

INTERNATIONAL MILITARY TRIBUNAL

FOR THE FAR EAST

TRANSCRIPT OF PROCEEDINGS

JULY 25, 1946

(pp. 2477--2541 inc.)

001773

DAVID NELSON SUTTON

NO. 35
JULY 25, 1946

35

25 JULY 1946

I N D E X
Of
WITNESSES

<u>Prosecution's Witnesses</u>	<u>Direct</u>	<u>Cross</u>
Ching, Teh-chun		2479 to 2518
Wilson, Dr. Robert O.	2527	

I N D E X
Of
EXHIBITS

<u>Pros.</u> <u>No.</u>	<u>Def.</u> <u>No.</u>	<u>Description</u>	<u>For</u> <u>Ident.</u>	<u>In</u> <u>Evidence</u>
204		Affidavit of Dr. Robert O. Wilson	2527	

D. Wilson

1 Thursday, 25 July, 1946

2 - - -

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

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

11 - - -

12 Appearances:

13 For the Tribunal, same as before.

14 For the Prosecution Section, same as before.

15 For the Defense Section, same as before.

16 - - -

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

3 THE PRESIDENT: All the accused are present
4 except OKAWA who is represented by counsel. Does
5 any counsel desire to mention any matter?

6 The Chief Referee of the Language Section
7 saw me today and complains that on account of the
8 unnecessary length of some of the questions, it is
9 most difficult for the interpreters to perform their
10 duties. Some of the passages from the Lytton Report,
11 if not the whole report, have already been translated
12 into Japanese, and if the translation were made avail-
13 able to the interpreters, their duties would not be
14 so difficult.

15 The interpreters are also having difficulty
16 with questions which are in negative form, although
17 they could be in affirmative form. I again urge
18 counsel to make their questions short and clear, and
19 to give due notice of any passage from a report or
20 other document which they desire to be read to a wit-
21 ness.

22 Is there any further cross-examination?

23 MR. T. OKAMOTO: May I be permitted to continue
24 my cross-examination of yesterday?
25

CHING

CROSS

1 CHING TEH - CHUN, called as a witness on
2 behalf of the prosecution, resumed the stand and
3 testified as follows:

4 CROSS-EXAMINATION (Continued)

5 BY MR. T...OKAMOTO:

6 Q Since the reply to my last question yester-
7 day was not clear, I should like to have it repeated.

8 A Yesterday I answered to the question by
9 saying that it was because the Japanese occupation of
10 Tientsin and Peiping that many of the Chinese students
11 were Communists and compelled to join the Communist
12 Party. So it can be said that it was the Japanese
13 who indirectly nurtured the growth of the Communists.

14 Q Your present explanation does not seem to
15 show any relationship between cause and effect. Could
16 you explain it further?

17 A What I have told you is concrete fact.
18 Students, because of the fact that Tientsin, Peiping
19 and surrounding areas fell to the Japanese, were com-
20 pelled to join the Chinese Communists. This fact is
21 a concrete fact.

22 Q When was that?

23 A That is referring to some time after July
24 7th, 1937.

25 Q Then, do you mean to say that this was after

CHING

CROSS

1 the outbreak of the Marco Polo Bridge Incident, or
2 are you trying to explain a situation which existed
3 prior to that Incident?

4 A Referring to the time after the outbreak
5 of the July 7th Incident -- prior to the outbreak of
6 the July 7th Incident -- some of the students may have
7 been found to have some Left inclination, but there
8 was never any Communist troops.

9 Q Then, are you aware of the fact that on the
10 tenth of June, 1935, Generalissimo Chiang Kai-shek issued
11 an executive order for friendly relations between two
12 neighboring countries, namely, between China and Japan?

13 A Yes, I know.

14 Q Do you know the cause for the proclamation
15 of such an order?

16 A The purpose was to maintain peace in China,
17 and ultimately maintain the peace of Asia, and ulti-
18 mately the peace of the world.

19 Q Was not this order issued to prevent the
20 general anti-Japanese movement in China, especially
21 in North China, as well as the anti-Japanese resistance
22 movement carried on by the Communists in that northern
23 area?

24 A At that time there was no anti-Japanese
25 movement in North China. The purpose of the order was

1 to admonish the people as a whole, as well as the
 2 Chinese Army, to respect and be friends with neighbor
 3 countries.

4 Q Then, Mr. Witness, are you acquainted with
 5 General Shang-chen who was in North China about 1935?

6 THE MONITOR: Correction: "who was the
 7 Governor of Hopei Province."

8 A Yes, I know.

9 Q Are you aware of the fact that General Shang-
 10 chen issued an order to bring under control anti-
 11 Japanese terrorists?

12 A No, not that I ever heard of.

13 Q Then, Mr. Witness, are you aware of the fact
 14 that your superior, General Sung Cheyuan, issued an
 15 order declaring that very positive steps must be taken
 16 to bring under control the anti-Japanese secret so-
 17 cieties in November, 1935?

18 A That order was given on the basis of an
 19 order received by General Sung from Generalissimo Chiang.
 20 There was a preventative order -- the order was prevent-
 21 ative in nature.

22 Q Where is General Sung Cheyuan at the present
 23 moment?

24 A He is already dead now.

25 Q Then, are you aware of the Hsi-an Incident

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1 of November, 1936?

2 A Yes, I know of that.

3 Q Was not this Incident one in which Marshal
4 Chang Hsueh-liang in collaboration with the Chinese
5 Communists kidnapped and placed under custody Gener-
6 alissimo Chiang Kai-shek?

7 A That I don't know.

8 COL. MORROW: I raise the question of material-
9 ity and relevancy of this line of questioning, if the
10 Court please.

11 MR. T. OKAMOTO: This incident has a very
12 relevant connection with the present point.

13 THE PRESIDENT: I think it is as relevant as
14 any of the other matters we have allowed cross-examin-
15 ation about. The whole purpose is to discover the
16 state of China -- its disturbed state is suggested,
17 and it is suggested, I suppose, that the Japanese took
18 appropriate measures to protect their interests there,
19 and it will be further suggested that they were acting
20 within treaties. This is a suggestion that the country
21 was so disturbed that its chief was imprisoned.

22 You may proceed.

23 Q Does the witness know what kind of change
24 took place in the relationships between the Kuomintang
25 and the Chinese Communist Party as a result of the

Hsi-an Incident?

1

A No, I don't know.

2

Q Where were you, Mr. Witness, at that time?

3

A I was in Peiping then.

4

Q What was your position at that time?

5

A Then, I was the Mayor of Peiping. What I know is this: that after the Incident at Hsi-an, the person responsible for that incident was Chang Hsueh-liang, became repentant, and then he sent Generalissimo back to Nanking and then the people all over the country were, so overwhelmingly joyous that they showed the greatest sign of vindicating the Generalissimo, and the country was unified as a whole; and Japan, then, was so much jealous of that fact.

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Q When you say that China had never been more unified than at that time, do you mean to say that peace and collaboration was established between the Kuomintang and the Chinese Communists?

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A Yes, the feeling between the two parties were very good then.

20

21

Q Does that not mean, then, that the Kuomintang resolved jointly with the Chinese Communists to pursue a policy of anti-Japanese resistance?

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A No, that was not the case. The two parties joined together to prepare themselves to guard against the further onslaught of the Japanese.

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1 Q I take your present reply to be an endorse-
2 ment of the statement included in my question. This
3 fact, together with the fact that General Shang-Chen
4 and General Sung Che-yuan successively issued orders
5 to bring under control anti-Japanese terrorists and
6 other light groups is a matter which could be re-
7 conciled with your present reply.

8 MONITOR: Correction: I take your answer to
9 mean the confirmation of the statement contained in
10 my question. Now I would like to ask another question
11 on a different point, that is, in 1935, as I said
12 before, Generalissimo Chiang Kai-shek issued an order
13 for maintenance of friendly relations with his
14 neighbors and then that was followed later by orders
15 from General Shang-Chen and General Sung Che-yuan
16 for suppression and surveillance over terrorists and
17 anti-Japanese secret societies. Now, how can these
18 facts be reconciled with your present reply?

19 THE PRESIDENT: Counsel must not make
20 statements to the witness. That in effect is largely
21 a conversation with the witness. Counsel must con-
22 fine himself to asking questions and the questions
23 should be reasonably brief and clear. I do not
24 think the witness should be asked to answer that
25 question. You had better make another attempt.

