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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

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JAN 9 1986

VOLUME IV
June 24, 1985

AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
BY DEPUTY

ORIGINAL

MORNING SESSION

(9 o'clock a.m., June 24, 1985)

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

THE COURT: Good morning, all. Did you
get your sleep over the weekend?

MR. KAWAKAMI: Enough.

THE COURT: You say enough? That's good.
Did you get to look at that original file as much as
you wanted to, Mr. Stone?

MR. STONE: Yes, I think so.

THE COURT: It's available to you and
everybody any time you want it.

I guess we're going to look at exhibits;
isn't that right? The Government's exhibits.

MR. KAWAKAMI: That's correct, Your Honor.

THE COURT: So do you have those that you
can pass up? Do you have the exhibits you want to intro-
duce?

MR. STONE: I've got them all listed.
Should I physically have them? I think I can discuss them
just off the list.

THE COURT: Well, do you have a list for
me?

MR. STONE: Yes. The clerk has two.

1 MR. HALL: You can borrow my list.

2 THE COURT: When was this served?

3 MR. HALL: Thursday, mid-day.

4 THE COURT: Within the last few days?

5 MR. STONE: Thursday noon.

6 THE COURT: All right. Well, you know, I
7 really think that I need to see the exhibits.

8 MR. STONE: Okay. The clerk also has two
9 stacks for you of them, two copies.

10 THE CLERK: Nothing has been added.

11 THE COURT: Would you want to get your
12 stack?

13 THE CLERK: Yes, Judge, I will go.

14 THE COURT: I want to get to the documents,
15 too, so I'll be right back. Now, have you given the list
16 back?

17 THE CLERK: Yes, I did.

18 THE COURT: This is mine?

19 THE CLERK: Yes, Judge.

20 THE COURT: All right. Let's take the
21 first one.

22 THE CLERK: Judge, I show that you have
23 previously ruled on some of these.

24 THE COURT: What was the ruling on that
25 one?

1 THE CLERK: Excluded.
2 THE COURT: And A-2?
3 THE CLERK: A-2 we had admitted.
4 THE COURT: A-3?
5 THE CLERK: No ruling.
6 THE COURT: Then let's take A-3.
7 MR. HALL: I thought A-3 was already --
8 MR. LEONG: I believe that one was excluded,
9 also.
10 MR. HALL: Not admitted; rejected by Court.
11 Actually there was some question whether it was even offered.
12 THE CLERK: That's correct. I don't have
13 any ruling on it, whether it was admitted or excluded.
14 MR. STONE: It was to refresh the recollec-
15 tion of Mr. Ennis about the AG's curfew program and I think
16 you said it wasn't necessary and we just kept going. I
17 don't know if you actually ruled the document was admissible
18 or not. We just kept going.
19 THE COURT: But you used it to refresh, so
20 I have not admitted it?
21 MR. STONE: I don't think you've admitted
22 that one.
23 THE COURT: All right. I'm going to put
24 down here for the moment, not offered.
25 Then, A-4?

1 MR. HALL: A-4 has been admitted. It's a
2 document that came in early. It's a letter from Captain
3 Walker to Milton Eisenhower, June 7, 1942, or Captain Waller,
4 W-a-l-l-e-r.

5 THE COURT: June 7, '42. You have it
6 admitted?

7 THE CLERK: I show nothing, Judge.

8 THE COURT: Are you in accord on that?

9 MR. STONE: I couldn't hear.

10 THE COURT: Apparently A-4, she has no
11 notation. Apparently it's a letter from Captain Waller to
12 Eisenhower, Milton Eisenhower, dated June 7, '42.

13 MR. HALL: I think it was in connection
14 with --

15 MR. STONE: That would be the cover letter.

16 MR. HALL: Is that the cover letter on
17 Terminal Island?

18 MR. STONE: No. That's the cover letter
19 on the Canaga matter which is -- maybe that is it. That's
20 the package, yes, which also carries the number A-64. It's
21 the same as A-64.

22 MR. HALL: A-4 is the same as A-64?

23 MR. STONE: Yes.

24 THE COURT: Are you sure that A-4 was not
25 just the cover letter?

1 MR. STONE: Well, A-64 has it attached to
2 it, and I thought they came in all together.

3 THE COURT: A-64 has the cover letter
4 attached to it?

5 MR. STONE: It has this June 7th letter
6 attached. It's three pages long.

7 THE COURT: Then, is there any objection
8 to A-64?

9 MR. STONE: That was one of the attachments
10 to the March pleading.

11 THE COURT: You know, my copies don't seem
12 to have -- some of them have a number; some do not,
13 apparently.

14 MR. STONE: I think they're all numbered.

15 THE COURT: Well, let's do this. On A-4
16 -- let me speak just a moment. On A-4, I am going to not
17 admit A-4, exclude that, because apparently that's a part
18 of 64. Then we'll look at both of them when we get to 64.

19 Now, A-5?

20 THE CLERK: I show A-5 and A-6 and A-7
21 were admitted.

22 THE COURT: And A-5 is the appellant's
23 reply brief. A-6 is admitted. I don't have a copy of A-6.
24 A-6 is an MID memo, which is probably Military Intelligence.

25 MR. HALL: Some of these have my

1 handwriting on them.

2 MR. KAWAKAMI: No, this is our copy.

3 THE COURT: I have admitted that?

4 THE CLERK: Yes.

5 THE COURT: A-6 has been admitted.

6 A-7?

7 THE CLERK: Was also admitted.

8 THE COURT: It was admitted. All right.

9 Then, A-8, 9 and 10 are blank?

10 A-11?

11 MR. STONE: No; 8 was -- you admitted, was
12 the Commission on Wartime Relocation and Internment of
13 Civilians statement of Peter Irons and his written state-
14 ment.

15 THE COURT: Before the Commission?

16 MR. STONE: Yes.

17 THE COURT: Do you have that?

18 THE CLERK: I don't have a record of that.

19 No, I do not.

20 MR. STONE: We did that in the room there.

21 THE COURT: It may have been out of your
22 presence.

23 MR. HALL: I have an objection with regard
24 to A-8, and this comes up with other things, too. It is
25 liberally annotated by counsel, and circled and underlined

1 and marginal notations.

2 MR. STONE: No, no.

3 MR. HALL: Whose notations are these?

4 MR. STONE: The Commission's.

5 MR. HALL: The circles?

6 MR. STONE: You've got the only annotated
7 copy. I was looking for what happened.

8 MR. HALL: I don't care if the record
9 reflects that the original is not.

10 MR. STONE: The original is not marked.

11 THE COURT: You have no problem on the
12 clean copy?

13 MR. KAWAKAMI: That's correct.

14 THE COURT: All right. A-8 is the Peter
15 Irons statement, and that's admitted.

16 A-9?

17 MR. KAWAKAMI: There is no 9 or 10.

18 THE COURT: Those are blank. Don't they
19 call them null sets in mathematics? At least when I was
20 trying to teach my children about something that I knew
21 nothing about.

22 A-11 is the --

23 MR. HALL: Stetson Conn excerpts.

24 THE COURT: That's A-11?

25 MR. STONE: A-11 is the whole chapter

1 regarding America's Downfall. It's one that we mentioned
2 to you. It has been repeatedly referred to in two versions
3 as the Official History of the Evacuation. We have both
4 versions here.

5 THE COURT: Any objection to that?

6 MR. KAWAKAMI: As long as it's represented
7 that that's the full chapter.

8 MR. STONE: That's the full chapter.

9 THE COURT: All right. I'll admit that.
10 You can check that. Any possible error, we can correct
11 after the hearing.

12 All right. A-12?

13 MR. STONE: I start by listing the cables
14 that are listed and I gave the page and the place that
15 they appeared in the Congressional hearing.

16 THE COURT: These, I assume, are "Magic"
17 decipherments?

18 MR. STONE: Yes.

19 MR. HALL: Does counsel represent all of
20 these cables were included in the pretrial order that we're
21 guided by?

22 MR. STONE: They're all on the pages of
23 the serial. I have the page right next to it. It's serial
24 90.

25 MR. HALL: That's not the question I'm

1 asking. The Court ruled, I think, that except for the docu-
2 ments listed in your pretrial order draft of March or so --

3 THE COURT: Or referred to by the witness
4 before the Congressional Committee hearing --

5 MR. HALL: Or otherwise used for laches
6 arguments, that nothing else is admissible. I'm just asking
7 counsel to represent that all of these "Magic" cables are
8 included in the March pretrial order.

9 MR. STONE: Or referred to by the witness
10 at the hearing.

11 MR. HALL: By the hearing, you mean Mr.
12 Lowman?

13 MR. STONE: The printed one, yes. Lowman
14 referred to them in the testimony. They've got a page
15 number for the testimony. Every one has a page number.

16 MR. HALL: I don't mean to be burdensome
17 about this, but I want to make it clear that counsel is
18 representing that all of these "Magic" cables which are
19 Exhibits A-12 through -- what?

20 MR. LEONG: The last one is page A-39.

21 MR. HALL: -- A-39, are either referred to
22 specifically by Mr. Lowman in his testimony or referred to
23 specifically in the March pretrial order in which counsel
24 set forth the exhibits which the Court has already ruled
25 are the only exhibits that are admissible.

1 MR. STONE: Through A-39, I have actually
2 given you the page number at which Mr. Lowman referred to
3 them for every one.

4 MR. KAWAKAMI: Where is that?

5 MR. STONE: It's right here. Right next
6 to the cable number. It says Serial No. 90, page 45, and
7 then down further another one says Serial No. 90, page 47.
8 I gave you the page of the serial, Serial 90 is his testi-
9 mony, that he actually referred to every one so it wouldn't
10 be questioned. You can just open to his testimony that it
11 points and that number is right there.

12 MR. HALL: On A-17A it's distribution?

13 MR. STONE: Okay. Now, A-17A. Now, when
14 we start with small letters, we're talking about cover
15 letters.

16 MR. HALL: Then I object, if it's not
17 included in the pretrial order or the reference by Mr.
18 Lowman, because I think it's outside the Court's ruling.

19 MR. STONE: Well, I think it's within
20 the reference of Mr. Lowman because of the cover letter
21 items.

22 THE COURT: Well, if I admit the cables,
23 then I would admit 17A, B, and so forth, if they indicate
24 the distribution of those messages.

25 MR. LEONG: Your Honor, I think the term

1 "distribution" is being used very liberally. I don't think
2 these can in any way be characterized as cover letters.

3 THE COURT: All right. Let me take a look
4 at one of them.

5 MR. STONE: Okay. Let's look at A-17A.
6 You'll need 17 at the same time. If you take 17 and 17A.

7 THE COURT: Yes. This doesn't seem to be
8 a cover letter to me.

9 MR. STONE: Well, Your Honor, if you will
10 look at 17 and 17A, starting at the paragraph numbered II,
11 it is the identical -- if you hold up -- if you look at 17,
12 17A starting at paragraph II is the identical words. It's
13 merely retyped.

14 MR. HALL: I guess I have another objection
15 to 17A and that's --

16 MR. STONE: I have set forth with triangles
17 on the sides where the exact paragraph is on 17.

18 MR. HALL: I object to that. I think it
19 pollutes the exhibit.

20 MR. STONE: I don't know what that means,
21 Your Honor.

22 THE COURT: I think I understand what
23 counsel is saying.

24 MR. STONE: They could not say "I'm going
25 to send around this cable" so they simply retyped the exact

1 cable to the next guy, and it is verbatim 17.

2 MR. HALL: I think what counsel is trying
3 to show is that while certain people may not have received
4 the "Magic" cables, people received summaries or synopses
5 and sometimes verbatim extracts from the "Magic" cables.
6 I don't think this is included in the Court's earlier
7 ruling with regard to what counsel can offer.

8 THE COURT: I'm going to admit these, if
9 this shows a distribution of the substance, the content, of
10 the "Magic" cables, I'm going to admit it.

11 MR. HALL: May we have a ruling, then,
12 with regard to counsel's marginal notes on the exhibits?

13 MR. STONE: Marginal notes?

14 MR. HALL: For example, 17A, the flags are
15 from counsel.

16 MR. STONE: The flags are for the Court's
17 assistance, simply so you could see which part of 17 it
18 came out of. In other words, we made flags so that the
19 Court would not be misled that we were using it for the
20 truth, just simply to show this is the paragraph from 17,
21 and we did that on 17B so that it would make it easy to
22 find.

23 THE COURT: All right. If this were a
24 jury trial, I would require clean copies, but I think this
25 could be of help to me.

1 MR. HALL: May I ask a question with regard
2 to 17B, something I didn't understand?

3 THE COURT: 17B?

4 MR. HALL: It shows in the middle of the
5 page, paragraph No. 1, circled and then X'd out. I don't
6 know what that means.

7 MR. STONE: What we did was, in order to
8 de facto sanitize the copies for you, Your Honor, where
9 there was a paragraph which appeared to be not simply
10 passing along the cables, we have circled it and put an X
11 through it. In effect, we could have just whited it out
12 but we did not do that because then if Mr. Hall said "For
13 completeness sake, I may want to ask the judge to read
14 it," we did it this way so if there are any paragraphs
15 like that that he wants you to read, he may ask you to
16 read those.

17 THE COURT: I think it's all right.

18 MR. STONE: Otherwise, we won't rely on
19 any of the ones that are circled and X'd out.

20 MR. HALL: What is the difference between
21 on Exhibit 17B, the paragraph No. 1 that's circled and X'd
22 out, and the top paragraphs in the memo, paragraph numbered
23 one and the paragraph that begins "In view of the critical
24 situation"? Is the X'd out one not to be considered part
25 of your offer but the balance of the exhibit part of your

1 offer?

2 MR. STONE: That's right. The beginning
3 is an introduction and it ends with a colon. Where it ends
4 with the colon and they begin the message, paragraph one is
5 the only paragraph which is not a verbatim paraphrase of
6 17, and the others tell you exactly where they're from.
7 Paragraph two of A-17, paragraph three of A-17, paragraph
8 four of A-17.

9 MR. HALL: Counsel is not offering the
10 circled and X'd out paragraphs?

11 MR. STONE: I'm not offering the circled
12 and X'd out paragraphs unless you want them.

13 THE COURT: That's what I understood.
14 All right.

15 THE CLERK: So, Judge, are you admitting
16 A-12 through A-, would it be 40B, all the cables?

17 MR. STONE: The same is true right through
18 all the way down --

19 THE COURT: A-39?

20 MR. STONE: -- 39. That's right.

21 THE COURT: Any objection?

22 MR. HALL: I think you've already ruled.
23 I learned that once you've ruled --

24 THE COURT: Over your objection? All
25 right. I will still have to be persuaded of their

1 relevance in final argument. I'm sure you all understand
2 that.

3 Now, that's A-39. I'm up to A-40.

4 MR. STONE: Okay. 40 you have previously
5 admitted. That was attached in its entirety to that --
6 you admitted that in court. That was the ONI memo which
7 is attached in its entirety to the Commission testimony,
8 the 26-page ONI memo.

9 THE COURT: Do you have any ruling on that?

10 THE CLERK: I don't have any ruling on that.

11 MR. STONE: It was in the pretrial ruling
12 that you made at page 25, line 8.

13 THE COURT: Page 25 of the transcript of
14 the pretrial hearing?

15 MR. STONE: Of the transcript of Monday,
16 at line 8.

17 THE COURT: Any comment? That was December
18 4, 1941, and I really cannot recall whether I made a ruling
19 or not. Do you have the transcript there? Let's see what
20 counsel says. Then if there is a problem, I'll look at the
21 transcript.

22 MR. HALL: I don't think we have an
23 objection, just so the record is clear that the flags are
24 from counsel so I don't have to mention it every time.

25 THE COURT: Yes. That's understood.

1 MR. STONE: The flags are from counsel.
2 40A and 40B are just different copies of 40 so you can see
3 distribution of 40. They're identical documents with
4 slightly different distribution. One has a cover letter.

5 THE COURT: I think that would be all
6 right. So that's 40, 40A and 40B admitted.

7 41 is blank? No, I do have 41 here.

8 MR. STONE: What is 41?

9 MR. LEONG: The same as A-6, I believe.

10 MR. STONE: Oh, that's why we didn't have
11 A-6. That's what we now made and admitted as A-6, so we
12 can cross 41 and you might want to just write A-6 on it.

13 THE COURT: So A-41 is excluded.

14 MR. STONE: Yes. Would you use the one
15 you have as 41 as A-6, though, because I'd like to discuss
16 one matter on that right now before we leave it, if I could.

17 THE COURT: All right. Is it the distri-
18 bution?

19 MR. STONE: Yes. Let me, if I may. Okay.
20 Your Honor, looking for a moment at A-6, if you would pull
21 out A-17H.

22 THE COURT: All right. I have that.

23 MR. STONE: You will see when you open up
24 A-17H that A-6 is a summary of A-17H. A-6 says at the top
25 left corner, ONI, 12-20-441, Japanese Tokyo Club," and

1 then it says "Japanese activities and intelligence machine
2 in the Western Hemisphere," and the title of it, "Recent
3 Japanese Activities in Latin America," or if you'll open
4 past the cover page of A-17H --

5 THE COURT: Yes.

6 MR. STONE: -- this document which is A-6
7 is a three-page summary of this much longer memo. I actually
8 think that it's a summary by the military for military
9 distribution of this Navy memo, and the titles follow
10 exactly. The first title which is "Japanese Activity in
11 Latin America" on A-6 is on the the first page --

12 THE COURT: Yes. Let me ask you, what
13 effect does that have with respect to A-6 and A-41, which
14 is what we're talking about.

15 MR. STONE: It doesn't affect A-6 and
16 A-41, but what I would ask is of all the distribution
17 documents that we have included, I would ask that A-17H
18 alone be admitted for substance because otherwise it is
19 somewhat confusing to look simply at a three-page summary
20 of what is otherwise a 22-page memo.

21 We have marked it so that if you want to
22 allow it only for distribution, that's fine, but frankly,
23 I think since we have already decided to admit A-6, and
24 it is a summary as you can see from that upper left-hand
25 corner where it says ONI 12-24-41, Japanese Tokyo Club,

1 it's a summary of this very memo. I would ask that this
2 one memo be admitted. I think it's very important not to
3 confuse you or unnecessarily curb your understanding of
4 the three-page A-6.

5 THE COURT: Well, A-17H has just been
6 admitted, hasn't it?

7 THE CLERK: Yes.

8 MR. STONE: It's been admitted, though,
9 only as to the non-X'd out paragraphs. The whole memo of
10 A-17H is summarized in A-6, and I would ask this one alone
11 to allow both X'd out and non-X'd out paragraphs to come in,
12 precisely because it is the reference to A-6, A-6 up in its
13 corner. It's referencing this memo. It's summarizing and
14 referencing it.

15 THE COURT: Well, I think what we had
16 better do is to defer that ruling and argue this in your
17 final argument.

18 MR. STONE: Okay. Thank you.

19 THE COURT: Because, to tell the truth,
20 I don't know the relevance now. It may turn out to be
21 relevant; it may turn out not to be relevant.

22 MR. STONE: Okay. Fine. You you will
23 defer that one?

24 THE COURT: Yes.

25 MR. STONE: Fine. That's fair enough.

1 Let me just write A-17H, the X'd out parts are deferred.

2 THE COURT: It will be consideration of
3 the X'd out portions for the truth of the matter asserted
4 is deferred.

5 Now, here is A-41 and A-6. Now, as far as
6 A-41, I am showing that as being excluded, the same as A-6.

7 MR. STONE: Right. A-6 is in and A-41 is
8 out.

9 THE COURT: Right. Now, anything else?
10 The next one I have is A-42.

11 MR. STONE: A-42 is one that was listed
12 on the Petitioner's pre-hearing order.

13 THE COURT: Who is George? Is that George
14 Marshall?

15 MR. STONE: Yes.

16 MR. EDWARDS: We expect so, but the docu-
17 ment itself doesn't say so.

18 THE COURT: He was a Brigadier General,
19 wasn't he?

20 MR. STONE: I think the document reads
21 "My dear George," as a matter of fact.

22 THE COURT: "Dear George."

23 MR. EDWARDS: DeWitt was three-star at
24 the time.

25 THE COURT: He was Lieutenant General.

1 MR. EDWARDS: Yes, sir.

2 THE COURT: All right. But it was
3 addressed to the Chief of Staff.

4 MR. STONE: Right. And that was listed
5 because it appeared on their pre-hearing list and there-
6 fore the rule says we can use it if it appeared on their
7 list.

8 THE COURT: I think it should be admitted.

9 MR. KAWAKAMI: We have no objection to
10 A-42, -43 and -44.

11 THE COURT: All right. Then as to those,
12 A-42 through A-44, admitted.

13 MR. HALL: Or -45.

14 MR. KAWAKAMI: Or -45 or -46.

15 THE COURT: All right. A-45 and A-46,
16 admitted.

17 MR. STONE: A-47 is just a publication to
18 show laches.

19 THE COURT: A-46 is the amicus brief.

20 THE CLERK: That had been previously
21 admitted on the 20th.

22 THE COURT: That's -46. -47?

23 MR. KAWAKAMI: -47, we just have an
24 objection as to the completeness of it.

25 MR. STONE: It's a publication to show

1 laches. We could furnish the Court with the entire copy,
2 but the only thing relevant are those pages at the end.
3 We will be happy, if the Court wants, to furnish the entire
4 book.

5 THE COURT: Let me admit that but give the
6 Petitioner permission to complete it, if you want to, to
7 provide me with additional pages. That's A-47.

8 MR. HALL: This is offered just for laches
9 purposes?

10 THE COURT: That's my understanding.

11 MR. STONE: Yes.

12 THE COURT: A-47. Then, A-48 is this.

13 MR. STONE: Brief of the United States in
14 Korematsu, and we just gave the Court a supplemental up
15 there this morning because somehow it didn't get into the
16 original package.

17 THE COURT: A-48 seems to be something
18 different.

19 MR. HALL: Yes. It's not a brief. It's
20 the Ringle report.

21 MR. STONE: Okay. We got somehow the list
22 wrong.

23 THE COURT: Well, then let's look at A-48,
24 and I think that should be admitted. I want to look at it,
25 in any event.

