

Nov 22, 1946

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I N D E X

Of

WITNESSES

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I N D E X

Of

EXHIBITS

(none)

1 Friday, 22 November, 1946

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

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

11 - - -

12 Appearances:

13 For the Tribunal, same as before with the
14 exception of the HONORABLE R. B. PAL, Member from
15 India, not sitting.

16 For the Prosecution Section, same as before.

17 For the Defense Section, same as before.

18 The Accused:

19 All present except OKAWA, Shumei, who is
20 represented by his counsel.

21 - - -

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

3 THE PRESIDENT: Mr. Smith.

4 - - -

5 J O S E P H W. B A L L A N T I N E, called as a
6 witness on behalf of the prosecution, resumed
7 the stand and testified as follows:

8 CROSS-EXAMINATION

9 BY MR. SMITH (Continued):

10 Q Mr. Ballantine, irrespective of whether the
11 Amau Statement of April 17, 1934, was authorized or
12 not, are you aware that it had the approval in the
13 English Parliament of Sir John Simon, who was Foreign
14 Minister of State at that time?

15 THE PRESIDENT: Sir John Simon's opinion
16 does not appear to me to be relevant, Mr. Smith.

17 MR. SMITH: I assume your Honor automatically
18 allows me an exception to the ruling.

19 THE PRESIDENT: You haven't even bothered to
20 tell me why you think it is relevant.

21 MR. SMITH: I didn't mean to take that at-
22 titude, your Honor. This Amau Statement was played
23 up in the American press as a so-called Japanese
24 Monroe Doctrine.

25 THE PRESIDENT: Well, its quality isn't a

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1 matter to be determined by the opinion of Sir John
2 Simon, so you may have your exception.

3 Q In April, 1934, are you aware of the fact
4 that there several hundred thousand people of Japanese
5 descent living in China proper, that is, excluding
6 Manchuria?

7 A I don't know the approximate number of
8 Japanese residents in China in 1936.

9 Q You lived in China for some time. What
10 years were they?

11 A I lived in China from 1930 to 1936.

12 Q And do you mean to say you can't even give
13 us a rough idea as to how many people of Japanese
14 descent were living in China, excluding Manchuria?

15 THE PRESIDENT: That appears to be beyond
16 the scope of his affidavit.

17 MR. SMITH: If your Honor please, it is
18 impossible to read this Amai Statement, even assuming
19 it was an authorized statement, which it isn't, as
20 we will show in our own case, without knowing the
21 background and the situation in the Government, the
22 disunity and lack of stability everywhere in China.

23 THE PRESIDENT: You may prove those things
24 if you can when you are giving evidence, but we don't
25 think that you should be allowed to question this

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1 witness along those lines.

2 MR. SMITH: Well, your Honor, there is more
3 to it than what I have said. It involves the question
4 of the protection and safety of Japanese nationals
5 living in China and their property interests.

6 THE PRESIDENT: This man is not here to be
7 examined on the history, political institutions and
8 geography of China, so far as those matters are be-
9 yond the scope of his affidavit, and these matters you
10 mention are.

11 MR. SMITH: Well, could I also call to your
12 attention the fact that in the paragraph dealing with
13 the hostilities which commenced after July 7, 1937, the
14 witness has described it as an invasion and wholly
15 unjustified. What I am inquiring about is relevant
16 on this point and also relevant to the larger issue.

17 THE PRESIDENT: Those matters are far too
18 remote. You must accept our decision, Mr. Smith.

19 MR. SMITH: If your Honor please, I had a
20 long series of questions along that line, and in
21 deference to your Honor's ruling, why of course, I
22 won't put the questions. I assume your Honor, has
23 chopped off that whole line of questions.

24 THE PRESIDENT: The Tribunal has done so,
25 if the questions to follow are of the same nature

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1 as those just disallowed.

2 Q In 1911 Japan and the United States made a
3 Treaty of Commerce and Navigation, is that correct?

4 A That is correct.

5 Q And that treaty was simply a renewal and
6 extension of a treaty which had been in force for
7 some forty or fifty years prior to 1911, is that
8 correct?

9 A It was a revision -- it was a replacement
10 for the previous commercial treaty, which I believe
11 was 1899, but I am not sure. It was somewhere in
12 the 1890's.

13 Q That treaty, in short, provided for the right
14 of citizens of both countries to reside and travel
15 in each other's territory and to lease houses, com-
16 mercial buildings, manufacturing establishments, and
17 so forth. Is that a short summary of that treaty?

18 THE PRESIDENT: Neither the validity nor
19 the effect of that treaty is in issue here, is it?

20 MR. SMITH: I didn't put it in issue, your
21 Honor. The prosecution did, in the last paragraph of
22 page 3 of this man's affidavit.

23 THE PRESIDENT: What does it say?

24 MR. SMITH: That paragraph says:

25 "On July 26, 1939, the Government of the United

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1 States notified the Japanese Government of its in-
2 tention to terminate the Treaty of Commerce and
3 Navigation of 1911. It was felt that this treaty
4 was not affording adequate protection to American
5 commerce either in Japan or in Japanese occupied
6 portions of China, while at the same time the opera-
7 tion of the most-favored-nation clause of the treaty
8 was a bar to the adoption of retaliatory measures
9 against Japanese commerce.

10 THE MONITOR: Will you give me the page
11 number, Mr. Defense Counsel?

12 MR. SMITH: Page 3, last paragraph, page 3.

13 THE PRESIDENT: These delays in interpreting
14 are imposing a great strain on the Court, and on all
15 of us, I think, so do your best to prevent them.
16 Speak in short sentences and speak clearly. It so
17 happens the Japanese we are listening to now is not
18 a part of the proceedings at all, but a broadcast to
19 the public of what we are saying, but yet we have all
20 these delays, but counsel must cooperate with us to
21 prevent them.

22 MR. SMITH: If your Honor's statement is
23 directed to me, I am cooperating, and what I was
24 just saying was merely reading the affidavit. I
25 understand the translators have a Japanese copy of

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1 Mr. Ballantine's affidavit and when I referred to the
2 last paragraph on page 3, all they had to do was
3 refer to that.

4 THE PRESIDENT: The questions that you were
5 putting to the witness do not appear to me to be
6 directed to elucidating anything he has said in his
7 affidavit.

8 Q When the United States terminated the treaty,
9 which took effect on January 26, 1940, the Japanese
10 Government took no action by way of retaliation against
11 the United States. Is that statement true?

12 A I don't know what retaliation is in that
13 situation; what would be the nature of retaliation
14 for the lapse of a treaty.

15 Q I mean the Japanese Government took no action
16 by law or regulation to exclude citizens of the United
17 States from Japan and occupied territory or to de-
18 prive them of the right to live in homes and own
19 places of business. That is what I mean.

20 A In our note to the Japanese Government of
21 October 6, 1938, which I believe is in evidence here,
22 there was a long recital of the manners in which the
23 Japanese Government had discriminated against and
24 had violated the rights of Americans in occupied
25 areas in China. The record is published.

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1 Q Well, treat my question as repeated and
2 please give me an answer to it.

3 A I was simply trying to state that this ques-
4 tion of Japanese violation of American rights was
5 continuous even before and during and after the lapse
6 of that treaty.

7 Q I will repeat my question for the third time
8 and ask you to please give me an answer to the
9 question.

10 A I must not have understood your question
11 correctly, then. I would like to have the question
12 repeated.

13 THE PRESIDENT: Mr. Reporter, will you re-
14 peat it?

15 (Whereupon, the official court reporter
16 read the question, as follows: "Q I mean the
17 Japanese Government took no action by law or
18 regulation to exclude citizens of the United
19 States from Japan and occupied territory, or to
20 deprive them of the right to live in homes and
21 own places of business. That is what I mean."

22 THE PRESIDENT: That is a statement, not a
23 question. He need not reply to a statement.

24 MR. SMITH: If your Honor please, the ques-
25 tion preceded what the reporter just read, and

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1 besides that, it was asked in the form of an in-
2 terrogation and in the form of a rising voice. It
3 was asked in a question form. Does your Honor want
4 me to repeat that question?

5 THE PRESIDENT: I don't want you to repeat
6 your statement. Put a question. The inflections of
7 your voice are not noted in the transcript, nor are
8 they appreciated by me.

9 Q I am asking you a question, and answer
10 whether it is correct or not: When the Treaty of
11 Commerce and Navigation of 1911 between Japan and the
12 United States was terminated on January 26, 1940,
13 whether the Japanese Government thereafter took any
14 action by law or regulation to deprive American
15 citizens of the right to travel and reside in Japan
16 and occupied territories and to live in houses and
17 own places of business?

18 A I don't know of any laws or ordinances that
19 were passed by the Japanese following the lapse of
20 the treaty affecting the rights and residence of
21 Americans in Japan or occupied territories.

22 Q At the time this treaty was terminated, is
23 it true that there were 110,000 persons of Japanese
24 descent living in the United States, 99 per cent of
25 whom lived in the Pacific Coast States of California,

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1 Oregon and Washington?

2 A I believe that there were somewhat over a
3 hundred thousand people of Japanese descent living
4 in the United States at that time. As to what pro-
5 portion lived in the three Pacific States I don't
6 know exactly.

7 Q Well, you are familiar with the fact that
8 the great bulk, the great preponderance of those
9 people, lived in the three states I have mentioned,
10 is that true?