1 Q Then, may I inquire, Mr. Witness, whether
2 the executive order issued by the Generalissimo for
3 friendly relations between two neighboring countries,
4 that is, China and Japan was effective even after the
5 Hsi-an Incident?

6 A Of course, it was conditional upon the fact
7 that Japan should withhold her aggression.

8 Q Since the Hsi-an Incident was any order
9 issued to you, Mr. Witness, from the central head-
10 quarters of the Kuomintang Party with respect to a
11 policy of anti-Japanism?

12 A No.

13 Q At about the time of the outbreak of the
14 Marco Polo Incident on July 7, 1937, where was
15 General Shih Yu-sun?

16 A General Shih Yu-sun was first at Peiping
17 and after the outbreak of the war against Japan he
18 went with General Sung to Paoting.

19 Q Do you know of the fact that General
20 Shih Yu-sun in the dark of the night of July the
21 7th fired both upon Japanese and Chinese Troops?

22 A What is the time you are referring to?
23 Is it before the outbreak of the war of July 7th or
24 after the outbreak of the war of July 7th?

25 Q Then I should like to ask you, did not the

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1 Marco Polo Incident break out as a result of the fact
2 that General Shih Yu-sun fired both on Japanese and
3 Chinese forces?

4 A No. That is not the case. I will give you
5 some further explanation. At the time the 37th Division
6 was allegedly anti-Japanese was withdrawn from
7 Lukuoohiao they were replaced by the troops under
8 General Shih Yu-sun, who was then considered as pro-
9 Japanese.

10 Q When did you, Mr. Witness, become a member
11 of the Kuomintang?

12 A I was a member of Kuomintang at the time the
13 party was in its inceptive stage.

14 THE PRESIDENT: Captain Brooks.

15 MR. BROOKS: Brooks, for OKAWA.

16 CROSS-EXAMINATION (Continued)

17 BY MR. BROOKS:

18 Q Mr. Witness, was a declaration of war made
19 by China or by Japan at the time of the July, 1937
20 Incident, or prior thereto?

21 THE PRESIDENT: That is a matter of which
22 we can take judicial notice.

23 MR. BROOKS: If the Tribunal please, the
24 witness states, on page 5, of exhibit 198, which
25 is prosecution's document 1750, this was the very

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1 beginning of the Sino-Japanese War. I wanted to find
2 out what he had in reference at that time.

3 THE PRESIDENT: You can have war without
4 having a declaration of it, unfortunately.

5 MR. BROOKS: May the witness answer, for
6 the base of another question I have?

7 THE PRESIDENT: It is useless, but he may
8 answer.

9 A On the part of China there was never any
10 order like that, but on the part of the Japanese
11 Government, I wonder if there is any order of what
12 we call punitive war against China.

13 Q Now, on exhibit 199, which is prosecution's
14 document No. 2340, you have stated in your discussion
15 with MATSUI you advocated that Asia -- that he ad-
16 vocated that Asia, should be the Asia of the Asiatics,
17 and that European and American influences should be
18 expelled. I would like further information on the
19 influences discussed that was considered necessary
20 to be expelled. I would like further information
21 on the influences discussed in this conversation
22 that should be expelled.

23 A In brief, what he wanted is to expel the
24 British and American interests out of Asia. The
25 subsequent facts that happened at Pearl Harbor and

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1 the attack on Manila and other places will be factual
2 enough to prove that.

3 THE PRESIDENT: We have had that answer before.

4 Q I wish to enlarge upon the answer. Did
5 not certain countries have powerful commercial interests
6 in China which they were fostering.

7 COLONEL MORROW: If the Court please, counsel
8 for General MATSUI went into this matter and I raise
9 the question that this is repetition.

10 THE PRESIDENT: I think the question is
11 objectionable on another ground entirely, that unless
12 it can be shown that the action of other countries
13 compelled the action taken by Japan, the whole thing
14 is irrelevant.

15 MR. BROOKS: That is exactly what I am going
16 to show, if the Court please.

17 COLONEL MORROW: I also raise the question
18 of relevancy, if the Court please.

19 THE PRESIDENT: That is what I said to Captain
20 Brooks.

21 MR. BROOKS: I would like to point out, if
22 the Court please, that I read and laid the basis for
23 this, that certain European and American influences
24 should be expelled. I would like to correct my
25 statement as to what I intend to prove. I do not

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1 intend to show that certain nations caused these con-
2 ditions which brought about this war. I do believe
3 that certain powerful commercial interests, joining
4 from various countries, brought about conditions which
5 did bring this about, and I think with a little
6 patience on the part of the Court I can bring that
7 out, and I would like to get the information which
8 this witness has bearing upon it, for later on I will
9 have witnesses of my own to carry on.

10 THE PRESIDENT: If you are not merely fishing,
11 but have evidence as you suggest, your questions should
12 be very specific. They should be based on that
13 evidence, and your questions are not specific; they
14 are very vague, and I propose to disallow your ques-
15 tions until they are made specific, because you now
16 say you have evidence. You must put your questions
17 on that evidence.

18 MR. BROOKS: If the Court please, I am now
19 in the process of cross-examination. I am not pre-
20 senting evidence on this phase, but I have a right
21 to know how far to carry my evidence and what re-
22 striction is placed on the cross-examination on the
23 statements made that a conversation was had about
24 European and American influences. It doesn't say
25 European and American nations; it says influences,

1 and I think that is very vital to this case. It is
2 vital to know where China over all this period of
3 years got the arms, the war materiel, the equipment,
4 and the technical assistance and training necessary
5 to prolong this strife, of which Japan was complaining
6 because she was the recipient of this strife which
7 was carried on over a long period of time.

8 THE PRESIDENT: Will you now state the
9 nature of this evidence. You can refuse if you like,
10 but at present so far as you have indicated it appears
11 to be too remote.

12 MR. BROOKS: If the Court please, I will
13 show by testimony, by affidavits, by certain records,
14 of which I think possibly we will ask the Court to
15 take judicial knowledge of certain facts, because
16 they are of common knowledge, but I do not wish at
17 this time to introduce evidence on this point or to
18 expose to the prosecution the evidence that we are
19 accumulating. However, I will make one specific
20 reference to an American concern, I believe it was
21 the Curtis-Wright concern, had a 30 million dollar
22 aircraft plant that they were building in China at
23 the time, a very critical time, and I think that
24 will be shown later on in the testimony. If that
25 is any indication, I would like to proceed.

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1 THE PRESIDENT: You have fallen back in this
2 alleged evidence for your justification and we will
3 fix you there. You have now made it transparently
4 plain that this evidence that you propose to rely on
5 is far too remote to be of any assistance. Therefore,
6 I decline, on behalf of the Tribunal, to allow you to
7 proceed with that line of cross-examination.

8 MR. BROOKS: I see I will have to disclose
9 further evidence to make my point clear. I state that
10 behind that, even, there was a growing apprehension
11 which may or may not have been justified by the Japan-
12 ese and by Asiatic peoples after a study of the econo-
13 mic aggression of the various countries of the world
14 over a period of years far before this which may or
15 may not have made them feel justified in taking cer-
16 tain defensive measures which they today state are
17 defensive and which are and may be proven defensive
18 in regard to the relations and activities of the
19 various nations in regard to assisting and directing
20 Chinese armies in the field during this period of time.
21 Was the war started with Pearl Harbor, or was it
22 started prior to 1931?

23 THE PRESIDENT: The mere economic develop-
24 ments of other countries could not justify the
25 Japanese resort to war.

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1 MR. BROOKS: That is true, if the Court
2 please, unless a close study of diplomatic history
3 for the last sixty years is made to show that not only
4 economic development is followed -- is carried on by
5 various countries, but political aggression follows
6 closely in the footsteps and protective measures in
7 various and sundry ways are fostered by certain power-
8 ful commercial interests which have been the cause of
9 most of our wars in the past.

10 THE PRESIDENT: Well, it is clear that you
11 wish to pursue an interminable inquiry going back
12 sixty years, and for all we know, eighty years, going
13 back perhaps to Japan's first contact with the outside
14 world. We cannot allow that. This Court would never
15 conclude its duties, would never finish its work, if
16 we allowed you to go that far back. That is too
17 remote. If we go back to first causes we may go back
18 centuries. We have to take a reasonable view. We
19 refuse to allow you to proceed with that line of cross-
20 examination.