1 MR. STONE: Okay. Wait a second. We gave
2 the Court --

3 MR. LEONG: Actually that is listed also
4 as A-77.

5 MR. HALL: -48 is -77.

6 MR. STONE: Okay. That's what happened.
7 The document that says A-48 should say A-77.

8 THE COURT: Let me change it.

9 THE CLERK: We did admit A-77.

10 THE COURT: Then, A-49?

11 MR. STONE: Wait. But there is an A-48
12 which is the brief that you would like.

13 THE COURT: Do you have it there?

14 MR. STONE: Yes. We gave a package up
15 here a few moments ago. Here it is right here. This is
16 the A-48.

17 MR. HALL: Can we have that marked A-48A
18 because of counsel's previous marking of A-77 and A-48 as
19 the same document, just so there is no question?

20 THE COURT: Well, I have no objection to
21 marking that as -- let's make it A-48A, if you think there
22 is any kind of confusion.

23 MR. HALL: Just so the record knows.

24 THE COURT: I will mark that on the docu-
25 ment, and that is admitted, the brief for the Government in

1 Korematsu.

2 Then, A-49?

3 MR. KAWAKAMI: We have no objection to that
4 as long as it goes to the issue of laches.

5 THE COURT: Yes, that's right, and you
6 can complete it if you want to. Anything that may be
7 omitted, you can fill in.

8 Then let's see. A-50?

9 MR. STONE: That's one of the documents
10 which was reprinted and you've already admitted. It's
11 reprinted in the Congressional hearing.

12 THE COURT: Have I made a ruling on this
13 particular document?

14 MR. STONE: Yes.

15 MR. KAWAKAMI: Your Honor, I believe you
16 ruled that he would be able to offer the exhibits in the
17 pre-hearing order but we were going to address the issue of
18 relevance and whether or not it would be admissible at the
19 time he offered it.

20 We would object to A-50 on the basis that
21 it goes to military necessity and is not therefore relevant.

22 MR. STONE: A-50 is --

23 THE COURT: Let me do this --

24 MR. STONE: Is to be considered --

25 THE COURT: -- because we are after 9:30.

1 Let me stop -- I was going to say defer there -- but I
2 think I'll stop right at this point between A-49 and A-50,
3 and then we'll take them up at another convenient time.
4 A-77 I'll put in here.

5 All right.

6 (The following proceedings
7 occurred in open court:)

8 THE COURT: Good morning.

9 MR. KAWAKAMI: Your Honor, if I may bring
10 up one preliminary matter before we resume testimony, and
11 that is that we have determined that we will not be
12 utilizing Professor Irons as a witness.

13 THE COURT: Again?

14 MR. KAWAKAMI: Again. That's correct.
15 We would ask that he be allowed to --

16 THE COURT: To be in the courtroom? That
17 would be fine. Is he here now?

18 MR. KAWAKAMI: Yes. He is sitting back
19 in the witness room.

20 MR. STONE: Your Honor, --

21 THE COURT: Yes.

22 MR. STONE: -- and I ask this only because
23 I thought it was part of the issue before. I have no
24 objection to him observing the case, but is he going to
25 continue to consult again with counsel, which was the point

1 that we sort of stressed, that he was not being counsel.
2 I will ask that he observe as any member of the public and
3 that he not consult with counsel through the end of the
4 case.

5 THE COURT: Well, counsel are entitled to
6 speak to expert witnesses. I would not make such a ruling.

7 MR. STONE: You didn't let him testify as
8 an expert. You had him testify only as an individual who
9 found records as to first person knowledge, and we did
10 have the problem that right up until the testimony, he
11 remained associated with the case and we were trying to
12 avoid the appearance of working with the attorneys. I
13 don't have any problem with him being in the courtroom, but
14 I think that it would --

15 THE COURT: I'm not going to preclude
16 their talking to him.

17 MR. STONE: All right.
18

19 AIKO HERZIG-YOSHINAGA, resumed the witness stand and
20 testified further, as follows:

21 DIRECT EXAMINATION (resumed)

22 BY MR. KAWAKAMI:

23 Q Mrs. Herzig-Yoshinaga, when we stopped on Thursday,
24 I believe it was, we were discussing some of the diffi-
25 culties in obtaining documents, and first, before we get

1 back into that, I would like to ask you if you had a chance
2 to look at your list again to see about which documents you
3 were able to obtain and which ones you didn't.

4 A Yes, I have, and I would like to be -- I would like to
5 say that I did not, upon a better study of this document,
6 that I did not include several documents which I, to the
7 best of my recollection, I had discovered but I had not
8 read them off as documents that I had found.

9 Q Could you state to the Court which ones those would be?

10 A Yes. Starting with page 4 --

11 MR. KAWAKAMI: And for the record, Your
12 Honor, she is still referring to the index in your black
13 volume.

14 THE COURT: Yes.

15 MR. KAWAKAMI: Page 4.

16 THE COURT: Let's see if we can agree.
17 The document number is the exhibit number; isn't that
18 correct?

19 MR. KAWAKAMI: That's correct.

20 THE COURT: And the Petitioner's exhibit
21 number is the tab number.

22 MR. KAWAKAMI: That's correct.

23 THE COURT: So why don't you tell us the
24 ones that you did find?

25 A Yes. Going from the top, the third one is the tab

1 No. 37, Exhibit 41. Tab No. 38, Exhibit 42. And then
2 skipping, skipping one, the next one will be tab 40,
3 Document 89. Skipping two, tab 43, Document 84, and the
4 last two, Tab 44, Document 57, and tab --

5 THE COURT: I'm sorry. I missed those.
6 Would you start again, please?

7 THE WITNESS: The last two?

8 THE COURT: Just the last two.

9 A It's tab 44, Document 57; tab 45, Document 58. Then
10 on page 9, tab 88, Document 91. Skipping one, the next one
11 is tab 90, Document 2. Tab 91, Document 87. Tab 92,
12 document 85. Tab 93, Document 86. Tab 94, Document 112.
13 Under that there are two listings. One says brown volume,
14 tab 95, Document 110. Tab 96, Document 113. Those are
15 the additions.

16 Q (by Mr. Kawakami) Now, on Thursday you testified that
17 you previously worked for the Commission on Wartime
18 Relocation and Internment Centers as a researcher?

19 A Yes.

20 Q And perhaps, for shorthand, we can just refer to that
21 now hereafter as just the Commission, if that's okay with
22 you?

23 A All right.

24 Q Can you briefly describe what research and what docu-
25 ments you were obtaining for the Commission?

1 A Well, since the Commission was charged with coming up
2 with the history and making recommendations to Congress on
3 what actions should be taken as a result of the exclusion
4 and detention program against Japanese-Americans, it was
5 the duty of the researchers to gather and reconstruct the
6 history, so it was a very sweeping search. At the very
7 beginning, that's what it was. Eventually we were able to
8 identify certain documents that we should definitely search
9 for.

10 Q And when you stated or testified earlier that you had
11 located documents which we utilized in our petition, you
12 didn't necessarily locate them all for our case?

13 A That's true.

14 Q And part of it was for -- as you were doing searches
15 through the Commission?

16 A Yes.

17 Q Now, did the Commission have special access to docu-
18 ments?

19 A Yes. It had been given statutory power to request
20 documents from federal agencies or other sources.

21 Q And would there be special requests to allow access to
22 these documents?

23 A Yes. Letters went out to, for example, the heads of
24 the FBI and the Department of Justice requesting that they
25 provide us whatever information they had on the subject.

1 Q Now, after you left the Commission, I believe that was
2 in 1983?

3 A Yes. The end of June.

4 Q After you left the Commission, were you asked by our
5 legal team to do research for this particular case?

6 A Yes.

7 Q And were you asked to do research for both general
8 topics and specific documents?

9 A Yes.

10 Q Can you briefly describe the problems you would have
11 in doing research for say a general topic that we would ask
12 you to research?

13 A Yes. Primarily because I didn't know what we were
14 looking for if it was general, and a great deal would depend
15 upon help from the archivist who could give us a better idea
16 of what existed.

17 Q So would it be fair to say that part of the problem
18 involved defining the area of what it is you were looking
19 for?

20 A Yes.

21 Q Now, I believe Thursday you were testifying before our
22 break regarding your finding or your locating and obtaining
23 the final report, the first version of the final report.

24 THE COURT: You know, the last question
25 had to do with the Ringle report. Are you now talking about

1 the DeWitt report?

2 MR. KAWAKAMI: Yes. Yes, Your Honor. That
3 would be Exhibit No. 4, tab 17.

4 THE COURT: You know, you said "the report"
5 and I may have just assumed the Ringle report, but I do
6 have Exhibit 32, tab 4. Right?

7 MR. KAWAKAMI: The one I'm referring to
8 right now, Your Honor, is the first version of the final
9 report which I believe is Exhibit 4, tab 17.

10 THE COURT: Let' see.

11 MR. KAWAKAMI: I'm not sure whether this
12 is the question that we ended with.

13 THE COURT: It doesn't make any difference.
14 We'll start afresh, but now are you talking about the final
15 version of the DeWitt report?

16 MR. KAWAKAMI: This is the first version,
17 Your Honor.

18 THE COURT: The first. That's Exhibit 4,
19 tab 17, I believe. Is that correct?

20 MR. KAWAKAMI: That's correct, Your Honor.

21 Q (by Mr. Kawakami) Now, on Thursday you were testifying
22 - I'm not sure whether this is the last question I was asking
23 or not - but you did testify about obtaining or finding the
24 final report, this version of the final report, sometime on
25 Thursday.

1 A Yes.

2 Q You were discussing some difficulties in locating or
3 some difficulties in obtaining this document.

4 A I can't say it was difficulty because I thought the
5 first version, the ten copies of the first version, had been
6 destroyed, and so when I recognized this particular book
7 that was sitting on the archivist's desk, and when I
8 thumbed through it quickly, I noticed that the date of the
9 letter of transmittal was not the same date. The Forward
10 was different and I noticed handwritten notes on the left
11 margin of the chapter, the second chapter.

12 Because of the fact that I had previously
13 seen correspondence concerning changes and alterations and
14 destruction of material, I paid particular attention to it,
15 and I noted at that time that this was not the version that
16 was currently available and that this was the first version.
17 I think the important thing about this is that the archivist
18 himself did not know that this was a different version.

19 THE COURT: You speak about an archivist.
20 Which archivist is that? Is that the National Archives?

21 THE WITNESS: Yes. A gentleman in the
22 Modern Military Section, which has custody of this.

23 THE COURT: Now, would you wait just one
24 moment? And when did you first see that?

25 THE WITNESS: I believe it was toward the

1 end of 1982.

2 THE COURT: That was when you were still
3 with the Commission?

4 THE WITNESS: Yes.

5 THE COURT: Because you stayed with the
6 Commission until the end of June, '83?

7 THE WITNESS: That's right.

8 Q (by Mr. Kawakami) So then you were one of the first
9 to locate this document and understand its significance?

10 A Yes. I think I was the first one able to identify it
11 as a version that was different from the publicly available
12 version.

13 Q And prior to that time, do you know if anyone else knew
14 that there was another version still in existence?

15 A I don't know that. The archivist did not know.

16 Q Can you describe some problems that researchers run
17 into when looking through files at the archives for docu-
18 ments?

19 A Yes. I think the general misimpression about archives
20 is that it's like a library; that you can go to a card
21 catalog, find directions on where to get a book. In the
22 archives, with the various different systems that prevail
23 in different branches, it's not the same thing. Many
24 archives' branches do not have guiding cards, detailed
25 indexes that you want to find, and they have different

1 systems. Oftentimes, even though you may be given a number
2 of boxes, and I think I did not specify that archival boxes
3 are about six, seven inches wide from front to back, large
4 enough to fit a legal size folder and high enough to fit
5 folders, and one might find anywhere from two to three
6 folders in one of these archival boxes or as many as twenty-
7 five folders in the box.

8 Some branches in the archives maintain
9 their records by punching holes at the top and fastening
10 them together. Some branches place the documents loosely
11 in the folder. If a researcher happens to open a folder,
12 and although they are not supposed to loosen the fastener
13 and take out the papers, because sometimes they're so thick
14 that you can't see the bottom copies, and so a researcher
15 might take the Acco fastener off in order to see the docu-
16 ments clearly. Then, if he does not put them back together
17 in the right order, which is very easy to do, that creates
18 a problem.

19 The problem is compounded if that same
20 person takes another folder out at the same time and does
21 the same thing to it, loosens it and starts mixing the
22 papers, and then when he's ready to put them back, if he's
23 not careful, one document may be placed in the wrong file.

24 Then, in addition to that, if the
25 archivist or if the researcher opens a second box and

1 therefore has one folder out of one box and another folder
2 out of another box and does the same thing, a document may
3 be replaced in the wrong place, and that has happened in a
4 couple of instances when I was looking for things. We found
5 material that was not where it should have been.

6 Q Can you describe a few of those instances where that
7 happened for our case?

8 A I think -- let me see if there is -- I have this list.
9 Let me see if I can identify one. Well, I remember several
10 that had been sent to you that don't appear to be in this
11 list, in which I had that particular experience.

12 Q Is it fair to say that you sent us documents which
13 although we requested and although you sent did not
14 eventually end up in petition papers or the papers that we
15 filed?

16 A Oh, yes.

17 MR. STONE: I thought it was asked and
18 answered, but it's all right. It's the same answer.

19 A Yes. I would say there were literally hundreds of
20 documents that I sent you that I don't see on this list.

21 Q Could the clerk please hand the witness, I believe it's
22 Exhibit 98, tab 19.

23 Do you recognize that document?

24 A Yes, I recognize it.

25 Q What is that document?

1 A This is the oral argument by Mr. Fahy, Solicitor General
2 of the United States, in Korematsu.

3 Q And is this a document that you had been looking for?

4 A Yes, I had, because this was one of the documents, I
5 believe, that was listed in the discovery list provided by
6 -- to the Government of some of the documents that was being
7 searched, and it was something I was looking for and also
8 the lawyers were looking for, so I recognize it. I had also
9 had in the back of my mind to keep looking for this, although
10 that was not my priority. I was with the Commission at the
11 time. My priority was to see that the Commission's report
12 was completed.

13 Q How many hours or months or years do you feel it takes
14 to become a proficient archives researcher?

15 A Well, my search was in particular branches. Mine was
16 military War Relocation Authority records, and I would say
17 it took me close to a year before I felt rather comfortable
18 with these records, and I can't say about other records.
19 It might have been easier, but because I was primarily
20 interested in these records, I would say it took me about
21 that long.

22 Q Is that working full time or about a year working how
23 long?

24 A When I first started it was a few days a week, a few
25 full days a week. As I got hooked, I guess is the word,

1 on the subject and I realized there was such rich material,
2 I started to spend three or four full days, plus the evenings.
3 The archives was open until 10 o'clock. My husband would
4 drop me off at 9 o'clock. He'd pick me up at five, we'd go
5 out to dinner and then he'd join me and we would work until
6 10 o'clock. Then on Saturdays they're open from 9 to 5,
7 so we would spend oftentimes most Saturdays in the archives.

8 THE COURT: Was this work you were doing
9 before you were employed by the Commission?

10 THE WITNESS: Yes.

11 THE COURT: You were doing work on your own?

12 THE WITNESS: Yes, and oftentimes even
13 when I was with the Commission, in the evenings I would go
14 back to the archives to try to do more work.

15 Q (by Mr. Kawakami) Now, have all the documents, to your
16 knowledge, from governmental sources been transferred to
17 the National Archives?

18 A Well, the request was made from the Commission to the
19 heads of various agencies, and the FBI, for example, I
20 recall at one point sent about six thousand sheets of paper,
21 but I know that everythign wasn't there. I knew that papers
22 from certain camps were not there. They supplied some and
23 some not, and in looking through some of the documents that
24 the Government had submitted, I see some documents, the FBI
25 documents, that I do not recollect seeing as having been

1 submitted to the Commission. And so, on the basis of
2 that, I think I can say that everything from the FBI was
3 not submitted to the Commission.

4 Q Well, have documents from governmental sources been
5 all transferred to the National Archives or with another
6 depository that keeps archival records?

7 A That's another area. Federal agencies are supposed
8 to submit documents that are, say this is 1985. Any docu-
9 ments older than 1965 are supposed to be routinely submitted
10 to the archives. In the case of the FBI, I was told by the
11 archivist that there are no documents -- that they have not
12 received documents from the FBI since 1938 or '39, and that
13 the FBI retains custody of those documents themselves.

14 In the Justice Department there is -- I
15 don't know what the cutoff date is for records that are in
16 the archives, but the Justice Department maintains its own
17 records through the record management office, so most -- if
18 I were to seek something from 1945 or even '55 in the
19 archives, I probably would not find it if it were a
20 Department of Justice document.

21 Q What difficulties would a lay person have in looking
22 for documents at the different archival depositories?

23 A Well, one would have to first determine what specific
24 area one is looking for a specific documents. A lot would
25 depend upon the knowledge of the archivist, the availability

1 of his or her time for whatever help one could get, the
2 quantity of material that might exist on that subject.
3 There is a lot of waiting time involved, and the system that
4 is used to index that particular subject. That's very
5 important.

6 Q And is there a unified system of indexing that is
7 utilized by all archival sources?

8 THE COURT: I think that has been testified
9 to, I know by Mr. Irons, but I believe also by this witness,
10 that the military use a different system from the Interior
11 from the Navy.

12 THE WITNESS: Yes.

13 Q (by Mr. Kawakami) Do the different archives determine
14 if or whether or not all the documents and attachments that
15 are sent to them are together and complete?

16 A I doubt that. I doubt that it's common practice for
17 the archives to do that. They're leaving it up to the
18 individual federal agencies to submit everything they have
19 to the archives.

20 MR. STONE: Your Honor, that's just a --
21 that's calling for a conclusion of the witness. She didn't
22 have direct knowledge of that.

23 THE COURT: I think it is. I'm going to
24 sustain the objection to the question. It's really to the
25 answer.

1 MR. KAWAKAMI: Could the clerk please hand
2 the witness Exhibit 91, tab 88, and No. 2, tab 90?

3 THE COURT: I have the first exhibit number
4 which was 91, tab 88, and the second was tab 90. Can
5 you give me the exhibit number?

6 THE CLERK: No. 2.

7 MR. KAWAKAMI: Tab 90, Exhibit 2.

8 THE COURT: Exhibit 2.

9 Q (by Mr. Kawakami) I believe these are both documents
10 you testified that you were able to locate; is that correct?

11 A Yes, I think they are. I know the first one is. Yes,
12 I think the second one is, too.

13 Q Do you recall approximately when you discovered these
14 particular documents?

15 THE COURT: You know, it might help me,
16 because I haven't looked them up, for me to take a quick
17 look at the index.

18 No. 2, is that the memorandum of agreement
19 between Miles Anderson and Hoover?

20 MR. KAWAKAMI: No, Your Honor. That's
21 a memo from Ennis to Wexler.

22 THE COURT: Again, I am looking at the --
23 let me take a look back here. 90 is, yes, a memo from
24 Ennis to Wexler.

25 A Your question I have forgotten. What was it?

1 THE COURT: Let me just be sure. The
2 first one is 91, tab 88. That's the letter from the
3 Attorney General Kenny to Colonel Watson; is that correct?

4 MR. KAWAKAMI: That's correct, Your Honor.

5 THE COURT: And the other one which is
6 tab 90 is a memorandum from Ennis to Wexler. And his
7 question was, do you recall the date when you found those
8 documents. I believe that was the question.

9 MR. KAWAKAMI: That's correct, Your Honor.

10 A I can't say. I looked through thousands of documents,
11 and there are some, perhaps a whole series, that I might
12 have a general idea. But this one particular documents, I
13 really can't say exactly when it was that I discovered this.

14 Q (by Mr. Kawakami) Can you give me a general time
15 frame?

16 MR. STONE: It's been asked and answered.

17 THE COURT: Let me ask this, which would
18 give us some information. Do you think that you found
19 that when you were acting as a private citizen or when you
20 were acting for the Commission, or when you were acting at
21 the request of these attorneys?

22 THE WITNESS: I think this was when I was
23 at the Commission.

24 MR. KAWAKAMI: No further questions.

25 THE COURT: All right. Any cross-examination?

CROSS-EXAMINATION

BY MR. STONE:

Q Mrs. Yoshinaga-Herzig, you know me pretty well, don't you?

A Yes, sir.

Q We have spoken quite a number of times about documents and I have, when there were still Commission premises, I came up and visited that collection and Xeroxed documents and at times used some of the vast number of index cards you had there. Right?

Did you create that card index at the Commission? Was that your card index?

A Yes. We made it up at the Commission, yes.

Q And the Commission tried to obtain Xerox copies of files from other places and then make its own internal set of copies and index them; is that right?

A Yes.

Q You were in the Commission's main office just about every day, weren't you?

A Yes.

Q You did things like an office manager, if I recall. Am I right?

A No. There was an administrative person to do the managing. I was a researcher.

Q Were you the -- who was the person who worked with

1 Angus MacBeth as special counsel on a regular basis?

2 A In the research work or in the administrative work?

3 Q Both.

4 A There were -- there was an administrative person, a
5 woman by the name of Mrs. Shores who worked with him in
6 matters other than research. I was his main contact for
7 research.

8 THE COURT: Would you spell the name of
9 that person, please, for the reporter?

10 THE WITNESS: Yes. The first name is
11 Catherine Shores, S-h-o-r-e-s. Oh, excuse me. There was
12 somebody who replaced her after that in that position.

13 Q (by Mr. Stone) You were generally at the Commission
14 during the day, I gather, and if you wanted to do research
15 in the archives it was in the evening?

16 A Oh, no. Sometimes I would leave the office to do
17 search in the daytime, too. Oftentimes -- I had to do that
18 primarily for Justice Department materials because your
19 offices were not open in the evening.

20 Q But usually I was able to get you over there at the
21 Commission's headquarters. You had a little office there.
22 Right?

