt therefrom - Testimony of Admiral R. F. Ingersoll, dated 12 February 1946		25447
401-(23)	2845		U. S. Rearmament - Excerpt from "Peace and War"		25450
401-(31)	2846		Excerpt from "Peace and War" - Defense Measures of the U. S. 1940 - President Roosevelt's Request for 50,000 planes		25469
			AFTERNOON RECESS		25482
401-(43)	2847		Excerpt from "Peace and War" - European War 1941 - The Four Freedoms		25493
401-(44)	2848		Lend-Lease Act		25495

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Monday, 11 August 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, all Members sitting, with the exception of: HONORABLE JUSTICE STUART McDOUGALL, Member from the Dominion of Canada and HONORABLE JUSTICE I. M. ZARAYANOV, Member from the USSR., not sitting from 0930 to 1600.

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, IMTFE.)

Kaplan & Reichers

MARSHAL OF THE COURT: The International Military Tribunal for the Far East is now in session.

THE PRESIDENT: Mr. Comyns Carr.

MR. COMYNS CARR: May it please the Tribunal, before my learned friend resumes his presentation of documents may I call the attention of the Tribunal to an extremely false report in the newspaper "Pacific Stars and Stripes" of the proceedings of this Tribunal last Friday? On this particular occasion I happen to be the victim of it. In a paragraph printed in heavy type they say "Prosecution Drops NEI Charge Against Tojo", and continues: "The pros- Friday told the International Military Tribunal for the Far East that it was abandoning its indictment allegations that former Premier Hideki Tojo and the twenty-four other Japanese leaders on trial for war crimes charges participated in a conspiracy to dominate the Netherlands East Indies government in the time between 1928 and 1937."

It will be within the recollection of the Tribunal, and the record shows, that what I said on behalf of the prosecution was the exact opposite, namely, that as there was no allegation in the indictment or anywhere else relating to this matter, there was nothing to withdraw. I find it difficult to

believe that anybody could have communicated this report to the newspaper in good faith.

THE PRESIDENT: Well, the transcript shows what you said, Mr. Carr.

Before me, on my arrival in court this morning, is an offensive note addressed to me. How those things can happen I don't know. I'll say no more about it.

Mr. Logan.

MR. LOGAN: If your Honor please, we now offer in evidence defense document 1400-H-3, being a memorandum from Ambassador Grew dated November 10, 1941, reporting conversation he had with the Japanese Minister.

THE PRESIDENT: Mr. Comyns Carr.

MR. COMYNS CARR: If it please the Tribunal, the prosecution objects to this document as irrelevant. It is merely Ambassador Grew's report of the opinion communicated to him by an unknown minister on the subject of the rapidly increasing Japanese population.

MR. LOGAN: My friend picks up the most minute portion of this document and calls it to your Honor's attention. He knows we are not offering it to show that the population of Japan was increasing.

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MR. LOGAN: My friend picks up the most minute portion of this document and calls it to your Honor's attention. He knows we are not offering it to show that the population of Japan was increasing.

He knows we are offering it to show that this was another protest by the Japanese Minister against the economic pressure that was being applied by the allied powers, setting forth the necessity of Japan to obtain raw materials for self-preservation and self-existence.

THE PRESIDENT: By a majority, the document is admitted tentatively.

THE CLERK: Defense document 1400-H-3 will receive Exhibit No. 2838.

(Whereupon the document above referred to was marked Exhibit No. 2838 and received in evidence).

MR. LOGAN: I shall read the exhibit just offered in evidence:

"Memorandum by the Ambassador in Japan (Grew), dated TOKYO, November 10, 1941.

"The Minister went on to say that the population of this country is steadily and rapidly increasing; it was now about one hundred million; and it was necessary to assure raw materials necessary for their existence. It was his opinion that unless the American Government realizes this fact as among the realities of the situation, successful conclusion to the conversations would be difficult.

During the conversations carried on for a period of more than six months, the Japanese Government had repeatedly made proposals calculated to approach the American point of view, but the American Government for its part had taken no step toward meeting the Japanese position and had yielded nothing -- it had perhaps taken a more advanced position. Those being the facts, 'we in Japan are led to wonder what is the degree of sincerity of the American Government in continuing with the conversations.' Signed Joseph C. Grew."

We now offer in evidence defense document 401-B-8 and 9, which are excerpts from Peace and War with respect to the repeal by the United States of the Neutrality Act.

THE PRESIDENT: Admitted tentatively.

THE CLERK: Defense document 401 B-8 and 9 will receive Exhibit Number 2839.

(Whereupon the document above referred to was marked Exhibit No. 2839 and received in evidence.)

MR. LOGAN: I shall now read Exhibit 2839, excerpts from Peace and War with respect to the repeal by the United States of the Neutrality Act.

"B (8): On October 9, 1941 the President

asked Congress to modify the Neutrality Act."

"B (9) The Congress passed, and the President approved on November 17, 1941, a joint resolution repealing sections 2, 3, and 6 of the Neutrality Act of 1939, thereby permitting United States vessels to be armed and to carry cargoes to belligerent ports anywhere."

We offer in evidence defense document 1500-E-5, which is a telegram sent to Honorable Laughlin Currie by Honorable Lattimore, dated November 25, 1941, with respect to the effect of the loosening of economic pressure or unfreezing as viewed by the Chinese. This document also contains a copy of a message transmitted to Secretary Stimson under cover of the aforementioned letter relating to the same subject.

THE PRESIDENT: Mr. Comyns-Carr.

MR. COMYNS CARR: May it please the Tribunal, the prosecution objects to this document and, in our submission, it requires rather careful consideration. This is a document communicating privately to the United States Government the opinion of General Chiang Kai Shek and the United States Government as to the effect which would be produced if the freezing of assets embargo were relaxed in the end

of November, 1941. It is a document which only came to public knowledge in the course of the Pearl Harbor inquiry after the end of the war. Now, as I understand it, this,-- the whole of this case which is being presented by the defense in this part of their case, is that the accused or some of them were justified in initiating military operations on December 7th to 8th, by reason of an honest and reasonable opinion that they were acting in self-defense, and they are presenting materials for the purpose of showing the reasons on which that opinion is alleged to have been based. Obviously, something which could only have come to their knowledge after the war was over could have formed no part of the materials upon which such a view was based if, in fact, such a view ever existed. Therefore, this and a pretty large number of other documents which they have served upon us, which come into the same category, namely, documents disclosed for the first time in the Pearl Harbor inquiry, cannot be admissible on the only ground which, so far as we can see, could possibly be suggested, namely, that they form a part of the material upon which the accused acted when they considered -- if they did -- that they were acting in self-defense, or, in the alternative way in which it has been put, under

provocation. That being so, in our submission, some other ground must be discovered for admitting this and the huge number of other documents which are about to be tendered; that is to say, it must be shown that the mere sending of these documents secretly between the countries of China and the United States, although unknown to the accused at the time, is a fact material in itself. That, in our submission, can only be the case if there were some issue before this Tribunal as to the propriety of the conduct of either China or the United States in this matter; that is to say, if you were trying the statesmen of those countries instead of these Japanese accused. You are not. There is no such issue, and, as I understand it, the defense have themselves repeatedly repudiated any intention to raise any such issue. In our submission, therefore, there is no basis whatever for the admissibility of this document. We have stated the objection to this document rather fully because it will -- the same reasoning will apply to a very large number of others.

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THE PRESIDENT: Mr. Logan.

MR. LOGAN: With regard to this particular document, I see nothing on it which says that it is either private or secret as claimed by the prosecution. I would like to explain just why we are offering this type of evidence. I am afraid the prosecution has confused the reasons why this evidence is being offered. They are of two types, not one type.

In the first place, there were certain acts committed by the Allied Powers of which the Japanese had knowledge and which we will show later on in the presentation of this evidence. Those acts are being presented for the purpose of showing that the Japanese Government realized the economic and military encirclement which was being conducted by the Allied Powers against it, and the acts which they performed after finding out this information and knowing its effect goes to the defense we are trying to prove here. All that evidence goes to acts which took place at the time and which the Japanese Government knew were occurring at that time.

The second type of evidence is the type being offered at the present time, that is, acts which occurred of which perhaps the Japanese Government had no knowledge of at the time they occurred,

and not perhaps discovered by the Japanese Government after the war, as my friend suggests. But even if the Japanese Government didn't know that these particular acts were taking place such as revealed in this particular document, they did know the effect of those acts. They did know that in late November, 1941, there was an attempt to enforce these orders, but perhaps they didn't know who was conspiring to see that they were not unfrozen.

This type of evidence tends to show that there was a conspiracy against Japan by these countries to continue the economic and military pressure which was being applied to her at that time.

THE PRESIDENT: I think you said earlier that the arms and other commodities on which the embargo was placed were acquired for use in China. The prosecution did not contest that. This is merely confirmation of it and it seems to me to be redundant, most of it at least.

MR. LOGAN: That was not my contention. Perhaps there is a misunderstanding. I said --

THE PRESIDENT: The embargo was intended to help China. I understood that to be common ground. Here is the Chinese President saying it is indispensable to China to continue it. I am afraid the

Tribunal will be inundated with documents about matters which are not contested.

MR. LOGAN: The fact that the prosecution objects to this document shows that it is contested, your Honor -- the conspiracy against Japan. Perhaps I should explain a little more fully, because I don't want the Tribunal to be under a misapprehension.

It was my contention last week, and it still is today, that these embargoes and freezing orders not only choked off any possible materials which might go into a war effort, but they also choked off Japanese industrial life.

THE PRESIDENT: The document deals only with Chiang Kai Shek's attitude toward the embargo.

MR. LOGAN: It is his protest, it is true, your Honor, but at that time there was an effort being made to lift those embargoes. This not only shows that China but also the United States and Great Britain were vitally interested in that matter too, and the effect of those embargoes constitute the facts upon which the Japanese Government formed its opinion.

THE PRESIDENT: On my casting vote the objection is upheld and the document rejected.

MR. LOGAN: We offer in evidence defense document 1400-F-3, which is a memorandum of a conversation dated December 2, 1941, excerpted from Foreign Relations of the United States. This memorandum is signed by Joseph W. Ballantine and relates his conversation with the Japanese Ambassador regarding the economic pressure exerted against Japan.

THE PRESIDENT: Brigadier Quilliam.

BRIGADIER QUILLIAM: May it please the Tribunal, apart from being irrelevant, this document is redundant. It is merely another protest about embargoes and adds nothing to the determination of the issues. It will be observed that the protest was made after the decision had been made to attack at Pearl Harbor on the 7th of December.

MR. LOGAN: This memorandum was in Washington on December 2, and there is no evidence by the Ambassador there that he knew of the decision of December 1 at that time. This shows further protest the same as the previous one admitted this morning.

THE PRESIDENT: By a majority the Court upholds the objection and rejects the document.

MR. LOGAN: We offer in evidence defense document 1400-G-3, being a memorandum of the conversation between the Japanese Ambassador and Joseph W. Ballantine dated December 5, 1941. In this memorandum the Japanese Ambassador reports the alarm of the Japanese over the increasing naval and military preparations of the ABCD powers in the Southwest Pacific.

THE PRESIDENT: Brigadier Quilliam.

BRIGADIER QUILLIAM: May it please the Tribunal, the prosecution object to this document on the same grounds as the previous one. It is dated, it will be observed, the 5th of December 1941 and it does not deal with economic embargoes specifically but it deals with the alleged war preparations.

MR. LOGAN: I will withdraw that at this time and present it later at the end of the military phase.

We now offer in evidence document 2007 which is an excerpt processed by the prosecution for the defense, being certain excerpts from the testimony of Honorable Cordell Hull given at a hearing held before the Joint Congressional Committee on the investigation of the Pearl Harbor attack. We propose at this time to read excerpts appearing on pages 1, 2, and the first three paragraphs on page 3 dealing with

Secretary Hull's testimony regarding embargoes, aid to China, armament of the United States and procurement of natural resources in the Southwest Pacific by Japan.

THE PRESIDENT: Brigadier Quilliam.

BRIGADIER QUILLIAM: May it please the Tribunal, this document and particularly the parts that are proposed to be read is merely a repetition of evidence which has been presented in more than one form to the Tribunal. This is part of the evidence of Mr. Cordell Hull at the Pearl Harbor Inquiry in which he reviews what took place over the years. The whole of it has been submitted, as I say, in more than one form before and it can have no greater value because it happens to be in this instance the extract from the evidence given before the Pearl Harbor Committee.

THE PRESIDENT: Do you admit, Brigadier Quilliam, that Mr. Hull said all the things that appear in the document about to be discussed?

BRIGADIER QUILLIAM: May it please the Tribunal, I have not actually checked these statements with the original report but I have no doubt that it is an accurate copy.

THE PRESIDENT: I understood you to say,

Brigadier, that all the things that appear in this document just tendered appear in the evidence already in some form or other. If that is so, we do not need this document. We are trying to save time and material.

BRIGADIER QUILLIAM: May it please the Tribunal, although we have a copy of this document it has not been served on the prosecution at all, but even a cursory perusal will show that all the matters that are referred to are all matters that have actually been dealt with before the Tribunal. In particular--

THE PRESIDENT: We do not want them twice.

BRIGADIER QUILLIAM: In particular, they are included in Mr. Ballantine's evidence necessarily excepting, of course, where this document contains the opinions and views of Mr. Cordell Hull, which we submit are objectionable anyhow.

MR. LOGAN: I only intended to read the first two and a half pages of this but the length of it, of course, is no reason to exclude it. But this document was processed by the prosecution for the defense. They took the choice parts of Secretary of State Hull's testimony out of that book and presented it to the Tribunal and left out those portions that we consider favorable to the defense. In other words, they presented only a one-sided story for the Tribunal's

consideration. We want to present all the facts, the reasons behind Secretary of State Cordell Hull's action.

Secondly, the Tribunal will recall that the defense objected strenuously to Mr. Ballantine, who came here and used a great deal of Secretary of State Cordell Hull's testimony and did not advise the Court where he got his statement. So the prosecution got Secretary Hull's testimony in twice, one, by the excerpts from this book and, second, through Mr. Ballantine. We complained again when Mr. Ballantine testified that he too was omitting the favorable portion of Secretary of State Cordell Hull's testimony, so we are offering these portions of Honorable Cordell Hull's testimony to fill in the gap so that the Tribunal will get a complete picture of his reasoning.

THE PRESIDENT: Whom are we to believe, you or Brigadier Quilliam? He says it is all in in some form; you say it is not. How can we decide?

MR. LOGAN: I will say this, if the Tribunal please, that this evidence, this particular piece of evidence, has never been offered before.

BRIGADIER QUILLIAM: May it please the Tribunal, as a quick way of testing the accuracy of Mr. Logan's remark, may I refer the Tribunal to the

bottom of page 2? That refers to the freezing of Chinese and Japanese assets. If the Tribunal wants to know once more that that happened then, of course, this document should be submitted.

THE PRESIDENT: It seems to me you are only flooding us with words about matters that are not contested.

MR. LOGAN: If the Tribunal please, at the time we requested these documents be excerpted we were told at that time that we could read any portion that the prosecution had omitted. They processed this document for us. We want to read it. It has never been offered before and out of two and a half pages that I would like to read the prosecution only points to about six lines which they say is in evidence before. Certainly we are entitled to have Secretary Hull's testimony wherein he sets forth the reasons why certain acts were done and compare that with other testimony which has been offered.

BRIGADIER QUILLIAM: May it please the Tribunal, I did only point to one because I thought that would be a useful illustration, but if we take the first paragraph dealing with the decision not to put the Neutrality Act into operation, evidence has been given about that. The determination that the Treaty of

Commerce and Navigation in 1939 is another matter about which there has been a wealth of evidence. That is in the next paragraph.

THE PRESIDENT: By a majority the Court overrules the objection and admits the document but we do ask you to read only what is absolutely necessary from your viewpoint.

CLERK OF THE COURT: Defense document 2007 will receive exhibit No. 2840.

(Whereupon, the document above referred to was marked defense exhibit 2840 and received in evidence.)

MR. LOGAN: I shall read exhibit 2840. I shall omit the first paragraph.

The second paragraph: "On July 26, 1939 our Government notified the Japanese Government of its desire to terminate the Treaty of Commerce and Navigation of 1911. It was felt that this treaty was not affording adequate protection to American commerce either in Japan or in Japanese occupied portions of China, while at the same time the operation of the most-favored-nation clause of the treaty was a bar to the adoption of retaliatory measures against Japanese commerce. The treaty therefore terminated on January 26, 1940, and the legal obstacle to our placing

restrictions upon trade with Japan was thus removed.

"Beginning in 1938 our Government placed in effect so-called 'moral embargoes' which were adopted on the basis of humanitarian considerations. Following the passage of the Act of July 2, 1940 restrictions were imposed in the interests of national defense on an ever-increasing list of exports of strategic materials. These measures were intended also as deterrents and expressions of our opposition to Japan's course of aggression.

"Throughout this period the United States increasingly followed a policy of extending all feasible assistance and encouragement to China. This took several different forms, including diplomatic actions in protest of Japan's aggression against China and of Japan's violation of American rights. Loans and credits aggregating some two hundred million dollars were extended in order to bolster China's economic structure and to facilitate the acquisition by China of supplies. And later lend-lease and other military supplies were sent to be used in China's resistance against Japan.

"During these years we had kept before the Japanese all these doctrines and principles in the most tactful and earnest manner possible, and at all

times we had been careful not to make threats. I said that I had always felt that if a government makes a threat it ought to be ready to back it up. We had been forthright but we had been as tactful as possible.

"We had in mind doing everything we could to bring about a peaceful, fair and stabilizing settlement of the situation throughout the Pacific area. Such a course was in accordance with the traditional attitudes and beliefs of the American people. Moreover, the President and I constantly had very much in mind the advice of our highest military authorities who kept emphasizing to us the imperative need of having time to build up preparations for defense vital not only to the United States but to many other countries resisting aggression. Our decision to enter into the conversations with the Japanese was, therefore, in line with our need to rearm for self-defense.

"The President and I fully realized that the Japanese Government could not, even if it wished, bring about an abrupt transformation in Japan's course of aggression. We realized that so much was involved in a reconstruction of Japan's position that implementation to any substantial extent by Japan of promises to adopt peaceful courses would require a long time. We were, therefore, prepared to be patient in an endeavor

times we had been careful not to make threats. I said that I had always felt that if a government makes a threat it ought to be ready to back it up. We had been forthright but we had been as tactful as possible.

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"The President and I fully realized that the Japanese Government could not, even if it wished, bring about an abrupt transformation in Japan's course of aggression. We realized that so much was involved in a reconstruction of Japan's position that implementation to any substantial extent by Japan of promises to adopt peaceful courses would require a long time. We were, therefore, prepared to be patient in an endeavor

to persuade Japan to turn from her course of aggression. We carried no chip on our shoulder, but we were determined to stand by a basic position, built on fundamental principles which we applied not only to Japan but to all countries.

"Accordingly, on July 26, 1941, President Roosevelt issued an executive order freezing Chinese and Japanese assets in the United States. That order brought under the control of the Government all financial and import and export trade transactions in which Chinese or Japanese interests were involved. The effect of this was to bring about very soon virtual cessation of trade between the United States and Japan.

"On August 6 the Japanese Ambassador presented a proposal which he said was intended to be responsive to the President's proposal regarding neutralization of Indo-China. In essence, the Japanese proposal was that:

"1. The Japanese Government should undertake to refrain from stationing troops in regions of the Southwest Pacific, to withdraw from French Indo-China after 'settlement of the China incident,' to guarantee Philippine neutrality, and to cooperate in the production and procurement of natural resources in East Asia essential to the United States; and

"2. The United States should undertake to 'suspend its military measures in the Southwestern Pacific areas' and to recommend similar action to the Governments of the Netherlands and Great Britain, to cooperate in the production and procurement of natural resources in the Southwestern Pacific essential to Japan, to take measures to restore normal commerce between the United States and Japan, to extend its good offices toward bringing about direct negotiations between Japan and the Chungking Government, and to recognize Japan's special position in Indo-China even after withdrawal of Japanese troops."

I now call the witness, ISHIBASHI, Tansan.

T A N S A N I S H I B A S H I, called as a witness on behalf of the defense, being first duly sworn, testified through Japanese interpreters as follows:

DIRECT EXAMINATION

BY MR. LOGAN:

Q Will you tell the Tribunal your name and address?

A My name is ISHIBASHI, Tansan. My address is Tokyo-to, 810 Shirai 3-Chome, Edogawa-ku, Tokyo.

Q Will you examine this document 1762 and exhibits attached thereto which is now being handed to you by Captain Van Meter, and tell us if that is your affidavit?

A This affidavit was written by me.

Q Are the statements therein contained accurate and true?

A Yes.

MR. LOGAN: I offer in evidence defense document 1762 and the exhibits attached thereto.

THE PRESIDENT: Mr. Comyns Carr.

MR. COMYNS CARR: May it please the Tribunal, the prosecution objects to the whole of this

affidavit which consists of twenty-seven pages of affidavit and twenty-three pages of exhibits, fifty in all. Every word of it, in our submission, is irrelevant and deals with matters which have already been ruled by this Tribunal to be irrelevant.

After devoting no less than four pages to his career, chiefly as a journalist, the witness proceeds to a section about overpopulation and food shortage in Japan --

THE PRESIDENT: Both of which are conceded.

MR. COMYNS CARR. Both of which are conceded. And the Tribunal has rejected documents further elaborating that matter already.

The next section deals with steps taken by Japan for coping with the above-mentioned difficulties and in addition to a speech by President Truman in 1947 which is solemnly exhibited to the affidavit, there are twenty-odd pages of statistics exhibited and also summarized in the affidavit, relating to the agricultural and industrial history of Japan from 1882 onwards.

Then there is a section dealing with the growth of trade in Japan from very early times, 1899 onwards.

Then there is a section dealing with what is called foreign pressure on Japanese goods, which merely goes country by country into the tariff history of the past thirty years, which the Tribunal has already ruled to be irrelevant.

THE PRESIDENT: The question is, if you are short of goods can you help yourself to your neighbors'? No doubt Japan was short of food, short of territory, and the question is, did that justify resort to war? That is another question.

MR. COMYNS CARR: The affidavit ends up by saying that after the conclusion of the Tripartite Alliance, the situation rapidly grew worse. Down to that point, the affidavit has been dealing wholly with general industrial and agricultural history, and that last page merely summarized what we have had over and over again about the freezing of assets, and so on.

In our submission, the tendering of such an affidavit shows a disrespect to the views repeatedly expressed by this Tribunal.

THE PRESIDENT: Mr. Logan.

MR. LOGAN: If the Tribunal please, the history of Mr. ISHIBASHI shows he is an expert

economist, not a journalist. The length of his affidavit is no grounds for objection that I know of, and we have tried to oppose in twenty pages what Liebert took over 100 pages of his own testimony irrespective of the charts that were submitted. I do not intend to read the charts. They were put in the affidavit in accordance with the Tribunal's ruling that the source of our information must be shown when reports are referred to.

The entire affidavit is offered for the purpose of showing that Liebert's testimony and the claims made by the prosecution that Japan was preparing for an aggressive war are without fact.

The purpose of this affidavit is not directed to the issue raised by Mr. President as to whether or not when a country is short of goods it should help itself to its neighbors'. It is directed to show that the industrialization of Japan was not for the purpose of waging, planning, an aggressive war. Its background has been laid to show the necessity for industrialization, and the facts and figures clearly show that the civilian economy of Japan was dependent on this industrialization. It was not evolved for any purpose of planning or preparing

for an aggressive war.

The facts and figures presented in this affidavit show a picture that Japanese civilian economy was going along and progressing in a normal way, and that there was no preparation for aggressive war in its industrialization as claimed by the prosecution. In other words, the prosecution tried to paint a picture that certain plants which might or which were being used for creation of munitions of war, when they increased rapidly, they drew the conclusion that it was preparation for aggressive war. These facts and figures show that industrial economy increased at the same time. This entire industrial picture as presented here will, I am sure, show that there was absolutely no planning and preparation for aggressive war, as claimed by the prosecution. It is directly in issue.

We also show by this affidavit the effect of the economic pressure on Japan, which goes to our affirmative defense. In other words, the outside pressure is brought right home in this affidavit as to the effect it had on Japanese, not only civilian economy, but all types of economy.

With respect to President Truman's speech, that has been offered, as I understand it, to bear

out the reasons and the circumstances which are the same today as they were at that time.

We have endeavored through this affidavit to comply with the Tribunal's wishes, and we do not try deliberately to do something which the Tribunal does not want us to do, as my friend claims, but the Tribunal suggested that instead of getting authors, to bring a witness here who knows the facts, and present them. Here he is.

THE PRESIDENT: By a majority, the Court sustains the objection and rejects the document.

We will recess for fifteen minutes.

(Whereupon, at 1050, a recess was taken until 1105, after which the proceedings were resumed as follows:)

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THE PRESIDENT: By a majority, the Court sustains the objection and rejects the document.

We will recess for fifteen minutes.

(Whereupon, at 1050, a recess was taken until 1105, after which the proceedings were resumed as follows:)

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

THE PRESIDENT: Mr. Logan.

MR. LOGAN: If the Tribunal please, I realize it is difficult for the President to know the reasons why the other Members of the Tribunal vote on admissibility of a piece of evidence. But I wonder if we could have some indication as to why this last document was rejected, because we view this document with great importance as completely answering Liebert's testimony.

THE PRESIDENT: Well, I gave you my reasons. I think I can safely say for the majority of my colleagues they held the view that the document was either irrelevant or redundant. One, at least, so expressed himself.

MR. LOGAN: We had presented the facts, if the Tribunal please, with regard to the development of industrialization in Japan and the outside pressure, and this was the effect of the pressure on Japan, and also to show that the industrialization was not for preparation for war, as prosecution contends, and it directly answers Liebert's testimony on all the points raised in the affidavit. In other words--

THE PRESIDENT: Japan's industrialization is

notorious, a matter of common knowledge, and the affidavit disclosed no more. The purpose of it may have been, of course, innocent to some extent. You can only judge the purpose by the use to which it is put eventually. The need for industrialization here in Japan was clear. All these things need not be proved. We know them all. They appear already in the prosecution's evidence to a sufficient extent.

MR. LOGAN: We did not intend by this affidavit to go into the question of the use to which it was put. It was to answer Liebert's contention, that there was no preparation for waging aggressive war, as he contended. Also--

THE PRESIDENT: The debate is closed.

BY MR. LOGAN (Continuing):

Q Mr. ISHIBASHI, will you examine defense document 1762-A which is now being handed to you by the clerk, and tell us whether or not that is your affidavit?

A This affidavit was written by me.

Q And are the statements contained therein accurate and true?

A Yes.

MR. LOGAN: I offer in evidence defense document 1762-A.

THE PRESIDENT: There is no objection. It is

admitted on the usual terms.

CLERK OF THE COURT: Defense document 1762-A, with appendices numbered 18, 19 and 20, will receive exhibit No. 2841.

(Whereupon, the document above referred to was marked defense exhibit No. 2841 and received in evidence.)

MR. LOGAN: Exhibit 2841, affidavit of ISHIBASHI, Tansan:

"Japan's Finance and War Expenditures.

"Japan experienced an era--"

Before I read this, may the Court take judicial notice of Mr. ISHIBASHI's qualifications as contained in the previous affidavit?

THE PRESIDENT: Let him state now what they are, Mr. Logan.

MR. LOGAN: Perhaps I could read them much faster.

"I, ISHIBASHI, Tansan, was born in Tokyo in September, 1884, graduated in 1907 from WASEDA University, majoring in philosophy in the department of literature, and immediately took a post-graduate course in philosophy in the same university.

"In 1908 I obtained a position on the editorial staff of THE TOKYO MAINICHI NEWSPAPER PUBLISHING

COMPANY.

"In 1911 I secured a position on the editorial staff of THE TOYO KEIZAI SHINPO PUBLISHING COMPANY. This publishing company was established in 1895 for the purpose of supplying the educated classes of the Japanese people with correct knowledge of economics and up-to-date information on world topics. It has since devoted itself to the publication of economic periodicals such as THE TOYO KEIZAI SHINPO (Oriental Economic Reports)(weekly), THE ORIENTAL ECONOMIST (monthly, later weekly), NIHON KEIZAI NENPO (Japan's Yearly Economic Reporters) (quarterly), GAIKOKU BOEKI GEPPO (Foreign Trade Monthly), etc., and also of books on economic subjects, as well as the compilation and publication of statistical books such as Meiji and Taisho Japan Almanac (1927), Foreign Trade of Japan, a statistical survey (1935), Meiji and Taisho Financial Almanac (1927) and Toyo Keizai Statistical Yearbook (from 1916 yearly). THE TOYO KEIZAI SHINPO (Oriental Economic Reports) was started in 1895 after the style of THE ECONOMIST published in London. It is the oldest economic periodical in Japan and has, ever since its foundation, been regarded as the best and most trustworthy of periodicals in the industrial and economic world of Japan.

"In 1914 I became the Chief of the editorial staff of the same publishing company, and in 1924 manager of the same company. In 1925, after the reorganization of the company I became its president. For 34 years I had been most closely connected with the editing of the aforesaid TOYO KEIZAI SHINPO (Oriental Economic Reports), until May, 1946.

"In July, 1931, I had the Keizai Club (Economic Club) organized in Tokyo and then in Osaka, Nagaya, and various other cities throughout the country, by getting together the leading businessmen of each city for the purpose of their joint study of economic questions. As chairman of the board of directors of the central Economic Club, I took the leadership of these clubs.

"From April 1925 to July 1932" -- there is a translation error there -- "I lecture on economics at the YOKOHAMA KOGYO SENMON GAKKO (Yokohama Industrial College).

"In June 1943 I founded the KINYU GAKKAI (Financial Institute), as an organ for financiers and technical experts of the country to study financial questions. Its headquarters were in the office and building of the TOYO KEIZAI SHINPO PUBLISHING COMPANY and as acting director of the Institute, I devoted

myself to the leadership and promotion of its activity.

"In 1934, I started an English Magazine, THE ORIENTAL ECONOMIST, of which I became editor-in-chief. This magazine portrayed the economic conditions of Japan as well as of the East in general. The magazine soon obtained many appreciative readers abroad who considered it as the most fair-minded and trustworthy economic magazine published in Japan. Even after the outbreak of the Pacific War in 1941, and consequent stoppage of communications with the Western countries, it was, by the request of the League of Nations, continuously forwarded to Geneva.

"Since 1935, representing the financial circles of Japan, I have held 21 different memberships in various committees and councils in the cabinet, Finance Office, and Commerce and Industry Office of the Japanese Government.

"In May, 1946, I was appointed Finance Minister in the YOSHIDA cabinet. In January, 1947, I was appointed managing head of the Economic Stabilization Office and head of the Prices Board, and on March 20, 1947, resigned from the same offices. On the resignation en bloc of the YOSHIDA Cabinet on May 24, 1947, I resigned from the office of Finance Minister."

I shall not read the essays and various publications.

Now, reverting to exhibit 2841, "Japan's Finance and War Expenditures."

"1. Japan experienced an era of severe deflation from 1929 to 1931, which was due to the policy deliberately adopted by the Government for the purpose of restoring the gold standard. For this purpose, the Government since 1929 did everything in its power to cut down financial expenditures. The expenditure of ¥1,815,000,000 for the fiscal year of 1928 was reduced to ¥1,477,000,000 in 1931. (Appendix table No. 18). The Japanese Government intended by this policy to reduce prices of commodities in Japan in order to cope with the depression that had been prevailing throughout the world at that time, and thus to make Japan's foreign trade properly balanced.

"The policy mentioned above, however, precipitated Japan's economy into extreme difficulties and gave rise to political dangers. Moreover, with the suspension of the gold standard in Great Britain in September 1931 it became clear that Japan also could no longer continue the deflation policy. Consequently, in December of the same year, the cabinet was changed and the new cabinet (The INUKAI cabinet) immediately suspended the gold standard and attempted

to make a new departure from the old policy.

"The policy which which was followed by the new cabinet after 1932 was the so-called 'reflation policy.' The term 'reflation,' however, being unfamiliar to the general public at that time, it was called an inflation policy. The Government increased financial expenditures beginning with the fiscal year 1932 and encouraged more demand for goods and labor, and thus tried to put into actual practice the so-called 'full employment.' On account of this policy, prices of commodities within the country rose and the business conditions improved. Moreover, as the government permitted simultaneously a fall of the exchange rate of the yen to a certain extent, the export of Japanese goods was made easier and again this brought about greater demand for goods and labor.

"The expenditures of the Japanese Government, as described above, decreased from the fiscal year of 1929 to that of 1931, but by the foregoing policy, they started to increase after the 1932 fiscal year. In other words, according to Table 18, the total of the expenditures which were ¥1,477,000,000 in 1931, rapidly increased since 1932 and expanded to ¥2,255,000,000 in 1933. Since then, however, up to 1936, i. e., the year before the outbreak of the China Incident,

there was hardly any increase in the expenditures but even some decrease was witnessed both in 1934 and 1935. This was because the objective of this 'reflation' had been sufficiently accomplished by the financial expansion to this extent. At the same time, the fact that the expansion of the financial expenditure had been checked since 1934 indicates that the Japanese Government at that time expected to maintain the peaceful relation with other countries. And the fact that the extent of the financial expansion during the eight years from 1920 to 1928 was ¥455,000,000 (35.5%), as against almost the equal amount of ¥467,000,000 (25.7%) for the eight years from 1928 to 1936, shows that it was no abnormal phenomenon but was aimed at 'reflation.'

"However, a complete change was brought about in the financial state of affairs in Japan after July 1937 with the outbreak of hostilities with China. It no longer aimed at 'reflation,' but entered completely into a state of de facto war. The Emergency Military Special Account was established, and the financial expenditures rapidly expanded.

"2. Reviewing the shift of Japan's military expenditures, as shown in Table 19, it can be seen that these totaled ¥731,000,000 in the fiscal year of 1921, decreased annually until it dropped to ¥434,000,00

in the 1926 fiscal year. There was then a little increase and yet the figure for the fiscal year of 1931 was no more than ¥455,000,000 which was far below the sum for the 1921 fiscal year. It was in 1921 that the Naval Disarmament Conference was held in Washington, and, in addition a deflation policy was followed after 1929, all of which contributed to the reduction of military expenditures.

"Indeed, those ten years were the era of disarmament. This fact was shown very clearly in the reduction of the extraordinary expenditures of the Army and Navy because the replenishment or the expansion of armaments could depend only on these extraordinary expenditures. As shown in table 19, the Army extraordinary expenditures decreased year by year from 120 million yen in the 1919 fiscal year to only 27 million yen in the 1924 fiscal year. It increased a little thereafter; however, it again dropped down to 26 million yen in the 1930 fiscal year. The Navy extraordinary expenditures, which were 343 million yen for the fiscal year of 1921, rapidly decreased after the next year, and dropped down to only 107 million yen for the fiscal year of 1925. It showed a slight increase thereafter, however, started to decrease again after the 1928 fiscal year, dropping down to only 88 million

yen for the fiscal year 1931.

"It was in September of 1931, when the Manchurian Incident occurred, but it should be noticed that both the Army and the Navy extraordinary expenditures for the fiscal year of 1931 were smaller in amount than those for 1928. In the total of the Army and Navy expenditures as shown in table 19, it was 517 and 495 million yen, respectively, for the fiscal year of 1928 and 1929, while 455 million yen for the fiscal year of 1931.

"Beginning with the 1932 fiscal year and up to 1940, the Army and Navy extraordinary expenditures showed some trend of gradual expansion. However, much increase is not noticeable. As an examination of the figures in table 19 shows, the Army extraordinary expentitures increased from 225 million yen in the 1932 fiscal year to 319 million yen in the 1936 fiscal year, and that of the navy also expanded from 172 million yen to 331 million within the same period of time. But, in judging this increase of the Army expenditures, expenses for the military movements by the Army in Manchuria within this period should be taken into consideration. The amount of the Navy extraordinary expenditures for the fiscal year of 1936 were 331 million yen, a smaller amount than 343 million yen for

the 1921 fiscal year. The Army and the Navy extraordinary expenditures did not witness a very rapid increase even after the outbreak of the China Incident in 1937. That of the Army increased once in the 1931 fiscal year to 431 million yen; however, in the 1938 fiscal year it even decreased to 357 million yen, while that of the Navy came up to 764 million yen in the 1940 fiscal year.

"3. The Emergency Military Special Account also did not witness a rapid increase until 1940 following its establishment in 1937. Reviewing the arms expenses thereof, as shown in table 20, those of the Army went up to 1,829,000,000 yen in the 1938 fiscal year which was the largest amount it attained before the Pacific War and from this decreased to 1,347,000,000 yen in the 1940 fiscal year, and that of the Navy showed a decrease in the 1939 fiscal year from 668 million yen for the fiscal year of 1938 which was the largest amount it attained before the Pacific War. The latter showed some increase again in the 1940 fiscal year, but only to the extent of 794 million yen.

"However, after the 1941 fiscal year the arms expenses for both the Army and the Navy suddenly jumped up to such a great amount as could not be compared to those of 1940. The same great expansion is also

indicated by the changes in the total of the military expenditures since 1941, according to table 19. Judging from the above facts, it can be seen how the Army and the Navy of Japan began their armament expansion with the outbreak of the Pacific War in the manner of 'after death the doctor.'

"On this 29th day of July 1947.

"At Asahigaoka, Yamanashi Prefecture."

Signed, "ISHIBASHI, Tansan."

I would like to have those charts spread in the transcript without reading them, if the Tribunal please.

You may examine.

THE PRESIDENT: Brigadier Quilliam.

BRIGADIER QUILLIAM: May it please the Tribunal, there will be no cross-examination.

MR. LOGAN: May the witness be released on the usual terms.

THE PRESIDENT: He is released accordingly.

(Whereupon, the witness was excused.)

Wolf & Leffler

MR. LOGAN: We next offer defense document 401(12). This document shows the expansion in armaments undertaken by the United States in its national defense programs of 1933 and 1934.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: If it please the Tribunal, the prosecution objects to the introduction of this document on the ground that it is irrelevant and immaterial. The increase of the Army in 1935 to 165,000 enlisted men for defensive purposes and the bringing of the Navy up to the treaty strength in parity with other nations for defensive purposes were acts which the United States had the legal right and duty to perform.

It places the prosecution in a peculiar position to object to a document which shows that the action of the United States was for defensive purposes. The same situation will be found to exist with many of the other documents in this section.

THE PRESIDENT: The Tribunal cannot say what the purpose was. At this stage, it must hear both sides.

MR. TAVENNER: Notwithstanding the fact that this and similar documents did not adversely effect the prosecution, we nevertheless feel that we should

object on the ground that it is not directed to a material issue at this point and that to admit it would only prolong the length of this record.

THE PRESIDENT: Well, suppose the defense tendered a document -- and they could in a couple of pages -- showing the relative strength of Japan and the Allied Powers, the armies, navies, and air forces, over a period of a year just before the war, what objection would there be to it? They can not show that their own army, navy, and air force was more than sufficient or was not more than sufficient unless they show what were the respective forces of the other powers.

MR. TAVENNER: But to show that the Army of the United States and the Navy was increased for defense purposes could certainly not be directed to any issue in this case.

THE PRESIDENT: But, are we to say, "Oh, this American stuff was directed to defense; your Japanese preparations were directed to aggression." We are a Tribunal. We cannot take that stand at this stage. We have to hear all the evidence.

MR. TAVENNER: Well, that is proof that the defense offer in this document, that it was for defense purposes.

THE PRESIDENT: That is a pet expression, perhaps, that nations employ when they mean something else.

The objection is overruled and the document admitted on the usual terms.

CLERK OF THE COURT: Defense document 401(12) will receive exhibit No. 2842.

(Whereupon, the document above referred to was marked defense document No. 2842 and received in evidence.)

MR. LOGAN: I shall read defense exhibit 2842, an excerpt from "Peace and War:"

"NATIONAL DEFENSE

"In 1933 the enlisted strength of the United States Army was 115,000 men. As a result of reductions in governmental expenditures the War Department appropriation act of March 4, 1933 provided only $270,000,000 for the military activities of the Army -- a sharp reduction from the amount made available for similar purposes during the previous year. General Douglas MacArthur, Chief of Staff, stated in his annual report of 1933 that successive reductions in appropriations had seriously injured the equipment and training of the Army. He said that the strength of the Army in personnel and equipment and its

readiness for employment were 'below the danger line.'

"In 1943 General MacArthur recommended a program of expansion for the Army; the accomplishment of this program, he said, would still leave us far behind all other major powers but would at least offer the United States 'a justified assurance in freedom from attack or, at the worst, from extreme consequences in the event of attack.'

"The War Department appropriation act of April 1935 authorized an increase of the Army to 165,000 enlisted men. In his report of 1935 General MacArthur said that measures had been undertaken to procure additional airplanes, motorized vehicles, tanks, and artillery, in most of which the Army's supplies had become obsolete or inadequate.

"By 1933 the United States Navy, in up-to-date ships, had fallen far below the tonnage allowed by treaty. In that year President Roosevelt allocated funds from the National Industrial Recovery Act for the purpose of constructing and equipping 32 naval vessels. The Secretary of the Navy reported in 1933 that no such building program had been undertaken by this country since 1916; that of the signatories to the naval treaties we alone had not undertaken an orderly building program designed to bring

the Navy up to treaty strength. He recommended an orderly annual naval building and replacement program which would 'shortly give this country a treaty navy.' He stated that the United States continued to strive for a reduction of armament by agreement but that the time had come when we could no longer afford to lead in disarmament by example. Other powers had not followed such a policy, he said, with the result that the United States found its relative naval strength seriously impaired. He said that our weakened position jeopardized the cause of peace, 'because balanced armament fortifies diplomacy and is an important element in preserving peace and justice, whereas undue weakness invites aggressive, war-breeding violation of one's rights.'

"During 1934 the Vinson Naval Bill was enacted, authorizing the construction of ships up to the limits of the Washington and London Naval Treaties."

We offer in evidence defense document 202-P-1 an excerpt from John B. Powell's book, "My 25 Years in China," which shows that in 1936 plans were undertaken for the defense of the Philippines.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: If it please the Tribunal, this document and the succeeding one, 202-P-2, deal

with the matter of the defense of the Philippines, and this second document, which I have mentioned, was rejected by the Tribunal at page 18,628 of the transcript. For the same reason, the document now being presented, 202-P-1, should be rejected as irrelevant and immaterial to any issue in this case.

THE PRESIDENT: Mr. Logan.

MR. LOGAN: I believe it is entirely relevant for the reason set forth by the President in answer to the objection to the last document.

THE PRESIDENT: I shall read this note: It is an absurdity as evidence. It proves nothing and should be rejected -- not a figure in it. Every country takes steps to defend itself.

The objection is upheld and the document rejected.

MR. LOGAN: We offer in evidence defense document 202-P-2, an excerpt from John B. Powell's book "My 25 Years in China" which shows the extent of the defense program undertaken for the defense of the Philippines in 1936. I might say that I did not know that this had been previously rejected. It may have been rejected at one time as not material to the particular phase of the case being offered, but it is material to this particular phase of the case.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: The prosecution submits that there is no better reason for admitting this document now than when it was rejected as previously stated.

THE PRESIDENT: The objection is upheld and the document rejected.

MR. LOGAN: We next offer in evidence defense document 401(22), a further excerpt from defense document No. 401, the official publication of the United States Government entitled Peace and War. This document shows that the United States armament program in 1937 and 1938 was further expanded in the light of the menacing world conditions at that time and the armament program undertaken by other countries.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: If the Tribunal please, the same objection is made to the introduction of this document as to the former one relating to the Philippines.

THE PRESIDENT: This comes from a more reliable source.

MR. TAVENNER: This document shows that it was the intention to strengthen the naval program for the defense of the United States and the fact that general proposals were made for military and naval rearmament could not justify an attack, aggressive attack by Japan. Unless some aggressive intention and action can be attributed to the United States in this matter, it certainly is irrelevant to any issue in this case. Every country strengthened its national defense just the same as they endeavored to enforce laws in their own country.

THE PRESIDENT: The Court overrules the objection and admits the document.

CLERK OF THE COURT: Defense document 401(22) will receive exhibit No. 2843.

(Whereupon, the document above referred to was marked defense exhibit No. 2843 and received in evidence.)

MR. LOGAN: I read exhibit 2843, an excerpt

from "Peace and War."

"EUROPEAN CRISIS 1938

"United States Rearmament

"As 1937 drew to a close the situation in the world became increasingly threatening. The hostilities between China and Japan raged with growing intensity; in Europe, Spain was torn by a civil struggle which threatened to turn into a general continental war. In November 1937 Italy joined Germany and Japan in the Anti-Comintern Pact. Meanwhile, Germany, arming at a feverish pace, was causing grave apprehension as to its intentions toward the European political structure.

"During this period there developed considerable public support in the United States for the adoption of a constitutional amendment requiring a popular vote as prerequisite to a declaration of war by the Congress. Both President Roosevelt and Secretary of State Hull at various times expressed their strong opposition to this proposal. On January 6, 1938 the President wrote to the Speaker of the House of Representatives that such an amendment would 'cripple any President in his conduct of our foreign relations' and 'would encourage other nations to believe that they could violate American rights with impunity.'

Secretary Hull on January 8 warned that the proposal would impair the ability of the Government to safeguard the peace of the people of the United States. On January 10 the proposal was voted on by the House of Representatives but was rejected by the close vote of 209 to 188.

"President Roosevelt recommended to Congress, in a special message or January 28, 1938, the strengthening of our national defense. The President reported with deep regret that armaments were increasing 'at an unprecedented and alarming rate'. He called attention to the ominous fact that at least one fourth of the world's population was involved in 'merciless devastating conflict' in spite of the fact that most people in most countries wished to live at peace. As Commander in Chief of the Army and Navy, the President deemed it his constitutional duty to report to the Congress that the national defense of the United States was, in the light of the increasing armaments of other nations, inadequate for purposes of national security and therefore required increase. The President said that 'adequate defense' meant that for the protection not only of our coasts but also of our communities far removed from the coasts, we must keep any potential enemy many hundreds of miles away from our continental

limits. We could not assume, he stated, that our defense would be limited to one ocean and one coast and that the others would certainly be safe. 'Specifically and solely because of the piling up of additional land and sea armaments in other countries' the President recommended to Congress that authorizations be granted for substantial increases in military and naval armament. Included were recommendations for increasing by 20 percent the existing naval building program and for appropriations to lay down two additional battleships and two additional cruisers during 1938.

"The President's proposals for military and naval rearmament were debated in Congress during the spring of 1938. Doubt was expressed in some quarters that the proposed naval increases were really necessary for the defense of the United States, and several Senators and Representatives voiced the suspicion that the contemplated naval increases were based on an agreement for naval cooperation with some other power, such as Great Britain. Secretary of State Hull took cognizance of these ideas in a letter to a member of Congress on February 10, 1938. He stated categorically his opinion that the proposed naval program was needed for the defense of the United States. Referring to the desire of the people and Government of the United States to

keep out of war, he said that those who, with a full sense of responsibility, were advocating this program, were doing so in the belief that its adoption would contribute to achieving this desire. Secretary Hull pointed out that the Navy, even with the proposed increases, would not be able to embark upon offensive or aggressive operations overseas.

"The secretary also declared that the proposed program did not contemplate naval cooperation with any other power in the world; that the policy of the United States was to avoid both extreme internationalism and extreme isolation; that, while avoiding alliances and entangling commitments, it was advisable to confer and exchange information with other governments having common objectives and, when practicable, to proceed on parallel lines. Finally, the Secretary said that if every peaceful nation insisted on remaining aloof from every other peaceful nation and on pursuing a policy of armament limitation without reference to relative armaments, the inevitable consequences would be to encourage and even to assist nations inclined to play lawless roles.

"The President's proposals for military and naval rearmament were substantially adopted by the Congress."

We now offer in evidence defense document 1500-0-4 which is an excerpt from the testimony of Admiral Ingersoll.

This excerpt is offered for the purpose of showing that the United States and Great Britain were discussing potential collaboration in the event of war against Japan as early as December 1937.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: If it please the Tribunal, there are two grounds of objection to this document. The first is that successfully asserted with regard to document 1500-E-5, that the matter related to in the document did not come to the attention of the Japanese officials until after the inquiry at Pearl Harbor and, therefore, if offered for the purpose of being an excuse or reason for action by Japan, it could not have had any bearing at the time Japan initiated aggressive warfare.

The second ground of objection is that as to the fact that the conference may have established. It is submitted that the fact of such a conference is not relevant or material in view of the purposes stated in the document. For two countries to discuss the possibility of joint action in the event they find themselves in war with the third country would certainly

not be relevant to the issues as they are drawn in this case.

THE PRESIDENT: I have in mind your evidence showing Japan's preparations for war and Japanese conversations with the Germans and the Italians as to what should be done in the event of a war with a third power. Having admitted that evidence of the prosecution, can we logically exclude the same evidence from the defense, the same kind of evidence?

MR. TAVENNER: I think the prosecution showed beyond question the aggressive intention and purposes of Japan in the first instance.

THE PRESIDENT: We will tell you what we think about that in our judgment, if necessary.

MR. TAVENNER: Now, I do not understand that the defense contend that the United States was guilty of aggressive warfare against Japan or intended to aggressively enter into aggressive warfare with Japan, though that seems to be the heading of the order of proof which is now being presented, but counsel has not stated that in the evidence -- in his statement.

THE PRESIDENT: Having given us his order of proof, he assumes, rightly, that we know.

By a majority the objection is overruled and the document admitted.

CLERK OF THE COURT: Part 9 of the official publication entitled "Pearl Harbor Attack" will receive exhibit No. 2844.for identification only and the excerpt therefrom, bearing defense document No. 1500-0-4, will receive exhibit No. 2844-A.

(Whereupon, the document above referred to was marked defense exhibit No. 2844 for identification; the excerpt therefrom being marked exhibit No. 2844-A and received in evidence.)

THE PRESIDENT: Read this after lunch, Mr. Logan.

We will adjourn until half-past one.

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

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

THE PRESIDENT: Mr. Logan.

MR. LOGAN: If your Honor please, I was reading Exhibit 2844A, excerptsfrom testimony of Admiral R. E. Ingersoll, February 12, 1946, before the Joint Committee on the Investigation of the Pearl Harbor Attack:

"Mr. GEARHART. When did that occur?

"Admiral INGERSOLL: Just to show again how memory can trick a person, Admiral Richardson, I read in the paper, had testified that I went to London in 1940 when I was Assistant Chief of Naval Operations and when Admiral Stark was Chief of Naval Operations. As a matter of fact, I went in December, very late in December of 1937, when I was Director of the War Plans Division and when Admiral Leahy was Chief of Naval Operations. Admiral Richardson was perfectly sincere in what he said.

"Mr. GEARHART: Well, that was pretty early, before events began to develop."

"Admiral INGERSOLL: There were two purposes. The primary purpose was to investigate and to talk with the British Admiralty officials as to what we

could do if the United States and Japan were to find themselves at war with Japan in the Pacific.

"Mr. RICHARDSON: United States and England.

"Admiral INGERSOLL: United States and England would find themselves at war with Japan in the Pacific, to explore all the means, what means could be used, what arrangements it would be necessary to make in regard to command relationships, in regard to communicating with each other, of establishing liaison officers and preparing certain codes and ciphers, and so forth."

"Mr. GEARHART: Were the assumptions upon which these conversations were based that the United States and Britain would be in war together?

"Admiral INGERSOLL: The assumption was that the United States and Great Britain might find themselves both at war with Japan in the Pacific.

"Mr. GEARHART: And your purpose in going there was to work out a tentative plan as to how each nation would cooperate with the other in the event that should occur?

"Admiral INGERSOLL: That is right, to find out what we could do, what forces we could expect. The British had to be a little bit careful about it

because they did not know at that time whether they were going to have, in a year or two, a European war on their hands, and they could not state definitely what forces they could allocate to the Pacific at that time."

"Mr. GEARHART: Did you go there to discuss Japan or Germany?

"Admiral INGERSOLL: Japan only. "

"Admiral INGERSOLL: As I say, that record of conversations became entirely obsolete when the later agreements in ABC-1 were in effect in 1940 or 1941."

Defense document 401 (23), an excerpt from Peace and War, is offered to show that as early as January, 1939 steps were being taken by the United States to strengthen the defense of Alaska, Hawaii, and the Panama Canal, and for the acquisition of stock piles of certain critical military materials.

THE PRESIDENT: Admitted on the usual terms.

THE CLERK: Defense Document 401 (23) will receive Exhibit Number 2845.

(Whereupon the document above referred to was marked Exhibit No. 2845 and received in

evidence.)

MR. LOGAN: I shall read Exhibit 2845, an excerpt from Peace and War, official publication of the Department of State of the United States of America:

"UNITED STATES REARMAMENT.

"In his annual message to Congress on January 4, 1939, President Roosevelt declared that while a threatened war had been averted, it had become increasingly clear that peace was not assured;

* * * * * *

"Eight days later the President, in a special message to Congress, called for immediate steps to strengthen the defense of the United States. He asked Congress to appropriate, 'with as great speed as possible', more than half a billion dollars for Army and Navy equipment, particularly for military and naval aircraft. These planes, he said, would considerably strengthen the air defense of continental United States, Alaska, Hawaii, Puerto Rico, and the Canal Zone. The President likewise recommended the training of additional air pilots and urged that steps be taken to prepare industry for quantity production of war materials. These recommendations, which the President characterized as 'a minimum program for the

necessities of defense', were substantially enacted into law.

"For several years agencies of this Government had been studying the problem of the acquisition of stock-piles of strategic and critical materials not produced in the United States or produced here in quantities below national requirements. These stock-piles were to be for use in case of national emergency.

"Secretary of State Hull discussed the problem in a letter of October 21, 1938 to the President. He said that events of the past few weeks had shown clearly the wisdom of adequate handling of the problem of strategic raw materials 'with all possible despatch'; that these events indicated how disturbed sources of supply would be in any general war; and that there were insufficient supplies in the United States of a number of raw materials which would be of great strategic importance in the event of a general war, whether or not the United States were involved. The Secretary said further that the Department of State concurred in the view of the War and Navy Departments that it was 'highly desirable to adopt a national policy with respect to this problem and to secure early and effective action by Congress';

that it was felt that there should be no further delay in initiating steps which would make available adequate supplies of the materials which were of the most critical importance.

"The President approved the recommendation, and there was later enacted, on June 7, 1939, legislation stating that it was the policy of Congress to provide for the acquisition of stocks of 'certain strategic and critical materials being deficient or insufficiently developed to supply the industrial, military, and naval needs of the country for common defense . . . in times of national emergency'. This legislation authorized the appropriation of $100,000,000 which was gradually appropriated for the purpose.

"One hundred thousand tons of rubber were brought into this country as a result of an agreement between the United States and Great Britain, dated June 23, 1939, providing for the delivery by the United States of cotton in return for rubber."

THE PRESIDENT: Mr. Taverner.

MR. TAVENNER: If the Tribunal please, I desire to call your attention to the fact that asterisks appear at the end of the first paragraph on the first page, indicating that matter has been omitted, and that it will appear from the omitted

matter that the war which had been averted, and which was referred to, was a war with Germany.

THE PRESIDENT: Mr. Logan.

MR. LOGAN: Defense Document 1500-A is a table of contents of selected letters between Admiral H. R. Stark and Admiral J. O. Richardson. I don't intend to read it. It is just for the information of the Tribunal as to where these documents come from.

I shall omit Document 1500-A-1 as cumulative.

We offer in evidence defense document 1500-B-1, which is a communication dated January 26, 1940, from the then Commander-in-Chief of the United States Fleet to the Chief of Naval Operations, relative to American naval operations plan against Japan. I shall omit the paragraph commencing with the last two lines on Page 1, and also omit the postscripts.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: If the Tribunal please, this is the first of a series of letters between the two admirals in the United States Navy which express mainly the opinion of the writer of the letter. These letters are in the nature of private communications between these two admirals and of necessity were secret until the Pearl Harbor inquiry.

It is submitted that there is no relevant statement contained in these letters, but even if a relevant statement had been made, a statement of fact, it is a matter which did not come to the attention of the Japanese, as far as the evidence discloses, and therefore could not have been the subject of action on their part, or the cause of action.

The same point was made with regard to document 1500-E-5, which was rejected this morning. The fact that the United States had a plan which it called the Orange Plan did not import any aggressive intention against Japan, and the fact that two admirals of the United States Navy spoke of those matters in a private communication between them certainly does not make it relevant to the issues as they stand in this case; so the objection is made that these documents deal with opinion, that they do not refer to

relevant facts, and such facts as they do refer to were matters the accused in this case did not have knowledge of until the inquiry at Pearl Harbor. Under no view of the situation could they be material to the issues.

I may add that in the early part of this case the Tribunal announced that it was no defense to these accused for the pot to call the kettle black. The sole issue in this case is whether or not the accused were guilty of aggressive warfare or conspiracy with regard thereto, and the subject of this Pearl Harbor inquiry would not be relevant to that issue.

THE PRESIDENT: Mr. Logan.

MR. LOGAN: If the Tribunal please, this is a communication from the Commander-in-Chief of the United States fleet to the Chief of Naval Operations, the two highest ranking United States naval officials. It is not a private letter discussing private matters. It is a letter between these two high ranking officials discussing official business. It is rather difficult to show the attitude of naval officers of a country, and the best way to do it that we have been able to find is to show at least the attitude of these two high officials, to show how they set forth the naval

viewpoint.

THE PRESIDENT: How does it help the defense, Mr. Logan?

MR. LOGAN: I am sorry; I didn't hear.

THE PRESIDENT: How does it help the defense?

MR. LOGAN: It shows, your Honor, the effect later on of these war plans which were being developed by the United States at that time, and if only on the ground that they reveal the war plans they should be admitted. But there are other grounds. The prosecution produced Admiral Richardson as a witness, and at that time the Court invited the defense to use this Pearl Harbor record rather than further cross-examine Admiral Richardson.

THE PRESIDENT: We can't see how it helps the defense, but one of my colleagues puts it this way: "There was a lot of discussion about war games. I think the defendants have the right to show that the United States did the same against Japan." However, the majority of the Court is against you.

By a majority the objection is upheld and the document rejected.

MR. LOGAN: I offer in evidence defense document 1500-D-1, which is a confidential letter from the then Commander-in-Chief of the United States

viewpoint.

THE PRESIDENT: How does it help the defense, Mr. Logan?

MR. LOGAN: I am sorry; I didn't hear.

THE PRESIDENT: How does it help the defense?

MR. LOGAN: It shows, your Honor, the effect later on of these war plans which were being developed by the United States at that time, and if only on the ground that they reveal the war plans they should be admitted. But there are other grounds. The prosecution produced Admiral Richardson as a witness, and at that time the Court invited the defense to use this Pearl Harbor record rather than further cross-examine Admiral Richardson.

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By a majority the objection is upheld and the document rejected.

MR. LOGAN: I offer in evidence defense document 1500-D-1, which is a confidential letter from the then Commander-in-Chief of the United States

Fleet to the Chief of Naval Operations relative to the situation that existed in the Pacific in early 1940. I intend to read three short paragraphs, the 7th and 8th on page 1 and the second paragraph on page 2.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: If the Tribunal please, this document is on all fours with the one previously rejected, and objection is made to its introduction on the same grounds.

THE PRESIDENT: Mr. Logan.

MR. LOGAN: If the Tribunal please, the paragraphs I designated I intended to read, the 7th and 8th, on page 1, show reinforcement of the Pacific Fleet; and on page 2 that paragraph refers to the cooperation between the Navy and the State Department with regard to the stationing of the detachment in Hawaii, for the effect of its presence there.

THE PRESIDENT: By a majority the Court upholds the objection and rejects the document.

MR. LOGAN: We offer in evidence defense document 1500-E-1, which shows the tenseness in the Pacific as early as April 8, 1940. I intend to read the third paragraph.

THE PRESIDENT: Mr. Tavenner.

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MR. TAVENNER: If the Tribunal please, this document is on all fours with the one previously rejected, and objection is made to its introduction on the same grounds.

THE PRESIDENT: Mr. Logan.

MR. LOGAN: If the Tribunal please, the paragraphs I designated I intended to read, the 7th and 8th, on page 1, show reinforcement of the Pacific Fleet; and on page 2 that paragraph refers to the cooperation between the Navy and the State Department with regard to the stationing of the detachment in Hawaii, for the effect of its presence there.

THE PRESIDENT: By a majority the Court upholds the objection and rejects the document.

MR. LOGAN: We offer in evidence defense document 1500-E-1, which shows the tenseness in the Pacific as early as April 8, 1940. I intend to read the third paragraph.

THE PRESIDENT: Mr. Tavenner.

Fleet to the Chief of Naval Operations relative to the situation that existed in the Pacific in early 1940. I intend to read three short paragraphs, the 7th and 8th on page 1 and the second paragraph on page 2.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: If the Tribunal please, this document is on all fours with the one previously rejected, and objection is made to its introduction on the same grounds.

THE PRESIDENT: Mr. Logan.

MR. LOGAN: If the Tribunal please, the paragraphs I designated I intended to read, the 7th and 8th, on page 1, show reinforcement of the Pacific Fleet; and on page 2 that paragraph refers to the cooperation between the Navy and the State Department with regard to the stationing of the detachment in Hawaii, for the effect of its presence there.

THE PRESIDENT: By a majority the Court upholds the objection and rejects the document.

MR. LOGAN: We offer in evidence defense document 1500-E-1, which shows the tenseness in the Pacific as early as April 8, 1940. I intend to read the third paragraph.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: The same objection, if the Tribunal please, and for the same reasons, with the emphasis on the matter of opinion on the part of the writer.

MR. LOGAN: This shows that in April 8, 1940, the highest ranking officials, one of whom sat on the War Council of the United States, recognized that the situation was deteriorating in the Far East as far as the relationship between the United States and Japan was concerned, and recognized the possibility of trouble in the Orient; and as the actions of a fleet are governed by the thoughts of those officials in charge of the Navy, this is offered for that purpose.

It also tends to show, if the Tribunal please, that as early as April 8, 1940, it was recognized that the possibility of a surprise attack, which took place, so called, over a year and a half later.

THE PRESIDENT: The objection is sustained and the document rejected by a majority.

MR. LOGAN: We offer in evidence defense document 1500-E-2. This is a confidential letter from Admiral Stark to Admiral Richardson, dated May 7, 1940. I only intend to read paragraphs 1, 3, 5, and 8.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: If the Tribunal please, the same objection is made for the same reasons. It is an operational discussion about concentrating the fleet in the Hawaiian waters, and refers to the danger of Italy coming into the war.

MR. LOGAN: If my recollection is correct, the Tribunal this morning ruled that the defense could show war plans on the part of the United States or any of the Allied nations, and the part I intended to read, which I read off, omits what Mr. Tavenner said about Italy coming into the war. I didn't intend to read that.

THE PRESIDENT: The Court upholds the objection and rejects the document, by a majority.

MR. LOGAN: We offer in evidence defense document 1500-F-1, which is a letter from the American Chief of Naval Operations to the Commander-in-Chief of the United States Fleet, dated May 13, 1940. This further shows the tenseness of the military situation in the Pacific at this time. I intend to omit the first three paragraphs and the last paragraph on page 1 and the postscript on page 2.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: If the Tribunal please, the

prosecution objects for the reasons previously announced.

MR. LOGAN: I suggest that the Tribunal read the seventh and eighth paragraphs. I think that explains as well as I can what I have in mind with respect to the proof we intend to offer.

THE PRESIDENT: By a majority the Court sustains the objection and rejects the document.

MR. LOGAN: We offer in evidence defense document 1500-G-1, another excerpt from the Pearl Harbor investigation. It is a letter from the Chief of Naval Operations to the Commander-in-Chief of the United States Fleet, dated May 22, 1940. This shows American preparations for war in the Pacific. I shall omit the paragraph beginning at the bottom of page 1 and the 1st, 3rd, 4th, and 5th paragraphs on page 2 and the postscript.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: The prosecution objects for the reasons previously stated.

THE PRESIDENT: By a majority the Court sustains the objection and rejects the document.

MR. LOGAN: If the Tribunal please, I have a large number of these documents that I intend to offer of these conversations. If I had some idea

what the Tribunal had in mind with respect to the reason, perhaps I could eliminate all these documents. I feel they are material.

THE PRESIDENT: These private letters between admirals do not help, at least this particular series. If the rest are like these, there is nothing to be gained in tendering them except for record purposes. Bunch them altogether and tender them and they will be rejected because of what has already occurred.

MR. LOGAN: Well, if the Tribunal please, while these two men were admirals, one, as I pointed out, was Chief of the Naval Staff, which is the highest naval position in the United States, and he sat on the Supreme War Council. His thoughts and his actions were submitted to that council and action taken thereon, and this Tribunal will have to determine why the United States Navy took certain actions. These are the reasons for it, as shown by this proof which we are offering. I mean, this is not idle gossip between two low-ranking officials; it is official business conducted between the two highest United States Naval officials discussing war plans against Japan, which we understood from the Tribunal's ruling this morning we were permitted to show.

If the Tribunal please, may Mr. Brannon,

who is very well versed in naval matters, speak on behalf of this line of documents? We deem it of sufficient important to have the Tribunal permit him to speak.

THE PRESIDENT: You can handle it well enough, Mr. Logan.

MR. LOGAN: We offer in evidence defense document 1500-H-1 which is a confidential letter to the United States Chief of Naval Operations from the Commander in Chief of the United States Fleet dated May 22, 1940. This shows that conditions in the Pacific were so tense at this time that the Commander in Chief himself during maneuvers did not know whether he was to engage in hostile activities against Japan.

I intend to read the first three paragraphs on page 1.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: If the Tribunal please, I had understood that if counsel would present these documents which come under this classification under another rule of the Court, so that there would be a record that he had tendered them, and I think by so doing the individual Member of the Tribunal who desires to read those documents, that the list is still preserved for him, so that to them it seems like a loss of time to present these separately and raise the objections and pass on it each time when

counsel has stated that there are a number of similar type documents.

THE PRESIDENT: We do not say that no letters between these two admirals, whether private or not, could never be relevant and material, but Mr. Logan seems to think they are covered by the earlier decisions. If so, he should respect those earlier decisions.

MR. TAVENNER: The prosecution objects to the introduction of this document on the same grounds as previously stated.

THE PRESIDENT: We said nothing this morning that would justify the tendering of this document.

MR. LOGAN: I am trying to respect the Tribunal's previous decision. That is what I said. This morning we were advised that we could show army and naval preparations on behalf of the United States -- war plans.

THE PRESIDENT: Those documents showed increases in the strength of the United States forces. This is quite different. This document is rejected.

MR. LOGAN: We offer in evidence defense document 1500-I-1 which is the secret answer of the

Chief of Naval Operations dated May 27, 1940 to the letter of the Commander in Chief of the United States Fleet, dated May 22, 1940.

I intend to read all of page 1 except the last three lines. On page 2 I intend to read paragraphs 3, 4 and 5, and on page 3, paragraphs 1, 7 and 8.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: If it please the Tribunal, the prosecution views this document as being on all fours with the previous one and being in answer to the previous letter. Objection is made to its introduction in evidence on the grounds previously stated.

MR. LOGAN: If the Tribunal please, this particular document answers the question which was asked in the previous letter, and this answer is from Admiral Stark, as to why the American fleet was in the Hawaiian area.

THE PRESIDENT: Admiral Stark puts the question and answers it himself -- to prevent the Japs going into the East Indies. Is that all you wanted it in for?

MR. LOGAN: That is right.

THE PRESIDENT: It seems to me to be in

the same position as the others. The objection is upheld and the document rejected by a majority.

MR. LOGAN: We offer in evidence defense document 1500-J-1 which is a secret letter from the Chief of Naval Operations to the Commander in Chief of the United States Fleet dated June 22, 1940 reiterating certain military preparations which had been made and emphasizing the need for complete readiness of the fleet.

I shall omit the first, fourth, seventh and eighth paragraphs.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: If it please the Tribunal, the prosecution objects to the introduction of this document for the same reasons as stated in regard to the previous document.

MR. LOGAN: It shows the transfer of certain equipment through the Panama Canal,to Pearl Harbor, efforts being made to strengthen the Pacific Fleet, transports, and introduction of legislation to provide for major tasks in both oceans. That is the information contained in the paragraphs I intend to read.

THE PRESIDENT: I cannot distinguish this from the other. There is some reference to an

increase in strength on a very small scale.

By a majority the objection is sustained and the document rejected.

MR. LOGAN: We offer in evidence defense documents 1500-K-1, 1500-F-2, 1500-L-1, 1500-G-2 which consist of a letter from the Chief of Naval Operations to the Commander in Chief of the United States Fleet dated June 22, 1940 together with certain enclosures. These show American military preparation in the Pacific together with the suspicion that an overseas air raid might occur against Pearl Harbor as early as June 1940.

I propose to read all of the letter, paragraph 1 of the first enclosure, all of the second enclosure, and the second paragraph of the third enclosure.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: The prosecution makes the same objection to the introduction of this document as to the former documents.

THE PRESIDENT: By a majority the objection is sustained and the document rejected.

MR. LOGAN: Defense document 401-31 being another excerpt from "Peace and War" is offered in evidence. This document shows further expenditures

and efforts made by the United States.

THE PRESIDENT: We have not seen it, but there is no objection to it. Admitted on the usual terms.

CLERK OF THE COURT: Defense document 401 (31) will receive exhibit No. 2846.

(Whereupon, the document above referred to was given defense exhibit No. 2846 and received in evidence.)

MR. LOGAN: I shall read exhibit 2846, an excerpt from "Peace and War," official publication of the Department of State, U.S.A.:

"Defense Measures of the United States, 1940. President Roosevelt's Request for 50,000 Planes.

"In January 1940, when the European war was still in a period of lull, President Roosevelt asked Congress for a national defense appropriation of $1,800,000,000. By the middle of the following May, the rapid development of military events in Europe impelled him to request further appropriations for national defense. In an address to Congress on May 16, 1940, he said that the brutal force of modern offensive warfare had been loosed in all its horror; that new and swift and deadly

powers of destruction had been developed which were wielded by men who were ruthless and daring; that no old defense was so strong that it required no further strengthening and no attack was so unlikely or impossible that it might be ignored. The President said we had had before us over and over again the lesson that nations not ready and unable to get ready found themselves overrun by the enemy; that so-called impregnable fortifications no longer existed; that an effective defense required the equipment to attack an aggressor on his route 'before he can establish strong bases within the territory of American vital interests.'

"The President said to Congress that he should like to see the United States 'geared up to the ability to turn out at least 50,000 planes a year'; furthermore, he believed 'that this Nation should plan at this time a program that would provide us with 50,000 military and naval planes.' He made a request for $1,000,000,000 to procure the essential equipment for a larger and thoroughly rounded out Army, to replace or modernize Army or Navy equipment, to increase production facilities for everything needed for the Army or Navy, and to speed up to a twenty-four-hour basis all Army and

Navy contracts. In making this request the President reminded Congress that our ideal and our objective still was peace. Nevertheless, we stood ready 'not only to spend millions for defense but to give our service and even our lives for the maintenance of our American liberties.'

"In a message to Congress on May 31, President Roosevelt made an additional request for appropriations of over a billion dollars for national defense and asked for authority to call the National Guard and the necessary Reserve personnel into active military service. He declared that 'the almost incredible events of the past two weeks in the European conflict, particularly as a result of the use of aviation and mechanized equipment,' necessitated further increases in our military program. No one could foretell the future, he said, but American defense must be made more certain so long as the possibility existed that not one or two continents but all continents might be involved in a world-wide war. He again emphasized the necessity for expansion of facilities for the production of munitions.

"These requests for appropriations were promptly met by the Congress, as also was the

President's request of July 10 for $5,000,000,000 more for the rearmament program. The President's request for authority to call the National Guard and Reserve personnel into active military service was granted in a resolution approved August 27, 1940. However, the legislation provided that the personnel ordered into active Federal service under this authority should 'not be employed beyond the limits of the Western Hemisphere except in the territories and possessions of the United States, including the Philippine Islands."

Defense document 401-33, being an excerpt from "Peace and War," is offered for the purpose of showing collaboration between the United States and Great Britain in September, 1940, the transfer of fifty destroyers and an enactment on September 16, 1940 of the Selective Service and Training Act in the United States. This document was previously rejected on page 24,273 of the record on the ground it was immaterial. It was offered at that time in connection with the Tri-Partite Pact.

THE PRESIDENT: What has this to do with Japan? There could only be the most remote connection.

MR. LOGAN: It shows, if the Tribunal please, that there was collaboration between the United States and Great Britain at that time and also with respect to the transfer of destroyers--

THE PRESIDENT: By a majority the objection is sustained and the document again rejected.

MR. LOGAN: I had not quite finished, if the Tribunal please--

THE PRESIDENT: It is already rejected, Mr. Logan. We do not want to hear elaborate argument on a document already rejected.

MR. LOGAN: We offer in evidence defense documents 1500-M-1, 1500-N-1, 1500-H-2 which consist

of a confidential letter together with enclosures from Admiral Richardson to Chief of Naval Operations, Admiral Stark, dated September 18, 1940. These show the condition of affairs in the Pacific as viewed by the Commander in Chief of the United States fleet together with a resume of discussions with the Under-Secretary of the Navy.

From document 1500-M-1 I shall read paragraphs 4 and 5 on page 1; from document 1500-N-1 I shall read paragraph 7, page 2; paragraphs number (b), (c) and (d) on page 3; paragraphs numbered (c) and (d) on page 4; and paragraph (3) on page 5.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: If it please the Tribunal, this is the same type of document which the Tribunal has rejected, it being correspondence between two of the Admirals of the United States navy. Prosecution objects to their introduction in evidence on the same grounds previously stated.

MR. LOGAN: If the Tribunal please, I would just like to refer to one portion of this document on page 4, memorandum that was given to the Secretary of the Navy, paragraph 7-(c), which shows just exactly what the policy of the United States government was at that time. It is defense document 1500-N-1, page 4,

7-(c). I think that portion is typical of the rest of that particular document and it indicates exactly why we are trying to present this document in evidence.

THE PRESIDENT: By a majority the objection is sustained and all three documents rejected.

MR. LOGAN: We now offer in evidence defense document 1500-O-1. This is a letter from Admiral Stark to Admiral Richardson dated September 24, 1940 in which the Chief of Naval Operations sets forth his strong disapproval to the State Department of the United States imposing an oil embargo on Japan.

I shall read only paragraphs 3 and 4.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: The same objection is made to the introduction of this document, if the Tribunal please.

THE PRESIDENT: Objection sustained and the document rejected, by a majority.

MR. LOGAN: We offer in evidence defense document 1500-P-1. This is a letter from Admiral Stark to Admiral Richardson dated October 1, 1940 in which the possibility of sending a detachment of the United States fleet to the Far East is referred to, together with the endeavors of the High Command to rapidly improve the fleet with the frank realization

that there would be no surprise at "anything happening any day."

I shall read the second, sixth and seventh paragraphs.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: If the Tribunal please, the same objection is made to the introduction of this document.

MR. LOGAN: Frankly, if the Tribunal please, I do not see how we can possibly get the views of the navy before the Tribunal except from the men responsible for it.

THE PRESIDENT: We are reading every document you tender, everyone of us, and we are looking for probative value. Every document has been fully considered by every Member of the Court.

MR. LOGAN: We now offer in evidence--

THE PRESIDENT: We have not given a decision.

MR. LOGAN: I am sorry.

THE PRESIDENT: By a majority the objection is sustained and the document rejected.

MR. LOGAN: We now offer in evidence defense document 138 which is an excerpt from the Japan Yearbook. This excerpt is offered for the purpose of showing American assistance to China and steps taken

by the United States with respect to its navy.

I shall read the last paragraph on page 1, the fourth and fifth paragraphs on page 2, the first paragraph on page 3 and the last paragraph on page 3, commencing with the third sentence.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: If the Tribunal please, this is a statement prepared by an anonymous writer covering material which is already in evidence. It is written in argumentative form and is objectionable for that reason. Had there been no evidence in the case relating to these matters this, we submit, would not be the proper way in which to prove them. We think the document should be rejected on the ground of its being repetitive.

THE PRESIDENT: Mr. Logan.

MR. LOGAN: I do not think it is repetitive. I am quite sure it is not but objection was made by the prosecution earlier to certain documents we offered, particularly this last group, on the ground that no information concerning what was transpiring was transmitted to the Japanese people or Japanese government. This is some evidence that the Japanese government and Japanese people knew what was going on.

THE PRESIDENT: The objection is sustained

and the document rejected by a majority.

MR. LOGAN: We offer in evidence defense document 1500-D-2. This is a memorandum prepared by Admiral Richardson after a discussion with the President of the United States in October, 1940. It speaks of the reason for retaining the fleet at Pearl Harbor and refers to military movements on behalf of the United States in the Pacific.

I shall omit the fifth paragraph.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: Objection is made to the introduction of this document for the same reasons presented in regard to the other Richardson communications.

MR. LOGAN: This is a memorandum, if the Tribunal please, delivered to Chief of Naval Operations from Admiral Richardson and covers some points which he discussed with the President of the United States.

THE PRESIDENT: By a majority the objection is sustained and the document rejected.

MR. LOGAN: We offer in evidence defense document 1500-A-2 which is a memorandum dated October 16, 1940 from Admiral Richardson to Admiral Hart, Commander of the Asiatic fleet, concerning a proposed blockade of Japan in the event Japan opposed the

opening of the Burma Road. It shows the extent of war plans and preparations that were actually being made against Japan.

I shall omit paragraphs numbered 2 and 7 on page 2 and paragraph numbered 8 on page 3.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: If the Tribunal please, this document is on the same footing as the one just rejected. Objection is made to its introduction for the reasons previously stated.

MR. LOGAN: I might say that this document shows that there are two enclosures in connection with it. One is a copy of assumptions; and one is a copy of tentative operations. The measures and operations to be undertaken by the United States fleet commence on page 4 of the document. The measures include mobilization of United States fleet in accordance with the "Orange Plan," redisposition of the forces in the Atlantic to transfer some of them to the Pacific, measures for the defense of Alaska, completion of readiness measures for the operation of the fleet in the mid-Pacific, measures for the defense of the Pacific Islands such as Midway, Wake, Johnston, Canton Island, Samoa, Hawaii, and also some assumptions which are--

THE PRESIDENT: The most important things of all.

MR. LOGAN: Yes.

THE PRESIDENT: They are all based on possible Japanese aggression as far as I can judge.

MR. LOGAN: There are various assumptions, sir, set forth there, if the Tribunal please.

THE PRESIDENT: Assumptions are based on prospective attack or possible attack by Japan.

MR. LOGAN: That is one of them. There are ten different assumptions there.

THE PRESIDENT: By a majority the Court sustains the objection and rejects the document.

MR. LOGAN: We offer in evidence defense document 1500-Q-1. This is a secret letter from Admiral Richardson to Admiral Stark dated October 22, 1940 in which war plans are discussed in view of the then existing international situation in the Pacific.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: This document is identical in the principles involved with that of the last document. Objection is made to its introduction on the same grounds.

MR. LOGAN: Here again it shows war plans, if the Tribunal please.

THE PRESIDENT: By a majority the Court sustains the objection and rejects the document.

MR. LOGAN: We offer in evidence defense document 1900-A-1, an excerpt from the "Asahi Shimbun" of November 9, 1940 reporting an agreement reached among Britain, America and Australia for cooperation in the Pacific.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: If it please the Tribunal, this is a typical newspaper publication which has been repeatedly rejected.

THE PRESIDENT: We would understand your argument more clearly if we had the papers before us. Never mind your point of view, Mr. Tavenner.

The speed is somewhat fast.

MR. TAVENNER: I beg your pardon, I thought you called on me to respond.

If the Tribunal please, this is a type of newspaper article which has been so repeatedly rejected by the Tribunal--

THE PRESIDENT: Wholly based on an emergency--a possible attack.

Mr. Logan.

MR. LOGAN: The prosecution has been objecting to some of this evidence on the ground that the Japanese

government and Japanese people did not know it. Some of the matters which were supposed to be secret, it was found out they were matters of common knowledge among the Japanese government and the Japanese people. The prosecution has contended and they tried to introduce evidence which they thought showed that the people of Japan were educated by these accused to build up a war machine. Possibly -- probably information which the Japanese press received from abroad such as this article here had a great deal to do with that. We are not offering the document for the truth or falsity of the information contained in it. We are offering it for the purpose of showing that this information was received and was published in the Japanese newspapers.

THE PRESIDENT: Objection sustained and the document rejected by a majority.

We will adjourn for fifteen minutes.

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

government and Japanese people did not know it. Some of the matters which were supposed to be secret, it was found out they were matters of common knowledge among the Japanese government and the Japanese people. The prosecution has contended and they tried to introduce evidence which they thought showed that the people of Japan were educated by these accused to build up a war machine. Possibly -- probably information which the Japanese press received from abroad such as this article here had a great deal to do with that. We are not offering the document for the truth or falsity of the information contained in it. We are offering it for the purpose of showing that this information was received and was published in the Japanese newspapers.

THE PRESIDENT: Objection sustained and the document rejected by a majority.

We will adjourn for fifteen minutes.

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

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

MR. LOGAN: We offer in evidence defense document 1900-A-2, an excerpt from the Asahi Shimbun of November 9, 1940, reporting that the Department of State denied the agreement between Britain, America and Australia to cooperate in the Pacific but admitted that cooperation was actually going on.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: If the Tribunal please, this is another newspaper publication similar to the one just rejected. Objection is made on the same ground as that previously stated.

MR. LOGAN: Our reasons for advancing it are the same.

THE PRESIDENT: The objection is sustained and the document rejected by a majority.

MR. LOGAN: We offer in evidence defense document 1900-A-3, an excerpt from the Asahi Shimbun of November 9, 1940, reporting further denials of agreement among Britain, America and Australia about the joint use of naval bases in the Pacific, but admission that opinions were exchanged unofficially.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: Objection is made on the same

ground, if the Tribunal please.

THE PRESIDENT: The objection is sustained and the document rejected by a majority.

MR. LOGAN: I might state, if the Tribunal please, that there was some question, when this matter of the conversation between the naval authorities of Great Britain and the United States met, as to whether or not that information had reached Japan, and that is what we were trying to show by these documents.

In conjunction with defense document 1500-Q-1, just offered in evidence, we offer defense document 1500-I-4, which gives some of the testimony of Admiral Richardson concerning the American Orange Plan.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: If the Tribunal please, the same objection is made to this document as to the other 1500 classification of documents, and on the same grounds.

MR. LOGAN: It is proposed later on in the testimony by the defense to show that the plans, operations, of the Japanese navy were to some extent based on what the other powers were doing; in other words, that there is duty on the part of the high naval officials of a country to formulate plans, and

what Japan did was no different from what was done by other nations.

THE PRESIDENT: The objection is sustained and the document rejected by a majority.

MR. LOGAN: We offer in evidence defense document 1500-R-1. This is a letter from Admiral Stark to Admiral Richardson, dated 12 November 1940, wherein the United States Chief of Naval Operations discloses that in his opinion it was only a matter of time before the United States was in the war and discusses new war plans. I intend to read the last two paragraphs on page 1.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: The prosecution, if your Honor please, raises the same objection on the same grounds.

MR. LOGAN: I might point out, if the Tribunal please, that if this series of letters, information contained in them, had been stated by any of these Japanese accused, it would have been used by the prosecution to show aggressive warfare; and all I am trying to show is that the same type of operations were undertaken by other nations.

THE PRESIDENT: By a majority, the objection is sustained and the document rejected.

MR. LOGAN: We offer in evidence defense

document 1500-S-1. This is a secret letter from Admiral Stark to Admiral Hart, Commander-in-Chief of the United States Asiatic Fleet, dated 12 November 1940, and which was an enclosure to the letter just offered in evidence, defense document 1500-R-1. It discloses the High Command's views on conditions in the Pacific and the extent of collaboration with the British at that time. It is also offered for the purpose of showing that the United States Navy was of the opinion that Japan would not resort to hostilities if additional economic sanctions were not imposed.

I intend to omit the last two paragraphs and the postscript on page 2.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: If the Tribunal please, the prosecution makes the same objection on the same grounds as the previous documents.

THE PRESIDENT: The objection is sustained, and the document rejected by a majority.

MR. LOGAN: We offer in evidence defense document 1900-A-4, an excerpt from the Asahi Shimbun of November 13, 1940, reporting that the negotiations dealing with America's use of Singapore were to come to the fore shortly.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: If the Tribunal please, this is another newspaper excerpt, identical in principle with that rejected, defense document No. 1900-A-1. Objection is made to its introduction on the same ground.

MR. LOGAN: This is another example, if the Tribunal please, of information which the Japanese received from New York, and it shows that Japan had general knowledge of the preparations and the encirclement that was going on. Again, I am not offering it for the truth or falsity of what is contained in it; I am offering it for the mere fact that this article appeared in the newspaper, and what the Japanese Government and the people of Japan thought of it undoubtedly had some effect on the subsequent actions.

THE PRESIDENT: The objection is sustained and the document rejected by a majority.

MR. LOGAN: We offer in evidence defense document 1900-A-6, an excerpt from the Asahi Shimbun of November 13, 1940, reporting further on the newly-established General Headquarters for the British Commonwealth Forces in the Far East and an extension of an embargo to ships of neutral nationalities bound for Kwangchow Bay. It also reports that British rights and interests in the Far East are to be protected in

cooperation with the colonies.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: If the Tribunal please, this is another newspaper excerpt similar to the four or five which have previously been rejected by the Tribunal, and objection is made on the grounds previously stated.

MR. LOGAN: I have nothing to add to what I stated before of the other document.

THE PRESIDENT: The objection is sustained and the document rejected by a majority.

MR. LOGAN: We offer in evidence defense document 1900-A-5, an excerpt from the Asahi Shimbun of November 15, 1940, stating that General Headquarters of British Forces in the Far East were recently established at Singapore. This dispatch emanates from London.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: The same objection on the same grounds, if the Tribunal please.

THE PRESIDENT: The objection is sustained and the document is rejected by a majority.

MR. LOGAN: We offer in evidence defense document 1500-T-1. This is a letter from Admiral Stark to Admiral Richardson dated November 22, 1940,

in which the possibility of a sudden attack on the United States Fleet was discussed in view of the gravity of the situation at that time.

I shall read, if it is admitted, only the third, fourth and fifth paragraphs.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: If the Tribunal please, the same objections on the same grounds as to the other documents in series 1500.

MR. LOGAN: I have nothing to add.

THE PRESIDENT: The objection is sustained and the document rejected by a majority.

MR. LOGAN: We offer in evidence defense document 1900-A-7, an excerpt from the Asahi Newspaper of November 24, 1940, reporting progress in the strengthening of military preparations against Japan in Singapore, and the plan for establishment of a great air force for the Far East and movement of the air force from England to Egypt, India and Singapore.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: If the Tribunal please, the same objection is lodged to the introduction of this document as the other documents in the 1900 series, and on the same grounds.

MR. LOGAN: If the Tribunal please, it is

my understanding that the prosecution claimed that these military preparations, and so forth, were not known to Japan. Here is definite evidence that it was known to them.

THE PRESIDENT: The objection is sustained and the document rejected by a majority.

MR. LOGAN: We offer in evidence defense document 1500-U-1. This is a letter from Admiral Richardson to Admiral Stark dated November 28, 1940, in which it is revealed that the United States Naval maneuvers might not be for training purposes alone. I shall omit the second, third and fourth paragraphs on page 1, the second, third, and fourth paragraphs on page 2, and all except the last paragraph on page 3.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: If the Tribunal please, the same objection is lodged to this document as to the other documents of the 1500 series.

MR. LOGAN: It shows, if the Tribunal please, that maneuvers were undertaken pursuant to plans in nations other than Japan. The prosecution's claim is that if Japan undertakes maneuvers they are for aggressive war.

THE PRESIDENT: The objection is sustained and the document rejected by a majority.

MR. LOGAN: Defense document 206-E-53, an excerpt from former United States Ambassador Grew's Diary, "Ten Years in Japan," setting forth certain questions addressed by Ambassador Grew to President Roosevelt is offered in evidence. This refers to a letter he wrote to President Roosevelt on December 14,

1940; rather it quotes from a letter.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: If the Tribunal please, Ambassador Grew in this letter merely sets forth certain possible questions that relate to matters of opinion. There is no question of fact.

THE PRESIDENT: He puts three questions and says he is not able to answer any of them, and that is the whole letter. The objection is sustained and the document rejected by a majority.

MR. LOGAN: We offer in evidence defense document 1500-V-1. This is a secret letter from Admiral Stark to Admiral Richardson dated December 17, 1940, in which the United States Chief of Naval Operations reveals a new Navy Basic War Plan. I do not intend to read this.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: Notwithstanding the fact counsel does not propose to read it, objection is nevertheless made to its introduction into evidence on the same ground as made to the other documents in the 1500 series.

THE PRESIDENT: Why do you tender it if it is not worth reading read, Mr. Logan?

MR. LOGAN: I tender it to show further war

plans. It is just one more plan that the United States made out of many.

THE PRESIDENT: The objection is sustained and the document rejected by a majority.

MR. LOGAN: We offer in evidence excerpt from "Peace and War," being defense document 401(43), which sets forth the budget requested by President Roosevelt in January 1941 for national defense.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 401(43) will receive exhibit No. 2847.

(Whereupon, the document above referred to was marked defense exhibit No. 2847 and received in evidence.)

MR. LOGAN: Exhibit 2847, "European War 1941, The Four Freedoms, excerpt from 'Peace and War,' official publication, Department of State, U. S. A.

"The President's budget message of this month, January 1941, called for the expenditure of approximately $11,000,000,000 for the national defense program. This raised to $28,000,000,000 the estimated outlay for the defense program inaugurated in May 1940."

We next offer in evidence defense document 401(44), a further excerpt from defense document No. 401, the official publication of the United States

Government entitled "Peace and War." This document shows the further implementation of the United States foreign policy by the passage of the Lend Lease Act in 1941 and the supplying of arms and ammunition and other materials to belligerents and others by the United States while it was still a neutral power.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: Objection is made to the introduction of this document into evidence on the ground that the Lend Lease Act with respect to Germany would be irrelevant and immaterial to any issue in this case. If it should be construed as defense matter against Germany it could not, by any interpretation, be considered relevant here.

MR. LOGAN: Again the prosecution picks out some immaterial matter and tries to enlarge it. It talks about aid to China and Britain.

MR. TAVENNER: If the Tribunal please, the granting of aid in the form of lend lease to governments in exile whose homelands are temporarily occupied by aggressors certainly cannot serve as any justification for aggressive action on the part of the accused in this case.

THE PRESIDENT: By a majority the objection is overruled and the document admitted on the usual

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THE PRESIDENT: By a majority the objection is overruled and the document admitted on the usual

terms.

CLERK OF THE COURT: Defense document 401(44) will receive exhibit No. 2848.

(Whereupon, the document above referred to was marked defense exhibit 2848 and received in evidence.)

MR. LOGAN: Exhibit 2848, "Lend-Lease Act.

"Early in January 1941 there was introduced in Congress a bill to enable the Government to furnish aid to nations whose defense was deemed by the President to be vital to the defense of the United States. Both Houses of Congress held extensive public hearings on the bill. Secretary Hull made a statement before the House Committee on Foreign Affairs on January 15 in support of the bill. In this statement the Secretary declared that it had become increasingly apparent that mankind was face to face with an organized, ruthless, and implacable movement of steadily-expanding conquest; that we were in the presence of forces which were not restrained by considerations of law or principles of morality; that these forces had no fixed limits for their program of conquest; that they had spread over large areas of land and were desperately struggling to seize control of the oceans as an essential means of achieving and maintaining the conquest of

other continents. The Secretary stated that control of the high seas by law-abiding nations 'is the key to the security of the Western Hemisphere'; that should such control be gained by the Axis powers, the danger to the United States 'would be multiplied manifold.' The most serious question for the United States, the Secretary said, was whether the control of the high seas would pass into the hands of powers bent on a program of unlimited conquest.

"The Secretary felt that on no other question of public policy were the people of the United States so nearly unanimous and so emphatic as they were on that of the imperative need, in our own most vital interest, to give Great Britain and other victims of attack the maximum of material aid in the shortest possible space of time. This was so because it was clear that such assistance to those resisting attack was a vital part of our national self defense. The bill before the Committee, he said, known as the Lend-Lease bill, provided for machinery which would enable the United States to make the most effective use of our resources for our own needs and for those whom, in our own self defense, we were determined to aid. The Secretary expressed the belief that this bill would make it possible for us to allocate our resources in ways best calculated to provide for the security of the United States and of this continent.

"The Lend-Lease bill became law with the signature of the President on March 11, 1941. Immediately thereafter the President requested an appropriation of $7,000,000,000 to accomplish the objectives of the act, and that appropriation was speedily made.

"In an address on March 15 President

Roosevelt stated that the decision embodied in the Lend-Lease Act ended the urging that we get along with the dictators and ended the compromise with tyranny and the forces of oppression. When our production output was in full swing, he said, the democracies of the world would be able to prove that dictators could not win. The time element he considered of 'supreme importance.' Every plane, every other instrument of war, old and new, which we could spare would be sent overseas; the great task of the day, the deep duty which rested upon us, was to 'move products from the assembly lines of our factories to the battle lines of democracies -- Now!'

"The President said that the Nazi forces were not asking mere modifications in colonial maps or in minor European boundaries; that they openly sought the destruction of all elective systems of government on every continent -- including our own; that they sought to establish systems of government based on the regimentation of all human beings by a handful of individual rulers who had seized power by force.

"The Nation, he said, was calling for the sacrifice of some privileges but not for the sacrifice of fundamental rights. Referring to the four

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"The Nation, he said, was calling for the sacrifice of some privileges but not for the sacrifice of fundamental rights. Referring to the four

freedoms set forth in his January address, the President said that they might not be immediately attainable throughout the world but 'Humanity does move towards those ideals through democratic processes.' If we failed and democracy were superseded by slavery, 'then those four freedoms or even the mention of them will become forbidden things.'

"There was no longer any doubt, he said, that our people recognized the seriousness of the international situation. That was why they had demanded and obtained a 'policy of unqualified, immediate, all-out aid for Britain, Greece, China, and for all the governments in exile whose homelands are temporarily occupied by the aggressors.' It would be increased, he emphasized, 'and yet again increased,' until total victory had been won.

"In instructions shortly thereafter to United States diplomatic missions in several neutral European countries, the Secretary of State said that every effort should be made to see that this authoritative statement by the President of our position was circulated as widely as possible. He said a salutary effect on public and official opinion in countries which had not been drawn directly into the war, would result from a forceful, continuous presentation of

the position of the United States and of the scope of our national effort and determination to resist aggression. Such a presentation would be of great assistance in counteracting totalitarian propaganda. The missions were to stress that we were absolutely convinced that the forces of aggression would be defeated. It had been made abundantly clear by our people and Government, the Secretary said, that we intended to play our part in resistance against the forces of aggression. Therefore, it was incumbent upon every representative of the United States and upon every United States citizen abroad to reflect 'the absolute determination' of the United States to 'see this thing through.'"

We offer in evidence defense document 1500-I-2 which is a confidential letter from Admiral Richardson to Admiral Stark, sent 7 January 1941 with respect to the security of the Fleet and the ability of the defense forces to meet a surprise attack.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: If it please the Tribunal, the same objection is made to this document as to the other documents constituting series 1500.

THE PRESIDENT: The objection is sustained and the document rejected by a majority.

MR. LOGAN: We offer in evidence defense document 1900-A-8, an excerpt from the Asahi Newspaper of January 13, 1941, reporting that Britain and the United States may jointly use British Naval Bases in the Pacific.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: If the Tribunal please, the same objection is made to this document as the others constituting the 1900 series. It is a rumor from a newspaper -- originating in a newspaper column.

MR. LOGAN: I might say, if the Tribunal please, here again we offer evidence to show that information was received in Japan. We are not offering it for the truth or falsity of this information, but apparently this came from the Washington Special Despatch -- part of it, anyway. It shows the information the Japanese people and the Japanese Government received and which helped formulate their opinion.

THE PRESIDENT: Objection sustained; document rejected by a majority.

MR. LOGAN: We offer in evidence defense document 1900-A-9, an excerpt from the Asahi Newspaper of January 13, 1941, reporting the appointment of a special committee to conclude an agreement covering technical particulars as to leasing naval and air

bases on the British islands in the Western Hemisphere and that said committee was leaving for England.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: The same objection as to the other 1900 series documents, if the Tribunal please.

MR. LOGAN: This, if the Tribunal will recall, was the secret meeting, which evidence was introduced. Then, again, the point was raised by the prosecution, did Japan know about this meeting? Here is evidence of it.

THE PRESIDENT: The objection is sustained and the document rejected by a majority.

MR. LOGAN: We offer in evidence defense document 1900-A-10, an excerpt from the Asahi Shimbun of January 13, 1941, reporting that Canada's new air bases in the North were to be placed at the service of the United States Air Forces.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: If the Tribunal please, the same objection is made to this as to the other documents in series 1900.

MR. LOGAN: Here, again, if the Tribunal please, we offer evidence to show that information was received in Japan of these various acts. It will be

up to the Tribunal to determine whether they were sufficient to cause apprehension of the Japanese people and the Japanese Government that they were being encircled and whether or not their act was warranted in declaring a defensive war.

THE PRESIDENT: The objection is sustained and the document rejected by a majority.

MR. LOGAN: I also wish to explain that we intend to tie this up by evidence which we will produce later.

THE PRESIDENT: I gave the decision.

MR. LOGAN: I am sorry. I didn't hear it.

We offer in evidence defense document 1900-A-11, an excerpt from the Asahi Shimbun of January 15, 1941. In this report is the account of House Naval Affairs Committeeman King suggesting the acquisition of British Islands in the south and mid-Pacific in return for President Roosevelt's Lend-Lease Aid to Britain.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: If the Tribunal please, objection is made to this newspaper excerpt on the same grounds as the others under Series 1900.

MR. LOGAN: We urge its acceptance for the same reason set forth in the other documents we have offered in that series.

THE PRESIDENT: Objection sustained and the document rejected by a majority.

MR. LOGAN: We offer in evidence defense document 1900A-12, an extract from the Asahi Shimbun of January 16, 1942 reporting opinions expressed among the United States Navy Circles as to the use of Singapore.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: If the Tribunal please, objection is made to this newspaper excerpt on the same grounds as the others in Series 1900.

MR. LOGAN: We offer in evidence --

THE PRESIDENT: Just a minute. The objection is sustained and the document rejected by a majority.

MR. LOGAN: We offer in evidence defense document 1900-A-13, an excerpt from the Asahi Newspaper of January 17, 1941 which reports the United States Navy's enlargement of the air bases across the Pacific, submarine patrol planes and the Navy's orders to produce a number of airships to be used for patrol.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: If the Tribunal please, objection is made to this newspaper excerpt on the same grounds as the others.

MR. LOGAN: If the Tribunal please, I don't know how we can prove our case unless we can show that the Japanese Government and the Japanese people knew what was going on. It goes right to the heart of the defense that she was being encircled and she knew about it. She knew what was going on. Is that justification for her subsequent acts? Prosecution advanced the tenuous argument before, that we shouldn't prove what the United States and other countries were doing along naval lines because we couldn't show that it was brought home to Japan. Here is evidence that what was happening

was actually known to the people in Japan, and it is up to the Tribunal, I submit, to determine whether or not this information which was received was sufficient to inflame the Japanese people and to cause the Japanese Government to do what it subsequently did.

THE PRESIDENT: A Member of the Tribunal puts it this way, Mr. Logan: The Japanese Ministers of State didn't act on newspaper reports.

MR. LOGAN: They acted on newspaper reports and other reports and we propose to show in a few minutes just the type of reports that they did act on.

THE PRESIDENT: I think we have allowed a newspaper report to be used as confirmation of certain atrocities, exposed by a witness to a newspaper or a newspaperman. But, I do not think we have taken newspaper reports as evidence of the occurrences to which they referred.

MR. LOGAN: I thought I made it abundantly clear, your Honor, that I am not offering these newspaper reports for the truth or falsity of the information contained therein. It seems to me that the facts that are in this case would give the Tribunal sufficient information and light as to whether or not they are true or false. I am offering them because --

THE PRESIDENT: Individual accused, if and when

he gives evidence may, perhaps, be able to say what influenced him.

MR. LOGAN: If the Tribunal please, that is the purpose of the general phases. We offer this evidence once. If each individual accused is going to take the stand and say "I read this, I read this, I read this, in the newspaper," we would have the same testimony 25 times.

THE PRESIDENT: You might. We shall have to try to avoid that without prejudice to the accused, of course, it it arises.

MR. LOGAN: That is exactly what we are trying to avoid, such duplication of effort and the prolongation of the trial. On the other hand, if we have this evidence through these documents of what appeared in the newspapers and these accused read the newspapers or relied on those reports, it would be a simple matter just to refer to the exhibits by number.

THE PRESIDENT: It was suggested at some stage or other that these Japanese newspapers in those days were publishing only press or government releases.

MR. LOGAN: All these reports, these releases, show they come from foreign countries. This particular one here comes from Los Angeles.

THE PRESIDENT: If that is so, why not give

us the information from the Japanese official sources showing upon what these releases were based?

MR. LOGAN: Well, these reports come in from various countries and they are published in the newspaper here. It seems to me that the mere fact that they appeared in the paper -- that is all I am offering them for. I have tried to explain that when I started to offer these papers, but I just wondered whether or not the Court understood what I was trying to do.

THE PRESIDENT: Here is a point at observation: You may be suggesting that a war is justified because of reports in newspapers, whether true or false.

MR. LOGAN: I am not suggesting that. I am suggesting this, if the Tribunal please, that actions were taken of a military nature by other countries. In the first place, prosecution think that everything the other countries did was secret and was not known to the people of Japan. This evidence contradicts that. Secondly, we will show that the information contained in these documents was, as a matter of fact, true. What we are trying to do is to show through this particular method that the actions which were taken by the other countries was actually published in the Japanese newspapers and they knew about it.

As I said earlier this afternoon, I am not

relying upon these documents to show the truth or falsity of the information contained therein. I am just relying on that to show that Japan knew what was going on and the subsequent actions of the Japanese people and the Japanese Government were based, in part, on these documents.

THE PRESIDENT: This is way back in January, 1936, don't forget.

By a majority --

MR. LOGAN: I am sorry, there is an error in that. That is "January 17, 1941." I read it correctly in my commentary. That's "January 17, 1941."

THE PRESIDENT: Well, a majority think that this has no probative value. The objection is sustained and the document rejected.

Mr. Tavenner.

MR. TAVENNER: If the Tribunal please, document 1739 appears in an early place on the order list for tomorrow. The first 30 pages of it we can read; the rest of it, it is impossible to follow. I thought attention should be called to that now so that it could be corrected.

THE PRESIDENT: Are you referring to an English translation?

MR. TAVENNER: Yes, sir.

THE PRESIDENT: We will defer that to the Language Section, Major Moore.

MR. TAVENNER: If your Honor please, it is not a matter for the Language Section. It is just a question of putting the document together and in typing it. There are some pages --

THE PRESIDENT: Why ask the Tribunal to do that? We will give any necessary direction to correct what is required to be done.

We will adjourn until half-past nine tomorrow morning.

(Whereupon, at 1600, an adjournment was taken until Tuesday, 12 August 1947 at 0930.)

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12 AUGUST 1947

I N D E X

Of

EXHIBITS

Doc. No.	Def. No.	Pros. No.	Description	For Ident.	In Evidence
	2849		Proceedings of the Joint Committee on the Investigation of the Pearl Harbour Attack, Congress of the U.S., 79th Congress, First Session		25531
1500-P-4	2849-A		Excerpt therefrom - Testimony of Admiral Harold R. Stark, dated 11 April 1946		25532
	2850		Part 20 of the Hearings before the Joint Committee on the Investigation of the Pearl Harbour Attack, Congress of the U. S.		25536
1500-N-5	2850-A		Excerpt therefrom - Telegram dated 9 May 1941 from Lauchlin Currie to the President of the U.S. re Aircraft Program for China and the Reply of President Roosevelt dated 15 May 1941		25536
			MORNING RECESS		25545
	2851		Excerpt from Exhibit No. 50 of the Joint Committee on the Investigation of the Pearl Harbour Attack, Congress of the U.S.		25547

I N D E X

Of

EXHIBITS

(cont'd)

Doc. No.	Def. No.	Pros. No.	Description	For Ident.	In Evidence
1500-T-4	2851-A		Excerpt therefrom - American, Dutch, British Conversations, Singapore, April 1941		25547
401-(47)	2852		Secretary Hull's Address of 24 April 1941		25560
			NOON RECESS		25562
	2853		Proceedings of the Joint Committee on the Investigation of the Pearl Harbour Attack, Congress of the U.S., 79th Congress, First Session		25564
1500-R-4	2853-A		Excerpt therefrom - Testimony of Admiral Richmond Kelly Turner, 20 December 1945		25565
401-(51)	2854		Excerpt from the Official Publication "Peace and War" re meeting at sea of President Roosevelt and Prime Minister Churchill re supplying of Munitions of War under the Lend-Lease Act		25576

12 August 1947

I N D E X

OF

EXHIBITS

(cont'd)

Doc. No.	Def. No.	Pros. No.	Description	For Ident	In Evidence
1500-O-3	2855		Excerpt from Exhibit No. 37 of the Joint Committee on the Investigation of the Pearl Harbour Attack; Congress of the U.S., 79th Congress, First Session		25578
1500-H-3	2856		Excerpt from Exhibit No. 33 of the Joint Committee on the Investigation of the Pearl Harbour Attack; Congress of the U.S., 79th Congress, First Session - Military Intelligence Estimates prepared by G-2, War Department, Washington D.C., 2 September 1941		25584
			AFTERNOON RECESS		25592
1500-S-3	2857		Excerpt from Exhibit No. 37 of the Joint Committee on the Investigation of the Pearl Harbour Attack; Congress of the U.S., 79th Congress, First Session - Basic Exhibit of Despatches - Top Secret Naval Despatch dated 23 November 1941		25604

12 AUGUST 1947

I N D E X

Of

EXHIBITS

(cont'd)

Doc. No.	Def. No	Pros. No.	Description	For Ident.	In Evidence
1500-N-2	2858		Excerpt from Exhibit No. 32 of the Joint Committee on the Investigation of the Pearl Harbour Attack, Congress of the U.S., 79th Congress, First Session - Messages Between War Department and Hawaii from 8 July to 7 September 1941		25607
1500-A-5	2859		Excerpt from Exhibit No. 17 of the Joint Committee of the Investigation of the Pearl Harbour Attack, Congress of the U.S., 79th Congress, First Session - Memorandum for the President dated 27 November 1941		25612

Tuesday, 12 August 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, all Members sitting, with the exception of: HONORABLE JUSTICE STUART McDOUGALL, Member from the Dominion of Canada and HONORABLE JUSTICE I. M. ZARAYANOV, Member from the USSR., not sitting from 0930 to 1600.

For the Prosecution Section, same as before.

For the Defense Section, same as before.

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(English to Japanese and Japanese to English interpretation was made by the Language Section, IMTFE.)

Knapp & Yelden

MARSHAL OF THE COURT: The International Military Tribunal for the Far East is now in session.

THE PRESIDENT: Major Moore.

LANGUAGE ARBITER (Major Moore): If the Tribunal please, we submit the following language corrections:

Record page 18,236, line 2, in order to conform to correction made on record page 8,414, line 25, substitute "seven or eight fold" for "70 to 80%."

Exhibit 2234, record page 16,044, line 17, substitute "her chief objective" for "their chief objectives." Line 25, delete "only"; after "Japan" insert "merely."

Record page 16,045, line 5, substitute "advised" for "notified." Line 18, insert "then" after "France and." Line 19, delete "furthermore for her." Line 20, read "power"; substitute "cause her to withdraw from" for "with the aid of Russia wash their hands off of." Line 22, delete "have USSR"; after "stop" substitute "her" for "the"; delete "and" and "have"; Line 23, delete "USSR"; after "withdraw" substitute "her" for "the." Line 25, after "favorably" insert "to us."

Record page 16,046, line 9, delete from "as the" to the end of the sentence and read "because it is

not the logical process."

In the original exhibit, page 20, paragraph 3, line 1, after "beginning" insert "to." Line 3, substitute "this was a proposal for" for "I was in favor of."

Page 23, last paragraph, line 7, substitute "have made" for "make." Line 8, read "enabled."

Page 24, paragraph 2, line 12, substitute "she" for "they." Paragraph 3, line 9, after "provide" insert "and."

Page 31, paragraph 1, lines 5 and 6, delete from "If Japan" to "whatsoever for" and read, "If Germany were to feel no uneasiness even if Japan and the USSR compromised and enabled." Line 13, after "Balkans" insert "I believe that an understanding can be achieved between Germany, the Soviet and Italy."

Record page 16,052, line 14, delete "it becomes such that." Line 15, delete "carrying out." Line 19, substitute "is not fully developed" for "could be maintained."

Original exhibit, page 61, paragraph 3, line 1, substitute "another" for "a."

THE PRESIDENT: Mr. Logan.

MR. LOGAN: If the Tribunal please, we offer in evidence defense document 1900-A-14, an excerpt from

the "Asahi Shimbun" of January 17, 1941 reporting the establishment of the Canadian corridor intended to connect the United States with Alaska. It further reports the visit of the Australian Premier to England regarding cooperation between England and Australia and his proposed visit to the United States to talk with President Roosevelt.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: If the Tribunal please, this is an excerpt from a newspaper similar to those of the documents presented under the 1900 series. Objection is made to its introduction on the same grounds as those previously stated.

MR. LOGAN: If the Tribunal please, here again we are offering this document to show the reports of Allied activities as published in the Japanese paper and for the effect that these reports had on the Japanese people and the Japanese government. They have a direct bearing on the issue raised by the prosecution as to whether or not this was an unprovoked war; also on the issue raised by the prosecution as to whether or not there was any encroachment by the Western Powers on Japan.

THE PRESIDENT: The objection is sustained and the document rejected by a majority.

MR. LOGAN: We offer in evidence defense document 1900-A-15, an excerpt from the "Asahi" newspaper of January 19, 1941 reporting the bill for increasing the total number of Naval Academy students passed by the Naval Committee of the Congress of the United States.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: If the Tribunal please, the same objection is made on the same grounds.

MR. LOGAN: If the Tribunal please, we are offering this document to show that the Japanese people and Japanese government were advised through newspapers of the increase requested by the United States Navy of the number of students to be admitted to the Naval Academy. It also shows further preparation for the war by the United States by passage of a bill for the increase of the students of the Naval Academy.

THE PRESIDENT: Objection sustained and the document rejected by a majority.

MR. LOGAN: We offer in evidence defense documents 1500-Z-1 and 1500-J-2. This is a letter dated January 24, 1941 from the Secretary of Navy of the United States to the Secretary of War of the United States relative to the defenses of Pearl Harbor and also the reply of the Secretary of War of the United States

dated February 7, 1941. It is offered for the purpose of showing that the highest cabinet officials of the United States believed that it was easily possible that hostilities would be initiated by a surprise attack upon the fleet at Pearl Harbor.

I offer this for the purpose of reading only the last sentence of the first paragraph.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: If the Tribunal please, these two documents are part of the 1500 series. The same objection is made to their introduction as formerly made and on the same grounds.

MR. LOGAN: I just do not understand what the prosecution objection is. There have been so many grounds raised to so many documents but if it is on the ground of materiality this document is offered to show that the United States recognized the possibility of an attack on Pearl Harbor and other evidonce will be introduced--

THE PRESIDENT: Objection sustained and the document rejected by a majority.

MR. LOGAN: I had not completed my statement, if the Tribunal please.

THE PRESIDENT: It is obvious that the fact that the Secretary of the Navy contemplated a possible

surprise attack is not evidence of the legality of the attack--

MR. LOGAN: If the Tribunal please--

THE PRESIDENT: --or the justification for the attack. The debate is closed.

MR. LOGAN: We offer in evidence defense document 1500-X-1. This is a secret letter from Admiral Richardson to Admiral Stark dated 25 January 1941 in which the Commander in Chief of the United States fleet outlines tentative assumptions upon which the actions of the United States fleet in the Pacific will be predicated and is offered to show the extent to which the United States had gone in anticipating war with Japan ten months before the Pearl Harbor attack.

I intend to read paragraph 4 on pages 1 and 2.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: If it please the Tribunal, the tentative assumptions referred to in this document, which is also one of the 1500 series, brings it within the purview of another similar document which the Tribunal rejected. Objection is made on the grounds previously asserted.

MR. LOGAN: This document and similar evidence which we are offering of Admiral Richardson is being

done pursuant to the Tribunal's invitation as shown on record pages 11,282-3-4. That invitation occurred during the cross-examination of Admiral Richardson when an attempt was made to inquire as to some reports which he had made at the Pearl Harbor Investigation Committee and in addition we wish to show through this particular document statements made by Admiral Richardson on this occasion. All this evidence is being offered--

THE PRESIDENT: I have not a transcript before me. I do not know what the invitation was, Mr. Logan; I cannot recall it.

MR. LOGAN: The invitation was that the defense submit statements made by Admiral Richardson on the Pearl Harbor Investigation report, and this is an extension of that invitation, rather than to conduct a further cross-examination of him.

During the Pearl Harbor --

THE PRESIDENT: Submit it as far as it is relevant and material and possessing probative value.

MR. LOGAN: Its relevancy and materiality and probative value lie in the fact that it is offered to meet the statement of Mr. Chief Prosecutor on page 22 of his opening statement, where he defines an act of aggression, quoting from Webster's New International Dictionary, second edition, unabridged, 1943, as being: "A first or unprovoked attack or act of hostility; the first act of injury or first act leading to a war or a controversy; an assault. Also, the practice of attack or encroachment, as a war of aggression."

