6-20-1985

Transcript of Proceedings, Hirabayashi v. United States (C83-122V), Western District of Washington

United States District Court - Western District of Washington

86-3853

IN THE UNITED STATES DISTRICT COURT FOR

THE WESTERN DISTRICT OF WASHINGTON

AT SEATTLE

GORDON K. HIRABAYASHI, Petitioner, vs. UNITED STATES OF AMERICA, Respondent.	No. C83-122V

VOLUME III

June 20, 1985

(The following proceedings occurred in the chambers of the Court:)

THE COURT: Good morning.

Let's first take up the exhibits that you intend to use with Mr. Ennis.

MR. STONE: I just came from the people who have been Xeroxing since late last night and 6 a.m. this morning. This is not all of them.

With respect to Mr. Ennis, the amicus brief in the Korematsu case is one exhibit that I want to use because we've talked about that case and injected it into this one. I have about, I think maybe a total of four documents which I would still like to use to impeach or refresh Mr. Ennis', who is not my witness, recollection on areas where he has already been questioned and I believe his answer is either erroneous, vague or not accurate.

THE COURT: All right. Why don't I see those exhibits?

MR. STONE: Unfortunately they are not within this group. What I brought initially was the group of exhibits, not the impeaching exhibits but the first group that was, you know, in accord with your order and was very clearly going to be admissible. They have been doing everything they can except for about an hour and a half when people slept and they just aren't done. I waited until the

1 last moment to take these from them, but they don't have
2 that group -- I'm not even sure I'll get them in time to
3 cross-examine Mr. Ennis with them, because I'm not sure
4 they can be back here by 9:30.
5 THE COURT: Well, I don't want you to use
6 them until I see them. I'm sure you are aware of this, but
7 the reason for the pretrial order always is to preclude or
8 obviate the necessity of having to take up exhibits one by
9 one at trial.
10 MR. STONE: Well, Your Honor, --
11 THE COURT: Our procedure is to make a
12 blanket order at the beginning of the trial and then we go
13 right through the exhibits.
14 MR. STONE: Your Honor, I, perhaps
15 erroneously, was under the impression that when the other
16 side and the Government stipulated to authenticity and
17 reserved the right simply to argue about relevance, that
18 that would have obviated --
19 THE COURT: I don't want a big argument on
20 relevance every time an exhibit comes up.
21 First, on the amicus brief in Korematsu,
22 I will admit that. Maybe it wasn't stated before, but I
23 think any of the briefs, I want to see them. I think they
24 go to issues in the case. So that will be admitted.
25 Now, how many exhibits do you propose to

1 use with Ennis?

2 MR. STONE: Well, I propose to use about

3 five or six of the ones which are in the group that you said

4 I could admit.

5 THE COURT: All right. Why don't we see

6 those?

7 MR. STONE: Those are also not here yet,

8 but they are specifically ones you named and ones that I

9 named on May 15th. I can give you the names as you tick

10 them off in court. There is a February 7th memo written

11 by Commander Ringle --

12 THE COURT: February 7th, what year?

13 MR. STONE: 1942, and that's listed in my

14 -- in fact, copies were attached to my March draft pre-

15 hearing order.

16 THE COURT: Any problem on that?

17 MR. HALL: I don't know what it is.

18 MR. STONE: You have a copy.

19 MR. HALL: I might have a copy, but there

20 have been thousands of pieces of paper --

21 THE COURT: Let me say this: I know there

22 is attached to this March 1 draft a February 7th, '42 memo

23 from Ringle, so that's all right.

24 MR. STONE: In fact, the documents attached

25 to that thing are the documents I want to use. Any of those

1 documents I want to use. No others except the brief.

2 THE COURT: With Ennis?

3 MR. STONE: Yes.

4 THE COURT: Do you have a copy of that, by

5 any chance, with you?

6 MR. STONE: If not, I would agree to try

7 to get it Xeroxed before we begin.

8 THE COURT: Why don't we start with the very

9 first one?

10 MR. HALL: What is the purpose for this?

11 Is this for impeachment or --

12 MR. STONE: No. It's an exhibit in the

13 case. I'm going to ask him about it.

14 THE COURT: Let's take the first one. It

15 says "War Department, MID, January 3, '42."

16 MR. HALL: War Department? Just a minute.

17 Let me find the first one.

18 MR. STONE: Well, I would like to -- I

19 don't think I need -- the only thing I'm going to ask about

20 that one is can he recall if he would have received that

21 memo. That's all.

22 You've admitted these exhibits for me,

23 haven't you, Your Honor?

24 THE COURT: Let me listen first. I think

25 what I indicated was that the exhibits were listed, that is,

1 you properly listed them, which is the issue I had before
2 me the other day. Now, of course, there are the problems
3 of relevance, this, that and the other thing. I will hear
4 objections to them and make a ruling on that, just as I
5 heard your objections to the exhibits listed by Petitioner.
6 MR. HALL: Well, I guess my argument is
7 relevancy and this goes to necessity, military necessity.
8 THE COURT: It does. Now, if all you're
9 going to ask him about this is did you receive a copy of
10 that --
11 MR. STONE: He has testified --
12 THE COURT: No; that's what I'm asking
13 you. I think that you stated you were going to ask him
14 did you receive a copy of this particular document.
15 MR. STONE: Then I'm going to ask him if
16 he was aware of the conclusions on the last two pages.
17 THE COURT: Well, that really is not the
18 issue here. The issue here is the suppression.
19 MR. STONE: Well, but Your Honor, his
20 testimony -- all right. If you want the document to speak
21 to itself, then I'm --
22 THE COURT: Beg your pardon?
23 MR. STONE: If you feel that the document
24 will speak for itself, then I can make the same point by
25 asking if he's familiar with it. I think it would be more

1 helpful, if he says he is, to explore that. If he says
2 he's not, then, --
3 MR. HALL: Where does it show he even got
4 a copy?
5 MR. STONE: Well, the reason it's relevant
6 is because he did make an attempt to pursue the situation
7 with respect to Mr. Ringle's memo which was received only
8 -- which is dated only ten days before, and the question is,
9 did he also try and get any of Mr. Ringle's other memos
10 dated at the same period.
11 MR. HALL: Is this written by Ringle?
12 MR. STONE: Yes.
13 MR. HALL: This?
14 THE COURT: It says War Department.
15 MR. STONE: Oh, you're looking at the
16 January 3rd memo. I'm sorry. I thought you were looking
17 at the February 7th Ringle memo.
18 MR. KAWAKAMI: We're looking at January 3.
19 MR. HALL: I don't see where this has
20 anything to do with anything. It's not written by Ringle.
21 There is no indication that Mr. Ennis received it. It goes
22 to military necessity, which I don't believe is an issue.
23 THE COURT: All right. Let me read through
24 it, will you?
25 I'll permit you to ask him whether he

received a copy of this.

MR. HALL: Just for the record, I have another objection. These are summaries of the "Magic" cables about which we have a total objection, but these are literally summaries of "Magic" cables.

MR. STONE: Thank you. Do you want to stipulate to that?

MR. HALL: I don't know that to be a fact, but that's my impression, that that's what these are. I won't stipulate these are "Magic" cables because I don't know that from a testimonial standpoint to be a fact, but I've read "Magic" and I've seen what "Magic" says, and this appears to be a summary of what "Magic" says.

THE COURT: I'll permit you to ask him whether he received a copy of this.

MR. HALL: If Mr. Ennis says "I don't know" or says no, is it admitted or not?

THE COURT: I think I'll admit it. I just don't see any relevance myself to the issues in this case.

MR. STONE: Well, I'll have other witnesses, Your Honor, who will also testify about it.

THE COURT: That's getting into the issue of military necessity that I don't want to explore.

MR. STONE: Your Honor, you just heard Mr. Hall say that even from his layman's point of view, he

1 recognizes that as a summary of "Magic" documents.

2 THE COURT: That doesn't make it an issue

3 in this case, though.

4 MR. STONE: My expert witness who will show

5 that the War Department had other considerations to which

6 Mr. Ennis was not privy because he was not cleared for it,

7 had other considerations in mind when they, in effect, as

8 the petitioners would argue, overruled or oversaw, depending

9 on how you do it, both the actions of General DeWitt and

10 the actions of the Department of Justice, and if they didn't

11 wish to go to the Supreme Court and lay on the record the

12 military confidential reports, it's because they were

13 dealing with a very, at that time, important intelligence

14 secret. To the extent this is summaries of it, that is

15 what it shows.

16 MR. HALL: Your Honor, on that point I

17 have two comments. If that's true, then the Government is

18 willing to sacrifice Mr. Hirabayashi to observe confidentiality

19 and I think that in itself is an issue which the Court ought

20 to consider in determining the merits of this case.

21 Secondly, the fact of the matter is that --

22 I have forgotten the second point.

23 THE COURT: That's okay.

24 MR. STONE: Nobody wants to sacrifice

25 anybody. We will show in our evidence --

1 THE COURT: I'll permit you to ask him
2 whether he received this January 3, 1942, looks like a
3 memorandum from the War Department.
4 All right.
5 MR. HALL: Oh, the second point is, Your
6 Honor, the Supreme Court didn't rely on the War Department's
7 determination. The Supreme Court relied upon General
8 DeWitt's determination, and it said, as I read the Supreme
9 Court decision, if General DeWitt believed X, who are we to
10 say that he is wrong. This is all we have before us.
11 I think a lot of what counsel has tried to
12 get in about overruling the War Department and this sort of
13 stuff is lacking in relevance, but that of course is some-
14 thing you're not prepared to deal with.
15 THE COURT: I'll tell you, if this were a
16 jury case, I would be much more strict, I believe, on
17 admission of evidence, but I think when it's all said and
18 done, I'm going to have to determine whether these exhibits
19 are or are not relevant.
20 MR. STONE: Thank you, Your Honor.
21 THE COURT: The next one is, it looks like --
22 MR. HALL: I still am unclear. Are you
23 admitting this exhibit?
24 THE COURT: Yes.
25 MR. LEONG: Do we have an identification

1 number?

2 THE COURT: It appears to be a memorandum

3 from the War Department. It says MID.

4 THE CLERK: I think he's referring to a

5 number, Judge.

6 MR. STONE: There is somebody working,

7 typing the exhibit list up right now. They've been typing

8 that this morning, too. They don't have it out of the word

9 processor yet. It will be brought over as soon as they have

10 it. I don't know if I'll have it by the morning recess or

11 after the morning session.

12 MR. HALL: I would like to, for the record,

13 object to counsel's additional foot-dragging in violation

14 of what I understood the Court to request.

15 THE COURT: That was certainly the request.

16 MR. STONE: Your Honor, from the moment

17 we stepped out of court but for oen hour when I slept,

18 there were perhaps four people, including myself, working

19 full time to meet that request, and the only thing I can say

20 is if you want to continue for one day, it will give me

21 another 24 hours to have it in a neat form. We have been

22 diligently working on it from the moment we left the court.

23 THE COURT: I have no doubt about that,

24 but the diligence that I'm critical of is the diligence

25 before today, before yesterday. These things should have

1 settled Monday or Tuesday of this week.

2 Now, let's go ahead with the next one.

3 What is the next one you want to use with Ennis?

4 MR. STONE: The next one that you're looking

5 at there.

6 THE COURT: Dated March 15, 1942, from the

7 War Department?

8 MR. STONE: Yes. Those are cover memos

9 -- there are some cover memos for the memo underneath.

10 There is a memo underneath which is dated February 7th, and

11 those are just various cover sheets to it. It shows distri-

12 bution, and that's a memo written by Commander Ringle on

13 February 7th, and as I pointed out, that's ten days after

14 he writes the other memo. Since everybody who spoke about

15 the case was very familiar with the one memo, the question

16 is did they also bother to see what else he was writing at

17 that time.

18 THE COURT: All right. I've already ruled

19 that the February 7th memorandum of Ringle would be admitted.

20 All right.

21 MR. STONE: The others are just cover

22 letters.

23 THE COURT: Well, the first one doesn't

24 seem to be a cover memorandum for that.

25 MR. STONE: I'm sorry. You're right, Your

1 Honor. Those are --

2 THE COURT: But the letter dated February

3 19th, 1942, appears to be the cover letter. "There is

4 transmitted herewith a copy of the report."

5 MR. STONE: February 19th --

6 THE COURT: 1942.

7 MR. STONE: The others also start "There

8 is herewith transmittal letter dated, subject. It's the

9 same memo. It's just this is the cover memo to that cover

10 memo.

11 MR. HALL: What does that add to anything

12 except paper?

13 MR. STONE: It shows the distribution; that

14 it was not just kept in one office, Your Honor. It was

15 circulated for the attention of a large number of people

16 so that they could be made aware of Commander Ringle's

17 later views.

18 THE COURT: The first two are duplicates

19 of each other, the first two that I have.

20 MR. STONE: One of them shows that it was

21 received back. The backwards date stamp that shows it came

22 back ultimately to G-2. It shows it was circulated, but

23 other than that, yes, it's an unsigned carbon of the docu-

24 ment that the top one is.

25 THE COURT: Well, I don't see that it would

1 add anything, but I'll admit the cover letter from B. M.
2 Brian dated March 15th, '42.
3 MR. STONE: Okay.
4 THE COURT: And the one from Keisker dated
5 February 19th.
6 Then the next one is --
7 MR. STONE: Is the Kenaga cover letter.
8 He is the District Intelligence Officer in the Eleventh
9 Naval District. He is the one who is sending it to Keisker.
10 Keisker is the one who has sent it to Brian.
11 THE COURT: All right. I'll admit that.
12 MR. STONE: And underneath that is the
13 report itself which is the --
14 THE COURT: The report of Ringle.
15 MR. STONE: Yes. Then, beneath that is --
16 THE COURT: All right. Beneath that is --
17 MR. STONE: I'm not sure what order yours
18 are in, if the next document is May 26th or June 7th.
19 THE COURT: June 7th.
20 MR. STONE: Okay. That is a cover letter
21 showing the distribution of the document immediately below
22 it, and again it's Mr. Kenaga who is the author who had
23 written the cover letter in the former group. Kenaga is
24 the author of the May 26th piece of paper and he's also the
25 signator on the cover letter we looked at a few moments

1 earlier immediately on top of the February 7 memo. He is
2 Mr. Ringle's boss. That's the point.
3 THE COURT: All right. Any objection to
4 those? The cover letter of June 7th?
5 MR. STONE: The cover letter of June 7,
6 by the way, shows on the bottom that the document went to
7 the Alien Enemy Control Unit.
8 THE COURT: The May 26th letter?
9 MR. STONE: Yes. The May 26th letter went
10 to the Alien Enemy Control Unit.
11 MR. HALL: Well, I guess I have the same
12 issue of relevancy that we raised yesterday.
13 THE COURT: I'm going to sustain that. I
14 just see no relevance to the cover letter.
15 MR. STONE: May I suggest --
16 THE COURT: I beg your pardon?
17 MR. STONE: The cover letter, Your Honor?
18 THE COURT: Both of them. I just see no
19 relevance.
20 MR. HALL: It talks about enemy aliens,
21 Your Honor. It doesn't talk about American citizens.
22 MR. STONE: They opened up that subject,
23 Your Honor, with Mr. Ennis.
24 THE COURT: They opened it up to bring out
25 the fact that he felt that a distinction should be made,

1 and this, I think, bears out the same thing. I'm going to
2 exclude the cover letter and the May 26th, 1942 letter.
3 Now, are those all you're going to use
4 with Ennis? Is that right?
5 MR. STONE: That's right, unless that brief
6 comes back in time. You said I could use that.
7 THE COURT: There is no problem on that
8 because, as I said, I want to see all the legal pleadings.
9 MR. STONE: And the other documents, not
10 evidentiary documents, but exhibits to impeach him, I don't
11 have those yet.
12 THE COURT: I would like to see those
13 before they're used.
14 MR. STONE: Okay. If I get them in time,
15 I'll hand them up without saying anything, or assuming
16 maybe we could ask Mr. Ennis --
17 THE COURT: How many impeaching documents
18 do you think you're going to use?
19 MR. STONE: Well, as I said, I think there
20 are maybe four.
21 THE COURT: All right. Why don't you give
22 a copy to counsel and a copy to me?
23 MR. STONE: As soon as I get them.
24 THE COURT: As soon as you get them.
25 Now, we have such little time, I think the

1 better thing to do is to go out and let you get ready to
2 start, but then take up the other exhibits before they're
3 used. We'll do it as quickly as we can.
4 MR. HALL: Does counsel have an idea about
5 how long cross is going to take?
6 MR. STONE: I don't think it should run
7 past noon.
8 THE COURT: All right. Then I'll pick a
9 time when we'll look at the other exhibits, and you say a
10 list is being prepared?
11 MR. STONE: A list is being prepared.
12 THE COURT: And copies.
13 MR. STONE: And copies.
14 THE COURT: All right. Before they're used,
15 I want to see them and rule upon them.
16 Okay. I'll see you out there at 9:30.
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(The following proceedings occurred in open court;)

MR. STONE: Good morning, Your Honor.

THE COURT: Good morning. I guess we're still on cross-examiantion.

RICHARD J. ENNIS, resumed the witness stand and testified further, as follows:

CROSS-EXAMINATION (resumed)

BY MR. STONE:

Q Mr. Ennis, you testified yesterday in your direct examination, I believe it was in your direct examination, you testified that you in the 1942-43 period and '44 period were yourself convinced that there was at least a potential problem with Japanese-American citizens who were Kebei or who were adherents to the Shinto faith; is that correct?

A I don't recall anything about the Shinto faith, but we recognized -- it was generally a recognition that American born citizens who were educated in Japan might have sympathies toward that country.

Q Do you recall whether the estimates of the number of those people in the Japanese -- in the Western Defense Command was substantial at or around the time that evacuation and curfew was ordered?

A I don't recall, but we wouldn't have recognized it as

1 a substantial part of the problem unless it was a substantial
2 number.
3 Q In the Ringle Report which you discussed yesterday, it
4 is estimated at somewhere between five and ten thousand
5 Kebei individuals were involved. Would a group of that size
6 have presented a problem, a time problem, if one wanted to
7 give them immediate hearings?
8 A If one wanted to give a group of that size individual
9 hearings, it would take a substantial period of time.
10 Q About how long?
11 A Oh, I wouldn't have any idea. Certainly more than
12 weeks.
13 Q More than months?
14 A Well, it would take months.
15 Q That Kebei population is one of the -- which Mr. Ringle
16 also mentions -- is one of the elements mentioned by General
17 DeWitt and also mentioned in the Government's briefs in both
18 this case and the Korematsu case. Does that strike you as
19 being an appropriate consideration?
20 A Well, it was mentioned both in the final report and in
21 the Government's brief, and that was an appropriate con-
22 sideration, yes.
23 Q You have no doubt about that both today and knowing
24 all that you know, you still believe it was an appropriate
25 consideration?

1 A Well, it was appropriate then. I don't know what
2 other considerations --
3 Q No; I mean given what you have subsequently learned,
4 whereas you have now testified that you are not satisfied
5 with General DeWitt's belief back then in 1942 -- let me
6 start over.
7 THE COURT: Well, I think what he said, as
8 I understood it, he thought it was a proper consideration
9 for the Supreme Court and a proper consideration in DeWitt's
10 report. Isn't that correct?
11 THE WITNESS: Yes, sir, Your Honor.
12 Q (by Mr. Stone) And your view has not changed over the
13 years?
14 A No.
15 Q I would like to -- I have now the amicus brief from the
16 Korematsu case, and I would like to --
17 THE COURT: No problem with that. Do you
18 want to introduce it now?
19 MR. STONE: Yes.
20 THE COURT: Do you have it numbered now,
21 by any chance?
22 MR. STONE: Yes, it has a number. I'll give
23 it to you.
24 THE COURT: What is it? A what? Is that
25 the brief before the Supreme Court?

1 MR. STONE: Yes, it is, Your Honor.

2 If the clerk would hand Respondent's

3 Exhibit No. A-46 to the witness. I have some copies here.

4 THE COURT: I take it that is the

5 Korematsu brief before the Supreme Court?

6 MR. STONE: Yes, it is. It is the original.

7 THE COURT: This is the brief by the

8 Government?

9 MR. STONE: Yes, it is, Your Honor. This

10 is the original.

11 MR. HALL: I believe -- didn't counsel

12 identify this as the amicus brief?

13 MR. STONE: Yes, that's correct. The

14 amicus brief of the ACLU.

15 THE COURT: So it's not by the Government.

16 It's the amicus brief.

17 MR. STONE: Yes. I'm sorry. It is A-46.

18 Q (by Mr. Stone) Would you please open that to page 21?

19 I am going to -- have you found page 21 of that brief?

20 A Yes.

21 Q Yesterday we were discussing whether or not the Supreme

22 Court was made sufficiently cognizant of the strict

23 limitations which the Government included in its footnote.

24 In that regard, I'm going to read a sentence and then ask

25 you if you think this helped bring that directly to the

1 Court's attention.

2 Beginning at the paragraph indentation on

3 page 21, the brief says, as I quote:

4 "General DeWitt does try to show military

5 necessity by reference to reported illegal radio signals

6 which could not be located, lights on the shore, and the

7 like, Report Chapter II. The Government's brief, page 11

8 note, states, however, 'We have specifically recited in

9 this brief the facts relating to the justification for the

10 evacuation of which we ask the Court to take judicial

11 notice, and we rely upon the final (DeWitt) report only to

12 the extent that it relates to such facts'.

13 "This singular repudiation of General

14 DeWitt's testimony on the military necessities, which

15 obviously could be required only by the existence of

16 reliable conflicting information from other sources is made

17 even more remarkable by comparison of the Government's

18 brief and Chapter II of the DeWitt report. The brief,

19 pages 20-26, contains no reference, for example, to illicit

20 radio signals. DeWitt report, page 8. 'Signal lights

21 visible from the coast,' or to the significance attached

22 by the report to hidden caches of contraband, ibid, location

23 of Japanese settlements near defense installations, specifi-

24 cally militaristic pro-Japanese organizations and Emperor

25 worshiping programs, page 10, and Japanese language schools,

pages 12 and 13.

"Moreover, in several respects the recital in the DeWitt report is wholly inconsistent with other facts of public knowledge. It is well known, of course, that radio detection equipment is unbelievably accurate. A 'fix' can be obtained which will locate a radio transmitter not only in a specific house, but in a specific room.

"Secondly, the fact that no person of Japanese ancestry has been arraigned for any sabotage or espionage since December 7, 1941, certainly suggests, in view of the unquestionable efficiency of the FBI, that no such acts were committed by such persons."

Then they continue:

"Nor can it be said to be wholly without significance that in four of the five cases in which during this war trial courts have taken testimony on alleged military necessity for action against civilians by direct testimony of military authorities, the asserted military necessity has been found not to exist in fact. Schuler v. Drum, Ebel v. Drum, Wilcox v. DeWitt, Churchberg v. Bruner, and United States ex rel Komomuko.

"But what is in the DeWitt report and not in the Government's brief is scarcely less significant than what is not in the DeWitt report."

Then they go on to talk about the DeWitt report, and somewhere down the page about six lines, it continues:

"General DeWitt does not tell us whether he consulted either the Director of the Federal Bureau of Investigation or the Director of the Office of Naval Intelligence before the enormously drastic, difficult and expensive step of mass evacuation was recommended. One would suppose that General DeWitt would have sought information from these other sources as to whether their investigation of the persons of Japanese ancestry on the Pacific Coast indicated that the population as a whole (emphasis in the original) was so dangerous that it must be wholly evacuated and where they could assist in some less drastic solution.

"If the Office of Naval Intelligence and the Director of the Federal Bureau of Investigation recommended complete evacuation, undoubtedly that would have been mentioned in the DeWitt report. It prints much of the correspondence and memoranda that were exchanged during this period. Since no recommendation from either the ONI or the FBI are referred to, one can only assume either that they were not sought or that they were opposed to mass evacuation."

Footnote, which I will read in a moment.

1 "In either case, the inference becomes
2 overwhelmingly strong that what was involved was not
3 military security but race prejudice and hysteria generated
4 in late January and February."
5 And then the footnote says there on that
6 page, page 23:
7 "There is a fair indication that whether
8 or not its recommendations were asked, the ONI would have
9 stated that mass evacuation was wholly unnecessary. In
10 Harper's magazine for October, 1942, pages 389 to 497, there
11 was an article by an anonymous author described as having
12 been prepared in May, 1942, by an intelligence officer,"
13 and they quote Mr. Ringle's memo. They summarize it and
14 then they quote with respect to his suggestions that
15 evacuation should be on an individual rather than a mass
16 basis.
17 Mr. Ennis, doesn't that seem to be a
18 critique of exactly the very same criticisms which you had
19 in your various memos before the Government's brief was
20 printed?
21 A It's the same -- yes, it's the same -- it's another
22 statement of the same problem, yes.
23 Q And it identifies the Ringle report?
24 A Yes.
25 Q It identifies the FCC's jurisdiction which has not been,

1 apparently, discussed and so it claims one can only assume
2 that their opinions were not sought or they were opposed to
3 mass evacuation in the text?
4 A It does not refer to the FCC, but it does say at the
5 bottom of page 21 that it is known that radio detection
6 equipment is accurate.
7 Q Right. It does refer to ONI and the FBI; isn't that
8 right?
9 A Yes, it does.
10 Q This individuals who signed this brief are listed on
11 page --
12 A 27.
13 Q Right. Page 27. Were you intimately familiar with any
14 of them?
15 A Intimately familiar?
16 Q Yes.
17 A I knew Charlie Horsky. I think he had been in the
18 Department of Justice before he was in private practice, and
19 I knew all my life Osmond Frankel because after I left the
20 Government, I was General Counsel of the ACLU with him for
21 many years. Those two. That's all.
22 Q Did you help them -- did you help Mr. Korematsu obtain
23 their assistance as amici? Did you help convince those two
24 individuals you know to work on this brief?
25 A No. I had no conversations with either Horsky or

1 Frankel or anybody on this list at any time during this
2 period.
3 Q There is a book which suggests that you met frequently.
4 Is it your recollection --
5 A I met with these counsel?
6 Q That you met with these counsel on a regular basis
7 prior to the printing of this brief.
8 A I have no recollection of meeting with them on a
9 regular or an irregular basis or even in one instance.
10 Q So there was no interference on your part with the
11 attorneys on the other side at all; is that correct?
12 A None whatever.
13 Q And yet they were able to identify the same concerns
14 you had; isn't that right?
15 A Yes.
16 Q And the same concerns Justice Murphy had; isn't that
17 right?
18 A Correct.
19 Q And that's before the case is decided; isn't that
20 correct?
21 A Yes, when the brief was filed.
22 Q Now, --
23 A There are a number of sources they could have gotten
24 that information from.
25 Q Correct. Now, given the fact that this statement which

1 we have just discussed, which is a very graphic explanation
2 -- well, let me ask you first, is this rather lengthy text
3 more graphic than the footnote you proposed?
4 A Well, it's longer and it makes -- it's clearer, if
5 that's what you mean by graphic.
6 Q Yes. That's my question. Is it clearer?
7 A It states at some length what is stated in the briefest
8 form in the footnote.
9 Q That's right. And it goes further than even saying
10 there was a contrariety of information; isn't that correct?
11 A Yes.
12 Q It argues the inference that there must be derogatory
13 -- information harmful to the Government's position; is
14 that correct?
15 A I don't understand that.
16 THE COURT: Counsel, I believe that's a
17 matter of argument.
18 MR. STONE: Okay.
19 Q (by Mr. Stone) Now, with this brief before the Supreme
20 Court in the Korematsu case, prior to the time of the oral
21 argument, I'd now like to direct your attention back to the
22 transcript, the discussion we had about the transcript of
23 the argument in that case yesterday. Do you recall that
24 I pointed out that there was a reference to the discussion
25 of the footnote in the Government's brief and I asked you

1 whether or not it seemed as if the Court was well aware of
2 the narrowness of the Government's footnote. Do you recall
3 me asking you that question?
4 THE COURT: Let's move ahead from that
5 question. You go ahead and ask the question you want to
6 ask today.
7 Q Okay. Yesterday you said in light of that transcript
8 standing alone, on the face of it, it was not possible for
9 you to tell whether the Supreme Court in fact focused on
10 the precise wording of the Government's footnote.
11 A That's right.
12 Q Okay. Seeing now that the wording of the Government's
13 footnote is actually quoted here in the text on page 21
14 and then analyzed for two further pages, does that lead
15 to a different inference or change your belief about that
16 transcript?
17 A Well, it leads correctly to the inference that this
18 problem was called to the Court's attention more clearly
19 than in our footnote. I hadn't remembered this brief at
20 all.
21 Q You also didn't remember any of the memos?
22 A No; that's right. No.
23 Q Is that perhaps because at the time, if you were
24 satisfied that this brief and the oral argument sufficiently
25 warned the Court about this problem, that it would not have

1 stayed with you as any kind of misconduct?
2 A No. If this brief had not been written, I believe that
3 we took the narrowest way to deal with the problem, but I
4 think by doing that we avoided any censurable misconduct.
5 Q Do you recall, Mr. Ennis, that there was an oral
6 history project from the University of California which
7 interviewed you and discussed many of these same questions
8 with you in 1972?
9 A Yes.
10 Q Can you recall at that time that in discussing whether
11 J. Edgar Hoover took a position -- well, before I get to
12 that, may I have the exhibits, please?
13 I am going to direct the Court's attention
14 to, I guess this is tab 32, the Court and the witness, tab
15 32, document No. 38.
16 Just so the record is clear, this is
17 December 17, 1941, Petitioner's exhibit. It is a letter
18 from J. Edgar Hoover, a memo from J. Edgar Hoover, for Mr.
19 Tamm and Mr. Ladd.
20 Do I recall yesterday, Mr. Ennis, you said
21 that Mr. Tamm and Mr. Ladd were high officials in the FBI?
22 A Well, Tamm was the first assistant to Hoover, and Mr.
23 Ladd was next to him, practically.
24 Q And Mr. Tulson, do you recall his position?
25 A Oh, Tulson. Tulson was very close to Mr. Hoover indeed.