11 A That is correct.

12 Q And of those persons of Japanese descent
13 about 65 per cent were native born, and, therefore,
14 citizens of the United States, is that correct?

15 A I don't know exactly what percentage, but
16 I think your statement is probably correct.

17 Q And is it true that still left some 40,000
18 persons of Japanese descent living in the three
19 Pacific Coast states I have mentioned, who had been
20 made ineligible to United States citizenship since
21 1924, is that correct?

22 A There probably were about 40,000 people who
23 were ineligible to citizenship.

24 Q Are you familiar with the fact that the
25 States of California, Oregon and Washington passed

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1 alien land laws, going back to 1913, and those laws
2 were progressively strengthened up to 1923 against
3 alien Japanese owning any land, leasing land, share-
4 cropping, or anything of that sort?

5 A I know there were such land laws in force.

6 Q Then you also knew that while the Treaty of
7 1911 was in force, it being the supreme law of the
8 land, it limited that state legislation as it applied
9 to alien Japanese, is that correct?

10 A I understand that was the case.

11 Q So that after the Treaty of 1911 was de-
12 nounced those state laws were vigorously applied to
13 alien Japanese in the United States, is that correct?

14 A I am not sure about that. I don't know
15 what the effect was on that -- state laws.
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1 Q Are you familiar with the fact that there has been
2 a whole series of litigation in California in recent
3 years which have deprived alien Japanese of leases,
4 property and that sort of thing since this treaty was
5 denounced?

6 A I am not very well versed in that subject.

7 Q When was it -- When did the State Department
8 direct the Panama Canal Commission to close the Panama
9 Canal to Japanese shipping?

10 A I don't know that the Panama Canal was closed
11 to Japanese shipping. If I recall correctly, in July
12 1941 there was some delay in shipping because precedence
13 was given to clearing the Canal for ships carrying
14 strategic commodities that we needed for our self-
15 defense. Some representation was made by the Japanese
16 Embassy to the State Department in 1941 which appears
17 in the record. I haven't had occasion to read it for
18 a long, long time, therefore, my memory on the facts
19 is not very clear.

20 Q Do you know anything about the nature of the
21 direction given with respect to Japanese shipping in
22 the Panama Canal, and if so, when did it occur?

23 A I know nothing about the matter other than
24 contained in that official -- in the official record,
25 in Volume 2. I believe it is in United States Foreign

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1 Relations, and my memory on that is not very fresh.
2 I'd have to have my memory refreshed on that.

3 Q Well, you do recall that Japanese shipping
4 was restricted from using the Panama Canal for a
5 number of months before Pearl Harbor?

6 A I don't know for how long. I believe a very
7 short period, because all Japanese shipping was being
8 recalled to near-sea waters from overseas and I don't
9 think there was much Japanese shipping in the Atlantic
10 after July.

11 Q What was the date, the earliest date, the
12 State Department knew that Japanese shipping had been
13 recalled?

14 A I think it was early in July, 1941.

15 Q And would it refresh your recollection if
16 I suggested that restrictions were put on Japanese
17 shipping in the Canal as early as October, 1940?

18 A It would not.

19 Q Well, the restrictions on the use of the Canal
20 was just one part of this economic war of the United
21 States and other nations allied with it were carrying
22 on against Japan, is that correct?

23 A The question of the use of the Panama Canal,
24 whereby we gave precedence to vessels carrying strategic
25 commodities, was a part of self-defense.

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1 Q And when you speak of "strategic commodities,"
2 you refer not only to ships of the United States,
3 but also the British and Dutch and the French ships
4 from all over the world, is that right?

5 A I am referring to the ships of countries
6 resisting the world-wide movement of aggression and
7 the American Republics, as well as the American ships.

8 Q And at the time that the restrictions on
9 Japanese shipping went into affect the State Department
10 was aware that Japan had important export customers
11 in Mexico, Central America, Colombia, Brazil and the
12 Argentine, all nations whose ports of entry were on
13 the Atlantic side, is that correct?

14 A I don't know the extent to which the Panama
15 Canal was used by Japanese shipping trading with South
16 America.

17 Q One of the reasons in denying the use of the
18 Canal, was it not, was to keep the Japanese from getting
19 any oil out of Mexico and Colombia?

20 A I never heard that reason advanced.

21 Q Will you tell us when the Suez Canal was
22 closed to Japanese shipping?

23 THE PRESIDENT: Mr. Chief of Counsel.

24 MR. KEENAN: I have hesitated to object to this
25 line of questioning, but it seems to me it is now

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1 getting far beyond the scope of the affidavit, and I,
2 therefore, object to it as anticipating the defense,
3 if it is material. I do not think all the time of
4 this Court should be taken asking geographical points.
5 We pointed out various actions of other nations. I,
6 therefore, object.

7 THE PRESIDENT: Mr. Chief of Counsel, I can-
8 not reprimand defense counsel and not reprimand you
9 when you violate the red signal.

10 MR. KEENAN: I am sorry, Mr. President. I
11 didn't realize that I was violating the red light.

12 THE PRESIDENT: What have you to say on the
13 objection, Mr. Smith?

14 MR. SMITH: It is not a matter of geography.
15 Yesterday it was gone into fairly extensively, but not
16 enough to suit me, as to this military and economic
17 encirclement of Japan for many months before Pearl
18 Harbor.

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1 THE PRESIDENT: You may give that evidence
2 in the course of the defense evidence. I have told
3 you that repeatedly. But is it fairly within the
4 scope of this man's affidavit? He is an American
5 official.

6 MR. SMITH: Well, your Honor, this affidavit
7 covers everything under the sun, especially when you
8 read some implications into it, and the way it is drawn.
9 I don't know how this Court can say that anything is
10 not relevant, especially as it bears on the sincerity
11 of the American and Allied position in dealing with
12 Japan in 1941.

13 THE PRESIDENT: I told you more than once that
14 we would disregard the affidavit so far as it indulged
15 in opinions. All we want from this witness is what was
16 said and done by the State Department in Washington,
17 and please cross-examine with that in view. I know you
18 can cross-examine as to credit, but these questions
19 are not directed to credit but to the issues, or they
20 are intended to be.

21 MR. SMITH: Well, your Honor, with all
22 deference to your statement that the Court will ignore
23 conclusions, I still do not know where I stand and
24 what is in this affidavit and what is outside of it.
25

THE PRESIDENT: I am sure, Mr. Smith, that you

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1 recognize an opinion or a conclusion when you see it
2 in print. We do.

3 MR. SMITH: Your Honor, as the point is apt
4 to arise time and time again, I would like to point
5 out some other aspects of this affidavit. For
6 example, in this affidavit it says that Japan has
7 been following a policy of military aggrandizement
8 ever since it emerged as a modern state.

9 THE PRESIDENT: That is a conclusion which we
10 utterly disregard.

11 MR. SMITH: Well, your Honor, if we could have
12 a similar statement it would greatly simplify it. For
13 example, 1895, dealing with the Japanese annexation of
14 Formosa, and 1905, the Russian-Japanese War, if that
15 is going--

16 THE PRESIDENT: Observe that red light.

17 MR. SMITH: If those matters could be stricken
18 out it would simplify the case. If they are going to
19 stand, I have perhaps four hundred questions to ask him
20 to justify Japan's position.

21 THE PRESIDENT: American counsel have told me
22 that by striking out they don't mean expunging. You
23 can rest assured that we have struck out those con-
24 clusions and opinions in that sense.

25 MR. SMITH: Thank you, your Honor. Does your

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1 Honor rule the witness cannot answer as to when the Suez
2 Canal was closed?

3 THE PRESIDENT: Cross-examine him on any
4 statement of fact in the affidavit, not on any opinion.

5 Q Well, I am asking you if you know as a fact
6 when the Suez Canal was closed to Japanese shipping?

7 THE PRESIDENT: That is not in his affidavit.

8 Q When did the United States and the Dutch and
9 the British embargo the shipment of petroleum,
10 gasoline and scrap iron, aircraft designs, and so forth,
11 to Japan?

12 A It will take a long time to tell that. It is
13 all in the record. And because these different steps
14 were taken at different times, I don't know what steps
15 the other governments took.

16 Q Didn't you tell us yesterday that the action
17 of the United States in putting these economic embargoes
18 on was followed within a day by similar action by the
19 Dutch and British and that the United States would have
20 not acted had it not been for a concert?

21 THE PRESIDENT: If he contradicts himself,
22 leave it to comment later. It is not necessary to point
23 out what he said yesterday in fairness to him, if he did
24 say something different.

25 Q When these embargoes on oil and scrap iron

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1 and a great many other things went on, did the Depart-
2 ment of State estimate how long it would take for such
3 economic blockade to bring Japan to its knees?

4 A No conclusion was reached on that subject at
5 all.

6 Q Well, you knew in the Department of State at
7 the time these embargoes went on that it would be a
8 matter, at most, of two or three years to stifle the
9 economy of Japan and even to force her to withdraw
10 armies from China and capitulate there; is that correct?

11 A As I said yesterday, those measures were taken
12 in self-defense. No conclusion was reached as to how
13 long or what the precise effect upon Japan would be.

14 Q Well, you knew in 1940 in the State Department
15 that Japan couldn't exist for long without petroleum,
16 cotton, wool, and food, did you not?