All this evidence is being offered to combat the prosecution contention that this was an act of aggression on the part of Japan -- that certain steps were taken by other countries as a result of which action was taken by Japan. It is for the

Tribunal to determine whether or not the final result was an aggressive war.

By all these documents we are introducing in this division, we are endeavoring to show what the Allied countries were doing, the information obtained by Japan with respect to those acts of encroachment or perhaps aggression, and the fact that these acts were published in Japan in the newspapers and received by the Japanese Government, and the actions taken by the Japanese Government thereon. All this evidence is offered for the purpose of showing that, and that is my answer to the prosecution's claim that it is immaterial and irrelevant.

THE PRESIDENT: By a majority the objection is sustained and the document rejected.

MR. LOGAN: We offer in evidence defense document 1900-A-16, an excerpt from the "Asahi Shimbun" of January 26, 1941, reporting that Secretary of Navy Knox had sent a note marked "Secret" to all major newspapers requesting that they withhold publication of certain navy information set forth in the document.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: If the Tribunal please, the

same objection is made to the introduction of this document as to the other documents in the 1900 series.

MR. LOGAN: I make the same statement with regard to the relevancy of that.

THE PRESIDENT: The objection is sustained and the document rejected by a majority.

MR. LOGAN: We offer in evidence defense document 1900-A-17, an excerpt from the "Asahi" newspaper of January 28, 1941 reporting United States bombers being sent to Australia to be distributed to the naval ports of Darwin in Australia and Singapore.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: If it please the Tribunal, this has been a constant repetition of presentation of similar documents which have been ruled upon by the Tribunal, and it is submitted that counsel for the defense should be required to delete from their order of proof those documents which are similar, in the interests of saving time.

THE PRESIDENT: Of course we must rest largely upon counsel to do the right thing by the Tribunal. We require counsel to do that, but if counsel tenders a document in defiance of that, we

have to consider the document and express our opinion later.

MR. TAVENNER: I make the same objection to the introduction of this as to the other documents of the 1900 series.

MR. LOGAN: With respect to the prosecution's suggestion that I withdraw these documents, I respectfully call his attention to the fact that apparently some Members of the Tribunal are in favor of the admission of these documents in view of the fact that the objections are sustained only by a majority.

THE PRESIDENT: The Charter says that all these questions must be decided by a majority, and the Charter is binding on every Member. I have often dissented, but I accept the decision of the majority of the Court, and I am not going to consider anything that they do not admit.

MR. LOGAN: I appreciate that. The Charter permits us to offer documents which have probative value, the same way as the prosecution introduced their evidence. I believe all this evidence which we have offered, and which we intend to offer, is relevant to the issues raised by the prosecution.

THE PRESIDENT: Before any decision is given

by this Court, every Member reads the document carefully and decides whether or not it has probative value. Then I give the decision, sometimes by a majority, sometimes we are unanimous.

No Member of this Tribunal can do more than exercise his honest judgment, and he does it in every case, and why quarrel with him over it? You appear to be resenting the attitude of the Tribunal in persisting in presenting these documents, knowing they are going to be rejected, Mr. Logan.

MR. LOGAN: May I finish what I started to say, if the Tribunal please?

It was either yesterday or Friday -- I have forgotten which -- when the question came up on some documents and I was invited to offer all these documents because we had them in chronological order, even though under the previous rulings of the Tribunal I knew there was a question about it, and I proceeded on that basis, but these particular documents we are now offering we have spent considerable time in culling out from thousands of documents because we believe they are all relevant and should be brought to the Tribunal's attention.

I am not quarreling with the Tribunal or any Member of it, but it is my understanding of what

the President said the other day, that some Members of the Tribunal like to see all these documents that are offered, and that is why I was invited to continue to offer them.

THE PRESIDENT: If any Member of this Tribunal wants to see a document, even though rejected, I am not going to stop him. I cannot.

I did tell you, Mr. Logan, to put all those documents in the same category in one bundle, then tender them, they will be rejected, and then the Members can help themselves to them if they see fit.

MR. LOGAN: Each of these documents, if the Tribunal please, contains different information. They are not all the same.

May I have a ruling on the last document?

THE PRESIDENT. Go ahead. Proceed. I will confer with my colleagues during the recess, to see what can be done if we waste much more time in this way. I am not taking any precipitate action.

By a majority the objection is upheld and the document rejected.

Duda & Spratt

MR. LOGAN: We offer in evidence defense document 1900-A-18, an excerpt from the Asahi Shimbun of February 3, 1941, reporting tacit agreement reached between the United States, Australia and New Zealand to prepare for future situation in the Southern Pacific. It further reports the transfer of United States Navy planes to Australia.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: If the Tribunal please, this is another excerpt from a newspaper under the 1900 series, and the same objection is made to its introduction.

THE PRESIDENT: By a majority the objection is sustained and the document rejected.

MR. LOGAN: We offer in evidence defense document 1900-A-19, an excerpt from the Asahi Newspaper of February 8, 1941, reporting that an understanding was made as how to deal with unexpected circum[illegible]ances in the South Pacific among America, Australia and New Zealand. The important points of the negotiations consisted of the naval base at Singapore, refueling stations at the various ports in Australia and New Zealand and the problem of American usage of airfields which exist in self-governing territories of the British.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: The same objection, if the Tribunal please.

THE PRESIDENT: By a majority the objection is sustained and the document rejected.

MR. LOGAN: We offer in evidence defense document 1500-Y-1. This is a secret letter from Admiral Stark to Admiral Richardson dated 10 February 1941, which announces that WPL 44, American Naval War Plan, shall have the highest priority. I only intend to read the second, third, and fourth paragraphs.

THE PRESIDENT: Mr. Tavenner, I don't want you to start arguing about this. I want the Judges to see these things. I said they are reading them, and they are.

Mr. Tavenner.

MR. TAVENNER: If the Tribunal please, the same objection is made to this document as to the others of the 1500 series.

THE PRESIDENT: The objection is sustained and the document rejected.

MR. LOGAN: We offer in evidence defense document 1900-A-29, an excerpt from the Asahi Shimbun of February 14, 1941, reporting President Roosevelt's request to Congress for a supplementary budget

amounting to $898,000,000, which includes the expenditure of strengthening the defense of the Pacific Islands.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: If the Tribunal please, the same objection is made to the introduction of this document as to the other documents under series 1900.

THE PRESIDENT: The objection is sustained and the document rejected by a majority.

MR. LOGAN: We offer in evidence defense document 1900-A-21, an excerpt from the Asahi Shimbun of February 17, 1941, reporting British-American-Australian-Dutch Conference held in Washington on joint defense in the Pacific.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: The same objection, if the Tribunal please.

THE PRESIDENT: The objection is sustained and the document rejected by a majority.

MR. LOGAN: We offer in evidence --

THE PRESIDENT: Mr. Logan, I have to cancel this decision because one, at least, of my colleagues didn't see his copy before I announced it. I saw that all copies were served on my left, but apparently they were not all served on my right.

I repeat that decision.

Tender your next document.

MR. LOGAN: We offer in evidence defense document 1900-A-22, an excerpt from the Asahi Shimbun of February 17, 1941, reporting British Admiralty announcement that mines would be laid at the east entrance to the Singapore Straits, and that after February 16th such mine laying would be carried out without warning.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: The same objection, if the Tribunal please.

THE PRESIDENT: The objection is sustained and the document rejected by a majority.

MR. LOGAN: We offer in evidence defense document 1900-A-23, an excerpt from the Asahi Shimbun of February 22, 1941, reporting secret meeting of the Senate Military Affairs Committee in which plans for quickly strengthening the U. S. Air Force in the Pacific was discussed. It further states that the military authorities of the U. S. A. considered that Germany was urging Japan to participate in the war.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: If the Tribunal please, the prosecution makes the same objection.

THE PRESIDENT: By a majority the objection is sustained and the document rejected.

MR. LOGAN: We offer in evidence defense document 1900-A-24, an excerpt from the Asahi Newspaper of February 22, 1941, reporting a statement made by General Marshall about the immediate strengthening of military preparations in the Pacific, and his view that conditions in the Pacific were critical.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: The same objection, if the Tribunal please.

THE PRESIDENT: By a majority the objection is sustained and the document rejected.

MR. LOGAN: This is the last of the 1900 series. We offer in evidence defense document 1900-A-25, an excerpt from the Asahi Newspaper of February 22, 1941, reporting a New York Times dispatch which stressed the military and economic significance of Singapore to the United States.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: The prosecution objects, if the Tribunal please.

THE PRESIDENT: By a majority the objection is sustained and the document rejected.

MR. LOGAN: Defense document 1500-M-4. This is an excerpt from the recorded U. S. - British Staff Conversations held in Washington from January 29, 1941 to March 27, 1941, at which time joint war plans against Japan were discussed. This brief secret excerpt from the Pearl Harbor Report is offered only to establish that such military plannings were in progress at this time and to disclose the extent of the collaboration between the United States and the United Kingdom.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: If the Tribunal please, this is another of the 1500 series documents, which is objected to on the grounds previously mentioned.

THE PRESIDENT: By a mojority the objection is sustained and the document rejected.

MR. LOGAN: Defense document 1500-P-4. This is an excerpt from the testimony of Admiral Stark in which he reveals the fact that British and American military leaders met in Washington for the purpose of discussing military collaboration. It further reveals that the military men of England came dressed in civilian clothes instead of the ordinary uniforms.

I might add that a document similar to this with respect to the meetings that were held in the latter part of 1937 was admitted by the Tribunal the other day.

THE PRESIDENT: That is so. I think it was somewhat like it.

MR. TAVENNER: The same objection, if the Tribunal please.

THE PRESIDENT: Are you trying to distinguish this from the document admitted the other day?

MR. TAVENNER: No, sir, I think there is no distinction on principle. We objected--

THE PRESIDENT: The objection is overruled and the document admitted on the usual terms.

CLERK OF THE COURT: Official publication entitled "Pearl Harbor Attack, Part 11," will receive exhibit No. 2849 for identification only; and the excerpt therefrom, bearing defense document

No. 1500-P-4, will receive exhibit No. 2849-A.

(Thereupon, the document above referred to was marked defonse exhibit No. 2849 for identification; and the excerpt therefrom, being document No. 1500-P-4, was marked defense exhibit No. 2849-A and received in evidence.)

MR. LOGAN: I shall read exhibit 2849-A from the Proceedings of the Joint Committee on the Investigation of the Pearl Harbor Attack.

"Excerpt from testimony of Admiral Harold R. Stark, Thursday, April 11, 1946.

"Mr. GEARHART: When did you send Admiral Ingersoll to London to discuss the possible naval cooperation of the British and American navies?

"Admiral STARK: I did not send Admiral Ingersoll to London to discuss such a point. That occurred prior to my tenure of office as Chief of Naval Operations.

"Mr. MURPHY: 1938.

"Mr. GEARHART: And he was sent by whom?

"Mr. RICHARDSON: If you know.

"Admiral STARK: Well, Admiral Leahy was Chief of Naval Operations prior to my going there. If it was in his tenure of office, he would have been sent

undoubtedly by concurrence with the Secretary, or direction of the Secretary, but he was sent previous to my time.

"Mr. GEARHART: Now, directing your attention to the year 1940, did you request the British Government to send naval experts to the United States to discuss the possibility of naval cooperation?

"Admiral STARK: Yes, I did. I think it was May of 1940, but those meetings were held in early 1941, as I recall, and completed in March of 1941.

"Mr. GEARHART: But it was in 1940, the fall of 1940 that you communicated with Admiral Sir Dudley Pound of the British Navy, requesting that he send his naval experts to the United States to discuss collaboration between the two navies?

"Admiral STARK: That is correct, in case of war.

"Mr. GEARHART: Upon whose responsibility was that message sent?

"Admiral STARK: My own.

"Mr. GEARHART: Did you discuss the subject with the President?

"Admiral STARK: I sent that on my own, and I did not notify the President until after I had done it.

"Mr. GEARHART: And as the result of that message that you sent to Sir Dudley Pound, a commission did arrive in the United States from England?

"Admiral STARK: They did; yes, sir.

"Mr. GEARHART: And they came in civilian clothes?

"Admiral STARK: Yes, sir.

"Mr. GEARHART: And a number of consultations were held at which you were present?

"Admiral STARK: Generally speaking, I was not present with the working committee, but of course I was in consultation with them, and was informed as to what was going on.

"Mr. GEARHART: Did you attend all of the meetings that were held in the United States?

"Admiral STARK: No, no; very, very few of them."

This is an excerpt from the Congressional Investigation of the Pearl Harbor Attack, and is an excerpt from the testimony of Lt. General Leonard T. Gerow, who was Assistant Chief of Staff, War Plans Division of the United States Army. This testimony is introduced for the purpose of showing the existence of American, British and Dutch military conversations at Singapore in April 1941. We now offer defense

document 1500-Q-4 in evidence.

THE PRESIDENT: Mr. Tavonner.

MR. TAVENNER: If the Tribunal please, this is another of the 1500 series which is on all fours with document 1500-M-4 which was rejected a few minutes ago.

THE PRESIDENT: how is it different from the last one that was admitted? I am not able to draw the line. I should be inclined to give them the benefit of the doubt, Mr. Tavenner.

MR. TAVENNER: The prosecution views the document as being totally irrelevant to any issue. It is not harmful, but we do think it would be a needless waste of time to continue to read documents that are irrelevant.

THE PRESIDENT: The last document admitted appears to me to have no value at all.

MR. TAVENNER: That is the reason we objected to it. We cannot see that it aids or furthers the issues in this case one iota.

THE PRESIDENT: By a majority the Court upholds the objection and rejects the document.

MR. LOGAN: We offer in evidence defense document 1500-N-5, being a telegram dated May 9, 1941, from Lauchlin Currie to the President of the

United States with respect to aircraft program for China, together with a tentative aircraft program attached thereto, and the reply of President Roosevelt dated May 15, 1941.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: If the Tribunal please, an objection was taken to a similar document yesterday and was sustained. Objection is now made to the introduction of this document.

THE PRESIDENT: We will give you the benefit of the doubt, Mr. Logan. The objection is overruled and the document admitted on the usual terms. We give you the benefit of every doubt.

CLERK OF THE COURT: Part 20 of the official publication entitled "Pearl Harbor Attack" will receive exhibit No. 2850 for identification only; and the excerpt therefrom, bearing defense document No. 1500-N-5, will receive exhibit No. 2850-A.

(Whereupon, the document above referred to was marked defense exhibit No. 2850 for identification; and the excerpt therefrom, being document No. 1500-N-5, was marked defense exhibit No. 2850-A and received in evidence.)

MR. LOGAN: (Reading) "Excerpts from Hearings before the Joint Committee on the Investigation of

the Pearl Harbor Attack - Congress of the United States.

"The White House, Washington, May 9, 1941.

"Memorandum for the President.

"Re: Aircraft Program for China.

"After spending a lot of time trying to inform myself on the general aircraft program and the various factors that have to be borne in mind, I have worked out a tentative program for the balance of this year. I don't think it will disrupt in any significant degree the Army or British programs and I believe that, though modest, it is probably as large as the Chinese can handle this year. I need not emphasize the actual importance of establishing a decent air force in China, nor the psychological importance of an early determination of a program that the Chinese can count on.

"May I proceed to negotiate with the Army and the British on this tentative program with the understanding that while you are prepared to accept modifications in the plan, nevertheless you approve of the general magnitudes involved? This would give me a basis for negotiation.

"Signed, Lauchlin Currie."

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"May 9, 1941. A Tentative Aircraft Program for China.

"The following program is designed to supply China in 1941 with 244 pursuit ships, 122 bombers, 340 trainers and 22 transport planes.

"1. Pursuit Ships.

"a. The British are prepared to release 144 air-cooled engine Vultee 48-C's. This force could be replaced and augmented by the release by our Army in the first six months of 1942 of their 147 air-cooled Republic as the more advanced P-47's become available.

"b. In order to replace and augment the initial Chinese pursuit force of 100 liquid-cooled Curtiss P-40 now en route, the Army could release 100 P40B, as the more advanced P40D's and E's come into production.

"This release could be continued in the first half of 1942.

"2. Bombers. It is suggested that the Army release 40 of its older B-18 bombers, of which it has 258, and which, though slow, are suitable for night bombing. It is further suggested that the Army and the British release from current production 72 bombers up to the end of 1941 according to the following schedules:

"3 each monthly from the Army and the British in May, June and July.

"4 each monthly in August and September.

"5 each monthly in October and November.

"6 each in December.

"A gradually increasing monthly schedule could then be provided for throughout 1942 to provide for replacements and additions.

"3. Trainers. Heavy emphasis should be placed immediately on the creation of a first-class Chinese air force. To this end it is suggested that a group of instructors under the charge of a first-class army flying school officer be sent to China. It is further suggested that 340 advanced and primary trainers be diverted from the production of 7,170 scheduled for the army this year. A tentative schedule might be as follows:

"May, 20; June, 30; July, 40; August, 50; September, 50; October, 50; November, 50; December, 50.

"4. Transport Planes. It is suggested that ten additional B-18's be released by the Army for this purpose and that the twelve DC3's now detailed to Army generals be released. For personal Army transport service here the two-engined Beechcraft, seating six and faster than the DC3's, would appear to be a

desirable substitution for DC3's.

"The attached tentative program would call for the following schedule of deliveries."

I call the Tribunal's attention to the schedule, which shows increased amounts from May to December 1941, and the amount set forth for the first six months of 1942, of pursuit ships, bombers, trainers and transports.

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"May 15, 1941. Dear Lauch: It is quite all right to go ahead and negotiate regarding the air program or any other thing that the Chinese request but I don't want to imply that I am at this time in favor of any of the proposals. Obviously that can only be worked out in relationship to our whole military problem and the needs of ourselves and the British. This should be taken up with General Burns and General Arnold.

"Very sincerely yours, (Signed) Franklin D. Roosevelt.

"The Honorable Lauchlin Currie."

We offer in evidence defense document 1500-T-4. This document consists of excerpts from the American-Dutch-British conversations held at Singapore April 1941, as reported in the Congressional

Investigation of the Pearl Harbor Attack, and sets forth the plans for cooperation militarily and economically. It further discusses support of the Chinese Regular Forces and the organization of subversive activities and sabotage.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: If the Tribunal please, in document 1500-Q-4 which was just rejected, it was endeavored to introduce in evidence the conference at Singapore, of which the present document is the report. Objection is made that this document is equally as irrelevant as the parent document.

As a further indication of the irrelevant character of this document, I desire to call to the Tribunal's attention portions of the original which are not copied into the document being presented, in which it was stated, "No political commitment is implied, and any agreement is subject to ratification by the governments concerned."

We think that the document is irrelevant and immaterial and should be rejected.

MR. LOGAN: This document is offered for the purpose of disproving the prosecution's claim that this was not a provocative war. We intend to prove by this document there was collaboration between American,

show that the operation of Chinese guerrilla forces armed and equipped and directed by the Associate Powers, that steps have already been taken by the British Government to organize such operations, and also states with respect to the organization of subversive activities, sabotage and corruption in Japan and Japanese-occupied territories, that activities of this kind are already being organized by the British Government.

THE PRESIDENT: Organized doesn't mean necessarily put into operation. It means they would be prepared for anything.

MR. LOGAN: That would be for the Tribunal to determine.

THE PRESIDENT: Well, the whole document is not in evidence yet, is it? I think we would like to know more about it before we decide.

MR. LOGAN: This is an excerpt from Investigation of Pearl Harbor Attack. Apparently there was a complete report of these conversations, as shown by the first page of our exhibit. It is submitted with the thought in mind it would be for the Tribunal to determine whether or not these acts were compatible with a claim of neutrality or whether they were the acts of a belligerent.

Dutch and British in April 1941. We will show by further documents that the conversations going on at that time -- the Japanese had knowledge of them and acted on them later.

THE PRESIDENT: Is this a proposal as to what should happen if Japan makes war? We see, here, "Subversive Activities in Japan." If that means activities before the war, we must admit this document.

MR. TAVENNER: If the Tribunal please, I arose to make a statement on that point. If I may be permitted to continue, I would like to do so.

I failed to read to the Tribunal another section of the original document which is not processed as part of this document which settles the point that your Honor has just mentioned:

"Our object is to defeat Germany and her allies and, hence, in the Far East to maintain the position of the Associated Powers against Japanese attack in order to sustain a long-term economic pressure against Japan until we are in a position to take the offensive. Our most important interests in the Far East are the security of sea communications and the security of Singapore."

MR. LOGAN: I might refer the Tribunal to paragraphs b and c on page 3 of this report, which

show that the operation of Chinese guerrilla forces armed and equipped and directed by the Associate Powers, that steps have already been taken by the British Government to organize such operations, and also states with respect to the organization of subversive activities, sabotage and corruption in Japan and Japanese-occupied territories, that activities of this kind are already being organized by the British Government.

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THE PRESIDENT: Of course, a short answer is that they were done in pursuance of treaty obligations. But that has to be established, of course.

MR. LOGAN: If they were done pursuant to any treaty obligation, then at that time they must have been an enemy of Japan.

THE PRESIDENT: I am referring to China, the Four-Power Pact, the Brussels Conference, the Pact of Paris -- The Nine-Power Pact, I should say. And there is nothing in this to show that these steps were to be taken before the war except in regard to China.

However, we had better not debate this matter at this time except so far as is necessary for our decision on this piece of evidence that is offered. We should like to see the whole document to make sure whether or not this refers to activities before or after war made by Japan.

MR. TAVENNER: If the Tribunal please, these excerpts were handed to us in the course of the introduction of documents this morning, and we did not like to delay the matter as we may have done. But there is another provision in the original which, if read, will settle any possible question about the point that your Honor has raised, and I suggest that

we turn the original over to the Tribunal so that a final ruling can be made on this document now rather than to postpone it to another time.

THE PRESIDENT: We are about to take a recess. You consider it during the recess and the Tribunal will.

We will recess for fifteen minutes.

(Whereupon, at 1050, a recess was taken until 1110, after which the proceedings were resumed as follows:)

Wolf & Leffler

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

THE PRESIDENT: The Tribunal is indebted to you, Mr. Logan, and to you, Mr. Tavenner, for the exhibits before the Joint Committee on the Pearl Harbor Attack, on page 1,557. It bears on the document last tendered and shows that the conditions apply only in the event of a state of war between Germany, Italy, and Japan, on the one hand, and the British Empire with its present Allies and the United States, on the other; that no political commitment is implied and that any agreement is subject to ratification by the respective governments.

However, you are relying on the words, "have taken steps to organize in relation to China," and, "being organized in relation to Japan."

MR. LOGAN: I might say, if the Tribunal please, that with respect to this particular evidence we are showing what was done at these conversations and that later on in the military phase of this case, evidence will be produced and offered to the Tribunal on the carrying out of these objectives.

THE PRESIDENT: The objection is overruled and the document admitted on the usual terms.

CLERK OF THE COURT: The official publication entitled, "Pearl Harbor Attack," will receive exhibit No. 2851 for identification only, and the excerpt therefrom, being defense document No. 1500-T-4, will receive exhibit No. 2581-A.

(Whereupon, the document above referred to was marked defense exhibit No. 2851 for identification, the excerpt therefrom being marked defense exhibit No. 2851-A and received in evidence.)

MR. TAVENNER: If the Tribunal please, in view of the decision to admit the document, the prosecution feels that the omitted portions are of such importance that they should be copied into the transcript.

THE PRESIDENT: The part I read from the introduction will be in the transcript and is conceded by both sides, I take it.

MR. TAVENNER: Yes.

MR. LOGAN: We have no objection to that. We will be glad to incorporate that as part of our exhibit.

This is an "Excerpt from Exhibit No. 50 of the Joint Committee on the Investigation of the Pearl Harbor Attack - Congress of the United States.

"MOST SECRET

"AMERICAN - DUTCH - BRITISH CONVERSATIONS

"SINGAPORE, APRIL, 1941

"(Short Title - 'A.D.B.')

"REPORT

"IV - ACTION OPEN TO THE ASSOCIATED POWERS.

"28. To ensure that we are not diverted from the major object of the defeat of Germany and Italy, our main strategy in the Far East at the present time must be defensive. There are, however, certain measures open to us which will assist greatly in the defence of our interests in the Far East, but which are themselves offensive.

"29. It is important to organise air operations against Japanese occupied territory and against Japan herself. It is probably that her collapse will occur as a result of economic blockade, naval pressure and air bombardment. This latter form of pressure is the most direct and one which Japan particularly fears.

"In addition to the defensive value of operation submarine and air forces from Luzon, referred to in pars. 21 above there is even greater value from the offensive point of view in holding this island. It is therefore recommended that the

defence of Luzon should be strengthened and that every effort should be made to maintain a bombing force in the island in addition to building up a similar force in China.

"30. Other positive activities which may be undertaken are as follows:

"(a) Support to the Chinese Regular Forces by financial aid and provision of equipment.

"(b) Operation of Guerillas in China.

"(c) Organisation of subversive activities in Japan.

"31. So far as economic pressure is concerned, the entry of the United States of America, the British Empire, and the Netherlands East Indies into a war against Japan would automatically restrict Japanese trade to that with the coast of Asia. Since China will be in the war against her, and our submarine and air forces should be able to interfere considerably with trade from Thailand and Indo-China, a very large measure of economic blockade would thus be forced upon Japan from the outset.

"VII - PLAN FOR EMPLOYMENT OF LAND AND AIR FORCES (continued)

"OTHER OPERATIONS.

"78. (a) Support to Chinese Regular Forces by financial aid, provision of equipment and establishment of military and air missions. A British nucleus Mission is already established, and a United States Mission possible combined with the British Mission would be of considerable value, and it is recommended that preparations to establish it should now be made.

"(b) The operating of Chinese Guerilla Forces armed, equipped and directed by the Associated Powers. Steps have already been taken by the British Government to organise such operations. It is recommended that the United States Government organise similar guerilla forces.

" (c) The organisation of subversive activities, sabotage and corruption in Japan and Japanese occupied territories. Activities of this kind are already being organised by the British Government. It is recommended that the United States Government should also undertake such activities and coordinate them closely with those of the British."

We now offer in evidence defense document 1739. This is a document compiled by the First Section,

Bureau of American Affairs of the Japanese Foreign Office dated April 16, 1941 on the formation of the anti-Japanese encirclement by Great Britain, the United States and the Netherlands. It is a compilation of information received by the Foreign Office from various sources for the information of the Foreign Office and is marked "Strictly Confidential."

THE PRESIDENT: Mr. Comyns Carr.

MR. COMYNS CARR: May it please the Tribunal, this document, in our submission would become material if and when any one of the accused swears that he saw it and that it influenced his mind in deciding to make the attack upon the Allies in December, 1941. Until that is done, it is, in our submission, irrelevant and has no probative value. It is, according to the certificate, compiled from reports of Japanese Foreign Office officials stationed abroad and news reports from papers supplied by news agencies. It has, therefore, no probative value as to the truth of the statements of fact contained therein.

There is, further, a confusion as to the date of it. The title page contains the date "April, 1941"; the certificate, however, declares that it was compiled and issued -- it doesn't say to whom -- in July, 1941.

The document itself, as supplied to us, is in

a hopeless state of confusion as to the order of pages. It appears to contain a supplement, the title of which is to be found on page 53, although what are evidently parts of it are scattered about amongst pages of the main document.

The supplement consists of extracts from speeches, mostly Japanese, but some of them American, which are mere repetition and, in our submission, in any case irrelevant.

But, our main submission is that the whole document should be withheld until some accused swears to it. There was a suggestion yesterday that that course would involve more time than tendering it now. That is a fallacy, because if no accused ever swears to it, the document will have no materiality at all. If one of them does, it can then be put in when he has done so and any accused giving evidence later, who wishes to rely upon it, will only need to refer to it in just the same way as if it had been put in at the present time. We ask that that course should be taken and that meanwhile the document should be put into proper order and the discrepancy and date cleared up.

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PRESIDENT: Mr. Logan.

MR. LOGAN: This document is being submitted at this time as being relevant to the question of the information which the Japanese government had and on which it acted. It is an official document of the Japanese government, and admissible under Article 13c(1) of the Charter.

THE PRESIDENT: The course suggested by Mr. Comyns Carr fully protects you, Mr. Logan.

MR. LOGAN: The Tribunal inquired -- yesterday, I believe it was -- as to what information the Japanese government had, on which they acted, as to whether it was newspaper reports, etc. This is one of those documents.

THE PRESIDENT: But the question is, when to use this document. It should be admissible.

MR. LOGAN: Well, this is on the general phase, and for this reason this type of evidence should go in on the general phase.

THE PRESIDENT: It is only in the general phase that you give the evidence that establishes the facts in relation to war; on the individual phase you give the facts which influenced the determination of the individual as well. And this document would appear to fall in the latter class.

MR. LOGAN: It seems to me, if your Honor please, that this would fall into both classes, because it is inconceivable that the Japanese government was not accumulating its facts, and I think it is important for the Tribunal to know just what information they had; and, further, it is inconceivable both that these accused, or some of them, did not act on some official document of the government, and this would be one of them. I think that now would be the time to receive it. It would save a great deal of time later on, if the accused did use it, to refer to this particular document; that is all.

THE PRESIDENT: Well, I don't think any of us want to reject it. It is the thought of the majority to let it in at the right stage, and I think the majority are of the opinion that the right time to let the document come in is when some individual connected with it claims to have acted on it.

MR. LOGAN: Well, that is eminently fair, if the Tribunal please, but could we mark it as an exhibit now and refer to it in individual cases?

THE PRESIDENT: I think the majority would prefer you to withdraw it and hold it until an individual says he acted on it.

MR. LOGAN: Of course, I am willing to go along with the Tribunal's position except that I think that for the chronological order in which this evidence is taken I think it right that it should be read. However, if it is not read at this time, we have had a full argument and I think it should be accepted as an exhibit, so that we can refer to it later on in individual cases.

THE PRESIDENT: Well, it needs to be tidied up, in any event, Mr. Logan.

MR. LOGAN: Yes, there are a few pages that need to be tidied up, but that can easily be done.

THE PRESIDENT: It is rejected now, but without prejudice to you, for submission later. If tendered later on behalf of an individual accused it will be acted upon.

MR. LOGAN: We offer in evidence defense document 1482, being a Top Secret Report issued by the Foreign Office of the Japanese Government on the Anglo-American policy of encirclement as against Japan in the Southern Pacific Ocean, dated July 1941."

INTERPRETER: Mr. Logan, I don't think the document which you read was in the order of proof. We don't have the running commentary.

MR. LOGAN: This is one I withdrew from the last section. Do you want me to read that over again?

INTERPRETER: Thank you, sir.

MR. LOGAN: It is also on this order of proof.

INTERPRETER: Mr. Logan, will you please read it over again?

MR. LOGAN: We offer in evidence defense document 1482, being a Top Secret Report issued by the Foreign Office of the Japanese Government on the Anglo-American policy of encirclement against Japan in the Southern Pacific Ocean, dated July 1941."

THE PRESIDENT: Mr. Comyns Carr.

MR. COMYNS CARR: May it please the Tribunal, this is a document of exactly the same kind as the last one, although free from the confusions in the last document, and it is objected to for the same reasons, and we ask that it be dealt with in the same way .

MR. LOGAN: I believe that this should be read now, your Honor. I think the Tribunal should know this particular information at this particular time. It would be very difficult for the Tribunal to try and evaluate what happened after the date of this document unless it knew what went on before,

and this is just a part of that picture. How did the Japanese Government -- the officials in the Japanese Government -- view these acts, and what reports were made to them, and what did they do about it. It is all in these reports.

THE PRESIDENT: We give the same decision as on the last document; It is rejected for the time being. That is a majority decision, and it is the same as the decision on the last document.

MR. LOGAN: We offer in evidence defense document 1500-W-4. This is an excerpt dated May 10, 1941, from the Pearl Harbor investigation, and contains matters relative to United States aid to China, together with a dispatch from Chiang Kai Shek to the President of the United States.

THE PRESIDENT: Mr. Comyns Carr.

MR. COMYNS CARR: May it please the Tribunal, the prosecution objects to this document, which is one of the 1500 series from the Pearl Harbor report and therefore not within the knowledge of any of the accused until after the event. Moreover, it is merely an argument by General Chiang Kai Shek and by Doctor Hornbeck in favor of a certain course of action with regard to air force in China. There was a similar one rejected yesterday on the same grounds.

MR. LOGAN: There was a more pertinent one accepted this morning, the same type of document, and this is a follow-up of the one accepted this morning.

THE PRESIDENT: This morning we admitted a document, it being a memorandum by Mr. Currie for the President, recommending a certain course, followed by the President's opinion. This is in a different category. This is a memorandum by Mr. Currie to the

President, forwarding a representation by the Chinese leader and without any note of any action by the President.

MR. LOGAN: That is correct, but it is a follow-up of the previous one in so far as the furnishing of airplanes, and so forth, are concerned, and that that actually was done will be shown by later evidence.

THE PRESIDENT: We won't prevent you from showing what aid was given to China by the United States, Mr. Logan, and that ought to be sufficient.

By a majority the objection is sustained and the document rejected.

MR. LOGAN: We next offer in evidence a portion of defense document 401(47), which is a further excerpt from defense document 401.

This shows that in May, 1941, President Roosevelt proclaimed an unlimited national emergency in the light of the world situation and the further shaping of United States policy in World War II while it was still allegedly a neutral. We offer only the paragraph beginning at the bottom of page 2 and continuing on to page 3 and the first sentence in the last paragraph of the document.

THE PRESIDENT: Mr. Comyns Carr.

MR. COMYNS CARR: May it please your Honor, the prosecution does not object to the paragraph at the bottom of page 2, which states a matter of fact. I presume that is to end with that paragraph as it finishes on page 3. In my submission, the sentence in the last paragraph is irrelevant, but, if the Tribunal please, we wouldn't very much press that.

THE PRESIDENT: Admitted to the extent that Mr. Logan proposes to read it.

CLERK OF THE COURT: Defense document 401(47) will receive exhibit No. 2852.

(Whereupon, the document above referred to was marked defense exhibit 2852 and received in evidence.)

MR. LOGAN: I will read from exhibit 2852:

"SECRETARY HULL'S ADDRESS OF APRIL 24, 1941.

"UNLIMITED NATIONAL EMERGENCY.

"On May 27, 1941, President Roosevelt proclaimed the existence of an 'unlimited national emergency', and in a radio address on the same day he outlined the policy of the United States in the light of developments in the world situation. In this address the President declared that our whole program of aid for the democracies had been 'based on a hard-headed concern for our own security and for the kind of safe

and civilized world in which we wish to live'; that every dollar of material we sent helped to keep the dictators away from our own hemisphere; that every day they were held off gave us time to build more guns and tanks and planes and ships."

And the first sentence in the last paragraph:

"We in the Americas would decide for ourselves, the President said, whether and when and where our American interests were attacked or our security threatened."

We offer in evidence defense document 1500-R-4, which is an excerpt from the testimony of Admiral Richard Kelly Turner, who was Chief of the War Plans Section in the Office of Chief of Naval Operations. It contains a brief resume of the conferences that were held between the American authorities and the British and the Dutch relative to war plans against Japan prior to December 7, 1941.

THE PRESIDENT: Mr. Comyns Carr.

MR. COMYNS CARR: May it please the Tribunal, in our submission this document referring to these conferences is objectionable on the same grounds on which we have objected to all the other documents in the 1500 series. However, as the Tribunal has accepted the excerpt from exhibit 50 of the Pearl Harbor

Inquiry, which is mentioned in the latter half of page 1 of this document, perhaps we should not object to that part of it beginning with the words "the next conference," about half way down the page.

THE PRESIDENT: Beginning with the words "the next conference" and ending where, Mr. Comyns Carr?

MR. COMYNS CARR: Your Honor, I think it continues to the end of the document.

MR. LOGAN: We are presenting the entire document so that the Tribunal can get the entire picture.

THE PRESIDENT: Mr. Carr, before you finally decide on this you might read the second last paragraph, numbered 5122:

"In none of these papers was there ever a political commitment, or a definite military commitment. This was a plan of action, or these were plans of action based on assumptions that should the United States enter the war, then these papers would be effective, provided they were approved by the proper authorities."

We will continue on this matter after the adjournment. We will adjourn until 1:30.

(Whereupon, 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: Quoting the last paragraph, Mr. Comyns Carr, "None of the ADB papers were ever presented to the Secretary of the Navy or the Secretary of War or to the President," although all of those people were aware that the conversations were being held.

MR. COMYNS CARR: Your Honor, it may well be that if the attention of the Tribunal had been called to those paragraphs of this document at the time when exhibit 50 was submitted, exhibit 50 would not have been allowed in evidence in this case, but as it has been admitted we thought it desirable that this information should be before the Tribunal now, and that is why we did not object to this part of that document.

THE PRESIDENT: The document is admitted to the extent that it is not objected to.

MR. LOGAN: If the Tribunal please, I have not had an opportunity to speak on this. I am

offering the entire document for all the information contained in it. I have no desire to conceal anything from the Tribunal. I knew this document was in existence at the time I offered the previous one.

The first part of this document also refers to this same conversation and some more explanation in connection with it, and I might call the Tribunal's attention to the fact that later evidence will be introduced to show that these conversations subsequently became part of and were incorporated in "Rainbow Plan" No. 5WPL46, and on the broader proposition, if the Tribunal please, I think this evidence is now tending to turn on the point of when defensive operations turn into offensive operations.

I have offered it to present the entire picture to the Tribunal.

THE PRESIDENT: The document is admitted to the extent not objected to, by a majority.

CLERK OF THE COURT: Part 4 of the official publication entitled "Pearl Harbor Attack" will receive exhibit No. 2853 for identification only, and the excerpt therefrom, bearing defense document No. 1500-R-4, will receive exhibit No. 2853-A.

(Whereupon, Part 4 of the official publication entitled "Pearl Harbor Attack" was given exhibit No. 2853 for identification only; the excerpt therefrom, bearing defense document No. 1500-R-4, was given exhibit No. 2853-A and received in evidence.)

MR. LOGAN: I shall read exhibit 2853-A, that part admitted in evidence:

"Excerpt from testimony of Admiral Richmond Kelly Turner - Thursday, December 20, 1945."

"Nothing very definite came out of that conference.

"The next conference--and on which there is another letter directing that this conference be held, and a letter or a dispatch from the British Chiefs of Staff concerning the conference--was held in Singapore about the 19th of April, 1941. Out of that conference was evolved the ADB paper which is here, and which the counsel has just produced.

"Mr. MITCHELL: That is exhibit 50.

"Admiral TURNER: That paper contained a lot of objectionable features, and the Chief of Naval Operations and Chief of Staff in the Army, on July 3, 1941, in a letter to the British Joint Staff

Mission here, rejected that paper in toto and requested that additional instructions be issued, so that we could get another agreement.

"In brief, the objections were two: First, there were some political implications in the paper which were not acceptable to us, and one of them was this deadline down in the South China Sea and Gulf of Siam. The other objection (5119) was that the plan was not very realistic and did not seem to advance in many respects the possible cooperative effort between the different countries.

"Mr. MITCHELL: Excuse me for interrupting you, but that document that the Admiral just referred to, dated July 3, 1941, from the Chief of Naval Operations and Chief of Staff of the British rejecting this Singapore proposal has already been introduced in evidence as exhibit 65.

"Go ahead, Admiral.

"Admiral TURNER: As a result of that rejection, and after considerable conversations between our representatives and the British representatives here in Washington, the British Chiefs of Staff produced a paper which was a proposal for a draft of an agreement, and which had the title 'ADB-2.'

The date of that is August, 1941. That paper was not entirely acceptable but was closer to our ideas.

"Negotiations on the basis of that draft agreement were proceeding rather slowly, until the arrival of Admiral Phillips, the new British Far Eastern Commander in Singapore, in November. Admiral Phillips and some staff officers went to Manila and had conferences there with our authorities, chiefly Admiral Hart, and Admiral Hart on the 6th of December, his date, which would have been the 5th here, sent a dispatch to us concerning arrangements which he had made with Admiral (5121) Phillips as to command, and so on, in the war which then was coming, within a day or two.

"That agreement, with some slight modifications and remarks, was approved by the Chief of Naval Operations, it being only a naval agreement, on the 7th of December, and the dispatch went out on the 8th.

"In none of these papers was there ever a political commitment, or a definite military commitment. This was a plan of action, or these were plans of action based on assumptions that should the United States enter the war, then these papers would be effective, provided they were approved by

the proper authorities.

"None of ADB papers were ever presented to either the Secretary of the Navy, or the Secretary of War, or to the President, although all of those officers as well as the Secretary of State were aware that these conversations were being held from time to time."

At this time, if the Tribunal please, I wish to read one document out of order. It is No. 133 on the list, 1500-K-5 -- at least, offer it.

We offer in evidence defense document 1500-K-5 which is an excerpt from the testimony of Major General Sherman Miles before the Congressional Investigating Committee on November 29, 1945, relating to military cooperation with the British and Chinese prior to Pearl Harbor.

I might say that in addition to offering the entire document, the reason I took it out of turn was for the last paragraph on the second page because I intend to offer further documents with respect to the testimony of General Miles, and this document shows how and from where he obtained his information.

THE PRESIDENT: Mr. Comyns Carr.

MR. COMYNS CARR: May it please the Tribunal,

this is one of the 1500 Pearl Harbor Investigation series, and in addition to all the other objections to those documents, it is objectionable because it discloses nothing more than the organization, internal organization of the Military Intelligence Division of the United States General Staff. In my submission, it is wholly useless.

MR. LOGAN: From the statement made by the prosecutor, it is my contention that it is relevant for the reasons set forth, that it shows from where Major General Miles got his information, how it was obtained, etc., and it is important in view of the subsequent documents which will be offered showing that information which he received and transmitted to Washington and the various officials there.

This document also shows how General Miles' information was -- the reports were distributed and how they were used.

THE PRESIDENT: But every country has these intelligence services. There is nothing peculiar about this.

MR. LOGAN: Except that it shows from where he got his information, and it will bear weight with the Tribunal as to the reliability of

the information which he received. And it shows cooperation between the British and the American intelligence services.

THE PRESIDENT: By a majority the objection is sustained and the document rejected.

MR. LOGAN: We offer in evidence defense document 1500-A-3. This is an excerpt from strategic estimates of the military situation in the Pacific issued by Brigadier General Sherman Miles, Assistant Chief of Army Intelligence, which shows concentration of British troops in the Far East as of July 11, 1941.

THE PRESIDENT: Mr. Comyns Carr.

MR. COMYNS CARR: Prosecution objects to this document as entirely irrelevant even assuming the information to be accurate. The second paragraph in the excerpt is merely General Miles' opinion as to objects which the British command entertained in its mind.

MR. LOGAN: The prosecution, of course, has just raised the question I anticipated they would raise as to the accuracy of the information they received which I endeavored to show would be accurate from the Intelligence Service which General Miles had through the previous document.

THE PRESIDENT: There is a little passage under the heading, "British Empire," you have not referred to. Are you pressing it for that purpose?

MR. LOGAN: That is part of the report which he submitted.

THE PRESIDENT: That is very vague. Britain was then fighting Germany but not Japan. This may

refer to conditions operating after the war.

MR. LOGAN: No, this is dated May, 1941.

THE PRESIDENT: Yes, but in contemplation of a war taking place between Japan and Britain. It seems to me too vague to be of any assistance.

MR. LOGAN: That (5) following (4) indicates that it does not refer to Germany.

THE PRESIDENT: By a majority the objection is sustained and the document rejected.

MR. LOGAN: We offer in evidence defense document 1500-C-3. This is an excerpt from an Intelligence Estimate prepared by the United States War Department on July 17, 1941 reciting the pertinent facts relative to the Japanese army at that time.

THE PRESIDENT: Mr. Comyns Carr.

MR. COMYNS CARR: May it please your Honor, this, as it appears from the last two lines, the only material part of it is merely General Miles' opinion as to the objects or wisdom of Japanese action. In our submission General Miles' opinion is irrelevant.

THE PRESIDENT: The Tribunal will not allow Brigadier General Miles to decide these matters for us.

MR. LOGAN: It is not offered for that purpose. It is offered for the purpose of showing the information transmitted to the Chief of Staff, the highest naval

authority in the United States, by the man charged with that duty, head of the Military Intelligence Estimates. It shows the information that was given to the United States by responsible officers with respect to what was transpiring. It is offered for that purpose. The United States government like any other government acts through its agents. It is a task too great for any one man to perform and those responsible must rely on information furnished them by persons charged with obtaining the information. The statements made by high military officials of the United States are just as material for the determination of this Court as the actions taken by the United States, as statements made by these accused or any one under them were in the prosecution's case to have the Court determine the effect of the actions that were taken by Japan.

MR. COMYNS CARR: Your Honor, in our submission if that is the ground on which this document is pressed it shows a complete misapprehension of the issues before this Tribunal.

THE PRESIDENT: By a majority the objection is sustained and the document rejected.

MR. LOGAN: We offer in evidence defense document 1500-B-3, the one just before C-3. This is

an excerpt from military intelligence estimate prepared by Brigadier General Sherman Miles, dated 17 July 1941, characterizing Japanese movement into French Indo-China as strategically defensive in character and designed primarily to prevent British and American influence from shutting off supplies badly needed by Japan.

MR. COMYNS CARR: May it please the Tribunal, prosecution objects to this document even more strongly than to the last. On its face it is nothing but an opinion and an opinion which subsequent events showed to be inaccurate. Whether it was accurate or not it is only an opinion and for that reason in our submission inadmissible.

THE PRESIDENT: There is a bit of confusion here. We are being given documents with the wrong numbers. We must rectify that at once. B-3 was rejected. We are being offered C-3; we are considering C-3.

MR. LOGAN: B-3 is the one that is being offered now. It was taken out of turn, your Honor, by mistake. I inadvertently took the wrong paper here.

THE PRESIDENT: We all read B-3. We heard what was said by both sides about it and we rejected it. We are now considering C-3. It seems to be in

the same position.

By a majority the objection is sustained and the document rejected.

MR. LOGAN: Sherman Miles, Brigadier General, United States Army, advised the Chief of Staff on July 18, 1941 of the change in cabinet in Japan and commented on the deplorable condition of Japan's foreign trade and internal economy. This memorandum is contained in defense document 1500-D-3 which is offered in evidence.

THE PRESIDENT: Mr. Comyns Carr.

MR. COMYNS CARR: May it please the Tribunal, the prosecution objects to this document. The information in paragraph 1 is already before the Tribunal as to the new ministers and the rest of it is merely General Miles' opinion about the characters and probable policy of the members of that government.

THE PRESIDENT: By a majority the objection is sustained and the document rejected.

MR. LOGAN: We next offer in evidence defense document 401(51), a further excerpt from the official publication entitled "Peace and War." This shows that in August 1941 President Roosevelt and Prime Minister Churchill met at sea and examined the problem of supplying munitions of war under the Lend-Lease Act

to belligerent countries.

THE PRESIDENT: I think we will take judicial notice of this one. Is there any objection to it?

MR. COMYNS CARR: Your Honor, I was only going to remark that if the defense agrees that Japan was one of the countries engaged in the aggression which was to be resisted then I should not oppose the admission of this document.

MR. LOGAN: I can only say that I am quite sure that remark was intended to be facetious.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 401(51) will receive exhibit No. 2854.

(Whereupon, the document above referred to was marked defense exhibit No. 2854 and received in evidence.)

MR. LOGAN: I shall read exhibit 2854:

"Atlantic Charter -- President Roosevelt and Prime Minister Churchill met at sea in August 1941. At this conference they examined the whole problem of the supplying of munitions of war, as provided by the Lend-Lease Act, for the armed forces of the United States and for the countries actively engaged in resisting aggression."

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We next offer in evidence defense document 401(52), which shows that President Roosevelt and Prime Minister Churchill issued on August 15, 1941 the joint message to Stalin regarding the active aid to be given to the Soviet Union which was then engaged in war with Germany.

THE PRESIDENT: Mr. Comyns Carr.

MR. COMYNS CARR: May it please the Tribunal, my friend's own description of this document shows it has nothing whatever to do with this case, and I ask that it be rejected.

MR. LOGAN: It has this bearing on this case: that Japan has always considered Russia in the light that there might possibly be an attack from her at any time, and in that particular period of time the success of the five-year plan was apparent, and Japan --

THE PRESIDENT: If we admit this we must admit every other document affecting Germany.

MR. LOGAN: No, I am trying to explain that we are not offering it for the effect it might have on Germany. It is being offered for this Tribunal to determine just what effect this aid to Russia had on Japan with respect to its interpretation of the encirclement that was going on and the necessity for Japan to fight a defensive war for self-

preservation.

THE PRESIDENT: The objection is sustained and the document is rejected by a majority.

MR. LOGAN: We offer in evidence defense document 1500-C-3. This is a top secret dispatch dated August 14, 1941 from the United States Office of Naval Operations to commanders in the Pacific reciting a curtailment of Japanese trade and shipping as a direct result of United States, British and Dutch interference.

THE PRESIDENT: Mr. Comyns Carr.

MR. COMYNS CARR: May it please your Honor, in our submission this document is irrelevant and adds nothing to the information already before the Tribunal.

MR. LOGAN: This time it will also show, if the Tribunal please, that the resumption of the shipping services was indefinite as a result of the United States, British, and Dutch pressure through refusal of transit of Panama Canal.

THE PRESIDENT: In accordance with our earlier decisions dealing with these matters, this is admitted tentatively.

CLERK OF THE COURT: Defense document 1500-0-3 will receive exhibit No. 2855.

(Thereupon, the document above referred to was marked defense exhibit No. 2855 and received in evidence.)

MR. LOGAN: I shall read exhibit 2855.

"14 August 1941, from OPNAV, Top Secret.

"Indications that orange ships formerly in North Atlantic and those on South Atlantic routes returning Japan via Magellan comma 4 tankers only vessels on Pacific coast, none enroute to USA, none North Atlantic, estimated 17 west coast of South America, none Los Angeles to Panama. Japanese rapidly completing withdrawal from world shipping routes. Scheduled sailings cancelled and majority ships in other than China and Japan seas areas homeward bound. Resumption of shipping services indefinite result of USA, British and Dutch pressure through refusal of transit of Panama Canal, export control restrictions, refusal of bunkering and port facilities and fund freezing."

We offer in evidence defense document 1500-F-3. This is a memorandum for the Chief of Staff prepared by Military Intelligence of the War Department, Washington, D. C., dated August 16, 1941, and contains a resume of the critical results of the action taken by the United States, Great Britain and

the Dutch against Japan as of that date. Copies of this document were distributed to the President, Secretary of War, Assistant Secretary of War, and the Chief of Staff.

THE PRESIDENT: Mr. Comyns Carr.

MR. COMYNS CARR: May it please the Tribunal, the prosecution objects to this document. It is merely the same sort of document as the Tribunal has already several times rejected from General Miles. The paragraph numbered 3 is merely a resume of his opinion of the situation, not affecting Japan particularly but affecting the whole world. Paragraphs numbered 5 and 6 are merely his opinion about the deductions to be drawn from the known facts about the state of affairs in Japan.

MR. LOGAN: This definitely shows that General Miles, based on intelligence reports submitted to him, made a report which was distributed to the President, Secretary of State, Assistant Secretary of State, and Chief of Staff. I can't imagine any government keeping a man of General Miles' standards in office unless they were assured that the reports he was making were accurate.

I believe this document is material to the issue as drawn by the prosecution as to whether or not

this was an aggressive war. I might say also that there was considerable doubt as shown by the prosecution's evidence as to whether or not Japan was sincere in what she was saying and doing. This is evidence that she was. This is a statement made by a high, responsible United States official at a time when he would make no statement other than the truth as he saw it.

THE PRESIDENT: The objection is sustained and the document rejected by a majority.

MR. LOGAN: We offer in evidence defense document 1500-G-3. This is a military estimate prepared by G-2, War Department, Washington, D. C., reciting American aid to China at a time when the United States was a neutral and revealing concern over the existing relations between Japan and the United States.

THE PRESIDENT: Mr. Comyns Carr.

MR. COMYNS CARR: May it please the Tribunal, this is another opinion by General Miles on the best steps to be taken to improve morale in China. In our submission it is irrelevant and objectionable from every possible viewpoint.

MR. LOGAN: All that I have said with respect to the previous documents issued by General Miles

applies with equal force here.

THE PRESIDENT: The objection is sustained and the document rejected by a majority.

MR. LOGAN: On September 2, 1941, Sherman Miles, Brigadier General, United States Army, made a memorandum for the United States Chief of Staff of a conversation he had with Major General Saburo ISODA about various matters including the fact that due to the restrictions imposed by the United States on the exportation of oil to Japan, the Japanese already found it necessary to draw on their oil reserves. This memorandum is set forth in defense document 1500-H-3, which is offered in evidence.

THE PRESIDENT: Mr. Comyns Carr.

MR. COMYNS CARR: May it please your Honor, the prosecution objects to this document, which is merely a conversation not even by General Miles, but by one of his subordinate officers with a Japanese military attache, in which they exchanged opinions, as the Tribunal will see by looking at the last but one and last but two paragraphs, and indeed right through. The Japanese General's opinion appears to have been highly unfavorable to his own government and to that extent helpful to the prosecution, but we don't desire to admit irrelevancy on that account.

MR. LOGAN: I am quite sure the document doesn't warrant any such characterization as made by Mr. Carr, but the last paragraph clearly shows that General ISODA's views paralleled the conversations which were in progress at that time between the Japanese Embassy and the State Department; and, in fact, he spoke for the Japanese Embassy in his conversation with Colonel Bratton, reported by General Miles.

THE PRESIDENT: If this were a conversation between the President and Prince KONOYE I suppose we would admit it, and in that event it would be material. But is it material, is a conversation at that level really of any probative value?

MR. LOGAN: I think it is to this extent, if the Tribunal please: that not only would conversations on the level of the President and Prince KONOYE be admissible here, but this is also further indications to show that in addition to officials on that level as well as on the ambassadorial staff that here is a military attache advancing the same argument why there should be a settlement of this issue. It shows the continuity of policy in the different levels of the Japanese government.

THE PRESIDENT: We will give you the benefit

of the doubt. We will overrule the objection and admit it on the usual terms.

CLERK OF THE COURT: Defense document 1500-H-3 will receive exhibit No. 2856.

(Whereupon, the document above referred to was marked defense exhibit No. 2656 and received in evidence.)

MR. LOGAN: I shall read exhibit 2856:

"2 September 1941. Subject: Conversation between the Japanese Military Attache and the Chief, Far Eastern Section. Memorandum for the Chief of Staff:

"1. Coincident with the Japanese Ambassador's call on the President on the morning of August 28, 1941, Major General Saburo ISODA, Japanese Military Attache, called by appointment on Colonel R. S. Bratton, Chief of the Far Eastern Section, Intelligence Branch, this division. The following are notes of Colonel Bratton on the visit:

"'I have known General ISODA and been associated with him under various circumstances for eighteen years. In consequence, our conversation was friendly, informal and entirely "off the record."

"'General ISODA stated that, like the Ambassador, he was exploring ways and means to relieve Japanese-United States tension and bring about better relations between the two countries. During the course of a conversation which lasted for an hour and a half, General ISODA made statements to the following effect:

"'a. Due to restrictions imposed by our export control, the Japanese have begun to use a portion of their war reserve of petroleum.

"'b. He, the Naval Attache, the Ambassador and the entire Embassy Staff are in accord in an earnest desire to better United States-Japanese relations.

"'c. Japan made a great mistake in joining the Axis.

"'d. The Army frequently gets out from under control of the Civilian Government and has to be restrained by Imperial Command.

"'e. Japan has her back to the wall. She can be pushed just so far, then will have to fight us to save her national honor and integrity, though war with the United States is the last thing desired by Japan.

"'When asked flatly my opinion as to what assurances on the part of Japan would be acceptable to the United States Government at this time, I told him that Prince KONOYE, if he comes to talk with the President, must come with Imperial sanction and armed with authority to speak for and on behalf of the armed forces of Japan as well as on behalf of the Civilian Government. I said that, in my opinion, nothing short of this would be productive of lasting results or be acceptable to the President.

"'General ISODA received this statement of opinion on my part with entire good will, expressed his

pleasure over the opportunity of having a frank talk, and stated his desire to have other and more frequent talks in the future. I, in turn, assured him that I would be glad to meet him in a private and unofficial capacity at any time.'

"2. General ISODA's visit clearly parallels the conversations now in progress between the Japanese Ambassador and the State Department. In effect he speaks for the Japanese Embassy, the entire staff of which is sincerely working for the betterment of Japanese-American relations. He obviously did not feel empowered to speak for the Japanese Army."

Copies sent to: Secretary of War, Chief of Staff, War Plans Division, Office of Naval Intelligence.

Defense document 1500-I-3 is a memorandum for the Chief of Staff dated September 5, 1941, from Brigadier General Sherman Miles, pointing out the seriousness of the embargoes which were likely to become dangerous before December 1, 1941. This document is now offered in evidence.

THE PRESIDENT: Mr. Comyns Carr.

MR. COMYNS CARR: Your Honor, prosecution objects to this document on the same grounds as before. It is merely a resume of General Miles' views of the situation on facts which are known to us all.

MR. LOGAN: This document also shows the effect of the embargoes and the encirclement on the Japanese at that time, and is based on intelligence reports received by General Miles from unimpeachable and very reliable sources. It shows that information was brought home to the United States Government of the effect of the economic embargoes, and that the stoppage of Japan's trade -- the opinion that Japan obviously did not want to go to war but at the same time she felt because of these embargoes it was an essential part of her foreign policy to do so.

THE PRESIDENT: By a majority the objection is sustained and the document rejected.

MR. LOGAN: We offer in evidence defense document 1500-J-3. This is an excerpt from Military Intelligence Estimate, prepared by G-2, War Department, Washington, D.C., dated 2 October 1941, revealing that while the United States was insisting on the removal of Japanese troops from China the military of America were advising against such procedure.

It further recites that the United States was seeking to gain time by diplomatic negotiations.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: If the Tribunal please, objection is made to the introduction of this document

in evidence. It is the expression of opinion by a governmental department regarding the Japanese situation in the East, which is irrelevant. It is one of the 1500 series documents which was the subject of inquiry at Pearl Harbor, and it is submitted that the objections originally made to this class of documents is good and should be sustained.

MR. LOGAN: I might also add, if the Tribunal please, that when I examined Mr. Ballantine I asked him the direct question if he had ever discussed at any time the position of the United States with respect to the withdrawal of Japanese Armed Forces from China; as to whether or not he had ever discussed in the State Department the strategic advantage of keeping the Japanese Army bottled up in China although at the same time the government was advocating that Japan withdraw the army from China. Mr. Ballantine said that he had no recollection of any such discussion.

This document shows that that question was reported by Colonel Kroner to Chief of Staff, with copies distributed to the President, Secretary of War, Under Secretary of War, and Assistant Secretary of War, on October 2, 1941.

THE PRESIDENT: Objection sustained and document rejected by a majority.

MR. LOGAN: I might say that in reference to Mr. Ballantine's testimony, it may be found on pages 11,117 and 11,118 of the record.

We offer in evidence defense document 1500-L-2. This is a message from Chief of Naval Operations released by Admiral Ingersoll and directed to the forces in the Pacific, stating that as of 16 October 1941, Japan's situation was desperate and admitting that Japan held the United States and Britain responsible therefor.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: If the Tribunal please, the prosecution is unable to comprehend how it could be material to the issues in this case that the United States Government was uneasy about conditions in Japan and for that reason warned its representatives. This document, we claim, is inadmissible on the same grounds as previously mentioned in connection with these 1500 series documents.

MR. LOGAN: This evidence is offered to show not only that America was cognizant of what was going on, but it is also offered to refute the prosecution's contention that the Pearl Harbor attack came out of a clear blue sky unknown to anybody. It is material and relevant to the question which the Tribunal will

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have to decide as to whether or not this war was a war which was provoked or not.

THE PRESIDENT: By a majority the objection is sustained and the document rejected.

MR. LOGAN: We next offer in evidence defense document 1500-P-3, being a further excerpt from the Pearl Harbor Investigation. This shows that on October 16, 1941, a dispatch was sent to all United States merchant ships in the Pacific to take precautionary steps because of the possibility of hostile action by Japan.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: If the Tribunal please, prosecution desires to make the same objection on the same grounds.

THE PRESIDENT: Objection sustained and document rejected by a majority.

MR. LOGAN: We offer in evidence defense document 1500-Q-3. This is a top secret dispatch from Chief of Naval Operations to Commander-in-Chief in the Pacific, dated 17 October 1941, referring to the reinforcement of the Philippines with long-range bombers.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: The same objection on the same

grounds, if the Tribunal please.

MR. LOGAN: This has a direct bearing on the defense we are trying to prove here, if the Tribunal please, and also material as to the question when defensive operations become offensive.

THE PRESIDENT: Objection sustained, and document rejected by a majority.

MR. LOGAN: We offer in evidence defense document 1500-R-3. This is a top secret dispatch from the Office of Naval Operations to the commanders in the Pacific, dated 23 October 1941, reciting the necessity of armed escort for military cargo in the Pacific.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: If the Tribunal please, the prosecution desires to offer the same objection on the same grounds.

MR. LOGAN: I urge its acceptance for the same reasons heretofore urged.

THE PRESIDENT: Objection sustained, document rejected by a majority.

We will recess for fifteen minutes.

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

Wolf & Leffler

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

MR. LOGAN: We offer in evidence defense document 1500-K-3. This is an excerpt from Military Intelligence Estimate prepared by G-2, War Department, Washington, D. C., dated November 2, 1941, stating Japan's internal military and economic condition after four years of war in China and reciting the knowledge on the part of the United States by the highly informed officers of the United States that Japan did not want war with the United States but her political and economic situation demanded action.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: The same objection, if the Tribunal please.

THE PRESIDENT: The objection is sustained and the document rejected by a majority.

MR. LOGAN: We offer in evidence defense document 1500-Z-4. This is an excerpt from the secret Joint Board Meeting in Washington, D. C., November 3, 1941, which was attended by Admiral Stark, United States Chief of Naval Operations, and General Marshall, Army Chief of Staff, and other high ranking military officers, showing that the high ranking military personnel of the United States was considering

every angle of a possible war with Japan and were stalling for time.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: If the Tribunal please, the same objection is made to the introduction of this document.

MR. LOGAN: I call the Tribunal's attention to those who were present at this meeting and the discussion which took place. Those who were present appear at the end of the document, and the nature of the discussion is contained in the document itself.

THE PRESIDENT: By a majority, the objection is sustained and the document rejected.

MR. LOGAN: We offer in evidence defense document 1500-Q-5, being an excerpt from a memorandum for the Chief of Staff from Brigadier General Gerow, dated November 3, 1941, with regard to aid to China, the building up of the defenses of Singapore and the Netherlands East Indies by reinforcement of the Philippines, and diplomatic and economic pressure to be applied.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: The same objection, if the Tribunal please.

MR. LOGAN: This definitely shows the policy

of the United States with respect to aid to China, defense of Singapore and Netherlands East Indies, which is directly bearing on the affirmative defense of these accused as to the necessity of waging a defensive war for their own self preservation.

THE PRESIDENT: It is common ground that the United States was helping in China, and we have admitted documents showing the extent of the assistance.

By a majority, the objection is sustained and the document rejected.

You may not have heard what I said, Mr. Logan.

MR. LOGAN: No, I didn't.

THE PRESIDENT: I said, it is common ground that the United States was helping China, and we have admitted documents showing the extent of the assistance.

MR. LOGAN: I appreciate that.

We offer in evidence defense document 1500-C-2 which is a memorandum for the President of the United States from Admiral Stark, Chief of Naval Operations, dated November 5, 1941. It is offered for the purpose of showing the true American intentions relative to China and the fact that the United States was seeking to avoid hostilities until it had improved its military strength.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: If the Tribunal please, this is another document dealing with the estimate concerning the Far Eastern situation, which we think is irrelevant and immaterial on the same grounds as previously mentioned, and objection is made to its introduction.

MR. LOGAN: I specifically call the Tribunal's attention to the recommendation contained at the end of this document.

THE PRESIDENT: "That no ultimatum be delivered to Japan."

MR. LOGAN: And the four lines preceding that.

THE PRESIDENT: By a majority, the objection is upheld and the document rejected.

MR. LOGAN: I intend to show, if the Tribunal please, that they recommended: "That the dispatch of United States armed forces for intervention against Japan in China be disapproved," which was under consideration at that time. "That material aid to China be accelerated consonant with the needs of Russia, Great Britain, and our own forces. That aid to the American Volunteer Group be continued and accelerated."

This document has a direct bearing on the defense, the affirmative defense of these accused, that we are seeking to prove.

THE PRESIDENT: That document has been rejected.

MR. LOGAN: We offer in evidence defense document 1500-T-5, an excerpt from the testimony of General Marshall before the Congressional Investigation Committee which discusses the supplying of planes to the Volunteer Air Force under General Chennault.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: If the Tribunal please, this document does not advance the issues. It is irrelevant, in our contention, and we object to its introduction.

MR. LOGAN: I believe this is the first time of any evidence in this case as to the operation of that Air Force under General Chennault. I believe it is material to show the aid that was given to China by the United States as to whether or not it is --

THE PRESIDENT: It will be part of the aid about which there is no question.

MR. LOGAN: There may be no question that the aid was given, but I don't know as that the prosecution will concede the way in which it was given and what backing the United States Government gave to it. That is why we are offering this testimony, to show that.

THE PRESIDENT: The objection is sustained

and the document rejected, by a majority.

All decisions today have been by a majority; at least, all decisions rejecting documents.

MR. LOGAN: We next offer defense document 1500-V-4. This shows the exchange of telegrams between Washington and Chungking in October and November, 1941, revealing the exchange of intelligence between the United States and China and the aid extended and contemplated by the United States and Great Britain.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: If the Tribunal please, the prosecution contends that this exchange of five telegrams is not relevant and material to any issue in this case.

THE PRESIDENT: Just telegrams about the help given by America to China, I suppose.

MR. TAVENNER: That is true, Sir. Objection is made to the introduction.

MR. LOGAN: The question, of course, being the extent of this help that was given, whether or not it was sufficient to enable the Tribunal to make a determination that this war was one of provocation. These telegrams passed between high ranking officials of the various countries, one from Generalissimo Chiang Kai-shek to President Roosevelt.

THE PRESIDENT: By a majority, the Court sustains the objection and rejects the document.

MR. LOGAN: We offer in evidence defense document 1500-S-5, an excerpt from exhibit No. 5 of the Proceedings of the Clarke Investigation, which is a radiogram dated June 26, 1941, sent from Manila and signed by General Grunert, setting forth British plans to use certain Chinese airfields as bases and the general plan of cooperation between the British and Chinese in the event of Japanese operations against the British. It further cites the British intention to encourage guerrilla warfare against the Japanese in certain areas.

THE PRESIDENT: Or in the event of an attack by Japan against Malaya or Hongkong.

Mr. Tavenner.

MR. TAVENNER: The same objection is made to the introduction of this document, if the Tribunal please.

THE PRESIDENT: The Tribunal upholds the objection and rejects the document by a majority.

MR. LOGAN: We offer in evidence defense document 1500-Y-4. This is a draft of a strictly confidential reply of the President of the United States to a message sent him by Generalissimo Chiang Kai-shek in which American Aid to China is discussed at a time when the United States was an alleged neutral. This is dated November 10, 1941.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: If the Tribunal please, this is a reply to the letter of Chiang Kai-shek which has been rejected in evidence. The reply is objected to on the same grounds that the original letter was rejected.

MR. LOGAN: This document also has a direct bearing on the issue this Tribunal will have to decide as to whether or not the acts of the United States and other Allied countries was sufficient to constitute

provocation.

THE PRESIDENT: This does not appear to add anything to the admitted situation.

By a majority the document is rejected.

MR. LOGAN: We next offer in evidence defense document 206-E(120), being an excerpt from the Diary of Ambassador Grew, entitled 10 Years in Japan, exhibit 2306 for identification. This shows that on November 11, 1941 Prime Minister Churchill pledged that if the United States should become involved in a war with Japan a British declaration of war would follow within the hour.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: If the Tribunal please, this document has been introduced in evidence heretofore.

THE PRESIDENT: I certainly have read it before, but the defense may not have.

MR. LOGAN: Maybe I don't recall it and Mr. Tavenner doesn't know the exhibit number of it.

MR. TAVENNER: The page number is 24,274.

MR. LOGAN: On that statement I withdraw it.

We offer in evidence defense document 1500-U-5, an excerpt from the testimony of General Marshall before the Congressional Investigating Committee which discusses Mr. Churchill's statement that if Japan

attacked America, Great Britain would be in the war within one or two hours. It further discusses the Volunteer Air Corps operation and the supply of planes to this organization.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: If the Tribunal please, as in previously rejected documents this is conditioned upon war with Japan. Objection is made to it on the grounds of its irrelevancy and immateriality.

MR. LOGAN: I think, if the Tribunal please, that this testimony of General Marshall, the highest-ranking army official in the United States, with respect to this aid to China, showing the extent of it, and the actions of the United States in regard to this Volunteer Air Corps should be accepted in evidence as bearing on the question of whether or not Japan had a right to do what she did in the affirmative defense of these accused.

THE PRESIDENT: General Marshall doesn't go into the details of the help given to China. He just discusses some of the matters.

MR. LOGAN: There has been some indication in this trial that this aid to this Volunteer Air Corps was not backed up by the United States and that General Marshall goes into considerably here to show just how

this force operated. In other words, an isolated instance of assistance, perhaps, would not be sufficient to justify a provocation, but where there is a continuing policy I think we should be permitted to show it.

THE PRESIDENT: By a majority the objection is sustained and the document rejected.

MR. LOGAN: We next offer in evidence defense document 1500-S-3. This is a Top Secret naval dispatch of November 23, 1941 for the Commander-in-Chief of the Pacific reciting large United States Army troop movements scheduled to depart from San Francisco.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: If the Tribunal please, the same objection is made to the introduction of this document into evidence.

MR. LOGAN: This is material to the defense. We are trying to show in this case, if the Tribunal please, the transformation from defensive operations to offensive, and it is before the Tribunal to determine whether or not these acts constituted sufficient grounds for the accused to act as they did.

MR. TAVENNER: If the Tribunal please, I would like to point out that there is nothing in this

document that indicates that this consists of a troop movement for offensive purposes. The document shows that --

THE PRESIDENT: If there is a doubt about it, aren't they entitled to benefit.

MR. TAVENNER: I was going to add, if your Honor please, that the document does show, on the contrary, that it is in the nature of a warning to the movement of ships, both troop ships and merchant ships, that are scheduled for voyages, ready to sail trans-Pacific. Seven vessels have already sailed, it says. And this document --

THE PRESIDENT: This suggests a very extensive movement of troops right across the Pacific.

MR. TAVENNER: And the document shows that the warning was given in view of reports that Japanese vessels are patrolling the area.

THE PRESIDENT: Well, we will give you the benefit of the doubt, Mr. Logan. The objection is overruled and the document admitted on the usual terms.

CLERK OF THE COURT: Document No. 1500-S-3 will receive exhibit No. 2857.

(Whereupon, the document above referred to was marked defense exhibit No. 2857 and received in evidence.)

MR. LOGAN: I shall read Exhibit No. 2857:

"Department dispatches apparently do not take cognizance of the magnitude of Army troop movement directed by War Department from San Francisco by December 10 involving about 22 vessels including largest liners. Aside from troop transportation about 12 merchant on scheduled voyages ready to sail trans-Pacific. Seven vessels already sailed. Com 12 organizing 17 knot convoy to depart San Francisco by December 8. Also planning 10 knot convoy to assemble Honolulu by December 15 routings prescribed eastward of Ellice Islands thence Torres Straits. Watering necessary practically all vessels especially troop transports. In view reports Japanese patrolling this area believe it vulnerable. Subject to further study believe routing south about Australia impracticable. If troop movement must be made at this time recommend great circle course to San Bernardino Strait with adequate fleet protection."

We offer in evidence defense document 1500-M-2. This is a sealed secret message from Chief of Naval Operations to Commanders in the Pacific and elsewhere dated 24 November 1941 and warning against a surprise aggressive movement by Japan against the

United States.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: Same objection, for the same reasons, is made to the introduction of this document.

THE PRESIDENT: These are only calculations or warnings. By a majority, the objection is sustained and the document rejected.

MR. LOGAN: We offer in evidence Defense Document 1500-L-3. This is an excerpt from a Military Intelligence Estimate prepared by G-2, War Department, Washington, D.C., dated 26 November 1941, showing the extent to which the military actions of Japan were being scrutinized by the authorities in the United States.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: Same objection if the Tribunal please.

THE PRESIDENT: By a majority, the objection is sustained and the document rejected.

MR. LOGAN: We offer in evidence defense document 1500-N-2. This is an excerpt from a secret message from the War Department to General Short in Hawaii, dated November 26, 1941, wherein it is revealed that the United States was prepared to fly over the Japanese Mandated Islands for the purpose of

photography and reconnaisance.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: Same objection, if the Tribunal please.

THE PRESIDENT: This is only reconnaisance, isn't it? This doesn't affect any troop movements or the disposition of the fleet?

MR. LOGAN: There was a subsequent question raised in this Pearl Harbor Investigation Report as to the effect of sending scouting planes over Mandated Islands, as to the effect if one of them had been shot down,-- whether or not that would have constituted an act of war.

THE PRESIDENT: Does this show that the Americans were photographing Japanese harbors?

MR. LOGAN: They were contemplating it, your Honor. The planes were all set for the photographing of the various islands, the Mandated Islands.

THE PRESIDENT: Objection overruled; the document is admitted.

THE CLERK: Defense document 1500-N-2 will receive Exhibit Number 2858.

(Whereupon the document in question was marked Exhibit No. 2858 and received in evidence.)

MR. LOGAN: I shall read Exhibit No. 2858:

"Exhibit No. 32. Messages between War Department and Hawaii. 26 November 1941. From Adj. Gen. to Short. Subject: Reconnaissance Mission.

"Commanding General, Hawaiian Department, Fort Shafter, T. H.

"Reference two B dash twenty four airplanes for special photo mission. It is desired that the pilots be instructed to photograph Truk Island in the Caroline group, Jaluit in the Marshall group. Visual reconnaissance should be made simultaneously. Information desired as to the number and location of naval vessels including submarines, airfields, aircraft, guns, barracks and camps. Pilots should be warned islands strongly fortified and manned. Photography and reconnaissance must be accomplished at high altitude and there must be no circling or remaining in the vicinity. Avoid orange aircraft by utilizing maximum altitude and speed. Instruct crews if attacked by planes to use all means in their power for self preservation. The two pilots and copilots should be instructed to confer with Admiral Kimmel upon arrival at Honolulu to obtain his advice. If distance from Wake to Jaluit to Moresby is too great suggest one B dash twenty-four proceed from Wake to Jaluit and

back to Wake, then Philippines by usual route, photographing Ponape while en route Moresby. Advise pilots best time of day for photographic Truk and Jaluit. Upon arrival in Philippines two copies each of any photographs taken will be sent to General MacArthur, Admiral Hart, Admiral Kimmel, The Chief of Naval Operations, and the War Department. Insure that both B dash twenty-four airplanes are fully equipped with gun ammunition upon departure from Honolulu. Signed ADAMS."

This is a memorandum for the President of the United States dated November 27, 1941, and issued by Chief of Naval Operations Admiral Stark and Army Chief of Staff General Marshall, reciting, among other things, that from the United States viewpoint the gaining of time was most essential, and that Army and Navy reinforcements had been rushed to the Philippines -- that the desired strength had not yet been reached. This document further sets out the conditions under which the United States, Dutch, and British military authorities would collaborate in the Far East.

We offer in evidence defense document 1500-A-5.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: If it please the Tribunal, the conditions under which the Allied Powers were to collaborate under this document were that the Japanese move their forces into Thailand west of 100 degrees east or south of 10 degrees north, and other places. In other words, the action was conditioned upon aggressive action being taken by the Japanese. A general statement is contained in the document that considerable reinforcements had been rushed to the Philippines and that it is intended to send other troops at a later date.

This is one of the 1500 series documents which was the result of the Pearl Harbor Investigation and which at that time could not have been known or considered by the Japanese in any action they may have taken.

THE PRESIDENT: We are inclined to let in evidence of all these troop movements just before the war opened.

MR. TAVENNER: Then, if the Tribunal please, that would be confined to the one statement that appears in the next to the last paragraph regarding considerable reinforcements. The rest of the document would, on that theory, be irrelevant and immaterial. It would be the second sentence in the next to the last paragraph on the first page.

THE PRESIDENT: You see, these discussions on what Japan would be likely to do, or what would be done if Japan does those things, have already been rejected.

MR. LOGAN: I think that entire paragraph is material. That is the fifth paragraph on the page. I also believe Admiral Stark's recommendation on page 2 is also material.

THE PRESIDENT: We don't want the speculations, but troop movements we will admit.

That is confined to what Mr. Tavenner suggests.

MR. LOGAN: I suggest that that entire paragraph go in. That is the fifth paragraph on page 1.

THE PRESIDENT: No, it is not necessary. It is not relevant. We admit that part of the fifth paragraph commencing "considerable Navy and Army reinforcements have been rushed to the Philippines" down to "December 8, 1941." If we admit any more we contradict our own decisions given earlier.

MR. TAVENNER: If the Tribunal please, I made an error a few moments ago in the citation of the record and I would like to correct it. I referred to defense document 206-E-120 as having been admitted in the record at page 24,473. The correct page number is 10,353, and the number of the exhibit is 1173. I regret having made the error.

CLERK OF THE COURT: Defense document 1500-A-5 will receive exhibit No. 2859.

(Whereupon, the document above referred to was marked defense exhibit 2859 and received in evidence.)

MR. LOGAN: I shall read exhibit 2859, the excerpt.

"Excerpt from Congressional Investigation, November 27, 1941.

"MEMORANDUM FOR THE PRESIDENT

"Subject: Far Eastern Situation.

"Considerable Navy and Army reinforcements have been rushed to the Philippines but the desirable strength has not yet been reached. The process of reinforcement is being continued. Of great and immediate concern is the safety of the Army convoy now near Guam, and the Marine Corps' convoy just leaving Shanghai. Ground forces to a total of 21,000 are due to sail from the United States by December 8, 1941."

We offer in evidence defense document 1500-J-4. This is an excerpt from the testimony of Admiral H. R. Stark in which he discusses the joint memorandum given to the President on November 27, 1941.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: If the Tribunal please, objection is made to the introduction of this document in evidence. It is one of those of the 1500 series and could not have influenced Japanese action and therefore is inadmissible; that is, the fact sought to be established is irrelevant and immaterial from any standpoint.

MR. LOGAN: This document also shows, if the

Tribunal please, in addition to the troop movement the air program, the training of the Philippine scouts and the laying of mines in the Philippines for protection of Manila Bay.

THE PRESIDENT: The mine laying was clearly defensive. The troop movements might have been equivocal as far as the Japanese were concerned.

The objection is sustained and the document rejected, by a majority.

MR. LOGAN: Defense document 1500-P-2 is offered in evidence. This is a message from the War Department to the Commanding General, Western Defense Command, dated November 27, 1941, also reciting that negotiations with Japan appeared to be terminated and that the United States, in the event of hostilities, desired Japan to make the first overt act.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: If the Tribunal please, this document is another of the 1500 series, which is nothing more than a warning that aggressive action is likely to occur on the part of Japan. The giving of that warning is immaterial to any issue here, and objection is made to its introduction.

MR. LOGAN: If the Tribunal please, this is a message from General Marshall, the highest ranking

army official in the United States, showing the state of mind of the American military at that time; that they knew the situation was tense, and the message specifically shows that hostilities cannot be avoided, which they knew were coming at that time; that it was the desire of the United States that Japan commit the first overt act.

THE PRESIDENT: But he directs reconnaissance in such a way as not to alarm the population. That can only be the population, perhaps, of Japan. What he says about waiting for Japan to start is neither here nor there as far as I can see it. Directing reconnaissance in those terms is different. I think the Members desire to admit this document, Mr. Tavenner.

The objection is overruled and the document is admitted on the usual terms.

Mr. Logan, it is suggested that this may be directed to the Commanding General of Hawaii and that the population is the population of Hawaii.

MR. LOGAN: I believe that is true, your Honor.

THE PRESIDENT: Well, then reconnaissance would not be a hostile act.

MR. LOGAN: If the Tribunal please, this

document clearly shows the state of mind of the highest ranking army official in the United States at that time, that the effect of the economic sanctions and the military encirclement of Japan had reached such a state that they realized these hostilities were coming on, and it was the desire of General Marshall that if hostilities cannot be avoided the United States desired that Japan commit the first overt act.

I have just been reminded that this happened the day after the note of November 26 was sent, which was called by some an ultimatum, and this action on the 27th should be taken into consideration along with the ultimatum or note of November 26, 1941.

MR. TAVENNER: If the Tribunal please, as to the point just referred to by counsel, the document shows clearly that it is only in the event that hostilities are unavoidable that it was their desire that Japan pass the first blow. The tenor of the whole document is that purely of a defensive matter.

THE PRESIDENT: I am reminded that if Japan did not strike there was to be no war.

MR. LOGAN: That is problematical, your Honor.

MR. TAVENER: If that is true, the document

could not be relevant and material; and on the point your Honor mentioned, it has been clear from other documents that have been tendered and which have been rejected that the populace of the Hawaiian Islands should not be alarmed or excited more than absolutely necessary in the maneuvers and the defensive action that the United States was taking.

THE PRESIDENT: I think we will adjourn and give our decision in the morning.

We will adjourn until half-past nine in the morning.

(Whereupon, at 1600, an adjournment was taken until Wednesday, 13 August 1947, at 0930.)

13 AUGUST 1947

I N D E X

Of

EXHIBITS

Doc. No.	Def. No.	Pros. No.	Description	For Ident.	In Evidence
1500-P-2	2860		Excerpt of Exhibit No. 32 of the Joint Committee on the Investigation of the Pearl Harbour Attack, Congress of the U.S., 79th Congress, First Session - Messages Between War Department and Hawaii from 8 July to 7 September, 1941		25620
1500-Q-2	2861		Excerpt of Exhibit No. 32 of the Joint Committee on the Investigation of the Pearl Harbour Attack, Congress of the U.S., 79th Congress, First Session - Secret Message dated 27 November 1941 from General Marshall to General Short in Hawaii		25621
1500-Q-2	2862		Excerpt from Exhibit No. 32 of the Joint Committee on the Investigation of the Pearl Harbour Attack, Congress of the U.S., 79th Congress, First Session - Dispatch from General Marshall to General MacArthur in the Philippines, dated 27 November 1941		25622

I N D E X

Of

EXHIBITS

(cont'd)

Doc. No.	Def. No.	Pros. No.	Description	For Ident.	In Evidence
1500-U-4	2863		Excerpt of Exhibit No. 45 of the Joint Committee on the Investigation of the Pearl Harbour Attack, Congress of the U.S., 79th Congress, First Session - Memorandum for the Chief of Staff from Brigadier-General Gerow, dated 27 November 1941		25624
1500-W-3	2864		Excerpt of Exhibit No. 37 of the Joint Committee on the Investigation of the Pearl Harbour Attack, Congress of the U.S., 79th Congress, First Session - Top Secret Dispatch from the Office of Naval Operations to Commanders in the Pacific re Sabotage due to critical negotiations with Japan, dated 8 November 1941		25631
			MORNING RECESS		25645
			NOON RECESS		25668
1500-V-5	2865		Excerpts from Pearl Harbour Attack, U.S. Government Printing Office, Washington, 1946 - Memoirs of Prince KONOYE		25670

I N D E X
Of
EXHIBITS
(cont'd)

Doc. No.	Def. No.	Pros. No.	Description	For Ident.	In Evidence
1500-Z-5	2866		Further excerpt from the Memoirs of Prince KONOYE - The Progress of Japanese-American Negotiations During the Time of the 2nd and 3rd KONOYE Cabinets - March 1942		25672
1400-A-6	2867		Excerpt from "Foreign Relations of the U.S. Japan:1931-1941" Vol II - Memorandum by the Secretary of State, Washington, 8 March 1941		25676
1400-B-6	2868		Excerpt from "Foreign Relations of the U.S. Japan:1931-1941" Vol II - Memorandum by the Secretary of State, Washington, 14 March 1941		25678
1400-C-6	2869		Excerpt from "Foreign Relations of the U.S. Japan:1931-1941" Vol II - Memorandum by the Secretary of State, Washington, 14 April 1941		25681
1400-A-1	2870		Note, dated 17 April 1941, from Ambassador NOMURA to Prince KONOYE		25683
1401-B-1	2871		Note, dated 18 April 1941, from Ambassador NOMURA to Prince KONOYE		25685

I N D E X
Of
EXHIBITS
(cont'd)

Doc. No.	Def. No.	Pros. No.	Description	For Ident.	In Evidence
1400-C-1	2872		Note, dated 8 May 1941, from Ambassador NOMURA to MATSUOKA		25701
			AFTERNOON RECESS		25711
1400-D-6	2873		Excerpt from "Foreign Relations of the U.S. Japan:1931-1941" Vol II - Memorandum of a Conversation Between Secretary Hull and Ambassador NOMURA on 16 May 1941		25712
1400-E-6	2874		Excerpt from "Foreign Relations of the U.S. Japan:1931-1941" Vol II - Informal and Unofficial Oral Statement handed by Secretary of State to the Japanese Ambassador NOMURA 16 May 1941		25715
1400-F-6	2875		Excerpt from "Foreign Relations of the U.S. Japan:1931-1941" Vol II - Memorandum of a Conversation Between Secretary Hull and the Japanese Ambassador on 20 May 1941		25720
1967	2876		Excerpt from book entitled "Peace and War U. S. Foreign Policy 1931-1941" published by the U. S. Government Printing Office, Washington, 1943 - Radio Address Delivered by President Roosevelt from Washington 27 May 1941		25722

I N D E X

Of

EXHIBITS

(cont'd)

Doc. No.	Def. No.	Pros. No.	Description	For Ident.	In Evidence
1500-W-5	2877		Excerpts from Pearl Harbour Attack - Memoirs of Prince KONOYE, Vol. 20		25726
1400-I-6	2878		Excerpt from "Foreign Relations of the U.S. Japan: 1931-1941" Vol II - Memorandum of a Conversation Between Mr. Hamilton and others for the U.S. and Mr. WIKAWA and others for Japan on 2 July 1941		25729
1400-J-6	2879		Excerpt from "Foreign Relations of the U.S. Japan: 1931-1941" Vol II - Memorandum of a Conversation Between Ambassador NOMURA and State Department Officials on 5 July 1941		25731
1400-A-8	2880		Excerpt from "Foreign Relations of the U.S. Japan: 1931-1941" Vol II - Memorandum of a Conversation Between Japanese and American Diplomats in Washington on 2 July 1941		25738
1400-H-6	2881		Excerpt from "Foreign Relations of the U.S. Japan: 1931-1941" Vol II - Memorandum of a Conversation Between the Assistants of the Secretary of State and the Japanese Ambassador on 17 June 1941		25740

Wednesday, 13 August 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, all Members sitting, with the exception of: HONORABLE JUSTICE STUART McDOUGALL, Member from the Dominion of Canada and HONORABLE JUSTICE I. M. ZARAYANOV, Member from the USSR., not sitting from 0930 to 1600.

For the Prosecution, same as before.

For the Defense Section, same as before.

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(English to Japanese and Japanese to English interpretation was made by the Language Section, IMTFE.)

Sprat & Duda

MARSHAL OF THE COURT: The International Military Tribunal for the Far East is now in session.

THE PRESIDENT: Major Moore.

LANGUAGE ARBITER (Major Moore): If the Tribunal please, we submit the following language corrections:

Exhibit 1961, record page 14,425, line 17, delete from "make" to "non-commissioned officers" and substitute "have them."

Line 21, delete the sentence beginning "You are" and substitute "Therefore, it is desired that proper direction be given accordingly."

THE PRESIDENT: Mr. Logan, have you cleared up to whom the last document was addressed?

MR. LOGAN: That was addressed to the Commanding General, Western Defense Command, San Francisco, California.

I might say there are practically identical messages which we will offer also addressed to the Far East Command in Manila and the Commanding General, Hawaiian Department.

That first one, the one under consideration, may be addressed to the entire Western Defense Command, and that might just be an A.P.O. number, San Francisco; I don't know.

THE PRESIDENT: Well, that is all you know about it?

MR. LOGAN: This third document from there shows the same radiogram was sent to the Caribbean Defense Command in the Canal Zone.

THE PRESIDENT: By a majority the Court overrules the objection and admits the document.

CLERK OF THE COURT: Defense document 1500-P-2 will receive exhibit No. 2860.

(Whereupon, the document above referred to was marked defense exhibit No. 2860 and received in evidence.)

MR. LOGAN: I shall read exhibit 2860.

"27 November 1941 from Marshal to Western Defense Command. Subject: Warning. Priority.

"Commanding General, Western Defense Command, Presidio of San Francisco, California.

"Negotiations with Japan appear to be terminated to all practical purposes with only the barest possibilities that the Japanese Government might come back and offer to continue period Japanese future action unpredictable but hostile action possible at any moment period If hostilities cannot repeat cannot be avoided the United States desires that Japan commit the first overt act period This policy should not

repeat not be construed as restricting you to a course of action that might jeopardize your defense period Prior to hostile Japanese action you are directed to undertake such reconnaissance and other measures as you deem necessary but these measures should be carried out so as not repeat not to alarm civil population or disclose intent period Report measures taken period A separate message is being sent to G dash two Ninth Corps Area re subversive activities in United States period Should hostilities occur you will carry out the tasks assigned in rainbow five so far as they pertain to Japan period Limit dissemination of this highly secret information to minimum essential officers.

"Marshall."

Defense document 1500-0-2 is a secret message dated 27 November 1941 from General Marshall to General Short in Hawaii containing the same information as stated in the previous document, 1500-P-2, exhibit 2860. As the messages are practically identical, I shall not read this document.

THE PRESIDENT: Admitted.

CLERK OF THE COURT: Defense document 1500-0-2 will receive exhibit No. 2861.

(Whereupon, the document above referred to was marked defense exhibit

No. 2861 and received in evidence.)

MR. LOGAN: We offer in evidence defense document 1500-Q-2, which is a dispatch from General Marshal to General MacArthur in the Philippines, dated 27 November 1941, revealing that the army realized that negotiations between Japan and the United States at that time were impossible and that hostile action was possible at any moment.

As this contains the same information as is contained in exhibit 2860 and 2861, I shall not read that, either.

THE PRESIDENT: Admitted.

CLERK OF THE COURT: Defense document No. 1500-Q-2 will receive exhibit No. 2862.

(Whereupon, the document above referred to was marked defense exhibit No. 2862 and received in evidence.)

MR. LOGAN: Defense document 1500-U-4 is a memorandum for the Chief of Staff from Brigadier General Gerow dated November 27, 1941, in which it is revealed that the American authorities recognized there was little hope for continuation of negotiations at this time and that the Secretary of War did not wish that the President be advised to request Japan to reopen conversations. We offer this document in

evidence.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: If the Tribunal please, this document is open to the same objections formerly made to the 1500 series documents; and in addition, the point that has just been covered by the preceding documents which were admitted with regard to the possible termination of negotiations is purely repetitive and should be excluded.

MR. LOGAN: We submit, if the Tribunal please, that this document is not apocryphal. It shows the unyielding attitude of the American military at that time. It is further evidence that both the military of the United States and Japan realized that further negotiations promised nothing. It sheds light on the reason for the decision of Japan of December 1, 1941, and it contains statements of the highest United States governmental and military authorities and it is very closely associated with the diplomatic phase which will be presented shortly.

I might say that this is an official document from the Pearl Harbor Attack.

THE PRESIDENT: Of course, we do not overlook the fact that the purpose of the Pearl Harbor inquiry was to fix the responsibility of the different American

army and navy chiefs concerned. However, some of the evidence may have a bearing more or less doubtful.

We will give you the benefit of that doubt and admit the document on the usual terms. We overrule the objection.

CLERK OF THE COURT: Defense document 1500-U-4 will receive exhibit No. 2863.

(Whereupon, the document above referred to was marked defense exhibit No. 2863 and received in evidence.)

MR. LOGAN: I shall read exhibit 2863.

Communication dated November 27, 1941.

"(Stamped notation:) November 28, 1941. Noted -- Chief of Staff. Noted -- Deputy Chief of Staff.

"Memorandum for the Chief of Staff. Subject: Far Eastern Situation.

"1. The Secretary of War sent for me about 9:30 a.m., November 27, 1941. General Bryden was present. The Secretary wanted to know what warning messages have been sent to General MacArthur and what were proposed. I gave him a copy of the Joint Army and Navy message sent November 24. I then showed him a copy of the draft message you discussed at the Joint Board meeting. He told me he had telephoned both Mr. Hull and the President this morning. Mr. Hull

stated the conversations had been terminated with the barest possibility of resumption. The President wanted a warning message sent to the Philippines. I told him I would consult Admiral Stark and prepare an appropriate cablegram.

"2. Later in the morning, I attended a conference with the Secretary of War, Secretary of Navy, and Admiral Stark. The various messages to the Army and Navy Commanders and to Mr. Sayre were discussed. A joint message for General MacArthur and Admiral Hart was approved (copy attached). The Secretaries were informed of the proposed memorandum you and Admiral Stark directed be prepared for the President. The Secretary of War wanted to be sure that the menorandum would not be construed as a recommendation to the President that he request Japan to reopen the conversations. He was reassured on that point. It was agreed that the memorandum would be shown to both Secretaries before dispatch.

"3. Both the message and the memorandum were shown to the Secretary of War. He suggested some minor changes in the memorandum. These were made (copy attached).

"(Signed) L. T. Gerow, Brigadier General, Acting Assistant Chief of Staff."

THE PRESIDENT: The decision to admit this document was a majority decision.

MR. LOGAN: Defense document 1500-V-3 is a top secret dispatch of November 27, 1941, from the Office of Naval Operations to commanders in the Pacific warning against sabotage due to the critical status of negotiations with Japan. This is offered in evidence.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: If the Tribunal please, this is merely an order directing that commanders of a particular area take appropriate measures for security. The next two documents are quite similar. These matters are quite irrelevant to any issues involved here and are subject to all the objections made to the 1500 series documents, and the same objection is now made.

MR. LOGAN: This document, if the Tribunal please, shows the attitude of the military the day after Mr. Hull's memorandum of November 26 had been sent and the realization as to the effect of that note.

THE PRESIDENT: By a majority the court sustains the objection and rejects the document.

MR. LOGAN: Defense document 1500-U-3 is offered in evidence. This is a top secret message dated 27 November 1941 from Chief of Naval Operations to commanders in the Pacific and warns of impending war, stating that negotiations with Japan have ceased

and that an aggressive move is expected within the next few days.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: The same objection, if the Tribunal please.

THE PRESIDENT: This seems to be of the same character as the previous document.

MR. LOGAN: In addition to my argument in support of the last document, I wish to add that it shows that the military were prepared to proceed with the war plan WPL 46. It also shows that the dispatch was to be considered a war warning.

THE PRESIDENT: By a majority the Court sustains the objection and rejects the document.

MR. LOGAN: Defense document 1500-R-2 is offered in evidence. This is a secret dispatch dated 27 November 1941 from Army Intelligence in Washington to Army Intelligence Hawaii, revealing that negotiations with Japan were such that hostilities might come at any moment.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: If the Tribunal please, this is an identical document, and the same objection is made.

MR. LOGAN: This further shows that the

highest military authorities of the United States recognized the effect of Secretary Hull's message of November 26, 1941.

THE PRESIDENT: It is in the same position as the other documents.

MR. LOGAN: It also explains that the Japanese military viewed it in the same light as the American military.

THE PRESIDENT: The objection is sustained and the document rejected by a majority.

MR. LOGAN: Defense document 1500-V-2 is offered in evidence. This is a secret message from the Western Defense Command to General Marshall, Chief of Staff, replying to his alert of November 28, 1941, and stating that they were ready to carry out the prepared tasks assigned in Rainbow 5 in the event of hostilities with Japan.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: If the Tribunal please, this is a reply to a telegram which has just been rejected in evidence. It is immaterial and irrelevant to any issue in the case, and for the reasons assigned in connection with the 1500 series documents objection is renewed.

MR. LOGAN: We will offer in a few minutes,

if the Tribunal please, an exposition of these various army plans, and this shows that steps were being taken at this time to put them into effect on November 28, 1941. They have a direct bearing on the question which will be for the determination of the Court as to whether or not this was an aggressive war.

THE PRESIDENT: We understand that you are tendering these to combat the charge of a treacherous attack.

MR. LOGAN: That is one of the minor issues, reasons, which I am attacking, not one of the major ones.

THE PRESIDENT: By a majority the Court sustains the objection and rejects the document.

MR. LOGAN: I shall omit defense document 1500-U-2.

I shall omit defense document 1500-S-2 as cumulative, showing America was ready for hostilities following the

I shall omit defense document 1500-T-2 on the same ground.

We offer in evidence defense document 1500-W-3. This is a top secret dispatch dated November 28, 1941, from Chief of Naval Operations to commanders

in the field advising that hostile action with Japan is possible at any moment and that the United States desires that Japan commit the first overt act. The previous exhibits we offered contained practically the same information as this with respect to the army. This one was with respect to a navy message. I shall not read it, as the message is identical with the previous ones admitted.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: If the Tribunal please, the similar documents were admitted regarding messages from the army; so I will not raise the same objections again. But inasmuch as this document has not been read to the Tribunal I do want to read this statement that is contained in it: "Undertake no offensive action until Japan has committed an overt act."

THE PRESIDENT: Admitted.

CLERK OF THE COURT: Defense document 1500-W-3 will receive exhibit No. 2864.

(Whereupon, the document above referred to was marked defense exhibit No. 2864 and received in evidence.)

MR. LOGAN: Defense document 1500-M-3 is offered in evidence. This is an excerpt from Military

Intelligence Estimate prepared by G-2, War Department in Washington, D. C., dated November 29, 1941, in which is revealed the extent of collaboration between the British and the United States, together with the Netherlands East Indies.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: This document, if the Tribunal please, is on all fours with a number of other documents of the 1500 series which have been rejected. Objection is made to its introduction on the same grounds as previously stated.

MR. LOGAN: This document dated November 29, 1941 shows definitely what was done by the United States, Netherlands East Indies, and Great Britain in preparation for the war. It will be shown that the actions of the ABCD Powers were known to Japan and Japan's reaction or counteraction thereto is pertinent to meet the issue of aggressive war and conspiracy. If the action by Japan was without provocation then the charge of aggressive war and conspiracy might be maintainable. But if there was provocation and the acts by Japan were in reply thereto as self-defense, then this is in answer to those charges. I might state that these are statements of fact contained in this document.

THE PRESIDENT: By a majority the objection is sustained and the document rejected.

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MR. LOGAN: We offer in evidence defense document 1500-0-5, being an excerpt from the testimony of General Marshall before the Congressional Committee in which is discussed the furnishing of material to Borneo, Port Moresby, etc. in conjunction with preventing the Japanese from obtaining oil in that area prior to December 7, 1941.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: If the Tribunal please, the prosecution views this document as irrelevant and immaterial, and it is objected to on those grounds.

MR. LOGAN: Of course, a general statement of immateriality and irrelevancy is difficult to answer, but I will answer it to this extent: This document shows definite steps taken in the Pacific by the ABCD Powers with respect to military preparation and armaments. It talks about airstrips and military materials furnished Borneo, Port Moresby and other places. It is a statement made by General Marshall, the highest military man in the United States at that time. It has a direct bearing on the issue of whether or not these actions taken were sufficient provocation or justification for Japan's action later. I can think of no other evidence that would be more material.

THE PRESIDENT: By a majority the Court

sustains the objection and rejects the document.

MR. LOGAN: Defense document 1500-X-3 is offered in evidence. This is a Top Secret dispatch from the Office of Naval Operations to the Commander-in-Chief of the United States Fleet in the Pacific dated 2 December 1941 directing reconnaissance measures to be taken against the Japanese on direct order of the President of the United States.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: If the Tribunal please, the matters set forth in this document could not be relevant and material to the issues in this case. Every country had its system of reconnaissance and its method of obtaining information. Whether or not this plan of reconnaissance was ever carried out is not disclosed. The fact that this plan was mentioned during the course of the Pearl Harbor Inquiry could not have had any influence upon the subsequent actions of Japan and could not constitute a justification for Japan's action.

MR. LOGAN: This document shows further preparations for war by the United States, the realization of the situation that existed at that time, and it was a break-down of the negotiations in diplomatic circles. It shows further preparations by the United States,

knowing the situation that existed on that date.

THE PRESIDENT: Objection sustained and the document rejected by a majority.

MR. LOGAN: Defense document 1500-F-4 is offered in evidence. This is a dispatch to the Military Attache, American Embassy in Tokyo dated December 3, 1941 and issued by General Miles advising of the early rupture of diplomatic relations and ordering the destruction of documents and codes.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: If it please the Tribunal, this document has no effect other than the other documents relating to warnings which have been rejected. The same objection is made to this as to the other documents of this series.

MR. LOGAN: I might say, if the Tribunal please, that this and other evidence which I have offered tends to show how fallacious the prosecution's argument is and its contention is that Japan, while talking diplomacy, was preparing for war, when we find that was also being done by the United States.

THE PRESIDENT: It is only a precaution. It doesn't show that the United States is finally committed to war.

MR. LOGAN: I didn't say that it had, your

Honor. I say that this document shows that one of the last steps which is usually taken when a full realization is had that war is imminent is the destruction of codes.

THE PRESIDENT: Objection sustained and the document rejected by a majority.

MR. LOGAN: We offer in evidence defense document 1500-Z-3. This is a Top Secret dispatch of December 3, 1941 from the Office of Naval Operations to the commanders in the Pacific advising that the Japanese had ordered the destruction of their code machine equipment in London,Hongkong, Singapore, Manila and Batavia.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: If the Tribunal please, this is an identical type document and the same objection is made to it.

MR. LOGAN: It shows that the Japanese were destroying their codes. The previous documents showed the Americans were destroying their codes.

THE PRESIDENT: The objection is sustained and the document rejected by a majority.

MR. LOGAN: Defense document 1500-N-3 is offered in evidence. This is a review of the Far Eastern situation as of December 5, 1941 as compiled by the

Military Intelligence Branch of the War Department in Washington, D.C. It contains statements of fact with regard to the effect of the economic embargoes, lack of raw materials in Japan at that time. The stoppage of trade and the freezing of credits had reduced Japan's supply of raw materials and she had been for some time required to use her reserves.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: If the Tribunal please, this is a statement of opinion made on the 5th day of December, 1941 by one government branch to another and is open to all the objections which have hitherto been made to the 1500 Series documents, and, therefore, the same objections are made.

THE PRESIDENT: The objection is sustained and the document rejected by a majority.

MR. LOGAN: We offer in evidence defense document 1500-X-4. This is an excerpt from the testimony of General Marshall in which he refers to American military installations in the Pacific and is offered to show that the United States had been preparing for some time for eventual hostilities with the Japanese.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: If the Tribunal please, this document is on all fours with document 1500-0-5, which

was rejected a few moments ago. The same objections are made to the introduction of this document.

MR. LOGAN: I fail to see how the prosecution can contend that evidence of preparations for war in the Pacific by nations other than Japan are immaterial to this action. They claim that this is an agressive war without any provocation. How can they possibly contend that Japan, who knew about these things that were going on, was not provoked by it?

THE PRESIDENT: They can contend Japan did not need any provocation.

MR. LOGAN: Whether they needed it or not, if the Tribunal please, we are trying to show that it was there and that they were provoked as a result of it. We are trying to meet the issues laid down by the Chief Prosecutor under his definition of what provocation is. We are showing that Japan was encircled militarily and economically in the Pacific. It is up to the Tribunal to determine -- not the prosecution -- as to whether or not that constituted provocation.

Evidence has been produced by the prosecution in an endeavor to convict these accused because of what they did. Now, we are trying to show that they had just provocation for it, and we cannot prove our affirmative defense unless we can get the evidence before the Tribunal as to what was being done.

Prosecution itself has introduced evidence showing that the Japanese military were keeping the home government informed of what was going on with respect to armaments and establishment of outposts in the Pacific. This is evidence of what the Allied Powers were doing in the Pacific.

I can think of no more competent, no better evidence to present to this Tribunal than the sworn testimony of General Marshall before the Congressional Investigation Committee.

THE PRESIDENT: It is not his position that matters; it is what he says.

MR. LOGAN: I have offered it solely for what he says, if the Tribunal please.

THE PRESIDENT: This seems to be based on the assumption that Japan will make war and is not itself a preparation for war independently of that.

MR. LOGAN: America may have known that, if the Tribunal please, but we have to accept the facts as they existed. Prosecution claims that everything that the Japanese did was aggression. We want to show from the facts what the Allied Powers did and what did the Japanese think about those actions; and only after ascertaining all the facts will the Tribunal be in a position to determine whether or not

there was provocation.

THE PRESIDENT: Self-defense.

The document is rejected and the objection sustained by a majority.

MR. LOGAN: We next offer in evidence defense documents 1500-L-4 and 1500-K-4, which contain a general discussion of American war plans and procedures prior to the Pearl Harbor attack. This is a document I referred to previously as explaining the various war plans, "Rainbow, W.L.P.," and so forth. This is taken from the testimony of Lieutenant General Leonard T. Gerow before the Congressional Investigation Committee.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: If the Tribunal please, the Tribunal has rejected quite a few documents which set forth, in this section, plans for defensive war. The effort to again introduce in evidence war plans for a defensive war, we think, should be rejected on the grounds that have been so frequently stated.

MR. LOGAN: Well, this document sets forth the resume of all the various plans and has a direct bearing on the question of whether or not the United States prepared for war in the Pacific at that time, just what her objectives were, based on assumptions.

THE PRESIDENT: This seems to be covered by earlier rulings.

The objection is sustained and the documents rejected by a majority.

MR. LOGAN: We offer in evidence defense document 1500-N-4, which is an excerpt from the testimony of Admiral Richard Kelly Turner and is a discussion of an American war plan directed against Japan prior to December 7, 1941.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: The same objection, if the Tribunal please.

MR. LOGAN: I have nothing further to add, your Honor.

THE PRESIDENT: The objection is sustained and the document rejected by a majority.

MR. LOGAN: We withdraw defense document 1500-W-2.

We offer in evidence defense document 1500-B-5, which is an excerpt from the testimony of General Marshall before the Congressional Investigating Committee with respect to United States aid to China prior to Pearl Harbor. This is also offered as having an extremely direct bearing on the question of provocation.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: If the Tribunal please, this is another of the 1500 series documents to which the same objections previously made are now made.

THE PRESIDENT: Similar material was rejected yesterday.

The objection is sustained and the document rejected by a majority.

MR. LOGAN: We now offer in evidence defense document 1500-P-5, which is an excerpt from the testimony of General George C. Marshall, the highest ranking United States military official, before the Congressional Committee on December 10, 1945, showing aid to the Chinese Government and shipment of materials to South Pacific Islands before December 7, 1941.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: If the Tribunal please, the prosecution contends that there is nothing in this document which is not covered by the previous rulings with regard to the 1500 series documents, and the same objection is made as heretofore made.

MR. LOGAN: This document goes a little further than the others, your Honor. It shows that preparations for war, what actions were taken, were

known to the Japanese with respect to the arrangement made at Rabaul, Port Moresby, Port Darwin, Balikpapan, Borneo, and Singapore. It has a direct bearing.

Again, I must say that I fail to see how the prosecution could seriously contend that this is not material to the issue raised by them as to whether or not this was an unprovoked war.

THE PRESIDENT: Suppose Australia made those strips and those parts in her own territory, we would hardly be asked to take it into consideration.

MR. LOGAN: But, that is not the case before us, your Honor. Here is an action that was taken thousands and thousands of miles, close to Japan. If Japan had done that, it probably would have been considered by the prosecution as an act of aggressive war.

THE PRESIDENT: I understand from my colleague, who examined this carefully while I was discussing it with you, that the first part relates to Lease-Lend and the second part covers material already rejected.

The objection is sustained and the document rejected by a majority.

We will recess for fifteen minutes.

(Whereupon, at 1045, a recess was

taken until 1100, after which the proceedings were resumed as follows:)

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

MR. LOGAN: We now offer in evidence defense document 1500-R-5, which is a memorandum for Admiral Stark from General George C. Marshall, Chief of Staff, dated September 12, 1941, regarding military aid for islands in the South Seas prior to Pearl Harbor.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: If the Tribunal please --

MR. LOGAN: I might say that the previous documents showing troop movements, and so forth, have been introduced and accepted by the Tribunal.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: If the Tribunal please, the prosecution views the transfer of troops to the Philippines as not being material and objects on that ground.

THE PRESIDENT: Purely defensive.

By a majority the objection is sustained and the document rejected.

MR. LOGAN: I didn't have an opportunity to answer. I might say there is nothing in this document to show whether it is offensive or defensive.

THE PRESIDENT: It is too late now, Mr. Logan.

MR. LOGAN: I beg pardon. I didn't hear your Honor's remark.

THE PRESIDENT: It is too late now. We have all read the document.

MR. LOGAN: I was going to offer defense document 1500-B-2, but I shan't.

THE PRESIDENT: That is withdrawn.

MR. LOGAN: Mr. Blakeney will now proceed with the presentation of evidence on the diplomatic sub-division of the Pacific War.

THE PRESIDENT: Major Blakeney.

MR. BLAKENEY: I now open the sub-division of the case, which, for convenience, we have nominated the Diplomatic Section.

The Tribunal having had presented to it the evidence of Japan's internal conditions, and of the course of Far Eastern history during the decade preceding the fateful year 1941, we now come to grips with what may well be called the most momentous events of modern history--the straining and final breaking of relations between Japan and the other great Pacific powers, the United States, the British Empire, and the Netherlands. We have now by seeking for the truth in connection with these events, by attempting to disclose fully why and how war came, to assist the Tribunal in

determining whether these twenty-five men in the dock have earned a stigma of guilt for bringing or conspiring to bring that war about as a war of aggression.

The Tribunal has already received evidence explanatory of some aspects of the unique and complex Japanese governmental and political system--not the least recondite point of which is, from the Occidental point of view, the interrelation between the civil and the military authority. To assist the Tribunal in understanding what is to follow and in correctly determining what men were responsible for the decisions--be they criminal or justifiable--which led to the clash of arms here under investigation, we shall offer additional evidence in clarification of the respective prerogatives and powers of the civilian government and the military high command. This evidence will show that in the Japan of those days, in operational military matters the high command--the general staffs of Army and Navy--were supreme and omnipotent, having power to decide without accountability to the government all questions of military strategy and related matters. The government had of course full authority over non-military matters, and the Army and Navy Ministers, as members of the government, had some authori-

ty over military matters, so far as those were of administrative nature; but where the two spheres impinged upon each other no action could be taken without the concurrence of the high command, which was thus enabled, on the plea of the necessities of national defence, to exert a powerful influence on affairs of state.

With this as a background we shall come to consider the long course of negotiations between Japan and the United States, acting for herself and her allies, which was designed but failed to avert the war which in the end came on 7 December 1941. The Tribunal will be reminded that relations of Japan with the United States and Britain had gradually changed for the worse since the Manchuria Incident; and that beginning at about the time of the abrogation of the Japanese-American Commercial Treaty in July 1939 the process of deterioration was much accelerated. The unabated continuance of the China Affair; the abrogation of the Commercial Treaty; the move into French Indo-China; the Tripartite Pact--these were the mileposts of the road to 1941, a year which opened with relations between the two countries at their worst of the century.

It was into this atmosphere that the new Japanese Ambassador, Admiral NOMURA, was projected

when he arrived in Washington in early 1941. The evidence will be that he arrived with instructions to work for the betterment of relations, although with no specific plan; but that soon after his arrival the President and the Secretary of State of the United States on several occasions invited him to the commencement of negotiations with a view to effectuating a general settlement of all the pending questions between the two nations. The Ambassador reported on 17 April that the American authorities had offered to commence negotiations upon the basis of a tentative draft of understanding, prepared by private individuals, Japanese and American, which they presented to serve as a starting-point.

We shall show by the evidence of Prince KONOE himself, then Premier of Japan, that upon receipt of advice of the American proposal and draft the government and the military high command gave the matter the most earnest consideration, thoroughly debating the various questions raised by the proposal, and finally agreed that such negotiations as those proposed offered the best prospect of establishing a peace not only in the Pacific but throughout the world. After study of the details, a counter-draft was accordingly made. It being presented to the United States Government on

12 May, the negotiations based on these and later proposals, between Ambassador NOMURA (later assisted by Ambassador KURUSU) and the American representatives, as well as the authorities in Tokyo, continued for over six months.

The details of these negotiations, so far as they are pertinent to the issues of this case, will be shown by evidence, which however it is unnecessary to detail here. It may be said that in general that evidence will be that the conversations in Washington soon narrowed the important differences between the parties to three: the question of equal commercial opportunity in China; the stands of the respective nations on the extent of the right of self-defence (including Japan's obligations under the Tripartite Pact); the question of the stationing of Japanese troops in and their withdrawal from China. It was on these issues--later complicated by that raised by the Japanese advance into Southern Indo-China--that the negotiations continued to the end.

The evidence will be that in the almost daily conversations held throughout May, June, and early July between Japanese and American representatives there was thorough discussion of every aspect of the questions at issue. The evidence will show that des-

pite good will and concession in some matters on each side, the parties stood by the end of September approximately on the ground which they had occupied in May. Meanwhile, however, there had occurred in Europe an event which had a far-reaching influence in Japan and in America, that of 22 June. The outbreak of the Russo-German war resulted in a decision by government and high command of Japan not to participate; but at the same time the government had to yield to the high command's insistence on moving into southern French Indo-China. This advance, which took place in accordance with the Franco-Japanese agreement of 21 July, led the United

States to discontinue the negotiations for a time, and will be shown to have been the turning-point, the point at which the United States, losing interest in the negotiations, seemed to have decided that war was but a matter of time. An immediate sequel to the Indo-China move was the American, British and Dutch freezing of Japanese assets and rupture of commercial relations with Japan; but the evidence will show that that move had been under contemplation by the United States since some weeks before.