He was first assistant.

THE COURT: Let me ask about this. The date is obscured on my copy, but I would assume that is December --

THE WITNESS: December 17, '41, I think, Your Honor.

THE COURT: Does yours read fairly clearly? In the body of it it indicates Pearl Harbor had already occurred.

THE WITNESS: Yes. They're talking about the Army claimed they could thrown anybody they wanted off the West Coast, so that has to be December and not November.

THE COURT: That's fine.

Q (by Mr. Stone) If you would turn to page 2, I'd like to read the second paragraph. It states, and this is Mr. Hoover writing the memo:

"I asked Mr. Peeper --"

I want to stop there a moment and ask you whether you recall that Mr. Peeper was the Special Agent in charge of the FBI field office in San Francisco. Do you recall that?

A Yes. Yes.

Q Okay. So Mr. Hoover states:

"I asked Mr. Peeper if they proposed to move both citizens and aliens out of this zone. He said

1 that they proposed to move anyone considered dangerous and
2 undesirable. I told Peeper that we wanted to be careful
3 that we don't get caught holding the bag if these people
4 start hollering, and the Army comes back by saying that they
5 moved the people because the FBI said they were bad."
6 This statement by Mr. Hoover that he didn't
7 want to get caught "holding the bag," was that pretty
8 typical of him?
9 A Well, it's the statement of a good bureaucrat, yes,
10 and he was a bureaucrat par excellence.
11 Q He was trying to avoid responsibility for whatever
12 would happen; is that a correct inference?
13 A No, I don't think that's quite fair. He wanted to
14 avoid the Army stating that they were acting on the basis
15 of a conclusion by him in addition to information by him
16 if it were not true.
17 Q Okay. If you will move to the paragraph, the last
18 paragraph on the page -- I'm sorry -- the next to the last
19 paragraph, the last sentence says:
20 "I told him," which would be Mr. Peeper,
21 "that there is no law at the present permitting us to pick
22 up citizens but that such a law is under consideration and
23 we should be prepared."
24 Was that also your same feeling? Did you
25 share that one, that there was no law permitting citizens

1 to be picked up?

2 A Oh, I was very clear about that. But it was -- and I

3 don't know, when he says a law was being considered, I don't

4 know who was considering it. I'm absolutely certain that

5 the Attorney General was not.

6 Q On the next page, the top paragraph on the next page,

7 it says:

8 "Mr. Peeper stated that he personally

9 thinks that there is a fight in progress between the Army

10 and the Navy. I stated that I believe that that is the

11 trouble, that they are fighting among themselves instead of

12 together, and for that reason, we want to keep our feet on

13 the ground, but at the same time, we don't want to miss any

14 bad ones that should be taken care of."

15 He continues later, four lines up from

16 the bottom:

17 "If the Army wanted to take in thousands

18 predicated upon lists furnished by us, we want to be very

19 careful to have specific recommendations on every person

20 on any of our lists, so that if there is any howl after-

21 wards, we will not be left holding the bag."

22 Does it sound at all surprising to you

23 that he twice, instead of discussing the sensitivity of

24 the situation, puts it in terms of he doesn't want to be

25 left holding the bag?

1 A But you see, the thing was so troubled and confused,
2 it's perfectly correct for the head of the investigation
3 unit to have said "We don't want to be held responsible for
4 making decisions or recommendations." That was not his job.
5 He was supposed to supply facts.
6 Q Did he make a recommendation --
7 MR. HALL: Your Honor, I'm not sure Mr.
8 Ennis had finished his statement. He still had his mouth
9 open.
10 THE COURT: Did you finish?
11 THE WITNESS: Yes, I finished.
12 MR. HALL: Sorry.
13 Q (by Mr. Stone) Did Mr. Hoover take the position on the
14 individual evacuation under your Attorney General's
15 authority that it should only be done on an individual
16 basis?
17 A No. He just -- that was a legal question. That was
18 not for Hoover to say yes or no. What Hoover said was that
19 he had no information supporting a mass evacuation.
20 Q Right. Now, let me take you back to what we discussed
21 before this which was that you gave a statement in 1972 to
22 an interviewer from the University of California about
23 these events. At that time you stated that you believed
24 Mr. Hoover stayed neutral; that he took no position. Is
25 that consistent with this memo that we've just read?

1 A Well, he was neutral so far as what the Army would do.
2 So far as what the civilian authorities would do, he said he
3 had no information authorizing a mass evacuation.
4 Q Okay. He then really did not seek to intervene in
5 issues dealing with the military authority; only the
6 civilian authority?
7 A Well, he would supply information to either. He would
8 exchange information with the Army, but he didn't seek to
9 make any recommendation or urge any course of action.
10 Q With respect to Executive Order 9066?
11 A That's right, which gave the authority to the -- which
12 the President gave the authority to the military authorities
13 to deal with it.
14 MR. STONE: Your Honor, I'd like to hand
15 a document dated January 3rd, 1942, have that document
16 handed to the witness.
17 THE COURT: What is the number you have
18 given to it?
19 MR. STONE: I don't have it numbered in
20 this version, Your Honor, but we can give it No. A-6.
21 THE COURT: All right. Do you want to
22 hand it up?
23 Q (by Mr. Stone) Mr. Ennis, directing your attention to
24 the cover page, the very first page, and looking down at the
25 bottom of it, it states under the words "Previous

1 Distribution," Special Defense Unit DJ. Can you tell me who
2 would have gotten this, what that means?
3 A Well, we had in the Department of Justice a special
4 defense unit of the Department of Justice which was the
5 unit under Mr. Smith who worked with the FBI before the war
6 in developing the aliens of enemy nationality who should be
7 picked up on the outbreak of the war. Now, what else they
8 did, I don't remember at the moment, but that's who that is,
9 that special unit.
10 Q This memo, if you'll look at the date at the top, is
11 dated January 3rd, 1942, which is almost a month after the
12 war; isn't that corect?
13 A Yes.
14 Q At that point were memos like this also circulated to
15 your Enemy Alien Unit by the special defense unit?
16 A I don't think so. I think that the subject matter of
17 Latin America, that the special unit was handling that. I
18 was not dealing with that. I got involved in it later,
19 sometime later.
20 Q There is a second title on the front page, and just the
21 title line says "D. Japanese intelligence machine in
22 Western Hemisphere," which is broader than -- different
23 than the topic on the first line. Do you believe that you
24 received this document in or about January-February, 1942?
25 A No, I don't believe I ever received it.

1 Q Okay. If we would --

2 We can take that document back, Your Honor,

3 because I would like to ask a hypothetical question, if I

4 may.

5 THE COURT: Do you want to pick it up,

6 please?

7 THE CLERK: Yes, Judge.

8 Q (by Mr. Stone) If you had received intelligence at

9 that time, Mr. Ennis, that was quite openly on its face not

10 supported by particulars but appeared to be simply a hearsay

11 statement that Japanese citizens -- citizens of Japanese

12 descent and Japanese aliens were involved in espionage

13 against the United States, would you have paid any credence

14 to it?

15 MR. HALL: I would object for the record

16 at least that this is calling for, through the back door,

17 information about "Magic" and it is a hypothetical that

18 isn't supported by the facts in the case.

19 THE COURT: I'm going to sustain the

20 objection. It is a hypothetical.

21 Q (by Mr. Stone) I would like to hand the witness the

22 next document which is the Commander Ringle February 7 memo

23 and the two cover letters on it, one dated March 15 and one

24 dated February 19, about which the Court is aware, and

25 we'll call this one A-7.

1 MR. HALL: Your Honor, before there is
2 testimony about this can we have it indicated on the record
3 what the official exhibit is, because I'm not exactly sure
4 I have the official exhibit, and the order in which the
5 official exhibit is taken.
6 THE COURT: Yes. Why don't I read that
7 into the record? The top document looks like a cover letter
8 dated March 15, 1942, from a Lieutenant Colonel B. N. Bryan,
9 Chief of the Aliens Division, to the Assistant Chief of
10 Staff, G-2.
11 The next document is a letter dated
12 February 19, 1942, from Commander H. G. Keisker, to a
13 Captain Perry, and Captain Perry is with the Military
14 Intelligence Division of G-2, with a copy to the FBI.
15 The third cover letter is from the District
16 Intelligence Officer, Eleventh Naval District, who apparently
17 was a B. L. Canaga, to the Director of Naval Intelligence,
18 and then the memorandum itself is dated February 7, 1942,
19 prepared by Lieutenant Commander K. D. Ringle.
20 MR. HALL: Thank you, Your Honor.
21 Q (by Mr. Stone) Mr. Ennis, would you turn to the bottom
22 document which is the document -- there are three single
23 page documents on top and it is the fourth page. It says
24 "Copy" at the top. "Subject: Japanese Menace on Terminal
25 Island, San Pedro, California."

1 A Yes.
2 Q It says, "Prepared by Lieutenant Commander K. D.
3 Ringle." Do you recall that the Ringle memorandum which
4 you discussed yesterday was described in your various
5 memoranda as being dated at approximately the same time as
6 this one, before the evacuation under Executive Order 9066?
7 A Yes.
8 Q What is the -- the date here of this memo is February
9 7, 1942. That is also the same time frame, shortly before
10 the signing of the Executive Order; isn't that right?
11 A Yes.
12 Q And this appears to be the same Lieutenant Commander
13 K. D. Ringle, U. S. Navy; isn't that correct?
14 A Yes.
15 Q Okay. If you would, I would like you to turn to the
16 second page of the memo, and there is a paragraph numbered
17 Arabic 3, the third paragraph on the page. The first two
18 sentences of that paragraph are:
19 "There does exist in the present population
20 a large element of what is considered to be the most
21 dangerous class of person of the Japanese race in the
22 United States."
23 Does the fact that Mr. Ringle uses the
24 term "Japanese race" and calls a class of people dangerous
25 in the same sentence suggest to you that he is a racist?

1 A No.

2 Q At that time was it less obnoxious to describe Japanese
3 descended citizens as a Japanese race rather than say a
4 Japanese group as we would today?

5 A It depends on the context. I don't consider it is
6 obnoxious in all texts. It may not be from an anthro-
7 pological point of view the precise way to deal a particular
8 nationality, but I don't get any racial overtones from
9 saying a group is one group of a larger group identified by
10 race.

11 Q In both the briefs -- do you recall that General DeWitt
12 is reported to have stated before a Congressional committee
13 that "a Jap is a Jap"?

14 A I've heard the statement attributed to the General, but
15 I don't know where I heard it. It seemed to be rather
16 generally distributed, that statement.

17 Q That statement appears in the brief of Mr. Hirabayashi
18 -- excuse me -- in the brief of the amicus on behalf of
19 Mr. Hirabayashi in the Supreme Court in that case. Does
20 that statement, standing alone, suggest to you that General
21 DeWitt was racially motivated in his decision to order an
22 evacuation of the West Coast?

23 A Well, I'd like to know the circumstances in which it
24 was stated. Generally speaking, it's not a statement I
25 approve of and it's quite different compared with this

1 statement, "The most dangerous class of persons of the
2 Japanese race." Of course it's much different, really.
3 Q In the General DeWitt final report he makes a statement
4 that he believes evacuation -- maybe I had better direct you
5 to it.
6 If you could hand the witness the black
7 volume, please? I guess it's also tabbed in this exhibit
8 as tab -- the first version is tab 17, tab 17, Exhibit 4.
9 If you would turn to Roman numeral page three. On Roman
10 numeral -- I'll wait until you get there.
11 A Yes.
12 Q On Roman numeral page three there is a paragraph 2.
13 Now, this is a first version of General DeWitt's final
14 report. That paragraph 2 states, starting with the third
15 sentence of it, --
16 THE COURT: Would you excuse me because I
17 don't have the reference yet.
18 MR. STONE: I'm sorry.
19 THE COURT: Would you give the page first?
20 MR. STONE: Yes. Roman numeral triple I,
21 three, little three. It's in the introduction.
22 THE COURT: Oh, yes. And the paragraph?
23 MR. STONE: It is paragraph numbered two.
24 THE COURT: All right.
25 MR. STONE: And I'm at the third sentence.

1 Q (by Mr. Stone) The third sentence states:

2 "The continued presence of large numbers of

3 persons of an unassimilated tightly knit racial group bound

4 to an enemy nation by strong ties of race, culture customs

5 and religion, along a frontier vulnerable to attack, could

6 not have been countenanced."

7 Is that statement very different from

8 Commander Ringle's statement that the most dangerous class

9 of persons of the Japanese race in the United States were

10 those who had been educated --

11 THE COURT: I don't believe that's really

12 an issue here, and if it is an issue, then it's for me to

13 decide.

14 MR. STONE: Okay, Your Honor.

15 Q (by Mr. Stone) Would you look at the Commander Ringle

16 memo again that we were discussing?

17 A Yes.

18 Q On the same page, page 2, down at the last paragraph

19 on that page. Commander Ringle is discussing the Japanese

20 fishing fleet and he says -- maybe I should read the whole

21 paragraph.

22 "In order that these vessels could be

23 documented under the laws of the United States, it was

24 required that at least 51 per cent of the vessel be owned

25 by American citizens, and that an American citizen be Master

1 of the vessel. These laws were in part evaded by having
2 the ownership vested in the American born children of
3 aliens and by having the American born Master be merely a
4 dummy, the real control of the vessel and her crew being
5 vested in the head of the fishing crew who is known as the
6 'fish boss' who directed all movements of the vessel at
7 sea. The latter practice was common even on those vessels
8 owned by the fish packers themselves. Thus, this evasion
9 of the law was done with the tacit consent and connivance
10 of the fish packing companies, although it is exceedingly
11 doubtful if this can proved in any court of law."
12 Does that indicate to you that the American
13 born children who were American citizens presented a problem
14 that had to be addressed on the West Coast?
15 A No.
16 Q Why do you say that?
17 A Well, I happen to be familiar with this law which of
18 course applies to all American flag vessels. The Greek
19 shipowners, for example, Mr. Onassis, got into trouble
20 because of having dummy directors. It's a commercial
21 problem, but it's no security problem, if that's what you're
22 talking about.
23 Q Okay. Let's turn to the third page of that memo, if
24 you would. The third page, Roman numeral IV, says:
25 "Analysis of the hazard to the security of

1 the United States due to the Japanese colony on Terminal
2 Island. As has been pointed out, it is very evident that
3 a hazard definitely exists due to the location of this large
4 Japanese colony in the heart of the Los Angeles harbor
5 district. It is considered that this hazard can be broken
6 down as follows: Physical observation and espionage, 75
7 per cent; (b) Sabotage, 20 per cent; (c) Fifth column
8 activity, 5 per cent. By fifth column activity is meant
9 preparation for and assistance to any attempted attack or
10 invasion from outside sources."
11 Do you understand this memo to mean that
12 Mr. Ringle is suggesting that there is a quantifiable
13 percentage of risk of espionage, sabotage and fifth column
14 activity in relation to an attempted attack or invasion?
15 MR. HALL: Your Honor, I think Mr. Ennis'
16 understanding of this memo is irrelevant.
17 THE COURT: I think that's right. I think
18 if the memorandum is relevant, it is for me to determine
19 that relevancy and the weight to be given to it.
20 MR. STONE: Okay.
21 Q (by Mr. Stone) Mr. Ennis, I just call your attention
22 to the fact that paragraph 2 states, paragraph numbered 2
23 on page 3, states:
24 "An analysis of the above hazards is as
25 follows: (a) --"

THE COURT: Where is that? Oh, I'm sorry. Bottom of page 3?

MR. STONE: Bottom of page 3.

A Oh, yes.

Q (by Mr. Stone) I think this is a very significant statement by Mr. Ringle. He says:

"An analysis of the above hazards is as follows: (a) It is evident that observation and espionage has been going forward for a great many years. Therefore it is evident that the physical location of all fixed defense works and harbor improvements and the like are already known to the Japanese."

Skipping down to the last paragraph on the page, he says:

"The items which would be of value to the enemy and which these people are in an unexcelled position to observe and report on, such items as arrival and departure of convoys, including size, strength of escort, bulk and bulk of cargo, troop movements, arrival and departure of major units of the fleet, progress of shipbuilding, including launching and commissioning of men or war as well as merchant marine, progress of construction of Naval operating base including the new drydock and the channel approaches thereto, delivery of new aircraft, the strength or lack of strength of the aerial defenses of the Naval Air Station

1 and Naval Operating Base and similar matters."

2 Then he concludes this section of his memo

3 by saying:

4 "As long as this colony which contains

5 known alien sympathizers, even though of American citizen-

6 ship, is allowed to exist in the heart of every activity in

7 the Los Angeles harbor, it must be assumed that items such

8 as the above are known an observed and transmitted to the

9 enemy quickly and easily."

10 In the next paragraph he speaks of sabotage.

11 It begins:

12 "Sabotage. The only reason that sabotage

13 is considered to be no more than 20 per cent of the total

14 hazard is because of the rather rigid and effective guards

15 and protections which have been placed into effect within

16 the last six months."

17 Then, skipping down to the next to the

18 last paragraph on that page, he states:

19 "It should not be inferred from the above

20 that full and adequate protective measures have been placed

21 into effect. Far from it! There still exists a great need

22 for increased police and fire protection and reduction of

23 possible fire hazards into the tremendous lumber yards, free

24 flowing oil wells, exposed water gas, gasoline, oil and

25 transmission lines, and installations, et cetera. Though

1 these hazards are at the moment beyond the control of the
2 Naval and military authorities, but would serve as ideal
3 objectives for saboteurs having as ready access to them as
4 the Japanese colony on Terminal Island."
5 Finally, --
6 THE COURT: What is your question?
7 MR. STONE: Well, Your Honor, I'm just about
8 to get to it, if I can just read this last paragraph and
9 then I'll ask a question, if I may.
10 THE COURT: All right.
11 Q (by Mr. Stone) The last paragraph is entitled "Fifth
12 Column Activity." It states:
13 "This hazard is considered to be only 5 per
14 cent of the whole for two reasons. First, this colony is
15 quite concentrated and under constant observation and can
16 be quickly and immediately surrounded by troops on the spot."
17 Let me stop there and ask you, were you
18 advised -- did you seek out any additional memoranda written
19 by Commander Ringle at the time such as this one, at the
20 time that you and Mr. Burling were suggesting in your various
21 memoranda in relation to the Hirabayashi and the Korematsu
22 Supreme Court cases, that there were other memoranda around
23 by Mr. Ringle? Did you see any out?
24 A No. We dealt directly with Terminal Island. We were
25 prepared to close it off to everyone, aliens, citizens of

1 any race, and only allow people there on permit, but that's
2 quite different from farmers two or three hundred miles away.
3 Q Okay. Were you familiar with this memo --
4 A Yes, of course.
5 Q -- at the time? You were familiar with this memo at
6 the time in 1943?
7 A I believe so. Much earlier than that. We were familiar
8 with this memo -- '43? We were familiar with this memo when
9 it was issued and we were dealing with the Army on the ques-
10 tion of Terminal Island, and were prepared to close it off to
11 anybody without permit. Take everybody off the island and
12 only people back who had business there.
13 Q Do you think this memo is discussed in the Harper's
14 magazine article?
15 A I don't recall. I'd have to compare them. You see,
16 it's dealing with a specific limited problem; not a whole
17 area problem.
18 Q Do you believe that those are the concerns which
19 motivated General DeWitt?
20 A They were some of the concerns which motivated, but
21 there were many, many more concerns which motivated General
22 DeWitt.
23 Q Do you recall that in early January, 1942, General
24 DeWitt wanted a new census taken of all aliens in the
25 Western Defense Command in order to issue them alien

1 registration cards?

2 A I don't independently recall it, but I do independently

3 recall that General Gullion, the Provost Marshal General,

4 wanted a census of everybody in the United States made in

5 January of '42, and I recall that yesterday I read in the

6 final report some remark about General DeWitt making a

7 similar request for the Western Defense Command.

8 Q That was in connection with his ability to identify

9 people who might need to individually be evacuated?

10 A I never could understand why he wanted it, why he wanted

11 to spend the manpower making a census. We just made a

12 census of all aliens in the United States in 1940.

13 Q And he wanted to update it; is that right?

14 A No, he didn't. I don't know whether his was restricted

15 to aliens or not, and it was updated. Every alien that

16 entered the United States was added to the census.

17 Q In fact, the Department of Justice refused to update

18 on his request at that time the census?

19 A They refused his request because they said it had

20 already been done and was updated.

21 Q Right. But they refused his request; isn't that

22 right?

23 A We refused the General's request for an additional

24 census of anyone.

25 Q In fact, you thought General Gullion's views were

1 foolish; isn't that right?
2 A I thought General Gullion was foolish and I think I
3 told him so, perhaps not in quite as abrupt a manner.
4 Q Let's see if I can find the second version here of the
5 final report.
6 MR. HALL: Tab 85.
7 MR. STONE: Is that tab 85?
8 Q (by Mr. Stone) Okay. If you could turn to tab 85,
9 Exhibit 29.
10 THE COURT: Is this the first version or
11 final?
12 MR. STONE: Final. Second version.
13 Q (by Mr. Stone) Would you please turn to the page
14 numbered on the bottom Roman numeral little three? Do you --
15 can you see the date on the top of the transmission?
16 A July 19, 1943.
17 Q That's after the decision in the Hirabayashi case;
18 isn't that right?
19 A Yes, which was June, I think.
20 Q Yes. Do you recall the date that the Hirabayashi case
21 was taken under submission by the Supreme Court?
22 A The date of the argument, the oral argument?
23 Q Yes.
24 A Was it May 10th?
25 Q Yes. It was May 10th and 11th. Do you recall from

1 yesterday that the pleading you were asked to read about,
2 the post-argument pleading that the Government filed in
3 response to a post-argument reply brief, that the Govern-
4 ment's last pleading was filed on May 14th. Do you recall
5 that date?
6 A No, but I accept it.
7 Q Okay. Turning to the very next page of this report,
8 this second version, it says:
9 Henry L. Stimson has written forward,
10 and he says "Great credit, in my opinion, is due General
11 DeWitt and the Army for the humane yet efficient manner in
12 which this difficult task was handled."
13 Do you think that necessarily implies that
14 Henry Stimson concurred in everything that occurred in the
15 Western Defense Command?
16 A No. I don't think it implies any such thing at all.
17 Q At that time General DeWitt was a Lieutenant General.
18 That's a three-star general; is that true?
19 A Yes.
20 Q He was ultimately given a fourth star after all these
21 events for his efforts during this period of time. Do you
22 recall that?
23 A No.
24 Q Would it surprise you as an unlikely result?
25 MR. HALL: Objection.

1 THE COURT: I think that's speculation.
2 Q (by Mr. Stone) Would you turn now to the next page,
3 Roman numeral VII. At the top it is dated June 5th, 1943.
4 Do you know for a fact that that's the date that this
5 report was transmitted to Washington, D.C.?
6 THE COURT: I don't think he could know
7 that.
8 MR. STONE: Okay. Well, Your Honor, I
9 ask that question because on the direct examination he was
10 specifically asked about the date on that report.
11 THE COURT: Well, I would assume from this
12 date, June 4, '43, that that was the date that he trans-
13 mitted it to the Chief of Staff.
14 MR. STONE: That's why I brought it up,
15 Your Honor, because I wanted to compare that with another
16 document, another Petitioner's document.
17 THE COURT: Which is?
18 MR. STONE: Which is Petitioner's Document
19 28 which is at tab 86. This is a phone call, a report of a
20 phone call.
21 THE COURT: All right. What question do
22 you want to ask this witness?
23 MR. STONE: Well, I want to ask him if
24 he's familiar with the participants, Colonel Bendetson and
25 General DeWitt.

THE COURT: What is the question?

Q (by Mr. Stone) The question relates to the statement down -- let's see -- about two-thirds down the page where General DeWitt states - they're talking about cover letters and Bendetson says, "The letters are prepared for your signature and everything is in readiness."

DeWitt says, "All right, and be prepared to ship them immediately upon receipt of these and we'll send another one to the Chief of Staff and I'll ask him in a personal letter to return the one he has."

Now, does that indicate to you that they're discussing the transmittal of the final report to Washington, D.C.?

MR. HALL: I don't know that this is for this witness to testify to. I think it's a matter of argument.

THE COURT: I think that's right.

MR. STONE: Okay, Your Honor.

THE COURT: The record is there and certainly you can argue that.

MR. STONE: I don't think I have any further questions at this time, Your Honor.

THE COURT: All right. Any redirect?

MR. HALL: Just briefly, Your Honor.

REDIRECT EXAMINATION

BY MR. HALL:

Q Good morning, Mr. Ennis.

Counsel this morning asked you about the effort by the ACLU brief in the Korematsu case to bring certain information to the Supreme Court's attention. Now, on your experience in working with the Solicitor General's office and otherwise, do you have an opinion as to the degree of attention that the Supreme Court gives to a brief from the Government as opposed to an amicus brief?

MR. STONE: Excuse me, Your Honor. If that's going to be an opinion quesiton, then I think he should say an amicus brief of the ACLU, which is a rather important organization --

THE COURT: I think you should add that.

MR. STONE: -- in the civil liberties field.

Q (by Mr. Hall) Do you have an opinion with regard to the degree of attention which the Court gives - which the Court gives to - relative degree of attention which the Court gives to briefs from the Department of Justice and, for example, the American Civil Liberties Union?

A I do.

Q What is your opinion?

A My opinion is that the brief of the ACLU, as

1 distinguished from some amici, that the Court gives them
2 substantial attention, almost equal to the attention to
3 the Government brief, because the ACLU is extremely careful
4 to have very skilled briefs filed with the Supreme Court
5 because it is the second largest litigator in the Supreme
6 Court after the Government of the United States.
7 Q Within the context of this particular controversy
8 involving the footnote issue and the information raised
9 before the Supreme Court in the amicus brief, the Supreme
10 Court was never told, isn't it true, that the Department
11 of -- strike that.
12 To what extent are you aware that the
13 Supreme Court was told of the dispute within the Department
14 of Justice regarding the footnote and the changing of the
15 footnote?
16 A None whatever.
17 Q Counsel showed you some exhibits with regard to
18 Terminal Island about which you also testified. Do you know
19 how many of the individuals on Terminal Island that are
20 referred to in the Ringle document that counsel brought to
21 your attention were on Government lists at or after December
22 7th, 1942?
23 THE COURT: Now, by Government lists, what
24 do you mean? They were ordered to be picked up?
25 Q (by Mr. Hall) Of suspected individuals who might

1 constitute a security risk to the United States.
2 A Numbers I don't know, but because of the location, in
3 the discharge of our own civilian government responsibilities
4 for security, the FBI would have concentrated on that
5 district and there would have been a great many more, for
6 example, than among farmers in the valley or something.
7 Q And you said, just to pick up that last thought, in
8 your examination that the situation on Terminal Island was
9 far different from farmers 300 miles away. Precisely what
10 did you mean by that?
11 A I mean that that was an area that was on the Coast and
12 adjacent to shipping and to installations, military
13 installations, that the Department of Justice was prepared
14 to exercise its authority to the full, even to excluding
15 anybody from Terminal Island of any nationality or descent
16 and to only allow people in there on permits for their
17 particular work.
18 Q I'd like to call your attention to the Hoover memorandum
19 which counsel asked you to look at which is tab 32, Exhibit
20 38, I believe. Just with regard to the last paragraph on
21 the first page, in the middle of that paragraph Mr. Hoover
22 writes, "I thought the Army was getting a bit hysterical."
23 Do you see that reference in the bottom paragraph on the
24 first page?
25 A "Losing our heads"? Oh.

1 Q We'll get to that in a minute, but in the middle of
2 the paragraph --
3 A Yes, I see the phrase.
4 Q "I thought the Army was getting a bit hysterical."
5 Then at the bottom of the paragraph Mr. Hoover writes:
6 "There was no sense in the Army's losing their heads as
7 they did in the Bonneville Dam affair where the power lines
8 were sabotaged by cattle scratching their backs on the
9 wires --"
10 MR. STONE: Your Honor, may I object
11 before he completes the question, if this is going to go
12 to the question of military necessity?
13 MR. HALL: It is not.
14 THE COURT: Well, let me try to recall
15 what questions you were asking with respect to this
16 memorandum. I do know that you asked a number of questions.
17 MR. STONE: I was not treating any of the
18 specifics about dangerousness. I was only talking about
19 Mr. Hoover's decision whether or not he wanted to be
20 responsible overall.
21 MR. HALL: I object to counsel interrupting
22 my question.
23 THE COURT: I'm going to let you go ahead
24 with your question.
25 MR. HALL: Your Honor, may I ask the Court

1 to ask counsel to not interrupt my questions?