21 MR. BROOKS: If the Court please, in Section III
22 of the Indictment there is a charge made of economic
23 aggression in China and Greater East Asia. There is
24 no limit on that period of time, as has been shown by
25 the prosecution in their evidence produced thus far.

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1 THE PRESIDENT: You are divorcing that from
2 its context. Economic aggression is not a crime.

3 We have given our decision.

4 MR. BROOKS: In this instance, if the Court
5 please, if economic aggression--

6 THE PRESIDENT: We refuse to hear you further
7 on that. We have given our decision and our reasons
8 for it and you are simply wasting time now in pursuing
9 the matter.

10 MR. BROOKS: If I may, I would like to cross-
11 examine on another point.

12 THE PRESIDENT: Permission to cross-examine
13 on those points is refused.

14 MR. BROOKS: I say on another point, if your
15 Honor please.

16 THE PRESIDENT: What is the other point?

17 MR. BROOKS: May I ask the question and have
18 your Honor find out if it is proper?

19 BY MR. BROOKS (Continuing):

20 Q Did your government, during this long period
21 of trouble, make any formal complaint in reference to
22 any of the matters set out in your testimony to either
23 the League of Nations, to the Japanese Government, or
24 any other governments?

25 A I was then only an official in the particular

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1 locality. Further, whether the central government
2 foreign office had filed any official complaint with
3 any of the governments or League of Nations, I cannot
4 exactly tell. But there was some formal protest made
5 to the League of Nations after September 18, 1931.

6 Q Did you, in your official capacity for this
7 area, forward any material or reports as a basis for
8 such complaints?

9 A I had reported to my central government
10 about the several provocative acts and aggressive acts
11 on the part of Japan. But whether the central govern-
12 ment had reported same to the League of Nations, I
13 don't know.

14 THE PRESIDENT: We will recess now for
15 fifteen minutes.

16 (Whereupon, at 1045, a recess was
17 taken until 1105, after which the proceedings
18 were resumed as follows:)

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Greenberg & Barton

1 MARSHAL OF THE COURT: The Tribunal is now
2 resumed.

3 THE PRESIDENT: Captain Brooks.

4 Q On what dates were these reports that you
5 have mentioned made?

6 A I cannot recall the exact dates. Whenever
7 there is an incident occurred, the report was immedi-
8 ately made.

9 Q Can you recall the year in which any such
10 reports were made?

11 A For instance, this Cha-Peh affair -- about
12 the Cha-Peh Incident, a negotiation was made in June,
13 1935; and following every negotiation, I made re-
14 ports. And I was negotiating on the instructions
15 sent to me by the Central Government, and I have made
16 my report to the Central Government on every negotia-
17 tions I had.

18 Q This affair in 1935 that you refer to, did
19 that have any connection with the kidnapping of
20 Chiang Kai-shek?

21 A There is no relation.

22 Q I believe I recall that was in 1925, was it
23 not?

24 A Which case do you refer to?

25 Q The kidnapping of Chiang Kai-shek.

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CROSS

1 A I think you have made a mistake of the year
2 in which General Chiang Kai-shek was kidnapped.

3 Q What was your official position at the time
4 this report was made in 1935?

5 A I was then the Deputy Commander of the 29th
6 Army and concurrently the Special Commissioner of
7 Civilian Affairs in the Cha-Peh Provincial Govern-
8 ment. I was then stationed in Chahar.

9 Q To who and to what branch of the Central
10 Government was such report directed?

11 A I was obliged to make reports separately to
12 several organs. As the Deputy Commander of the 29th
13 Army I was obliged to make reports to the Ministry of
14 Military Affairs; and, as Special Commissioner of the
15 Department of Civilian Affairs of the Chahar Provin-
16 cial Government, I was obliged to make reports to
17 the Executive Yuan.

18 Q What was contained in this report that you
19 made in 1935? Do you remember the gist of the report?

20 A I think you had better refer to the state-
21 ments I had already written in regard to the results
22 of negotiations I had.

23 Q Do you show in such statement the contents
24 of such report as you have testified to?

25 THE MONITOR: Will the reporter please read

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1 that.

2 (Whereupon the last question was
3 read by the official court reporter.)

4 A Do I understand you that you want me to
5 make a complete report of the cables sent forth and
6 back from the Central Government to me and from me
7 to the Central Government, which is about two
8 inches high?

9 Q I want a brief summary of the gist of the
10 1935 report which you testified you sent after that
11 incident.

12 A The first major point in the report I made
13 in 1935, June, is like this: I reported that there
14 were two Japanese civilians and two Japanese military
15 officers coming in from To-Lun by truck. They were
16 then trying to force their entry into the North Gate
17 of Chang-Peh district. At the gates they were
18 stopped by the gate guard who asked them to produce
19 their passports. They refused and quarrel ensued.

20 THE PRESIDENT: Do you really think it will
21 help us to have this story over again? After all,
22 you have to convince us, you know.

23 CAPTAIN BROOKS: I was asking of the reports
24 with the purpose of ascertaining the dates they were
25 made so that it might be obtained for defense

1 material; if there was any discrepancy or any other
 2 matter that might explain them, to see what action
 3 was taken by the Chinese Government upon them, and
 4 if they were considered important at that time; and
 5 I believe it will be relevant in this case.

6 THE PRESIDENT: I don't think it will help
 7 at all, Captain Brooks. I don't know what my col-
 8 leagues think. I feel they agree with me.

9 Do keep in mind that we really want to hear
 10 the things that will help us to see the defense view-
 11 point. But these small things won't, particularly
 12 as we have heard them before, and more than once.

13 CAPTAIN BROOKS: If the Court please, what
 14 I am trying to show is the defense viewpoint on this
 15 thing that looks to me like it is being disallowed on
 16 cross-examination. I think that, where he has made
 17 a statement here, although what he is saying in the
 18 report is repetitious, we are getting that it was
 19 made in the report of June, 1935 by him as the
 20 Deputy Commander of the 29th Army, and it was made
 21 to the Central Government, to certain offices, where
 22 it might be examined for further information; and we
 23 would like to put the truth before the Court.

24 The truth in these matters should come out
 25 regardless of how it affects any party so that the

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1 Court has it before it. It is often elusive to find
2 the truth, and it is often hard to get it believed
3 and to get the viewpoint of a certain group or
4 individual seen.

5 THE MONITOR: Would the reporter kindly
6 read that last statement?

7 (Whereupon the last paragraph was
8 read by the official court reporter.)

9 CAPTAIN BROOKS: A misunderstanding of the
10 intentions of certain parties often would even to
11 mitigation -- if only to mitigation alone, should
12 be allowed to be brought to the Court for the purpose
13 of showing mitigating circumstances as the basis for
14 certain actions. I think that the prosecution in
15 this case has started this case with 1928 when the
16 shooting started, but in any criminal case --

17 THE MONITOR: Would the reporter please
18 read the last statement?

19 (Whereupon, the last statement
20 was read by the official court reporter.)

21 THE PRESIDENT: I think we had better
22 terminate this matter by the understanding that the
23 Tribunal will give you every assistance to get that
24 report if it will be released by the Chinese Govern-
25 ment, or to have a Commission, if necessary, in

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1 China if the matters in the report are really of im-
2 portance to you. In the meantime, I think you had
3 better cease cross-examining about that report.

4 CAPTAIN BROOKS: I will cease cross-exam-
5 ining on that report. I was glad to find out that
6 there was a report so that we could discover it.
7 Previous to this we did not know where it was or any-
8 thing about it.

9 Q Now, in 1937, at the time of the Marco Polo
10 Bridge Incident, what was your official position at
11 that time?

12 THE PRESIDENT: Captain Brooks, I would ask
13 your cooperation with the Court. You are asking
14 things already obtained.

15 CAPTAIN BROOKS: I want to find out: Did
16 you make a report in your official capacity as such?

17 THE PRESIDENT: Counsel owes a duty to the
18 Tribunal. The position of American counsel is no
19 different from that of British counsel; they are
20 officers of the Court, and they must help the Court
21 and not impede it.

22 Q Now, Mr. Witness, do you know what claim
23 China had to sovereignty over the territory of Outer
24 Mongolia and whether the orders of the Central Govern-
25 ment were obeyed by the officials there up to the

CHING

CROSS

1 year 1945?