23 A Yes.

24 Q Did the Commission have the power to declassify any
25 documents it wanted other than papers Congress had? Isn't

1 that right?

2 A I don't know if they had the power to declassify. They
3 had the power to ask for.

4 Q Didn't they have the statutory power to declassify any-
5 thing they wanted?

6 A Not that I know of.

7 Q Ultimately the Commission had authorized from Congress
8 about a \$2 million dollar budget; is that right?

9 A 1.5.

10 Q 1.5?

11 A It was requested but we did not get the entire amount.

12 Q As you recall, how much did you actually get?

13 A As I recall, since that was not my area of responsi-
14 bility, the Commission received a million dollars first.
15 Then, toward the end of '82 it became apparent that the rest
16 of the funds were needed in order to complete the report
17 and it was a very unsettling situation because the funds
18 were running out and we were maintained almost on a month to
19 month basis until the approval of the remaining funds was
20 received, and it finally turned out that they did not
21 receive the entire \$500,000.

22 Q But they did receive and spend over a million dollars?

23 A A million two hundred fifty, or something to that
24 effect. Uh-hmm.

25 Q In your affidavit that you filed in these cases, you'd

1 stated that you decided who the witnesses would be at the
2 Commission hearings and what the research priorities would
3 be. Did you do that alone or did you do that with the
4 advising of Angus MacBeth as special counsel?

5 A Well, Mr. MacBeth wasn't there at the very beginning.
6 Mr. MacBeth came on in October, and so in consultation with
7 the first executive director and then also in consultation
8 with Mr. MacBeth who finally -- who did come on in October,
9 and other members of the research staff, we ran down a list
10 of the principal witnesses and tried to determine whether
11 they were alive, where they lived, and tried to make a
12 determination about that.

13 Q It was the special counsel, though, who actually made
14 the decision. Everybody might have had input, but wasn't
15 that his decision, ultimately?

16 A Oh, yes. We couldn't ask somebody unless he approved
17 it.

18 Q You dno't have any formal degree in archival research
19 or history, do you?

20 A No, I do not.

21 Q Was there a professional historian or professional
22 archivist who worked full-time as a regular employee of the
23 Commission?

24 A No, but there were -- there was a gentleman who was
25 from the Library of Congress who knew a great deal about

1 library finance and archival material.

2 Q Was he able to travel on your behalf to other archives
3 across the country?

4 A Not across the country, no. Locally, yes.

5 Q Did that archivist -- did you say the National Library
6 of Congress?

7 A I don't think he was called an archivist. I think he
8 was a library employee.

9 Q I see. So he was not necessarily a professional
10 archivist, either?

11 A No.

12 Q Was there anybody who had a set travel budget who went
13 out to these various libraries on a regular basis and acted
14 from the field sending you back documents?

15 A No, there was no specific person like that, but when
16 Commission hearings were held, for example in the San
17 Francisco area and one of our researchers was out there, he
18 or she would be asked to look for additional material in
19 that area.

20 Q So you would take opportunities as they came up to
21 collect papers from different places if it was convenient;
22 is that right? Is that what you told me?

23 A Yes, we took advantage of the situation if somebody
24 was there.

25 Q Right. In fact, when I went out to the Bancroft

1 Libraries and got some papers, you asked on behalf of the
2 Commission to copy those; is that right?

3 A Yes. We already had some, but in case you had picked
4 up some that we did not have, then it would be to the
5 Commission's advantage to have additional materials.

6 Q You are familiar with the various petitioner's exhibits
7 that were served on me last summer, aren't you? Copies of
8 those reflect that the very copies you gave -- I gave to
9 you with my own and your own initials that you received
10 them from me came back and some of my documents supplemented
11 your collection from the Bancroft Libraries because then the
12 Petitioner gave them back to me; isn't that right?

13 A That's possible. We got hundreds of documents from
14 Bancroft and you gave us some, so I don't know which copies
15 may have been the one you're referring to.

16 Q Well, let me try and pin that down, then.

17 I wonder, Your Honor, we have some docu-
18 ments in a rebuttal envelope up there, and they're numbered
19 A-117 through A-121. I would just like to have those shown
20 to the witness to see if I can refresh her recollection as
21 to those being documents I gave to her and then came right
22 back to the Government.

23 THE COURT: That would be fine.

24 MR. STONE: 117 to 121, please.

25 THE COURT: You know, I hate to have you

1 people have to stand back there. I wonder out here in the
2 audience, are there any vacant seats? There appear to be
3 some in the first row here. Any of you could sit in the
4 first row on this side or back there.

5 THE CLERK: Mr. Stone, did you say through
6 121?

7 MR. STONE: 117, 118, 119, 120 and 121.

8 Q (by Mr. Stone) Mrs. Herzig-Yoshinaga, could you look
9 down at document A-117 on the lower right-hand corner, it
10 says "Stone-Bancroft 3-14-83." That's a document that you
11 got from me, isn't it, that then you identified and came
12 back to me as a Petitioner's exhibit?

13 A I honestly can say I don't recognize this.

14 Q Is that your handwriting down there where it says
15 "Stone-Bancroft 3-14-83?"

16 A Yes, I see that. That's not my handwriting.

17 Q Okay. Let's go to the next one. You had sent them
18 back with a cover letter. Let's go to the next one which is
19 118. That one also says down on the bottom "Stone-Bancroft,
20 3-14-83."

21 A Yes, I see that. That's not my handwriting.

22 Q Okay. Now, on 119 it says the same thing, and on 120
23 it says the same thing, and on 121. I just wanted to see
24 if I could refresh your recollection if those are in fact
25 some of the documents which I had referred to that I

1 transmitted to you and then you used it at the Commission
2 and you used it in helping the Petitioner prepare his case?

3 A I'm sorry, I don't recognize these documents. That is
4 not to say that you didn't give them to the Commission. I
5 just happen not to recognize these, and the words Stone and
6 Bancroft, that is not my handwriting.

7 Q Okay. You do recall, though, that there were a group
8 of documents that you copied for me and when you returned
9 them, you made copies for both me and Dr. Peter Irons. Do
10 you recall that?

11 A I don't recall making it for Dr. Peter Irons.

12 Q How many times did you personally visit the Bancroft
13 Library?

14 A I was there this year. Members from the Commission
15 staff were there during the Commission's life.

16 Q During the existence of the Commission, did you per-
17 sonally ever go to the Bancroft Library?

18 A No. My contact with them was by telephone.

19 Q Okay. And you had listed a whole bunch of libraries.
20 Am I correct that the standard operating procedure -- well,
21 let me go back.

22 You stated in your affidavit of January
23 17, 1984 that you obtained documents by telephone or by
24 mail and listed a lot of libraries. Did I understand from
25 your testimony before that what you would do was obtain an

1 index, call the library and ask them to send certain docu-
2 ments off the index, and they would come in to you by mail
3 unless you had the fortuity of being able to get to that
4 archives?

5 A If they had it, yes, I would ask for it, and then
6 determine, based upon the index, what areas we wanted to
7 investigate. If we had someone that was free to go and
8 obtain the material, we would do that. Otherwise, I would
9 ask for them to be mailed.

10 Q In fact, when I came up to your office, you showed me
11 the Bancroft Library index; isn't that right?

12 A Right. That's a good example of what we did.

13 Q When I wanted documents, you made available to me
14 documents that were already copied that other people had
15 sent you in that fashion. Like you did not at my request
16 travel to the Bancroft Library, for example?

17 A Yes; that's correct.

18 Q To the extent that you took excursions to archives,
19 it was mostly within the Washington, D.C. area of the
20 Commission's headquarters. Correct?

21 A No. I went to the Roosevelt Library in Hyde Park, New
22 York, and I was in California at the Federal Records and
23 Archives Center in Southern California, Laguna Miguel in
24 San Bruno near San Francisco, and I have gone to the Hoover
25 Institution at Stanford University.

1 Q Tell me about the archives at San Bruno. Are you
2 familiar with Michael Anderson?

3 A Yes, I know who he is. He's the Chief of the archives
4 branch.

5 Q Did he inform you when you were out there that his
6 archives are missing a substantial amount of the Twelfth
7 Naval District's records for that period?

8 A No. There were only certain files that were not there.

9 Q Do you recall if he told you that 23 feet of files had
10 been missing since 1972?

11 A No, he didn't give me any response like that. He
12 showed me a list.

13 Q Didn't you also write in your affidavit that was
14 previously filed that you could not catch up with certain
15 records that belonged in San Bruno and Laguna Miguel they
16 were in one city when you were in another and you never
17 did catch up with them?

18 A Yes, I did write that and I subsequently went there
19 and found that some of the papers had been transferred and
20 that the information I was seeking I thought would be there
21 by that time. This is after the affidavit was signed, and
22 I found they were still not there.

23 Q Okay. So the documents have never been located.

24 A Those particular ones, no. I was advised if you go to
25 the Southern California records branch, they might possibly

1 be there, and that is something I have yet to do.

2 Q Am I correct that when you were at the Commission I
3 asked if you had been able to get the records of the Roberts
4 Commission and you were unable to obtain those.

5 A I don't recall that, Mr. Stone.

6 Q Do you recall that Angus MacBeth had made a special
7 request because he had to ask Congress for those records?

8 A It was not the Roberts Commission. It was the Dyes
9 Committee records.

10 Q Did he get those records?

11 A No. That was only because there was no time. We were
12 very close to the end.

13 Q Did he subsequently get those records?

14 A No. The only way that could -- if I wanted records
15 out of a committee of Congress, there has to be certain
16 years passed before it would be open to the public, and if
17 I wanted to see internal memos of the Dyer Committee, I
18 would have to either go to my Congressman and have a
19 special individual law passed waivng a restriction for me
20 to get into those records.

21 Q And you haven't done either of those. Correct?

22 A No.

23 Q You said also in your affidavit that when former
24 government officials were interviewed in the distant past,
25 it was only the limited availability of internal Government

1 documents and as of now those officials either can't
2 remember details or are dead. Is that the experience that
3 you had?

4 A Would you read that again, slowly?

5 Q That the people who were interviewed who were first
6 person participants a long time ago, at that time there was
7 only the limited availability of internal Government docu-
8 ments and today they either can't remember the details or
9 many of them are dead.

10 A Many of them are dead, yes. Some recall well; some
11 don't recall too well.

12 Q Okay. You had also stated that early historians
13 failed to give adequate citations for documents. I think
14 you made that point yesterday.

15 A Yes.

16 Q You feel that hindered your ability to find critical
17 documents?

18 A Yes, it definitely did. Can I give you one example?

19 Q No, ma'am.

20 THE COURT: No; you go ahead.

21 A As you know, there is a document that has been cited
22 a number of times in published materials. These authors
23 were never able or did not know the date of the document,
24 there being no source of where the document might be found.
25 This was one document that special counsel deemed quite

1 important. Therefore, he asked me to look for this document,
2 and it was cited, for example, I think in the Grodzins book
3 as a memo from Cohen, Cox & Robb, Attorney.

4 Q And that exhibit is not part of the record in this
5 case; is that right?

6 A This is an example of what he asked me for in the
7 published materials, if I could locate something.

8 Q Sure.

9 THE COURT: Let her finish her example.
10 I think what you're talking about is that, as I understand
11 it, early writers failed to give a citation to documents
12 which made it more difficult for you to find it.

13 THE COURT: That's right, and this par-
14 ticular one was even harder because it has no date on it.
15 I came across it. It was in the Justice Department files,
16 but without any indication. The reason it was undated in
17 the publication -- in the published version is that truly
18 it was an undated memo.

19 MR. STONE: That's not one of the documents,
20 though, that's in the materials.

21 THE COURT: I understand that.

22 MR. STONE: Okay.

23 Q (by Mr. Stone) Would the clerk please hand the witness
24 Exhibit A-11? That's a copy of the official U.S. Army
25 History of World War II. This is a Xerox copy of Stetson

1 Kahn's Official U.S. Army History. I think you may recognize
2 it because if you'll look at the bottom, you'll see a
3 stamp CWIC. I received an original or the copy this was
4 copied from from you?

5 A Yes.

6 Q Okay. Would you turn in it to the page that's
7 numbered 121?

8 A Yes.

9 Q Okay. Just wait until everybody gets there.

10 On the page that's numbered 121, I'm par-
11 ticularly interested in Footnote 20. Is footnote 20
12 sufficiently identified so that you would have no trouble
13 finding it?

14 THE COURT: That is, finding the document
15 to which it refers?

16 MR. STONE: Yes. Yes, finding the document
17 to which it refers?

18 Footnote 20, just let me read it. It says
19 "GHQ G2: Infer bulk 6. 21 Jan. '42, copy in ASW 014.311
20 WDC Gen."

21 Do you know which file that is, Mrs.
22 Herzig-Yoshinaga?

23 A I myself would be able to identify it. I don't know
24 if somebody who doesn't have familiarity --

25 Q You could find it with no trouble. Which record group

1 is that in; do you know?

2 A That appears to be Mr. McCloy's files.

3 Q Right. Like ASW, Assistant Secretary of War.

4 A Yes.

5 Q And one of the archivists would be able to tell you
6 that right off, wouldn't they?

7 A Who would be able to?

8 Q An archivist could look at that and tell you right off
9 where that was; isn't that right? Mr. Taylor of Modern
10 Military Records.

11 A Oh, he would know it was Mr. McCloy's files, yes.

12 Q Yes.

13 A Yes.

14 Q And that's record group 338?

15 A No. 107.

16 Q Oh, I'm sorry. 107. Okay.

17 Would you look at the sentence to which it
18 relates at the top? I'm going to read that sentence, just
19 so it's in the record. It says: "A GHQ Intelligence
20 Bulletin, 21 January, for example, concluded that there was
21 "An espionage net containing Japanese aliens, first and
22 second generation Japanese and other nations thoroughly
23 organized and working underground."

24 Did you ever look for this document in
25 trying to elucidate the intelligence justification for the

1 evacuation?

2 MR. KAWAKAMI: Your Honor, I'm going to
3 object to that as not being relevant. She's not testifying
4 as to what she looked for with respect to intelligence
5 information.

6 MR. STONE: She's testified as to the
7 difficulty of finding documents. The underlying issue is
8 whether or not there was bad faith because of the documents
9 which were ultimately found, and I'm trying to find out,
10 Your Honor, how thorough the search was and how difficult
11 it was to find a document from a published text because she
12 previously testified published texts didn't give a
13 sufficient way to get into the documents. That, by the way,
14 Your Honor, is a document which you've already admitted
15 in evidence.

16 THE COURT: That's what I'm thinking; that
17 it is already admitted.

18 MR. STONE: It is.

19 THE COURT: I'm going to sustain the
20 objection to this last question.

21 MR. STONE: Okay. Let's --

22 THE COURT: If there are any references
23 in the footnotes to documents that she has testified she
24 found, I think that would be relevant.

25 MR. STONE: May I ask her whether she has

1 found -- if she has ever found that document?

2 THE COURT: I'm going to sustain the
3 objection to that particular document. Sustain the objection
4 to the question.

5 MR. STONE: Okay.

6 THE COURT: Let me ask, and I didn't recall
7 that she testified about finding this particular document.

8 MR. STONE: No, she didn't. I wanted to
9 establish - I guess I already have, Your Honor - that it was
10 in a place that she was familiar with.

11 THE COURT: All right. Then go ahead with
12 the next question.

13 Q (by Mr. Stone) Mrs. Yoshinaga-Herzig, how many drafts
14 of General DeWitt's final report were there?

15 THE COURT: Or do you know?

16 A I don't know how many drafts. I know that there was
17 talk in the correspondence about submitting an almost
18 finished printed typeset volume to the Secretary of War, to
19 General Marshall and Mr. McCloy, which the Western Defense
20 Command called a draft but which in fact was already set
21 in print.

22 Q You are pretty familiar with that correspondence about
23 the final report. You've spent quite a bit of time on it,
24 haven't you?

25 A I found that I know that it exists. I read through the

1 correspondence.

2 Q There are approximately two or three dozen documents,
3 if one includes all the various transmittal memos that talk
4 about a revised report and telephone recorded and trans-
5 cribed telephone conversations dealing with the revised
6 report, teletypes that deal with the revised report, and
7 ultimately documents showing destruction of some materials
8 that talk about a revised report. There are at least two or
9 three dozen documents in the National Archives that talk
10 about it; isn't that true?

11 A Yes.

12 Q And none of those documents say on their face "After
13 you have read this document, please destroy it." Isn't that
14 true?

15 A "After you have read this document, please destroy it?"

16 Q Yes. In other words, the documents in the record are
17 published documents which were maintained and kept openly
18 even though they discuss more than one version of the
19 General's report; isn't that true?

20 THE COURT: Let's go back to your question,
21 which I believe perhaps is the relevant one. You spoke
22 about perhaps two dozen documents referring to a version.
23 Do any of those documents, to your recollection, bear on
24 their face the notation, "After reading this, please destroy?"

25 THE WITNESS: No. I don't recall any

1 specific document that said that.

2 Q (by Mr. Stone) Okay. Would the clerk hand the witness
3 the black volume which says on it Petitioner's Exhibit 17
4 but I think it's really tab 17. I'd like her to have the
5 black volume for a moment.

6 Okay. Would you open it only to the very
7 first page in the book? The very first page. This page
8 that we are looking at is a copy of a canvas cover that sits
9 on the original; isn't that right?

10 A That sits on the original?

11 Q There is no black cover like this on the one in the
12 archives. Right?

13 A Yes. It's a cloth.

14 Q It's sort of a tannish-brown faded color?

15 A Yes.

16 Q And it has this big sticker on it that we're looking at
17 right in the middle, doesn't it?

18 A Yes. It looks like -- the second page looks like the
19 sticker. The first looks like somebody -- looks like some-
20 body wrote it in or they used a big type face.

21 Q Would you read for me what it says right on the first
22 page there?

23 A It says "Final Report, Japanese Evacuation from the
24 West Coast. First Draft Not Used."

25 Q Now, that's not an attempt to hide the face that this

1 was not used for it or that this was the first draft?

2 A That's right.

3 Q Now, would you go to the second page?

4 A Uh-hmm.

5 Q Would you read what's on the label on the second page?

6 MR. KAWAKAMI: Your Honor, I'm going to
7 object to this. He's asking a substantive question and I
8 believe the exhibit is on record and the Court can cer-
9 tainly --

10 MR. STONE: Your Honor, --

11 THE COURT: I'm going to overrule the
12 objection.

13 Q (by Mr. Stone) The second page says -- would you read
14 that?

15 A It says "Office work copy with notes. First draft
16 not used."

17 Q Okay. How did you develop your inference from those
18 two cover pages that this was meant to be hidden? I mean --

19 A Not hidden.

20 Q Okay.

21 A When I saw this, I thought it was very strange. Of
22 course, the cover itself was different.

23 Q Well, it's not bound. Right?

24 A It's bound in terms of -- I think it's got a cloth
25 string through it, and tied, but the thing was, since I

1 knew what had happened previously before this final report
2 was distributed, I knew that certain changes were requested
3 by Mr. McCloy's office. I flipped through it and I noticed
4 the various notations and numbers on the margin. Then I
5 compared some of these notes and numbers in the margin
6 with the suggested changes made by the office of the
7 Assistant Secretary of War in the correspondence file, and
8 they coincided.

9 So then I realized that this was a copy,
10 one of the ten copies that had been sent out from the
11 Western Defense Command to the Chief of Staff Marshall,
12 Assistant Secretary of War and to the Secretary of War,
13 and they had asked for every one of these copies back to
14 the Western Defense Command but one was never returned,
15 because there is some notation, some documents that say
16 "Mr. Hall says Mr. McCloy, 'We're going to hold onto this
17 particular copy because it may be useful to Mr. McCloy in
18 the trial or in the case'," and I thought, "Well, perhaps
19 this is the copy they were holding onto because apparently
20 this is the one where the changes were requested.

21 Q Did this document come out of Mr. McCloy's files?

22 A I don't know where it came out of. I can't tell you
23 where it came from. It might have been Mr. Bendetson's
24 copy.

25 THE COURT: When you saw it it was on the

1 archivist's desk?

2 THE WITNESS: Yes.

3 Q (by Mr. Stone) But isn't it quite obvious right on
4 that front cover where it says "Office Work Copy with
5 Notes - First Draft Not Used" that that is the same one
6 you used --

7 A This may have been put on there after the whole thing
8 happened and when it was ready to be submitted to the
9 Archives.

10 Q Okay.

11 A We don't know when it was placed there.

12 Q Okay.

13 THE COURT: She has responded, I believe,
14 that she does not know what files this came from. Is that
15 correct, or no?

16 THE WITNESS: I know that it was on the
17 archivist's desk and it was supposed to be with the Western
18 Defense Command files, I believe, or it could have been
19 one of Mr. McCloy's, the Secretary of War's files. It was
20 on his desk.

21 Q You don't know, then, what record group this comes
22 from?

23 A No. It has to be -- there is, I think, another copy
24 somewhere where I have noted it. It's either the Western
25 Defense Command's or the Assistant Secretary of War file,

1 in the Modern Military Branch. There is no question about
2 that.

3 Q Okay. Would you open to the first page of it now?

4 A Yes.

5 Q It says on there, "Meyer's marked copy." At least
6 that's what I read. Do you read it that way?

7 A I don't know. I can't tell. For me, I thought at
8 first Mr. MacBeth had written on this, because it looks
9 to me like "Angus."

10 THE COURT: It looks like Angus to me.

11 MR. STONE: Okay.

12 Q You were not able, then, to identify that signature or
13 whose copy this was?

14 A Yes; that's true.

15 Q All right. Let's -- when you finish --

16 THE COURT: Who is Angus?

17 THE WITNESS: Mr. MacBeth was the
18 Special Counsel to the Commission.

19 THE COURT: All right.

20 Q (by Mr. Stone) How many different drafts did you say
21 before you ultimately determined there were of General
22 DeWitt's report?

23 A I only knew -- I don't know about drafts. I only
24 know that Mr. McCloy had asked to see the draft before
25 it was put into final form, and then when he received a

1 bound version, he was very upset. And Mr. Bendetson,
2 Colonel Bendetson said, "Well, this is just a draft," and
3 that's the only one I'm familiar with. Mr. McCloy said,
4 "That doesn't look like a draft. It's already in type."