2 THE COURT: I will ask you to do that.

3 Let counsel complete his question and then make your objec-

4 tion. If you will stand, I'll recognize you and rule upon

5 it.

6 Q (by Mr. Hall) Mr. Ennis, again, reading at the bottom

7 of the first page, the last paragraph:

8 "There was no sense in the Army losing

9 their heads as they did in the Bonneville Dam affair where

10 the power lines were sabotaged by cattle scratching their

11 backs on the wires or the 'arrows of fire' near Seattle

12 which was only a farmer burning brush as he had done for

13 years."

14 In your discussions with Mr. Hoover, did

15 he allude to his concerns about the intensity of the Army's

16 hysteria?

17 A No. I don't recall having any conversations with Mr.

18 Hoover on that.

19 Q Yesterday in your examination by Mr. Stone you were

20 asked a question something to the effect, internal disputes

21 within the Department of Justice being disclosed to the

22 Supreme Court, internal disputes over strategy in the case

23 within the Department of Justice or within various depart-

24 ments of the Government, being disclosed to the Supreme

25 Court, and you were asked about revealing to the Supreme

1 Court exculpatory information, and you answered something
2 to this effect, that generally exculpatory -- generally
3 information about disputes within a department would not be
4 disclosed to the Supreme Court, but then you said "There
5 are special circumstances in criminal cases where the dis-
6 closure of exculpatory evidence may be required."
7 Now, I may not have exactly the questions
8 and the answers precise, but I think that's generally what
9 you said.
10 A Yes.
11 Q Can you describe what you meant when you said that
12 there were special circumstances in criminal cases where
13 the disclosure of exculpatory evidence ought to be dis-
14 closed?
15 A Well, what I was trying to say, perhaps too briefly,
16 was that the rule about disclosing exculpatory evidence has
17 been developed in criminal cases, where as the prosecuting
18 official, it comes to their attention, whether it's the
19 prosecuting attorney himself, federal or state, or their
20 investigators, whether it's the FBI or the drug people,
21 that there is exculpatory evidence, and the rule is pretty
22 clear that if that emerges, that it must be disclosed to
23 the Court and to the jury.
24 Now, the thing we're dealing with in the
25 Supreme Court of the United States is it's not a criminal

1 case and I've never known of a case where there was an
2 occasion or a problem of disclosing something to the Supreme
3 Court of the United States, which is not the trial court,
4 where the Government has been under a problem of disclosing
5 it to the U.S. Supreme Court at that stage, which is not
6 evidence.
7 Q First, the Hirabayashi case was a criminal case, was it
8 not?
9 A Yes.
10 Q And if I might call to your attention again Exhibit 35,
11 tab 36. Do you remember this memorandum?
12 A I do.
13 Q Calling your attention specifically, for example, to
14 the last page, top paragraph, in which you discuss the
15 approximation of suppression of evidence.
16 A Yes.
17 THE COURT: I'm going to have to get the
18 tab and the exhibit number, please, Mr. Hall.
19 MR. HALL: It's tab 36, Your Honor, Exhibit
20 35.
21 THE COURT: All right.
22 Q (by Mr. Hall) Now, is it true, Mr. Ennis, that what
23 you were urging in this memorandum to the Solicitor General
24 was that there may be exculpatory evidence which ought to
25 be brought to the Supreme Court's attention along the lines

1 of the discussion which you've just given us with regard to
2 exculpatory evidence?
3 A Yes. What I said is, "It occurs to me that any other
4 course than revealing the Naval Intelligence position might
5 approximate the suppression of evidence." I was calling
6 this to the attention of the Solicitor General, saying that
7 this might be an example where the Government would be under
8 an obligation to disclose a contrary view than that which
9 was expressed in the Army's position and in our brief.
10 That's correct.
11 Q Now, Mr. Ennis, I'd like to call your attention to
12 tab 19 which is Exhibit 98, I believe. It's the oral argu-
13 ment in the Korematsu case of Mr. Fahy. In particular, I'd
14 like you to look at pages 7 and 9 and I'll take you to the
15 parts of those pages during the recess so we can not waste
16 the Court's time while you read it, because it's a quarter
17 of 11.
18 A I have it in front of me.
19 THE COURT: We are right at recess time,
20 but I think you made reference to pages 7 and 9.
21 MR. HALL: Right. I'll call the Court's
22 attention to the precise paragraph after the recess.
23 THE COURT: All right. We'll take a
24 recess, then, until 11 o'clock.
25 (Recess.)

1 MR. HALL: Your Honor, I have called the
2 Court's and the witness's attention to Exhibit 98, tab 19,
3 pages 7 and 9. With the Court's permission, I would like
4 to read portions and then ask a question.
5 THE COURT: All right. This is a portion
6 of the transcript of the argument of the Solicitor General.
7 MR. HALL: Before the United States Supreme
8 Court in the Korematsu case.
9 Q (by Mr. Hall) Mr. Ennis, on page 7, the paragraph that
10 begins in the middle of the page, "It is even suggested --"
11 A Yes.
12 Q I would like to, with the Court's permission, read that
13 paragraph.
14 "It is even suggested that because of some
15 footnote in our brief in this case indicating that we do
16 not ask the Court to take judicial notice of the truth of
17 every recitation or instance in the final report of General
18 DeWitt, that the Government has repudiated the military
19 necessity of the evacuation. It seems to me, if the Court
20 please, that that is a neat little piece of fancy dancing.
21 There is nothing in the brief of the Government which is
22 any different in this respect from the position it has
23 always maintained since the Hirabayashi case, that not only
24 the military judgment of the General but the judgment of
25 the Government of the United States has always been

1 justification for the measures taken, and no person in any
2 responsible position has ever taken a contrary position
3 and the Government does not do so now. Nothing in its
4 brief can validly be used to the contrary."
5 Then, Mr. Ennis, to page 9 at about three
6 inches from the bottom of the page, the Chief Justice asks
7 the following:
8 "As I understood the argument of the other
9 side, it was that this report, taken as a whole, could be
10 taken to exclude the possibility of the basis for military
11 judgment to continue these exclusion orders. We are
12 dealing now only with the exclusion orders."
13 "MR. FAHY: Yes, that is our position.
14 "THE CHIEF JUSTICE: Do you challenge that
15 position?
16 "MR. FAHY: We say that the report proves
17 the basis for the exclusion orders. There is not a line in
18 it that can be taken in any other way. It is a complete
19 justification and explanation of the reasons which led to
20 his judgment."
21 Now, Mr. Ennis, the question I would like
22 to ask you is whether this recitation by the Solicitor
23 General in effect repudiates the limitations of the footnote
24 that you helped to construct, arising out of the controversy
25 within the Department of Justice as to what that footnote

1 should contain.

2 A Well, it certainly diminishes or waters down the foot-

3 note, in my opinion.

4 Q In your examination yesterday, you were asked questions

5 about the hearings that were afforded the enemy aliens that

6 were arrested and placed under your control.

7 A Yes.

8 Q Is it a fair statement -- I think you said that these

9 were - you had a word for it and I'm not sure exactly what

10 the word was - some kind of due process hearing, limited

11 due process hearing; is that what you said?

12 A I think that's what I said, yes.

13 THE COURT: Let me ask a question about

14 that. I know that you said it included German aliens, some

15 Italian aliens. Did it also include Japanese aliens?

16 THE WITNESS: Oh, yes. The two large

17 groups were German and Japanese, and smaller groups were

18 Italian, and a much smaller group were a few Hungarians

19 and Rumanians. Any one of the enemy nationalities.

20 THE COURT: Who were taken into custody?

21 THE WITNESS: Yes.

22 Q (by Mr. Hall) These people were taken into custody

23 because they, as individuals, were suspected of presenting

24 a danger to the security of the United States?

25 A Because there were FBI written reports containing

information of certain kinds of connections with the enemy nation which we thought was a basis for their temporary detention and hearing and a decision as to whether they should be interned, paroled or released.

Q Can you draw, based upon your own experience, the differences as to how these enemy aliens were treated and the individuals of Japanese ancestry, including Japanese-American citizens were treated, with regard to the issues that are involved in the Hirabayashi case? Let's take, first off, describe the basis for a determination that the individuals represented, as an individual, a security threat to the United States. Let's take first the enemy aliens. What determination was made that an individual enemy alien constituted a threat to the security of the United States?

A Well, there were certain general categories. Anyone who had served in the armed forces of Germany or Japan or of Italy, a man would be considered as a person whom our government should be entitled to put away instead of having to watch him. We were fighting a war, and that would be one category.

Membership in German or Japanese, or even some Italian, associations indicated strong ties with the enemy nation and perhaps the enemy government. The Bundas and a number of Japanese organizations, which we thought indicated a sufficient tie with the enemy.

1 Then, at that hearing, --

2 THE COURT: Let me ask this, if I may.

3 That, I assume, included only certain of those associations.

4 THE WITNESS: Oh, yes.

5 THE COURT: Japanese-Americans was not one

6 of them?

7 THE WITNESS: Oh, no, no. Associations

8 which our information showed an active interest in the

9 welfare of Germany or Japan, as the case might be.

10 Q (by Mr. Hall) So individual determinations were made

11 about the individuals and their associations as threats to

12 the United States?

13 A Yes, and their accountability. Of course they came

14 in with witnesses and presented countervailing information.

15 Q What kind of individual attention was given to

16 Japanese-Americans and Japanese aliens who were not among

17 the enemy aliens that came under your control but who were

18 nonetheless subjected to curfew or exclusion?

19 A Individual determination?

20 Q Yes.

21 A No. The travel regulation we had, Japanese aliens

22 could not travel without permission. That applied to every-

23 body without any reference to any attitude they might have

24 about Japan. The same for any curfew that the Justice

25 Department applied.

1 THE COURT: Were any -- I believe counsel
2 is inquiring about hearings. Were any hearings held?
3 THE WITNESS: No, no. No hearings. They
4 were general application without hearings, regulation of
5 that type.
6 Q (by Mr. Hall) So the known enemy aliens received
7 hearings?
8 A Only enemy aliens who were subjects of detention.
9 Q Yes. And what about the Japanese-Americans and other
10 Japanese aliens who were subject to detention but were not
11 classified as enemy aliens, were they given hearings?
12 A We claimed no jurisdiction over American citizens of
13 Japanese ancestry.
14 Q So would it be safe to say that the known enemy aliens
15 received greater due process from the United States than
16 the citizens of the United States who were of Japanese
17 nationality who were put in exclusion camps?
18 A That the Japanese aliens --
19 THE COURT: Let me stop you. I think again
20 that's something for the Court to decide.
21 MR. HALL: I just thought I'd try.
22 THE COURT: Yes.
23 Q (by Mr. Hall) Now, I think the last series of
24 questions that I would like to -- I guess there is one other
25 series that I'd like to ask you about.

1 Exhibit 42, please. It's tab 38. It's a
2 memorandum from Mr. Burling to Mr. Ennis.
3 THE COURT: Is this the Burling of
4 Covington & Burling?
5 THE WITNESS: It's the son of the founder
6 of that firm, Your Honor.
7 Q (by Mr. Hall) Now, yesterday Mr. Stone asked you a
8 question, the general import was whether you knew the
9 Federal Communications Commission information about which
10 we've been talking, was ever provided to General DeWitt,
11 and your answer was "I don't know."
12 I'd like to ask you to take a look at
13 Exhibit 42 and see if that refreshes your memory so that
14 you can now answer the question, and in particular, page 2,
15 the next to the last paragraph.
16 A Yes.
17 Q Now, if I were to ask you whether information was
18 brought to your attention in 1944 as to whether General
19 DeWitt received the Federal Communications Commission infor-
20 mation we've been talking about in this trial, and after
21 having reviewed Exhibit 42, what would your answer be?
22 MR. STONE: That's calling for a double
23 predicate of an "if".
24 THE COURT: I think the memorandum is in
25 evidence. You can argue from that.

1 MR. HALL: Thank you.

2 Q (by Mr. Hall) The last questions I would like to ask
3 you, Mr. Ennis, are with regard to Hawaii. Were Japanese-
4 American citizens or Japanese aliens, other than identified
5 enemy aliens, in the territory of Hawaii put in exclusion
6 camps?

7 A No. There was no -- there was general martial law but
8 there was no program like that on the mainland.

9 MR. HALL: Thank you. I have no further
10 questions.

11 THE COURT: Let me ask a question on that
12 because that has really puzzled me. Why were they not?

13 THE WITNESS: For one reason, there was
14 no transport available. Our transport was all busy fighting
15 the war in the Pacific and not moving American citizens or
16 peaceable aliens around, and so it was never considered.
17 The military, like other human beings, are bound by the
18 possible, and they will expand their programs in relation
19 to what the population permits, and in Hawaii where a third
20 of the population were of Japanese origin, there was just
21 no question of having any kind of a detention or removal
22 program. It would have disrupted the entire economy and
23 even its war activity.

24 THE COURT: Was there any difference in
25 the attitude of the military commander in that area than on

1 the West Coast that you are aware of?

2 MR. HALL: Toward the Japanese?

3 THE COURT: Yes.

4 MR. HALL: Japanese-Americans.

5 THE COURT: Toward the Japanese citizens.

6 THE WITNESS: I only know it in the general

7 sense that the overall commander, Admiral Nimitz and the

8 Army commander, General Robinson or Robertson --

9 THE COURT: Wasn't it Richardson?

10 THE WITNESS: Richardson. Yes. General

11 Richardson, they insisted on maintaining martial law which

12 was close control on the whole population, and that being

13 the case, I never dealt with them on the basis of what they

14 felt about the Japanese third of the population. We never

15 got to that.

16 Q (by Mr. Hall) You commented that the Japanese

17 represented a third of the population of the Territory of

18 Hawaii, were important to the economy of Hawaii. Could you

19 describe or elaborate a little bit more about the

20 importance to the economy in the context of the decision

21 not to place Japanese-Americans and non-enemy aliens of

22 Japanese extraction in exclusion camps.

23 A I don't have any information about that more than any

24 other citizen. They were in the whole economy, spread

25 through the whole economy.

THE COURT: Any recross?

MR. STONE: Yes, Your Honor.

RECROSS-EXAMINATION

BY MR. STONE:

Q With respect, if we can, going back to the ACLU brief in the Korematsu case, could you tell us who the first signator -- do you know who the first signator of that brief was, Mr. Ennis?

A Yes. I don't know Cary McWilliams personally, but I knew him as a Californian who was active in civil liberties matters, and I think a writer for The Nation magazine, and the author of one book that I have read. I think it was a book about this problem of persons of Japanese ancestry on the West Coast.

Q Do you know who Nanette Dembitz is?

A Oh, Nanette? Yes. She's a life-long personal friend of mine who worked for me in the Department of Justice on the Hirabayashi and the Korematsu briefs and now is a close neighbor of mine in New York.

Q Do you recall that she wrote an article --

THE COURT: Would you give me her name again?

MR. STONE: Nanette Dembitz, D-e-m-b-i-t-z.

Q (by Mr. Stone) Do you know that in 1945, shortly after

her participation in writing the judicial notice arguments in these cases, she wrote a Law Review article about the cases?

A Yes.

Q In that article, in a footnote, she points out that Cary McWilliams in his book cited by Justice Murphy in his, Justice Murphy's, dissent in the Korematsu case, that Cary McWilliams identifies Commander Ringle as the author of this Harper's magazine article, identifies him by name before the case is decided. Did Nanette Dembitz mention that to you? Can you recall if she mentioned that to you in 1945?

A No, I can't recall any discussion with Nanette about her article at all.

Q Right. If she had mentioned to you, if she had brought to your attention just before the Supreme Court argument the fact that one of the signators to the ACLU brief was publicly aware that Lieutenant Ringle was the author of the Harper's magazine article, Lieutenant Ringle of the ONI, would that have alleviated some of your apprehension about writing a slightly different footnote?

MR. HALL: I don't think that's relevant.

A No.

THE COURT: I'm going to sustain the objection.

1 Q (by Mr. Stone) Am I correct that roughly in the 1942
2 to '43 period with respect to your duties at the Department
3 of Justice, you had quite a bit of trouble with Generals,
4 not only in the Western Defense Command but also in the
5 Eastern Defense Command, who didn't like the way the
6 Department of Justice carried out its decision?
7 A We differed with Lieutenant General Drum in charge of
8 the Eastern Defense Command on the same basis as we differed
9 with General DeWitt of the Western Defense Command.
10 Q And with Admiral Nimitz and General Richardson out in
11 Hawaii?
12 A Yes.
13 Q I would like to go back for a moment to that trans-
14 cript of the Korematsu argument, which is tab --
15 THE COURT: Tab 19.
16 Q -- tab 19, Exhibit --
17 THE COURT: 98.
18 Q -- 98. Would you please go to page 8 of the transcript.
19 A Yes.
20 Q About halfway down the page, Mr. Justice Jackson
21 states: "What is the status of this report?" He's talking
22 about the final report. "It does not seem to be a report
23 to Congress."
24 Mr. Fahy says, "No, it is a report of the
25 Commanding General to the Secretary of War."

1 Was that an accurate representation by --
2 A Yes.
3 Q Okay. If you will now just jump for a moment here to
4 the transcript on page 10. Mr. Fahy says, about halfway
5 down the page again, "If, as a matter of fact, from all the
6 Court can take judicial notice of or consider in any other
7 way, the Court is left in doubt as to whether there was a
8 rational basis for the judgment, I think you have a
9 different question. We stand on the proposition that there
10 is sufficient from what is known as a matter of public
11 knowledge, and which is not controverted, to support the
12 judgment. We are not speaking here, Your Honor, of merely
13 the judgment of the Commanding General in the area."
14 Is that an accurate statement?
15 A Well, it's not a statement I agree with. I think the
16 Supreme Court held that the issue was the judgment of the
17 Commanding General in the area. Mr. Fahy here seems to be
18 taking the position that it was the judgment of the Govern-
19 ment of the United States. Now, the difficulty with that
20 is quite simple. Mr. Fahy was not involved in the
21 administration of the program or the disagreement by the
22 Department of Justice with the War Department; not involved
23 at all in objecting to the decision that was made to give
24 this authority to the Commanding General. Mr. Fahy was the
25 Government lawyer arguing the Army's case and this is the

way he argued it.

Q But he did represent on behalf of the United States, did he not, that this represented more than simply the decision of the Commanding General. Correct?

A That's what he says here.

Q Okay. And when he makes concession in the Supreme Court, that does bind the United States; isn't that correct?

A It depends on the circumstances.

Q Well, you've argued many cases. Is it binding?

THE COURT: I think that's a legal argument to be addressed to me.

Q (by Mr. Stone) Would you turn back to page 8 for a moment, of the transcript?

A Yes.

Q To continue where we were reading before, Mr. Justice Jackson says: "Is it your view that the Court can take judicial notice of the facts which it recites?" They had just finished talking about the particular report of the Commanding General.

A Yes.

Q Mr. Fahy says, "Not all of them, Your Honor. I think the Court is required to take judicial notice only of those facts which are of the character of public general knowledge. Beyond that as to the details in the report, certainly the Court is entitled, it seems to me, to consider them in

1 proving what the General was thinking, his motive, and what
2 he had before him when he made the judgment which he made.
3 Otherwise I see nothing to be done, if the Court please,
4 except that the case go back to be heard and that all this
5 be gone into in a trial, which the Government does not
6 suggest."
7 Is it quite clear, however, from that
8 that Mr. Fahy certainly pointed out that if public judicial
9 notice couldn't be taken, all that could be done would be
10 that the question be heard and that the case go back for a
11 trial. Wasn't that made quite plain to the Supreme Court
12 there?
13 MR. HALL: I believe the document speaks
14 for itself.
15 THE COURT: I think it does, and I think
16 that's an argument to be addressed to me.
17 MR. STONE: Okay.
18 Q (by Mr. Stone) Finally, if you will look at page 12
19 at the bottom, Mr. Fahy is talking about General DeWitt's
20 report. Mr. Fahy says at the bottom of page 12, "As to
21 General DeWitt's report, Mr. Justice Frankfurter, he con-
22 cludes in his report, after reviewing all the reasons which
23 had motivated him from the military standpoint, with the
24 following statement: The Commanding General, charged as he
25 was, with the mission of providing for the defense of the

West Coast, had to take into account these and other military considerations. He had referred to them in the body of his report. He had no alternative but to conclude that the Japanese constituted a potentially dangerous element from the viewpoint of military security, and military security required their immediate evacuation to the interior. The impelling military necessity had become such that any measures other than those pursued along the Pacific Coast might have been too little and too late."

Mr. Justice Frankfurter states: "That does not preclude the conviction that a wiser man would not have so concluded."

Mr. Fahy says: "Of course not. The military may make mistakes. We know of many that have been publicized during this war." Then he says "I will not say many; we know of some," and he says, "For example, in the invasion of Sicily, hundreds of our own men were shot down by our own forces. Someone made a mistake."

The Chief Justice says, "The military necessity could not be measured wholly in terms of invasion. It included the dangerous envisage by the Presidential order which related to espionage and sabotage."

Mr. Fahy: "That is correct."

He's saying -- isn't he saying that what is correct is the first statement, that it may not be

1 measured wholly in terms of invasion?

2 MR. HALL: The same objection.

3 THE COURT: Well, I think with respect to

4 the argument made by the Solicitor General, those arguments,

5 and they may be good arguments, should be addressed to the

6 Court.

7 MR. STONE: Okay. Well, let me just ask

8 the last question.

9 THE COURT: Does it have to do with asking

10 this witness to comment upon the argument?

11 MR. STONE: Not upon the argument so much

12 as the brief which he participated in.

13 THE COURT: You ask the question.

14 Q (by Mr. Stone) On the bottom, the last few lines of

15 that transcript, and at the top of page --

16 A What page?

17 Q Page 13, the bottom of 13 and continuing, Mr. Fahy

18 characterizes the problem on the very first line of the top

19 of page 14 by saying, "The danger was such that he, General

20 DeWitt, could not feel secure in the defense of the West

21 Coast without the removal of this part of the population."

22 Is that the same line, the same argument

23 that the Government's brief took, that General DeWitt could

24 not feel secure?

25 A I don't think the argument in the brief is quite as

1 broad as that, that he could not feel secure. That's a very
2 general statement.
3 Q Do you recall that at page 63 of the brief for the
4 United States in the Korematsu case, it is stated there,
5 "The United States does not say that there was any specific
6 instance and does not rely on any specific instance of
7 sabotage or espionage but rather simply relies on probability,
8 possibility and tendencies which caused those in the
9 decision making position to feel that they would have
10 encountered a problem. Do you recall that?
11 THE COURT: Here again, that brief is
12 either in evidence or is going to be, so it makes no
13 difference.
14 MR. STONE: Okay.
15 Q (by Mr. Stone) You were quite familiar at that time
16 with Dillon Myer, weren't you, Mr. Ennis?
17 A Yes. He was the second director of the War Relocation
18 Authority.
19 THE COURT: Would you spell his name?
20 THE WITNESS: D-i-l-l-o-n.
21 THE COURT: Dillon.
22 THE WITNESS: And Myer, M-e-y-e-r.
23 MR. STONE: I believe it's M-y-e-r.
24 THE WITNESS: All right. M-y-e-r.
25 Q (by Mr. Stone) Was he an individual who was rather

1 cool-headed about the situation?

2 THE COURT: Is this proper recross? I

3 haven't heard a question asked about him.

4 MR. STONE: Well, Your Honor, Dillon Myer,

5 there is a Dillon Myer document in here, as well as he is

6 the individual who gave Mr. Ennis the final -- was the

7 first person to give Mr. Ennis the final version of the

8 final report, the one he was having trouble getting. That's

9 why I'm discussing that.

10 THE COURT: What is the tenor of your

11 question going to be?

12 MR. STONE: Well, I'm trying to find out

13 what his relationship was with Dillon Myer and whether

14 Dillon Myer was open and free with Mr. Ennis in discussing

15 these matters.

16 MR. HALL: Your Honor, we respectfully --

17 THE WITNESS: We had a cordial relation-

18 ship.

19 THE COURT: I'm sorry?

20 MR. HALL: This is beyond the scope of

21 our redirect and if counsel wanted to ask that question,

22 he had an opportunity in his cross-examination.

23 THE COURT: I think that's right. I'm

24 going to sustain the objection. It seems to me such a

25 tangential area. I'm going to sustain the objection.

1 MR. STONE: All right. Let me take it from
2 a different -- pursue this in somewhat different ways.
3 Q (by Mr. Stone) If we would turn to tab 21, Exhibit
4 107, please. That's the conference with General DeWitt on
5 Friday, January 9th.
6 A Yes.
7 Q And if you'll look at the beginning of the last para-
8 graph -- well, this is, if I may just state for the record,
9 a conference with General DeWitt at San Francisco, Friday,
10 January 9th --
11 THE COURT: Was that '42?
12 Q -- 1942. In attendance are Colonel Forney, G-2, in
13 charge of counterespionage, Colonel Stroh, G-2, Lieutenant
14 Colonel Smith, Assistant Chief Signal Officer, Colonel
15 Brace, Chief Signal Officer, Colonel Warren, Public
16 Relations Officer, Intelligence --
17 THE COURT: What is the question you want
18 to ask this witness?
19 MR. STONE: I want to call his attention
20 to the fact that they were discussing -- well, the first
21 sentence of the next to the last paragraph says, "The
22 General launched into quite a discourse --"
23 THE COURT: Let me say this: This witness
24 apparently was not present at that conference.
25 MR. STONE: Your Honor, --

1 THE COURT: The exhibit is in evidence, so
2 you can make the argument to me.
3 MR. STONE: I want to ask whether the
4 statement that I just made before, the question which I just
5 asked before about the transcript --
6 THE COURT: What Fahy said?
7 MR. STONE: Yes. This relates to that.
8 THE COURT: You can make the argument to
9 me. As a matter of fact, it's --
10 MR. STONE: May I ask --
11 THE COURT: -- it's not proper recross.
12 I think you know that.
13 MR. STONE: They just went into the FCC
14 relationship. They just opened that up, Your Honor. This
15 is a report of that FCC -- they just established on
16 redirect with Mr. Ennis that Mr. Ennis was aware of the
17 FCC report saying that there was not signaling. That was
18 just opened up on redirect. This is a meeting -- this is
19 a report of that meeting by that very same FCC person, and
20 this was attached -- this is an attachment to that 1944
21 FCC response.
22 THE COURT: What is your question?
23 MR. HALL: Well, I believe Your Honor didn't
24 allow me to ask the question about Mr. Ennis' knowledge
25 because you said that the document spoke for itself. I was

1 referring to another document, too, Your Honor.

2 THE COURT: I really have forgotten my

3 ruling.

4 MR. STONE: May I ask the question?

5 THE COURT: No. Let me just take a look.

6 MR. STONE: This also relates to the state-

7 ment --

8 THE COURT: Why don't you let me read my

9 notes?

10 MR. STONE: Okay.

11 THE COURT: I don't see anything on

12 redirect, but I'll let you ask the question and then rule

13 on it.

14 MR. STONE: I will. Okay.

15 Q (by Mr. Stone) Mr. Ennis, I want you to keep in mind

16 that in the last piece of the oral argument transcript we

17 just read that Mr. Fahy was talking with the Supreme Court

18 about the fact that military commanders make a lot of

19 mistakes.

20 Now, looking at the first sentence of the

21 last paragraph on page 1 of tab 21, the FCC person reviewing

22 this report says "Since General DeWitt seemed concerned

23 and in fact seemed to believe that the woods were full of

24 Japs with transmitters, I proceeded to tell him and his

25 staff," and he goes on to tell them basically that he

1 thought General DeWitt was wrong.

2 Now, on the next page in the first para-

3 graph, the person from the FCC continues to report how

4 General DeWitt's staff is really -- he says worse than

5 incompetent. He says "I have never seen an organization

6 that was so hopeless to cope with radio intelligence

7 requirements."

8 Then, in the middle of the paragraph, he

9 says, "These officers, knowing no difference, pass it on to

10 the General and he takes their word for it. It's pathetic

11 to say the least."

12 THE COURT: What is the question you want

13 to ask.

14 Q (by Mr. Stone) The question is, is this the information,

15 because this report was actually passed to the Department of

16 Justice in 1944, which would have supported Mr. Fahy's

17 statement in the Supreme Court that a mistake was what was

18 involved by a General who was being misinformed.

19 THE COURT: That's an argument to be made

20 to me.

21 MR. STONE: Okay.

22 Q (by Mr. Stone) The last thing I'd like to do is turn

23 to tab 36, Exhibit 35. I'm sorry. I've gotten them in the

24 wrong order. I'd like to turn to -- it's tab 94, Exhibit

25 112.