2 THE PRESIDENT: That has been put and
3 answered. That is repetition.

4 CAPTAIN BROOKS: I was asked by associate
5 counsel to ask that question. I hadn't heard it
6 myself, your Honor. I think you are thinking about
7 Manchuria. We were talking about Outer Mongolia.

8 THE PRESIDENT: The question was put gener-
9 ally before on the control exercised by the Central
10 Government over the troops in the outside areas.

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1 Q General, where did you receive your training
2 as a staff officer?

3 THE PRESIDENT: The answer cannot help us.

4 MR. BROOKS: If the Court please, I won't ask
5 any further on cross-examination. I would like, as a
6 matter of information now to know if on our defense we
7 will be limited in showing the conditions previous to
8 when the shooting began, involving the question of who
9 supplied the weapons; the arms, the munitions and
10 materials -- with which war was engaged with these
11 various rebels and bandits -- were used to kill Japanese
12 citizens and to violate their property rights. I be-
13 lieve it is very material.

14 THE PRESIDENT: We want to understand the de-
15 fense fully, but this line of cross-examination is not
16 helping us to understand the defense.

17 MR. BROOKS: If the Court please, in a criminal
18 case you are allowed to go back into the motive as to
19 who furnished the weapons, whether it was conspiracy
20 and what was said before the shooting actually took
21 place. This is a criminal case, and it is very im-
22 portant to know what large commercial interest and
23 what other interests -- black markets or undercover
24 agents or otherwise -- were furnishing arms of which
25 Japan complained numerous times, not only to China,

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1 but to other nations of the world. It is possible
2 that this is not the proper time, on cross-examination,
3 to ask that type of question. I understand I have been
4 refused to cross-examine along those lines. However,
5 the question for a point of information was: Is the
6 defense proper in going ahead and preparing this as
7 a matter of defense evidence along that line, to show
8 the relationship between Japan and China, and the
9 damage that was caused to Japan by these conditions
10 that prevailed, and powerful commercial interests in
11 their marketing various arms and supplies -- petroleum
12 and war materials -- that was allowing this strife to
13 continue over this long period of years -- fifteen
14 years before 1931.

15 THE PRESIDENT: Well, put your questions, and
16 I will say whether they will be allowed or disallowed.
17 Put your question, and I will say whether it is allowed
18 or not.

19 Q Mr. Witness, hasn't there been a constant
20 growing or increase in tension and antipathy between
21 the Chinese and Japanese since the year 1900, and a
22 desire by the National Government or Central Government
23 of China for the retrenchment of certain territories
24 which it has lost previously?

25 THE PRESIDENT: I suppose "retrenchment" means

1 recovery.

2 MR. BROOKS: Recovery.

3 THE PRESIDENT: I think it somewhat remote,
4 but I will not prevent the witness from answering.

5 A Ever since the Sino-Japanese War, it was but
6 evident that the Chinese people as a whole were trying
7 their best to live up to the standards of a modern
8 world. It was not the desire of the Chinese people --
9 Chinese Government -- to recover their lost territory
10 right then, but it was the desire of the Chinese Govern-
11 ment to have the national strength consolidated, and
12 put the nation on a modern basis. I said that the
13 Chinese Government was realizing its feeble strength,
14 but was not prepared to recovery the lost territory.
15 This can be proved by the fact that while the Chinese
16 not as a whole resented the imposing by the Japanese
17 of the twenty-one demands on China, the Chinese Govern-
18 ment has very, very reluctantly accepted it. Due to the
19 fact that Japanese aggression knew no bounds, and the
20 fact that the Chinese Government then was a very weak
21 one, the Chinese people rose and put out this foreign
22 expeditionary force, and had that Government thrown out.

23 Q The weakness of the Chinese Government, though,
24 was not the only reason why foreign nations found it
25 necessary to keep troops stationed in China; is that true?

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1 A Only Japan took that advantage of stationing
2 troops there; other nations didn't.

3 Q Mr. Witness, as a result of the Boxer Protocol,
4 other nations had troops there, but even beside that
5 reason and the activities of bandits and rebels being
6 prevalent in China over this long period of years,
7 weren't there still other reasons why foreign nations
8 had troops stationed in China? If you know of them, I
9 would like to have them stated.

10 THE PRESIDENT: You should suggest the reasons,
11 if you know them, and not leave him guessing. This cross-
12 examination is most unenlightening.

13 MR. BROOKS: May he answer that question, if
14 he knows?

15 THE PRESIDENT: I do not expect him to answer it.
16 You suggest the reasons, and he may or may not adopt
17 them. That is the correct way.

18 Q Mr. Witness, would it not be a reasonable
19 apprehension, that could be entertained by the Japanese
20 residents as a result of numerous incidents, that
21 another Boxer uprising might be imminent?

22 THE PRESIDENT: The state of China from 1900
23 on is not relevant, and is too remote. What we want to
24 discover is the state of China as of the times when
25 the Japanese took action, when the Japanese armed forces

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1 began to operate. The conditions then are the things
2 that we want to know. You cannot go back forty years.

3 MR. BROOKS: In this case, the shooting
4 started in '31 on a large scale, but since it is a
5 criminal case I have considered -- the defense has
6 considered -- it relevant to show the conditions giv-
7 ing rise to the mounting blood pressures in the various
8 countries -- of nationals -- their apprehensions and
9 fears, their conflicting commercial interests, and to
10 show that hostilities, although not openly declared,
11 started long before this period as shown by numerous
12 incidents -- several hundred has been testified to by the
13 prosecution's own witness here.

14 THE PRESIDENT: I would suggest to you, with
15 all respect, I hate to say anything that may appear
16 offensive to counsel, more particularly to American
17 counsel who are practically strangers to me, that you
18 frame your questions more carefully, and with a view to
19 assisting the Court, keeping in mind that it is your duty
20 to assist the Court.

21 We will recess now until thirty minutes past
22 one.

23 (Whereupon, at 1200, a recess was taken
24 until 1330, after which the proceedings were re-
25 sumed as follows:)

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1 AFTERNOON SESSION

2 The Tribunal met, pursuant to recess, at 1338.

3 MARSHAL OF THE COURT: The International
4 Military Tribunal for the Far East is now resumed.5 C H I N G T E H - C H U N, called as a witness on
6 behalf of the prosecution, resumed the stand and
7 testified as follows:

8 BY MR. BROOKS (Continuing):

9 Q Mr. Witness, previous to 1937, did you, as
10 a representative of China in that area ever request
11 any assistance of Japanese, or even of Chinese troops,
12 from other areas for the purpose of policing your
13 area of responsibility and maintaining peace and order
14 therein?15 A I am not quite clear about the question
16 you ask.17 THE PRESIDENT: Witness, did you ever seek
18 the assistance of the Japanese or other Chinese to
19 maintain order in your particular district?

20 THE WITNESS: No.

21 Q Prior to 1937, Mr. Witness, do you know
22 whether General Chiang Kai-shek or any other Chinese
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1 officials requested financial or any other type of
2 assistance to restore peace and order in China and
3 in your area or North China?

4 A What do you mean? I don't quite under-
5 stand your question. Do you mean the Generalissimo
6 and other generals requested my assistance or requested
7 the assistance from Japanese side?

8 Q The latter. Wasn't Japanese national assis-
9 tance sought and wasn't Japanese troops requested
10 to be given as policing troops for your areas as
11 well as other nations consulted by your officials
12 on reports made from your areas and various other
13 areas in order to restore peace and order to the
14 whole of China?

15 A (Interpreter): He is answering to the first
16 of your question. He said: "There was no request made
17 in regard to military troops but there was some dis-
18 sension about economic collaboration. But, that is,
19 economic collaboration was suggested by the Japanese
20 side."

21 Q Did this economic collaboration that you
22 speak of involve any dealings in war materials, arms,
23 ammunition, to give assistance to any of the opposing
24 factions in China on the part of an association of
25 Japanese businessmen or any company or corporation of

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1 Japan? If so, please name them.

2 A No.

3 THE PRESIDENT: Captain Brooks, it must be
4 obvious to you from the trouble the interpreters are
5 getting that your questions are far too long, to say
6 the least.

7 MR. BROOKS: I will try to ask shorter ones,
8 your Honor. I have made them fairly long so the
9 complete idea would be expressed without a series of
10 short questions that might not have any meaning to
11 the Court.