17 A Everybody knew that Japan was not self-
18 sustaining in many of these commodities.

19 Q Do you know when the British mined Singapore
20 Strait?

21 THE PRESIDENT: It does not arise out of his
22 affidavit. We will recess for fifteen minutes.

23 (Whereupon, at 1045, a recess was taken
24 until 1100, after which the proceedings were
25 resumed as follows:)

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

3 THE PRESIDENT: Mr. Smith.

4 BY MR. SMITH (Continued):

5 Q Mr. Reporter, would you repeat the last
6 question to the witness?

7 THE PRESIDENT: I disallowed that as not a-
8 rising out of the affidavit. It refers to alleged
9 mining of the Straits of Singapore by the British.

10 Q Can you tell us when the United States
11 acquired military bases in Iceland and Greenland,
12 the Azores and leases in British territory for the
13 construction of air fields?

14 THE PRESIDENT: That does not arise out of
15 the affidavit. The defense can give that evidence
16 later.

17 Q Can you tell us when the United States trans-
18 ferred fifty American destroyers to Great Britain?

19 THE PRESIDENT: You know very well, Mr. Smith,
20 that the ruling on the last question covers this.

21 MR. SMITH: Well, your Honor, I would like
22 to defend these questions, if I may.

23 THE PRESIDENT: There is no obligation
24 on us to allow you to put those questions simply
25 because you prepare them. I do ask you to act

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1 reasonably. I want to avoid any sharp differences
2 with counsel.

3 MR. SMITH: Your Honor, I never contended
4 because I prepared the question, every court had
5 to allow it; but I would like to be heard on the
6 question of its relevancy.

7 THE PRESIDENT: I said you could cross-
8 examine him on statements of fact in his affidavit.
9 The cross-examination that you are attempting is
10 not limited to that.

11 MR. SMITH: Your Honor, I would like to
12 make an objection that this Tribunal has applied such
13 a narrow rule with respect to cross-examination,
14 a rule narrower than any national court in the
15 United States or Canada has ever applied.

16 THE PRESIDENT: You may make that submission,
17 but my colleagues on this Bench from the United States
18 and Canada do not take that view.

19 MR. SMITH: And I would also like to add,
20 your Honor, that these defendants are being deprived
21 of a fair trial as guaranteed by the Charter because
22 of an undue restriction on the right of cross-examin-
23 ation.

24 THE PRESIDENT: You must abide by the Court's
25 ruling. I am not going to argue it with you.

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1 Q Mr. Ballantine, are you aware that in
2 November 1941 the Congress of the United States
3 voted to repeal important sections of the Neutrality
4 Law thus permitting the arming of merchant ships
5 of the United States and their sailing into any
6 combat zone or belligerent port in the world?

7 THE PRESIDENT: How does that arise out
8 of the affidavit?

9 MR. SMITH: It bears on, your Honor, the
10 good faith of the negotiations carried on in 1941,
11 and it also bears on what the Japanese could reason-
12 ably apprehend were the intentions of a concert of
13 nations.

14 THE PRESIDENT: The Tribunal does not take
15 that view, Mr. Smith.

16 Q When did the United States begin
17 supplying arms, ammunition, aircraft, trucks and
18 food to the Kai-Shek regime in China?

19 THE PRESIDENT: The same objection applies
20 to that. You can give evidence of all of these
21 things. Do not talk about a fair trial being denied
22 to you. I am afraid that is not meant for our ears,
23 but for the ears of the public outside.

24 MR. SMITH: Your Honor, I seriously resent
25 what your Honor just said to me. I am not talking

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1 for the press; and what I am talking about aid to
2 Kai-Shek is known all over the world. It is a
3 matter of common knowledge.

4 THE PRESIDENT: If it is, why put matters --
5 all matters of common knowledge to this witness?
6 If you are allowed to put one matter, why not
7 another?

8 MR. SMITH: Well, in order to save time and
9 to pay due respect to your Honor's ruling, I had
10 a long series of questions dealing with aid to
11 the Kai-Shek regime, the efforts to keep the Burma
12 road open and military assistance on construction.

13 Q Mr. Ballantine, these complaints that the
14 United States Government lodged with the Japanese
15 Government with respect to violation of the Nine-
16 Power Treaty dealt in the main with the competitive
17 conditions among merchants of different countries
18 in China, is that correct?

19 A They dealt with the whole range of American
20 rights and interests in China.

21 Q Well, the great bulk of the complaints that
22 the State Department received from American merchants
23 and traders, when analyzed, really boiled down to
24 the fact that the Americans could not compete with
25 the Japanese because of their low prices and quality

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1 of their goods, is that right?

2 THE PRESIDENT: How does that arise out
3 of the affidavit?

4 MR. SMITH: It arises out of the affidavit
5 in many places, your Honor. The Witness has said
6 there has been flagrant violation of the Nine-Power
7 Pact, that they got no equality of treatment in
8 China. I want to show that these complaints,
9 when they were analyzed, were nothing more than
10 the fact that they could not meet stiff competition.

11 THE PRESIDENT: I told you that had been
12 stricken from the affidavit as an opinion or con-
13 clusion.

14 Q With further respect to the Nine-Power
15 Treaty, was the State Department aware for a number
16 of years before Pearl Harbor that China was opposed
17 to any nation having any extraterritorial rights
18 on Chinese soil?

19 THE PRESIDENT: What statement of fact in
20 the affidavit is that based on? You may be able
21 to point one out. I cannot recall one.

22 MR. SMITH: Well, your Honor, the United
23 States has long since realized the futility of
24 trying to maintain a territorial foothold in China.
25 They have withdrawn their United States District

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1 Court, have subjected their own citizens to Chinese
2 law.

3 THE PRESIDENT: You are not there to give
4 evidence, but to refer to the affidavit.

5 MR. SMITH: The main point, as it touches
6 the affidavit, and the point I am trying to make,
7 is that the Nine-Power Treaty was practically a
8 dead letter long before Pearl Harbor because of the
9 Chinese attitude and the acquiescence in it by
10 most governments.

11 THE PRESIDENT: You can give that evidence
12 at the proper time. Now, at the present time, you
13 are staging a holdup by putting questions you know
14 must be disallowed on the Court's previous rulings.

15 MR. SMITH: I would like to have your Honor
16 allow me a special exception to the remark that I
17 am holding this Court up. I deny it emphatically.

18 THE PRESIDENT: You have an exception on
19 my refusal to allow those questions you have been
20 putting.

21 Q In the early negotiations with the Japanese
22 in the spring of 1941 is it true that the Japanese
23 spokesman and also the Civilian Committee asked
24 the State Department to act as an "introducer" of
25 peace in China?

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1 A The proposal that the President of the
2 United States suggested to the Government of China
3 that it enter into negotiations for a peaceful
4 settlement with Japan arose right at the very
5 outset of the conversations, and we agreed to that
6 subject to an agreement on a general Pacific settle-
7 ment.

8 Q Did the State Department ever change its
9 attitude about assuming a role of an introducer
10 of peace?

11 A As I stated in my affidavit, that offer
12 was never withdrawn.

13 Q Well, in your later -- the later proposals
14 of the State Department to the Japanese, especially
15 the one of November 26th, did not purport to act --
16 I am asking you this as a question -- did not purport
17 to act as an introducer of peace between China
18 and Japan, but the United States was going to
19 settle the whole China war for China without China
20 being consulted at all, is that correct?

21 THE PRESIDENT: The witness has already
22 dealt with that, but let him answer again.

23 A That is not correct.

24 Q Would you answer, Mr. Ballantine, as to
25 what the true situation was, particularly as to

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1 whether you were going to merely assume the role
2 of an introducer, and let China and Japan work
3 out their own problem, or the United States was
4 unilaterally going to settle the whole China war?

5 A A careful reading of the explanatory state-
6 ment which accompanied our November 26 proposal
7 should make the situation abundantly clear. We pro-
8 posed going ahead with the conversations along the
9 basis of that proposal; when we reached a tentative
10 agreement, then we would take up the subject with
11 the other governments affected.

12 Q But, as I read the November 26, 1941 pro-
13 posal, the State Department's position was that
14 every Japanese soldier in China should be withdrawn.
15 Now, my question is, if that came about, what would
16 there be left to settle between China and Japan
17 with respect to the war?

18 THE PRESIDENT: We do not want the witness'
19 opinion. The matter is one for comment by counsel
20 later.

21 Q Well, is it a fact that in the November 26
22 proposal the State Department practically abandoned
23 the idea of acting as an introducer of peace?

24 A No. The fact that no mention was made of
25 it in that thing doesn't rule it out. We had these

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1 matters outstanding. We never withdrew the offer.

2 THE PRESIDENT: This cross-examination, when
3 relevant, is repetitive. Other defense counsel have
4 covered this ground.

5 Q In the November 26 proposal, as I remember
6 it, among other things you offered to Japan to nego-
7 tiate a reciprocal trade agreement binding raw silk
8 on the free list; is that correct?

9 A Yes. There was a provision calling for bind-
10 ing raw silk on the free list.

11 Q Are you familiar with the tariff history of
12 the United States since 1921 and the Tariff Act since
13 then as it related to Japanese imports into the
14 United States?