Turning to page 4 of that document, the last two sentences on page 4, state: "The Commanding General of the Western Defense Command had responsibility for defending --" This is a letter from Dillon Myer. States: "The Commanding General of the Western Defense Command had responsibility for defending the West Coast but had not had direct supervision of intelligence work among West Coast Japanese. His confidence in the thoroughness of the cleanup operations immediately following the outbreak of the war was something less than complete."

Did Dillon Myer ever express those same statements to you in your various conversations with him?

A Not to my recollection. I don't recall Dillon being involved in this problem. He was busy taking care of the camp as far as I knew.

MR. STONE: Finally, Your Honor, I have a document which is one that was brought in before. It's a document that has already been in evidence and discussed several times. It is the Ringle report, the version -- the same Ringle report, a version of which was published in Harper's magazine.

THE COURT: Isn't that an exhibit?

MR. STONE: Except this one includes a cover letter, and Your Honor has said we could use cover letters. It's a one-page cover letter, transmittal letter.

THE COURT: All right.

Q (by Mr. Stone) May I have it handed to the witness, please? It is marked as Respondent's Exhibit No. A-77.

Would you turn over the first page for a moment, Mr. Ennis, and look at the second page?

A Yes.

Q This is the same Ringle report dated -- I'm not sure where the date is on this one, but this is a copy of the same Ringle report which was abstracted in the Harper magazine article. Now, if you'll go back to page --

MR. HALL: Just a minute. I object to the characterization.

MR. STONE: Would you like me to have him read it?

THE COURT: Let's go ahead. I think we all understand this is the Ringle report that we've been talking about.

MR. STONE: Thank you.

Q (by Mr. Stone) Would you now look back at the first page and right at the second paragraph, please. It states that "The Ringle report was prepared at the request of the Office of Naval Intelligence. The following statement by Mr. C. V. Munson, 'In a survey of Japanese on the West Coast, that Lieutenant Commander Ringle is particularly well acquainted with the Japanese problem'."

1 Would you read for us, please, the third
2 paragraph on the first page?
3 A "Although it does not represent the final and official
4 opinion of the Office of Naval Intelligence on this subject,
5 it is believed that this report will be of interest to the
6 Federal Bureau of Investigation."
7 Q Were you aware of this in 1944 when you reported to
8 the Attorney General that it did represent -- that you were
9 unofficially informed that it did represent the views of
10 the Office of Naval Intelligence?
11 THE COURT: Did you say the unofficial or
12 the official view? What did you say in your question?
13 MR. STONE: Well, my question, I would have
14 to ask the reporter, but the official view.
15 A I was never aware of this report -- of the transmission
16 of this report of February '42 to the FBI.
17 Q If you had been aware of it, would you have said any
18 such thing; that Ringle's report represented the official
19 views of the Office of Naval Intelligence?
20 MR. HALL: Your Honor, I want to object for
21 a couple of reasons. There is nothing that indicates that
22 between the time of February 14th, 1942 and the time when
23 Mr. Ennis communicated to his superiors about the Ringle
24 memorandum that it did not then become an official view,
25 and secondly, it is beyond the scope of the redirect.

1 THE COURT: Well, I think the argument can
2 be made to me, this covering letter is now in evidence.
3 Let me ask, I thought you said that you were not aware
4 of this letter; isn't that correct?
5 THE WITNESS: In 1942, no. My acquaintance
6 with the Navy view came up as we developed the cases, Your
7 Honor.
8 THE COURT: All right.
9 Q (by Mr. Stone) Would you turn to tab 36 which is
10 Exhibit 35 and look at page 2?
11 A Yes.
12 Q On page 2 the paragraph begins, and this is your memo
13 to the Solicitor General regarding the Japanese brief in
14 this very case, the Hirabayashi case. You state: "In
15 addition, I am informed entirely unofficially by the
16 persons in the Office of Naval Intelligence that Lieutenant
17 Commander Ringle in fact was lent to the War Department,
18 War Relocation Authority, to prepare a manual on the back-
19 ground of the Japanese," and then if you will skip down to
20 the next paragraph, the beginning of the next paragraph,
21 you say: "I have furthermore been most informally but
22 altogether reliably advised that both the article and the
23 WRA memorandum prepared by Lieutenant Commander Ringle
24 represent the views if not of the Navy, at least of Naval
25 Intelligence officers in charge of Japanese counter-

1 intelligence and war."

2 Do you remember who would have unofficially

3 told you any such thing?

4 A No.

5 Q Mr. Ennis, you stated a moment ago to me that if you

6 had had the cover letter in your scope of knowledge, you

7 might have addressed the question differently to the

8 Solicitor General; isn't that right?

9 THE COURT: I don't think that's true.

10 A No.

11 THE COURT: I think I stopped the question

12 at the point you asked it.

13 MR. STONE: Oh, I'm sorry.

14 THE COURT: I said the argument could be

15 made to me.

16 MR. STONE: May I now, having pointed out

17 that that is the critical -- one of the critical memos,

18 is a pre-decisional in this Hirabayashi case, memo from Mr.

19 Ennis to the Solicitor General. It's in a critical period,

20 April 30th, 1943, suggesting that he was under the

21 impression that Ringle's report represented the views of

22 the Office of Naval Intelligence, I would just like to

23 follow up now --

24 THE COURT: All right. I'll permit you to

25 ask whether when he wrote the memorandum of April 30, 1942,

1 if he had been aware of the letter of February 14, 1942,
2 would he have said what he did in his memorandum. Is that
3 your question?
4 MR. STONE: That's the question.
5 MR. HALL: I want to respectfully object
6 to that, recognizing the Court has ruled, because I think
7 that there are several things that are wrong with that
8 question, not the least of which there is no evidence that
9 it didn't subsequently become the official position of ONI.
10 THE COURT: I'm going to stop your objec-
11 tion. I know your objection, but I would rather see what
12 the witness has to say about it.
13 THE WITNESS: Would you repeat the question?
14 I'm sorry, but I lost the thread of it in the colloquy.
15 THE COURT: Let me try to rephrase it,
16 since I was the one who phrased it. That is, if you had
17 been aware on April 30, 1943, when you wrote your memorandum,
18 which is Exhibit No. 35, if you had been aware at that time
19 of the letter of February 14th, 1942, which is A-77, that
20 transmittle letter -- do you have that?
21 THE WITNESS: Well, I don't, but I have it
22 in mind.
23 THE COURT: Let's get that back in your
24 hands.
25 THE WITNESS: Yes. Mr. Tamm. Yes, I have

1 it here.

2 THE COURT: If you had been aware of the

3 contents of that transmittal letter, would you have stated

4 in your memorandum of April 30, 1943, what you did state with

5 respect to the Ringle report? Is that satisfactory?

6 MR. STONE: That's right. That it repre-

7 sented the official view of the Office of Naval Intelligence.

8 A I don't state that.

9 Q (by Mr. Stone) You said you were informed entirely

10 unofficially but reliably?

11 A That it was the view of the officers dealing with

12 Japanese counterintelligence but not the official view of

13 the Office of Naval Intelligence.

14 Q I see. In other words, you never meant to suggest

15 that the Ringle report represented the official views of

16 the Office of Naval Intelligence?

17 A Well, I only meant to suggest what I said, and I think

18 it's pretty clear what I said.

19 Q Okay. If you had had this cover letter, would you

20 have felt obliged to go further and say, "However, we have

21 been informed it does not--

22 THE COURT: That's speculative. Let's go

23 on to another question.

24 MR. STONE: Well, Your Honor, --

25 THE COURT: No. Let's go to another

1 question. You can argue that to me.

2 MR. STONE: Okay.

3 Q (by Mr. Stone) Would you look at the second from the

4 last line on that cover letter?

5 THE COURT: I don't want any more questions

6 about the cover letter. The cover letter is in evidence.

7 MR. STONE: Your Honor, --

8 THE COURT: That was written fifteen months,

9 something like that, before his memorandum, but you can

10 argue it to me.

11 MR. STONE: Your Honor, would you please

12 let me just answer this one.

13 THE COURT: No.

14 MR. STONE: Then I would like to state for

15 the record my objection.

16 THE COURT: All right. You go ahead.

17 MR. STONE: For the record, I'd like to

18 point out that the cover letter shows a copy to the Alien

19 Enemy Control Unit, Department of Justice, which Mr. Ennis

20 headed at that time.

21 THE COURT: I thought he stated that he

22 himself was not aware of that memorandum.

23 MR. STONE: I know, and I want to point out

24 to him that it was officially sent to the unit he headed.

25 THE WITNESS: I saw that.

THE COURT: Do you want to comment on that?

THE WITNESS: I don't remember ever seeing this is all.

MR. STONE: That's what I wanted to elicit.

Q (by Mr. Stone) So then it is possible that in the tremendous amount of paperwork that you got, it got lost in the shuffle in your office?

A No. Somebody else in my office saw it.

THE COURT: Let's leave that cover letter alone. It's in the record. You can argue from it. Let's go ahead.

Q (by Mr. Stone) On the redirect you were asked about the Japanese problem in Hawaii and you pointed out that there was not enough transport to move them from Hawaii.

A For one thing.

Q Nonetheless, the generals in Hawaii and the War Department in Washington were recommending the same kind of evacuation of Hawaii, if there had been no transport problem, that was going on on the West Coast; isn't that true?

A No, that's not my understanding at all.

Q Were you involved in those discussions?

A No.

MR. STONE: Thank you, Your Honor. I have no further questions.

THE COURT: All right. Dare I ask, are there any further questions?

MR. HALL: We have no further questions. We would request that the witness be released so that he can sit in and listen to the rest of the trial.

THE COURT: I think that would be all right.

THE WITNESS: Thank you, Your Honor.

THE COURT: You may stay in court if you care to.

THE WITNESS: Thank you.

(Witness excused.)

THE COURT: Ready to call your next witness?

MR. KAWAKAMI: Your Honor, if I might, --

THE COURT: Would you excuse me just a moment? I think it might be better for you to sit back there since there is plent of room now, I believe.

MR. KAWAKAMI: Your Honor, if I might, at this particular time, the next witnesses we had deal mainly with obtaining the documents, and I would like to perhaps go over briefly our documents and give you a short synopsis of how we believe it fits into the case, and then we intend to call the witnesses for purposes of seeing where they obtained the documents.

THE COURT: Well, I don't want to spend the

time on doing that, that is, going through the documents. I think the witnesses can testify as to the difficulty without my having to go through -- without your having to go through all of it with me.

MR. KAWAKAMI: That's fine.

THE COURT: Let's do it that way.

MR. KAWAKAMI: That's fine. The next witness we would call is Dr. Peter Irons.

MR. STONE: Excuse me, Your Honor. There is, I think, a problem that has just been brought to my attention about this. Would you like me to discuss it here now?

THE COURT: Well, is it something that you feel is somewhat confidential?

MR. STONE: Yes.

THE COURT: Because I can have a conference with you and counsel and the court reporter.

MR. STONE: Yes.

THE COURT: All right. Let's do that. We'll go into this little room right here.

(The following proceedings occurred in the chambers of the Court:)

MR. STONE: Your Honor, in the transcript of the proceedings on May 7th in this case, when I was informed Mr. Irons would be called as a witness, at that

1 time I said, "Is he going to resign as counsel in the case?"
2 Mr. Hall said, "I don't know. He is counsel of record."
3 I said "He is counsel of record." Then you said, "I
4 wouldn't hear him if he is counsel of record."
5 I was told that as of this morning he has
6 never filed a motion to withdraw as counsel of record.
7 MR. HALL: He is not counsel of record.
8 He has never applied to appear before this Court. I think
9 he signed the petition. He has never applied to become
10 counsel of record. Indeed, counsel has repeatedly com-
11 plained about who counsel of record was and wanted to be
12 dealing with counsel of record, and that's why we made it
13 quite clear over and over, it used to be Kathryn Bannai and
14 me and then it became Rod and me, and counsel has complained
15 because he was having to deal with a whole lot of people.
16 THE COURT: I don't like the fact that
17 somebody is a witness who has signed pleadings. Let's get
18 him in here. Whatever connection he has with the case,
19 let's get that established. If it's attorney of record,
20 let's sever that.
21 MR. STONE: I had assumed that a motion
22 for him to withdraw, as Ms. Bannai filed, I just assumed
23 it would be filed and acted upon.
24 THE COURT: If he had testimonial knowl-
25 edge about critical events, I would feel more concerned,

1 but it's with respect to documents.

2 (Witness Peter Irons entered conference room.)

3

4 THE COURT: Mr. Irons, Government counsel

5 has complained because you have apparently signed one or

6 more pleadings in this case and it is now proposed that you

7 be a witness. The ruling I have made is that I will not

8 permit you to be a witness unless you sever your relation-

9 ship, even though you are --

10 MR. IRONS: I am perfectly willing to do

11 that.

12 THE COURT: For whatever connection you

13 have with the case as an attorney, you now withdraw as an

14 attorney?

15 MR. IRONS: Yes.

16 THE COURT: As an attorney of any kind in

17 the case?

18 MR. IRONS: That's right.

19 THE COURT: Then I will permit you to be

20 a witness.

21 Anything further?

22 (The following proceedings occurred in open court:)

23

24 THE COURT: Mr. Irons, or is it Dr. Irons?

25 It is. Would you step up to be sworn, please?

1 PETER IRONS, called as a witness on behalf
2 of the Petitioner, being duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MR. KAWAKAMI:

5 Q Dr. Irons, could you state your name and spell your
6 name for the record?

7 A Yes. My name is Peter Irons, I-r-o-n-s.

8 Q And what is your address?

9 A My address is 1920 32nd Street, San Diego, California.

10 Q And your occupation?

11 A I'm an associate professor at the University of
12 California in San Diego.

13 Q Can you describe very briefly your educational back-
14 ground?

15 A Yes. My educational background, beginning with college,
16 includes a Bachelor of Arts degree of Antioch College in
17 1966. I received a Master of Arts from Boston University
18 in 1970; a PhD from Boston University in 1973, and a J.D.
19 from Harvard Law School in 1978.

20 Q Can you please describe for the Court some of your
21 professional accomplishments?

22 MR. STONE: Excuse me, Your Honor. I'm
23 not sure why they're relevant if he's being asked how he
24 found or where he found documents.

25 THE COURT: Well, I'm going to allow him

1 to do so, briefly, in response to your question.
2 A Well, Mr. Kawakami, my main field of professional
3 interest and research over the last fifteen years has been
4 American legal and constitutional history. I began with a
5 dissertation in graduate school, the period of 1942 to 1948,
6 in the process of which I spent a good deal of time becoming
7 familiar with archival research of materials and sources,
8 particularly in the national archives in Washington, the
9 presidential libraries and other sources.
10 After I completed my dissertation, in law
11 school I taught American legal history at Boston College
12 Law School. During this time I was working on a book
13 entitled "The New Deal Lawyers" which was published in
14 1982. In the course of preparing that book, I again made
15 use of records in the national archives, particularly those
16 of the Department of Justice, since that book was a study
17 of the litigation of the Roosevelt administration during
18 its first term.
19 I have also, in addition to that book,
20 published articles in various law reviews based on
21 historical research, including Harvard Law Review and the
22 Washington Law Review. Subsequently I published a book
23 entitled "Justice of War, the Story of Japanese-American
24 Internment Cases," which was also based upon archival
25 research, primarily.

1 Q Dr. Irons, can you describe for the Court, first
2 generally, some of the problems that say a lay person would
3 have in getting documents from archives?
4 MR. STONE: Excuse me, Your Honor. I don't
5 know how he can testify --
6 THE COURT: Let's make it specific to
7 these documents, if you will.
8 MR. STONE: And his difficulty, if I may,
9 Your Honor, I don't know how he can give an opinion on
10 someone else's difficulty. Shouldn't he be testifying --
11 I thought he was going to be testifying about his diffi-
12 culty in getting the documents.
13 THE COURT: I think he's probably going to
14 base it on his difficulties, but I would permit the question
15 to be asked.
16 A Well, I've been working, Mr. Kawakami, in archival
17 research for a period of about fifteen years on various
18 projects that I've described to you, and in the course of
19 that, I have discovered that one of the primary obstacles
20 to compiling a full record when you're doing historical
21 research is that of locating documents that may be scattered
22 between any number of different archival sources, some of
23 which in fact are not even available until after a good
24 deal of digging.
25 MR. STONE: Your Honor, that's not

1 responsive to what an ordinary person would do. I thought
2 it called for a fairly simple answer. I'm getting a narrative
3 statement now.
4 THE COURT: I think it's perfectly all
5 right. However, I would like to have you confine your
6 answer to documents involved in this case.
7 THE WITNESS: All right.
8 A (continuing) In particular, when I began research for
9 a book on the internment cases in the early part of August
10 of 1981, being familiar with the resources of the national
11 archives, I began this research in the files of the War
12 Relocation Authority, the agency which initially -- which
13 administered the internment camps.
14 I discovered in beginning that research
15 that the files of the WRA in the national archives had a
16 very incomplete indexing system. What I was primarily
17 interested in were those records that related to the
18 litigation of the internment cases that reached the Supreme
19 Court, including Korematsu, Yasui and Hirabayashi, and in
20 those initial records, which were located in boxes that
21 had not been adequately indexed, I discovered a number of
22 documents that had come from the files of the Department
23 of Justice, but I discovered upon making requests to the
24 staff of the national archives that those files were in
25 fact not in the possession of the national archives but were

1 in the possession of the Department of Justice.

2 All that I had to go on in trying to locate

3 those files, which I'm sure you'll understand were important

4 to the research I was conducting, was file numbers which

5 did not include any of the documents in these files but

6 simply the original number given by the Department of

7 Justice to the cases. So I then began, very shortly after

8 discovering these file numbers, an attempt to secure from

9 the Department of Justice access to their original litiga-

10 tion files.

11 I began by calling Mr. Robert Yahn of the

12 Department of Justice public information office - that's

13 Y-a-h-n, I believe is the spelling of his name. Mr. Yahn

14 is a person with whom I had previously done --

15 THE COURT: Wait just a moment.

16 MR. STONE: Your Honor, are we going to

17 get into hearsay about what Mr. Yahn would say, because I

18 would think he would have to be called if he's going to tell

19 us what Mr. Yahn would say.

20 THE COURT: I think it's all right. That's

21 part of his difficulty.

22 MR. STONE: Well, Mr. Yahn was listed as a

23 witness and they chose not to call him.

24 MR. KAWAKAMI: Your Honor, he was listed

25 as an authenticator.

THE COURT: I don't know about the listing, but I think it's perfectly proper for this witness to testify about what somebody else told him if that's part of the problem, so I'm going to permit it. I don't consider that hearsay because it's not really offered for the truth of the matter asserted. It's offered as part of the problem, as I understand it.

A (continuing) I called Mr. Yahn because I had dealt with him earlier in prior research that I had been doing in the Justice Department files and I knew him, and I asked Mr. Yahn if he could help me to locate the original litigation files, and I pointed out to him these had originally been in the Criminal Division of the Justice Department and had also been in the files of the Alien Enemy Control Unit, which had been headed by Mr. Ennis during that period.

Mr. Yahn responded that he was interested in the subject of my research; that he hoped he could locate the files, but that he would have to conduct a search. I gave him the file numbers of all of the files I was interested in at that time.

I subsequently received a telephone call from Mr. Yahn --

THE COURT: Could I interrupt you?

THE WITNESS: Sure.

THE COURT: We are right at recess time. We will take a recess until 1:30.

(Noon recess.)

1 AFTERNOON SESSION

2 (1:30 p.m., June 20, 1985)

3 THE COURT: Would you wait just one moment,

4 Mr. Kawakami? I should tell all of you, I have a full

5 calendar or motions and other things I have to handle

6 tomorrow, so we will recess this trial for tomorrow and come

7 back on Monday.

8 MR. HALL: We will probably take Mr. Lowman's

9 deposition sometime tomorrow, then.

10 THE COURT: That would be fine.

11

12 PETER IRONS, resumed the witness stand and testified further, as follows:

13

14 DIRECT EXAMINATION (resumed)

15 BY MR. KAWAKAMI:

16 Q Dr. Irons, I believe we were in the middle of your

17 explanation of how you were researching and obtaining docu-

18 ments for this particular case.

19 A That's correct.

20 Q Could you go on and explain to the Court?

21 A Yes. I had said before the lunch break that I had

22 received a telephone call from Mr. Yahn in the Department of

23 Justice. I had returned from Washington to Boston and he

24 called to say that he had been unsuccessful in locating the

25 original case files that I had requested, the determined

1 cases, and he had turned it over to Mr. Ross Buckley who
2 was the Freedom of Information Officer in the Criminal
3 Division of the Justice Department.
4 I talked to Mr. Buckley whom I had had
5 dealings with before and explained to him further what I
6 was looking for. He said that he would continue the search,
7 although he was not sure which division of the Department
8 the files might be located in; that the Alien Enemy Control
9 Unit from which they originated had been abolished or dis-
10 banded, at any rate, sometime shortly after the war.
11 Mr. Buckley said that he would continue
12 looking for the documents and keep me posted. I received
13 a further telephone call from him several weeks later.
14 This would be sometime in late August of 1981, I think,
15 explaining that he had found a transmittal slip somewhere
16 in his files that indicated that at some time within a few
17 years after the end of World War II, the records of the
18 Alien Enemy Control Unit, presumably including these liti-
19 gation files, had been transferred to the records of the
20 Immigration and Naturalization Service, and he explained
21 to me that INS, as far as he knew, had never had anything
22 to do with these cases, but that in the general records
23 disposition process of the Department, that they had been
24 mistakenly included in the records of another division
25 called the Alien Enemy Hearing Boards. The Hearing Boards

1 were not connected at all with the Alien Enemy Control Unit
2 but in fact were a separate unit set up to give hearings
3 to aliens of enemy ancestry. That he was tracking down
4 the records on the basis of this transmittal slip and would
5 let me know.
6 At about that time, because of the diffi-
7 culty in obtaining these records, I sent to Mr. Buckley,
8 I think on August 28th of 1981, a formal request for these
9 listed files, including Hirabayashi, Korematsu, et cetera,
10 pursuant to the Freedom of Information Act, and I listed
11 the files that I was asking to have access to.
12 Sometime after that, probably another
13 couple of weeks, Mr. Buckley responded once again, I think
14 by telephone, and said that in fact the records of the
15 internment cases, that is, the Department of Justice case
16 files, identified by the numbers I had given him, had been
17 located in the Federal Records Center in Suitland, Maryland,
18 and that they would be made available to me for my inspec-
19 tion.
20 I explained to Mr. Buckley that I had also
21 been invited to testify as a witness before the Commission
22 on Wartime Relocation and that I was hopeful that the
23 records could be produced so that I could help prepare my
24 testimony for that hearing.
25 I was then called by Mr. Russell Powell

1 of the Freedom of Information Privacy Act unit of the
2 Immigration and Naturalization Service. Mr. Powell
3 explained to me that the records had been, I think, trans-
4 ferred to his office from Suitland by Mr. Buckley, or by
5 Mr. Buckley's office at any rate, and I asked him if I was
6 free to come and examine these records and he said yes.
7 I went down to Washington very shortly, I
8 think it was about the 10th or 11th of October, 1981, and
9 went to Mr. Powell's office. Mr. Powell explained to me
10 at that time that the records had been delivered. They
11 were kept in cardboard boxes. That the woman who was
12 responsible for actually processing this request, whose
13 name I don't recall, who occupied the desk next to his, was
14 out sick that day so that I could use her desk to examine
15 the records.
16 I asked him if they had been cleared by
17 the Department of Justice and he said he thought so. There
18 was in fact a slip on top of one of the boxes - they were
19 piled on top of each other - signed by Mr. Buckley, simply
20 transmitting them to INS.
21 I then spent that day going through the
22 records. One of the first documents I located in the
23 Hirabayashi file, and these were documents when I opened
24 the boxes, the boxes had been secured by heavy twine. They
25 were covered with dust, and at least to my inspection, did

1 not appear to have been opened recently. I went through
2 the documents first in the Hirabayashi file, and one of the
3 first documents I found was, I think, dated April 30th,
4 1943, a document that had originated with Mr. Ennis. I
5 knew, of course, of Mr. Ennis' role in this as Director of
6 the AECU. That document seemed to me quite important, and
7 I attempted thereafter, having gone through these docu-
8 ments, to locate further records relating to these cases,
9 because it was obvious in going through the documents in
10 the Department of Justice file, that there were references
11 to other DOJ records that were not included in this file.
12 For example, I found in the file dealing
13 with the case of Mitsui Endu, another case cited by the
14 Supreme Court, that there was a transcript or a partial
15 transcript of an argument before the Supreme Court by
16 Solicitor General Fahy. There were also records in the
17 Hirabayashi and Korematsu files.
18 THE COURT: Would you wait just one
19 moment?
20 THE WITNESS: I'm sorry.
21 MR. STONE: Was this all in response to
22 that one question, Your Honor?
23 THE COURT: Yes, I thought it was. I
24 thought it was.
25 MR. STONE: I just didn't know. It sounded

1 like a narrative statement that was --

2 THE COURT: Well, it is, but he is speaking

3 about the difficulties he encountered in trying to locate

4 these records. I think it's responsive.

5 MR. STONE: I just thought he was going

6 beyond difficulties and telling us the entire global story

7 of things that were not difficulties. I just thought the

8 question had somehow gotten lost.

9 THE COURT: All right. I think it is

10 responsive.

11 A (continuing) Well, the difficulties persist because

12 one of the documents that I hoped to find, which I con-

13 sidered very important for my research for the book I was

14 then writing, was the transcript of Solicitor General Fahy's

15 argument before the Supreme Court in October of 1944.

16 Quite obviously, that would be a document of considerable

17 historical importance, but no such transcript was located

18 in the files of the Korematsu case.

19 I knew from my previous research on other

20 topics that there were records of many of the Roosevelt

21 Administration officials at the Franklin D. Roosevelt

22 Library in Hyde Park, New York, and I went shortly there-

23 after and visited the Roosevelt Library and located a

24 reference to records of Solicitor General Fahy which had

25 been transmitted to the FDR Library.

1 I went through those records, including
2 all of those dealing with the Korematsu, Hirabayashi and
3 Yasuii cases, and discovered in there a number of other
4 Justice Department documents that in fact had not been in
5 the original litigation file.
6 THE COURT: When were you there?
7 THE WITNESS: This was in the fall of
8 1981, Your Honor, and I think another trip or two in the
9 spring of 1982.
10 A (continuing) But I was not able to find the transcript
11 of the Korematsu argument in Solicitor General Fahy's files
12 in the FDR Library. I did find, however, a slip that had
13 been signed by his secretary, whose name I don't recall
14 offhand, indicating that that document had been received.
15 Two copies of the transcript had been prepared by a
16 commercial court reporting company and had been received
17 by the Department of Justice in October of 1944.
18 Over the next more than three years, I
19 continued my efforts to locate this document, particularly
20 because it was -- I considered it to be of great historical
21 importance to the research I was conducting and am con-
22 tinuing to conduct. I contacted the librarian of the
23 Supreme Court of the United States and the Clerk of the
24 Supreme Court. I went through Solicitor General Fahy's
25 papers in the Library of Congress, which is another

1 collection of his papers. I contacted the office of the
2 Solicitor General of the United States and talked with
3 Mr. Kenneth Geller who was Deputy Solicitor General at
4 that time. Mr. Geller told me that there would be as
5 thorough a search as possible.
6 I also talked to the woman who had been
7 Mr. Fahy's secretary in 1944, who it turned out was still
8 the secretary to Solicitor General Lee in 1982 or '3, and
9 she explained to me in a telephone conversation that there
10 were no files of oral arguments before the Supreme Court
11 in the Solicitor General's office; that to her knowledge
12 that document which she had some recollection of from the
13 early 1940's was not locatable in any of the Department of
14 Justice files.
15 I contacted the court reporting company
16 itself, which had gone out of business but had merged into
17 another, and contacted the man who had prepared the trans-
18 cript in 1944, who was now retired and living in Florida,
19 and he reported that the records of that company had been
20 destroyed years ago.
21 I also contacted Mr. Fahy's grandson,
22 I think, who was an attorney in the Department of Justice,
23 and he told me that he would look through his family's
24 records - Mr. Fahy's daughter who lives in Washington -
25 and reported to me that he had searched through those

1 family records and had been unable to find this.

2 More recently, in March of this year, I

3 went to the Department -- I went to the National Archives

4 in Washington to continue some research, and I asked Cindy

5 Fox, who was a staff member of the Judicial and Legislative

6 Branch, Judicial Fiscal Branch of the National Archives,

7 if there were any other records in the archives that might

8 help to locate this transcript. I asked her if I could go

9 through the original card index which I had seen several

10 years before, just on the off chance that it had been

11 overlooked. She said those card files were no longer open

12 to the public but that she would conduct her own search

13 through them. And then she asked me if I had ever looked

14 in the enclosures file. I responded that I did not know

15 there was an enclosures file, no one had ever informed me

16 of that. I didn't know that there was such a thing as

17 an enclosures file to another file.