12 Q During this period of trouble in China, in the
13 civil war previous to 1937, did China have outside
14 resources for war materials, weapons and equipment?
15 Do you know what they were?

16 A I don't know anything about it.

17 Q Was the arms and ammunition used by you
18 and your armies and by the opposing factions that
19 you were in conflict with previous to 1937 all of
20 Chinese make or manufacture?

21 THE PRESIDENT: What bearing on the issue
22 has the origin of the Chinese war material?

23 MR. BROOKS: I have heard, if your Honor
24 please, I know, and we will show in evidence what the
25 Japanese opinion has been of the conditions prevailing

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1 prior to this outbreak of war and of the various
2 commercial interests involved there.

3 THE PRESIDENT: You have not answered my
4 question. I want to know what bearing on the issue
5 the origin of the Chinese war material has.

6 MR. BROOKS: It is difficult with this con-
7 stant interruption from the interpretation, but I
8 wanted to add further that I wanted to find from the
9 Chinese side, from a hostile, evident hostile witness
10 in this case to the defense, the interests that they
11 said, if there were any of the members of the Zaibatsu
12 of Japan not represented by these accused who were
13 responsible for the conflict of commercial interests;
14 and it has a bearing in this case. In Exhibit No. 199,
15 prosecution paper 2340, in the discussion which was
16 a current topic at that time among Asiatics, was
17 whether European and American influences should be
18 expelled and a discussion of what would take place,
19 whether they would be Japanese or otherwise. It has
20 been shown recently that the Civil War in China has
21 been prolonged by furnishing materials. I think it
22 will be shown that materials were furnished the Japan-
23 ese that made this war possible, that these various
24 interests in conflict created a situation that was
25 causing the loss of lives of Japanese residents and

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1 destruction of property of which Japan had through
2 various negotiations in over three hundred instances
3 by diplomatic measures, even going to the League of
4 Nations, and finally withdrawing because she was not
5 given any assistance, was forced to take action.

6 The defense feels that it has a responsibility
7 to put forth these conditions and facts surrounding
8 the charges, surrounding the conditions and actions
9 taking place which might have influenced the defendants
10 in making certain decisions and which will explain
11 and cast, possibly, a different light on the acts
12 taken by the various parties and tend to justify,
13 mitigate or even shift the responsibility to others
14 for what happened.

15 THE PRESIDENT: We don't permit you to
16 indulge in these generalities. Your question must
17 be directed to specific matters. No counsel ever
18 attempts to do what you are trying to do. You are
19 simply wasting time. Whenever I ask you for specific
20 information, what your questions are directed to,
21 what evidence you have to back them up, you indulge
22 in a general address. That is not permitted to any
23 counsel.

24 MR. BROOKS: The questions, if the Court
25 please, that I am asking are not in relation to a

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1 specific thing. They are in relation to general
2 conditions which require a general answer to the
3 Court's instruction as to what I am trying to show.
4 I will go to another point.

5 THE PRESIDENT: Your attitude is so utterly
6 unreasonable that it is difficult to control in the
7 ordinary way. Counsel rarely puts a court in that
8 situation.

9 MR. BROOKS: If I have offended the Court,
10 I wish to apologize. It may be a difference in
11 customs in presenting a case. In the cases that
12 I have tried in American courts, the counsel is
13 allowed uninterruptedly to present cross-examination
14 in defense as long as he thinks it is material and
15 later will try to connect it up; and if it is not
16 material and not connected up, the Court at that
17 time rules it out of order or strikes it for failure
18 to tie it up. I wish to apologize.

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1 Q Were there not, Mr. Witness, officers, in
2 1937, of the armies of other nations attached to these
3 various Chinese units as observers, consultants,
4 directors, and as active participants in the military
5 action at that time and previous thereto?

6 COLONEL MORROW: We object on the ground of
7 relevancy and immateriality, if your Honor please.

8 MR. BROOKS: If the Court please, I think it
9 would be very relevant to show what officers, how
10 many, and what their activities were previous to this
11 time. I am asking about 1937, previous to 1937, and
12 also previous to 1941. There has been, also, much dis-
13 cussion in the papers and in various diplomatic
14 addresses about forcing Japan to commit the first
15 overt act, and I think the first overt act, as the
16 prosecution has presented it, has been as of 1941 in
17 some cases against some nations, and 1931 in others,
18 and I think this line of questioning may bring out
19 certain other conditions that may very well be regarded
20 as an overt act which led to an aggressive policy,
21 against which Japan was finally forced to take
22 defensive action.

23 THE PRESIDENT: The question is disallowed.

24 Q In your discussion with Mr. MATSUI, set out
25 on page 4 of exhibit 199, when you discussed the

1 European and American influences that should be
 2 expelled and the Japanese attitude, was there any
 3 discussion as to the hold on Asia's markets and
 4 resources having anything to do with the Japanese
 5 attitude and expression "Asia for the Asiatics?" If
 6 so, state what it was.

7 I am going to reframe the question, if you
 8 please. I can make that shorter.

9 THE PRESIDENT: The Court will now recess
 10 in order to consider their position.

11 (Whereupon, at 1410, a recess was
 12 taken until 1430, after which the proceedings
 13 were resumed as follows:)

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1 DEPUTY MARSHAL OF THE COURT: The Tribunal is
2 now resumed.

3 THE PRESIDENT: The Tribunal has decided that in
4 the future all cross-examination shall be limited to
5 matters arising in the examination in chief.

6 MR. BROOKS: If the Court please, I would only
7 like to make one observation and that is on exhibit 199.
8 There was a discussion by MATSUI referred to as to Asia
9 should be the Asia of the Asiatics, and that European
10 and American influences should be expelled. And my
11 line of questioning has been in line with the witness'
12 own affidavit in which a discussion was made of these
13 vital factors of which Japan had complained, and which
14 are the bases and the features of this world holocaust
15 that should be pointed out and condemned by this Tri-
16 bunal.

17 THE PRESIDENT: Is that the end of the cross-
18 examination?

19 MR. BROOKS: No further cross-examination of
20 this witness.

21 COLONEL MORROW: If your Honor please, we have
22 no direct examination.

23 THE PRESIDENT: There is only one question I
24 should ask of the witness.

25 Have you any reason to doubt the genuineness

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1 of the TANAKA Memorial?

2 MR. FURNESS: Does that--

3 THE PRESIDENT: Now, let the witness answer.

4 THE WITNESS: I cannot prove that it is a true
5 one, but at the same time I also have no means to dis-
6 prove it. But as the development we have witnessed in
7 the latter stages of Japanese aggression it seems to me
8 that the author TANAKA had made himself a very good
9 profit.

10 THE MONITOR: English supplements: If TANAKA
11 Memorial was untrue, was cooked up, everything predicted
12 in it has been carried out.

13 THE PRESIDENT: Major Furness.

14 MR. FURNESS: My objection, sir, was to the
15 question put by the President, that it assumed that there
16 had been any proof that such a memorial existed. As far
17 as this case has gone I think there has been no such
18 proof.

19 THE PRESIDENT: The question is put in the
20 interests of the defense.

21 MR. FURNESS: Thank you, sir.

22 CAPTAIN KLEIMAN: May it please the Tribunal,
23 in the interest of the defense, may I ask this witness
24 just one question concerning the TANAKA Memorial?

25 THE PRESIDENT: No. We were told there was no

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1 further cross-examination.

2 CAPTAIN KLEIMAN: All right, your Honor.

3 THE PRESIDENT: We will keep to that.

4 Now, there is another question that I--

5 Which of the two HASHIMOTOS, if either, is the
6 accused? The witness referred to two in his exam-
7 ination in chief.

8 THE WITNESS: Neither of them, of the
9 HASHIMOTOS I mentioned in the written statement, can
10 be identified with the HASHIMOTO accused in this case.

11 MR. BROOKS: Your Honor, I was going to
12 point out he previously testified that neither of them
13 them were this man.

14 THE PRESIDENT: Is there any further re-
15 examination?

16 Mr. Smith.

17 MR. SMITH: Your Honor, evidently the Court
18 came back unexpectedly and most of the Japanese
19 counsel were out of the room when you made the
20 ruling. Could we have the reporter read that back
21 for their benefit?