"On 16-18 July the second KONOE ministry resigned and the third was formed. This change of government will be shown to have been directly and wholly brought about by the necessities of reaching an agreement with the United States -- the negotiations were not progressing, and it was felt that a change of foreign ministers was required to further them. The new cabinet continued with the attempt to bring about an agreement. Not only were new proposals offered, but Premier KONOE, taking up and elaborating a suggestion contained in the original draft proposal, urged that a meeting be held between him and President Roosevelt for a tete a tete from which there was every reason to expect much. To ~~this suggestion -- which the premier had been able~~

to make on some conditions proposed by the Army -- to this suggestion the American authorities at first responded with some enthusiasm, but they later imposed so many conditions for the meeting that it could never be realized.

"By August the pressure of the Army authorities upon the government for a quick settlement of the Japanese-American relations had become too powerful to be any longer resisted. The United States, it was argued, was insincere in negotiating; she had no real intention of agreeing; if Japan yielded on the points at issue then, the United States would impose further measures of oppression; and it was useless longer to negotiate, and better to go to war in defense of the nation than to yield. This position was opposed by the Government, which urged that further concessions could and should be made to preserve peace; the Navy at this time was reluctant to see the nation embarked upon a war, but entrusted the decision to the premier rather than openly opposing the Army's stand. At the Imperial Conference of 6 September the decision was arrived at that unless a settlement by diplomacy could be reached by mid-October war would be resolved upon.

"The government redoubled its efforts;

Premier KONOE urged anew the promise held out by the meeting with the President; a new proposal, embodying the maximum concession which could be agreed upon, was presented to the United States; Foreign Minister TOYADA began consultations in Tokyo with the American and British Ambassadors to insure that every possible effort should be made. Despite all, the negotiations did not prosper; the United States remained unconciliatory and adamant and, as reported by Ambassador NOMURA, seemed determined on maintaining its stand even if it meant war. The Army renewed its insistence that diplomacy, having little prospect of success, must give place to arms; the opposing points of view could not be reconciled; and on 16 October the third KONOE government, like its predecessor, fell, a victim of the Japanese-American question.

"The emergency of the successor cabinet, that of General TOJO, was widely regarded as evidence of the victory of extremist opinion in Japan. That, on the contrary, the new premier was charged to and did immediately upon taking office undertake reexamination of the whole question of Japanese-American relations, 'wiping the slate clean' of the Imperial Conference decision of 6 September which had estab-

lished the limit beyond which Japan could not go by way of concession toward America, will be shown by the evidence to be adduced. The highest officials of government and high command plunged at once into a round of Liaison Conferences at which the whole subject was minutely restudied with a view of finding the utmost concessions which could be offered. It having been understood from Ambassador NOMURA'S reports that a basis for agreement concerning the other two large questions had been obtained, the Liaison Conference devoted the most of its consideration to the problem of withdrawal of troops from China, the Army's intransigence in connection with which had caused the fall of the KONOE government and had brought the negotiations in Washington to a stalemate.

"During this period the position of the Army high command remained that which it had been before: that there was but a faint prospect of successful conclusion of the negotiations, and that Japan would therefore eventually have to go to war. But while negotiations dragged out interminably, so it was argued, Japan was being subjected to gradual exhaustion of resources as the economic warfare of the allied powers began to take full effect; the nation was

losing its power to fight; and hostilities should therefore be commenced while Japanese fighting power was still relatively strong as compared with that of the potential enemy. The viewpoint of the Naval General Staff had come to be that if war was to be inevitable, it should be determined upon promptly. But the result was that agreement of the high command was secured to offer further concessions and to continue diplomatic efforts; but with the provisos that precautionary military preparations should go on simultaneously, and that if diplomacy failed to achieve results, a resolution for war should be taken.

"The evidence will be that at the Liaison Conference of 1-2 November agreement was reached upon the presentation to the United States, in obedience to the policy so established, of two alternative proposals: one in general form, embodying such points of understanding as had theretofore been reached, together with the new concessions: the other in form of a modus vivendi, to be offered, in the event of American unreceptiveness to the general proposal, as a means of relaxing the tension to create a favorable atmosphere for continuance of negotiations. These proposals were approved at an Imperial Conference on 5 November, and Ambassador NOMURA was immed-

iately instr cted to commence negotiations on that basis. Ambassador KURUSU was dispatched at the same time, in accordance with a long-standing request of Ambassador NOMURA, to assist.

"The first of these proposals -- "Proposal 'A'", as it was designated -- was duly presented to Secretary Hull and the President. At first, the evidence will show, prospects from it seemed good; but gradually the United States seemed to lose interest; it made light of the concessions agreed to with great travail by Japan, it questioned the sincerity of Japan. There seeming to be no prospect of success in that direction, the Liaison Conference authorized the presentation of the modus vivendi, Proposal "B". It was handed over on 20 November. Both before and after that date, the evidence will show, a variety of efforts had been made by the Japanese representatives to meet the American position on the points at issue. Meanwhile, under the limitations of the decision previously taken, and in face of the obviously mounting threat to the national existence, time was running out.

"Receipt from the United States of the memorandum of 26 November will be shown virtually to have extinguished hope of preserving peace. All

participants in the Liaison Conference were in agreement at last, that unless the United States could be persuaded to reconsider, Japan must resort to war in self-defense. Military preparations had, of course, been proceeding in accordance with the 5 November decision; but those preparations had been subject to countermand at any time that an agreement might be reached, and that even after the actual decision for war was taken at the Imperial Conference of 1 December.

"Liaison Conferences following the decision upon war considered and settled the manner of giving notice before commencement of hostilities and the content of that notification. Evidence will be tendered of the decision that before the opening of hostilities the United States should be notified, and that a note breaking off the current negotiations should be sent. Preparations were made accordingly and the final note was ordered delivered in Washington at 1 P.M. of 7 December. The note was dispatched to Washington and was there received in good time, but owing to delays there in the mechanical processes incident to its preparation, delivery was delayed until more than an hour after the appointed time, and consequently until after the attack on Pearl Harbor and other points in the Pacific. All concern-

ed in the government and the Liaison Conference intended, when the matter of notice was decided, that notification should precede any attacks.

"Evidence will be introduced to show that the delay in delivery of the President's message of 6 December to the Emperor was without the knowledge or authorization of the Foreign Ministry or the cabinet, but that, on the contrary, the Foreign Ministry made every effort to expedite its delivery,

"The evidence will show that the members of the Liaison Conference charged with responsibility for decision of the question of war or peace considered the final note dispatched to the United States to be in the circumstances then prevailing tantamount to a declaration of war, and a substantial compliance with the convention governing commencement of hostilities. That the responsible authorities of the United States concurred in that opinion; that the United States was amply warned of the coming of war, and in fact had anticipated that the delivery of the note of November 26 would result in rupture of the negotiations and of peaceful relations; and, lastly, that the highest military authorities of the United States expected the war at the hour that it came, will be shown by an abundance of evidence."

The first matter to be made the subject of evidence in the diplomatic subdivision of the case is the division of power between the military high command and the government, and their interrelation. In this connection I wish first to refer the Tribunal to the testimony of the witness FUJITA Tsuguo, relative to these matters. The attention of the Tribunal is directed especially to pages 17,548 - 17,555 on the responsibilities of government and high command, and to pages 17,555 - 17,560 in explanation of the character and function of the Liaison Conference and the Imperial Conference.

Further on this matter, I offer in evidence defense document 626-A-9, being excerpts from the interrogation of TOJO Hideki, which interrogation has heretofore been introduced in evidence and made an exhibit or exhibits for identification.

Knarp & Yelden

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: If the Tribunal please, I think it is proper to point out at this time that the prosecution will contend that excerpts introduced, excerpts from interrogations of accused introduced by the accused, are to be taken as evidence against all of the accused.

THE PRESIDENT: I understood we decided differently. Perhaps I misapprehend you, Mr. Tavenner. I thought we had decided that an accused's statements would be evidence against himself only. Here is an attempt to make use of an accused's statements on behalf of all the accused. Whether that makes any difference, I cannot say. For the time being I do not think it does. You may convince us that it does.

MR. TAVENNER: I was addressing my attention, if your Honor please, to the last point that you raised. What I had to say did not apply to interrogations introduced by the prosecution but we contend that when the defense introduce in a general phase an interrogation or a part of an interrogation of an accused in behalf of all the accused they must be charged with anything in it that is adverse to them. We contend that they cannot accept the sweet and reject the bitter. When they introduce an excerpt in evidence they are

doing it voluntarily and they should--

THE PRESIDENT: It is not a case of just tendering the sweet and rejecting the bitter. You did that in the prosecution. They are tendering the sweet and the bitter, I take it, but they say the bitter does not apply to the other accused.

MR. TAVENNER: That, we submit, is identically the same thing as rejecting the bitter.

MR. BLAKENEY: I might suggest that the question raised by Mr. Tavenner can in this instance be disposed of on two much narrower grounds.

THE PRESIDENT: I should remind you you are not bound by any technical rules of evidence but we have applied them. We do not get away from them without due consideration. The interests of justice require us to adhere to them sometimes.

MR. BLAKENEY: One of the grounds which I referred to might be characterized as a technical rule of evidence; the other is one of those rules heretofore acted upon by the Tribunal in substitution for technical rules of evidence. To deal with the latter point first, it is that the excerpts here being tendered from the interrogation of General TOJO relate to the same subject matter as that of excerpts heretofore tendered by the prosecution, and I refer to

exhibits 1243 to be found at page 10,705 of the record and 1979 to be found at page 14,553 of the record and especially to the discussion of the relations of the government and the high command to be found on pages 10,482-504.

As for the other ground upon which this document must be received as it is offered, I call attention to the fact that the defendant TOJO is charged in the Indictment with acts alleged to have been committed at one time in his capacities of Premier and War Minister, a member of the government, and at other times in his capacity as Chief of the Army General Staff, a member of the high command. Therefore if we wish to adopt a so-called technical rule of evidence we can say that any statement by this defendant relative to the responsibilities of government or of high command is an admission against interest. Therefore the excerpts presently being tendered must, it is submitted, be received by the Tribunal for exactly what they purport to be: evidence favorable in varying degree to all defendants but unconnected with the remainder of the document which is not tendered by the defendants.

THE PRESIDENT: If I recollect rightly, the prosecution invited us not to take statements made by

one accused against another as evidence against that other and I do not recollect that they made that on any condition. We are all agreed, of course, if any of the accused goes into the box then, of course, everything he says is evidence against all those who put him there -- who are responsible for calling him -- and this evidence is being offered on behalf of all undoubtedly. We realize that.

Do you invite us to accept evidence which may operate to the prejudice of other accused, Major Blakeney? Are you going to put before us statements of the accused TOJO which may be prejudicial to other accused?

MR. BLAKENEY: When I stand here speaking for all the defendants, of course, I shall not deliberately do anything of that nature.

THE PRESIDENT: The position is not the same as if the accused TOJO went into the box where he would be subject to cross-examination and where matters prejudicial to other accused might be brought out in cross-examination.

MR. TAVENNER: If it please the Tribunal, I am contending for a very simple proposition and that is that when a document is presented here by counsel for the defense in behalf of the defense that the

prosecution be entitled to receive the benefit of all inferences or any contradictory statements that may be contained in it, with reference to the subject matter presented.

THE PRESIDENT: That suggests to me that the question is premature. The only question now is what evidence is admissible and what is not. The extent to which it can be used is a matter to be dealt with in summation. Individual defense counsel may arise, of course, and say "That is not evidence against my client." We will have to hear him.

I say the point is prematurely raised by the prosecution, but I do concede that individual defense counsel can arise in his place and claim that the evidence is not admissible against his client, but I recollect that Major Blakeney is claiming to put this on behalf of all the accused.

MR. TAVENNER: If it please the Tribunal, I have not objected to the introduction of the document. I only considered it to be a fair matter to all concerned that we make known now what our contention would be with regard to this evidence. If it is considered premature, I will have nothing more to say about it.

MR. BLAKENEY: Since the statement of the prosecution is limited to interrogations of defendants, I will withdraw the tender and reoffer the document on behalf of defendant TOGO.

THE PRESIDENT: We cannot allow you to do that, Major Blakeney. This is the general phase and as I said yesterday you are now proving matters in relation to all the accused.

MR. BLAKENEY: All the accused concerned with the subject matter in question.

THE PRESIDENT: They are all charged as being parties to one huge conspiracy.

MR. BLAKENEY: On the basis that your Honor suggested, I will permit the tender to stand, it being understood that any defense counsel who wish to take objection may do so.

THE PRESIDENT: This is a new situation for which you are not prepared. The implications cannot be clear to you. You ought to consider it further.

MR. BROOKS: If your Honor please, I would like to say that I have not had a chance to study this document, and I would not want my accused bound by it until I at least have a chance to reserve that right, because I thought the other ruling to

be in effect. I think over the noon recess--there are a number of other attorneys who are not here who might want to consider this--and I think it would be wise for us to have a meeting on it.

THE PRESIDENT: Members of the Tribunal regard this as a very serious if not a very difficult matter. We have debated this particular matter at considerable length; not this particular phase of it, but the matter generally. We will expect considered argument before we decide.

We will adjourn until half-past one.

(Whereupon, at 1200 a recess was taken.)

Spratt & Duda

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

THE PRESIDENT: Mr. Blakeney.

MR. BLAKENEY: In connection with the question raised by the prosecution before the recess, there seems to be a considerable difference of opinion among defense counsel, particularly in view of the fact that any ruling now made on this question would be presumed to have a retroactive effect in connection with much evidence already received. It is therefore felt that full consideration should be given to preparation of an argument on the question, which we are not prepared to make at this time. I shall therefore request leave of the Tribunal to withdraw the tender of this document for the time being.

THE PRESIDENT: We give you leave to withdraw the document.

MR. BLAKENEY: Another document on this point touches upon the influence on the Japanese-American negotiations themselves of the independence of the military high command: an excerpt from the memoirs of Prince KONOYE as published in the record of the proceedings of the Joint Committee of the Congress of the United States on the investigation of the Pearl Harbor attack. I tender for identification Volume 20

of the proceedings, and offer in evidence the excerpt therefrom, defense document 1500-V-5.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1500-V-5 will receive exhibit No. 2865.

(Whereupon, the document above referred to was marked defense exhibit No. 2865 and received in evidence.)

MR. BLAKENEY: I read the excerpts:

"The Independence of the Supreme Command and State Affairs from Each Other.

"The Anguish of Cabinets from Generation to Generation.

"The fact that the Supreme Command and State Affairs are independent of each other has been a matter of anguish for cabinets from generation to generation.

"During the present Japanese-American negotiations, too, the government on the one hand was conducting these negotiations with all its powers, but the military was vigorously making preparations in case the negotiations should be broken off: Moreover, as to what those preparations were, we did not know at all, and it was not possible to have them go along step by step with diplomacy. Since the military vigorously went about moving ships, mobilizing troops,

etc., and these things were discovered by the United States, the United States would question the sincerity of our diplomacy, so that we were frequently embarrassed because the relationship between diplomacy and military matters was not smooth.

. . . . . .

"But the Japanese constitution is built on a framework of direct rule by the Emperor, and is fundamentally different from the English constitution. Especially in reference to the problem of the authority of the Supreme Command the government has no power at all of raising its voice, and the only person who may restrain both the government and the Supreme Command is the Emperor.

. . . . . .

"Recently Premier TOJO spoke to the Lord Keeper of the Privy Seal, KIDO, and sympathetically that, now that he had become Premier, he understood for the first time how difficult it was for the previous Premiers to do things, and that he himself would to the very end proceed with a duplication of posts; to this I understand the Lord Keeper of the Privy Seal, KIDO, replied that that was not the first time that someone had said this, that it had been exactly the same from the time of the first KONOYE Cabinet,

and that, late though it may be, to have the Army realize this point was fine."

Coming now to the subject matter of the Japanese-American negotiations themselves, I first refer the Tribunal to exhibits 1008, record page 9,643, instructions sent by Foreign Minister MATSUOKA to Ambassador NOMURA, on 22 January 1941, and 1009, instructions of 7 February, record page 9,648, that the Ambassador work for understanding between Japan and the United States.

I next offer in evidence another excerpt from the KONOYE memoirs, being a narrative of the early part of the negotiations as seen by the Premier of Japan at the time, defense document 1500-Z-5.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1500-Z-5 will receive exhibit No. 2866.

(Whereupon, the document above referred to was marked defense exhibit No. 2866 and received in evidence.)

THE PRESIDENT: Volume 20 was already marked for identification as exhibit No. 2850. We will leave it at that.

MR. BLAKENEY: At this time I read the first two paragraphs of page 2, showing how the negotiations

had their inception.

"Beginning in December 1940, conversations for the readjustment of Japanese relations were conducted secretly between Bishop Walsh, President, and Mr. Draft, Administrative Secretary of Maryknoll (a high institution of American Catholicism), on the one hand, and Colonel IWAKURO of the Military Affairs Bureau of the Army Ministry and Mr. Tadao IKAWA on the other."

THE PRESIDENT: You are reading from page 1, paragraph 1?

MR. BLAKENEY: Yes, sir, the first two paragraphs.

"By April 1941, the time had become ripe for the governments of the two countries to conduct the conversations themselves. It should be remembered that because of the personal connections of the participants in the conversations from the first, private contact was maintained between President Roosevelt himself and Mr. Hull on the American side, and between Ambassador NOMURA and the Japanese Military and Naval Attaches in Washington on the Japanese side. Thus, both the President and the Japanese Ambassador were kept informed of what was going on."

I read only that far at this time.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: If the Tribunal please, I think I should call to your attention that on page 5, where the asterisks appear near the bottom of the page just prior to the page reference of 3997, there is an omitted paragraph which we think is material to be read. It is only five lines in length and I would like to have permission to read it and get through with it.

THE PRESIDENT: We did not allow the defense to wedge their case in the prosecution's in this way. If the defense object, you may have to wait until rebuttal.

MR. TAVENNER: I understand it is only a request that I am making, but I would also like to point out that I have just been informed that Rule 6-b(1) had not been complied with for a longer period than two days in connection with this document.

THE PRESIDENT: I think all Members of the Tribunal would like to know what the five lines are now.

MR. TAVENNER: (Reading) "It was thought necessary to define these three points clearly for the sake of the future. In other respects the American proposal was all right. However, even in the eventuality of a breakdown in negotiations, matters should be prolonged until after the entrance of Japanese troops into

French Indo-China."

MR. BLAKENEY: Of course, I should like to object to this type of procedure, particularly as I note that counsel seems to have a long list of excerpts which he proposes to insert in this way.

And I wish to call attention to the fact that counsel is reading from no document which is in evidence. If he were reading part of my document, I should have no objection, but we do not know what he is reading from and there is no evidence to support his statement except that he says that is part of the document.

THE PRESIDENT: We thought that you agreed to his reading what he did read. We merely expressed a wish that it might be done and that was received in silence as Mr. Tavenner proceeded to read. We were under a misapprehension.

MR. BLAKENEY: I expressed neither agreement nor dissent because I understood the Tribunal to be directing the reading of that portion.

THE PRESIDENT: I gave no direction. The transcript will show it.

MR. BLAKENEY: I always assume the statement of the Tribunal's desire to be equivalent to the Tribunal's ruling.

MR. TAVENNER: In view of the objection, we

will wait until rebuttal to read the other excerpts, if the Tribunal please.

MR. BLAKENEY: Ambassador NOMURA presented his credentials to President Roosevelt on 14 February 1941, as is shown by exhibit 1043, record page 9,798. I wish to call especial attention of the Tribunal to the suggestion of the President that the Ambassador meet with the Secretary of State to review relations between the two countries with a view to their improvement.

Exhibit 1056, record page 9,843, is an excerpt from a record of a conversation of 8 March between Secretary of State Hull and Ambassador NOMURA. At this point I offer in evidence a further excerpt from the same record, defense document 1400-A-6.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document No. 1400-A-6 will receive exhibit No. 2867.

(Whereupon, the document above referred to was marked defense exhibit No. 2867 and received in evidence.)

MR. BLAKENEY: I read the excerpt for the purpose of showing that the Secretary urged the Ambassador to enter into conversations for adjustment of relations.

"Washington, March 8, 1941.

"The Japanese Ambassador called at my apartment at the Carlton Hotel by an indirect arrangement based on the equal and joint initiative of himself and myself growing out of his talk with the President in my presence some days ago.

. . . . .

"I said that I came from the President who sent his regards and said that he would be only too glad at any time to talk further with the Ambassador just as two old friends would talk, and do so officially and unofficially, or individually at times, if desired by either. I pointed out that such a meeting could be arranged unobtrusively and without publicity, and in a manner permitting the initiative to be shared on a 50-50 basis between him and the President. The Ambassador said he might call on the President the next time; that he would hope to continue these conversations. On two or three occasions I inquired of him whether it was still agreeable to pursue the President's suggestion of talking over and discussing the past relations between our two governments and the questions that have arisen which call for settlement by mutual agreement. He indicated his favorable disposition in regard to the matter, but not in any

specific way as to time or as to officials with whom he might talk.

"I referred on one or two occasions to the statement reported to have been made to Mr. Churchill by the Japanese Ambassador in London some days ago to the effect that his government would not attack Singapore or the Netherlands East Indies, and inquired pointblank what the Ambassador's idea as to this was. In reply to the first inquiry, he was not exceedingly strong in his statement but he did make it fairly definite that he did not believe there would be an attack but added, as heretofore indicated, that if our American embargoes continued to press his government and the military group in control, they may feel forced to proceed further in a naval or military way."

On the 14th of March, the Ambassador again called on the President and held a conversation of which part appears as exhibit 1057. I offer, to show further pressure by the American authorities for Japan to "take the initiative," an additional excerpt from the memorandum of that conversation, defense document 1400-B-6.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1400-B-6 will receive exhibit No. 2868.

(Whereupon, the document above referred to was marked defense exhibit No. 2868 and received in evidance."

MR. BLAKENEY: I read exhibit 2868.

"Washington, March 14, 1941.

"The Ambassador of Japan called at the White House at his request. The President and I were present at the meeting.

. . . . . .

"The President then...stressed the close ties existing between Thailand and Japan, adding that the former was more closely related to Japan in many ways than the Argentine was related to the United States. The President said that the suggestion had been made now and then that the United States take over the West Indies, but that the attitude of this government unreservedly has been to see each country preserve its sovereignty, its territorial integrity and equality of opportunity, and that all the nations of the world can on the same basis come and trade with the nations of this hemisphere. The Ambassador admitted that we had been treating Central and South America extremely well, and that we had developed greatly the good neighbor relationships.

. . . . . .

"The Ambassador said that Japan had no idea of controlling China . . . The Ambassador joined with the President a number of times in expressing the view that differences between the countries could and should be worked out. The Ambassador did not, however, respond to requests for any additional methods of approach beyond the Chinese-Japanese question. He did not say so, but I inferred that he would probably be returning in due time for another conference. I made it clear that Japan, having departed from the course that both countries have been pursuing, the initiative and the responsibility are hers to suggest what, how and when, she is willing, as a preliminary step, to undertake serious discussions, and that above all she must make it clear by words and acts of her serious intentions in this direction."

The private individuals mentioned earlier had meanwhile continued their work toward an understanding, and on 8 or 9 April presented to the State Department a draft of an understanding to serve as a basis of negotiation. This draft has been introduced into evidence as exhibit 1059, record page 9851. As a sequel to its appearance, Secretary Hull asked Ambassador NOMURA to call and again suggested that negotiations commence, as is shown by an excerpt from the record of

the conversation, defense document 1400-C-6, which I offer in evidence.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1400-C-6 will receive exhibit No. 2869.

(Whereupon, the document above referred to was marked defense exhibit No. 2869 and received in evidence.)

MR. BLAKENEY: Before I read the exhibit, it may be added for completeness that other parts of this conversation of the 14th of April have been introduced into evidence as exhibit 1060, record page 9863.

(Reading): "Washington, April 14, 1941.

"The Ambassador of Japan called at my apartment at the Wardman Park Hotel at my request.

"Near the close of the conversation I suggested that, having cleared up these preliminary phases for which I sent for him, we could, if desired on his part, proceed at any time with certain preliminary discussions with a view to ascertaining whether there is a basis for negotiations; that for the purpose of this preliminary discussion there would really be no occasion for either side to present officially any completed documents. The Ambassador raised some question as to why such documents might not be

presented in the next conversation, and I replied that there were certain points that my government would desire to raise prior to negotiations, such as questions pertaining to the integrity and sovereignty of China, to the principle of equality of opportunity in China, et cetera; that he could then communicate with his government and ascertain whether it agrees that there is a basis for negotiations. The Ambassador readily agreed to this view. He emphasized that he had not yet presented this document to his government or consulted it concerning concrete terms of settlement, but stated that, in his opinion, his government would be favorably disposed along such lines as might be made the basis of an agreement.

"I said, in conclusion, that I would communicate with the Ambassador later today with a view of agreeing on a time and place for the next conference, adding that it could be at my office or at the White House or in my apartment, although the President was planning on leaving for Warm Springs within a day or two. The Ambassador referred to the interruptions of the press and suggested that he come to my apartment, which he would be ready to do any day from this day on, and he again emphasized the urgency of the situation, saying

events were moving rapidly and that my country is likewise moving rapidly with the result that clashes would become more easily possible from week to week."

As is shown by exhibit 1061, record page 9866, there was a further meeting between Secretary Hull and Ambassador NOMURA on 16 April, at which time, according to the Ambassador's report, the Secretary offered to commence negotiations on the basis of the draft plan. I offer in evidence defense document 1401-A-1, the Ambassador's telegram of 17 April making report to Premier KONOYE.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1400-A-1 will receive exhibit No. 2870.

(Whereupon, the document above referred to was marked defense exhibit No. 2870 and received in evidence.)

MR. BLAKENEY: I read the telegram.

"From NOMURA to KONOYE. 17 April 1941.

"I had a talk with the Secretary of State today, at his private residence. He offered to commence the negotiations with a draft which will be conveyed separately in my telegram No. 234. (Tentatively it will be called Draft Understanding. As to this draft, we had been sounding out the

intention of the American Government privately until we could ascertain that Secretary Hull had no objection to it in general. Thereupon, the plan has been framed after complicated negotiations, in which I partook in private.) And it was his request that I should obtain instructions of the Japanese Government in this connection, lest the agreement reached between the Secretary of State and myself should be disavowed by the Tokyo Government, in which case the American Government would be put in a very awkward position.

"We have made a careful study of the matter with the members of the Embassy staff, military and naval attaches, Colonel IWAKURO, et al. We have also given full consideration to the state of affairs at home and abroad, and have, working as one, exerted efforts to make the present understanding advantageous for us. But, of course, it does not cover all aspects of Japanese-American relations. With respect to the contents of the items, also, it is feared that they have defects. Nevertheless, it is our belief that, if an understanding to such an effect be reached on this occasion,

"(1) it will not be contradictory to the spirit of the Imperial Rescript given on the occasion

of the conclusion of the Tripartite Alliance, and it is presumed that the conclusion of the understanding will even conform to the Imperial wishes;

"(2) it will not betray the faith of the Tripartite Alliance;

"(3) it will be the first step toward maintenance of the peace of the Pacific, which is the fundamental policy of the Japanese Government; and

"(4) it will further serve as the groundwork for Japanese-American cooperation in rebuilding the peace of Europe.

"In this connection, I earnestly request your instruction allowing me to proceed with the negotiations according to this plan, leaving all the defects thereof to be remedied at the proposed conference."

Ambassador NOMURA at the same time sent to Premier KONOYE an explanation of the draft proposal, which I offer in evidence as defense document 1401-B-1.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1400-B-1 will receive exhibit No. 2871.

(Whereupon, the document above referred to was marked defense exhibit No. 2871 and received in evidence.)

Lefler & Wolf

MR. BLAKENEY: In reading this telegram I wish to call special attention to the fact, among others, that the American Ambassador's report emphasizes the part played in preparation of the draft plan by American authorities.

"From NOMURA to KONOE

"18 April 1941

"In reference to the latter part of No. 235

"The following is the explanation of the Draft Understanding section by section.

"(1) The concepts of the United States and of Japan respecting international relations and the character of nations.

"As the Americans fear the totalitarianization of Japan, and consider it impossible to carry on talks between Japan and the United States if Japan is totalitarianized, this section is designed to clarify that the Japanese idea is not totalitarianism nor Communism nor Democracy, but is based upon the traditional concept of the nation held for three thousand years, and is not to be dominated by foreign ideas contrary to that tradition. This section is inserted by reason of the strong request at the desire of the highest American authority that it be done. Secretary Hull also has emphasized this point to me. Considering it

a good opportunity to proclaim our national character, I have agreed to retaining this section after making some revisions.

"(2) The attitude of both Governments toward the European war.

"This section is one to which we have paid the utmost care, in connection with the Tripartite Pact. The purposes of this section are:

"(a) to make it clear that our obligations under the Tripartite Pact shall be in no way affected by the present understanding;

"(b) to restrain the United States to the utmost from entering into the European war, and to make full use of the spirit of Article 3 of the Tripartite Pact; and at the same time

"(c) to avoid a rupture of relations between Japan and the United States and to achieve the objectives of the Tripartite Pact.

"(3) The attitudes of both Governments toward the China Affair.

"The United States at first was considering the settlement of the China Affair through the arbitration, or mediation, of the American President, and seemed on the other hand to disapprove entirely of the Wang Government. I have had it explained fully to

them that such a proposal would have no chance of acceptance by Japan, and have got them to agree -- with a view to preventing the United States from intervening in the settlement of the China Affair -- that the United States will only offer its good offices for peace between Japan and China, that the negotiations will be conducted directly between Japan and China, and that the other party to the negotiations will not be Chungking. Hence the present proposal.

"As to the essential conditions of the peace, I have got them to recognize the so-called Three KONOE Principles -- namely, neighborly friendship, joint defense against Communistic activities, and economic cooperation. With respect to the withdrawal of troops, it is made clear that the withdrawal will be carried out in accordance with an agreement to be concluded between Japan and China, so that there will be no conflict with the Treaty of Basic Relations between Japan and China and the documents attached thereto. In connection with the Open Door, the interpretation and application of the Open-Door Principle have been left to future consultation, and no stipulation is inserted -- though it had at first been intended to insert one -- concerning our special position in North China and Mongolia, in view of the delicate question

of Hainan Island. The clause concerning immigration is inserted at the American desire, and from the consideration that practically it will do no harm to us. It is clear that Manchoukuo is not included within the territory of China, from the fact that recognition of Manchoukuo is made one of the conditions.

"It is our opinion that the foregoing conditions proposed by and guaranteed to the United States are not in conflict with the Three KONOE Principles, the Treaty of Basic Relations between Japan and China, nor the Japan-China-Manchoukuo Joint Declaration promulgated last year.

"It is said that although the United States has the intention of ceasing aid to the Chiang regime in case it does not accept the recommendation of the President of the United States, there are objections to putting it in writing at this stage.

"(4) Naval, aerial and mercantile marine relations in the Pacific

"(a) At first, the United States appeared to have the intention of agreeing to mutual assistance by the Japanese and American navies for the maintenance of peace in the Pacific; but this was altered to the present formula from the consideration that such an agreement of mutual assistance would make Germany and

Italy our hypothetical enemies, and would also give birth to the misunderstanding that it was a military alliance between Japan and America.

"(b) As to the merchant-marine question, the clause is inserted from the consideration that it is quite natural, in view of her present shortage of bottoms, that America should make such a request, and that it is advisable for Japan to comply with it with a view to the future development of our marine activities. As, however, we ourselves are suffering from a shortage of shipping, the time is specified to be after the settlement of the China Affair has been put under way. It is sought thereby to expedite the American recommendation for peace between Japan and China.

"(5) Commerce between both nations and their financial cooperation.

"The gold credit provided by this section is intended to utilize the excess of gold stored by the United States for payment for goods necessary for Japan in the development of the homeland and East Asia.

"(6) Economic activity of both nations in the Southwest Pacific area.

"There being danger that the advance of Japan by force to the South would lead to war between Japan and the United States, Japan guarantees that her

development toward the South will be made not by armed force but by peaceful means, and the United States in response makes it clear that she will support the economic advance of Japan in that area. That the advance of Japan toward the South will not be carried on by force is not limited to this section, but is the foundation of the whole of the present understanding.

"(7) The policies of both nations affecting political stabilization in the Pacific.

"European powers will be restricted by this clause, but Japan will not be. As to immigration to the United States, Secretary Hull told me that this question involved problems concerning the states, causing domestic difficulties. Not much, therefore, can be expected.

"As to the stipulations concerning the Japanese-American conference, the United States maintained that it was necessary as a domestic gesture, and we consider that there is no special objection to it. This is nothing more than statement of the principle of the conference; there may be defects in the procedure, but they may properly be cured in the talks to be held hereafter.

"I had opinions exchanged on the questions of

the New Order in East Asia, the recognition of Japan's leadership in the Greater East Asia Co-prosperity Sphere, etc., in addition to the points included in the understanding mentioned above; but as it was felt that they would complicate the negotiations, I dropped these problems, making it our primary objective to obtain practical results."

THE PRESIDENT: Mr. Comyns Carr.

MR. COMYNS CARR: If it please the Tribunal, it will be of assistance in understanding my friend's presentation if he will tell us what is the document on which Ambassador NOMURA is supposed to be commenting in this telegram.

MR. BLAKENEY: As I stated in offering the document, it was his comment on the draft plan which appears in evidence as exhibit 1059.

MR. COMYNS CARR: That is, as I understand it then, the draft plan prepared by private individuals and not by the United States Government at all.

MR. BLAKENEY: My understanding is that it is the draft plan prepared by private individuals, and, as reported by Ambassador NOMURA, presented to him as a basis for negotiations by the United States Government, as is shown in exhibit 2870 read just a moment ago.

MR. COMYNS CARR: That was not so stated by

Mr. Ballantine, nor was any such suggestion, as far as I am aware, put to him in cross-examination.

MR. BLAKENEY: I appreciate that the testimony of the witness for the prosecution was different, but I do seem to remember cross-examining Mr. Ballantine on that point for something like half an hour, and I may as well state for counsel's information and the Tribunal's that, as was indicated by the cross-examination of Mr. Ballantine, we propose and intend to contradict him on a number of points in this matter.

MR. COMYNS CARR: May I point out to the Tribunal the defense can't contradict Mr. Ballantine merely putting in a telegram from Admiral NOMURA without calling Admiral NOMURA to swear to the truth of it.

MR. BLAKENEY: That might, of course, be a questionable point in view of the fact that these are official records sent in the course of official duty. But, however that may be, the official reports sent by the Japanese Ambassador in Washington are certainly admissible as the information and understanding upon which these defendants were moved to act.

If Ambassador NOMURA's reports were a complete tissue of falschood, nevertheless, in the absence of evidence that these defendants knew them to be so, certainly they would constitute justification for these

defendants' actions.

THE PRESIDENT: That is your submission.

MR. BLAKENEY: That is my submission.

I return now to the Memoirs of Prince KONOYE and read further passages from exhibit 2866 as explanation of the action taken in Japan upon Ambassador NOMURA's report of the proposed negotiations. From Exhibit 2866 I read from page 1, commencing with the fourth paragraph:

"Ambassador NOMURA's dispatch containing these important representations by Mr. Hull and the contents of the Plan (tentatively called the Proposal for Japanese-American Understanding), which was to provide the basis for the conversations, was received at the Tokyo Foreign Office between the afternoon of April 17th and the morning of the 18th. Since Foreign Minister Yosuke MATSUOKA was then in Siberia on his way home from his visit to Europe, Mr. OHASHI, Vice-Minister of Foreign Affairs, at 11 A.M. on the 18th, brought the first section of the dispatch to me while I was in a Cabinet conference. At 4:30 P.M. on the same day, after waiting for the cable to be decoded, he called on me at my official residence, accompanied by Mr. TERASAKI, Chief of the American Bureau.

"This Proposal for Understanding was to announce, in the form of a joint declaration, an agreement between the two Governments on several fundamental items necessary for breaking the deadlock between the two countries. Detailed agreements were to be arranged by a Japanese-American conference to follow the joint declaration.

"In view of the importance of the matter, I summoned a joint conference of high government and military leaders for 8 o'clock that very night.

"The Government was represented by the Premier, the Home Minister, the War and Navy Ministers and also by Mr. OHASHI, Vice-Minister of Foreign Affairs. The Chiefs of the Army and Naval General Staffs represented the Supreme Command. Also present were the Directors of the Military Affairs Bureaus of the War and Navy Ministries, and the Chief Cabinet Secretary. The concensus of opinion regarding the American proposal was as follows:

"1. Acceptance of the American proposal would be the speediest way toward disposal of the China Incident. That is to say, no effective results had been obtained by the setting-up of the Wang Regime, direct negotiations with Chungking were becoming more difficult, and Chungking was entirely

dependent upon America; consequently negotiations with Chungking were possible only through the good offices of America. In view of these facts it was quite clear that acceptance of the American proposal would be the speediest way toward disposal of the China Incident.

"2. To accede to this proposal and to plan for a rapprochement between the two countries would not only provide the best means of avoiding a Japanese-American war, but would also be a prerequisite to preventing the European war from assuming the magnitude of a world war and to the creation of world peace.

"3. The considerable depletion of Japan's national strength made it desirable to restore and cultivate that strength by disposing of the China Incident as quickly as possible. For the success of Japan's southward advance which was being advocated in certain quarters, the supreme command itself confessed to having neither the confidence of success nor the necessary preparation. The cultivation of national strength, moreover, necessitated the temporary restoration of amicable relations with America and planning for the replenishment of the supply of vital commodities for the future.

"Thus, the participants were in favor of accepting the American proposal. However, the following items were brought forth as conditions of acceptance:

"1. It should be made clear that there would be no infringement of the Tripartite Pact. This was considered axiomatic in view of Japan's keeping faith with Germany.

"2. It should be made more clear that the object of Japanese-American cooperation was the promotion of world peace. If the understanding between the two countries were to relieve America of her commitments in the Pacific and thus afford her an opportunity for increasing her support of Britain, Japan would be breaking faith with Germany, which would be improper, and it would constitute a lowering of the tone of the whole concept of the proposal.

"3. The contents of the proposal were too complex.

"4. Since the text gives the impression of a return to the old world order, clearer expression should be given to the constructive side of the proposal, namely, the idea of building a New Order.

"5. Speedy action was necessary to avoid the probably leakage of intelligence. For this reason

the return of the Foreign Minister to Japan must be urged.

"After the joint conference on the 18th, the Army, Navy and Foreign Office immediately started examination of the proposal. In the meantime, TERASAKI, Chief of the American Bureau of the Foreign Office, wished to cable instructions to Ambassador NOMURA to transmit to America Japan's 'acceptance in principle' of the proposal. Vice-Minister of Foreign Affairs OHASHI, although in favor of the idea, vetoed it; he insisted that the answer be dispatched after the Foreign Minister's return. Foreign Minister MATSUOKA finally reach Dairen on the 20th, and I got in touch with him by telephone. It was learned later that the Foreign Minister then said to persons close to him, 'The American proposal has probably come as the fruit of what I said in Moscow to Mr. Steinhart, the American Ambassador to Soviet Russia.' In fact, the Foreign Minister, on his way both to and from Europe, had held conversations in Moscow with Mr. Steinhart, an old acquaintance, asking him to urge President Roosevelt, if the latter was really fond of gambling, to have faith in Japan and to lend a helping hand for the sake of Sino-Japanese peace. MATSUOKA had reported this to me by cable under the date of

April 8th, and apparently had been secretly expecting his move to bear fruit.

"Because of adverse weather, the Foreign Minister was delayed a day, returning to Tokyo on April 22nd. Since a joint conference had been scheduled for the very evening of his arrival, the examination of the American proposal, by the Army, Navy, and Foreign Ministries, had been roughly completed on the 21st. In addition, the Army and Navy held a joint conference that same day at the Navy Club, the respective Ministers and Heads of Departments, Bureaus and Sections participating, and presented a memorandum to me which stated that 'Japan must turn the American scheme to good advantage and by embracing the principles embodied in the proposal, attain the objectives of the China Incident, restore the national strength, and thereby attain a powerful voice in the establishment of world peace.'

"There was no denying, however, that despite his outward demeanor, the Foreign Minister was giving concentrated thought to the handling of the problems then pending between America and Japan. It was learned later that on his sick-bed MATSUOKA had been closely examining both the text of the American proposal and the revision of the same which had been

drawn up by the appropriate authorities of the Army, Navy, and Foreign Ministries. In addition, he was also thoroughly revising the latter. A third joint conference was finally held on May 3rd.

"Those participating in the conference approved, on the whole, of the revised proposal prepared by the Foreign Minister. The main points of the revision were the elimination of Item IV, 'Naval Strength, Air Strength and Shipping of the two countries in the Pacific;' the insertion of a new clause under Item '2, Attitudes of the two countries toward the European War,' covering the mediation of Japan and America between Britain and Germany; and clear definitions of Japan's obligations under the Tripartite Pact. Other points were the withholding of the announcement of the China Incident peace terms, the deletion of Japan's declaration not to carry on a southward military advance, and the deletion of the agreement concerning Japanese-American conversations."

I cease reading for the time being at that point.

Meanwhile, the Ambassador in Washington had sent a report emphasizing the great interest of the President in the negotiations, but at the same time

warning that anti-Japanese sentiment in the United States was already high. This telegram, defense document 1401-C-1, is offered in evidence.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1400-C-1 will receive exhibit No. 2872.

(Whereupon, the document above referred to was marked defense exhibit No. 2872 and received in evidence.)

MR. BLAKENEY: Because of its interest as being the foundation of the understanding of the Tokyo authorities of the American attitude, this telegram is read in its entirety:

"From NOMURA to MATSUOKA

"8 May 1941

"In reference to my previous telegram No. 273, the following is submitted as a supplementary report.

"(1) The real power, in a political as well as in an economic sense, of the Government of the United States has come to be held in the hands of Roosevelt recently, especially since the National Defence Act passed Congress. The dictatorial tendency is more remarkable than ever. And Washington is now in a lively condition unprecedented in history, with crowds of statesmen and financial experts of all grades.

Meanwhile, leading newspapers and news agencies are controlled by Roosevelt, and the so-called public opinion is being dextrously molded, in reality, by the President. It is quite impossible that the public opinion thus molded by Roosevelt should be mollified, or changed, through the activity of the statesmen and the critics who embrace the creed of 'America First.' Whoever criticizes the policy of Roosevelt, or whoever speaks or acts against it, will be ostracized from society as a traitor or a spy. The freedom of the press, it seems, is being lost rapidly. Those who used to be called 'The Brains' of Roosevelt have become alienated from him one after another, and he has now only Hopkins, Walker (who has supported Roosevelt for the past twenty years, and headed his campaign office when Roosevelt ran for the Presidency for the third time) and Hull as his close associates who can give him effective advice. But important affairs of state are decided, it seems, by the President himself. It is certain that the plan for the readjustment of Japanese-American relations, which I reported the other day, was decided by the President in person, in deliberation with the three advisers above mentioned and the Secretary of the Navy, while Stimson and other Cabinet members, as well as the

officials of the Department of State, were all excluded from the conference. It is said that Hull told the Under-Secretary of State and other officials that the Japanese-American problem would be decided among the highest leaders of the Government.

"By the way, Roy Howard, who we consider is of considerable use and with whom Your Excellency is on friendly terms, is now rather distant from the President, partly because he took a stand against Roosevelt on the occasion of the last election and in the debate on the National Defence Act.

"(2) As for the view of the world which the majority of Americans, especially the President, embrace -- which regards the present war as a strife between totalitarianism and democracy; which considers totalitarianism a stain upon humanity because it denies the freedom of the individual; which will not recognize any transfer of territories resulting from aggression; which believes in the final destruction of aggressors, as endorsed by the examples of Caesar and Napoleon, though they may achieve temporary success; which urges that America hold Britain, the stronghold of democracy; and which points to the possibility that the present Anglo-German war may be converted into a German-American war -- no one indeed

could alter it, at present or in future. Whoever tries to give well-meant advice will be cast out of society as an enemy of America. As to the issue of the war, there are many who entertain the optimistic opinion that the war will be protracted, and that Germany (including the occupied countries) will surely come to destruction, if the United States helps Britain on a large scale. Some Americans -- like Lindbergh, for example -- entertain opinions which are considered proper from our standpoint, but it is only a minority of the people who support them.

"Accordingly, there is no possibility, in present circumstances of the United States taking the initiative in making peace between Britain and Germany, unless Britain sustains a complete defeat. She will concentrate her energies on the effectuation of the national defence plan, in order to increase the supply of aid to Britain, and at the same time to complete her own epoch-making armament. Meanwhile, she will practice convoying, by enlarging the scale of the patrolling already practiced. And it is at the risk of war that the United States practices convoying. There is great danger, therefore, that it will lead to her participating in the Great War. In this connection, precautions should be taken against the

recent rapid rise of opinion approving participation of the United States in the present war with the object of cooperating with Britain in her effort to recover from the discouraging situation she has fallen into in the Balkans and in the Near East. It will be disadvantageous for the United States, confronted by such a delicate situation, to have both Japan and Germany at once as countries of enemy character. On this ground, it is rather reasonable to think that the United States is willing to readjust her relations with Japan, who is the less dangerous of the two, and this view is endorsed, it is believed, by the fact that the United States Government is going to open negotiations with Japan along the lines of the so-called 'Draft Understanding.' Nevertheless, it is not correct to think, on this account, that the United States is going to take sides with Japan. According to what I am confidentially told, the United States seems to have the intention of making strenuous efforts in the Pacific area against the day when she actually fights Japan and Germany, and to wage a decisive war against Japan with her colossal Navy and Air Force which will be completed several years from now.

"As for the general feeling of Americans

toward Japan, she is second only to Germany and Italy in unpopularity, on the ground that the whole nation is taking sides with these two states. The President, however, revealed to me on the occasion of my presenting my credentials that he was a friend of Japan. The President and his few close associates have come to recognize, it seems, that Japan is not essentially aggressive, that her national character is utterly different from that of Germany or Italy, and that rapprochement with Japan is advantageous to the United States herself also. (Attention must be called to the fact that it is advantageous to the United States.)

"(3) The situation being as stated above, some step or other must be taken now, or the pro-Japanese sentiment of the President and his close associates will cool off. The result, then, would be the bringing about of complete economic disruption. Japan would be compelled for her existence to advance southward by force. There is every danger, it is considered, that it might develop into general warfare.

"In restoring friendly relations with the United States, the opportunity we are to take must be chosen from among the following three:

"(a) the present occasion, when the issue of the European war cannot yet be forecast;

"(b) the day of Germany's decisive victory; and

"(c) the time when both get tired of the protracted war.

If the occasion (a) is seized, the keynote would be that the two countries make a compromise -- peace on an equal footing. Although this might be unfavorable for Japan in case the war ended in a German victory, it has the advantage that Japan would be able to settle the China Affair before the war in Europe was over and to deal with the post-bellum questions with freedom of action. Moreover, Japan would be able to replenish her national power under favorable conditions, and accordingly would have the advantage of promoting greater cooperation with Britain. As for (b), surely it would be a desirable situation in the general view; however, so far as Japan is concerned, she would have to face the situation saddled with the heavy burden of the China Affair. There would be no little difficulty in replenishing her national power in such circumstances, and the danger is foreseen that her demands might be checked by a third power. And what is worse, no one knows when the day of

Germany's decisive victory will come. Lastly, if we wait for (c) (though it is hardly possible) the hope of readjusting Japanese-American relations would be lost forever, for the United States will have participated in the war, in all probability, by that day.

"Taking such a danger into consideration, the United States, too, had entertained the opinion that it is to her interest to restore friendly relations with Japan as early as possible.

"As to the contents of the plan for the restoration of friendly relations between Japan and the United States, it was at first intended to deal chiefly with the achievement of the purpose of the Tripartite Pact and the avoidance of a Japanese-American war. But circumstances have compelled us to deal en bloc, in their mutual inter-relations, wich such problems as the clarification of the relations of Japan with Germany and those of the United States with Britain; the China Affair; the problem of the South; the vise' problem; the economic problems; etc. It is hardly practicable, therefore, to deal exclusively with a part of the problem, such as commercial agreement, in the present conditions of Japanese-American relations. On the other hand, there

would be little possibility of success in proposing a peace founded on the New Order in East Asia or of the world, seeking a fundamental solution on philosophical principles; that would only throw doubt on the true motives of Japan. We have actually repeatedly, in the course of the negotiations in the background to reach the Draft Understanding, had our delegates request the Government of the United States to recognize our new order, and propose offering our services to mediate the Great War, only to become convinced that the United States would never agree. (There is no doubt that the United States also would make a display of non-recognition of the transfer of territories brought about by aggression, and disapproval of war, and it is feared that all efforts to restore comity between Japan and the United States might end in vain disputes on abstract principles.) In discussing the 'Draft Understanding,' the Government of the United States was indeed persistent in insisting upon

"(a) preservation of the territorial integrity and respect for the sovereign rights of both countries and other countries;

"(b) supporting the principles of non-interference in the domestic affairs of other

countries;

"(c) supporting the principle of equality, including equality of commercial opportunity; and

"(d) not altering the present situation in the Pacific except by peaceful measures.

"We countered this by proposing not to become engrossed in disputes on abstract principles. The first requisite, today, is to meet the actual situation of Japanese-American relations properly, confining to the minimum disputes on principles and views of the world which the two nations embrace. It may be difficult to settle, at a single stroke, all the puzzling, complicated problems accumulated between Japan and the United States with the lapse of a long time, but once the course is set in the direction of mutual understanding, the ill-feeling between the two nations will gradually be dispelled and friendly feelings brewed. Thus, it would be possible to check, or convert, the attitudes of the United States toward the present war, provided that such a situation be realized as early as possible. We sought a practical settlement, therefore, in the full conviction that it is preferable, in the existing circumstances, to bend ourselves to obtaining effectual results. And for this reason, we submit

the present report to Your Excellency, regardless of repetition."

THE PRESIDENT: We will recess for fifteen minutes.

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

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Kapleau & Reichers

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

THE PRESIDENT: Major Blakeney.

MAJOR BLAKENEY: The result of the deliberations of the Japanese government and high command detailed by Prince KONOE was the adoption and presentation to the United States Government of a counter-proposal, which was handed to Secretary Hull on 12 May and which has been introduced in evidence as Exhibit 1070, record page 9891. The next few documents will deal with some of the negotiations arising out of that proposal. And the first of these, defense document 1400-D-6, is an excerpt from Foreign Relations embodying parts of a conversation between Secretary Hull and Ambassador NOMURA of 16 May, which is offered in evidence.

THE PRESIDENT: Admitted on the usual terms.

THE CLERK: Defense document 1400-D-6 will receive Exhibit Number 2873.

(Whereupon the document above referred to was marked defense exhibit 2873 and received in evidence.)

MAJOR BLAKENEY: I will read the Exhibit:

"Washington, May 16, 1941. The Japanese Ambassador called at the Secretary's apartment by appointment made at the Secretary's request.

"In reply to a question by the Ambassador

as to whether the Secretary wished to imply that under the American Government's interpretation of self-defense the United States might become involved in the European war even if its territory was not attacked, the Secretary observed that if and as an aggressor in the course of his aggression against other countries makes manifest a purpose of unlimited conquest it is necessary for other countries to take appropriate measures of self-protection and self-defense. Our policy of assistance to Great Britain was an illustration of the kind of measures which he meant. As to what other action this Government might take, this would depend upon what the military authorities of this Government would deem essential to our protection and self-defense in any given circumstances.

"The Ambassador said that it went without saying that Japan desired only peaceful relations with the United States, but that at the same time Japan might be faced with the question of carrying out in good faith any obligations it might be called upon to perform under Article III of the Axis Alliance. The Secretary said that in his opinion the explanatory statement, consisting chiefly of excerpts from an address he had made some three weeks ago,

would make the attitude of this Government on the matter of self-defense very clear. The Secretary said that he felt that the Japanese would feel the same way as we do under similar circumstances. He referred to the suggestions which we had offered as a formula under Section II of the Japanese proposal in regard to relations of the United States and Japan to the European war as defining our respective relations clearly.

"The Ambassador said that it was the earnest hope of Japan that the Government of the United States would find itself able at the earliest possible moment to request the Chinese Government to enter into negotiations with Japan for a peace settlement. He expressed the hope that there would be no dilatory tactics on the part of the Chinese.

"The Secretary observed that if we could dispose of these two points which had been brought up in a preliminary way no reason was perceived why we could not then proceed rapidly with consideration of the proposal as a whole.

"There was some discussion of the questions of joint defense against communism and the recognition of Manchuria. The Secretary indicated that if China and Japan could agree on the other points

listed in the Japanese "Annex and Explanation" he did not believe that difficulties which might arise over these two points would be such as to prevent an agreement between China and Japan.

"The Secretary referred briefly to the reciprocal feature of our suggested redraft of Section V of the Japanese proposal, which relates to the economic activity of the Southwest Pacific area, and expressed the hope that subsequently other countries could be brought in. He alluded in this connection to the fact that the benefits of our trade program in South America are enjoyed by all nations."

The oral statement handed by Secretary Hull to Ambassador NOMURA on 16 May is offered in evidence as defense document 1400-E-6.

THE PRESIDENT: Admitted on the usual terms.

THE CLERK: Defense Document 1400-E-6 will receive Exhibit Number 2874.

MAJOR BLAKENEY: The oral statement is as follows:

"Informal and Unofficial Oral Statement Handed by the Secretary of State to the Japanese Ambassador (NOMURA) on May 16, 1941.

"There has not yet been time to study care-

fully the proposal which the Ambassador has presented under instructions from his Government. From such examination as it has been possible to make, however, certain preliminary comments suggest themselves.

"It is understood that the purpose of the present discussions and of the proposal presented by the Japanese Ambassador is to work out a formula whereunder Japan and the United States may make manifest their common desire and definite purpose to refrain from any aggressive act by force and to pledge themselves in honor and in act to maintain and preserve peace in the Pacific area.

"Keeping in mind this admirable objective, it would seem advisable to dispose of certain fundamental points before attempting to consider the Japanese proposal as a whole.

"With reference to the proposed formula in Section II in regard to the relations of Japan and of the United States toward the European war, the United States is, as the Ambassador is aware, engaged in an extensive program of strengthening its national defense, and it regards as an essential part of its program of self-defense aid to Great Britain and to other countries which are resisting the present world-wide movement of conquest and aggression by force.

There is annexed a statement which defines clearly the position of the Government of the United States on this subject. The Japanese Government will naturally wish to give careful consideration to the position of the Government of the United States as set forth in the statement.

"It is believed that on the basis of the fundamental purpose of pledging themselves in honor and in act to refrain from any aggressive act by force and to maintain and preserve peace in the Pacific area a mutually satisfactory formula defining the relations of the United States and of Japan toward the European war can be arrived at.

"In the light of the foregoing, there are offered for the Ambassador's consideration certain suggestions for possible revision of Section II of the proposal.

"With reference to the proposed formula in Section III in regard to the relations of the United States and of Japan toward the China Affair, it is noted that in the "Annex and Explanation" it is stated that in Section III of the proposal there are exemplified principles of neighborly friendship; joint defense against communism; economic cooperation

free from economic monopoly or limitation of the interests of other countries; mutual respect of sovereignty and territories; mutual respect for the inherent characteristics of each nation cooperating as good neighbors and forming a Far Eastern nucleus contributing to world peace; withdrawal of Japanese troops from Chinese territory in accordence with an agreement to be concluded between Japan and China; no annexation and no indemnities; and the independence of Manchuria. While one or two of the points might present difficulties, it is believed that, if China and Japan could come to agreement on the basis of the other points mentioned, the remaining points with some modification need not present insuperable obstacles.

"The principles embodied in the KONOE Statement, as defined in the "Annex and Explanation" as relating to neighborly friendship, joint defense against communism, and economic cooperation free from economic monopoly or limitation of the interests of other countries, could, with some modification, it is believed, be acceptable."

"Annex 1.

"Extracts From Address by the Secretary of State on April 24, 1941, Handed to the Japanese

Ambassador on May 16, 1941.

". . . Events have shown beyond possible question that the safety of this hemisphere and of this country calls for resistance wherever resistance will be most effective."

"The foregoing statements make it clear that the attitude of the Government of the United States is one of resolve to take measures of self-defense in resistance to a movement, which, as has been made unequivocally clear by the acts and utterances of Hitler, is directed to world conquest by force from which no country and no area are excepted. This attitude is based upon a most fundamental consideration -- that of the inalienable right of self-defense."

Another excerpt from Foreign Relations, being part of a memorandum of the conversation between Secretary Hull and the Japanese Ambassador on 20 May, is offered in evidence as defense document 1400-F-6.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1400-F-6 will receive exhibit No. 2875.

(Whereupon, the document above referred to was marked defense exhibit 2875 and received in evidence.)

MR. BLAKENEY: This excerpt, the purpose of which is to show early American understanding of the grounds on which Japan required the right of stationing troops in China, I read:

"Washington, May 20, 1941.

"The Japanese Ambassador, accompanied by Colonel IWAKURO and Mr. WIKAWA, was received by the Secretary at his apartment at 8:30 this evening by arrangement at the suggestion of the Japanese Ambassador.

"The Secretary then observed that there were two points in regard to the section dealing with China which he would like to bring up. One was in regard to the joint defense against communism and the other was

in regard to the stationing of Japanese troops in certain parts of Chinese territory. He said that he was not discussing the merits of the two points to which he referred, but he felt that if and when this Government should approach Chiang Kai-shek on the matter of negotiating with Japan he would have to tell Chiang the basis on which Japan would propose to negotiate; that this basis should be one on which Chiang could carry his country with him; and that if the Chinese Government should be unwilling to proceed with negotiations on the basis proposed the Secretary would be in a very embarrassing position. He therefore wished to ask whether it would not be possible to cover these two points under some broader provision, such as a provision which would call for special measures of protection for Japanese nationals and property interests against lawlessness in areas where special measures for safeguarding the rights and interests of nationals of third powers were necessary."

Another conversation was held between Secretary and Ambassador on 28 May. Excerpts from the record of this meeting are already in evidence as Exhibit 1077, to which I refer in connection with the fact that it was made clear to the Secretary of State that in Japan the Foreign Minister does not bear the entire responsibility for matters of foreign policy. Additional

selections from the conversation are offered in defense document 1400-G-6, an excerpt from Foreign Relations.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1400-G-6 is missing from our order of proof.

THE PRESIDENT: We have it in our order of proof.

CLERK OF THE COURT: We don't have the document.

MR. BLAKENEY: I will have to pass that for the time being.

Referring again for a moment to Exhibit 1077, the conversation of 28 May, it will be remembered that, as shown therein, Secretary Hull called the attention of the Japanese Ambassador to the speech delivered the preceding evening by President Roosevelt as illustrative of the United States' position on the question of the right of self-defence. Excerpts from that speech, taken from the State Department publication Peace and War, are offered in evidence as defense document 1967.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1967 will receive exhibit No. 2876.

(Whereupon, the document above referred

to was marked defense exhibit 2876 and received in evidence.)

MR. BLAKENEY: I read the excerpts.

"Radio Address Delivered by President Roosevelt from Washington May 27, 1941.

* * * *

"In September 1940 an agreement was completed with Great Britain for the trade of 50 destroyers for eight important off-shore bases."

* * * *

"I have said on many occasions that the United States is mustering its men and its resources only for the purpose of defense--only to repel attack. I repeat that statement now. But we must be realistic when we use the word 'attack'; we have to relate it to the lightning speed of modern warfare."

* * * *

"First, we shall actively resist wherever necessary, and with all our resources, every attempt by Hitler to extend his Nazi domination to the Western Hemisphere, or to threaten it. We shall actively resist his every attempt to gain control of the seas. We insist upon the vital importance of keeping Hitlerism away from any point in the world which could be used and would be used as a base of attack against the

Americas."

* * * *

""We in the Americas will decide for ourselves whether and when and where our American interests are attacked or our security threatened.

""e are placing our armed forces in strategic military position.

""We will not hesitate to use our armed forces to repel attack."

* * * *

"Therefore, with profound consciousness of my responsibilities to my countrymen and to my country's cause, I have tonight issued a proclamation that an unlimited national emergency exists and requires the strengthening of our defense to the extreme limit of our national power and authority."

On 31 May the United States Government handed to the Japanese Ambassador its counter-proposal, exhibit 1078, and various oral statements and other explanations, a number of which are in evidence here, were exchanged. I wish to offer in evidence only one excerpt from a record of a conversation, defense document 1400-H-6, an excerpt from Foreign Relations relating to the conversation of 17 June between the assistants of the Secretary of State and the Japanese

Ambassador.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1967 will receive exhibit No. 2876.

THE PRESIDENT: Defense document 1400-H-6 was tendered then.

CLERK OF THE COURT: We have no copy of this 1400-H-6.

MR. BLAKENEY: I will have to pass it, then, for the time being.

CLERK OF THE COURT: I have just been informed by my office that defense document 1400-H-6 is already an exhibit, No. 2819.

MR. BLAKENEY: Well, that is news to me.

I might mention briefly the purpose for which I had the document prepared, and that is specifically in connection with the last paragraph thereof, to show one attempt by the Japanese representatives to satisfy the American demand in connection with the Tripartite Pact question.

I now pass to defense document 1500-W-5. The continuous negotiations in Washington resulted in the United States Government's producing in its turn, on 21 June, another revised draft of understanding, which is in evidence as exhibit 1092, record page 10,004.

Simultaneously, the Japanese-American negotiations were receiving equally arduous study in Tokyo, especially after the failure of the commercial negotiations with the Netherlands East Indies on 17 June (exhibit 1309-A, record page 11,717) and the outbreak of the Russo-German war on the 22nd. In connection with this, I offer in evidence an additional excerpt from the KONOE memoirs, defense document 1500-W-5.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1500-W-5 will receive exhibit No. 2877.

(Whereupon, the document above referred to was marked defense exhibit 2877 and received in evidence.)

MR. BLAKENEY: I read from exhibit 2,877, the first three paragraphs.

"While the complicated and prolonged diplomatic negotiations were being conducted between Tokyo and Washington, in Tokyo itself a question of special significance was being deliberated upon by the cabinet. The question was whether to continue negotiations indefinitely with America, or whether to break them off abruptly. And more important still, they were considering whether war with America would follow upon the heels of the breaking off of negotiations.

"The diplomatic negotiations for establishing

a better American-Japanese understanding were being participated in by only the highest leaders of the Government, Army, Navy, and the Supreme Command. They were progressing to the absolute exclusion of lesser officials. With the sole exception of Foreign Minister MATSUOKA, all the leading participants were hoping for the success of the negotiations, and for this very reason they were conducting it in absolute secrecy lest it encounter opposition.

"Nevertheless, news began to leak out, particularly as a result of Foreign Minister MATSUOKA's secret reports to the German and Italian Ambassadors. As they began to perceive the general outline of the negotiations, the lesser officials began to give evidence of their disapproval. The Army in particular stiffened in its opposition. Just at this moment the German-Soviet war suddenly broke out. Though the governmental leaders were able to set aside the insistent demands for an immediate war against the Soviets, they were obliged to decide upon the armed occupation of French Indo-China as a sort of consolation prize. At the same time, in order to be prepared for any emergency, they proceeded with full-scale preparations for a possible war against England and America. Though it was no easy task, the division between

Yelden & Knapp

I read only to there at this time.

The policy of Japan, referred to by Prince KONOE, vis-a-vis the USSR and Indo-China, is expressed in the decisions of the Liaison Conference of 25 June, exhibit 1306, record, page 11,753, and the Imperial Conference of 2 July, exhibit 588, record, page 6,566.

The next of the Washington conversations of which I wish to offer evidence is that of 2 July between Mr. Hamilton and others for the United States and Mr. WAKASA and others for Japan. The excerpt from "Foreign Relations," defense document 1400-I-6, is offered in evidence to show that secrecy was being observed in both countries concerning the negotiations, and as well the United States position toward the Tripartite Pact.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1400-I-6 will receive exhibit No. 2878.

(Whereupon, the document above referred to was marked defense exhibit No. 2878, and received in evidence.)

MR. BLAKENEY: I read the document:

"Washington, July 2, 1941. -- Mr. Ballantine and Mr. Schmidt, who were later joined by

preparation for war and the war itself had to be firmly borne in mind. As preparations for war progressed, opposition to American-Japanese negotiations became more vociferous."

Yelden & Knapp

I read only to there at this time.

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The next of the Washington conversations of which I wish to offer evidence is that of 2 July between Mr. Hamilton and others for the United States and Mr. WIKAWA and others for Japan. The excerpt from "Foreign Relations," defense document 1400-I-6, is offered in evidence to show that secrecy was being observed in both countries concerning the negotiations, and as well the United States position toward the Tripartite Pact.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1400-I-6 will receive exhibit No. 2878.

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MR. BLAKENEY: I read the document:

"Washington, July 2, 1941. -- Mr. Ballantine and Mr. Schmidt, who were later joined by

Mr. Hamilton, called at the apartment of Colonel IWAKURO and Mr. WIKAWA by arrangement following an intimation that the Japanese would like to meet us for further discussion."

MR. TAVENNER: If the Tribunal please, may I be permitted to interrupt?

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: This document was introduced formerly. The exhibit number I do not have before me.

I desire to apologize to the Tribunal; I have the wrong document.

THE PRESIDENT. It is very easy to make a mistake in these matters.

MR. BLAKENEY: It is, indeed.

Continuing: "Mr. WIKAWA said these conversations were being kept very secret in Japan owing to the opposition which could be expected from third countries and from certain groups in Japan. Mr. MATSUOKA's statements and the statements of other individuals were often largely for home consumption.

"Mr. Hamilton replied that these conversations were also kept very secret here; and brought to Mr. WIKAWA's attention the fact that the President and the Secretary of State in the administration of

matters of policy were able at times judiciously to apply the brakes. It seems to us, Mr. Hamilton said, the Japanese Government, if it so desired, could pursue a similar course to indicate more clearly that Japan is now committed to a peaceful policy. He added that we do not expect the impossible, of course, and do not ask Japan to repudiate contractual obligations."

Ambassador NOMURA's conversation with State Department officials on 5 July shows the Japanese concern with what was considered the threat to Japan from ABCD encirclement; defense document 1400-J-6, which is offered in evidence.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1400-J-6 will receive exhibit No. 2879.

(Whereupon, the document above referred to was marked defense Exhibit No. 2879 and received in evidence.)

MR. BLAKENEY: I read the exhibit:

"Washington, July 5, 1941.

"The Secretary having directed that Mr. Hamilton and Mr. Ballantine endeavor to see the associates of the Japanese Ambassador, Mr. Hamilton and Mr. Ballantine ascertained that Mr. WIKAWA was out of town, and, as Colonel IWAKURO does not speak English, after consulting Mr. Welles, made an appointment to see the Japanese Ambassador.

"Mr. Hamilton said that a third point which he wished to bring up related to press reports to the effect that Japan was planning to acquire naval and air bases in French Indo-China and Thailand to enable Japan to threaten the Burma Road, Singapore, and the Dutch East Indies. Mr. Hamilton read to the Ambassador a press clipping from the New York Times of this morning containing a press despatch from Shanghai on the subject (attached). He asked the Ambassador how does the Japanese Government expect to go forward with a peace settlement for the Pacific area while reports indicated that Japan is moving in exactly the opposite direction? Mr. Hamilton suggested that it would be advantageous at this juncture to have either a prompt denial or frank confirmation of those reports.

"The Ambassador replied that the Japanese

Government was faced with the necessity of preparing itself against possible eventualities. He observed that one had only to take up the paper to read suggestions by commentators in the United States on plans for the encirclement of Japan; that America was aiding Chiang Kai-shek in various ways, including the despatch of American pilots to Chungking; that American supplies were being sent to Malaya and the Netherlands East Indies; that there were visits of American squadrons to Australia which to a naval man like himself were of greater significance than mere courtesy visits; and that commentators were discussing the prospects of American aid to the Russian Far East and of the acquisition of American air bases in Siberia. He alluded also to the possibility of an executive order being issued stopping the shipment from the United States of petroleum products to Japan,, and he remarked that, if Japan should thus be shut off from American sources of oil, Japan must obtain them elsewhere and that, under the circumstances, it was necessary for Japan to take appropriate preparatory measures."

In accordance with the Imperial Conference decision of 2 July, Japan entered into an agreement with the Government of France for joint defense of

Indo-China (exhibits 647-A, record, page 7,058 and 651, record, page 7,079). The Tribunal will be requested to take judicial notice that the government located at Vichy was the de jure and de facto government of France at the time, and that the United States and other Allied nations maintained diplomatic relations with that government. The advance of Japanese troops into Southern French Indo-China by virtue of this agreement for joint defense was followed by action of the Governments of the United States, Great Britain and the Netherlands freezing Japanese assets (exhibit 67, record, page 513). To show that there was evidence of the intention of the United States to take such action as early as 2 July, I offer in evidence defense document 1400-A-8, an excerpt from the record in Foreign Relations of a conversation of that date between Japanese and American diplomats in Washington.

THE PRESIDENT: Admitted on the usual terms.

Mr. Tavenner.

MR. TAVENNER: If the Tribunal please, this is the same document as defense document 1400-I-3 which was rejected at page 25,301 of the record.

THE PRESIDENT: I did not see you at the lectern when it was admitted so the decision is revoked for the time being.

CLERK OF THE COURT: Defense document 1400--

THE PRESIDENT: No, I want it argued.

It has already been rejected, you say?

MR. TAVENNER: Yes.

If it please the Tribunal, I have nothing more to say in regard to it, it having been rejected very recently. There is no greater ground for its being admissible now than it was then.

MR. BLAKENEY: I know nothing about the purpose for which the document has heretofore been tendered, nor the objection then made to it, nor the basis of the ruling.

THE PRESIDENT: You had better withdraw it for the time being.

MR. BLAKENEY: I am ready to go ahead and state why I think it admissible in this connection.

I merely wanted to say that I was not, of course, aware that it had been separately processed or I shouldn't have used paper making another copy.

The United States' imposition of petroleum embargo and order freezing Japanese assets has been stated in evidence to have been the result of the Japanese movement of troops into Southern Indo-China. I refer in this connection to the testimony of the witness Ballantine where the statement will be found

in paragraph 4 of page 10 of the original document to that effect. As against that statement I am offering by this document to show that as much as three weeks prior to the date of the freezing of assets it had come to the attention of the Japanese officials that such a movement was under contemplation and in this connection it should be of interest to note that as disclosed by exhibit 2879 the first suggestion made by the Department of State of a rumored Japanese move into Indo-China was on the 5th of July, or three days thereafter. In those circumstances I submit that this record of the remarks of the Japanese representatives to the State Department officials has relevance in enabling us to test the question of the reason for the freezing of Japanese assets.

THE PRESIDENT: I think you ought to be heard again, Mr. Tavenner, because this was pressed and rejected on other grounds previously.

MR. TAVENNER: I was just about, if your Honor please, to read the objection made by Brigadier Quilliam to the introduction of this document: "In our submission this document is quite immaterial. Apparently all it consists of is an unsupported charge by Mr. WIKAWA against a private financial firm which acts as agent for the Japanese government."

THE PRESIDENT: It was rejected on the ground that Morgan & Company were not identified with the United States and the charge against them was a purely collateral matter.

MR. TAVENNER: That is correct, sir.

MR. BLAKENEY: Now that I have seen the record I would like to point out that the objection made at that time and renewed now is a complete misstatement of the contents of the document.

THE PRESIDENT: In view of what we have heard this afternoon without objection about the part played by some of these people, it has been well put by a colleague that this may be regarded as a step in diplomatic talks and admitted.

MR. BLAKENEY: I might additionally point out that so far from this constituting a charge against the firm of Morgan & Company it is a statement given on the authority of Morgan & Company as having emanated from the State Department itself.

MR. TAVENNER: I would like to point out, if your Honor please, that the crux of the matter seems to be that the freezing of Japanese funds was to be expected in the near future. They had not yet occurred.

MR. BLAKENEY: And from the record, the

ostensible reason for the freezing of assets, the move into Southern Indo-China, was not yet expected.

MR. TAVENNER: And I would also like to point out in connection with that last statement by my friend that Brigadier Quilliam asserted in his objection that there was a lot of evidence that Japan intended to go into French Indo-China before she actually did.

MR. BLAKENEY: Nothing was further from my thoughts than to misquote the record but I believe it stands as I said.

THE PRESIDENT: By a majority the objection is overruled and the document admitted on the usual terms.

CLERK OF THE COURT: Defense document 1400-A-8 will receive exhibit No. 2880.

(Whereupon, the document above referred to was marked defense exhibit No. 2880 and received in evidence.)

MR. BLAKENEY: I read the document:

"Washington, July 2, 1941. -- Mr. Ballantine and Mr. Schmidt, who were later joined by Mr. Hamilton, called at the apartment of Colonel IWAKURO and Mr. WIKAWA by arrangement following an intimation that the Japanese would like to meet us for further discussion.

"In a plea for mutual confidence, Mr. WIKAWA stated that he had learned recently that the banking firm of Morgan and Company in New York, which had control of a Japanese sinking fund to purchase Japanese Government bonds at a price favorable to Japan, had learned from sources within the State Department that these conversations had been very politely but firmly and on technical grounds closed by the United States and that the freezing of Japanese funds in the United States could be expected in the near future. Morgan and Company had accordingly begun the purchase of Japanese Government bonds indiscriminately and had forced the price of those bonds to rise considerably to the detriment of the Japanese Government's sinking fund."

I understand that document 1400-H-6 has now arrived, and I therefore renew the tender,

the offer of this excerpt from "Foreign Relations" relating to the conversation of 17 June between the assistants of the Secretary of State and the Japanese Ambassador.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1400-H-6 will receive exhibit No. 2881.

(Whereupon, the document above referred to was marked defense exhibit No. 2881, and received in evidence.)

MR. BLAKENEY: I read the document to show the Japanese position concerning the Tripartite Pact, and as evidence that there were three main outstanding questions:

"Washington, June 17, 1941. -- Conformably with an arrangement made earlier in the day, Mr. Hamilton, Mr. Ballantine and Mr. Schmidt met with Colonel IWAKURO and Mr. WIKAWA at the latter's apartment.

"Colonel IWAKURO discussed at some length the deterioration of relations between the United States and Japan and the division of opinion in Japanese circles which had preceded the conclusion of the Tripartite Pact. The attitude of the United

States, Colonel IWAKURO said, had left to Japan no other course than to sign the Tripartite Pact. For this reason, he said, it was most desirable that an improvement in American-Japanese relations be accomplished before taking up the consideration of such detailed controversial issues. He stated emphatically that Japan cannot at this time repudiate the Tripartite Alliance. He felt that once 'good feeling' had been restored, other differences would be satisfactorily ironed out.

"The Japanese urged that discussions be carried on with all possible speed and asked when they could telegraph Tokyo. Mr. Hamilton pointed out that there were outstanding three large questions: economic non-discrimination in China, stationing of Japanese troops in China, attitude of the two governments toward the European war, and added that the question of a statement regarding military bases presented an additional serious question."

THE PRESIDENT: We will adjourn until half-past nine tomorrow morning.

(Whereupon, at 1600, an adjournment was taken until Thursday, 14 August 1947, at 0930.)

- - - -

NOTE:

The attached pages are corrected pages and should be substituted for the corresponding pages in the record.

another effort to remove misunderstanding. These instructions, as contained in Foreign Relations, are offered in evidence as defense document 1400-R-6.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1400-R-6 will receive exhibit No. 2899.

(Whereupon, the document above referred to was marked defense exhibit 2899 and received in evidence.)

MR. BLAKENEY: I read the document.

"Proposed Instructions to the Japanese Ambassador (NOMURA), handed by the Japanese Minister for Foreign Affairs (TOYODA) to the American Ambassador in Japan (Grew) on September 13, 1941.

"I. (a) The proposed draft of an understanding which has been constituting a basis for informal negotiations between the Japanese and the United States Governments will continue to be a basis for further discussions.

"The points upon which we deem a tentative agreement has already been reached during the informal preliminary conversations in Washington comprise the preamble to the proposed understanding, the concepts of the United States and of Japan respecting

instructions being sent to Ambassador NOMURA, in another effort to remove misunderstanding. These instructions, as contained in Foreign Relations, are offered in evidence as defense document 1400-R-6.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1400-R-6 will receive exhibit No. 2899.

(Whereupon, the document above referred to was marked defense exhibit 2899 and received in evidence.)

MR. BLAKENEY: I read the document.

"Proposed Instructions to the Japanese Ambassador (NOMURA), handed by the Japanese Minister for Foreign Affairs (TOYODA) to the American Ambassador in Japan (Grew) on September 13, 1941.

"I. (a) The proposed draft of an understanding which has been constituting a basis for informal negotiations between the Japanese and the United States Governments will continue to be a basis for further discussions.

"The points upon which we deem a tentative agreement has already been reached during the informal preliminary conversations in Washington comprise the preamble to the proposed understanding, the concepts of the United States and of Japan respecting

doing it voluntarily and they should--

THE PRESIDENT: It is not a case of just tendering the sweet and rejecting the bitter. You did that in the prosecution. They are tendering the sweet and the bitter, I take it, but they say the bitter does not apply to the other accused.

MR. TAVENNER: That, we submit, is identically the same thing as rejecting the bitter.

MR. BLAKENEY: I might suggest that the question raised by Mr. Tavenner can in this instance be disposed of on two much narrower grounds.

THE PRESIDENT: I should remind you we are not bound by any technical rules of evidence but we have applied them. We do not get away from them without due consideration. The interests of justice require us to adhere to them sometimes.

MR. BLAKENEY: One of the grounds which I referred to might be characterized as a technical rule of evidence; the other is one of those rules heretofore acted upon by the Tribunal in substitution for technical rules of evidence. To deal with the latter point first, it is that the excerpts here being tendered from the interrogation of General TOJO relate to the same subject matter as that of excerpts heretofore tendered by the prosecution, and I refer to

prasecution be entitled to receive the benefit of all inferences or any contradictory statements that may be contained in it, with reference to the subject matter presented.

THE PRESIDENT: That suggests to me that the question is premature. The only question now is what evidence is admissible and what is not. The extent to which it can be used is a matter to be dealt with in summation. Individual defense counsel may rise, of course, and say "That is not evidence against my client." We will have to hear him.

I say the point is prematurely raised by the prosecution, but I do concede that individual defense counsel can arise in his place and claim that the evidence is not admissible against his client, but I recollect that Major Blakeney is claiming to put this on behalf of all the accused.

MR. TAVENNER: If it please the Tribunal, I have not objected to the introduction of the document. I only considered it to be a fair matter to all concerned that we make known now what our contention would be with regard to this evidence. If it is considered premature, I will have nothing more to say about it.

and I must point out to the Tribunal that I have failed to comply wholly with the rule for service of affidavits. However, I am advised by the prosecution that they will have no objection to waiving the rule to the extent of permitting me to put the witness on the stand, they to reserve their objections both to the affidavit and to the documents until the 24-hour period to which they are entitled has elapsed.

Mr. Tavenner tells me he is mistaken. He doesn't wish to make any reservation; he is prepared to go ahead.

Of course the Tribunal also has not had the document for the required period of three days, but I believe in the circumstances it will find no difficulty in permitting me to go ahead.

THE PRESIDENT: There is no desire on the part of the Tribunal to prevent you from proceeding.

MR. BLAKENEY: I therefore call as a witness YAMAMOTO Kumaichi, whose testimony is embodied in his affidavit, defense document 2014.

Y A M A M O T O K U M A I C H I, recalled as a witness on behalf of the defense, having been previously sworn, testified through Japanese interpreters as follows:

THE PRESIDENT: You are still on your former oath, Witness.

Mr. Brannon.

MR. BRANNON: If the Tribunal please, I have been instructed by the accused former Admiral SHIMADA and OKA to inform the Tribunal that they strongly

differ with certain statements contained in defense document 2014, the affidavit of YAMOMOTO Kumaichi, about to be read. Therefore, they do not wish the Tribunal to consider this testimony as offered in their behalf, even though it appears in a general phase.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: If the Tribunal please, when an affidavit is produced and entered in evidence in a general phase, I would take it that it would be evidence for all of them unless counsel for a particular accused points out by cross-examination wherein he differs with the assertions of the witness. If that isn't done, then I think the evidence should be reserved until the individual phase of the case is reached.

THE PRESIDENT: We understand that the evidence given in the general phase is the evidence for all the accused.

MR. BRANNON: If the Tribunal please, we do not wish to be placed in the position of having to accept the testimony of any one witness as our evidence.

THE PRESIDENT: We must reconsider how far we are going allow this evidence on behalf of some to be tendered in the general phase.

MR. BRANNON: We simply don't want to be in the position of impeaching our own evidence later on

in the individual phase. Therefore we inform the Tribunal now that we do not adhere to this evidence.

THE PRESIDENT: Major Blakeney, if you persist in offering this evidence in the general phase, we would like to hear you shortly on the reason why it should be accepted at this stage.

MR. BLAKENEY: Mr. Brooks would like to say a word first, if agreeable.

MR. BROOKS: It has been my understanding, and I believe the understanding of most of the defense attorneys, that the evidence put in in the general phase was general evidence affecting most of the accused not all of them, because there have been no instances that I recall where the majority of the evidence has affected every accused. Some of them were not even --

THE PRESIDENT: I have stated the contrary at least twice without hearing any dissent that I recollect.

MR. BROOKS: On particular pieces of evidence when your Honor has spoken that has been true; but there have been times when the accused in many instances were retired from military and political life when other bits of evidence went in that did not affect them, either for or against.

THE PRESIDENT: The question could not arise

as regards accused of that kind.

MR. BROOKS: Well, I have in mind one of my accused in particular who was Governor General in Korea at the time. He wasn't even in Japan at the time, certainly not in any of these consultations.

THE PRESIDENT: If the evidence is neither for him nor against him, I cannot see how any question can arise.

MR. BROOKS: I was just meeting the proposition of the Court that this evidence was being put in in his behalf, that it was to be used against him. I haven't said anything because it doesn't affect him one way or the other, and I thought the Court was considering that.

THE PRESIDENT: We are concerned with the practical question, not the academic one.

We will recess for fifteen minutes.

(Whereupon, at 1445, a recess was taken until 1505, after which the proceedings we resumed as follows:)

Dula & Spratt

MR. BLAKENEY: The President then called for a list of the names of those dissenting and was given it.

On page 17,010:

"THE PRESIDENT: Proceed to read the opening, Doctor KIYOSE, but be careful to omit any arguments already put to the Tribunal.

"MR. TAVENNER: The prosecution desires to reserve the right to object to any phases of the opening statement at the conclusion thereof should they be advised it is proper to do so."

THE PRESIDENT: Of course, if you call a witness in a general phase and he happens to say something prejudicial to one of the accused, to say it unexpectedly, you must have a right to cross-examine him under the circumstances, and the rules give it to you.

MR. BLAKENEY: Yes, I was coming to the rules in a moment's time. I might say now that the Charter, in Article 9(d), gives the unrestricted right to the defendants to cross-examine all witnesses not only if they unexpectedly say something against the interest of the defendants, and I was--

THE PRESIDENT: But it is put very pointedly to me that if you are right you could call in the general phase a witness with whom twenty-four out of

twenty-five disagree.

MR. BLAKENEY: In considering this very perplexing problem among ourselves, we have tried to adopt a rule or practice of putting in evidence only in cases when, let's say, all the defendants agreed with as much as ninety-five per cent of the evidence. We thought that was about the practical limit. We had to recognize that these defendants, many of whom have fought each other officially and personally, would come to the point of differing about the evidence to be adduced. In the present case, for example, I think I am quite correct in saying that the two defendants for whom Mr. Brannon noted his reservation would agree to fully ninety or ninety-five per cent of the content of this affidavit; but the remaining five per cent thereof, to which all other defendants so far as I know subscribe, represents one of those fields of conflict of interests between these two defendants and other defendants, and I want the Tribunal to know that we have seen this problem, we have considered it, and we have thought that in the interests of efficiency and expedition it was far better to present it in this way with the reservation than to give the Tribunal an incomplete picture now and require, perhaps, many defendants to adduce

similar evidence later. That was our intention. And if I may say just another word. We went on the assumption that the Tribunal, appreciating our difficulty in this respect, had taken our view of the matter because this has been presented, I think, as a reservation in the opening statement of each phase prior to this one, and I, personally, should have thought that the supplementary rules concerning cross-examination lately adopted by the Tribunal were designed to solve or to get us out of this sort of dilemma.

THE PRESIDENT: When I explain the need for such a rule you may show that it is wider than I suggest.

MR. BLAKENEY: In view of the rather considerable importance of this question, and since I had only ten minutes to look it up, I wonder if the Tribunal would hear another counsel who has indicated that he would like to say a word on the subject. That is all I have to say.

THE PRESIDENT: Perhaps that is all that can be said. Has anybody else gone right through the record and found something that you haven't told us, Major Blakeney?

MR. BLAKENEY: I don't know. I went through as much of the record as I could between a quarter of

three and three o'clock. That is all I know on that subject.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: If the Tribunal please, in regard to the incident mentioned by counsel where the witness TANAKA was produced by the defense, the question there raised by Mr. Freeman was not directed at the possibility of impeaching the testimony in the affidavit of the witness then being presented; so that this did not arise on that occasion.

THE PRESIDENT: That is the only occasion.

MR. TAVVENER: What counsel did state on that occasion was that he did not desire to be bound by the testimony of this witness because he expected to attack the credibility of the witness at a later date, the witness having previously testified at length in behalf of the prosecution. Counsel merely did not join in calling that witness. That was the only question involved there.

THE PRESIDENT: Nor did he cross-examine or claim to do so, if I recollect rightly.

MR. TAVENNER: There was nothing in that witness' testimony as then being offered that he was attempting to attack. The question now being presented was not involved at all in the inquiry made with regard to the general opening statement by the defense. Neither I nor my associates can recall any instance in which the question has arisen.

The rules which were adopted by the Tribunal were adopted pursuant to agreement between the defense and the prosecution, and your Honor made it perfectly clear that they were rules pursuant to agreement between counsel and that the Tribunal would try them out and if necessary change them. So in no sense, we contend, is the Tribunal bound in any way by either rules or previous decision, as far as we know, on this question.

Now, there will be nothing saved in time by the defense postponing testimony of this type to the individual phase -- I mean, of course, to state that there will be nothing lost in time. It is a spurious argument to contend that each of the accused would have to call the same witness and prove the same thing. If the testimony is offered once, it can either be adopted by an accused or rejected when he takes the stand in a very simple manner. If the Tribunal is to

begin to hear evidence upon which there is a sharp conflict between the accused, the general phases will never end. I think for the prosecution's objection to be sustained would shorten the general phase of the case.

MR. BLAKENEY: May I say a word in reply, your Honor?

THE PRESIDENT: Yes, Major Blakeney.

MR. BLAKENEY: Mr. Tavenner's argument about lengthening the general phases indefinitely is, of course, wholly specious. We are almost at the end of the general phases and this is, according to him, the second time that the matter has ever come up; and so far as concerns any evidence that I am familiar with it is the last time that it will come up, although that is not a promise on my part.

Now, if it is the simple matter that Mr. Tavenner says for evidence introduced in the defense of an individual to be adopted or dissented from by other individuals, it is equally simple now, and the record will be utterly and unequivocally clear as to who is and who is not disassociating himself from that evidence.

In connection with Mr. Tavenner's statement of what point was involved in the case of the witness

TANAKA, I merely say again without reading it again that the record, on page 22,713, shows precisely the case of reservation which we have here.

I understand that Mr. Levin would like to say something concerning his clients' position in relation to this witness.

THE PRESIDENT: Mr. Levin.

MR. LEVIN: Mr. President: I did not join Mr. Brannon in his statement on behalf of my clients SUZUKI and KAYA, although our position is the same with reference to a portion of this affidavit as his position, or, rather, the position of those whom he represents. And while I am in thorough agreement with everything that Mr. Blakeney stated, I want to add further that the reason I did not make any statement was because, under the rules, each defense counsel had a right to examine directly or to cross-examine; and having the right to cross-examine indicated, at least by implication, that there was a disagreement with either the testimony given by affidavit or given orally by the witness. So it was our position that by stating the dissent, either before the affidavit was read and preserving the right to contradict the affidavit subsequently by oral testimony, or by cross-examining the witness, there was a sufficient indication

of a disagreement with the statement or evidence given by the witness; and I joined in those views.

THE PRESIDENT: The majority of the Tribunal think that as this affidavit is contested by some of the accused, it should not be read in the general phase. Therefore, the objection is sustained. It may be read on behalf of those individuals who support it, subject, of course, to other objections that are open.

Captain Brooks.

MR. BROOKS: In view of the Court's decision just announced, I would like to ask permission to put myself clear on the record that I did not think that was the understanding we had had when these rules were drafted and from the previous rulings when this point had been brought up on the opening statements, and there are certain affidavits and pieces of evidence on the record which I do not agree are binding upon my defendants and I want to go back and point those out to the Court at a later time. There has been a small percentage of evidence that has been inconsistent. Sometimes it has been, as I have assumed, from the period of time that has elapsed, making the witness' memory fail him on certain points, but I thought it would be cleared up later.

THE PRESIDENT: You must stand or fall with the transcript, Mr. Brooks. There is no reason for you to point out your position.

MR. BROOKS: Except that we were practically at the end of the case and when a rule is coming into effect which I have not understood and which, in justice, if it had been announced at the early part of this case, I would have made a lot of statements and objections that would have taken a lot of time in this court--

THE PRESIDENT: Just consider this, Captain Brooks: You heard every word that was said in this court affecting your client. If anything was said prejudicial to your client or clients, did you cross-examine?

MR. BROOKS: On occasion I have found the witness -- I have talked with him before he was put on the stand and found he would not change his statement on that point, and there was no necessity of cross-examining. I do not know whether I cross-examined or not.

THE PRESIDENT: But on your own statement you have not been prejudiced; you have no grievance. You are making a formal, unnecessary protest and wasting out time. The debate is closed.

MR. BROOKS: May I be heard in chambers on this?

THE PRESIDENT: We will adjourn until half-past nine tomorrow morning.

(Whereupon, at 1600, an adjournment was taken until Friday, 15 August 1947, at 0930.)

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NOTE:

The attached pages are corrected pages and should be substituted for the corresponding pages in the record.

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known to the Japanese with respect to the arrangement made at Rabaul, Port Moresby, Port Darwin, Balikpapan, Borneo, and Singapore. It has a direct bearing.

Again, I must say that I fail to see how the prosecution could seriously contend that this is not material to the issue raised by them as to whether or not this was an unprovoked war.

THE PRESIDENT: Suppose Australia made those strips in those parts of her own territory, we would hardly be asked to take it into consideration.

MR. LOGAN: But, that is not the case before us, your Honor. Here is an action that was taken thousands and thousands of miles, close to Japan. If Japan had done that, it probably would have been considered by the prosecution as an act of aggressive war.

THE PRESIDENT: I understand from my colleague, who examined this carefully while I was discussing it with you, that the first part relates to Lease-Lend and the second part covers material already rejected.

The objection is sustained and the document rejected by a majority.

We will recess for fifteen minutes.

(Whereupon, at 1045, a recess was

if the Tribunal please, an exposition of these various army plans, and this shows that steps were being taken at this time to put them into effect on November 28, 1941. They have a direct bearing on the question which will be for the determination of the Court as to whether or not this was an aggressive war.

THE PRESIDENT: We understand that you are tendering these to combat the charge of a treacherous attack.

MR. LOGAN: That is one of the minor issues, reasons, which I am attacking, not one of the major ones.

THE PRESIDENT: By a majority the Court sustains the objection and rejects the document.

MR. LOGAN: I shall omit defense document 1500-U-2.

I shall omit defense document 1500-S-2 as cumulative, showing America was ready for hostilities following the note.

I shall omit defense document 1500-T-2 on the same ground.

We offer in evidence defense document 1500-W-3. This is a top secret dispatch dated November 28, 1941, from Chief of Naval Operations to commanders

States to discontinue the negotiations for a time, and will be shown to have been the turning-point, the point at which the United States, losing interest in the negotiations, seemed to have decided that war was but a matter of time. An immediate sequel to the Indo-China move was the American, British and Dutch freezing of Japanese assets and rupture of commercial relations with Japan; but the evidence will show that that move had been under contemplation by the United States since some weeks before.

On 16-18 July the second KONOE ministry resigned and the third was formed. This change of government will be shown to have been directly and wholly brought about by the necessities of reaching an agreement with the United States -- the negotiations were not progressing, and it was felt that a change of foreign ministers was required to further them. The new cabinet continued with the attempt to bring about an agreement. Not only were new proposals offered, but Premier KONOE, taking up and elaborating a suggestion contained in the original draft proposal, urged that a meeting be held between him and President Roosevelt for a tete a tete from which there was every reason to expect much. To this suggestion -- which the premier had been able

to make on some conditions proposed by the Army -- to this suggestion the American authorities at first responded with some enthusiasm, but they later imposed so many conditions for the meeting that it could never be realized.

By August the pressure of the Army authorities upon the government for a quick settlement of the Japanese-American relations had become too powerful to be any longer resisted. The United States, it was argued, was insincere in negotiating; she had no real intention of agreeing; if Japan yielded on the points at issue then, the United States would impose further measures of oppression; and it was useless longer to negotiate, and better to go to war in defense of the nation than to yield. This position was opposed by the Government, which urged that further concessions could and should be made to preserve peace; the Navy at this time was reluctant to see the nation embarked upon a war, but entrusted the decision to the premier rather than openly opposing the Army's stand. At the Imperial Conference of 6 September the decision was arrived at that unless a settlement by diplomacy could be reached by mid-October war would be resolved upon.

The government redoubled its efforts;

Premier KONOE urged anew the promise held out by the meeting with the President; a new proposal, embodying the maximum concession which could be agreed upon, was presented to the United States; Foreign Minister TOYADA began consultations in Tokyo with the American and British Ambassadors to insure that every possible effort should be made. Despite all, the negotiations did not prosper; the United States remained unconciliatory and adamant and, as reported by Ambassador NOMURA, seemed determined on maintaining its stand even if it meant war. The Army renewed its insistence that diplomacy, having little prospect of success, must give place to arms; the opposing points of view could not be reconciled; and on 16 October the third KONOE government, like its predecessor, fell, a victim of the Japanese-American question.

The emergency of the successor cabinet, that of General TOJO, was widely regarded as evidence of the victory of extremist opinion in Japan. That, on the contrary, the new premier was charged to and did immediately upon taking office undertake reexamination of the whole question of Japanese-American relations, 'wiping the slate clean' of the Imperial Conference decision of 6 September which had estab-

lished the limit beyond which Japan could not go by way of concession toward America, will be shown by the evidence to be adduced. The highest officials of government and high command plunged at once into a round of Liaison Conferences at which the whole subject was minutely restudied with a view of finding the utmost concessions which could be offered. It having been understood from Ambassador NOMURA'S reports that a basis for agreement concerning the other two large questions had been obtained, the Liaison Conference devoted the most of its consideration to the problem of withdrawal of troops from China, the Army's intransigence in connection with which had caused the fall of the KONOE government and had brought the negotiations in Washington to a stalemate.

During this period the position of the Army high command remained that which it had been before: That there was but a faint prospect of successful conclusion of the negotiations, and that Japan would therefore eventually have to go to war. But while negotiations dragged out interminably, so it was argued, Japan was being subjected to gradual exhaustion of resources as the economic warfare of the allied powers began to take full effect; the nation was

losing its power to fight; and hostilities should therefore he commenced while Japanese fighting power was still relatively strong as compared with that of the potential enemy. The viewpoint of the Naval General Staff had come to be that if war was to be inevitable, it should be determined upon promptly. But the result was that agreement of the high command was secured to offer further concessions and to continue diplomatic efforts; but with the provisos that precautionary military preparations should go on simultaneously, and that if diplomacy failed to achieve results, a resolution for war should be taken.

The evidence will be that at the Liaison Conference of 1-2 November agreement was reached upon the presentation to the United States, in obedience to the policy so established, of two alternative proposals: One in general form, embodying such points of understanding as had theretofore been reached, together with the new concessions: The other in form of a modus vivendi, to be offered, in the event of American unreceptiveness to the general proposal, as a means of relaxing the tension to create a favorable atmosphere for continuance of negotiations. These proposals were approved at an Imperial Conference on 5 November, and Ambassador NOMURA was immed-

iately instructed to commence negotiations on that basis. Ambassador KURUSU was dispatched at the same time, in accordance with a long-standing request of Ambassador NOMURA, to assist.

The first of these proposals -- "Proposal 'A'", as it was designated -- was duly presented to Secretary Hull and the President. At first, the evidence will show, prospects from it seemed good; but gradually the United States seemed to lose interest; it made light of the concessions agreed to with great travail by Japan, it questioned the sincerity of Japan. There seeming to be no prospect of success in that direction, the Liaison Conference authorized the presentation of the modus vivendi, Proposal "B". It was handed over on 20 November. Both before and after that date, the evidence will show, a variety of efforts had been made by the Japanese representatives to meet the American position on the points at issue. Meanwhile, under the limitations of the decision previously taken, and in face of the obviously mounting threat to the national existence, time was running out.

Receipt from the United States of the memorandum of 26 November will be shown virtually to have extinguished hope of preserving peace. All

participants in the Liaison Conference were in agreement at last, that unless the United States could be persuaded to reconsider, Japan must resort to war in self-defense. Military preparations had, of course, been proceeding in accordance with the 5 November decision; but those preparations had been subject to countermand at any time, that an agreement might be reached, and that even after the actual decision for war was taken at the Imperial Conference of 1 December.

Liaison Conferences following the decision upon war considered and settled the manner of giving notice before commencement of hostilities and the content of that notification. Evidence will be tendered of the decision that before the opening of hostilities the United States should be notified, and the [illegible] note breaking off the current negotiations should be sent. Preparations were made accordingly and the final note was ordered delivered in Washington at 1 P.M. of 7 December. The note was dispatched to Washington and was there received in good time, but owing to delays there in the mechanical processes incident to its preparation, delivery was delayed until more than an hour after the appointed time, and consequently until after the attack on Pearl Harbor and other points in the Pacific. All concern-

ed in the government and the Liaison Conference intended, when the matter of notice was decided, that notification should precede any attacks.

Evidence will be introduced to show that the delay in delivery of the President's message of 6 December to the Emperor was without the knowledge or authorization of the Foreign Ministry or the cabinet, but that, on the contrary, the Foreign Ministry made every effort to expedite its delivery.

The evidence will show that the members of the Liaison Conference charged with responsibility for decision of the question of war or peace considered the final note dispatched to the United States to be in the circumstances then prevailing tantamount to a declaration of war, and a substantial compliance with the convention governing commencement of hostilities. That the responsible authorities of the United States concurred in that opinion; that the United States was amply warned of the coming of war, and in fact had anticipated that the delivery of the note of November 26 would result in rupture of the negotiations and of peaceful relations; and, lastly, that the highest military authorities of the United States expected the war at the hour that it came, will be shown by an abundance of evidence.

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

MR. LOGAN: We now offer in evidence defense document 1500-R-5, which is a memorandum for Admiral Stark from General George C. Marshall, Chief of Staff, dated September 12, 1941, regarding military aid for islands in the South Seas prior to Pearl Harbor.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: If the Tribunal please --

MR. LOGAN: I might say that the previous documents showing troop movements, and so forth, have been introduced and accepted by the Tribunal.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: If the Tribunal please, the prosecution views the transfer of troops to the Philippines as not being material and objects on that ground.

THE PRESIDENT: Purely defensive.

By a majority the objection is sustained and the document rejected.

MR. LOGAN: I didn't have an opportunity to answer. I might say there is nothing in this document to show whether it is offensive or defensive.

THE PRESIDENT: It is too late now, Mr. Logan.

Spratt & Duda

AFTERNOON SESSION

The Tribunal met, pursuant to recess, at 1330.

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

THE PRESIDENT: Mr. Blakeney.

MR. BLAKENEY: In connection with the question raised by the prosecution before the recess, there seems to be a considerable difference of opinion among defense counsel, particularly in view of the fact that any ruling now made on this question would be presumed to have a retroactive effect in connection with much evidence already received. It is therefore felt that full consideration should be given to preparation of an argument on the question, which we are not prepared to make at this time. I shall therefore request leave of the Tribunal to withdraw the tender of this document for the time being.

THE PRESIDENT: We give you leave to withdraw the document.

MR. BLAKENEY: Another document on this point touches upon the influence on the Japanese-American negotiations themselves of the independence of the military high command: An excerpt from the memoirs

of Prince KONOYE as published in the record of the proceedings of the Joint Committee of the Congress of the United States on the investigation of the Pearl Harbor attack. I tender for identification Volume 20

listed in the Japanese Annex and Explanation he did not believe that difficulties which might arise over these two points would be such as to prevent an agreement between China and Japan.

"The Secretary referred briefly to the reciprocal feature of our suggested redraft of Section V of the Japanese proposal, which relates to the economic activity of the Southwest Pacific area, and expressed the hope that subsequently other countries could be brought in. He alluded in this connection to the fact that the benefits of our trade program in South America are enjoyed by all nations."

The oral statement handed by Secretary Hull to Ambassador NOMURA on 16 May is offered in evidence as defense document 1400-E-6.

THE PRESIDENT: Admitted on the usual terms.

THE CLERK: Defense Document 1400-E-6 will receive Exhibit Number 2874.

(Whereupon, the document above referred to was marked defense exhibit No. 2874 and received in evidence.)

MAJOR BLAKENEY: The oral statement is as follows:

"Informal and Unofficial Oral Statement

Handed by the Secretary of State to the Japanese Ambassador (NOMURA) on May 16, 1941.

"There has not yet been time to study care-

14 August / [illegible]

I N D E X

Of

EXHIBITS

Doc. No.	Def. No.	Pros. No.	Description	For Ident.	In Evidence
1401-D-1	2882		Report of Ambassador NOMURA to Foreign Minister TOYODA on 24 July 1941 of his interview with President Roosevelt		25750
1901	2883		Memorandum handed to Ambassador Grew by Foreign Minister TOYODA on 26 July 1941		25752
1401-F-1	2884		Japan's Reply sent by Foreign Minister TOYODA to Ambassador NOMURA on 5 August 1941		25756
1401-G-1	2885		Proposal Foreign Minister TOYODA sent to Ambassador NOMURA on 5 August 1941		25759
1401-H-1	2886		Report of Ambassador NOMURA to Foreign Minister TOYODA re the latest Japanese Proposal to Secretary Hull, dated 6 August 1941		25764
1401-J-1	2887		Instructions sent to Ambassador NOMURA from Foreign Minister TOYODA on 7 August 1941		25772
1401-K-1	2888		Ambassador NOMURA's Account of Meeting of President Roosevelt and Prime Minister Churchill at sea on 17 August, 1941, dated 18 August 1941		25776

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EXHIBITS

(cont'd)

Doc. No.	Def. No.	Pros. No.	Description	For Ident.	In Evidence
1400-K-6	2889		Excerpt from "Foreign Relations of the U.S. Japan: 1931-1941" Vol II - Statement handed by the President of the US to the Japanese Ambassador NOMURA on 17 August 1941		25780
1400-C-8	2890		Excerpt from "Foreign Relations of the US Japan: 1931-1941" Vol II - Oral Statement handed by President Roosevelt to the Japanese Ambassador NOMURA on 17 August 1941		25782
1400-L-6	2891		Excerpt from "Foreign Relations of the US Japan: 1931-1941" Vol II - Memorandum by the Ambassador in Japan (Grew), dated 18 August 1941		25784
1400-M-6	2892		Excerpt from "Foreign Relations of the US Japan: 1931-1941" Vol II - The Ambassador in Japan (Grew) to the Secretary of State, Report dated 18 August 1941		25790
			MORNING RECESS		25792

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(cont'd)

Doc. No.	Def. No.	Pros. No.	Description	For Ident.	In Evidence
1401-M-1	2893		Telegram from Ambassador NOMURA to Foreign Minister TOYODA dated 29 August 1941 re Talk he had with Secretary Hull for a Meeting		25794
1401-N-1	2894		Report of Ambassador NOMURA to his Government re the meeting, dated 3 September 1941		25798
1401-O-1	2895		Telegram from Foreign Minister TOYODA to Ambassador NOMURA on 4 September 1941		25801
1400-O-6	2896		Excerpt from "Foreign Relations of the US Japan: 1931-1941" Vol II - Comment by the Ambassador in Japan (Grew), dated Tokyo, 5 September 1941		25805
1401-P-1	2897		Telegram of Ambassador NOMURA to Foreign Minister TOYODA, dated 8 September 1941 re War Sentiment in America		25812
1400-Q-6	2898		Excerpt from "Foreign Relations of the US Japan: 1931-1941" Vol II - Memorandum of a Conversation Between Japanese Ambassador and Secretary of State on 10 September 1941		25814

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EXHIBITS

(cont'd)

Doc. No.	Def. No.	Pros. No.	Description	For Ident.	In Evidence
1400-R-6	2899		Excerpt from "Foreign Relations of the US Japan: 1931-1941" Vol II - Proposed Instructions to the Japanese Ambassador NOMURA, handed by the Japanese Minister for Foreign Affairs (TOYODA) to the American Ambassador in Japan (Grew) on 13 September 1941		25816
1400-B-8	2900		Excerpt from "Foreign Relations of the US Japan: 1931-1941" Vol II - Memorandum by the Counselor of Embassy in Japan (Dooman), dated 18 September 1941		25820
1401-Q-1	2901		Conversation TOYODA had with American Ambassador in Tokyo, reported to Ambassador NOMURA on 22 September 1941		25823
1401-R-1	2902		Report to Ambassador NOMURA from Foreign Minister TOYODA on 23 September 1941 of Explanation given to American Embassy for reasons for Japan's requirement for stationing Troops in China		25827
			NOON RECESS		25830

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EXHIBITS

(cont'd)

Doc. No.	Def. No.	Pros. No.	Description	For Ident.	In Evidence
1500-X-5	2903		Excerpts from Pearl Harbour Attack, US Government Printing Office, Washington, 1946: Memoirs of Prince KONOYE - Vol 20		25831
1401-S-1	2904		Report of Foreign Minister TOYODA to Ambassador NOMURA on 27 September 1941 re his meeting with Ambassador Grew to urge him to work for the Roosevelt-KONOYE meeting		25834
1401-T-1	2905		Message from Foreign Minister TOYODA to Ambassador NOMURA, dated 27 September 1941 (referred to in preceding exhibit)		25836
1401-U-1	2906		Telegram of Ambassador NOMURA of 3 October 1941 to Foreign Minister TOYODA		25842
1401-V-1	2907		Report to Ambassador NOMURA from Foreign Minister TOYODA, dated 3 October 1941 re Japanese-American negotiations with the British Ambassador, Sir Robert Craigie		25846
1844	2908		Ambassador Craigie's Report to his Government on conditions in Japan, dated 30 September 1941		25847

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EXHIBITS

(cont'd)

Doc. No.	Def. No.	Pros. No.	Description	For Ident.	In Evidence
1400-T-6	2909		Excerpt from "Foreign Relations of the US Japan: 1931-1941" Vol II - Memorandum by the Counselor of Embassy in Japan (Dooman), dated Tokyo, 7 October 1941		25852
1400-V-6	2910		Excerpt from "Foreign Relations of the US Japan: 1931-1941" Vol II - Memorandum by the Ambassador in Japan (Grew), dated Tokyo, 8 October 1941 re Conversation he had with Mr. TERASAKI, Chief of the American Bureau of the Foreign Office		25854
1400-X-6	2911		Excerpt from "Foreign Relations of the US Japan: 1931-1941" Vol II - Memorandum by the Undersecretary of the State (Welles) re Conversation had with the Japanese Minister in Washington, dated 13 October 1941		25856
1400-Y-6	2912		Excerpt from "Foreign Relations of the US Japan: 1931-1941" Vol II - Memorandum by the Counselor of Embassy in Japan (Dooman) re Resignation of the 3rd KONOYE Cabinet, dated Tokyo, 17 October 1941		25857

I N D E X

Of

EXHIBITS

(cont'd)

Doc. No.	Def. No.	Pros. No.	Description	For Ident.	In Evidence
1500-Y-5	2913		Excerpts from Pearl Harbour Attack - US Government Printing Office, Washington: 1946 - Memoirs of Prince KONOYE - Vol 20		25860
1500-A-6	2914		Excerpt from Pearl Harbour Attack - US Government Printing Office, Washington: 1946 - Memoirs of Prince KONOYE		25868
			AFTERNOON RECESS		25877

LANGUAGE CORRECTIONS

14 August 1947

Exhibit 774-A, Original Exhibit, page 1, line 1, substitute "Dear" for "To Mr.". Paragraph 1, line 1, substitute "it is" for "you have"; after "decided" insert "that you are".

Paragraph 2, line 1, after "long-cherished" insert "and later revised". Line 2, read "views"; delete "revised somewhat later" and "had". Line 4, delete "an"; read "authorities"; substitute "Russia" for "SOVIET UNION".

Page 2, line 1, before "Mr." insert "Dear". Paragraph 1, line 1, substitute "on" for "to".

Page 4, line 3, delete "had". Line 4, substitute "no" for "none in". Line 5, delete "while"; substitute "appear to be" for "are only". Line 6, substitute "moderated" for "neutralized". Line 7, delete from "Notwithstanding" to "seen" and substitute "Foreign views aside"; after "standpoint" insert "the interests". Line 8, substitute "at least very" for "undoubtedly most". Line 18, substitute "outside" for "outer"; substitute "disregarding entirely immediate" for "excluded of the"; delete from "which we" to the end of the sentence.

Paragraph 2, line 4, substitute "legitimate" for "legal". Line 8, substitute "consequently" for "accordingly". Line 10, substitute "activities" for "movements". Line 11, substitute "do not retain any" for "is void of the fromer"; after "vestige" insert "of the former days". Line 12, substitute "Only a few" for "Few still cling to the". Line 13, substitute "remain, but" for "and". Line 15, after "other" insert "formal"; delete "which are perfunctory". Line 16, after "removed, and" insert "the number of"; delete from "wouldn't" to the end of the sentence and substitute "would not the rest be satisfactory?"

Paragraph 3, line 1, after "should" insert "above all". Line 2, substitute "expelled" for "most expulsed"; after "question" insert "on". Line 3, delete "that". Line 4, delete from "must be" to "with our" and substitute "and".

Page 5, line 1, after "Anglo-Americans" insert "are necessary for the solution of this problem".

Record Page 7,884, line 18, (Orig. Exh. page 6, para 2, line 24) substitute "matter" for "fact". Line 23, (Orig. Exh. lines 27 & 28) substitute "determination" for "resolutions"; after "refusing" insert "even".

Record Page 7,885, line 17, (Orig. Exh. page 7, para 1, line 1) delete from "Now that" to "determination of" and substitute "On the basis that it is determined". Line 18, substitute "to refuse" for "refusing". Line 19, substitute "taken" for "treated". Line 21, (Orig. Exh. line 4) substitute "is the" for "are in a"; delete "position". Line 22, delete from "try" to "weave" and substitute "make any specific". Line 24, (Orig. Exh. line 6) delete "on our side"; substitute "problem" for "trouble".

Original Exhibit, page 7, para 1, line 14, substitute "should be able" for "shall". Line 15, after "fully" insert "to"; substitute "should not have to make many" for "need not make much". Line 16, delete "on the contrary". Line 17, delete "on the question until now".

Exhibit 2233, Record Page 16,017, line 20, substitute "guiding" for "political". Lines 21 & 22, delete from "are" to "Nationalism" and substitute "represents a nearer approach to the spirit in which the Japanese Empire was founded". Line 24, delete "do not". Line 25, substitute "a very inadequate" for "an adequate".

Record Page 16,018, line 1, substitute "of" for "in"; read "Americas". Line 4, substitute "That may be" for "this is". Line 9, read "European and American economic spheres". Line 10, delete "out". Line 11, delete "set up". Line 12, delete from "an ideal" to the end of the sentence and substitute "for our ideal there must be something much grander".

Record Page 16,019, line 13, substitute "presence" for "rule"; after "of" insert "the Imperial Ancestress"; delete "AMATERASU OMIKAMI". Line 15, after "Archipelago" read "and that her" etc. Line 16, substitute "incarnate gods" for "who are the incarnation of God". Line 18, substitute "whole world" for "universe". Line 21, after "united" insert "in one family". Line 22, substitute "All" for "Each"; read "nations"; substitute "their own proper" for "its"; delete "in the Sun". Line 23, after "peace" insert "and security".

Record Page 16,020, line 17, subsitute "farsighted" for "philosophical".

Record Page 16,021, lines 9 to 11, delete from "Today" to "come to" and read "Furthermore, I am convinced that, in this sense, now is the time to clarify our national polity, proclaim it before all the world and loudly".

LANGUAGE ARBITRATION BOARD

Thursday, 14 August 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, all Members sitting, with the exception of: HONORABLE JUSTICE STUART McDOUGALL, Member from the Dominion of Canada and HONORABLE JUSTICE I. M. ZARAYANOV, Member from the USSR., not sitting from 0930 to 1600.

For the Prosecution, same as before.

For the Defense Section, same as before.

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(English to Japanese and Japanese to English interpretation was made by the Language Section, IMTFE.)

Lefler & Wolf

MARSHAL OF THE COURT: The International Military Tribunal for the Far East is now in session.

THE PRESIDENT: Major Blakeney.