15 A I am not an authority on the American tariff
16 policy or tariff legislation.

17 Q Do you recall the fact that in the Tariff
18 Act of 1921 -- these are all United States laws --
19 the Emergency Tariff Act of 1922 and the Hawley-Smoot
20 Tariff Act of 1930 --

21 THE PRESIDENT: He does not purport to know
22 anything about the tariff of the United States. He
23 told you that. You must take his answer.

24 MR. SMITH: Your Honor, I am trying to
25 explore what he does know about it. After all, he

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1 was one of those who put this provision in, and I
2 want to show that this proposal to enter into a re-
3 ciprocal trade agreement was nothing but sham in view
4 of the history which preceded it.

5 THE PRESIDENT: If you want to say those
6 unpleasant things about your own country, wait until
7 you are giving evidence. Do not try to get it im-
8 properly from this witness because he does not know.
9 BY MR. SMITH (Continued):

10 Q Were you informed, or the State Department
11 informed, on December 6 or the early morning of
12 December 7, 1941, Washington time, that some twenty-
13 four hours previously an American destroyer had depth-
14 charged and sunk a Japanese submarine some distance
15 off Pearl Harbor?

16 A If it was a fact, I don't know about it.

17 Q Were you informed in a despatch from the
18 White House, that is, informed in the State Depart-
19 ment, on November 28, 1941 that Secretary Stimson
20 had seen President Roosevelt that morning and had
21 stated to the President that he was "inclined to feel
22 that the warning given in August by the President
23 against further moves by the Japanese toward Thai-
24 land justified an attack without further warning,
25 particularly as their new movement southward indi-

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1 cated that they are about to violate that warning,
2 and that, on the other hand, he realized that the
3 situation could be made more clean-cut from the point
4 of view of public opinion if a further warning were
5 given, and further, that it is axiomatic that the
6 best defense is offense."

7 Did you get that message in the State Depart-
8 ment on that day?

9 A I never heard of the matter or any matters
10 of that nature except what I read in the Pearl Harbor
11 report, I mean, in the Pearl Harbor Congressional
12 Hearing.

13 Q You do know that Secretary of War Stimson
14 did so testify in the Pearl Harbor Investigation.

15 A Yes. I have read Secretary Stimson's testi-
16 mony in the Pearl Harbor Investigation.

17 MR. SMITH: That concludes my examination,
18 your Honor, and I want to take this occasion to assure
19 you most humbly that I had no intention of holding
20 this Court up. I never had any such intention during
21 the twenty-two years I've been a lawyer.

22 THE PRESIDENT: I accept your explanation,
23 Mr. Smith, and I hope that in the future we shall have
24 no differences.
25

Mr. Brannon.

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CROSS-EXAMINATION (Continued)

BY MR. BRANNON:

Q I have just a short question or two, Mr. Ballantine.

In 1940 did the State Department advocate the use of the fleet in influencing Japan in regard to foreign policies?

A The fleet, as well as all agencies of the American Government, as far as they can be instruments of foreign policy, are so utilized. It is always the case.

Q Then, other than across-the-table talk, economic sanctions and measures, are you stating that the United States State Office took into consideration the use of the fleet for whatever purpose they might have had in mind at the time?

A As I understand it, that's what a fleet is for, is an agency of national policy.

Q Am I correct in stating that some time in the early portion of 1940 the American Pacific Fleet moved from the west coast of the United States to Hawaii?

THE PRESIDENT: Why not leave these fleet movements to Admiral Richardson, if he can tell us? I am sure he can, Mr. Brannon.

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1 MR. BRANNON: Mr. President, I was seeking
2 to establish, perhaps, the fact that the fleet move-
3 ment was due to a suggestion of the State Department
4 and that that matter may not properly be within the
5 Admiral's knowledge. Would not Mr. Ballantine, as a
6 State Department official, be properly in a position
7 to answer that, if anyone?

8 THE PRESIDENT: Answer, if you can, Mr.
9 Ballantine.

10 A So far as I know, I do not know of any fleet
11 movement that was made in response to any suggestion
12 of the State Department.

13 Q The President of the United States
14 primarily is the head of the State Department, is he
15 not?

16 THE PRESIDENT: I think we can take judicial
17 notice of the United States Constitution.

18 Q As a State Department official, do you know
19 whether or not the President of the United States
20 attached significance to the movement of the fleet
21 at that time?

22 A As the Commander-in-Chief of the Navy, the
23 President attached important significance to the
24 movements of fleets at all times.

25 Q Do you know whether or not the President

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1 stated to State Department officials that he had so
2 ordered the movement of the fleet for its effect on
3 Japan?

4 A I am sorry, but I don't have any exact or
5 definite knowledge of that -- dates and times of
6 those matters.

7 MR. BRANNON: That is all as far as I am
8 concerned. Mr. Brooks has a few questions.

9 MR. BROOKS: Mr. President and Members of
10 the Tribunal.

11 CROSS-EXAMINATION (Continued)

12 BY MR. BROOKS:

13 Q Mr. Witness, on the first page of your affi-
14 davit, in the fifth paragraph you state that the
15 State Department -- I assume that's what you were
16 talking of -- took into consideration the background
17 of the political situation.

18 A That is correct

19 Q (Continuing) And that it is essential to
20 an understanding of the true significance of the con-
21 versations to have that well in mind.

22 A That is correct.

23 Q Now, would you agree that there could be no
24 understanding of the merits of the controversy that
25 was in progress over the Manchurian domination with-

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1 out some consideration, first, of the nature of the
2 government which was opposed to Japan; second, of the
3 provocation under which Japan acted; third, of the
4 character of the Japanese activities; and fourth, of
5 the final purposes by which the Japanese were ani-
6 mated at that time?

7 THE PRESIDENT: You are assuming provocation
8 in one of those questions, Captain Brooks. It is
9 not fair to the witness to put it in that form.

10 MR. BROOKS: I am assuming that the witness,
11 since, in his affidavit, stated that from 1909 until
12 1928 he had been serving in consular posts in Japan,
13 would have read the Japanese newspapers and would
14 have known the various acts and atrocities. If he
15 does not know and wishes to discard that knowledge,
16 well, I would like for him to speak.

17 THE PRESIDENT: We will adjourn now until
18 half-past one.
19

20 (Whereupon, at 1200, a recess was
21 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. Brooks.

- - -

J O S E P H W. B A L L A N T I N E, called as a
witness on behalf of the prosecution, resumed
the stand and testified as follows:

CROSS-EXAMINATION

BY MR. BROOKS (Continued): If the reporter will read
back to the witness starting with the question where
I dealt with the merits of the controversy in the
Manchurian situation.

(Whereupon, the official court
reporter read the question, as follows:)

"Q Now, will you agree that there could be no
understanding of the merits of the controversy that
was in progress over the Manchurian domination with-
out some consideration, first, of the government
which was opposed to Japan; second, of the provoca-
tion under which Japan acted -- "

MR. BROOKS: If any. You might add that.

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1 THE REPORTER (Continuing): "Second, of the
2 provocation, if any, under which Japan acted; third,
3 of the character of Japanese activities; and fourth,
4 of the final purposes by which the Japanese were
5 animated at that time?"

6 THE PRESIDENT: I think we are all of the
7 opinion that you should put several questions cover-
8 ing that one.

9 MR. BROOKS: I will do so.

10 Q Mr. Ballantine, to what extent did your
11 department investigate as to the actual conditions
12 existing, and what was the sources of the knowledge
13 as to the conditions in the Far East, that you
14 utilized?

15 THE PRESIDENT: He could never undertake to
16 tell you all they had in mind about the Far East.

17 MR. BROOKS: I am going to break it down.

18 Q Did you send, for instance --

19 THE PRESIDENT: I think, Captain Brooks, I
20 must confine you this way: You must suggest to him,
21 if you can, that in considering the position they
22 overlooked certain matters, naming them.

23 MR. BROOKS: Thank you, your Honor.

24 Q Now dealing, Mr. Ballantine, with the first
25 part of the general question, as to the nature of

1 the government which was opposed to Japan -- did
2 your department consider that the government of
3 China at that time was really effective and respon-
4 sible? I am speaking of the authority that you
5 recognized in the Nanking government.

6 A The Nanking government was the government
7 that was recognized by the government of the United
8 States, as well as all other governments at that
9 time.

10 Q However, it was a fact, was it not, that its
11 authority actually extended over but a small fraction
12 of the territory and the people of China, did it
13 not?

14 THE PRESIDENT: That is really a matter of
15 opinion as to how far that government was effective,
16 geographically and otherwise. You can ask him
17 whether he took into account the position in China,
18 but you can hardly ask him to state fully what it was.

19 Q Well, Mr. Ballantine, the State Department
20 knew, did they not, and did they not consider that
21 in the territory in issue in Manchuria that the
22 young marshal, Chang Hsueh-Liang, by right of
23 inheritance from his father was actually the one
24 that was effective and responsible in that area, and
25 that at that time, even in the south, that the

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1 authority of the Nanking government was effectively
2 challenged by what was known as the Canton govern-
3 ment?

4 A I consider that our government of the United
5 States was well informed on the situation throughout
6 China and took into careful considerations all the
7 circumstances involved.

8 Q Your department urged Japan to deal only
9 with the leader, Chiang Kai-shek, at all times. Is
10 that not so?

11 THE PRESIDENT: Well, he has already made
12 that clear. They did.

13 Q And did your department not have knowledge
14 that the widow of Sun Yat Sen, the real founder of
15 the Chinese Republic, had denounced the government
16 which you were urging them to deal with at that
17 time?