22 THE PRESIDENT: Counsel who were in the room
23 are quite capable of advising those who were not.

24 COLONEL MORROW: I understand this witness
25 may be dismissed, if the Court please?

THE PRESIDENT: The witness may go.

1 DEPUTY MARSHAL OF THE COURT: The witness will
2 sign this oath: "I swear that the testimony I have given
3 is a true statement."

4 (Whereupon, a document was signed by
5 the witness.)

6 THE PRESIDENT: The Representative of China
7 advises me that that is the Chinese form.

8 (Whereupon, the witness was excused.)

9 COLONEL MORROW: If the Court please, pursuant
10 to a permission of this Court to take certain witnesses
11 out of turn from the Republic of China, I desire to
12 present for the purpose, Mr. David Nelson Sutton of
13 West Point, Virginia, a member of the bar of the Su-
14 preme Court of Appeals of Virginia and of the bar of
15 the Supreme Court of the United States, a member of the
16 prosecution staff, who will present certain witnesses
17 from China out of order, with the permission of this
18 Court.

19 THE PRESIDENT: For the information of other
20 Members of the Tribunal you might explain what you mean
21 by out of order.

22 MR. SUTTON: May it please the Tribunal, the
23 witnesses are presented without at this time presenting
24 certain documents which would normally have been pre-
25 sented. The witnesses are presented one after the other.
The evidence will be connected up later.

1 THE PRESIDENT: I understand these witnesses
2 will deal with matters which ordinarily would have been
3 presented at later stages, but I had no idea you were
4 going to dispense with documents.

5 MR. SUTTON: We are not presenting any docu-
6 ments except the affidavits of the witnesses.

7 THE PRESIDENT: That microphone is in a bad
8 position. We have the greatest difficulty hearing
9 counsel at that lectern.

10 MR. SUTTON: The statement which I made was
11 that we are not at this time presenting any documents
12 except the statement of the witness.

13 THE PRESIDENT: Well, proceed.

14 MR. FURNESS: If the Court please, my recollec-
15 tion of the Court's order was that because certain wit-
16 nesses were here in Japan and wanted to return to China,
17 that the testimony of those witnesses could be put on
18 out of order. That is, they could interrupt the phase
19 on which they were offering proof and put in the evidence
20 of other witnesses who might not be available here in
21 Japan.

22 My recollection further is that the names of
23 those three witnesses were General Ching, who has just
24 testified, and Mr. Dorrance, and Mr. Fitch, and that
25 those are the only three witnesses to whom that order

1 applied.

2 MR. SUTTON: May it please the Court, these
3 witnesses whom we are offering at this time have been
4 here in response to summons issued by this Court since
5 the 12th of June. One, the next witness, was brought
6 from the United States of America, the rest from the
7 Republic of China. Their own circumstances are such
8 that they cannot remain longer without great embar-
9 rassment. They testify with regard to certain phases of
10 the war in China as to which the Court has been hearing
11 testimony for the last several days.

12 MR. FURNESS: The Court has been hearing the
13 testimony of one witness to whom the order of the Court
14 applied. I say with that reservation that the testimony
15 of the witnesses of whom Mr. Sutton now speaks was not
16 the subject of the Court's order. It applied to two
17 other witnesses. We are not prepared on these witnesses
18 which he plans to call now.

19 MR. SUTTON: Not only were the statements of
20 these witnesses distributed to defense counsel, but the
21 defense counsel were given the names of the particular
22 witnesses who will be next called, these names having
23 been furnished to them the first of this week at the
24 time General Ching was called.

25 THE PRESIDENT: The defense will not be taken

1 by surprise, Major Furness.

2 MR. FURNESS: I do object to his statement
3 that these witnesses are being put on pursuant to a
4 Court order. They are not. And I wish the prosecution
5 would admit that.

6 I think Colonel Warren wants to say something.

7 MR. WARREN: Let the record show it is Mr. War-
8 ren.

9 If the Tribunal please, in a sense, yes, we are
10 caught unprepared. The mere presentation of an affidavit
11 to us has no indication as to when that witness will be
12 called. Your Honor realizes, and as I know all the
13 Members of the Tribunal do realize, that because of the
14 exigencies of time that has existed throughout, we have
15 had to prepare our case as the case progressed.

16 Ordinarily there would be no objection to tak-
17 ing a witness out of turn if we were notified in time
18 so that we may proceed ahead of ourselves in preparing
19 that particular phase of the case. We cannot understand
20 how any witness can be embarrassed by being required to
21 wait a few days on one of the highest tribunals that
22 the world has ever known. It seems strange to us that
23 the prosecution did not inform this Tribunal at the time
24 that they asked for the other witnesses to be taken out
25 of turn in order that the defense could be prepared.

1 We can take no other view except that they are trying
2 to take advantage of a situation. That is our unalter-
3 able view, sir.

4 THE PRESIDENT: The only question is whether
5 you are prepared to cross-examine. You have not stressed
6 the fact that you are not.

7 MR. WARREN: Sir, we are not.

8 THE PRESIDENT: Dr. KIYOSE.

9 DR. KIYOSE: May I speak a few words on behalf
10 of the Japanese counsel?

11 Actually speaking, this Tribunal is now under-
12 taking a review of the Manchurian phase of the question.
13 However, as Major Furness has already pointed out, three
14 witnesses have been called from China, one of whom is
15 an important official, and others have very important
16 business waiting for them in China to the extent that
17 the Tribunal has said that a master commissioner would
18 be asked -- to the extent that prosecution asked for
19 a master commissioner. To this request the Court, in-
20 stead of nominating a master commissioner, has made a
21 ruling of reviewing the case, actually, at this time
22 here and it is according to that that the present trial
23 is now in progress.

24 One of these three witnesses, namely General
25 Ching Teh-chun, has already been cross-examined.

1 Following that we have been expecting Mr. Fitch and
2 Mr. Dorrance to appear on the witness stand and have
3 been preparing for them ever since this morning. We
4 would like to know, Mr. President, what shall we do
5 about taking evidence from Messrs. Fitch and Dorrance?

6 One other point which I wish to present to the
7 Court is that one of the causes for the confusion here
8 is that witnesses are introduced out of order. If
9 witnesses are to be examined with respect to the China
10 Incident, then if an opening statement on the China
11 Incident would be presented by the prosecution at the
12 outset, then it would very greatly clarify the position
13 and attitude of the prosecution and enabling us, the
14 members of the defense counsel, to prepare and carry on
15 our case.

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1 In connection with the China Incident, the
2 charges made are with respect to military aggression,
3 economic aggression, to the use of narcotics, and
4 other harmful drugs as well as atrocities. Unless
5 some clarification is made by the prosecution on how
6 they are going to handle these charges and produce
7 their witnesses out of order, it puts us into a very
8 difficult position and creates confusion in this Court.

9 As the honorable Mr. President has already
10 stated -- asked of us, we are indeed most anxious
11 to cooperate with this Tribunal. From the standpoint
12 of our own responsibility in the handling of the
13 cases on hand, we should like to ask the Tribunal to
14 establish a fixed system in order that the proceed-
15 ings of this Court may progress smoothly. It is re-
16 gretful that since yesterday /the proceedings have
17 not been going on smoothly.

18 Japanese counsel respectfully asks the Tri-
19 bunal to make an appropriate ruling in order to assure
20 smoothness in the proceedings. The carrying out of
21 our responsibility -- our desire to carry out our
22 responsibility is also with respect -- also should
23 be taken as our responsibility to the people of Japan.

24 THE PRESIDENT: The case is divided into
25 sections by order of the Court, and the Court may

1 modify its order. Instead of having this evidence
2 taken by Commission, the Court has decided to take it
3 itself. Nothing more than that has happened. There
4 has been no confusion, and there will be none on that
5 account. The real question is whether the defense
6 are in position to examine the witnesses that will
7 now be called, and it appears they have had ample
8 notice.

9 Is this witness from the United States a
10 long witness?

11 MR. SUTTON: He is, sir, on direct examin-
12 ation, a very short witness. His statement is con-
13 tained on three pages.

14 THE PRESIDENT: We will hear his evidence
15 in chief this afternoon, and, if necessary, we will
16 postpone his cross-examination until tomorrow. That
17 ought to meet the position of the defense.