MR. BLAKENEY: I return, now, to the memoirs of Prince KONOYE, exhibit 2,866, to read further passages narrating events in Japan from early July, in connection with the Japanese-American negotiations. I commence at the top of page 4 of the exhibit:

"With the German-Soviet question settled for the time being, the American question permitted of no more delay. Also, the Foreign Minister's ambiguous attitude could no longer be disregarded. Consequently, on July 4th, purposely using the form of a letter, I transmitted the following views to the Foreign Minister.

"1. Until the settlement of the Northern question, armed force should not be used against the Southern regions, and steps should be taken toward readjustment of diplomatic relations with America. Naval leaders clearly state that to fight America and the Soviets simultaneously offers almost insurmountable difficulties. From this point of view it is advisable that the invasion of French Indo-China should, if possible, be abandoned.

"2. As a result of the readjustment of diplomatic relations with America, it would be impossible

to satisfy German demands. This might temporarily create an undercurrent of misunderstanding among the Axis countries, but this could not be avoided.

"3. Readjustment of American-Japanese relations was also necessary in view of these three points:

"a. Expansion of national strength by acquisition of foreign goods.

"b. Prevention of American-Soviet rapprochement.

"c. Acceleration of peace negotiations with Chungking.

"4. Not only was it necessary to continue the present negotiations with America, from the above point of view, it was also necessary to bring them to a successful conclusion in the light of high national policies. Lastly, I added that 'even though from the Foreign Minister's point of view a compromise between Japan and America might seem impossible, I, who carried the responsibility of vital state affairs, was obliged to do my best. Moreover, the Emperor was seriously concerned about the situation. I, therefore was determined to do my utmost, and would work for the success of negotiations even at the cost of some concessions.'

"The Foreign Minister said to me over the telephone that he was profoundly moved by my letter.

When he saw me at my official residence the next day, the 5th, the following points were established.

"'Fundamentally he was of the same mind as I. No matter what public opinion might be, he considered himself to be the most zealous person in respect to the American question. He was certainly not trying to please Germany. However, he was opposed to do anything detrimental to the Tripartite Pact. From that very day he was going to give his entire attention to the American question.' At the same time, he made the significant statement that 'if at any time he became a stumbling-block, he would resign his post.'

"Deliberations on the Japanese-American Proposal for Understanding thus began again. Joint conferences were held on July 10th and 12th, which considered the American proposal of June 21st. The special points of this June 21st proposal were as follows:

"1. In the item covering the attitudes of the two countries toward the European War, the clause advocated by Japan, which proposed joint efforts of Japan and America for the restoration of peace, was deleted. This suggested by implication a determination to work to the last for the overthrow of Germany.

"2. In relation to the Tripartite Pact, America proposed that 'Japan. . . Make clear her intention

of preventing a spreading of the European War resulting from provocative acts. This seemed to reveal an effort to have Japan make a written promise not to take up arms in the event of America's participation in the war as the result of 'provocation' by Germany.

"3. Concerning the China Incident, the distinction made in the first proposal between the Chiang Kai-shek Administration and the Nanking Government was omitted so as to make the recommendation of peace be to the 'Chinese Government'. Also, although the KONOYE Principles were mentioned, only that part referring to amicable relations were included, and the matter of economic cooperation and a common front against communism was omitted. On the whole this marked a general reversion to a fear of American public opinion.

"4. The Sino-Japanese Peace Terms, which Japan had deleted were included in an Annex. The necessity for the establishment of perfect agreement concerning this was indicated.

"5. Whereas Japan advocated limiting the economic cooperation of Japan and America to the 'southwest' Pacific, this was revised to cover the entire Pacific.

"This June 21st proposal was finally deliberated upon at the joint conference of July 10th.

"However, in spite of my efforts, Foreign Minister MATSUOKA's attitude became increasingly uncooperative. It became clear that his attitude was one of opposition to the Japanese-American negotiations.

"At the joint conference on the 12th, the Army and Navy made a joint statement of their opinions. It differed from the Foreign Minister's in that it stated: (1) Japan's attitude toward the European War should be determined according to treaty obligations and the question of self-defense. (2) The three KONOYE Principles should form the basis of dealing with the Chinese question. America might make recommendations as to an armistice and peace, but should not intervene in the peace terms. (3) Japan reserved her right to use armed forces in the Pacific in case of necessity.

"On July 17th at 5:10 P.M. I was received in audience by the Emperor at the Imperial Palace and ordered to organise the Cabinet again. Commencing the selection of Cabinet members at once, I completed the task at 5:30 P.M. on the 18th. I reported to the Palace at 7:00 P.M. and presented the names of the Cabinet members. At 8:50 P.M. the newly-organized third KONOYE Cabinet came into existence. The first Cabinet council was held at 9:45 P.M. The special

feature of the new Cabinet was the appointment of Admiral TOYODA as Foreign Minister.

"The previous Cabinet had done its utmost for the success of the Japanese-American negotiations. Particularly, the Army and Navy had maintained the closest cooperation. The opposition of the Foreign Minister alone had caused the Cabinet's collapse. Unexpectedly, only the Foreign Minister was changed, and actually the identical Cabinet had the opportunity of again taking the stage. (In addition to the Foreign Minister, four Ministers, KANEMITSU, OGAWA, AKITA, and KAWADA had resigned, but essentially it was a matter of Foreign Minister MATSUOKA's being changed.) Thus, the mission assigned to the new Cabinet was clear to everyone.

"It should be noted particularly that the Army and Navy Ministers remained in office, and that the important post of Foreign Minister was occupied by a representative of the Navy, which was most concerned with the American question, and hence had a significant voice in the matter. The Cabinet was given the additional privilege of holding joint conferences with the Supreme Command in the Imperial Palace, and launched immediately upon the attainment of its objectives, the solution of Japanese-American problems.

"However, the significance of this very obvious political change was not clearly grasped by Ambassador NOMURA in Washington. Because the Ambassador himself failed to understand it, almost nothing was done to convey its significance to the Americans. To the Tokyo Government, which had expected that a good impression would be made by the establishment of the new Cabinet, and that negotiations would progress swiftly now that the vague atmosphere had been dispelled, this situation was truly mortifying.

"The previous Cabinet in its last days had drawn up with great pains a Japanese counter-proposal to the American proposal of June 21st, and on July 25th", which is a typographical error. On the original it's "July 15." -- "and on July 15th had dispatched it by cable. In spite of this, the Embassy at Washington had not yet presented it to the Americans, first because of the change in Cabinets, second, because of fear that its contents might not be acceptable to the Americans. This was made clear in a cable from Ambassador NOMURA on July 22nd. In addition to all that, Ambassador NOMURA on July 23rd, requested that he be informed of the new Cabinet's policy toward America."

At that point I stop for the time being reading from this document.

Next to be offered in evidence is Ambassador's report to Foreign Minister TOYODA, on 24 July, of his interview with President Roosevelt of the same day, defense document No. 1401-D-1.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1400-D-1 will receive exhibit No. 2882.

(Whereupon, the document above referred to was marked defense exhibit No. 2882 and received in evidence.)

MR. BLAKENEY: I read the document for the purpose especially of showing that the United States had at the time determined upon the imposition of the economic rupture even at the risk of war:

"From NOMURA to TOYODA

"24 July 1941

"Feeling keenly the strained situation, I asked the Chief of Naval Operations yesterday, the 23rd, when we two had lunch alone, to use his good offices to arrange a meeting between the President and myself. I met the President in private at 5:00 PM on the 24th. I dwelt, in accordance with your instructions, upon the reasons why our advance into French Indo-China was inevitable for Japan's economic existence as well as for the stabilization of that area, and also upon the

resolution of the Japanese Government to respect territorial integrity and sovereignty. I further informed him that the present Cabinet also is eager for understanding between Japan and the United States, and urged him to give the matter statesmanlike consideration from a broad viewpoint with a view to maintaining the peace of the Pacific. The President hinted at the possibility of an oil embargo, saying that, in spite of the strong public sentiment for placing an embargo on the export of petroleum to Japan, he had kept it in check on the ground that it was not desirable for the peace of the Pacific, but that now he has lost his justification. As to Japan's advance into French Indo-China, it seems that it is already now too late, inasmuch as he made the views of the American Government clear by reiterating the main points of the statement of the State Department of the 24th. After inquriing of me if I had consulted in advance with the State Department, he stated that he would not hesitate to make efforts if there were a way by which the troops now stationed in French Indo-China might be withdrawn, the neutrality of the area guaranteed (as in the case of Switzerland), and its resources obtained by the Powers freely and equitably. Besides, he told me he had deep sympathy for Japan in obtaining resources. In fine, I got the

impression that some measures of economic pressure will be taken in the near future. Under-secretary of State Welles and the Chief of Naval Operations were present."

On 26 July in Tokyo the new Foreign Minister, Admiral TOYODA, had a conversation, chiefly on the subject of the agreement for joint defense of Indo-China, with Ambassador Grew, the record of which is in evidence as exhibit 2,754. At that time the Foreign Minister handed to the Ambassador a memorandum pointing out that Japan was concerned over what was deemed to be an encirclement of Indo-China. The memorandum is offered in evidence as defense document 1901.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1901 will receive exhibit No. 2883.

(Whereupon, the document above referred to was marked defense exhibit No. 2883 and received in evidence.)

MR. BLAKENEY: I read the memorandum:

"Memorandum Handed to Ambassador Grew by Foreign Minister Toyoda on 26 July 1941.

"In my solicitude for friendly relations between Japan and the United States, I revealed frankly to you yesterday evening, prior to its announcement to the public, the views of the Japanese Government concerning the joint defense of French Indo-China undertaken by Japan and France, and requested the consideration thereof on the part of the American Government. I have asked you again to call on me, as I believed, in view of the matters appearing recently in American newspapers and reports, that to make a frank statement of the views of the Japanese Government repeatedly is the only way to prevent further aggravation of the situation.

"Whereas the statement of the American Under-Secretary of State of 24 July dealt with general principles, I venture to declare that the situation in which Japan now finds herself is, in the light of the serious state of affairs within and outside the country, closely connected with the very existence of Japan herself.

"If Japan had had an intention of advancing southward with territorial ambitions, she could have

carried out the intention at any time she liked, without enduring the conversations with the Netherlands East Indies which lasted for six months. That she did not venture to take such a step, and even tolerated the failure of those conversations, was simply because she had a sincere desire of maintaining the peace of the Pacific. I expect that you are fully aware that the Japanese advance into northern French Indo-China was requisite for carrying through the China Affair. Nevertheless, we perceived through various reports which we had obtained an 'encircling' of French Indo-China, constituting a menace to that area, which is indispensable in prosecuting the China Affair and in securing the necessary resources. It was against such a menace that Japan undertook the joint defense of French Indo-China.

"The present step is only a 'precautionary measure,' as explained above, which both Japan and French Indo-China were compelled to take for the sake of defence, and I reassure you that, as I told you last evening, it has no offensive significance, either against French Indo-China itself or against the areas adjacent thereto. Besides, I firmly believe that the general peace of the Pacific can be

maintained through, and only through, such measures.

"Should any provocative attitude or any concrete step be taken against such measures of joint defence which Japan as well as French Indo-China were compelled to take for the sake of their self-defence, on the exclusively theoretical ground that it contradicts general doctrinarian principles which the American Government embraces, the Japanese Government may not be able, it is feared, in spite of all its efforts (which have succeeded in suppressing them thus far) to suppress an outburst of the national feeling which has unfortunately received an extremely strong impetus from the attitude which the American Government has taken in connection with its aid to the Chiang Kai-shek regime. In such a case, there is a danger that Japan would be forced to take some counter-measures, to the destruction of all the hopes of myself as well as the present Cabinet to prevent by all possible efforts the coming about of such a situation. This would be much to be dreaded, indeed, for the maintenance of friendly relations between Japan and the United States and the peace of the Pacific. It is cordially requested therefore that Your Excellency as well as your Government give prudent and general consideration thereto."

Japan's reply to President Roosevelt's suggestion made to Ambassador NOMURA was sent by the Foreign Minister on 5 August. I offer in evidence now defense document 1401-F-1, the telegram of explanation of the reply.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1401-F-1 will receive exhibit No. 2884.

(Whereupon, the document above referred to was marked defense exhibit No. 2884 and received in evidence.)

MR. BLAKENEY: I read the telegram:

"From TOYODA to NOMURA

"5 August 1941

"1. While the Japanese Government is managing Japanese-American diplomacy in spite of various domestic difficulties, the President and the Secretary of State are, according to your repeated reports, taking a calm and sympathetic attitude toward Japan in spite of the trend of public opinion in the United States. There are, however, not a few in Japan who urge that the United States is increasingly strengthening her economic pressure upon Japan. The YOMIURI special dispatch from Washing on 2 August, for instance, reported that the President of the United

States had laid an embargo or an extreme limitation on the export of various petroleum products and that even the licenses already issued had consequently all been cancelled. The telegram, irrespective of the truth of the report of the actual extent of the measures taken, is being made much of by the extremists, with a serious influence upon the general situation.

"2. It is absurd to think that Japanese national opinion could be intimidated through tightening of the so-called encirclement of Japan or strengthening of economic pressure. The result would, in the light of our national character, be just the reverse. Moreover, it would surely be utilized as fine material by our bellicose elements, as is demonstrated in the above instance, and the situation might consequently hasten in a direction contrary to the adjustment of Japanese-American relations.

"3. It is recognized that Japanese-American relations are now confronted with a very serious and delicate crisis. If, at this juncture, the United States thinks over the consideration and restraint of the Japanese Government, and especially its sincerity shown recently in the spontaneous suspension of bombing of Chungking, and if she really wishes adjustment

of relations between Japan and the United States, which are two equal powers of the Pacific, it is desirable at the moment that she should promptly withdraw or alleviate to the utmost such measures as are regarded as economic pressure upon Japan, so that adjustment of the relations between the two countries can be conducted in as friendly and calm an atmosphere as possible and that no such misunderstanding be caused within and without the country as that Japan carried on the negotiations under pressure. That Japan is ready to reciprocate is clearly demonstrated by the statement of the Finance Minister the other day.

"4. The Japanese Government is making the proposal contained in the separate telegram in accordance with the desire for adjustment of Japanese-American relations which has been harbored since the time of the preceding cabinet.

"The present proposal is to be the reply to the proposal of the President of the United States on the 24th, and has been decided upon after careful deliberation, taking fully into consideration the views of the two countries. You should bear this in mind and impress it upon the President and Secretary of State, and call their attention to the importance of

the matter.

"5. Although the present proposal constitutes in form, as stated before, a reply to the proposal of the President of the United States, it is expected that it will be absorbed into the entire framework of the admustment of the Japanese-American relations, because it is our intention to make it the means of resumption of the Japanese-American negotiations which were suspended after the advance into southern French Indo-China which was executed while the presentation of our revised proposal of 14 July had been delayed. You are directed, therefore, to understand this instruction fully and to convey the separate telegram without delay."

On the same day, 5 August, Foreign Minister TOYODA sent to Ambassador NOMURA the proposal to be handed to the United States. This proposal is contained, together with the explanation to be given to the United States, in defense document 1401-G-1, which is now offered in evidence.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1401-G-1 will receive exhibit No. 2885.

(Whereupon, the document above referred to was marked defense exhibit

No. 2885 and received in evidence.)

MR. BLAKENEY: I read the exhibit:

"From TOYODA to NOMURA

"5 August 1941

"(I) Explanation. (The explanation should be given orally, and not in writing.)

"The significance and nature of the measures taken by the Government of Japan for the common defence of French Indo-China have been made clear by the exhaustive explanations of the Japanese Foreign Minister and the Japanese Ambassador to the United States. In short, they are peaceful and defensive measures which a third Power has no need to intervene in. They are, moreover, necessary for preventing an explosion of anti-foreign views, in view of the provocation of public opinion by the recent trend of the policy of Great Britain, the United States, the Netherlands East Indies, etc., toward Japan, and eventually for preserving the peace of the Pacific from rupture.

"The following proposal will be made because the Government of the United States might possibly be unable to shake off a sense of uneasiness, notwithstanding the above explanation. And, as to the proposal, conversations will be started immediately -- off the record and confidentially, in consideration

of the present situation -- and when an agreement is reached, it will promptly be taken into the framework of adjustment of diplomatic relations between Japan and the United States for which negotiations have been conducted for some time past.

"At any rate, we are convinced that the Government of the United States will agree to the views of the Japanese Government that it is necessary to examine, with sympathy and calmness, the various causes which have produced the present tense relations between the two countries, and to try to improve the situation or eliminate the causes which might lead up to disquietude of military, economic and political nature.

"(II) The Proposal.

"1. The Japanese Government undertakes:

"(A) that, in order to remove such causes as might constitute a menace of a military character to the United States, it will not further station its troops in the southwestern Pacific areas except French Indo-China and that the Japanese troops now stationed in French Indo-China will be withdrawn forthwith on the settlement of the China Incident, and

"(B) that, in order to remove such causes as might constitute a menace of political and military

character to the Philippine Islands, the Japanese Government will guarantee the neutrality of the islands at an opportune time on the condition that Japan and Japanese subjects will not be placed in any discriminatory positions as compared with other countries and their nationals including the United States and its nationals, and

"(C) that, in order to remove such causes as might be responsible for the instability of the economic relations between Japan and the United States in East Asia, the Japanese Government will cooperate with the Government of the United States in the production and procurement of such natural resources as are required by the United States.

"2. The Government of the United States undertakes:

"(A) that, in order to remove such causes as might constitute a direct menace of military character of Japan," it should be, "to Japan or to her international communication, the Government of the United States will suspend its military measures in the South Pacific areas, and also that, upon a successful conclusion of the present conversations, it will advise the Governments of Great Britain and of the Netherlands to take similar steps, and

"(B) that, in order to remove such causes as might be responsible for military, political and economic friction between Japan and the United States, the Government of the United States will cooperate with the Japanese Government in the production and procurement of natural resources as are required by Japan in the Southwestern Pacific areas, especially in the Netherlands East Indies, and in the solution of the pending issues between Japan and the Netherlands, and

"(C) that, in conjunction with the measures as set forth in (B) above, the Government of the United States will take steps necessary for restoring the normal relations of trade and commerce which have hitherto existed between Japan and the United States, and

"(D) that, in view of the undertaking by the Japanese Government as set forth in 1.(A) above, the Government of the United States will use its good offices for the initiation of direct negotiations between the Japanese Government and the Chiang Kai-shek regime for the purpose of a speedy settlement of the China Incidents, and that the Government of the United States will recognize a special status of Japan in French Indo-China even after the withdrawal of the

Japanese troops from that area.

"(III) Publication:

"(At the beginning of the negotiations, the point should be made clear orally.)

"The present negotiations will be conducted in secrecy, as explained above. However, in case it is considered desirable, from the general viewpoint, to publish a part or the whole progress of them, official announcement will be made after agreement upon time, contents, form, etc."

On 6 August, he reported, the Ambassador presented the latest Japanese proposal to Secretary Hull, and the Secretary's reaction was described in the report of the Ambassador to the Foreign Minister, defense document 1401-H-1, which is offered in evidence.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1401-H-1 will receive exhibit No. 2886.

(Whereupon, the document above referred to was marked defense exhibit No. 2886 and received in evidence.)

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MAJOR BLAKENEY: I read the telegram:

"From Nomura to Toyoda, 6 August 1941.

"I called on Secretary of State Hull in the late afternoon of 6 August, and conveyed the proposal of (II) of your telegram No. 448, after giving a detailed explanation of (I) thereof in accordance with your repeated instructions including the telegram referred to.(The proposal was handed to the Secretary of State in writing, in accordance with separate telegram No. 660.)

"Hull promised to give an answer after full study shall have been made, and did not seem much interested in our proposal at the moment. Then he gave his opinion in detail on the present relations between Japan and the United States, saying that he was going to express his personal sentiments apart from the present proposal. He said that, laying aside the relation between the Secretary of State and myself, he could but be deeply disappointed to see the successive moves of Japan. He declared that, so long as Japan holds to the policy of conquest by force, there is no room left for negotiations; and that, so long as the government authorities of Japan call American actions the encirclement of Japan, he can expect nothing from Japan ('I can expect nothing

from you'). He added that, while Americans want to live in peace and quiet, Hitler would smash whatever stands in his way, under pretence of self-defense, and he talked as if he regarded Japan as one of Hitler's kind.

"Judging from the impression I received today, it seems utterly impossible now by any explanation to bring the authorities of the American Government to understand the true intention of Japan, and it was clearly perceived that the United States is already determined to face any situation that may be brought about."

I return once again to the KONOE Memoirs, and read the remainder of Exhibit No. 2866, commencing with page 6, last paragraph, in connection with the Premier's proposal for a personal meeting with President Roosevelt:

"During this time, I was considering every means by which to surmount the Japanese-American crisis. Finally, I made up my mind to personally meet with the President, and on the evening of August 4th, I told both the Ministers of War and of Navy-about this for the first time. My words were as follows:

"1. The President of the United States

has gone so far as to say that he "wishes to leave nothing undone," and it is our duty, I believe, to do everything that can be done. Behind the conversations which have been held between Japan and America to date, there have been various misunderstandings and differences of sentiment, and it seems that the real intentions of each are not thoroughly understood by the other. For a statesman to allow matters to develop in this manner into war could not be justified when viewed in the light of world peace. He would not be fulfilling his duties to the Emperor, who views Japanese-American relations with particular anxiety, nor to the people. If all that could be done had been done and still there is war, there can be no help for it. In such an eventuality, our minds can be made up, and the people's will determined. Although outwardly Chamberlain of England appeared to have been deceived by Hitler on his several trips to the Continent prior to the European War, it is believed that they were effective from the standpoint of solidifying the determination of the British people.

"'2. In this most critical period, it is feared that the opportune moment might be missed if negotiations are carried on through Ambassador NOMURA. The Prime Minister should meet personally with the Pres-

ident and express straightforwardly and boldly the true intentions of the Empire. If the President still does not understand, I shall, of course, be fully prepared to break off the talks and return home. It is, therefore, an undertaking which must be carried out while being fully prepared for war against America. If, after a direct meeting with the President, an understanding cannot be obtained, the people will know that a Japanese-American war could not be avoided. This would aid in consolidating their determination. The world in general, also, would be made aware that the primary factor is not aggression and invasion. It will know that great efforts were made in behalf of maintaining peace in the Pacific. This would be advantageous to us in that the unfavorable trend of the world's public opinion would be somewhat eased.

"'3. Since the matter of the President's coming to Honolulu has already been brought up in the first Proposal for Understanding, I do not believe that having it materialize is an impossibility. It is not necessary to assume from the start that the conversations will fail. Japan will insist, of course, on the firm establishment of the Greater East Asia Co-Prosperity Sphere. American claims will be based on the provisions of the Nine-Power Pact. The con-

tents of these are at odds with each other. However America has stated that "it is ready at any time to discuss making revisions to the Nine-Power Pact through legal means." Japan's ideal, of course, is to bring about the firm establishment of the Greater East Asia Co-Prosperity Sphere. In view of the national potential it is too much to expect this ideal to be fulfilled at once. Therefore, I do not believe that Japanese-American talks are an impossibility if they are carried out with broadmindedness.

"'4. This conference must be held soon. The outlook of the German-Soviet war indicates that the peak will become apparent in about September. If, as people in some circles predict today, a stalemate has brought about, Germany's future cannot be viewed with optimism. If that does happen, the American attitude will stiffen and she will no longer entertain the thought of talking with Japan. On the other hand, even if the German-Soviet war develops favorably for Germany, this conference would not necessarily bring about unfavorable results for Japan. Even if Germany's attitude toward Japan becomes cool, since there is no chance of a German conquest of the world or of a complete victory over Britain and America, there are many ways in which Japanese-German relations

can be altered. Therefore, we need not feel much anxiety because of favorable developments for Germany in the German-Soviet War. On the contrary, in consideration of possibly unfavorable developments for Germany, it is of the utmost urgency that we reach an accord with America without a day's delay.

"'5. But the problem is not merely to come to any agreement with America. The urgency, of course, must not force us to strike a submissive attitude. In other words, we shall do everything that can be done, and then if success is not attained, there is no help for it. It is my opinion that to do everything that should be done is absolutely essential from a diplomatic as well as from a domestic standpoint.'

"Both the War and Navy Ministers listened to me intently. Neither could give me an immediate reply but before the day was over the Navy expressed complete accord and, moreover, anticipated the success of the conference. The War Minister's reply came in writing as follows:

"'If the Prime Minister were to personally meet with the President of the United States, the existing diplomatic relations of the Empire, which are based on the Tripartite Pact, would unavoidably be weakened. At the same time, a considerable domestic

stir would undoubtedly be created. For these reasons, the meeting is not considered a suitable move. The attempt to surmount the present critical situation by the Prime Minister's offering his personal services, is viewed with sincere respect and admiration. If, therefore, it is the Prime Minister's intention to attend such a meeting with determination to firmly support the basic principles embodied in the Empire's Revised Plan to the "N"-Plan and to carry out a war against America if the President of the United States still fails to comprehend the true intentions of the Empire even after this final effort is made, the army is not necessarily in disagreement.

"'However, (1) it is not in favor of the meeting if, after making preliminary investigations it is learned that the meeting will be with someone other than the President, such as Secretary Hull or one in a lesser capacity. (2) You shall not resign your post as a result of the meeting on the grounds that it was a failure; rather you shall be prepared to assume leadership in the war against America.'

"The War Minister was of the opinion that 'failure of this meeting is the greater likelihood.' After considering the matter from all angles, the Foreign Minister concluded that 'matters should be

carried out expeditiously.' On the morning of the 6th, immediately after the joint conference, I was granted an audience, and I conveyed my intentions to the Emperor. During the afternoon of the 7th I was summoned to his presence and was advised: 'I am in receipt of intelligence from the Navy pertaining to a general oil embargo against Japan by America. In view of this, the meeting with the President should take place as soon as possible.' Instructions were despatched to Ambassador NOMURA during the morning of the 7th."

MAJOR BLAKENEY: These instructions sent to Ambassador NOMURA concerning the proposal for the meeting are offered in evidence as defense document 1401-J-1.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1401-J-1 will receive Exhibit Number 2887.

(Whereupon the document above referred to was marked Exhibit No. 2887 and received in evidence.)

MAJOR BLAKENEY: I read the telegram:

"From TOYODA to NOMURA. 7 August 1941.

"(1) You are well aware, through our repeated telegrams, of the earnest intention of the KONOE Cabinet, harbored since the time of the preceding Cabinet, to adjust the diplomatic relations between Japan and the United States. Nevertheless, relations

between the two countries are at present in such an extraordinarily strained condition, owing to misunderstanding existing between them and also to third-power activities, that we can no longer afford to leave the situation as it is now. The only possible way to tide over the present crisis is, it is believed, for the responsible heads of the two Governments to meet personally, and lay bare their hearts to study the possibility of saving the situation.

"(2) In accordance with that view, and in consideration of the fact that the first proposal of the Government of the United States included an offer of similar import, Premier KONOE is disposed to take a trip in person as far as Honolulu to meet President Roosevelt, provided that the United States consents to it. It is desired, therefore, that you emphasize that the present attempt is based upon a sincere desire on the part of the Japanese Government to maintain peace in the Pacific, and sound out the response of the Government of the United States.

"(3) In case the Government of the United States appears to hesitate to accept our offer on account of our troop movement into French Indo-China

and of the news of the strengthening of Japanese forces in the north (this is possible in the light of your telegram No. 649), you will stress these points: (a) that it is a resolution of unprecedented importance on the part of the Japanese Government that, in view of the serious situation, the Premier should personally attend the meeting, and (b) that it is a duty owed by both Governments to their respective nations that they should make every possible effort for maintaining peace in the Pacific.

"(4) When the consent of the Government of the United States shall have been obtained, an immediate report will be expected regarding the date that suits the President, it being considered necessary, in light of the present situation, that the conversations start at the earliest possible date. As for the agenda, it will be deliberated upon, as occasion demands. But it is the desire of the Japanese Government that the general conversations be on the line of the plan now under consideration for the adjustment of Japanese-American relations. It is hoped further that, both the Premier and the President being pressed by business, the term of the conversations may be so arranged that it will not exceed a few days, and that, from

practical considerations, the delegation of each country may consist of not too many members.

"(5) Absolute secrecy must be preserved as to the present matter, in view of its importance, until it is settled, and it is requested that you in person will convey our proposal to the President or to the Secretary of State. However, as it is considered proper to publish it promptly when it shall have been settled, provided that the President has no objection, we expect to announce it officially after due consideration concerning the date and other details, and we shall entrust to you the making of suitable advance arrangements on these points. In order to maintain secrecy we intend not to inform the American Ambassador in Tokyo of this proposal for the time being. This is for your information."

Ambassador NOMURA met President Roosevelt on 17 August, after the latter's return from the meeting at sea with Prime Minister Churchill. The Ambassador's account of this meeting is contained in defense document 1401-K-1, his telegram to the Foreign Minister, which is now offered in evidence.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1401-K-1 will receive exhibit No. 2888.

(Whereupon, the document above referred to was marked defense exhibit 2888 and received in evidence.)

MR. BLAKENEY: The telegram is as follows:

"From NOMURA to TOYODA

"18 August 1941

"I met the President in secret at 4:30 p. m. on the 17th (Sunday), the Secretary of State being present. The President spoke about the days he had spent at sea, telling me that the climate was favorable and that it was seldom foggy, and that everything had progressed satisfactorily. He sailed in his yacht to the warship, and the place of meeting was, it seems, off the coast of Maine.

"We proceeded to business. The President said, with a paper in his hand, that, whereas he, the

Secretary of State and myself are eager for the peace of the Pacific, others are not, as if suggesting that there are many advocates of war. As I told him in reply that there are many among the third Powers who earnestly desire war in the Pacific, he immediately affirmed it, declaring that, although Britain as well as the United States, and probably the Soviet Union too, are eager for the peace of the Pacific, there is a country which does not wish it, and that it is one which has no warship in the Pacific. He even used the words 'our German friend.' Pointing out that he and the Secretary of State as well as myself are not diplomats by career, the President suggested that we might act without regard to diplomatic practice. He then read aloud in a clear voice the note I have conveyed to you by my telegram No. 707, telling me emphatically that this is not a diplomatic document nor an aide-memoire but a note of what he wants to convey. He added that though he did not like to state such a thing, it might be better to make the matter clear.

"I stated, in accordance with your successive instructions, that the Japanese Government is sincere in the desire of adjusting diplomatic relations between Japan and the United States, that the Japanese

Government desires to know whether the President will meet Prince KONOE: that the conversation between the two heads should proceed along the lines of the unofficial conversations which we have been having for the past several months; that, in connection with the French Indo-China question, we have conveyed the views of the Japanese Government to the Secretary of State; that Prince KONOE is ready to make an exchange of views with an eye to the general peace of the world; that, while expecting high statesmanship from the government of the United States, Japan is believed ready to reciprocate. In conclusion I stated that everything depends, after all, upon the statesmanship of the President. The President listened intently and replied, with the note of the telegram No. 708 in his hand, that it is difficult for geographical reasons to go as far as Honolulu, as he is forbidden to travel by aeroplane.

"He said that the Japanese Premier would find it difficult to come to San Francisco or to Seattle, and suggested Juneau. (The place is in Alaska. I think he mentioned Sitka, but it is not certain.) He asked me how many days it takes to go to Juneau from Japan, and I answered that it will take about ten days. He inquired again about climatic conditions there around the middle of October, so I replied that

they would be all right until that time or thereabouts.

"He said that he had amended the note a little for the reasons above described, and explained, before reading out the note, that the removal of the word 'President' from the original draft was solely because of the geographical difficulty. He declared then that he is by no means pleased at the present 'closed door' policy, but that it is being taken against his will in response to action on the part of Japan. It therefore depends entirely upon the attitude of Japan whether the closed door shall be opened, he said, and now it is Japan's turn. After the discussion about French Indo-China, the Acting Secretary of State called our attention to the fact that Thailand had been added there. The President was very polite and cordial throughout the conversation, and received us with tactful manner. (The success of the recent conversation with Churchill... [words missing]... Wilson's Fourteen Points were enunciated by the Government of the United States alone. But this time the United States has succeeded in persuading Britain to participate in a joint declaration of 'peace terms.' There is no doubt that he is pleased with the people's support thereof. Moreover, he had just spent more than ten days on the sea, which he likes so much, and

he seemed in an especially good humor.) The Secretary of State said, on parting, that he would be glad to see me at any time. As regards the China problem, we left it untouched today, to be discussed separately.

"In the course of the conversation, the President mentioned the name of Mr. Walker, the Postmaster-General. His constant efforts for the promotion of friendly relations between Japan and the United States are much to be appreciated, and it is to his good offices that we may probably owe the prompt realization of the present interview. My opinion in this connection will be submitted separately."

Of the two documents mentioned by Ambassador NOMURA in the preceding telegram as having been handed to him by the President, we offer excerpts pertinent to the present purpose. First of these appears as defense document 1400-K-6, which is offered in evidence.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1400-K-6 will receive exhibit No. 2889.

(Whereupon, the document above referred to was marked defense exhibit 2889 and received in evidence.)

MR. BLAKENEY: I read the excerpt, calling attention to the fact that in this document the Presi-

dent invited the resumption of negotiations which had been suspended in July.

"Statement Handed by President Roosevelt to the Japanese Ambassador (NOMURA) on August 17, 1941.

"Reference is made to the question which the Japanese Ambassador raised on August 8 during a conversation with the Secretary of State whether it might not be possible for the responsible heads of the Japanese Government and Government of the United States to meet with a view to discussing means whereby an adjustment in relations between the United States and Japan might be brought about. The thought of Prince KONOE and of the Japanese Government in offering this suggestion is appreciated."

* * * *

"In case the Japanese Government feels that Japan desires and is in position to suspend its expansionist activities, to readjust its position, and to embark upon a peaceful program for the Pacific along the lines of the program and principles to which the United States is committed, the Government of the United States would be prepared to consider resumption of the informal exploratory discussions which were interrupted in July and would be glad to endeavor to arrange a suitable time and place to exchange views. The Government of the United States,

however, feels that, in view of the circumstances attending the interruption of the informal conversations between the two Governments, it would be helpful to both Governments, before undertaking a resumption of such conversations or proceeding with plans for a meeting, if the Japanese Government would be so good as to furnish a clearer statement than has yet been furnished as to its present attitude and plans, just as this Government has repeatedly outlined to the Japanese Government its attitude and plans."

The other document handed to Ambassador NOMURA by the President on 17 August, a warning to Japan against further aggression, appears in part as defense document 1400-C-8, which is offered in evidence.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1400-C-8 will receive exhibit No. 2890.

(Whereupon, the document above referred to was marked defense exhibit 2890 and received in evidence.)

MR. BLAKENEY: I read the excerpt.

"Oral Statement Handed by President Roosevelt to the Japanese Ambassador (NOMURA) on August 17, 1941.

* * * *

"The Government of the United States is in full sympathy with the desire expressed by the Japanese Government that there be provided a fresh basis for amicable and mutually profitable relations between our two countries. This Government's patience in seeking an acceptable basis for such an understanding has been demonstrated time and again during recent years and especially during recent months. This Government feels at the present stage that nothing short of the most complete candor on its part, in the light of evidence and indications which come to it from many sources, will at this moment tend to further the objective sought.

"Such being the case, this Government now finds it necessary to say to the Government of Japan that if the Japanese Government takes any further steps in pursuance of a policy or program of military domination by force or threat of force of neighboring countries, the Government of the United States will be compelled to take immediately any and all steps which it may deem necessary toward safeguarding the legitimate rights and interests of the United States and American nationals and toward insuring the safety and security of the United States."

As showing the importance attached by the Japanese to Prince KONOE's proposed meeting with

tance to the pro

President Roosevelt, I wish to refer to the interview of 18 August between Foreign Minister TOYODA and Ambassador Grew. A report of this interview is already in evidence, as exhibit 2756 (record page 24,709), parts only of which were read into the record. Although the contents are substantially the same, believing the official record from Foreign Relations to be a more satisfactory record than the Ambassador's book, I shall offer in evidence the official record, defense document 1400-L-6, and propose to read the parts not read from exhibit 2756.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1400-L-6 will receive exhibit No. 2891.

(Whereupon, the document above referred to was marked defense exhibit 2891 and received in evidence.)

MR. BLAKENEY: I therefore read first paragraphs 7 through 10 of the exhibit, No. 2891:

"7. On August 8 Admiral NOMURA had received from Secretary Hull the American reply to the Japanese proposal reiterating the substance of the President's proposal of July 24 and Admiral TOYODA regretted that the American reply seemed to attach too little importance to the profound consideration given by the

Japanese Government to the President's proposal.

"8. In other words, the American proposal, it seems, suggested the withdrawal of Japanese forces from Indo-China as a prerequisite, although the Japanese Government had definitely affirmed its intention to withdraw immediately after the China affair had been settled because the China affair is the obstacle to peace in the Far East.

"9. If the United States really desires peace in the Far East the Japanese Government hopes that it will give full consideration to the Japanese Government's declaration and will cooperate for the settlement of the China affair which is the obstacle to peace in the Far East.

"10. As the Ambassador is fully aware, both the present and the last cabinet of Prince KONOYE have had the sincerest wish to adjust relations with the United States and it is the Minister's firm conviction that there is no room for doubt that this wish has been equally shared by President Roosevelt and Secretary Hull."

Paragraph 11, which has already been read, I omit and continue with paragraph 12:

"12. The Minister believes that both Japan and the United States must do their duty as saviours

of the world in the present crisis, and for that purpose the problems lying between the two countries must be considered in a calm and friendly atmosphere on an equal basis as between two great powers facing the Pacific Ocean; the Minister further believes that it would be possible to come to an adjustment of relations between both countries in that spirit.

"13. The Minister cannot but recognize the fact that in spite of the points just mentioned the present relations between the United States and Japan have become extremely strained as a result of misunderstanding between the two countries and sinister designs by third powers, and that if the situation should be left without trying to prevent it from getting worse it would lead to a most critical situation.

"14. The only way to eliminate this critical situation is, the Minister thinks, that the responsible people of both countries should directly meet each other and express their true intentions toward each other and thus to study the possibility of remedying the present situation, trying to discover the methods for contributing toward mankind and the peace of the world.

"15. In other words, the Minister thinks that it would be most opportune if the leaders of both

countries, animated by the above mentioned desires, could have talks most frankly in order to dispose of American-Japanese relations in the aforesaid spirit and also from a broadminded point of view, and in view of his conviction that it would be highly desirable that Prince KONOYE should proceed to Honolulu and have talks personally with President Roosevelt if the President would consent to this suggestion, the Minister sent an instruction on August 7 to Ambassador NOMURA about this matter. He intended that Admiral NOMURA should personally see President Roosevelt on his return to Washington.

"16. According to news reports the President returned to Washington yesterday. In view of the seriousness of the matter the Minister desired to make this statement to me on this suggestion and he wished to ask for my cooperation towards the realization of this proposal.

"17. The Minister firmly believed that I would give him my cooperation with the more sincerity and vigor in order to make this plan succeed when he remembers my ever continuing sincere effort for the improvement of American-Japanese friendly relations during the past nine long years.

"18. Needless to say, the Premier's going

abroad would have no precedent in Japanese history and the Prime Minister, Prince KONOE, has made up his mind with an extremely strong determination to meet the President notwithstanding the fact that he is fully aware of the objections in certain parts of this country. This determination of Prince KONOYE is nothing but the expression of his strongest desire to save the civilization of the world from ruin as well as to maintain peace in the Pacific by making every effort in his power, and the Minister firmly believes that the President will also be in harmony with this thought and will give his consent to the proposal of the Japanese Government.

"19. It is firmly believed that in the conversations between the Prime Minister and the President it will be possible to reach a just and equitable agreement on the general question of Japanese-American relations from the broadminded point of view as a result of the expressions of the highest degree of statesmanship of both leaders, Japan not being necessarily bound by her reply to the President's proposal of July 24 made through Admiral NOMURA on August 6 and in this connection the Minister wishes to call my attention to the fact that it is absolutely necessary to avoid arousing misunderstanding or giving an

impression both inside and outside this country that the Japanese Government has entered into negotiation with the American Government as a result of American pressure. Based upon this point of view the Minister deems it desirable that various measures of economic pressure against Japan be immediately stopped or highly moderated and the Japanese Government is of course ready to reciprocate at once in this respect. The Minister wishes to draw the attention of the American Government to this point."

I omit paragraph 20, which has just been read, and continue with the succeeding paragraph, unnumbered:

"In the early part of the Minister's oral statement, before he had come to the proposed meeting in Honolulu, I spoke of Japan's progressive southward advance and the fact that in spite of all peaceful assurances the American Government, in the light of the steps taken by Japan, could only be guided by facts and actions and not by words. I noted also the fact that whereas in previous conversation the Minister had ascribed the Japanese move into Indo-China as brought about by the threatened encirclement by other powers, including the United States and Great Britain, he now ascribed it exclusively to the settling of the China affair. To these comments the Minister made no reply.

"I furthermore repeated to him the statement

which the Under Secretary had made to the Japanese Ambassador on July 23 to the effect that Mr. Hull could not see that any basis was now offered for continuing the conversations which had been carried on in Washington between the Secretary and Admiral NOMURA and I also spoke of Mr. Hull's statement to Admiral NOMURA on August 8 to the effect that in the view of the American Government the proposal handed by the Japanese Ambassador to the Secretary of State on August 6 failed in responsiveness to the proposal advanced by the President on July 24.

"At the end of his presentation I said that I would withhold comment until my Government had had an opportunity to study the proposal which the Minister had advanced, but I said that in the interests of peace I would give the proposal my own personal support.

"Joseph C. Grew."

Ambassador Grew's official recommendation in connection with the proposal made to him by the Foreign Minister was contained in his despatch of 18 August, an excerpt of which, taken from Foreign Relations and contained in defense document 1400-M-6, is offered in evidence.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1400-M-6 will receive exhibit No. 2892.

(Whereupon, the document above referred to was marked defense exhibit 2892 and received in evidence.)

MR. BLAKENEY: I read the exhibit.

"Tokyo, August 18, 1941," and so forth.

"1268. The Ambassador reports as follows for Secretary Hull and Under Secretary Welles:"

* * * *

"He says that naturally he is not aware of the reaction President Roosevelt will have to the proposal made today orally by the Japanese Minister for Foreign Affairs. The Ambassador urges, however, with all the force at his command, for the sake of avoiding the obviously growing possibility of an utterly futile war between Japan and the United States, that this Japanese proposal not be turned aside without very prayerful consideration. Not only is the proposal unprecedented in Japanese history, but it is an indication that Japanese intransigence is not crystallized completely owing to the fact that the proposal has the approval of the Emperor and the highest authorities in the land. The good which may flow from a meeting between Prince KONOYE and President Roosevelt is incalculable. The opportunity is here presented, the Ambassador ventures to believe, for an act of the

highest statesmanship, such as the recent meeting of President Roosevelt with Prime Minister Churchill at sea, with the possible overcoming thereby of apparently insurmountable obstacles to peace hereafter in the Pacific.

"Grew."

THE PRESIDENT: We will recess for fifteen minutes.

(Whereupon, at 1045, a recess was taken until 1105, after which the proceedings were resumed as follows:)

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

MR. BLAKENEY: On 28 August 1941 Ambassador NOMURA had an interview with the President for the purpose of conveying to him a message from Prince KONOYE requesting the President to meet him at an early date for personal discussion of the pending questions between the two countries.

Here is a change, Language Section.

These documents are now in evidence as exhibit 1245-B, record page 10,764, a memorandum of the Secretary of State showing the President's enthusiastic reception -- I am sorry, that is the memorandum.

At the same time, Ambassador NOMURA conveyed a statement of the Japanese Government of its position to which also I make reference.

Document 1400-N-6, which is a duplicate, is withdrawn from the list.

That Secretary Hull was less enthusiastic than the President appears from Ambassador NOMURA's account of their conversation on the evening of the same day, the 28th, at which the Secretary imposed conditions for the meeting. The telegraph from the Ambassador, defense document

1401-M-1, is offered in evidence.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1401-M-1 will receive exhibit No. 2893.

(Whereupon, the document above referred to was marked defense exhibit No. 2893 and received in evidence.)

MR. BLAKENEY: I shall read the document, first calling attention to the typographical error in the first line, the 20th for the 28th.

"From NOMURA to TOYODA, 29 August 1941.

"In reference to my telegram No. 752,

"I had a talk with Hull yesterday evening, the 28th, about the agenda of the meeting and other things. The gist is as follows:

"(a) A really serious situation would result if the meeting should, because of the uncompromising attitude of either of the two heads as to some point or other, fail to produce an agreement. It is therefore desired that the negotiations should be brought to a conclusion in outline before the two heads meet, and that only the final decision (Hull used the word 'ratification') should be left to the meeting. (With respect to this point, please refer to the latter part of my

telegram No. 703.)

"(b) Generally speaking, it is necessary to bring the previous talks up to date, and the Secretary of State repeatedly said that the adjustment of Japanese-American relations would be difficult apart from the China problem, which is one of the chief subjects for discussion.

"(c) The Secretary of State said that, though Japan requests that the United States should simply use its good offices to restore peace between Japan and China, the Government of the United States does not want to affect Sino-American relations unfavorably in improving Japanese-American relations, and that it does not wish to have China explode (as the Secretary put it) through the conduct of the American Government. He explained further that such are the reasons that the American Government deems it necessary to be familiar with the basic points of the Sino-Japanese negotiations thoroughly and to persuade China to concur in them, and that this question requires, after all, the placating of Japan and China and making Great Britain, the Soviet Union and the Netherlands agree, which is indeed a hard task for the United States.

"(d) Concerning the withdrawal of

Japanese troops from China I replied that there was nothing new beside what I had told him. As regards the question of the right of self-defense I repeated my usual contentions. However, I explained further that I believed that Prince KONOYE must be confident of a successful settlement of the question, since he had determined to meet Roosevelt. Hull, however, stated that the existing understandings would not suffice, and insisted on having a clear-cut statement of intention of the Japanese Government.

"We accordingly request that further instructions be given, upon reference to my telegram No. 540, concerning the decision of the Government with respect to the questions of the withdrawal of forces and of the right of self-defense.

"As to the present question, please let Colonel IWAKURO, who has returned to Japan recently, inform you in detail.

"(e) In connection with the practical arrangements in case an agreement is reached concerning the meeting of the two heads, I suggested, as my personal opinion, the following:

"(1) The Japanese Government desires to choose the Hawaiian area for the place of meeting,

but, if the President finds it difficult to go there for geographical reasons or because of constitutional difficulties, and suggests instead Juneau which lies halfway between Tokyo and Washington, it is believed that the Tokyo Government will consent to the idea.

"(2) As for the date of meeting, we suggest fixing it for 21 - 25 September.

"(3) The proper number of attendants is considered to be about twenty, consisting of delegates from the Foreign, War and Navy Ministries as well as the Embassy. But it can be smaller.

"(4) Prince KONOYE will come to the place of meeting on board a warship, and it will take about ten days.

"(5) Mutual consultation is required as to its announcement, and it is proper, in my private opinion, to announce it soon after the departure of Prince KONOYE.

"The Secretary of State said that he would consult with the President upon these points. Generally speaking, the Secretary is very prudent and cautious in dealing with the present project, and seems to be giving careful consideration to it from every side. It appears that the meeting

of the responsible heads will not be realized unless both sides practically accord in their opinions."

On 3 September, meeting again with the President, the Japanese Ambassador further urged the meeting, with the Premier at the same time receiving the President's answer to the Premier's message, the reply being exhibit 1245-C, record, page 10,772. The Ambassador's report to his government on the meeting is offered in evidence as defense document 1401-N-1.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1401-N-1 will receive exhibit No. 2894.

(Whereupon, the document above referred to was marked defense exhibit No. 2894, and received in evidence.)

MR. BLAKENEY: I read the document, pointing out especially that the Ambassador reported having reached an agreement in principle on two of the three pending issues, and reported no dissent from that statement.

"From NOMURA to TOYODA, 3 September 1941.

"On 3 September, at 5 P. M., I had a talk

with the President in secret. The President read out the message and the oral statement which I have transmitted to you (see my telegrams Nos. 776 and 777), and gave his opinion that while the President, Prince KONOYE, the Japanese Ambassador and the Secretary of State are all striving for peace in the Pacific, public opinion, in Japan as well as in the United States, would have its way, and pointed out the fact that he had received frequent telegrams advising him not to alter his policy in order to compromise with Japan. Then he stated that for that reason he was 'very sincerely sympathetic' (as he put it) with Prince KONOYE. The Secretary of State, sitting by his side, also asked me about the present situation in Japan. I replied that the Premier would carry through his policy in spite of opposition.

"As to the three pending issues, I said that an agreement in principle had been reached so far as two of them were concerned. With respect to the withdrawal of Japanese forces from China, I explained that it is because the Premier has confidence in reaching an agreement with the American Government that he has decided to meet the President.

"The Secretary of State made further reference to several questions of phraseology, and repeatedly emphasized the necessity of persuading Great Britain, the Netherlands Indies and China to consent to the present project, after all arrangements for the meeting shall have been made. The President said that in his meeting with Churchill he did not touch upon the content of the conversations for the adjustment of relations between Japan and the United States, because, as he explained, of the difficulty in keeping secrecy owing to the British usage that everything is reported to the members of the Cabinet, who are prone to reveal it to the Parliament. As regards the date of meeting, the President said that he had an engagement at the end of September, but he seems to have no other engagement.

"On leaving, I said that the maintenance of peace in the Pacific depends heavily upon the high statesmanship of the President. The President nodded appreciation. The Secretary of State, being apprehensive of the recent trend of press comment in Japan, asked several more questions.

"I made an explanation in connection with the statement of the Japanese position

referred to in the closing part of your telegram No. 524. The President seemed to have no objection. The Secretary of State made no reply. I will submit a further report upon ascertaining the Secretary's intention, as I am going to have a talk with him tomorrow morning."

On 4 September, Foreign Minister TOYODA handed to Ambassador Grew a new proposal which he instructed Ambassador NOMURA to communicate to the Secretary of State also, as appears from his telegram, defense document 1401-O-1, which is offered in evidence.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1401-O-1 will receive exhibit No. 2895.

(Whereupon, the document above referred to was marked defense exhibit No. 2895, and received in evidence.)

MR. BLAKENEY: In reading the telegram, I call attention to the fact that the Foreign Minister believed the United States to have been satisfied by the Japanese commitments concerning the Tripartite Pact.

"From TOYODA to NOMURA, 4 September 1941.

"In reference to your telegram No. 756.

"(1) As prerequisite to the meeting of the responsible heads of the two countries the United States Government holds that there are, among the problems dealt with in the preliminary conversations thus far held unoffficially, the following three pending issues to be solved: namely, the right of self-defense, the stationing of Japanese forces in China, and non-discriminatory treatment in trade. The internal situation of Japan, however, especially after the leakage of the Premier's message, necessitates prompt realization of the meeting to adjust Japanese-American relations, as I have repeatedly informed you through my successive telegrams. If the routine legal argument of these problems should be repeated in future as in the past it would be quite impossible, according to our judgment, to work our way to bringing about the meeting at the end of September as you suggested. Moreover, the Japanese Government has already expressed its views concerning the American offers of 24 July and 17 August, and has also delivered the Premier's message, leaving nothing unsaid. The Japanese Government has decided, therefore, to express frankly its views which are

conveyed in the separate telegram No. 529; to reach a preliminary and general agreement thereupon and to hold a meeting between the two responsible heads of government; to issue a joint statement as an outcome of the meeting (our draft statement will be cabled as soon as it shall have been completed); and thus to improve the atmosphere between Japan and the United States. Accordingly, I asked Ambassador Grew to call on me at 4:30 P. M. on the 4th, and handed him a proposal, which will be sent to you by wire separately. You should take this into consideration, and hand the separate telegram to the Secretary of State.

"(2) Concerning the separate telegram, the points that require special explanation are as follows. (As to the present proposal, agreement will be reached at the meeting of the responsible heads, and the decision whether it ought to be done in the form of a secret agreement or in ordinary form will be left to direct consultation between them).

"(I) The Japanese Government expects that its views concerning its undertakings, especially those concerning the Tripartite Pact,

will be sufficient to satisfy the United States Government

"(II) In connection with the mutual rescission of the freezing of assets, you should avoid giving an impression that this measure of the American Government was a severe blow to Japan. But it should be emphasized that the United States Government should dissuade any strong internal opposition, and should reciprocate the resolution of Japan, for the reasons (a) that mere relaxation would not be understood by the general public, in view of the technical and complex nature of these measures; (b) that the present measure has given the Japanese people an impression that it was punitive, against Japan's advance into French Indo-China; and (c) that the measure is the most conspicuous. As to the date of rescission, 'immediately' implies the time when the understanding referred to in (1) above shall have been reached at the meeting of the two heads.

"(III) By suspension of military measures is meant, for instance, not to dispatch to the Philippine Islands and other places submarines and aeroplanes in addition to the present strength, and not to acquire military bases in the Southwestern Pacific, China and the Soviet Far Eastern territories."

The proposal referred to in the last exhibit is already in evidence herein as exhibit 1245-D, record, page 10,778. Ambassador Grew had further conversations over it as appears from his comment excerpted from "Foreign Relations," which is offered in evidence as defense document 1400-0-6.

CLERK OF THE COURT: Defense document 1400-0-6 will receive exhibit No. 2896.

(Whereupon, the document above referred to was marked defense exhibit No. 2896 and received in evidence.)

MR. BLAKENEY: I shall read the exhibit:

"Comment by the Ambassador in Japan (Grew)

"Tokyo, September 5, 1941.

"In my meeting tomorrow with the Foreign Minister I shall confine myself to carrying out the explicit instructions contained in the Department's telegram No. 562, September 4, 8 p.m., and shall avoid discussion of the questions at issue pending a reply from the Department to my 1384, September 4, 9 p.m.

"Admiral TOYODA has told me that he would like to have any further conversations which may be necessary before the proposed meeting between the Prime Minister and the President carried on in Tokyo rather than in Washington because, as he said, certain

language difficulties appear to have arisen in Washington. I told him, however, that I could not make any such recommendation since I felt that it was up to my Government to decide where and by whom such conversations should be carried on.

"After having carefully gone over the reports of the oral discussions which took place concerning our redraft of the original proposals advanced by the Japanese, it was apparent to me that there are four substantial points on which no agreement has been reached, i.e., (1) the question of equal opportunity and non-discrimination in China, (2) the maintenance of Japanese garrisons in China, (3) the respective attitudes of the United States and Japan toward the war in Europe, and (4) the question of military bases. It is pertinent to examine whether or to what degree the commitments which the Japanese Government is prepared to accept as set forth in points (e), (d), (c), and (b), in that order, of the latest Japanese proposal are considered by our Government as satisfactory in regard to the four points outlined above, and whether these new provisional commitments afford an adequate basis for the proposed meeting between the President and the Prime Minister.

"It is obvious in this connection that no Japanese undertakings whether oral or in written form can be accepted as giving a complete guarantee that such undertakings can or will be carried out to our entire satisfaction. It is clear that the first step toward a return to the status quo ante in the Far East or the establishment of a situation in that area which would conform to the principles which we believe should govern decent relations between states involves the cessation on the part of Japan of its progressive acts of aggression. It would appear that the commitments contained in the latest Japanese proposal, if implemented, would fulfill this requirement. Since it is presumed that a detailed formulation of a general plan of reconstruction of the Far East could not probably be worked out in advance, it would be eminently desirable that the military and economic measures of the United States which are now inexorably pressing on Japan be relaxed point by point pari passu with the actions of the Japanese Government in the direction of implementing its proposed commitments. If our Government followed this suggested course it would always retain in its hands the leverage which would contribute to Japanese implementation of its commitments. If an adjustment of relations is to be

"It is obvious in this connection that no Japanese undertakings whether oral or in written form can be accepted as giving a complete guarantee that such undertakings can or will be carried out to our entire satisfaction. It is clear that the first step toward a return to the status quo ante in the Far East or the establishment of a situation in that area which would conform to the principles which we believe should govern decent relations between states involves the cessation on the part of Japan of its progressive acts of aggression. It would appear that the commitments contained in the latest Japanese proposal, if implemented, would fulfill this requirement. Since it is presumed that a detailed formulation of a general plan of reconstruction of the Far East could not probably be worked out in advance, it would be eminently desirable that the military and economic measures of the United States which are now inexorably pressing on Japan be relaxed point by point pari passu with the actions of the Japanese Government in the direction of implementing its proposed commitments. If our Government followed this suggested course it would always retain in its hands the leverage which would contribute to Japanese implementation of its commitments. If an adjustment of relations is to be

achieved some risk must be run, but the risk taken in the pursuance on our part of a course which would not only provide inducements to the Japanese to honor their undertakings but would also leave to the United States Government a certain leverage of compulsion would appear to be relatively less serious than the risk of armed conflict entailed in the progressive application of economic sanctions which would result from a refusal to accept these proposals.

"Joseph C. Grew."

Meanwhile, to revert for a moment to the conditions of matters in Tokyo from the time of the move into Southern Indo-China I read from exhibit 2877, the KONOYE Memoirs, beginning with page 1, the fourth paragraph, and continuing to the end of the excerpt. That is defense document 1500-W-5.

"Meanwhile, the effect of Japan's armed occupation of French Indo-China was immediate and powerful. America immediately effected a breaking off of economic relations painful to Japan and without hesitation made clear that her own country's traditional policy alone was the policy conducive to peace. This strong American retaliation created a proportionate reaction in the anti-American camp in Japan. Opposition to American-Japanese negotiations came out

into the open, and the course of action of the Cabinet, which had been created expressly for this purpose, became fraught with difficulties. Developments finally induced me to request a personal interview with the American President. However, the fact of the existence of the so-called 'KONOYE Message' had leaked out as a consequence of the conversations between NOMURA and the President, and, while the actual contents were not known, various vague conjectures began to circulate, making even more difficult the problems confronting negotiations. It would seem that from about August 1941, the Army General Staff, even including the highest quarters, began advocating an immediate breaking off of negotiations and an opening of American-Japanese hostilities. Seeking in every possible way to contravene these policies, from the latter half of August I repeatedly held consultations with the Army and Navy Ministers and called together countless joint conferences. To a certain degree, the 'National Policy' calling for breaking off of negotiations and the immediate opening of hostilities against England and America was brought under discussion.

"Thus it came about that on September 6th, at a conference held in the Imperial presence, the

'Outline for the Execution of the National Policy of the Imperial Government' was decided upon. . ."

The Imperial conference decision referred to is found in exhibit 588 and in view of its intimate connection with the remainder of this part of the case I wish to ask leave of the Tribunal to read from it once again the provisions pertinent to the Japanese-American question. They are very brief. I read then from the decision of the Imperial conference of the 6th of September as found in exhibit 588, at the bottom of page 2:

"Summary: Execution of the Empire's Policy.

"In view of the present acute situation, especially the aggressive movements the United States, Britain and the Netherlands have assumed; the situation of Soviet Russia; and the suppression of our national power; Japan will execute her Southern advance policy, related in the 'Principle of Japan's Policy According to the Change of Situations,' as follows:

"a In order to secure self-existence and self-defense, Japan, with a determination for a war with the United States (Britain and the Netherlands), will have completed her preparations by the end of October.

"b Meanwhile, in pace with the above, Japan will strive for the fulfillment of her demands through

diplomatic measures with the United States and Britain.

"The minimum matters of demand to be accomplished in Japan's negotiations with the United States (Britain), and the limit Japan is able to come to an agreement in this connection will be stated on another sheet.

"c If, through the above negotiations, our demands have no hope of fulfillment by the beginning of October, we shall immediately determine to wage war against the United States (Britain and the Netherlands)."

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your successive instructions concerning the adjustment of relations between Japan and the United States, and am constantly exerting myself to obtain the expected result somehow or other. With respect to the situation in the United States, I believe that the Tokyo Government has not a shadow of doubt left, for a full report thereof has been submitted by WAKASUGI and IWAKURO.

"The recent attack on an American destroyer by German submarines did not provoke public opinion here. In connection with Japan, however, the Gallup poll (though some argue that the Gallup is not quite credible) shows that an opinion that the expansion of Japan must be checked even at the risk of war is rapidly gaining in influence. It indicated 51% in last June and 70% today. It is perceived that the United States is getting deeply concerned with the Pacific, notwithstanding that she must necessarily be interested in the safety of the Atlantic sea-routes. Accordingly, if there should occur in the Pacific such an incident as an attack on an American destroyer, it is believed that there would be no hope of saving the situation. It is again conjectured that the strong public opposition to the dispatch of expeditionary forces, and the consideration that a Japanese-American war would require no army, are the chief reasons that

public opinion in the United States is not aroused against Germany whereas it is against Japan. Expenditure on account of munitions of war amounts now to over $1,000,000,000 every month, and the quantity of output is four or five times as much as that of last year."

From among the many conversations, in both Japan and America, during this period we offer a few excerpts on points of special relevance. The Japanese Ambassador and the Secretary of State conferred on 10 September, an excerpt from their conversation being embodied in defense document 1400-Q-6, from Foreign Relations, which is offered in evidence.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1400-Q-6 will receive exhibit No. 2898.

(Whereupon, the document above referred to was marked defense exhibit No. 2898 and received in evidence.)

MR. BLAKENEY: The excerpt, "Memorandum of a Conference, Washington, September 10, 1941.

"The Japanese Ambassador called at his request at the Secretary's apartment.

"The Ambassador then inquired what the Secretary's reaction was to the Japanese Government's

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MR. BLAKENEY: The excerpt, "Memorandum of a Conference, Washington, September 10, 1941.

"The Japanese Ambassador called at his request at the Secretary's apartment.

"The Ambassador then inquired what the Secretary's reaction was to the Japanese Government's

proposals of September 6. The Secretary commented that it seemed to us that whereas our previous conversations had related to a broad and liberal understanding covering the entire Pacific area, the present proposals had narrowed down the spirit and the scope of the proposed understanding. The Secretary also observed that, in regard to the matter of the Tripartite Pact, as this was a military alliance and as Germany was engaged in a movement of world conquest the situation presented real difficulties for this Government which he did not see how the new proposals met.

"Mr. OBATA said that as the Japanese Government concurred in all the points in which tentative agreement had been reached in our previous conversations the Ambassador and he felt that the new proposals did not serve to narrow the scope and the spirit of the original proposals. The Secretary then suggested that if we were under a misunderstanding, the misunderstanding should be cleared up and suggested that Mr. Hamilton and Mr. Ballantine meet with the Japanese Ambassador and Mr. OBATA in an endeavor to clear up all doubtful points."

Foreign Minister TOYODA, on 13 September, called in Ambassador Grew and handed him a copy of

instructions being sent to Ambassador NOMURA, in another effort to remove misunderstanding. These instructions, as contained in Foreign Relations, are offered in evidence as defense document 1400-R-6.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1500-R-6 will receive exhibit No. 2899.

(Whereupon, the document above referred to was marked defense exhibit 2899 and received in evidence.)

MR. BLAKENEY: I read the document.

"Proposed Instructions to the Japanese Ambassador (NOMURA), handed by the Japanese Minister for Foreign Affairs (TOYODA) to the American Ambassador in Japan (Grew) on September 13, 1941.

"I. (a) The proposed draft of an understanding which has been constituting a basis for informal negotiations between the Japanese and the United States Governments will continue to be a basis for further discussions.

"The points upon which we deem a tentative agreement has already been reached during the informal preliminary conversations in Washington comprise the preamble to the proposed understanding, the concepts of the United States and of Japan respecting

international relations and the character of nations, and the matter concerning the good offices of the United States to the relations between Japan and China.

"Although it seems that there is a misunderstanding on the part of the United States that Japan does not want the good offices of the United States in the settlement of China affairs, the Japanese Government has by no means refused the good offices of the President of the United States and is still, as before, wishing for them.

"(b) The terms 'without any justifiable reason' applies sic merely to the latter part of point (b) of the undertaking to which Japan is ready to commit itself."

(c) is apparently nonexistent.

"(d) For the purpose of preventing communistic and other subversive activities threatening the safety of both Japan and China and also of maintaining the peace and order in China, Japan and China will cooperate in the form of common defense. The execution of the common defense by Japan and China will contain the stationing of Japanese troops for a certain period in accordance with the agreements between both countries. The

Japanese troops which have been sent to China with the object of executing the China affairs will be withdrawn when the said affairs have been settled.

"(e) The reason why the Japanese Government inserted point (e) as a matter to be undertaken by Japan is because the Japanese Government, in view of the apprehension on the part of the Government of the United States that Japan might violate the American rights and interests in China, wishes to show her intention of not obstructing any just and equitable economic activities of the United States in China. The Government of Japan will not only admit the principle of nondiscrimination with regard to commerce in China as well as in the Southwestern Pacific Area, but also it fully respects the established rights and interests of the United States in China. However, it considers that the especially close economic relations between Japan and China natural from their geographical propinquity are the same kind of relations as those which exist between any other two neighboring countries. Indeed, there will be no reason why the principle of close economic relationship owing to the geographic propinquity shall not be applied to Japan's economic relations with China. Accordingly, the close and

especial economic cooperation between Japan and China within this limit will not establish so-called monopolistic or preferential rights and interests for Japan. Moreover, it is firmly believed that such is a natural phenomenon in our human life, and the observance of this law of nature is not only a factor of bringing about economic prosperity of the world, but the surest way for the firm establishment of the world peace.

"(f) Since matters relating to China, as has been stated above, are covered under point (e), the matter concerning Japan's economic activities in the Southwestern Pacific Area was clarified under point (f) in view of the fact that among other areas of the Pacific the United States is most concerned with the Southwestern Area of the Pacific.

"II. (a) The measures and actions referred to in point (a) among the the proposed undertakings by the United States are meant to indicate acts of the United States in aid in various forms for the Chiang Kai-shek regime. As for the 'good offices' of the President of the United States they were referred to above."

Five days later Prince KONOYE's private secretary, Mr. USHIBA, had a conversation with the

Counselor of Embassy, Mr. Dooman, in which the discussion of the Tripartite Pact question is of particular interest. From Foreign Relations I offer the excerpt, defense document 1400-B-8, on this point.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1400-B-8 will receive exhibit No. 2900.

(Whereupon, the document above referred to was marked defense exhibit No. 2900 and received in evidence.)

MR. BLAKENEY: The excerpt is as follows:

"Memorandum by the Counselor of Embassy in Japan (Dooman), Tokyo, September 18, 1941.

"Mr. USHIBA called me on the telephone yesterday afternoon at my house, asking whether he could call on me immediately.

. . . . . .

"We then discussed the question of the attitude of the United States and Japan respectively toward the European War. Mr. USHIBA said that it was impossible for Japan to give to the United States a prior undertaking that it would interpret as a defensive act any action on the part of the United States against Germany which might lead to war between the United States and Germany. He thought that the formula which had been

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Could not, therefore, Japan inform Germany that Japan had undertaken to pursue policies conformable to those of the United States, although Japan was prepared to fulfill its obligations under Article III of the treaty? Technically the Alliance is a defensive alliance; and it is clear from the rescript issued by the Emperor at the time of the signing of the Alliance that it was then considered by the Japanese Government as an instrument for peace.

"Eugene H. Dooman."

Foreign Minister TOYODA on the 22d, as he reported to the Ambassador in Washington, had a talk with Mr. Grew in which he disclosed the basic terms for peace with China. This conversation is reported in defense document 1401-Q-1, which is now offered in evidence.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1401-Q-1 will receive exhibit No. 2901.

(Whereupon, the document above referred to was marked defense exhibit No. 2901 and received in evidence.)

MR. BLAKENEY: I read it.

THE MONITOR: We haven't the Japanese copy, Mr. Blakeney.

MR. BLAKENEY: If you haven't got it, I will postpone it until after the noon recess; or do you prefer that I read it now and let the Japanese be read later?

THE PRESIDENT: I think you ought to read it now. It doesn't break the Charter in any way.

MR. BLAKENEY: Then I will read exhibit 2901.

"From TOYODA to NOMURA, 22 September 1941.

"I asked the American Ambassador in Tokyo to call on me at 4:30 p.m. on 22 September, and expressed

Foreign Minister TOYODA on the 22d, as he reported to the Ambassador in Washington, had a talk with Mr. Grew in which he disclosed the basic terms for peace with China. This conversation is reported in defense document 1401-Q-1, which is now offered in evidence.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1401-Q-1 will receive exhibit No. 2901.

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MR. BLAKENEY: I read it.

THE MONITOR: We haven't the Japanese copy, Mr. Blakeney.

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THE PRESIDENT: I think you ought to read it now. It doesn't break the Charter in any way.

MR. BLAKENEY: Then I will read exhibit 2901.

"From TOYODA to NOMURA, 22 September 1941.

"I asked the American Ambassador in Tokyo to call on me at 4:30 p.m. on 22 September, and expressed

my opinion to the following effect. The American Ambassador replied that he would convey it to the home government immediately.

"(1) The intention of Premier KONOE in connection with the meeting of the two heads is evident in the message to the President of the United States itself.

"(2) His intention is that the general principles shall be decided at the meeting of the two heads and the details shall be left to negotiation by the competent authorities of the two governments. The American Government, however, takes the attitude that agreement on the pending points should be reached beforehand.

"(3) As I have repeatedly stated, the Japanese Government has readily made replies to the inquiries of the American Government. Explanation with respect to the policy and attitude of the Japanese Government has been exhausted, and it now remains only to wait for the reply of the American Government.

"(4) The Japanese proposal which I handed to the American Ambassador on 4 September not only includes all the pending points, but expounds the Japanese attitude covering a wider scope, and in no way narrows down the original proposal of the Government of the

United States.

"(5) The American Ambassador's inquiry of 10 September reminded me of the fact that the Government of the United States had a doubt as to using its good offices to restore peace between Japan and China. In this connection, I showed the American Ambassador privately the basic terms of peace between Japan and China. We are not taking a new position thereby, but it should be taken as an explanation of the Japanese proposal of 4 September. (The basic peace terms which I presented will be cabled to you separately as No. 590.)

"(6) As for the situation in Tokyo, there is a great difference compared with that of a month ago, as the American Ambassador, conversant with Japanese affairs, must be well aware. This is an undisputed truth, and I hope that the American Ambassador will strongly impress the fact upon the Govemment of the United States. The present Japanese-American negotiations became a topic of conversation everywhere in the world from about the time the news began to appear in the American press, and in Japan also they have interested a part of the general public. Meanwhile, the anniversary of the conclusion of the Tripartite Alliance will come within a few days. The function

in celebration of the anniversary will be held as last year, but the government intends to have it performed in as calm a way as possible. I fear, however, that there may be some in this country who will try to seize the opportunity to arouse public opinion against the Japanese-American negotiations, and also that there may be some disturbances.

"7) The situation in Japan is very delicate, as explained above. The earliest possible consent of the Government of the United States to the meeting under consideration, at least as a matter of principle, is hopefully awaited. The situation is now extremely critical. It is requested that you should promptly convey the contents of the conversation to the Secretary of State and report his reaction to it."

THE PRESIDENT: Apparently there has been a Japanese translation while you were reading.

MR. BLAKENEY: Is that correct?

THE MONITOR: No, sir, we just explained in Japanese that the Japanese copy was not being read because it has not been prepared; just an explanatory note, sir.

THE PRESIDENT: The accused are supposed to hear it in Japanese.

MR. BLAKENEY: Perhaps it would be well to have

diplomatic measures with the United States and Britain.

"The minimum matters of demand to be accomplished in Japan's negotiations with the United States (Britain), and the limit Japan is able to come to an agreement in this connection will be stated on another sheet.

"c. If, through the above negotiations, our demands have no hope of fulfillment by the beginning of October, we shall immediately determine to wage war against the United States (Britain and the Netherlands)."

Dana & Spratt

On the 6th of September, significantly the very day of the Imperial Conference just referred to, Premier KONOYE invited Ambassador Grew for a long private talk on the subject of Japanese-American relations. Mr. Grew's report of this conversation has been received in evidence as exhibit 2836, record page 25,368, to which I refer the Tribunal, calling attention especially to the commitments which Prince KONOYE offered in the course of that conversation to make to the United States.

1400-P-6 is omitted.

Ambassador NOMURA reported to the Foreign Minister on 8 September that war sentiment in America war rising. His telegram, defense document 1401-P-1 is offered in evidence.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1401-P-1 will receive exhibit No. 2897.

(Whereupon, the document above referred to was marked defense exhibit No. 2897 and received in evidence.)

MR. BLAKENEY: I read the exhibit.

"From NOMURA to TOYODA

"8 September 1941

"I have fully comprehended the import of

your successive instructions concerning the adjustment of relations between Japan and the United States, and am constantly exerting myself to obtain the expected result somehow or other. With respect to the situation in the United States, I believe that the Tokyo Government has not a shadow of doubt left, for a full report thereof has been submitted by WAKASUGI and IWAKURO.

"The recent attack on an American destroyer by German submarines did not provoke public opinion here. In connection with Japan, however, the Gallup poll (though some argue that the Gallup is not quite credible) shows that an opinion that the expansion of Japan must be checked even at the risk of war is rapidly gaining in influence. It indicated 51% in last June and 70% today. It is perceived that the United States is getting deeply concerned with the Pacific, notwithstanding that she must necessarily be interested in the safety of the Atlantic sea-routes. Accordingly, if there should occur in the Pacific such an incident as an attack on an American destroyer, it is believed that there would be no hope of saving the situation. It is again conjectured that the strong public opposition to the dispatch of expeditionary forces, and the consideration that a Japanese-American war would require no army, are the chief reasons that

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CLERK OF THE COURT: Defense document 1400-Q-6 will receive exhibit No. 2898.

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"The Japanese Ambassador called at his request at the Secretary's apartment.

"The Ambassador then inquired what the Secretary's reaction was to the Japanese Government's

proposals of September 6. The Secretary commented that it seemed to us that whereas our previous conversations had related to a broad and liberal understanding covering the entire Pacific area, the present proposals had narrowed down the spirit and the scope of the proposed understanding. The Secretary also observed that, in regard to the matter of the Tripartite Pact, as this was a military alliance and as Germany was engaged in a movement of world conquest the situation presented real difficulties for this Government which he did not see how the new proposals met.

Mr. OBATA said that as the Japanese Government concurred in all the points in which tentative agreement had been reached in our previous conversations the Ambassador and he felt that the new proposals did not serve to narrow the scope and the spirit of the original proposals. The Secretary then suggested that if we were under a misunderstanding, the misunderstanding should be cleared up and suggested that Mr. Hamilton and Mr. Ballantine meet with the Japanese Ambassador and Mr. OBATA in an endeavor to clear up all doubtful points."

Foreign Minister TOYODA, on 13 September, called in Ambassador Grew and handed him a copy of

instructions being sent to Ambassador NOMURA, in another effort to remove misunderstanding. These instructions, as contained in Foreign Relations, are offered in evidence as defense document 1400-R-6.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1500-R-6 will receive exhibit No. 2899.

(Whereupon, the document above referred to was marked defense exhibit 2899 and received in evidence.)

MR. BLAKENEY: I read the document.

"Proposed Instructions to the Japanese Ambassador (NOMURA), handed by the Japanese Minister for Foreign Affairs (TOYODA) to the American Ambassador in Japan (Grew) on September 13, 1941.

"I. (a) The proposed draft of an understanding which has been constituting a basis for informal negotiations between the Japanese and the United States Governments will continue to be a basis for further discussions.

"The points upon which we deem a tentative agreement has already been reached during the informal preliminary conversations in Washington comprise the preamble to the proposed understanding, the concepts of the United States and of Japan respecting

international relations and the character of nations, and the matter concerning the good offices of the United States to the relations between Japan and China.

"Although it seems that there is a misunderstanding on the part of the United States that Japan does not want the good offices of the United States in the settlement of China affairs, the Japanese Government has by no means refused the good offices of the President of the United States and is still, as before, wishing for them.

"(b) The terms 'without any justifiable reason' applies sic merely to the latter part of point (b) of the undertaking to which Japan is ready to commit itself."

(c) is apparently nonexistent.

"(d) For the purpose of preventing communistic and other subversive activities threatening the safety of both Japan and China and also of maintaining the peace and order in China, Japan and China will cooperate in the form of common defense. The execution of the common defense by Japan and China will contain the stationing of Japanese troops for a certain period in accordance with the agreements between both countries. The

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Japanese troops which have been sent to China with the object of executing the China affairs will be withdrawn when the said affairs have been settled.

"(e) The reason why the Japanese Government inserted point (e) as a matter to be undertaken by Japan is because the Japanese Government, in view of the apprehension on the part of the Government of the United States that Japan might violate the American rights and interests in China, wishes to show her intention of not obstructing any just and equitable economic activities of the United States in China. The Government of Japan will not only admit the principle of nondiscrimination with regard to commerce in China as well as in the Southwestern Pacific Area, but also it fully respects the established rights and interests of the United States in China. However, it considers that the especially close economic relations between Japan and China natural from their geographical propinquity are the same kind of relations as those which exist between any other two neighboring countries. Indeed, there will be no reason why the principle of close economic relationship owing to the geographic propinquity shall not be applied to Japan's economic relations with China. Accordingly, the close and

especial economic cooperation between Japan and China within this limit will not establish so-called monopolistic or preferential rights and interests for Japan. Moreover, it is firmly believed that such is a natural phenomenon in our human life, and the observance of this law of nature is not only a factor of bringing about economic prosperity of the world, but the surest way for the firm establishment of the world peace.

"(f) Since matters relating to China, as has been stated above, are covered under point (e), the matter concerning Japan's economic activities in the Southwestern Pacific Area was clarified under point (f) in view of the fact that among other areas of the Pacific the United States is most concerned with the Southwestern Area of the Pacific.

"II. (a) The measures and actions referred to in point (a) among the the proposed undertakings by the United States are meant to indicate acts of the United States in aid in various forms for the Chiang Kai-shek regime. As for the 'good offices' of the President of the United States they were referred to above."

Five days later Prince KONOYE's private secretary, Mr. USHIBA, had a conversation with the

Counselor of Embassy, Mr. Dooman, in which the discussion of the Tripartite Pact question is of particular interest. From Foreign Relations I offer the excerpt, defense document 1400-B-8, on this point.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1400-B-8 will receive exhibit No. 2900.

(Whereupon, the document above referred to was marked defense exhibit No. 2900 and received in evidence.)

MR. BLAKENEY: The excerpt is as follows:

"Memorandum by the Counselor of Embassy in Japan (Dooman), Tokyo, September 18, 1941.

"Mr. USHIBA called me on the telephone yesterday afternoon at my house, asking whether he could call on me immediately.

. . . . . .

"We then discussed the question of the attitude of the United States and Japan respectively toward the European War. Mr. USHIBA said that it was impossible for Japan to give to the United States a prior undertaking that it would interpret as a defensive act any action on the part of the United States against Germany which might lead to war between the United States and Germany. He thought that the formula which had been

Counselor of Embassy, Mr. Dooman, in which the discussion of the Tripartite Pact question is of particular interest. From Foreign Relations I offer the excerpt, defense document 1400-B-8, on this point.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1400-B-8 will receive exhibit No. 2900.

(Whereupon, the document above referred to was marked defense exhibit No. 2900 and received in evidence.)

MR. BLAKENEY: The excerpt is as follows:

"Memorandum by the Counselor of Embassy in Japan (Dooman), Tokyo, September 18, 1941.

"Mr. USHIBA called me on the telephone yesterday afternoon at my house, asking whether he could call on me immediately.

. . . . . .

"We then discussed the question of the attitude of the United States and Japan respectively toward the European War. Mr. USHIBA said that it was impossible for Japan to give to the United States a prior undertaking that it would interpret as a defensive act any action on the part of the United States against Germany which might lead to war between the United States and Germany. He thought that the formula which had been

communicated by Admiral TOYODA to Mr. Grew was about as far as the Japanese Government could go prior to the proposed meeting. He added, however, that an understanding had been reached among the various influential elements in Japan which would enable Prince KONOYE to give orally and directly to the President an assurance with regard to the attitude of Japan which, he felt sure, would be entirely satisfactory to the President. Another matter which troubled him very much in this connection was precisely in what terms the Japanese Government would explain to Germany any understanding which might be reached with the United States on this point. I remarked that the United States, which was committed to supporting the principle of the sanctity of treaties, could not well request Japan to betray its treaty commitments. It seemed to me, however, that there was a very definite difference between the Treaty of Alliance, with its rights and obligations, and the formulation of policies by the concerned allies. It followed as a matter of course that allies pursued policies which served their common end, but there was no obligation arising out of the Three Power Alliance which required Japan to follow policies which would serve exclusively the ends of Germany.

Could not, therefore, Japan inform Germany that Japan had undertaken to pursue policies conformable to those of the United States, although Japan was prepared to fulfill its obligations under Article III of tho treaty? Technically the Alliance is a defensive alliance; and it is clear from the rescript issued by the Emperor at the time of the signing of the Alliance that it was then considered by the Japanese Government as an instrument for peace.

"Eugene H. Dooman."

Foreign Minister TOYODA on the 22d, as he reported to the Ambassador in Washington, had a talk with Mr. Grew in which he disclosed the basic terms for peace with China. This conversation is reported in defense document 1401-Q-1, which is now offered in evidence.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1401-Q-1 will receive exhibit No. 2901.

(Whereupon, the document above referred to was marked defense exhibit No. 2901 and received in evidence.)

MR. BLAKENEY: I read it.

THE MONITOR: We haven't the Japanese copy, Mr. Blakeney.

MR. BLAKENEY: If you haven't got it, I will postpone it until after the noon recess; or do you prefer that I read it now and let the Japanese be read later?

THE PRESIDENT: I think you ought to read it now. It doesn't break the Charter in any way.

MR. BLAKENEY: Then I will read exhibit 2901.

"From TOYODA to NOMURA, 22 September 1941.

"I asked the American Ambassador in Tokyo to call on me at 4:30 p.m. on 22 September, and expressed

my opinion to the following effect. The American Ambassador replied that he would convey it to the home government immediately.

"(1) The intention of Premier KONOE in connection with the meeting of the two heads is evident in the message to the President of the United States itself.

"(2) His intention is that the general principles shall be decided at the meeting of the two heads and the details shall be left to negotiation by the competent authorities of the two governments. The American Government, however, takes the attitude that agreement on the pending points should be reached beforehand.

"(3) As I have repeatedly stated, the Japanese Government has readily made replies to the inquiries of the American Government. Explanation with respect to the policy and attitude of the Japanese Government has been exhausted, and it now remains only to wait for the reply of the American Government.

"(4) The Japanese proposal which I handed to the American Ambassador on 4 September not only includes all the pending points, but expounds the Japanese attitude covering a wider scope, and in no way narrows down the original proposal of the Government of the

United States.

"(5) The American Ambassador's inquiry of 10 September reminded me of the fact that the Government of the United States had a doubt as to using its good offices to restore peace between Japan and China. In this connection, I showed the American Ambassador privately the basic terms of peace between Japan and China. We are not taking a new position thereby, but it should be taken as an explanation of the Japanese proposal of 4 September. (The basic peace terms which I presented will be cabled to you separately as No. 590.)

"(6) As for the situation in Tokyo, there is a great difference compared with that of a month ago, as the American Ambassador, conversant with Japanese affairs, must be well aware. This is an undisputed truth, and I hope that the American Ambassador will strongly impress the fact upon the Govemment of the United States. The present Japanese-American negotiations became a topic of conversation everywhere in the world from about the time the news began to appear in the American press, and in Japan also they have interested a part of the general public. Meanwhile, the anniversary of the conclusion of the Tripartite Alliance will come within a few days. The function

in celebration of the anniversary will be held as last year, but the government intends to have it performed in as calm a way as possible. I fear, however, that there may be some in this country who will try to seize the opportunity to arouse public opinion against the Japanese-American negotiations, and also that there may be some disturbances.

"(7) The situation in Japan is very delicate, as explained above. The earliest possible consent of the Government of the United States to the meeting under consideration, at least as a matter of principle, is hopefully awaited. The situation is now extremely critical. It is requested that you should promptly convey the contents of the conversation to the Secretary of State and report his reaction to it."

THE PRESIDENT: Apparently there has been a Japanese translation while you were reading.

MR. BLAKENEY: Is that correct?

THE MONITOR: No, sir, we just explained in Japanese that the Japanese copy was not being read because it has not been prepared; just an explanatory note, sir.

THE PRESIDENT: The accused are supposed to hear it in Japanese.

MR. BLAKENEY: Perhaps it would be well to have

that by preventing a peace through the earnest support which America and Britain offer, the Soviet Union can hold over the winter and continue to fight next spring. As to the battle of the Atlantic, it is showing a favorable turn, with increasing losses of submarines and consequent great decrease in shipping losses. Invasion of the British Isles is becoming less and less probable owing to the strengthening of the Royal Air Force and fleet. It is believed that the spirit of Britons can stand a long war. The war on the eastern front is not so favorable for Germany as her propaganda asserts, as her hesitant attitude toward the Balkan countries proves. Disorder prevails in the occupied territories, and Italy is increasingly losing the will to fight, h[illegible]strained from making a separate peace only by German domination. As the war is prolonged the blockade will become more and more effective, as proved in the last war. The over-all prospect of the war in this country is thus very optimistic. If in such circumstances Germany and the Soviet Union come to a separate peace and Germany can shift her forces from the eastern front to the British and other fronts, Britain will be further endangered, and the United States will be concerned about it. If the United States thus participates further in

the battle of the Atlantic she will lose more ships, and the danger of war will be invited. It might be possible that the United States would relax her attitude in the Pacific in such circumstances (according to this reasoning the more favorable the war situation turns the more effective it will be.) From the viewpoint of Japan a separate peace between Germany and the Soviet Union and the full entry of the United States into the war in the Atlantic would be contributory to the improvement of Japanese-American relations.

"The KONOE Message has somewhat eased the tense situation, temporarily. It has dissipated such hot-headedness as was manifested in the demand of the United States to 'Fight Japan First!' For the moment, there is thus a lull in the situation. On the other hand, the message has also had the effect of causing the United States to take an increasingly greater part in the Atlantic. However, the United States has not in the least relaxed its economic pressure on Japan, but is going ahead with its avowed policy -- a fact worthy of the utmost attention. If the United States continues to carry on economic warfare against Japan, a measure just short of armed warfare, the United States will be able to attain the objectives of a war against Japan without firing a shot. This United States

policy toward Japan, I believe, will not be changed except in the event of a great transformation in the world political situation or in the event of a reversal of policy on the part of Japan. However, of the three pending issues in the Japanese-American negotiations, two have already been nearly settled. (Mr. Hull abides by the principle of free trade and regards bloc-economy as a cause of war. He is now trying to make this principle prevail in regard to the United Kingdom also.) The problem that remains to be settled is that of the stationing of Japanese troops in China. Considering, in this connection, the present conditions of China, as set forth in your telegram No. 622, and also considering what may come in China's chaotic future, it seems to me that it will be impossible for some years to come to carry out the complete withdrawal of the troops.

"This is a really grave problem. I think that Japanese-American understanding depends fundamentally upon that problem, and I hope that it will be given further study by you. I may add that I had a talk with Mr.....(two words undecipherable) He said that both the President and the Secretary of State sincerely desire Japanese-American understanding, and that the question of the stationing of troops was the

only remaining issue.

"Perceiving that the matter is of extreme importance, I have ventured to submit my views herein."

The Foreign Minister also took up the question of the Japanese-American negotiations with the British Ambassador, Sir Robert Craigie, as is shown by his report to that effect to Ambassador NOMURA, defense document 1401-V-1, which is offered in evidence.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1401-V-1 will receive exhibit No. 2907.

(Whereupon, the document above referred to was marked defense exhibit No. 2907 and received in evidence.)

MR. BLAKENEY: I read the exhibit:

"From TOYODA to NOMURA

"3 October 1941

"On 28 September I revealed my general opinion with regard to the Japanese-American problems to British Ambassador Craigie, who is expected shortly to travel to the United States on leave. (He was to leave Nagasaki on the 30th to take the S.S. President Coolidge at Shanghai on 4 October, but it seems that his departure has been postponed by three weeks or so owing to the illness of the counsellor

who is to be Charge d'affaires while he is away.) I requested him to ask Ambassador Grew for detailed explanations. It seems that he had a talk with the American Ambassador in the evening of the same day. According to reliable information, the British Ambassador has explained to Foreign Minister Eden and Ambassador Halifax the necessity of prompt conclusion of the Japanese-American negotiations, and has submitted his opinion as summarized in telegram No. 628 which will be sent separately. In view of the source, this information is for you exclusively."

Ambassador Craigie's report to his government on conditions in Japan, defense document 1844, is offered in evidence.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1844 will receive exhibit No. 2908.

(Whereupon, the document above referred to was marked defense exhibit No. 2908 and received in evidence.)

MR. BLAKENEY: I point out before reading the exhibit that, as is common with decoded messages, of which this is shown to be one by the certificate, there are several cryptic passages (with conjectural readings supplied by the cryptographer) resulting

presumably from imperfect decoding.

"From: Craigie, Tokyo

"To: Eden, London

"September 30th, 4:20 A.M., 1941

"Summary:

"Japan is in haste. America is playing for time, without taking due note of the situation in Japan. KONOE sincerely desires to steer clear of Axis dangers.

"The present moment is the best chance of settling Far Eastern question.

"Meantime, continue economic reprisals in full vigour.

"Torch.

"Addressed to Foreign Office No. 1853, September 29th, repeated to Washington No. 293, 'Torch' No. 160. Your telegram No. 1187.

"Secret.

"While I find myself in general agreement with the views expressed, I do not think this telegram tells the whole story, and, to bring the narrative up to date, I would submit the following observations.

"(2) I do not question the view that Japan's motives may be mixed, but is this in itself a reason for doing nothing to encourage Japan along the new

path on which the present Government have now entered? Even assuming Japanese policy to be actuated solely by the idea that identical ambitions can for the moment best be served by a change of technique (a view to which I do not altogether subscribe), there is no chance of Japan's expansionist aims being realized in the immediate postwar future, once Germany has been defeated. For this reason and because to keep Japan neutral will contribute to the defeat of Germany, I venture the opinion that post-mortem on our horizon (? part) may legitimately be bounded by limits of war . . . .

"(3) As regards your reference to the last paragraph of my despatch No. 270, it will be appreciated that this was written at a time when Mr. MATSUOKA was still Foreign Minister. With his departure, a very considerable -- brief notable (? but) a radical -- change has occurred in the political situation here, and there exists a more real prospect than at that time of setting in motion a steady swing away from the Axis and towards more moderate policies.

"(4) The all-important question at the moment is the discussion now proceeding between the United States and the Japanese Government. The main difficulty appears to be that, while the Japanese

want speed and cannot yet afford to go beyond generalizations, the Americans seem to be playing for time and to demand the utmost precision in definition before agreeing to any contract for a step of rapprochement. This (? There is) reason to believe that the American requirement undoubtedly makes little account of Japanese psychology or of the internal situation here, which brooks of no delay. If persisted in, it bids fair to wreck the best chance of bringing about a just settlement of Far Eastern issues, which has occurred since my arrival in Japan.

"(5) My United States colleague and I consider that Prince KONOYE is telephone (? most) sincere in his desire to avert the dangers towards which he now sees the Tripartite Pact and the Axis connection (for which he naturally accepts his share of responsibility) are rapidly leading Japan. But the strength of the opposition to his new policy, nurtured by the anniversary of the strategical reconnaissance (? reminders) of the Tripartite Pact, leads the Japanese Government to feel that they can only retain a sufficient body of supporters for this policy and face decidedlying (? the risk of arousing the) wrath of their Axis partners, if some overt and striking sign of progress in the discussions can be given at

an early date. The Prime Minister has staked his political future on this move and concurs (? drift). Despite the Emperor's strong backing, I doubt if he and his Government British Consular_Officer (? can) survive if the discussions prove abortive or drag on unduly.

"(6) Admittedly there are entials (? danger-our factors) in the situation baggage (? from these) points of view: (a) A preliminary agreement merely on general principles may contain seeds of future misunderstanding when the details come to be worked out; (b) there is a danger of suspicion and discouragement at Chungking if the preliminaries about general principles contain any ambiguity on the subject of peace terms to be offered to China; (c) partisans of the Axis in Japan are still very strong both numerically and vocally, and we cannot exclude the possibility that so radical a change in foreign policy if_all (? may) precipitate serious internal trouble, with the German Fifth Column at the bottom of it; (d) finally, America's interests in the Far East are not wholly identical with ours and, when the time comes for consultation, divergences of view may be found to exist. But the risks must be faced either_repaired (? in any case) and my United States colleague and I

are firmly of the opinion that on balance this is a chance which it would be illegible (? inexcusable) folly to let slip. Caution must be exercised, but an excessive cynicism brings stagnation.

"(7) Meantime, it goes without saying that we should maintain the full vigour of our economic reprisal until such time as concrete evidence of a change of Japanese policy is forthcoming, i.e., until there begins that practical application of Prince KONOYE'S general principles which alone can justify the making of concrete concessions on our part."

The next document in order, 1401-I-1, is withdrawn.

On 7 October Prince KONOE'S private secretary called on the Counselor of the American Embassy to state the feeling of the Japanese at that time. I offer in evidence an excerpt from the conversation, taken from Foreign Relations, being defense document 1400-T-6.

THE PRESIDENT: Admitted on the usual terms

CLERK OF THE COURT: Defense document 1400-T-6 will receive exhibit No. 2909.

(Whereupon, the document above referred to was marked defense exhibit No. 2909 and received in evidence.)

MAJOR BLAKENEY: The excerpt is as follows:

"Memorandum by the Counselor of Embassy in Japan (Dooman).

"Tokyo, October 7, 1941.

"In reply to a request by telephone yesterday from Mr. USHIBA, I suggested that he breakfast with me this morning at my house."

. . . . .

"Mr. USHIBA went on to say that pessimism in Japanese official quarters had been strengthened by failure on the part of the American Government to lay any of its cards on the table. It was true that the American Government had given a full presentation of its principles, but it had not precisely specified what it wanted the Japanese Government to undertake. Although several months had elapsed since the conversations began, the apparently great care being taken by the American Government not to give the Japanese any specifications was extremely discouraging. Since the receipt of the last American memorandum (October 2) an increasing number of persons in Japanese Government circles were of the opinion that Japan had fallen into a trap, the argument running somewhat as follows -- the United States never had any intention of coming to any agree-

ment with Japan; it has now got from Japan an exposition of Japanese policies and objectives; those policies and objectives are not in line with American policies and objectives; and there is therefore no justification for refusing to make an agreement with Japan and for continuing to maintain an attitude of quasi-hostility against Japan."

. . . . .

"Eugene H. Dooman."

An excerpt from conversation of American Ambassador Grew with the Chief of the American Bureau of the Foreign Ministry of 8 October is offered in evidence as defense document 1400-V-6, from Foreign Relations.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1400-V-6 will receive Exhibit Number 2910.

(Whereupon the document above referred to was marked Exhibit No. 2910, and received in evidence.)

MAJOR BLAKENEY: I read the excerpt:

"Memorandum by the Ambassador in Japan (Grew).

"Tokyo, October 8, 1941.

"Mr. TERASAKI, Chief of the American Bureau of the Foreign Office, called on me this afternoon,

at his request, and asked if I had read the full text of the Department's memorandum of October 2 which he had lent us for perusal."

• • • • •

"Mr. TERASAKI then asked what particular points impressed me in connection with the desires of the United States for action by Japan in order to reach a mutual agreement. I replied that without having the actual document before me I could not undertake to cover all the points presented, but that personally and off the record I might say that three of the points which had particularly caught my eye were (1) the withdrawal of Japanese troops from China; (2) application to the entire area of the Pacific of certain of the Japanese assurances which appeared to be limited to the southwestern Pacific, and (3) the special privileges claimed by Japan as a result of her geographical propinquity to China."

• • • • •

". . . In the conversations it had developed that it was the desire of the Japanese Government to leave troops for a stated period in North China, Mongolia and possibly other areas and I pointed out to Mr. TERASAKI the unfortunate experiences which we

had met in times past through the failure of various Japanese Governments to carry out assurances given us in apparent good faith."

. . . . .

"Joseph C. Grew."

On the 13th of October the Under-Secretary of State of the United States had a conversation with the Japanese Minister in Washington, an excerpt from which, taken from Foreign Relations, is offered in evidence as defense document 1400-X-6.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1400-X-6 will receive Exhibit No. 2911.

(Whereupn the document above referred to was marked Exhibit No. 2911 and received in evidence.)

MAJOR BLAKENEY: It follows:

"Memorandum by the Under-Secretary of State (Welles). Washington, October 13, 1941.

"Mr. WAKASUGI, the Minister-Counselor of the Japanese Embassy, called to see me this afternoon at his request."

. . . . .

"The Minister then brought up the question of evacuation of Japanese troops from China. He

said that the Japanese Government was willing to evacuate all of its troops from China. (Thinking I had misunderstood him I asked him to repeat this statement, which he did, in the same terms, twice.) He said, however, that it was impossible for the Japanese Government after four years of military operations in China to undertake to withdraw its entire troops from China within twenty-four hours. I said that of course nobody expected miracles in this modern age."

. . . . .

"Sumner Welles".

At the time of the resignation of the third KONOE Ministry an explanation of the situation was given to the Counselor of the American Embassy by Prince KONOE'S private secretary. Part of the conversation was reproduced in defense document 1400-Y-6, an excerpt from Foreign Relations, which is offered in evidence.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1400-Y-6 will receive Exhibit No. 2912.

(Whereupon the document above referred to was marked Exhibit No. 2912 and received in evidence.)

MAJOR BLAKENEY: I read the excerpt:

"Memorandum by the Counselor of Embassy in Japan (Dooman). Tokyo, October 17, 1941.

"Mr. USHIBA telephoned me early this morning while I was still dressing and asked whether he might call on me at my house."

. . . . .

"The Secretary's memorandum of October 2 which had been handed to the Japanese Ambassador in Washington had been a great disappointment to the KONOYE Cabinet and the impression had been created inside the Cabinet that the road had been blocked to any hopes that the present conversations could be successfully concluded. Prince KONOYE about a week ago had decided to resign in view of the internal situation in Japan. At that time it appeared inevitable that the succeeding Cabinet would be one of an extremist nature but Prince KONOYE through intensive effort and 'by a miracle' had in recent days been successful in ensuring that the government to succeed him would be composed of persons who did not subscribe to the principle that the conversations with the United States should be broken off.

"No Japanese civilian statesman will undertake the task in which Prince KONOYE has failed and

consequently the succeeding Cabinet must be headed by an Army officer and will be composed primarily of military men. The new Cabinet may even appear to be extremist to persons unacquainted with the set-up of the various groups within the Japanese Army and other factions having influence in the Government. However, Prince Konoye entertains the hope that the Ambassador will stress to the Government of the United States that too great importance should not be given to the outward appearance of the new Cabinet. Prince KONOYE also desires the Ambassador to understand that he would not have tendered his resignation at this moment without having convinced himself that the succeeding Prime Minister would be equally desirous of adjusting Japanese-American relations."

. . . . .

"I said that it was a great pity that Prince KONOYE had felt it necessary to resign, as the conversations in Washington were still in progress, the recent call of Mr. WAKASUGI on the Under-Secretary of State having had, in my opinion, good results toward further clarifying the position of the Japanese Government. Mr. USHIBA said that he hoped some day to be able to tell me of the events which

had led to the Cabinet's resignation, but that all that he could say for the present was that Prince KONOYE had taken the decision in the confident belief that he could thus bring the conversations to a successful conclusion."

. . . . .

"Eugene H. Dooman."

Additional excerpt from the Memoirs of Prince KONOE showing the development of the situation which finally led to the resignation of the Premier and his Cabinet, is offered in evidence. The excerpt, taken from Vol 20 of the Pearl Harbor Attack, is defense document 1500-Y-5.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1500-Y-5 will receive Exhibit Number 2913.

(Whereupon the document above referred to was marked Exhibit No. 2913 and received in evidence.)

MAJOR BLAKENEY: I shall read the entire excerpt:

"After Japan's final comprehensive plan had been determined upon at the joint conference of September 20th, the activities of the Government frequently began to show an acute seriousness. This

was by reason of the balance struck between the progress of Japanese-American negotiations on the one hand and on the outline of national policy determined upon in the conference that was held on September 6th in the presence of the Emperor. On September 24th and 25th, I held conferences for two days with the War Minister, the Navy Mainister and the Foreign Minister and the President of the Cabinet Planning Board. From the 27th to October 1st, I took a rest at Kamakura, but during that time I called the Navy Minister, OIKAWA, and asked in detail concerning the atmosphere in his circle. Upon the arrival of the American memorandum of October 2nd, I went to the Imperial Palace on the 4th. Afterwards, driving away a group of bureau chiefs, I held a liaison conference with only the Cabinet Ministers and the leaders of the Supreme Command. On the evening of the 5th, I asked the War Minister to come to my house in Ogikubo, and expressed my opinion that I would continue negotiations to the very end.

"Late on the night of the 7th, the War Minister visited me in my Japanese-style rooms, and declared, 'as to the problem of withdrawing troops from China, such a formality as to once withdraw -- in principle -- all troops and after that to station

them there, as insisted upon by the United States, is something that is difficult for the Army to submit to.' In view of the stiff attitude of the Army, on both the 6th and 8th, I conferred separately with the Minister of the Navy and with the Foreign Minister, and deliberated with them on the methods of avoiding a crisis. The Foreign Minister further visited me twice on the 10th, and we spoke intimately on how we might somehow or other continue the negotiations. The joint conference also held a meeting on October 11th. During this time the movements of the three chokan (the President of the Cabinet Planning Board, the Director of the Bureau of Legislation, and the Chief Secretary of the Board) and especially of President SUZUKI (of the Cabinet Planning Board) became objects of attention.

"October 12. My fiftieth birthday. In spite of its being Sunday, early in the afternoon I gathered together the three ministers, the Minister of War, the Minister of the Navy and the Foreign Minister, together with President SUZUKI of the Cabinet Planning Board, at Ogikubo, and held with them almost the last conference relative to peace or war. Before this meeting there was previous notification from the Chief of the Military Affairs Bureau of the Navy

to the Chief Secretary of the Cabinet as follows: 'The Navy does not desire a rupture in the negotiations. Thus it wishes as much as possible to avoid war. But as far as the Navy is concerned it can not of itself bring this openly to the surface and say so. At today's conference the Navy Minister is expected to say that the decision for peace or war is entirely up to the Premier, so I beg you to keep this matter in your mind.'

"Surely enough, at the very beginning there were the following opening remarks by the Minister of the Navy: 'We have now indeed come to the cross-roads where we must determine either upon peace or war. I should like to leave this decision entirely up to the Premier, and, if we are to seek peace, we shall go all the way for peace. Thus, even if we make a few concessions, we ought to proceed all the way with the policy of bringing the negotiations to fruition. If in the midst of negotiations -- after negotiations have gone on for two or three months, one says that "they won't do from any point of view," and "well, we've got to have war now," -- the Navy will be put to inconvenience. If we are to have war, we must determine upon war here and now. Now is the time. We are now at the final moment of decision.

If we decide that we are not to have war, I should like to have us proceed upon the policy that we will bring negotiations to fruition no matter what happens.' To this I said, 'If we were to say that we must determine on war or peace, here, today, I myself would decide on continuing the negotiations.' But the Minister of War said, 'This decision of the Premier's is too hasty. Properly speaking, ought we not to determine here whether or not there is any possibility of bringing the negotiations to fruition? To carry on negotiations for which there is no possibility of fruition, and in the end to let slip the time for fighting, would be a matter of the greatest consequence. In fact, does the Foreign Minister think that there is any possibility or not of bringing the negotiations to fruition?' Thus, turning to the Foreign Minister, he asked this question, whereupon the Foreign Minister replied, 'That depends entirely on the conditions. The most difficult point in the problem today, I believe, is the matter of stationing troops in China, but if in this regard the Army says that it will not retreat one step from its former assertions, then there is no hope in the negotiations. But if on this point the Army states that it would be all right to make

concessions, however small they may be, then we can not say that there is no hope of bringing the negotiations to fruition.' But the Minister of War said in answer to this, 'The problem of the stationing of troops in itself means the life of the Army, and we shall not be able to make any concessions at all.' I said, 'At this time isn't it all right to forget about the glory but to take the fruits; perform the formalities as America wants, and achieve a result that will in actuality be the same as "stationing troops?" ' To this, the Minister of War did not yield, and in the end, though the conference lasted from two o'clock untill six o'clock, we did not arrive at any conclusion and adjourned.

"On the next day, the 13th, I went to the Palace and made a detailed report on the crisis which the Cabinet was facing. Then I spoke intimately with the Lord Keeper of the Privy Seal, Marquis KIDO. On the following day, the 14th, at nine o'clock in the morning, prior to the meeting of the Cabinet, I asked the Minister of War to come to my official residence and once again asked his considered opinion concerning the problem of the stationing of troops. I said, 'I have a very great responsibility for the China Incident, and today, when this Incident has lasted four years and still sees no settlement, I find it difficult to agree, no matter what is said, to enter upon a great war the future of which I cannot at all foresee. On this occasion, we ought to give in for a time, grant to them, the United States, the formality of withdrawing troops, and save ourselves from the crisis of a Japanese-American war. Moreover, I believe that on this occasion both from the point of view of the nation's strength and from the point of view of the people's thinking it is necessary to end the China Incident. The advancement and development of the nation are, of course, things that we should aspire to, but in order to develop greatly we need also at times to fall back and cultivate the national strength.'

Thus did I declare my sincerest feelings and explain them to the Minister of War. To this the Minister of War declared, 'If at this time we yield to the United States, she will take steps that are more and more high-handed, and will probably find no place to stop. The problem of withdrawing troops is one, you say, of forgetting the honor and of seizing the fruits, but, to this, I find it difficult to agree from the point of view of maintaining the fighting spirit of the Army." Thus he insisted and did not move from his position. Therefore, my talk with the Minister of War ended at odds, and as soon as possible as the meeting of the Cabinet opened, the Minister of War strongly and excitedly set forth the reasons why the Japanese-American negotiations should no longer be continued.

"These opening remarks of the Minister of War were so sudden that the other Cabinet Ministers were somewhat taken aback and there was no one who would open his mouth to answer. The Cabinet meeting, after settling other subjects for discussion, made no reference to this problem of continuing negotiations, and adjourned."

Reporting to the meeting of Senior Statesmen convened after the resignation of his government, Prince KONOE gave an explanation of the details of the

cabinet resignation and the progress of the Japanese-American negotiations which is of interest as being a succinct summary of the position as it then stood. This explanation, in the form of a further excerpt from the Prince's memoirs, is offered in evidence: defense document 1500-A-6.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1500-A-6 will receive exhibit No. 2914.

(Whereupon, the document above referred to was marked defense exhibit 2914 and received in evidence.)

MR. BLAKENEY: I shall read the excerpt.

"The Details of the Cabinet Resignation and the Progress of Japan-American Diplomatic Negotiations Under the Direction of the Council of Senior Statesmen Following the Resignation of the Third KONOYE Cabinet.

"I. Differences between the Viewpoint of the Government and the Army.

"1. Concerning the 'Decisions Reached at the Council in the Imperial Presence: 'Clause 3 of the Plans for the Prosecution of the Imperial Program,' as decided upon at the Council in the Imperial Presence on September 6th, states: "If by the early part of October, there is no reasonable hope to have our demands agreed to, we will immediately make up our minds to

get ready for war against America, England and Holland.' The Army takes the position that the progress of the negotiations with America in the early part of October impels us to decide that 'there is no reasonable hope to have our demands agreed to,' as referred to in the said article and that, therefore, the conclusion is inevitable that by the middle or end of October we 'must make up our minds to ready for war.'

"The Cabinet contends that not only have the diplomatic negotiations not reached a hopeless state, but that in the light of the diplomatic documents which we have received from America and many other reports, the American Government also entertains considerable hope of arriving at a satisfactory agreement. However, that Government harbors certain misunderstandings and suspicions (for example, the Army's gradual infiltration into Northern Indo-China in the early part of October, though, of course, this was carried out in harmony with definite treaty stipulations); is influenced by the deliberate misrepresentations of certain Third Powers, or is carefully watching the future of the International situation, especially of the European War. There are also activities on the part of strong anti-Japanese elements in the Far Eastern Sections of the State Department, activities which have

covered up the true feelings of the President and Secretary of State Hull. In view of these facts, we can not decide that there is no hope of successful negotiations even with the present conditions as suggested by us, if time is allowed for the conduct of the negotiations. Especially, if we could get our Army authorities to relax their position somewhat, namely, with reference to the withdrawal of troops, we believe that there is a good possibility of reaching an agreement.

"The Army feels that although the early part of October is the ideal time for us to decide on war in harmony with the demands of the Supreme Command, it can defer it till the middle of the month, but by all means not later than the latter part of the month. Otherwise, the Army feels itself seriously handicapped in the event of war. It therefore rigidly adheres to the middle of the month, the latter part of October, as the time to decide upon war, should war be decided upon, and this is a point that must ever be kept in mind.

"2. The obstacles in the negotiations with America (especially the problem of the withdrawal of troops); Diplomatic negotiations are still proceeding with America and while the true intentions of that country are not clear the following three points may

be listed as the major unsolved problems.

"(1) The problem of stationing or withdrawal of troops from China.

"(2) Japan's attitude toward the Tripartite Pact.

"(3) The problem of non-discriminatory trade in the Pacific area.

"Among the three, it is clear to all that the outstanding problem is the withdrawal of troops. In other words, that problem is really the one problem, the negotiations with America.

"A summary of the Army's attitude concerning the withdrawal of troops is as follows:

"Our Government's terms for a Sino-Japanese peace, as indicated to America, are very liberal, inasmuch as they include the principles of no annexation and no reparations. They merely insist on the stationing of troops in certain areas for a stipulated period in order to facilitate cooperation with China in preventing the inroads of communism and any other movements tending to disrupt the present order. It is evident that these dangers are a threat to the safety of both Japan and China and to the welfare and prosperity of the peoples of both countries. These measures are also vitally necessary for the economic develop-

ment of the country. It is, of course, understood that all troops not necessary for the above purposes will be withdrawn as soon as the China Incident is brought to a close. In view of the above, the stationing of troops in China is an absolutely necessary stipulation. In other words, the Army insists that this point is a consideration of first importance and that the stationing of these troops in China is, after all, the one and only tangible result of the China Incident. It follows that the Army can not agree to any plan which envisages the giving up of the right to station troops in China. If our troops' withdrawal from China is carried out, the Army will be overcome by a spirit of defeatism and it will be impossible to preserve its morale.

"On the other hand, the final position of America on this matter of stationing troops is not yet clear. It may be possible if we give time for further negotiations to have our terms for the China problem agreed to by America. Up to the present, the American position in this matter seems to be as follows:

"(1) Japan is to agree in principle to the withdrawal of troops. (The matter of stationing troops in China must be decided after the principle has been accepted.) It is not clear at the present moment

whether America will agree to the stationing of troops in China, but in the light of the negotiations so far conducted, America's position does not seem to be entirely negative in the matter.

"(2) America desires to be assured of Japan's sincerity in the matter of the withdrawal of troops. For instance, Under-Secretary Welles stated to Minister WAKASUGI in Washington that if Japan was sincere in her decision to withdraw the troops, America was willing to give more consideration to the manner in which this should be done.

"In the light of the above, the Cabinet's position in regard to the withdrawal of troops is as follows:

"(1) Diplomatic negotiations should be continued for a longer period.

"(2) We understand, of course, that the stationing of troops in China is a very necessary consideration. However, if the success or failure of the present negotiations hangs on this one problem, the Cabinet holds the view that it would be better for us to agree to the American formula for the withdrawal of troops and yet secure stationing of troops in China for a specified period."

At this point I propose to call a witness,

and I must point out to the Tribunal that I have failed to comply wholly with the rule for service of affidavits. However, I am advised by the prosecution that they will have no objection to waiving the rule to the extent of permitting me to put the witness on the stand, they to reserve their objections both to the affidavit and to the documents until the 24-hour period to which they are entitled has elapsed.

Mr. Tavenner tells me he is mistaken. He doesn't wish to make any reservation; he is prepared to go ahead.

Of course the Tribunal also has not had the document for the required period of three days, but I believe in the circumstances it will find no difficulty in permitting me to go ahead.

THE PRESIDENT: There is no desire on the part of the Tribunal to prevent you from proceeding.

MR. BLAKENEY: I therefore call as a witness YAMAMOTO Kumaichi, whose testimony is embodied in his affidavit, defense document 2014.

THE PRESIDENT: You are still on your former oath, Witness.

Mr. Brannon.

MR. BRANNON: If the Tribunal please, I have been instructed by the accused former Admiral SHIMADA and OKA to inform the Tribunal that they strongly

differ with certain statements contained in defense document 2014, the affidavit of YAMOMOTO Kumaichi, about to be read. Therefore, they do not wish the Tribunal to consider this testimony as offered in their behalf, even though it appears in a general phase.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: If the Tribunal please, when an affidavit is produced and entered in evidence in a general phase, I would take it that it would be evidence for all of them unless counsel for a particular accused points out by cross-examination wherein he differs with the assertions of the witness. If that isn't done, then I think the evidence should be reserved until the individual phase of the case is reached.

THE PRESIDENT: We understand that the evidence given in the general phase is the evidence for all the accused.

MR. BRANNON: If the Tribunal please, we do not wish to be placed in the position of having to accept the testimony of any one witness as our evidence.

THE PRESIDENT: We must reconsider how far we are going to allow this evidence on behalf of some to be tendered in the general phase.

MR. BRANNON: We simply don't want to be in the position of impeaching our own evidence later on

in the individual phase. Therefore we inform the Tribunal now that we do not adhere to this evidence.

THE PRESIDENT: Major Blakeney, if you persist in offering this evidence in the general phase, we would like to hear you shortly on the reason why it should be accepted at this stage.