18 A I don't think it is a question of whether
19 any unofficial person's views would have affected
20 the position of the government in regard to their
21 attitude towards China to a very large extent.

22 Q From a diplomatic viewpoint that might be
23 so, but I am talking about the sincerity and the
24 practicability of the discussions, and trying to
25 arrive at a peaceful solution of the problem, and it

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1 is my understanding from your testimony thus far
2 that the State Department's attitude was that things
3 were well in 1922 as a result of those conferences,
4 and that you were not recognizing any change in the
5 facts and circumstances to alter and move from that
6 position. Is that correct?

7 A We did not consider that there were any cir-
8 cumstances that called for revision or reconsidera-
9 tion of the Nine-Power Treaty.

10 Q Now, the Japanese rise in Manchuria dated
11 from this treaty negotiated in 1915, but really had
12 their origin in earlier agreements with both China
13 and Russia. Is that not right?

14 A Certain rights dated from certain times.
15 The treaty that Japan contracted with China in 1905
16 was one of them.

17 Q Your department knew that for some years
18 after the period 1922 that the Chinese had been
19 endeavoring to nullify these treaties by a system-
20 atic violation of certain provisions. Did they not?

21 I call your attention to some of them that were
22 contended by the Japanese, I imagine, in your con-
23 versations with them. As the building of the rail-
24 way lines parallel to the South Manchurian Railway,
25 the raising of the duty on Fuchan coal, although the

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1 price had been fixed by a formal agreement, and
2 the enlistment of business men in a campaign of
3 boycott against Japanese interests, and the advance-
4 ment of the campaign of propaganda which led to many
5 persecutions and the killing of guards and many
6 other incidents, I think numbering around three
7 hundred at that time, with which I imagine you were
8 familiar, were you not?

9 A I knew that there were claims by one side
10 and counter-claims. I don't think that the United
11 States undertook to pass upon the merits of those
12 claims. What we advocated was their adjustment by
13 peaceful processes by the two countries.

14 Q Now, Mr. Ballantine, your representatives
15 did tell you of the protests -- of the diplomatic
16 protests made by the Japanese as to the invasion
17 of these rights, did they not, by the Chinese?

18 A I think we were informed by diplomatic
19 representatives of what was going on on both sides.
20

21 Q Do you know why the Chinese evaded settle-
22 ment of these diplomatic issues?

23 THE PRESIDENT: That assumes they did so
24 evade.

25 MR. BROOKS: I would like to change that.

Q Do you know if the Chinese persistently

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1 evaded settlement of these diplomatic issues:

2 A As I say, our government didn't undertake
3 to pass upon the merits of the claims and counter-
4 claims of the two sides.

5 Q Do you know the approximate number of cases,
6 as cited by the Japanese, as being outstanding at the
7 time of the Manchurian Incident September 18, 1931?

8 A I do not recall.

9 Q There was several hundred, were there not?

10 A I don't know how many there were.

11 Q Did you take any of those cases in considera-
12 tion in considering the actions of the Japanese
13 following September 18, 1931?

14 THE PRESIDENT: He could not unless he
15 determined the merits first, and he says he didn't.

16 Q Is the President's statement correct, in
17 view of that -- of your knowledge?

18 A Of course.

19 Q Under the treaties the Japanese had certain
20 extra-territorial rights which had led them to invest
21 over a billion dollars in Manchuria, had they not,
22 previous to '31?

23 THE PRESIDENT: That is beyond anything
24 that was said or done or decided in the State Depart-
25 ment, and he is limited to that.

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1 Q I asked you this question, Mr. Ballantine,
2 because you state in your affidavit it is essential
3 to an understanding of the true significance of the
4 conversations which took place.

5 THE PRESIDENT: I told you, Captain Brooks,
6 how we regard his affidavit. My colleagues assure
7 me they take the view that it is purely argumenta-
8 tive.

9 Q Was there any discussion in these conversa-
10 tions as to the investments and the amount of in-
11 vestments made by Japan?

12 A I do not recall that there was any par-
13 ticular discussion of investments in Manchuria dur-
14 ing the conversations.

15 Q Was there any comparison made by the Japanese
16 diplomats in their conversations with you and your
17 department between their position and their actions
18 in Manchuria as being analagous to those of the
19 United States in Nicaragua or in Cuba?

20 THE PRESIDENT: That involves a judgment.
21 It is outside the scope of the affidavit.
22

23 Q Well, did he --

24 THE PRESIDENT: We are not trying what
25 happened in Nicaragua or any of those South American
or other places.

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1 MR. BROOKS: If your Honor please, I don't
2 think they need trial. I hadn't finished what I was
3 getting at, Mr. Ballantine, was did they advance any
4 of the justifiable reasons, any defense of their
5 actions in Manchuria, as was utilized by the United
6 States in actions that they took when their interests
7 were in question?

8 A I am afraid I don't get all the parts of
9 that question together. There seem to be two or
10 three parts that are disconnected and I can't get
11 them very well.

12 Q Well, did the Japanese not urge or insist that
13 their actions were an exercise of police power for
14 the purpose of protecting their property and their
15 people, and it was not war? One point.

16 THE PRESIDENT: That is an issue for us and
17 he can not swear it.

18 Q The point I am making is a question of
19 whether the Japanese emissary that was carrying on
20 these conversations made that an insistence and is
21 a fact, and I think he can testify as to the facts.

22 THE PRESIDENT: He can tell us anything
23 they said during the negotiations.

24 MR. BROOKS: That's what I asked him.

25 A Well, they advanced many reasons why they

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1 wanted these items that they asked for in the con-
2 versations, such as the stationing of troops, and
3 they also spoke of the sacrifices they had made
4 during the last four years of fighting with China.

5 Q Now, in these discussions, Mr. Ballantine,
6 didn't the representatives of Japan, discussing the
7 Manchurian situation, state, to summarize it, that
8 Japan needed and wanted a stable government that
9 would respect the treaty obligations, and that there
10 was no limit placed by the Japanese on the method of
11 assuring that stable government, was there?

12 A I don't recall that the Manchurian situation
13 was discussed in those conversations. There was, of
14 course, a point about the recognition of Manchukuo
15 in their proposals, but I don't think there was any
16 discussion of that subject. At least I don't recall
17 it.

18 Q Then their position in Manchuria was not
19 considered by the Department of State. Am I to gain
20 that from your statement? Or was it left to be later
21 discussed?

22 A I can only say that there was no discussion
23 in the conversations about that subject. The subject
24 of Manchuria and Japan's claims in regard to Manchuria
25 was something that the Department of State had been

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1 considering for years.
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1 Q Now, the Department of State in considering
2 this problem, did they make any private investigations
3 as to the conditions there, either economically or
4 politically?

5 THE PRESIDENT: You would be advised by
6 your representatives in those countries, no doubt. You
7 would not need to make private inquiries, would you?
8 What do you have consuls for?

9 MR. BROOKS: Can he answer the question?

10 Q (Continuing) I mean besides your regular official
11 channels?

12 A Our official channels seemed adequate for
13 us. If it hadn't been adequate we would have increased
14 them.

15 Q Did you utilize the reports of any commissions
16 or other bodies making investigations from a commercial
17 standpoint, in those areas?

18 A We gave most careful consideration to the
19 Lytton Report, for example.

20 Q And was that the only report that you utilized
21 as a basis for arriving at your conclusions later?

22 A Well, we had our consular and diplomatic reports
23 and the Lytton Report. I can't think -- recall any
24 other at this moment that we had.

25 Q Were you familiar, Mr. Ballantine, with the

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1 O'Ryan commission headed by General O'Ryan of New
2 York?

3 A I recall that he was engaged by the Japanese
4 and went out to make an investigation for them.

5 Q That was also a joint enterprise with some
6 American business interests in New York, was it not,
7 that he was representing?

8 A If that is so, I didn't know about it.

9 Q Did you or any of your Department ever have
10 any discussion with any members of that commission?

11 A don't recall. I believe that General
12 O'Ryan did come down to the State Department and see
13 somebody down there.

14 Q Did they not make available to your Department
15 the report and the information that they had obtained?

16 A If he did, I don't recall seeing it.

17 Q Did you know Mr. Willis J. Abbott who
18 was editor-in-chief of the Christian Science Monitor?

19 THE PRESIDENT: There is no limit to the length
20 of a cross-examination of this type if it is permitted.
21 You could ask him about opinions of every man in
22 America.

23 MR. BROOKS: I am asking him, your Honor, in
24 following up the questions to refresh his memory as to
25 the commissions and reports that they used that were

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1 unofficial, and I was suggesting to him this last man
2 because he is a prominent American newspaperman who
3 made that investigation to present a fair and unbiased
4 view of the problem.

5 THE PRESIDENT: There are hundreds of prominent
6 newspapermen throughout the world who gave their
7 attention to these things and surely you are not going
8 to ask him his opinion of those or what influence they
9 had in Washington.

10 MR. BROOKS: I am asking him for this reason:
11 That in these cases here that I have cited these men
12 had information that could have been available to
13 the State Department, and in fact, may have been offered
14 but I do not believe was ever used as I have gained
15 so far by him, that was available to them.

16 THE PRESIDENT: No doubt the press of America
17 entertained a variety of opinions and expressed them,
18 perhaps pressed them, but is he to tell us all those
19 things? Why should they go outside the reports of
20 their trained advisors on the spot?