5 Q Okay. Let's talk about that conversation for a moment.
6 Well, let's get back to it. Did you assume that all the
7 draft versions were destroyed, however many drafts there
8 were?

9 A Yes, because of the letter, the certification of the
10 destruction of materials by a Warrant Officer Smith.

11 Q Okay. Before we go on, let me say you don't know
12 how many drafts there were. Correct?

13 A That's right.

14 Q Okay. Let's go to Warrant Officer Smith's letter for
15 a moment. That's Document 11, tab 87.

16 Okay. That document doesn't explicitly
17 state whetehr all the drafts have been destroyed. It just
18 says that galley proofs, galley page drafts and memorandums
19 of the original report have been destroyed; isn't that
20 right?

21 A That's what it says.

22 Q You take that to mean that every draft was destroyed?

23 A I don't take it to mean anything except what it says.

24 Q Okay. Would the clerk please hand A-44 to the witness?
25 I'm sorry. It's A-43. I've got the wrong number.

1 It's A-43.

2 THE COURT: We are right at recess time
3 so we'll take a recess now and pick up at 11 o'clock.

4 (Recess.)

5 Q (by Mr. Stone) I believe I had just asked the clerk
6 to hand the witness A-43, and if you would compare A-43
7 with tab 87, which is Exhibit 11. Would you tell me the
8 differences between these two exhibits?

9 MR. KAWAKAMI: Your Honor, I believe the
10 documents speak for themselves. With respect to differences,
11 there may be --

12 MR. STONE: Well, maybe I should make a
13 point.

14 THE COURT: Do you believe there is a
15 difference?

16 MR. STONE: Well, if you start with the
17 date, Your Honor, you'll see that the document on the 29th
18 of June, '43, is a certificate of burning of the galley
19 proofs, galley pages, drafts, memorandums or the original
20 report. The document dated the 30th of June is a certifi-
21 cate of burning of the final proof of the corrected final
22 report dated May 15th.

23 Q (by Mr. Stone) Now, my question to the witness is
24 isn't the corrected final report dated May 15th the version
25 that is in the published book?

1 A The final report that we see in the public libraries
2 is June 15th.

3 Q Okay. What is the version dated May 15th? Is that
4 the date of the version in the black folder?

5 A The one that is called "Draft"?

6 Q Yes, the first draft, it's called.

7 A Well, let me see. It doesn't say May 15th on this.

8 Q On the page that's marked little Roman numeral III,
9 what date does it have?

10 A It says April 15th.

11 Q So there was a May 15th version in there somewhere as
12 well; isn't that right?

13 MR. KAWAKAMI: Your Honor, I'm going to
14 object. That's asking the witness to speculate.

15 THE COURT: I think that she would have
16 to speculate just as we do, but I think the exhibits speak
17 for themselves.

18 MR. STONE: Well, okay. Well, Your Honor,
19 let me go to -- since she has testified she's familiar
20 with these documents, I thought that she would be able to
21 tell us about the May 15th version. All right.

22 THE COURT: Are you aware of a May 15th
23 version?

24 THE WITNESS: No.

25 MR. STONE: No. Good. Can the record

1 show that she shook her head no, please?

2 THE COURT: That's right.

3 Q (by Mr. Stone) Let us go to Exhibit 66 -- I'm sorry --
4 tab 66 which is Exhibit No. 5. It's Exhibit 5 but it's at
5 tab 66.

6 This is a report of a phone conversation
7 between Mr. McCloy and Mr. Bendetson. I think you must be
8 pretty familiar with this conversation. Am I right?

9 A I've read it through a couple of times. This was not
10 priority material when we got this for the Commission, you
11 see, but I do recall reading it.

12 Q Okay. Mr. McCloy does not insist on any changes in
13 the final report. He simply expresses his disappointment
14 to Mr. Bendetson that he hadn't been shown a copy first;
15 isn't that right?

16 MR. KAWAKAMI: Your Honor, I'm going to
17 object. It's argumentative.

18 THE COURT: I think it speaks for itself.

19 MR. STONE: Okay.

20 THE COURT: It's a four or five-page
21 document and I think the witness would have to read through
22 the whole document in order to answer.

23 Q (by Mr. Stone) Could the witness --

24 THE COURT: Why don't you let me finish
25 what I say before you start?

1 MR. STONE: I'm sorry.

2 THE COURT: I think the witness would have
3 to read through the whole document before she could answer
4 the question. So, next question?

5 MR. STONE: Okay.

6 Q (by Mr. Stone) On page 2 at the bottom paragraph it
7 talks about the letters of transmittal that were attached
8 to the final report, and it specifically says - this is Mr.
9 McCloy talkign about the changes or possible changes in the
10 final report - Mr. McCloy says: "The difference is this:
11 The way it comes in in a completely definitive form with a
12 letter of transmittal already printed and bound into it and
13 signed, sealed and delivered, the act of the final report
14 has now been consummated as of April 15th. That's what
15 disturbs me. There is no taking that back. Maybe you
16 don't want to take it back, but I certainly thought I was
17 going to get a look at it."

18 Had you been familiar with that language
19 when you read all of the various requests for return of
20 the original transmittal letters?

21 A This was together with all the requests in one folder.

22 Q Okay. So you were aware that Mr. McCloy was suggesting
23 that Mr. Bendetson had to get the transmittal letters back
24 if he wanted to make another version?

25 A Well, he was suggesting -- you are suggesting, Mr.

1 Stone, that you've given us what looks like a final version,
2 and this is what apparently General DeWitt wanted to be
3 accepted as the final version, and Mr. McCloy is objecting
4 to this, that he had not seen the draft.

5 Q Right. And he tells him, not only -- if he wants to --
6 Mr. Bendetson says, "Well, if you'd like to look it over,
7 look at your revisions." Correct? In the context of that
8 conversation, Mr. Bendetson is very receptive to revisions?

9 A No.

10 MR. KAWAKAMI: Your Honor, I'm going to
11 object.

12 MR. STONE: That's all right. She's testi-
13 fied what I wanted, Your Honor, that she's read that con-
14 versation about the letters of transmittal.

15 THE COURT: All right.

16 Q (by Mr. Stone) Following that in this book, ma'am,
17 I think you've seen it in the same file which you say is
18 319.1. Is that the file these documents come out of?

19 A That this particular one came out of, yes.

20 Q Yes. 319.1. Shortly thereafter there were a series
21 of teletypes back and forth. Those teletypes reserve the
22 right to General DeWitt to insist on his own position; isn't
23 that right?

24 MR. KAWAKAMI: Your Honor, I'm going to
25 object. Again it's argument of counsel.

1 THE COURT: Are the teletypes in as
2 exhibits?

3 MR. KAWAKAMI: Yes, Your Honor.

4 THE COURT: They are. All right. I think
5 it's all right.

6 Your question was?

7 Q (by Mr. Stone) General DeWitt was insisting that he
8 approve any changes because it was his version; is't that
9 right?

10 A He was adamant about the fact that he did not want
11 changes made.

12 Q And that no report would be transmitted back to Mr.
13 McCloy until he personally signed it. Is that in the
14 teletype, too?

15 A I don't remember that. I just remember that he was
16 quite adamant.

17 Q Okay. With respect to the changes themselves, would
18 you look at tabs 73 and 74 which are Exhibits 15 and 20.
19 Tab 73.

20 THE CLERK: Excuse me a moment. 15 and

21 20? MR. STONE: Yes. Or you can give her the
22 book with the tabs, since they are tabs 73 and 74 in the
23 book.

24 I've got it wrong. 73 is Document 7. I
25 didn't give her the right two. 73 is Exhibit 7 and 74 is

1 Exhibit 15. Have you got those right?

2 THE CLERK: Yes.

3 MR. STONE: Okay.

4 Q (by Mr. Stone) If you'd look at Exhibit 7, there are
5 only 55 changes in that draft; isn't that right? It says
6 Suggested changes in final report, Japanese Evacuation from
7 West Coast, 1942."

8 A Yes.

9 Q And there's only 55 changes?

10 A Yes.

11 Q Does it say anywhere on its face that these are changes
12 from Washington or Captain Hall?

13 A Not on this version.

14 Q Okay. How do you -- okay. Let's look at the next
15 one. The next one says "Captain Hall's suggested changes
16 in letter of transmittal and in forward."

17 Do you want to tell us who Captain Hall
18 Was?

19 A Captain Hall was the executive in the office of the
20 Assistant Secretary of War.

21 Q Okay. Going back just one moment to the last document
22 we looked at, there were 55 suggested changes. Correct?

23 A The first one, yes.

24 Q Fifty-five changes. Okay. Now, back to the second
25 one --

1 THE COURT: They were changes in the final
2 report itself?

3 MR. STONE: Yes.

4 THE WITNESS: Yes.

5 THE COURT: All right.

6 Q (by Mr. Stone) Now, if we go to the second document
7 which is Exhibit 15, would you tell me what it says right
8 underneath changed numbered 55?

9 A "End of Captain Hall's Draft."

10 Q That's on page 4 near the top of that exhibit. Right
11 after No. 55. Okay.

12 Now, whose changes are No. 56 through the
13 end of this document, which goes all the way to page 9,
14 and there's 140 changes. Whose are these other 85 changes?

15 A I don't know. It doesn't say whose it is. It could
16 be Captain Hall's; it could be somebody else's.

17 Q Well, it said at 55, "End of Captain Hall's draft."

18 A Okay. But if it were added on, it looks like probably
19 word for word. The first few pages were the same up to
20 page 55.

21 Q To change 55?

22 A Yes, to change 55, and whoever wrote that may have
23 written "End of Captain Hall's draft." We don't know --

24 Q We have no idea who made the rest of the changes, if
25 they came from Washington or not?

1 A We don't know. That's the answer.

2 Q Have you looked at all of these 140 changes to see how
3 many of them were accepted.

4 A No. I have not made -- I have not compared every one
5 of them.

6 Q Do you know for a fact that they were all made?

7 A No, because I didn't compare. I don't know if they
8 were all made.

9 Q Would you be surprised if I told you that a lot of them
10 were not made?

11 A No, I wouldn't be suprised because I have not checked
12 it.

13 Q You have not checked. Okay. You had stated before
14 that you believed, if I am correct, that the original copies
15 came back and were destroyed. Is there any reference in
16 any of the transmittal letters that says "Please return
17 the originals for destruction, or please destroy them
18 themselves," as opposed to simply "Please return them to
19 me"?

20 A No, I don't remember saying that. Any letter asking
21 for return because they wanted destroyed?

22 Q Yes. Does it say that anywhere?

23 A Not the two, no.

24 Q Okay.

25 THE COURT: But the Western Defense

1 Command asked for the return of the drafts; is that correct?

2 THE WITNESS: Yes.

3 Q (by Mr. Stone) Okay. Would you look at tab 82 now,
4 which is Exhibit 27? Do you know who that letter is to?

5 A That was George Marshall, the Secretary -- the Chief of
6 Staff.

7 Q Okay. And it's dated 15 June?

8 A Yes.

9 Q And I would just like to read the text because it's
10 about a three-sentence letter:

11 "I am enclosing herewith for your personal
12 use a bound copy of my revised final report covering the
13 evacuation of all persons of Japanese ancestry from certain
14 military areas of the Western Defense Command during 1942.
15 This is in substitution for the copy previously sent you
16 which I shall appreciate your returning to me. Revised
17 copies are also being forwarded in lieu of those previously
18 sent to the Secretary and Assistant Secretary of War.
19 Faithfully yours, J. L. DeWitt."

20 That letter could not be more inartfully
21 drafted if there was an attempt to hide the fact that there
22 had been an earlier draft, could it?

23 MR. KAWAKAMI: Your Honor, --

24 THE COURT: That's a matter of argument.

25 MR. STONE: Okay, Your Honor.

1 THE COURT: I think it could be more
2 inartfully drawn, if you really wanted to.

3 MR. STONE: Well, it's fairly blatant.

4 Q (by Mr. Stone) Can you tell me, is this the trans-
5 mittal letter with the draft which you believe was the final
6 draft in published form that the GPO printed, Mrs. Herzig-
7 Yoshinaga?

8 A Try that again.

9 Q Is this the cover letter for the version which is re-
10 printed by the GPO, Government Printing Office, and which
11 in this record is -- I have to find the tab number for you
12 here.

13 THE COURT: I think that --

14 Q (continuing) The second version, the one we keep
15 calling the second version.

16 THE COURT: The final printed version.
17 Do you think that this is the transmittal letter for that?

18 THE WITNESS: I think this is an informal
19 one because there is a more formal one which addresses him
20 by his title.

21 Q (by Mr. Stone) Can you tell me the date of mailing of
22 this letter?

23 A The mailing?

24 THE COURT: It bears the date June 15,
25 1942. Probably nobody knows when it was mailed.

1 MR. STONE: Well, it's got a stamp down at
2 the bottom, Your Honor, and they have already made -- brought
3 up in this case the date of the final report.

4 THE COURT: All right. It appears to have
5 been mailed on June 18th, 1943. Does that sound right?

6 THE WITNESS: Yes, that's what it says
7 stamped here.

8 Q (by Mr. Stone) Did you also see documents that showed
9 when the final report was in fact received in Washington.

10 A I don't recall.

11 Q I wonder if we could ask the clerk to hand the witness
12 A-42 which is a copy of one of the Petitioner's documents
13 that was supplied to the Government. This is identical to
14 the earlier letter, isn't it, the text of it

15 A Yes. Yes, it looks that way.

16 Q Just above the word "confidential" scratched out there
17 is some handwriting on the bottom and above that it appears
18 to be received June 21, 1943. Do you recall obtaining and
19 sending to me this letter?

20 A I'm sorry. Where do you see June 21st, 1943?

21 THE COURT: Right here.

22 A Do I recall sending you this?

23 THE COURT: Let's first go back to this.
24 On A-42 there appears to be a stamp which says Received
25 on; is that right, received on June 21, 1943?

1 MR. STONE: Yes.

2 THE WITNESS: Yes.

3 THE COURT: And then your question was?

4 Q (by Mr. Stone) My question was, do you recall looking
5 at the bottom of that? It says Petitioner's document No.
6 51-78, and it also has what I believe is commission number
7 above that, which is 24129. Do you remember handling that
8 document and sending it to me?

9 A No, I don't remember sending it to you, but I see that
10 they came from different files and that they're similar --
11 exact similar letters, but they came from different files.

12 Q And that number, 24129, at the bottom is a Commission
13 number, isn't it?

14 A Yes, it is.

15 Q Fine. I'd like you to take a look at tab 84 now, which
16 is Exhibit 23. This one also shows, does it not, on the
17 bottom, that it was mailed on June 18th?

18 A Yes.

19 Q And that this goes to Mr. McCloy, and once again --

20 THE COURT: I'm sorry. You gave, that
21 was tab 84, wasn't it?

22 MR. STONE: It was tab 84.

23 THE COURT: And the exhibit number was
24 what?

25 MR. STONE: And the exhibit number is --

1 THE CLERK: 23.

2 MR. STONE: -- 23. Yes.

3 THE COURT: It shows a date of this as
4 June 15th; is that what it says? June 15th, '43?

5 THE WITNESS: Yes.

6 MR. STONE: Yes.

7 Q (by Mr. Stone) And down at the bottom there is a date
8 stamp that shows this also was mailed on June 18th; isn't
9 that right?

10 A Yes, there is.

11 Q And once again, the text of this again repeats to Mr.
12 McCloy from General DeWitt, "I am enclosing for your
13 personal use two bound copies of my final report, as
14 revised." Now this is a little different language than the
15 other one that says "my revised final report." Right? So
16 it was rewritten. You have to go back to the other one.

17 THE COURT: That's right.

18 Q (by Mr. Stone) Okay. And then again he says:
19 ". . .forwarded in substitution for those previously sent
20 you. I am also enclosing revised copies of the final
21 report for the personal use of the Secretary of War and the
22 Chief of Staff in lieu of those previously sent to them."

23 Once again, General DeWitt is quite openly
24 publishing that there's at least two versions. Right?

25 A Yes.

1 THE COURT: Well, the letters speak for
2 themselves.

3 MR. STONE: Okay.

4 Q (by Mr. Stone) The next document that I'd like the
5 witness to look at is tab 86, which is Exhibit No. --

6 THE COURT: Would that be 28?

7 MR. STONE: Exhibit 28. That's correct.

8 Q (by Mr. Stone) This is a conversation dated June 17th.
9 Are you generally familiar with this conversation, Mrs.
10 Yoshinaga?

11 A Just generally. I have to reread it to --

12 Q Okay. Could you just take a moment?

13 THE COURT: What is your question?

14 Q (by Mr. Stone) My question is the date of this con-
15 versation is June 17th, and this also clued you at that time
16 when you were searching for documents that the final report
17 had not been sent out yet; isn't that right? Isn't that
18 what as a researcher that conversation would tell you, that
19 General DeWitt is telling Mr. Bendetson that he's not going
20 to send the second version out yet because he hasn't gotten
21 the first one back, and it's on the 17th. Right?

22 MR. KAWAKAMI: Your Honor, --

23 MR. STONE: That's the only question on
24 that document, Your Honor.

25 THE COURT: I think it speaks for itself.

1 It so states.

2 MR. STONE: Okay.

3 Q (by Mr. Stone) Let's turn to tab 81 now, which is
4 Document 26. This is also a conversation reported between
5 Colonel Bendetson and Captain Hall about the final report.
6 Is this conversation one of the letters you had seen back
7 then when you were searching for documents?

8 A This was in, I think, with the same group of materials
9 having to do --

10 Q In record group 319.1?

11 A In the folder 319.1.

12 Q In 319.1?

13 A I think this is. It seems to be.

14 Q Okay. And they're talking about in the top paragraph
15 contracting for the printing with the Sunset Recorder
16 Company; is that right? The top paragraph.

17 A Yes.

18 Q Okay. Now, could I have Rebuttal Document A-108
19 handed to the witness, please?

20 THE COURT: Have I ruled on A-108?

21 MR. STONE: You haven't ruled on it yet,
22 Your Honor. It comes out of record group 319.1, which is
23 the record group we're in, the folder that we're in, and
24 if you turn the page you'll see it is an inventory of the
25 various versions of the final report. This document is

1 out of record group 319.1, isn't it, Mrs. Herzig-Yoshinaga?

2 MR. KAWAKAMI: Your Honor, may I? I
3 haven't really had an opportunity to look this document
4 over. I'm not certain this is actually a rebuttal document.
5 I don't understand why --

6 MR. STONE: I'm impeaching the witness,
7 Your Honor, because she stated there was no inventory and
8 she was familiar with the contents of record group 319.1,
9 and this is an inventory of the various versions of the
10 final report which was in that same folder.

11 THE COURT: I'll permit you to question
12 her on that. It's A-108.

13 MR. STONE: Thank you.

14 Q (by Mr. Stone) Mrs. Herzig-Yoshinaga, I know you
15 stated you were familiar with the documents in record group
16 and folder 319.1. Were you familiar with this document?

17 A No, I'm not.

18 Q It says on its -- well, it speaks for itself on the
19 cover and says it's a memorandum inventory of bound volumes.

20 Would you please open to the second page
21 of it? Okay. Under the column that says "Title of Volumes"
22 it says: "Final Report, Japanese Evacuation from the West
23 Coast, First Printing, Loose Leaf Canvas Covers, for
24 Official Use Only, Not Issued, Number Bound one, Still
25 Available one."

1 Is that the one in the black volume here
2 that we're looking at?

3 A Not available. I'm sorry. Not available? Where does
4 it say not available?

5 Q It says not issued. It says First Printing, Loose Leaf
6 Canvas Covers, for Official Use Only. Do not issue. Number
7 bound, one. Still Available, one.

8 THE COURT: Then, your question was?

9 MR. STONE: My question is --

10 THE COURT: Was that reference --

11 MR. STONE: Is that reference --

12 THE COURT: -- to Petitioner's Exhibit 17.

13 MR. STONE: Petitioner's Exhibit 17.

14 Q (by Mr. Stone) Do you know if that's referring to
15 Exhibit 17?

16 A From the description, a loose leaf, canvas cover, it
17 might be one of those.

18 Q It might be, but it says do not issue, and you believe
19 this is the one that was in fact issued and recalled. Right?
20 Only one was bound and printed. It says number bound, one.

21 MR. KAWAKAMI: Your Honor, may I --

22 MR. STONE: Okay. Let's skip to the next.

23 MR. KAWAKAMI: May I inquire as to whether
24 or not this document is being introduced for impeachment
25 purposes or for the truth of the matter asserted in these

1 documents?

2 THE COURT: I think it's for impeachment
3 purposes.

4 MR. STONE: Yes.

5 Q (by Mr. Stone) Okay. Now, let's just go to the second
6 paragraph for a moment. That says, "Final Report, Japanese
7 Evacuation from the West Coast, First Printing, Copy avail-
8 able contains notes for revision. Enclosure: One. Number
9 Bound, next column, twelve. Still available, one, and over
10 in "Disposition of Others" it says eight destroyed; three
11 unknown.

12 Would that be tab 17, Exhibit 4? Eight
13 destroyed; three unknown?

14 A I wouldn't know.

15 Q You don't know. Okay.

16 A How would I know that?

17 Q Well, I thought from the correspondence we had decided
18 that they had destroyed some.

19 THE COURT: Next question.

20 Q Okay. The next question is let's go down to the next
21 block. It says: Final Report, Japanese Evacuation from
22 the West Coast, Revision or Second Printing, does not
23 contain letter of transmittal from Chief of Staff to
24 Secretary of War or Secretary's Forward, and shows distri-
25 bution of one, two, three, four, five, six, seven, eight,

1 nine, ten, eleven, twelve, including Chief of Staff General
2 Marshall and Assistant Secretary of War, which would have
3 been Mr. McCloy.

4 Are those the ones that the correspondence
5 on June 15th which is mailed June 18th relate to?

6 A Since it doesn't say here when it was mailed, I have no
7 point of reference either to say yes or no, that this is the
8 list.