MR. BLAKENEY: Mr. Brooks would like to say a word first, if agreeable.

MR. BROOKS: It has been my understanding, and I believe the understanding of most of the defense attorneys, that the evidence put in in the general phase was general evidence affecting most of the accused, not all of them, because there have been no instances that I recall where the majority of the evidence has affected every accused. Some of them were not even --

THE PRESIDENT: I have stated the contrary at least twice without hearing any dissent that I recollect.

MR. BROOKS: On particular pieces of evidence when your Honor has spoken that has been true; but there have been times when the accused in many instances were retired from military and political life when other bits of evidence went in that did not affect them, either for or against.

THE PRESIDENT: The question could not arise

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THE PRESIDENT: The question could not arise

as regards accused of that kind.

MR. BROOKS: Well, I have in mind one of my accused in particular who was Governor General in Korea at the time. He wasn't even in Japan at the time, certainly not in any of these consultations.

THE PRESIDENT: If the evidence is neither for him nor against him, I cannot see how any question can arise.

MR. BROOKS: I was just meeting the proposition of the Court that this evidence was being put in in his behalf, that it was to be used against him. I haven't said anything because it doesn't affect him one way or the other, and I thought the Court was considering that.

THE PRESIDENT: We are concerned with the practical question, not the academic one.

We will recess for fifteen minutes.

(Whereupon, at 1445, a recess was taken until 1505, after which the proceedings were resumed as follows:)

Knapp & Yelden

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

MR. BLAKENEY: The Tribunal had asked that I reply to Mr. Tavenner's remarks. I think in the first place I should point out what perhaps was not clear from the statement by Mr. Brannon but what, at any rate, I am authorized by him to say: that the two defendants for whom he noted his reservation do not object -- do not dissent from the testimony of this witness in toto, rather they wish to reserve the right of offering inconsistent evidence on some points contained in the testimony of this witness which reservation, of course, they would have to make otherwise the later attempt would constitute an attempt to impeach their own witness.

We have, I might say, ample precedent in this proceeding for this type of procedure. For example, in the case of the witness TANAKA, Ryukichi, who was called on behalf of the defense in the Russian phase on the 21st of May, it was stated to the Tribunal on page 22,713 of the record that three defendants intending to attack the credibility of this witness at a later date did not join in calling him as a witness. Although objection was made to some points in the affidavit, no objection was offered in that

connection and the testimony was accepted by the Tribunal.

THE PRESIDENT: Mr. Blakeney, we deal with objections made to us. We do not raise objections except on such points as repetitiveness, repetition.

MR. BLAKENEY: I mentioned the absence of objection only because in one or two instances that I remember the defense or I myself have been told that we had lost our rights by waiving, by not using them.

THE PRESIDENT: The objection is taken now and we must deal with it.

MR. BLAKENEY: We have also by way of precedent several questions in connection with opening statements to which I wish to make reference briefly. At the time of the presentation of the general defense opening statement on the 24th of February the Tribunal was advised by Mr. Logan on page 17,004 of the record that -- I am paraphrasing -- the defense had tried so far as possible to state the facts to be proved to the satisfaction of all accused but that some of those accused necessarily in the circumstances of this case would take issue with various statements of fact, reasonings and evidence to be produced.

THE PRESIDENT: What opening was that?

MR. BLAKENEY: This was the general defense opening statement. This was prior to the delivery of the general opening statement.

THE PRESIDENT: This is the first time that we have had occasion to rely on that.

MR. BLAKENEY: I have already mentioned the one precedent which I was able to turn up in the ten-minute recess but there may have been others; I do not know.

THE PRESIDENT: In that one apparently there was no objection; the Court did not act on it.

MR. BLAKENEY: I think the reason there was no objection, if I may say so, is what I am now trying to point out to the Tribunal that the objection was made, the matter argued out fully at this time of the opening statement. Upon objection of the prosecution made at that time, objection made to the remarks of Mr. Logan which I have just quoted, the Tribunal requested that it be given the names of those who dissented from the opening statements. In response the names were given of five defendants who dissented -- or I should say who disassociated themselves from that opening statement in toto. It being then stated by one or two other defendants

that they would reserve the right to object and to present inconsistent evidence in certain matters covered by the general opening, the prosecution again renewed its request to know on whose behalf the opening was made.

THE PRESIDENT: We are not interested in what passed in the absence of any objection. We are interested in knowing whether we have decided your way on this point before and if we have I suppose we will have to decide that way again.

MR. BLAKENEY: I thought I had made it clear that Mr. Tavenner on that occasion raised precisely the same objection that he is raising now, and the result of the discussion was that the Tribunal, speaking through the President, ordered the opening statement read with the reservations already noted; page 17,010 of the record. Again, on page 17014 of the record, which is in the opening statement itself, we find the following statement: --

THE PRESIDENT: Your paraphrase may be perfect but I would like to hear what Mr. Tavenner said or what the prosecutor said and what the Tribunal said.

MR. BLAKENEY: I will be glad to read it. It is rather long. Page 17005 of the record:

"MR. TAVENNER: Mr. President, Members of the Tribunal, in view of the statement just made by counsel, I think it should appear on record for whom and in whose behalf this opening statement is made."

The statement just made by counsel, to which he refers, is Mr. Logan's statement that the accused reserve to themselves the right to present their different views of the facts.

THE PRESIDENT: So far there is no objection. Read on; you may find one. I do not say there is not; I cannot recall it.

MR. BLAKENEY: The President said: "I take it to be the general opening statement on behalf of all the accused, whatever differences of opinion they may have."

There was then a discussion of which defendants dissented, which brings us to page 17,007 of the record. I should have said 17,009. I am omitting matter irrelevant to this issue. On page 17,009:

"MR. TAVENNER: If it please the Tribunal, I think we are entitled to know in whose behalf this opening statement is being made."

THE PRESIDENT: Still a request for information, not an objection. Go on.

MR. BLAKENEY: It is true that as yet I have not seen the word "object."

THE PRESIDENT: No, because there was not any, and you are not going to spell one out of that.

Duda & Spratt

MR. BLAKENEY: The President then called for a list of the names of those dissenting and was given it.

On page 17,010:

"THE PRESIDENT: Proceed to read the opening, Doctor KIYOSE, but be careful to omit any arguments already put to the Tribunal.

"MR. TAVENNER: The prosecution desires to reserve the right to object to any phases of the opening statement at the conclusion thereof should they be advised it is proper to do so."

THE PRESIDENT: Of course, if you call a witness in a general phase and he happens to say something prejudicial to one of the accused, to say it unexpectedly, you must have a right to cross-examine him under the circumstances, and the rules give it to you.

MR. BLAKENEY: Yes, I was coming to the rules in a moment's time. I might say now that the Charter, in Article 9(d), gives the unrestricted right to the defendants to cross-examine all witnesses not only if they unexpectedly say something against the interest of the defendants, and I was--

THE PRESIDENT: But it is put very pointedly to me that if you are right you could call in the general phase a witness with whom twenty-four out of

twenty-five disagree.

MR. BLAKENEY: In considering this very perplexing problem among ourselves, we have tried to adopt a rule or practice of putting in evidence only in cases when, let's say, all the defendants agreed with as much as ninety-five per cent of the evidence. We thought that was about the practical limit. We had to recognize that these defendants, many of whom have fought each other officially and personally, would come to the point of differing about the evidence to be adduced. In the present case, for example, I think I am quite correct in saying that the two defendants for whom Mr. Brannon noted his reservation would agree to fully ninety or ninety-five per cent of the content of this affidavit; but the remaining five per cent thereof, to which all other defendants so far as I know subscribe, represents one of those fields of conflict of interests between those two defendants and other defendants, and I want the Tribunal to know that we have seen this problem, we have considered it, and we have thought that in the interests of efficiency and expedition it was far better to present it in this way with the reservation than to give the Tribunal an incomplete picture now and require, perhaps, many defendants to adduce

similar evidence later. That was our intention. And if I may say just another word. We went on the assumption that the Tribunal, appreciating our difficulty in this respect, had taken our view of the matter because this has been presented, I think, as a reservation in the opening statement of each phase prior to this one, and I, personally, should have thought that the supplementary rules concerning cross-examination lately adopted by the Tribunal were designed to solve or to get us out of this sort of dilemma.

THE PRESIDENT: When I explain the need for such a rule you may show that it is wider than I suggest.

MR. BLAKENEY: In view of the rather considerable importance of this question, and since I had only ten minutes to look it up, I wonder if the Tribunal would hear another counsel who has indicated that he would like to say a word on the subject. That is all I have to say.

THE PRESIDENT: Perhaps that is all that can be said. Has anybody else gone right to the record and found something that you haven't told us, Major Blakeney?

MR. BLAKENEY: I don't know. I went through as much of the record as I could between a quarter of

three and three o'clock. That is all I know on that subject.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: If the Tribunal please, in regard to the incident mentioned by counsel where the witness TANAKA was produced by the defense, the question there raised by Mr. Freeman was not directed at the possibility of impeaching the testimony in the affidavit of the witness then being presented; so that this did not arise on that occasion.

THE PRESIDENT: That is the only occasion.

MR. TAVENNER: What counsel did state on that occasion was that he did not desire to be bound by the testimony of this witness because he expected to attack the credibility of the witness at a later date, the witness having previously testified at length in behalf of the prosecution. Counsel merely did not join in calling that witness. That was the only question involved there.

THE PRESIDENT: Nor did he cross-examine or claim to do so, if I recollect rightly.

MR. TAVENNER: There was nothing in that witness' testimony as then being offered that he was attempting to attack. The question now being presented was not involved at all in the inquiry made with regard to the general opening statement by the defense. Neither I nor my associates can recall any instance in which the question has arisen.

The rules which were adopted by the Tribunal were adopted pursuant to agreement between the defense and the prosecution, and your Honor made it perfectly clear that they were rules pursuant to agreement between counsel and that the Tribunal would try them out and if necessary change them. So in no sense, we contend, is the Tribunal bound in any way by either rules or previous decision, as far as we know, on this question.

Now, there will be nothing saved in time by the defense postponing testimony of this type to the individual phase -- I mean, of course, to state that there will be nothing lost in time. It is a spurious argument to contend that each of the accused would have to call the same witness and prove the same thing. If the testimony is offered once, it can either be adopted by an accused or rejected when he takes the stand in a very simple manner. If the Tribunal is to

begin to hear evidence upon which there is a sharp conflict between the accused, the general phases will never end. I think for the prosecution's objection to be sustained would shorten the general phase of the case.

MR. BLAKENEY: May I say a word in reply, your Honor?

THE PRESIDENT: Yes, Major Blakeney.

MR. BLAKENEY: Mr. Tavenner's argument about lengthoning the general phases indefinitely is, of course, wholly specious. We are almost at the end of the general phases and this is, according to him, the second time that the matter has ever come up; and so far as concerns any evidence that I am familiar with it is the last time that it will come up, although that is not a promise on my part.

Now, if it is the simple matter that Mr. Tavenner says for evidence introduced in the defense of an individual to be adopted or dissented from by other individuals, it is equally simple now, and the record will be utterly and unequivocally clear as to who is and who is not disassociating himself from that evidence.

In connection with Mr. Tavenner's statement of what point was involved in the case of the witness

TANAKA, I merely say again without reading it again that the record, on page 22,713, shows precisely the case of reservation which we have here.

I understand that Mr. Levin would like to say something concerning his clients' position in relation to this witness.

THE PRESIDENT: Mr. Levin.

MR. LEVIN: Mr. President: I did not join Mr. Brannon in his statement on behalf of my clients SUZUKI and KAYA, although our position is the same with reference to a portion of this affidavit as his position, or, rather, the position of those whom he represents. And while I am in thorough agreement with everything that Mr. Blakeney stated, I want to add further that the reason I did not make any statement was because, under the rules, each defense counsel had a right to examine directly or to cross-examine; and having the right to cross-examine indicated, at least by implication, that there was a disagreement with either the testimony given by affidavit or given orally by the witness. So it was our position that by stating the dissent, either before the affidavit was read and preserving the right to contradict the affidavit subsequently by oral testimony, or by cross-examining the witness, there was a sufficient indication

of a disagreement with the statement or evidence given by the witness; and I joined in those views.

THE PRESIDENT: The majority of the Tribunal think that as this affidavit is contested by some of the accused, it should not be read in the general phase. Therefore, the objection is sustained. It may be read on behalf of those individuals who support it, subject, of course, to other objections that are open.

Captain Brooks.

MR. BROOKS: In view of the Court's decision just announced, I would like to ask permission to put myself clear on the record that I did not think that was the understanding we had had when these rules were drafted and from the previous rulings when this point had been brought up on the opening statements, and there are certain affidavits and pieces of evidence on the record which I do not agree are binding upon my defendants and I want to go back and point those out to the Court at a later time. There has been a small percentage of evidence that has been inconsistent. Sometimes it has been, as I have assumed, from the period of time that has elapsed, making the witness' memory fail him on certain points, but I thought it would be cleared up later.

THE PRESIDENT: You must stand or fall with the transcript, Mr. Brooks. There is no reason for you to point out your position.

MR. BROOKS: Except that we were practically at the end of the case and when a rule is coming into effect which I have not understood and which, in justice, if it had been announced at the early part of this case, I would have made a lot of statements and objections that would have taken a lot of time in this court--

THE PRESIDENT: Just consider this, Captain Brooks: You heard every word that was said in this court affecting your client. If anything was said prejudicial to your client or clients, did you cross-examine?

MR. BROOKS: On occasion I have found the witness -- I have talked with him before he was put on the stand and found he would not change his statement on that point, and there was no necessity of cross-examining. I do not know whether I cross-examined or not.

THE PRESIDENT: But on your own statement you have not been prejudiced; you have no grievance. You are making a formal, unnecessary protest and wasting our time. The debate is closed.

MR. BROOKS: May I be heard in chambers on this?

THE PRESIDENT: We will adjourn until half-past nine tomorrow morning.

(Whereupon, at 1600, an adjournment was taken until Friday, 15 August 1947, at 0930.)

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WITNESSES

Defense witnesses	Page
YAMAMOTO, Kumaichi (resumed)	25895
Direct by Mr. Blakeney	25900

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EXHIBITS

Doc. No.	Def. No.	Pros. No.	Description	For Ident.	In Evidence
2014	2915		Affidavit of YAMAMOTO, Kumaichi		25901
1891	2916		Opinion of the Foreign Minister Concerning the Japanese-American Negotiations, dated 13 October 1941		25912
1401-Y-1	2917		Telegram from TOGO to Ambassador NOMURA, dated 21 October 1941		25920
1400-Z-6	2918		Excerpt from "Foreign Relations of the US Japan: 1931-1941" Vol II - Memorandum by the Ambassador in Japan (Grew), dated Tokyo, 10 November 1941		25925
			MORNING RECESS		25926
1401-W-1	2919		Message from Foreign Minister TOYODA to Ambassador NOMURA, dated 17 October 1941		25939
1401-H-3	2920		Telegram from Foreign Minister TOYODA to Ambassador NOMURA, dated 28 August 1941		25943
1401-E-1	2921		Message from Ambassador NOMURA to Foreign Minister TOYODA, dated 4 August 1941		25952

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(cont'd)

Doc. No.	Def. No.	Pros. No.	Description	For Ident.	In Evidence
1400-W-6	2922		Excerpts from "Foreign Relations of the US Japan: 1931-1941" Vol II - Memorandum by the Ambassador in Japan (Grew), dated Tokyo, 10 October 1941		25953
1401-E-2	2923		Message from TOGO to Ambassador NOMURA, dated 6 November 1941		25957
1401-A-2	2924		Message from TOGO to Ambassador NOMURA, dated 4 November 1941		25960
1401-B-2	2925		Message from TOGO to Ambassador NOMURA, dated 4 November 1941		25964
			NOON RECESS		25965
1401-D-2	2926		Message from TOGO to Ambassador NOMURA, dated 5 November 1941		25971
1400-A-7	2927		Excerpt from "Foreign Relations of the US Japan: 1931-1941" Vol II - Memorandum by the Secretary of State, Washington, dated 10 November 1941		25974

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EXHIBITS

(cont'd)

Doc. No.	Def. No.	Pros. No.	Description	For Ident.	In Evidence
1401-F-2	2928		Message from Ambassador NOMURA to TOGO, dated 7 November 1941		25986
1401-L-2	2929		Message from Ambassador NOMURA to TOGO dated 13 November 1941		25991
1401-G-2	2930		Telegram from TOGO to Ambassador NOMURA, dated 9 November 1941		25998
1401-J-2	2931		Telegram from TOGO to Ambassador NOMURA, dated 10 November 1941		25999
1401-K-2	2932		Telegram from TOGO to Ambassador NOMURA, dated 10 November 1941		26000
1401-H-2	2933		Telegram from Ambassador NOMURA to TOGO, dated 10 November 1941		26003
1401-J-3	2934		Telegram from Ambassador NOMURA to TOGO, dated 16 November 1941		26006
1400-B-7	2935		Excerpt from "Foreign Relations of the US Japan: 1931-1941" Vol II - Oral Statement Handed by the Secretary of State to the Japanese Ambassador (NOMURA) on 12 November 1941		26014
			AFTERNOON RECESS		26019

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EXHIBITS
(cont'd)

Doc. No.	Def. No.	Pros. No.	Description	For Ident.	In Evidence
1401-0-2	2936		Telegram from TOGO to Ambassador NOMURA, dated 16 November 1941		26021
1400-C-7	2937		Excerpt from "Foreign Relations of the US Japan: 1931-1941" Vol II - Oral Statement Handed by the Japanese Ambassador (NOMURA) to the Secretary of State on 17 November 1941		26023
1401-P-2	2938		Telegram from TOGO to Ambassador NOMURA, dated 17 November 1941		26025
1400-D-7	2939		Excerpt from "Foreign Relations of the US Japan: 1931-1941" Vol II - Oral Statement Handed by the Japanese Ambassador (NOMURA) to the Secretary of State on 17 November 1941		26026
1400-F-7	2940		Excerpt from "Foreign Relations of the US Japan: 1931-1941" Vol II - Memorandum of a Conversation Between the Japanese Ambassador, Mr. KURUSU, and the Secretary of State when they called on him, dated Washington, 18 November 1941		26027

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EXHIBITS
(cont'd)

Doc. No.	Def. No.	Pros. No.	Description	For Idont.	In Evidence
1401-R-2	2941		Telegram from Ambassador NOMURA to TOGO, dated 21 November 1941		26028
1401-Q-2	2942		Telegram from Ambassador NOMURA to TOGO dated 17 November 1941		26032
1401-S-2	2943		Telegram from Ambassador NOMURA to TOGO dated 23 November 1941		26038
1401-W-2	2944		Telegram from TOGO to Ambassador NOMURA, dated 26 November 1941		26041
1400-G-7	2945		Excerpt from "Foreign Relations of the US Japan: 1931-1941" Vol II - Memorandum by the Secretary of State, dated Washington, 21 November 1941		26045
1401-T-2	2946		Telegram from Ambassador NOMURA to TOGO, dated 23 November 1941		26048
1401-U-2	2947		Telegram from TOGO to Ambassador NOMURA, dated 23 November 1941		26051
1401-V-2	2948		Telegram from Ambassador NOMURA to TOGO, dated 25 November 1941		26053
1401-X-2	2949		Telegram from Ambassador NOMURA to TOGO dated 27 November 1941		26054

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EXHIBITS

(cont'd)

Doc. No.	Def. No.	Pros. No.	Description	For Ident.	In Evidence
1401-A-3	2950		Telegram from Ambassador NOMURA to TOGO dated 28 November 1941		26056
1401-D-3	2951		Telegram from TOGO to Ambassador NOMURA, dated 3 December 1941		26059

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Of
EXHIBITS
(cont'd)

Doc. No.	Def. No.	Pros. No.	Description	For Ident.	In Evidence
1401-A-3	2950		Telegram from Ambassador NOMURA to TOGO dated 28 November 1941		26056
1401-D-3	2951		Telegram from TOGO to Ambassador NOMURA, dated 3 December 1941		26059

Friday, 15 August 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, all Members sitting, with the exception of: HONORABLE JUSTICE STUART McDOUGALL, Member from the Dominion of Canada and HONORABLE JUSTICE I. M. ZARAYANOV, Member from the USSR., not sitting from 0930 to 1600; and HONORABLE JUSTICE LORD PATRICK, Member from the United Kingdom of Great Britain and HONORABLE JUSTICE E. H. NORTHCROFT, Member from the Dominion of New Zealand, not sitting from 1330 to 1600.

For the Prosecution Section, same as before.

For the Defense Section, same as before.

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(English to Japanese and Japanese to English interpretation was made by the Language Section, IMTFE.)

Knapp & Kapleau

MARSHAL OF THE COURT: The International Military Tribunal for the Far East is now in session.

Y A M A M O T O K U M A I C H I, resumed the stand and testified, through Japanese interpreters, as follows:

THE PRESIDENT: Major Moore.

LANGUAGE ARBITER (Major Moore): If the Tribunal please, we have the following language corrections. Since these have been distributed to all who received the transcript, only those portions which affect the record will be read at this time.

Exhibit 774-A, record page 7884, line 18, substitute "matter" for "fact."

Line 23, substitute "determination" for "resolution." After "refusing" insert "even."

Record page 7885, line 17, delete from "Now that" to "determination of" and substitute "On the basis that it is determined."

Line 18, substitute "to refuse" for "refusing."

Line 19, substitute "taken" for "treated."

Line 21, substitute "is the" for "are in a." Delete "position."

Line 22, delete from "try" to "weave" and substitute "make any specific."

Line 24, delete "on our side" and substitute "problem" for "trouble."

Exhibit 2233, record page 16,017, line 20, substitute "guiding" for "political."

Lines 21 and 22, delete from "are" to "Nationalism" and substitute "represents a nearer approach to the spirit in which the Japanese Empire was founded."

Line 24, delete "do not."

Line 25, substitute "a very inadequate" for "an adequate."

Record page 16,018, line 1, substitute "of" for "in"; read "Americas."

Line 4, substitute "That may be" for "this is."

Line 9, read "European and American economic spheres."

Line 10, delete "out."

Line 11, delete "set up."

Line 12, delete from "an ideal" to the end of the sentence, and substitute "for our ideal there must be something much grander."

Record page 16,019, line 13, substitute "presence" for "rule"; after "of" insert "the Imperial Ancestress"; delete "AMATERASU OMIKAMI."

Line 15, after "Archipelago" read "and that

her," and so forth.

Line 16, substitute "incarnate gods" for "who are the incarnation of God."

Line 18, substitute "whole world" for "universe."

Line 21, after "united" insert "in one family."

Line 22, substitute "all" for "each"; read "nations"; substitute "their own proper" for "its"; delete "in the Sun."

Line 23, after "peace" insert "and security."

Record page 16,020, line 17, substitute "far-sighted" for "philosophical."

Record page 16,021, lines 9 to 11, delete from "Today" to "come to" and read "Furthermore, I am convinced that, in this sense, now is the time to clarify our na'ional polity, proclaim it before all the world and loudly."

THE PRESIDENT: Major Blakeney.

MR. BLAKENEY: If the Tribunal please, when I offered yesterday to call the witness YAMAMOTO Kumaichi, who is now for some reason in the box, certain reservations to his testimony were made on behalf of two defendants. I am now told that upon condition of my making certain deletions, which have been agreed upon from the affidavit, that reservation will be with-

drawn. Whether there will then be reservations presented from other defendants I am unable to state and they will have to speak for themselves; but I think there will be none, and that the witness will therefore stand as the witness of all defendants interested in the question. The remaining subject matter of this sub-division can therefore be presented to the Tribunal as planned in this general phase instead of being postponed to the individual phases. In order that there shall be no misunderstanding, I shall state precisely the deletions proposed from the affidavit and will let counsel who made reservations yesterday state whether he now withdraws them.

THE PRESIDENT: Discuss it privately with the counsel concerned. Until the affidavit is tendered we are not supposed to know what is in it, nor are you at liberty to read it.

MR. BLAKENEY: I am quite confident that agreement has been reached with the counsel in question.

THE PRESIDENT: Copies of the affidavit have been served on counsel for all the accused, I take it, Major Blakeney? Only those particular counsel are objecting, and you are meeting their objections by deleting the material they object to. With that

material deleted you may re-tender the affidavit, subject to any further objections from the prosecution.

MR. BLAKENEY: I am afraid, however, your Honor, that until such time as I can state publicly the deletions proposed, other counsel will not be in a position to say whether they are now satisfied.

THE PRESIDENT: Other counsel have no objection to the affidavit as it stands. Could it be that in some remote contingency they will object to it if some part is deleted? That is hardly likely having regard to the nature of the subject matter. It would if the matter deleted altered the nature of the subject matter or changed its import. I think you had better take the risk and re-tender the affidavit. It is a matter for you.

MR. BLAKENEY: Very well. The affidavit has never actually been tendered yet, of course.

THE PRESIDENT: I have already told you, clearly enough I thought, to delete the parts that you had agreed to delete before you re-tender it.

MR. BLAKENEY: I said that I would, but it has never actually been tendered yet. I haven't asked the witness' name yet.

DIRECT EXAMINATION

BY MR. BLAKENEY (Continued):

Q State your name, please, Mr. Witness.

A YAMAMOTO, Kumaichi.

Q State your residence, please.

A No. 9, Shimiumachi 3, Setagayaku, Tokyo.

Q I ask that the witness be handed defense document 2014.

(Whereupon, a document was handed to the witness.)

MR. BLAKENEY: Please give him a copy of the English also, Mr. Marshal.

(Whereupon, another document was handed to the witness.)

Q Mr. Witness, I am proposing to delete from this document, on page 2 of the English, paragraph 3, lines 7 and 8, the words "and the Naval General Staff." Please compare the two copies and note that change in your Japanese copy.

Also in line 7 I delete the "s" from the word "chiefs" so that it stands in the singular "chief."

Have you made that correction?

A Yes, I have.

Q Then please turn to section 21 of the affidavit, which in the English version is on page 11, and delete the passage commencing in line 3 of the second paragraph thereof, commencing with the words "Admiral ITO" and continuing to the word "attack" at the end of the sentence. And in the following sentence, which appears in line 8 of the paragraph, delete the words "however, opposed this, saying" and insert the word "said."

Have you made that correction?

A Yes, I have.

Q Now I ask you, Mr. Witness, whether the document as so amended -- whether the document is your affidavit, signed and sealed by you?

THE PRESIDENT: Having been amended, it should be resworn, but we need not insist on that formality. It is sufficient if he swears to the contents of the amended document.

A I swear that the contents of the affidavit as amended are true.

MR. BLAKENEY: I offer in evidence the affidavit, defense document 2014.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 2014

will receive exhibit No. 2915.

(Whereupon, the document above referred to was marked defense exhibit No. 2915 and received in evidence.)

MR. TAVENNER: If the Tribunal please, I am sorry; I was talking. I desire to make one objection. May I be permitted to do so?

THE PRESIDENT: I waited, Mr. Tavenner, but go ahead. What do you object to?

MR. TAVENNER: If the Tribunal please, I desire to object to section 15 of the affidavit, beginning at the bottom of page 7 and extending to the middle of page 8. In this portion of the affidavit the witness seeks to compare prosecution exhibits 1164, 1165 and 1170 with certain original telegrams of the Foreign Minister, which original telegrams are not produced.

THE PRESIDENT: He should be satisfied to produce the originals and let us make any comparisons.

MR. TAVENNER: That is the point, your Honor, that I desire to make, but there is an additional explanation which I should make to the Tribunal regarding that matter.

At the time that the intercepted messages

mentioned, 1164, 1165 and 1170, were introduced by the prosecution, instructions were given to make a careful search for the original telegrams, with the view to presenting to the Tribunal the originals rather than the intercepted messages. Some originals were obtained and were introduced rather than to introduce the intercepted messages.

When this matter came up yesterday afternoon, I requested that a careful search be made of our own prosecution's files, and to my complete surprise I was advised while the witness was in the box that three originals had been discovered in the prosecution's files. In view of that situation, I of course will tender those original telegrams.

THE PRESIDENT: That is an ugly situation, in view of what is suggested about the originals and the copies you tendered.

MR. TAVENNER: I would call to the Tribunal's attention that the intercepted messages are not copies of the original telegrams.

THE PRESIDENT: Mr. Tavenner, there is no need for you to give any further explanation.

MR. TAVENNER: Will we be permitted to tender the original telegrams? We will have them

processed and served under the rule of the Tribunal.

THE PRESIDENT: As they are not rebutting evidence, I cannot tell you. You ought to wait until rebuttal, but as we should have the originals I think it is the duty of the Court to ask for them even in the course of the defense case. I understand there is no question about these being the originals?

MR. TAVENNER: That is precisely the reason, your Honor, why we felt we should present the originals now, as soon as it came to our attention that they had not been presented in the first instance, and we take the position that with the originals available, this section of the affidavit is objectionable because the witness is attempting to construe the documents himself and make the comparison, where that is a matter in the province of the Tribunal.

MR. BLAKENEY: I should point out to the Tribunal that in one or two instances -- my memory is not accurate -- we are tendering already the original telegrams.

THE PRESIDENT: How can you, if the prosecution has the custody of them? It is unheard of for the prosecution to tender documents in its

custody to the defense to be tendered to the court. The prosecution does it itself.

MR. BLAKENEY: That is, we are of course not tendering the original in the custody of the prosecution, but a certified copy thereof, from the Foreign Ministry.

THE PRESIDENT: Let the prosecution, as custodian of the originals, do the tendering.

MR. TAVENNER: If the Tribunal please, I feel reasonably certain that counsel is mistaken about the tendering or presentation of a copy of these particular telegrams. There is no mention of the tendering of such in the affidavit, and we have not discovered copies of them on the order list of their documents. If counsel will refer us to the order number of the documents which are the counterpart of these mentioned, we will be very glad to compare them, and if they are correct there is no need for the prosecution tendering anything.

THE PRESIDENT: If the defense have certified copies and you are satisfied with them, Mr. Tavenner, let the defense tender the certified copies.

MR. BLAKENEY: If counsel will look at

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defense document 1401-B-2 he will find the translation of the original document of which one of his three exhibits purports to be the translation of the intercept.

In a recess I will be glad to investigate the matter and advise counsel of any other documents which are in the same condition. I think there are others.

MR. TAVENNER: That number appears on a revised order list. We will examine it.

THE PRESIDENT: How much of this paragraph in the affidavit are you challenging?

MR. TAVENNER: The entire paragraph.

THE PRESIDENT: That encroaches on our province. That is not his province. We have to make the comparisons and draw the inferences.

MR. TAVENNER: By "entire paragraph" I meant the entire section numbered 15 which deals with several paragraphs.

MR. BLAKENEY: In drawing the affidavit I attempted to avoid having the witness invade the province of the Tribunal.

THE PRESIDENT: Evidently he did not take any notice of you because he says here, "Finally, in Section 3 of the "explanation" of the intercepted

Reichers & Yelien

version there is language evidencing an intention to trick the United States by forms of words." We must decide that. That is all that seems to be objectionable.

MR. BLAKENEY: That, of course, was intended to be explanatory of what follows where the witness testifies from his own knowledge of what went on in the Liaison Conference and the Foreign Ministry, and while, of course, the Tribunal makes the comparison, I should point out that this man is speaking as the one responsible, not as author but as reviser and approver of these messages, and is attempting to speak of what was intended by him in sending them. While, of course, his opinion of the intention in the intercepted messages which he never sent and never saw is wholly immaterial, his opinion of the intention of the messages which he did send, I submit, may be of some assistance to the Tribunal in drawing the comparison itself.

THE PRESIDENT: The certified copies of the original telegrams are sufficient. The objection is sustained. The document is admitted subject to that.

MR. BLAKENEY: I read the affidavit, omitting the formal parts:

"1. I have served in the Japanese Foreign

Ministry since March 1920. I was appointed Director of the Bureau of East Asiatic Affairs of that ministry on 2 September 1940, and was appointed concurrently Director of the Bureau of American Affairs on 28 October 1941. On 18 September 1942 I became Vice-Minister of Foreign Affairs, and held these three offices concurrently until on 1 November 1942 I was appointed Vice-Minister for Greater East Asia.

"As Director of the Bureau of East Asiatic Affairs, I often attended, during the third KONOE Ministry, the Liaison Conferences between the government and the High Command; on these occasions it was my function, as the Foreign Ministry official concerned with China problems, to make explanation when such problems came before the Liaison Conference for discussion. After the formation of the TOJO cabinet, as Director of the two Bureaus of East Asiatic and American Affairs, I always attended the Liaison Conferences, giving explanation concerning various questions involved in the Japanese-American negotiations. Since all important points of policy in connection with the negotiations were decided in the Liaison Conference--most of the diplomatic telegrams, including all important ones, being sent to the Army and Navy Ministries and General Staffs--since the Foreign Minister,

especially after the formation of the TOJO ministry, consulted me frequently on the subjects involved in the negotiations; since the meetings with the military bureau directors concerned with the negotiations were always held by me; and since our telegrams of instruction to the Washington Embassy were usually drafted by the Bureau of American Affairs in conformity with the decisions of the Liaison Conference and the instructions of the Foreign Minister, I was thoroughly familiar, especially after the formation of the TOJO cabinet, with the details of the Japanese-American negotiations. I thus make the following statement upon the basis of personal knowledge, of matters which I officially managed or which were told to me directly in the course of my official business.

"Attitude of the TOJO Cabinet toward the

"Japanese-American Negotiations

"2. In October 1941 I was told by Foreign Minister TOYODA that War Minister TOJO had upon the demand of the High Command made a strong request to Premier KONOE and the Foreign Minister to present by the 15th or thereabouts their opinions on the pending problems of the Japanese-American negotiations, and especially on the question of the stationing of Japanese troops in China. I was ordered by the Foreign

Minister to draft his opinion for this purpose, and I accordingly took considerable pains in drawing up the 'Opinion of the Foreign Minister Concerning the Japanese-American Negotiations,' defense document No. 1891," which I wish at this time to offer in evidence.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: If the Tribunal please, in view of this statement that this is an opinion prepared by this witness of the views of the Foreign Ministry I think it is objectionable as opinion matter.

THE PRESIDENT: It is not an attempt, of course, to form our conclusions for us; it is not that type of opinion.

MR. BLAKENEY: That is right.

THE PRESIDENT: It is a step in the negotiations, as one of my colleagues put it the other day, but was it not adopted in toto by the Prime Minister and given in evidence?

MR. BLAKENEY: No, sir, that is not quite the situation. This document or the contents thereof, as the Foreign Minister's opinion, has not been given in evidence. Prince KONOYE did state that the Foreign Minister gave his opinion and he may have summarized it in a few lines.

THE PRESIDENT: This is only evidence of the

fact that the witness drafted the opinion of the Prime Minister and Foreign Minister. It is not objectionable as opinion but it may be irrelevant and immaterial. We are not concerned with any difference between the witness and his chiefs.

MR. BLAKENEY: There is no such question as that, your Honor. This document is intended, as will be shown by reading the sentence which follows in the affidavit, as an explanation of how and why the negotiations were carried on at that time.

MR. TAVENNER: May I clarify the statement that I made a moment ago about opinion? This is not a part of the negotiations with the United States. This is a statement by this witness in which he is attempting to put into the mouth of the Foreign Minister his statements and conclusions but it is certainly not a part of the diplomatic negotiations with the United States.

MR. BLAKENEY: In answer to counsel's second argument, of course, the witness is not trying to put words in anybody's mouth. This document is an official document entitled "Opinion of the Foreign Minister" adopted by him and promulgated as his opinion.

THE PRESIDENT: The objection is overruled

and the document admitted on the usual terms.

CLERK OF THE COURT: Defense document 1891 will receive exhibit No. 2916.

(Whereupon, the document above referred to was marked defense exhibit No. 2916 and received in evidence.)

MR. BLAKENEY: I shall read the exhibit:

"Opinion of the Foreign Minister Concerning the Japanese-American Negotiations.

"(13 October 1941)

"In view of the attitude of the United States and the development of the previous negotiations, there is no prospect for the success of the Japanese-American negotiations so long as we insist on our proposals of 6 and 25 September. However, if the Government on the one hand allows me to continue negotiations in accordance with the following new revised proposal, and on the other cautiously and properly handles the situation through appropriate measures both internal and external, I will do all that I can to achieve diplomatic success without substantially affecting various policies centering around the problem of stationing of troops and without impairing the achievement of the China Affair.

"It is my conviction that the establishment

of the New Order in East Asia, which is the foundation of our national policy, should by all means be pursued through peaceful measures--that is, to begin with the adjustment of Japanese-American relations, to solve the China Affair, to establish the East Asia Coprosperity Sphere, and to realize the stability of the Pacific; that this is the most appropriate and effective measure for achieving our purpose; and that we should consider resort to a solution by force, in the present circumstances both within and outside the country, only if we are forced to do so for the sake of our self-defense.

"1. There is no prospect of the success of the Japanese-American negotiations on the basis of our previous proposals.

"It is observed from the assertions made and the attitude maintained by the United States in the past that she entertains doubt and apprehension of the ability of the Japanese Government to effect internal control and of its intention to pursue its external policy through peaceful means. This is why she attaches importance, among the problems included in the concrete proposals, to the question of stationing and withdrawal of troops in China and French Indo-China, and requests clarification of the intention of the

Japanese Government with respect to this question. It is observed that the United States will not agree to conclude the negotiations unless and until she obtains assurance that the policy of Japan on this question conforms to the four principles which the United States af^irms, and that they will be put into practice. Consequently, there is no prospect for the success of the negotiations unless such doubt and apprehension of the United States are cleared away, and proposals at once more clear and closer to the American assertions are put forward regarding the stationing of troops and other problems.

"2. There is a possibility of the success of the negotiations if the following concrete proposals be adopted with respect to the problem of stationing of troops and various policies centering around it, as well as with respect to the trend both within and outside the country, and if the execution thereof is secured.

"(1) To cease further reinforcement of French Indo-China and to refrain from any action which will cause suspicion that Japan entertains territorial aspirations in that area or that she is intending further advance by force therefrom into neighboring areas.

"(2) The contentions of the United States regarding the question of stationing of troops in China and withdrawal therefrom are, that (a) the question of withdrawal is confused by that of stationing, and the period of withdrawal is not clearly shown; that (b) to include provisions concerning stationing of troops in the peace conditions is contradictory to the concept of withdrawal of troops and of peace settlement, and that she cannot approve it as it is sharply in conflict with the four principles; and that (c) she does not approve of indefinite stationing of troops whatever the reasons may be. In view of the above, understanding is sought from the United States in accordance with the following form and provisions, and question of stationing of troops to be excluded from the peace conditions and carried in secret protocol or record.

"Provisions:

"'The Japanese troops dispatched to China in connection with the China Affair will be withdrawn in accordance with agreement to be entered into between Japan and China and following restoration of peace between them, and the withdrawal will be completed within two years at the latest.

"'In accordance with the agreement to be

entered into between Japan and China upon restoration of peace between them, Japanese troops will be stationed for a period of five years in a part of North China and Mengchiang, as well as Hainan Island, for the purpose of maintaining order after restoration of peace and of cooperation with China for her reconstruction. At the end of that period it may be extended further in consideration of the actual situation on the spot and in accordance with consultation between Japan and China.'

"(3) The following provisions are to be offered with respect to the question of stationing of troops in French Indo-China and withdrawal therefrom, as it is observed that the United States is suspicious that Japan entertains territorial aspirations toward French Indo-China and intends to make it a base for further advance by force into neighboring areas.

"'The Japanese Government respects the territorial integrity of French Indo-China. The Japanese troops which have been dispatched thereto will be withdrawn upon the termination of the situation which necessitates joint defense, and the withdrawal will not be delayed until the conclusion of the China Affair.

"'In line with the foregoing provision, the Japanese Government is ready to consider, upon the conclusion of a Japanese-American arrangement, revision of the provisions in the agreement between Japan and French Indo-China concerning stationing of troops.'

"(4) Actions within Japan should be under strict control so that there will be no incidents contradictory to the Government policy or prejudicial to the Japanese-American negotiations.

"3. Our national policy should by all means be pursued through peaceful means, and we should not resort to solution by force, in view of present circumstances both within and without the country.

"To resort to force on our own initiative in pursuing our national policy at this time is not only contradictory to the fundamental principle of our diplomacy, but does not contribute to the achievement of our objectives, in view of the domestic situation in Japan, the present state of the China Affair, and the prospect of the outcome of the European war. For effectuation of the policy we have pursued in Manchuria, China and French Indo-China, it is absolutely necessary in the establishment of

the Co-prosperity Sphere to utilize peaceful means, that is to concentrate our efforts on the adjustment of Japanese-American relations. The fundamental principle of our diplomacy as well as our own duty is, in my conviction, to relegate solution by force strictly to the sphere of self-defense."

MR. BLAKENEY: Resuming the affidavit:

"I was later told by Foreign Minister TOYODA that this document had been presented to the Premier and the War Minister.

"On 16 October the KONOE Cabinet resigned, and on the 18th the TOJO Cabinet was formed, with Mr. TOGO becoming Foreign Minister. Mr. TOGO told me at the time that, when offered the Foreign portfolio by General TOJO, he had rejected it on the ground that, so long as the Army clung to its old attitude, especially on the question of stationing troops in China, the successful conclusion of the Japanese-American negotiations was hopeless, and it would be meaningless for him to become Foreign Minister. After exchange of opinions, however, he said, he had at last accepted the offer upon General TOJO'S promise that his cabinet would, in obedience to the Imperial command (Exhibit 1154), strive for successful conclusion of the negotiations by undertaking reconsideration of the various unsettled questions, including that of the stationing of troops, without being bound by the Imperial Conference decision of 6 September and Ambassador NOMURA in Washington was accordingly notified that negotiations would continue (defense document No. 1401-

Y-1)"-- which is offered in evidence.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1401-Y-1 will receive Exhibit No. 2917.

(Whereupon the document above referred to was marked Exhibit No. 2917, and received in evidence.)

MR. BLAKENEY: I read the exhibit:

"From TOGO to NOMURA. 21 October 1941.

"In reference to your telegram No. 966.

"The Cabinet having just been formed, detailed instructions concerning the points you refer to will subsequently be telegraphed. The new Cabinet is one with its predecessor in its intense desire for the adjustment of Japanese-American relations on a fair basis. As our opinion and assertions have almost all been revealed in the past negotiations, we are in a position in which we maintain a firm attitude and wait for reconsideration on the part of the United States. It is directed that you should, either yourself or through WAKASUGI, properly suggest to the United States that we can not afford to spend too much time in the negotiations, and continue the negotiations with emphasis on obtaining the American counter-proposal to our pro-

posal of 25 September."

Continuing the affidavit:

"This intention of the new government was confirmed by Premier TOJO, who in the opening address at the first meeting of the Liaison Conference after the formation of his ministry said that the policy of the new cabinet would be to reconsider the problem without being bound by the decision of 6 September, and asked the agreement thereto of the representatives of the High Command, which was given.

"Liaison Conferences to the Imperial Conference of 5 November.

"3. Thereafter, Liaison Conferences were held almost daily from around 23 October to early November. Debates over the Japanese-American negotiations and the question of peace or war occupied these meetings, much difference of opinion and thorough discussion occurring. Foreign Minister TOGO always insisted that it was necessary to succeed in the negotiations; the contention of the High Command, voiced by the Chief of the Army General Staff" -- we omit a phrase here -- "was that concessions concerning the stationing of troops in China must absolutely not be made, and that there being almost no room left us for concession from the decision of

6 September, we should in the circumstances even accept the opening of hostilities at that time. The Foreign Minister vigorously rejected this contention; and I remember that Premier TOJO reproved the Vice-Chief of the Army General Staff, and repeated his words to the opening Conference, mentioned above, to the effect that reconsideration would be given by the Liaison Conference, without being bound by the decision of 6 September.

"4. At the almost daily Liaison Conference meetings held from 23 October into early November study was given to the situation in the light of conditions in Japan and abroad, and the national policy to be adopted was discussed. The subjects discussed are those mentioned in Exhibit 1,328 herein. As the result of those discussions and studies, substantially the following conclusions were reached at the meeting of 1-2 November:

a) to work for the successful conclusion of the Japanese-American negotiations, specifically on the basis of Proposals "A" and "B", referred to in detail hereafter;

b) to make a decision for war against America for self-preservation and self-defense, should the negotiations fail in spite of the

diplomatic efforts mentioned above;

c) to make efforts to complete preparation for military operations, in view of these conditions, against eventualities; provided, however, that such preparations would be stopped immediately if a settlement were reached through Japanese-American negotiations.

In short, it was intended to make the utmost possible concessions in order to adjust relations between Japan and America with a view to maintaining peace in the Pacific, but at the same time to make preparation for military operations in self-defense, in view of the conditions -- exhaustion of Japanese resources and encirclement of Japan, military and economic, by other powers.

"5. Before the reaching of the conclusion above mentioned, there had been various discussions and debates in the meetings of the Conference. The General Staff had maintained the position which they had adopted theretofore, that there was no hope of a successful conclusion of the Japanese-American negotiations, and insisted that, since they believed war to be inevitable, it was necessary to commence it during November. In support of their argument, they pointed out that in July

President Roosevelt had told Ambassador NOMURA that he had refrained from placing an embargo on petroleum shipment to Japan, in spite of strong public opinion supporting such action, on the ground that it would not make for maintaining the peace of the Pacific, but that now he had lost his ground for that argument; thus revealing his intention of subjugating Japan by imposition of the embargo even at the risk of war in the Pacific. Further, they argued, America had never made concessions or shown a conciliatory attitude in the negotiations. Against this opinion, the Foreign Minister contended most earnestly that it was necessary to exert the utmost efforts for conclusion of the negotiations in order to achieve a peaceful settlement, and at last was able to persuade the Conference to adopt the decision to continue the negotiations. His urging of the reconsideration of the conditions contained in the decision of 6 September, including the question of the stationing of troops -- most difficult of all the difficult problems -- resulted in the decision to present Proposals "A" and "B", which were considered by the Liaison Conference to represent the utmost possible concessions which could be made. I shall now explain in detail concerning these two proposals.

"6. The important pending questions in the Japanese-American negotiations were the stationing of Japanese troops in China, the application to China of the principle of commercial non-discrimination, and the Tripartite Pact question, as well as questions arising from the entry of Japanese troops into Southern French Indo-China. Of these, it was considered in Japan, in the light of the telegrams received from Ambassador NOMURA, that the American Government understood the intention of Japan in regard to the questions of the Tripartite Pact and non-discrimination in commerce, and that these could accordingly be settled on that basis (defense document No. 1400-Z-6)" -- which I offer in evidence.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1400-Z-6 will receive Exhibit Number 2918.

(Whereupon the document referred to was marked Exhibit No. 2918 and received in evidence.)

THE PRESIDENT: Do you propose to read all of this, Mr. Blakeney?

MR. BLAKENEY: Yes sir, I do. I think it is quite important.

THE PRESIDENT: We will recess for fifteen

minutes.

(Whereupon, at 1045, a recess was taken until 1100, after which the proceedings 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: Major Blakeney.

MR. BLAKENEY: Before proceeding with the exhibit, I should like to point out, if I may, what I overlooked to say in the confusion this morning, that the deletion made on page 2 of the affidavit was a correction which had already been made by the witness himself in the original document.

I wish to state also that I have ascertained that of the exhibits mentioned in paragraph 15, now stricken from the affidavit, the three mentioned by number are all on my order of proof in their original forms. Exhibit 1164 appears in its original form as defense document 1401-A-2; exhibit 1165 as defense document 1401-B-2, and exhibit 1170 as defense document 1401-D-2.

I now continue with the reading of exhibit 2918, which is a memorandum by the Ambassador in Japan, Grew, excerpted from Foreign Relations of the United States, dated Tokyo, 10 November 1941.

"The Foreign Minister recalled the conversation which he had had with me on October 30, when he said that he was firmly of the opinion that the maintenance of friendly relations between the United States and

Japan was a practicable proposition. He went on to say that he had given constant thought to this matter and that he had determined to put forward every effort to re-establish relations between the two countries on a friendly basis and to maintain peace in the Pacific. It was the purpose of the present Cabinet to continue with the project of establishing a 'Greater East Asia' as a contribution toward world peace. Mr. TOGO said that ever since he has assumed office he had been intensively studying the documents relating to the conversations which have thus far taken place. Fresh proposals had been formulated and had been sent to Admiral NOMURA, who had been instructed to enter into negotiations with the President and the Secretary of State. I interrupted the Foreign Minister to say that our Government had been careful to emphasize that it was engaged in 'preliminary and exploratory conversations' with the Japanese Government. Mr. TOGO replied that he was well aware of that fact, but that he wondered whether the time had not come to enter into formal and official negotiations. However, he said that he did not wish to press the point.

"Mr. TOGO went on to say that only recently Mr. KURUSU had been despatched to Washington to assist Admiral NOMURA in conducting the conversations. He

recalled in this connection that he had asked me to facilitate Mr. KURUSU's journey to the United States, and that the American Government and I had responded in a manner which was most gratifying. He said that it was everywhere known in Japan that I had striven to promote friendly relations between our two countries and that my efforts in this regard were highly appreciated throughout the country. He intended on his part to spare no effort to cooperate with me with a view to opening up a way for the solution of the problems confronting the two countries which would be mutually acceptable.

"What he most keenly felt, the Foreign Minister continued, from reviewing the documents recording conversations which have thus far taken place was that the knowledge and appreciation of the United States with regard to the realities of the situation in the Far East are unfortunately inadequate. Although Mr. Hull had admitted that Japan is a stabilizing force in the Far East, the position taken by the United States throughout the conversations had not been in harmony with that fact. Unless the American Government should take full cognizance of the fact that Japan has been engaged in hostilities with China for four and a half years, then the admission of Japan's being a stabilizing

force in the Far East would have in actuality no meaning. Mr. TOGO said that Mr. Hull, in a conversation with Mr. WAKASUGI on October 16, recalled that he had told former Ambassador SAITO that he recognized Japan as a stabilizing force and would be prepared to express such recognition in an official manner. The Minister went on to say that the population of this country is steadily and rapidly increasing; it was now about one hundred million; and it was necessary to assure raw materials necessary for their existence. It was his opinion that unless the American Government realizes this fact as among the realities of the situation, successful conclusion to the conversations would be difficult. During the conversations carried on for a period of more than six months, the Japanese Government had repeatedly made proposals calculated to approach the American point of view, but the American Government for its part had taken no step toward meeting the Japanese position and had yielded nothing -- it had perhaps taken a more advanced position. Those being the facts, 'we in Japan are led to wonder what is the degree of sincerity of the American Government in continuing with the conversations.' He said that national sentiment will not tolerate further protracted delay in arriving at some conclusion. Referring to the

fact that the Diet is shortly to meet, he emphasized that the position is daily becoming more pressing. He expressed the hope that the American Government would take a statesmanlike position and view the problems to be resolved from the broadest possible viewpoint that it would try to settle these problems 'with one sweep.' It was his opinion that otherwise the prospects of overcoming the present difficulties would be small.

"The Foreign Minister went on to say that Japan had already made what were believed to have been the greatest possible concessions. However, the position had been examined by the new cabinet and the new proposal now being made comprises the maximum possible concessions by Japan. The Minister at this point handed me two pieces of paper (attached hereto) which he described as the new Japanese proposals, and he said that he wished to make two observations as follows:

"1. The new Japanese draft corresponds to the American draft of June 21. It contains the elements of the proposals put forward in the Japanese documents of September 6 and 25, with modifications to meet as far as possible the American positions as set forth in the American memorandum of October 2.

"2. The Japanese draft of September 25 was largely based on the American draft of June 21. In the

Foreign Minister's opinion it contains many unsatisfactory features with regard to both text and substance. However, to expedite the conversations, the Minister had decided to make use of that draft as a basis for a fresh start. He reiterated that this new proposal includes the maximum concessions.

"By way of commentary he said:

"(a) With regard to the attitudes of the American and Japanese Governments towards the European war, it is the understanding of the Japanese Government that there has been an agreement of views based on the Japanese draft of September 25;

"(b) With regard to the question of non-discrimination in economic matters, it is the belief of the Japanese Government that its new proposal adequately covers the desires of the American Government;

"(c) With regard to the stationing in and withdrawal of troops from China, which have been the greatest obstacle in bringing the conversations to a successful end, the Japanese Government has, notwithstanding grave domestic difficulties, made a further and what must be regarded as the maximum possible concession. The Japanese Government believes that the American Government will appreciate this further manifestation of Japan's desire to come to an amicable settlement

with the United States:

"(d) Mr. Hull has intimated that he has already consulted the British Government with regard to the conversations and that he proposes to continue such consultation. British interests in the Far East are admittedly large and would be deeply affected by matters now under discussions between the United States and Japan. The Foreign Minister regards it as necessary that in the event of the sought-for agreement being reached between the United States and Japan there should simultaneously be concluded a similar instrument between Japan and Great Britain. The Foreign Minister expressed the hope that the American Government will persuade the British Government to agree to such simultaneous signature.

"The Minister concluded his observations by repeating that he solicited my cooperation to bring about a speedy and satisfactory end to the negotiations. He referred to the question of conversations being carried on in Tokyo paralleling those taking place in Washington, which was touched on at our last meeting. The Minister said that he had no intention of merely duplicating here what would be said in Washington. He believed that there would be no objection on the part of the American Government to holding parallel

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conversations in Tokyo, but in his view such parallel conversations should be designed to supplement exchanges in Washington of information and of opinion with a view to expediting the progress of the conversations.

"At the end of the Minister's presentation I said that I had no authority to debate the questions approached by the Minister which would be discussed in Washington but that I wished to raise three points as pertinent to those discussions, as follows:

"(1) In connection with the Minister's observation that my Government does not understand the realities of the situation in the Far East I ventured to disagree on the ground that the American Government had been given a perfectly clear conception of the situation and its various factors by this Embassy and, I assumed, by the Japanese Ambassador in Washington;

"(2) The term 'stabilizing force in East Asia' as applied by the Minister to Japan is open to very wide interpretation;

"(3) The Minister's observation that Japan must have access to necessary supplies penetrates to the center of the whole problem since one of the fundamental purposes of the current conversations is to open a way for Japan to obtain such necessary supplies,

together with a free flow of trade and commerce and markets for her industries, but by peaceful means as opposed to the use of force, and that Mr. Hull's program visualizes precisely these desiderata which are aimed to ensure Japan's future welfare, prosperity and contentment.

"The Foreign Minister remarked that he was quite prepared to admit that the Embassy is endeavoring to report accurately on the situation in the Far East, but that, in view of the position which is being taken by the American Government, he wondered whether the American Government has in fact a correct appreciation of the realities. To illustrate his point, he wished to cite the question of the stationing of Soviet troops in Outer Mongolia, which was universally recognized to be a part of China. So far as he knew no one had objected to the presence of Soviet troops in Outer Mongolia. With regard to my comment on the phrase 'stabilizing force in East Asia,' the Foreign Minister said that there should be a satisfactory interpretation of that phrase from a common-sense point of view. With regard to my observations on the question of assuring to Japan sources of raw materials the Foreign Minister said that this was a question which had been debated over a period of years at Geneva and elsewhere. He did

not wish to go into the fundamentals of the question, but he thought that he could advert briefly to the importance of commercial and economic relations between the United States and Japan. The freezing by the United States of Japanese assets had stopped supplies of many important raw materials to Japan. Economic pressure of this character is capable of menacing national existence to a greater degree than the direct use of force. He hoped that the American Government would take into consideration circumstances of this character and realize the possibility that the Japanese people, if exposed to continued economic pressure, might eventually feel obliged resolutely to resort to measures of self-defense.

"The Minister went on to say that Japan had been engaged in extensive hostilities for a period of more than four years, and that if Japan were called upon to sacrifice the fruits of such protracted hostilities she must inevitably collapse. If the American Government realizes this fact a speedy conclusion to the conversations will be easy.

"I pointed out the apparent inconsistency between the Minister's emphasis on the insistence of Japan that she retain the fruits of hostilities and Japan's acceptance of the principle of refraining from

aggression and the use of force.

"The Foreign Minister replied that Japan is not conducting a war of aggression and that therefore no question arises of her retaining the fruits of aggression. It is his impression that the American Government is now resorting, under the plea of self-defense, to measures over and beyond those that are generally recognized by international law. He expressed the opinion that it might not be out of place for Japan to ask the United States not to put too liberal a construction on the principle of self-defense. In any event, it was his opinion that theoretical discussions would not promote the conversations, which he thought should be pursued along realistic lines.

"The conversation then turned to another matter which is covered by a separate memorandum."

Resuming the affidavit:

"It was for this reason that, in the 'Opinion of the Foreign Minister,' defense document No. 1891, the belief was advanced that mitigation of the Japanese stand on the question of the stationing of troops would suffice for the success of the negotiations. While it is true that in several points the new proposals followed the formula theretofore adopted, those formulas were those on which it was considered that agreement had already been reached. To all questions on which, as we understood, America maintained its objections, the Liaison Conference gave the most careful consideration, and the proposals which were adopted represented the maximum agreement which could be obtained for making concessions on those points.

"7. In regard to the problem of the stationing of troops in China, the Japanese proposal of 25 September (exhibit 1245-E) stipulated that 'the stationing of Japanese troops and naval forces in certain areas in the Chinese territory would be maintained for a necessary period in accordance with the existing agreement and usages for the cooperation between Japan and China for the purposes of preventing communistic and other subversive activities and of maintaining the public order.' This was the position

which Japan had maintained since the opening of the negotiations; while America had objected to the stationing of troops in China for an unlimited period, and insisted on their withdrawal within a definitely limited time. This point had, therefore, been the most difficult of the problems, and this decision taken and embodied in Proposal 'A' in the time of the TOJO cabinet was the first time that it had been made clear that the stationing was not to be for an unlimited period. It was further decided that if America asked how long the period would be, reply would be given to the effect that the approximate goal was 25 years. The settlement of this problem had caused great difficulties to the Liaison Conference and it was this problem which had brought about the downfall of the third KONOYE Cabinet (defense document No. 1401-W-1," which I offer in evidence.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1401-W-1 will receive exhibit No. 2919.

(Whereupon, the document above referred to was marked defense exhibit 2919 and received in evidence.)

MR. BLAKENEY: This is a telegram from TOYODA to NOMURA, dated 17 October, 1941. (Reading):

"On this occasion of the resignation en bloc of the Cabinet, I wish to express my appreciation of the efforts which you and your staff have been making. The resignation is caused, as the Cabinet has announced, by its internal disagreement of views, the most important of the issues involved being the question of withdrawal of troops. Whatever cabinet may hereafter be formed, however, there will be no change in regard to continuing the Japanese-American negotiations in accordance with the predetermined principles. I earnestly hope that you and your staff members, keeping that in mind, will all the more unite in cooperation, and make greater efforts than ever."

Resuming the affidavit:

"It was for this reason that Mr. TOGO had requested and obtained assurance on this point (as well as other points of the 6 September decision) before accepting the portfolio of Foreign Affairs. But in the Liaison Conference, the Army General Staff especially strongly opposed a limitation on the period of stationing troops on the grounds that if a limitation were imposed the fruits of the China Incident would be lost, the feeling of defeat would spread over the nation, and the morale of the army would be lowered. The Foreign Minister insisted, on the contrary, that

the negotiations would undoubtedly fail unless the period was limited; and after hot discussions the General Staff at last came to agree to the decision.

"The plan adopted further made it clear that the area in which troops would be stationed would be certain areas of North China and Inner Mongolia, and Hainan Island. According to the provisions of the Treaty of Basic Relations between China and Japan (Exhibit 1245-F), which had been mentioned in the original proposal of 12 May (exhibit 1070), Japan had the right to station troops in the Shanghai triangular zone, at Amoy and in some other areas in addition to those enumerated in Proposal 'A' and this right had been strongly defended until the time of the TOJO Cabinet and was still strongly insisted on by some at this time. As a result of the Conference deliberations, however, it was decided to make the concession of restricting the areas, to those mentioned.

"8. On the question of the application of the principle of nondiscrimination in trade, the draft of 25 September had provided that 'economic cooperation between Japan and China will be carried on by peaceful means and in conformity with the principle of non-discrimination in the international commercial relations and also with the principle of especially close

relationship which is natural between neighboring countries; and that the economic activities of third Powers in China will not be excluded so long as they are pursued on an equitable basis.' In Proposal 'A,' however, the Liaison Conference, in accordance with the participants' intention of making concessions so far as possible, had included the provision that 'The Japanese Government recognized the principle of nondiscrimination in international commercial relations to be applied to all the Pacific area, inclusive of China, on the understanding that the principle in question is to be applied uniformly to the rest of the entire world as well.' The Liaison Conference intended thus not only abandonment of the condition of proquinquity, to which America had taken exception, but also to adopt the American extension of the nondiscriminatory principle to the whole Pacific area.

"9. As to French Indo-China, Proposal 'A' provided that 'The Japanese Government undertakes to guarantee the territorial sovereignty of French Indo-China. The Japanese forces at present stationed there will be withdrawn as soon as the China Affair is settled or an equitable peace is established in East Asia.' The meaning of the phrase, 'an equitable peace in East Asia,' as used here is explained in the earlier

telegram of Foreign Minister TOYODA to Ambassador NOMURA, 28 August, defense document No. 1401-H-3," which I offer in evidence.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1401-H-3 will receive exhibit No. 2920.

(Whereupon, the document above referred to was marked defense exhibit No. 2920 and received in evidence.)

MR. BLAKENEY: I read the exhibit, which is a telegram from TOYODA to NOMURA, dated 28 August 1941.

"With reference to my telegram No. 503:

"(A) Please give the following numbers to the contents of the telegram above referred to, for convenience' sake in future telegrams regarding this matter.

"(1) (The paragraph beginning with 'The Government of the United States declared . . .,' which repeats the contents of the communication made to our Ambassador at Washington.)

"(2) (The paragraphs following 'The Japanese Government cannot but feel unsatisfied . . .')

"(3) (The paragraphs following 'The messages taken by the Government of Japan for the common defense

of French Indo-China were . . .')

"(4) (The paragraph beginning with 'As to the statement of the Government of the United States that the informal discussions between the two Governments with a view to discovering . . .')

"(5) (The paragraph beginning with 'The Government of Japan is of opinion that, with regard to the principles and hope reiterated by the Government of the United States as the program . . .')

"(6) (The paragraph beginning with 'The Government of Japan feels that its intention . . .')

"(B) With reference to the telegram above referred to, the explanation of the points calling for special attention is given for you only as follows:

"(1) Our idea underlying the present telegram is that the United States should state its opinion very frankly and that Japan should respond to it. Therefore, the views of the Japanese Government are set forth frankly and simply in this telegram. It is necessary that both sides should make their respective views clear and find some compromise through the spirit of mutual concession. The Japanese Government considers that the meeting between the responsible heads of the two Governments is the most effective method for such purpose.

"(2) With reference to (3), it is implied in

the phrase 'when an equitable peace has been established in the Far East . . .' that the withdrawal of Japanese troops can be considered even while the China Affair is not yet brought to a general settlement, if the Chiang Kai-shek regime descends literally to a local government owing to the closing of the supply routes, normal relations between Japan and China are in effect restored, and equitable and free acquisition of resources from French Indo-China is assured to Japan. In fine, it aims at widening the scope of the negotiations as much as possible.

"(3) With reference to (5),

"(a) 'These are to be applied to the whole world and consequently to the Pacific area' expresses the intention of the Japanese Government to apply the principles to the whole world so that they should not operate unilaterally against the interest of Japan. For, if the proposed principles and desire of the American Government be applied exclusively to the Pacific areas, Japan will be subject to all kinds of restraint in the East Asia Co-prosperity Sphere where a new order is being established, while the United States will be left free from any such restraint in the adjacent areas.

"(b) 'Any countries which are in a better

condition and are more advanced geographically and from the viewpoint of natural resources as well as militarily, politically and economically, should adopt a fair attitude for the distribution . . .' suggests (in connection with the proposed principles of equality of economic opportunity and treatment, that any countries which are in better condition should take fair measures for the distribution of essential raw materials, and that they should cooperate with other countries, making the most of their respective power of leadership) that it is only natural for Japan to take peaceful leadership in the economy of the East Asia Co-prosperity Sphere.

"(c) 'It is natural, proper and absolutely necessary for the establishment and promotion of peace that fundamental necessities for the existence of a certain country should be mutually satisfied . . .' manifests that it is natural and is necessary for the establishment of the Co-prosperity Sphere that Japan is exerting itself to bring forth peace through the policy of good neighborliness, that is, with Manchuria and China as the nucleus. It also shows that the mutual respect for the individual characteristics of adjacent countries does not mean the acquisition of superiority which the United States cautions us against,

denoting that such has a basis in common with the Monroe Doctrine of the United States. Further, with respect to 'the satisfaction of the necessities for existence,' we have taken in the idea of the defense against dangers advocated by the Government of the United States, and the joint defense of China has also been taken into consideration.

"In short, all such statements quoted in (a), (b), and (c) are made by way of precaution lest Japan's hands should be tied in the future negotiations in her efforts for the establishment of the Co-prosperity Sphere, to which she is committed."

Returning now to the affidavit:

"The Liaison Conference discussions and decision of this point were on the basis of this meaning of the phrase.

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"In general, Proposal 'A' was formulated by study and consideration of the negotiations from the time of the Japanese proposal of 25 September, and with a view to making on the unsettled questions the utmost concessions to the American position which could be agreed upon by all.

"10. In addition to Proposal 'A', Proposal "B" was prepared also, for use in the event that no favorable prospect developed from presentation of Proposal 'A' (it being realized that settlement of all outstanding problems at a stroke might be difficult). The main purpose of Proposal 'B' was to restore conditions to what they had been before the critical situation brought about by the Japanese advance into Southern Indo-China, as a modus vivendi until a basis for final settlement of the various issues could be reached. Thus it was decided to propose withdrawal to the north of all troops stationed in Southern Indo-China, as well as withdrawal of all troops stationed in Indo-China upon establishment of an equitable peace in the Pacific area. It was decided also that, if necessary, the stipulations of Proposal 'A' on non-discrimination in commerce, as well as on the interpretation and obligations of the Tripartite Pact, might be included in Proposal 'B'. To arrive at an

agreement to make such concessions in spite of the many questions left unsettled for future negotiations was a difficult matter, and there were strong objections from the Army General Staff, by whom it was considered an extreme concession on the part of Japan, the retreat of Southern Indo-China especially being very hard for them to accept.

"11. The Liaison Conference discussed also the policy to be adopted in case the United States would not accept either Proposal 'A' or 'B', despite the concessions which they were believed to represent. Before reaching the final decision that in that case war would have to be waged in self-defense, the Liaison Conference had hot discussions. The Foreign Minister, insisting on the necessity of preserving peace, strongly urged patience even in hardship and provation, pointing out the great productive capacity of America and Britain and the indomitable and inflexible spirit of their nationals, and the impossibility of Japan's receiving assistance from Germany or Italy. He repeatedly expressed the fear that once war broke out it would necessarily be a prolonged one, and one that would result disastrously for Japan, and insisted that Japan should manage herself with patience at least until American participation in the European War.

This opinion met with strong opposition from the High Command. It was argued that, since the imposition of freezing measures by the United States, Britain and the Netherlands, Japan's vital resources were subject to gradual depletion, and that is that condition continued, with no means of replenishing her resources, the materials necessary for war would be gradually exhausted and Japan would collapse militarily and economically. In the case of petroleum especially, great concern was manifested, it being concluded that the stock available for civilian use would be exhausted by June or July of 1942, however strictly rationing might be imposed; and that the stock even for military use was so small that the Japanese Navy would be faced with the impossibility of discharging its functions, if the worst came, in less than a year and a half. It was stressed that in view of the rapid increase of military preparations by America, Britain and the Netherlands, and the condition of Japan, the probability of being subjected to pressure by America and Britain in the event of failure of negotiations was growing, and if conditions remained unchanged Japan would no longer have power to resist. Further, it was argued, we should conclude, if America refused to pay favorable consideration to our proposals despite our great

concessions, that she was already resolved upon war against us. As a result of these arguments, the opinion that we should continue negotiations with the determination to fight America in self-defense if negotiations failed prevailed in the Liaison Conference in early November, resulting in the conclusions before mentioned.

"Prior to the agreement on this conclusion, Ministers KAYA and TOGO reserved expression of their final opinions, requesting a day's time for further consideration before agreeing. Foreign Minister TOGO told me a day or two later that, believing that war should be avoided to the last, before agreeing to the conclusion he had made some requests of Premier TOJO; especially to make every effort for the success of the negotiations, and to consider moderating as necessary the terms of Proposals 'A' and 'B', if the United States' attitude toward them was in general favorable. He had, he told me, got the consent of the Premier, and he therefore encouraged me to make still further efforts for the success of the negotiations. The Foreign Minister further proposed in the Liaison Conference that in case of a settlement through the negotiations the Army and Navy forces should be restored to their former condition however much military

preparations had progressed; and to this the High Command fully agreed.

"The Negotiations, 5 - 20 November

"12. The dispatch of Ambassador KURUSU to Washington was first requested by Ambassador NOMURA on 4 August (defense document No. 1401-E-1)," which I offer in evidence.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1401-E-1 will receive exhibit No. 2921.

(Whereupon, the document above referred to was marked defense exhibit No. 2921 and received in evidence.)

MR. BLAKENEY: The exhibit which I read is a telegram:

"From NOMURA to TOYODA

"4 August 1941

"All the newspapers here accorded much publicity to the Japanese-American problem yesterday, supporting the strong attitude of the American Government. The Gallup Poll also shows support for the strong attitude, though it is suggested that the door is not yet quite closed. For the present, public interest appears to be focused on Japanese-American relations rather than on American-Japanese relations.

Though it may be possible for the tension to be allayed, it depends partly on the European war situation, and nothing can be forecast with respect to future developments. Reports will be submitted by WAKASUGI and IWAKURO on their return to Japan; but, as the situation is changing every moment, time is the most important factor. I deeply fear lest I should make a miscalculation at this moment, and besides there is a limit to my ability. It is therefore earnestly requested that you dispatch at your earliest convenience some senior in the diplomatic service who is well versed in affairs in and out of Japan (for example, Ambassador KURUSU), to cooperate with me. I am unable to perceive the delicate shades of the policy of the Government, and am quite at a loss what to do. I should be very much obliged if you would give special consideration to the matter and realize it promptly."

Returning to the affidavit:

"The matter was being considered by Foreign Minister TOYODA when the KONOE Cabinet resigned, (defense document 1400-W-6)," which I offer in evidence.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1400-W-6 will receive exhibit No. 2922.

(Whereupon, the document above referred to was marked defcnse exhibit No. 2922 and received in evidence.)

MR. BLAKENEY: The exhibit, which is an excerpt from "Foreign Relations," I read:

"Memorandum by the Ambassador in Japan (Grew)

"(Tokyo) October 10, 1941

"The Minister for Foreign Affairs asked me to call this afternoon.

"The Minister for Foreign Affairs then told me that since he had the impression that the Japanese Ambassador in Washington was apparently very fatigued, serious consideration was being given to the question of sending to Washington a diplomat of wide experience to assist the Ambassador in carrying on the present conversations. Admiral TOYODA said he had in mind a high-ranking diplomatic official with the personal rank of Ambassador, but he had not yet approached the official in question and was therefore uncertain as to whether he would agree to undertake to accept the mission. It would be of great assistance to the Minister to ascertain whether the Government of the United States, in the event that it was decided to send the officials in question to Washington, would be prepared to make available a reservation for him on the airplane from

Manila to San Francisco. Admiral TOYODA said that the official in question would not be accredited to the Government of the United States but would be temporarily and unofficially attached to the Japanese Embassy in Washington. I told the Foreign Minister that I would transmit his inquiry to my Government.

"In concluding the conversation, the Minister several times stressed to me, in view of the importance of the time factor, the necessity of expediting the progress of the conversations."

Resuming the affidavit, I will start at the beginning of the sentence:

"The matter was being considered by Foreign Minister TOYODA when the KONOE Cabinet resigned, and after assuming office, Foreign Minister TOGO told me that he considered that sending Ambassador KURUSU -- who shared his opinion of the necessity of adjusting Japanese-American relations, and who had a good knowledge of America -- to assist Ambassador NOMURA would be helpful for expediting the negotiations. Therefore on the night of 3 November, following the Liaison Conference's agreement on Proposals 'A' and 'B', the Foreign Minister had Ambassador KURUSU call on him, stated the nature of the proposed mission, and obtained his consent to undertaking it. The following day

I went over the course of the negotiations in detail with Ambassador KURUSU, and, the Foreign Minister securing the Premier's approval of and the Imperial sanction for the mission, the Ambassador was sent off by Clipper, thanks to special arrangements made by the American Ambassador and the American State Department.

"The disptach of Ambassador KURUSU was carried out solely as one more effort offering an additional chance to succeed in the earnestly-desired conclusion of the negotiations, as was explained to Ambassador NOMURA at the time (defense document No. 1401-E-2)," which I offer in evidence.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1401-E-2 will receive exhibit No. 2923.

(Whereupon, the document above referred to was marked defense exhibit No. 2923 and received in evidence.)

MR. BLAKENEY: I read the exhibit, which is a telegram from TOGO to NOMURA, 6th of November, 1941:

"Reference to my telegram No. 730.

"While Ambassador KURUSU was sent for the reasons stated in the reference telegram, his hurried dispatch indicates also the sincerity of the Japanese Government in regard to the present negotiations. As stated in the telegram under reference, the Ambassador is not carrying with him any new instructions other than those already telegraphed to you. His mission is to convey in person to you information concerning the latest situation here, to assist you in the final stage of the negotiations, and by cooperating with you to break

the deadlock so as to bring the negotiations speedily to a successful conclusion. It has been explained to the public here that, in view of the necessity of the negotiations' being speedily brought to a successful conclusion, Ambassador KURUSU has been hurriedly dispatched to assist you. The above circumstances have also been thoroughly explained to the British and American Ambassadors in Tokyo (Ambassador KURUSU talked with the American Ambassador in Tokyo just before his departure), and the two Ambassadors fully understand the circumstances. Further, the Army and Navy authorities understand the purpose for which the Ambassador has thus been specially sent, and are appreciative of the trouble he is taking. Let me add that you will, bearing the above in minde, appropriately explain the matter to the United States Government authorities, the press and other quarters."

I return to the affidavit:

"The suggestion has since been made that it was intended as a measure to gain time by deceiving the United States; but, as I have already indicated above, the difficulty in the Liaison Conference from long before had been to persuade the High Command to agree to enough delay to give negotiation full opportunity, their position being that there was neither necessity

nor desirability of delaying the opening of hostilities, but that it would be advantageous to commence them at once.

"13. The proposals decided upon by the Liaison Conference on 2 November were sent to Ambassador NOMURA on the 4th, prior to their approval by the Imperial Conference on the 5th (defense documents Nos. 1401-A-2 and 1401-B-2)," the first of which I offer in evidence.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: If the Tribunal please, these two documents are two of those with which we were concerned this morning. Our investigation discloses that they are copies, purported copies of the originals, which we have. But, there are certain discrepancies in the translation offered by the defense and that which the prosecution has. For that reason, we desire that it be referred to the Language Pool. That is true as to both of these documents and also the third one, which is 1401-D-2.

THE PRESIDENT: All these documents will be referred to the Language Section.

MR. BLAKENEY: May I be heard on this, your Honor?

This, it is submitted, is not a question for

the Language Arbiter. The translations in question, that is to say,the translations now being tendered and the exhibits already tendered by the prosecution are translations of different documents.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: That is wholly aside from the point, your Honor. I am not raising that question. I spoke of having the originals of these various documents, of which copies are now being presented, and that discrepancies appear between the prosecution's translation of these documents and the translation being presented by the defense. That has nothing to do whatever with the intercepted documents.

MR. BLAKENEY: I misunderstood Mr. Tavenner's position.

THE PRESIDENT: We didn't, so we refer the matter to the Language Section when the documents are before us, but not yet.

MR. BLAKENEY: I assume that meanwhile, as has been done in the past, the document will be admitted.

THE PRESIDENT: By "before us" I mean in evidence. They are not, yet.

This document is admitted on the usual terms.

CLERK OF THE COURT: Defense document 1401-A-2 will receive exhibit No. 2924.

(Whereupon, the document above referred to was marked defense exhibit No. 2924 and received in evidence.)

MR. BLAKENEY: I now read the exhibit, which is a telegram from TOGO to NOMURA, the 4th of November, 1941:

"Reference to my telegram No. 722.

"1. Strenuous efforts are being made day and night in order to adjust Japanese-American relations, which are on the verge of rupture. The Government has held daily meetings of the Liaison Conference with the High Command to examine the fundamental principles of our national policy. After long and thorough deliberation and discussions, the Government and the High Command have reached unanimous agreement on the proposals in the Japanese-American negotiations (Separate telegrams Nos. 726 and 727.) These proposals await, together with other basic policies, final sanction at the Imperial Conference to be held on the 5th.

"2. The situation both within and outside the country is extremely pressing and we cannot afford to allow any procrastination. Out of the sincere intention to maintain peaceful relations with the United States, the Imperial Government continues the negotiations after thorough deliberations. The present negotiations are

our final effort, and you must realize that these proposals, are truly our last. If speedy conclusion of the negotiations is not to be attained even on the basis of these proposals, breakdown of the negotiations is unavoidable, however regrettable it may be. Relations between the two countries face rupture in such a case. The future of our country is profoundly involved in the outcome of the present negotiations, and the security of the Empire depends on it.

"3. The Japanese-American negotiations have been prolonged for over half a year. Our Government has made concession after concession, in spite of difficulties, for the speedy consummation of the negotiations, but the United States insists on the assertions with which she started, showing no response whatsoever to our concessions. There are not a few in this country who are suspicious of the real intention of the United States. In such circumstances, it is only out of our sincere desire to maintain the peace of the Pacific that we express our sincerity and dare to make further concessions. One-sided concessions on our part are made not because of our lack of power and confidence in solving difficulties, as some Americans misunderstand them to be. There is a limit

to our forbearance, and our existence and prestige must if necessary be protected, however great the price. If the United States continues further to disregard our position, we can but say that there is no room for negotiation. Now that we make the utmost concessions in the spirit of utmost friendliness for the sake of peaceful solution of the situation, we hope earnestly that the United States will, on entering the final stage of the negotiations, reconsider the matter and approach this grave situation properly with the general view of maintaining Japanese-American relations.

"4. The circumstances being as they are, the mission entrusted to you has a great deal to do with the future of the country. We do well understand how difficult your task is, and we expect that you will do all that you can, bearing the above points in mind. We will let you know as soon as the Imperial Conference is over. You will, thereupon, see President Roosevelt and Secretary Hull and do your best to make them thoroughly understand our determination and to bring the negotiations to a speedy conclusion.

"5. In view of the serious nature of the negotiations, I intend to carry on talks with the American Ambassador in Tokyo parallel with the negotiations in Washington. It is, therefore, desired

that we be informed of any appointment with the American authorities as soon as it is made, that the course of the negotiations to come be promptly reported, and that you keep close contact with us whenever you take new steps. In order to avoid any contretemps, you are directed to abide strictly by your instructions and you are given no room for discretion."

I now offer in evidence defense document No. 1401-B-2, revised.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1401-B-2 will receive exhibit No. 2925.

(Whereupon, the document above referred to was marked defense exhibit No. 2925 and received in evidence.)

MR. BLAKENEY: I wonder if the Tribunal has the revised copy. Does it say "revised" under the defense document number?

THE PRESIDENT: Not the copy, no. The word "revised" does not appear on these pages.

MR. BLAKENEY: On two pages, your Honor.

I think I better postpone reading until we have the correct document. Perhaps, in order to avoid breaking the continuity, I might suggest that we recess

at this time.

THE PRESIDENT: We will adjourn until half-past one.

(Whereupon, at 1155, a recess was taken.)

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Kapleau & Knapp

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: Major Blakeney.

MR. BLAKENEY: I was about to read exhibit 2925, which I understand has now been distributed in its revised form. It is as follows, being a telegram from TOGO to NOMURA, dated 4 November 1941.

"1. Proposal A

"This is our proposal setting forth what are virtually our final concessions, made by revising our proposal of 25 September with a view to meeting, in so far as possible, the wishes of the United States as revealed through the negotiations in the past. Our stand with respect to the three pending issues is moderated as follows:

"(1) Non-discrimination in trade

"If it should not be possible to reach an agreement on the basis of our 25 September proposal, it should be modified as follows: 'The Japanese Government recognizes the principle of non-discrimination in international commercial relations to be

applied to all the Pacific area, including China, on the understanding that the said principle is to be applied uniformly to the rest of the world.'

"(2) Interpretation and application of the Tripartite Pact

"It should be further clarified that Japan has no intention of making any unwarranted extension of the interpretation of the right of self-defense. With regard to the interpretation and application of the Tripartite Pact, it should be stated that the Japanese Government, as has been repeatedly explained in the past, will act in accordance with its own decision, and that it is believed that the understanding of the American Government has already been obtained on this point.

"(3) Withdrawal of Troops

"We make the following relaxation:

"(a) Stationing of troops in and withdrawal from China

"Following restoration of peace between Japan and China, the Japanese troops dispatched to China in connection with the China Affair will be withdrawn within two years, in accordance with the agreement to be entered into between Japan and China, except that those in specified areas in North China

and Mengehiang as well as Hainan Island are to be stationed for such duration as may be necessary.

"(Note) In case the United States inquires into the length of the necessary duration, reply is to be made to the effect that the approximate goal is 25 years.

"(B) Stationing of troops in and withdrawal from French Indo-China

"Japan respects the territorial integrity of French Indo-China. The Japanese troops dispatched thereto will be withdrawn immediately upon either the settlement of the China Affair or the establishment of peace in East Asia on an equitable basis.

"With regard to the four principles, every effort is to be made to avoid including them in the terms of a formal agreement between Japan and the United States (whether in the form of agreement or other declaration).

"2. Explanation of the above

"(1) With regard to the principle of non-discrimination in trade, our contention hitherto made on the basis of geographical propinquity is withdrawn and the principle is adopted on the condition that it be applied to the whole world. It is presumed that there will be no opposition to it on the part of the

United States Government in view of the statement in its memorandum of 2 October to the effect that 'it would be undesirable if either the United States or Japan were to pursue one course of policy in certain areas while at the same time pursuing an opposite course in other areas.' It is believed, therefore, that agreement will be reached on this point.

"(2) By the way, with regard to the Tripartite-Pact question, it has been reported in your telegrams on various occasions that the United States is, in general, satisfied with our proposal. It is, therefore, believed that this question will also be settled if it is further clarified that Japan has no intention of unwarrantedly extending the interpretation of the right of self-defense.

"(3) The question of withdrawal of troops may still be difficult to settle. In view of the strong American opposition to the stationing for an indefinite period, it is proposed to dismiss her suspicion by defining the area and duration of the stationing. It might meet the desire of the United States to a greater degree if withdrawal were to be made the principle and stationing the exception, but it is impossible to adopt that formula in the circumstances prevailing in Japan. If, moreover, a definite period

for which it will be necessary to station the troops is clearly indicated, it may have the contrary effect of further complicating the issue. Accordingly, you are directed to abide, at this moment, by the abstract term 'necessary duration,' and to make efforts to impress the United States with the fact that the troops are not to be stationed either permanently or for an indefinite period.

"In short, Proposal 'A' represents an overall acceptance of the American contention in respect to two of the three pending issues and a maximum concession in regard to the question of stationing and withdrawal of troops. In the light of the enormous sacrifices sustained by Japan owing to the China Affair, extending over four years, this Japanese proposal by no means involves any excessive demands; our requests are, if anything, much too small. In this connection, any further concession on our part can hardly be expected, by reason of the internal political situation. I earnestly that you will have the United States understand the circumstances and speedily conduct the negotiations under the present proposal to a successful conclusion."

Returning to the affidavit: "As soon as they had been approved, instruction to open negotiations

on these proposals was sent, defense document No. 1401-D-2," which is offered in evidence.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1401-D-2 will receive exhibit No. 2926.

MR. BLAKENEY: I read the exhibit, which is a telegram from TOGO to NOMURA, dated 5 November 1941.

"1. Our proposals in the Japanese-American negotiations mentioned in my telegram No. 725 were approved at the Imperial Conference held today, the 5th. You are directed, therefore, to commence negotiations immediately in accordance with the previous instructions.

"2. In view of the course of negotiations so far, we consider that it will meet the desire of the United States if we proceed with the negotiations on the basis of the 21 June proposal -- 25 September proposal from our side. It is therefore considered more convenient for the speedy conclusion of the negotiations first to present Proposal 'A' (my telegram No. 726). (We are not quite satisfied with the form and expression of the proposed Japanese-American understanding which has so far been discussed, but we mean to present Proposal 'A' first for the sake of convenience.) You are directed to explain the above to the

United States, together with the circumstances detailed to you in my telegram No. 725, and do your best to conclude the negotiations within as short a time as possible.

"3. It is our intention to present Proposal 'B' (my telegram No. 727) as the last resort to save the situation in case Proposal 'A' fails to conclude the negotiations owing to its rejection by the United States. You are directed to learn the attitude of the United States toward Proposal 'A' as promptly as possible and make report. You are not to present Proposal 'B' without previously requesting instructions.

"4. As stated in detail in the previous telegram, this instruction is the final proposal of our Government. It is repeated that you must realize that the situation is extremely pressing, and no further procrastination is permissible. Do your best with full understanding of the circumstances.

"5. Although speed is necessary in the negotiations, it is desired to avoid making an impression of setting a time-limit to the negotiations or of serving an ultimatum. It is desired that you impress upon the United States that we want to conclude the negotiations through friendly intercourse."

Reverting to the affidavit: "It may be noted that in the explanation of Proposal 'A' given to Ambassador NOMURA (Defense Document No. 1401-B-2), it is said that if 'a definite period for which it will be necessary to station the troops is clearly indicated it may have the contrary effect of further complicating the issue,' and the ambassador was accordingly directed if possible to abide by the abstract term 'necessary duration,' and to impress upon the United States that neither permanent nor indefinite stationing was contemplated. This instruction resulted from the following circumstances. When the question of withdrawal of troops was debated in the Liaison Conference, the Foreign Minister had first advocated the adoption of a 5-year limit for the withdrawal. Being unable to obtain the consent of the conference to this, he proposed successively plans for 8- and 10-year periods, but neither of them was accepted either, and the 25-year approximate goal was finally decided upon. It would have been possible, however, to request re-consideration with a view to shortening the period, had the United States been generally favorable to Proposal 'A', inasmuch as there was, as above mentioned, an understanding to that effect between Premier TOJO and Foreign Minister TOGO. In these circumstances

it was believed by the Foreign Ministry that it would be better first to attempt to reach agreement on general principles, putting emphasis on having the United States understand that the stationing of troops was not to be an indefinite nor a permanent stationing, then to proceed to discussion of concrete terms.

"14. Proposal 'A' was handed by Ambassador NOMURA to Secretary of State Hull on 7 November (Exhibit 1246), and further explanation thereof was made by him to the President on the 10th (Defense Document No. 1400-A-7)," which is offered in evidence.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1400-A-7 will receive exhibit No. 2927.

(Whereupon, the document above referred to was marked defense exhibit 2927 and received in evidence.)

MR. BLAKENEY: I read the exhibit, which is an excerpt from Foreign Relations of the United States:

"Memorandum by the Secretary of State

"Washington, November 10, 1941

"The Japanese Ambassador, accompanied by Minister WAKASUGI, called on the President. The Secretary of State was present at the express wish of President Roosevelt. The Ambassador, after a few

preliminary remarks, proceeded to read as under instruction from his Government the following communication:

"'I am now going to explain to you the salient points of the proposals which my Government has instructed me to submit to your Government. As you will recall, it was on the 25th of September that the Japanese Government last made its proposals to the United States Government, and, gathering from the observations which the Secretary of State made on them on the 2nd of October and also from the views which were subsequently expressed by the Secretary of State and the Under-Secretary of State Mr. Welles, the greatest difficulties arose from three points, that is:

"'1. The application of the principle of non-discrimination in international commercial relations,

"'2. The attitude of our two Governments toward the European war, and

"'3. The question of the stationing and withdrawal of Japanese forces.

"'In regard to the first question, that is, the principle of non-discrimination, my Government has now decided to accept its application in all the Pacific areas, including China, as your Government desires, on the understanding that the principle is to be applied uniformly to the rest of the world as well.

The Secretary of State has repeatedly pointed out to me that it has been his long-cherished scheme to see the application of the principle throughout the whole world. I therefore hope that the assurance to be given by my Government in this connection will be gratifying to you.

"'As to the second question, the attitudes of our two Governments toward the European war, my Government proposed, in the draft of September 25th, that

"both Governments will be guided in their conduct by considerations of protection and self-defense."

"'In this connection I have to inquire if the United States Government is in a position to give an assurance that it has no intention of placing too liberal an interpretation on the term "protection and self-defense" that may lead to an abuse of the recognized right based upon it. The Japanese Government would be ready to give a similar assurance on the basis of reciprocity, that is, if the assurance is forthcoming from the United States Government.

"'In the draft of September 25th referred to, my Government proposed that

"in case the United States should participate in the European war, Japan would decide entirely independently in the matter of interpretation of the Tripartite

Pact between Japan, Germany, and Italy, and would likewise determine what actions might be taken by way of fulfilling the obligations in accordance with said interpretation.

"'It will hardly be necessary to point out in this connection that the fundamental motive for initiating the present conversations was the preservation of peace in the Pacific by all possible means. The present circumstances under which Japan is placed do not permit my Government to go any further to write in black and white than what is proposed in the draft of September 25th which I have just quoted. All I have to ask you is to "read between the lines" and to accept the formula as satisfactory. (Deleted by Ambassador NOMURA.)'" The sentence is lined out.

"'You will agree with me that where there is no mutual confidence and trust, a thousand words or letters would not be a satisfactory assurance.

"'In regard to the third question, the stationing and withdrawal of Japanese forces, the formula which my Government wants to submit is as follows:

"'"With regard to the Japanese forces which have been despatched to China in connection with the China Affair, those forces in specified areas of North China and Mengchiang (Inner Mongolia) as well as in Hainan-Tao (Hainan Island) will remain to be stationed for a certain required duration after the restoration of peaceful relations between Japan and China. All the rest of such forces will commence withdrawal

as soon as general peace is restored between Japan and China and the withdrawal will proceed according to separate arrangements between Japan and China and will be completed within two years with the firm establishment of peace and order."

"'In submitting this formula, the Japanese Government has gone a great deal further than it went previously in that the formula specifies not only the areas in, but also the duration for, which the Japanese Government desires to have its forces remaining in China, clearly indicating that the stationing of the Japanese forces in China is not of a permanent nature. You will readily agree that, while complete and immediate withdrawal of all the Japanese forces from China may be desirable, it is impracticable under the present circumstances. I therefore earnestly hope that you will give favorable consideration from a practical standpoint.

"'I have been instructed to add that, in regard to the Japanese forces in French Indo-China, the Japanese Government proposes the following formula:

"'"The Japanese Government undertake to respect the territorial sovereignty of French Indo-China. The Japanese forces at present stationed

there will be withdrawn as soon as the China Affair is settled or an equitable peace is established in East Asia."'

"The Ambassador then read the following manuscript which he said was an oral statement by him:

"'I am very glad to be able to see you today, because since the resignation of the Cabinet of Prince KONOYE, the conversations between the Secretary of State and myself had to be left alone for nearly three weeks -- three weeks, even three days, are very precious time under the present circumstances. I am sure you will agree with me that the situation between Japan and the United States must not be left alone to take its own course and drift away beyond rescue.

"'It is more than six months since the present informal conversations were started. From the very beginning the Japanese Government was very anxious to reach the earliest possible conclusion and the Japanese people placed a great deal of hope on it, but the conversations dragged on and on and, on the other hand, the relations between our two countries became more and more strained, the people of my country becoming more and more impatient.

"'As viewed from the Japanese side, the

Japanese Government has made not a few concessions in its assertion at various stages while the United States Government has, it seemed to the Japanese, remained adamant on its contention and has shown little sign of reciprocation, and thus I must frankly inform you that in certain quarters in my country some skepticism has arisen as to the true intention of the United States Government. Personally I do not like to say it, but it is true. People in my country take the freezing of assets as an economic blockade and they go even so far as to contend that the means of modern warfare are not limited to shooting. No nation can live without the supply of materials vital to its industries. Reports reaching me from home indicate that the situation is serious and pressing and the only way of preserving peace is to reach some kind of amicable and satisfactory understanding with the United States without any unnecessary loss of time. In the face of these mounting difficulties, the Japanese Government bent all its efforts to continue the conversations and bring about a satisfactory understanding solely for the purpose of maintaining peace in the Pacific. My Government therefore is now submitting certain proposals as its utmost effort for that purpose, and I shall feel very grateful if I can

have the views of your Government on them at the earliest possible opportunity. Suppose we come to an understanding with this country, the psychological effect of it upon our people will mean much more than what is actually written upon the paper, and the policy of our Government will necessarily be guided and dictated thereby. I confidently hope that the views and desires entertained by the Japanese Government are fully shared and reciprocated by your Government.

"'I may add for your information that in view of the serious situation now prevailing in the relations between our two countries, the Japanese Government is sending over here Ambassador KURUSU to assist me in the present conversations and also that the conversations will be taken up by Foreign Minister TOGO with Ambassador Grew in Tokio in a parallel line.

"'I am afraid I may have used today some words which a trained diplomat must not use, but I hope you will kindly forgive my transgression, for it was only because of my earnest wish to keep and direct the relations of our two countries in the course which I believe is best for both of us.'

"The Ambassador appeared very much in earnest in reading the statement.

"The Ambassador made some reference to

commercial policy as discussed and proclaimed by the President and Prime Minister Churchill at their sea conference some months ago. He referred complainingly to the fact that the Japanese went into Shantung and were only allowed to remain there some six years, at the end of which time they were requested to move out their troops.

"The President then read the following oral statement in reply:

"'The entire world has been placed in a precarious position as a result of the havoc which has been wrought by the forces of aggression. Our common sense tells us of the extreme need that the world come back to ways of peace. It is the purpose of this Government to do its best in the spirit of fair play to contribute to establishing a basis for peace, stability, and order in the Pacific area. As a means of achieving these objectives it is essential that emphasis be laid upon giving practical effect to a sound philosophy of human welfare. We have often and quite recently made clear publicly what we have in mind in this regard. We hope that our exploratory conversations will achieve favorable results in the way of providing a basis for negotiations. We shall continue to do our best to expedite the conversations just as we understand that

the Japanese Government is anxious to do. We hope that the Japanese Government will make it clear that it intends to pursue peaceful courses instead of opposite courses, as such clarification should afford a way for arriving at the results which we seek.'

"The President also referred orally to his opinion that nations must think one hundred years ahead, especially during the age through which the world is passing, and that the Chinese Government for the past thirty years has been passing through a new experience. He referred to extraterritorial courts and other unusual conditions that had accompanied this new experience of China. If I understood the Ambassador correctly, he said it took three years to develop and dispose of the Shantung problems. The President thereupon replied that the Ambassador, Secretary Hull and himself had only soncumed some six months in discussing a solution of our relations and those of other countries in the Pacific and that patience was necessary. The President spoke of a modus vivendi as being not merely an expedient and temporary agreement, but also one which takes into account actual human existence. The Ambassador dwelt briefly again on the question of the Japanese getting out of China by degrees and adding that there would

be no annexation, no indemnity, et cetera.

"There was nothing said about when the next conversation would take place. The President brought up his program to visit Warm Springs at the end of this week for some ten days. The Ambassador said that KURUSU would be here about Saturday. The President said that, of course, he expected to see KURUSU and confer with the Ambassador and the Minister and their associates. The Ambassador said that KURUSU was only coming to assist him and coming at his request and that he did not have anything new to bring so far as the Ambassador knew.

"C[ordell] H[ull]"

Returning to the affidavit: "Foreign Minister TOGO also made an explanation to Ambassador Grew, on the same day, in the endeavor to insure a thorough understanding of the proposal (defense document No. 1400-Z-6)," which is now exhibit 2918. "In the Foreign Ministry and the Liaison Conference, it was felt that in view of the concessions made upon careful study of the American position on pending questions the United States would give favorable consideration to the proposal. Ambassador NOMURA's reports at first indicated that this result had come about (defense documents Nos. 1401-F-2 and 1401-L-2)," the first of which I now offer in evidence.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1401-F-2 will receive exhibit No. 2928.

(Whereupon, the document above referred to was marked defense exhibit 2928 and received in evidence.)

MR. BLAKENEY: I read the exhibit, which is a telegram from NOMURA to TOGO, dated 7 November 1941:

"Today, the 7th, at 9 A.M. I, accompanied by WAKASUGI, called on Secretary Hull (Ballentine also being present) at his private residence. I told him that, under instructions from the home government, I wanted to explain to the President and the Secretary Japan's intentions and position so as to arrive speedily at a successful settlement of the Japanese-American relations. Hull said that in the present situation in the world two forces were fighting each other; that as no early decision of the issue was possible on either side it was to be feared that the world might gradually enter upon a chaotic state of anarchy; and that if at this juncture Japan and the United States equally followed a peaceful policy in the Pacific, it would be possible to save the world from this chaotic state of affairs.

"In accordance with your instructions, I explained to him as follows:

"1. As to two of the three pending issues a general understanding could be reached, and as to the problem of stationing and withdrawal of troops Japan is making the maximum concession possible in

the light of the domestic situation.

"2. It is earnestly hoped that the United States Government will visualize the real situation from the broad viewpoint of Japanese-American friendship, and the negotiations be brought to a successful concusion speedily.

"3. I received from the home government (one word missing) that I explain fully to the President and the Secretary of State Japan's determination and position and strive toward a speedy settlement.

"4. National sentiment in Japan has become impatient after six months of negotiations, and as the situation is considered urgent it is earnestly hoped that the present negotiations will speedily come to a successful conclusion.

"5. In view of the critical situation, there will be a parallel negotiations in Tokyo.

"With these explanations, I produced the counter-formula transmitted from you, adding that in it Japan displayed the utmost measure of friendly spirit and conciliatory sincerity, and expressed the hope that the United States would consider the matter from the broad point of view and agree to the Japanese proposal. After careful reading, Hull

concurred in the clause respecting non-discrimination in trade and revealed his opinion that its adoption would prove beneficial also to Japan.

"As to the stationing of troops, he only asked in what ratio the withdrawal and stationing would be. I explained that the greater portion of the troops would be withdrawn, only a part continuing to be stationed. I also explained the matter of the right of self-defense in accordance with your instructions received today. A reply of the United States is to be made after study. When I see the President I will make further explanations in detail and ask for a reply.

"Further, Hull said that, as he had mentioned before, it was necessary that consultations should be had also with the other countries concerned, such as the United Kingdom, China and the Netherlands, in order that the Japanese-American conversations concerning the maintenance of peace in the Pacific should resolve into formal negotiations. With regard to the China question, he revealed that the United States was in communication with China. Hull asked me, as his own personal idea, what Japan would think if China's highest authority pledged to the government and people of Japan China's sincere friendship and

and confidence and desired the restoration of friendly relations between Japan and China.

"WAKASUGI asked whether China's intentions had already been ascertained with respect to the matter. In reply Hull said that China had not yet been consulted on the matter, it being entirely his own personal idea, but that if it was carried into effect it would constitute a good example of the maintenance of peace in the Pacific and have a favorable influence on the world. There is some reason to think, however, that it may have been as a result of having ascertained China's intentions in the matter that Hull's idea was brought forward.

"In any case, Hull asked that the above-mentioned idea be conveyed to the Japanese Government for an expression of its views thereon. I replied simply that I would consider the matter."

"Not only were Secretary Hull's concurrence in the clause respecting non-discrimination in trade and his expression of appreciation of our clarification of our position on stationing of troops in China encouraging, but his new suggestion of having China's highest authority pledge friendship seemed to offer additional prospects of a solution. It was thus thought that the situation was taking a favorable turn, and with regard to the China question Ambassador NOMURA was instructed that Japan welcomed Secretary Hull's suggestion and was ready to carry it out by negotiating with Chiang Kai-shek (defense documents No. 1401-G-2, 1401-J-2, and 1401-K-2)," the first of which I offer in evidence. I am sorry, if I may interrupt myself; I omitted reading one of the documents--

THE PRESIDENT: L-2.

MR. BLAKENEY (continuing) relating to the preceding paragraph. I now offer it in evidence and offer to read it.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1401-L-2 will receive exhibit No. 2929.

(Whereupon, the document above referred to was marked defense exhibit 2929 and received in evidence.)

MR. BLAKENEY: I now read Exhibit No. 2929, being a telegram from NOMURA to TOGO, dated November 13, 1941:

"At 3 P.M. today, the 12th, I called on Hull with WAKASUGI (Ballantine being present) and talked for about an hour and a half. As I requested their reply to our proposal, Hull offered Document "A", telegram No. 1083, and Document "B", telegram No. 1084. With respect to Document "A", Hull requested me to refer it to Tokyo to learn whether the new Cabinet also acknowledges it. With respect to Document "B", he said that it was the explanation of the suggestion regarding the Japanese-Chinese peace to which he had referred at the previous conversation. He added that the China problem can be settled if those principles be applied in China which could be applied to all other matters, and that the problem of non-discriminatory treatment in trade is now being studied in this connection, and a plan thereof can be worked out by day after tomorrow.
I said that, if the relation between the suggestion and the present negotiations was such that the latter could not be concluded in case Japan and China failed to come to an agreement because of some difficult problems such as stationing of troops, it would

in essence leave the key to Japanese-American relations in the hand of China, which we consider quite improper. I inquired if it was meant that problems between Japan and China be left to Japan and China, and agreement be reached between Japan and the United States with respect to other matters. Hull vaguely replied that agreement could be reached if we applied general principles to China, and went on to state that though he had not disclosed the contents of the talks to China, Britain and the Netherlands had been informed of the general outlines and that he believed it possible to get their signature simultaneously with the United States once the basis of the negotiations was established (he added that he could not, however, make any guarantee of this.) Ballantine intervened and said that it was stated in the American proposal of 21 June that the United States could not take part in enforcing conditions contradictory to the principles to which she has subscribed. WAKASUGI said that we welcomed the idea of the suggestion in Document "B", but that we desired to know more about the concrete measures which would be taken to obtain China's pledge; and asked whether Secretary Hull meant to leave it to direct negotiation between Japan and China, or that the United

States would obtain an assurance from China to that effect and convey it to Japan, or that the matter would be carried out through a tripartite conference of Japan, America and China. Hull, however, seemed to have no definite program therefor, but stated that so long as the Japanese-American negotiations are carried on in accordance with peaceful principles a stage will, without fail, be reached when the suggestion will be realized. WAKASUGI further asking whether Hull meant to let China join the negotiations at such a stage and to have her give a pledge, he did not make a clear answer but merely stated allegorically that it is often the case that a controversy between two persons is solved through the mediation of a third person, thereby implying that the United States has an intention of tendering its good offices for Japan and China.

"As I pointed out, with regard to the problem of stationing of troops, that we fixed in our new proposal the area and duration of the stationing and that it was no longer an indefinite stationing that we propose, Hull said that interference in domestic affairs of other countries is against a general program for peace, that he is against permanent stationing, and that he appreciates the clarifica-

"Hull stated with respect to the general peace policy that he can hardly offer a satisfactory explanation to the political leaders as well as to the general public in the United States of her stand on the Tripartite Pact when it is explained on the one hand that the object of the Pact is peaceful, yet at the same time there is a strong contention that Japan is bound by it and is tied up with Germany, that the project of Hitler is extremely difficult of realization and the peoples of Europe are suffering from it; that such a difficult undertaking cannot last long so that we have sooner or later to work on the post-war program; that the united efforts of all countries are necessary in such work, and Japan and the United States must cooperate in the realization of the peace program as good leaders; and that if in this way an agreement is reached between Japan and the United States and including the countries concerned such as Great Britain and the Netherlands, over a general peace plan for the entire Pacific, it will no longer be necessary for Japan to stay in the Tripartite Pact and the reason for the existence of the Pact will have disappeared. I said that the significance of a treaty changes with the surrounding circumstances -- for instance, the

Anglo-Japanese Alliance, which had been very useful at the time of the Russo-Japanese War, was abrogated at the time of the Washington Conference; that the existence of a treaty of alliance is not necessarily in conflict with a peace plan; that Japan does not favor the use of force, but wants only to secure a supply of oil and other materials from the United States and the Netherlands Indies; and that we consider that the United States has no objection to our proposal concerning the problem of non-discriminatory treatment in trade. Hull said in the end that the United States is fully appreciative of the seriousness of the situation and is making an urgent study of our proposal concerning the three pending issues; and while it is impossible to settle over-night the problems of more than ten years' standing, he expects to be able to offer a reply day after tomorrow. WAKASUGI repeated that the Diet is to be in session on the 15th, and the situation is very pressing, and that therefore we had expected to get a definite reply today concerning our proposal, and emphasized our desire to obtain clear and concrete reply to all the problems by the day after tomorrow.

"In fine, the United States restricted to-day's conversation to her request for our acknow-

ledgement of the 28 August statement (Document "A") and the explanation of the suggestion of the other day concerning Japanese-Chinese peace. As to the three pending issues and our proposal of 25 September, she merely informed us that they are under examination but that she is making haste to offer a reply. As the progress of the negotiations is not satisfactory I will have WAKASUGI tomorrow morning request a speedy settlement of Hull."

I will now resume, if I may, with the sentence which I have already read once:

"Not only were Secretary Hull's concurrence in the clause respecting non-discrimination in trade and his expression of appreciation of our clarification of our position on stationing of troops in China encouraging, but his new suggestion of having China's highest authority pledge friendship seemed to offer additional prospects of a solution. It was thus thought that the situation was taking a favorable turn, and with regard to the China Question Ambassador NOMURA was instructed that Japan welcomed Secretary Hull's suggestion and was ready to carry it out by negotiating with Chiang Kai-shek (Defense Documents No. 1401-G-2, 1401-J-2 and 1401-K-2)," the first of which I offer in evidence.

THE PRESIDENT: Admitted on the usual terms.

THE CLERK OF THE COURT: Defense document 1401-G-2 will receive Exhibit No. 2930.

(Whereupon the document referred to was marked Exhibit No. 2930 and received in evidence.)

MR. BLAKENEY: I will now read the exhibit, which is a telegram from TOGO to NOMURA, 9 November 1941:

"Reference to the last paragraph of your telegram No. 1055.

"With regard to the China question, Secretary Hull's idea of having China's highest authority make a pledge may be interpreted as revealing an intention of the United States to commit to direct Japanese-Chinese negotiations the China question which has so far been the crux of the Japanese-American negotiations. Its purpose is presumably to have Chiang Kai-shek propose peace talks with Japan. If that is the case, the idea is an effective means of contributing to the promotion of peace between Japan and China, and the Japanese Government of course welcomes it. The views of the Government on the matter will be sent you in a separate telegram. You are directed to find out details as to how the pro-

posal is to be dealt with in relation to the Japanese-American negotiations, to ascertain as full particulars as possible of the intention of the American Government with respect to the concrete steps to be taken in this matter, and to telegraph the results."

I now offer in evidence Defense Document 1401-J-2.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1401-J-2 will receive Exhibit No. 2931.

(Whereupon the document referred to was marked Exhibit No. 2931, and received in evidence.)

MR. BLAKENEY: I read the telegram from TOGO to NOMURA, 10 November 1941:

"Reference to my telegram No. 751.

"It is considered advisable to have Hull's proposal realized. You are directed to talk with the United States after referring to my separate telegram No. 755 so as to persuade her to the realization of the proposal."

MR. BLAKENEY: And the telegram therein referred to I offer in evidence as Defense Document 1401-K-2.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1401-K-2 will receive Exhibit No. 2932.

(Whereupon the document referred to was marked Exhibit No. 2932, and received in evidence.)

MR. BLAKENEY: I read the excerpt. This is a telegram from TOGO to NOMURA, dated 10 November 1941.

"Reference to my telegram No. 754.

"Whereas the Japanese Government has, in connection with the adjustment of Japanese-American relations, endeavored to promote the solution of the China Affair, and the United States Government also has maintained that the China problem cannot be excluded in considering the general peace of the Pacific, it will meet the original desire of the Japanese Government relative to the problem of peace between Japan and China if the United States intends at this juncture to proffer its good offices between Japan and China in accordance with the line suggested by Secretary Hull, and to leave the details of the peace conditions to direct negotiation. By making use of Hull's suggestion we can exclude the problem of stationing and withdrawal of troops from the present

negotiations, thereby expediting the conclusion thereof, and we are also enabled to conduct peace negotiations with China without the interference of the United States.

"In utilizing that suggestion, however, we must first obtain a commitment or a statement by the United States to the effect that the establishment of Japanese-Chinese peace would not be made a condition for the conclusion of the Japanese-American negotiations, and that the United States would not impede peace between Japan and China. (Cessation of assistance to Chiang also should be included), thereby making it clear that the agreement between Japan and the United States should be speedily signed and put into execution.

"(In substance, this will mean, with respect to the China problem, that Article 3 of Proposal "A", concerning the China Affair, in my telegram No. 726 is replaced in the agenda of the Japanese-American negotiations by the fourth clause of Proposal "B" in my telegram No. 727 -- 'The Government of the United States undertakes not to indulge in measures and actions prejudicial to the endeavors for the restoration of general peace between Japan and China.' I trust that the suggestion of Hull was

made out of a sincere desire on the part of the United States for the speedy arrival at a Japanese-American understanding, and that she offers her good offices to Japan and China from such a point of view. However, should it be the case that the United States intends to postpone the settlement of other matters until the establishment of the Japanese-Chinese peace, and to continue assisting Chiang meanwhile, the acceptance of the suggestion will not only render Japanese-American understanding impossible, but will result in Japan's being held responsible for the failure of the negotiations. It is desired that you bear this in mind, and negotiate with caution."

Resuming the reading of the affidavit:

"Ambassador NOMURA's report that Secretary Hull said that it would be possible to have Britain and the Netherlands sign an agreement simultaneously with the United States was further encouraging for the prospects of agreement based on Proposal "A". On the other hand, reports received from him of the President's attitude and of an Anglo-American agreement for military collaboration had aroused some misgivings (defense document No. 1401-H-2)," which is now offered in evidence.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1401-H-2 will receive exhibit No. 2933.

(Whereupon, the document above referred to was marked defense exhibit No. 2933 and received in evidence.)

MR. BLAKENEY: I read the exhibit. This is a telegram from NOMURA to TOGO, 10 November 1941:

"1. I had Mr. Moore approach Mr. Thomas (member of the Senate Foreign Relations Committee and well acquainted with Mr. Hull). The gist of Mr. Moore's report is that the United States is not making a bluff, that if Japan engages in further aggression the United States will fight Japan, that the American people are

spiritually prepared, and that the United States Navy is 'ready for action'.

"2. Yesterday evening, Sunday, I met a Cabinet member. He caused the persons around him to withdraw, and spoke to me in real earnest, with the introductory remark, swearing by God to our intimate friendship, that he was telling this to no one except myself. He said that the United States Government had in its hands reliable information that Japan would shortly take action, and that the United States Government considered that neither my visit to the President on Monday nor Mr. KURUSU's coming to the United States would have any effect on the general situation. Thereupon, I told him in detail that the Japanese people had become impatient especially after the freezing of Japanese assets, but that they want a speedy conclusion of the pending negotiations and to maintain friendship by all means, and that they do not want a war against the United States.

"He said, however, that 'our Boss' (the President) believed the above-mentioned information, and so did the Secretary of State.

"In press comments, except those in the Daily News and Hearst papers, a Japanese-American war is far more popular than an American-German war, and

it is said that there are some Britons who are trying to take advantage of that popularity. With regard to Anglo-American military collaboration, an agreement of views is reported already to have been reached in preliminary conversations. Some urge the necessity of having a part of the British fleet sent to Singapore. It is not improbable that the President, out of considerations of domestic politics, may move in this direction. The said Cabinet member said that the United States would not choose to take action, but that, if Japan took action, the United States would surely act for its honor in view of the developments which have thus far occurred.

"3. In my interview with the President on the 10th, I will do everything in my power in pursuance of your instructions."

Reverting to the affidavit: "The ambassador's report of his meeting with Secretary Hull on the 15th moreover, showing that the Secretary raised various objections to Japan's proposals and further said that it would be impossible, despite his former statement, to arrange quickly to have the other interested countries join an agreement, gave rise to doubts among circles concerned in Japan of the sincerity of the United States for the

negotiations (defense document 1401-J-3), which I offer in evidence.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1401-J-3 will receive exhibit No. 2934.

(Whereupon, the document above referred to was marked defense exhibit No. 2934 and received in evidence.)

MR. BLAKENEY: I read the exhibit:

"From NOMURA to TOGO, 16 November 1941.