21 (Addressing the witness) Did you consider
22 the views of journalists?

23 THE WITNESS: We did.

24 THE PRESIDENT: Was your judgement determined
25 by the opinions of influential newspapermen?

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1 THE WITNESS: Our opinions were determined
2 by consideration of our consular reports, other reports
3 and we also gave consideration to reports of journalists.
4 They were not determined by reports of journalists.

5 BY MR. BROOKS (Continued):

6 Q Or by any one of those particular things in
7 particular, were they?

8 A They were not. Our conclusions were not
9 determined by any one set of reports.

10 Q However, the facts as reported were considered
11 and reflected in your conclusions, were they not?

12 A We tried to give full consideration to all
13 facts.

14 Q Now, did you --

15 THE PRESIDENT: The State Department
16 would have files of all the leading newspapers of
17 America at all events?

18 THE WITNESS: It does have.

19 Q But the particular man, Mr. Abbott, that I
20 asked you about had been there to make a study and
21 make a report. Did you see his report?

22 A I don't recall it. That must have been a long
23 time ago.

24 Q That was in December of 1931.

25 A That's a long time ago.

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1 Q Now, I want to ask you in considering the
2 Manchurian invasion and its effect on your discussions
3 later on: Is it not true that all of your conclusions
4 as to that were based entirely upon the Lytton Report?

5 A No.

6 Q Is it not true that your Department had taken
7 the stand to try to maintain the conditions of 1922
8 and would not consider investigating the facts as to
9 the changing events in history of the times after that?

10 A I think our Government gave consideration to
11 all the facts, also the facts connected with the
12 character -- circumstances of Japan's invasion of
13 Manchuria.

14 Q Did you -- your Department -- examine into the
15 facts that had happened just previous to the Manchurian
16 Incident?

17 A As I say, we had full reports from our consular
18 representative of pertinent facts and we gave them care-
19 ful study and consideration.

20 Q Did these reports deal with the invasion
21 of the extra-territorial rights of Japan or any other
22 nation?

23 A I think these reports dealt with all aspects
24 of these questions.

25 Q In January 1932 China made another effort

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1 to cancel extra-territorial rights of other nations
2 than Japan, did she not?

3 THE PRESIDENT: How is that relevant to any
4 issue here?

5 MR. BROOKS: I want to know if the State
6 Department considered this attempt to repudiate certain
7 of China's own treaties at that time in light with the
8 same -- ~~similar~~ effect that she had with Japan previous
9 to that time, if they considered that.

10 THE PRESIDENT: We must confine ourselves
11 to China's attitude to Japan.
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1 Q Yet they asked the government that was
2 repudiating these treaties -- asked Japan to deal with
3 a government that was repudiating these treaties
4 and to deal with her as being able and effective to
5 assume the responsibility for her property and people
6 in these areas.

7 THE PRESIDENT: The witness need not answer.

8 MR. BROOKS: I base that, your Honor, upon
9 the assumption that it was either due to a misunder-
10 standing of the facts or circumstances, or there would
11 be some other reason for it.

12 THE PRESIDENT: We cannot undertake to decide
13 all the disputes between nations here.

14 Q Your Department did know that Japan had
15 attempted to negotiate a settlement of this controversy
16 originally with the young marshal, did they not?

17 A I have no clear recollection of that.

18 Q From the reports and information that you had
19 from these areas, do you know why it was that Japan
20 considered it necessary to negotiate with the young
21 marshal for the settlement of the controversy rather
22 than with the government at Nanking by taking that up
23 with the League of Nations?

24 THE PRESIDENT: We do not want him to tell us
25 Japan's attitude. You can tell us that in the course

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1 of giving evidence later.

2 MR. BROOKS: My question asks him as to the
3 effectiveness of the young marshal's control.

4 THE PRESIDENT: That, again, involves a
5 judgment. It is not for a diplomat.

6 MR. BROOKS: As it was known by their Depart-
7 ment from their official reports as well as otherwise,
8 they should know who was effective to deal with.

9 THE PRESIDENT: They said they treated
10 Chungking, meaning Nanking, as the effective government
11 in those days. Chungking was at the time of Pearl
12 Harbor and thereabouts.

13 Q What did the reports at this time, your offi-
14 cial reports, show as to the effectiveness of dealing
15 with Chungking in relation to dealing with the young
16 marshal?

17 I had better ask that this way, Mr. Ballantine:

18 If an agreement had been made by Japan with
19 the Nanking Government at that time, from the informa-
20 tion that you had as to your official reports, do you
21 think that it would have been effective and settled the
22 controversy?

23 THE PRESIDENT: I told you repeatedly we
24 won't accept his opinion, so don't ask for it.
25 Please spare me the necessity to have to repeat that

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1 again. I have repeated it twenty times today.

2 MR. BROOKS: I think that is all I have at
3 this time, your Honor.

4 THE PRESIDENT: Mr. Logan.

5 MR. LOGAN: If the Tribunal please.

6 CROSS-EXAMINATION (Continued)

7 BY MR. LOGAN:

8 Q Mr. Ballantine, up to the imposition of
9 sanctions by the United States, isn't it a fact that
10 Ambassador Grew pointed out that when these embargoes
11 went into effect against Japan, that the relations
12 between the United States and Japan would probably go
13 downhill and would in all probability lead to war?

14 A I don't recall exactly the exact time or the
15 exact wording of references made by Mr. Grew on that
16 subject. I do know that he did make them.

17 Q And he was your representative on the spot,
18 and after receipt of this advice, did the State Depart-
19 ment take into consideration that the imposition of
20 embargoes would in all probability make future nego-
21 tiations with Japan impossible?

22 A As I have already stated, the conversations
23 with the Japanese had been suspended when the freezing
24 measures were adopted. After the freezing measures
25 were adopted the Japanese came around and asked to

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have the conversations resumed.

1 Q I realize that, Mr. Ballantine. But the
2 point I am trying to make is that after you received
3 this advice from Mr. Grew to the effect that embargoes
4 might lead to war, the State Department, nevertheless,
5 put through the recommendation that embargoes be put
6 on the goods, with the knowledge that after the embar-
7 goes were placed it would be more difficult to continue
8 or even reopen negotiations with the Japanese? In
9 other words, Mr. Ballantine, it created another prob-
10 lem for consideration in any negotiations; isn't that so?

11 A The Japanese move into southern Indo-China
12 had also created another problem for consideration.
13

14 Q When you say "another problem," I assume by
15 that that you agree with me that this embargo question
16 did create another problem; is that right?

17 A That is correct.

18 Q Now, on October 9, 1941, Ambassador Grew also
19 reported to the State Department that the frozen credit
20 policy of the United States was driving Japan into
21 national bankruptcy, and that she would be forced to
22 act, is that correct?

23 A There, again, I don't recall the exact wording,
24 but I believe it is substantially correct.

25 Q So that, Mr. Ballantine, the observation made

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1 by Mr. Grew prior to the time the embargoes were
2 imposed, his prediction at that time, actually came
3 true; isn't that so?

4 A I don't recall that his previous representations
5 to which you refer said that Japan would be driven into
6 national bankruptcy.

7 Q I am referring to the fact that he stated
8 that she would be forced to act. That is what I had
9 in mind.

10 A Well, the two things are quite different. One
11 is your references to "national bankruptcy;" the other is
12 "forced to act." Japan always had the opportunity
13 before her of reverting to peaceful courses.

14 THE PRESIDENT: I think, Mr. Logan, we are
15 covering the same ground again. We have been over this.

16 Q Yesterday, Mr. Ballantine, in answer to a
17 question as to why Mr. Hull suddenly abandoned the modus
18 vivendi, you stated that you -- or, Mr. Hull felt that
19 it would be a very discouraging factor on the Chinese,
20 who were being hard-pressed.

21 Did the State Department also at that time
22 discuss the advantage to the United States of keeping
23 the Japanese Army occupied in China if the incident
24 between Japan and China was not terminated at that time?

25 A One of the paramount considerations before us,

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1 in accordance with our fixed national policy, was to
2 aid nations resisting aggression.

3 Q Will you answer the question, please?

4 A I thought my answer would have covered your first
5 question.

6 MR. LOGAN: Will the stenographer please
7 repeat it?

8 (Whereupon, the question was read
9 by the official court reporter.)

10 A I don't recall that that subject was discussed.

11 THE PRESIDENT: We will recess for fifteen
12 minutes.

13 (Whereupon, at 1445, a recess was
14 taken until 1500, after which the proceedings
15 were resumed as follows:)
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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now resumed.

3 THE PRESIDENT: Mr. Logan.

4 BY MR. LOGAN (Continued):

5 Q Mr. Ballantine, yesterday when a question
6 was directed to you -- it may have been today -- yes-
7 terday, about a statement that had appeared in your
8 affidavit with respect to the AMAU statement, you
9 stated that if you recalled correctly that the idea
10 of putting that in your affidavit was suggested by
11 counsel here, and that you wrote your own wording of
12 it independently of having before you or having in
13 mind any similar statement by Mr. Hull. Now, isn't
14 it a fact, Mr. Ballantine, that that statement is
15 taken word for word out of Mr. Hull's prepared state-
16 ment which he submitted to the hearings before the
17 Congressional Investigation with the exception of
18 the fact that you used the word "AMAU" whereas Mr.
19 Hull used the words, "hands off China"?
20

21 A In my statement yesterday I was referring
22 to the statement I made on the first page of my
23 affidavit. Apparently, the first page of my affi-
24 davit has gotten torn off here, and I cannot check
25 on it, but it was a statement in regard to my --

(Whereupon, a document was handed

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1 to the witness.)