18 MR. WARREN: If the Tribunal please, I
19 would like to correct one impression -- I think
20 wrong impression -- the Tribunal has. We were not
21 notified that they intended to call these witnesses.
22 They serve us with affidavits, and maybe it would be
23 weeks -- I mean a document, and maybe it would be
24 weeks before they come up in Court. So much for
25 that phase.

1 We should not have objected had we been
2 told. However, we are in Court without these
3 affidavits, and we are forced at this time to ask
4 the Tribunal to give us a ten minute recess to go
5 pick up these statements from our office.

6 MR. SUTTON: May it please the Tribunal, I
7 called the administrative office of defense counsel
8 myself on Tuesday afternoon, talked to Commander
9 Harris, and told him at that time, pursuant to a
10 request made by Mr. Logan of defense counsel to Mr.
11 Carlisle Higgins, Acting Chief of Counsel for the
12 prosecution, on the morning of that day -- told
13 Commander Harris that the witness whom the prosecu-
14 tion would offer, following the testimony of General
15 Ching, was Dr. Robert O. Wilson. I gave him the
16 document number of Dr. Wilson's affidavit and also
17 told him the name of the other witnesses who would be
18 offered following Dr. Wilson.

19 THE PRESIDENT: The defense cannot be
20 prejudiced if the examination in chief is taken this
21 afternoon. We will take the examination in chief
22 this afternoon.

23 MR. WARREN: There is no controversy on
24 that, sir. We just want a ten minute recess to run
25 and get our documents. May we have that, sir?

WILSON

DIRECT

1 THE PRESIDENT: Yes, proceed. Call the
2 witness.

3 - - -

4 R O B E R T O. W I L S O N, called as a witness
5 on behalf of the prosecution, being first duly
6 sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MR. SUTTON:

9 Q Are you Dr. Robert O. Wilson of Arcadia,
10 California?

11 A I am.

12 Q I hand you a statement marked IPS document
13 No. 2246 and ask if you signed it and made affidavit
14 to that.

15 A This is my affidavit, and I signed it.

16 MR. SUTTON: We ask that this be filed as
17 an exhibit.

18 CLERK OF THE COURT: Prosecution's document
19 2246 is given exhibit No. 204.

20 (Whereupon, the document above
21 referred to was marked prosecution's ex-
22 hibit No. 204 for identification.)

23 MR. LEVIN: Mr. President, we would like
24 to object to the use of this affidavit as an exhibit
25 in this case or as the testimony of this witness.

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1 We believe that none of the reasons assigned by the
2 Court for permitting the use of affidavits in this
3 case are applicable to this witness. The witness is
4 a graduate of Princeton and Harvard Universities and
5 a well educated man and speaks English as well as
6 anyone in this courtroom.

7 When the Court announced -- when the
8 President announced the decision of the Court to
9 permit affidavits, it stated that it did so with
10 grave misgivings. We have no situation with this
11 witness that is applicable to any of the other wit-
12 nesses who have appeared -- that is, those who spoke
13 either Chinese or Japanese. Under these circumstances
14 we believe that the witness should be directed -- that
15 the testimony of the witness should be offered by
16 question and answer.

17 THE PRESIDENT: There is no need for you
18 to say any more. We will hear what you have to say,
19 Mr. Sutton. We see no reason why this man's evidence
20 in chief should not be taken in the ordinary way.
21 There is nothing we can think of to justify this
22 departure except the mere fact that you have pre-
23 pared an affidavit.

24 You can treat that as the proof of his
25 evidence and examine him from it. The objection is

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1 sustained.

2 MR. SUTTON: We had understood, may it
3 please the Tribunal, that we should in each case
4 offer the affidavit of the witness in order to
5 shorten the proceedings and then offer the witness
6 for cross-examination.

7 THE PRESIDENT: It was offered in evidence,
8 there was no objection, and the Court couldn't re-
9 ject it. But it is desirable that the witness
10 should now be examined in chief as though his affi-
11 davit was a mere proof of his evidence.

12 MR. LEVIN: Mr. President, my objection to
13 the affidavit -- I offered it as an objection to the
14 affidavit. I assumed that that was the proper time
15 to make the objection, when it was offered in evi-
16 dence.

17 THE PRESIDENT: It was already in evidence
18 and marked when you objected, but we may be pre-
19 pared to sustain the objection and reject the affi-
20 davit. We can always do that.

21 MR. LEVIN: If the Court please, my object-
22 ion was based according to practice to which I am
23 accustomed. In our practice, when the exhibit is
24 offered it is not considered in evidence. At the
25 time it was offered I thought I made my proper

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1 objection to it. I now object to it. I thought I
2 had objected to it, and I ask that the Court sustain
3 our objection to the use of this affidavit.

4 THE PRESIDENT: We can treat your objection
5 as made nunc pro tunc and uphold it. We will reject
6 the affidavit.

7 The Page had better collect the affidavits
8 from the judges.

9 MR. SUTTON: Shall I proceed with the
10 examination, if the Tribunal please?

11 THE PRESIDENT: Yes.

12 BY MR. SUTTON (Continued):

13 Q Dr. Wilson, when and where were you born?

14 A I was born in Nanking, China, October 5,
15 1906.

16 Q What is your profession, and where did you
17 receive your education?

18 A I am a surgeon. I received my education at
19 Princeton University and Harvard Medical School.

20 Q Following your graduation in medicine, did
21 you return to China, and, if so, during what period
22 did you practice medicine in the Republic of China?

23 A I returned to China in January, 1936 and
24 practiced medicine at the University Hospital in
25 Nanking, China from that time until August of 1940.

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1 Q Were you connected with the University
2 Hospital in Nanking, and, if so, in what capacity?

3 A I was an Associate in Surgery at the Uni-
4 versity Hospital in Nanking.

5 Q Did the Chinese doctors and nurses on the
6 staff of the hospital leave the hospital in the
7 Fall of 1937 and, if so, when?

8 MR. McMANUS: If your Honor please, for the
9 record, I object to that question -- to the form of
10 the question, and also on the grounds it is very
11 leading, and request that the President shall in-
12 struct the counsel to conduct his examination not by
13 asking leading questions and asking them in the proper
14 form.

15 THE PRESIDENT: These are merely introduct-
16 ory matters upon which he may well be permitted to
17 lead.

18 A Late in November, 1937, after the fall of
19 Shanghai, when the Japanese Army was approaching
20 Nanking, the nurses and doctors of our staff came to
21 us with the request that they be allowed to proceed
22 up-river and not remain in Nanking when the city
23 was taken by the Japanese soldiers. Their reason for
24 doing this was because of the stories that they heard
25 about the happenings in the cities between Shanghai

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1 and Nanking. These cities were specifically Su-Chou,
2 Wu-Hsi, Chen-Kiang, Tang-Yang, among others.

3 Our staff feared for their lives and wished
4 to leave, and we attempted to calm their fears by
5 saying that under martial law they would have nothing
6 to fear in Nanking after the city fell. We were
7 unable to convince them, however, and they left to
8 up-river, leaving the hospital with Dr. Trimmer,
9 another American doctor, and myself, five nurses who
10 elected to remain behind, and some of the servant
11 class who elected to stay with us. They left the
12 city about the first of December. All together,
13 about twenty Chinese doctors and some forty or fifty
14 nurses and student nurses left.

15 Q To what number had the patients in the hos-
16 pital been reduced immediately prior to the fall of
17 the city of Nanking?

18 A When our staff left we were forced to re-
19 duce the number of patients to the irreducible limit
20 and sent home all who could possibly go home, leaving
21 about fifty patients in the hospital who either had
22 no place to go or were too sick to move.
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1 Q Did the situation change following December 13,
2 1937; and if so, in what manner?

3 A The Japanese soldiers entered the city on the
4 morning of the 13th of December, all resistance having
5 ceased on the night of the 12th. Within a very days
6 the hospital filled up rapidly with many, many cases
7 of injury to men, women and children of all ages, and
8 of all degrees.

9 MR. BROOKS: If the Court please, I think
10 it is objectionable. I think the Court--

11 THE PRESIDENT: I cannot hear you. Talk
12 through the microphone.

13 MR. BROOKS: If the Court please, I think this
14 line of questioning is objectionable, and I think it
15 is made for the possibility of influencing the Members
16 of the Court and that the Court can very well take
17 judicial notice, and I think the defense would be
18 willing to agree that in any war there will be casualties
19 among civilians -- women, children and others-- otherwise,
20 if such purpose is not shown, I move it should be stricken
21 from the record.