"The contents of the conversation of the 15th between Hull and myself, referred to in my telegram No. 1095, were as follows:

"Hull said that the earnest efforts on the part of the United States have ripened into the present proposal concerning the problem of commerce. He said, amplifying the contents of my previous telegram 'A' of the 15th, that the United States has already concluded commercial agreements with twenty-two countries, all in accordance with its policy of the most-favored nation treatment, removing obstacles to the commerce of the world, actually succeeding in lowering the tariffs on 1,000 to 1,200 kinds of commodities. He declared that it is the policy of the United States to apply generally the

principle of non-discrimination in commercial relations, though the American contention for it was not accepted at the London Economic Conference owing to objections. (He added that Germany was one of those opposing.) Referring to the Japanese proposal to apply that principle to the entire Pacific area on condition that it be applied to the rest of the world, he stated that he hoped Japan would withdraw the condition inasmuch as it would not be necessary in the light of the above-mentioned American policy, and as the United States cannot commit itself to anything which concerns countries outside the jurisdiction of the United States. Hull thereupon presented a proposal which has been transmitted by my telegram 'B' (dispatched on the 15th). WAKASUGI inquired, thereupon, if this was a counter-proposal of the American Government to the Japanese proposal concerning the principle of non-discrimination in commercial relations, which is one of the three problems submitted by the Japanese Government the other day. Hull replied that it had a more comprehensive implication with respect to its application. (Perhaps this means that the substance of the proposal covers a wider scope.) I replied that I would give an answer on due consideration and after receiving instructions in this

connection from the Japanese Government I stated, further, that we regarded the conversations as negotiations, since we had officially proposed it to the President and the Secretary of State. Hull replied, referring to the necessity of further negotiations with Britain, the Netherlands and other countries concerned mentioned at the previous conference, and also to the fact that the Foreign Minister had requested Ambassador Grew in Tokyo to conclude similar agreements with other countries concerned, that it was untoward to enforce upon those other countries without negotiating with them the acceptance of the results of negotiations exclusively between Japan and the United States, although the Japanese Government might consider this as negotiations. He said that the American Government wished to enter upon negotiations after finding a basis for negotiations and showing to those countries the fundamental attitude of the United States toward that basis, and that, accordingly, it could hardly be called negotiations until we worked out the fundamental questions to their satisfaction. It was not proper nor practical, to say that negotiations should be held exclusively between Japan and the United States, without negotiating with those other countries,

though it did not 'hinder' the exchange of views between Japan and the United States. He made the complaint that, though the Japanese Government presses the American Government for prompt conclusion, it is impossible to settle the matter so quickly, since there is the desire of the Japanese Government expressed by the Foreign Minister in his interview with Ambassador Grew in Tokyo to have Britain, the Netherlands and other countries concerned sign the agreement simultaneously with the United States, and the intention of those countries must also be taken into consideration. Further, in connection with (6) of the American proposal of 21 June concerning political stability of the Pacific areas, Hull declared that he wished to know the reasons why the Japanese Government proposed to limit the matter exclusively to the Southwestern Pacific instead of, as the United States wished, extending it to the entire Pacific areas, in spite of the fact that the present conversation between the Secretary of State and myself was concerned with the peace of the whole Pacific area. He repeated, in this connection, what he had often stated to me with respect to the peace policy of Japan and the Tripartite Pact, and requested reassurance of the peaceful promise which the Japanese

Government had made on 28 August. I replied that, though I believed there was no change in the spirit of the statement of the Japanese Government in the light of the fact that it was incorporated into our present proposal, I would confirm it for the sake of assurance. I emphasized, further, the earnest efforts of the Japanese Government for the conclusion of the agreement and for the peace of the Pacific, and pointed out the fact that the preamble of the Japanese proposal clearly manifests the Japanese intention to establish and maintain peace in the whole area of the Pacific although it is confined in its text to the Southwestern Pacific. Hull answered, however, that the preamble does not constitute a part of the text, and it is the text which has the restrictive power, and he repeated his doubts as to the peaceful intention of Japan. Pointing out the contradiction that Japan maintains the military alliance with Germany while wishing to conclude a peace agreement with the United States, Hull stated that, though he himself understands the explanation of the Japanese Government, the general public of the United States and the whole world, judging simply from the stipulations of the alliance pact, would laugh at the Government of the United States for

concluding a peace agreement with Japan in spite of such contradiction, and that it would be difficult to make a convincing explanation thereof. He said, again, that there will be no need for Japan to 'hold on' to the Tripartite Pact if the agreement be concluded between Japan and the United States, and that it is a self-contradiction that Japan is inviting Britain and the Netherlands, who are now fighting with Germany, to participate in the peace agreement between Japan and the United States, while maintaining the military alliance with Germany, the enemy of Britain and the Netherlands. I replied that, as to Japan's relations with the Tripartite Pact, they have already been explained in our proposal, and that, as I have emphasized on the occasion of our previous conversation by the example of the Anglo-Japanese Alliance, a pact of alliance is not inconsistent with an agreement of peace. I stated, further, that the original objective of the Pact consists in peace, and that the German Government understands that it is not incompatible with peace between Japan and the United States. Hull stated, in response to this, that, if Japan adheres to the military alliance with Germany even after the conclusion of the Japanese-American agreement, the Government of the United States will find

it very difficult to explain the situation to other countries, and that, after all, the United States does not wish to fall into such relations as exist between Japan and the Soviet Union, who are concentrating vast forces on their border in spite of the neutrality pact concluded between them. He repeated that he hoped the Tripartite Pact would 'disappear' (he used also an expression 'become a dead letter') upon the conclusion of a peaceful agreement between Japan and the United States. WAKASUGI inquired, thereupon, if Hull meant to say that the conclusion of an agreement between Japan and the United States was impossible so long as Japan did not secede from the Tripartite Pact. Hull only repeated, however, that he hoped the pact of alliance would be rendered a dead letter as soon as an agreement was reached between Japan and the United States, because the agreement of peace contradicts the military alliance, and avoided giving a definite answer. WAKASUGI further asked if this could be considered as an answer to the Japanese proposal concerning the right of self-defense, which constitutes one of the remaining two questions. Hull stated in reply that, as to those two questions, an answer would be given after the above-mentioned assurance of the Japanese Government concerning its peace

policy was given, and the Japanese intentions were made clear in connection with the restriction to the Southwestern Pacific of the American proposal for the whole Pacific area and with the draft joint statement concerning the economic policy presented today. I told him thereupon that the reply of the American Government at today's conversation would, in such a strained situation, greatly disappoint the Japanese Government and promised to resume the conversation upon receiving further instructions.

"In short, Hull manifested, at today's conversation, the concrete intention on the part of the American Government with respect to the question of commerce, but reserved any statement of definite opinions regarding the other two questions. Judging from what has been stated, however, it is considered evident that he entertains a deep doubt as to our peaceful intention in connection with Japan's relations with its allies in Europe, and that he is of the opinion that the China problem also must be investigated from this viewpoint. Please confirm the Government statement in question without delay, and give instructions promptly so that our reply to the American proposal may be given."

Paragraph 16 of the affidavit:

"16. During this period additional attempted concessions were offered in the effort to meet the American position. The American Government having, in its oral statement of 12 November (defense document No. 1400-B-7), requested confirmation of the Japanese position on a number of points communicated to the President in August, the Foreign Ministry on 16 November confirmed that the present cabinet adhered to the same position (defense documents Nos. 1401-0-2 and 1400-C-7)."

I now offer in evidence defense document No. 1400-B-7.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1400-B-7 will receive exhibit No. 2935.

(Whereupon, the document above referred to was marked defense exhibit No. 2935.)

MR. BLAKENEY: I read the exhibit which is an excerpt from "Foreign Relations of the United States.

"Oral Statement Handed by the Secretary of State to the Japanese Ambassador (NOMURA) on November 12, 1941.

"It will be recalled that the documents communicated by the Japanese Ambassador to the

President of the United States on August 28, 1941 contained a statement of the position of the Japanese Government in regard to its desire and intention to pursue peaceful courses. That position was set forth in excerpts taken from those documents as follows:

"' * * * Japan is solicitous for the maintenance of the peace of the Pacific and the peace of the world and she desires therefore to improve Japanese-American relations. * * *'

"' * * * In consequence, the Japanese Government welcomes the invitation by the Government of the United States to an exchange of views in regard to basic policies and attitudes as the foundation of an understanding that will condition lasting and extensive peace in the Pacific area. For such peace, the Government of Japan is ready: for such a united effort toward a peaceful settlement covering the entire Pacific situation the Government of Japan, like the Government of the United States, would be proud to make sacrifices. * * *'

"With reference to the stationing of Japanese troops in Indo-China, it was stated:

"' * * * the Japanese Government has no intention of threatening thereby other countries.

"'Therefore, the Japanese Government is prepared to withdraw its troops from Indo-China as soon as the China Incident is settled or a just peace is established in East Asia.

"'Furthermore, in order to remove all possible doubt in this regard, the Japanese Government reaffirms herewith its repeated declaration that its present action in Indo-China is not a preparatory step for military advance into neighboring territories.'

"The statement was made specifically applicable to Thailand as follows:

"'The Japanese Government believes the above pledge will suffice to clarify also Japan's intentions toward Thailand.'

"Specific reference was also made to the Soviet Union by the Japanese Government as follows:

"'As regards Soviet-Japanese relations, the Japanese Government declares likewise that Japan will take no military action as long as the Soviet Union remains faithful to the Soviet-Japanese neutrality treaty and does not menace Japan or Manchoukuo or take any action contrary to the spirit of the said treaty. * * *'

"There was also a comprehensive statement, as follows:

"'Therefore, the Japanese Government is prepared to withdraw its troops from Indo-China as soon as the China Incident is settled or a just peace is established in East Asia.

"'Furthermore, in order to remove all possible doubt in this regard, the Japanese Government reaffirms herewith its repeated declaration that its present action in Indo-China is not a preparatory step for military advance into neighboring territories.'

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"'The Japanese Government believes the above pledge will suffice to clarify also Japan's intentions toward Thailand.'

"Specific reference was also made to the Soviet Union by the Japanese Government as follows:

"'As regards Soviet-Japanese relations, the Japanese Government declares likewise that Japan will take no military action as long as the Soviet Union remains faithful to the Soviet-Japanese neutrality treaty and does not menace Japan or Manchoukuo or take any action contrary to the spirit of the said treaty. * * *'

"There was also a comprehensive statement, as follows:

"'In a word, the Japanese Government has no intention of using without provocation, military force against any neighboring nation.'

"With reference to the general program in view, it was stated:

"'* * * such discussions would naturally envisage the working out of a progressive program, obtainable by peaceful methods. The Japanese Government shares fully that view with the Government of the United States.

"' * * * Regarding the principles and directives set forth in detail by the American Government and envisaged in the informal conversations as constituting a program for the Pacific area, the Japanese Government wishes to state that it considers these principles and the practical application thereof, in the friendliest manner possible, are the prime requisites of a true peace and should be applied not only in the Pacific area but throughout the entire world. Such a program has long been desired and sought by Japan itself. * * *'

"Inasmuch as subsequent to the giving by the Japanese Government of the foregoing statement of its position a new cabinet has come into office in Japan, this Government believes that it would be helpful, in

order to avoid the possibility of any misunderstanding, if the Japanese Government could at this time confirm that the position of the Japanese Government has not changed.

"This Government, in its statement to the Japanese Government of October 2, 1941, pointed out that, although we were gratified to receive the statement of the position of the Japanese Government, we found it difficult to understand the need for the qualification by the Japanese Government of its statements of peaceful intent with what would seem to be unnecessary qualifying phrases. We had in mind such phrases as:

"'As long as the Soviet Union remains faithful to the Soviet-Japanese neutrality treaty and does not menace Japan or Manchoukuo or take any action contrary to the spirit of the said treaty.'

"'Without provocation.'

"'Without any justifiable reason.'

"On October 13 the Japanese Minister, in a conversation with the Under Secretary of State, said that such qualifications were the result of unfortunate phraseology and that the Japanese Government would be willing to omit them. As this conversation took place before the present Japanese Cabinet came into office,

it is believed that it would be helpful if the position of the Japanese Government on this point could be clarified and the statement of the Japanese Minister be confirmed.

"The foregoing observations are not directed to the new proposals put forward by the Japanese Ambassador on November 7 and November 10, but are set forth merely in an effort to make abundantly clear the basis on which we are proceeding in order that there may be avoided any misunderstanding on the part either of the Japanese Government or of this Government. It has not been and is not the purpose of this Government to enter needlessly into a discussion of details. While presenting these preliminary observations toward ensuring a common understanding, this Government will expect to do everything it can to expedite consideration of the latest proposals of the Japanese Government."

THE MONITOR: Mr. Blakeney, the language section did not have the Japanese text for the second page of the exhibit just read, 2935, and it was not read in the Japanese.

THE PRESIDENT: We will recess for fifteen minutes.

(Whereupon, at 1445, a recess was

taken until 1500, after which the proceedings were resumed as follows:)

Duda & Spratt

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

THE PRESIDENT: Major Blakeney.

MR. BLAKENEY: In connection with the contretemps which arose before the recess, that is, the missing Japanese version of part of the last exhibit read, 2935, apparently the error is in processing; there is no complete Japanese version, and I suggest that a translation of that part will be supplied for reading the first thing Monday morning.

THE PRESIDENT: Well, the accused should hear these things as they are read, not simultaneously necessarily.

MR. BLAKENEY: Yes, sir, I appreciate it is not very satisfactory, but it seems to be the best we can do in the circumstances.

I now offer in evidence defense document No. 1401-0-2.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1401-0-2 will receive exhibit No. 2936.

(Thereupon, the document above referred to was marked defense exhibit No. 2936 and received in evidence.)

MR. BLAKENEY: And I read the exhibit, which

is a telegram from TOGO to NOMURA dated 16 November 1941.

"Reference to your telegram No. 1083.

"1. You are directed to make the following reply on the problem of acknowledgment.

"'Those points in the statement of the Imperial Government of 28 August which are enumerated in the "Oral Statement" of the United States (only those points which are enumerated in the "Oral Statement" should be quoted) are all contained in our proposals of 6 and 25 September and the present Cabinet has no objection to acknowledging them. These points, however, presuppose the consummation of the Japanese-American negotiations; it goes without saying that they shall not bind Japan alone in case the negotiations end in failure. We should like to have this point clearly understood.'

"2. The phrase 'without provocation' is used in the reply of the Imperial Government of 28 August with respect to the use of force in general; in the same reply we say, regarding the Soviet problem, 'as long as the Soviet Union remains faithful to the Soviet-Japanese Neutrality Treaty'; there is a phrase in our proposal of 6 September 'without any justifiable reason.' These terms mean the same thing in the end.

Rather detailed stipulations are made regarding the Soviet Union because of the Soviet-Japanese Neutrality Treaty and of the situation arising out of the Russo-German war. These complications are only natural and necessary for Japan as an independent state, and it goes without saying that they do not by any means sugrest qualification of our peaceful intent."

And I now offer in evidence defense document No. 1400-C-7.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1400-C-7 will receive exhibit No. 2937.

(Whereupon, the document above referred to was marked defense exhibit No. 2937 and received in evidence.)

MR. BLAKENEY: This is an excerpt from Foreign Relations of the United States, being an oral statement handed by the Japanese Ambassador NOMURA to the Secretary of State on November 17, 1941.

(Reading): "Reference is made to the oral statement handed by the Secretary of State to the Japanese Ambassador on November 12, 1941, and, under instructions from his Government, the Japanese Ambassador states as follows:

"1. That all the points contained in the excerpts which the Secretary of State quoted in the oral statement are embodied in the proposals which the Japanese Government made to the United States Government on the 6th and 25th of September last and the present Japanese Cabinet also has no objection whatever to confirming these points as expressing its general purport. It is, however, to be taken for granted that such confirmation has the successful conclusion of the present negotiations between the Japanese and United States Governments as its prerequisite, and that is, failing by any chance such successful conclusion, the Japanese Government is naturally not to be left bound by its commitment on the points above mentioned.

"2. In regard to the phrases quoted in the oral statement as modifying the peaceful intent of the Japanese Government, it is to be explained that the phrases in question were after all for the purpose of expressing one and the same intent and that, in the case of Soviet Russia in particular, a more or less detailed stipulation was made out of considerations of the existing Soviet-Japanese neutrality treaty and its relation to the war between Germany and Soviet Russia. These phrases were used

only in order to express the qualification which is due to and necessary for an sic sovereign state and were not intended to limit or narrow down in any way the peaceful intentions of the Japanese Government."

Reverting to the affidavit:

"Japan further agreed, at the American request, to the deletion from the proposal of 25 September of the restriction of the question of political stabilization to the Southwestern Pacific area, defense documents Nos. 1401-P-2 and 1400-D-7," the first of which I now offer in evidence.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1400-P-2 will receive exhibit No. 2938.

(Whereupon, the document above referred to was marked defense exhibit No. 2938 and received in evidence.)

MR. BLAKENEY: I read the exhibit, which is a telegram from TOGO to NOMURA, 17 November 1941.

"In reference to your telegram No. 1110.

"We have no objection to applying it, as proposed by the United States, to the entire Pacific area, and therefore no objection to striking out 'Southwestern' from Article 6 of our 25 September proposal."

I now offer in evidence defense document No. 1400-D-7.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document No. 1400-D-7 will receive exhibit No. 2939.

(Whereupon, the document above referred to was marked defense exhibit No. 2939 and received in evidence.)

MR. BLAKENEY: I read the exhibit, which is an excerpt from Foreign Relations of the United States embodying an oral statement handed by the Japanese Ambassador NOMURA to the Secretary of State on November 17, 1941.

"The Japanese Ambassador has been authorized to state that the Japanese Government has no objection whatever to apply the principle of political stabilization to the entire area of the Pacific and that the Japanese Government is willing to eliminate the word 'southwestern' from the text of Article VI of its proposal of September 25th."

Returning to the affidavit:

"Upon the American request, it was made clear that the great majority of the Japanese troops would be withdrawn from China upon the reaching of an agreement, defense document No. 1400-F-7," which I offer

in evidence.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1400-F-7 will receive exhibit No. 2940.

(Thereupon, the document above referred to was marked defense exhibit No. 2940 and received in evidence.)

MR. BLAKENEY: And I shall read at this time only the first and the last paragraphs of the exhibit, which is an excerpt from Foreign Relations of the United States, "Memorandum of a Conversation, Washington, November 18, 1941."

"The Japanese Ambassador and Mr. KURUSU called on the Secretary by appointment made at their request, at the Department.

. . . . . .

"Turning to the China situation the Secretary asked how many soldiers the Japanese wanted to retain in China. The Ambassador replied that possibly 90 per cent would be withdrawn."

Returning to the affidavit:

"The American attitude nevertheless continued lukewarm; Ambassador KURUSU joined the negotiations from 17 November, but despite his efforts the negotiations showed no progress and the situation

did not improve. In these circumstances, the Foreign Minister reported to the Liaison Conference that there was no prospect of American acceptance of Proposal 'A,' and the presentation of Proposal 'B' was authorized. Ambassador NOMURA was accordingly directed to present it, which was done on the 20th.

"The Negotiations, 20-26 November

"17. Proposal 'B' has already been fully explained above. It having been formulated, after much discussion, with a view to making the greatest possible concessions, we expected it to be favorably entertained by the United States, in the light of a modus vivendi to promote a more favorable atmosphere in which negotiations could be carried on, as was explained to Secretary Hull on the 20th, defense document No. 1401-R-2," which I offer in evidence.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1400-R-2 will receive exhibit No. 2941.

(Thereupon, the document above referred to was marked defense exhibit No. 2941 and received in evidence.)

MR. BLAKENEY: I read the telegram.

"From NOMURA to TOGO, 21 November 1941.

"The following is the gist of the conversation with Secretary Hull on the 20th.

"Accompanied by Ambassador KURUSU, I called on Hull, he having given ready consent to our meeting although it was Thanksgiving Day, one of the most important holidays in the United States. I explained the items in accordance with the instructions of your telegram No. 798. Hull showed complete disapproval of the item 'The Government of the United States undertakes not to indulge in measures and actions prejudicial to the endeavors for the restoration of general peace between Japan and China,' though, as regards the rest of the items, he expressed no special opinion, merely putting one or two questions. He dilated upon the assertions of the American Government in connection with the Tripartite Pact, and declared that, so long as there dwelt in the minds of the American people a persistent doubt which was rooted in Japan's relations to the pact, it would be extremely difficult to stop aid to Chiang Kai-shek. He again pointed out that the present policy of the United States is to assist Britain on the one hand and to aid Chungking on the other, against the German policy of limitless armed

expansion, and stated that it is just as difficult to change the policy of aiding Chiang Kai-shek as to stop assistance to Britain, so long as it remains unclear whether Japan's attitude toward peace is unwavering. In the meantime, American interests in China (and Manchuria) have suffered heavy damage, bringing about the present situation.

"KURUSU reminded Hull of the President's statement at our previous interview that he would be the introducer in connection with the question of peace between Japan and China, and said that since the President has expressed his intention to be the introducer, it is only natural that Japan should request the stopping of aid to the Chiang Kai-shek regime, as it is self-contradictory for him on the one hand to continue to aid Chungking, which is destructive to the realization of peace, and on the other to use his influence to restore peace between Japan and China. Hull stated in reply that the President had so spoken on the assumption that the fundamental policy of the Japanese Government would be peaceful, and that it is difficult for Americans to believe in Japan's return to its former policy of peace, in view of the fact that up to now certain influential statesmen of Japan have often been advocating the Hitlerian armed expansion

policy.

"I explained to Hull that the new proposal of today was presented in the circumstances that Proposal 'A' has made no progress, stumbling on two or three points, while the situation has been getting extremely tense, and that its aim lies in first relaxing the strained relations between Japan and the United States, especially in the Southwestern Pacific, thereby contributing to the restoration of amicable feelings between the two nations, and in promoting the negotiations thereafter. Hull said in reply that, though he fully appreciates the intention of the Japanese Government, there are such difficulties as those mentioned above, and he added with a grave face that he and I bear a weighty responsibility for the Japanese and American nations as well as for the whole of mankind. He said that with respect to the proposed points, he hoped to talk them over further after studying them with full sympathy."

Continuing with the affidavit:

"We understood that on the 17th President Roosevelt had said to Ambassadors NOMURA and KURUSU that he did not propose to intervene between Japan and China, but merely to act as an introducer (defense document No. 1401-Q-2," which I offer in evidence.

policy.

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Continuing with the affidavit:

"We understood that on the 17th President Roosevelt had said to Ambassadors NOMURA and KURUSU that he did not propose to intervene between Japan and China, but merely to act as an introducer (defense document No. 1401-Q-2," which I offer in evidence.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1401-Q-2 will receive exhibit No. 2942.

(Whereupon, the document above referred to was marked defense exhibit No. 2942 and received in evidence.)

MR. BLAKENEY: I read the exhibit, which is a telegram from NOMURA to TOGO, 17 November 1941.

"At 10:30 a.m. on the 17th I with Ambassador KURUSU called on Secretary Hull.

"Hull opened the conversation by saying that the present situation had been brought about because there were no far-sighted statesmen after the last war, and that we must even today prepare to save the world from a repetition of such a situation.

"KURUSU expressed sympathy with the idea, and said that the United States and Japan, neither of which has yet joined in the European War, have great responsibility in meeting the situation, but that there are more immediate problems which have to be solved between the two countries and about which concrete discussions should at once be started. He continued (after describing how he had come over to the United States at the request of you and the Premier) thatthe Premier is sincerely desirous of the conclusion of

the negotiations, and holds greater hope for their success than one imagines, and that of the three problems at issue between Japan and the United States -- nondiscriminatory treatment in trade, the Tripartite Pact, and withdrawal of troops -- the Premier is very hopeful of settlement respecting the first two, and much concerned about the last point of withdrawal of troops.

"As the appointment with the President drew near, Hull suggested that the conversation be resumed in the presence of the President and we all left the room. At 11:00 we were received by the President with Secretary Hull. KURUSU stated that the present cabinet is, as he had told Secretary Hull, very earnest about the Japanese-American negotiations; that the President as a statesman must have sufficient appreciation of the frame of mind of the Japanese people, who have been in the China Affair for over four years; that even a layman such as himself had observed at Hong Kong, Manila and other islands that the situation was tense militarily and might explode any minute; that such a situation serves no purpose whatsoever for the two countries (the President agreed). Japan, he said, is desirous of the success of the negotiations, but the time element has to be taken into consideration because

the economic and military ability of Japan to defend herself would deteriorate with procrastination; Japan cannot submit to complete surrender without doing anything to avoid it; and therefore, though Japan is earnest about the succ ; of the negotiations, they must at the same time be concluded speedily.

"The President reminded us that Secretary of State Bryan once told Baron Chinda that 'there is no last word between friends,' and said that, whereas many non-aggression pacts in the past have now all become 'out of date,' he considers that it is possible to save the situation by arriving at some 'general understanding' between Japan and the United States.

"KURUSU offered his personal opinion in agreement with the President's suggestion. As he looked at it, he said, the real issues in the Japanese-American negotiations are ultimately the question of how Japan should harmonize the Tripartite Pact with the negotiations, and the question how the United States could adjust her various insistences with respect to the solution of the China problem, and the negotiations. As to the Tripartite Pact, he explained, Japan has treaty obligation as well as her honor as a world power, and does not dare commit treaty violations. It is not to be assumed that the United States -- who has been a

strong advocate of observance of international commitments -- would request Japan to violate one. Inasmuch as the object of the Tripartite Pact lies particularly in preventing extension of war and in maintenance of peace, it should be possible to solve this point somehow. As to the solution of the China problem, KURUSU said, it should be understood that Japan cannot accept proposals which it is not possible to put into practice, however attractive they may sound.

"The President said that he has heard of the difficulties in withdrawing troops in relation to the China problem. The United States, he said, has no intention either to 'intervene' or to 'mediate' the problems between Japan and China, but means only to be an 'introducer,' though the term may not be one of diplomatic usage.

"KURUSU said that, whereas Japan has stated that her action with respect to the obligation to go to war under the Tripartite Pact will be determined entirely independently, it appears that the United States took it to mean that Japan intended to stab the United States in the back when she had become deeply entangled in the European war. He stated that such an interpretation was entirely wrong, and that clarification had been made, to the effect that Japan

would, under the influence of Germany, move at Germany's demand. If some such broad understanding as was suggested by the President were reached at the present moment between Japan and the United States concerning the pacific problems, KURUSU went on, it would naturally 'outshine' the Tripartite Pact, and American apprehension over the problem of application of the pact would consequently be dissipated.

"Secretary Hull then intervened and described in detail the German policy of aggression. He said that if Germany succeeded in the conquest of Britain she would establish various puppet regimes in South America, and launch an attack against the United States with the British fleet; that as it would be too late then for the United States to cope with her, the United States must defend herself now; and that this is the self-defense of the United States and Japan must understand it. He thus described his own theory in detail. The President added that the map showing the Central and South American policy of Germany, to which he referred in his recent speech, is a real thing obtained from German government sources.

"KURUSU said that inasmuch as we are discussing peace in the Pacific, and as the President refers to a Japanese-American general understanding, Central and

South America will be covered in it because one side of the Western Hemisphere faces the Pacific Ocean; that it is, therefore, impossible that Japan should become a partner of one who would disturb the peace of the Western Hemisphere. Although it is argued that the conclusion of the present negotiations will be criticized as allowing Japan to have a peaceful treaty with the United States on the one hand and to cooperate with Germany on the other, Japan's peaceful policy will be proved to the American people if Japan, in accordance with the commitment made by her, withdrew her troops from French Indo-China upon establishment of the equitable peace in the Pacific; and that at any rate it is urgently necessary to settle the issues now being discussed between Ambassador NOMURA and Secretary Hull.

"Secretary Hull said that he would like to continue the discussion further, and that he would like to have opinions from new angles offered by Ambassador KURUSU, for he has been talking with Ambassador NOMURA repeatedly and going round and round the same point. The President agreed with this, and told me and KURUSU that as he will be in Washington until Saturday (the 22nd) he will be glad to see us at any time that we may desire in accordance with the progress

of the talks with Secretary Hull."

I return to the affidavit.

"On the 21st Secretary Hull, referring to Ambassador KURUSU's earlier suggestion of disposing of the Tripartite Pact question by conclusion of an important Japanese-American agreement which would outshine it, showed sympathy with it, and indicated also that he considered it natural that Japan should have the leadership of East Asia and that he was ready to understand the idea of the Greater East Asia Co-Prosperity Sphere (defense document No. 1401-S-2)," which is offered in evidence.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1401-S-2 will receive exhibit No. 2943.

(Whereupon, the document above referred to was marked defense exhibit No. 2943 and received in evidence.)

MR. BLAKENEY: This is a telegram from NOMURA to TOGO, 23 November 1941.

"In reference to my telegram No. 1159 from KURUSU:

"I had a private talk with Secretary Hull for about thirty minutes on the 21st with a view to making advance arrangements about the conversation of the

22d. He expressed his sympathy with my reference, made at the conversation of the 18th, to an important agreement which would 'outshine' the Tripartite Pact, and told me that he, too, considered it a good idea. He also revealed that it was his sincere desire that the two countries cooperate in maintaining the peace of the Pacific and contributing to the establishment of world peace, and added that he still cherished as a happy memory that he had fought for the freedom of commerce jointly with Viscount ISHII and Mr. Fukai EIGO at the London Economic Conference. He seemed to consider it very natural that Japan should be the leader-state of East Asia, and he was not reluctant to understand the idea of Greater East Asia Co-prosperity Sphere, apart from the rather awkward nomenclature. He declared further that, so long as Japan had no design to subdue other countries by force, the United States had no intention of interfering with it. Then he expressed his earnest desire that such friendly relations should be restored as had prevailed when, directly after the Russo-Japanese War, Japan and the United States cooperated as leader-states, the one in East Asia and the other in the Western Hemisphere respectively, and added that he believed it to be a good idea that the two countries should come to an

agreement upon the peace of the Pacific in the above frame of mind and that Japan should declare simultaneously that the Tripartite Pact is not to interfere with the execution of the agreement.

"It may be regarded as too roundabout a way, to study such an idea at this very juncture when the situation is so tense that the breakdown of negotiations may be unavoidable with the American reaction to our proposal 'B'. Nevertheless, there is still the possibility, as forecast in my telegram referred to above, that Hull will make some proposal on Monday (the 24th) in connection with the Pacific agreement. I should be very much obliged if you would promptly instruct me if you have any idea how to make use of this idea as a means to effect a break in the present deadlock."

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"On the basis of these and other reports from Washington, the Japanese government offices concerned were hopeful of success in the negotiations. The possibility of success being foreseen, instructions were sent to the Embassy relative to the quantity of oil which would be required to implement an agreement under Proposal 'B'(defense document No. 1401-W-2)," which I offer in evidence.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1401-W-2 will receive exhibit No. 2944.

(Whereupon, the document above referred to was marked defense exhibit No. 2944 and received in evidence.)

MR. BLAKENEY: I read the exhibit:

"From TOGO to NOMURA

"26 November 1941

"In reference to my telegram No. 798.

"In case an agreement is reached on the basis of our new proposal, Japan will be faced with the immediate necessity of securing the economic resources in connection with Articles 2 and 3 thereof. As petroleum is urgently needed by Japan, you are directed to convey, as the negotiations develop but prior to the signing of the agreement, our desire for annual

imports of 4,000,000 tons from the United States (which is the average of the imports in 1938, 1939 and 1940--and the proportion of the various petroleum products to be imported is to be based on actual imports before the freezing of assets, aviation gasoline being included), that is 333,000 tons per month; and of 2,000,000 tons from the Netherlands East Indies, which is calculated on the basis of the amount virtually agreed upon between the Governments (the Netherlands East Indies agreed to supplying yearly 1,800,000 tons). It is further desired that upon the conclusion of the agreement, assurance be obtained in the form of exchange of notes between you and the Secretary of State.

"The above figures are only a rough estimate which is to be the standard in the negotiations, and we hope that the quantity will gradually be increased as commercial relations shall be restored hereafter. This is for your information."

(Reading from the affidavit):

"Reports from the Washington Embassy indicated, however, that Secretary Hull had suddenly changed his attitude. Further clarifications of the Tripartite Pact question offered by Ambassador KURUSU found the Secretary uninterested (defense documents Nos. 1400-F-7 and 1400-C-7)," The former of these is exhibit 2940 to

which I now return to read the unread portions.

I read the remainder of the exhibit, commencing with the second paragraph thereof:

"Turning to the question of the Tripartite Pact, Mr. KURUSU said that he could not say that Japan would abrogate the Tripartite Pact but that Japan might do something which would 'outshine' the Tripartite Pact.

"The Ambassador repeated that the situation in Japan was very pressing and that it was important to arrest a further deterioration of the relations between the two countries. He suggested that if this situation could now be checked an atmosphere would develop when it would be possible to move in the direction of the courses which this Government advocated. He pointed out that big ships cannot turn around too quickly, that they have to be eased around slowly and gradually.

"Mr. KURUSU pointed out that a comprehensive solution cannot be worked out immediately, that he could make no promises. He said that our freezing regulations had caused impatience in Japan and a feeling that Japan had to fight while it still could. If we could come to some settlement now, he said, it would promote an atmosphere which would be conducive to discussing fundamentals. The Secretary asked if he did

not think that something could be worked out on the Tripartite Pact. The Ambassador said that he desired to emphasize that Japan would not be a cat's-paw for Germany, that Japan's purpose in entering into the Tripartite alliance was to use it for Japan's own purposes, that Japan entered the Tripartite Pact because Japan felt isolated. The Secretary observed that it would be difficult to get public opinion in this country to understand the situation as Mr. KURUSU had described it.

"He then asked what the Ambassador had in mind in regard to the Chinese situation and whether the Japanese stood for no annexations,no indemnities, respect for China's sovereignty, territorial integrity and the principle of equality. The Ambassador replied in the affirmative."

THE PRESIDENT: This document is dated November 18th and it is read on negotiations November 20-26.

MR. BLAKENEY: Yes. Your Honors may note that in many instances the affidavit is not strictly chronological because it has gone back to pick up a different thread, which is what has happened here, and it is quite possible that this point should have been inserted earlier, but it crept in here by inadvertence.

I continue by offering in evidence defense document 1400-G-7.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1400-G-7 will receive exhibit No. 2945.

(Whereupon, the document above referred to was marked defense exhibit No. 2945 and received in evidence.)

MR. BLAKENEY: And I read the exhibit which is an excerpt from Foreign Relations of the United States, being a "Memorandum by the Secretary of State, Washington, November 21, 1941.

"Ambassador KURUSU called at my hotel apartment at his request. He had no business to take up with me except to refer to the Japanese interpretation of the Tripartite Pact and handed me a draft of a paper which he proposed to sign by way of attempted clarification. I looked at the paper and then asked Mr. KURUSU whether he had anything more on the whole subject of a peaceful settlement to offer. He replied that he did not. I said that I did not think this would be of any particular help and so dismissed it. This was virtually all that was said of importance.

"C(ordell) H(ull)

"Annex

"Draft Letter Handed by Mr. Saburo KURUSU to the Secretary of State on November 21, 1941

"Washington, November 20, 1941

"Mr. Secretary: Through several conversations I have had the honor of holding with Your Excellency, I was rather surprised to learn that a deep-seated misconception prevails among your people about the obligation which Japan assumed under the Tripartite Pact.

"As your Excellency is fully aware I am the one who signed the said treaty under the instructions of my Government; and I am very happy to make the following statement which I trust will serve to eradicate the aforesaid false impression:

"It goes without saying that this treaty can not and does not infringe, in any way, upon the sovereign right of Japan as an independent state.

"Besides, as Article III of the Pact stands, Japan is in a position to interpret its obligation freely and independently and is not to be bound by the interpretation which the other high contracting parties may make of it. I should like to add that my Government is not obligated by the aforementioned treaty or any other international engagement to become a collaborator or cooperator in any aggression whatever by any third

Power or Powers.

"My Government would never project the people of Japan into war at the behest of any foreign Power: it will accept warfare only as the ultimate, inescapable necessity for the maintenance of its security and the preservation of national life against active injustice.

"I hope that the above statement will assist you in removing entirely the popular suspicion which Your Excellency has repeatedly referred to. I have to add that, when a complete understanding is reached between us, Your Excellency may feel perfectly free to publish the present communication.

"I have the honor, etc."

Returning to the affidavit:

"The Ambassador reported that he had declared that withdrawal of Japanese forces from Southern Indo-China was of no help, and that the time was not ripe for the so-called introduction by the President between Japan and China (defense document No. 4101-T-2)" which I offer in evidence.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1401-T-2 will receive exhibit No. 2946.

(Whereupon, the document above referred to was marked defense exhibit No. 2946 and received in evidence.)

MR. BLAKENEY: The exhibit is a telegram:

"From NOMURA to TOGO

"23 November 1941

"In reference to my telegram No. 1160:

"The essence of the conversation of the evening of the 22nd was that Japanese-American trade will gradually be restored if Japan adopts a policy of peace. As to the cooperation of the Powers concerned, the Secretary of State told me that he had already the day before conferred fully on the matter with the representatives of those Powers, and that as they would communicate with their respective governments by Monday, he would confer further with them thereafter.

Besides, he said nothing more than that could be expected, as there was a limit to his abilities. He was aware of the reasons that Tokyo was pressing for an answer, yet he seemed to believe that there was no reason that Japan could not wait a few more days. It is also reported that Hu Shih, who had been ill abed, made an appearance at the conference yesterday toward its close.

"The Secretary has no intention of using his good offices now in restoring peace between Japan and China, and considers it difficult to suspend aid to Chiang Kai-shek. But he appears to think that America's present aid to Chiang Kai-shek is not of much importance, and that the matter will develop as the peace policy progresses. He seems to intend to leave the China question until later. However, according to a reliable report Hull is of opinion that the stationing of troops for such period as may be necessary is in effect indefinite stationing; that there is no objection if the duration is set for four or five years, providing that the further decision be made in accordance with the situation at the end of that period; but that the indefinite stationing is contradictory to the principles of non-annexation and respect for sovereignty. (He repeatedly expressed his

regret that the negotiations had been interrupted in July by the Japanese advance into French Indo-China, and warned me indirectly lest action of a similar nature be repeated.)

"With reference to the proposed transportation of Japanese troops from southern to northern French Indo-China, Hull maintained that it would have no effect in relieving the present tension of the South-western Pacific, and that the countries concerned would be diverted by the Japanese forces therein and their forces frozen no less than they are today. I explained thereupon that, in my strategic judgment, this was a great concession contributing much to the amelioration of the tense situation in the Southwest-ern Pacific. The Secretary pointed out, however, that he alone was responsible for the contents of the con-versations, and that no other person was allowed to interfere in them (though he told me later that he was going to consult with one or two influential Senators), and that he did not understand strategic questions well.

"I showed him the preamble of Proposal 'B', and tried to obtain his definite opinion article by article. It seemed that the Secretary felt that Pro-posal 'B' was a demand made upon the American Govern-ment, and he looked very much displeased and declared

that there was no reason that demands should be made upon the United States by the Japanese Government, and that he was much 'discouraged at my pressing him to answer "yes" or "no,"' entirely disregarding all his efforts.

"We are negotiating with clmness and never get excited. So are the Americans. The Secretary said that the United States is taking the middle road of peace and is negotiating on that ground, and that it was hoped that Japan would respond to the American policy of peace."

From the affidavit:

"The China problem was, as always, the object of thought and effort in Tokyo (defense document No. 1401-U-2)" which I offer in evidence.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1401-U-2 will receive exhibit No. 2947.

(Whereupon, the document above referred to was marked defense exhibit No. 2947 and received in evidence.)

MR. BLAKENEY: I read the exhibit, which is a telegram:

"From TOGO to NOMURA

"23 November 1941

"It seems that the United States does not concur in the fourth clause of Proposal 'B' relative to the undertaking not to indulge in measures and actions prejudicial to the endeavor for the restoration of general peace between Japan and China. We have no objection to President Roosevelt's being the introducer concurrently with Proposal 'B,' and it is our intention to have China, through the good offices of the President, express friendship toward Japan in accordance with the American proposal (B) of the 12th, and thereby commence peace talks directly with China. As it is expected that an agreement for a truce will be concluded between Japan and China at the opening of such negotiations, American assistance to Chiang would in practice become unnecessary in such an event. It should therefore naturally be made clear that the President, by his introduction, should cause Chiang Kai-shek to propose peace to Japan, that the United States in response should support the efforts for Japanese-Chinese peace with a view to establishing friendly relationships between the two countries, and that therefore the United States should refrain from any action which would disturb such efforts.

"You are directed to do your best to get the United States to accept the fourth clause of Proposal

'B' and, when the negotiations shall have been concluded, to bring about through the President's introduction, by the time set in my telegram No. 812, the peace proposal of Chian Kai-shek (preferably a simple one.)"

From the affidavit:

"We also learned shortly thereafter that the United States was holding consultations with the British, Australian, Chinese and Dutch Governments (defense document No. 1401-V-2)" which is offered in evidence.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1401-V-2 will receive exhibit No. 2948.

(Whereupon, the document above referred to was marked defense exhibit No. 2948 and received in evidence.)

MR. BLAKENEY: I read the exhibit, which is a telegram:

"From NOMURA to TOGO

"25 November 1941

"Secretary Hull has twice conferred jointly with the Ambassadors and Ministers of Great Britain, Australia, the Netherlands East Indies and China. It seems, however, that with the development of the

'B' and, when the negotiations shall have been concluded, to bring about through the President's introduction, by the time set in my telegram No. 812, the peace proposal of Chian Kai-shek (preferably a simple one.)"

From the affidavit:

"We also learned shortly thereafter that the United States was holding consultations with the British, Australian, Chinese and Dutch Governments (defense document No. 1401-V-2)" which is offered in evidence.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1401-V-2 will receive exhibit No. 2948.

(Whereupon, the document above referred to was marked defense exhibit No. 2948 and received in evidence.)

MR. BLAKENEY: I read the exhibit, which is a telegram:

"From NOMURA to TOGO

"25 November 1941

"Secretary Hull has twice conferred jointly with the Ambassadors and Ministers of Great Britain, Australia, the Netherlands East Indies and China. It seems, however, that with the development of the

situation he confers mainly with the British Ambassador only. Since this morning, the 25th, Australian and Dutch representatives are informed through the British Ambassador, and Hull is going to talk with the Chinese Ambassador alone this evening after his conference with the British Ambassador. It is generally noted that the United States no longer treats the four countries on the same level."

Reverting to the affidavit:

"Thus while still hopeful of an agreement, we felt that the situation was turning for the worse. On 27 November we were informed by Ambassador NOMURA of the note which Secretary Hull had handed to him on the 26th (defense document No. 1401-X-2)" which I offer in evidence.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1401-X-2 will receive exhibit No. 2949.

(Whereupon, the document above referred to was marked defense exhibit No. 2949 and received in evidence.)

MR. BLAKENEY: I read, for the time being, only the first paragraph of exhibit 2949, which is a telegram:

"From NOMURA to TOGO

"27 November 1941

"The development of the Japanese-American negotiations is as you are well acquainted with through successive telegrams. The American proposal of the 26th (telegram No. 1189) shows that there is an extreme divergence between the positions of the two parties, and there is unfortunately no prospect whatsoever of America's accepting our position within the period you indicated."

I read only that much for the time being.

Returning to the affidavit:

"This note (Exhibit 1245-I) was a great disappointment to the Japanese Government; the view of all concerned was that its acceptance would involve Japan's falling to a lower international position than in the days before the Manchurian Incident, and that its very existence would be endangered. Other incidents confirmed our opinion that the United States had by that time become determined on war with Japan; Ambassador NOMURA's report, for example, that, abandoning the policy of both Governments since the beginning of the negotiations, the United States had made public on the 26th the details of the negotiations and of its latest proposal (defense document No. 1401-A-3)" which is offered in evidence.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1401-A-3 will receive exhibit No. 2950.

(Whereupon, the document above referred to was marked defense exhibit No. 2950 and received in evidence.)

MR. BLAKENEY: The exhibit is a telegram:

"From NOMURA to TOGO

"28 November 1941

"In reference to my telegram No. 1190.

"The State Department, which had maintained silence concerning the Japanese-American negotiations, broke its silence and made disclosure of the conversations yesterday, the 26th. The press responded and printed such headlines as 'Hull Hands Peace Plan to Japan' and 'America Rejects Second "Munich"' and stressed abstract points, such as Hull's four principles, which have general appeal. It has to be noted that the papers argue that it is up to Japan either to accept or to reject the American proposal and that it is Japan's responsibility to make choice between peace and war."

(Reading from the affidavit): Meetings of the Liaison Conference after 5 November

"18. The meetings of the Liaison Conference

after the Imperial Conference of 5 November considered questions in connection with the Japanese-American negotiations, but also considered the measures to be taken in the unfortunate eventuality of the negotiations failing and Japan's being forced to resort to arms to preserve its own esistence. Matters concerning military operations, however, were kept absolutely secret and were never once brought up for discussion in the Liaison Conference. Although various documents (Exhibits 1175, 1169) relating to war were drawn up by the Liaison Conference, these were preparatory drafts discussed and adopted merely against a time when war might prove to be inevitable, and not as the result of any decision for war at the time; that diplomatic efforts were to remain of first importance was the assumption upon which the documents were drawn.

"The Foreign Minister on 5 November instructed Ambassador NOMURA to bend every effort to concluding an agreement with the United States by the 25th (Exhibit 1171), and again on the 22nd told him that Japan could wait if agreement could be reached within a few days further (Exhibit 1183), but that otherwise the situation would have to be left to develop automatically. The circumstances in Japan were increasingly

pressing the government to reach a settlement quickly, and there was much expression of criticism that the representatives in Washington, not realizing the serious state of affairs, were too easy-going. The Foreign Minister for this reason attempted to spur on the Ambassadors. While the government was making desperate efforts to conclude the negotiations, the military authorities considered that from the point of view of their responsibility for national defense it was disadvantageous to delay the opening of hostilities if war was to be inevitable, and urgently demanded to know whether there was any possibility of successful conclusion of the negotiations. These negotiations had been in progress for nearly eight months and, it was urged, the views of both sides were well known to each other, and it could not require long to ascertain whether there was a prospect of agreement. Hence the necessity for the instructions to the Ambassadors setting dates for conclusion; there was no suggestion in Japan that was would be commenced without further deliberations.

"The Negotiations after 26 November

"19. Upon receipt of the note of the American Government of 26 November, it was felt generally in Japan by those conversant with the matter, including

the attendants at the Liaison Conference, to be clear that hope of bringing the Japanese-American negotiations to a successful issue through either a complete agreement or a modus vivendi were almost lost. Nevertheless, with the design of leaving unexplored no possibility for maintenance of the peace of the Pacific, the Foreign Minister sent additional messages urging the Ambassadors to attempt to obtain reconsideration by the United States, the only course remaining open (Exhibits 1193, 1194 and 1195), (defense document 1401-D-3)" which is offered in evidence.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1401-D-3 will receive exhibit No. 2951.

(Whereupon, the document above referred to was marked defense exhibit No. 2951 and received in evidence.)

MR. BLAKENEY: I read this exhibit, which is a telegram:

"From TOGO to NOMURA

"3 December 1941

"In reference to your telegram No. 1225.

"1. It is observed that the United States makes much of the statement of our Government, the

trend of public opinion and the troop-movements in the south, and expresses apprehension on account of them over our sincerity in the negotiations. However the facts about the statement of Premier TOJO were as contained in my telegram No. 866, and we consider that the unexpected repercussion was caused by an extreme inappropriateness of translation (made by the DOMEI news agency.) As to the direction of public opinion, I have been taking great pains over it. It is understood that Ambassador Grew has made report to his Government on this point, and even Secretary Hull himself expressed satisfaction with the improvement, as you reported in your telegram No. 1148. In spite of this, the recent tone of the press in the United States has been very provocative and the radio broadcasts (especially the short-wave broadcasts from San Francisco in the last several days) are daily giving reports of the delicate subjects of the negotiations. Such broadcasts can never be made unless there is close contact with quarters familiar with the course of the negotiations. It is inappropriate for the United States to blame Japan without considering her own faults.

"2. The United States, Britain and other countries have increasingly of late intensified their

military preparations against Japan and adopted a provocative attitude toward us. On the 20th of last month, for instance, an American plane made a reconnaissance flight over Garambi in the South of Formosa. (Protest concerning the matter was made to the American Ambassador in Tokyo on the 27th.) This is not an isolated case of such American and British actions. It is our desire in view of the delicate situation that they should themselves refrain from repeating such actions.

"3. You are directed to make further explanations to the United States that our proposal of 20 November was made from the standpoint of fairness, and that we believe it the best measure to save the situation at this moment. (It is assumed that the United States refers, when she asserts that our proposal is inconsistent with the general principles, to the provisions of Article 4 relative to non-interference with the peace between Japan and China.) Our assertion is, as repeatedly made clear to the United States, that she should stop assisting Chiang when peace talk is commenced between Japan and China through the introduction of the President. You should bear in mind, therefore, that our position by no means conflicts with what the United States calls fundamental

principles."

From the affidavit:

"The commencement of war is decided only by an Imperial Conference; and before that decision was made on 1 December the Ambassadors were cautioned not to give the impression that negotiations were closed for the reason that there was still no definite determination for war, although it was considered that rupture of the negotiations was inevitable, in the light of American attitude, unless reconsideration could be obtained. Even thereafter, in accordance with the decision, military operations were still to be stopped if the negotiations succeeded (Exhibit 809.)"

THE PRESIDENT: We will adjourn until half past nine on Monday morning.

(Whereupon, at 1600, an adjournment was taken until Monday, 18 August 1947, at 0930.)

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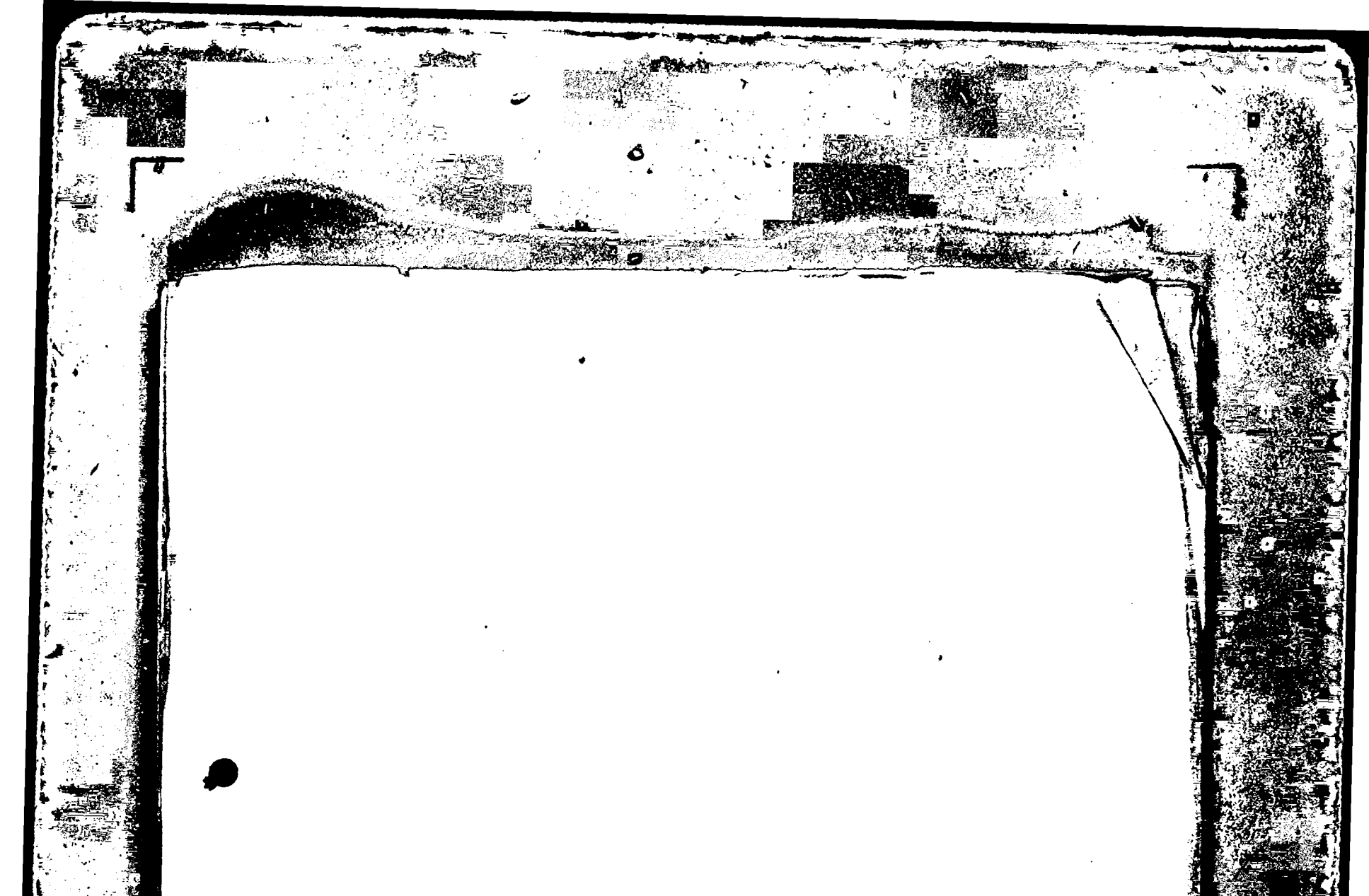

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18 AUGUST 1947

I N D E X

Of

EXHIBITS

Doc. No.	Def. No.	Pros. No.	Description	For Ident.	In Evidence
1401-I-3	2952		Report of Ambassador NOMURA to TOGO of Conversation Between NOMURA, KURUSU and Secretary of State Hull on 26 November 1941		26065
206-H	2953		Excerpt from "Ten Years in Japan" by Joseph C. Grew, U. S. Ambassador to Japan - 1932-1942		26069
1886	2954		The Explanation of the Premier at the Imperial Conference on 1 December 1941		26072
1892	2955		The Explanation of the Foreign Minister at the Imperial Conference on 1 December 1941		26074
1401-C-2	2956		Telegram from TOGO to Ambassador NOMURA, dated 4 November 1941		26098
1401-G-3	2957		Telegram from TOGO to Ambassador NOMURA, dated 3 November 1941		26100
478-B	2958		Excerpt from "Speeches by British Leaders, 1 September, 1939 - November 10, 1941 (Vol.I)		26103
1401-Z-1	2959		Telegram from Ambassador NOMURA to TOGO, dated 24 October 1941		26109
			MORNING RECESS		26109

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(cont'd)

Doc. No.	Def. No.	Pros. No.	Description	For Ident.	In Evidence
2063	2960		Affidavit of KASE, Toshikazu		26167
1401-F-3	2961		Telegram from TOGO to Ambassador NOMURA, dated 7 December 1941		26168
1401-E-3	2962		Telegram from Ambassador NOMURA to TOGO, dated 6 December 1941		26169
1030	2963		Affidavit of MATSUDAIRA, Yasumasa		26180

Monday, 18 August 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, all Members sitting, with the exception of: HONORABLE JUSTICE STUART McDOUGALL, Member from the Dominion of Canada and HONORABLE JUSTICE I. M. ZARAYANOV, Member from the USSR., not sitting from 0930 to 1600.

For the Prosecution Section, same as before.

For the Defense Section, same as before.

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(English to Japanese and Japanese to English interpretation was made by the Language Section, IMTFE.)

Knapp & Yelden

MARSHAL OF THE COURT: The International Military Tribunal for the Far East is now in session.

K U M A I C H I Y A M A M O T O, resumed the stand and testified, through Japanese interpreters, as follows:

THE PRESIDENT: Major Blakeney.

MR. BLAKENEY: If the Tribunal please, there was a part of an exhibit omitted from the Japanese copy last Friday which is now supplied in translation, and ready for reading. That is exhibit 2935. I therefore suggest that it be read before we proceed.

The reading of the affidavit had progressed to page 10, the second paragraph of section 19, where I now resume:

"On 26 November there was received from Ambassadors NOMURA and KURUSU a telegram (Exhibit 2249) suggesting as their opinion that the relations between the two countries could be improved by an exchange of telegrams between the President and the Emperor, the exchange to be followed by a prcposal from Japan for establishment of a neutralized area. The ambassadors requested that the Foreign Minister consult concerning their

suggestion with the Lord Keeper of the Privy Seal, and give them a prompt answer. Foreign Minister TOGO did consult not only with Lord Keeper KIDO, but also with Premier TOJO, and instructed me to convey to the ambassadors the result, that all three of them considered the project to offer no hope of settlement in the circumstances of the time, and that it would therefore be improper to adopt it. This information was conveyed to the ambassadors (Exhibit 1193). It should, however, be noted that although the ambassadors had sent their suggestion on 26 November, before receipt of the United States note of that date, Foreign Minister TOGO had, before his consultation with the Premier and the Lord Keeper, received from the ambassadors an outline of the American note, from which it appeared that successful conclusion of the negotiations had become almost impossible, and that such a scheme as that proposed by the ambassadors would be unavailing, defense document No. 1401-I-3, which is offered in evidence.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1401-I-3 will receive exhibit No. 2952.

(Whereupon, the document above

referred to was marked defense Exhibit No. 2952 and received in evidence.)

MR. BLAKENEY: I read the exhibit, which is a telegram from NOMURA to TOGO, 26 November 1941:

"Ambassador KURUSU and I talked with Secretary Hull for about two hours from 4:45 P.M. on the 26th.

"Hull stated that the United States for several days had thoroughly examined the modus vivendi proposed by Japan on the 20th of this month (Proposal 'B'), and had fully consulted about it with the countries concerned, but that unfortunately she could not agree to it, and that she was constrained to propose instead a plan (marked 'tentative and without commitment') which was a compromise between the American proposal of 21 June and the Japanese proposal of 25 September. The gist of the plan is as follows:

"(A) Request of approval of the four principles.

"(B) 1. Conclusion of a multilateral non-aggression pact among the British Empire, China, Japan, the Netherlands, the Soviet Union, Thailand and the United States.

"2. Conclusion of an agreement among the United States, the British Empire, China, Japan,

the Netherlands and Thailand concerning non-aggression toward French Indo-China and equal economic treatment therein.

"3. Withdrawal of all Japanese forces from China and French Indo-China.

"4. Assurance that the United States and Japan will not support any regime in China other than the Chiang Kai-shek regime.

"5. Abolition of extraterritorial rights and concessions in China.

"6. Conclusion of a reciprocal trade agreement between the United States and Japan on the basis of the most-favored-nation principle.

"7. Reciprocal rescission of the freezing of assets.

"8. Stabilization of the dollar-yen rate.

"9. Understanding that no agreement which either has concluded with any third powers shall be interpreted by it in such a way as to conflict with the purpose of this agreement and preservation of peace in the Pacific area (a proposal to make the Tripartite Pact a dead letter).

"We argued strongly against the proposal, saying that it is in conflict with what has been

discussed so far and that we were reluctant to make report of it to Tokyo. However, Hull showed no sign of concession.

"It is presumed that the United States proposed such a strong plan as a result of the victory of the strong elements in the country over the supporters of compromise, because of our request to suspend American aid to Chiang, speeches of our leaders against Britain and America and the rumor that Japan requested Thailand to hand over the entire defense of the latter country, as well as under the influence of British, Dutch and Chinese pressure."

"20." -- From the affidavit:

"The ambassadors at Washington had sent frequent telegrams to the Foreign Ministry pointing out the harmful effect upon the Japanese-American negotiations of anti-American articles in Japanese newspapers, and Foreign Minister TOGO was concerned over it. He accordingly endeavored to prevent the appearance of such injurious publications, hoping thereby to further the negotiations. The instance of such control appearing in the Foreign Minister's telegram of 1 December (Exhibit 1208) was by no means the first; much earlier, for example, Ambassador Grew

had complained of the 'Japan Times' as being particularly offensive, and the Foreign Minister had taken prompt and drastic measures against it (defense document No. 206-H)" which is offered in evidence.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 206-H will receive exhibit No. 2953.

(Whereupon, the document above referred to was marked defense exhibit No. 2953 and received in evidence.)

MR. BLAKENEY: I read the exhibit, which is an "Excerpt from 'Ten Years in Japan,' by Joseph C. Grew, United States Ambassador to Japan 1932-1942.

"November 7, 1941. -- At the Soviet Embassy reception today, to celebrate their national holiday (they are the only diplomatic mission which now holds such receptions), I took occasion to make the strongest representations to every Japanese to whom I talked with regard to the 'Times and Advertiser' editorial, mentioned above, listing seven points as a program for American 'restitution' to Japan, and to point out what serious harm the editorial had done, especially at the moment of sending KURUSU to the United States to try to bring the current conversations to a successful conclusion. I spoke of

the utter stupidity of creating such a hostile atmosphere here and such an unfortunate impression on the American public at a moment when constructive, not destructive, results were desired. I made it clear that it was not my intention to presume to interfere with the Japanese press but only to point out factually the inevitable effects in my country when such editorials, assumed to represent the views of the Japanese Government since the 'Times and Advertiser' is known to be controlled by the Foreign Office, were reprinted in the United States.

"TOGO, the Foreign Minister, appeared to know nothing about the editorial and was sure that it had not been inspired by the Foreign Office, but he undertook to look into it and a few moments later he called Toshi GO, editor of the paper, over to him and told him what I had said. I also spoke to Toshi GO, who said that he alone was responsible for the editorial and had written it himself as indicating Japan's maximum demands which would undoubtedly be far beyond what the Government would ask for in the conversations. I told him that he could have no conception of the harm that he had done. Somebody else told me that GO had published the editorial as a protest against the secrecy under

which the conversations were being held.

"SHIGEMITSU, with whom I talked, was thoroughly sympathetic and said that he would do his best to stop this sort of thing, while MATSUMOTO, head of Domei, promised me that there would be an immediate change in the tone and substance of the Japanese press, and he was as good as his word because the tone did immediately change for the better. I think I succeeded in stirring them all up considerably, so the gathering at the Soviet party was distinctly useful.

"The next time I called on TOGO I repeated these representations and he replied that while the Foreign Office had exerted no control over the 'Times and Advertiser' up to the present, it was jolly well going to exert such control from now on. The editorial may or may not have been dictated by the Foreign Office, regardless of what Toshi GO said. One informant said that it had been so dictated, but if so, I think it was probably done by some subordinate official and without the knowledge of the Minister, who, I am convinced, knew nothing about it."

Returning to the affidavit: "The Notification Closing Negotiations.

"21. The commencement of hostilities was decided upon on 1 December, through an extraordinary Cabinet meeting in the morning and an Imperial Conference in the afternoon (exhibit 588). At the Imperial Conference, explanations were given by the Premier and the Foreign Minister of the circumstances, those explanations being respectively defense documents 1886 and 1892," the first of which, document 1886, I offer in evidence.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document No. 1886 will receive exhibit No. 2954.

(Whereupon, the document above referred to was marked defense exhibit No. 2954 and received in evidence.)

MR. BLAKENEY: I read the exhibit: "The Explanation of the Premier at the Imperial Conference on 1 December.

"By the Imperial permission, I will sponsor the proceedings of the Conference.

"In accordance with the decision of the Imperial Conference of 5 November, the Government has taken all possible steps, concentrating all its

energies, to adjust the relations with the United States, while the Imperial Army and Navy have made efforts to complete their preparations for operations. The United States, however, has not shown any sign of concession from its past position. Moreover, she served, jointly with Britain, the Netherlands and China, new demands such as the unconditional over-all withdrawal of Japanese troops, the withdrawal of recognition of the Nanking Government, and the nullification of the Tripartite Pact, proposing unilateral concessions by Japan. Should Japan submit to her demands, not only would Japan's prestige be entirely destroyed and the solution of the China Affair rendered impossible, but Japan's existence itself would be endangered. It is now clear that Japan's claims cannot be attained through diplomatic measures. Meanwhile, the United States, Britain, the Netherlands and China have increasingly strengthened their economic and military pressure upon Japan. From the viewpoints both of Japan's national power and of strategy, it is now utterly impossible for Japan to permit the present situation to continue any longer. In such circumstances, Japan now has no other way than to wage war against the United States, Britain and the Netherlands in order to achieve a solution of the present critical

situation and to secure its existence and self-defense.

"We are filled with trepidation to think that it causes much anxiety to His Imperial Majesty to plunge into a great war at the present moment when the China Affair has already lasted for four years. Upon careful consideration, however, it is my belief that our national power is now several times as strong as before the outbreak of the China Affair, that our national solidarity is all the more tightened, and that the morale of the Imperial Army and Navy is exceedingly high. I am convinced that the whole nation, presenting a united front and laying down their lives for the sake of the country, will surely deliver us from the present national crisis. I hope that you will give due deliberation to the subject placed before you. Concerning matters of diplomatic negotiations and military operations, explanation will be given by the Cabinet ministers concerned and the High Command."

I now offer in evidence defense document No. 1892.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document No. 1892 will receive exhibit No. 2955.

(Whereupon, the document above

referred to was marked defense exhibit No. 2955 and received in evidence.)

MR. BLAKENEY: I read the exhibit which is "The Explanation of the Foreign Minister at the Imperial Conference on 1 December 1941.

"Explanations will be made today chiefly on the development of the Japanese-American negotiations after the Imperial Conference of 5 November. To summarize the circumstances of the negotiations before that Conference, that is to say to about the end of October, the United States had insisted on the following four principles as the basis of international relations; namely:

"(1) Respect for the territorial integrity and the sovereignty of each and every nation;

"(2) Non-interference in the internal affairs of other countries.

"(3) Non-discriminatory treatment in trade;

"(4) Non-disturbance of the status quo in the Pacific except as the status quo may be altered by peaceful means.

The United States insisted on the application of these principles; expressed doubt as to the peaceful intention of Japan; raised objections to the stationing of Japanese troops in China; insisted that the principle

of non-discrimination in international trade be applied unconditionally in China; and demanded that the Tripartite Pact be rendered in effect a dead letter. The negotiations, thus faced with difficulties, at last came to an impasse.

"Such divergence of views between the two countries has resulted largely from the fact that the United States Government obstinately adhered to the doctrinarian principles to which it had traditionally submitted, and insisted on their unconditional application to China and other areas, regardless of the actual situation prevailing in East Asia. It was evident that, so long as the United States refused to alter such an attitude, the conclusion of the present negotiations was extremely difficult.

"The present Cabinet considered it proper to bring about the adjustment of Japanese-American relations on an equitable basis, and decided to make all possible concessions and to concentrate its energies to avert a rupture between Japan and the United States. From this viewpoint, our previous proposal of 25 September was moderated with respect to the following three questions which had so far been the main points at issue in the Japanese-American negotiations; namely, (1) the interpretation of the

right of self-defense in connection with the Tripartite Pact, (2) the principle of non-discrimination in international trade, and (3) the withdrawal of Japanese troops from China and French Indo-China. (1) With respect to the problem of the right of self-defense in connection with the Tripartite Pact, we proposed that the United States should declare that she would not make any unwarranted extension of the interpretation of the right of self-defense, and that, at the same time, Japan also should make a similar declaration. (2) With respect to the principle of non-discrimination, Japan should recognize it to be applied to China on the understanding that the principle was to be applied uniformly to the rest of the world. (3) With regard to the withdrawal of Japanese troops, it was provided that the Japanese troops dispatched to China in connection with the China Affair would be withdrawn within two years following the restoration of peace between Japan and China in accordance with the agreement to be entered into between Japan and China, except those in specified areas in North China and Mengchiang, as well as Hainan Island, which would be stationed for such period as may be necessary. In regard to French Indo-China, it was revised to stipulate that Japan respects the

territorial integrity of French Indo-China, and that the Japanese troops dispatched thereto will be withdrawn immediately upon either the settlement of the China Affair or the establishment of peace in East Asia on an equitable basis. The Imperial Conference of 5 November decided upon the above.

"In accordance with the decision, the Government instructed Ambassador NOMURA to convey to the United States that Japanese-American relations, which were on the verge of collapse, could be saved in the pressing circumstances only through the consummation of the negotiations on the basis of the present proposal, and that it was earnestly desired that the United States should, in view of the greatest possible concessions which the Japanese Government had made in spite of every difficulty, sincerely reconsider the situation and cooperate with Japan for the sake of the peace of the Pacific. The negotiations were continued in Washington thereafter; but meanwhile I had frequent conversations in Tokyo with the American and British Ambassadors with a view to urging the negotiations. Ambassador NOMURA, beginning with the interview with Secretary of State Hull on the 7th, met President Roosevelt on the 10th, and Secretary Hull on the 12th and the 15th, earnestly endeavoring to promote the

negotiations. Meanwhile, in consideration of the serious situation, the Japanese Government on the 5th dispatched Ambassador KURUSU to the United States with a view to exhausting every possible diplomatic effort. He arrived at Washington on the 15th, and, assisting Ambassador NOMURA, participated in the negotiations after the 17th. The negotiations were then already in full swing. From the 7th onward, the United States was putting questions about various points as if to sound the true intention of Japan. The United States, who had insisted on the overthrow of Hitlerism, demanded that Japan should give up the policy of force. She seemed to be still apprehensive of the policy of Japan in connection with the Tripartite Pact, and requested that Japan should reaffirm her peaceful intentions, as stated in the aforementioned statement of the Japanese Government on 28 August. Moreover, she repeatedly urged that there would be no need for Japan to maintain the Tripartite Pact after the consummation of a Japanese-American agreement, and expressed her desire that that treaty should cease to exist or become a dead letter. As regards the principle of non-discrimination in international trade, the United States desired to drop the condition which we proposed, that the principle be applied uniformly to the whole world, urging that she had

striven for the restoration of freedom of trade. At the same time, the United States proposed separately 'the Joint Declaration on Economic Policy', and suggested that the countries should cooperate in restoring free trade in the whole world; that the normal commercial relations between the two countries be restored through conclusion of a Japanese-American commercial agreement; that, as to China, complete control over her economic, financial and monetary affairs should be restored to her; and that a comprehensive program of economic development should be inaugurated in China under international cooperation. With regard to the withdrawal of Japanese troops from China, the United States made no special argument, but only showed disapproval of the permanent or indefinite stationing of them. It proposed, however, to employ good offices for direct negotiations between Japan and China, provided Japan would adopt a peaceful policy.

"The Japanese Government replied that our proposal of 25 September comprehended all the points which the United States desired Japan to confirm in connection with its statement of peaceful intentions of 28 August, and that the present Cabinet naturally had no objection to confirming them. With respect to

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the qualification of the principle of non-discrimination, an answer was made that Japan desired its application throughout the world, and that it would recognize the application of the principle to China depending upon the realization of that desire. And with respect to the American proposal for the joint international development of China, the Japanese Government replied that it was unacceptable to Japan as it disregarded the actual state of affairs in China and would open the way for the joint international control of that country. It was also replied that Japan had no objection to the American good offices for peace between Japan and China. It was at this stage that Ambassador KURUSU joined in the negotiations. Ambassadors NOMURA and KURUSU met President Roosevelt on the 17th, and had interviews with Secretary Hull on the 18th, the 20th, the 21st, the 22d and the 26th. In the interviews of the 17th and the 18th, however, the President stated that he desired peace between Japan and the United States, and that he had no intention either to intervene or to mediate between Japan and China, but wanted only to be an 'introducer' between them. On the other hand, the Secretary of State emphasized that the Japanese-American negotiations

would prove difficult as long as Japan cooperated with Germany, and dwelt upon the necessity of removing that fundamental difficulty. After exhaustive discussions it became clear that the difficulty lay as before in the questions of the Tripartite Pact, the principle of non-discrimination, and China. Thereupon, the Japanese Government presented on the 20th a new proposal which simplified the previous proposal full of propagandistic tone, on the basis of which the negotiations had so far been conducted; eliminated the question of the principle of non-discrimination, upon which an agreement was not readily to be attained, and also that of the Tripartite Pact, which was left to a future proposal to be made by the United States; and requested the United States simply to refrain from disturbing the peace between Japan and China with a view to leaving the China problem to direct negotiation between Japan and China. The contents of the proposal were as follows:

"1. Both the Governments of Japan and the United States undertake not to make any armed advancement into any of the regions, excepting French Indo-China, in the South Eastern Asia and the Southern Pacific area.

"2. The Governments of Japan and the United

States shall cooperate with a view to securing the acquisition of those goods and commodities which the two countries need in the Netherlands East Indies.

"3. The Governments of Japan and the United States mutually undertake to restore their commercial relations to those prevailing prior to the freezing of the assets. The Government of the United States shall supply Japan a required quantity of oil.

"4. The Government of the United States undertakes not to indulge in measures and actions prejudicial to the endeavors for the restoration of general peace between Japan and China.

"5. The Japanese Government undertakes to withdraw troops now stationed in French Indo-China upon either the restoration of peace between Japan and China or the establishment of an equitable peace in the Pacific area.

"The Government of Japan declares that it is prepared to remove the Japanese troops now stationed in the southern part of French Indo-China to the northern part of the said territory upon the conclusion of the present agreement.

"Regarding the above proposal, the United States contended that it was impossible to cease aiding the Chiang Kai-shek regime unless Japan clarified her relations with the Tripartite Pact and gave assurance regarding her adoption of a peaceful policy, and that the President's offer of being an 'introducer' presupposed Japan's adoption of a peaceful policy. Thereupon, we requested reconsideration of the United States, pointing out that it was self-contradictory that the United States should, after the commencement of the Japanese-Chinese direct negotiations through the introduction of the President as proposed by the United States, continue aid to the Chiang Kai-shek regime, thereby interfering with the peace between the two countries, the United States being an intermediary of peace. Nevertheless, the United States failed to show any sign of concession, refusing to give up aid to the Chiang Kai-shek regime and repeating her assertions concerning the Tripartite Pact, although she stated that she had no objection to Japan's and the United States' holding leadership in East Asia and in the Western Hemisphere respectively, and that she desired the amicable conclusion of the Pacific agreement.

"Meanwhile, the United States Government consulted with the representatives of Britain, Australia, the Netherlands and Chungking, and Secretary Hull stated on the 22nd that the above Powers, though they considered it possible to restore the normal relations of international trade if Japan's adoption of a peaceful policy was ascertained, seemed to intend to realize it gradually, and that the withdrawal of troops from southern French Indo-China alone would not be enough, according to their opinions, to ease the tense situation in the Southern Pacific. He further revealed that he considered the time not yet ripe for the President's acting as 'go-between' of peace between Japan and China.

"The United States Government continued consultations with the representatives of the Powers above referred to, and Secretary Hull told our two ambassadors on the 26th that, although the United States had carefully studied the Japanese proposal of the 20th and had consulted with the countries concerned, she could not unfortunately agree to our proposal, and presented the following new proposals as being a compromise plan between the American June proposal and our September proposal. The first

proposal was a request for confirmation of the so-called Four Principles (item 4 thereof was altered to the principle of reliance upon international cooperation and conciliation for the prevention of controversies). It was proposed secondly as the basis for future negotiations that the two governments should undertake the following:

"1. The Government of the United States and the Government of Japan will endeavor to conclude a multilateral non-aggression pact among the British Empire, China, Japan, the Netherlands, the Soviet Union, Thailand and the United States.

"2. Both Governments will endeavor to conclude among the American, British, Chinese, Japanese, the Netherlands and Thai Governments an agreement whereunder each of the Governments would pledge itself to respect the territorial integrity of French Indo-China and, in the event that there should develop a threat to the territorial integrity of Indo-China, to enter into immediate consultation with a view to taking such measures as may be deemed necessary and advisable to meet the threat in question.

"Such agreement would provide also that each of the Governments party to the agreement would not seek or accept preferential treatment in its trade or economic relations with Indo-China and would use its influence to obtain for each of the signatories equality of treatment in trade and commerce with French Indo-China.

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"3. The Government of Japan will withdraw all military, naval, air and police forces from China and from Indo-China.

"4. The Government of the United States and the Government of Japan will not support -- militarily, politically, economically -- any government or regime in China other than the National Government of the Republic of China with capital temporarily at Chungking.

"5. Both Governments will give up all extraterritorial rights in China, including rights and interests in and with regard to international settlements and concessions, and rights under the Boxer Protocol of 1901.

"Both Governments will endeavor to obtain the agreement of the British and other Governments to give up extraterritorial rights in China, including rights in international settlements and concessions and under the Boxer Protocol of 1901.

"6. The Government of the United States and the Government of Japan will enter into negotiations for the conclusion between the United States and Japan of a trade agreement, based upon reciprocal most favored-nation treatment and reduction of trade barriers by both countries, including an undertaking

by the United States to bind raw silk on the free list.

"7. The Government of the United States and the Government of Japan will, respectively, remove the freezing restrictions on Japanese funds in the United States and on American funds in Japan.

"8. Both Governments will agree upon a plan for the stabilization of the dollar-yen rate, with the allocation of funds adequate for this purpose, half to be supplied by Japan and half by the United States.

"9. Both Governments will agree that no agreement which either has concluded with any third powers shall be interpreted by it in such a way as to conflict with the fundamental purpose of this agreement, the establishment and preservation of peace throughout the Pacific area.

"10. Both Governments will use their influence to cause other governments to adhere to and to give practical application to the basic political and economic principles set forth in this agreement.

"Regarding the above proposal, our Ambassadors pointed out its unreasonableness, and strongly contended against it, but Secretary Hull did not show any sign of concession, it was reported. On the

27th the President, in an interview with our two Ambassadors, told them that, although he still hoped for an amicable conclusion of the Japanese-American negotiations, he considered, on the basis of the latest information, that there was danger that cold water would be dashed upon the United States for the second time, just as had been done in last July by the advance of Japanese troops into the southern part of French Indo-China, and that it would be futile to try to surmount the crisis by a modus vivendi if the fundamental policies of the two countries were not in accord.

"It is true that the American proposal contained some acceptable items, such as those concerning international trade (Items VI, VII, VIII) and the abolition of extraterritorial rights in China (Item V) but the items concerning China and French Indo-China (Items II, III) the nonrecognition of the Nationalist Government of China (Item IV) the disapproval of the Tripartite Pact (Item IX) and the conclusion of a multilateral nonaggression pact (Item I) are all unacceptable for Japan. In fine, this proposal is unreasonable, constituting a marked retrogression from the previous proposals of the United States and entirely disregarding the course

of negotiations for over half a year.

"In short, the United States Government has persistently adhered to traditional ideas and principles, disregarded the actual situation in East Asia and tried to force Japan to act on those principles which the United States herself would not observe. Throughout the present negotiations, lasting for the past seven months, the United States has made no concessions from her original stand, in spite of the various concessions made frequently by Japan.

"It has been a consistent policy of the United States to obstruct Japan's efforts toward the establishment of the new order in East Asia, which constitutes our immutable national policy. If we accepted the present proposal of the United States, Japan would be in an international position inferior even to that which it had held before the outbreak of the Manchurian incident, and its very existence would also be endangered.

"1. China under the rules of Chiang Kai-shek would become even more disposed to depend upon Britain and the United States, and Japan would have to break its faith with the National Government of China. The friendly relations between Japan and

China would be ruined for years to come. Japan would be compelled to retreat completely from the continent; the status of Manchoukuo would accordingly be exposed to all dangers; and we would lose all means to carry through the China Affair.

"2. Britain and the United States would reign over these areas as leaders. Japan would entirely lose its authority as well as its position as the stabilizing power of East Asia, and the work of establishing the new order in East Asia would collapse midway.

"3. The Tripartite Pact would become a mere scrap of paper, and Japan would have to forfeit its national good faith.

"4. The design to restrain Japan by the organization of a collective machinery of Powers, with the Soviet Union as a new member, would increase the menace on our northern frontier.

"5. As to such principles as that of non-discrimination in trade, they are not necessarily to be excluded. However, it is only to carry through their selfish policy that Britain and the United States intend to apply these principles exclusively to the Pacific area, and Japan would have to face great difficulties in obtaining essential goods and

materials which she requires.

"All things considered, the above proposal is utterly unacceptable for Japan, and we cannot help recognizing that, unless the United States wholly withdraws it, it is almost impossible to realize fully our claim by continuing the negotiation further upon the basis of the present proposal."

Resuming the affidavit:

"With respect, however, to the date of and the procedure for commencement of hostilities, there was no discussion or decision on that day.

"The question of the procedure for opening hostilities first came up for discussion at the Liaison Conference of the following day, 2 December. On that occasion the Foreign Minister said that the government must follow the usual procedure and formalities for opening hositilities. Discussion followed, and the Foreign Minister finally said that it was essential that at the least a notification of termination of the negotiations be given prior to the initiation of hostilities. He referred, in this connection, to the telegram from Ambassador NOMURA to the same effect, defense document No. 1401-X-2," which is now exhibit 2949, and from which I read the unread portion:

"As the United States made this proposal after

suspension of the negotiations in the past. Our resorting to free action without taking steps to terminate the negotiations not only would be utilized for counter-propaganda against us, but would prejudice the good faith of Japan as a world power. Such steps, however, involve matters of military secrecy. It is considered advisable that the negotiations be terminated, depending upon the decision of the Government, either by notification to the American Ambassador in Tokyo, by an open declaration, or by any other means. In any case I should like to be informed in advance so that I can give notification here simultaneously.

"As I am seeing the President soon, I should like to be instructed immediately if there is anything which I should bear in mind."

Reverting to the affidavit:

"The conference adjourned on that day without arriving at any conclusion.

"It was at the Liaison Conference of 3 December that the result of further discussions was embodied in a decision concerning the procedure for opening war, the decision being that a notification closing the negotiations would be given at Washington. I had drafted the notification in accordance with the

having conferred with the countries concerned, in accordance with her long-standing position and because of our request to obtain their concurrence, we must maintain close vigilance regarding their intentions. On the other hand, we have, in accordance with your instructions, pressed them only for speedy conclusion of the negotiations, and have not, therefore, expressed anything in the nature of an ultimatum. Moreover, the situation is such that the President, at the meeting of the 17th, said that there can be 'no last word.' In such circumstances, if we resort to freedom of action after the time set without in some way terminating the present negotiations, it is very likely that the United States, taking advantage of the fact that she is at present conferring with the countries concerned, will make propaganda that Japan prolonged the negotiations with the aim only of gaining time for preparing for a definite course of action and launched on the planned action upon completion of the preparation even while the negotiations were still being carried on, thereby shifting to us the responsibility for the rupture of the negotiations. It should be recalled in this connection that the United States blamed our advance into French Indo-China for the

suspension of the negotiations in the past. Our resorting to free action without taking steps to terminate the negotiations not only would be utilized for counter-propaganda against us, but would prejudice the good faith of Japan as a world power. Such steps, however, involve matters of military secrecy. It is considered advisable that the negotiations be terminated, depending upon the decision of the Government, either by notification to the American Ambassador in Tokyo, by an open declaration, or by any other means. In any case I should like to be informed in advance so that I can give notification here simultaneously.

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Reverting to the affidavit:

"The conference adjourned on that day without arriving at any conclusion.

"It was at the Liaison Conference of 3 December that the result of further discussions was embodied in a decision concerning the procedure for opening war, the decision being that a notification closing the negotiations would be given at Washington. I had drafted the notification in accordance with the

decisions of various Liaison Conferences; my draft had been submitted to the Army and Navy Ministries, who made some suggestions and changes, and it was then brought to the Liaison Conference of 4 December and copies submitted to the participants, and in its final form was approved by the Conference (exhibit 1245-K). The Foreign Minister told me later that he had also reported the gist of it to the Cabinet meeting of 5 December. It was the belief and conclusion of the participants in the Liaison Conference that the intention not only of breaking off the negotiations but of severing relations and going to war was, in the circumstances then prevailing, clearly expressed in the concluding words of the document: 'Thus, the earnest hope of the Japanese Government to adjust Japanese-American relations and to preserve and promote the peace of the Pacific through cooperation with the American Government has finally been lost. The Japanese Government regrets to have to notify the American Government that in view of the attitude of the American Government it cannot but consider that it is impossible to reach an agreement through further negotiations.'

"22. At the Liaison Conference of 6 December the time for delivery of the notification to the

American Government was fixed. It was reported by the Foreign Minister that the decision was to deliver the notification at 1 P. M., Washington time, 7 December, which would be in advance of the commencement of hostilities. No members of the Liaison Conference except those concerned with military operations knew when or where operations would commence; no one of the Foreign Ministry knew, or knew that the fleet had sailed from Hitokappu Bay on 26 November and was approaching Hawaii, or was informed of any of the other strictly secret operational plans.

"The Foreign Minister thereafter ordered me to send the text of the notification ahead of time, to insure its delivery at the time appointed, and we arranged most carefully that it should reach the embassy in Washington in ample time to be delivered to the American Government without fail at 1 P. M. on 7 December. The time of dispatch being also a matter of concern to the Navy, it was after consultation with the Navy officials concerned that the earliest time for dispatching the message was decided.

"23. Japan did not notify Britain in advance of the commencement of hostilities. The Foreign Minister had long been solicitous over Anglo-Japanese relations, and had repeatedly attempted to induce the

British Government to participate in the Washington negotiations. Ambassador NOMURA had been directed to urge the United States to take necessary steps to have the British and Dutch Governments sign an agreement simultaneously with the United States, defense document No. 1401-C-2," which I offer in evidence.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1401-C-2 will receive exhibit No. 2956.

(Whereupon, the document above referred to was marked defense exhibit No. 2956 and received in evidence.)

MR. BLAKENEY: I read the exhibit, which is a telegram from TOGO to NOMURA, 4 November 1941.

"Reference to my telegram No. 725.

"As Britain is a de facto contracting party to the present negotiations, and in view of the circumstances that she possesses extensive rights and interests in the Far East, it has to be noted that, when the proposed terms of understanding (this with respect to both Proposals 'A' and 'B') are to be carried into execution, not only Britain, but also the Netherlands, must be in a position to carry them out. Unless there is a definite guarantee on this point, Japan cannot rest assured by the mere fact of having reached an understanding with the United States Government. It is necessary that Britain and the Netherlands should simultaneously concur in the Japanese-American agreement with regard to the matters concerning those two countries. Accordingly, you are directed to approach the United States to have her take necessary steps in order to obtain from the two countries assurances of their concurrence in the agreement, and cable the results."

Returning to the affidavit:

"The Foreign Minister had discussed the matter personally with Ambassador Grew, in Tokyo

(defense document No. 1400-Z-6)," which is now exhibit No. 2918, and to which reference is made.

"He also requested Ambassador Craigie to have the British Government make a positive effort for the conclusion of the negotiations, informing him of the acute situation (defense document No. 1401-G-3)," which I offer in evidence.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1401-G-3 will receive exhibit No. 2957.

(Whereupon, the document above referred to was marked defense exhibit No. 2957 and received in evidence.)

MR. BLAKENEY: The exhibit is a telegram from TOGO to NOMURA, dated the 3d of November, 1941.

"(1) On the occasion of my interview with the Diplomatic Corps on 30 October, while having a talk with the American Ambassador in Tokyo, I expressed my regret over the recent aggravation of the tense relations between Japan and the United States and pointed out the danger that things might, if left alone, have serious consequences. I called his attention to the fact that the Japanese nation had become impatient with the slow progress of the negotiations which had dragged on for six months and I expressed

my desire to bring them to a conclusion promptly, and requested further cooperation on the part of the American Ambassador. I emphasized that, in order to break the deadlock, the American Government also should consider some measures for the settlement of the matter fitting to the actual situation of the Far East, without clinging to theories.

"I referred, by way of explaining the complicated circumstances of the Far East, to the problem of the withdrawal of Japanese forces from China, pointing out that there were certain countries besides Japan whose forces were actually stationed in China, and also to the situation in Outer Mongolia where the Soviet Union had stationed forces of considerable strength in spite of the fact that China regarded it as a part of her territory, and requested that the American Government should recognize the real state of affairs there and fully understand the Japanese viewpoint. The American Ambassador listened to my opinion, promised to cooperate, and replied that it was desirable to proceed with the negotiations simultaneously in Tokyo and in Washington.

"(2) When the British Ambassador called on me for some other business on the 29th, I told him that the attitude of the United States tends to be so

doctrinarian and unrealistic that there is at present little prospect of success of the negotiations, and the situation is one of deep concern; that should the negotiations end in failure the development of the situation would be unpredictable, and that inasmuch as such development would not be in the interest of Great Britain, who has important rights and interests in the Far East, it would be proper for her to strive at this moment for the improvement of Japanese-British-American relations and the maintenance of world peace. The Ambassador promised that he would immediately transmit the matter to his Government, and left. When I saw the Ambassador on the 30th I repeated to him to the same effect and impressed upon him that the situation is very acute and allows of no further procrastination.

"Transmit to London."

Returning to the affidavit:

"The British Ambassador, however, advised the Foreign Minister that his Government felt that it should entrust the negotiations to the United States Government for the time being (exhibit 1174). Meanwhile, repeated telegrams of Ambassador NOMURA reported that the United States Government was carrying on careful consultation, through their representatives

in Washington, with the Governments of Britain, the Netherlands and China (exhibit 1184, defense document No. 1401-V-2)" which is exhibit No. 2948. "At that time it was considered by the Japanese circles concerned that the British Government's attitude toward the Japanese-American negotiations -- which had close connection with the important British interests in East Asia -- was one of the proofs that America and Great Britain were adopting a united front against Japan in East Asia, as they were in respect also of the European war. It was also taken into consideration that Prime Minister Churchill had on 10 November already in effect committed Great Britain to going to war with Japan automatically upon an outbreak of hostilities between the United States and Japan (defense document No. 478-B)," which is offered in evidence.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 478-B will receive exhibit No. 2958.

(Whereupon, the document above referred to was marked defense exhibit No. 2958 and received in evidence.)

MR. BLAKENEY: The prosecution advises me that they believe this speech to have been placed in

evidence by the prosecution.

THE PRESIDENT: We have read it somewhere in the evidence.

MR. BLAKENEY: But Mr. Comyns Carr is not sure whether the precise excerpts have been placed in evidence.

THE PRESIDENT: It is a familiar statement.

MR. BLAKENEY: I suggest if it is in evidence I be permitted to read these excerpts.

THE PRESIDENT: We notice at the top, "Exhibit No. 2324." What is that?

MR. TAVENNER: That is the point we desire to call to the Tribunal's attention, and we thought it meant that it was an exhibit formerly introduced.

THE PRESIDENT: 2324 is tendered for identification only.

MR. BLAKENEY: I seem to remember tendering this book for identification on a different matter. I do not think it included this feature in any way.

May I read the exhibit?

THE PRESIDENT: Our familiarity with this does not mean it is already in evidence, because we cannot help knowing these things. We read them before we came to Japan.

A colleague tells me that the first part

appears in telegrams between New York and Tokyo; that the second part is new as far as the evidence goes. Perhaps you had better tender the lot and save time.

Admitted on the usual terms.

MR. BLAKENEY: I read the exhibit, which is an excerpt fromm a speech by Winston Churchill appearing in "Speeches by British Leaders."

"The United States' time-honored interests in the Far East are well known. They are doing their utmost to find a way of preserving peace in the Pacific. We do not know whether their efforts will be successful, but if they fail, I take this occasion to say -- and it is my duty to say -- that should the United States become involved in war with Japan the British declaration will follow within the hour.

. . . . . .

"...I hope devoutly that the peace of the Pacific will be preserved in accordance with the known wishes of the wisest statesmen of Japan, but every preparation to defend British interests in the Far East and to defend the common cause now at stake has been, and is being, made."

Returning to the affidavit:

"In such circumstances it was considered by the Liaison Conference that as a matter of course the

Government of the United States would notify that of Great Britain immediately upon receipt of the notification of termination of negotiations, and that the delivery of a notice additionally to Great Britain was unnecessary.

"Consular Reports of Shipping.

"24. Consuls stationed abroad had the duty of reporting, from time to time, such information concerning the politics, economy, finance, military affairs and other matters of interest pertaining to the places where they were stationed as they considered of interest to the Japanese Government. With respect to such affairs, other government offices frequently requested the use of the organization and facilities of the Foreign Ministry for investigations which they desired to conduct; when such requests were received, the Foreign Ministry dealt with them as routine business, instructions from the appropriate bureau or section going to the consuls to make the required investigations and report. These instructions, like all instructions to consuls, ministers and ambassadors, were always issued in the name of the Foreign Minister; but in actuality, not being Foreign Ministry business, they were never seen by the Foreign Minister, but were sent round to the Cable Section

for dispatch with the approval of the chief of the appropriate bureau or section, or even at times of a competent secretary.

"It was in accordance with this system, which had prevailed for many years, that at the request of the Navy in 1941 consular reports on merchant and naval shipping of the United States, the Netherlands and other nations were requested and obtained from consuls. This type of message went not only to Honolulu (exhibits 1254, 1256-1264) and to Batavia (exhibit 1330), but as well to Portland, Seattle, Vancouver, Panama, Manila and elsewhere. These reports were handled as routine, and naturally neither the requests nor the reports -- which were transmitted direct to the naval officials who had asked for them -- underwent inspection by the Foreign Minister."

If the Tribunal please, I should like to ask one or two additional questions.

THE PRESIDENT: What has happened to defense document 1401-Z-1?

MR. BLAKENEY: That is what I wish to ask the questions about.

BY MR. BLAKENEY (Continued):

Q Mr. Witness, can you recall having received a report from Ambassador NOMURA in October 1941, in

which he reported as follows: that Minister WAKASUGI had had an interview with Under Secretary Welles at which some suggestion was made concerning future negotiations?

A Yes, I do recall a telegram to that effect from the United States.

MR. BLAKENEY: Please let the witness be handed defense document No. 1401-Z-1.

Q Please look at the document which is being handed to you, and state whether you can recognize it as the report in question.

A This is the document which I recall.

Q Was this report called to the attention of the Liaison Conference?

A This report was brought to the attention of the Liaison Conference about the end of October, which said conference was in the midst of drawing up concrete proposals vis-a-vis the Japanese-American negotiations.

THE INTERPRETER: Correction: "This telegram arrived at the end of October, when," etc.

A (Continuing) As for us, after reading the statements made by Welles in the report, we felt that it would be difficult to reach -- arive at any solution of the pending issues between the two

countries by discussing the problems as a whole, and and that it would be more advisable to take problems which are possible of solution one by one; and this report was used as a convenient reference in formulating or drawing up Japan's draft of the proposal in drafting Proposal "A".

MR. BLAKENEY: I offer in evidence the document, defense document 1401-Z-1.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1401-Z-1 will receive exhibit No. 2959.

(Whereupon, the document above referred to was marked defense exhibit No. 2959 and received in evidence.)

THE PRESIDENT: This will take a long time to read. What follows this phase, Major Blakeney, this subdivision?

MR. BLAKENEY: Do you mean what follows my subdivision?

THE PRESIDENT: Yes.

MR. BLAKENEY: The military subdivision, I understand, follows.

THE PRESIDENT: We will recess for fifteen minutes.

(Whereupon, at 1045, a recess was

taken until 1100, after which the proceedings were resumed as follows:)

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

THE PRESIDENT: Major Blakeney.

MR. BLAKENEY: I was about to read exhibit 2959, which is a telegram:

"From NOMURA to TOGO

"24 October 1941

"Reference to your telegram No. 698.

"WAKASUGI talked with Welles for an hour from 3:30 P.M. on the 24th.

"In accordance with your telegram, WAKASUGI said that the new Japanese Cabinet has as earnest a desire as the last Cabinet to arrive at a fair and equitable adjustment of Japanese-American relations, that Japan's position had already been made clear, and that, although no detailed instructions had yet been received from the home government, WAKASUGI might say that, according to what he himself observed during his recent visit to Japan, the circumstances did not permit of any further indefinite protraction of the present conversations, it being desirable to arrive at a conclusion as soon as possible and without even a day's unnecessary delay. WAKASUGI then asked for the presentation of the United States counter-proposal in response to the Japanese proposal of 25 September.

"Welles asked about the intentions of the new Cabinet in regard to the continuance of the present negotiations. Simultaneously, he pointed out that lately persons in responsible positions in Japan had been making bellicose statements:. for example, the Navy spokesman had said in a statement that the Japanese Navy was 'itching for action;' and that the newspapers, etc., were vehemently attacking the United States. This fact, he pointed out, seriously irritated the Government and people of his country, and was injurious to the continuance of the present negotiations.

"WAKASUGI countered by saying that there were not a few influential statesmen in the United States, including for example, Senator Pepper, who were making vehement attacks on Japan. Above all, Secretary of the Navy Knox had said in a speech today that not only was a Japanese-American war unavoidable, but the clash was imminent. There were many such bellicose utterances in the United States, and the Government and people of Japan were being no less irritated by them. Welles made repeated explanations to get WAKASUGI to understand that the speech of the Secretary of the Navy was not really so vehement, the press reports of it being merely exaggerations of its fragments; and that the Secretary of the Navy, as the

highest person responsible for the Navy, the greatest force in the United States, was now and then using strong language in an attempt to encourage the Navy.

"Welles proceeded to say, with regard to the counter-proposal of the United States, that, as repeated at the previous talk, the principles and the counter-proposal of the United States were clear in the proposal of 21 June. One idea might be to attempt oral adjustment between the United States and Japanese proposals, but, according to the experience of informal conversations carried on, merely to stick to the formula hitherto followed and discuss it by items would lead only to a repetition of the same arguments as has already been made, and render it difficult to achieve progress in the negotiations. As had been said at the previous talk in the presence of Secretary Hull, it might therefore be a quicker was to make a fresh survey by a new formula consisting of taking up matters of a general character, such as the three problems, and in endeavoring to reach an agreement of views on them one by one, beginning with those which were comparatively easier of settlement. For this purpose, the question of non-discrimination in trade, on which it should be comparatively easier for both sides to reach an agreement of views, might first be

taken up (Whereupon Welles asked whether what had been emphasized by Hull at the previous talk had been communicated to the home government, and WAKASUGI replied that details thereof had been reported.) Secondly, the question of obligations under the Tripartite alliance might be discussed. To this question Welles referred in terms which might be taken as revealing the possibility of an adjustment on the United States side itself. Next, the China question might be talked over. Thus Welles made a new proposal in the negotiations, and showed an attitude indicating a marked desire to promote a compromise.

"WAKASUGI, in reply, said that today he was not at liberty to add anything to the Japanese proposal of 25 September, because no detailed instructions had yet been received from the home government. It was desirable, however, that, with regard to the new method of approach proposed by Welles, a proposal be formulated by the United States side and presented at the next talk. A study of this new approach would also be made by the Japanese side.

"With regard to the question of release of the frozen funds of the two Japanese tankers, referred to at the last talk, and of the two mail ships dispatched at this time, Welles said that steps had

forthwith been taken at the time. At the Treasury Department, the necessary steps had already been taken in regard to the three mail ships. As for the tankers, there were strict regulations concerning United States banks.../two words undecipherable/ the protection of bank depositors. Once funds had been put in an account at the Yokohama Specie Bank, it was difficult to release such frozen funds, no matter whether they were funds which had been in that bank previously or were remittance drafts just received from another country. If, therefore, the funds in question were made into drafts via United States banks, the State Department would do all in its power to meet the request.

The last-mentioned matter is again to be talked over with Financial Attache NISHIYAMA."

That concludes the general direct examination, and I understand that there will be further direct examination on behalf of three defendants, the first of whom, I believe, is Dr. KIYOSE on behalf of the defendant TOJO.

THE PRESIDENT: Dr. KIYOSE.

DIRECT EXAMINATION (Continued)

BY DR. KIYOSE:

Q I refer to page 1, towards the end of page 1 of the affidavit, of the English affidavit. In

paragraph 2, you state, "In October 1941 I was told by Foreign Minister TOYODA that War Minister TOJO had upon the demand of the High Command made a strong request to Premier KONOYE and the Foreign Minister to present by the 15th or thereabouts their opinions on the pending problems of the Japanese-American negotiations." Where was this demand of the High Command made?

A I heard that the request of the High Command was made of Foreign Minister TOYODA at the Liaison Conference at the time.

Q Then, since Foreign Minister TOYODA himself was present at the Liaison Conference, may I understand that he did not necessarily have to hear this demand from War Minister TOJO but could have heard it direct from the Chief of the General Staff or other members of the General Staff?

THE MONITOR: The Chief of the Army General Staff or the Chief of the Navy General Staff.

A Yes.

Q Next, towards the middle of page 2 of the English text, I refer to your statement that the question of the withdrawal of troops from China -- the question of the stationing of troops in China was discussed at the Liaison Conferences held at that

time.

THE MONITOR: Between the 23rd of October and early November.

Q Were there not other important matters, from the standpoint of national defense, argued by the two Chiefs of Staff, that is to say, the Chief of the Army General Staff and the Chief of the Navy General Staff at that time?

A Yes, very serious discussions were held with regard to military materials, especially synthetic oil or liquid fuel.

Q As my last question, I refer to page 12 of the English affidavit. At the top of the page you refer to the fixing of the time for delivery of the notification to the American Government. Was this matter actually decided at the Liaison Conference itself or was it decided elsewhere?

A With reference to this question, at first the matters were discussed between the Foreign Minister and representatives of the High Command, and the results of their discussions were reported and received the approval of the Liaison Conference itself.

DR. KIYOSE: That concludes my direct examination.

MR. KAINO: I am counsel KAINO, representing the defendant SUZUKI.

THE PRESIDENT: Counsel KAINO.

DIRECT EXAMINATION (Continued)

BY MR. KAINO:

Q My questions will refer to paragraphs 21 and 22 of your affidavit -- to the numbered paragraphs 21 and 22.

Was the final note of December 8 made -- were the contents of the final note of December 8 made known to persons other than the actual drafters of the note?

THE MONITOR: Participants in the liaison conference previous to December 8.

A No, they were not known to others outside of these parties.

Q Do you remember who attended the liaison conferences after December 2nd?

A I have no concrete recollection.

MR. KAINO: That is all.

MR. SHIMANOUCHI: I am SHIMANOUCHI.

THE PRESIDENT: Counsel SHIMANOUCHI.

MR. SHIMANOUCHI: I represent the defendant OSHIMA.

DIRECT EXAMINATION (Continued)

BY MR. SHIMANOUCHI:

Q Did the Foreign Office convey to Ambassador OSHIMA in Berlin the decisions of the Imperial Conferences of 1941 and the Liaison Conferences held in that year?

A He was not notified.

Q Did or did not the Foreign Office convey to Ambassador OSHIMA in Berlin the course of the Japanese-American negotiations of 1941?

A I recall that a very simple notification was given to the Ambassador with regard to the fact that Japanese-American negotiations were under way by Foreign Minister MATSUOKA in May, 1941.

Q Were no other notifications made?

A I recall that instructions were sent in the end of November with respect to "no separate peace" -- the question of "no separate peace."

Q There were no other notifications made to Ambassador OSHIMA in regard to the Japanese-American negotiations?

A I have no recollection.

Q At the Liaison Conference held in 1941 between the Government and the High Command, were the thoughts -- were the opinions of Ambassador OSHIMA ever discussed or were they ever taken up as problems there?

A Reports from the field with regards to the

military situation were brought up at the Liaison Conference, but other than that he did not come up for discussion.

Q What was the extent of the argument in the Liaison Conference?

THE PRESIDENT: Oh, that is too indefinite.

Q Were there hot discussions at the -- Were there heated discussions at the Liaison Conference or were decisions arrived at rather simply?

THE PRESIDENT: Even that won't help. Those are not sensible questions.

Q At the Liaison Conference deciding on the opening of the Pacific War, were Ambassador OSHIMA's opinions ever discussed or were they taken up as a problem?

A They had never been brought up for discussion or as a question. It was not brought up for discussion in any form.

Q Did the Foreign Minister ever inform Ambassador OSHIMA of the decision to open war prior to the actual opening of hostilities in the Pacific Area?

A I recall that no notification was sent.

Q According to your affidavit Foreign Minister TOGO stated that in the event of war with America,

Japan could expect no help from Germany -- in the event of a Pacific war Japan could expect no help from Germany. What were the opinions of the Army and Navy High Command at the Liaison Conference in regard to this question?

A At the Liaison Conference the Army and Navy High Command were both in agreement with Foreign Minister TOGO that not much help or assistance could be expected from Germany.

Q Did the Foreign Office send instructions to Ambassador OSHIMA regarding the conclusion of a "no separate peace agreement"with Germany" just before the outbreak of the Pacific War?

A Yes, instructions were sent.

Q What was the relationship between the Japanese decision to fight, the Germany entry into the war and the "no separate peace agreement with Germany"?

A The proposed agreement for a "no separate peace agreement" had no connection whatsoever with Japan's determination for war.

MR. SHIMANOUCHI: That concludes my direct examination.

THE PRESIDENT: Mr. Brannon.

MR. BRANNON: On behalf of the accused SHIMADA and OKA I wish to cross-examine.

THE PRESIDENT: Oh, that raises a nice question. What came out unexpectedly to the prejudice of either of those accused? We understood you to say or to agree that nothing in that affidavit operated to your prejudice.

MR. BRANNON: According to the rules as I understand them, it specifically provides that defense counsel may cross-examine even the general witnesses for the defense. But, perhaps I am mistaken.

THE PRESIDENT: Those rules do not alter the general position that you cannot cross-examine a witness called for all unless he proves hostile unexpectedly, and, in those circumstances, the Court in the interests of justice allows you to cross-examine.

MR. BRANNON: I certainly can't honestly contend that it is a surprise, because I had the affidavit and I read every word in it. Mr. Levin, I believe, brought up the point the other day that he had understood it to be that he would have the right to cross-examination to indicate his dissent as to certain portions of the testimony.

Reichers & Kapleau

THE PRESIDENT: The position indicated to you was indicated to Mr. Levin.

MR. BRANNON: Well, it is quite possible, Mr. President, I may not proceed wrongly if I state I am asking questions on direct examination.

THE PRESIDENT: You may directly examine but not cross-examine.

MR. BRANNON: I shall attempt to proceed that way.

BY MR. BRANNON:

Q On page 2 of the English version of your testimony, the third paragraph, seventh line, you use the words "and the Naval General Staff." Later you struck these words. Now I want to ask you if you intended to insert these words in the first place in your affidavit or whether that was a mistake.

THE PRESIDENT: That is cross-examination.

MR. BRANNON: I am informed it was an error made by the witness, your Honor, or in the translation, that the words should never have appeared. I am not seeking to challenge his truthfulness.

THE PRESIDENT: What was intended to be excised from this affidavit was carefully considered.

MR. BRANNON: That is the point I am trying to make. Apparently this was an error on the part of

the witness. I want him to admit it, that is all.

THE PRESIDENT: When you are giving evidence on behalf of the accused represented by you, you may call this witness as your witness, subject to the permission of the Tribunal. There is no limit on what we may permit, but we won't permit this man to be cross-examined by you now.

MR. BRANNON: I was merely trying to save time, Mr. President. While he was on the stand I thought I could get my little matters taken care of; but I will reserve it until later.

MR. BLAKENEY: The witness is now available to the prosecution for cross-examination.

CROSS-EXAMINATION

BY MR. TAVENNER:

Q Mr. YAMAMOTO, at the top of page 12 of your affidavit you state that at the Liaison Conference of December 6, 1947, the time was fixed for delivery of notification to the American Government at 1 p. m. on December 7. Now, in reply to a question by Doctor KIYOSE you stated that this matter was discussed between the Foreign Minister and the High Command prior to the Liaison Conference. On how many occasions were those discussions had prior to the Liaison Conference?

A I have stated in my affidavit that the results

of the discussion were reported at the Liaison Conference on the 6th and then there approved. It was on the 2nd of December that the Liaison Conference agreed that with respect to the time for the notification to be delivered, the Foreign Minister and the High Command should consult each other and draw up -- or come to a conclusion on the matter.

Q Now will you please answer my question? How many conferences did the Foreign Minister and the High Command have on this subject prior to the Liaison Conference on December 6?

A I think informal discussions on this question were held twice.

Q What was the date of the second instance you refer to?

A About the 4th or 5th of December.

Q Was it the first occasion or on the second the day of the Liaison Conference that you mentioned a moment ago?

A I recall it as having taken place on the second.

Q Was a tentative decision reached on the 2nd date of the conference?

A On the 2nd it was merely decided that the matter would be left to consultation between the Foreign Minister and the High Command.

Q But you just told me that there were two conferences between the Foreign Ministry and the High Command, the first of which occurred on the 2nd. I am asking you if it is not true that on this date, the 2nd of December, a tentative decision was reached on the question of the time of notification, that is, decision between the Foreign Minister and the High Command.

A The informal decision between the Foreign Minister and the High Command was arrived at separately from the Liaison Conference on the 2nd.

Q I understand that perfectly, but do I understand you correctly also that the decision was reached on the 2nd of December between the Foreign Minister and the High Command?

A Yes, the informal decision, yes, that is, the first decision.

Q And that was the decision which was ultimately reported to the Liaison Conference on December 6, was it not?

A Not so. The results of the consultation between the Foreign Minister and the High Command on the 2nd was reported to the Liaison Conference on the 3rd. At that time the report made was that the time for delivery of notification was 12:30 o'clock. After

that the opinion of the High Command was submitted to the Foreign Office with regard to the delivery time. The result of the original informal decision thus revised was what was reported to the Liaison Conference on the 6th.

Q The hour 12:30 that you mentioned was 12:30 on December 7, Washington time, was it not?

A Yes.

Q And the final date and hour fixed was 1 p. m. December 7, Washington time?

A That is so.

Q Was that the agreement of all who attended the meeting between the Foreign Ministry and the High Command?

A The consultation between the Foreign Office and the High Command on this question was held between the Foreign Minister and the Vice-Chief of the Army General Staff and the Vice-Chief of the Naval General Staff. No others attended.

Q And was the time fixed the common consent of all three representatives at that meeting?

A Before arriving at such a decision Foreign Minister TOGO contended that arrangements should be made so that the delivery of the note would take place sufficiently in advance, and it was after some dis-

cussion that the final agreement was reached.

Q When the final agreement was reached was it with the unanimous approval of the Foreign Minister and the High Command?

A Ultimately the agreed and unanimous opinion was reported to the Liaison Conference on the 6th.

Q Was the action taken also with the unanimous approval of the members of the Liaison Conference on December 6th?

A Yes. They all agreed.

Q Who were the vice-chief of the Army staff and vice-chief of the Navy staff who attended the conference representing the High Command?

A The vice-chief of the Army General Staff was TANABE; and of the Navy, Admiral ITO.

Q Who were those who attended the Liaison Conference of December 6th?

A I don't recall.

Q Who were those who attended on December 2nd or 3rd?

A I have no recollection as to who or how many people attended a conference on a certain date.

Q What reason was assigned for the changing of the hour of notification from 12:30 to 1:00 P.M.?

A I was not informed of the reason at the

time.

Q Will you state what you knew the reason to be?

A Even to this day I do not know anything more than the fact that the revision was made at the request of the High Command.

Q So far as you know, the reason was not associated with the attack on Pearl Harbor, that is, that the reason had nothing to do with the fixing of the time for the attack on Pearl Harbor?

A I never thought or knew whether or not it had anything to do with the Pearl Harbor attack.

Q Will you state whether or not the Foreign Minister told you why the hour was first fixed at 12:30?

A I have never heard of the reason.

Q At the time that this decision was presented to the Liaison Conference on December 6th, will you tell us what the discussion consisted of at that time and place, with reference to the hour for the delivery of the notice?

A On the 6th this was approved without any discussion after the matter had been reported.

Q When the matter was reported the first time to the Liaison Conference on December 3rd, will you

state what the discussion was with reference to the time of notice?

A There was no discussion on the occasion of the meeting on the 3rd of December.

A Did you make any inquiry from any source of the reason for the fixing of the hour of notification as it was fixed?

A I made no inquiry, nor made any attempt to obtain information concerning it.

Q Now why didn't you make inquiry about a matter of such vital importance as that, when you were handling a great deal of the diplomatic correspondence for the Foreign Ministry?

A My position in the Foreign Office was this: that this note would be delivered to the United States prior to the opening of hostilities, sufficiently in advance. Concerning this, when Foreign Minister Togo told me that when they had their conference that he attended, he particularly stressed this point of having this note arrive in Washington on time and sufficiently in advance. This he agreed to.

Q At the time of the Liaison Conference on December 2nd, what reason was assigned for having the Foreign Minister consulted regarding the time of the note?

A The view of the Liaison Conference at that time with respect to this question was that it was proper that this matter first be consulted about between the High Command and the Foreign Minister, who was in charge of diplomatic matters -- that a consultation should first be held between the High Command and the Foreign Minister and there decided.

Q What reason was assigned as to why the conference should be between the Foreign Minister and the High Command?

A The Foreign Minister was the responsible official with regard to diplomatic matters, for instance, with regard to the delivery of the note.

Q But why consult the High Command if that were true?

A I was interrupted in the middle of my reply previously, so I shall continue that, so that I can complete my statement. Diplomatic matters were in the hands of the Foreign Minister, that is, with respect to war, and operations within the hands of the High Command, and it was because of these reasons that these two parties were entrusted with consultation and decision on this matter.

Q I have asked you a simple question a number

of times: What reason was assigned by the Liaison Conference for that act?

A To my knowledge there was no discussion as to what reasons were behind the idea. This step was taken as a matter of course.

THE PRESIDENT: I don't want to break into the cross-examination at a crucial phase, but I don't think that you will be prejudiced now if we recess 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.

THE PRESIDENT: Mr. Tavenner.

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K U M A I C H I Y A M A M O T O, resumed the stand and testified, through Japanese interpreters, as follows:

CROSS-EXAMINATION

BY MR. TAVENNER (Continued):

Q Mr. YAMAMOTO, do you deny that the delay of one-half hour from 12:30 to 1:00 p.m. on July 7 was for the purpose of enabling the Foreign Ministry and the High Command to more nearly synchronize the time between the delivery of that note and the bombing of Pearl Harbor?

THE PRESIDENT: December 7.

MR. TAVENNER: Please substitute the month of December for that of July.

A I deny that it was made for such a purpose.

Q Then why did you state this morning that you did not know the purpose? Explain that, please.

A At that time I heard from Foreign Minister

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Q Then why did you state this morning that you did not know the purpose? Explain that, please.

A At that time I heard from Foreign Minister

TOGO that at the time of his consultation with the Vice Chief of the Naval General Staff he had insisted upon the delivery of the note considerably in advance of the opening of hostilities and that his request on that point was accepted by the Naval High Command. That is all that I heard. Moreover, in order to have you more clearly understand the circumstances at this time, I should like to supplement my remarks made previously.

On the 2d of December when the question of delivering a notification to the United States was brought up at the Liaison Conference for the first time, at this Liaison Conference the Vice-Chief of the Naval General Staff, Vice-Admiral ITO representing the naval branch of the High Command, made a very strong request that in view of the necessity of conducting a surprise attack and inflicting heavy damages upon the enemy at the outset of the opening of hostilities the Naval High Command would like to have the Japanese-American negotiations left alone and unruptured up to the time of the opening of hostilities.