18 She said she would check with the Federal

19 Records Center in Suitland, and reported to me shortly

20 thereafter that they had in fact - this was March 28th,

21 I think, of this year - located the transcript of the

22 Fahy argument. I received a copy of that through Mr.

23 Stone shortly after I had made this request, and that

24 document, of course, was turned over to me pursuant to

25 the request I had made years before under the Freedom of

1 Information Act.

2 Q (by Mr. Kawakami) Now, could you briefly explain to

3 the Judge what your involvement in this case has been?

4 A Well, as I said at the outset of my testimony, I began,

5 as an historical researcher and person who taught history,

6 to write a book about the internment cases. I don't think

7 I need to go into why I wanted to write the book, but

8 suffice it to say that these were cases I thought of great

9 historical importance, and the role of the Supreme Court

10 and of the attorneys who participated attracted me as a

11 topic.

12 During the course of this research, and

13 I had decided in order to complete the record, that I would

14 interview as many as possible of the remaining participants,

15 both the defendants and the attorneys who were involved,

16 and I interviewed, I think, somewhere in the vicinity of

17 thirty people who had been involved in these cases in

18 various stages. Mr. Ennis was one of them.

19 I also contacted and interviewed Mr.

20 Hirabayashi in Edmonton. I talked to Mr. Yasuii and I

21 talked to Mr. Korematsu. In the course of those interviews,

22 I showed those gentlemen documents from various sources

23 including some from the Department of Justice files.

24 I spoke first with Mr. Yasuii. This was shortly after, I

25 think, I had testified before the Commission on Wartime

1 Relocation, and at that Commission hearing in Cambridge,
2 Massachusetts, I had been asked by one of the Commissioners,
3 I think Judge Moratani, if there was any indication of
4 potential reopening of these cases through the coram nobis
5 procedure. Judge Moratani seemed interested in that topic.
6 I had not at that time, I think, met with the original
7 defendants, but Mr. Yasuii whom I met in Washington, brought
8 up the topic and asked me if I would be interested as an
9 attorney in helping to reopen this case on his behalf, and
10 I responded that I certainly would be glad, and that he
11 indicated to me that he would try to contact other
12 attorneys on the West Coast, since I was living in Boston
13 at the time, who might be interested.
14 Through that, and through speaking with
15 Mr. Hirabayashi, I became involved with the other attorneys
16 who were participating in these cases.
17 Q Now, I believe you described just earlier your search
18 of the Department of Justice files. Did you have occasion
19 to go through any other agency files?
20 A Oh, yes. I, in the course of this research, also
21 examined files of numerous other agencies.
22 Q Which agencies are those?
23 A I began with the War Relocation Authority. Those
24 records in the National Archives were in particularly bad
25 state of indexing but they gave me leads to other agencies.

1 I also examined in the Federal Records Center in Suitland
2 the records of the Military Intelligence Division of the
3 Western Defense Command, records of the Federal Communi-
4 cations Commission. I examined the papers of members of
5 the Supreme Court in the Library of Congress. As I said,
6 I was at the Roosevelt Library. I worked with the records
7 of the FBI. I examined a number of FBI records during
8 discovery in the Korematsu case in Mr. Stone's office.
9 Q So how many different places would you say that you
10 had to go to obtain records?
11 A I would say that it was upwards of six separate
12 locations around the country, including the Bancroft
13 Library at the University of California. Some of the WRA
14 records are held there, and other federal archives, and
15 examined perhaps some twenty-odd different collections of
16 papers of various agencies.
17 Q So is it fair to say, then, that you obtained or got
18 copies of many of the documents that are the basis of this
19 petition?
20 A Yes, that's correct.
21 Q In fact, do you know which ones specifically you
22 obtained or --
23 A Well, I have a pretty clear recollection of having
24 obtained on my own initiative the records in the petition
25 attached to the original petition from the Department of

1 Justice case files. That's the 146-42 series. Those
2 include memoranda of Mr. Ennis and Mr. Burling to the
3 Solicitor General, to Mr. Wexler and Mr. Biddle.
4 I also recall having examined and obtained
5 documents of military intelligence, that is, G-2 and FCC
6 records. The particular documents I can recall, I've
7 already said the memoranda of April 30th, 1943, and the
8 memorandum of September 30th, 1944, which to me seemed
9 particularly important in the history of these cases.
10 THE COURT: Let me ask you about those.
11 April 30, 1943, was the memorandum from Ennis?
12 THE WITNESS: That's correct. I think to --
13 THE COURT: To?
14 MR. KAWAKAMI: To the Solicitor General.
15 THE WITNESS: To the Solicitor General,
16 Your Honor.
17 THE COURT: All right. Tell me when you
18 located that?
19 THE WITNESS: That was at the time I went
20 through the case files at the INS office in Washington in
21 October of 1981.
22 THE COURT: And there was another one
23 which I don't have the date down. It was September some
24 date.
25 THE WITNESS: September 30, 1944.

1 THE COURT: '44, the 30th.

2 THE WITNESS: That had been attached to

3 the original petition.

4 THE COURT: And from whom and to whom was

5 that?

6 THE WITNESS: That was also from Mr. Ennis,

7 I think, to Mr. Wexler, if I recall correctly.

8 THE COURT: Does that sound right, Counsel?

9 Does that sound right, Ennis to Wexler?

10 MR. KAWAKAMI: I'm looking for that right

11 now, Your Honor.

12 THE WITNESS: I think that would be docu-

13 ment either double A or double B in the original petition.

14 MR. KAWAKAMI: September 30th, 1944,

15 would be Exhibit 90, tab 2.

16 THE COURT: And that was from whom to

17 whom?

18 MR. KAWAKAMI: This is the memorandum from

19 Edward J. Ennis to Herbert Wexler.

20 THE COURT: All right. Now let me ask,

21 when did you locate that and where?

22 THE WITNESS: I think, Your Honor, that

23 was on the same date.

24 THE COURT: In the files of the INS

25 office?

1 THE WITNESS: Yes. There was a separate
2 file. I think it was the Korematsu case file.
3 THE COURT: All right.
4 THE WITNESS: Now, I also obtained a
5 number of other --
6 MR. STONE: Hold it.
7 THE COURT: Would you want to wait just
8 one moment.
9 THE WITNESS: I'm sorry.
10 THE COURT: I want to be sure counsel
11 could hear you.
12 MR. STONE: I didn't think there was any
13 question on the floor that he was answering.
14 THE COURT: Well, let's see.
15 MR. STONE: I thought he just finished
16 answering your question, Your Honor.
17 THE COURT: Well, I don't have a question,
18 but he said that he was the one who obtained copies of
19 various documents, and he did obtain the papers attached
20 to the original petition, and then you spoke with reference
21 to these two memoranda. So let's have another question.
22 Q (by Mr. Kawakami) For the record, Your Honor, I would
23 like the clerk to hand up Exhibit 90, tab 2. No. I'm
24 sorry. Exhibit 2, tab 90, and Exhibit 35, tab 36.
25 Directing your attention first to Exhibit

1 35, could you identify that for the record?
2 A That's the exhibit number at the bottom of the page?
3 THE CLERK: It would be on the back.
4 Q It's April 30th, 1943.
5 A Yes, I have that. This says Petitioner's Exhibit No.
6 36.
7 THE COURT: That is, I believe, actually
8 Exhibit 35 but tab 36.
9 THE WITNESS: Oh, I'm sorry. I didn't
10 know this.
11 THE COURT: We have a double method of
12 identifying them.
13 Your question?
14 Q (by Mr. Kawakami) My question is was that the docu-
15 ment which we were referring to earlier as the letter from
16 Mr. Ennis to the Solicitor General?
17 A That's correct.
18 Q This is a document that you located?
19 A Yes. It has the Department of Justice case file number
20 written on it, 146-42-20.
21 Q And looking at Exhibit 2, could you identify that for
22 the record, please?
23 A This is the September 30, 1944 memorandum from Mr.
24 Ennis to Mr. Wexler, and it has handwritten, "Noted, C.F."
25 Q And is this the document that you were referring to

1 earlier?

2 A Yes, it is.

3 Q That you identified?

4 A Yes, it is.

5 Q And located?

6 A Yes.

7 Q Were there other documents that you yourself located

8 and found?

9 THE COURT: He did say, I believe, that he

10 obtained all of the papers that were attached to the

11 original petition.

12 THE WITNESS: No; I'm sorry, Your Honor.

13 I didn't obtain all of those myself. I was explaining that

14 I had obtained those that came from the Department of

15 Justice case files, from Mr. Fahy's papers at the FDR

16 Library, a number of the documents that originated in the

17 FCC and G-2.

18 Q (by Mr. Kawakami) Did you obtain documents -- would

19 the clerk hand perhaps the brown volume to the witness?

20 The brown volume contains G-2 reports.

21 THE COURT: And your question?

22 Q Are these the documents that you were able to obtain?

23 A Yes. These are, I think, all headed G-2 Periodic

24 Report, and these are documents that I obtained and

25 located in the Federal Records Center in Suitland, Maryland.

1 THE COURT: For my purposes, would you
2 identify those by exhibit numbers, not individually, but is
3 there a beginning exhibit number and an ending one?
4 MR. KAWAKAMI: I believe, Your Honor, it
5 begins in tab 44, which would be Exhibit 57 --
6 THE COURT: The tab I think would be
7 sufficient. Tab 44?
8 MR. KAWAKAMI: Tab 44, through, I believe
9 it goes up to tab 60.
10 THE COURT: Tab 60?
11 MR. KAWAKAMI: Yes.
12 THE COURT: All right. When did you locate
13 those?
14 THE WITNESS: To the best of my recollec-
15 tion, Your Honor, that would have been sometime in the
16 summer of 1982. I might explain that I made probably six
17 or eight trips to Washington to do research during the
18 period from August of 1981 through the following year, and
19 I don't always have a precise recollection of which records
20 I looked at on which trip.
21 THE COURT: But it would be from August
22 '81 through '82?
23 THE WITNESS: I think so, yes.
24 THE COURT: That you located most of the
25 documents?

1 THE WITNESS: That's right.
2 Q (by Mr. Kawakami) Dr. Irons, do you have a list there
3 of the petition documents that we've submitted in this
4 case, exhibit documents?
5 THE COURT: Those are the ones attached to
6 the petition?
7 MR. KAWAKAMI: No. I'm referring to the
8 exhibits that we now have in the book.
9 A I think so, Mr. Kawakami.
10 Q (by Mr. Kawakami) Now, we've gone over some of them
11 that you've located. Can you tell the Court which other
12 documents you were able to obtain?
13 A Do you want me to identify these by number?
14 Q If you would, please.
15 A These are numbers on a sheet list of exhibits, and do
16 you want me just to run down the numbers?
17 Q Yes; please.
18 A Okay. No. 1 --
19 Q Just a second.
20 THE COURT: It might be well --
21 MR. KAWAKAMI: These are exhibit numbers,
22 Your Honor.
23 THE COURT: You want him to give the
24 exhibit numbers and not the tab numbers?
25 MR. KAWAKAMI: All he has there, I believe,

1 is a list of the exhibit numbers, so we would have to cross-
2 reference them to the tabs. Exhibit 1 is tab 35.
3 THE COURT: Let me just see if my index
4 shows the same thing.
5 MR. KAWAKAMI: That would be page 4, the
6 index.
7 THE COURT: Yes, Exhibit 1 is tab 35.
8 All right. Now, did you want him to start from the very
9 beginning?
10 Q (by Mr. Kawakami) Perhaps we should start from the
11 beginning and just read down those you have obtained.
12 A All right. Starting with No. 1 --
13 MR. STONE: Excuse me, Your Honor. Before
14 he answers, he has already testified that he had many trips
15 and that he can't remember which trips he got what documents,
16 and they've asked him two specific questions as to two
17 specific documents, and you've covered the same documents
18 as being key documents, and he's asked and answered ques-
19 tions as to those key documents.
20 I don't know that hving him identify
21 other documents that he cannot any longer remember because
22 of his notes which were not specific, as he said. Which
23 documents he got when goes to laches.
24 THE COURT: Let's do this: Unless you
25 can give a more specific answer, I think you've already

1 said that the document you located you located sometime
2 between August '81 and the end of the year of '82.
3 THE WITNESS: That's correct.
4 THE COURT: All right. Then, I think what
5 I would like to have in the record is which documents then
6 you located in that period of time, even though you might
7 not be able to fix it by day or month.
8 THE WITNESS: All right. Well, I have
9 already specified, Your Honor, some of the documents I
10 obtained on specific dates.
11 THE COURT: That's right.
12 THE WITNESS: But I'll just run through
13 these numbers. 1, 2, 38 --
14 Q (by Mr. Kawakami) Dr. Irons, after you give the
15 number, we need to locate the tab numbers. I have to read
16 them.
17 A Okay. I'm sorry. I misspoke. It was No. 30.
18 THE COURT: Starting out with, did you
19 locate No. 1?
20 MR. KAWAKAMI: Yes, Your Honor.
21 THE COURT: Let me see your list, would
22 you, for just one moment, to be sure it looks like mine.
23 THE WITNESS: Yes.
24 THE COURT: You know, his list is different
25 from mine. Do you have a copy of the index that gives the

exhibit and the tab that I might use?

MR. KAWAKAMI: Yes, Your Honor.

THE COURT: The list that I have, and I might show you, gives the exhibit number and the tab, which I think might be easier for you, if we can get a copy.

THE WITNESS: Oh, I see. Well, okay, Your Honor. This would require me, I think, to work backwards, because where it says "Petitioner's Exhibit No. Black Volume," do those correspond -- those don't correspond with the numbers I have on my list.

MR. KAWAKAMI: That's correct. Those are what we're calling the tab numbers.

THE WITNESS: So I will attempt to locate in this list as quickly as possible the corresponding exhibit numbers. No. 1.

MR. STONE: Your Honor, if it will save time, I won't deny that he located some documents. I thought the real question was which ones took him a lot of time, and if that's not the subject, I'll concede that he located a lot of the documents.

THE COURT: Well, I think on the issue of laches, which of course you've raised, and it's perfectly proper to raise, I do need to know which documents he located because he said he did not locate them until August of '81, wasn't it?

1 THE WITNESS: Beginning in August of '81.
2 THE COURT: Through '82. So let's go
3 ahead. I just want to be sure that you have a list there
4 that you can give us the exhibit number and the tab. Would
5 it be convenient for you to start on the same list that I
6 have, which starts out with Exhibit No. 1, tab 94? Could
7 you run down through that?
8 THE WITNESS: I don't have one that says
9 tab 94. Let me show you what I have, Your Honor.
10 THE COURT: Well, that document number
11 there is the tab. That's the tab.
12 THE WITNESS: Oh, I'm not familiar with
13 the tab.
14 THE COURT: It doesn't say tab. It says
15 document number.
16 THE WITNESS: All right.
17 THE COURT: I would think it might be well
18 for you to refer only to those that are, say, not a matter
19 of public record. Some of those you may have located but
20 everybody knew they existed.
21 THE WITNESS: All right, Your Honor.
22 A (continuing) No. 1 we've already referred to, is
23 document No. 94, tab 98. I'm sorry. Tab 98, Transcript
24 of Proceedings, Korematsu v. United States.
25 THE COURT: You know, I was thinking about

1 something else. Give me the exhibit number and the tab,
2 would you, please?
3 THE WITNESS: The exhibit number is 19,
4 the tab is 98.
5 THE COURT: All right.
6 THE WITNESS: There are a number of docu-
7 ments which I think are in order here dealing with the
8 Federal Communications Commission.
9 THE COURT: Which ones are those?
10 THE WITNESS: Beginning with on page 3 of
11 the summary, Exhibit 25, tab 81, through 31 and 40, Exhibit
12 31, tab 40.
13 THE COURT: Tab 40.
14 THE WITNESS: On page 4, I've already
15 mentioned tab 35, document 1. Tab 36, document 35, and
16 continuing on --
17 THE COURT: It might be easier for me if
18 you would give the exhibit number first and then the tab.
19 THE WITNESS: Okay. Beginning on page 4,
20 beginning with Exhibit 36, tab 35 --
21 THE CLERK: He is reversing them, Judge.
22 THE WITNESS: Do I do it the other way?
23 THE COURT: The exhibit there, I believe,
24 is 35.
25 THE WITNESS: I'm sorry.

THE COURT: So it's Exhibit 35.

THE WITNESS: Exhibit 35, tab 36, down through --

THE COURT: Let me say, I said it wrong. It is Exhibit 36, tab 35.

THE CLERK: No, it's Exhibit 35, tab 36.

THE COURT: Let me check with counsel.

MR. KAWAKAMI: Your Honor, it should be under the column "Petitioner's Exhibit Number." That's what we've been referring to as the tab number.

THE COURT: Then I have it reversed. The clerk is right.

THE WITNESS: Okay. Beginning with tab 36 all the way through the rest of that page, various memoranda of the Justice Department and then G-2 Periodic Reports. That would include all of the G-2 Periodic Reports on the next page, page 5, down through on page 6, tab 61, Exhibit 74.

THE COURT: All right.

THE WITNESS: The next document would be tab 62, Exhibit 30, on page 6, Transcript of Conference in Office of General DeWitt, which I initially located in the records of the War Relocation Authority, I think.

I might add, Your Honor, that a number of these documents are to be found, various copies of them,

1 in separate sources. One might be found, for example, in
2 the WRA files, also in the Department of Justice files, and
3 often the same document in the War Department files.
4 THE COURT: Because there was a distri-
5 bution.
6 THE WITNESS: That's right.
7 None of the remaining documents on page 6
8 or 7. So on page 8, beginning with tab 79, Exhibit 21, I
9 examined those documents in the National Archives in the
10 files of the Assistant Secretary of War. Tabs 79, 80, 81,
11 I don't recall 82, tab 86, Exhibit 28. On page 9, tab 89,
12 Exhibit 111, tab 90, Exhibit 2, and the following three
13 documents down through tab 93, Exhibit 86.
14 THE COURT: Would you give me those again?
15 It was 92 --
16 THE WITNESS: 92, 85.
17 THE COURT: Then it would be tab 91, 92,
18 93 and 94?
19 THE WITNESS: No, not 94, Your Honor. And
20 that, I think, does it.
21 MR. HALL: Your Honor, to protect our
22 record, could we have this marked as an exhibit, because
23 the witness has been reading from pages 6 and so forth, and
24 I think the record may be unclear as to what he is referring
25 unless the document itself is in evidence.

1 For example, with regard to G-2, he said
2 from a certain number down the rest of the page down to a
3 certain other number, and I don't think the record is clear
4 as to the intervening numbers.
5 THE COURT: Well, I thought it was clear
6 enough myself.
7 MR. HALL: I don't know if it would be
8 clear to the Ninth Circuit or whoever else might have the
9 opportunity to read this, should it become necessary.
10 THE COURT: Well, I'll tell you what you
11 do. You prepare a document for an exhibit and we can put
12 it in. No problem.
13 MR. HALL: All right.
14 Q (by Mr. Kawakami) Dr. Irons, are you familiar with
15 the book "Americans Betrayed" written by Morton Grodzins?
16 A Yes, I am.
17 Q To what extent was that of assistance to you in obtain-
18 ing the documents you obtained?
19 A That was of very little assistance to me because the
20 footnoting process in Mr. Grodzin's book is of very little,
21 if any, help in locating documents, original copies of
22 documents.
23 Q Why are they of very little assistance?
24 A Because they don't specify precisely, for example, even
25 the archival source of documents.

THE COURT: I missed that. The archival what?

THE WITNESS: Source of the documents.

THE COURT: Source.

A (continuing) It's normal in historical writing to include references, for example, to box numbers or file numbers. Materials from the National Archives should be cited as record group such and such, Box A, File B, for example. That is not the procedure that Mr. Grodzins followed.

Q (by Mr. Kawakami) Can you explain to the Court how difficult obtaining these documents would have been to someone other than someone with the experience in research that you have?

A In my --

MR. STONE: Your Honor, he hasn't been qualified. That is purely calling for an opinion, Your Honor.

THE COURT: I think it's all right. When you say "to some other person," say a lay person who is not in the business of historical research. I'm going to permit it.

A In my opinion, it would be extremely difficult for a lay person without substantial historical training in the methodology of historical research. First of all, to be

1 aware of the possible sources of relevant documents of this
2 nature.
3 The documents that I consulted in writing
4 my book were scattered in sources across the country. There
5 is no central listing of document sources. Secondly, within
6 the sources themselves, that is, the National Archives or
7 the FDR Library, there are often very dissimilar filing
8 systems or indexing systems. Some of these systems in fact
9 give no indication of the nature of the material included
10 in the collection. Some, of course, are better than others.
11 But to find documents, for example, in
12 the files of the War Relocation Authority relating to the
13 legal aspects of these cases, the first source that I con-
14 sulted in my research, those boxes in the Solicitor's file
15 - Mr. Philip Lake was the Solicitor then - have no index
16 of contents. The boxes were in fact located by me by
17 physically walking through the back files stacks of the
18 National Archives. I had worked there doing research for
19 some fifteen years --
20 MR. STONE: Your Honor, --
21 A -- had access --
22 MR. STONE: I don't know what that par-
23 ticular document has to do with the legal files of this
24 case. I can understand the relevnce of the Department of
25 Justice files, but I'm at a loss to understand the relevance

1 of walking through the file room of the WRA, unless he's
2 going to tell us, like you did, you posed two specific
3 questions and he said File 146. I understood that relevance,
4 but I don't doubt that there are a lot -- I'll agree that
5 there are lots of unorganized files in the WRA.
6 THE COURT: All right. I'm going to over-
7 rule the objection. You go ahead.
8 A (continuing) Well, to continue, the WRA files, as I
9 think I explained earlier, included in addition to the
10 Solicitor's own papers, a number of documents, largely
11 copies, from other agencies; the War Department, the Justice
12 Department, and so forth, but there was no indexing of
13 these files.
14 So the search for records, particularly
15 those of the Department of Justice, was complicated by the
16 fact that those records are not in the possession of any
17 publicly accessible archive, and I explained the difficulty
18 I've had in locating through the Department of Justice the
19 litigation files which were the initial object of my
20 research.
21 THE COURT: Let me ask you, you say the
22 search for files in the Department of Justice was compli-
23 cated by the fact that they were not in the possession of
24 any publicly acceptable --
25 THE WITNESS: Accessible.

1 THE COURT: Oh, accessible. I see.

2 THE WITNESS: I'm sorry, Your Honor.

3 THE COURT: Can you tell me, and I know

4 you've already testified to where you found various ones of

5 those records, but where are those records now? Some in

6 Fahy's files?

7 THE WITNESS: Some are in the Franklin D.

8 Roosevelt Library in Hyde Park.

9 MR. STONE: Excuse me. May I ask what

10 files we're talking about? The Department of Justice files,

11 where are they now? I'm not sure which files. I assume

12 those are still in record group 146.

13 THE COURT: Well, he was speaking of some

14 of the records of the Justice Department, and you said some

15 of those were located in Hyde Park?

16 THE WITNESS: That's correct.

17 THE COURT: And where else?

18 THE WITNESS: Well, the bulk of those in

19 fact are in the possession of the Department of Justice, to

20 the best of my knowledge. Those litigation files are now

21 in Mr. Stone's office.

22 THE COURT: Can you tell me where they were

23 before they were in his possession?

24 THE WITNESS: Well, before that, I assume

25 between the time I examined them in the INS office in

1 Washington, they were transferred to Mr. Stone's office.
2 THE COURT: But you found them at INS?
3 THE WITNESS: I examined them at INS.
4 That's right.
5 THE COURT: All right.
6 Q (by Mr. Kawakami) Dr. Irons, did you at our request
7 assist us in preparing various organizational charts?
8 A Yes, I did.
9 Q And which ones did you assist us in preparing?
10 A Well, I gave you diagrams of the organizational setup
11 of the War Department at the time, that is, the early
12 1940's, the Justice Department, and the War Relocation
13 Authority.
14 MR. KAWAKAMI: Your Honor, these three
15 exhibits over to the right here are organizational charts
16 that have not been marked yet as exhibits. What I would
17 like to do, if possible, is have them marked as demon-
18 strative evidence, and I do believe we have a smaller
19 version for the Court in its files.
20 THE COURT: Let me hear from the Govern-
21 ment. Any objection to those?
22 MR. STONE: Well, I don't have any
23 objection to them being marked. I gather, though, that
24 anybody else can testify to them once they're marked.
25 THE COURT: I take it a copy has not been

1 furnished to you.

2 MR. STONE: Oh, I've gotten a copy and

3 I've told them I have some questions about them, but you

4 know, if they want to mark them and have him say that he

5 prepared them, that's fine.

6 THE COURT: Can you give us a number for

7 those?

8 THE CLERK: Exhibits 135, 136 and 137.

9 THE COURT: And do you know which is

10 which? Which is 135, Army, Navy or Justice?

11 MR. KAWAKAMI: Your Honor, I believe he

12 only assisted in helping us prepare War Department and

13 Justice.

14 THE COURT: And do you know the numbers of

15 those, by any chance?

16 MR. KAWAKAMI: We haven't assigned them

17 a number yet.

18 THE CLERK: They haven't been marked.

19 THE COURT: All right. Then 135 let's

20 list as Justice, and 136 War.

21 Q (by Mr. Kawakami) Dr. Irons, have you attempted to

22 locate transcript of court proceedings in the Hirabayashi

23 case?

24 A Yes, I have.

25 Q And have you been able to locate the transcript?

A You mean of the Supreme Court arguments, or the District Court.

THE COURT: The lower court?

MR. KAWAKAMI: Lower court.

THE COURT: Have you looked in the window-sill of my office?

THE WITNESS: I have not attempted to find the District Court transcript. It is not included in the record of the case as certified to the Ninth Circuit, as far as I remember.

THE COURT: I think I have the lower court file that I got from archives.

MR. STONE: I can't ask for the record, Your Honor, how long it took you to get that file, can I?

THE COURT: I really don't know because, as a matter of fact, just for the record, that particular file was in the archives right here in Seattle, so it probably took two, three days. But my recollection is, I'm not sure whether there were any transcripts of arguments and so forth included with the pleadings in that file, but all of you are welcome to look at it.

MR. BARNETT: Can I contribute a remark at this point, Your Honor, on the transcript? I have the same record I have had since the first trial. The problem is the judge's instructions were oral, and in the praecipe

1 requested by Mr. Walters, he did not ask for that, and so
2 there are materials available, which perhaps we can get in
3 under the hearsay rule of the Federal Rules of Civil
4 Procedure, taken down in shorthand and reduced into written
5 form.
6 THE COURT: What I intended to do, as I
7 said about all the court records, I intend to take judicial
8 notice of them. I intend to examine the District Court
9 file.
10 MR. STONE: Can I just state for the
11 record so it appears in the transcript who spoke?
12 THE COURT: That was Arthur Barnett.
13 MR. STONE: Who was, I guess, his personal
14 attorney, although not attorney of record for Mr. Hirabayashi
15 back in 1942. Is that accurate?
16 MR. BARNETT: I was not his attorney in
17 the court proceeding. I was his attorney outside the court
18 proceeding.
19 MR. STONE: That's what I thought.
20 MR. KAWAKAMI: I have nothing further.
21 THE COURT: All right. Any cross-
22 examination?
23 MR. STONE: Yes, Your Honor.
24 THE WITNESS: Your Honor, could I get a
25 little more water?

1 THE COURT: You certainly can.

2

3 CROSS-EXAMINATION

4 BY MR. STONE:

5 Q Mr. Irons, just --

6 A Excuse me, Mr. Stone. Would you mind addressing me

7 as Doctor Irons?

8 Q Would you mind addressing me as Doctor Stone? I have

9 a doctorate as well.

10 THE COURT: That's different. He was

11 addressed as Doctor to begin with, so let's do that.

12 Q (by Mr. Stone) Dr. Irons, am I correct that within --

13 you you have in your possession a letter that tells you

14 the exact day in late August when you asked Mr. Ross

15 Buckley of the Department of Justice for the 146 files of

16 the Department of Justice?

17 A Yes, I do.

18 Q Am I correct that it's dated perhaps the last two or

19 three days in August?

20 A August 28th.

21 Q Thank you. And it was sometime before October 10th

22 or 11th that Mr. Buckley called you and said those files

23 were available to you if you wanted them; isn't that right?

24 A Yes, I think so.

25 Q Do you know -- did he tell you at that time what the

1 just simple normal processing time is to physically wait
2 until your request comes up to get it shipped from Suitland
3 -- maybe I had better ask you first, do you know how far
4 the Suitland Record Center is from Washington, D.C.?
5 A Not precisely. It's approximately five miles.
6 Q Do you have any idea how many feet of records are
7 stored there?
8 A In the Suitland Record Center?
9 Q Yes.
10 A In any particular record group or --
11 Q Totally.
12 A Totally, I do not.
13 Q Did Mr. -- you said you have been familiar with
14 retrieving records. You are aware it takes a reasonable
15 amount of time just for the records to get back when a
16 request is made because of the backlog; isn't that true?
17 A It depends on which agency you're talking about.
18 Q Okay.
19 A I have been told by Mr. Buckley, incidentally, --
20 MR. STONE: I don't want to hear hearsay,
21 Your Honor. I object.
22 THE COURT: Well, does it have to do with
23 the time it would take to retrieve the records?
24 THE WITNESS: Yes, it does, Your Honor.
25 THE COURT: I will let you state what you

1 state he stated to you.