9 Q Well, it shows distribution to those people. We just
10 saw the distribution letters.

11 THE COURT: I'm going to accept her answer.
12 I don't think that she really can answer your question and
13 say yes.

14 MR. STONE: Okay. Fine.

15 Q (by Mr. Stone) It only shows 14 bound, though; isn't
16 that correct, in the second column, only 14 copies made and
17 two still available?

18 A That's what it says here.

19 Q Okay. Now, let's go down to the next paragraph. It
20 says Final Report, Japanese Evacuation from the West Coast,
21 Final Official or Third Printing, containing letter of
22 transmittal from Chief of Staff to Secretary of War and
23 Secretary's Forward, and in terms of number bound it says
24 none for CAD, which - correct me if I'm wrong - the Civil
25 Affairs Division; Still available, none, and in terms of

1 whereabouts it says, Printed for Government Printing Office
2 and available through that source.

3 Is that in fact the GPO Government Printing
4 Office copies that we are looking at in the red volume,
5 which has an exhibit number --

6 THE CLERK: Exhibit 85, tab 92.

7 Q -- Exhibit 85, tab 92. Doesn't that show on the
8 inside cover it's Government Printing Office?

9 A Yes, it does.

10 Q Okay. So would you conclude from that that that is
11 the last paragraph I showed you that says Final Official
12 or Third Printing?

13 A It would seem this it is referring to, yes.

14 Q Okay. So now if it's a third final revision -- well,
15 let's turn the page a moment of this inventory of all the
16 documents and go to -- there is a letter underneath that
17 starts 14 September, 1943.

18 A Excuse me. Where is that?

19 Q It's about four pages down.

20 THE COURT: What is the number of the page
21 down at the bottom?

22 MR. STONE: This particular document
23 didn't have numbered pages, but it's one, two --

24 THE COURT: Wait.

25 MR. STONE: Oh, I see.

1 THE COURT: Are you looking at A-108 still?

2 MR. STONE: Yes. We're still looking at
3 A-108 and we're looking one, two, three, four, five, six,
4 on the seventh page of it. You have to turn the exhibit
5 sideways to read the letter. The seventh page down. There
6 is a letter to the Recorder Printing & Publishing Company
7 and Sunset Press, and it's dated 14 September, 1943.

8 Q (by Mr. Stone) Is that the same company, Sunset-
9 Recorder -- did you check out if that's the same company,
10 Mrs. Herzig-Yoshinaga, that was mentioned in tab 81 where
11 there was a discussion about contracting the Government
12 Printing Company copies out to Sunset Recorder?

13 A Did I trace?

14 Q Did you go to the printing company?

15 A No, I certainly did not.

16 Q Now, what follows is a list of 35 corrections; is that
17 correct, to the final report which are to be made before
18 publication?

19 A Yes, it looks that way.

20 Q And it is signed by a gentleman whose name is -- the
21 type block on the bottom is Robert C. Meyers, Chief,
22 Statistical Section.

23 A Yes.

24 Q Is that the same Mr. Meyers, the same signature that
25 I have suggested before to you appears on the copy of the

1 first draft in the black volume; also appears at tab 17,
2 Exhibit 4, where it says -- I believe it says "Meyers marked
3 copy"?

4 THE COURT: It still looks like Angus to me.

5 MR. STONE: Okay. Well, I'm suggesting
6 it's M-y-e-r-s, apostrophe.

7 Q (by Mr. Stone) Did you ever check out if that was the
8 same signature of Robert C. Myers?

9 A No.

10 Q Now, if you continue down the same exhibit from the
11 Record Group 319, I'm not sure why but it doesn't have a
12 page one and there is another letter that is four pages
13 long and we only have the last three pages, and it has
14 another set of 38 corrections and it suggests at the top
15 it's a letter dated 11 September, 1943.

16 You never checked out this set of corrections,
17 either, did you?

18 A No, because it was not in the folder where the corres-
19 pondence of the final report. This whole document was not
20 in the folder where it says 319.1. That was obtained for
21 the Commission. This whole document was not in there.

22 Q You've never seen this document before?

23 A Not this particular document, no.

24 THE COURT: Tell me what that folder was.
25 You say it was not in the folder. Will you describe that

1 folder? What folder was that, that is, the one that you
2 saw?

3 THE WITNESS: Yes. The one I saw had the
4 same decimal number, 319.1, and I believe it was followed
5 by the words Report; Correspondence. Now, this apparently
6 is another folder because I believe every one of the docu-
7 ments that was in the folder I referred to was obtained for
8 the Commission. There are -- this is a good example of the
9 fact that this decimal number appeared on several different
10 folders.

11 Q (by Mr. Stone) Well, you don't know for a fact that
12 it's not in that folder, do you?

13 MR. KAWAKAMI: Your Honor, --

14 A I have no idea.

15 Q You have no idea?

16 THE COURT: Yes.

17 MR. KAWAKAMI: I would like counsel to allow
18 the witness to answer the question before he breaks in.

19 THE COURT: I thought she did finish that
20 answer.

21 MR. KAWAKAMI: She was answering about the
22 difficulty of this 319 document. She was going to explain
23 it.

24 THE COURT: Is there anything else you
25 want to say about the difficulty of finding documents in

1 that file, 319.1?

2 THE WITNESS: Yes, because apparently there
3 is another file folder with that same number, because every-
4 thing that is in the Commission records pertaining to the
5 revisions and the destruction and the requests for changes
6 was in one folder that I know of, and that was com -- the
7 entire content of that folder was made available to the
8 Commission. This is apparently from another folder because
9 I have not seen this.

10 Q (by Mr. Stone) Would you look at tab 86 again for a
11 moment, and the next to the last page -- I'm sorry -- the
12 third from the last page of this Exhibit A-108?

13 A Tab 86? This is Record 86.

14 Q Tab 86 is Exhibit 28.

15 A That's only one page. What page did you say?

16 Q The next to the last page of 108 -- I'm sorry -- the
17 third from the last. It has a 2 down at the bottom. It's
18 page 2 of the 11 September 1943 letter, and there is only
19 one page to tab 86. It's a telephone conversation about
20 the final report.

21 A I'm sorry. I'm lost.

22 THE COURT: Yes. I'm lost, too.

23 MR. STONE: Sure. Okay.

24 Q (by Mr. Stone) The first thing I'd like you to do is
25 take Exhibit A-108 which you still have out and turn to

1 three pages from the bottom. It's a page which at the top
2 has a date 11 September 1943, and at the bottom has page 2 on
3 it. There's a whole bunch of okays all the way down the
4 margin on changes. Do you see those, okay all the way down
5 the margin?

6 A Yes.

7 Q Okay. Now I would like you to -- leaving that open --
8 turn to tab 86, Petitioner's Tab 86, which is Petitioner's
9 Exhibit 28, which also has the word "okay" handwritten on
10 it.

11 Now, if you look at the way the word is
12 written and underlined, does it appear to you that it's
13 worth investigating as a researcher, whether that has been
14 written by the same individual at the same time?

15 A If I were assigned to do the research on this specifi-
16 cally, yes, but you will remember that the Commission, in
17 light of my responsibilities with the Commission, I
18 gathered a lot of this material and there were thousands
19 of others to be gathered at the same time.

20 The material like this was turned over to
21 the writers of the report. At the time this was found and
22 I discovered that one version was different from the other,
23 I was not involved in these cases and I was not looking
24 or spending any time --

25 Q I understand.

1 A -- to search the Recorder, the press, or anythign like
2 that.

3 Q I understand. I understand. Now that you have this
4 document in front of you, A-108 --

5 THE COURT: Let me say this: I think this
6 is a matter of argument. The documents are in evidence.
7 You can argue to me.

8 MR. STONE: Well, I wanted to see if that
9 changes her earlier testimony when she said she believed
10 there was no index which would have pointed one --

11 THE COURT: You can ask that question.

12 Q (by Mr. Stone) Does the presence of A-108 now change
13 your view that there was no index to the existing versions
14 of the final report?

15 A If I had seen this I would have said there was a guide,
16 that there might have been, but since I have never seen
17 this --

18 Q Right. And if you had seen it, or now that you have
19 seen it, you know that there are -- are you able to tell
20 from the corrections which we have previously talked about
21 which of these various four different versions, of which we
22 have copies still available in the still available copy
23 column on page 2, are we able to really pin down which one
24 Exhibit 4 and the printed one is?

25 A I would have to do a little study before I can say.

1 Q Okay. I think I can move on to the next question.
2 You are familiar, are you not, with an accession inventory?

3 THE COURT: That is, the phrase?

4 MR. STONE: Yes. The phrase, accession
5 inventory when dealing with records.

6 A Apparently that is used when agencies submit material
7 to the archives.

8 Q (by Mr. Stone) Okay. Could we hand the witness A-109.
9 It's a document that we had out yesterday.

10 THE COURT: Is this Exhibit 109?

11 THE CLERK: Exhibit A-109.

12 MR. STONE: A-109.

13 Q (by Mr. Stone) This is a document obtained from John
14 Taylor, Modern Military Records. In the description of
15 records in the middle there it says Records of the Western
16 Defense Command and Fourth Army relating to the exclusion
17 of enemy aliens and Americans of Japanese descent from
18 military area on the West Coast, 1942 to '46, consisting
19 of central correspondence of the Wartime Civil Control
20 Administration and Civil Affairs Division, correspondence
21 relating to the administration and operation of the
22 Individual Exclusion Board and the Individual Exclusion
23 Program, 625 reels of 16 mm. microfilm of records of the
24 Assembly Central Branch, Operations Division, Wartime Civil
25 Control Administration, relating to assembly centers

1 established for aliens and citizens of Japanese ancestry
2 evacuated from military area No. 1 and the California
3 portion of military area No. 2, and library collection
4 of seized documents originally belonging to the Japanese
5 societies and religious organizations and individuals.

6 That is a description of the records that
7 319 and 107 come from, isn't it?

8 A No. This is Adjutant General's office.

9 Q Yes. The Adjutant General. You are aware, aren't you,
10 that the Adjutant General's records were split up and
11 ultimately accessioned to with a new group number, Modern
12 Military Records, aren't you?

13 A They're split in different places.

14 Q Right. Did you at any time go ask for the accession
15 inventory from Mr. Taylor to determine when the various
16 final drafts became available to the public?

17 A Did I go to Mr. Taylor and ask for an inventory?

18 Q This accession inventory to see when documents became
19 available to the public that you were looking at?

20 A No. I don't understand -- I'm sorry. I'm not real
21 clear. Did I ask for that particular inventory of the
22 final report?

23 Q Yes. Did you ask for the accession inventory to show
24 when the version of the final report which you believed
25 you had discovered first became available to the public?

1 A No. He knew when I had discovered the first, what I
2 call the first version, and he did not notify me that there
3 was an inventory.

4 Q Okay.

5 THE COURT: This was the archivist upon
6 whose desk you saw the report?

7 THE WITNESS: Yes.

8 Q (by Mr. Stone) By the way, how old is Mr. Taylor, just
9 for the record?

10 A He must be in his seventies.

11 Q He has quite a few assistants there, though, doesn't he?

12 A I don't know. They are his assistants or they are in
13 charge of various other areas in the Modern Military Branch.

14 Q Okay. YOU also testified that you asked the FBI --
15 your job with the Commission was to ask the FBI and the
16 Department of Justice to provide certain documents; isn't
17 that right?

18 A Not certain documents. It was a very broad request
19 for anything.

20 Q At the Commission, the January 26th Commander Ringle
21 was singled out as perhaps the most important intelligence
22 document of that period; isn't that right?

23 A One of the most, from the Navy.

24 Q Right. From the Navy. Did you ever ask the Department
25 of Justice or the FBI whether they had copies or other

1 documents attached to or related to that most important
2 document?

3 A We had asked the FBI and the DOJ, Department of Justice,
4 for any materials having to do with this entire experience.

5 Q If the Department of Justice and the FBI had given you
6 any documents they had that related to this experience,
7 would that not have encountered -- would that not have been
8 hundreds of feet of records, maybe thousands?

9 A I don't know because I don't know what exists.

10 Q Okay. But nobody from your organization physically
11 went in to the FBI and asked to look for particular docu-
12 ments; is that right?

13 A We didn't have to. We had made the request officially
14 and we were assured that we would have everything, so they
15 transmitted by carton boxes material to us. I had made
16 telephone requests, also.

17 Q Could you hand Document A-77 to the witness, please?

18 Would you open it up to the second page?

19 Is this Commander Ringle's report which the Commission put
20 so much emphasis upon as representing the views of the
21 Office of Naval Intelligence?

22 A Is this the report?

23 Q Yes.

24 A The Ringle report?

25 Q Yes.

1 A This is not the original copy. This is a copy of the
2 Ringle report.

3 Q Okay. Would you turn back now and take a look at the
4 cover page?

5 A Yes.

6 Q The cover page says in the third paragraph of it,
7 "Although it does not represent the final and official
8 opinion of the Office of Naval Intelligence on this subject,
9 it is believed that this report will be of interest to the
10 Federal Bureau of Investigation. Signed, H. E. Kiester,
11 Commander, USNR," and it comes out of the office of the
12 Chief of Naval Operations, Navy Department.

13 Would that letter have been of substantial
14 assistance to the Commission in evaluating the importance
15 of the attached report?

16 MR. KAWAKAMI: Your Honor, I object. That
17 is not relevant to the issues here.

18 MR. STONE: She raised researching this
19 report, previously.

20 THE COURT: I think that's a matter of
21 argument. If it does have relevance, it's a matter of
22 argument.

23 Q (by Mr. Stone) Okay. I guess my question was, you
24 have never seen that cover letter before; isn't that correct?

25 A Yes. It should have been sent to the Commission because

1 we requested it and it's an FBI document, but we never
2 received it.

3 Q Okay. But you also never specifically requested cover
4 letter or attachments to Mr. Ringle's January 26th report?

5 THE COURT: She has already said that.

6 MR. STONE: Okay.

7 THE COURT: You made a general request.

8 THE WITNESS: Yes.

9 Q (by Mr. Stone) You spoke about different indices, Mrs.
10 Herzig-Yoshinaga. You don't personally find them terribly
11 confusing, do you? You have in fact walked me through the
12 various systems, haven't you?

13 A Like what systems?

14 Q The decimal system of the Army. That's not terribly
15 confusing standing alone, is it?

16 A Well, I think it is for a person who is a brand new
17 researcher, yes.

18 Q Well, if you have an index with you, it's not difficult,
19 is it?

20 A Now, it depends on what you say. The difference
21 between a preliminary inventory, which some people call an
22 index, and a very detailed index of individual documents
23 that may be available. Tremendous difference.

24 Q But you had no trouble, ultimately, with this decimal
25 index, did you?

1 A Ultimately? Yes, because I found material relating to
2 one subject in a totally different place than where it
3 should be.

4 Q Did you have occasion during your various searches to
5 search the counterintelligence Japanese unit of the Navy
6 at the Suitland Record Center, the Navel Intelligence
7 Command?

8 THE COURT: I'm sorry. I was writing down
9 something so I missed the question entirely. Would you
10 give it again?

11 MR. STONE: Okay.

12 Q (by Mr. Stone) You searched many records at Suitland,
13 Maryland, didn't you?

14 A Yes.

15 Q That was at the Federal Records Center located there.
16 Correct?

17 A Yes.

18 Q Are you aware there's another building there which is
19 the Navy Intelligence Command?

20 A Another building?

21 Q Yes. It's a separate building.

22 A No.

23 Q Okay. Did you ever ask the Navy Intelligence Command
24 for any records which they have not yet turned over to the
25 National Archives?

1 A No. No.

2 Q Did you just assume that they had turned all their
3 records over from World War II?

4 A Yes. It's just like the Department of Justice. We
5 asked for it. If they hadn't sent it to us, we had no
6 reason to assume that this wasn't everything.

7 Q Well, there are classified records from World War II
8 that the military has that does not now or ever plan to
9 declassify; isn't that true?

10 A I suppose so. I don't know. I think if they're
11 classified, how would I know it's there if I had no lead to
12 that particular document.

13 Q Well, you don't know whether the Commission had access
14 to declassified records?

15 A No. That isn't what I said. Anything that was de-
16 classified and we asked for, we hope we got.

17 Q But you personally when you were searching didn't
18 believe you had the right to ask to see classified records
19 so you could declassify them; is that right?

20 A Oh, yes. We had the power to ask for anything, yes.

21 Q But you didn't go to these classified records and ask
22 them to be declassified?

23 A If I knew they were classified, I may have gone to
24 them. We had no time to go to every single document where
25 there was a note that said it was classified information.

1 Q Okay. Are you familiar with Army Regulation 380-5?

2 A It doesn't mean anything to me.

3 Q Okay. Would the clerk please hand the witness --

4 THE COURT: Let me ask you this: Do you
5 have a witness who is going to testify about that?

6 MR. STONE: Yes.

7 THE COURT: Let's use your witness on that
8 subject.

9 MR. STONE: Okay.

10 Q (by Mr. Stone) Mrs. Herzig-Yoshinaga, are you aware
11 of what the standard operating procedure was for the
12 disposition of surplus documents during World War II?

13 A No, I have never studied it.

14 Q So you have no idea whether burning documents with a
15 requirement that there be a certificate of burning was the
16 proper and official way to dispose of documents?

17 A There is some information on that but I can't -- I have
18 to study it.

19 Q Okay. And you did not check that when you located
20 the certificates of burning for the final report, did you?

21 A No.

22 Q Did you locate, when you were -- did you make a
23 request and locate correspondence dealing specifically
24 with Western Defense Command curfew regulations and whether
25 or not General DeWitt wanted a curfew prior to ever even

1 requesting evacuation of the Japanese-Americans from the
 2 West Coast?

3 A Would you break that up, please?

4 Q Did you ever request or locate documents which indicated
 5 that General DeWitt wanted a curfew on the West Coast
 6 before the question of evacuation of people from the West
 7 Coast ever arose?

8 A Can you refresh my memory as to when the question of
 9 evacuation first --

10 Q Yes. Okay.

11 Your Honor, we had previously marked a
 12 letter which we used to refresh the recollection and you
 13 admitted it, A-2, of Mr. Ennis.

14 Can we have A-2 shown to the witness,
 15 please? This is a letter dated January 25th, 1942. Am I
 16 correct that that predates any opinion by General DeWitt
 17 that he wanted evacuation of anybody from the West Coast?

18 THE COURT: This letter was Ennis to whom?

19 MR. STONE: This letter is Secretary of
 20 War Stimson to the Attorney General, and Mr. Ennis said
 21 it had come down the path to him.

22 A I would have to read this.

23 Q (by Mr. Stone) Okay. Would you take a moment?

24 A You're asking me a lot of questions that are very
 25 difficult for me, since to analyze -- I didn't stop to

1 analyze a lot of these, the many thousands of documents that
2 I received. I knew that they were probably important so they
3 were given to the Commission in light of that, but I have to
4 impress upon you that I have not spent a whole lot of time
5 analyzing every single document.

6 THE COURT: Well, A-2 is a matter of record;
7 isn't that correct?

8 MR. STONE: Okay.

9 THE COURT: So you can argue from it.

10 MR. STONE: All right.

11 THE COURT: Tell me again, though, A-2,
12 tell me the party -- I thought you said Ennis. Ennis testi-
13 fied with respect to it, but the person who wrote the letter
14 was?

15 MR. STONE: Secretary of War Stimson.

16 THE COURT: All right. And it's addressed
17 to whom?

18 MR. STONE: Addressed to the Attorney General,
19 and he says in the last sentence of the second paragraph
20 that General DeWitt's apprehensions have been confirmed by
21 recent visits of military observers from the War Department
22 to the Pacific Coast.

23 THE COURT: Well, you spoke about the curfew.
24 What does he say about the curfew?

25 MR. STONE: Right. He talks about the

1 President's proclamations.

2 Q (by Mr. Stone) Mrs. Yoshinaga-Herzig, did you ever come
3 across any documents that suggested that General DeWitt
4 insisted on maintaining the curfew for military reasons long
5 after Japanese persons, citizens and aliens, were evacuated
6 from the West Coast?

7 A That he -- let me frame this correctly. That he
8 insisted on continuance of the curfew?

9 Q Yes. Even after all Japanese persons were evacuated
10 from the West Coast and in custody.

11 A I think I recall many documents where he insisted that
12 Japanese not be returned to the West Coast.

13 Q No, no. I'm talking about the curfew order which is
14 the subject of this case.

15 A I specifically don't remember.

16 MR. STONE: Could I try and refresh the
17 witness's recollection with document A-111 which is Western
18 Defense Command curfew correspondence?

19 THE COURT: Let's pick that up when we come
20 back at 1:30.

21 MR. STONE: Okay.

22 THE COURT: That's A-111?

23 MR. STONE: Yes. We'll give everybody a
24 copy and they can look at it.

25 THE COURT: That will be fine.

(Noon recess.)

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AFTERNOON SESSION

(1:30 p.m., June 24, 1985)

AIKO HERZIG-YOSHINAGA, resumed the witness stand and testified further, as follows:

CROSS-EXAMINATION (resumed)

BY MR. STONE:

Q I believe we were just about to see whether or not in her examination of the Western Defense Command records Mrs. Herzig-Yoshinaga had occasion to see documents dated after the evacuation of the Japanese from the West Coast in which General DeWitt still insisted that he needed a curfew, and I had asked to have the witness handed document A-111 which is a series of communications from the Western Defense Command, and I was going to ask her to turn to the one, two, three, four, five, six, seventh page of that.

THE COURT: What is the date of the document you're looking at, would you, please?

MR. STONE: 5 July 1942.

THE COURT: All right.

MR. STONE: It's signed by DEW, which would be General DeWitt, and General DeWitt is discussing the earlier papers which talk about alleviating the conditions of the curfew, and in this document he says "I am of the opinion that instead of alleviating --"

1 THE COURT: I see that. Mr. Kawakami?

2 MR. STONE: That's why I wanted --

3 MR. KAWAKAMI: Yes. I don't -- is the
4 question has she seen this document before?

5 MR. STONE: The question is has she seen
6 this one and the response on the next page of his G-2 where
7 he recommends that the curfew continue as late as -- here we
8 are in July of '42 when everybody basically has already
9 reported to a center.