2 A (Continuing) -- I was referring to the third
3 paragraph of my statement on page 1.

4 Q Well, the record indicates, Mr. Ballantine,
5 that you were referring to the statement I just re-
6 ferred to? If I read this to you it might refresh
7 your recollection on it.

8 A Then it is a complete --

9 THE PRESIDENT: Is it worthwhile wasting
10 time on it, Mr. Logan? As he drafted his affidavit,
11 no doubt he had before him papers, perhaps including
12 Mr. Hull's statement. Why couldn't he adopt Mr.
13 Hull's language, if it expressed the position as he
14 saw it?

15 Q Well, isn't it usual, Mr. Ballantine, that
16 quotation marks be given to extracts from other docu-
17 ments, particularly in diplomatic circles?

18 THE PRESIDENT: Oh, that is a matter of
19 ethics at most. It does not affect us.

20 Q I will ask you, Mr. Ballantine, who
21 selected the passages which you used in your affi-
22 davit from Mr. Hull's prepared statement? Was it
23 you or counsel for the prosecution?

24 A It was I who selected practically all, if
25 not all. I do not recollect exactly, but practically

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1 all I selected myself.

2 Q And was that selection made, Mr. Ballantine,
3 with the idea of presenting to this Tribunal that
4 part of Mr. Hull's testimony which would be more
5 favorable to the prosecution's case?

6 THE PRESIDENT: Well, you know what Mr.
7 Hull said, and you know what is in the affidavit.

8 MR. LOGAN: I appreciate that, your Honor,
9 but my point is this: That here we have a witness
10 who comes ten thousand miles to testify at this
11 trial, and he presents to the Tribunal an affidavit
12 in which he does not state that much, if not most,
13 of the affidavit is taken from Mr. Hull's testimony;
14 and in addition to that, he omits that part of Mr.
15 Hull's testimony which has not been put in evidence
16 by the prosecution and which we contend is favorable
17 to the accused in this case.

18 THE PRESIDENT: Well, you can put it in
19 later. There will be ways of doing it without
20 calling Mr. Hull.

21 MR. LOGAN: Well, it is my understanding,
22 your Honor, that this witness is supposed to present
23 the entire attitude of the State Department -- not
24 a one-sided attitude.

25 THE PRESIDENT: Well, you can put to him

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1 the things which you think he should have included
2 in his affidavit from Mr. Hull's statement, in a
3 short form, I mean.

4 Q I just want to call to your attention,
5 Mr. Ballantine, among other things which you o-
6 mitted was Mr. Hull's discussion of the embargo
7 on page 412 of his record, his mention of the
8 Selective Service Act which was passed in the United
9 States' preparation for war, and his statement with
10 respect to the pressure which was brought upon
11 Japan from other countries. I would also like to
12 call your attention to the bottom of page 12 of
13 your affidavit --

14 THE PRESIDENT: You will make your question
15 too long unless you let him answer the first part,
16 Mr. Logan.

17 What have you to say about the Selective
18 Service Act --you said something yesterday about it --
19 and the pressure brought by other countries?

20 THE WITNESS: Was there a question addressed
21 to me, Mr. President? I did not understand it.

22 THE PRESIDENT: It is suggested that you
23 are suppressing the truth, that you omitted any
24 reference to Mr. Hull's statement about the Selective
25 Service Act and the pressure brought on Japan by

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other countries.

1 THE WITNESS: I had no thought whatever
2 of suppressing the truth. I certainly received no
3 suggestion from counsel as to the omission or in-
4 clusion of any of these portions. I was trying to
5 make this affidavit as concise as possible, and I
6 used the selection -- used my best judgment as to
7 what would be most appropriate for this occasion.
8

9 MR. LOGAN: We will accept that, Mr. Bal-
10 lantine.

11 Q Will you now turn to page 12 of your af-
12 fidavit, at the bottom of the page. You make this
13 statement, which is a direct quotation from Mr. Hull's
14 prepared statement on page 430 of the record:

15 "On November 20 the Japanese Ambassador
16 and Mr. KURUSU presented to me a proposal which,
17 on its face, was extreme."

18 But, you omit the next sentence in Mr.
19 Hull's testimony, wherein he said: "I knew, as did
20 other high officers of the Government, from inter-
21 cepted messages supplied to me by the War and Navy
22 Department that this proposal was the final Japan-
23 ese proposition and an ultimatum."

24 In the last paragraph of your page 12 of
25 your affidavit, however, you say:

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1 "Before and after presenting that proposal,
2 Ambassador NOMURA and Mr. KURUSU talked emphatically
3 about the urgency of the situation and intimated
4 vigorously that this was Japan's last word and if
5 an agreement along these lines was not quickly
6 concluded ensuing developments might be most un-
7 fortunate."

8 Now, is that last sentence in your affi-
9 davit intended by you to take the place of the
10 sentence I read to you from Mr. Hull's prepared
11 statement?

12 A I had before me not only Mr. Hull's state-
13 ment, but also the statement contained in our summary
14 of conversations that we prepared shortly after Pearl
15 Harbor. I had no particular motives in using one
16 instead of the other. I do not remember what con-
17 siderations I had on that. I had no reason -- I mean
18 I have no reason for omitting the Secretary's state-
19 ment. I had those both before me, and I leaned
20 towards this other statement, and did not see any
21 need of both of them.

22 Q Do I understand, Mr. Ballantine, that
23 that last paragraph on page 12 of your affidavit
24 came from some other memorandum?

25 A I don't know about the exact wording, but

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1 I think it follows pretty closely what appears in
2 the summary of conversations in Foreign Relations,
3 United States-Japan, 1931 to 1941.

4 Q Can you tell us with whom Ambassador NOMURA
5 and Mr. KURUSU had these talks which I referred to
6 in that last paragraph on page 12?

7 A They had these talks with the Secretary of
8 State, at which I was present.

9 Q Now, Mr. Ballantine, aside from the quota-
10 tions which you have presented in your affidavit from
11 Mr. Hull's testimony and statements from other memo-
12 randa which you have not designated, the balance of
13 your affidavit is your own personal opinion, isn't
14 that so? I mean, pardon me -- may I explain that a
15 little bit -- I mean by that that it is an opinion
16 which you drew up while you were here and which has
17 never been submitted to the State Department for
18 its approval?

19 THE PRESIDENT: Ignore his opinion, Mr.
20 Logan. We are doing so.

21 MR. LOGAN: I am doing that, your Honor,
22 but I want him to state that that is his opinion,
23 and not the State Department's opinion which he has
24 in that affidavit, if that be the fact.

25 THE PRESIDENT: He can tell if it is the

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1 State Department's opinion, yes.

2 MR. LOGAN: If your Honor please, I am
3 asking him if the balance of that affidavit, aside
4 from the statements which he has incorporated from
5 Mr. Hull's testimony and from other documents, I am
6 asking him if the balance of that affidavit which he
7 has submitted here is his own opinion and not the
8 opinion of the State Department.

9 THE PRESIDENT: That is an allowable
10 question, certainly.

11 A I take full responsibility for the con-
12 tents of this affidavit. I will say that I did show
13 this affidavit in its entirety to associates of mine
14 in the State Department. This affidavit, however,
15 has never been officially cleared with the State De-
16 partment.

17 MR. S. OKAMOTO: I am OKAMOTO, Shoichi,
18 counsel for the defendant, MUTO, Akira.

19 THE PRESIDENT: Mr. OKAMOTO.

20 MR. S. OKAMOTO: Owing to the efforts of
21 American defense attorneys, the extent of my cross-
22 examination has become very narrow, and I have only
23 a few simple questions to ask.
24
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CROSS-EXAMINATION (Continued)

1 BY MR. S. OKAMOTO:

2 Q On page 1, paragraph 4 of your affidavit,
3 you state as follows: "During practically all of my
4 career in the foreign service, I have dealt with Far
5 Eastern Affairs and have followed closely the course
6 of Japanese-American relations. Up until 1931 the
7 relations between the United States and Japan were
8 generally friendly and the American Government and
9 people consistently had an attitude of good will
10 toward the government and people of Japan. The
11 Japanese occupation of Manchuria caused an impairment
12 of those relations." I wish to ask you two or three
13 questions concerning this paragraph.
14

15 In your capacity as an official of the State
16 Department and also through the studies in foreign
17 affairs which you made are you aware that there was
18 an American named Bates in the employ of the Japanese
19 Foreign Office -- as an adviser of the Japanese
20 Foreign Office?

21 A I know Mr. Dennison personally.

22 THE MONITOR: Correction: Mr. Dennison.

23 THE PRESIDENT: I thought he said "Bates."

24 THE MONITOR: Mr. President, the correction
25 was overlooked, and it has been made just now. The

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correction is: "Mr. Dennison" instead of "Mr. Bates."

1 Q Do you know that Mr. Dennison worked in the
2 Foreign Office from 1880 to 1914, which covered both
3 the period of the Sino-Japanese War and the Russo-
4 Japanese War?