2 THE WITNESS: Mr. Buckley told me in one

3 of the initial calls I had with him that he would try to

4 retrieve these records as expeditiously as possible because

5 he acknowledged their historical importance.

6 Q (by Mr. Stone) Did he say he put a special tab on his

7 request?

8 A I don't recall.

9 Q But in any case, you had the records by the beginning

10 of October; isn't that right?

11 A I think it was the middle of October. Well, the 10th

12 or 11th, is that the beginning or the middle?

13 THE COURT: You know, I don't really think

14 it makes any difference whether it was the beginning, middle

15 or end of October.

16 MR. STONE: Well, Your Honor, just because

17 it has some bearing on this question of how long it took to

18 get records, we have now finally put together a pretty

19 complete set of marked items and your clerk has some --

20 we have one document which is the cover file, the 146-42

21 file, with Mr. Buckley's name on it and it shows exactly

22 the date the --

23 THE COURT: That what?

24 MR. STONE: -- that he signed his name

25 for receipt of those records. As a matter of fact, it

1 also shows the date that I signed my name for receipt of
2 the records, and I would like to show this to the witness,
3 if I may.
4 THE COURT: That doesn't indicate when
5 Mr. Buckley called the witness. If you want to establish
6 when Buckley got them, that would be fine.
7 MR. STONE: Yes.
8 THE COURT: Why don't you just read it
9 into the record?
10 MR. STONE: Okay, Your Honor. It just
11 shows here that Mr. Buckley obtained the records, signing
12 for them on 10-1-81, and I think that is consistent with
13 your recollection of events, isn't it, Mr. Irons?
14 THE WITNESS: I think so.
15 Q (by Mr. Stone) At the time you looked in that file,
16 was there correspondence that suggested that in between
17 the 1950's and 1981 that the file had been called up?
18 A Inside the boxes themselves?
19 Q Either on the cover file or in the file itself.
20 A Not in the boxes themselves, no. I don't recall.
21 There were forms attached to the outside of the boxes,
22 slipped in between the twine.
23 Q So there was nothing in the file -- from your
24 recollection, because you said they were quite dusty, when
25 is the last time you think those files had been sought?

1 THE COURT: Well, I think that's speculative.
2 I don't think you can determine by the amount of dust on
3 the file.
4 Q (by Mr. Stone) Well, I was asking about from the
5 contents. Do you have any information from the contents
6 of the file whether they had last been called for in the
7 1940's, the 1950's, the 1960's?
8 A No.
9 Q So in fact, you cannot say that they hadn't been
10 called in the 1970's; isn't that right?
11 THE COURT: Well, I think he testified,
12 as I understand it, there was no indication on the files
13 if or when they had been called up. Would that be correct?
14 THE WITNESS: That's correct, Your Honor.
15 There was no indication in the files as to when they had
16 last been opened.
17 Q (by Mr. Stone) Isn't it true that you therefore
18 suggested that they therefore had been lost in between the
19 1940's and the 1980's?
20 A In the sense that they had not been in a readily
21 accessible file, that's true. That is, as Mr. Buckley told
22 me, they were mistakenly placed with the records of the
23 Alien Enemy Hearing Boards.
24 Q Mr. Ennis, of course, was in charge of the Alien Enemy
25 Unit of the Department, wasn't he?

1 A No, he was not in charge of the Alien Enemy Hearing
2 Board. That was Judge Thomas Cooley.
3 Q He was in charge of the Alien Enemy Unit was my ques-
4 tion. Isn't that correct?
5 A The Alien Enemy Control Unit, yes.
6 Q And he was also the person whose memos -- most of whose
7 memos we're talking about in this case; isn't that true?
8 A A good number of them.
9 Q Do you know whether in fact the 146 files of the
10 Department of Justice are still located in the Alien Enemy
11 Unit of the Department of Justice?
12 A My knowledge is that that unit doesn't exist any more
13 and hasn't since --
14 Q The file unit exists. Do you know whether those files
15 are still filed routinely with the Alien Enemy Unit files?
16 A I have no idea.
17 Q When you went up to Mr. Yahn's office, did you look
18 through --
19 A I'm sorry. I didn't go to his office. I talked with
20 him on the telephone.
21 Q So then you never asked if he had a card file or looked
22 through his card file?
23 A No, I didn't.
24 Q And you had no idea that the Department of Justice
25 files have an enclosure file for bulky documents?

1 A Not until I was told by Ms. Fox.

2 Q And then when you asked her for the enclosures file,

3 in fact you got the transcript or your agent got it from

4 me within about three days; isn't that right?

5 A That's correct.

6 MR. STONE: I have another document here,

7 Your Honor, that I would like to show the witness, or if

8 you don't think it's necessary, I can describe it. But

9 it's a fairly contemporary letter by an individual not

10 related to this case but asking for papers from this case

11 which is in the current Hirabayashi files. It shows file

12 numbers of all three of these cases, the Korematsu case,

13 the Indu case, and the Hirabayashi case.

14 THE COURT: Show a copy to counsel and

15 let me see a copy.

16 MR. KAWAKAMI: I have a copy.

17 MR. STONE: It's in the stack and it's

18 marked as A-75. Your clerk has one, too. The purpose of

19 the document being to show simply that at least as late as

20 the 1960's -- it should be a single page document, A-75.

21 THE COURT: This is listed as A-75. It's

22 over the signature of William Warrick --

23 MR. STONE: That's it. I'm sorry. There

24 may be more than one copy. That's it. It's a single page

25 document but I think you have several copies there, and I

1 would like to --

2 THE COURT: Let me look at it.

3 MR. STONE: Sure.

4 MR. KAWAKAMI: Your Honor, I don't under-

5 stand what this document -- this isn't on the list of

6 documents that the Court allowed.

7 MR. STONE: The Court specifically --

8 THE COURT: Do you object to this document?

9 MR. KAWAKAMI: Yes, Your Honor.

10 MR. STONE: Your Honor, --

11 THE COURT: I'm going to sustain the

12 objection.

13 MR. STONE: Your Honor, we asked if you

14 would allow us to present documents that go to laches.

15 It doesn't go to anything but laches.

16 THE COURT: Well, let me tell you, this

17 is a letter by William J. Horrigan, Jr., who then was

18 Assistant Attorney General of the Civil Division. He says,

19 and I can't read the name - Yanofsky - Y-a-n-o-f-s-k-y -

20 he speaks about enclosing copies of the briefs filed in

21 the Supreme Court.

22 MR. STONE: Yes.

23 THE COURT: That shouldn't be too difficult

24 for the Department of Justice to find.

25 MR. STONE: I don't care about the

1 substance of the two paragraphs, Your Honor, and we could
2 even X that out. The point of the document is to show
3 that it was routinely handled, it is currently located in
4 file 62-A47, Box 76, which is one of the files -- which is
5 the file of the --
6 THE COURT: I'm going to sustain the
7 objection.
8 MR. STONE: -- of these records and has
9 the regular file letters in the corner.
10 THE COURT: The fact that an Assistant
11 Attorney General of the United States could locate them,
12 and perhaps locate easily, --
13 MR. STONE: Well, it is not signed by him,
14 Your Honor. It's signed by Paul J. Grumbley. They simply
15 put his name on it and you will see that the initials on
16 the side are a P and then I guess it's a G.
17 THE COURT: I don't think that makes any
18 difference. Even if you are right, it's William Horrigan,
19 Jr., by Paul J. Grumbley, but nevertheless, these are
20 inside the Department. I don't think that has any
21 relevance with respect to the difficulty of somebody
22 outside the Department to find them. That's my ruling.
23 I'm going to exclude the letter.
24 MR. KAWAKAMI: Your Honor, may I also get
25 a clarification on your ruling. If I understood Mr. Stone

1 correctly, he's under the impression that he would be able
2 to submit any documents you hadn't ruled on in the Monday
3 hearing as evidence of laches.
4 MR. STONE: That's not my understanding.
5 THE COURT: That is not my understanding,
6 either, but let's take them up document by document. I
7 thought I made myself clear as to the documents that I
8 would admit. Those are the ones listed in the March pre-
9 hearing order.
10 MR. STONE: Well, Your Honor, perhaps we
11 can take that up in the morning, because we have the
12 transcript of Monday's ruling when you said -- I asked if
13 documents - this one admittedly is not published - but I
14 asked if published documents that showed dates, and I said
15 of published records, for purposes of laches would be
16 admissible, you said yes; that that was a non-hearsay
17 function, and all of the other documents that I would seek
18 to talk about the laches are public documents.
19 THE COURT: All right.
20 Q (by Mr. Stone) I want to follow that up and ask Mr.
21 Irons --
22 A I'm sorry. It's Dr. Irons.
23 Q Dr. Irons. Excuse me. I think I would like to bring
24 that out. Dr. Irons, when you came to my office to look at
25 records, isn't it true that you never asked me to call you

1 Dr. Irons?

2 THE COURT: I tell you, let's forget about

3 that. I believe you're a PhD.?

4 A If you're insistent on calling me Mr. Irons, it's

5 perfectly all right. You referred to Dr. Trask.

6 Q When did I do that?

7 THE COURT: Now let's stop it altogether.

8 Q (by Mr. Stone) Mr. Irons, in fact, however, you got

9 the 146 file from the Department of Justice in, did you say

10 mid-October?

11 A I believe I was given access to those files the 10th

12 or 11th. Around the middle of October, yes.

13 Q That was when --

14 THE COURT: Let me ask you this: Where

15 were you at that time, when you were advised that they were

16 available?

17 THE WITNESS: I was in Boston, Massachusetts.

18 THE COURT: Were you teaching at that time?

19 THE WITNESS: Yes, I was.

20 THE COURT: Did you have classes?

21 THE WITNESS: Yes, I did, as a matter of

22 fact.

23 THE COURT: When did you go down to

24 Washington to look at them?

25 THE WITNESS: As soon as I could arrange

1 it after I got the call from Mr. Buckley.

2 THE COURT: Do you recall when you went

3 down there?

4 THE WITNESS: It was the same day or the

5 day after I arrived in Washington, I examined the files.

6 THE COURT: But the only evidence we have

7 here, as I recall it, is that Buckley signed for them on

8 October the 1st and you felt you were notified about that

9 time.

10 THE WITNESS: It was after that, but

11 shortly, Your Honor.

12 THE COURT: All right.

13 Q (by Mr. Stone) You've previously filed affidavits,

14 haven't you, that it was in the neighborhood of eight to

15 ten days?

16 A I think that's correct, Mr. Stone.

17 Q So then we're talking mid-October when you actually

18 got to the raw materials?

19 A Yes.

20 Q Did you visit -- what other depository or places did

21 you visit within the next two months after that time,

22 archival sources within the next two months?

23 A I visited the Franklin D. Roosevelt Library in Hyde

24 Park; I visited the National Archives in Washington; I

25 think I visited the Federal Records Center in Suitland,

1 Maryland; I visited the Harvard Law School Library and the
2 Library of Congress.
3 Q Did you visit the Library of Congress and the Suitland
4 Records Center and the National Archives in Washington on
5 the same trip when you came down to look at the Department
6 of Justice files?
7 A I don't think so, Mr. Stone.
8 Q Did you -- just for the record, at that time the
9 Harvard Law School Library was quite close to where you
10 lived, wasn't it?
11 A A 10-minute walk.
12 Q You put together a -- you testified before the
13 Commission on Wartime Relocation and Interned Civilians,
14 didn't you?
15 A Yes, I did.
16 Q And am I wrong they were a little surprised at the --
17 correct me if I'm wrong -- but I think they were a little
18 surprised at the statements you made that your research
19 had shown that you thought there was a question of
20 Government misconduct that needed to be looked into. Wasn't
21 that the substance of your statement?
22 A The substance of my statement dealt -- based on the
23 archival records I consulted -- dealt with the possibility
24 that Government misconduct had occurred in the litigation
25 of these cases. That's correct.

1 Q You talked about Ed Ennis, didn't you?
2 A Edward Ennis, yes.
3 Q And you talked about John Burling's views, didn't you?
4 A As recorded in the records, yes.
5 Q And you talked about the FCC reports and how General
6 DeWitt was really wrong in not listening to them. Didn't
7 you talk about that?
8 A I think so.
9 Q And you talked about --
10 THE COURT: Let me ask you this: Why
11 should I be concerned about what he testified to before the
12 Commission, or if you're leading up to their reaction, why
13 should I be concerned?
14 MR. STONE: No, I'm not leading up to
15 their reaction, Your Honor.
16 THE COURT: Why don't we move ahead to
17 another line of questioning.
18 MR. STONE: Well, all right, Your Honor.
19 Would you allow me three more questions, please?
20 THE COURT: Let's move on to something
21 else. I'll hear you at the first recess about this.
22 MR. STONE: About this subject?
23 THE COURT: About this subject, yes.
24 MR. STONE: Okay.
25 Q (by Mr. Stone) Mr. Irons, you said that it was very

1 difficult for you to get the -- that the transcript in this
2 case, in the Korematsu case, the partial transcript, was of
3 tremendous historical interest, I believe, in the litigation
4 of this case. Can you tell me what specific part of the
5 transcript in that case supports the Petitioner's petition
6 in this case?
7 THE COURT: That's my problem. Next
8 question.
9 MR. STONE: Okay.
10 Q (by Mr. Stone) Mr. Irons, the only two documents
11 you've testified you could recall locating you located in
12 the 146 file in the Department of Justice, can you tell me
13 whether a majority of the documents in that appendix you've
14 gone through came out of the 146 files of the Department of
15 Justice?
16 A Well, as I said earlier, Mr. Stone, it was a matter
17 of collating from a variety of sources the documents that
18 went into the petition. Some of them, of course, came out
19 of the 146 file, some of them came out of the FBI library,
20 and some came out of the FCC, FBI, et cetera.
21 Q About how many boxes of files did you review in my
22 office from the 146 files that we were talking about?
23 A In your office?
24 Q Yes.
25 THE COURT: Now, that would be fairly

1 recently?

2 MR. STONE: Yes. In 1983, in connection

3 with discovery in this case.

4 THE COURT: Why should I be interested?

5 MR. STONE: Well, Your Honor, it will show,

6 I think, that there was really quite a voluminous set of

7 Department of Justice records that he actually got when they

8 showed up.

9 THE COURT: In your office?

10 MR. STONE: Yes. Well, it was the same

11 set Mr. Irons told me at the time that he previously had

12 seen.

13 THE COURT: Let's go back to the files

14 that he examined in October of '82.

15 MR. STONE: All right.

16 THE WITNESS: '81.

17 THE COURT: Was it '81?

18 Q (by Mr. Stone) Were they several inches thick or were

19 there several boxes of them in 1981?

20 A Well, as I said earlier, Mr. Stone, they were included

21 in a -- I think there were three cardboard boxes, if I'm

22 not mistaken, and they were, as you say, voluminous. There

23 were probably two linear feet.

24 Q Two thousand pieces of paper? Three thousand?

25 A Oh, I didn't count the pieces of paper.

1 Q They included records, though, in that Department of
2 Justice file from other agencies as well, isn't that true?
3 Copies from Mr. Gluek's records, copies from FBI records?
4 A Well, there were some -- of course, the FBI is a
5 division of your Department, but there were FBI records
6 and I think some WRA that you might remember better.
7 Q It's also true, isn't it, that the Immigration and
8 Naturalization Service is a part of the Department of
9 Justice; isn't that right?
10 A Oh, that's quite correct.
11 Q And there was no particular fee that was charged to
12 you or no particular waiting line that they made you get
13 on when you called Mr. Buckley and said "I'd like someone
14 to look at the records." They took it and submitted it;
15 isn't that correct?
16 A I was not charged a fee, no.
17 Q Did any of your students help you collate or organize
18 this material?
19 A Well, as a matter of fact, at the time, Mr. Stone, I
20 was teaching a course called Writing Legal History, and
21 one of the assignments in that course, in fact the major
22 assignment - this was at the University of Massachusetts
23 at Amherst - was to take a big stack of these documents
24 and turn them into a narrative. Some of my students in
25 fact participated in that.

1 Q So what we have, then, to some extent, may be student
2 speculation and term papers?
3 A Oh, no, no. None of those are in the records. I
4 graded those papers myself and returned them to the students,
5 and they returned all the documents to the Commission.
6 Q You stated before in response to the Judge's question
7 that he wanted to know what documents you found that were
8 not a matter of public record, you started by listing the
9 Department of Justice file. Are you suggesting that those
10 are not open to the public?
11 THE COURT: Oh, no. I know he didn't
12 mean to indicate that. I was thinking about things
13 published and that sort of thing. What documents did he
14 find that have not been published? But he certainly didn't
15 indicate -- I don't think you intended to indicate that
16 those files were not accessible to the public, if the
17 public knew where to look.
18 THE WITNESS: That's correct.
19 Q (by Mr. Stone) Do you concede -- I gather you're
20 familiar with Mr. Grodzins' book, Dr. Irons; is that true?
21 A I've read his book, yes.
22 Q It discusses the details of the evacuation in great
23 detail, does it not?
24 A He focuses on the decision-making process that led up
25 to the decision to evacuate and pretty much stops there.

1 Q He does talk about the communications from the Chairman
2 of the FCC to the Attorney General, the very ones Mr. Ennis
3 requested, and that are being discussed in this case.
4 Doesn't he quote those documents?
5 A As I recall, there are selected quotations from some
6 of those documents. They are not cited to any particular
7 source but simply by the date of the document.
8 Q Thank you. But he does quote FCC Chairman Bly's docu-
9 ment to the Attorney General?
10 A As I recall the quotes, excerpts.
11 Q That is right, and described it generally?
12 A Yes.
13 Q And doesn't Mr. Grodzins -- and that letter, of
14 course, suggests that -- are we at the time, Your Honor?
15 THE COURT: We'll go ahead with that
16 question.
17 Q And of course, Mr. Grodzins does describe Chairman
18 Bly's incredulity, shall we say, at General DeWitt's belief
19 that there was signalling going on. That's described in
20 Morton Grodzins' book, isn't it?
21 A I think "incredulity" is a good word to describe Mr.
22 Grodzins' discussion of that, yes.
23 THE COURT: All right. We'll take a
24 recess. However, I'll stay here and hear you on those
25 other questions.

MR. STONE: Thank you.

THE COURT: We'll take a recess until 3 o'clock, but I'm going to stay here so don't bang the gavel. Any of you may leave if you want to. However, let me ask you to -- I'm going to ask all of you to be quiet because I have to hear argument from counsel.

MR. STONE: I wonder if we could go back for a moment?

THE COURT: That would be fine. I'll ask the reporter to come with us.

(The following proceedings occurred in the chambers of the Court:)

THE COURT: Right now let me call your attention to the question I said I would hear from you about.

MR. STONE: Yes.

THE COURT: You asked him questions about a subject matter about which he testified before the War Relocation Commission.

MR. STONE: Yes, Your Honor.

THE COURT: Then you asked for, I think, three more questions.

MR. STONE: Yes, Your Honor.

THE COURT: What were those questions?

MR. STONE: I was just -- I would like to

1 say we are in camera and the witness is not here, so I am
2 delighted to lay the foundation out of his presence.
3 THE COURT: Fine.
4 MR. STONE: That witness's testimony is
5 here in front of me, and I was very surprised to hear him
6 say it took him a long time to put his research together
7 because he testified at length before the Commission and
8 filed a written 17-page statement which is virtually
9 parallel to the allegations in this petition. What that
10 does is show the reason he was --
11 THE COURT: What is the date of his testi-
12 mony?
13 MR. STONE: December 9th, 1981. He said
14 he didn't see the documents until October 10th, so I was
15 trying to point out and that's why I asked what other
16 places he visited in the intervening two months. Within
17 two months he not only got his research materials; he
18 figured out what he thought was wrong, but he wrote up a
19 draft, and he must have revised it because it's typed and
20 submitted as a 17-page draft, a fully footnoted version
21 with the Biddle memo. He's got them all right here.
22 THE COURT: Well, let me accept that, but
23 what does that go to?
24 MR. STONE: It goes to the fact that he
25 was -- that once he decided to ask for the Department of

1 Justice files which are, he admitted, quite voluminous, he
2 was given all the raw material and the rest of the material
3 was simply icing on the cake.
4 Any researcher, if they had asked the
5 Department of Justice for those files and had gotten the
6 great bulk of all they wanted to raise in sufficient time
7 that within two months he could put together a beautiful
8 draft, and what I wanted to do, actually, was to offer this
9 as an exhibit so the Court could compare the kind of brief
10 he was able to put together within two months.
11 THE COURT: I don't think that that, at
12 least in my mind, goes to the real issue here; that is,
13 was Mr. Hirabayashi guilty of laches for not doing all
14 these things.
15 MR. STONE: What I am doing is impeaching
16 -- unless I understood Mr. Irons wrong, I am impeaching his
17 statement that he went from October '81 to December '82
18 rather than December '81 before he was able to figure out
19 this whole puzzle. He put the pieces of the puzzle together
20 within two months; not a year and two months, and his own
21 document shows it. That's all. I don't care whether it's
22 true or false, but it shows that within two months he put
23 the whole puzzle together, footnoted, typed, submitted,
24 and testified at length about it.
25 THE COURT: Let me look at it and then

1 I'll hear you.

2 MR. STONE: It's got a date. It's got his

3 oral testimony and attached -- that comes form the National

4 Archives and attached is his statement.

5 THE COURT: Was Mr. Mitchell on the

6 Commission?

7 MR. KAWAKAMI: Yes, Your Honor.

8 THE COURT: I did not realize that.

9 MR. STONE: His written statement is much

10 more carefully composed, but it covers the FCC allegations,

11 the FBI allegations, the Ennis footnote allegations, the

12 failure to disclose these things to the Supreme Court

13 allegations. I just think the Court needs to examine it

14 to be able to compare that to the petition in order to see

15 whether there was really a big gap between December 9th,

16 1981 --

17 THE COURT: I think that this is admissible

18 and relevant as to what he knew on December 9th, 1981.

19 MR. STONE: That's the only reason I'm

20 offering it, Your Honor.

21 THE COURT: I think I'll admit it for that

22 purpose.

23 MR. KAWAKAMI: That's fine.

24 MR. STONE: That's what I was --

25 MR. HALL: Is there anything about the two

1 DeWitt reports in there?

2 MR. STONE: Yes.

3 MR. HALL: Both of them?

4 MR. STONE: I can't say. It's been a long

5 time since I've read it.

6 THE COURT: I didn't think there was.

7 MR. STONE: It's been a long time ago. I

8 know he mentions the final report.

9 THE COURT: Have you seen a copy of this?

10 MR. HALL: I saw it for about sixty seconds.

11 MR. STONE: Are you suggesting Mr. Irons

12 never gave you a copy?

13 MR. HALL: I'm not suggesting anything.

14 THE COURT: All right. We will be at

15 recess.

16 (Recess)

17 (The following proceedings occurred in open court:)

18

19 THE COURT: Let's see. There was an

20 exhibit offered and I don't know -- can you give me the

21 number of that?

22 MR. STONE: Yes, Your Honor. This one is

23 not in the stack because, of course, we had not anticipated

24 this line of --

25 THE COURT: Is this the one we talked

1 about?

2 MR. STONE: Yes. It's marked now as A-4.

3 THE COURT: And I will admit that. We may

4 already have an A-4. We already have an A-4.

5 MR. STONE: I think A-8 is an open number,

6 if I'm right. I would like to just see that I haven't given

7 you something that's all marked up. One of those is marked

8 up. I'll give you a clean copy.

9 THE CLERK: A-8.

10 THE COURT: A-8, and that will be admitted.

11 (Respondent's Exhibit No. A-8
12 marked for identification and received in evidence.)

13 THE COURT: That is admitted solely on the

14 issue, as I said before, as to how much knowledge this

15 witness had as of the date of that particular testimony.

16 Q (by Mr. Stone) Mr. Irons, when was the first time

17 that you went to the National Archives in Washington, D.C.,

18 in connection with this case?

19 A With this case?

20 Q Yes.

21 A I went to the National Archives to do research on the

22 book in August of 1981.

23 Q So you actually went to the National Archives before

24 you went to the Department of Justice?

25 A I didn't go to the Department of Justice, Mr. Stone.

1 I talked with Mr. Yahn on the telephone.

2 THE COURT: And this would be in connection

3 with the intern -- how do you refer to them?

4 THE WITNESS: The internment cases.

5 THE COURT: The internment cases. That

6 was what year and month?

7 THE WITNESS: August of 1981.

8 Q (by Mr. Stone) So it was even before that time that

9 you went to the National Archives which is directly across

10 the street from the Department of Justice; isn't that right?

11 A I don't understand your question.

12 Q Is the National Archives pretty close --

13 THE COURT: I will take judicial notice

14 of that.

15 MR. STONE: Okay.

16 Q (by Mr. Stone) The Western Defense Command records

17 of the National Archives are out in Suitland; is that

18 correct?

19 A I think so, yes.

20 Q Did you have any trouble with the retrieval of those

21 records?

22 A Well, if you mean by trouble, was there --

23 Q How long --

24 A -- difficulty --

25 THE COURT: Let him finish.

1 MR. STONE: I don't want him to re-
2 characterize my question, Your Honor. I'll reask it. I
3 withdraw the question.
4 THE COURT: Let's stop. I think the ques-
5 tion was, did you have any difficulty gaining access to those
6 records.
7 THE WITNESS: Well, the index --
8 MR. STONE: Can I get a yes or no first?
9 THE COURT: I'm going to let him answer my
10 question.
11 THE WITNESS: The indexes to those records
12 are not extremely helpful in some cases, so if you mean by
13 that that once I had identified particular files that I
14 was interested in looking at, did the archives staff quickly
15 produce them for me, the answer is fairly quickly.
16 Q (by Mr. Stone) The point I was making is there was no
17 long delay in the archives staff at Suitland producing the
18 Western Defense Command records for you, was there?
19 A Well, they're not the quickest archives staff I've
20 encountered.
21 Q Not including the speed with which they walk --
22 THE COURT: He didn't mean that.
23 A That's not what I meant.
24 Q The allegations in the petition include a discussion,
25 and there were exhibits here before the Court of two versions

1 of General DeWitt's final report. The still existing copy
2 of General DeWitt's final report is available in the
3 National Archives, isn't it?
4 THE COURT: Now, let me ask, would this be
5 the first or the second?
6 MR. STONE: First draft.
7 Q (by Mr. Stone) The first draft is sitting there in the
8 files of the National Archives; isn't that true?
9 A I have seen -- I was not the person, Mr. Stone, who
10 located that, but I have examined it in the National
11 Archives.
12 Q Okay. And it's not a classified document in the
13 National Archives?
14 A The National Archives does not have classified docu-
15 ments.
16 Q Okay. So it's an unclassified available document in
17 the National Archives?
18 A Well, there are documents that were previously classi-
19 fied. Whether that one was previously classified or not,
20 I don't know.
21 Q The second version of General DeWitt's report, of course,
22 is publicly available in libraries around the country; isn't
23 that true?
24 A Yes.
25 Q When you went before the Commission on Wartime

1 Relocation and Internment of Civilians, you gave them a
2 pretty thorough presentation of the various problems you
3 thought there were in the prosecution of all three cases,
4 didn't you?
5 A Based on the material that I had examined up to that
6 date, yes.
7 Q Isn't it true that none of the other participants on
8 the panel that day had as detailed a presentation prepared
9 as you?
10 THE COURT: Let's go on to another line
11 of questions. I have before me what he did say before the
12 Commission.
13 MR. STONE: All right.
14 Q (by Mr. Stone) Would the clerk please hand Mr. Irons
15 Exhibit A-8?
16 THE COURT: Tell me what questions you
17 intend to ask on A-8, because it speaks for itself. It says
18 what he testified to before the Commission.
19 MR. STONE: Okay.
20 Q (by Mr. Stone) I just wanted to establish, that is a
21 recorded version of your testimony, isn't it, Mr. Irons?
22 A I don't know yet. It seems to be, yes.
23 THE COURT: Is there attached to that
24 possibly a written statement that you made at that time?
25 THE WITNESS: Yes, there is.

1 Q (by Mr. Stone) With respect to -- oh, I'm sorry.
2 Still paging through it?
3 A I just wanted to see if this is complete.
4 Q Certainly. Please.
5 Is it a complete copy?
6 A Yes, it is.
7 Q Were there other materials you gave the Commission?
8 I would certainly like to know if there were.
9 A At that hearing?
10 Q Yes, at that hearing. Is there any supplemental --
11 A That I gave the Commission at that hearing?
12 Q Did you informally communicate to the Commission
13 additional information about the research?
14 A Well, during the course of my research for my book,
15 I consulted fairly extensively with Mrs. Aiko Herzig-
16 Yoshenaga who was the researcher for the Commission, whom
17 I met very early in my research.
18 Q When did you meet her? Do you know?
19 A I think I met her on the second day I was doing
20 research, in August of 1981.
21 Q In August, 1981?
22 A She had been appointed. I didn't know her previously.
23 She had been pointed out to me by a member of the archives
24 staff as someone who was also using WRA files, including
25 a couple of the boxes that I wanted to look at, so I went

down and looked her up.