10 THE COURT: All right. Why don't you ask
11 the question?

12 MR. STONE: Okay.

13 Q (by Mr. Stone) Mrs. Herzig-Yoshinaga, did you see either
14 of these documents before?

15 A I don't remember the details and I'm not sure that I
16 did, but even if I had, because of the fact that the Japanese
17 population was already in the camps, and it said something
18 about a problem with curfew. I probably would not have paid
19 too much attention to it because it didn't apply to the
20 Japanese-Americans.

21 Q Okay. So you were not concerned -- the focus of your
22 search was not whether there was still a curfew even after
23 the Japanese-Americans left the West Coast?

24 A Well, I knew there were restrictions for the Japanese
25 not to go back to the military zone, but as far as curfew

1 there was no problem.

2 Q This is a curfew that covers other people within the
3 Western Defense Command. That's what it indicates. This was
4 a general curfew like the one -- it is the one at issue in
5 this case and I wondered whether as a result of working on
6 this case you had gone back to the documents to see how long
7 the curfew in this case stayed in effect.

8 A No.

9 MR. KAWAKAMI: Your Honor, that has been
10 asked and answered.

11 THE COURT: She's answered that question.

12 MR. STONE: Okay.

13 Q (by Mr. Stone) Have you reviewed the testimony at Mr.
14 Hirobayashi's trial, the record in this case, as a historical
15 researcher?

16 A The legal papers?

17 Q Yes.

18 A No. Even if I read it, I'm afraid I'm not versed enough
19 so I wouldn't understand all of it.

20 Q Okay. You had identified some G-2 summaries among other
21 documents in the index to the Petitioner's exhibits and you
22 had run down a long list of exhibits and said you had
23 discovered or given those exhibits to the Petitioner.

24 You weren't suggesting, were you, that none
25 of the documents in that list of exhibits you named appears

1 on an index. They are easily retrievable by any researcher,
2 aren't they?

3 A I didn't look for any index for this particular thing,
4 for the G-2 reports. I did not look.

5 Q Well, you mentioned the G-2 periodic reports specifi-
6 cally. Those are well indexed in the Western Defense Command
7 records at Suitland, Maryland, aren't they?

8 A I didn't have to look for an index because I already
9 found the document.

10 Q Okay. Those are documents that are easily found. Right?
11 One goes in and asks for the G-2 periodic reports of the
12 Western Defense Command.

13 A There are Western Defense Command weekly reports and
14 in the staff, general staff files, there are weekly -- there
15 are summaries --

16 Q Right.

17 A -- of the same thing.

18 Q Right. In fact, though, there is about an eight-page
19 index to that that when one orders down those boxes that
20 comes with it. Correct? In fact, you had served me with a
21 copy of that index. Right. That indexes all of the records
22 in the Western Defense Command's boxes from Suitland, Maryland?

23 A Indexes the G-2 reports?

24 Q It indexes all the Western Defense Command records and
25 on one page it says G-2 reports.

1 A I don't think there is a complete index of everything
2 in the Western Defense Command, no. I have never seen any-
3 thing like that.

4 Q Let's go on to -- by the way, before we leave that, if
5 a person is designated G-2, as a researcher, does that tell
6 you that automatically it's an intelligence officer or an
7 intelligence man?

8 A G-2 refers to military intelligence, yes.

9 Q So if somebody or a report is designated G-2, we know
10 he's an intelligence officer. Correct?

11 A Yes.

12 Q Okay. You mentioned in going over these documents you
13 took specific reference to tab -- this is going to get
14 tough -- tab 88 -- no; that's not the one. Let me see which
15 tabs they were.

16 I seem to have lost my place here for a
17 moment. Excuse me. I want to find the documents that
18 relate to the amicus brief and I'm having some trouble
19 putting my finger on which ones they are.

20 THE COURT: Is that listed as a Petitioner's
21 exhibit or not?

22 MR. STONE: Yes. These are Petitioner's
23 exhibits, but I'm so used to looking at these other lists
24 that I don't seem to be able to put my finger on the docu-
25 ments here for a moment. Oh, I guess it's -- yes, it is --

1 Petitioner's Exhibit No. 88. That is it. It is 88.

2 THE CLERK: Tab number, please?

3 MR. STONE: It's Exhibit No. 91, tab 88.

4 That's it. And tab 89 and tab 90

5 THE COURT: I don't think that is what you
6 want. Give me the exhibit number again, would you, please?

7 MR. STONE: The exhibit numbers are 91
8 and 2.

9 THE COURT: Those are not amicus briefs,
10 are they?

11 MR. STONE: No. These are the letters
12 dealing with the question of an amicus, generally.

13 THE COURT: I see.

14 THE CLERK: And the tab numbers?

15 MR. STONE: The tab numbers are 88 and 90.

16 Q (by Mr. Stone) Would you take a look at the one that's
17 under tab 88? I believe that's a letter from Robert W.
18 Kenny, Attorney General, State of California, to Colonel
19 Joe Watson.

20 You stated that you had located -- that's
21 one of the specific documents you located; isn't that right?

22 A Yes.

23 Q Do you know why you were asked to search for that
24 document?

25 A I wasn't asked to search for this particular document.

1 It was among many of the other papers that had to do with
2 this entire history, and knowing that the names appeared
3 here, Hirobayashi and Yasui, were important figures in the
4 Supreme Court case, I gathered it so that the Commission
5 could study it.

6 Q Peter Irons identified another letter from Mr. Kenny
7 that discussed the Hirobayashi case and indeed it is written
8 to the amicus counsel, Al Wieren, in the Hirobayashi case
9 at about the same time. That letter openly acknowledges
10 Herbert Weden's part in the amicus brief to Mr. Wieren, the
11 amicus counsel.

12 Were you asked to search for that document?

13 A I don't recall that I was asked to.

14 Q I would like to have you turn to tab 25 which is docu-
15 ment 81. Is this another document that you discovered?

16 A Yes.

17 Q Okay. And you discovered this over in the National
18 Archives?

19 A Yes.

20 Q It says on the bottom underneath General DeWitt's name,
21 FCC Classified Exhibit 13. It says at the top, War Depart-
22 ment - Secret. This document comes out of the House investi-
23 gation of the FCC file, doesn't it?

24 A I suppose so. I'm not sure. It does say classified
25 exhibit. There is a folder called Classified Exhibit in the

1 FCC records.

2 Q And House investigation of the FCC; isn't that the name
3 of the file?

4 A It may be, but I -- if I remember correctly, I always
5 condensed the titles of folders because they were very long,
6 to something like Classified Exhibits.

7 Q Okay. Would you turn to the next tab which is 26, which
8 is Exhibit 88? That's the cover of the summary of work
9 performed by the RID for other agencies and it also has a
10 Secret label on it. That comes out of the same file - right?
11 - and the reason it was marked Secret is because it was the
12 House investigation of the FCC; isn't that right?

13 A I assume so. I don't have it in front of me.

14 Q Oh, I'm sorry. Would you hand her, please, that exhibit?

15 THE COURT: Would that be the Radio
16 Intelligence Division of the FCC?

17 MR. STONE: Yes. That's what it is, Your
18 Honor.

19 THE WITNESS: It's the same one.

20 THE CLERK: Tab 88?

21 THE COURT: It's Exhibit 88?

22 THE CLERK: Tab?

23 THE COURT: Oh, I'm sorry. Tab 26,
24 Exhibit 88.

25 A What was your question again, Mr. Stone?

1 Q (by Mr. Stone) I just wanted you to look at that
2 "Secret" sticker on the cover of that file, and if you turn
3 the page, the very first page, all of this report which is
4 an unexceptional report of the public activities of the FCC
5 is marked "Secret" in big letters on every page, and I was
6 trying to confirm that this also comes out of that same
7 folder House Investigation of the FCC.

8 A No, I have a notation that this came out of a folder
9 called Summary of Work Performed by RID for Other Agencies.

10 Q All right. Let's go back to the last exhibit, the FCC
11 Classified Exhibit 13, it said on the bottom. Can you recall
12 what else was in the details of that House Investigation of
13 the FCC?

14 THE COURT: Tell me, Counsel, because I'm
15 unfamiliar with the House Investigation --

16 MR. STONE: Right.

17 THE COURT: -- when was that and what was
18 the reason for it?

19 MR. STONE: It was exactly the same timing,
20 Your Honor, and what I was hoping to do next was try to
21 refresh the witness's recollection with a copy --

22 THE COURT: When you say exactly the same
23 time, what time are we talking about?

24 MR. STONE: This is a statement made on
25 July 2nd, 1943, and that's virtually the same time that the

1 Final Report was being written, and I have another document
2 dated February 8th, 1943, which also relates to that file.

3 THE CLERK: Can you give me the numbers,
4 Counsel?

5 MR. STONE: Yes. I'm sorry. I didn't
6 have a chance to get these to you.

7 THE COURT: Counsel, let me ask you this,
8 because I just know nothing about it. You say there was an
9 investigation of the FCC.

10 MR. STONE: Yes.

11 THE COURT: By Congress?

12 MR. STONE: By Congress.

13 THE COURT: And when was that?

14 MR. STONE: It was in 1943, and these docu-
15 ments describe it.

16 THE COURT: What was the reason for that
17 investigation?

18 MR. STONE: Well, I was going to see if I
19 could get her to recollect.

20 THE COURT: Why don't you tell me?

21 MR. STONE: Okay. The Joint Chiefs of
22 Staff of the United States, the Secretary of the Navy and
23 Secretary of the Army moved to get the FCC kicked out of all
24 military intelligence because they thought they were
25 incompetent. As a matter of fact, General DeWitt subscribed

1 as well as other generals to that recommendation, and that is
2 part of the same file that this document that's an FCC classi-
3 fied document comes out of.

4 THE COURT: I think you've told me enough
5 to give me a setting for it.

6 I have a reference to tab 26, or tab 25,
7 Exhibit 81, tab 26, Exhibit 88. Then you go ahead.

8 MR. STONE: Okay.

9 Q (by Mr. Stone) The tab 25 reference comes out of --
10 that's an FCC classified exhibit with respect to the House
11 Committee to investigate the FCC, which is described on
12 Document 122, A-122, and I would ask that you give A-122
13 to the witness so she can see if she recognizes this docu-
14 ment from that file.

15 A Mr. Stone, where did you get this? Can I ask you where
16 you got A-122 and A-123?

17 Q A-122 and A-123 are documents of the General Counsel to
18 the Select Committee of the House of Representatives and
19 they relate to that FCC investigation. The copy that you are
20 looking at comes from the 146 files which you said you came
21 and looked at at the Department of Justice, which is why I
22 asked whether or not you're familiar with them.

23 A This is a working paper of the Select Committee to
24 investigate the FCC. No, I did not see this in the files
25 of the FCC.

1 Q Okay. The pages are not numbered on it, but one, two,
2 three, four, five, six pages from the bottom --

3 THE COURT: In which exhibit?

4 MR. STONE: On 122.

5 Q (continuing) -- there is a list of numbers down the page
6 that start with one. No. 2 says that the FCC --

7 MR. KAWAKAMI: Your Honor, I'm going to
8 object to this. She's already testified that she is not
9 familiar with this document. It is not being introduced to
10 refresh her recollection if she's testified that she is not
11 familiar with the document.

12 MR. STONE: Well, what I'd like to do --

13 THE COURT: You ask your question and then
14 let me rule on the question.

15 MR. STONE: Okay.

16 Q (by Mr. Stone) Does the substance of the three allega-
17 tions that the House Committee made -- was the substance of
18 them something you were aware of when you searched through
19 these documents, and allegation No. 2 was the FCC is entirely
20 motivated by political partiality and favoritism in the
21 performance of its duties.

22 Allegation 8 was that in its quest for
23 power, it has incurred the antagonism and distrust of other
24 Government departments and agencies , and the third allegation
25 I wanted to read it allegation No. 17, that it has sought to

1 cloak itself as an essential war agency making a vital con-
2 tribution to the war effort, whereas, in truth its alleged
3 war activities constitute a danger of menace to national
4 security.

5 THE COURT: Let me go back. The preparatory
6 paragraph says, and this is the General Counsel to the Select
7 Committee speaking. He says --

8 MR. STONE: Right.

9 THE COURT: "Broadly speaking, among the
10 widespread accusations leveled at the Commission, and brought
11 to the attention of the Committee for investigation are, and
12 then these numbers.

13 I guess the question to you was were you
14 aware of those particular paragraphs that counsel called
15 your attention to at the time of your research.

16 I'm going to permit the quesiton to be
17 asked.

18 A I'm not sure I have the same document.

19 THE COURT: Let me see. I think maybe you
20 do, but I'll try to find the page. Can you recall the
21 numbers again?

22 MR. STONE: Yes, Your Honor. They are --

23 THE COURT: Just look at these numbers.

24 MR. STONE: -- Paragraphs 2, 8 and 17.

25 THE COURT: The question is, were you aware

1 of these accusations at the time of your own research. These
2 have to do with the FCC, as I understand it.

3 A 2, 7, --

4 THE COURT: 2, 8 and 17.

5 A 2, 8 and 17. I'm not sure that I was aware of these
6 accusations. I have seen -- may I just say something?

7 THE COURT: You go ahead.

8 A I have seen documents that the FCC has had -- a report
9 the FCC having made about the inadequacy of the existing
10 military effort in, for example, tracking down radio trans-
11 missions, and that the FCC experts felt that the armed forces
12 was not adequately staffed or trained to do these things. I
13 have seen that.

14 THE COURT: Can you recall with respect to
15 those paragraphs --

16 MR. STONE: Your Honor, --

17 THE COURT: Let me do this. With respect
18 to 2, 8 and 17, were you aware of the fact that when you were
19 doing your research that someone somewhere had made those
20 accusations about the FCC?

21 THE WITNESS: No.

22 MR. STONE: Okay.

23 THE WITNESS: To the best of my knowledge.
24 I don't recall seeing anything like that.

25 THE COURT: I really don't know the

1 relevance of that at all.

2 MR. STONE: Well, Your Honor, in research-
3 ing what was just mentioned by the witness, namely the
4 criticisms by the FCC of the Army and the Navy, it seems to
5 me one needs to be aware that the House of Representatives
6 was investigating the Joint Chiefs of Staff's military
7 criticisms of the FCC at the very same time.

8 THE COURT: All right. Whatever they were
9 doing, I suppose the record is made by this statement. At
10 least he's stating what they're looking at.

11 MR. STONE: Right.

12 THE COURT: But these are not findings by
13 the Commission. These are the accusations.

14 MR. STONE: No, I understand that.

15 THE COURT: All right. Let's go ahead.

16 MR. STONE: Okay. I was simply going to
17 ask if she was aware of the Joint Chiefs' recommendation in
18 1943.

19 THE COURT: Well, that's something else.

20 MR. STONE: Yes.

21 THE COURT: Do you want to refer her --

22 MR. STONE: That's Document A-123, and
23 that's the Joint Chiefs of Staff recommendation that the FCC
24 should be eliminated from Radio Intelligence activities,
25 and it's dated February 8th, 1943.

1 Q And again, my question is, were you aware of the sub-
2 stance of the allegations if not this document at the time
3 you were doing your research?

4 A I have not seen --

5 THE COURT: You go ahead.

6 A I have not seen this document, but I think it's some-
7 thing that the Commission should have been sent.

8 Q Okay.

9 A Because it's in the Justice Department records. We had
10 asked for all records from the Justice Department.

11 THE COURT: I may be wrong, but this
12 probably would not be in the files of Justice, would it?
13 It looks to me as if it might have been in the files of the
14 President or the Secretary of the Navy or Secretary of War.

15 THE WITNESS: Your Honor, this file number
16 at the bottom, 146, indicates it was in the Justice Depart-
17 ment.

18 THE COURT: I see. All right.

19 Q (by Mr. Stone) That's a file which you searched many
20 times. Right? The 146 files.

21 A in 146, only the alien and enemy control unit files,
22 which was what we were primarily concerned with. There are
23 many, many folders, file folders, Mr. Stone, under 146.

24 Q The next document I would like to hand the witness, if
25 I may, is the copy of the index of the Western Defense

1 Command records which the Petitioner served on me. She has
2 just recently testified that there --

3 THE COURT: Has that been given a number by
4 you?

5 MR. STONE: Yes, A-124. I wanted to see
6 if I could refresh her recollection about this index of the
7 Western Defense Command records.

8 Q (by Mr. Stone) What I have had handed to the witness
9 is a several page long index of the decimal records and
10 categorizations for the Western Defense Command.

11 Would you please just page through it?
12 Does this refresh your recollection that the documents for
13 the Western Defense Command are in fact organized in decimal
14 fashion, alphabetically arranged, chronologically arranged,
15 and that this is a document which one is given when one calls
16 Suitland for the Western Defense Command records?

17 A This is Suitland files, or is that the field branch?

18 Q I believe this is a Suitland file. This copy is one
19 that was served on me by Petitioners and it's got their number
20 down at the bottom.

21 Do you recognize this document as the
22 index of the Western Defense Command records?

23 THE COURT: Let me ask you this: When he
24 says "recognize," that implies that you've seen it before.
25 Have you seen this document before, to your knowledge?

1 THE WITNESS: I've seen so many general
2 indexes. I don't recall. I don't recall this.

3 THE COURT: That would be whether or not;
4 you may have or may not have?

5 THE WITNESS: Yes.

6 Q (by Mr. Stone) Do you think that's because the document
7 is misfiled, or do you think you just don't recall?

8 A This looks like the kind of document that an archivist
9 would show a researcher. It might be -- this is very, very
10 general. You know, it's not a detailed index.

11 Q Okay. Let's turn for a moment to the second -- let's
12 see. The second --

13 THE COURT: Well, let me say this --

14 MR. STONE: Okay. It speaks for itself,
15 Your Honor. I don't have to go through it.

16 THE COURT: I think it does.

17 MR. STONE: It lists all the G-2 quarterly
18 intelligence reports and it was the G-2 weekly periodical
19 report and a G-2 section summary --

20 THE COURT: Counsel, again I'm going to
21 say this. When I start to say something, I want you to
22 stop. That is, if you have a witness who can testify this
23 did exist at a certain time and was available, let's listen
24 to that witness.

25 MR. STONE: Okay.

1 Q (by Mr. Stone) Mrs. Yoshinaga-Herzig, did you in your
2 research come across a document that indicated that most of
3 the Western Defense Command records have long since been
4 dispersed and are very hard to reconstruct?

5 A Did I find a document that said they had been destroyed?

6 Q Dispersed.

7 THE COURT: I think he said dispersed;
8 sent to various places.

9 Q Not necessarily burned, but simply maintained in
10 personal folders and files elsewhere so that they're no
11 longer available for researchers, and that that is a process
12 that started right after the war.

13 THE COURT: What he said was did you come
14 across a document that indicated that.

15 THE WITNESS: No.

16 Q (by Mr. Stone) Okay.

17 I would like to offer this last Exhibit.
18 It's A-125. Now, that has your initials on the top of it,
19 doesn't it? Note by A. H. Yoshinaga.

20 A Yes.

21 THE COURT: Let me see. I don't see her
22 initials.

23 MR. STONE: Right under the date it
24 says --

25 THE COURT: Well, I see -- mine is

1 typewritten.

2 THE WITNESS: I think he meant my name.

3 Not an initial, but a typed name on the document.

4 Q (by Mr. Stone) This is a document you discovered?

5 A Yes.

6 Q That's your note, isn't it?

7 A Uh-hmm.

8 Q Okay. This is a part, it says inside, of a supplemental
9 report on civilian controls exercised by the Western Defense
10 Command dated January 1947. If I can get to the right page
11 here. On page what is small little three at the top, a little
12 Roman numeral three, I would just like to read a part of that
13 and see if you recollect that part of the document.

14 THE COURT: Now would you wait just one
15 moment?

16 MR. STONE: Sure. Little Roman numeral
17 three at the top.

18 THE COURT: I have that. Do you have that?
19 You have it.

20 Q (by Mr. Stone) The paragraph apparently begins in the
21 middle of the page. "Unfortunately, due to the pressure of
22 time and the lack of personnel, many operations of an
23 important nature were carried out with an almost complete
24 lack of permanent records documenting the decision made and
25 the actions taken. Much was done over the telephone and

1 often either the conversation was not recorded or the trans-
2 criptions were quite unintelligible. Since some of the
3 individuals failed to understand that complete documentation
4 of these operations should be made, principally because of
5 the uniqueness of the operation, either documents were
6 destroyed or the actions taken were not reduced to writing.

7 "This report is being written entirely
8 from the files of the Civil Affairs Division of the Western
9 Defense Command which was an office of record and presumably
10 received copies of all communications and documents pertinent
11 to civilian control exercised by the several Commanding
12 Generals of the Western Defense Command.

13 "Again, unfortunately, many times copies
14 were not furnished these files but were either retained in
15 the private files of the Commanding Generals or inadvertently
16 became a part of the general files of the Western Defense
17 Command. The latter files were stripped by persons who
18 were not cognizant of the importance of the documents and,
19 as a consequence, many were destroyed.

20 "The general files of the Western Defense
21 Command were put in storage at the Adjutant General's depot
22 prior to the beginning of this report and have not been
23 available during this writing."

24 Do you recall this document?

25 A I remember the supplemental report. This document of

1 one thousand and some pages, double spaced, I remember seeing
2 this report.

3 Q And this was a part of what was supposed to be the
4 introduction to the document - correct? - that was not used.
5 Isn't that what your note says?

6 MR. KAWAKAMI: Your Honor, I would just
7 move for the record that his reading of the particular
8 document be stricken from the record.

9 THE COURT: I'm going to leave it in. The
10 document itself, I think it's proper cross-examination.

11 Q (by Mr. Stone) My question is, you were aware, then,
12 when you did your research --

13 THE COURT: Well, let's do this. She said
14 that on this little note that this page was included in the
15 supplemental report. Now, may I ask what page you're speaking
16 about, or did you mean these pages?