With respect to this matter Foreign Minister TOGO asserted, as I have stated in my affidavit, as follows: that is to say, that Foreign Minister TOGO insisted at the Liaison Conference that international

arrangements for procedure of such kind must be handled with utmost propriety and care and that at least a notification giving notice of the severance of the negotiations was absolutely necessary. As a result of discussions following that in the Liaison Conference and no decision was reached it was decided at the time that this question be left to the Foreign Minister and the Vice-Chief of the General Naval Staff ITO for consultation between the two and that discussion in the Liaison Conference would be resumed following the conference between these two parties. It was also further decided at the Liaison Conference on December 2 that the question as to the time of delivery of the note also should be submitted to preliminary consultations between the Foreign Minister and the High Command and the results reported to the Liaison Conference.

MR. TAVENNER: You have told us all of that this morning. I do not desire for you to repeat testimony that you have already given.

THE PRESIDENT: He gave you some that was cut out and that will now give Mr. Brannon the right to cross-examine, but he is not here.

MR. TAVENNER: I expected to add that, your Honor, to my statement.

Q Therefore, your statement that there was a discussion at the meeting at the Liaison Conference of December 2 that the negotiations were to be carried on with a view of prolonging the time and to give Japan the opportunity to act is true, by a surprise attack?

MR. BLAKENEY: I object to counsel's putting words in the witness' mouth which the witness has never used.

THE PRESIDENT: I can see nothing objectionable.

MR. TAVENNER: Of course, I gave the general meaning of the words. I will now quote the item so that there will be no question about it.

Q Do you now state as being true this proposition: That Admiral ITO, Vice-Chief of the Naval General Staff, urged that negotiations be left unterminated until the belligerent operations actually commenced, it being absolutely necessary to deliver a blow to the United States at the very beginning of the war by a surprise attack?

A That is a fact.

Q Did you assist in the preparation of this note that was delivered on December 7, Washington time?

A Yes, I took part in that work.

Q In how many sections was that note prepared?

THE MONITOR: Mr. Tavenner, do you mean by "section" the offices or part of the document, chapters?

MR. TAVENNER: I mean in how many sections was the note prepared. How many sections comprised the note?

A I have no definite recollections but I think that it was comprised of eleven sections or eleven items.

Q Were there not fourteen parts?

A I think it was in such a condition that it may be broken down, the number of paragraphs which I mentioned could be broken down to around fourteen.

Q What disposition did you make of that note upon its completion?

A What do you mean by disposition of this notice? I should like to have that clarified.

Q After its completion what instructions did you receive about the sending of the note?

A I received the instructions from the Foreign Minister to exercise the utmost care in the filing of the telegram so that it would arrive at its destination at the time decided at the Liaison Conference.

Q Was the entire note sent at one time to Washington?

A The notification was filed to Washington in several sections.

Q Is it not a fact that you delivered instructions that the fourteenth part should be held up and not sent to Washington until some time after the first thirteen had been sent?

A Yes.

Q Why did you direct that the fourteenth part be withheld from dispatch?

A Having received very strict instructions from my seniors to exercise the utmost care and caution because the document was extremely important and constituted and required from the standpoint of the preservation of state secret the utmost care in its handling, and therefore proper steps were taken in filing these in separate sections.

Q Do you contend, then, that by the mere delay in the sending of part fourteen that you were preserving the secrecy of the document?

A No, I do not make such an assertion. I was thinking of the preservation of secrets as regards the entire document.

Q Then why did you delay delivering the fourteenth part?

A I did not specially delay it.

A If you did not specially delay it, tell us to the extent that you did delay it, keeping in mind

that you have already told us that you requested that part of it be delayed.

A What I mean by delayed in this connection is to file it last. However, as regards the entire document, the steps taken were to see that the entire document was telegraphed to Washington considerably in advance of the time which was set for delivery of the note so that the Embassy might prepare it for delivery.

Q You referred to the fourteenth part being the last part, but why did you take the precaution to notify the persons responsible for the sending of the message that the fourteenth part was to be delayed under instructions from your seniors?

A The fourteenth was the last section constituting the entire notice, and also the conclusion of the note.

Q And that is the only reason that the fourteenth part was sent last? Is that the reason that you assign for delay in sending the fourteenth part?

A We handled the entire telegram on the understanding, from the standpoint of the preservation of secrets because we were extremely apprehensive at that time lest the coded telegram be decoded.

Q Now, Mr. YAMAMOTO, you know as a matter of fact that under your directions and as a result of your directions, the sending of the fourteenth part was delayed fifteen hours and forty minutes, do you not?

MR. BLAKENEY: I object to the question unless counsel states from what time he means delayed; from the time of the decision on the notice, from the time of the instructions to send it, or what.

THE PRESIDENT: I understood him to suggest a fifteen hours' delay between the two parts.

MR. TAVENNER: Yes.

THE PRESIDENT: If I am right, the question is clear enough.

MR. TAVENNER: That, of course, is correct, your Honor.

A As I have been saying that there was no intention whatsoever to delay the filing of these telegrams, the question was at what time the telegram in sections must be filed.

Q Now, you told us a moment ago that you directed that the fourteenth part be delayed pursuant to the directions of your seniors. I ask you, was not the real reason for the delay in the sending of

part fourteen that you desired this to be another effort to more nearly synchronize the time of the delivery of this note with the bombing of Pearl Harbor?

A To such a question I should like to state emphatically as follows: The rigid instruction was to have the note filed by telegram to arrive in Washington in the hands of the Japanese Ambassador there sufficiently in advance of 1:00 P. M., December 7, Washington time, at which time the note was to be delivered to the United States Government. To take all possible means to assure the delivery, the arrival of the telegrams at the Japanese Embassy sufficiently in advance of that appointed time, was the duty entrusted to me. That was all; nothing else.

Q You know, as a matter of fact, that the thirteenth part arrived in Washington at 12:20 A. M. on the 7th, Tokyo time, do you not? But you delayed the fourteenth section or part so that it arrived --

I would like to correct my statement.

You know, as a matter of fact, do you not, that this note was sent at -- that is, the first thirteen parts -- at 12:20 A. M., Tokyo time, on the 7th of December, and that you did not send the fourteenth

part until 4:00 P. M. of the 7th, Tokyo time? And you also know, do you not, that it was in this fourteenth part that the entire reference to action by Japan, aggressive action by Japan, was set forth?

A It was only later that I learned of the time when the telegrams arrived in Washington. At that time I did not know. And I do know that the last section of the note was prepared as the conclusion of the entire note conveying to the United States Government the attitude of the Japanese Government, and prepared with utmost care by the Foreign Ministry, and I have no knowledge whatsoever as to whether this, the filing of these notes, had anything to do with actual hostilities, actual acts of hostilities. However, I do remember and I do know that the note, the entire note, was to be delivered in Washington sufficiently in advance of the opening of hostilities.

Q You also know it to be a fact that Ambassador NOMURA was instructed not to use a typist in the transcribing of that note when it was decoded, do you not?

A Yes.

Duda & Spratt

Q You further know that it was the position of Admiral NAGANO that this section 14 was not received in time to enable the decoding and the typing and the delivery of this note within the time before the attack on Pearl Harbor, do you not?

A It was only later that I learned that that was the state of affairs at the time.

Q Now, who were your seniors who directed that you delay the sending of part 14?

A As I have been saying, the 14th section was not delayed; nor was there any intention to delay it. With respect to the cabling of the telegram, the naval high command was extremely interested in this data, and after discussing matters with them and in accordance with the instructions of my seniors to see that the secret was preserved with utmost care in the filing of this message, arrangements were made to send the note, to telegraph the note in sections and at different times.

Q Well, suppose you tell us who your seniors were. That may be shorter.

A My seniors were Foreign Minister TOGO and Vice-Foreign Minister NISHI.

Q You have stated in your affidavit that you attended all the Liaison Conferences during the TOGO

Cabinet, which was from the 18th of October 1941 to a date, I believe, in 1943?

THE PRESIDENT: TOJO, I take it to be.

MR. TAVENNER: In the TOJO Cabinet.

A Yes, I did attend.

Q How many Liaison Conferences were held between the 18th of October and December 8, 1941?

A From October 23 to the morning of the 2nd of November the Liaison Conference was held daily, and between November 6 and November 29 I think the Liaison Conference was convened five or six times; and I recall in December Liaison Conferences were held on the 2nd, 3rd, 4th, and 6th.

Q Will you tell me how long those conferences were usually in session?

A In most cases Liaison Conferences were convened from either nine or ten o'clock in the morning up to noon, but from the end of October Liaison Conferences frequently lasted from 9 A. M. to about midnight or one or two o'clock the following morning.

Q What was the character of the work of these conferences between October 23 and December 8?

A The foremost question for discussion and most of the work of the Liaison Conference beginning [illegible] October was how to lead the Japanese-

American negotiations to a successful conclusion.

Q Who presided over these meetings?

A There was no such thing as a presiding officer at the conferences. There was only a secretary who made preparations for the conferences.

Q What ministries were represented at these conferences?

A The regular members representing the government at the Liaison Conferences were the Prime Minister, the War Minister, the Navy Minister, the Foreign Minister, the Finance Minister, and the President of the Planning Board. Representing the High Command, the Chief of the Naval General Staff and the Chief of the Army General Staff were always in attendance.

Q Then TOJO as the Prime Minister was present at these Liaison Conferences; is that correct?

A Yes.

Q TOGO, who was the Foreign Minister, was also present at these conferences?

A Yes.

Q The President of the Planning Board, was he present also?

A Yes.

Q And the President was SUZUKI?

A Yes.

Q Now, the Chief of the Military Affairs Bureau was present also, wasn't he?

A The Chief of the Military Affairs Bureau of the War Ministry and the Chief of the Naval Affairs Bureau of the Navy Ministry attended the meetings as secretaries.

Q And MUTO at this time was present as the Chief of the Military Affairs Bureau and also as Chief of the Naval Affairs Bureau?

A Yes.

Q Now, the Chief Secretary of the Cabinet was also present, wasn't he?

A The Chief Secretary of the Cabinet attended as one of the secretaries of the conference.

Q And the Chief Secretary at this time was HOSHINO, was he not?

A Yes.

Q The Finance Minister attended also?

A Yes.

Q And that was the accused KAYA?

A That is so.

Q Now, you have also told us that you attended most of the Liaison Conferences that were held during the third KONOYE Cabinet?

A Yes, at the time of the third KONOYE Cabinet.

At that time I attended the Liaison Conference meetings as the Director of the East Asiatic Affairs Bureau of the Foreign Office, when in these conferences the China problems were discussed, serving as an assistant to the Foreign Minister and also as an explainer.

Q Let me return for a moment to the conferences held during the TOJO Cabinet. SHIMADA, the Navy Minister, also attended, did he not?

A Yes.

Q The vice-ministers of the army and the navy also attended the Liaison Conferences, did they not?

A The vice-ministers did not attend.

Q Were there not occasions on which they did attend?

A I have no definite recollection.

Q You would not state they did not attend, as I understand it, but you only state that you do not recall? Is that correct?

A Ordinarily they did not attend. Whether or not at some time during these conferences they attended or not, I have no definite recollection.

Q Let us now proceed to the third KONOYE Cabinet. Did the same officials of the government and the army and the navy attend the Liaison Conferences during the KONOYE Cabinet as during the TOJO Cabinet?

A I believe that the ministers who attended the Liaison Conference during the third KONOYE Cabinet were not necessarily representative of the same ministries as those during the TOJO Cabinet.

Q I will ask you about certain ones. Did the Chief of the Military Affairs Bureau attend, MUTO?

A Yes, he did.

Q And did OKA, the Chief of the Naval Bureau, attend those conferences?

A Yes.

Q And did SUZUKI, the President of the Planning Board, attend?

A Yes, he did.

Q Did the Minister of State attend?

A Minister without Portfolio, HIRANUMA, attended sometimes.

Q That was HIRANUMA?

A Yes, that is so.

Q And the War Minister, TOJO, attended, did he not?

A Yes, he did.

Q I notice on the first page of your affidavit, a reference to meetings with the military bureau directors concerned with the negotiations.

Let me repeat the question. I note on the first page of your affidavit, a reference to meetings attended by you or conducted by you and which were attended by the military bureau directors concerned with negotiations. Were these military bureau directors the Chief of the Military Affairs Bureau and the Chief of the Navy Affairs Bureau?

A Yes, that is so.

Q And they were the accused MUTO and OKA?

A Yes.

MR. TAVENNER: Now, if the Tribunal please, as to the question of credibility, I desire to merely refer to the place in the record where this witness was cross-examined on a former occasion, pages 17,929 to 18,006, and again at pages 18,032 to 18,062, with special reference to page 18,059.

With regard to the voluminous documents introduced through this witness, it is submitted that they, like all other documents in evidence, in the last analysis are matters for construction by the Tribunal.

There are no further questions.

THE PRESIDENT: I have a question on behalf of a Member of the Tribunal. I will paraphrase it, if I may.

On what particular words of the concluding paragraph of the document did the participants in the Liaison Conference base their belief and conclusion that the intention of going to war was clearly expressed?

That refers to part 14, if I apprehend the document correctly.

THE WITNESS: This intention was expressed -- these words are to be found in paragraph 14 of the above-mentioned document, the fourteenth instalment or section.

THE PRESIDENT: Can you be a little more

specific than that? Can you indicate what the words are?

THE WITNESS: In these words: "Thus, the earnest hope of the Japanese Government to adjust Japanese-American relations and to preserve and promote the peace of the Pacific through cooperation with the American Government has finally been lost. The Japanese Government regrets to have to notify the American Government that in view of the attitude of the American Government, it cannot but consider that it is impossible to reach an agreement through further negotiations."

THE PRESIDENT: Mr. Brannon.

MR. BRANNON: Under the rules, if the Tribunal please, I feel that I now have the right to ask one or two short questions.

THE PRESIDENT: That was stated by the Tribunal in your absence, Mr. Brannon. I know you were working in another room in the building.

MR. BRANNON: Still on behalf of the accused SHIMADA and OKA.

CROSS-EXAMINATION (Continued)

BY MR. BRANNON:

Q You have stated that several of the accused attended the Liaison Conferences in the capacity of

secretaries. I will ask you if they had any vote in any of the decisions that were there made?

A The secretaries had no power to vote.

MR. BRANNON: I ask that question, if the Tribunal please, on behalf of all of the accused who attended in the capacity of secretaries.

THE PRESIDENT: You represent only two, I think, but--

MR. BRANNON: I was whispered to here, Mr. President.

Q Former Admiral ITO, who was Vice-Chief of Naval General Staff in 1941, is now dead, is he not?

A Yes.

Q I will ask you if you recall being questioned by me in my office in this building on March 11 of this year?

A I remember having had a conversation with you on the 11th of March, but I do not remember having been interrogated.

Q Do you recall that there was a translator there and also a reporter taking down what you said?

A I did not talk with you then on the understanding that I was to be interrogated or to be examined. I merely talked with you on the understanding that it was to be a mutual conversation. I remember

that there was an interpreter and also that there was a reporter writing our conversation down.

Q Do you recall at that time telling me that at a certain Liaison Conference around the first of November you had occasion to be with the former accused Admiral NAGANO in the palace, and there engaging him in private conversation?

A That is true.

Q Did you tell me that in these words: "During the conference I was walking in the compound of the palace. Admiral NAGANO came to me and said that the navy doesn't want this war and asked that the Foreign Office take full responsibility of concluding negotiations with the United States peacefully." Did you say that?

A I do remember that Admiral NAGANO said words to that effect. However, in order to avoid misunderstanding, I should like to quote the words which Admiral NAGANO used in clearer language here. That is to say, he said that the navy high command still had the earnest desire of avoiding war as much as possible; that it had had such a desire and that even at that date it continued to have such a desire.

Admiral NAGANO continued: "Therefore, if the Foreign Minister will say, 'I will take full

responsibility for the amicable solution of these negotiations,' then I, Admiral NAGANO, will oppose the opening of hostilities." Correction: "That I, Fleet Admiral NAGANO, would support the Foreign Minister and oppose any decision for war," and asked what I thought about it. In reply, I told Admiral NAGANO that if everything was to be left completely in the Foreign Minister's hands, if all conditions were to be left absolutely up to the Foreign Minister, then he could take full responsibility for the successful conclusion of these negotiations; but that I, YAMAMOTO, felt that in the present state of affairs in which various conditions were put forth to the Foreign Minister, and having to negotiate with America on the basis of these various conditions, I could not guarantee such a thing; even the Foreign Minister could not guarantee such a thing.

THE PRESIDENT: We will recess for fifteen minutes.

(Whereupon, at 1445 a recess was taken until 1500, after which the proceedings 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: Mr. Brannon

MR. BRANNON: I believe the witness was answering a question.

Q Had you finished your answer, Mr. Witness?

A Yes, I did.

Q Do you recall my asking you at that time if this thought as expressed was typical of the Navy thought at the Liaison Conference, Mr. YAMAMOTO; and do you recall answering, "I think it was representative of the Navy's views in these things?"

A What do you refer to?

Q The attitude of the then Chief of the Navy General Staff in reference to peaceful negotiations with the United States.

A I remember having had such a conversation with him -- with you.

Q Now, you have testified that the man in the Navy Ministry, with whom you had conversations relative to the make-up of the last notification, was the accused OKA, have you not?

A Yes, I do.

Q Did you have many conversations with OKA relative to this draft?

A I did have several conversations with him.

Q Did not the accused OKA present you with a corrected copy of the draft, which had been prepared by him, containing the words, "The Japanese Government reserves the freedom of action?"

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: If it please the Tribunal, under the guise of cross-examination it appears to the prosecution that an effort is being made to examine this witness as though it were direct examination in that grossly leading questions are being asked.

THE PRESIDENT: He had the right to examine in chief, but he did not press for that. He has earned the right to cross-examine, which would be by way of leading questions because of something adverse said.

MR. TAVENNER: My only point, your Honor, is that he should not be permitted to lead the witness on a matter which is not in contradiction of some previous testimony.

THE PRESIDENT: This is the position: This witness said something which gave Mr. Brannon the right to cross-examine on behalf of two of the accused. Is this question he is putting now related to that matter?

MR. TAVENNER: That is the point, your Honor, that I am raising, that this seems to be a new matter and he is cross-examining in regard to it and asking leading questions in a way that would be permissible if it were cross-examination, in all probability, but would not be permitted in direct examination.

THE PRESIDENT: How is the question you are putting now, Mr. Brannon, related to the adverse matter that gave you the right to cross-examine?

MR. BRANNON: It was brought out that this witness conferred with the accused OKA relative to the drafting of the notification. I do not know what import the Tribunal may put on that, but I seek now to show exactly what it was. We accepted it as having possible adverse tendencies.

THE PRESIDENT: You can put any questions directed to destroying the effect of the adverse matter, but that is the limit.

Put the question again.

MR. BRANNON: Will the reporter read the question back?

(Whereupon, the last question was read by the official court reporter as follows: "Did not the accused OKA present you with a corrected copy of the draft,

which had been prepared by him, containing the words, 'The Japanese Government reserves the freedom of action?'")

MR. TAVENNER: If the Tribunal please, may I be heard on that?

THE PRESIDENT: I thought you abandoned your ground and took your seat at the table again.

MR. TAVENNER: We submit, if the Tribunal please, that that is purely re-examination on the original affidavit, that it is not cross-examination. The only statement in the affidavit to which this matter refers, we are convinced, is the statement that this witness conferred with the Chief of the Navy and Military Affairs Bureau. Now it is being sought to introduce in evidence in a leading form statements that were made by the Navy Chief of the Naval Affairs Ministry, or Bureau, which he could not do if it were examination in chief.

THE PRESIDENT: The witness said something, not in his affidavit, prejudicial to OKA. What was that? The question that Mr. Brannon puts now must be related to that and intended to meet it. That is a narrow issue.

MR. BRANNON: Mr. President, I can withdraw this question. We can handle it better later on in

our individual phase.

BY MR. BRANNON (Continued):

Q I would like to ask you, Mr. Witness, as my last question, to explain the function of the secretaries at the Liaison Conferences.

A The work of the secretaries was the gathering and preparation of subjects for discussion at the Liaison Conference and also the summing of subjects already discussed at the Liaison Conference.

MR. BRANNON: That concludes my examination.

We have one last question.

THE PRESIDENT: On whose behalf?

MR. BRANNON: On behalf of all the secretaries who attended. I have been requested by their counsel; also OKA whom I represent personally.

THE PRESIDENT: You told us the secretaries have no vote. Is that what you want to get out of him?

MR. BRANNON: The last question is:

Q Could a secretary express his own opinion at the Liaison Conference?

MR. BRANNON: That goes a little further, Mr. President.

A Secretaries could not express their own opinions.

THE PRESIDENT: You heard what he said,

Mr. Brannon?

MR. BRANNON: I didn't get that.

MR. USAMI: My name is USAMI. I appear for the accused HIRANUMA and I want to cross-examine on matters specifically related to my client.

THE PRESIDENT: What matters? Were they matters brought out by the cross-examination?

MR. USAMI: Yes, they were.

THE PRESIDENT: What matters?

MR. USAMI: HIRANUMA attended one or two liaison conferences during the period of the Third KONOYE Cabinet.

THE PRESIDENT: Mr. Tavenner cross-examined about attendances at those conferences, but I do not recollect that HIRANUMA's name was mentioned. He may have been mentioned by another description.

MR. USAMI: My recollection is that Mr. Tavenner asked the witness whether he remembered any one of the State Ministers, Ministers without Portfolio, attended the conference, and the answer of the witness was that he thought he had remembered seeing HIRANUMA attending one or two liaison conferences.

MR. TAVENNER: That is correct.

THE PRESIDENT: Do you admit that, Mr. Tavenner?

MR. TAVENNER: That is correct, your Honor, with the exception that I recall he said "sometimes"

instead of "one or two."

THE PRESIDENT: You have the right to cross-examine.

MR. USAMI: Thank you.

CROSS-EXAMINATION (Continued)

BY MR. USAMI:

Q Mr. Witness, do you recall that the Third KONOYE Cabinet was formed on July 18, 1941?

A Yes, I do.

Q Do you recall that on the 14th of August State Minister HIRANUMA, not quite one month after he had entered the Cabinet, had been attacked by an assassin and was injured seriously?

A I well remember that incident.

Q With reference to your recollection of Baron HIRANUMA attending the Liaison Conference, was it during this very short period or was it later on that you recall seeing him attending the Conference?

A It is a very faint recollection that I have of Baron HIRANUMA attending these conferences during this very short period.

Q About how many times do you recall having met him there?

A I do not remember clearly. I believe it was two, and at the most, three times.

Q Were you in attendance at those conferences?

A Yes.

Q Do you recall the agenda?

A No, I do not.

Q Do you recall whether or not State Minister HIRANUMA spoke at any of these conferences?

A As far as I remember, State Minister HIRANUMA made no remarks whatsoever.

Q Do you know whether or not State Minister HIRANUMA, during the tenure of the Third KONOYE Cabinet, after he had been attacked and injured by assassins, was able to perform his duties of Minister without Portfolio or attend conferences?

A According to my recollection, Baron HIRANUMA did not recover sufficiently to be able to attend to state affairs during the period of the tenure of the KONOYE Cabinet.

THE MONITOR: After the attack on him.

MR. USAMI: That concludes my cross-examination.

MR. BLAKENEY: There will be no general re-examination and so far as I am advised, subject to correction, there will be no re-examination.

I therefore ask that the witness be exeused on the usual terms.

THE PRESIDENT: He is excused accordingly.

(Whereupon, the witness was excused.)

MR. BLAKENEY: I call as my next witness KASE TOSHIKAZU, whose testimony is embodied in his affidavit, defense document No. 2063.

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TOSHIKAZU KASE,

called as a witness in behalf of the defense, being first duly sworn, testified through Japanese interpreters as follows:

MR. BLAKENEY: Before qualifying the witness I should like to call attention to a typographical error in the affidavit: On page 2, paragraph 3, line 4, between the words "been" and "delivered" there should be inserted the words "cabled to Washington to be", so that the sentence will read: "The memorandum is unrelated to the President's message, it having been cabled to Washington to be delivered to Mr. Hull before Mr. TOGO saw the Emperor on the matter."

DIRECT EXAMINATION

BY MR. BLAKENEY:

Q Please state your name:

A KASE, Toshikazu.

Q Where is your residence?

A Kamakura, Omachi, Tasene 330.

Q What is your occupation?

A Counsel of Embassy.

Q I wish that you be handed defense document number 2063 and that you examine that and state to

the Tribunal whether it is your affidavit, bearing your signature and seal.

A It is my affidavit and bears my signature.

Q Are the contents thereof true and correct?

A True and correct.

MR. BLAKENEY: I offer the affidavit in evidence.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 2063 will receive Exhibit Number 2960.

(Whereupon the document referred to was marked Exhibit No. 2960 and received in evidence.)

MR. BLAKENEY: I now read the exhibit which, omitting the formal parts, is as follows:

"1. I entered the Japanese Foreign Ministry in 1925 and was appointed Chief of the First Section of the Bureau of American Affairs of that ministry in November 1941, continuing in that position until April 1943. In the course of my official duties as such section chief I was familiar with the matters herein testified to.

"2. Soon after my arrival at the Foreign Ministry at about 10 o'clock in the morning of 7 December 1941 (Tokyo time), I received information

from the Domei News Agency that the United Press had carried a report to the effect that the State Department had announced the dispatch of a personal message by President Roosevelt addressed to His Majesty the Emperor. I immediately reported the matter to my superiors, including Messrs. TOGO, the Foreign Minister, NISHI, Vice Foreign Minister and YAMAMOTO, the Director of the American Bureau. I then telephoned to alert Marquis MATSUDAIRA, private secretary to the Lord Privy Seal, and asked him to let us know at once when and if the Imperial Palace received the President's message. For we were under the impression that, being a personal message, it would be sent directly to the Emperor, as in the case of the Panay incident of December 1937. An urgent telegram was dispatched without delay to Admiral NOMURA, our Ambassador in Washington, instructing him to make inquiries into, and report back upon the matter (telegram No. 905, from TOGO to NOMURA, Defense Document No. 1401-F-3)," which at this point I offer in evidence.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT. Defense Document 1401-F-3 will receive Exhibit No. 2961.

(Whereupon the document in question

from the Domei News Agency that the United Press had carried a report to the effect that the State Department had announced the dispatch of a personal message by President Roosevelt addressed to His Majesty the Emperor. I immediately reported the matter to my superiors, including Messrs. TOGO, the Foreign Minister, NISHI, Vice Foreign Minister and YAMAMOTO, the Director of the American Bureau. I then telephoned to alert Marquis MATSUDAIRA, private secretary to the Lord Privy Seal, and asked him to let us know at once when and if the Imperial Palace received the President's message. For we were under the impression that, being a personal message, it would be sent directly to the Emperor, as in the case of the Panay incident of December 1937. An urgent telegram was dispatched without delay to Admiral NOMURA, our Ambassador in Washington, instructing him to make inquiries into, and report back upon the matter (telegram No. 905, from TOGO to NOMURA, Defense Document No. 1401-F-3)," which at this point I offer in evidence.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT. Defense Document 1401-F-3 will receive Exhibit No. 2961.

(Whereupon the document in question

was marked Exhibit No. 2961, and received in evidence.)

MR. BLAKENEY: I shall read the exhibit:

"From TOGO to NOMURA.

"7 December 1941.

"The AP and UP news agencies report that the State Department has disclosed the dispatch by the President of a personal telegram to the Emperor. Make report immediately about the facts thereof."

Continuing with the affidavit:

"Apparently crossing this telegram on the way, a short dispatch from Admiral NOMURA arrived at the Foreign Ministry in the afternoon (telegram No. 1275 from NOMURA to TOGO, Defense Document No. 1401-E-3)," which I offer in evidence.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense Document No. 1401-E-3 will receive Exhibit No. 2962.

(Whereupon the document in question was marked Exhibit No. 2962, and received in evidence.)

MR. BLAKENEY: I read this telegram, which is from NOMURA to TOGO, dated 6 December, 1941:

"In the evening of the 6th, the Department of State disclosed that the President had dis-

patched a personal telegram to his Majesty the Emperor. The contents of the message are unknown, but it is generally assumed that it concerns the reinforcement of troops in French Indo-China and the advance into Thailand, in view of the simultaneous disclosure by the Department, based on information received, that in addition to one hundred twenty-five thousand troops already stationed in French Indo-China, two corps were moving this morning into the Gulf of Siam (refer to news dispatch).

"The dispatch of the message by the President to the Emperor directly, and not through diplomatic channels, may, it is considered, be the result of taking into consideration our steps in connection with the personal message on the Panay incident some years ago."

Continuing with the affidavit:

"This confirming the authenticity of the press news, I instructed all the staff in my office to be alerted for urgent work and waited for the arrival of the message in question. However, as nothing happened, I got in touch with Marquis MATSUDAIRA once again in the evening, shortly after 8 P.M., by telephoning his residence. I was told that the President's message had not arrived yet.

"3. At about 10:15 P.M. Mr. TOMODA Jiro, private secretary to the Foreign Minister, received a telephone call from the American Embassy requesting him to make an appointment around midnight for the Ambassador to see the Foreign Minister. I understand that Mr. TOMODA asked if the Ambassador could not wait until the next morning, but was told that an urgent telegram was being decoded and that the Ambassador wanted to see Mr. TOGO as soon as it was ready. Shortly after midnight -- at about 12:30 A.M., 8 December -- Mr. Grew came to the official residence of the Foreign Minister where the interview took place; I was present at this meeting and interpreted the conversation. Saying that he had received an urgent message of the President to the Emperor, Mr. Grew requested the Foreign Minister to arrange an audience for him. Mr. TOGO replied that it was unusual to take action on a request for audience at midnight, and inquired about the substance of the message. Thereupon, the Ambassador left a copy of the message with Mr. TOGO for the latter's reference, and took leave of the Foreign Minister after repeating his request for the audience, stressing the extreme gravity of the situation. The interview lasted about 15 minutes Mr. TOGO gave me the copy and asked me to translate

it into Japanese as quickly as possible. I did so with the help of my staff. I still vividly remember the very tense atmosphere that prevailed in my office, where everybody worked frantically in order to avoid delay in translating the message. Meanwhile, Mr. TOGO got in touch with Marquis KIDO, the Lord Privy Seal, by telephone, asking him to arrange for him to report the matter to the Throne. He then, I understand, went to the Premier's residence, consulted with General TOJO, and left his official residence at about 2 A.M. for the Imperial Palace, there informing the Emperor of the President's message and receiving the answer to be sent through the American Ambassador.

"4. In accordance with instructions given me on the previous day, I requested Mr. Grew early in the morning of 8 December to call on the Foreign Minister. This was originally for the purpose of handing to the Ambassador a copy of the memorandum of the Japanese Government, terminating the diplomatic conversations, which had been delivered by Admiral NOMURA at Washington to the American Government. This meeting would have taken place even if Mr. Grew had not paid the midnight visit to the Foreign Minister in connection with the President's message. Mr. Grew

came to the Foreign Minister's official residence at about 7:30 A.M., at which time I was again present at the meeting interpreting the conversation. Mr. TOGO gave the Ambassador a copy of the memorandum with the remark that it was a copy of the document already delivered to the American Government by Admiral NOMURA. He told the Ambassador also that during the night he had had occasion to learn the wishes of the Emperor in regard to the President's message, and orally transmitted the reply which was later written out at the Ambassador's request (Exhibit 1247).

"Although Mr. Grew seems to be under the impression that the memorandum of the Japanese Government constituted the Emperor's reply, this is a misunderstanding on his part. The memorandum is unrelated to the President's message, it having been cabled to Washington to be delivered to Mr. Hull before Mr. TOGO saw the Emperor on the matter.

"5. We in the Foreign Ministry, including Mr. TOGO, had no slightest suspicion that the Communications Ministry might delay the delivery of telegrams addressed to the American Embassy. Moreover, we did not think that the President's message would be delivered to the Embassy. We took it for

granted that it was addressed directly to the Emperor. Such an assumption was in fact supported by Admiral NOMURA'S telegram (No. 1275), Defense Document No. 1401-E-3)," that is, Defence Exhibit No. 2962, "which said that the President had sent his message directly to the Emperor without going through the usual diplomatic channels. We, therefore, waited anxiously for word from the Imperial Palace of the arrival of the message. That being the case, the Foreign Ministry had no idea regarding the substance of the message. In fact, Mr. TOGO learned the content of the message only when the American Ambassador brought it to his attention at the midnight interview above described."

You may cross-examine.

THE PRESIDENT: Mr. Tavenner.

CROSS-EXAMINATION

BY MR. TAVENNER:

Q Mr. KASE, was it the practice in the Foreign Ministry to send a messenger from the Foreign Ministry to the Ministry of Communications daily for such telegrams as would interest the Foreign Ministry?

A We of the First Section of the American Bureau -- Bureau of American Affairs had nothing to do with this and consequently didn't know anything about it.

Q Do you mean to state that you don't know whether or not it was the practice to send a messenger to the Communications Ministry each day?

A Not necessarily.

Q I am unable to hear you.

A Not necessarily.

THE PRESIDENT: How does "necessarily" come into it? You asked about a practice.

THE WITNESS: What I meant was that we did know that a messenger was sent. We did know that messengers were sent daily. However, since our section did not handle such affairs we didn't know for what purpose -- what specific purpose such messengers were sent.

BY MR. TAVENNER:

Q But you do know that messengers were sent daily to pick up telegrams in which the Foreign Ministry was interested, do you not?

A I don't know whether they went every day. However, I do know there was such a practice.

Q On this particular occasion you knew a day or more in advance that an important message was to be received or had been sent from the President of the United States?

A As is written in my affidavit, I did know of that.

Q What action did the Foreign Ministry take about sending a messenger for this important message from the President of the United States?

A As I have already told you, this had nothing to do with the First Section of the American Affairs Bureau. Therefore I don't know anything about it.

Q Well, you were interested in seeing the telegram, were you not?

A Yes. As you say, we were waiting for the arrival of that telegram.

Q Why did you not follow the accustomed practice of sending a messenger to pick up the telegram?

A At that time the Communications Ministry was

not even in our minds. All we were thinking of was about the Imperial Household Ministry. We were sure that that was where the telegram would go, and that is where our attention was directed.

Q Then, on this particular day you abandoned the accustomed practice of sending a messenger for cables that were of interest to the Foreign Ministry?

A This practice of sending a messenger to the Communications Ministry had been carried on in the past entirely separate from the Bureau of American Affairs. That is to say, the American Affairs Bureau had nothing whatsoever to do with it. Therefore on this occasion also the Bureau of American Affairs had no thought even of the Communications Ministry.

Q When you inquired first as to whether or not this message from the President had been received by the Emperor and you were advised that it had not been, why didn't you send a messenger then, according to the usual practice?

A Since other bureaus and other sections were handling relations with the Communications Ministry, and since our bureau had nothing whatsoever to do with the Communications Ministry, we did not take up that matter.

Q Is not the real reason why you did not bother

to send a messenger the fact that you knew that an order had been entered to hold up the delivery of messages for, I believe it was, ten hours?

A That is absolutely contrary to the facts. To begin with, it wasn't our job to communicate with the Communications Ministry; and secondly, we didn't know at the time that an order had been issued to the Communications Ministry to hold up telegrams. In fact, we didn't know of it until a witness from the Communications Ministry testified to that effect last year.

Q Well, now, did you not know, as a matter of fact, that the contents of this message were being discussed in the afternoon over the telephone between the Army General Staff and the Communications Ministry?

A I didn't know about that at all.

Q Well, you know now, do you not, that the matter was being discussed in the afternoon between that ministry and the Army General Staff?

A Yes, I heard of that. I became aware of that through the testimony of the witness from the Communications Ministry last year.

MR. TAVENNER: That is all.

MR. BLAKENEY: There will be no re-examination.

May the witness be excused on the usual terms?

THE PRESIDENT: He is excused accordingly.

(Whereupon, the witness was excused.)

MR. BLAKENEY: I call as my next witness MATSUDAIRA Yasumasa, whose testimony is embodied in his affidavit, defense document 1030, revised.

Y A S U M A S A M A T S U D A I R A, called as a witness on behalf of the defense, being first duly sworn, testified through Japanese interpreters as follows:

DIRECT EXAMINATION

BY MR. BLAKENEY:

Q Mr. Witness, please state your name and residence.

A My name is MATSUDAIRA Yasumasa. My address is No. 912 Yoyogi Nishihara Machi, Shibuya-Ku, Tokyo.

Q Will you please examine defense document 1030, which is being handed to you, and state whether that document is your affidavit, bearing your signature and seal.

A Yes, this is mine.

Q Are the contents thereof true and correct?

A Yes.

MR. BLAKENEY: I offer in evidence the affi-

davit, defense document No. 1030.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1030 will receive exhibit No. 2963.

(Whereupon, the document above referred to was marked defense exhibit 2963 and received in evidence.)

MR. BLAKENEY: I read the affidavit, which, omitting the formal parts, is as follows:

"1. I was the private secretary to the Lord Keeper of the Privy Seal from June 1936 to November 1945.

"2. I received a telephone call from Mr. KASE, an official of the Foreign Ministry, in the morning of 7 December 1941 at the Imperial Household Ministry. He told me that the Foreign Ministry had received a telegram from Washington reporting that a personal telegram had been dispatched from the American President to the Emperor, and asked me if the telegram had been delivered directly to the Imperial Household Ministry. I told him, however, that the Imperial Household Ministry had not received such a telegram.

"On the same day about 8:30 p. m. when I was at my private residence, Mr. KASE telephoned and asked me again about the above-mentioned private telegram from American President. Thereupon, I immediately in-

davit, defense document No. 1030.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1030 will receive exhibit No. 2963.

(Whereupon, the document above referred to was marked defense exhibit 2963 and received in evidence.)

MR. BLAKENEY: I read the affidavit, which, omitting the formal parts, is as follows:

"1. I was the private secretary to the Lord Keeper of the Privy Seal from June 1936 to November 1945.

"2. I received a telephone call from Mr. KASE, an official of the Foreign Ministry, in the morning of 7 December 1941 at the Imperial Household Ministry. He told me that the Foreign Ministry had received a telegram from Washington reporting that a personal telegram had been dispatched from the American President to the Emperor, and asked me if the telegram had been delivered directly to the Imperial Household Ministry. I told him, however, that the Imperial Household Ministry had not received such a telegram.

"On the same day about 8:30 p. m. when I was at my private residence, Mr. KASE telephoned and asked me again about the above-mentioned private telegram from American President. Thereupon, I immediately in-

davit, defense document No. 1030.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1030 will receive exhibit No. 2963.

(Whereupon, the document above referred to was marked defense exhibit 2963 and received in evidence.)

MR. BLAKENEY: I read the affidavit, which, omitting the formal parts, is as follows:

"1. I was the private secretary to the Lord Keeper of the Privy Seal from June 1936 to November 1945.

"2. I received a telephone call from Mr. KASE, an official of the Foreign Ministry, in the morning of 7 December 1941 at the Imperial Household Ministry. He told me that the Foreign Ministry had received a telegram from Washington reporting that a personal telegram had been dispatched from the American President to the Emperor, and asked me if the telegram had been delivered directly to the Imperial Household Ministry. I told him, however, that the Imperial Household Ministry had not received such a telegram.

"On the same day about 8:30 p. m. when I was at my private residence, Mr. KASE telephoned and asked me again about the above-mentioned private telegram from American President. Thereupon, I immediately in-

quired of the office of the Chamberlain (Jijushoku) and of the officer on duty in the Ministry about the matter, and informed him (Mr. KASE) that the Ministry had received no such telegram as yet.

"Later on, after 12 o'clock of the same night, Mr. KASE called me by phone and informed me that the American Ambassador in Tokyo had conveyed the telegram of the President to the Foreign Minister."

You may cross-examine.

MR. TAVENNER: If the Tribunal please, there will be no cross-examination.

MR. BLAKENEY: I ask that the witness be excused on the usual terms.

THE PRESIDENT: He is excused accordingly.

(Whereupon, the witness was excused.)

We will adjourn now until half-past nine tomorrow morning.

(Whereupon, at 1600, an adjournment was taken until Tuesday, 19 August, 1947, at 0930.)

19 AUGUST 1947

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EXHIBITS

Doc. No.	Def. No.	Pros. No.	Description	For Ident.	In Evidence
1079	2964		Affidavit of KAMEYAMA, Kazuji		26186
2050-B	2965		Telegram from Foreign Minister TOGO to Ambassador NOMURA, dated 7 December 1941		26194
2045	2966		Excerpt from book entitled "Pearl Harbour Attack" - Intercepted Diplomatic Messages sent by the Japanese Government Between 1 July and 8 December 1941 (published by the US Government Printing Office, Washington: 1945)		26197
2064	2967		Affidavit of YUKI, Shiroji		26207
1500-F-6	2968		Excerpt from "Pearl Harbour Attack" - Information from Documentary Evidence on Messages Nos. D 901, 902, 907, 910		26229
1500-J-6	2969		Excerpt from "Pearl Harbour Attack" - Memorandum to Mr. Seth W. Richardson from John Ford Baecher, Commander, USNR, dated 16 May 1946 re Japanese Intercepts		26231
2094	2970		Affidavit of Rufus S. Bratton, Colonel, U.S. Army		26244

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EXHIBITS

(cont'd)

Doc. No.	Def. No.	Pros. No.	Description	For Ident.	In Evidence
1500-E-6	2971		Excerpt from "Pearl Harbour Attack" - Testimony of Major-General Sherman Miles		26250
1500-I-6	2972		Excerpt from "Pearl Harbour Attack" - Testimony of Captain Laurence Frye Safford, USN.		26252
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1500-G-6	2973-A		Excerpt therefrom - Testimony of Lester Robert Schulz, Commander, USN.		26254
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Tuesday, 19 August 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, all Members sitting, with the exception of: HONORABLE JUSTICE STUART McDOUGALL, Member from the Dominion of Canada and HONORABLE JUSTICE I. M. ZARAYANOV, Member from the USSR., not sitting from 0930 to 1600; and HONORABLE JUSTICE E. H. NORTHCROFT, Member from the Dominion of New Zealand, not sitting from 1330 to 1600.

For the Prosecution Section, same as before.

For the Defense Section, same as before.

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(English to Japanese and Japanese to English interpretation was made by the 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: Mr. Tavenner.

MR. TAVENNER: If it please the Tribunal, I find that it is imperative to ask the indulgence of the Tribunal in regard to a matter.

We make the request that the Tribunal permit us to recall the witness YAMAMOTO for further cross-examination. I do not think that it would require more than fifteen or twenty minutes of time. The proposed cross-examination relates to a matter which was not covered in cross-examination before and which, by the exercise of due diligence, we could not have anticipated.

THE PRESIDENT: According to the American rule applied here, cross-examination must be confined to matters arising out of examination-in-chief. There could be exceptions bearing on credibility; I realize that.

MR. TAVENNER: This matter relates to the testimony-in-chief of the witness.

THE PRESIDENT: Do you suggest you found material for cross-examination within those limits which was not available to you before?

MR. TAVENNER: That is precisely correct,

your Honor. The information came to us for the first time after the closing of court yesterday.

THE PRESIDENT: Does the defense wish to be heard before we come to a decision?

MR. BLAKENEY: We feel that while the request is somewhat unusual and while, as I remember, the same privilege had been denied us, we have no desire to obstruct the full disclosure of the facts and, therefore, do not object to the request.

THE PRESIDENT: The witness is recalled for further cross-examination.

MR. TAVENNER: If the Tribunal please, the witness is not present. I believe that his presence can be obtained possibly by two o'clock, or one-thirty, preferably.

THE PRESIDENT: Very well.

MR. TAVENNER: May the marshal be directed to get in touch with the witness and have him present at that time?

THE PRESIDENT: We direct accordingly.

MR. BLAKENEY: I call as my next witness, KAMEYAMA, Kazuji, whose testimony is contained in his affidavit, defense document 1079.

- - -

K A Z U J I K A M E Y A M A, called as a witness on behalf of the defense, being first duly sworn, testified through Japanese interpreters as follows:

DIRECT EXAMINATION

MR. BLAKENEY: Before qualifying the witness, I wish to call attention to a correction which has been made by him in the affidavit. On page 4, the paragraph numbered 10, line 3, delete the words "which were received by the Embassy;" and in the following line delete the words "morning of the" and alter the word "in" to the word "on."

BY MR. BLAKENEY:

Q Please state your name and residence, Mr. Witness.

A KAMEYAMA, Kazuji; Gifu Prefecture, Seki-machi, 885 Kurachi.

Q I am having you handed defense document No. 1079, and I ask that you examine that and state to the Tribunal whether that is your affidavit, bearing your signature and seal.

A This is my affidavit without mistake.

Q Are the contents thereof true and correct?

A That is so.

MR. BLAKENEY: I offer in evidence the

affidavit, defense document No. 1079.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1079 will receive exhibit No. 2964.

(Whereupon, the document above referred to was marked defense exhibit No. 2964 and received in evidence.)

MR. BLAKENEY: I read the affidavit which, omitting formal parts, is as follows:

"1. I entered the Japanese Foreign Ministry in February 1922, and served as Chief of the Cable Section of the ministry from September 1940 to October 1942. I shall state herein matters which came to my knowledge in the course of my official business in that position.

"2. On 7 December 1941 a telegram was sent by Foreign Minister TOGO to Ambassador NOMURA in Washington to the effect that the AP and UP news agencies were reporting that the State Department had made public that the President had sent a personal telegram to the Emperor, and that the matter should be investigated and a report made (defense document No. 1401-F-3)," which is now exhibit No. 2961. "Simultaneously the Ambassador had sent a telegram dated 6 December to the effect that the President was

reported to have sent a telegram to the Emperor (defense document 1401-E-3)," which is now exhibit 2962.

"I, as Chief of the Cable Section of the Foreign Ministry, was aware of these two telegrams, but I did not see the contents of the reported telegram of the President at that time. I recall that only on 8 December, as I remember it, was I informed by the American Bureau of the Foreign Ministry that a personal telegram of the President had been transmitted from the American Ambassador to our hands.

"3. The cable Section of the Foreign Ministry used to obtain copies of coded telegrams to and from diplomatic and consular representatives in Japan for the purpose of research in coding technique. As a matter of fact, the Cable Section sent messengers to the competent section of the Communications Ministry to receive such copies, and their receipt by the Foreign Ministry was delayed one or two days after

receipt by the Communications Ministry. It was the custom at the time that the code research group of the Cable Section did not work Saturday afternoons and Sundays. As 7 December 1941 was a Sunday, there was nobody working in the afternoon of the 6th and all day the 7th. It was not possible, consequently, for the Foreign Ministry to have decoded the telegram of the President on 7 December.

"Presumably the code research group of the Foreign Ministry in the usual course received the President's telegram in code from the competent section of the Communications Ministry on 8 or 9 December. (Foreign telegrams in code were not received by me, but went directly to members of the code research group and were dealt with by them.) The personnel of the group at that time was very small, and only about five were engaged in research on the Anglo-American codes. The situation was therefore that, of the coded telegrams received daily, only a small proportion of the decodable ones was actually decoded. In addition, the Foreign Ministry received some decoded telegrams, mainly from the army high command. There is nothing to show that the President's telegram was decoded by the Foreign Ministry, nor anything to show that it received a decoded copy thereof from the army high

command. For, all such telegrams which were either decoded by the code research group or obtained by the group in decoded text were submitted to me as Chief of Cable Section, and I have no recollection of having seen the decoded telegram of the President's message.

"4. It is true, as has been stated, that the code research group of the Foreign Ministry received in those days from the competent section of the Communications Ministry telegrams sent and received by diplomatic and consular representatives in Japan, but it had nothing to do with the delivery and dispatch of those telegrams by the Communications Ministry. The code research group of the Foreign Ministry merely obtained copies of those telegrams from the competent section of the Communications Ministry after they had been delivered or dispatched as the case might be. The Foreign Ministry never intervened in the delivery or dispatch of those foreign telegrams. The Foreign Ministry thus had nothing to do with any delay in the delivery to the American Embassy of the telegram of the President.

"5. I recall that I received the original copy of the memorandum of the Japanese Government to the United States prior to the start of the war in the afternoon of 6 December 1941 from the section in

charge of the matter (the first section of the American Bureau), and had it coded immediately in fourteen parts. The results of an investigation made at the Tokyo Central Telegraph Office and reported to me by my subordinates at my order in December 1941 showed that the first thirteen parts were telegraphed from the cable room of the Foreign Ministry to the Central Telegraph Office between 8:30 p.m. on the 6th and 12:20 a.m. on the 7th, and that the latter cabled them to the United States between 10:10 p.m. on the 6th and 1:50 a.m. on the 7th.

"The dispatch of the fourteenth part was withheld, at the request of the section in charge of the matter, until notice should be given by them. That section requested at about 4 p.m. of the 7th that it be cabled, and steps were immediately taken to that end. Of this part the same text was sent through the MKY and the RCA, two American cable companies, at an hour's interval in order to assure speedy and accurate receipt in Washington. The report of the same investigation disclosed that the fourteenth part was cabled from the Central Telegraph Office at 5 p.m. on the 7th through MKY and at 6 p.m. on the 7th through RCA.

"6. Prior to the dispatch of our memorandum, an instruction had been sent from the Foreign Ministry

at 8:30 p.m. on 6 December to the effect that as soon as our memorandum to the United States had been received preparation of the document and all the necessary arrangements were to be made so that the memorandum might be handed to the United States at any time upon the receipt of the instruction to deliver it (exhibit 1216). This telegram was sent, according to the above-said investigation, from the Central Telegraph Office to the United States at 9:10 p.m. on the 6th.

"7. The instruction to hand the memorandum to the United States at 1 p.m., 7 December, Washington time (exhibit 1218), was cabled through two channels, MKY and RCA, to make sure of speedy and accurate delivery, and investigation showed that it was sent from the Central Telegraph Office to the United States at 6:30 p.m., 7 December, through the MKY, and at 6:28 p.m. through the RCA.

"8. One technical error was discovered by an examination conducted immediately after the coding, in one of the first thirteen parts of the coded telegram (I recall that it was something like the dropping of one line), and a telegram of correction was immediately sent (it was, of course, a very simple one). The exact time of dispatch of this telegram of correction cannot be learned, the record kept in the Cable Section

at 8:30 p.m. on 6 December to the effect that as soon as our memorandum to the United States had been received preparation of the document and all the necessary arrangements were to be made so that the memorandum might be handed to the United States at any time upon the receipt of the instruction to deliver it (exhibit 1216). This telegram was sent, according to the above-said investigation, from the Central Telegraph Office to the United States at 9:10 p.m. on the 6th.

"7. The instruction to hand the memorandum to the United States at 1 p.m., 7 December, Washington time (exhibit 1218), was cabled through two channels, MKY and RCA, to make sure of speedy and accurate delivery, and investigation showed that it was sent from the Central Telegraph Office to the United States at 6:30 p.m., 7 December, through the MKY, and at 6:28 p.m. through the RCA.

"8. One technical error was discovered by an examination conducted immediately after the coding, in one of the first thirteen parts of the coded telegram (I recall that it was something like the dropping of one line), and a telegram of correction was immediately sent (it was, of course, a very simple one). The exact time of dispatch of this telegram of correction cannot be learned, the record kept in the Cable Section

having been destroyed by fire; but it cannot have been later than the early hours of the 7th, because several telegraph clerks were on duty throughout the night of the 6th to the 7th.

"There was one more telegram of correction, replacing one word in the original text of the memorandum. The original text of the telegram shows that it was cabled from the Foreign Ministry to the Central Telegraph Office at 7:20 p.m., 7 December (defense document No. 2050-A)," and it should be added, 2050-B, which I now offer in evidence.

THE PRESIDENT: Admitted on the usual terms.

MR. BLAKENEY: Although the prosecution advised me that they had the document, apparently the clerk has not, so we will pass it for the time being.

I therefore continue with the affidavit.

"In the light of the then prevailing situation this telegram should have been sent from the Central Telegraph Office to the United States not more than an hour after its dispatch from the Foreign Ministry to the Central Telegraph Office.

"8(a) For convenience of reference, the comparative Tokyo and Washington times for the hours mentioned above are as follows (the time difference being 14 hours):

"Instruction to Washington to prepare memorandum immediately upon receipt, sent to Central Telegraph Office: Tokyo time, 8:30 P. M., the 6th; Washington time, 6:30 A. M., the 6th.

"Instruction to Washington to prepare memorandum immediately upon receipt, sent from Central Telegraph Office: Tokyo time, 9:10 P. M., the 6th; Washington time, 7:10 A. M., the 6th.

"13 parts of memorandum sent from Cable Section to Central Telegraph Office: Tokyo time, 8:30 P. M., the 6th, to 12:20 A. M., the 7th; Washington time, 6:30 A. M. to 10:20 A. M., the 6th.

"13 parts of memorandum sent from Central Telegraph Office: Tokyo time, 10:10 P. M., the 6th to 1:50 A. M., the 7th; Washington time, 8:10 A. M. to 11:50 A. M., the 6th.

"First Section, American Bureau, ordered 14th part sent: Tokyo time, 4:00 P. M., the 7th; Washington time, 2:00 A. M., the 7th.

"14th part sent to Central Telegraph Office: Tokyo time, 4:00 P. M., the 7th; Washington time,

2:00 A. M., the 7th.

"14th part sent from Central Telegraph Office, via MKY: Tokyo time, 5:00 P. M., the 7th; Washington time, 3:00 A. M., the 7th. Via RCA: Tokyo time, 6:00 P. M., the 7th; Washington time, 4:00 A. M., the 7th.

"Instructions to deliver memorandum at 1 P. M., 7th December (Washington time) sent to Central Tel. Office: Tokyo time, 5:30 P. M., the 7th; Washington time, 3:30 A. M., the 7th.

"Instructions to deliver memorandum at 1 P. M., 7th December (Washington time) sent from Central Tel. Office, via RCA: Tokyo time, 6:28 P. M., the 7th; Washington time, 4:28 A. M., the 7th. Via MKY: Tokyo time, 6:30 P. M., the 7th; Washington time, 4:30 A. M., the 7th.

"Cable correcting one word in memorandum sent to Central Telegraph Office: Tokyo time, 7:20 P. M., the 7th; Washington time, 5:20 A. M., the 7th."

I understand the document 2050-A and B is now here, and I therefore renew the offer of it.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 2050-A and 2050-B will receive exhibit No. 2965.

("hereupon, the document above

referred to was marked defense exhibit No. 2965 and received in evidence.)

MR. BLAKENEY: I do not propose to read the exhibit other than to point out the notation thereon that it was dispatched at 7:20 P. M. on the 7th of December, and that it corrects one word in the original memorandum.

Resuming the affidavit with paragraph 9:

"9. Knowing that, the communications conditions between Japan and the United States at that time being generally very good, it did not take more than 30 minutes to an hour for communication, I ordered these various messages sent on the supposition that the times of their arrival in Washington would be (Washington time):

"(a) the telegram instructing preparation of the document and other necessary matters, at about 8 A. M., 6 December;

"(b) the first thirteen parts of the memorandum, approximately between 9 A. M. and 1 P. M. of the 6th;

"(c) the fourteenth part of the memorandum, between 4 and 5 A. M. of the 7th;

(c) the telegram of instructions of the time of delivering the memorandum, at about 5:30 A. M. of

the 7th.

"All the telegrams concerning the Japanese-American negotiations were handled as 'Government' and in view of the tenseness of the situation at that time, the American telegraph companies presumably handled the telegrams concerning the negotiations speedily. Supposing it to have taken as long as two hours for delivery to the Japanese Embassy in Washington after receipt in the United States, it may be assumed that the telegram in (a) of the preceding paragraph was delivered to the Embassy at about 10 A. M., 6 December, that in (b) between 11 A. M. and 3 P. M. on the 6th, that in (c) between 6 and 7 A. M. on the 7th, and that in (d) at about 7:30 A. M. on the 7th. As to the two telegrams of correction, the one correcting the technical error should have been delivered to the Embassy at latest prior to the delivery of the fourteenth part of the memorandum; and the other, correcting one word in the text of the memorandum, should have been delivered by 9:30 A. M. of 7 December at the latest.

"10. Those telegrams sent from the Foreign Ministry to the Japanese Embassy in Washington subsequently to the dispatch of the thirteen parts of the memorandum toward the late hours of 6 December and on

the 7th are as follows, according to my memory and as disclosed by the telegrams themselves: (a) correction of technical error; (b) instruction to keep strict secrecy (exhibit 1217); (c) the fourteenth part of the memorandum (defense document No. 2045; (d) inquiry about the President's telegram to the Emperor (defense document 1401-F-3)," now exhibit 2961; "(e) instruction indicating the time of delivering the memorandum (exhibit 1218); (f) instruction to destroy the coding machine; (g) the Minister's greeting to Ambassadors NOMURA and KURUSU; (h) greeting of the Director of the American Bureau to Counselor IGUCHI and other members of the Embassy; (i) instruction indicating the number of the final telegram; and (j) correction of one word in the text of the memorandum (defense document No. 2050-A and B)," now exhibit 2965. "If my memory serves me correctly, the telegram correcting one word in the text of the memorandum was the last."

At this point I wish to offer in evidence defense document No. 2045, referred to in the preceding paragraph.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 2045 will receive exhibit No. 2966.

(Whereupon, the document above referred to was marked defense exhibit No. 2966 and received in evidence.)

MR. BLAKENEY: I do not propose to read this document, which is merely a part of a document already in evidence. It is offered for the purpose of showing the precise division into parts of the final message and the length of the fourteenth part.

THE PRESIDENT: The last word of paragraph 7 should be "lost," should it not?

MR. BLAKENEY: Yes, sir.

THE PRESIDENT: L-o-s-t.

MR. BLAKENEY: I wish simply to point out that this is part 14 of the fourteen parts, and that on it appears the following note which is not in the complete document:

"(Note -- In the forwarding instructions to the radio station handling this part, appeared the plain English phrase 'VERY IMPORTANT.')"

Resuming the reading of the affidavit:

"All those telegrams except the fourteenth part of the memorandum were simple ones composed of not more than a few lines. The decoding, by one coding machine, of the fourteenth part would have taken twenty or thirty minutes but each of the rest

of them would have been decoded in ten or fifteen minutes each. All those telegrams therefore could have been decoded in about two hours.

"The Embassy had been instructed to the effect that there should always be some clerks on duty in the cable section. Moreover, an instruction had been sent to the effect that the document and all the necessary preparations were to be made ready beforehand (exhibit 1216). In these circumstances the Foreign Ministry sent these telegrams to the Japanese Embassy in Washington with the conviction that even if a considerable amount of time should be necessary for typing the memorandum, there would be a sufficient amount of time so that our memorandum be handed to the United States without fail at 1 P. M., 7 December, Washington time.

"11. Allowing for the decoding of the first thirteen parts of the memorandum to the United States to take six hours and a half at the longest, I assumed that the decoding would have been completed by 0:30 P. M., 6 December, Washington time, even if the decoding was started after the last of the thirteen had arrived. As a matter of fact, each part should have been decoded as soon as it had arrived, so that the writing of the clean copy of the memorandum could

have been started before 9:30 P. M. (the instructions for the preparation of the memorandum having been sent before the memorandum itself was cabled). Moreover, the telegram making the technical correction concerning one of the thirteen parts was sent by the early morning of 7 December, and there was no doubt that it was sent before the fourteenth part of the memorandum (the arrival of the fourteenth part at the Embassy is assumed to have been between 6 and 7 A. M., 7 December). Consequently, the Embassy must have received the telegram on the technical correction by 7 A. M., 7 December, Washington time, by the latest, and could have decoded it without delay. The last telegram, correcting one word in the text of the memorandum, should have been received and decoded not later than 10 A. M., 7 December, Washington time. Therefore, even if the officers and clerks of the Embassy concerned had taken a normal rest from 6 to 7 o'clock, the full text of the entire memorandum in fourteen parts could have been written in clean copy by 11 A. M., 7 December, Washington time, by the latest.

Wolf & Lefler

"12. It having become known in the Foreign Ministry through radio broadcast from America that the delivery of the memorandum to the United States on 7 December had been delayed in Washington, Foreign Minister TOGO instructed me upon the return of the Embassy staff from the United States to conduct an investigation of the matter. In the course of the investigation which I accordingly carried out, it was reported to me by one of the telegraph clerks of the Embassy in Washington who returned on the exchange boat in August 1942 that the instruction for preparation of the memorandum so that it could be handed to the United States any time had been received by the Embassy in the forenoon of 6 December, Washington time; that the memorandum had started to arrive at the Embassy from about noon of the same day, and the thirteen parts had been decoded by about 11 P.M. of the same day; that the fourteenth part of the memorandum had arrived at the Embassy by about 7 A.M. of the 7th; and that the telegraph clerks of the Embassy finished decoding the fourteenth part about 12:20 P.M. KONDO, and the other telegraph clerks of the Embassy at that time who returned home in March 1946 on the boat repatriating the Japanese diplomats from Europe, reported in general to the same effect.

"13. The Foreign Ministry was often asked by other government agencies to obtain information concerning economic, financial, military and other matters abroad, and instructed its establishments abroad to obtain and report such data. Since the gathering of such information and their communication to the government agencies which had asked for them had no direct relationship to the decision and execution of diplomatic policies, instructions of such nature, when cabled, were generally drafted by officers in the section in charge of the matter and, with the approval of the bureau director and the section chief, or sometimes of the section chief only, were forwarded to the Cable Section for dispatch. In practice, therefore, the Minister and the Vice-Minister had nothing to do with such telegrams, and they were generally dealt with at the responsibility of the bureau director, or more often that of the chief of the section, in charge of the matter. When a telegram of information in response to such instructions was received, the Cable Section forwarded it to the bureau director and the section chief concerned, and the section in charge sent it to the government agency which has asked for it. Parallel with such procedure, the Cable Section sometimes sent copies of such telegrams directly

to the government agencies which had made the request, but that practice was a supplementary measure to meet their executive requirements.

"All telegrams sent from the Foreign Ministry to its establishments abroad were sent in the name of the Foreign Minister, and all the telegrams from its overseas establishments to the Foreign Ministry were addressed to the Foreign Minister. Of these telegrams, however, the Foreign Minister examined only those telegrams which were deemed important, and there were many which were not brought to his attention. While I was Chief of the Cable Section, for instance, some two hundred telegrams were received and some one hundred dispatched daily, only about one tenth of which were submitted to the Foreign Minister for examination.

"I recall that, while I was Chief of the Cable Section, instructions were sent for gathering information concerning the movement of warships and merchant vessels in Hawaii, Manila, Jave and other places, and that telegrams in reply thereto were received. These communications were all dealt with in accordance with the procedure above described, and I have no recollection that any of them, either sent from or received by the Foreign Ministry, was submitted

for review to the Foreign Minister or the Vice-Minister."

By leave of the Tribunal, I have one or two additional questions which I should like to put.

BY MR. BLAKENEY (Continued):

Q Mr. Witness, in paragraph 3 of your affidavit you refer to the practice of sending messengers to the Foreign Ministry, who received copies of foreign telegrams. Will you tell us when, how often, and on what occasions those messengers were sent?

A Generally speaking, messengers were sent from the Cable Section of the Foreign Office to the Communications Ministry once a day, at the most twice a day. However, on Sundays no messengers were sent.

Q Were the messengers sent on special instructions or on standing instructions?

A They were sent on standing instructions.

Q From what time, if you know, had the practice existed of sending such messengers to the Communications Ministry for this purpose?

A From the time of my predecessor as Chief of the Cable Section.

Q What instructions were given those messengers in connection with what material they should get from the Communications Ministry?

for review to the Foreign Minister or the Vice-Minister."

By leave of the Tribunal, I have one or two additional questions which I should like to put.

BY MR. BLAKENEY (Continued):

Q Mr. Witness, in paragraph 3 of your affidavit you refer to the practice of sending messengers to the Foreign Ministry, who received copies of foreign telegrams. Will you tell us when, how often, and on what occasions those messengers were sent?

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A They were sent on standing instructions.

Q From what time, if you know, had the practice existed of sending such messengers to the Communications Ministry for this purpose?

A From the time of my predecessor as Chief of the Cable Section.

Q What instructions were given those messengers in connection with what material they should get from the Communications Ministry?

A Generally speaking, they were copies of coded telegrams sent to and from diplomatic and consular representatives in Japan.

Q Were the messengers given special instructions on each trip what messages they would get?

A No, no such instructions were ever given. They went, so to speak, mechanically every day.

Q Then, who decided which material they received, the Foreign Ministry or the Communications Ministry?

A The Foreign Ministry office took whatever the Communications Ministry would give it.

Q In connection with the research in decoding which was being conducted in your section, were you conducting such decoding and research on a large scale?

A The Cable Section of the Foreign Office was carrying on this research only on a very small and limited scale.

Q Was that research carried on with cipher machines?

A We had no cipher machines.

Q How many of the codes, then in use by the American diplomatic officials, were you able to decipher or decode?

A I believe there were not more than three or

four.

Q Out of how many?

A According to my recollection, there seemed to have been eight or nine altogether.

MR. BLAKENEY: I think you may cross-examine.

MR. TAVENNER: If the Tribunal please, I desire to call attention to paragraph 3 of the affidavit, on the first page, relating to the sending of messengers to the Communications Division for messages. The prosectuion relies on the testimony of SHIRAO at page 10,567 with regard to this general subject, and I desire to point out that there was no cross-examination of that witness suggesting the matter set forth in this paragraph in this affidavit.

The prosecution does not desire to cross-examine.

MR. BLAKENEY: I request that the witness be released on the usual terms.

THE PRESIDENT: The witness is discharged on the usual terms.

(Whereupon, the witness was excused.)

MR. BLAKENEY: I now call as a witness YUKI SHIROJI, whose testimony is contained in defense document 2604.

S H I R O J I Y U K I, called as a witness on behalf of the defense, being first duly sworn, testified through Japanese interpreters as follows:

DIRECT EXAMINATION

BY MR. BLAKENEY:

Q Mr. Witness, please state your name and residence?

A YUKI SHIROJI; Liaison Office, Fukuoka City.

Q I ask that you be handed defense document 2064, that you examne that and state to the Tribunal whether it is your affidavit, bearing your signature and seal.

(Whereupon, a document was handed to the witness.)

A This is my affidavit without mistake.

Q And, are the contents thereof true and correct?

A Yes, they are.

MR. BLAKENEY: I offer in evidence the affidavit, defense document 2064.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 2064 will receive exhibit No. 2967.

(Whereupon, the document above

referred to was marked defense exhibit No. 2967 and received in evidence.)

MR. BLAKENEY: I read the affidavit, omitting the formal parts:

"1. I entered the Foreign Ministry in April 1927. In December 1940 I was appointed Chief of the First Section of the Bureau of American Affairs of the Ministry, serving in that position until October 1941. In November I was appointed, in the capacity of a senior secretary, to accompany Ambassador KURUSU on his mission to the United States, and left with him on November 5. I remained at the Embassy in Washington, engaged in the business of the Japanese-American negotiations, until the outbreak of the Pacific war. I was accordingly concerned, directly or indirectly, in the general business of the embassy with regard to the negotiations, though I was not a regular member of the embassy staff. Therefore, I have knowledge of the facts concerning the delay in the delivery of the memorandum of the Japanese Government to the United States on 7 December 1941, and state herein the circumstances thereof. (The time I use in this statement is Washington time, 14 hours earlier than Tokyo time.)

"2. Telegraphic instructions from the Japanese Foreign Ministry, deciphered by noon of 6 December (Saturday) had instructed us that they were

going to send, by separate telegrams, the memorandum of the Japanese Government in response to the American proposal of 26 November; that it would be the following day before this long message would be completely received (it was actually sent in 14 parts, the last of which was delivered on the morning of 7 December); and that, in consideration of the delicate situation, the receipt of the memorandum should be kept in strict secrecy (in this connection, we were instructed by another telegram -- Exhibit 1217 -- to take every prudent measure to keep it in secret, and especially, not to entrust the preparation of the memorandum to typists). We were further told that we would be instructed later of the time for handing the memorandum to the United States, and that all necessary steps, including the preparation of the documents, should be taken promptly so that the memorandum could be delivered at any time upon receipt of instructions (Exhibit 1216). Subsequently, the 14 parts into which the memorandum was divided began to arrive, and the first 8 or 9 parts had already been deciphered by dinner-time (about 7 P.M.) that evening.

"There was a farewell dinner, which I did not attend, for a member of the embassy staff who was being transferred to another post; I had dinner with

Ambassador NOMURA, then retired to my bedroom. On Sunday morning, 7 December, I went to the so-called Secretaries' Room of the Embassy, which is in the Ambassador's residence, at about 9, and there found Secretary OKUMURA busy typing the memorandum. The typing apparently had not been started on the night of the 6th. As the staff of the cable section began arriving soon afterward, I learned from talking with them that after the dinner of the night before the whole staff of the cable section (Telegraph Officer HORIUCHI and clerks KAJIWARA, HORI, KAWABATA, KONDO and YOSHIDA) had returned to the office and resumed the work of deciphering at about 9:30, the deciphering of the first 13 parts being finished before midnight. Having nothing to do but to wait for the 14th part to be delivered, the members of the cable section had then busied themselves, while waiting for it, in disposing of the remnants of the cipher machine which had been destroyed on the night of 5 December in accordance with the order of the Foreign Minister. The 14th part, I learned, had not arrived during the night, and Counselor IGUCHI having advised the members of the cable section to retire, they returned to their respective lodgings before dawn, leaving a duty officer.

"3. While Secretary OKUMURA (who was the

only senior official of the Embassy staff who could operate a typewriter at all decently) typed the memorandum, I proof-read the typed pages in the adjoining room with Chancellor NAKAJIMA. Before my arrival (between 7 and 8 o'clock, I was told) several telegrams had been delivered, and the night duty officer had called up all the members of the cable section at their respective lodgings--finding, to his uneasiness, that, having left the office only a short time before, they were not prepared for prompt attendance. At from 9:30 to 10 they had all gathered in the office and from 10 o'clock they set about deciphering the telegrams. Telegrams marked 'urgent' were first deciphered. The greetings of the Foreign Minister and the Director of the American Bureau came first, then a few telegrams of corrections. It was about 11 o'clock that they deciphered the telegram directing that the memorandum be handed to the United States (to the Secretary of State if possible) at 1 P.M., 7 December (Exhibit 1218).

"In accordance with Ambassador NOMURA's order, eleve-interpreter ENSEKI promptly called the Secretary of State at his private residence, asking for an appointment for an interview at 1 P.M. The Secretary of State replied that, as he had a previous engagement

for lunch, he wished that the Ambassadors would meet Under-Secretary Welles in his stead. Shortly after, we received a telephone message to the effect that the Secretary of State himself would receive the Japanese ambassadors at 1 P.M. at the State Department.

"4. Meanwhile, by 11 A.M. Secretary OKUMURA had finished typing the memorandum as far as the 13th part. However, saying that that copy was meant to be a draft and was not well-typed, and that there was still plenty of time before 1 o'clock, he began to type the draft over again with the assistance of interpreter ENSEKI. That day, however, they were under such a strain that they were slower and making more mistakes than usual. This became more perceptible as time passed after we had received the instructions to hand the memorandum to the United States at 1 P.M. As the above-mentioned telegram of correction was deciphered, however, they were compelled to retype a page which they had barely finished typing. Another telegram directing the insertion of a sentence of one or two lines which had been dropped out of the memorandum, forced them again to retype, not only the page in question but also the following page, on account of the slipping down of lines. At any rate, in these

circumstances it took longer than we had expected, and time flew by rapidly. It was around 12:30 P.M., as I remember, that the deciphering of the 14th part, the last part of the memorandum, was sent to the Secretaries' Room. The typing of the thirteen parts, however, was not yet completed by that time.

"5. In the meantime, Ambassador NOMURA came frequently to the Secretaries' Room to press for the document. Ambassador KURUSU also was holding himself in readiness to start, and was waiting impatiently for the completion of the typing.

"As it became clear that the typing could not be completed in time for the appointed hour, interpreter ENSEKI, by order of Ambassador NOMURA, told the secretary to Secretary Hull that the call of the two ambassadors might be delayed because the necessary document was not yet ready, and received a reply that Mr. Hull would expect the Japanese ambassadors as soon as the preparations were completed. It was already about 1:50 when Secretary OKUMURA and Interpreter ENSEKI finished the typing. The two ambassadors, who had been waiting at the entrance-hall of the Embassy, started for the State Department as soon as they received the typewritten memorandum. I understand that they reached there at about 2 o'clock, were kept

waiting for about twenty minutes, and met the Secretary of State about 2:20 and handed him the memorandum."

You may cross-examine.

MR. TAVENNER: The prosecution does not desire to cross-examine, if the Tribunal please.

MR. BLAKENEY: I ask that the witness be released on the usual terms.

THE PRESIDENT: He is released accordingly.

(Whereupon, the witness was excused.)

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MR. BLAKENEY: As evidence of the time at which the various messages at present under consideration were received in the United States, as well as in corroboration of the previous evidence of the time of dispatch from Tokyo, I offer in evidenc defense document 1500-F-6, an excerpt from Pearl Harbor Attack, the proceedings of the Joint Committee of Investigation of the Congress of the United States.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: If the Tribunal please, objection is made to the introduction of this document on the ground that it is irrelevant and immaterial. This, and the succeeding document are of the 1500 series, of which we have had many offered and many

rejected.

As to the statement of counsel that it is in corroboration of the sending of the messages, the position of the prosecution is that that is entirely unnecessary as the time of sending of these messages is not disputed.

As to the other position taken by counsel that they are being tendered for the purpose of showing the time at which the United States received the intercepts, we contend likewise that that is immaterial and irrelevant.

A great many documents dealing with that subject have been rejected and I think it is hardly necessary to repeat the reasons for the objections again.

THE PRESIDENT: Major Blakeney.

MR. BLAKENEY: The last part of counsel's objection deals with a ground on which I did not offer this evidence. The evidence is offered as part of a chain of proof on a point originally raised by the prosecution and now being met by the defense. It has been the prosecution contention, repeated as late as yesterday, that the final message to the United States was sent so late, and was deliberately sent so late, that it was known in Japan it could not be delivered at the time appointed.

In meeting that proof, rather those innuendoes, the defense is undertaking to show the hour at which the messages were sent, the hour at which they were received in the United States -- I didn't say "by the United States" -- and the hour by which translation and processing could with diligence have been performed. And the document now under consideration showed nothing more or less than the fact of the hour at which the several messages were heard in the United States, were received in short.

If this proof is relevant to the issue so framed by the prosecution, I feel that the mathematical argument founded on the fact that the number of the document is 1500 something, is of no moment. It doesn't matter where the proof comes from.

I therefore submit that this document is clearly relevant to one of the issues in the case.

THE PRESIDENT: There is no cross-examination of the last two witnesses. I take it that in the absence of any indication to the contrary to indicate it, prosecution do not contest what they said. There was a reference to earlier evidence by prosecution's witness which may imply some challenge of the statements we have heard from the box this morning, but to that extent only.

Mr. Tavenner.

MR. TAVENNER: If the Tribunal please, I feel that I should make it clear from the standpoint of the prosecution that we do not intend by mere failure to cross-examine to agree with what a witness says on the stand.

THE PRESIDENT: Where you have offered evidence to the contrary that is so, but these witnesses said a lot which I do not recollect to be covered by prosecution's evidence. The last witness clearly puts the blame for the delay on Japanese clerks in the Foreign Office or Ambassador's office in Washington. What evidence of yours contradicts that?

MR. TAVENNER: If it please the Tribunal, I was addressing my remarks to the larger question and not confining it purely to the testimony of the last two witnesses.

As to your direct question with regard to the placing of the blame upon the Embassy staff in Washington, the prosecution has offered no direct evidence to the contrary.

THE PRESIDENT: It would be a matter peculiarly within the knowledge of the Japanese Embassy in Washington, and you could not be expected to contradict them except by evidence as to what happened externally to that office.

I think we all understand the prosecution to be contending that the High Command and the Foreign Minister, and perhaps others, did conspire to delay the message in Japan so that it could not be delivered in time in Washington. The document last offered would tend to combat that.

MR. TAVENNER: If the Tribunal please, aside from the ruling as to the admissibility of this document, my main purpose in arising was to state the prosecution's view with regard to the cross-examination of witnesses. In response to the remark of your Honor, we are perfectly aware of the fact that adverse

inferences may be drawn by reason of our failure to cross-examine, but we do not understand, and have never understood, that the failure to cross-examine infers that we agree with the statement that is being made by the witness.

THE PRESIDENT: That all depends on the circumstances.

While you were offering evidence of atrocities I did suggest that failure to cross-examine would amount almost to admission, and nobody contested it that I recollect.

It would depend upon the ability the cross-examiner could have to test the credibility of the witness on the point. We would have to take that into account.

MR. TAVENNER: Then, we take it that that is particularly true when the facts are not within the peculiar knowledge of the prosecution in regard to the matter, as in this instance it was impossible for the prosecution to know what occurred within the confines of the Japanese Embassy at Washington.

And, the reasonableness of the witness' story is a matter to be contested in summation, we take it, rather than by long cross-examination. We have endeavored, as far as humanly possible for us to do, to

judicially determine this question in order that this case be not unduly prolonged.

THE PRESIDENT: There are no shortcuts to proper judicial determinations. Cross-examination still remains the principle means of testing credit.

MR. TAVENNER: That is perfectly true in the view of the prosecution, and in important and material things we propose to resort to it where we think there is a reasonable chance of developing the presecution's theory.

THE PRESIDENT: We will recess for fifteen minutes.

(Whereupon, at 1050, a recess was taken until 1110, after which the proceedings were resumed as follows:)

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Kapleau & Reichers

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

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: If the Tribunal please, I am confident that no such rule as the one announced exists in the United States. I am certain it does not exist in any court in which I have ever practised.

THE PRESIDENT: What rule are you referring to? State the rule so that we know.

I suggest that cross-examination is always expected where the witness makes an adverse statement, where you have materials, where you can cross-examine, where his statement is not obviously foolish, and where you have not already covered it by your evidence. I know nothing about your United States rules. I am not a United States lawyer. But I do know something about British rules and I do claim that what I say is in accordance with British rules and practice. I have had the advantage of discussing this matter with my colleagues during the recess and I know of no dissent from the rule as stated to you. No cross-examination is called for where a witness is obviously talking foolishly, or is of no consequence; but you are not suggesting for one second that those last two witnesses are in that class. My remarks are

directed to those two witnesses, their testimony.

MR. TAVENNER: I understood your Honor to state that the prosecution, by failure to cross-examine a witness, agreed with the testimony of the witness.

THE PRESIDENT: Your failure to cross-examine one of those witnesses surprised at least two British judges here, if not three; and at least two, if not three, thought you were admitting what he said.

MR. TAVENNER: If your Honor will permit me to continue with the statement that I propose to make, I think I can make myself clear.

THE PRESIDENT: It is no use discussing the different legal systems, it is only a waste of time so far as I can gather. You can always make yourself clear. You can always say that, no matter what my misapprehension may have been, I intended this, that or the other thing, and I will always take it into account, and so will the other judges. That is sufficient. There is no use in discussing the difference between the American system, the British system, the Dutch system, or the Russian system; we have no time for that here, nor would it lead us anywhere.

MR. TAVENNER: As I stated, if your Honor please, when I first arose, I was addressing my remarks to the larger question that your Honor mentioned, and that was whether or not the prosecution admits as true a statement by a witness who is not cross-examined by the prosecution. Now, that is a very important question, and if you will permit me just one or two minutes of the Tribunal's time, I would like to make some comment on that.

I merely referred to the fact that such a technical rule, if one exists in the British Commonwealth of Nations -- and I don't dispute that -- does not exist in the United States. That, of course, is no positive reason why it should not be adopted by this Tribunal. I recognize that. I don't think any American counsel for either the defense or the prosecution will be heard to say that such a rule exists in any superior court in the United States. I don't see how such a rule can exist in many of the countries represented on the Tribunal, because the very right of cross-examination is not recognized in some of them.

Regardless of the attitude of various Members of the Tribunal on this question, I want to make it clear that as far as the prosecution is concerned, there is no intent or purpose or design to admit as true a

thing that a witness states where there is no cross-examination. Now, this question was raised by Mr. Levin in an early phase of the case and I thought the matter was entirely disposed of. It appears at page 20,587 of the transcript. Recognizing the inferences that Members of the Tribunal may draw in their own mind where cross-examination does not occur, yet we feel that there should be no technical rule applied which would be the equivalent of an admission by the prosecution where no cross-examination occurs.

THE PRESIDENT: I take it to be your view that where a prejudicial statement is made, where it is serious, where you have materials with which to cross-examine, and where you fail to do so, no adverse inference should be drawn by the Tribunal, although you have not covered the matter by your own evidence? Those are the points I made to you. You are contesting them all.

MR. TAVENNER: We are, if your Honor please, contesting them to the extent that the prosecution is in any sense bound by it. We have proceeded throughout this trial with this in mind, that where we don't know what a witness's answer will be, where we haven't proof that we can establish a different line of thought from that expressed by the witness, cross-examination

on the point may be futile and there is no excuse for us going on a fishing expedition in regard to it.

THE PRESIDENT: I said twice, and I say a third time, where you have materials for cross-examination.

MR. TAVENNER: Of course we understand, as you have warned us a number of times, that we should not in cross-examination repeat the prosecution's evidence, so I understand you mean where there is no evidence in the case.

That is all we have to say.

THE PRESIDENT: Mr. Tavenner, materials for cross-examination and the prosecution's evidence already given are not necessarily to be identified, as you know and as every counsel in court knows.

MR. TAVENNER: Now that is all I have to say in regard to the over-all question, and now returning to the question of this document I desire to point out that in any analysis of it, it is nothing more than repetitive. The fact that the messages were received in the United States is nothing more than repetitive of the fact that they were sent.

THE PRESIDENT: It is not offered as evidence of the fact that they were received in the United States but as evidence of the time at which they were received there, which is another matter.

MR. TAVENNER: Not having disagreed in any manner with the time in which they were sent, certainly evidence of the time they were received could add nothing to the time element.

THE PRESIDENT: Mr. Tavenner, the fact that they were sent from Japan at a certain hour does not involve their receipt in Washington at a certain hour without proof as to when they were received in Washington. If it were a matter of common knowledge, like the rising of the sun, that a telegram sent from Tokyo at a certain hour would reach Washington at a certain hour there would be no need to prove it; but if we understood anything yesterday it was this: that you were suggesting in effect that the Foreign Minister-

in Japan and the High Command put their heads together to dispatch the messages at such a time that they could not reach Washington in time to give proper notice. If that is not so, you may correct it.

MR. TAVENNER: I would correct it only to this extent: that the conspiracy extended to the delaying of the message to the point where it ran the risk of not being received in time.

THE PRESIDENT: That could be met by the defense only by proving the times at which the messages were received in Washington.

MR. TAVENNER: With your permission I will make just one more remark in regard to it: that the time the message was sent and consequently the time it was received is not in dispute.

THE PRESIDENT: It is the first time you have made that clear, Mr. Tavenner, although you did say something earlier and we understood you to go back on it.

If it is not in dispute, is it in evidence already? If it is not in evidence and not in dispute it should go in now because we know nothing that does not appear in evidence.

MR. TAVENNER: It is not in evidence.

THE PRESIDENT: The objection is overruled

and the document admitted.

CLERK OF THE COURT: Defense document 1500-F-6 will receive exhibit No. 2968.

(Whereupon, the document above referred to was marked defense exhibit No. 2968 and received in evidence.)

MR. BLAKENEY: I propose to read from the exhibit only the descriptions of the messages, the times of filing, and the times of interception:

"No. 901 (pilot message), filed by the Japanese 8:56 p.m., 6 December, Tokyo time, which in Washington is 6:56 a.m., 6 December; intercepted in Japanese code by Navy Station S (Bainbridge Island, Washington) 1215-1220 GMT, 6 December, which is 7:15-7:20 a.m., 6 December, Washington time.

"No. 902 (14 part memo), Part 1, filed by the Japanese 10:00 p.m., 6 December, Tokyo time, which is 8:00 a.m., 6 December, Washington time; intercepted in Japanese code by Navy Station S (Bainbridge Island, Washington) 1303-1310 GMT, 6 December, which is 8:03-8:10 a.m., 6 December, Washington time.

"Part 13" of the 14 part memo, the intervening parts being omitted, "filed by the Japanese 1:25 a.m., 7 December, Tokyo time, which is 11:25 a.m., 6 December,

Washington time; intercepted in Japanese code by Navy Station S, 1635-1652 GMT, 6 December, which is 11:35-11:52 a.m., 6 December, Washington time.

"Part 14, filed by the Japanese 4:38 p.m., 7 December, Tokyo time, which is 2:38 a.m., 7 December, Washington time; intercepted in Japanese code by Navy Station S, 0805-0810 GMT, 7 December, which is 3:05-3:10 a.m., 7 December, Washington time.

"No. 907 (one o'clock message), filed by the Japanese 6:18 p.m., 7 December, Tokyo time, which is 4:18 a.m., 7 December, Washington time; intercepted in Japanese code by Navy Station S (Bainbridge Island, Washington) 0937 GMT, 7 December, which is 4:37 a.m., 7 December, Washington time.

"No. 910 (code destruction), filed by the Japanese 6:44 p.m., 7 December, Tokyo time, which is 4:44 a.m., 7 December, Washington time; intercepted in Japanese code by Navy Station S (Bainbridge Island, Washington) 1007 GMT, 7 December, which is 5:07 a.m., 7 December, Washington time."

The exhibit last offered in evidence did not disclose the time of decoding of these messages. As evidence of the time required for decoding, typing and preparation for distribution in this case by the United States authorities I offer in evidence an

additional excerpt from "Pearl Harbor Attack," defense document 1500-J-6.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1500-J-6 will receive exhibit No. 2969.

(Whereupon, the document above referred to was marked defense exhibit No. 2969 and received in evidence.)

MR. BLAKENEY: From the exhibit I propose to read only page 1 and a few entries from page 2. Page 1 (Reading):

"Department of the Navy, Office of the Secretary, Washington, 16 May 1946. 1083A (HLB)

"Memorandum to Mr. Seth W. Richardson.

"In compliance with the request of Vice Chairman Cooper at page 10783 of the Record of Proceedings, referred to in item 14 of your memorandum of 29 March 1946, Captain Kramer has prepared, and there is forwarded herewith, a smooth copy of the study made by him of the times of delivery to the White House of certain translations of Japanese intercepts.

"John Ford Baecher, Commander, USNR."

From page 2 I shall read the following items, taking the number in the left-hand margin, No. 42. I

omit the second column, "Origin," the date, the translator, the page in the exhibit or transcript, and come to the "Subject": "Re code machines, keep one I meant."

The next item, No. 43: "Jap Note parts 1-13"; in the right-hand column, "Delivered by Navy," "Evening, 6 December."

The next item, No. 43 also, entitled: "Jap Note part 14, delivered by Navy 0815-1000, 7 December."

Skipping to item 45: "1 P.M. message," delivered as were the following ones from 1030-1100, 7 December.

Item 47: "Destroy all codes and papers."

Item 49: "Pilot message," and

Item 50: "AP-UP reports re FDR message to Emperor."

All of those last, I repeat, were delivered from 1030-1100, 7 December.

I call as my next witness, Colonel Rufus S. Bratton, United States Army, whose testimony is contained in defense document 2094.

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R U F U S S. B R A T T O N, called as a witness in behalf of the defense, first being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BLAKENEY:

Q State your name, please.

A Rufus S. Bratton, Colonel, General Staff Corps, United States Army.

Q I ask that you be handed defense document 2094 and that you examine that and state whether it is your affidavit, signed and sworn to by you.

A It is.

Q Are the contents thereof true and correct?

A They are.

MR. BLAKENEY: I offer in evidence the affidavit, defense document 2094.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: If the Tribunal please, objection is made to this affidavit on the ground that the matters contained therein are irrelevant and immaterial to any issue in this case. The fact that the United States may have correctly anticipated what was likely to occur certainly is no justification for the aggressive acts of these accused. The fact that they may have been discovered in their

efforts to deceive does not at all affect their intent to deceive.

We think that the contents of the affidavit are objectionable on the same grounds as many of those documents in the 1500 series were refused.

THE PRESIDENT: You are charging killings as a result of treacherous surprise, is that so?

MR. TAVENNER: That is true.

THE PRESIDENT: Suppose you were not surprised, but knew, which is the contention of the defense, rightly or wrongly.

MR. TAVENNER: We take it, your Honor, the fact that a person feels that he may be waylaid in a dark alley does not at all alleviate the character of the offense.

THE PRESIDENT: I think the answer is shorter than that, Mr. Tavenner. You may have known what was coming, but you did not know where or when. In that way, this would not be an answer to a breach of The Hague Convention of 1907.

Major Blakeney.

MR. BLAKENEY: I feel that this evidence can be established as relevant on several grounds, and in view of the fact that in my judgment it raises squarely one of the fundamental questions for

decision by the Tribunal, I venture to hope that I may be indulged in presenting my views rather fully.

First, because of its chronological place in the order of proof, I should like to point out the bearing of this evidence on the same chain of proof which I have been attempting to forge with the immediately preceding exhibits.

The Tribunal has received evidence of the time of the dispatch, receipt, decoding and distribution of the Japanese final message. Mr. Tavenner says that those things will not be contested, but that the prosecution will contend that there was a deliberate arrangement to leave such a short time as created a grave risk of mishap in the delivery of this message by the Embassy. The evidence of Colonel Bratton, viewed in this aspect, furnishes the final link in the chain of showing the time within which actually the message, intercepted, decoded and prepared, was in the hands of a recipient, rather than merely distributed in a void, as it were. I said "a recipient" but I should have said "recipients."

Also, on another point raised by the President's discussion with Mr. Tavenner, we might well readily agree with Mr. Tavenner's statement

that in effect knowledge of intended treachery does not palliate the performance of that treachery, but Mr. Tavenner overlooks, I believe, that in the end there is always the possibility that this evidence will be regarded from the point of view of the defense. Of course, if we accept all the evidence in the case, with all the inferences arising therefrom which the prosecution present, this argument is quite sound. But to accept that argument is to overlook that the defense has, before now, offered evidence that no treachery was in fact intended, and if we accept the evidence in the light favorable to the defense, as of course we do in presenting further evidence, we find the situation to be somewhat different, somewhat like this -- that these defendants had the honest intention of serving a notice at a certain time. That intention was frustrated and rendered nugatory by events outside their control, and in such a state of affairs, I submit, the fact of actual knowledge of that which should, had the intention been carried out, have been given notice of, must be very significant in determining guilt or innocence for a treacherous attack.

It was suggested that substantial compliance with the terms of The Hague Convention III did not exist because knowledge was not shown of time when and the place where hostilities would commence, but I remind the Tribunal that quite aside from the fact that The Hague Convention III contains no requirement of a specification of time or place, this witness will testify that the time of the commencement of hostilities was known with considerable certainty.

I have a good deal more to say.

THE PRESIDENT: We will recess until half-past one.

(Whereupon, at 1200 a recess was taken.)

Duda & Spratt

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.

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R U F U S S. B R A T T O N, called as a witness on behalf of the defense, resumed the stand and testified as follows:

THE PRESIDENT: Major Blakeney.

MR. BLAKENEY: I understand from Mr. Warren that there was some matter which by agreement with the Tribunal I believe was to have been brought up at 1:30, but I assume we would all prefer not to be interrupted in this present discussion.

THE PRESIDENT: I understand Colonel Warren has an important matter to mention. I did suggest 1:30, but I did not anticipate we would be in this position. We should not keep Colonel Bratton longer than necessary.

MR. BLAKENEY: The remainder of my argument is prepared for simultaneous delivery, I believe.

THE MONITOR: Yes.

MR. BLAKENEY: I said in opening my argument

that the objection to this evidence raises squarely one of the fundamental questions for decision by the Tribunal. The question -- whether the uncontroverted fact that the United States Government, in the persons of all its highest military, naval, and civilian officials, had certain knowledge of the imminence of a war with Japan, and that many of them had correct knowledge of the very hour at which the hostilities would commence, can operate as a dispensation from compliance by Japan with the requirement of Hague Convention III for service of a declaration of war -- I now wish to discuss from the narrow point of view of treaty construction.

As the Tribunal is well aware, the scholiasts and academicians explain this provision of the Convention on two different grounds -- these grounds being, incidentally, those two upon which different groups of the delegates to the convention voted for adoption of the provision. First of these reasonings, and possibly the most widely adopted today, is that the requirement of a declaration of war antecedent to commencement of hostilities is designed to insure against a nation's being made victim of a surprise attack. But it seems plain that a nation which expects war, which considers war waged by a known

adversary to be 'absulutely imminent' (to quote the American Military authorities), which indeed knows the very hour, within a margin of a few minutes, of the opening of belligerent operations, cannot be said to be taken by surprise when that war comes precisely as it was anticipated that it would. To such a case applies one of the best-known maxims of our law: cessante ratione legis, cessat et ipso lex. Analogies could be produced from other fields of law -- from the law of contracts, from the law merchant, for example; but the strongest argument, in my submission, is that the foul play, the treachery which on this hypothesis this clause was intended to guard against is simply not present, nor possible, in these circumstances.

If, on the other hand, as many assert -- and as the debates over its adoption show was the view of many of the contracting nations -- the provision in question is not at all concerned with forestalling surprise, but is a 'technical' or 'formal' rule, designed chiefly to aid in establishing the precise moment of commencement of war and in securing the rights and duties of neutrals, then how much the less shall it be accounted an offense vis-a-vis the fully forewarned enemy that the formality be not complied

with! When the Hague Convention provides no minimum time which must elapse between notification and hostilities; when it leaves it available to the belligerent to serve the one and follow it a minute later with the other; when it so patently has neither intention nor tendency to guard against surprise; how shall it be accounted a crime or even a delinquency if the provision be violated, and that through inadvertence? It shall not be, in the view of leading authorities, even in the absence of the actual notice which we have here.

It is thus submitted that whether the matter be viewed formally or from the consideration of its true substance, the existence of actual notice must be deemed to work a dispensation from the requirement of the convention.

A point already mentioned may be slightly elaborated. The testimony of Colonel Bratton will additionally be evidence for the Tribunal on the point of whether the Japanese Embassy in Washington was given ample time by the Foreign Ministry for preparation and distribution of the final message. His testimony is clear that the message came in ample time to the War Department -- that, in fact, the entirety of it, as well as the instruction when to

deliver it, was in the hands of the War Department a full four hours before the time set for delivery. Clearly in these circumstances the United States had far more notice than if the notification had been delivered to it, as scheduled, at 1 P. M. and it had then first had knowledge of it; not to speak of the cases if, as is universally recognized to be permissible under the Hague Convention, Japan had elected to and had successfully served the final notification one or two minutes prior to the commencement of hostilities.

Last, and in my judgment a decisive ground on which this evidence is relevant is one which by chance arose from a question put to a witness yesterday by the President of the Tribunal -- the question of interpretation of the final Japanese memorandum. Since the Tribunal itself raised the point, a simple statement without elaborate argument should suffice to it. It will, of course, be an issue whether that final memorandum as drafted and delivered (though late) does constitute a declaration of war. The Tribunal has heard testimony that the members of the Liaison Conference who passed on it considered it clearly to amount, in the circumstances then prevailing, to a declaration of war.

In determining this question of interpretation it cannot fail to be of assistance to the Tribunal to know that the same interpretation was arrived at by the responsible American authorities familiar with and concerned in the matter. Here is a form of the familiar interpretation by the parties. Thus Colonel Bratton's testimony is relevant on this further ground, that it will disclose that high American authorities placed upon the Japanese memorandum the same interpretation as did the participants in the Liaison Conference, that it could be and was nothing but a declaration of war.

On all these grounds I therefore submit that this evidence should be received by the Tribunal.

THE PRESIDENT: The question to which you refer was put by me at the request of another Member of the Tribunal. You must not conclude that this question was put by the Tribunal, that is to say, by the majority of the Members. It was not. If a Judge asks me to put a question I do so.

MR. BLAKENEY: I didn't mean in any way to challenge the propriety of its being so done; I meant it merely as an illustration that the point should be readily understood.

THE PRESIDENT: By a majority the objection

is overruled and the document admitted on the usual terms.

CLERK OF THE COURT: Defense document 2094 will receive exhibit No. 2970.

(Whereupon, the document above referred to was marked defense exhibit No. 2970 and received in evidence.)

MR. BLAKENEY: I request leave of the Tribunal to read myself the questions and have Colonel Bratton read the answers, the affidavit being in question and answer form. May I do so?

THE PRESIDENT: I see no reason why the usual practice should be departed from. We expect you to read both question and answer.

MR. BLAKENEY: Very well.

I read the affidavit, which, omitting formal parts, is as follows:

"Q What is your name?

"A Rufus S. Bratton, Colonel, United States Army.

"Q What is your present position?

"A Deputy Chief of CIS, G-2, GHQ, SCAP.

"Q What was your position in the month of December 1941?

"A Chief of the Far Eastern Section, Military Intelligence Division, War Department General Staff,

Washington, D. C.

"Q What, in general, were your duties at that time?

"A I supervised the work of the Far Eastern Section of the Military Intelligence Division, and specifically was the custodian and processor of the Japanese diplomatic messages which were being intercepted and translated by the Army and the Navy. I had charge of that material from the time it reached the Military Intelligence Division.

"Q Was it your responsibility to make delivery or dissemination of that intercepted diplomatic correspondence?

"A It was my responsibility. I had some officer assistants who helped me in processing the material and occasionally in distributing it.

"Q When did you first learn that orders had been issued to Japanese Embassies and consulates to destroy their codes and documents?

"A On 3 December we had intercepted orders from Tokyo to the Embassy to that effect, and I had sent one of my officers to the Embassy and he reported that they were burning their papers in the back yard.

"Q Whom did you notify of this fact?

"A General Sherman Miles, my superior officer

and Chief of Military Intelligence, and General Leonard T. Gerow, Chief of the War Plans Division of the General Staff. The intercepted message was sent to the usual recipients of this material, which included the Secretary of State and the Chief of Staff. Distribution to the Secretary of the Navy and the President was at that time the responsibility of the Navy.

"Q Did you and Generals Miles and Gerow discuss the meaning of this destruction of codes?

"A Yes, we agreed that it meant at the least a break in diplomatic relations and probably war.

"Q Do you remember the so-called pilot message, which appears in evidence in this case as exhibit 1,216, and which I am having handed to you?

"A I do."

I am sure that he does.

THE PRESIDENT: That is why you asked for that permission.

MR. BLAKENEY: Yes.

"Q When did this message first come to your attention?

"A Some time around 2 o'clock of the afternoon of Saturday, 6 December 1941.

"Q Did you discuss the matter with anyone on that Saturday afternoon?

"A Yes; with General Miles and with General Gerow. In addition, that message was distributed to the Chief of Staff, the Secretary of War and the Secretary of State.

"Q Are you familiar with the 14-part message which was later received in accordance with this pilot message, in evidence here as exhibit 1245-K, which I trust is being handed to you?"

I will give him a moment to look at that long document.

"A I am.

"Q When did you first see any parts of this message?

"A That message began to come into my office in the late afternoon or early evening of 6 December, and the first 13 parts had arrived completely between 9 and 10 o'clock that evening.

"Q To whom did you make distribution of those 13 parts?

"A To the Secretary of State, by delivery of the locked pouch containing them to the night duty officer in the State Department some time after 10 o'clock that night. I also advised General Miles by telephone of the contents, and was told by him that he had seen the 13 parts.

"Q When did you first see the 14th part of the message?

"A The 14th part was delivered to me at my office in the War Department 8:15 or 8:30 on the morning of Sunday, 7 December.

"Q What distribution of it was made by you?

"A It was delivered immediately to the State Department by me or my assistant, Colonel Dusenbury.

"Q When did you first see the message ordering 1 o'clock delivery of the memorandum contained in the 14-part message, exhibit 1218, which is being shown to you?

"A At just about 9 o'clock of the morning of 7 December.

"Q Whom did you notify of receipt of this message?

"A Generals Miles and Gerow, and General Marshall, Chief of Staff.

"Q Do you know whether General Marshall had read

the 14-part message?

"A At 11:25 that morning Generals Miles and Gerow and I met with General Marshall in his office. He then read, in our presence, the complete 14-part message and the 1 o'clock delivery message.

"Q Was the significance of the 1 o'clock delivery discussed?

"A At General Marshall's request each of us gave him his evaluation of it, which was that we concurred in believing that it meant Japanese hostile action against some American installation in the Pacific at or shortly after 1 o'clock that afternoon.

"Q What did General Marshall do as a result of this conversation?

"A He called Admiral Stark, Chief of Naval Operations, on the telephone, and after consultation with him wrote out in his own hand a warning message to be sent to Hawaii, the Philippines, Panama and other American outposts in the Pacific.

"Q I am having handed to you defense document No. 1500-E-6. Please examine this document and state whether it contains, on page 8" -- I make that correction -- "on page 8, a copy of the message at that time prepared and sent by General Marshall?

"A This is the message which General Marshall

wrote and which at his order I took to the War Department Message Center for coding and transmission."

And I now offer in evidence defense document No. 1500-E-6.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1500-E-6 will receive exhibit No. 2971.

(Whereupon, the document above referred to was marked defense exhibit No. 2971 and received in evidence.)

MR. BLAKENEY: And at this time I shall read from page 8, commencing with the words:

"Memorandum for the Adjutant General (through Secretary, General Staff).

"Subject: Far East Situation.

"The Secretary of War directs that the following first priority secret radiogram be sent to the Commanding General, U.S. Army Forces in the Far East; Commanding General, Caribbean Defense Command; Commanding General, Hawaiian Department; Commanding General, Fourth Army;

"And the message is this:

"Japanese are presenting at one p.m. Eastern Standard time today what amounts to an ultimatum also they are under orders to destroy their code machine

~~immediately~~ stop Just what significance the hour set may have we do not know but be on alert accordingly stop Inform naval authorities of this communication.

"Marshall."

Returning to the affidavit, top of page 3:

"Q Were you advised by the chief of the message center how long it would take for delivery of that message to the addressees?

"A Colonel French, the chief of the message center, told me that it would be in the hands of the addressees within 30 or 40 minutes, which fact I reported to General Marshall.

"Q What time was it then?

"A It was then 11:58 a.m."

You may cross-examine.

MR. TAVENNER: There will be no cross-examination.

MR. BLAKENEY: I ask that the witness be released on the usual terms.

THE PRESIDENT: He is released accordingly.

(Whereupon, the witness was excused.)

MR. BLAKENEY: As further evidence of the time of delivery of the intercepted 14-part message by the American Navy, I offer in evidence defense document 1500-I-6, an excerpt from Pearl Harbor Attack.

I am sorry, I have departed from the order of proof. I understand there is no objection.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1500-I-6 will receive exhibit No. 2972.

(Whereupon, the document above referred to was marked defense exhibit No. 2972 and received in evidence.)

MR. BLAKENEY: I read the excerpt, which is part of the testimony of Captain Laurence Frye Safford, United States Navy, given before the Joint Congressional Committee investigating the Pearl Harbor attack.

"All my shore duty has been spent in my specialty as a cipher expert and radio intelligence expert. I came ashore to assume this duty in charge of the Navy Department Communications Intelligence Unit in May 1936, and remained on that duty until February 15, 1942, at which time I was removed by the orders of Admiral Horne.

. . . . . .

"I would like to make one statement which may or may not be important, that the Navy completed its distribution of that message, all 14 parts, plus the pilot message, about 3 hours before the Japanese Embassy in Washington called up the State Department

and asked for a delay in their appointment with Secretary Hull because they were not ready."

As showing the advance knowledge of the President of the United States of the contents of the Japanese final memorandum, and that his interpretation thereof from a perusal of the first 13 parts only corresponded with that of the participants in the Liaison Conference in Japan, defense document 1500-G-6, an excerpt from Pearl Harbor Attack, is offered in evidence.

THE PRESIDENT: Mr. Tavonner.

MR. TAVENNER: If it please the Tribunal, objection is made to the introduction of this document in evidence on the ground that it is immaterial and irrelevant.

THE PRESIDENT: Do you wish to say anything, Major Blakeney?

MR. BLAKENEY: Yes, sir. I think that this document and documents subsequently to be offered are all squarely covered by the ruling on the testimony of Colonel Bratton.

THE PRESIDENT: Yes, Mr. Tavenner?

MR. TAVENNER: If the vote has not been taken, I would like to comment further.

THE PRESIDENT: Well, we do not allow you to

argue these points twice. Several seconds elapsed between when you last spoke and Major Blakeney was invited by me to talk if he wished. However, the majority may desire to hear you, Mr. Tavenner. I will take a vote.

MR. TAVENNER: I will not argue it further.

THE PRESIDENT: By a majority, the Court overrules the objection and admits the document on the usual terms.

CLERK OF THE COURT: Part 10 of the Pearl Harbor Attack will receive exhibit No. 2973 for identification only. The excerpt therefrom, bearing document No. 1500-G-6, will receive exhibit No. 2973-A.

(Whereupon, the document above referred to was marked defense exhibit No. 2973 for identification; and the excerpt therefrom, bearing document No. 1500-G-6, was marked defense exhibit No. 2973-A and received in evidence.)

MR. BLAKENEY: I read the document:

"Mr. Richardson: Will you state your full name, please?

"Commander Schulz: Lester Robert Schulz.

. . . . . .

"Mr. Richardson: What was your assignment

for duty in Washington during the first week of December?

"Commander Schulz: I was under instruction in the Office of Naval Communications for communication intelligence. That was my permanent assignment. However, I was on temporary duty under verbal orders at the White House as a communications assistant to the Naval Aide, then Captain Beardall.

. . . . . .

"Mr. Richardson: Were you on duty at the White House in Admiral Beardall's office there on the night of December 6, 1941?

"Commander Schulz: I was on duty in the White House.

. . . . . .

"Mr. Richardson: Do you recall Captain Kramer coming to the White House on the evening of December 6 to deliver any papers?

"Commander Schulz: Yes, sir; I do.

"Mr. Richardson: About what time did he come?

"Commander Schulz: Between 9 and 10; I should say about 9:30.

. . . . . .

"Mr. Richardson: Are you able to state now whether among the papers which were delivered to the

President there were this 13 parts of what was eventually the 14-part message?

"Commander Schulz: No, sir; I cannot. I did not read the message. I have only learned of its substance through information that has been divulged during this inquiry, from newspapers and so on.

"Mr. Richardson: All right. Now, what happened when you delivered these papers to the President? You remained there?

"Commander Schulz: Yes, sir; I remained in the room.

"Mr. Richardson: What happened?

"Commander Schulz: The President read the papers, which took perhaps 10 minutes. Then he handed them to Mr. Hopkins.

. . . . . .

"Commander Schulz: Mr. Hopkins then read the papers and handed them back to the President. The President then turned toward Mr. Hopkins and said in substance -- I am not sure of the exact words, but in substance -- 'This means war.'"

As bearing on the notice of impending war given to high officials of the American State, War and Navy departments, by interception of Japanese messages directing destruction of codes, I offer in

evidence defense document 1500-C-6, an excerpt from Pearl Harbor Attack.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1500-C-6 will receive exhibit No. 2974.

(Whereupon, the document above referred to was marked defense exhibit No. 2974 and received in evidence.)

Woolf & Leffler

MR. BLAKENEY: I read the document. First, excerpts from:

"TESTIMONY OF SUMNER WELLES, FORMER UNDER SECRETARY OF STATE.

"Senator Ferguson: When did you first hear from any source that the Japanese Ambassadors in various places, for instance, here in Washington and in London, were destroying codes, or did you ever hear of it?

"Mr. Welles: I recollect that shortly before December 7th an intercept gave an indication that the Japanese Embassy here was instructed to destroy its papers.

"Senator Ferguson: Do you recall when that was?

"Mr. Welles: Without referring to a record I could not give you the precise day or time.

"Senator Ferguson: Was it prior to the 7th?

"Mr. Welles: Prior to the 7th.

"Senator Ferguson: What did that signify to you as a diplomat and Under Secretary of State?

"Mr.Welles: That signified to me that the last stage had been reached.

"Senator Ferguson: I did not catch that.

"Mr. Welles: That signified to me that the

last stage had been reached.

"Senator Ferguson: Would you say it indicated war?

"Mr. Welles: A rupture of diplomatic relations at the very least and under the circumstances then existing the probability of war."

We come to the testimony of Major General Sherman Miles, United States Army.

"Mr. Gesell (Chief Assistant Counsel): General, will you state for the record your full name and your present rank, and duty, please, sir?

"General Miles: Sherman Miles, Major General, Army of the United States; stationed in Boston, Massachusetts.

"Mr. Gesell: You were head of G-2, were you, General, on December 7, 1941?

"General Miles: I was, sir.

"Mr. Gesell: How long have you had that duty?

"General Miles: I reported on May 1, 1940.

"Mr. Gesell: What, in a general way, would you say are the duties and the functions of G-2?

"General Miles: The Military Intelligence Division of the General Staff is charged with the collection, analysis, estimation, dissemination of information primarily for the Chief of Staff and the

Secretary of War.

"G-s is a staff officer of the Chief of Staff, an assistant chief of staff for intelligence.

"Mr. Gesell: G-2 is another name for Military Intelligence Division, is that correct?

"General Miles: Yes, sir.

"Mr. Gesell: May I ask you, General, what significance could properly be attached at this time to the number of messages which we had intercepted from the Japanese in the period from December 1 to December 5 and later indicating that the Japs were destroying their most secret and confidential codes in Washington and in fact throughout the world?

"General Miles: The inference would be that the Japanese had either planned for the outbreak of war, in other words, planned to initiate a war as they did or feared war coming suddenly through what was described in that message you recently read, a clash of arms.

"Mr. Gesell: Therefore, the information concerning code burning and destruction was of a specific and vital military nature, was it not?

"General Miles: It was, sir.

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"TESTIMONY OF ADMIRAL R. E. INGERSOLL, UNITED STATES NAVY

"Mr. Richardson (General Counsel): Admiral, will you state your name to the reporter, please?

"Admiral Ingersoll: R. E. Ingersoll, Admiral, U. S. Navy.

"Mr. Richardson: What was your assignment during November and December 1941?

"Admiral Ingersoll: I was at that time Assistant Chief of Naval Operations.

"Mr. Richardson: Your immediate superior was Admiral Stark?

"Admiral Ingersoll: That is correct.

"Mr. Richardson: What were your duties generally speaking in that assignment, Admiral?

"Admiral Ingersoll: The Assistant Chief of Naval Operations had no duties assigned by law or by Navy regulations. By Executive order he was a member of the joint board which was the forerunner of the joint chiefs of staff. By office regulations prescribed by the Chief of Naval Operations he had in general supervision of all officers of the Office of Chief of Naval Operations. I had no original cognizance of any manner. As a matter of fact I had no office other than myself. And all heads of sections took up their questions with me usually before presenting them to the Chief of Naval Operations.

"Once the Chief of Naval Operations had established a policy, I endeavored then to relieve him of all the load that I could of the details in carrying out that policy, in signing papers and releasing dispatches, I kept him informed of correspondence where I thought there was something of which he should be informed.

"I considered that the information which we received regarding the destruction of the codes and which was sent out to the fleets as one of the two most important messages that were sent out by the Chief of Naval Operations during the entire period before Pearl Harbor, the other one being the dispatch stating that, 'This is a war warning,' in effect and that all hope of negotiations had broken off.

"Now, the wording in that winds message did not say that we are going to be in a state of war or that hostilities now exist. It referred to a rupture of diplomatic negotiations or that the situation between the countries was becoming critical.

"The importance of the messages regarding the destruction of the codes is this: If you rupture diplomatic negotiations you do not necessarily have to burn your codes. The diplomats go home and they can pack up their codes with their dolls and take them

home. Also, when you rupture diplomatic negotiations you do not rupture consular relations. The consuls stay on.

"Now, in this particular set of dispatches they not only told their diplomats in Washington and London to burn their codes but they told their consuls in Manila, in Hong Kong, Singapore, and Batavia to burn their codes and that did not mean a rupture of diplomatic negotiations, it meant war, and that information was sent out to the fleets as soon as we got it and it made no difference whether we ever got an execute from the winds after that or not, and that is why I think officers in high positions are vague about it. It did not make any difference.

"Mr. Gearhart (Representative from California): Now the reason why you knew that the destruction of the codes meant war and not merely breaking off of negotiations was the fact that is they were merely breaking off diplomatic negotiations with us they would not have to destroy their codes?

"Admiral Ingersoll: Not necessarily.

"Mr. Gearhart: They could pack them up, as you said with their second suit of clothes and take them home if they were merely breaking off diplomatic relations.

"Admiral Ingersoll: Correct.

"Mr. Gearhart: So that it was a dead tip-off, a foregone conclusion in the estimations of the higher ranking military officers that the order for the destruction of their codes within our areas meant nothing but war?

"Admiral Ingersoll: Yes; and the fact that the consulates were included cinched it in my opinion that it was war and not a rupture of diplomatic negotiations or diplomatic relations.

"Senator Ferguson: But would you say that all Navy men would come to the conclusion that the moment that codes were going to be destroyed that that meant war between the countries?

"Admiral Ingersoll: That was what we construed it and I think everybody construed it, that it would mean that.

"Senator Ferguson: All right. Now you know of no one in the high command in the Navy that construed the destruction of the codes in any other way than you construed them?

"Admiral Ingersoll: I think everybody in the Navy Department construed the destruction of the codes as the fact that Japan expected to be at war shortly with the three countries that were involved in that

series of messages.

"Senator Ferguson: Then we come to this conclusion, that at least on the 4th -- I think that is the date they sent the messages out, was it not?

"Admiral Ingersoll: Third or fourth.