Q She had a pretty extensive collection of files, as I recall; isn't that true, before the Commission?

A In the Commission offices?

Q Yes.

A I would say it was fairly extensive.

Q And she made it available to you, didn't she?

A There were particular items that I had not been able to locate in my research that I thought she might have come across in her research, and vice versa.

Q That's not my question.

A Well, then I don't understand your question.

Q She did not require --

THE COURT: Wait a second. I thought his answer started to be responsive to your question.

MR. STONE: I was trying to find out if there was some qualification.

THE COURT: I'm going to let him finish his answer.

MR. KAWAKAMI: Your Honor, I'd like to ask the attorney for the Government to please allow the witness to answer the question.

MR. STONE: No, Your Honor. The point is --

THE COURT: I'm going to let him respond to the question.

1 I think his question was something like
2 this: Did she make her files available to you, and then
3 you said that there were particular items that you had not
4 been able to locate and . . . go ahead.
5 A That's right. -- that I had not been able to locate in
6 my research that I thought the Commission might have in their
7 files, and I at the same time volunteered to make available
8 to the Commission any documents that I came across in my
9 research on a sort of quid pro quo basis, and so consequently
10 there was some exchange of records.
11 Q (by Mr. Stone) She did not require that you have a
12 clearance, however, or that you pay a fee to see her records,
13 did she?
14 A No.
15 Q And while you were there, did she also make -- did you
16 happen to see other people that she made those records
17 available to?
18 A I really don't recall, Mr. Stone.
19 Q Did she have an index card system to her records?
20 A Yes, she did. At least to the records that I was
21 interested in.
22 Q And she freely used it to help you locate your records?
23 A She would look, if she didn't seem to know where a
24 document was physically located, she would look in the card
25 files. She could often put her hands on just about anything,

1 though.

2 Q When you testified before, you said that you had read

3 Morton Grodzins' book and I had not finished asking you

4 about it when we took the break. Does Morton Grodzins'

5 book also reprint the correspondence between J. Edgar Hoover

6 and the Attorney General, at least in part, and describe it?

7 A As I recall, there is some memoranda of Mr. Hoover.

8 Whether they were addressed to the Attorney General or not,

9 I can't recall.

10 Q Are you saying that you cannot recall whether Morton

11 Grodzins who wrote a book on the same subject actually

12 cited the J. Edgar Hoover February 2 --

13 MR. KAWAKAMI: Your Honor, I object.

14 THE COURT: I think I'll sustain the objec-

15 tion.

16 MR. STONE: I want to ask a more specific

17 question.

18 Q (by Mr. Stone) There is a February 2 memorandum from

19 Mr. Hoover --

20 A What year?

21 Q 1944.

22 THE COURT: Counsel, let's go back. I

23 thought he responded.

24 MR. STONE: I'm sorry. 1942.

25 THE COURT: I thought he responded fairly

1 to your question. He said that the book had references to
2 some of the memoranda of Hoover. Now, is there a specific
3 question you want to ask on that?
4 MR. STONE: Yes. I'm sorry, but somehow
5 the index with the evidence designations has disappeared
6 from our copy of the Petitioner's exhibits. I'm not sure
7 what the tab or evidence number is on the February 2, 1942,
8 J. Edgar Hoover -- oh, thank you -- February 2, 1942, J.
9 Edgar Hoover letter to the Attorney General.
10 THE WITNESS: Your Honor, while he's doing
11 that, might I point out --
12 MR. STONE: I'm sorry. It's February 7.
13 THE COURT: Why don't you wait a minute,
14 Counsel.
15 THE WITNESS: I have gone over the exhibit
16 that was handed to me and it seems that this is not a
17 complete transcript of the testimony I gave to the Commission.
18 It does not include any of the questions, as I see, from
19 the Commissioners to me.
20 THE COURT: Were questions asked of you?
21 THE WITNESS: Yes, they were.
22 MR. STONE: We will be happy to furnish
23 the Court subsequent --
24 THE COURT: I don't think it would be
25 necessary, unless you want to.

1 MR. STONE: I'd like to. I'd like it to
2 be complete. I wouldn't want it not to be complete, so we
3 will, with the Court's permission, we will subsequently
4 obtain and furnish everything to the end of that hearing
5 so the Court has it all.
6 THE COURT: Only with respect to his
7 testimony.
8 MR. STONE: Yes, only with respect to his
9 testimony. We would certainly want it to be as complete as
10 possible.
11 Q (by Mr. Stone) Mr. Irons, do you recall yourself the
12 date of what you in your book considered to be the trans-
13 mission of the FBI's official views on the necessity for
14 evacuation to the Attorney General?
15 THE COURT: Well, that transmission is in
16 the record, is it not?
17 MR. STONE: I don't know. I just looked
18 through the exhibit and I wasn't able to find what I
19 thought were --
20 THE COURT: If it's not an exhibit, then
21 it doesn't make any difference to me. If it is an exhibit,
22 I am sure it bears a date.
23 MR. STONE: Okay. Well, I'm going to take
24 a moment and try to find it, Your Honor.
25 THE COURT: Let me state what I think this

1 witness has testified - I may be wrong - but have you testi-
2 fied that you found certain J. Edgar Hoover memoranda that
3 you were unaware of or that the public was unaware of?
4 THE WITNESS: The FBI memoranda, Your
5 Honor, that I have come across in the course of my research,
6 some of those memoranda, at least to my knowledge, have
7 been partially available in other public sources, but I'm
8 not sure particularly which ones Mr. Stone has reference to.
9 THE COURT: Let me ask, is that book in
10 evidence as an exhibit?
11 MR. STONE: The whole book is not, Your
12 Honor. We had been prepared to offer certain parts of it,
13 but we will again be happy to offer the whole book.
14 THE COURT: That would be fine. Instead
15 of asking him questions about it, you present those
16 excerpts that tell when the Hoover memoranda were mentioned
17 in that book.
18 MR. STONE: Yes, we will, Your Honor.
19 Q (by Mr. Stone) That book does discuss also the -- as
20 you titled your later book - the war, the friction, the
21 conflict between Mr. Ennis and Mr. Burling at the Department
22 of Justice and people in the -- in Mr. McCloy's office and
23 General DeWitt, does it not, Mr. Irons?
24 A I didn't title my book that, no.
25 Q Excuse me. Let's go back. Does Morton Grodzins

1 describe Mr. Ennis almost in tears on February 17, 1942,
2 when he learns for the first time that Executive Order 9066
3 is going to be signed?
4 A I think Roger Daniels also discussed the same episode
5 in his book, so I'm not quite sure which one it is.
6 THE COURT: Let me ask, what relevance is
7 that to this case?
8 MR. STONE: Well, Your Honor, I'm trying
9 to find out exactly which documents it was that Mr. Irons
10 did not know about at all when he started to do his
11 research.
12 THE COURT: All right. But you're not
13 talking about a document when you speak about Ennis being
14 in tears.
15 MR. STONE: Well, I was getting to that.
16 There was a series of documents that are Mr. Ennis's own
17 memos, and if I understood them, they show his unhappiness
18 and his skepticism of what was going on at the War Depart-
19 ment, and I'm pointing out that was long known. My next
20 question --
21 THE COURT: You started out, I thought,
22 by saying "Did the book discuss the conflict between Ennis
23 and Burling."
24 MR. STONE: No. I meant on the one hand --
25 THE COURT: And Fahy on the other hand?

1 MR. STONE: -- and on the other hand, not
2 Mr. Fahy but the War Department.
3 THE COURT: All right. Why don't you
4 answer that question, if you can?
5 THE WITNESS: All right. Well, first of
6 all, Mr. Stone, my book dealt with litigation, primarily.
7 Mr. Grodzins' deals with an entirely different topic which
8 is the events leading up to the evacuation decision.
9 To the extent that there is any overlap,
10 as I tried to provide a context for the litigation that
11 followed the exclusion orders, there are discussions of
12 those conflicts within the Government prior to the February
13 19th, '42 executive order.
14 Q (by Mr. Stone) Doesn't your book say that Mr. Ennis
15 only found out about the ONI Ringle memo and was very upset
16 about it after, long after the decision was made during the
17 litigation of these cases?
18 A Does my book say that?
19 Q Are you aware that that's the fact?
20 A That what is the fact?
21 MR. KAWAKAMI: Your Honor, --
22 Q Are you aware -- I'd like to focus --
23 THE COURT: Wait a second.
24 MR. STONE: Okay.
25 THE COURT: I want you to stop talking

1 when I start talking.

2 MR. STONE: Excuse me, Your Honor.

3 THE COURT: Let me hear from counsel.

4 MR. KAWAKAMI: Your Honor, this is getting

5 to the substance of the merits of the case. I don't under-

6 stand where he's going or how it's relevant to the issues

7 to which this witness is testifying.

8 THE COURT: I don't either.

9 MR. STONE: I'll explain, if you like.

10 THE COURT: If you want to ask him, did

11 Mr. Ennis tell you that he knew about these things, that's

12 fine. What his book discusses I don't think is relevant.

13 Q (by Mr. Stone) Mr. Irons, do you know what year

14 Morton Grodzins' book was published?

15 A Not for sure.

16 Q But it was -- you were well aware of it before you

17 started your research?

18 A No. I began my research, in fact, before I -- I began

19 my research on this particular topic before, shortly before,

20 I thoroughly read through the books by Roger Daniels,

21 Weglund, Morton Grodzins, Tenbroke, et cetera.

22 Q So you encountered that problem you were telling us

23 before about finding the record before you read these books?

24 A No. I read those books -- Mr. Stone, let me give you

25 the chronology here. I decided to begin research on this

1 book while I was in the National Archives, having come down
2 there for the purpose of doing research on a different topic.
3 I discovered that that topic was not a particularly fruitful
4 topic, decided to work on the internment cases, and then
5 went up to the Library of Congress where I read through
6 those books to see particularly if they dealt with the
7 litigation phases of the internment.
8 Q And you encountered some trouble in locating the
9 relevent records of the litigation; isn't that right?
10 A Well, because the citations in those books, particularly
11 Mr. Grodzins' book, were so unhelpful in terms of locating
12 documents --
13 Q Are you aware that Mr. Grodzins' book in the footnotes
14 repeatedly states that he was given access to the Department
15 of Justice files?
16 A No. I think the files Mr. Grodzins was referring to
17 were some files of Mr. Biddle's, correspondence, largely
18 with members of the public, members of the Congress, et
19 cetera. There were no citations in Mr. Grodzins' book to
20 any of the 146 files.
21 Q Does he cite to Department of Justice files, though,
22 or does he cite to National Archives files?
23 A No. I think the material that Mr. Grodzins cited to,
24 although his citations do not help in locating documents,
25 he would simply say "Department of Justice files" and give

1 a date for a document. Right.
2 Q No source or location, but he does describe it as a
3 Department of Justice file.
4 A I think Mr. Grodzins had access through the WRA records,
5 if I'm not mistaken, to some of Mr. Biddle's correspondence,
6 but --
7 Q Would you --
8 THE COURT: Let's let him -- you said
9 something that interrupted the answer. What did you say?
10 You thought he had access to the Justice Department files
11 through the WRA files?
12 THE WITNESS: Well, some of them were
13 located in the WRA files, but what I meant to point out,
14 Your Honor, was that I think to the best of my recollection,
15 Mr. Grodzins' citations were to records that were primarily
16 correspondence between Mr. Biddle and members of the public
17 who would write in to express an opinion on the evacuation,
18 not dealing at all with litigation.
19 Q (by Mr. Stone) So as a researcher, it's your position
20 that if we read that -- that one who reads that book will
21 not get an idea to go to the Department of Justice files
22 to find out about the litigation in the Hirabayashi case?
23 A That is entirely correct.
24 Q Okay. Would you please hand the witness Exhibit A-49,
25 which is an abstract of a lot of pages from Morton Grodzins'

book?

THE COURT: A-45?

THE CLERK: A-49.

THE COURT: A-49.

Q (by Mr. Stone) Would you look, please, first at the page directly under the cover page - I think the Court mentioned that - to tell us the copyright date, Mr. Irons?

A Oh, I was right. It is 1949.

Q Would you -- let me see which page it is. I don't believe I have all the pages that are necessary, but if you'll turn to the page that has Roman numeral X at the bottom of it, I think it's the fourth page down.

THE COURT: What is the number of that page?

MR. STONE: Roman numeral X.

THE COURT: Your question?

Q (by Mr. Stone) Mr. Irons, Mr. Grodzins states there, "In many instances I have acknowledged in footnotes those who have been generous in making their time available for interviews and their files accessible for analysis."

THE COURT: All right. Let's go on to the next question. I think that's irrelevant.

MR. STONE: Okay.

THE COURT: What we really need to look at are the footnotes, I believe.

1 MR. STONE: Okay.

2 Q (by Mr. Stone) Would you please turn to the page that's

3 marked 146, please, and look at footnote 49? I'm sorry.

4 Footnote 46. Is that Mr. Grodzins' -- footnoted to Mr.

5 Grodzins discussion of Commander Ringle's report?

6 A Yes.

7 THE COURT: Well, there is no problem

8 about that, is there?

9 MR. STONE: Then, again, --

10 THE COURT: I mean -- let me say this:

11 This witness I don't think has testified that he found the

12 Ringle report.

13 MR. STONE: Okay.

14 THE COURT: Or the Harper's magazine

15 article.

16 MR. STONE: Okay.

17 Q (by Mr. Stone) Would you go to the page that's

18 numbered 189 and look at the other half of it which is 188?

19 Could you read me, please, footnote 23?

20 A It says, "Memorandum, J. Edgar Hoover to Edward Ennis,

21 January 9, 1942. See below, Chapter 8."

22 Q Is that a specific enough reference to request a file

23 from the Department of Justice files?

24 A No.

25 MR. KAWAKAMI: Your Honor, I'm not sure

that's an exhibit in this case.

THE COURT: Well, I'm quite sure that I said that with respect to the issue of laches, that I would permit portions of this to be admitted, and other published books on the issue of laches.

MR. KAWAKAMI: I'm referring to the memo in the footnote, Your Honor.

THE COURT: Yes. Well, I see what you mean. I'm going to permit the question. The answer was that that was not a specific enough reference for a researcher.

THE WITNESS: Correct.

Q (by Mr. Stone) Would you now look at the page that's noted as page 231.

A You mean noted at or is?

Q It is page 231. It begins Chapter 8. The page itself appears to discuss the ABC list and whether or not the Justice Department officials had any information in front of them about sabateurs or fifth columnists; isn't that so?

THE COURT: Now, are we looking at footnote 1?

MR. STONE: We're looking at the text right above it, but footnote 1 is fine, too, Your Honor.

THE COURT: Well, let me hear your question

1 again.

2 MR. STONE: My question is, does the text

3 at the bottom of the page talk about the question whether

4 or not there was sufficient evidence to treat Japanese-

5 Americans on an individual basis, which is the italicized

6 word, the word "individual" is italicized at the bottom of

7 page 231; isn't that so?

8 THE COURT: Let me state this: I don't

9 think this witness has testified on that subject.

10 MR. STONE: Okay. I was trying to get

11 to the footnote and I want to show what the footnote is to.

12 It relates to this issue. I don't want to go into the

13 issue. I just want to show what --

14 THE COURT: Let's look at the footnote.

15 MR. STONE: Okay. The footnote, if I may

16 read it, says, "Field notes: Interviews with Edward Ennis,

17 Chief, Alien Enemy Control Unit, Department of Justice,

18 September 25, October 10, 1942," and then it says, "For

19 statement by J. Edgar Hoover that Pearl Harbor found the

20 FBI completely mobilized on a wartime basis and ready for

21 any emergency, see," and it says, "New York Times, July

22 19, 1942. For a similar statement by the Assistant --"

23 THE COURT: Let me stop you there. That

24 footnote pertains to this one sentence you've already read.

25 MR. STONE: Yes.

THE COURT: "The policy was clearcut. All dangerous alien enemies would be immediately detained. Dangerous citizens would be carefully watched. Treatment for all would be on an individual basis." I don't think that footnote has anything to do with the documents that this witness found.

Q (by Mr. Stone) Would you turn to page 240, please, the first sentence on that page which begins on the second line, says "The Commanding General of the Western Defense Command considered these new regulations a great step forward, although he was still critical of the continued insistence of the Department of Justice that premises occupied by citizens could be searched only with a warrant, and of other Justice Department restrictions on mass raids for contraband."

Does that indicate that there was some friction between General DeWitt and the Department of Justice?

MR. KAWAKAMI: Your Honor, --

THE COURT: I don't think you need to object. Go on to another question, because this witness hasn't testified about that. I thought you were going to refer to footnotes which gave specific references to reference.

MR. STONE: I'm referring to the footnotes,

1 Your Honor, to the extent that they refer to interviews
2 with the individuals at the Department of Justice, one of
3 whom testified as the immediate last witness, and in that
4 respect, maybe the document speaks for itself.
5 THE COURT: Let's find a footnote that
6 makes such a reference.
7 MR. STONE: Okay. There is a reference,
8 and maybe I can just publish it, in effect. In addition to
9 that footnote 1 on page 231, there is a reference to the
10 interview with Edward Ennis on footnote 3, page 232.
11 THE COURT: What I need to have you do,
12 though, I believe, is to ask this witness the question you
13 asked before: Does that footnote give you a key to the
14 record about which it speaks? If you have a footnote that
15 refers to any of the records that Mr. Irons found, then
16 you can call his attention to that.
17 MR. STONE: Well, I would like to call
18 his attention, if I may, to page 291, without going over it
19 in detail, just asking Mr. Irons if page 291 begins a
20 recitation of the dispute between, on the one hand, the
21 Department of Justice with memos from the Federal Communi-
22 cation Commission and J. Edgar Hoover, and on the other
23 hand, the War Department.
24 THE COURT: Well, that's not what this
25 witness testified to. He testified to the finding of

1 certain documents and the difficulty of finding those docu-
2 ments. I thought perhaps this book reported that those
3 particular documents had been found years before Dr. Irons
4 found them. Does it do that?
5 MR. STONE: I believe it does do that,
6 Your Honor.
7 THE COURT: Where abouts?
8 MR. STONE: And I believe, for example,
9 the footnote 53 is one of those footnotes. I believe foot-
10 note 52 and 54 --
11 THE COURT: Let's take them up one by one.
12 MR. STONE: Okay. Footnote 52.
13 THE COURT: Page 293.
14 MR. STONE: Page 293. Fly to Biddle,
15 April 1 and 4, 1944.
16 THE COURT: Let's look up in the text.
17 Let me ask you, and I really cannot recall,
18 did you testify about finding any of the FCC memoranda or
19 letters?
20 THE WITNESS: I had, Your Honor, gone
21 through the FCC files and discovered a number of documents
22 that were attached to the original petition.
23 THE COURT: All right. Then you go ahead
24 and ask about footnote 52.
25 Q (by Mr. Stone) Footnote 52, and indeed the paragraph

1 quoted before it on page 292, is one of the documents upon
2 which the original petition filed in this case that you put
3 together relied, isn't it? It's a very long quote with a
4 listing of the number of -- identifying the various lawful
5 transmissions and saying how few were not identified?
6 A It appears -- I'm having a little trouble reading the
7 small print -- but it appears that this is one of the docu-
8 ments that in the course of doing research on the whole
9 involvement of the FCC in this litigation that I found in
10 these files.
11 Now, some of these documents, of course,
12 Mr. Stone, a few of them had been cited in some other
13 works. My research was designed to look more closely at
14 those files. One of the troubles, of course, is that these
15 particular footnotes, as you see footnote No. 52 which you
16 asked me about, Fly to Biddle, April 1 and 4, 1944, gives
17 no indication of even the archivist's source of the docu-
18 ment. Is it the National Archives? The War Department?
19 Grodzins' personal files? Who knows?
20 Q Okay. So let's go back to footnote 51. It quotes a
21 January 9, 1942 FCC Commission document that says, "Frankly,
22 I have never seen an organization that was so hopeless to
23 cope with radio intelligence requirements. The personnel
24 is unskilled and untrained. These officers --" I'm reading
25 the last sentence. "These officers, knowing no difference,

1 pass it on to the General and he takes their word for it.
2 It's pathetic to say the least."
3 Isn't that the same document that is in
4 this case as tab 21?
5 A I don't know. I don't have tab 21.
6 Q Would you please hand him tab 21? It's Exhibit 106.
7 I'm sorry, 107.
8 I believe on Exhibit 107 that's somewhere
9 near the top of the second page, that same quote.
10 A Well, the portion quoted in Mr. Grodzins' book is not
11 the full text of this document, but it does come from this
12 document.
13 Q Isn't it also true, without me having to pick out each
14 one, that there are at least a dozen more critical docu-
15 ments, a dozen more of the documents attached to the
16 petition for coram nobis in this case that are cited,
17 quoted by date, sender, recipient, in Mr. Grodzins' book?
18 A I have not made a count, Mr. Stone. If you could
19 point out any particular document, I could respond.
20 THE COURT: The book will be a matter of
21 record.
22 MR. STONE: Okay. Then we'll try and
23 supply the Court with the number.
24 THE COURT: The documents attached to the
25 petition are a matter of record, so that's a matter of

1 argument.

2 MR. STONE: Okay.

3 Q (by Mr. Stone) Is there any suggestion that you know

4 of, Mr. Irons, -- well, I'll leave the document at this

5 point.

6 Do you have any reason to believe from the

7 face of document -- here we go again -- from the face of

8 the document which is the first version of General DeWitt's

9 final report that it remained in a classified file during

10 the early parts of its existence at the National Archives?

11 A I don't have that before me.

12 MR. STONE: Your Honor, may I show this

13 witness the record which shows it was --

14 Q Respondent's Document A-109, would you have that

15 handed to the witness, please? I'm sorry. That's not in.

16 I'm sorry.

17 Would you tell me the date of this

18 exception record document?

19 MR. KAWAKAMI: Your Honor, I have an

20 objection to this document. I don't believe this is in the

21 scope of what was allowed in the pre-hearing order.

22 THE COURT: Well, I'm going to admit this,

23 if it's offered.

24 MR. KAWAKAMI: Your Honor, it's not listed

25 on even the exhibit list he provided us.

1 THE COURT: Well, this witness has testi-
2 fied -- first, I'll say this: I don't know the materiality
3 of this because I think it would become material only if
4 this witness testified that he had found the first version.
5 I don't know whether he did or did not.
6 THE WITNESS: No.
7 THE COURT: And whether you were privy to
8 this accession inventory, but it does tell apparently when
9 those records perhaps first became available, so --
10 Q (by Mr. Stone) Mr. Irons, are you familiar with with
11 accession inventory documents?
12 A I don't deal with a lot of them. No, those are
13 internal archival documents.
14 Q Have you seen any of them before?
15 A I must have seen a few.
16 Q How many have you seen?
17 A I don't normally, when I go into an archive, ask to
18 see the accession records. I just want to see the records.
19 Q Don't the accession records tell you what is available?
20 A No. The accession records are not what historical
21 researchers look for. They look for indexes of record
22 groups.
23 Q But you are not familiar with this particular accession
24 inventory; is that right?
25 A This particular one? No.

1 Q With accession inventories generally?
2 A Oh, I'm perfectly aware that when the archives
3 accession a group of documents from a federal agency, they
4 prepare an accession inventory. That's correct.
5 Q Okay. Good. Would you please look at the description
6 of records that's the title of a phrase at about the middle
7 of page 1?
8 THE COURT: Well, let me stop you just a
9 moment. Do you have a witness who can testify on this?
10 MR. STONE: Yes, Your Honor.
11 THE COURT: Let's have your witness do
12 that. I think it would be quicker.
13 MR. STONE: Sure.
14 Q (by Mr. Stone) Maybe I can make it easier. You're
15 not suggesting, Mr. Irons, are you, that the first version
16 of General DeWitt's final report was inaccessible to you at
17 any point in the National Archives, are you?
18 A I'm not the person who originally located that in
19 consequence of a search for the documents.
20 Q So you have absolutely no evidence to offer us that it
21 was inaccessible to you; is that right, or to any other
22 person in the National Archives?
23 A This particular document?
24 Q Yes.
25 A No.

1 Q Thank you. Mr. Irons, you spoke some about your
2 travels meeting the petitioners in these various cases.
3 Did you go to seek them out at their various homes and
4 locations?
5 A Yes, I did.
6 Q They live pretty far apart, don't they?
7 A Far? Well, one of them lives in Canada.
8 Q So they live thousands of miles apart; is that fair to
9 say?
10 THE COURT: Well, let's go over the fact
11 they live pretty far apart, because I don't think it makes
12 a whole lot of difference to me with air travel being what
13 it is.
14 MR. STONE: I'll try and tie it up, Your
15 Honor.
16 THE COURT: I don't want you to tie it up.
17 Just go ahead and ask your questions.
18 Q (by Mr. Stone) You invested a large amount of time
19 and money in writing that book, didn't you, Mr. Irons?
20 A I in fact put a great deal of time into writing the
21 book.
22 Q You didn't answer my question on the money aspect.
23 MR. KAWAKAMI: Your Honor, I'm going to
24 object.
25 THE COURT: What difference does that make

1 to me?

2 MR. STONE: Well, Your Honor, I think it

3 does.

4 THE COURT: Does it go to bias?

5 MR. STONE: Yes, I think it does.

6 THE COURT: Can you answer that question?

7 You said you put a great deal of time. How about money?

8 THE WITNESS: I'm trying to recall. I

9 think most of the funds for the research in this came out

10 of my own pocket.

11 THE COURT: As far as you are concerned,

12 was it a fairly substantial amount of money?

13 THE WITNESS: It was straining my resources.

14 THE COURT: All right.

15 Q (by Mr. Stone) And am I correct that the very first

16 occasion when you are -- you had traveled to meet Mr.

17 Korematsu in his home resulted in you representing him in

18 a legal case; is that right?

19 A No, that's not quite correct. Mr. Korematsu asked

20 me if I would be interested in helping him prepare a coram

21 nobis petition.

22 Q On the basis of the materials you brought to him?

23 A That is correct.

24 Q And you decided to become his counsel within days;

25 isn't that right? Maybe the second day?

1 A Well, I actually told him that I would have to try to
2 locate a number of attorneys on the West Coast to assist.
3 I obviously couldn't do this myself from Boston.
4 Q Didn't you file an affidavit that you were the primary
5 drafter of the petition in this case?
6 A That's correct.
7 Q Does the petition --
8 A But I didn't --
9 Q Doesn't it follow --
10 MR. KAWAKAMI: Your Honor, I would like
11 counsel to allow the witness to answer the question before
12 he interrupts.
13 THE COURT: Well, let me say this: It's
14 a matter of record, and I did not know about the affidavit
15 where he said he was the primary drafter of the petition,
16 but it's a matter of record that he was involved early on
17 in this case. I think that's all we need.
18 MR. STONE: Well, I'm trying to establish
19 that the legal case is something he was involved in from
20 day one, Your Honor.
21 THE COURT: All right. I'll accept that.
22 MR. STONE: Okay.
23 Q (by Mr. Stone) Even before you began your research
24 and discussions with Mr. Korematsu about whether to reopen
25 these cases, Mr. Irons, isn't it true that you harbored a

1 personal resentment towards Government lawyers who prosecute
2 civil liberties protestors?
3 MR. KAWAKAMI: Your Honor, I'm going to
4 object to that classification or categorization of Dr.
5 Irons' feelings.
6 THE COURT: I think that's irrelevant here.
7 MR. STONE: May I lay a foundation?
8 THE COURT: No. Let's go ahead.
9 Q (by Mr. Stone) I would like to read a -- Mr. Irons,
10 did you write this book, The New Deal Lawyer?
11 A I wrote a book called The New Deal Lawyers. Is that a
12 copy?
13 Q Well, yes, it is. It's a copy of the book your wrote.
14 Did you write the preface?
15 A Of course I wrote the preface.
16 MR. STONE: I would like to read one
17 sentence from the preface, Your Honor.
18 THE COURT: Let me look at it.
19 Which sentence?
20 MR. STONE: It's only one sentence. I
21 would ask to read the sentence, if I may.
22 THE COURT: I'm going to exclude it. I
23 mean he indicates there a resentment towards --
24 MR. STONE: Your Honor, it's exactly --
25 THE COURT: Let me have it.