17 THE WITNESS: Just this one sheet of paper.
18 The only thing on this sheet of paper said Part IV, under-
19 lined, page 869 through 970 omitted. That was the only
20 sheet of paper in the report, and I put this note up to
21 myself saying apparently Part IV was missing. That was a
22 note to myself that actually existed and I found it, but the
23 only thing in this supplemental report, the only page -- the
24 words on the page were this, and the note up above that I
25 wrote to myself was to indicate that this page was included

1 in the supplemental report and referred to in the table of
2 contents, but when you looked for it, it was not in there.
3 Part IV was not in there, except for the title pages as
4 Part IV.

5 THE COURT: And then do you say you subse-
6 quently found a folder titled Legal Phase of the Exercise of
7 Authority under Executive Order No. 9066 not used?

8 THE WITNESS: That was the title of the
9 folder.

10 THE COURT: And those pages are herewith
11 attached, and those are these pages here.

12 THE WITNESS: No. These did not include
13 them. The entire Part IV was placed in the Commission's
14 record, but what Mr. Stone has attached is just the title
15 page of the entire supplemental report plus the table of
16 contents and these other few introductions.

17 The particular Part IV to which my note
18 refers is not attached here.

19 THE COURT: All right. Then let's go back
20 to your question.

21 Q (by Mr. Stone) My question is, these pages that are
22 attached are pages you read, however, during your research.
23 Correct?

24 A I looked through them. I did not analyze carefully,
25 but I looked through them.

1 Q Okay. So then you were aware when you did your research,
2 as that introduction states, that many of the important
3 documents were simply not preserved literally from the time
4 of their creation?

5 A I don't know if I paid that much attention to it when
6 I read that.

7 THE COURT: Well, in any event, I believe
8 the exhibit does speak for itself.

9 MR. STONE: Okay. Your Honor, I was going
10 to ask whether the witness can testify about the two charts
11 which have not been testified about, the Army and the Navy
12 chart, if she's going to identify them. Of course, I under-
13 stand that --

14 THE COURT: Let me hear from counsel.

15 MR. KAWAKAMI: I don't understand.

16 THE COURT: Well, there were three charts
17 up here, and did not Mr. Irons testify with respect to one
18 of them?

19 MR. STONE: The Department of Justice
20 chart I know he testified about. I didn't think he testified
21 about the Navy or the War Department charts and I thought
22 she might be the one who was going to --

23 THE COURT: Let me ask, did you intend to
24 have anybody testify about those demonstrative charts?

25 MR. KAWAKAMI: No, Your Honor.

1 THE COURT: All right.

2 MR. STONE: Well, I would object to them,
3 then. What I wanted to elicit was that someone who had done
4 research put them together and could give us a date with
5 respect to them, because I'm not even sure what date --
6 they're not dated. I thought perhaps this witness --

7 THE COURT: Apparently they are not going
8 to use her to testify with respect to them.

9 MR. STONE: Okay. I'm going to object to
10 those charts, then, for that reason, Your Honor. They've
11 never been identified in any way.

12 THE COURT: All right. Let's go ahead.

13 MR. STONE: I think that's all I have,
14 Your Honor.

15 THE COURT: Any redirect?

16 MR. KAWAKAMI: Yes, Your Honor.

17

18 REDIRECT EXAMINATION

19 BY MR. KAWAKAMI:

20 Q Could the clerk please hand the black volume, No. 17,
21 to the witness?

22 Now, I'm not sure that I got this exactly
23 correct, but did you testify on cross-examination, looking
24 at the, I believe the first two pages, do you know when
25 those labels were put on the book?

1 A I have no idea. This first page and the second page?

2 Q Yes.

3 A I have no idea when this label was placed on the volume.

4 Q Do you know who put them on?

5 A No, I don't.

6 Q Now, with respect to --

7 THE COURT: Could I ask you, because this

8 doesn't bear a tab, is this actually the Exhibit No. 17?

9 MR. KAWAKAMI: That is Exhibit 17, yes.

10 THE COURT: It is Exhibit 17. All right.

11 MR. HALL: No; it's Exhibit 4.

12 THE COURT: It's Exhibit 4, tab 17?

13 MR. KAWAKAMI: That's correct. At least

14 the clerk knew what I was talking about.

15 Q (by Mr. Kawakami) Now, looking at -- I wonder if the

16 clerk would hand her again Exhibit A-109?

17 That is what has been entitled the

18 accession inventory, I believe?

19 A Yes.

20 Q Is that of any assistance to you in locating documents?

21 A I saw this earlier this morning. No, this is not of

22 help because it is so general. It would not be of much

23 assistance to a researcher looking for a specific document.

24 This is a general picture of what the entire records hold.

25 Q Now, one final question.

1 A It's not an index, you see. Excuse me. It's just a
2 general description.

3 Q One final question. You had mentioned earlier on one
4 of the documents, I believe it was 319.1. I didn't quite
5 understand. What was that number? What did that number
6 signify?

7 A Oh, that decimal number applies to a certain file. Mr.
8 Stone had just inadvertently referred to it as record group.
9 It is not a record group. It is a file in a record group and
10 this 319.1 can appear in a certain part of a record group.
11 Also, the same number may appear in another part of the same
12 record group, which I think is the reason that I did not see
13 that other document that was handed to me, an inventory of
14 the final report, because the Commission had requested for
15 the entire file of 319.1 to be Xeroxed and submitted to the
16 Commission.

17 THE COURT: In what agency or department
18 would 319.1 be?

19 THE WITNESS: This one is the -- it could
20 be -- the one we found was in the Western Defense Command,
21 which is record group 338, but also that same decimal number
22 is used by the War Department, so it could also be in Mr.
23 McCloy's file, and I believe the reason I didn't recognize
24 the inventory is because there must be a 319.1 file, another
25 folder with that number. There might be another folder with

1 that number in the War Department records, because we had
2 asked for everything in that one folder. That was not in
3 the folder.

4 MR. KAWAKAMI: That's fine. I have nothing
5 further, Your Honor.

6 THE COURT: Any recross?

7
8 RECROSS-EXAMINATION

9 BY MR. STONE:

10 Q Do you recall the original label on that Exhibit 4 and
11 whether it's of recent or old origin? Am I not correct it's
12 a very old cover and label?

13 A It looks to be very old.

14 Q It looks to be original. Right?

15 A I can't say it's original. It looks very old.

16 Q Okay. Do you recall it, what that original actually
17 looks like? The cover is tan or brown and there is a faded
18 yellow label on it; isn't that right?

19 A Tan, brown I recognize, yes, and everything looked old.

20 Q It looked original. It didn't look like it had been
21 messed around with very much.

22 A Yes. It didn't look like it.

23 Q Okay. Now, with respect to the accession inventory,
24 that is of help in telling you when a particular organization
25 first displays that set of records, isn't it?

1 A Yes, because of the date here. It tells you when it
2 was transferred to the archives, but it doesn't tell you
3 whether archives is ready to open it up to the public. That's
4 a very different story.

5 Q But it does tell you that the archives got it as of
6 1956. Right?

7 A Yes.

8 Q And the last question, do I understand your comment
9 about file 319.1 to mean that you have testified that it
10 would have been impossible for you to be familiar with all
11 the documents in that file because it was so big?

12 A Not 319.1 necessarily. 338, yes.

13 Q 338.

14 A That's the Western Defense Command file. When I said
15 that I meant I could not have possibly seen all of the
16 records dealing with this subject, all of them. For example,
17 in the Assistant Secretary of War's files there is 149 boxes,
18 and we have -- we asked for help from the archivist to show
19 us those that dealt with this particular experience.

20 So what I'm saying is that I have not --
21 I didn't mean to say that I have looked at all of the Western
22 Defense Command's or all of Mr. McCloy's files. I looked
23 at everything that was possible to see in the time frame
24 from when that started to now.

25 Q You also, with respect to this particular file, 319.1,

1 that somehow alluded you, too. Am I right?

2 A That I saw everything in 319.1?

3 Q You didn't see this document you testified before, and
4 I just wanted to confirm that maybe there were other parts of
5 319.1 that may have alluded you as well?

6 A Yes, because, you see, Mr. Stone, 319.1, there may have
7 been several folders with that same number.

8 Q And you could only recall certain of those?

9 A Yes. And when the Commission asked for everything
10 having to do with that, we were not given that. That's why
11 I did not recognize it and therefore I assume there are other
12 folders with the same number.

13 Q Didn't you think the Commission or you had an obligation
14 to go out and double check what you were given?

15 A If we asked for everything under a certain number, we
16 would assume we would get it. There is no reason to think
17 that they wouldn't have sent us everything.

18 Q You just told me that the size of it was such that they
19 couldn't send it all you. Didn't you tell me there were 145
20 boxes?

21 A No.

22 THE COURT: I think that's argumentative.
23 Any other questions?

24 MR. STONE: No, that's it. Thank you.

25 THE COURT: All right. You may step down.

1 Be careful of that step as you step down.

2 THE WITNESS: Thank you.

3 THE COURT: Your next witness?

4 MR. KAWAKAMI: Your Honor, we would like
5 to at this time release this witness.

6 THE COURT: All right. You are excused,
7 then.

8 THE WITNESS: I can stay?

9 THE COURT: You may stay here if you
10 want to. That is on the assumption that she will not be
11 called again.

12 MR. STONE: The exhibit is to stay.

13 THE WITNESS: This is my list.

14 (Witness excused.)

15
16 GORDON K. HIRABAYASHI, called as a witness in his own
17 behalf, having duly affirmed,
18 testified as follows:

19 THE COURT: Counsel, I assume that you do
20 not now plan to call Ms. Yoshinaga again?

21 MR. KAWAKAMI: That's correct, Your Honor.

22 THE COURT: I guess it's Yoshinaga.

23 MR. KAWAKAMI: Herzig-Yoshinaga.

24 THE COURT: All right.
25

DIRECT EXAMINATION

BY MR. KAWAKAMI:

Q Will you state your name and spell your name for the record, please?

A My name is Gordon Hirabayashi, H-i-r-a-b-a-y-a-s-h-i.

Q And what is your address?

A 11645 91 Avenue, Edmonton, Alberta, Canada.

Q And your occupation?

A I am currently Professor Emeritus of Sociology, University of Alberta.

Q When and where were you born?

A Seattle, Washington, April 23, 1918, 11 a.m.

Q Do you remember that?

A No. It's on my document.

Q Where were your parents born?

A In Japan.

Q Approximately when did they come to the United States?

A My father came over in 1907; my mother seven years later, in 1914.

Q About how old were they when they came to the United States?

A They were each, respectively, nineteen at the time of arrival.

THE COURT: May I ask, were they married in this country?

1 THE WITNESS: Yes. It was arranged in
2 Japan.

3 THE COURT: I see. They were married here.

4 THE WITNESS: Yes.

5 Q (by Mr. Kawakami) Do you recall your arrest in May of
6 1942 for violation of certain military orders?

7 A Certain?

8 Q Do you recall your arrest in May of 1942 for violation
9 of military orders?

10 A Yes.

11 Q And what were you arrested for?

12 A I first, the day after all of Seattle was excluded,
13 reported to the FBI office with Arthur Barnett and turned
14 myself in, and so I was arrested or charged with that
15 offense.

16 THE COURT: Let me ask this: You spoke
17 about all of Seattle excluded. Tell me what that was. Who
18 was excluded?

19 THE WITNESS: There was a Western Defense
20 proclamation, an exclusion order, and these were issued on
21 various parts of the Coast in the Western Defense Command,
22 the Military Zone 1 and -- I guess 1 and 2. And for
23 Seattle there were several districts designated and they
24 were -- they had deadlines in sequence posted on telephone
25 poles and post office bulletin boards and so on, and the

1 last district that was removed was the University District.

2 I was living in that district, so when the
3 deadline for that in mid-May arrived, all of Seattle was
4 supposed to have moved, of those persons of Japanese ancestry.

5 So it was the morning after that last day,
6 so that presumably, according to the proclamation, I was
7 illegally in Seattle. I didn't want to be a fugitive so I
8 had arrangements made to report to the FBI.

9 Q And what were your reasons for not reporting?

10 A Well, the proclamation specified that these exclusion
11 orders were to be applied to all persons of Japanese ancestry,
12 both alien and non-alien. All through the war I was never
13 referred to as a citizen. I was always a non-alien. But
14 that made me subject to it since I wasn't an alien, and I
15 felt that the Constitution, as I understood it, gave me
16 certain protections as a citizen in the absence of martial
17 law, and designation of ancestry was not sufficient, even
18 during a war, to make me subject to that kind of order.

19 I was not charged with espionage or
20 sabotage or anything else regarding my conduct. Other people
21 who were living with me in fact in the dormitory of other
22 ancestry, regardless of whether they were citizens or not,
23 were not subject to this order. So I decided that if I am
24 to declare myself as an American, have a self-perception as
25 an American, I would have to object to this order, even

1 though it would subject me to certain potential penalties.

2 Q Now, by "this order," do you mean the exclusion order?

3 A Yes.

4 Q And you were charged --

5 THE COURT: Let me ask this, if you will.

6 Do you refer to that as a curfew order or is that a different
7 order?

8 THE WITNESS: The curfew violation hadn't
9 occurred yet.

10 THE COURT: I see. So this is a violation
11 of the exclusion order?

12 THE WITNESS: Yes. I mean the act had
13 taken place, the curfew violation, but I had never been
14 charged with it at this point.

15 Q (by Mr. Kawakami) When were you charged with the curfew
16 violation?

17 A While the FBI was interrogating me regarding the
18 exclusion order refusal, he stopped at one point and said,
19 "Well, gee, if you feel this way about it, what would you do
20 about curfew?" which was in effect, and --

21 THE COURT: Did you say what did you do?
22 Is that what you said?

23 THE WITNESS: Yes. And so I said, "Well,
24 what were you doing the past few nights? Were you out after
25 8 o'clock?" He says "Yeah." I said "So was I."

1 Q (by Mr. Kawakami) So he subsequently charged you also
2 with a curfew violation?

3 A Yes. That became Count II.

4 Q And Count I was the exclusion violation. Prior to the
5 war, could you tell the Court what your religious upbringing
6 was?

7 A I was brought up in a Christian home. My parents in
8 Japan had grown up in a Buddhist home, but when they were
9 taking English lessons, preparatory to coming over, and when
10 I talk about my parents I'm talking about seven years apart
11 when they were taking these lessons prior to each of their
12 coming over, they happened to have as an instructor, language
13 instructor, a disciple or follower of a unique Protestant
14 movement person, who did a certain amount of English teaching
15 but I guess he was more effective in his religious teaching
16 because each of them before they arrived in the United States
17 had been converted to Christianity.

18 THE COURT: So this person was in Japan; is
19 that right?

20 THE WITNESS: Yes.

21 A (continuing) I mention this because it's an unorthodox
22 small movement. In Japanese it's Mukyokai, and roughly it
23 refers to non-denominational or non-church movement. I
24 think the leader of this movement, after theological training
25 in New England, decided that Christianity is, in effect, a

1 very good thing to bring to Japan but all this institutional
2 claptrap could stay in North America and he decided to start
3 a movement on Christianity, per se, to to speak, so that
4 followers of this movement were not large in numbers, but
5 those who became members were very strong members. The
6 movement is still there in Japan but it's a very small number.

7 The things that I remember --

8 THE COURT: Let me do this: Let's go back
9 to the question again. You indicated that you were a
10 Christian at that time, that is, at the time of these events?

11 THE COURT: Yes.

12 THE COURT: All right. Next question.

13 Q (by Mr. Kawakami) What other activities were you
14 involved in at the time just before the war broke out?

15 A Well, I was a student at the University right at the
16 time, and I was quite active, in addition to school activities,
17 courses and so on, the activities of the University of
18 Washington YMCA, YMYW, we were joint in program. I also had
19 belonged to the Japanese Students Club, which is about a half
20 a block from where I lived, but most of my activities were
21 at the Student Y.

22 The time for extracurricular activities was
23 such that I spent a lot of time at the Y. There wasn't much
24 time left for other activities except for nominal partici-
25 pation.

1 Q You were how old when the war broke out?

2 A When the war broke out? I was 23 at the time, and
3 during the process of the court case had moved into my 24th
4 birthday.

5 THE COURT: You know, I missed the first.
6 Did you say 22?

7 THE WITNESS: 23.

8 THE COURT: When it broke out?

9 THE WITNESS: Yes.

10 THE COURT: 23?

11 THE WITNESS Yes.

12 Q (by Mr. Kawakami) Prior to the war, had you ever been
13 to Japan?

14 A Yes.

15 Q And also prior to the war, did you belong to any
16 organizations which advocated the overthrow of the American
17 Government?

18 A No.

19 Q Did you belong to any organizations or groups which
20 advocated loyalty to Japan?

21 A Not to my knowledge.

22 Q Now, can you briefly describe for the Court your trial
23 proceedings that led to your conviction?

24 A We had -- see, I was arrested or detained in May and
25 arraigned, and my District Court trial was the latter part

1 of October.

2 THE COURT: Let me ask, when you say you
3 were arrested and detained, were you actually placed in jail
4 at that time?

5 THE WITNESS: Yes. There was an initial
6 attempt to get me to register and then they promised to drop
7 the charges and give me a ride to the Western Washington
8 Fairgrounds, but when I found that there were no changes in
9 the regulations from the time I previously had found it
10 impossible to sign, at the end of that day I was placed in
11 the federal tank of the King County jail.

12 Now, from that time until the District
13 Court trial, which was five months later, we had some court
14 sessions, demurrer cases, plea of abatement, and so on,
15 moves by the defense attorney to drop the cases because, as
16 a citizen, I wasn't given due process and, in effect, I was
17 being subject to these things on the grounds of ancestry
18 which was declared as outside of constitutional guarantees,
19 but these were denied and finally the October trial was set
20 and I think the essence of that was the decision of the
21 presiding judge to declare that the Western Defense Pro-
22 clamation was the law that the Court will observe, in effect,
23 suspending the Constitution so far as my rights were con-
24 cerned, and whenever discussion of constitutional guarantees
25 came up, the jury was excluded, sent to another room, while

1 they debated whether he could submit these arguments or not,
2 and to the extent that they were, they were done with the
3 jury out of the room.

4 THE COURT: Now, let's take the next ques-
5 tion. I might ask, was that a one-day trial, two, three?

6 THE WITNESS: One-day trial with the
7 sentencing the following day. May I just conclude with the
8 judge's, the presiding judge's, instructions to the jury?

9 THE COURT: Let me just make one note here.
10 Now, I believe the actual Court's Instructions are not a part
11 of the record, are they?

12 MR. KAWAKAMI: No, Your Honor, and we have
13 -- we would like to make an offer of proof after Mr.
14 Hirabayashi's testimony. Mr. Barnett is prepared to talk to
15 the Court about presenting some documents relating to the
16 jury instructions.

17 THE COURT: I think we had better do that
18 through Mr. Barnett with respect to the jury instructions.

19 THE WITNESS: All right.

20 Q (by Mr. Kawakami) Prior to your conviction, had you
21 ever been convicted of a crime before?

22 A No.

23 THE COURT: Let me ask this, because I want
24 to get it in the record if it's true. At some prior hearing,
25 I seem to recall that you were active in the Boy Scouts; is

1 that correct?

2 THE WITNESS: Yes, while I was in grade
3 school.

4 THE COURT: What rank did you attain, if I
5 might ask?

6 THE WITNESS: I got as far as life scout,
7 and while I was a patrol leader, Mr. Kawakami's father used
8 to be in my patrol.

9 MR. KAWAKAMI: I never made it to that
10 high myself.

11 THE COURT: I see.

12 Q (by Mr. Kawakami) Now, after your arrest, you told the
13 Court already that you were detained in jail pending your
14 trial. How long did you spend in jail on these convictions
15 after your conviction?

16 A I was five months at the time of the trial, and the
17 judge took that into consideration when he was sentencing
18 me, and two days -- I believe it was two days after the
19 sentencing, I was -- our team appealed.

20 THE COURT: I know this is part of the
21 record, but what was the actual sentence?

22 THE WITNESS: Well, the judge -- there was
23 two processes involved. The judge said, "Taking into con-
24 sideration that he's already been five months waiting in
25 jail on a conviction with a maximum of twelve months,"

1 he's going to sentence me to 30 days for exclusion order
2 violation and 30 days for curfew order violation, to be
3 served consecutively, or 60 days.

4 Then when he asked if the prisoner had
5 anything to say, I asked my lawyer if he could ask the judge
6 to add 15 more days to each of those counts so that it would
7 be a total of 90 days. I did this on my jailhouse advice
8 that if I had to serve my sentence and I wanted to do it
9 outside of the cell blocks, I'd have to get at least 90 days
10 or they wouldn't go through the paperwork to process that.

11 When the judge heard this, he smiled and
12 said, "Oh, I could accommodate that. Instead of 45 days
13 each to be served consecutively, why don't I say -- why don't
14 we make it three months to be served concurrently," and the
15 District Attorney, my attorney, the judge, nobody saw any
16 objection to that. None of them had had Supreme Court
17 experiences, so that became the accepted sentence.

18 When I got to the Supreme Court, of course,
19 that had some implications because --

20 THE COURT: Well, let's have another
21 question now.

22 THE WITNESS: Okay. I didn't finish the
23 length of time I was in.

24 THE COURT: All right.

25 THE WITNESS: Two days after I was

1 sentenced, we appealed, and I continued to remain in jail
2 because the judge and I couldn't agree on bail conditions.
3 From the outset, he said if my bankers put up the bail, which
4 they were willing to do, he would release me in one of those
5 camps, barbed wire camps, and I said "If my backers put up
6 the bail, I should be released out the front door like any-
7 body else who puts up his bail," and he says, "Well, there's
8 a law that says you're not allowed out in the streets so I
9 can't do that."