"Senator Ferguson: Third of fourth, that everyone in the Navy, as far as the high command was concerned, were alerted that war was going to occur between America and Japan?

"Admiral Ingersoll: Those instructions were sent to certain commanders, to the commanders of the fleet, to the Naval attaches in Peiping and to the Marine detachments and others and the purpose of sending it to them was to inform them that we expected to be at war -- or that Japan expected to be at war with those countries in a very short time.

"Senator Ferguson: And our country was one of them?

"Admiral Ingersoll: And our country was one of them.

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"TESTIMONY OF CAPTAIN ALWIN D. KRAMER, UNITED STATES NAVY

"Senator Ferguson:" I think that is, "I want you to look at page 249, the top message from Tokyo to Washington, December the 7, 1941, 'Extremely urgent.'

The other one was listed, 907, 'Urgent, very important,' but this is, 'Extremely urgent,' and I will read it: After deciphering part 14 of my #902[a] and also #907[b], 908 and 909, please destroy at once the remaining cipher machine --

"You will notice it says: the remaining cipher machine and all machine codes. Dispose in like manner also secret documents.

"Now, I will ask you when that message was received and decoded.

"Captain Kramer: I cannot state, sir, from first-hand knowledge when it was received and when it was decoded. I do know that it was not received, or at least seen by me, until about the middle of Sunday morning.

"Senator Ferguson: Now, what hour would that be?

"Captain Kramer: I believe that this particular one, 910, which you read, was seen by me first when I returned from my appointment at the State Department.

"Senator Ferguson: Do I understand that it was seen at the same time as the 1 o'clock message?

"Captain Kramer: That is my recollection, sir.

"Senator Ferguson: Well, now I have information

here that a 910 and 907 -- 907 -- there are two short messages I have just read -- was filed in Tokyo on 4:18 a.m. on the 7th of December. And it was intercepted in Japanese code by the Navy station at Bainbridge Island, Washington, at 4:35 a.m.

"Captain Kramer: It says 4:37"."

The remainder of the page should be obliterated and is not a part of the document.

May I suggest that Mr. Warren present his matter now.

THE PRESIDENT: Colonel Warren.

MR. WARREN: If the Tribunal please, we are rapidly approaching the time when it will become necessary to present the individual cases of the accused, and the defense counsel have had a great deal of discussion with reference to the accused taking the witness stand. There is naturally more than one school of thought, and while other counsel and their clients are vitally interested in the proposition, it is not my desire nor the desire of any of my co-counsel to bind or in any manner limit the action of any other attorney in behalf of his own client. Consequently, these remarks are directed in behalf of the accused HIRANUMA and DOIHARA. After lengthy discussion, we have decided upon a course of action which we believe will

meet all the requirements of the Tribunal and adequately serve the ends of justice.

If the accused are presented as witnesses, to testify in their own behalf, it will necessitate the compiling of a lengthy and detailed affidavit in behalf of each. We have, of course, rough drafts of such statements, and are in a position at this time to state authoritatively that if they are completed and presented, that they will be lengthy and will undoubtedly elicit a lengthy cross-examination. Struggle as we may to shorten these documents, we arrive at the inevitable obstacle of being unable to determine what points might be lightly touched upon and what points must be covered in great detail. This situation is the natural result of the great mass of testimony which has been placed before the Tribunal by both the defense and the prosecution. We have no way of knowing the points which the various Members of the Tribunal may desire to have clarified. Not only is it possible, but it is most probably that in compiling our affidavits, we may touch sketchily or perhaps completely overlook a matter of evidence which some Member of the Tribunal needs most urgently in order to arrive at his final judgment. For this reason we must, if we produce an affidavit, cover in comprehensive detail all of the

testimony concerning our respective clients upon which the prosecution has touched. From our viewpoint this is not desirable and can only result in a tremendous waste of time and effort, not only on the part of counsel, but on the part of the Tribunal, and will result in a considerable lengthening of the individual cases.

It may seem far fetched, and indeed it is entirely possible that I may be wrong. However, by the elimination of affidavits and procedure in accordance with the plan which I shall now outline, my prognostication is that two-thirds of the time which might be consumed in the presentation of the individual cases will be saved.

Section IV(b) of General Orders No. 20, which is the Charter of this Tribunal, provides, under the powers of the Tribunal, that the Tribunal has the power, "to interrogate each accused and to permit comment on his refusal to answer any question." We interpret this provision to mean the Tribunal may examine only if the accused voluntarily takes the witness stand. Whatever the interpretation, it is, of course, a departure from ordinary procedure in criminal cases. Because it is a departure, in the opinion of this counsel, it permits the Tribunal, with

complete propriety, especially upon the application of counsel for guidance, to indicate its preference with reference to the manner in which testimony may be taken from the accused.

In our particular case it is our hope that it would serve the purpose of the Tribunal if, after presenting our individual cases in the ordinary manner, we could, upon conclusion of our testimony, state in substance to the Tribunal that we did not desire to place the accused on the witness stand for direct testimony, but had no objection to the Tribunal as a whole, or any Member thereof, calling the accused to the witness stand, under oath, and propounding to the accused any question which might enable the Tribunal to more speedily arrive at their judgment.

We do not believe there is any prohibition under the terms of the Charter that would preclude us from adopting this course of action, but our interpretation of the provisions of the Charter may not be in accord with that of the Tribunal. To adopt such a course without first apprising the Tribunal of our intention might react to the detriment of an accused at a time when it would be too late to retrench and bring his testimony before the Court by affidavit. There is not the slightest desire on the part of either

of the accused to in any manner withhold any information from the Tribunal which it may feel pertinent to the issues. As a matter of fact, it is their desire to wholeheartedly cooperate, but they are just as anxious to adopt any time-saving device as any Member of the Tribunal, the prosecution, or the defense. They feel, as do we, that it would be humanly impossible to develop an affidavit going directly to the point which each Member of the Tribunal may want clarified. They likewise feel that the Members of the Tribunal, if given adequate notice of our intentions, can be prepared to put their questions directly to the accused at a great saving of time, and with the elimination of any unnecessary details which undoubtedly would become the subject of direct examination and cross-examination, if an affidavit is used.

We realize that the Members of the Tribunal might be reluctant to express an opinion as to their preference on this question. As previously pointed out, we feel that they may do so with the utmost propriety. However, because of the fact that other accused and their counsel may not see eye to eye with this counsel, the Tribunal might, quite naturally, determine that it should not express such a preference and in such instance we would not presume to urge it so to do. If

the Tribunal can or will convey to us their approval of the plan expressed, we shall be more than satisfied.

In order to fully clarify our position, we should like to state that this matter is being presented to the Tribunal basically upon three premises:

1. We naturally do not desire to adopt any course of action which might in any way reflect upon the integrity of the accused.

2. We are firmly convinced that the Tribunal, in the exercise of its prerogative to examine an accused, can elicit from the accused the desired information, much more expeditiously than either the defense or the prosecution.

3. We are firmly convinced that it will undoubtedly save a great deal of time and effort for all persons concerned.

THE PRESIDENT: Mr. Chief of Counsel.

MR. KEENAN: The prosecution has not been apprised of this application, if it has been called such, but, of course, is anxious to cooperate in any method that will avoid any unnecessary delay in any part of this proceeding; and suggests that a copy of the suggestion now advanced by Mr. Warren be furnished the prosecution and an appropriate time be given for study or any response that this Court may think fitting and proper to such application.

MR. WARREN: If the Tribunal please, this is not a matter that I formally notified the prosecution about, because it is a question of a matter of procedure upon which defense counsel alone is asking guidance. However, I have a copy in my office which they may have, but it will be completed and in the record in the morning, and if they desire to study it and have any comment to make, of course I have no objection to that.

THE PRESIDENT: Captain Brooks.

MR. BROOKS: If the Court please, I do not believe this is going to be the final decision today on this matter. As I understand it there will be a further hearing and I would like to be heard at that time, after discussion, as to the rights -- if such a procedure is adopted -- that I might have as a defense

counsel for one of the other accused, to cross-examine on a point that was raised to the Court in a question. I believe that this matter goes deeper than what appears on the surface. I do want to reserve my rights until a future time, if the Court will allow.

THE PRESIDENT: The Court has no intention of giving a decision today, nor until after it has heard this matter fully argued. I may hear it in chambers, I think, and I believe now I have the concurrence of all my colleagues that we will not undertake to advise the accused what they should do. We will decide what are their rights and obligations under the Charter after hearing argument. We will adjourn this matter to be argued later at a time to be fixed.

Major Blakeney.

MR. BLAKENEY: I return to exhibit 2971.

THE PRESIDENT: It has been suggested to me that the prosecution might like to cross-examine the witness YAMAMOTO. He has been in court or about the court since half-past eleven.

MR. BLAKENEY: I have just discussed the matter with Mr. Tavenner and we thought it is better to commence at 3 o'clock.

Meanwhile, then, I shall return to exhibit

2971 to read further excerpts with a view to clarifying the state of knowledge of General Miles, G-2 and General Marshall, Chief of Staff, starting at the beginning:

"TESTIMONY OF MAJOR GENERAL SHERMAN MILES

"Mr. Gesell: Now, just how far, General, did this question of security go in this regard? To take an extreme case, assuming you had intercepted a message in which the Japanese said that they planned to attack Pearl Harbor on the 7th of December at dawn. I take it I am correct in assuming that that message would have been transmitted to Hawaii for their information?

"General Miles: It would have been, by the Chief of Staff. I think that case is similar to the one which actually occurred on the morning of December 7. We didn't know where this attack was coming but we very much feared an attack would come coincident with the 1 p.m. delivery of the Japanese reply and my action then was to bring this to the notice of the Chief of Staff so that an additional warning would be sent out.

"Mr. Gearhart: . . . But, General Miles, things happened on the 6th of December which suddenly centered your attention upon Hawaii as a possible object of attack, did there not?

"General Miles: Things happened on the morning of the 7th of December, sir, which centered my attention on the probable Japanese attack somewhere coincident with the delivery of the Japanese reply at 1 o'clock that day.

"Mr. Gearhart: You are familiar with the so-called 14-part Japanese reply to the Hull message of November 26, are you not?

"General Miles: I am, sir.

"Mr. Gearhart: When they speak of it as the 14-part message they are referring to the method the Japanese used in transmitting that message, are they not?

"General Miles: That is correct, sir.

"Mr. Gearhart: It came in in installments, in other words, rather than in a solid typed coded message; is that correct?

"General Miles: That is correct, sir.

"Mr. Gearhart: Thirteen parts of that message were received in Washington on the 6th day of December, were they not?

"General Miles: On the late evening of the 6th they were received, sir.

"Mr. Gearhart: Do you know when the fourteenth part was received on the 7th of December?

"General Miles: I understand that that was received fairly early on the morning of the 7th, at 7 or 8 o'clock. Again, I am not able to testify as to the accurate hour.'

"Mr. Gearhart: You were impressed with the importance of that fourteenth part of the message, were you not?

"General Miles: When I read it, I was very much impressed with the fourteenth part.

"Mr. Gearhart: Did you make any out-of-the-ordinary directions in reference to its immediate delivery to the ones that were entitled to receive copies from an emissary from your division?

"General Miles: It had been delivered to the recipients about coincidental with its delivery to me, with the exception of General Marshall with whom I was in touch either directly or through Colonel Bratton to get this information to him.

"Mr. Gearhart: Did you make any special effort by telephone or otherwise, or by calling at his office, to inform General Marshall of the receipt of that fourteenth part of the message?

"General Miles: I did, sir.

"Mr. Gearhart: Were you successful in contacting him?

"General Miles: I was, sir.

"Mr. Gearhart: When did you inform him of the fourteenth part of the message?

"General Miles: Mr. Congressman, I have written notes on my activities on the 6th and 7th which, perhaps for clarity and saving time, I might read.

"My wife and I dined at the house of Admiral Theodore Wilkinson, then Chief of ONI. We were there from 8 p.m. until about 11 p.m. Shortly before we left, I think about 10:30 p.m., Commander Kramer came to the house, bringing with him a summary, I think, although it may have been the full translation of the first 13 parts of the Japanese reply to our note of November 26. This was the first knowledge I had that these 13 parts were in.

"Early on the morning of the 7th, Colonel Bratton called me at my house, told me that important information was in and that he was trying to get in touch with General Marshall. I asked Colonel Bratton to tell General Marshall that I would come out to Fort Myer to see him if he desired. Either Colonel Bratton or I called General Gerow. These telephone messages were

designed to effect a meeting of the Chief of Staff with General Gerow," it should be Colonel Bratton, "and myself, which subsequently took place in General Marshall's office.

"I then went to my office. There I saw the full Japanese reply, and the 1 p.m. delivery message, and discussed them with Colonel Bratton. The latter message and the fourteenth part of the Japanese reply struck me immediately.

"Soon arrangements had been made for us to be notified when General Marshall arrived. When so notified, I went to General Marshall's office. What took place in his office is best recalled by me in a memorandum I prepared for the Chief of Staff, dated December 15, 1941, subject: 'Sunday Morning, December 7, 1941.'

"This is the memorandum that I refer to, as my recollection of what occurred.

"Memorandum for the Chief of Staff

"Subject: Sunday morning, December 7, 1941.

"1. My recollection of what occurred in your office on that morning is as follows:

"I found you alone in your office at about 11:25 a.m. We were almost immediately joined by Colonel Bratton , who brought in the Japanese reply

and the Japanese directive that the reply be given to Secretary Hull at 1 p.m. that day.

"You then read aloud the Japanese reply, which was of considerable length. You then asked what Colonel Bratton and I thought should be done about it, or what it signified. We said that we believed there was important significance in the time of the delivery of the reply-- 1 p.m.-- an indication that some military action would be undertaken by the Japanese at that time. We thought it probable that the Japanese line of action would be into Thailand, but it might be any one or more of a number of other areas.

"I urged that the Philippines, Hawaii, Panama and the West Coast be informed immediately that the Japanese reply would be delivered at one o'clock that afternoon, and to be on the alert. You then picked up the telephone and got Admiral Stark. You told him you thought we should send out warning as indicated above. After Admiral Stark replied, you put down the telephone and said that the Admiral did not think any further warnings necessary, since all the forces had already been several times alerted. Colonel Bratton and I nevertheless urged that warnings be sent.

"You then wrote out the warnings message. There was some discussion as to whether the Philippines

should be included or not, but I am not quite clear exactly when this discussion occurred. You again got Admiral Stark on the telephone and read the message to him. He apparently concurred, and asked that the naval forces be informed. You added that at the bottom of the message.

"At about this time General Gerow and Colonel Bundy arrived. You asked us in succession, beginning with me, what we thought the Japanese reply and timing meant. I said that I thought it probably meant Thailand, but that the timing had some significance and warning messages should be sent. General Gerow and Colonels Bratton and Bundy concurred. The message in your handwriting was then given to Colonel Bratton to take immediately to the message center. (There was a little discussion here as to whether it should go to General Gerow's office for typing first, but time was then pressing and I gave it to Bratton for immediate delivery. General Gerow said as Bratton was leaving, 'Tell them to give it first priority to the Philippines if there is a question of priority' or something to that effect.) Bratton returned in a few moments and you directed him to find out how long it would take for the delivery of those messages. Again he went to the message center and returned and reported to you that they would have

them encoded in three minutes, on the air in eight, and in the hands of the recipients in (I think) twenty.

"Colonel Bratton states that he looked at his watch on delivering your message to the Signal Corps, and the time was 11:50 a.m. He further states that the message center gave him no intimation that all four messages would not go over Army radio direct to the four Army Headquarters.

"Signed by me

"Mr. Gearhart: Do you remember when you first saw the full message of the 14 parts?

"General Miles: I cannot identify the hour exactly, sir. I only know that I got down there to the office fairly early after this telephone conversation with Colonel Bratton, and I think that General Gerow, although of that I am not quite certain, and that I had considerable time to read the message and discuss it with Colonel Bratton before the arrival of the Chief of Staff.

"Mr. Gearhart: But the very use of 1 o'clock by the Japanese Government in directing their Ambassador and Envoy to present that at that hour certainly excited in the minds of every officer who saw that message much comment in respect to its possible meaning, did it not?

"General Miles: Yes, sir, It was a very unusual request to make on a Secretary of State of a foreign power, that he receive a message at 1 o'clock on a Sunday afternoon."

Mr. Tavenner advises me that the next two paragraphs have been inverted. I therefore read them in reverse order.

"General Miles: I am trying to remember, Mr. Congressman but I do not remember that any of those places specifically were discussed, or that we related the 1 o'clock in Washington to any specific place. We thought the line of action would be Thailand, still thought it that morning, but we wanted our overseas departments and the west coast alerted, and it was an awful urgency about it.

"Mr. Gearhart: All right. What did 1 o'clock in Washington mean in Hawaii?"

Then, on the top of page five:

"General Miles: One o'clock, as we now know, meant about 7 o'clock, I think, in Hawaii."

Now, at this point, Mr. Tavenner has asked me, and I have consented, to read an additional excerpt of three sentences which we would like to have at this point.

"Mr. Gearhart: And isn't it true that the

opinion among those with whom you were in consultation was unanimous that it meant trouble in Hawaii?

"General Miles: No, sir, I have no such recollection."

Then, I return to the exhibit.

THE PRESIDENT: We will recess for fifteen minutes.

(Whereupon, at 1445, a recess was taken until 1505, after which the proceedings were resumed as follows:)

- - - -

Reichers & Kapleau

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

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: If the Tribunal please, I would like to recall at this time the witness YAMAMOTO Kumaichi for further cross-examination.

K U M A I C H I Y A M A M O T O, resumed the stand and testified through Japanese interpreters as follows:

THE PRESIDENT: You are still on oath.

CROSS-EXAMINATION

BY MR. TAVENNER (Continued):

Q Mr. YAMAMOTO, as is shown on page 26,134 of the transcript, you volunteered this information yesterday: that on the 2nd of December, 1941, at a Liaison Conference, the Vice-Chief of the Naval General Staff, Vice-Admiral ITO, representing the naval branch of the High Command, made a very strong request that in view of the necessity of conducting a surprise attack and inflicting heavy damages upon the enemy at the onset of the opening of hostilities, the Naval High Command would like to have the Japanese-American negotiations left alone and unruptured up to the time of the opening of hostilities.

What conversation or discussion did you have

on that subject either within the Foreign Ministry or without prior to the 2nd day of December, the date of this Liaison Conference?

A In regard to the notification -- In regard to the final notification to be sent to America, even before the Liaison Conference of December 2, in talks with Foreign Minister TOGO in the Foreign Office the Foreign Office as a whole was of the opinion that this matter should be handled in the regular manner, that the regular forms be preserved in sending such notification.

Q You evidently misunderstood my question. I am not asking you about the time of sending of the notification; I am asking you about the position that the Vice-Chief of the Naval General Staff took with regard to holding open negotiations until hostilities begin.

THE PRESIDENT: There are interruptions in the Japanese, and I am sure he is not hearing the translation of what you are saying, not all of it.

MR. TAVENNER: If your Honor please, I have been informed that the witness understands English.

THE PRESIDENT: Mr. Brannon.

MR. BRANNON: We assume that the prosecution has a basis for interrogating this witness again on

the same point that they could have yesterday. We are withholding objection, relying upon their sincerity in bringing in new matter, matter that wasn't available yesterday.

THE PRESIDENT: It is too early to say they are not relying on something they have discovered since.

BY MR. TAVENNER:

Q Do you understand the question, Mr. YAMAMOTO?

A. May I understand your last question to be one directed to the question of whether previous conversations were held between the Foreign Office and Vice-Admiral ITO?

Q I asked you if you had any discussion or conversation within the Foreign Ministry or without the Foreign Ministry on this subject prior to the Liaison Conference of December 2.

A I am still not quite clear as to just what your question means. If your question is directed to the question of whether we discussed within or without the Foreign Office the position of Admiral ITO, I must reply, as I did previously, that the Foreign Office was of the opinion that we should take the regular steps prescribed by international law. But if you are asking whether I had any talk with Vice-

Admiral ITO about the matter, I had no talks with him up until December 2 on this matter at all.

Q I don't see how there could be any uncertainty about my question, Mr. YAMAMOTO. It is plainly this:

Did you have a conversation within or without the Foreign Ministry prior to December 2, the date of the Liaison Conference, regarding the holding open of negotiations until hostilities begin?

THE PRESIDENT: If I am hearing the Japanese as he is hearing it, then he is not hearing all you are putting to him; but there may be something wrong with my part of the IBM.

BY MR. TAVENNER:

Q Am I speaking too rapidly?

THE PRESIDENT: You are not, but this machine is out of order as far as this section is concerned. I can't speak for his line.

Q Do you understand now, Mr. YAMAMOTO?

A I understand.

Q Please answer.

A The question of whether negotiations should be continued on it up until the opening of hostilities was discussed in the Foreign Office prior to December 2.

THE PRESIDENT: I didn't hear his answer. I heard "hos." I suppose it is part of the word "hostilities." That is all I heard.

MR. TAVENNER: I think it must be your Honor's earphones.

Will you please repeat the answer the witness gave?

(Thereupon, the last answer was read by the official court reporter.)

THE WITNESS: Even after the decision to open hostilities, which was made on December 1, the Foreign Office continued to hope that negotiations could be concluded on the basis of asking America to reflect. Concerning this matter, a telegram was sent -- instructions were sent on December 28 from Foreign Minister TOGO to Ambassador NOMURA.

Q When did the Foreign Ministry abandon its idea of attempting to conduct negotiations in a bona fide manner?

A Right up until the opening of hostilities the Foreign Office had hope for a reflection on America's part, and had hope for a solution of the situation; but the final notification delivered to the American Government on December 7th showed that Japan had finally given up this hope, and the Foreign Office in particular.

MR. TAVENNER: I desire to call to the Tribunal's attention that in answer to the previous question it was announced that the date was "December 28th"; I am confident that the witness said "November 28th".

Q Is that correct?

A November 28th.

Q Now, how many conferences were held prior to December 2nd regarding this matter of breaking off negotiations?

A Within the Foreign Office this problem was discussed almost every day.

Q With what other groups, such as the High Command, was this matter discussed before the 2nd day of December?

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A November 28th.

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A Within the Foreign Office this problem was discussed almost every day.

Q With what other groups, such as the High Command, was this matter discussed before the 2nd day of December?

A It goes without saying that we held conferences within the Foreign Office daily, but we also were in continual touch with high army and navy officials and all other officials who were connected with this matter.

Q Isn't it true that the Foreign Ministry and the High Command, or the Army and the Navy, were united in their opinion prior to December 2nd that the negotiations should be held open until hostilities began?

A When you say our opinion that negotiations should be continued up to the beginning of the hostilities, my interpretation is that negotiations should be continued right up until delivery of the final notification, which was decided on at the Liaison Conference on December 2nd.

Q Then your statement that Vice-Admiral Ito made a strong request that in view of the necessity of a surprise attack and inflicting heavy damages upon the enemy at the outset of the opening of hostilities, required keeping the negotiations open, was the view of the Ministry as well as the Navy, was it not?

A In your last question I understood you to refer to Vice-Admiral Ito's opinion as being not

only that of the High Command, but also that of the Foreign Ministry, is that correct?

Q Is that not a fact?

A That was not the opinion of the Foreign Office at all. That was the opinion of the Navy High Command.

Q Now did you not telephone to Ambassador KURUSU in the United States, asking him to hold the negotiations open?

A That is a fact.

Q And was that not done with the real intention of holding the United States off by continuing to talk peace, while preparing to attack?

THE PRESIDENT: Mr. Blakeney.

MR. BLAKENEY: I should like to point out that counsel this morning mentioned a fifteen-minute cross examination. As yet, 30 minutes have produced no new material whatever. I object to continuing this line of cross-examination, which could have been done yesterday, and in large measure was conducted yesterday.

MR. TAVENNER: It is not my fault, your Honor, that the witness evades the questions.

MR. BLAKENEY: That is not the point. The questions contain no suggestions of new matter as yet.

THE PRESIDENT: Well, we expect these questions to lead to some new matter. We do not suppose for one moment that he would be so foolish as to disclose it instantly if circumstances require otherwise. That would destroy the element of surprise.

Q Now, after this objection, are you prepared to answer the question?

A I replied to your question that that was a fact.

Q Now what was the first occasion for a conference in which it was decided that negotiations would be kept open to give Japan an opportunity to conduct a surprise attack?

A No decision that Japan was to continue the negotiations until the surprise attack was ever arrived at in any conference held at any time.

At the Liaison Conference of December 2 the Vice-Chief of the Naval General Staff did voice an opinion to that effect, but this opinion was immediately countered by Foreign Minister TOGO's words, and as a result it was decided that a final notification would be sent to America before the outbreak of hostilities.

Knapp & Yelden

Q Now, in view of your statement that there was no understanding prior to December 2 or at any other time that negotiations would be held open to give Japan an opportunity to make a surprise attack I would like to present you prosecution document 3134-A and ask you if you can identify it. Do you identify that document?

A Will you wait a moment, please?

I do recollect this document. This was never adopted in the Foreign Office. This is a mere research draft proposal -- a draft proposal for reference purposes. The basic thought underlying this document was that the negotiations would have to be stopped, would have to be dropped one time or another and when that rupture of negotiations came about appropriate measures would be taken and was thus peaceful in nature.

THE MONITOR: The basic nature of this document, however, was that although it could not be expected that the negotiations would come to a peaceful or successful end and that there would come a time when the rupture of negotiations would become necessary, it was on the premise that the appropriate measure would be taken regarding the breaking off of the relation. Thus with the basic idea of

that nature this was a peaceful idea and in accordance with international law.

MR. TAVENNER: As you have identified the document I desire to offer it in evidence on behalf of the prosecution.

Will you distribute typewritten copies to the Members of the Tribunal?

MR. BLAKENEY: I object to the reception of the document on the grounds that the witness has not identified it but has merely said that he has seen it before and has attempted to explain its nature. He is not connected with it, or anyone or any organization.

THE PRESIDENT: He seemed to identify it readily and I did not understand him to be speaking from the face of the document but from what he knew about it independently.

MR. BLAKENEY: And in any event, of course, I wish to reserve the right to make any further objections after having had opportunity to examine the document.

MR. TAVENNER: You will note at the top of the document a--

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Prosecution document

3134-A will receive exhibit No. 2975.

(Whereupon, the document above referred to was marked prosecution exhibit No. 2975 and received in evidence.)

Q You will note at the top of this document a seal. Is that the state secret seal?

Hand him the original.

A Yes.

Q Is that the highest type of secret seal that there is?

A Yes.

Q It is the seal of the Japanese government?

A Yes.

Q Was it prepared by you?

A I acknowledge that this was a draft proposal for reference purposes, drafted by my subordinates and presented to me. No decision on this was ever reached. It is not a proposal on which a decision was reached.

Q And are the interlineations in your handwriting?

A The penciled notes are in my handwriting.

MR. TAVENNER: I will read the document and I desire to call to the Tribunal's attention that there appears in the original an interlineation and

also a line which has been struck out and a substitution made for it. The translator's note on the second page of the copy which I have handed the Members of the Tribunal explains that situation.

I will read the document both with and without the interlineations and both with and without the line that was struck out:

"Outline of Future Diplomatic Measures

"Vis-a the United States

"State Secret

"It is clear that the contents of the new United States proposal dated 26 November are completely unacceptable nor can we longer recognize any signs whatsoever of sincerity in the attitude of the United States towards the present negotiations. Such being the case, although it will be necessary to break off the negotiations at a proper time"--

now reading without the interlineation -- "for the time being we should continue the negotiations under the following policy so as to facilitate the execution of our own future plans."

This last sentence read with the interlineation is as follows:

"Such being the case, although it will be necessary to break off the negotiations at a proper

time, we should make it our main object for the time being to strictly guard lest the real intentions of the Empire be perceived. We should continue the negotiations under the following policy so as to facilitate the execution of our own future plans:

"1. Have Ambassadors NOMURA and KURUSU state that regarding the new proposals of the United States they have asked for and are awaiting instructions from the central authorities and that upon receipt of such instructions a reply will be forthcoming."

The next sentence as it formerly read before a part of it was struck out is as follows:

"But for the time being have the two Ambassadors, as though it were their own opinion, continue the negotiations with the United States with the same opinion as has been expressed hitherto in regard to the basic plan."

The sentence as reconstructed with an interlineation is as follows:

"But for the time being have them continue the negotiations with sincerity, asking numerous questions on the various points noted here separately.

"2. To the United States proposal of 26 November an answer to the following effect shall be

issued at a proper time:

"(a) As the United States plan is opposed to the past basic claims of Japan it cannot be made the basis for further negotiations.

"(b) There is no room for further consideration on our part beyond the proposals of 25 September and 20 November.

"(c) We call upon the United States for still further reconsideration.

"NOTES: (1) The contents of our reply should bring out the sincerity of the Empire and her just claims, and at the same time due consideration should be paid to the time when the reply is made public at some future date.

"(2) In this answer we should"-- and here is inserted an interlineation -- "use phraseology which will" -- (that ends the interlineation) -- "put the responsibility for future success or failure on the United States, and, furthermore, should take care not to create the impression of a break off of negotiations."

Q Now, Mr. YAMAMOTO, you state that that is a work draft?

A Yes, I did.

Q Is it not in fact the basic decision upon which you acted, beginning with your telephone call to Ambassador KURUSU?

A I do not recollect whether this document was drawn up before or after my telephone conversation with Ambassador KURUSU. The reason why I asked Ambassador KURUSU to continue negotiations was that at that time no decision had been reached as to whether to continue the negotiations or to break them off and to start war. Up until that moment, every instruction I had received from my superiors indicated that I was to bend all my efforts to arrive, to successfully conclude the negotiations right up until the final moment. I talked with Ambassador KURUSU on the telephone only on the basis of those instructions.

Q Is not that draft which has been introduced in evidence also the basic reason for your telegram of November 28, in which you asked the Ambassador to continue with the negotiations?

A The instructions sent on the 28th November had to do in main with an appeal to America to

reconsider. We felt that if America would reconsider and to a certain extent agree to our proposals, a basis for future negotiations would be laid -- for the continuation of the negotiations would be laid.

Q Did you not, in fact, prepare the note that was ultimately delivered in pursuance to the matters appearing in paragraph two in this document?

A What do you mean by final facts and final note?

Q The final note which you admitted yesterday you prepared, the one with fourteen parts.

A As regards this final note, I had the primal responsibility in drawing it up but in the actual drawing up of the note consultations were held with all officials concerned and at the end the note itself received the approval of the Liaison Conference.

Q But was not that note in compliance with the matter set forth in paragraph two in this document?

A That document was drawn up before the final decision to go to war, and therefore there are portions of that document which may be similar to the contents of the final note, while there are other portions which are not.

Q As a matter of fact, this is titled "An Outline of Future Diplomatic Measures," and were not the future diplomatic measures actually taken in accordance with this draft?

A To begin with, that document sets forth the premise that future negotiations would be futile and it is written on that assumption. Therefore, probably in the near future matters would come to such a state that negotiations would have to be broken off, but until then negotiations would be continued. That was the purport of that document.

Q Now, in your own handwriting, there appears in that document, this language: "We should make it our main object to strictly guard lest the real intentions of the Empire be perceived."

Do you recall that that appeared in your own handwriting in that document?

A I do, but the meaning of that sentence is as follows: that we did not want our opponents to find out the fact that we did not believe the negotiations capable of a successful conclusion.

Q And you also wanted the United States to believe that negotiations were being conducted in good faith when they were not, did you not?

A In the actual negotiations we dealt with the

United States always in good faith, and in any action, in any matter one's view as to how things would develop and the steps one actually takes are two separate matters.

Q In other words, what you are speaking of here are negotiations that were to be falsely conducted, is that true?

A As I have repeatedly said, our view of how things would develop, how things might develop, was as I have said, but as far as the negotiations were concerned we went at them in all earnestness and hoped that America would reconsider. We had no intention of deceiving anyone.

Q Knowing full well that the negotiations would fail, you nevertheless, in this note, state and advise that care should be taken not to create the impression of a break-off of negotiations. That was solely for the purpose of carrying out the plan of Admiral ITO, was it not, to deliver a surprise attack at the opening of hostilities?

A From beginning to end, all that we hoped for was for the amicable solution of negotiations and we had nothing whatever to do with operational matters or the actual conduct of the war.

THE PRESIDENT: We will adjourn until half-

past nine tomorrow morning.

(Whereupon, at 1600, an adjournment was taken until Wednesday, 20 August, 1947, at 0930.)

I N D E X

Of

EXHIBITS

Doc. No.	Def. No.	Pros. No.	Description	For Ident.	In Evidence
	2975-A		Copy of Exhibit 2975 with inter-lineations		26324
			MORNING RECESS		26325
	2975-B		Copy of document, numbered "3" in pencil		26331
	2975-C		Copy of document, numbered "5" in pencil		26332
	2975-D		Copy of document, numbered "6" in pencil		26332
			AFTERNOON RECESS		26369
1401-B-3	2976		Telegram from Ambassador NOMURA to TOGO, dated 30 November 1941 re Address by Premier TOJO		26373
1401-C-3	2977		Telegram from TOGO to Ambassador NOMURA, dated 1 December 1941		26375
1400-H-7	2978		Excerpt from "Foreign Relations of the US Japan: 1931-1941" Vol. II - Statement Handed by the First Secretary of the Japanese Embassy (TERASAKI) to Mr. Joseph W. Ballantine on 2 December 1941		26376

I N D E X

Of

EXHIBITS

(cont'd)

Doc. No.	Def. No.	Pros. No.	Description	For Ident.	In Evidence
	2979		Excerpt from "Pearl Harbour Attack" Vol. 2	26386	
1500-D-6	2979-A		Excerpt therefrom - Testimony of Sumner Welles, Former Under Secretary of State		26386

I N D E X

Of

WITNESSES

Defense' Witnesses	Page
YAMAMOTO, Kumaichi (resumed)	26306
Cross by Mr. Tavenner (cont'd)	26307
Questions by the President of the Tribunal, Sir William Webb	26318
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Recross by Mr. Tavenner	26343
(Witness excused)	26347

Wednesday, 20 August 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, all Members sitting, with the exception of: HONORABLE JUSTICE STUART McDOUGALL, Member from the Dominion of Canada and HONORABLE JUSTICE I. M. ZARAYANOV, Member from the USSR., not sitting from 0930 to 1600.

For the Prosecution Section, same as before.

For the Defense Section, same as before.

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(English to Japanese and Japanese to English interpretation was made by the Language Section, IMTFE.)

Woll & Lefler

MARSHAL OF THE COURT: The International Military Tribunal for the Far East is now in session.

THE PRESIDENT: All the accused are present, except ARAKI and KAYA who, with the Court's permission, are conferring with counsel during the first half of the morning session.

I understand they will be conferring all the morning with the counsel. They have permission to do so.

Mr. Tavenner.

K U M A I C H I Y A M A M O T O, resumed the stand and testified through Japanese interpreters as follows:

MR. TAVENNER: I would like, if the Tribunal please, to hand to the Tribunal the original of the document introduced in evidence which was defense document 3134-A -- I mean, prosecution document --

THE PRESIDENT: 2975 is the exhibit number.

MR. TAVENNER: -- with the state seal, secret seal at the top. The reason for handing the original is that we had not had an opportunity to have photostatic copies of it made.

THE PRESIDENT: Well, I see no reason why you should not substitute a photostatic copy for the

original.

We give you permission to do so. The document will be handed to the Tribunal in court.

MR. TAVENNER: I wanted the Tribunal to have the advantage of seeing the form and contents of the original document itself.

THE PRESIDENT: The photostatic copy must be formally tendered. That is what I am indicating.

CROSS-EXAMINATION

BY MR. TAVENNER (Continued):

Q Mr. YAMAMOTO, was the draft of this document prepared as early as November the 27th?

A I have no definite recollection whether or not it had been prepared on the 27th. At any rate, it was prepared on the basis of the impression received upon receipt and reading of the United States memorandum of November 26th.

Q Could it have been prepared immediately upon the receipt of that memorandum?

A Yes.

Q So, according to your best judgment, it was prepared upon the receipt of the note of November 26th?

A That is so.

Q And, what day was the note of the 26th received according to Japanese time, Tokyo time?

A There were several telegrams from Ambassador NOMURA in Washington reporting receipt of the United States note in Washington. Of these telegrams, most of them arrived during the 27th of November, Japan time. However, it is my recollection that all of these telegraphic reports were in our hands early on the 26th.

Q So that this memorandum was prepared, most likely, on the 27th or certainly not later than the 28th of November?

A According to my pencil note -- my pencil note therein was put in there some time during the 27th or in the morning of the 28th.

Q Will you tell us when the draft of the fourteen-part note was prepared?

A It is my recollection that I began to gather together opinions and views regarding the United States note from the afternoon of the 28th.

Q And, was the draft completed as early as December 3rd?

A It is my recollection that the drafting of the note to the United States Government of the date of the 7th of December was completed at my office before the 3rd of December, but I believe the draft was not completed in so far as the conclusion was

concerned.

Q How long before the 3rd of December was the draft completed?

A It is my recollection that the draft -- the reply in so far as the comments and criticisms of the United States proposals and the Japanese views thereon were completed by the last day of November with the exception, of course, of the conclusion.

Q What do you mean by, "the conclusion?"

A I am referring to the fourteenth section of the Japanese note.

Q Had that section also been drafted prior to the end of November?

A The section containing the conclusion was not drafted by the end of November.

Q What work had been done upon it prior to the end of November?

A By the end of November, only a very general study was made, with reference to the conclusion, within the Foreign Ministry.

Q The results of that study were made known at the Imperial Conference that was held on December 1st, was it not?

A The question with regard to the opening of hostilities was decided at the Imperial Conference on

the 1st of December. The decision to open hostilities includes the two points that there were no more prospects of a successful conclusion of the negotiations and also no desire for the continuance of the negotiations, and at the Imperial Conference of the 1st of December there was no discussion held with regard to what kind of international procedure to take before the opening of hostilities.

Q Well, the 14th section or part as finally drafted was in conformity with the study that had been made prior to the end of November, was it not?

A The 14th section was prepared following a decision made which was reached subsequent to a discussion with reference to the note to be sent to the United States at the Liaison Conference on the 2nd of December.

Q But the draft as prepared conformed to the study that you made in the War Ministry prior to the end of November, did it not? I meant to say "Foreign Ministry."

A I merely remember that as a result of various studies made,a draft of what was later to be the official last note of the Japanese Government was made by me.

THE INTERPRETER: Correction: By the end of November, on the basis of various studies made, a personal draft was drawn up by me with reference to the last note to be sent to the United States Government, and my plan was to send an official note to the United States Government.

A (Continuing) May I add that it was my personal draft plan. May I further add that all in the Foreign Ministry were agreed that proper international procedure, or procedure proper under international law should be

taken in reference to the delivery of this note following discussion of this matter.

Q Do you have that note or a copy of it, that is, your draft?

A I do not have it.

Q Where is it?

A I was transferred to the Ministry for Greater East Asiatic Affairs at the time it was established in 1942, and all documents in the Foreign Ministry which was under my custody up to that time were left at the Foreign Ministry. Now, the personal draft which I referred to was written in pencil. I have no definite recollection, because I have a feeling that the original draft of a draft which was prepared by me, might have been destroyed by me before I was transferred to the Ministry for Greater East Asiatic Affairs.

THE INTERPRETER: Slight correction: I believe that my draft, being one of the drafts upon which a later draft was drawn up, it might have been destroyed by me before my transfer.

Q Did not the requirements of your office make it imperative that you preserve as part of the records of the Foreign Ministry copies of drafts of documents such as this?

A Of course, official documents approved by my

superiors had to be filed and kept in custody in the Ministry, but such notes as I have just referred to, a personal draft of a personal draft, need not be preserved.

Q Was there a copy lodged in the Foreign Ministry?

A If I had possession of any copy of such, then I would have been able to give my feelings at that time and my thinking at that time more clearly in this Tribunal. Unfortunately, I do not have any.

Q My question was whether or not you lodged a copy of that draft with the Foreign Ministry. Please answer the question.

A I think this recollection of mine is as positive and as accurate as it could be and that is that this draft, personal draft, was prepared in pencil and it was later revised by me in pencil, and, therefore, no copies were made.

Q Was the draft later prepared, that is, on December 2nd or later, in conformity with the principles set forth in this draft you have just spoken of?

A As I have said repeatedly before, my personal draft stated my views on the United States note. That was the primary purpose, or the primary contents of my draft. As to what form the note to the United States

Government should take, it was my personal opinion that it should take the form of a general note. At that time, because the Japanese attitude was undecided, I merely stated my personal opinion on such matters. The conclusion set forth in the note as sent to the United States was decided upon after the general policy had been decided upon at the Liaison Conference.

Q Now, will you please answer my question. I will attempt to make it specific and as direct as it can be made and I wish you to give me a direct answer.

Did the draft, as complete, include the matters contained in your pencil memorandum to which you refer on part 14?

A The conclusion set forth that the negotiations would be discontinued. In my personal draft I used certain phraseology normally used in accordance with international law in addition to the statement of the breaking off of the negotiations.

Q Do I understand you, then, to state that the final draft did contain the language which you expressed in your note? Please answer yes or no.

A As I have said before, some parts were included, but generally speaking, the contents were different.

Q What was the difference?

A My personal draft used words which were usually used in ultimatums.

Q You are speaking now of the technical use of language. I ask you whether or not the substance or the meaning of the two were the same.

A The contents were different.

Q Explain the difference.

A In addition to the fact that the discontinuance of negotiations was unavoidable, I added the words that Japan would reserve freedom of action.

Q Now, did you discuss this matter with the other members in the Foreign Ministry during the month of November?

A When you say "this matter," may I understand that to mean the note?

Q Yes, the subject of your pencilled note, prepared in November.

A I had frequent consultations with the Foreign

Minister and the Vice-Minister.

Q And did you not show this pencilled memorandum to the Foreign Minister?

A I have no recollection as to ever having shown this to the Foreign Minister -- as to whether I showed this pencilled memorandum to the Foreign Minister, but I did show it to the Vice-Minister in the course of consultations with him.

Q You consulted the Foreign Minister about this same subject matter, did you not?

A It was only as a matter of course that I consulted the Foreign Minister with regard to the contents of the note to the United States and received instructions from him.

THE MONITOR: Correction: It is not "only as a matter of course" but "Of course I consulted with the Foreign Minister and sometimes received his instructions."

A (Continued) I recall that the Foreign Minister frequently directed me and instructed me to take the proper steps in the handling of this matter -- proper and careful steps in the handling of this matter.

Q Who was the Foreign Minister?

A Foreign Minister TOGO.

MR. TAVENNER: Now, if the Tribunal please, this concludes for the present my cross-examination of this witness.

In June and July of 1946 a request was made by the Division of Investigation of the prosecution section of the proper Japanese authorities for the production of the documents relating to diplomatic negotiations of this very period between the United States and Japan. We were advised repeatedly by persons no longer in the employment of the Japanese Government that the documents relating to these matters had either been turned over to the Washington Document Center or had been destroyed, and that there were no such documents any longer in the custody of the Japanese Government.

When some of the documents we would like to have scanned appeared in the defense case, I immediately asked that an investigation be made, with the result that the document introduced yesterday was discovered in the possession of the Foreign Ministry, and it was not until after the witness had left the stand on his first cross-examination that that document came into our hands for translation and review. It may actually have come into the hands of a representative of the IPS during the day on which the wit-

ness was on the stand, but its contents were not known to us until after the adjournment of court. Now, there may be other documents which we will find it important to cross-examine this witness upon. We will hurry our investigation as much as we can with a view to recalling this witness if it seems advisable.

You may take the witness.

THE PRESIDENT: There are certain questions which I propose to put to the witness on behalf of a Member of the Tribunal. These questions refer to Exhibit 2975, the Outline of Future Diplomatic Measures.

The first question is as follows:

BY THE PRESIDENT:

Q Did you discuss the contents of this document with the Foreign Minister, TOGO?

A With regard to that document, I don't have any clear understanding. May I see the document?

Q That is the document you were recalled for cross-examination on. You surely know what I am talking about. I described it as the Outline of Future Diplomatic Measures vis a vis the United States, if that makes it clear. I don't think it is necessary to tell you that.

A This document was written by me in which I

gathered together and assembled my personal ideas. It was never presented to Foreign Minister TOGO.

Q The second question is this: On what occasion was the alteration in the document made by you?

A This document is one of the several documents prepared by my subordinates following the receipt of the United States note of November 26, setting forth his views and opinions thereon. It was the general practice for several people or a number of people concerned with the matter to set forth their opinions, and it was my duty to analyze and adopt certain parts and eradicate certain parts. The circumstances under which this document was prepared is that this document was prepared and presented to me by one of my subordinates, upon which I made certain revisions.

Q Was that done after consultation with the Foreign Minister?

A It was entirely my personal idea, and no consultation was held with the Foreign Minister.

Q Was the document printed?

A The document submitted by my subordinate was typed out, but the revisions made thereon by me was not printed. This document was not an officially approved draft; it was merely a personal draft made

up by me, and that was the state of the document to the very last. Hence this document does not bear neither my signature nor my seal.

Q Was it circulated?

A It was not circulated.

Q I have another question on behalf of a member of the Tribunal: You testified that the hostilities were accorded only on December 1st. If so, why is it that in your affidavit you stated that your fleet was dispatched to Hawaii on November 26th?

A I testified that I had no knowledge whatsoever of the dispatch of the Japanese fleet, or anything pertaining to military operations.

Q Well, I will still ask you to answer this question: Is it not true that the sending of your fleet was accorded at the same time when KURUSU was sent to the United States in the first days of December, 1941?

A I had absolutely no knowledge with respect to the matter set forth in that question.

Q When was it accorded to dispatch your fleet to Hawaii on November 26, 1941?

A I have no knowledge whatsoever.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: If the Tribunal please, I would like to ask one or two more questions in response to one matter brought out in his answer

to the Tribunal's question.

BY MR. TAVENNER:

Q I am not certain that I quite understood your reply in which you stated that there were copies made of your report, that is, this document 2975, regarding future negotiations vis a vis the United States, but that they were not printed. What do you mean by that?

A I said that the draft submitted to me by my subordinate was typewritten, but the pencilled revisions or notes that I had made on that was neither typed nor printed.

Q I would like to present you with another document.

(Whereupon, a document was handed to the witness.)

Will you examine the document now handed to you and state whether or not you can identify it? Is your name signed at the end of it?

A Will you wait just a moment, please?

Q Can you not identify that document without reading every word of it?

A This is a typed copy of a draft on which I made pencilled notes. I believe that since it does not bear my signature it must have been typed out

by my subordinate following my revision, and kept in file, and therefore I will have to correct a statement I made before, that the draft on which I made pencilled notes was not typed.

Q So the draft was typed, with the interlineations that you had made, as shown by the document itself?

A Yes, that is so.

Q And this document is marked "secret" at the top by the appropriate seal of the Japanese Government, is it not?

A Yes, that is so.

MR. TAVENNER: I desire to introduce this document in evidence as a prosecution exhibit.

THE PRESIDENT: Major Blakeney.

MAJOR BLAKENEY: I would like to reserve any objections until I have had a chance to see the document.

THE PRESIDENT: Admitted on the usual terms.

MR. TAVENNER: I will not read the document, if the Tribunal please, because it is a copy of Exhibit 2975 with the interlineations included at the very end.

THE PRESIDENT: What interlineations? You mean the parts underlined in Exhibit 2975?

MR. TAVENNER: If the Tribunal please, the document now being presented includes the interliniations that appear in Document 2975 and which are underscored in the copy of that document.

THE PRESIDENT: Will you give us copies of the document last admitted -- English translations -- showing the interliniations?

MR. TAVENNER: Comparison will show that in the document just presented it appears as one continuous document. There are no interliniations that appear above the line. When the document is given a number I will read the interliniated portions.

THE MONITOR: Mr. Tavenner, can we have the Japanese copy or the English copy, either one?

MR. TAVENNER: It will be only three or four lines.

THE MONITOR: Then it will be the translation in substance, not the exact words. Will that be all right?

MR. TAVENNER: Yes.

THE CLERK OF THE COURT: Prosecution document without document number, being copy of Exhibit 2975 with interliniations, will receive exhibit number 2975-A.

(Whereupon, the document above

referred to was marked prosecution exhibit No. 2975-A and received in evidence.)

MR. TAVENNER: I will read from document 2975-A that portion which appeared as interlineations in document 2975.

THE PRESIDENT: Mr. Tavenner:

MR. TAVENNER: Yes, sir.

THE PRESIDENT: At the top of the last exhibit these words appear in parentheses "(YAMAMOTO Private Draft)". Does that appear in the original?

MR. TAVENNER: That is an ink notation on the original.

THE PRESIDENT: A colleague would like to know where you got this copy, or document last tendered.

MR. TAVENNER: It was obtained by the same method and at the same time as the former document, which I explained a moment ago.

Now I will read paragraph one.

THE PRESIDENT: Will you read it after the recess, Mr. Tavenner?

We will recess for fifteen minutes.

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

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

THE PRESIDENT: The accused KAYA is now in court. Mr. Tavenner.

MR. TAVENNER: If the Tribunal please, I will now read from exhibit No. 2975-A those sentences which contain the interlineations appearing in exhibit 2975. In the second sentence, first paragraph:

"Such being the case, although it will be necessary to break off the negotiations at a proper time, we should make it our main object for the time being to strictly guard lest the real intentions of the Empire be perceived."

The next sentence is the last sentence under paragraph numbered one:

"But for the time being have them continue the negotiations with sincerity, asking numerous questions on the various points noted here separately."

And the last paragraph: "2. In this answer we should use phraseology which will put the responsibility for future success or failure on the United States and furthermore should take care not to create the impression of a break off of negotiations."

CROSS-EXAMINATION

BY MR. TAVENNER (Continued):

Q At the time I handed the original document, 2975-A, to you for identification, I called your attention to what I thought was your signature. I understood you to say that it was not your signature. Will you look again at the document and see what purports to be your signature and examine it again? It appears in ink at the very beginning of the document instead of at the end.

A Yes, it appears under the title and says, "YAMAMOTO - private draft," but this was written in pencil by one of my subordinates. It is not my signature. The words, "YAMAMOTO - private draft," explain the nature of this document.

Q And that appears as an ink notation?

A Yes.

Q What is the name of the subordinate who, you say, presented you with this study or note?

A I have no definite recollection but I believe it was the Chief of the First Section of the American Affairs Bureau, Mr. KASE.

Q Who placed the ink notation on the document?

A I do not know who wrote it because a number of secretaries were in charge of the filing of documents.

Q When was that ink notation placed on the document?

A I believe when this copy was made but I have no clear recollection whatsoever -- but I do not know.

Q When copies of documents are made, which copy is given to the Foreign Minister, that is, the first or last copy or which copy?

A In case copies are made of the officially approved draft it is a practice to give the top sheet to the Foreign Minister; but in the case of private drafts, there is no case of submitting copies to the Foreign Minister. But as to this copy I do not know when it was prepared; but judging from the seal "Secret" at the top of the document there may have been a copy made for the purpose of preparing a resume after the opening of hostilities. Whatever the case may be, I have no -- I do not remember this copy. I do not remember this copy at all.

Q What disposition is made of the second copy?

A With respect to documents which belong to the category of private drafts, in some cases they are filed in the record in toto or if they concern business which I handled, it may be in my possession or in the hands of the Chief of Section if some matters were handled

by him, and some are kept in the possession of secretaries in the bureau.

Q But what disposition is normally made of the second copy in distribution?

A There is no fixed practice or regulation.

Q Will you examine the original document and state which copy it is?

A According to the notation at the top it says "No. 7 of seven copies," so it indicates that it is the seventh copy.

MR. TAVENNER: I desire to offer in evidence other copies constituting all of the copies we received from the Foreign Ministry of this document, which shows that copies 1, 2 and 4 are missing.

THE PRESIDENT: Major Blakeney.

MR. BLAKENEY: I object to the reception of these documents on the ground that it has no bearing upon any issue before the Tribunal.

THE PRESIDENT: How do you think it will help us, Mr. Tavenner, to have the copies?

MR. TAVENNER: If the Tribunal please, I have no special desire to place these copies in evidence. I thought that as a matter of fairness these documents should be presented -- as a matter of fairness to the accused.

THE PRESIDENT: What inference can we draw against any of the accused from those particular copies?

MR. TAVENNER: There are two inferences: one against them and one to some extent in favor of them. It shows that all of the copies were not actually circulated as they may have been, as could have been done. That is an inference probably in their behalf. It shows at the same time that three of the copies are not accounted for, including copy No. 1 which normally, as the witness says, is delivered to the Chief of the Section, who in this instance is the accused TOGO.

I think they should be received in evidence for whatever value they have.

MR. BLAKENEY: Until such time as there is some evidence of when this was prepared, the Court can no more assume that Mr. TOGO was Foreign Minister than it can assume that any of his successors was Foreign Minister. The witness, moreover, has specifically and unequivocally stated that copies of documents of this type were not circulated to the Minister. The whole suggestion that any inference to be drawn from these documents is one calculated only to prejudice these defendants, not to constitute legal proof

against them.

THE PRESIDENT: The Tribunal overrules the objection and admits the documents by a majority.

CLERK OF THE COURT: Prosecution documents, without number, just described will receive exhibit No. 2975-B.

(Whereupon, the documents above referred to were marked prosecution exhibit No. 2975-B and received in evidence.)

Q How soon after the alteration of the document were these copies prepared?

A I do not know.

MR. TAVENNER: That is all for the present, your Honor.

THE PRESIDENT: Is there any further re-examination?

MR. BLAKENEY: There will be re-examination.

I suggest, if the Tribunal please, that those three copies of the last document admitted in evidence should be given separate numbers.

THE PRESIDENT: Separate letters, what is wrong with that?

MR. TAVENNER: There is no objection, if your Honor please, and I would like to make this suggestion: that as these are all copies, it is a

needless waste of time and material to process them as separate documents and serve separate copies, and I would like to dispense with the processing and service of copies in this instance.

THE PRESIDENT: I think I can safely say the Tribunal dispenses with that. Call out the letters, B, C, and D.

CLERK OF THE COURT: Prosecution document No. 5 will receive exhibit No. 2975-C and prosecution document No. 6 will receive exhibit No. 2975-D.

(Whereupon, prosecution documents, copies numbered in pencil 3, 5 and 6, were marked prosecution exhibits No. 2975-B, No. 2975-C and No. 2975-D, respectively, and received in evidence.)

Duda & Spratt

REDIRECT EXAMINATION

BY MR. BLAKENEY:

Q Let the witness be handed exhibit No. 2975-A.

Do you know when this copy was typed, Mr. Witness?

A I do not know.

Q Do you know who was Foreign Minister when it was typed?

A I do not know the date on which this document was typed. I do not know who the Foreign Minister was.

Q Do you know whether this document was brought to the attention of any Foreign Minister?

A I have no knowledge as to the preparation of this copy, but I can say that documents of this kind could not possibly have been presented to the Foreign Minister.

MR. BLAKENEY: Will you repeat that answer, please?

(Whereupon, the last answer was read by the official court reporter.)

Q Let the witness be handed exhibit 2975-B.

Please examine that document and state whether you know when it was typed.

A I do not know.

Q Is that a copy of the same document which you have just examined as exhibit 2975-A?

A I think it is the same copy.

Q That is copy number what, exhibit 2975-B?

A Copy No. 3.

Q Exhibit 2975-A was copy number what?

A Copy No. 7.

Q Do you know whether exhibit 2975-B was ever shown to any Foreign Minister?

A I do not know.

Q Do you know who was Foreign Minister when it was typed?

A I do not know.

MR. BLAKENEY: Let the witness be shown exhibit 2975-C.

THE PRESIDENT: Can we not assume he will give the same answers in respect of the remaining copies, to save time?

MR. BLAKENEY: I should think so, but the documents were admitted over my objection as raising an inference of some knowledge by somebody. Therefore, I assume that they have probative value which I can't quite understand, and I should like to try to disprove any such probative value.

THE PRESIDENT: We waste time here trying to

save it.

MR. BLAKENEY: In view of your Honor's remark I will refrain from exhibiting the remaining two copies to the witness and ask him some other questions.

THE PRESIDENT: We take it he would give the same answers.

Q Mr. Witness, do you know where the copies Nos. 1, 2, and 4 of this document, which the prosecution state to be missing from the Foreign Ministry files, are now located?

A I do not know.

Q Do you know what distribution was made of those copies, 1, 2, and 4, at any time in the past?

A I do not know.

Q Looking at exhibit 2975-A in comparison with exhibit 2975-B -- no, I am sorry. Looking at exhibit 2975 in comparison with exhibit 2975-A, tell the Tribunal whether the stamp of classification of secrecy is the same or different.

A The seal indicating secrecy is very much different.

Q Which of those is of higher and which of lower degree?

A The copy which shows my penciled notations between the lines is stamped, "State Secret." This

represents the highest degree of secrecy.

Q What is the grade of secrecy as indicated by the stamp on the later copy—on the other copy?

A It is stamped, "Kimitsu" or "Secret," and the degree is much lower.

Q On what kind of documents is the stamp, "State Secret," used? I mean, of course, was used at that time?

A The stamp, "State Secret," was placed at that time on all documents referring to matters or negotiations on which absolute secrecy had to be preserved and absolutely no leakage could be permitted; for instance, such matters as the United States-Japanese negotiations, and it represents the highest degree of secrecy.

Q Did the Foreign Ministry possess one or more of such stamps?

A There were many seals, the State Secret seals, in the Foreign Ministry, and they were kept in the various bureaus and sections within the ministry and the secretaries in the Foreign Office used this stamp on certain documents which they felt or were instructed should bear such a seal.

Q From the fact that the draft which was typed, incorporating your penciled notations, bears

"I replied to your question that that was a fact."

In truth you had not replied to the question last read to you. I ask you whether you intended this answer to be to that question or to the preceding question to which you had replied that that was a fact?

A I was under a misapprehension at the time. I said that was a fact in answer to the question relating to my telephone conversation with Ambassador KURUSU, and I repeated again with reference to that question, that that was the fact.

Q Then what is your answer to the question, 26,33
"And was that not done with the real intention of holding the United States off by continuing to talk peace while preparing to attack?"

A That there was not such a thing.

MR. BLAKENEY: Before proceeding with the remainder of my re-examination I should like to ask an adjournment for a consultation.

THE PRESIDENT: We will adjourn until half-past one.

(Thereupon, at 1150, a recess was taken.)

26,33

the stamp "Secret," can you draw any inference concerning the date of preparation of that typed draft?

A Documents relating to the Japanese-American negotiations during the negotiations all bore the stamp, "State Secret." However, after the outbreak of war many documents which hitherto had borne the stamp, "State Secret," required no longer such degree of secrecy and were therefore changed to the ordinary stamp such as "Kimitsu" or "Secret." In view of the fact that the document brought to my attention bears the seal, "Secret," there is a possibility that the office in the Foreign Ministry in charge of the matter made copies for the purpose of making a set of files of some other document based on the document and already classified as just "Secret."

Q Yesterday in cross-examination, at page 26,292 of the record, you were asked concerning your telephone call to Ambassador KURUSU, and in answer to the question whether you asked him to hold the negotiations open you stated, "That is a fact." You were then asked the following question: "And was that not done with the real intention of holding the United States off by continuing to talk peace while preparing to attack?" There was then an interruption, after which being asked for your answer you said:

"I replied to your question that that was a fact."

In truth you had not replied to the question last read to you. I ask you whether you intended this answer to be to that question or to the preceding question to which you had replied that that was a fact?

A I was under a misapprehension at the time. I said that was a fact in answer to the question relating to my telephone conversation with Ambassador KURUSU, and I repeated again with reference to that question, that that was the fact.

Q Then what is your answer to the question, "And was that not done with the real intention of holding the United States off by continuing to talk peace while preparing to attack?"

A That there was not such a thing.

MR. BLAKENEY: Before proceeding with the remainder of my re-examination I should like to ask an adjournment for a consultation.

THE PRESIDENT: We will adjourn until half-past one.

(Thereupon, at 11:50, a recess was taken.)

Wolf & Leffler

AFTERNOON SESSION

The Tribunal met, pursuant to recess, at 1330.

MARSHAL OF THE COURT: The International Military Tribunal for the Far East is now in session.

THE PRESIDENT: With the Tribunal's permission, the accused ARAKI will be conferring with his counsel for the whole of the afternoon.

Major Blakeney.

K U M A I C H I Y A M A M O T O, resumed the stand and testified through Japanese interpreters as follows:

REDIRECT EXAMINATION

BY MR. BLAKENEY (Continued):

Q Mr. Witness, referring to the copy, typed with additions, of this draft, "Outline of Future Diplomatic Measures," exhibit 2975-A, and the various exhibits which are copies thereof, I believe you have not been asked and I therefore now ask you whether you ordered the typing, with the additions, of that draft.

A I have no recollection whatsoever that I ever gave such instructions.

Q Now, you stated that this draft was prepared

and submitted to you -- I am not referring to the retyped one but to the original draft -- that it was prepared and submitted to you about the 28th of November. I want to ask you whether other drafts of proposals or policies were submitted to you about that same time in connection with this matter.

A I recall that at that time drafts and other verbal opinions were brought to my attention in connection with the Japanese-American negotiations.

Q Exhibit 2975 includes some additional phrases inserted by you in pencil. I want you to look at the original of that document and state to the Tribunal what was your intention in adding the words which appear in the first paragraph that, "We should make it our main object to guard lest the real intentions of the Empire be perceived?"

A All the telegrams in connection with the note of the -- the United States note of November 26th reached my hands during the morning of the 28th of November. During all my years as a diplomat, this was the most sorrowful day that I ever experienced. My feeling was that if the United States did not reconsider its attitude with regard to the Japanese-American negotiations, there were no prospects of it ever reaching a successful culmination, and I regarded

the Japanese-American negotiations -- I regarded that the discontinuance of the negotiations were absolutely unavoidable. However, at that time there was yet no decision with regard to the opening of hostilities or with regard to the discontinuance of the negotiations. However, there was some room -- consequently, there was some room for the continuance of the negotiations with some solution still possible. We, in the Foreign Office, did not lose any hope in the successful termination of the negotiations, and therefore we felt that if the idea which we had that the discontinuance of the negotiations was unavoidable ever reached the ears of the United States, we believed that it would be prejudicial to the future negotiations between the two countries. Thus, I myself took hold of a pencil and wrote in notes cautioning that utmost care be given to this matter, so that such a belief on our part would not leak to the American side.

And, I again wish to emphasize that in such a case, we must handle the matter in good faith and earnestness, and therefore I made notations to that effect.

Q You mean you made such notations in the draft?

A Yes.

Q You stated earlier that you yourself had

prepared a draft of a final notification which included the words, in effect, "Japan therefore reserves freedom of action," and you stated that that phrase did not appear in the draft ultimately adopted. Will you now state why that phrase was omitted from the final draft.

A In the Liaison Conference, it was decided that the words be limited to the discontinuance of negotiations, and therefore the text was limited to those words, "Discontinuance of negotiations."

Q You were cross-examined about the connection of this draft, exhibit 2975, with the question of a surprise attack on the United States and specifically in connection with the position of Admiral ITO. I want to ask you whether any conversations had been held by you or by anyone, to your knowledge, with Admiral ITO prior to the date of this draft in question.

A There was no conversation in connection with the matter just pointed out by you -- just referred to by you.

Q And I want to ask you further whether the question or suggestion of a surprise attack had come up in any way prior to the preparation of this draft in question.

A I heard the words, "Surprise attack," for the first time on the 2nd of December at the Liaison Conference. I never heard these words before that.

MR. BLAKENEY: That concludes my re-examination.

I ask that the witness be released on the usual terms.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: If the Tribunal please, I would like to ask several questions.

RECROSS-EXAMINATION

BY MR. TAVENNER:

Q You stated, in reply to a question propounded to you, that you were presented with another or other documents besides the one which bears exhibit No. 2975. State precisly what document you refer to as being presented to you.

A I have no clear recollection at this time, but in those days various documents were brought to me. Some were comments and criticisms on the United States note; some were documents advocating continuation of the negotiations. In any case, they were all private views, and there were many, and I do not have any clear recollection of each and every one of them.

Q Were they filed in the archives of the Foreign Ministry as was true of document 2975?

A I believe that such private views of a very light nature were disposed of at the time, and so for the most part they were not recorded in the files of the Foreign Office.

Q But, your document entitled, "Outline of Future Diplomatic Measures," was given the state secret seal and was filed with the archives.

Regardless of your testimony this afternoon what you did write in that document 2975 in your own hand was, "We should make it our main object for the time being to strictly guard lest the real intention of the Empire be perceived." Now, you do not claim that you -- you do not now claim that you did not write those words, do you?

MR. BLAKENEY: I object to the question as not being cross-examination growing out of any re-examination.

THE PRESIDENT: It is very difficult to say that it isn't.

Objection overruled.

I recollect his answer this morning to the unanswered question yesterday.

A I do not deny it.

Q You, of course, on such an important matter chose each word carefully, did you not, especially when you were making alterations in a top secret document already prepared?

MR. BLAKENEY: I must object again that this in no way arises out of the re-examination. The witness has never denied he wrote the words. He has admitted the writing. He has explained his intention, and counsel, I submit, is now only arguing with him.

MR. TAVENNER: If it please the Tribunal, defense counsel endeavored to place a somewhat different import upon the meaning of this language in his redirect examination.

MR. BLAKENEY: Defense counsel attempted no construction of the language whatever. He asked the witness his intention in writing the words, and the witness answered.

THE PRESIDENT: I can only regard, "intention," there as meaning, "meaning." In other words, he asked the construction.

MR. TAVENNER: That is right.

THE PRESIDENT: Objection overruled.

Q Please answer the question.

A May I have the question repeated?

THE INTERPRETER: Mr. Tavenner, will you

Q You, of course, on such an important matter chose each word carefully, did you not, especially when you were making alterations in a top secret document already prepared?

MR. BLAKENEY: I must object again that this in no way arises out of the re-examination. The witness has never denied he wrote the words. He has admitted the writing. He has explained his intention, and counsel, I submit, is now only arguing with him.

MR. TAVENNER: If it please the Tribunal, defense counsel endeavored to place a somewhat different import upon the meaning of this language in his redirect examination.

MR. BLAKENEY: Defense counsel attempted no construction of the language whatever. He asked the witness his intention in writing the words, and the witness answered.

THE PRESIDENT: I can only regard, "intention," there as meaning, "meaning." In other words, he asked the construction.

MR. TAVENNER: That is right.

THE PRESIDENT: Objection overruled.

Q Please answer the question.

A May I have the question repeated?

THE INTERPRETER: Mr. Tavenner, will you

kindly repeat your question?

Q I said, you, of course, on such an important matter chose each word with great care especially in view of the fact that you were making alterations in a top secret document which had already been reduced to writing.

A I handled all matters with the greatest of care.

MR. TAVENNER: That complete my recross-examination.

With regard to the matter of releasing this witness, the prosecution requests that the witness be advised not to leave Tokyo without permission of the Tribunal for the period of the next three weeks. I understand the witness lives in Tokyo.

MR. BLAKENEY: But I think that release on the usual terms should achieve the prosecution's object. I don't believe the witness intends to escape, but he may have business, I don't know.

THE PRESIDENT: That had better be a subject of application in Chambers where we could get full reasons from the prosecution for the application.

A colleague wishes enlightenment on this matter, Mr. Blakeney: You asked for time for consultation before the luncheon adjournment. With whom

did you consult?

MR. BLAKENEY: I have never before been asked such a question in my career, and, although I have no objection to answering it, I wonder if the Tribunal should not care to consider the matter carefully before asking counsel with whom he consulted in the defense of his client. If it is the Tribunal's desire that I answer, I will do so, but I will do so under the protest that I am being placed in a position which is inimical to the proper defense of my client, which is imposing a stigma on the position of defense counsel which is not applied to prosecution counsel.

THE PRESIDENT: In view of your protest, I will consult my colleagues before pressing for an answer.

MR. BLAKENEY: Then, may the witness be released on such terms as seem fitting at the time?

THE PRESIDENT: He is released on the usual terms, but I will deal with any application at the mid-afternoon recess.

(Whereupon, the witness was excused.)

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Kapleau & Reichers

MR. BLAKENEY: Before concluding with the matter of the testimony of this witness I should like to point out that Mr. Tavenner this morning made some remarks concerning the inability of the prosecution to obtain documents, remarks which seemed to me to be, in effect, if not in intention, designed to reflect upon the defense. I therefore wish to say only---

THE PRESIDENT: I did not take it so. It may reflect upon the Japanese Government, which I do not identify with the defense.

MR. BLAKENEY: I should, however, like to say that to the best of my knowledge every document of Japanese origin which I have presented in this defense is a copy of an original taken by the prosecution from the Foreign Office, and now held by the prosecution, and which I am quite willing to assume would be made available by the prosecution upon request. That being the case, however, I should like to call upon the prosecution to specify which of the documents heretofore presented by me came to them as a surprise because they had been unable to obtain the originals or copies of the same documents.

THE PRESIDENT: We understand that that refers to the documents tendered in the course of the examination. We may be wrong. Prosecution can en-

lighten us.

Mr. Tavenner.

MR. TAVENNER: My statement, your Honor, was to this effect: that there were documents that appeared in the course of the defense case which we thought we should have obtained in response to our request. When I thought that there were documents that had not been received in response to our request, I made the inquiry that I described to you, and as a result obtained the documents which we have introduced during the period of cross-examination, and other documents which we had never seen before. I think that explains it.

MR. BLAKENEY: My question was, which of the documents which appeared in the defense case occasioned that activity of the prosecution? and I might say that my request is made only because I feel that this matter of documents is of interest and importance to all concerned. In this connection, the Tribunal will remember that some of the missing originals were discovered by the prosecution in their own files, as was announced a few days ago, and we wish to know, equally with the prosecution, the exact facts concerned in relation to the custody, trovenance and original location of these documents.

THE PRESIDENT: They said they are documents they had never seen before, so they can not be any documents that you have tendered in evidence, and we are not concerned with any others yet.

MR. BLAKENEY: Well, I have the opposite understanding, if your Honor please, but Mr. Tavenner declines to answer my question, so I will drop the matter.

I now come, in my order of proof, to Exhibit No. 2971, from which I was reading at yesterday's recess. I resume the reading at the top of page 5, marked page 933:

"Mr. Gearhart. When was the conference completed insofar as the determination to send a message was concerned?

"General Miles. I wrote on that same day, December 15, that Colonel Bratton looked at his watch on delivering General Marshall's message to the Signal Corps, and the time was 11:50 a.m."

From the "Testimony of Lt. Gen. Leonard Townsend Gerow, United States Army.

"Mr. Mitchell (general counsel). General Gerow, will you state your present rank and station?

"General Gerow. Leonard T. Gerow, lieutenant general; station, Fort Leavenworth, Kans.

"Mr. Mitchell. Were you in the War Plans Division in the War Department in 1941?

"General Gerow. Yes, sir.

"Mr. Mitchell. When did you receive that assignment?

"General Gerow. I reported, sir, in November 1940, and left the War Plans Division in February 1942.

"Mr. Mitchell. You were head of the War Plans Division during that period?

"General Gerow. Yes, sir; Assistant Chief of Staff of War Plans Division."

. . . .

"Mr. Mitchell. Yes. You may. Just a part of the regulations relating to the War Plans Division.

"General Gerow. Yes, sir. I quote paragraph 12:

"War Plans Division, general duties:

"a. The War Plans Division is charged, in general, with those duties of the War Department General Staff which relate to the formulation of plans for the use in the theatre of war of the military forces, separately or in conjunction with the naval forces, in the national defense.

"b. The War Plans Division is specifically charged with the preperation of plans and policies and

the supervision of activities concerning--

"(1) Location and armament of coast and land fortifications;

"(2) Estimate of forces required and times at which they may be needed under the various possible conditions necessitating the use of troops in the national defense;

"(3) The initial strategical deployment (plans and orders for the movement of troops to execute the initial deployment to be the duty of the Operations and Training Division);

"(4) Actual operations in the theatre of war;

"(5) Consultation with the Operations and Training Division and the Supply Division on major items of equipment.

"Those are the responsibilities of War Plans Division, 1941, sir."

. . . . .

"General Gerow. Well the first time the 14-part message or the 1 p.m. message was in the office of the Chief of Staff on the morning of December 7th was about 11:30 o'clock."

. . . . .

"Testimony of General of the Armies George C. Marshall, Special Envoy to China.

"Mr. Mitchell. Now, when we closed last even-

ing I had just asked you a question. I will repeat it now: 'Do you remember this diplomatic message from Tokyo to their Ambassadors here, what we call for short the 14 part message and the 1 P.M. message?' Your answer was, 'Yes, sir.'

'Will you state in your own way just when you first knew about that and under what circumstances?'

And you got as far as saying: 'I first was aware of this message when I reached the' -- and then we adjourned. Will you give us now the answer?

"General Marshall. When I reached the office on the morning of Sunday, December the 7th."

I will omit from there to the last line on the page:

"On my arrival there Colonel Bratton handed me these intercepts which included the 14 sections of the Japanese message, and I started reading them through. You recall it is a rather lengthy document and of such a nature that there were portions of it that I read twice.

"When I reached the end of the document the next sheet was the 1 o'clock message of December 7.

"Mr. Mitchell: That is the message that directed the Ambassadors to deliver this thing at 1:00 p.m. Sunday to the American Government?

"General Marshall. Yes, sir, that message. That, of course, was indicative to me, and all the others who came into the room, of some very definite action at 1:00 o'clock, because that 1:00 o'clock was Sunday and was in Washington and involved the Secretary of State, all of which were rather unusual put together.

"I think that I immediately called Admiral Stark on the phone and found he had seen the message, and I proposed a message to our various commanders in the Pacific region, the Philippines, Hawaii, the Caribbean, that is the Panama Canal, and the west coast, which included Alaska. Admiral Stark felt that we might confuse them, because we had given them an alert and now we were adding something more to it.

"I hung up the phone, which was the White House phone, and in longhand wrote out the message. My recollection was that he called me back. I am told now that the White House telephone records show that I called him back. I had no recollection of reading the message to him. I thought, on the contrary, he called me just as I finished the message, saving the last sentence.

"However, one way or the other, there was a call or a conversation between Stark and myself, the effect of which was he wished me to add to the message,

specifically 'Show this to your Naval officers', which I did in longhand.

"I then directed Colonel Bratton to take it immediately to the message center and start it. There was a proposal then that we have it typed. The decision was there was no time for typing, and Colonel Bratton left with the message.

"On his return I questioned him as to the length of time involved and I could not make out whether or not he was talking about the time of encoding as well as the time of dispatching and the time of receipt, so I sent him back, accompanied by Colonel Bundy, the officer in charge of the immediate details of all Pacific affairs.

"They came back and gave me the estimates of the time of deliveries in these various parts of the world. My recollection is that I sent at least Colonel Bundy back again, and I thought Colonel Bratton with him. I believe others state that there was no third trip. There were certainly two -- my own recollection is there were three. However that may be, that was the procedure on the dispatching of the message."

. . . . .

"Mr. Mitchell. Then at least you did read the message and were in the act of preparing a warning

by 11:30 or 11:40?

"General Marshall. Yes, sir; 11:40 would be quite evidently the completion of it, because I had it all written except the last sentence.

"Mr. Mitchell. I will offer now, as Exhibit 61, a photostat which reads as follows: "December 7, 1941." It is typed.

"Memorandum for the Adjutant General (through Secretary, General Staff)."

Here follows the exhibit which was already read in evidence; I therefore skip to the end of the message and resume:

"It has the signature of General Gerow on it. Has the committee a copy?

"The Chairman. Yes.

"Mr. Mitchell. And the committee will note that underneath it is a record: 'Radios as follows dispatched 11:52 AM, 12-7-41 by Code Room, WDMC.'

"General Marshall. War Department Message Center.

"Mr. Mitchell. And another was dispatched 12:05 to Manila, another one to Hawaii at 12:17; the one to the Caribbean Command is blurred. It looks like 12:00 o'clock, and the one to the Fourth Army at San Francisco at 12:11."

I omit the remainder of this document.

That in fact the American Navy had considered a Japanese war imminent since late November is shown by defense document No. 1500-U-3, and excerpt from Pearl Harbor Attack consisting of a war warning message sent out by the Chief of Naval Operations on 27 November 1941.

MR. COMYNS CARR: May it please the Tribunal, this document has already been tendered and rejected, at page 25,627 of the record. In case the Tribunal should now arrive at a different decision, may I point out that there is an error in the date as copied? In one place the date is correctly given as November 27 and in another place incorrectly as November 7.

The ground on which the objection was made and sustained was that the matter of internal orders given by United States officers to those under their command is irrelevant to any issue before this Tribunal. We are not concerned with the question which was before the Pearl Harbor Committee, whether the United States forces took adequate measures of security against threatened Japanese attacks or not. The document was tendered and rejected, together with a considerable number of others bearing on the same allied, cognate topics, and we ask that it be rejected again.

THE PRESIDENT: Major Blakeney.

MR. BLAKENEY: As the Tribunal has repeatedly pointed out and as I submit is self-evident, the fact of prior rejection of a document is not at all to the point. The document is now being tendered on a ground the relevance of which is clearly deducible,

and, I might say, follows, without even a possibility of discussion, from the documents which have immediately before been received in evidence. This document is not offered in connection with any problem that was before the Pearl Harbor Investigating Committee, nor in connection with any internal steps taken by the United States Navy. It is offered precisely on the ground which I stated in my words tendering it, which were as follows: that, in fact, the American Navy had considered a Japanese war imminent since late November-- in other words, as proof of notice to the Navy, just as General Marshall's message was received yesterday as proof of notice to the Army of the imminence of hostilities, and I submit that, in view of the rulings which have gone before, the document is clearly admissible and the objection can only be considered frivilous.

THE PRESIDENT: By a majority the objection is upheld and the document rejected again.

MR. BLAKENEY: As evidence of the knowledge of Secretary of State Hull, Secretary of the Navy Knox, and the Chief of Naval Operations of the immediacy of war on the 6th or 7th of December, 1941, I offer in evidence a further excerpt from Pearl Harbor Attack, defense document 1500-H-6.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: If it please the Tribunal, objection is made to the introduction of this document on the same grounds as asserted for the rejection of the former document.

THE PRESIDENT: Was this rejected previously?

MR. BLAKENEY: If the Tribunal please, admission of the document is pressed on the same grounds as were argued and accepted by the Tribunal in connection with the tenders of documents which are now exhibits 2860 and 2861 -- I am sorry; I have the wrong numbers. 2970 and 2974 I should have said.

THE PRESIDENT: This is repetitive in any event. We have had all this before from others in a higher station.

MR. BLAKENEY: It is true that we have had it from others, but I had thought that the knowledge of Secretary Hull, for example, was very significant.

THE PRESIDENT: We have knowledge imputed to the President himself and the Chief of Staff. What more do you want?

MR. BLAKENEY: All I want, sir, is for the Tribunal to find that the United States Government had notice, and if that is an indication that this is cumulative, I will be glad to withdraw it.

THE PRESIDENT: By a majority the objection is upheld and the document rejected.

MR. BLAKENEY: I shall now read some additional parts of Exhibit 2840, consisting of excerpts from the testimony of Cordell Hull before the Joint Congressional Committee for the Investigation of Pearl Harbor. I commence with the last paragraph on page 3:

"VI. JAPANESE ULTIMATUM OF NOVEMBER 20 AND OUR REPLY

"On November 20 the Japanese Ambassador and Mr. KURUSU presented to me a proposal which on its face was extreme. I knew, as did other high officers of the Government, from intercepted Japanese messages supplied to me by the War and Navy Departments, that this proposal was the final Japanese proposition -- an ultimatum."

I now skip to the last paragraph on page 5:

"To have accepted the Japanese proposal of November 20 was clearly unthinkable. It would have made the United States an ally of Japan in Japan's program of conquest and aggressions and of collaboration with Hitler. It would have meant yielding to the Japanese demand that the United States abandon its principles and policies. It would have meant

abject surrender of our position under intimidation.

"The situation was critical and virtually hopeless. On the one hand our Government desired to exhaust all possibilities of finding a means to a peaceful solution and to avert or delay an armed clash, especially as the heads of this country's armed forces continued to emphasize the need of time to prepare for resistance. On the other hand, Japan was calling for a showdown.

"There the situation stood -- the Japanese unyielding and intimidating in their demands and we standing firmly for our principles.

"The chances of meeting the crisis by diplomacy had practically vanished. We had reached the point of clutching at straws.

"Three possible choices presented themselves.

"Our Government might have made no reply. The Japanese warlords could then have told their people that the American Government not only would make no reply but would also not offer any alternative.

"Our Government might have rejected flatly the Japanese proposal. In that event the Japanese warlords would be afforded a pretext, although wholly false, for military attack.

"Our Government might endeavor to present a

reasonable counter-proposal.

"The last course was the one chosen.

"In considering the content of a counter-proposal consideration was given to the inclusion therein of a possible modus vivendi. Such a project would have the advantages of showing our interest in peace to the last and of exposing the Japanese somewhat in case they should not accept. It would, if it had served to prolong the conversations, have gained time for the Army and Navy to prepare. The project of a modus vivendi was discussed and given intensive consideration from November 22 to November 26 within the Department of State, by the President, and by the highest authorities of the Army and Navy. A first draft was completed on November 22 and revised drafts on November 24 and 25. It was also discussed with the British, Australian, Dutch and Chinese Governments.

"The projected modus vivendi provided for mutual pledges by the United States and Japan that their national policies would be directed toward lasting peace; for mutual undertakings against advances by military force or threat of force in the Pacific area; for withdrawal by Japan of its armed forces from southern Indochina; for a modification by the United States of its freezing and export restrictions to permit re-

sumption of certain categories of trade, within certain specified limits, between the United States and Japan; for the corresponding modification by Japan of its freezing and export restrictions; and for an approach by the United States to the Australian, British and Dutch Governments with a view to their taking similar measures. There was also an affirmation by the United States of its fundamental interest that any settlement between the Japanese and Chinese Governments be based upon the principles of peace, law, order, and justice. There was provision that the modus vivendi would remain in force for three months and would be subject to further extension.

"It was proposed as a vital part of the modus vivendi at the same time to give to the Japanese for their consideration an outline of a peace settlement which might serve as a basis for working out a comprehensive settlement for the Pacific area along broad lines. On November 11 there had been prepared in the Division of Far Eastern Affairs for possible consideration a draft of a proposal along broad lines. This draft like others was drawn up with a view to keeping the conversations going (and thus gaining time) and to leading, if accepted, to an eventual comprehensive settlement of a nature compatible with American prin-

ciples. This draft proposal contained statements of general principles, including the four principles which I had presented to the Japanese on April 16, and a statement of principles in regard to economic policy. Under this draft the United States would suggest to the Chinese and Japanese Governments that they enter into peace negotiations, and the Japanese Government would offer the Chinese Government an armistice during the period of the peace negotiations. The armistice idea was dropped because it would have operated unfairly in Japan's favor.

"A further proposal to which I gave attention was a revision in tentative form made by the Department on November 19 of a draft of a proposed comprehensive settlement received from the Treasury Department on the previous day. This tentative proposal was discussed with the War and Navy Departments. In subsequent revisions points to which objections were raised by them were dropped. A third proposal which I had under consideration was that of the modus vivendi.

"What I considered presenting to the Japanese from about November 22 to November 26 consisted of our modus vivendi draft and an outline of a peace settlement which might serve as a basis for working

out a comprehensive settlement for the Pacific area along broad and just lines. This second and more comprehensive part followed some of the lines set forth in the November 11 draft and in the November 19 draft.

"While the modus vivendi proposal was still under consideration, I emphasized the critical nature of this country's relations with Japan at the meeting of the War Council on November 25. The War Council, which consisted of the President, the Secretaries of State, War and Navy, the Chief of Staff and the Chief of Naval Operations, was a sort of clearing house for all the information and views which we were currently discussing with our respective contacts and in our respective circles. The high lights in the developments at a particular juncture were invariably reviewed at those meetings. At that meeting I also gave the estimate which I then had that the Japanese military were already poised for attack. The Japanese leaders were determined and desperate. They were likely to break out anywhere, at any time, at any place, and I emphasized the probable element of surprise in their plans. I felt that virtually the last stage had been reached and that the safeguarding of our national security was in the hands of the Army and

the Navy.

"In a message of November 24 to Mr. Churchill, telegraphed through the Department, President Roosevelt added to an explanation of our proposed modus vivendi the words, 'I am not very hopeful and we must all be prepared for real trouble, possibly soon.'.

"On the evening of November 25 and on November 26 I went over again the considerations relating to our proposed plan, especially the modus vivendi aspect.

"As I have indicated, all the successive drafts, of November 22, of November 24 and of November 25 contained two things; (1) the possible modus vivendi; and (2) a statement of principles, with a suggested example of how these principles could be applied -- that which has since been commonly described as the 10-point proposal.

"I and other high officers of our Government knew that the Japanese military were poised for attack. We know that the Japanese were demanding -- and had set a time limit, first of November 25 and extended later to November 29, for acceptance by our Government of their extreme, last-word proposal of November 20.

"It was therefore my judgment, as it was that of the President and other high officers, that the

chance of the Japanese accepting our proposal was remote.

"So far as the modus vivendi aspect would have appeared to the Japanese, it contained only a little chicken feed in the shape of some cotton, oil and a few other commodities in very limited quantities as compared with the unlimited quantities the Japanese were demanding.

"It was manifest that there would be widespread opposition from American opinion to the modus vivendi aspect of the proposal especially to the supplying to Japan of even limited quantities of oil. The Chinese Government violently opposed the idea. The other interested governments were sympathetic to the Chinese view and fundamentally were unfavorable or lukewarm. Their cooperation was a part of the plan. It developed that the conclusion with Japan of such an arrangement would have been a major blow to Chinese morale. In view of these considerations it became clear that the slight prospects of Japan's agreeing to the modus vivendi did not warrant assuming the risks involved in proceeding with it, especially the serious risk of collapse of Chinese morale and resistance and even of disintegration of China. It therefore became perfectly evident that the modus vivendi aspect would not be

feasible."

I omit the next several pages and resume reading on page 13 with the second paragraph.

THE PRESIDENT: We will recess for fifteen minutes.

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

Barton & Yelden

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

THE PRESIDENT: Major Blakeney.

MR. BLAKENEY: I continue reading from exhibit 2840, beginning now on page 13 with the second paragraph:

"On November 26 following delivery of our Government's proposal to the Japanese Ambassador, correspondents were informed by an official of the Department of State that the Japanese representatives had been handed a document for their consideration. This document, they were informed, was the culmination of conferences during recent weeks and rested on certain basic principles with which the correspondents would be entirely familiar in the light of many repetitions.

"On November 27 I had a special and lengthy press conference at which I told the correspondents they were free to use the information given them as their own or as having come from authoritative sources."

I omit everything from there to page 16 where I commence with the fourth paragraph from the bottom beginning with "On November 28."

"On November 28, at a meeting of the War

Council, I reviewed the November 26 proposal which we had made to the Japanese, and pointed out that there was practically no possibility of an agreement being achieved with Japan. I emphasized that in my opinion the Japanese were likely to break out at any time with new acts of conquest and that the matter of safeguarding our national security was in the hands of the Army and the Navy. With due deference I expressed my judgment that any plans for our military defense should include an assumption that the Japanese might make the element of surprise a central point in their strategy and also might attack at various points simultaneously with a view to demoralizing efforts of defense and of coordination.

"On November 29 I expressed substantially the same views to the British Ambassador.

"I said the same things all during those days to many of my contacts.

"On November 25 the American Consul at Hanoi, Indo-China, had communicated to the Department a report that the Japanese intended to launch an attack on the Kra Peninsula about December 1, and he reported also further landings of troops and military equipment in Indo-China in addition to landings he had previously reported from time to time. On November 26

the American Consul at Saigon had reported the arrival of heavy Japanese reinforcements in Southern Indo-China, supplementing arrivals he had reported earlier that month. On November 29 the Department of State instructed its posts in Southeast Asia to telegraph information of military or naval movements directly to Manila for the Commander in Chief of the United States Asiatic Fleet.

"On November 30, I was informed by the British Ambassador that the British Government had important indications that Japan was about to attack Siam and that this attack would include a sea-borne expedition to seize strategic points in the Kra Isthmus.

"In a message from Premier TOJO to a public rally on November 30 under the sponsorship of the Imperial Rule Assistance Association and the 'Great Japan East Asia League' he stated among other things that:

"'The fact that Chiang Kai-shek is dancing to the tune of Britain, America and communism at the expense of able-bodied and promising young men in his futile resistance against Japan is only due to the desire of Britain and the United States to fish in the troubled waters of East Asia by pitting the

East Asiatic peoples against each other and to grasp the hegemony of East Asia. This is a stock in trade of Britain and the United States.

"'For the honor and pride of mankind we must purge this sort of practice from East Asia with a vengeance.'

"On that day, Sunday, November 30, after conferring with our military regarding the Japanese Prime Minister's bellicose statement and the increasing gravity of the Far Eastern situation, I telephoned the President at Warm Springs and advised him to advance the date of his return to Washington. Accordingly, the President returned to Washington on December 1."

And I stop reading at that point.

In connection with the speech of Premier TOJO referred to by Secretary Hull I offer in evidence defense document 1401-B-3, a telegram of inquiry from Admiral NOMURA to Tokyo concerning it.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document No. 1401-B-3 will receive exhibit No. 2976.

(Whereupon, the document above referred to was marked defense exhibit No. 2976 and received in evidence.)

THE PRESIDENT: This seems familiar, Major Blakeney.

MR. BLAKENEY: I do not think it has been read before, your Honor; I do not remember at all events.

THE PRESIDENT: As I said before, we read a lot of this before we came to Japan.

MR. BLAKENEY: I read the exhibit, which is a telegram from NOMURA to TOGO, dated 30 November 1941:

"The newspapers of the 30th reported an address of Premier TOJO under big headlines, and special importance was attached to the expression therein that the 'exploitation' of the Asiatic peoples by the British and Americans 'must be purged with a vengeance.' Meanwhile, the White House secretary announced, according to the press, that Secretary Hull promptly reported the speech by telephone to the President, who was taking a rest at Warm Springs, and that the President suddenly changed his program and left there in the afternoon of the 30th for Washington, which he was to reach on the morning of the 1st. As it is feared that the American Government may use the address as material for their propaganda, please take appropriate steps in connection with it and send its text (in Japanese and English)

to me promptly."

As the explanation made by the Foreign Ministry of the matter after the Embassy had inquired concerning it, I offer in evidence defense document 1401-C-3.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1401-C-3 will receive exhibit No. 2977.

(Whereupon, the document above referred to was marked defense exhibit No. 2977 and received in evidence.)

MR. BLAKENEY: I read the document, which is a telegram from TOGO to NOMURA, dated 1 December 1941:

"Premier TOJO's address in question was delivered on the occasion of the meeting, held on 30 November under the auspices of the Koa Domei, celebrating the anniversary of the conclusion of the Treaty of Basic Relations between Japan and China. It was drafted by the administrative office of that organization. The draft was handed to the press at their request in the evening of the 29th, without due inspection by the Premier and other Government authorities, as the 30th was Sunday and there were to be no evening editions.

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of the Japanese Embassy (TERASAKI) to Mr. Joseph W. Ballantine on December 2, 1941.

"The so-called speech of Premier Hideki TOJO was originally drafted by members of the office staff of the East Asia Restoration League, a non-governmental organization of which Mr. TOJO happens to be President, as a congratulatory address to be delivered on November 30, on the occasion commemorating the first anniversary of the conclusion of the Treaty Concerning the Basic Relations between Japan and China, under the auspices of the said League.

"However, November 30 happened to be Sunday; the League staff gave out the manuscript to the newspaper reporters upon their request on the night of November 29 (Saturday), before the said draft was examined by either the Premier himself or other Government officials, and this unapproved manuscript was printed in the metropolitan newspapers.

"As a matter of fact, the Premier himself made no speech of any kind on the 30th. Moreover, neither the Premier nor other government authorities had any knowledge as to the content of the said speech.

"It should further be noted that the reported statement 'For the honor and pride of mankind we must purge this sort of practice from East Asia with a

vengeance' is a mistranslation of the original text. There is, in the original text, no such expression as 'purge' or 'with a vengeance.' The correct translation of the statement should be 'For the honor and pride of mankind, this sort of practice must be removed.'"

I return to exhibit 2840 to read one or two additional passages, first from page 18, the fifth paragraph:

"Throughout the critical years culminating in Pearl Harbor and especially during the last months, the President, the Secretary of State, the Secretary of War, the Secretary of the Navy and the heads of our armed services kept in constant touch with each other. There was the freest interchange of information and views. It was customary for us to pick up the telephone and for the caller to ask one of the others whether he had anything new of significance on the situation and to communicate whatever the caller may have had that was new. These exchanges of information and views were in addition to those which took place at Cabinet meetings and at meetings during the fall of 1941 of the War Council, and in numerous other conversations."

I pass to page 19, commencing with the second

paragraph:

"Mr. Gesell: Well now, at about this time Secretary Stimson reports that there was a meeting at the White House, on the 25th of November, at which you and Secretary Knox and himself were present, and General Marshall and Admiral Stark.

"He says there: 'The President brought up the relations with the Japanese. He brought up the event that we were likely to be attacked, as soon as, perhaps, next Monday, for the Japanese are notorious for making an attack without warning, and the question was what we should do. We conferred on the general problem.'

"Do you remember any conferences at that time or at about that time with the War Council as to what should be done about the general problem?

"Mr. Hull: The main point I was making during those and subsequent days was the very great improbability that Japan would seriously continue to participate in any conversations. We had learned through the interceptions not only that they had determined on their ultimatum but that they had ordered that conversations cease on the 25th, and then finally they worried me almost sick after the 20th about getting a quick reply.

"The Vice Chairman: Then you did regard the Japanese proposal of November 20 as nothing but an ultimatum?

"Mr. Hull: Well, they said se both in writirg and orally and we could only regard it as that from its very nature.

"The Vice Chairman: Now, was your reply of November 26 in any sense an ultimatum?

"Mr. Hull: Well, the truth is we were most anxious, as we have said here at different times, to go forward with the conversations, and we had every motive to desire to go forward with them, and we offered this, as I say, as an ordinary, normal plan for international relations, on these lines, and I think everybody in the State Department, the President and others, were in agreement; and, as I say, the Japanese would have found a way at once, all they had to do was to announce that they were through with conquest and aggression and automatically they would have become the beneficiaries of these proposals."

With that I leave this document.

Additional excerpts from the testimony of Secretary Hull before the Congressional Committee are offered in elucidation of the American attitude toward the Japanese-American negotiations, defense document

1500-L-6.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: If the Tribunal please, the same objection is made to the introduction of this document in evidence as was successfully made to documents 1500-U-3 and 1500-H-6, which were rejected just prior to the recess. In addition, there are some paragraphs which are duplications of document 2840, for instance, the last two paragraphs on page 1, and there are others.

MR. BLAKENEY: In answer I should say that I did not propose to read any parts which were apparently in duplication of evidence already received. As for the general objection which was stated as being "the same one successfully made against earlier documents," the earlier document was objected to so far as I know on the grounds that it involved the internal military arrangements of the United States. This document is testimony of Cordell Hull, Secretary of State, about the negotiations which he conducted with Japan in which he states what his and his government's intentions were, what his and his government's estimate of Japanese intentions were, and how diplomatic relations developed and deteriorated.

THE PRESIDENT: It is the same story in different words. It is repetitive and cumulative, is it not?

MR. BLAKENEY: There are points covered herein relative to the negotiations which, I believe, are not covered in any other evidence so far offered.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: The diplomatic relations in the main are covered by the two paragraphs on page 1, which are duplications of evidence already admitted, and the rest of this document deals with the same question as documents 1500-U-3 and 1500-H-6, which were rejected, namely, the realization on the part of the United States that the situation was dangerous.

THE PRESIDENT: By a majority the Court sustains the objection and rejects the document.

MR. BLAKENEY: As evidence of the existence of an understanding between the United States and Great Britain for parallel action to be taken against Japan, I offer in evidence excerpts from the testimony of Sumner Welles, Undersecretary of State of the United States, concerning the proceedings had and the agreement entered into between President Roosevelt and Prime Minister Churchill at the Atlantic Conference of August 1941, defense document 1500-K-6, an excerpt

from "Pearl Harbor Attack."

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: If the Tribunal please, the objection is made that this document is irrelevant and immaterial. The same subject matter has been rejected heretofore by the Tribunal. This document is particularly objectionable in view of the fact that reference is made to a rumor which the witness in the course of the Pearl Harbor Inquiry denied.

MR. BLAKENEY: Of course, the witness denies the rumor and explains the facts in this excerpt; that is what it is offered for. As to the materiality or otherwise of the subject matter, I have a word to say.

The Tribunal has heretofore received in evidence the proof of actions taken by the United States in connection with the Japanese-American negotiations and specifically has received evidence of the warning delivered by President Roosevelt to Japan immediately upon his return from the Atlantic Conference, and of the President's invitation to the Japanese representatives at that time to resumption of the negotiations. The evidence now tendered to the Tribunal has the effect of showing that those steps were taken in accordance with American-British

understanding and would enable the Tribunal, I submit, to determine the question of the extent of the participation by Great Britain in these negotiations as well as helping to determine the question of the extent of international military action against Japan, if any. I therefore submit that the document is relevant and should be received.

Duda & Spratt

THE PRESIDENT: We have many documents showing British and American understanding and cooperation. This has about the effect of those.

By a majority the Court sustains the objection and rejects the document.

MR. BLAKENEY: For the record I wish to offer in evidence, as additional evidence of consultation and parallel action between the United States and Great Britain, defense document 1500-D-6, further excerpts from the testimony of Mr. Welles, and I concede that the same ruling should apply if objection is made.

MR. TAVENNER: If the Tribunal please, the first half of this document we concede is relevant; the last half, as indicated by counsel, we think is covered by the ruling just made and should be rejected. Therefore, our position is that the first part of the document down to the four dots across the center of the page is admissible, and we concede that, and the last is not.

THE PRESIDENT: The objection is sustained as to the second part. It is admitted to the extent conceded by Mr. Tavenner.

MR. BLAKENEY: I do not think half of the document has any significance, and I will withdraw it.

MR. TAVENNER: I understood, your Honor, that the document had been admitted, and therefore it is too late now to withdraw a document already admitted.

THE PRESIDENT: Yes, we must concede that. Give it a number and read it.

CLERK OF THE COURT: Part 2 of the Pearl Harbor Attack series will receive exhibit No. 2979 for identification only. The excerpt therefrom, bearing defense document No. 1500-D-6 will receive exhibit No. 2979-A.

(Whereupon, the document above referred to was marked defense exhibit No. 2979 for identification; and the excerpt therefrom, bearing defense document No. 1500-D-6, was marked defense exhibit No. 2979-A and received in evidence.)

THE PRESIDENT: You are not obliged to read any part of it, Mr. Blakeney.

MR. BLAKENEY: I am not reading any part of it, your Honor.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: If the Tribunal please, may I read it?

THE PRESIDENT: No.

MR. BLAKENEY: In your case.

I turn now to a group of documents on another point -- the question of the extent of the right of self-defense, particularly in connection with the Kellogg-Briand Pact. First of these to be offered in evidence is defense document 1957, excerpts from the Department of State's THE GENERAL PACT FOR THE RENUNCIATION OF WAR, the excerpts consisting of notes exchanged among the various powers.

THE PRESIDENT: Mr. Comyns Carr.

MR. COMYNS CARR: May it please the Tribunal, in regard to this group of documents we object on the ground that in none of them except one has there been any compliance with Rule 6-b(1). They are with one exception excerpts and, so far as we have been able to trace the matter, misleading excerpts, in our view, from longer documents; and we would like to draw the attention of the Tribunal to a practice which seems to have grown up on the part of the defense to take advantage of the leniency which we have shown in not always insisting on compliance with this rule. That is to say, not only do they tender to the Tribunal as their ultimate exhibit something which is an excerpt, but they don't even tender the original, whole document as the original exhibit, with the result that

we don't have the opportunity of checking to see how far the excerpt is a proper one and how far it ought to be supplemented. May I draw the attention of the Tribunal in that connection to page 24,897 of the record, where, on the testimony of the witness OKADA, we drew the attention of the Tribunal to the fact that he had produced only parts of documents which he said were in his possession. We asked where the whole of the documents were. First of all, we were told they were in the hands of Dr. KIYOSE; then we were told that they had been filed in the Clerk's office. The latter statement turns out to be completely erroneous, and we haven't seen them yet.

THE PRESIDENT: Mr. Carr, we judicially notice the Pact of Paris and everything which is necessary for its correct interpretation. Some of us may think that we can look beyond the clear words of the pact to find out what is the real meaning of the statements made by those responsible for bringing it about. Others may take the view that we are bound by the clear words. At all events, it may not be necessary to prove these statements by Mr. Kellogg, perhaps, or Mr. Stimson, or Mr. Briand; that we should judicially notice this if they really bear on the interpretation of the treaty. But that is a matter that

probably we would prefer to discuss among ourselves before dealing with these documents.

MR. COMYNS CARR: Yes.

THE PRESIDENT: I think that we have all those matters which are pressed on us now, if I understand this document rightly.

MR. COMYNS CARR: If the Tribunal proposes to take judicial notice of the whole documents, we of course have no objection. We are objecting to his garbled extracts being put in as evidence without compliance with the rules of the Tribunal.

Your Honor, may I take the opportunity, as I have raised the whole subject, to ask for an order of the Tribunal that the two documents exhibited to the affidavit of OKADA, which were said to be deposited with the Clerk and I am informed are not, should be forthwith produced for our inspection?

THE PRESIDENT: Major Blakeney.

MR. BLAKENEY: In connection with the OKADA matter, I have no knowledge or information concerning it. But if the documents in question are in the same state as the original of the excerpt now under consideration, counsel will find them at the clerk's desk, because I have, within the last few minutes, personally inquired of the clerk and been shown the original of defense document 1957, which is on deposit there.

As to whether the excerpts are misleading, garbled or deserve any of the other adjectives bestowed on them by counsel, that is a matter which the Tribunal can determine.

We do wish to direct the attention of the Tribunal to these parts of the document which we are here offering. Whether it be done by production of evidence or by the Tribunal's taking judicial notice is a matter of entire indifference to us, if it be done. The difficulty, as I see it, on the judicial notice question is to be able to tell from the record, from the transcript, of what matters the Tribunal is taking judicial notice.

THE PRESIDENT: We take judicial notice of international law, at least. We say we do. And you take judicial notice of everything that is necessary

to enable you to interpret it because anything that could affect its interpretation would be on a very high level.

MR. BLAKENEY: The difficulty that still, with due deference, strikes me, your Honor, is that as we all know, tribunals know many things of which they do not take judicial notice, and actually they do not know some of the things of which they do take judicial notice.

THE PRESIDENT: I can safely say we have all read the statements attributed to Mr. Stimson and others as to the meaning of the pact or the meaning they intended it to have. We know the reservations made by the different nations when they signed. All those things are known to us. You can find them in the textbooks on international law.

MR. BLAKENEY: Perhaps if the Tribunal could and would state that judicial notice would be taken of the matters contained in these documents plus the remainders of the documents from which they are taken, we could solve the matter in that way.

THE PRESIDENT: If you have a publication containing the full statements of all these people I think we should be only too happy to receive copies of it from you.

MR. BLAKENEY: In that connection, the original from which defense document No. 1957 is taken contains the full text of the pact, the full text of the various notes exchanged among the powers on the subject of reservations, as well as the addresses of Secretary of State Kellogg on the subject. The original of defense document No. 672, unless I am mistaken, is the complete hearing before the Senate Foreign Relations Committee at which Secretary Kellogg appeared.

THE PRESIDENT: If you have copies of that State Department publication referred to in the document tendered, we should be only too happy to receive copies.

MR. BLAKENEY: Whether they can be had, I do not know, your Honor. It is dated 1928. But we will endeavor to obtain them.

MR. COMYNS CARR: And the prosecution will assist in--

MR. BLAKENEY: And document No. 1971 is, I think, agreed to be the complete report at that time filed by the Committee on Foreign Relations of the United States Senate on the Kellogg-Briand Pact.

The matter can no doubt, as Mr. Tavenner suggests, be handled in the form of a brief, and I

think the parties can agree on the method of presenting the material.

THE PRESIDENT: Mr. Carr.

MR. COMYNS CARR: Your Honor, we are quite prepared to cooperate in preparing such a document in which each side can present its views and citations which it considers necessary for the assistance of the Tribunal.

THE PRESIDENT: We are only too happy to receive any State Department pamphlet which contains those speeches which may help us to determine the meaning of the pact. We would like you to cooperate on that matter.

MR. COMYNS CARR: The prosecution will endeavor to get additional copies of this or a similar document. We know there is a similar and rather larger one.

MR. BLAKENEY: On that understanding of the matter, I will withdraw the tender and tender no further documents on this point.

THE PRESIDENT: What is next, Mr. Blakeney? What is the next business?

MR. BLAKENEY: In closing my branch of the case, I wish to ask the Tribunal to take judicial notice of the fact that on the 11th of December, 1941,

the United States of America declared war on Germany.

THE PRESIDENT: We will have no difficulty in taking judicial notice of that fact, or any other declaration of war by any of the powers represented in this court, so far as relevant and material.

MR. BLAKENEY: Yesterday morning at page 26,206 of the record, Mr. Prosecutor made a statement relative to the cross-examination of the witness, SHIRAO, the statement that is relative to the absence of cross-examination on a particular point and which statement was made in lieu of cross-examination of the witness then on the stand and in contradiction to the position taken by the prosecutor in connection with non-cross-examination of defense witnesses. I do not wish to reopen this controversy about the effect of absence of cross-examination, but I wish to point out in connection with the statement then made by Mr. Tavenner that there was cross-examination of the witness on that point at page 10,592 of the record within the limitations of the witness' knowlege on that point as shown in his testimony in chief at page 10,570; and I wish to suggest a reading of the testimony of that witness generally in connection with that of the witness KAMEYAMA.

That concludes the Diplomatic Subdivision of

the Pacific Phase, to be followed by the Military Subdivision, of which the first branch, the Naval Section, will be opened and presented by Mr. Brannon.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: If the Tribunal please, I am advised that if the Tribunal looks at the page that was mentioned by counsel, the correctness of my original statement will be verified; either that page or any other page in the cross-examination.

I have spoken to counsel regarding two typographical errors in the course of the transcribing of the cross-examination of the witness YAMAMOTO, and we have agreed, subject to the approval of the Court, to a correction of both of these matters.

On page 26,144, line 2, the third word should be "NOMURA" instead of "NAGANO"; and on page 26,147, line 8, the third word from the end should be "OKA" instead of the the word "also." Will the Tribunal direct the correction of the record accordingly?

THE PRESIDENT: The corrections will be made accordingly. We will adjourn until half-past nine tomorrow morning.

(Whereupon, at 1600, an adjournment was taken until Thursday, 21 August 1947, at 0930.)

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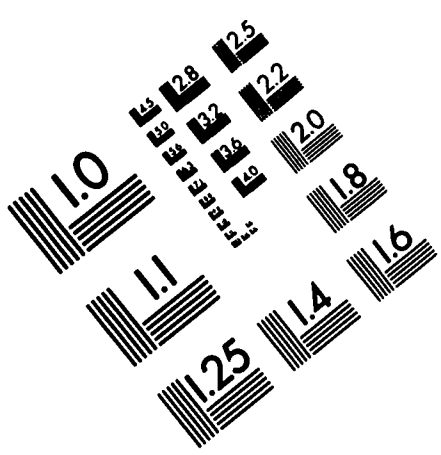

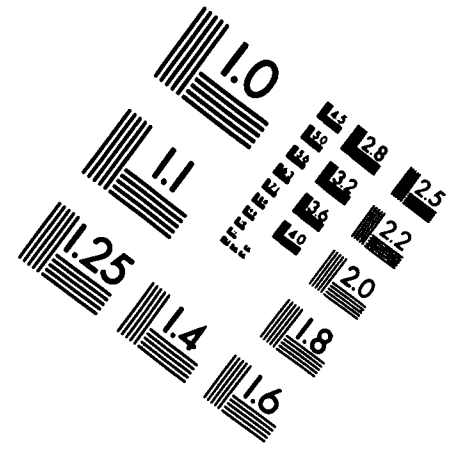

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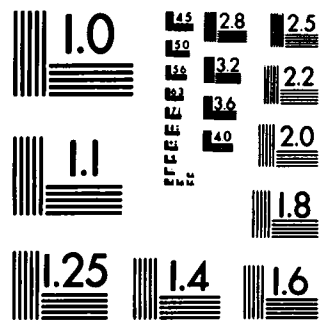

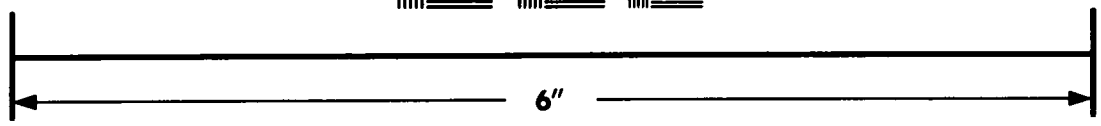

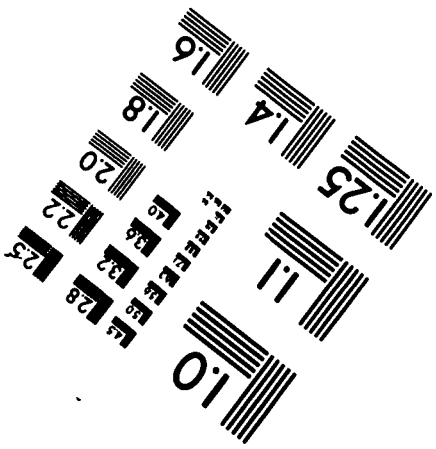

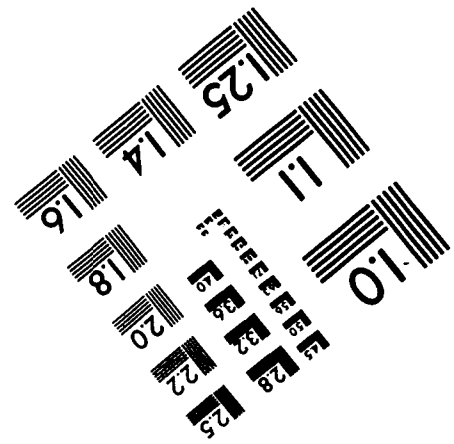

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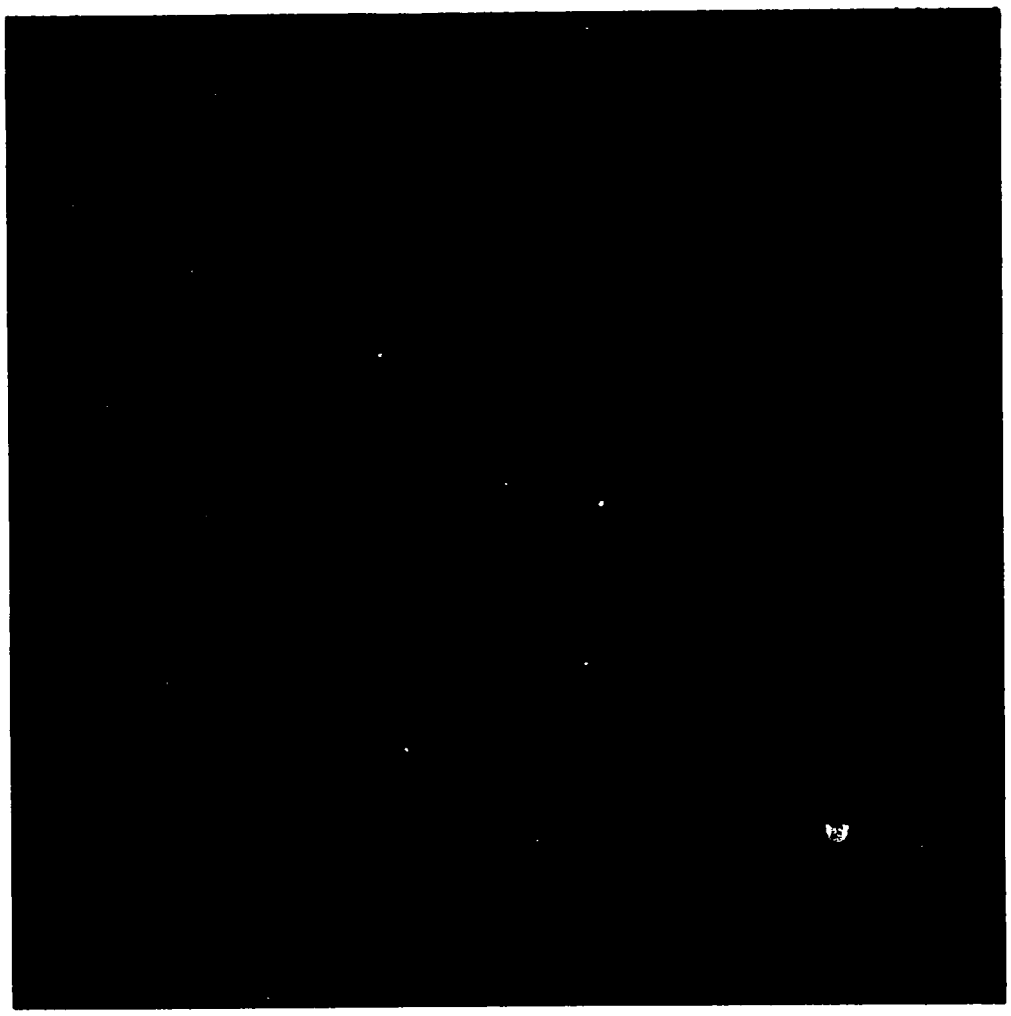

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