22 THE PRESIDENT: The objection is overruled.
23 Proceed.

24 MR. BROOKS: I would like to enter a further
25 objection, on the ground of immateriality and irrel-

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1 evancy to the issue they are trying to show -- who caused
2 the war. If this had anything to do with it, I don't
3 see where it is material.

4 THE PRESIDENT: The objection is overruled.

5 Q Doctor, will you give specific instances of
6 the types of injuries which had been received by the
7 persons whom you treated at the hospital?

8 A I can say the few instances of patients that
9 I treated during the time immediately following the fall
10 of Nanking, but I will not be able to give their names,
11 except in the case of two, who are here as witnesses.

12 One case that comes to my mind is that of a
13 woman of forty, who was brought to the hospital with
14 the back of her neck having a laceration severing all
15 the muscles of the neck, and leaving the head very
16 precariously balanced. From direct questioning of the
17 patient, and from those who brought her in, there was
18 no --

19 MR. MATTICE: I would like to interrupt this
20 witness to object; first, for the reason that, obvious-
21 ly, what the witness is about to say is heresay;
22 secondly, it is not in response to the question which
23 was asked him. He was asked to describe the wounds
24 which he saw and he now undertakes to tell what the
25 woman told him.

1 THE PRESIDENT: The objection is overruled.
2 The objection to heresay has been overruled repeated-
3 ly.

4 A (Continuing) Upon direct questioning of the
5 woman, and from the story of those who brought her in,
6 there was no doubt in our minds that the work was
7 that of a Japanese soldier.

8 THE PRESIDENT: He ought to say what the
9 woman told him.

10 A (Continuing) A young boy of eight was
11 brought in with a deep penetrating wound of the
12 abdomen, which pierced his stomach.

13 MR. WARREN: If your Honor please, I was
14 about to object on the same grounds that your Honor
15 called to the attention of the witness; that he
16 should state what the patient is alleged to have told
17 him, instead of his conclusions, and let the Court
18 draw the conclusion. We respectfully request the
19 Tribunal to request the witness to state, as near as
20 he recalls, the conversations he had with these patients.

21 THE PRESIDENT: The objections are sustained.

22 (Addressing Mr. Sutton) I do not think you
23 are hearing me. You will not hear me unless you wear
24 those headphones.

25 I said the witness must state what con-

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1 versations he had with those wounded people.

2 A (Continuing) A man was admitted with a
3 wound through the right shoulder, obviously a bullet
4 wound, and --

5 THE WITNESS: If the Court pleases, I
6 can tell his story as he told it to me then. Is
7 that what I understand? --

8 A (Continuing) He was one -- the only survivor
9 of a large group of men who were taken to the river
10 bank of the Yangtze River and individually shot. The
11 bodies were pushed into the river, and hence the
12 actual number cannot be ascertained. But he feigned
13 death, crept away in the darkness, and came to the
14 hospital. This man's name was Liang.

15 Another man was a Chinese policeman and was
16 brought to the hospital with a very deep laceration
17 across the middle of his back. He was the only sur-
18 vivor of a large group taken outside the city wall,
19 who were also first machine-gunned and the wounded
20 were then pierced with bayonets to be sure that they
21 were dead. That man's name was Wu Chang-teh.

22 One noon I was having lunch in my house, when
23 the neighbors rushed in and told us, at the table, that
24 some Japanese soldiers were raping the women in their
25 house.

 MR. WARREN: If your Honor please, that

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1 obviously is not an answer to the question that was
2 propounded to this witness and we request that he be
3 required to answer the question and undoubtedly the
4 prosecution will bring those out in further questioning.

5 THE PRESIDENT: He should confine his answers
6 to the questions, but I do not think he infringed
7 very seriously. These are all related matters. The
8 objection is overruled.

9 A (Continuing) We rushed out of the house to accom-
10 pany the men back to their own house, and the people
11 in the courtyard pointed to the closed door of the
12 gate-house. Three Japanese soldiers stood about in the
13 courtyard with their bayonets. We pushed in the
14 door of the gate-house, and found two Japanese soldiers
15 in the act of raping two Chinese women. We took the
16 women to the University of Nanking Refugee -- the campus
17 where there was a large group of refugees, under the
18 supervision of the International Refugee Committee.

19 A man came into the hospital with a bullet
20 through his jaw, barely able to talk. About two-
21 thirds of his body was very badly burned. His story,
22 as nearly as we could make it out, was that he had been
23 seized by Japanese soldiers, shot, covered with gaso-
24 line, and set afire. He died two days later.

25 Another man was admitted with a very severe

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1 burn covering his entire head and shoulders. While
2 still able to talk, he told us that he was the only
3 survivor of a large group who had been bound together,
4 had gasoline sprayed over them, and were set afire.

5 We have pictures of these particular cases,
6 that I have mentioned so far.

7 An old man of sixty was admitted with a
8 bayonet wound in his chest. His story was that he had
9 gone from the refugee zone back into the other part of
10 the city to look for a relative. He met a Japanese
11 soldier who bayoneted him in the chest and threw him in
12 the gutter for dead. He recovered six hours later --
13 he recovered consciousness six hours later and was able
14 to get to the hospital.

15 Cases like this continued to come in for a
16 matter of some six or seven weeks following the fall
17 of the city on December 13, 1937. The capacity of the
18 hospital was normally one hundred and eighty beds,
19 and this was kept full to overflowing during this entire
20 period.

21 Q Doctor, were any children brought in with
22 wounds during this period?

23 A I mentioned the eight year old boy. There are
24 two other cases that come to my mind:

25 One was that of a little girl of seven or

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1 eight, who had a very serious wound of the elbow, with
2 the elbow joint exposed. Her story to me was that
3 Japanese soldiers had killed her father and mother in
4 front of her eyes, and given her this wound.

5 A girl of fifteen was brought into the hospital by
6 the Reverend John Magee, with the ~~story~~ story that she had
7 been raped. A medical examination confirmed this.
8 About two months later this girl came again into the
9 hospital with a secondary rash of syphilis.

10 Q Did these patients report to you from whom
11 they had received the wounds?

12 A They merely stated that they received the
13 wounds at the hands -- without exception they reported
14 that the wounds were received at the hands of Japanese
15 soldiers.

16 Q Doctor, are these two patients, -- Captain
17 Liang and Wu-Chang-teh -- in Tokyo?

18 A The man you refer to as Captain Liang -- at the
19 time I knew him, he was a stretcher-bearer in the Chinese
20 Army. He is here in Tokyo, and Wu-Chang-teh, the police-
21 man also mentioned previously, also is in Tokyo.

22 THE PRESIDENT: Colonel Morrow, apparently he
23 has not heard the witness finish his answer.

24 Q Doctor, was there any change in the matter of
25 the sale of opium in the City of Nanking following the

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1 occupation of that city by the Japanese in December,
2 1937?

3 MR. WARREN: If the Tribunal please, patently
4 that does not tend to prove or disprove any of the is-
5 sues in this case, and we ask that the witness not be
6 permitted to answer, and that this line of cross-examina-
7 tion -- of direct examination -- be abandoned.

8 THE PRESIDENT: It is certainly objectionable
9 as leading in a very important matter, but what about
10 this question of relevancy? I will hear you on that.
11 The question is leading, and leading in a very important
12 matter, but it is also objected to as being irrelevant.
13 I would like to hear you on that.

14 (Addressing Mr. Warren) I would like to hear
15 him, Mr. Warren.

16 MR. SUTTON: May it please the Tribunal, it
17 is the purpose of the testimony to show whether or not
18 there was an increase in the open sale of opium and
19 narcotics in the City of Nanking following the occupa-
20 tion; and if so, something of the extent of that increase.

21 THE PRESIDENT: There is a count in the Indict-
22 ment covering narcotics, but I forget the exact terms.

23 MR. SUTTON: It is to this charge in the Indict-
24 ment that this portion of the evidence is directed.

25 THE PRESIDENT: Well, read the charge.

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1 MR. SUTTON: Will your Honor excuse me for
2 a moment while I find the proper place in the Indict-
3 ment?

4 THE PRESIDENT: Well, this is a convenient
5 time to adjourn. We will recess now until half past
6 nine tomorrow morning.

7 (Whereupon, at 1600, an adjournment
8 was taken until Friday, 26 July 1946, at 0930.)

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