5 A I do not know the exact years that he was
6 in the Foreign Office, but I know he was there a long
7 time.

8 Q Have you heard that he was held in great
9 respect by Foreign Ministers MUTSU and KOMURA?

10 A I understand that that was the case.

11 Q Are you aware that Mr. Dennison participated
12 in the drafting of the Sino-Japanese Peace Treaty?

13 A I believe I recall that, yes.

14 Q Are you aware that the Japanese ultimatum
15 to Russia, just before the outbreak of the Russo-
16 Japanese War, was penned solely upon the responsibility
17 of Mr. Dennison?

18 A I didn't know that.

19 Q Are you aware that in 1899 John Hay
20 enunciated the Open Door Policy towards China?

21 A I am familiar with that.

22 Q Was the Russian southward advance in Man-
23 churia contrary to this Open Door principle before
24 the Russo-Japanese War?
25

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1 THE PRESIDENT: Oh, that is hardly within
2 the scope of the affidavit.

3 MR. S. OKAMOTO: I am trying to dissect his
4 statement regarding the so-called friendly relations
5 between the United States and Japan and wish to clear
6 up his statement regarding that.

7 THE PRESIDENT: You are not doing it in this
8 way.

9 MR. S. OKAMOTO: Then I shall change my
10 question.

11 Q I wish to question you concerning the
12 Japanese Exclusion Act, concerning which Mr. Smith
13 asked you previously. Is it not a fact that this
14 Act, which was passed in 1923 -- 1922, greatly ex-
15 cited the Japanese people -- 1923?

16 THE PRESIDENT: That is beyond the scope of
17 the affidavit as it is to be read now.

18 Q Then I shall ask you a very short question:
19 You have stated that up until 1931 the relations be-
20 tween the United States and Japan were generally
21 friendly. However, did you not receive information
22 that, owing to the Oriental Exclusion Act, the
23 Washington Conference, the Naval Limitation Treaty,
24 and the Nine-Power Pact, as far as Japan was con-
25 cerned she considered herself oppressed to quite a

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1 degree by the United States?

2 A My understanding is that the Japanese Govern-
3 ment entered voluntarily into those treaties referred
4 to.

5 Q And what about the trend of Japanese public
6 opinion?

7 THE PRESIDENT: That is beyond the scope of
8 the affidavit.

9 MR. S. OKAMOTO: Then I shall again change
10 my question.

11 Q On page 2 of your affidavit, in paragraph
12 seven you state as follows: that after "Japan gave
13 formal notice of its intention to withdraw at the end
14 of 1936 from the Naval Limitation Treaty," "Japan
15 proceeded energetically to increase her armaments,
16 preparatory to launching her invasion in China."
17 What do you mean by the word "energetically"?

18 THE PRESIDENT: It speaks for itself. There
19 is no need to answer.

20 Q I shall ask you concerning another point:

21 THE PRESIDENT: In any event, that part of
22 the affidavit was disallowed as expressing an opinion.
23 It goes on: "preparatory to launching her invasion
24 in China."
25

Q (Continuing) I shall question you concerning

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1 another point: In your affidavit you state that
2 Japan was waging an undeclared war against China.
3 Did the United States State Department consider, even
4 in war time, that Japan was still waging an unde-
5 clared war?

6 A I don't quite understand the question.

7 Q In your affidavit you have used the phrase
8 "undeclared war." Before drawing up this affidavit,
9 that is, during the period of the Sino-Japanese con-
10 flict, did the American State Department recognize
11 that an undeclared war existed between Japan and
12 China and conduct its foreign affairs accordingly?

13 A Yes. We knew that the Japanese Government
14 had not declared war against China, that is, before
15 1941, and that we had to take the facts into consider-
16 ation that hostilities on a large scale were going on.

17 Q Then, were the provisions of the Neutrality
18 Act put into effect?

19 A No.

20 Q If you recognized that an undeclared state
21 of war existed, was it a mistake not to have put the
22 provisions of the Neutrality Act into effect?

23 THE PRESIDENT: That is an opinion which
24 he is not invited to give.

25 Q Then I shall ask you, as a matter of fact,

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1 was the Neutrality Act not put into effect?

2 A As I said before, the Neutrality Act was not
3 put into effect.

4 Q Then, is it a fact that it follows that
5 material to aid the Chiang Regime was sent in large
6 quantities, and also including weapons?

7 A Yes. It was our policy to assist the Chinese
8 Government, and we assisted in sending such materials
9 as we could.

10 Q But, is it not also a fact that England on
11 the 19th of July, 1939, as a result of the ARITA-
12 Craigie conversations, recognized that a state of war
13 existed in China and agreed not to aid the Chinese
14 side, and agreed to let this be known to the English
15 people?

16 THE PRESIDENT: Well, that is really outside
17 the scope of the affidavit. He does not speak for
18 Great Britain.

19 But, do you know?

20 THE WITNESS: Well, I do know for three
21 months the Burma Road was closed by the British.

22 Q Was not the United States note abrogating the
23 Commercial Treaty -- the Treaty of Commerce and Navi-
24 gation with Japan as a means of trying to influence
25 Great Britain?

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1 THE PRESIDENT: That requires an opinion.

2 MR. S. OKAMOTO: I wish to ask whether
3 America was not stimulated by this action of Great
4 Britain and thus served notice of the abrogation of
5 the Commerce and Navigation Treaty, and that the
6 United States did this in order to check or to re-
7 strain Britain from that policy.

8 THE PRESIDENT: What was the view of the
9 State Department?

10 THE WITNESS: I don't know of any considera-
11 tions entering into the abrogation of the Commercial
12 Treaty other than those stated in my affidavit.

13 BY MR. S. OKAMOTO (Continued):

14 Q I shall ask you on another point: You have
15 written in your affidavit of the Siberian Expedition.
16 Did not Japan send troops to Siberia upon the invita-
17 tion of America?

18 THE PRESIDENT: That is outside the scope
19 of the affidavit. At least you may point out some-
20 thing in the affidavit that warrants it. I cannot
21 recall anything.

22 MR. S. OKAMOTO: It is on page 14 of the
23 Japanese text. I am trying to find out what page
24 it is on in the English text from my colleagues.

25 THE MONITOR: At the top of page 6 in the

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English text.

1 THE PRESIDENT: Yes. A colleague has sent
2 me this note. I think it is correct, too. He said,
3 "they were entitled to send seven thousand and did
4 send seventy thousand, or something like that."

5 Answer the question, if you can.

6 A I think that the actual, initial proposal
7 did come from the United States.

8 Q However, in 1920 America sent Japan notice
9 that she was withdrawing her troops --

10 THE MONITOR: Correction: But, in January,
11 1920, America withdrew her own troops without con-
12 sultation with Japan and sent merely notice to that
13 effect to Japan.

14 THE PRESIDENT: Do you know that?

15 A I believe that is correct.

16 Q Did Baron SHIDEHARA, then Japanese Ambassa-
17 dor to Washington, protest to the State Department?
18 Did not Baron SHIDEHARA protest, saying that "a
19 unilateral withdrawal of troops -- that America's
20 unilateral withdrawal of troops was uncalled for and
21 that, hereafter Japan will be at liberty whether she
22 chooses to remain or to withdraw her troops"?

23 A I do not recall that.

24 Q Towards the end of page 16 of the Japanese
25

text --

1 THE MONITOR: This is still page 6 of the
2 English text.

3 Q (Continuing) in paragraph 6 of page 6 you
4 state: "On April 15, 1940, Mr. ARITA, then Japanese
5 Minister for Foreign Affairs, said" et cetera, et
6 cetera, and then "Following the occupation of the
7 Netherlands by Germany that spring, Japan sent a
8 Commercial Commission to the Indies which asked con-
9 cessions so far reaching that, if granted, they would
10 have reduced the Indies practically to a Japanese
11 colony."
12

13 THE PRESIDENT: We decided to ignore that
14 opinion. You may do so.

15 MR. S. OKAMOTO: Thank you.

16 Q Page 8 of your affidavit, the third para-
17 graph of the English text, you state as follows:
18 "Notwithstanding the various objectionable features
19 of the Japanese Government's proposal, in view of the
20 world situation the Government of the United States
21 decided to explore thoroughly every possible means,
22 starting with the Japanese proposals, of coming to
23 an agreement. The Secretary of State on numerous
24 occasions at which I was present emphasized to the
25 Japanese Ambassador that this Government was aware of

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1 the difficult internal situation which the Japanese
2 Government faced and was prepared to be patient and
3 to give the Japanese Government ample time to bring
4 Japanese public opinion into line in support of a
5 liberal broad-gauge program, such as the Secretary of
6 State and the Japanese Ambassador had been discussing
7 in their conversations."

8 What information had the State Department
9 received concerning the difficult internal situation
10 of the Japanese Government of which you speak?

11 A We had received information from these
12 unofficial Japanese representatives; we had had
13 constant -- had representations made to us about these
14 liberal forces ready to come forth if we'd only be
15 patient; and many other representations of that
16 character.

17 THE PRESIDENT: Will you be much longer,
18 Mr. OKAMOTO?

19 MR. S. OKAMOTO: I still have a few more
20 questions to ask.

21 THE PRESIDENT: We will adjourn now until
22 half-past nine on Monday.

23 (Whereupon, at 1600, an adjourn-
24 ment was taken until Monday, 25 November
25 1946 at 0930.) - - - -