1 MR. STONE: Can you just read that
2 sentence?
3 THE COURT: No, I'm not going to read it
4 into the record.
5 MR. STONE: I would be perfectly willing
6 to have him explain it.
7 THE COURT: I'm not going to read it into
8 the record.
9 Oh, wait. This is in the preface. I was
10 looking at the introduction.
11 MR. STONE: Yes, it's in the preface.
12 THE COURT: I'm not going to let you read
13 it into the record, but at 4:30 I'll let you put it in the
14 record as an offer of proof. I think it's completely
15 irrelevant as to his feeling towards Government lawyers.
16 MR. STONE: Well, it impeaches his answer
17 to the last question, Your Honor.
18 THE COURT: All right.
19 Q (by Mr. Stone) Mr. Irons, don't you have a -- in your
20 background, you were yourself a civil liberties protestor
21 very much like Mr. Hiarabayashi; isn't that true?
22 MR. KAWAKAMI: Your Honor, I'm going to
23 object to that.
24 THE COURT: I think it's all right.
25 A As a matter of fact, Mr. Hirabayashi and I have one

1 thing in common which in fact helped attract me to these
2 cases as a matter of research in that we both have objections
3 to military conscription.
4 Q By that, you both protested the Selective Service
5 Training Act and you were at one point both convicted of
6 a felony for doing that; isn't that true?
7 A Yes, that's true.
8 Q And you both went to jail for it; isn't that true?
9 A Well, I know I did.
10 Q You are not familiar -- I thought your book described
11 Mr. Hirabayashi's circumstances --
12 THE COURT: Let's go ahead with another
13 line of questioning.
14 MR. STONE: All right, Your Honor.
15 Q (by Mr. Stone) Isn't it true that both of you also
16 ultimately were pardoned by a blanket pardon from the
17 President of the United States?
18 A No, that's not true. I was pardoned specifically by
19 President Ford. It was an individual pardon.
20 Q Thank you. It is true that you both received a
21 pardon?
22 THE COURT: You know, Counsel, I really
23 don't know how that should affect my judgment in this case.
24 MR. STONE: Okay. I'll go on.
25 Q (by Mr. Stone) Isn't it true that your own case, Mr.

1 Irons, that eight years, or you can tell me how many years,
2 after you emerged from imprisonment you served in your own
3 case, you filed a coram nobis petition in your own case?
4 A That's correct.
5 Q And then --
6 THE COURT: Let's have another line of
7 inquiry.
8 Q Mr. Irons, isn't it true that both you and Mr.
9 Hirabayashi are college professors?
10 A Mr. Hirabayashi, I think, has completed his sentence
11 as a college professor and is now emeritus, but I am
12 currently a college professor. That's right.
13 Q Isn't it true that you have a very personal interest
14 and identification with the Petitioner in this case?
15 A Oh, yes.
16 THE COURT: Counsel, are you suggesting
17 to me that he is testifying falsely because of this?
18 MR. STONE: What I am suggesting, Your
19 Honor, is that when a person is very closely identified
20 with their client, it's like any lawyer who tries to be his
21 own client. He often overpleads his case.
22 THE COURT: All right. Next line of
23 questioning.
24 MR. STONE: I think that's it, Your Honor.
25 THE COURT: All right. Any redirect?

1 MR. KAWAKAMI: Yes, Your Honor.

2

3 REDIRECT EXAMINATION

4 BY MR. KAWAKAMI:

5 Q Dr. Irons, have you ever received any financial rewards

6 for your participation in Mr. Hirabayashi's case?

7 A No, I haven't.

8 Q Is it a fair statement to say that because of the work

9 of the Commission that some of the documents that you

10 obtained were more readily and easily obtained?

11 A Oh, I think that the work of the Commission helped in

12 obtaining many of the documents.

13 MR. KAWAKAMI: No further questions.

14 MR. STONE: I have one on recross, Your

15 Honor.

16 THE COURT: On these questions?

17 MR. STONE: Yes, on these questions.

18 THE COURT: The last two.

19 MR. STONE: Yes. The question of financial

20 rewards arising from this case just came up.

21

22 RECROSS-EXAMINATION

23 BY MR. STONE:

24 Q Mr. Irons, you did publish your book in the fall of

25 19 -- in August of 1983; isn't that true?

1 A My book was published in October 6th, I think, 1983,
2 was the official publication date, if I'm not mistaken. The
3 publishers sometimes arbitrarily pick publication dates.
4 Q But it was released at a time when all three petitions
5 in these cases were pending and you were counsel of record
6 having primarily drafted the petitions in all three cases;
7 isn't that true?
8 A That the book was published after the date the
9 petitions were filed.
10 Q No; it was published at the same time.
11 A No.
12 Q Excuse me. It was published after the date that the
13 petitions were filed?
14 A That's what I said.
15 Q Before any of them were disposed of?
16 A That's correct.
17 Q Isn't it true you got a substantial amount; that you
18 went on talk shows, radio talk shows, during that time
19 publicizing your book, call in, question and answer talk
20 shows?
21 A That I received a substantial amount for those? No,
22 I didn't.
23 Q No, no. Excuse me. I don't think I said substantial
24 amount.
25 A I heard you say it.

THE COURT: The question was -- I thought the question was, did you go on radio talk shows publicizing your book. That's the question.

THE WITNESS: I'm sorry. I was confused by the way he stated his question. The answer to that question is yes.

Q (by Mr. Stone) Do you get substantial -- can you tell us offhand what the retail price of your book is?

THE COURT: I don't care about that.

MR. STONE: Well, Your Honor, they asked about financial rewards, and it's a very expensive book.

THE WITNESS: You can buy it in paperback now.

THE COURT: Okay. Next question.

MR. STONE: May I ask about royalties from the book?

THE COURT: No. That really has so little value to me.

MR. STONE: Your Honor, --

THE COURT: I'll tell you for true, I'm not going to discredit his testimony at all because he published a book about it, because he appeared on radio talk shows, or some of these other things. The fact that he was a draft resistor --

MR. STONE: Oh, Your Honor, I didn't ask

1 you to discredit it on that basis.

2 THE COURT: What did you ask me to discredit

3 it on?

4 MR. STONE: I was asking you to recognize

5 that he is an interested participant for a variety of

6 personal reasons, and that at the very same time that he

7 was counsel, the very same time that he was counsel, he

8 made allegations of the Government's unethical behavior,

9 and I was trying to --

10 THE COURT: Any other questions?

11 MR. STONE: Well, the line of questioning

12 was going to -- I was going to pursue whether or not it is

13 within the canons of ethics to publish cases that are still

14 open and that you're working on.

15 THE COURT: All right. I'm not going to

16 let you ask that question.

17 MR. STONE: Then I have no further ques-

18 tions.

19 THE COURT: I thought the last question

20 you asked had to do with royalties.

21 MR. STONE: It did.

22 THE COURT: I'm not going to let you ask

23 that question.

24 MR. STONE: Are you letting me ask about --

25 THE COURT: No.

1 MR. STONE: Okay. Then all we have is an
2 offer of proof left.
3 THE COURT: I assumed you were going to
4 ask about the last question you spoke about.
5 All right. Any other questions?
6 MR. KAWAKAMI: No, Your Honor.
7 THE COURT: All right. You may step down.
8 THE WITNESS: Thank you.
9 (Witness excused.)
10 MR. KAWAKAMI: Your Honor, we would like
11 to release this witness so he may sit in the courtroom.
12 THE COURT: All right. If you feel that
13 he is not going to be called again.
14 MR. STONE: Your Honor?
15 THE COURT: Yes.
16 MR. STONE: The only reason that I object
17 is that he has been playing such a substantial role up
18 until this very day when he said he was no longer counsel
19 that it seems to me he would again be de facto counsel if
20 he sat in the courtroom and participated, and frankly, --
21 THE COURT: Is that your objection?
22 MR. STONE: My objection is that it would
23 appear at least it is simply a way around a lawyer testi-
24 fying in his own case.
25 THE COURT: I'll overrule that objection,

1 but if you feel he's not going to be called again --

2 MR. KAWAKAMI: Your Honor, we'll exclude

3 him from the courtroom because he may in fact testify in

4 rebuttal.

5 THE COURT: All right. That's fine.

6 Now, let me ask you, of course you're not going to be

7 called again today, so I think you're perfectly free to

8 leave if you care to.

9 THE WITNESS: Thank you.

10 THE COURT: All right.

11 MR. KAWAKAMI: Your Honor, our next wit-

12 ness is Aiko Herzig-Yoshinaga.

13

14 AIKO HERZIG-YOSHINAGA, called as a witness on behalf of the Petitioner, being duly

15 sworn, testified as follows:

16 THE COURT: Now, would you move closer to

17 that microphone, just move your chair, and then pull it

18 down so it's right in front of you. Maybe a little bit

19 more. That should be fine.

20

21 DIRECT EXAMINATION

22 BY MR. KAWAKAMI:

23 Q Can you state your name and spell your name for the

24 record, please?

25 A My name is Aiko Herzig-Yoshinaga. A-i-k-o, H-e-r-z-i-g-

1 Y-o-s-h-i-n-a-g-a.

2 Q And your address?

3 A 3713 South George Mason Drive in Falls Church,

4 Virginia.

5 Q And what is your occupation?

6 A I am an independent research consultant.

7 Q And prior to that, what did you do?

8 A Just before I began doing my independent research work

9 I was a researcher for the Commission on Wartime Relocation

10 and Internment of Civilians.

11 THE COURT: Would you wait just a moment?

12 I'm afraid maybe everyone cannot hear you. Can you turn

13 up the volume a little bit? Maybe you could sit a little

14 bit closer to the microphone.

15 Now, I'm going to ask you to repeat what

16 you said about what you were just before becoming an

17 independent research consultant.

18 A I was a researcher on the staff of the Commission on

19 Wartime Relocation and Internment of Civilians.

20 Q (by Mr. Kawakami) And when was it that you were on

21 the staff of the Commission?

22 A I joined the staff in June of 1981, and remained on

23 the staff until it was terminated in June of 1943.

24 THE COURT: '83?

25 THE WITNESS: '83. I'm sorry. I am

1 thinking in terms of the war years.

2 Q (by Mr. Kawakami) And what were your duties at the

3 Commission?

4 A I was familiar with the archives by that time because

5 I had done personal research in the archives since 1979,

6 and so I had gone to the archives originally to look for

7 family records.

8 THE COURT: Let me ask you, his question

9 was what were your duties with the Commission.

10 A Okay. I was to isntruct, because of my experience in

11 the archives, instruct other staff persons on the Research

12 Department on archival research techniques and set

13 priorities for research for the Commission, identify wit-

14 nesses, former Government witnesses particularly, who

15 should be asked to testify before the Commission at its

16 hearings, and to select priorities in the areas to be

17 researched.

18 Q And you did research on documents yourself?

19 A Yes. I reviewed them and made them available to the

20 writers of the reports for the Commission. I reviewed and

21 indexed these documents.

22 Q And how did you identify the witnesses that would

23 testify?

24 A From the material that I had seen prior to joining the

25 Commission, I was able to pinpoint some of the key officials,

1 and we made an effort to find out which of these officials
2 were still living and track down where they may be living
3 at the time and identify them in that way.
4 Q And you have been able to locate certain documents
5 that we've used in our petition for coram nobis in this
6 matter?
7 A Yes.
8 Q Do you have a list before you of the documents that
9 you've located?
10 A Yes.
11 MR. KAWAKAMI: Your Honor, I believe she
12 has a copy of your index.
13 THE COURT: All right. That's fine.
14 Q (by Mr. Kawakami) Can you identify the documents that
15 you located?
16 A All right. On the first page --
17 THE COURT: Let me just say this, and I'll
18 have to ask my clerk. Is the left column, is that the tab?
19 THE CLERK: That's the tab number.
20 THE COURT: And the right is the --
21 THE CLERK: The exhibit number.
22 THE COURT: -- the exhibit number.
23 You don't have two sets of numbers?
24 THE CLERK: Yes. She has it the way it
25 should be. This is the tab and this is our exhibit number.

THE COURT: Now, it would be a little bit helpful to me if you would read the number on the right first, because that's the exhibit number. The one on the left is the tab.

THE WITNESS: All right.

A The first Exhibit No. 94.

THE COURT: That is, you were saying you located that?

THE WITNESS: Yes. I will read just the ones that I know, that I can identify.

THE COURT: That's fine.

A The second is 95.

THE COURT: And the tab is 2.

THE WITNESS: The tab is 2.

A The third is 96, tab is 3. The fourth, 32, tab is 4. Exhibit 47; tab 5. Exhibit 48; tab 6.

THE COURT: I think that's 46.

THE WITNESS: I'm sorry.

THE COURT: Is that right?

THE WITNESS: Yes, you're right.

A Exhibit 45; tab 7. Exhibit 34; tab 8. Exhibit 100, tab 9. Exhibit 80, tab 10.

We are into the second page. Exhibit 33, tab 11. Exhibit 77, tab 12. Exhibit 78, tab 13, and then the next three do not have exhibit numbers but they're tabs

14, 15 and 16. Exhibit No. 4; tab 17.

We jump down to Document 102; tab 20. Exhibit 107; tab 21. Exhibit 106, tab 22. Exhibit 104; tab 23.

The next page. Exhibit 103; tab 24. Exhibit 81; tab 25.

THE COURT: Let me ask you, on that particular page, is there a way for you to start at a particular exhibit and then say all through another exhibit?

THE WITNESS: That's right, there is.

A All the way down to -- let's see -- the whole page.

THE COURT: So that would be through Exhibit 79, tab 34?

THE WITNESS: Yes.

THE COURT: At the bottom?

THE WITNESS: Yes.

THE COURT: All right.

A Then on page 4 -- let's see. Since this was given to me just a little while ago, I have to identify it more clearly myself. I think -- if I could see the documents, I may be able to be more clear, but the third item there is Exhibit 41; tab 37. And the next one, Exhibit 42; tab 38. Then, at the bottom, the last two items, Exhibit 57; tab 44 and Exhibit 58; tab 45.

Then the next page, page 5, all of them,

1 starting with Exhibit 59, tab 46, ending with Exhibit 68;
2 tab 55.
3 THE COURT: Let me check those. At the
4 top, and I have to check with my clerk, the exhibit number
5 is 59, is it not?
6 THE CLERK: Yes, Judge.
7 THE COURT: So that would be 59, tab 46,
8 through Exhibit 68, tab 55. Is that right?
9 THE CLERK: Yes.
10 A (continuing) All of page 6, starting with Exhibit 69,
11 tab 56, ending with Exhibit 24, tab 65.
12 All of page 7, starting with Exhibit 5,
13 tab 66, ending with Exhibit 8, tab 76.
14 The same for the next page, page 8,
15 starting with Exhibit 9, tab 77, ending with Exhibit 11,
16 tab 87.
17 I think the first one on the next page,
18 91, Exhibit 91, tab 88. I believe that's it.
19 THE COURT: All right.
20 Q (by Mr. Kawakami) Now, without going into each and
21 every location of each and every document that you found,
22 could you tell the Court the places that you went to locate
23 these documents?
24 A These particular documents?
25 Q Yes.

1 A The National Archives is where the bulk of the material
2 came from, but also I was able to get documents from the
3 United States Naval Historical Center, and some from the
4 Department of Justice files, some from the Roosevelt Library
5 in Hyde Park, New York, and some from Commander Ringle, Jr.,
6 Kenneth Ringle, Jr.
7 THE COURT: From him, personally?
8 THE WITNESS: Personally.
9 THE COURT: You spoke about "Junior."
10 Is that the man who wrote the report or is that the son of
11 the man who wrote the report?
12 THE WITNESS: The son.
13 THE COURT: Is Commander Ringle himself
14 still living?
15 THE WITNESS: No.
16 THE COURT: He is not. So it's the son of
17 the man?
18 THE WITNESS: Yes.
19 A (continuing) Also from the Federal Communications
20 Commission files, Modern Military files, War Relocation
21 Authority files, Secretary of War files, Assistant
22 Secretary of War files, General and Special Staff for the
23 United States Army, the Navy Department files, Federal
24 Records Center in San Bruno, California and Lebanon, New
25 York and Suitland, Maryland.

1 THE COURT: Federal Records Centers in
2 California and Maryland?
3 THE WITNESS: Yes.
4 A (continuing) And we have received through telephone,
5 I have received through telephone, mailed materials from
6 other libraries, the Truman Library, Cornell University,
7 Yale University where Stimson --
8 MR. STONE: Excuse me. Could she talk up
9 a bit?
10 THE COURT: Yes. She said from Cornell
11 Library, from Yale University Library where the Stimson
12 papers are?
13 THE WITNESS: Yes.
14 Q (by Mr. Kawakami) When is it that you obtained these
15 documents?
16 A Some I started, as I said, earlier. I think I started
17 my personal research in about 1979, and throughout I have
18 gone from place to place since then, and a lot of the
19 materials were gathered during the time I served on the
20 Commission. I made contacts during that period.
21 THE COURT: By what date do you think you
22 had found all of these documents you've listed?
23 THE WITNESS: Oh, dear. You see, Judge,
24 when I first started this, it was on a very personal search
25 and I didn't have anything special in mind.

1 THE COURT: I'm not thinking of the
2 beginning date so much as the ending date.
3 THE WITNESS: The ending date? I would
4 say until very recently. As recently as April, May.
5 THE COURT: Of this year?
6 THE WITNESS: Of this year.
7 Q (by Mr. Kawakami) Some of these documents you had
8 located and identified through your work on the Commission;
9 is that correct?
10 A Yes.
11 Q Now, can you describe -- you're familiar with at least
12 those documents that you identified that you found. You're
13 familiar with those and you understand that they are
14 exhibits in our case here?
15 A Yes.
16 Q Now, can you briefly describe to the Court any par-
17 ticular difficulties you had in obtaining any of the docu-
18 ments that you've listed and identified?
19 A Well, much of the material here relates to the first
20 version of the DeWitt report. For example, I had during
21 the course of my investigation come across a copy of his
22 first version, and when I saw it, I was intrigued by the
23 fact that it didn't look the same as the one that I had
24 been studying, which was the published version, public-
25 available copy, and when I thumbed through it quickly, I

1 realized there was another version, and then I realized also
2 that that was the first version which I thought had all
3 been destroyed, the copies had been destroyed, because I had
4 formerly seen a file which indicated that the Assistant
5 Secretary of War's office had requested certain alterations,
6 certain changes, to be made in the so-called first version
7 of the DeWitt report, and I called the attention of the
8 archivist to the fact that this copy looked different, was
9 the first version, and he was very surprised because he
10 didn't know himself.
11 THE COURT: Let me stop you just a moment.
12 I think the question was what if any difficulty did you
13 encounter in finding these various documents? What about
14 that particular one?
15 A That particular one, because of the fact that much --
16 that particular document was not known to the archivist
17 that it even existed, the first version, I didn't know to
18 look for it and I came across it by accident. But the
19 material, the background material about the first version
20 was in separate files, and I came across a memo relating to
21 the first version in different file folders of the Assistant
22 Secretary of War records, so they had to be gathered up
23 together in order to make the full story of the fact that
24 this was actually what happened, that alterations were made
25 in the second version printed.

1 And another instance -- can I give you?

2 THE COURT: Do you recall when you found

3 that particular document?

4 THE WITNESS: I believe it was toward the

5 end of '82. I think it was toward the end of '82.

6 Q (by Mr. Kawakami) This is while you were working for

7 the Commission?

8 A Yes.

9 Q Can you briefly describe for the judge, in general,

10 what difficulties a person with no research experience

11 would encounter in trying to obtain documents?

12 MR. STONE: Your Honor, --

13 A Yes. I think --

14 MR. STONE: -- maybe before there is an

15 answer, couldn't it be what difficulties you encountered

16 rather than a person? She certainly is not qualified,

17 having only been a researcher personally since 1979 and

18 herself in a pay position since 1981, to give an opinion

19 on what difficulties another researcher had, but I don't

20 object to what difficulties she had.

21 THE COURT: I think the question is proper,

22 that is, your question was the difficulties that would be

23 encountered by a person with no background in historical

24 research.

25 MR. KAWAKAMI: That's correct, Your Honor.

THE COURT: What difficulties would such a person encounter in finding these documents?

A I guess I'm a good example of one because when I started my research, I found that the federal agencies which submit their records to the National Archives, they all -- not all, but most of them have different systems of filing and there is no standard way that each -- that is maintained.

For example, the War Department has a system of filing by decimals. The Navy Department has a code symbol. You have to know that EF-37 stands for Japan and that A8-5 stands for espionage. Then, the Justice Department, for example, has records by a number and then date, not necessarily by subject. Therefore, if you're looking for something specific, say for example I had a case in the Justice Department records and I was trying to find a particular memo and that memo was undated, so I was invited to look through cartons and cartons and probably many, many boxes and files before I came across this particular memo. Because it was undated, it was difficult for whoever was handling the files in the Justice Department to know where to put it, and it was unlabeled but I did come across it.

It was a very important document because it had been quoted by historians in published works. The

1 archivists themselves are not familiar, naturally, with the
2 thousands of documents that they have, so they can just
3 generally give you a general guide, especially when so many
4 of these records do not have any indexing system or card
5 catalogs, and that's the problem I myself had. It's only
6 because of my familiarity now with how these different
7 agencies have their records stored at the archives that I
8 have been able to go more directly when I've been asked to
9 find something.
10 Q (by Mr. Kawakami) Have there been occasions when
11 individuals have asked you about obtaining documents for
12 them?
13 A Yes. Yes.
14 Q We've asked you to supply certain documents for our
15 case?
16 A Yes.
17 Q And you've also, through your work on the Commission,
18 you've supplied some documents to Mr. Stone as well?
19 A Yes.
20 Q Have there been occasions when other people might ask
21 you for your assistance in obtaining documents?
22 A Yes, there have been, and whenever possible -- are you
23 speaking specifically of the time when I was with the
24 Commission?
25 Q Either on the Commission or after.

1 A Yes; both.
2 Q And after your work on the Commission, people would
3 from time to time call you and ask you to obtain documents
4 other than either the Government or --
5 A Yes. I have had researchers who have gone to the
6 archives and oftentimes the archivists with whom I might be
7 familiar would, in order to help a researcher, would suggest
8 that they call me to see if I could help them more, because
9 oftentimes they themselves couldn't assist the researcher
10 and they knew that I had been through the records for so
11 many years that I might be able to help them.
12 Q So there were times when your advice or help was
13 requested even from people who had experience in research?
14 A Yes. Yes.
15 Q Now, you mentioned, for example, I believe, that you
16 obtained a copy of the Ringle report, which is, I believe,
17 Exhibit 32, tab 4.
18 A Yes.
19 THE COURT: All right. I think we are
20 right at recess time so we'll take a recess now and resume
21 at 9:30 tomorrow morning.
22 I do want to see counsel and the reporter.
23 Oh, I'm so sorry. You're right. It's Monday at 9:30.
24 I do want to see the book that you asked about, the sentence
25 from the Forward, and we'll put it into the record in the

1 room in here. We are going to take a recess until 9:30,
2 Monday morning. Would you come with us?
3 (The following proceedings occurred in the chambers of
4 the Court:)
5 MR. STONE: I think it has been particularly
6 difficult to rule on admissibility without having the
7 context, so I hope on some of the rulings we could defer
8 because since there is no objection, you could decide later.
9 THE COURT: All right. Now, you wanted to
10 make an offer, and it is from -- may I just see it for a
11 second? It is from the book by the witness, Peter H. Irons,
12 "The New Deal Lawyers," and it is from his Forward. Why
13 don't you just read it into the record?
14 MR. STONE: Thank you, Your Honor, and in
15 connection with that, I would like to say in making the
16 offer of proof that I was in the course of trying to
17 establish that Mr. Irons has, for his own personal reasons,
18 a bias or perhaps even a vendetta against what he personally
19 perceives as Government lawyers who only do their jobs but
20 nonetheless prosecute civil liberties violators.
21 THE COURT: Why don't you just read the
22 sentence that you want?
23 MR. STONE: The sentence which I wish to
24 read begins -- may I read a little more?
25 THE COURT: No. I am going to let you

1 read that one particular sentence from the Forward.

2 MR. STONE: The sentence is from his

3 Forward. It is on page Roman numeral XI, which is 11, and

4 it's the first full sentence.

5 THE COURT: Why don't you read it somewhat

6 slowly?

7 MR. STONE: I offer to read the whole

8 paragraph, but I'll read the sentence.

9 THE COURT: That's what I said.

10 MR. STONE: "Possibly as a criminal

11 defendant, first in a sin-in case in Maryland and then as

12 a draft resister in Federal Court, left a residue of

13 resentment towards the Government lawyers who proclaimed

14 to be 'only doing their jobs' in prosecuting me and others

15 for what we felt were legitimate protests against illegiti-

16 mate Government policies."

17 THE COURT: All right. Very well.

18 MR. STONE: May I just make two other

19 sentences with respect to another line of questioning?

20 I'll make that offer of proof at the end otherwise. It's

21 relating to Mr. Irons.

22 THE COURT: Go ahead. Is it from this

23 book?

24 MR. STONE: No, but it was the same line

25 of questioning you stopped.

THE COURT: You go ahead.

MR. STONE: When I was trying to develop simply his financial bias and the fact that he has received substantial royalties, well in excess of his out-of-pocket expenses, and has also been on T.V. as well as radio publicizing it, leading to the inference that, by direction or indirection, these cases are part of his publicity campaign to fund his own personal career.

THE COURT: All right.

MR. HALL: May I raise two issues? First, it is my understanding that Grodzins' books or any other books that are introduced by counsel go to the issue of laches and not to the substance of any segments in the books.

THE COURT: I think he has agreed to that.

MR. STONE: Yes.

THE COURT: That was my original ruling.

MR. HALL: Also, as I understand it, counsel has agreed to permit us to take the deposition of Mr. Lowman, and just for the record, we are prepared to take that in the morning or afternoon tomorrow at counsel's convenience.

MR. STONE: I thought the Court had ruled we had to do it after the Petitioner had rested, so we instructed him to be prepared when you rested. I thought

1 that --

2 THE COURT: Is he in town?

3 MR. STONE: I think he's in town.

4 THE COURT: I think we ought to do it

5 tomorrow. I think that would be the most convenient time

6 for everybody.

7 MR. STONE: I'll have to make sure he's

8 clear. Something like 11:30 or 1 o'clock? He has no idea

9 because I guess I have not told him. I didn't think the

10 case was ending today, so he is not prepared yet.

11 THE COURT: Let's do it at some convenient

12 time tomorrow.

13 MR. HALL: One o'clock?

14 MR. LEONG: That will be fine.

15 MR. HALL: One o'clock in our office,

16 34th Floor, 1111 Third Avenue Building, just down the

17 street on Third Avenue.

18 MR. BARNETT: I have the old record but

19 I see nothing in here on the Court's instructions to the

20 jury. I did run across some files at the University of

21 Washington where they've got the instructions in shorthand

22 by a woman who wrote a book, and I feel after talking with

23 my colleagues, if we want to proceed on the Rules of Civil

24 Procedure, under hearsay as recorded recollection of an

25 authority, it's pretty good shorthand notes that have been

1 in the archives of the University for perhaps ten, fifteen
2 years. I could offer those, if you don't have the instruc-
3 tions in your records. I don't have them in what I have
4 and this is supposed to be the complete record.
5 THE COURT: Why don't you all wait right
6 here?
7 I do have the original file, as I told you,
8 and of course it is available to any of you who want to look
9 at it. It does not have the Court's instructions. It does,
10 however, have the instructions proposed by the Petitioner,
11 I guess the defendant in that action, and by the Government.
12 I think that's more important. Really, I think it's more
13 important what the defendant in that action, the Petitioner
14 here, proposed. That is really more important than what
15 the Court gave.
16 MR. BARNETT: I have those. I will, if
17 the Court will allow us, offer these.
18 THE COURT: I intended to take judicial
19 notice of this file, and it might be well to --
20 MR. STONE: Your Honor, we are still in
21 the same case. I don't think you have to. It's part of
22 the record. This is part of the same criminal case.
23 THE COURT: I don't know that it is. Isn't
24 this a civil case?
25 MR. STONE: No. Not according to

1 United States --

2 THE COURT: In any event, I intend to look

3 at this file, but I think it might be well to have a set

4 of the defendant's instructions marked as an exhibit, just

5 in case this goes on appeal, it would be readily available.

6 MR. STONE: I would also like to be able

7 to sit in your office and read through the file.

8 THE COURT: Sure.

9 MR. STONE: Or, if it's possible, take it

10 up to the U.S. Attorney's office, Xerox the thing, and bri

11 it back.

12 THE COURT: I don't think you'd like to

13 Xerox the whole thing. It certainly is available to you.

14 Why don't I just keep it in my office and whenever you

15 want to look at it, you let me know.

16 MR. STONE: I am going to come in the

17 first thing tomorrow to look at it. Can you tell me what

18 time your office is open?

19 THE COURT: I will be here no later than

20 8:15.

21 MR. STONE: Okay. I'm not sure I can get

22 up that early. I'm making up for last night, but I will

23 be here sometime between 8 and 9.

24 THE COURT: That would be fine. I'll be

25 here.

1 MR. STONE: If for some reason I am not
2 here --
3 THE COURT: There's no problem. Any time
4 that's convenient for you.
5 MR. STONE: Perhaps later in the day.
6 There is no ability to see it on Saturday, is there?
7 THE COURT: I think you had better try to
8 see it tomorrow. I come in many Saturdays, but I'm not
9 sure.
10 MR. STONE: Friday before what time?
11 THE COURT: Quarter of six.
12 MR. STONE: I'll be here before that.
13 The deposition will be over.
14 THE COURT: Very well.
15 (Court adjourned.)
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