10 And so with that stalemate, I remained in
11 jail until at the end of the ninth month, four months into
12 the appeal period, a compromise was worked out between the
13 Court and my law team, and they came to me to see if I would
14 accept it. The arrangements that were made were to arrange
15 with the American Friends Service Committee in Philadelphia
16 to open up an office -- a branch of the Seattle office in
17 Spokane to work on relocation of Japanese who might be able
18 to come out of the camps if they had a place to go to and
19 if they had a job. And so my assignment would have been
20 like a field officer working up places to stay and lining up
21 jobs.

22 Q (by Mr. Kawakami) So it was after this period of time
23 that the appeal came through or your appeal was --

24 A No. No, this is still in appeal. It was in San
25 Francisco, the Court of Appeals, at the time, and then the

1 judge compromised a little and so did I. The judge said
2 "If you will agree to this, then I will release him out the
3 front door, so to speak, in Spokane, and with only one con-
4 dition." He said, "I want the prisoner's condition, promise,
5 that he will not reenter the excluded area for the duration
6 of the appeal."

7 So I accepted that and went out to the
8 Spokane post.

9 Q And that's where you stayed for the duration of the
10 appeals process?

11 A Right.

12 Q And once the Supreme Court ruled, did you go back for
13 the serving of your sentence?

14 A Yes. About maybe two months after the Supreme Court
15 decision came down, a couple of FBI people came over to
16 say "We've got to take you in to serve your sentence." And
17 there was a little bit of difficulty getting that set up,
18 but I finally served my sentence in Tucson, Arizona, federal
19 prison camp.

20 THE COURT: Let me ask you this: Were you
21 not given any credit for time served, the five months in the
22 county jail?

23 THE WITNESS: Well, the only credit that
24 was given was the judge's consideration when he was giving
25 me a relatively short term, and after that it was, as far as

1 I was concerned, just dead time, and I had the 90 days less
2 two between the sentencing and the appeal that I had -- I
3 had served only two when we appealed the case, so I had the
4 rest to do.

5 THE COURT: So you actually served three
6 months in Tucson?

7 THE WITNESS: Yes.

8 MR. STONE: Your Honor, your original file
9 contains a motion that was made to stop the running of the
10 sentence and either allow him at his option to remain in
11 jail or get out on bail so that they could maintain the
12 appeal. It's in the file and essentially explains that
13 phenomena.

14 THE COURT: All right.

15 Q (by Mr. Kawakami) Now, Mr. Hirabayashi, what did you
16 do right after the war was concluded?

17 A When I came out of prison, the war had just finished,
18 and so I was released to Seattle. I had twin daughters by
19 then that were born just before I got out, and I thought one
20 of the first things I have to do is to get a job now because
21 I had, counting mine, four mouths to feed. But since I had
22 completed one quarter of my senior year at the time of the
23 war, I thought what I should first do was to complete my
24 Bachelor's degree, feeling that whatever I went into, a
25 degree would probably come in handy.

1 So my first decision was to reenter the
2 University that fall, which I did, and I completed my
3 degree at the end of that academic year. I was given some
4 opportunities to apply for graduate school, which I did, and
5 actually I've been in university ever since. I finished my
6 Master's and PhD. in sociology.

7 Q In what year was that?

8 A I finished all my requirements in December, early
9 December, of 1951, but I was too late for the 1951 deadline
10 of Thanksgiving so my degree technically was awarded in March
11 of '52, and following -- well, I had been teaching part-time
12 at the University until my final year when I was acting
13 instructor, and then as my first appointment, I accepted an
14 assistant professorship at the American University of Beirut.

15 I had a strong feeling of wanting inter-
16 national experience and the only overseas experience I had
17 during the war was from Steilacoom to McNeil Island, so I
18 looked around for some university where I could teach in
19 English, since that was the only language I could teach in,
20 professionally, and American University of Beirut came to my
21 attention and I got an appointment there, so I went there on
22 a three-year contract.

23 THE COURT: Could I interrupt you there?
24 It's recess time so we'll take a recess until 3 o'clock.

25 (Recess.)

1 MR. KAWAKAMI: Your Honor, I believe, and
2 I wrote it down this time so I'm sure we've got it right.

3 THE COURT: We were in Beirut.

4 MR. KAWAKAMI: Yes, we were in Beirut.

5 THE COURT: You actually took that
6 appointment?

7 THE WITNESS: Yes.

8 THE COURT: How long were you there?

9 THE WITNESS: I was at the American
10 University of Beirut for, let's see, for three years, and I
11 was offered a research contract at the American University
12 in Cairo when I was -- shortly before I was leaving, and so
13 to take advantage of my experiences for the first three
14 years, I accepted that position and I was in Cairo until
15 1959, about four and a half years. So for most of the 1950's
16 I was in the Arab Middle East.

17 Coming back to North America, I had family
18 reasons, primarily. My kids were getting to junior high,
19 almost to high school age, and I felt that they should have
20 continuity in high school, although we all appreciated the
21 international schooling background for the early years. So
22 looking at options, I by-passed the East Coast where I had
23 some invitations, and looking towards the West, which the
24 East Coast people couldn't understand, I finally accepted
25 the offer at Alberta, University of Alberta, since it was

1 the most attractive one and it was for an initial two-year
2 contract. I felt that from there I could look into West
3 Coast options during the two-year contract. I have been
4 there ever since so I guess in various ways we have liked
5 it personally and as a family.

6 Q (by Mr. Kawakami) And you retired -- what year did you
7 retire?

8 A In most of the Canadian schools, they have a mandatory
9 age requirement at 65, so in 1983, the year during which I
10 became 65, I retired at the end of the academic year.
11 They're looking at other options for retirement now, but at
12 my time, we came to an end.

13 Q Okay. Now, since the Supreme Court decided your case
14 in June of 1943, did you do anything to pursue your case?

15 A There were several -- there was sort of a continuous
16 hope and interest on my part that the Supreme Court hearing
17 would be reviewed at some point under some circumstance.
18 Not being a lawyer, I didn't know exactly what options there
19 were, but that was a continuing hope on my part.

20 During the time I was overseas I didn't
21 spend too much time looking into that particular question,
22 but the latter part of the sixties and particularly right at
23 the end of the sixties, beginning of the seventies, I had
24 conversations with the National Japanese-American Citizens
25 League in San Francisco which had a committee established,

1 a legal committee, to look into possible options for a re-
2 hearing of the Supreme Court cases, and an arrangement was
3 made for me to have lunch and a bull session with one of the
4 attorneys, a professor at the University of California law
5 school, to discuss the options, and at the time of my lunch
6 meeting with him, he had not found anything promising and
7 subsequently I understand that nothing emerged from that
8 exploration.

9 On two other occasions, one, an exploration
10 by friends of mine at a conference in Bellingham, where
11 Professor Arvor Morris was a speaker, - this was a conference
12 on Japanese-American, Japanese-Canadian internment process,
13 sort of a comparative conference, and so several members of
14 the Seattle Chapter of the JACL had an session with Professor
15 Morris to see if they could pick his brains on some leads.
16 This is about 1978, and one of the suggestions he gave was to,
17 you know, short of having another exclusion order process
18 and finding new cases, the thing that he felt that we might
19 explore was to look for a black or a native person whose
20 situation might include many of the principles that were
21 involved in the exclusion order process, deprivation on the
22 basis of ancestry, and so on.

23 If we could find a case like that to
24 support it strongly, and even if it's not our own case, many
25 of the principles could be discussed and challenged. That

1 was one example of an exploration.

2 The other came when I was, I think a year
3 later, sitting on a panel with the currently Senator Gorton
4 who was a candidate at the time, and another judge in Tacoma
5 and I were on a panel. And so during a free period, I was
6 discussing with the judge if he knew of any options by
7 which I might explore this process of a re-hearing, and the
8 suggestion he made was, why don't I move to quash my case,
9 the charges, and in order for a decision to be made on it,
10 they would have to look at it and review it, and in that
11 process, we might be able to get a kind of hearing.

12 I proposed that idea, that is, I shared
13 that idea with a few others, but nothing came of it. I had,
14 first of all, certain feelings of finality about it. You
15 know, while I'm hoping as a layman, I have the feeling that,
16 well, the Supreme Court is the Supreme Court. That's the
17 end, and when they have made a decision, there isn't --
18 there aren't many ways open. So the finality aspect was
19 discouraging to some extent, and I also felt that with
20 organizations like the American Civil Liberties Union, when
21 options would arise, somebody would -- I was hoping some-
22 body would pick up those options and get in touch with me.

23 But other than those things, it has taken
24 until Peter Irons called me from Boston saying that he
25 had discovered some documents that might present an

1 opportunity under a rarely used device to petition for a re-
2 hearing. This is the first --

3 Q Do you recall when that was?

4 A I beg your pardon?

5 Q Do you recall when that was?

6 A That was January of 1982, early in January. He said,
7 when he found out I was interested, I said to him actually,
8 "I've been waiting over forty years for this kind of a phone
9 call. I'm very interested." So he said, "Let's set up an
10 appointment," and he arranged to fly out on the way to the
11 West Coast where he had other appointments, and he brought
12 more details to discuss with me.

13 Q Okay. Now, for the record, you've been in court a lot
14 but you have no formal legal training?

15 A That's right.

16 THE COURT: Do you recall when he met you?

17 THE WITNESS: Peter Irons?

18 THE COURT: Yes. The first time.

19 THE WITNESS: He came out about the 8th or
20 9th of January, 1982, and stayed a couple of days.

21 THE COURT: So it was right after he
22 called you?

23 THE WITNESS: Yes.

24 Q (by Mr. Kawakami) Can you briefly describe for the
25 Court how these convictions have affected you?

1 A Well, outside of or in addition to the legal consequences
2 that convictions would have in case of court processes, I've
3 been personally handicapped by the feelign that I, even
4 though the Constitutions says so, I was maybe not a full
5 American citizen, and the convictions still told me that
6 native-born citizenship wasn't adequate to protect me, so
7 that's been a continuing handicap.

8 And as a test case, this same handicap of
9 ancestry hangs as a cloud over the whole 120,000 Japanese-
10 Americans who were so affected during World War II, and a
11 few years ago in Detroit when Vincent Chin, a Chinese-
12 American, was clubbed to death because they thought he was --

13 THE COURT: Wait just a minute.

14 MR. STONE: I don't mind discussing this
15 history, but I have no first-hand knowledge of Detroit or a
16 Mr. Chin and I thought that was just a little bit far
17 afield.

18 THE COURT: Yes. I'm going to have you
19 not refer to that. I am familiar with what you're talking
20 about. Maybe you can refer to something else in your own
21 experience.

22 A (continuing) And so in addition to the Japanese-
23 Americans, I think I've been greatly handicapped while I was
24 overseas, trying to defend American democracy, because of
25 their knowledge that I was deprived, primarily on the grounds

1 of my ancestry.

2 I am also aware that as long as this
3 record stands, it could be a precedent for similar actions.
4 We've had talks of rounding up Cubans, rounding up the
5 Iranians and some of the Arab-Americans are a little bit
6 concerned these days, and so the precedent is very much
7 alive. Those are things that have been -- factors that
8 have affected me.

9 And, finally, I'd just like to mention
10 that each time these things come up, because of the kinds
11 of convictions that I've had, I get letters, usually anonymous
12 so that I cannot respond to them, raising questions like
13 "What are you going to do for the victims of Pearl Harbor
14 which your country did to us?"

15 "What about our boys who suffered over in
16 Corregidore or Bataan because of your Armies' excesses," and
17 so on, making me responsible or even considering me not as
18 an American but as an Imperial Japanese subject. I think
19 this is something that ought to be cleared up, but it crops
20 up even recently.

21 In connection with last May's hearing, when
22 that came up in the papers, I received a short note,
23 anonymous again, saying:

24 "Dear Gordon:

25 "What about our boys that were done in at

1 Pearl Harbor? What about the husbands and sons and fathers
2 of these people who have suffered? What are you going to do
3 for them?"

4 And then signed, "American."

5 I saw an address on the bottom. He used
6 half of a letterhead, the bottom half, so I didn't know what
7 it was, but on the bottom half there happened to be an
8 organization and an address in Los Angeles, so I responded
9 to that address but it came back saying that that address no
10 longer was applicable and no forwarding address.

11 Q Could the clerk please hand the witness Petitioner's
12 Exhibits 134 and 138?

13 THE COURT: Can you give me a tab on that?

14 MR. KAWAKAMI: These are not tabs, Your
15 Honor.

16 MR. STONE: These are new ones, Your Honor.
17 Maybe you'll want to look at them.

18 MR. KAWAKAMI: These are the letters that
19 he was referring to just now in his testimony, Your Honor.

20 THE CLERK: Do you have a copy of 134?

21 MR. KAWAKAMI: Yes. 134 was previously
22 submitted with one of our other pleadings for I believe the
23 May hearing.

24 I have no further questions, Your Honor,
25 other than to offer those two exhibits.

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THE COURT: Any objection?

MR. STONE: Only if you think we need them in addition to the testimony. I leave it to you, Your Honor. You've seen one of them before. I don't know if they add to the testimony or not. I leave it to your discretion.

THE COURT: I will admit them. I don't think they add much to what he's already testified to, but I'll admit 134 and 138.

(Petitioner's Exhibits Nos. 134 and 138 for identification received in evidence.)

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

THE COURT: All right. Any cross-examination?

MR. STONE: Yes.

CROSS-EXAMINATION

BY MR. STONE:

Q Mr. Hirabayashi, we have not met before, have we?

A Not formally.

Q Okay. I just want to say it is an honor and a privilege to have this conversation with you, although I must say I would much prefer it under any other circumstances.

The Government has never suggested or charged you with any kind of personal disloyal conduct, have

1 they?

2 A They put me in prison.

3 Q No, but I mean at the time -- at the time that the judge
4 sentenced you for breaking the regulation, didn't he instruct
5 the jury that he was not suggesting and no one was suggesting
6 there was anything wrong with your character?

7 A No. The judge instructed the jury that if I were of
8 Japanese ancestry, to see if I obeyed those orders, and if
9 not, they should come back with a guilty verdict. This is
10 why these -- I'm bringing up even to this day these testi-
11 monies because they're bringing up the same thing in public;
12 that because of my ancestry somehow I'm not an American.

13 Q I understand that that's the nature of those letters,
14 and I don't think anybody appreciates hate mail of any kind.
15 But the point that I was trying to ask was, the Government
16 has never suggested you personally were involved in sabotage
17 or espionage, or any member of your family, or anything like
18 that. Correct?

19 A That's right. If I were given that charge, I would have
20 had a chance to defend myself.

21 Q Right. I understood your position at the time you were
22 tried to be, "I want a hearing because I think you have to
23 charge me with that in order to exclude me, and if you charge
24 me, I will be happy to prove myself innocent." Wasn't that
25 essentially your position?

1 A That's part of it, yes.

2 Q In 1942 and '43, did you discuss your case pretty

3 thoroughly with your counsel? I know you consulted counsel

4 before you came in.

5 A Yes. Our arrangement was to be that they would look

6 after the legal responsibilities and the financing of the

7 legal responsibilities and so on, but would keep me in

8 consultations in the process, which they did.

9 Q You were a university senior at that time?

10 A Yes.

11 Q And I assume you read over all the pleadings in your

12 case as they filed them all?

13 A I read over most of them, and not being a lawyer, I

14 probably didn't understand the full implications of some

15 aspects of the pleadings.

16 Q But you understood them generally?

17 A Yes.

18 Q You don't contend now that your counsel was incompetent

19 in 1942, do you?

20 A No.

21 Q And you were present at your 1942 trial right during the

22 whole thing?

23 A Yes.

24 Q You later got an M.A. and a Ph.D. in sociology; am I

25 right?

1 A Yes.

2 Q You've published scholarly articles in the areas of
3 social psychology, health, minorities and Third World
4 development, haven't you?

5 A Yes.

6 Q Over the course of your professional career, you've
7 taught at, as you mentioned, a variety of universities?

8 A Yes.

9 Q Did you ever supervise student research papers?

10 A Yes.

11 Q Did you conduct your own research projects?

12 A Yes.

13 Q For your articles and research projects, have you con-
14 ducted literature searches in various libraries?

15 A Most studies had secondary sources that were essential
16 to consult.

17 Q But that's usually library research?

18 A Yes. Secondary sources are.

19 Q Have you occasionally done projects that involved
20 primary research source material?

21 A Not in the archival sense. In the current sense, most
22 of my studies were field studies; interviews, sampling, and
23 so on.

24 Q Have you at any point in your professional career gone
25 to private libraries and private collections of materials?

1 A I don't believe so. Not in a professional role.

2 Q Within the last year you made and withdrew a Freedom of
3 Information Act request to see all the original papers in
4 your files at the Department of Justice in your case, didn't
5 you?

6 A Yes.

7 Q Had you ever made an earlier similar request?

8 A No, I didn't.

9 Q Am I correct that in 1942 and 1943, you also read the
10 opinions, the various opinions in your case?

11 A Yes.

12 Q You stated that in 1982 for the first time you met Peter
13 Irons. Prior to that, in 1981, you provided a written state-
14 ment and appeared before the Commission on Wartime Relocation
15 and Internment of Civilians. At that time I believe you
16 stated, "The Chief Justice argued it was unnecessary for the
17 court to consider the questions raised by my failure to
18 report to a civilian control station, provided that my
19 violation of the curfew order was sustained. Thus emerged
20 the Hirabayashi curfew case. I have been denied a ruling
21 on the exclusion order validity."

22 Is that the underlying reason why you filed
23 this petition?

24 A No.

25 Q Do you still subscribe to the belief stated here that

1 the Chief Justice denied you that ruling on exclusion?

2 A I feel that since the arguments in the hearing in the
3 Supreme Court was primarily on exclusion, the questionings
4 and everything, this point came up after they went into
5 their chambers for discussion. I understand also that this
6 is a legal procedure that they are to follow, that is, in
7 the tripartite check and balance system, the Congress has
8 restricted the Supreme Court from using court cases to make
9 sweeping implications and to rule only on the essentials,
10 so the courts were, on that aspect, I don't believe were
11 doing anything wrong. But I felt that that was my main case
12 and I wanted to get a hearing on it, and I haven't to this
13 day on the exclusion order, except by implication in the
14 Korematsu case.

15 Q You are aware that the hearing that we're involved in
16 now deals primarily with the issue of attorney misconduct
17 so it doesn't go to the validity of Public Law 77-503, either.
18 You understand that, don't you?

19 MR. KAWAKAMI: Your Honor, I'm going to
20 object to that characterization. I don't believe that that's
21 the basis of our petition.

22 THE COURT: How would you phrase it?

23 MR. KAWAKAMI: I would say it's governmental
24 misconduct regarding due process rights.

25 THE COURT: Rather than just attorney's

1 misconduct. Is that satisfactory to you, Counsel?

2 MR. STONE: Oh, yes. I don't mind.

3 THE COURT: Governmental misconduct.

4 MR. STONE: Governmental misconduct, but
5 it doesn't go to the constitutionality that the Supreme
6 Court decided on Public Law 77-503.

7 Q (by Mr. Stone) You're aware of that. Right?

8 A You know, a lot of the technical aspects and the impli-
9 cations and so on I leave to my attorneys, and in the general
10 principles, I'm in communication with them. General principles,
11 general procedures, and any major decisions.

12 Q I just wanted you to understand they have -- we have in
13 this proceeding repeatedly heard objections to the issue of
14 military necessity, and I thought that that was the issue
15 which related to the exclusion order forty years ago that
16 you were suggesting you wanted ultimately to get resolved.

17 A And your question?

18 Q My question is, do you recognize that that issue of
19 military necessity is at most a satellite issue; it is not
20 the main focus of this hearing?

21 A As I understand the proceedings, yes.

22 Q In your 1981 statement that you made before the
23 Commission, before you met Mr. Irons, you were aware of and
24 quoted to the Commission on Wartime Relocation and Internment
25 of Civilians, the Eugene Rostau 1945 Law Review article in

1 54 Yale Law Review to the effect that "the cause of action
2 which we," - meaning the United States - "undertook was in
3 no way required or justified by the circumstances of the
4 war."

5 Do you recall making that statement?

6 A Yes.

7 Q So you were aware of an objection to the underlying
8 necessity and Mr. Rostau's article long before you met Mr.
9 Irons?

10 A Yes.

11 Q At that time you also stated, in 1981, "After declassi-
12 fication of wartime documetns, papers and transcripts,
13 scholars," - and then you included Mishi Wegler in his 1976
14 book, Years of Infamy; William Morrow's 1976 book, Concentra-
15 tion Camps; and Roger Daniels in his 1975 book, Decision to
16 Relocate the Japanese-Americans - "have investigated the
17 factors underlying the decision to relocate the Japanese-
18 Americans and concluded that it was not for military security."

19 You took that position before you met Mr.
20 Irons as well. Right?

21 A Yes. The references you give are confusing. Mishi
22 Wegler is the author, is a woman. W. Morrow is the publisher
23 of her book.

24 Q I see. Okay. Before the Commission you also, and
25 this is before meeting Peter Irons, referred to the Munson

1 Reports and you said, "The conclusion of the FBI and Naval
2 Intelligence that mass exclusion was not necessary." You
3 had made that argument that time as well. Right?

4 A Yes.

5 Q In the 1981 statement to the Commission, you also quoted
6 General DeWitt's 1943 Final Report to the effect that General
7 DeWitt admitted on page 34 of his report, "That there was no
8 known case of espionage or sabotage, which fact worried
9 General DeWitt because he believed its total absence indi-
10 cated it would still occur."

11 You thought that was illogical. Do you
12 remember that reference to the Final Report?

13 A Yes. I was wondering why you stopped the quote where
14 you did, because the rest of that gives a statement that is
15 incredible to me where he says "the very fact that there were
16 no known cases is grounds to believe that there will be some."

17 Q You were aware of that concern long before you met Peter
18 Irons. Right?

19 A Oh, yes. I was also aware of the Fifth Amendment, the
20 Fourteenth Amendment, and so on, of the Constitution, which
21 I sort of took literally as a student, which I still feel is
22 a wonderful document, but it needs vigilant citizen attention
23 for it to be enforceable, active.

24 Q You read the -- did you read the Korematsu, Yasui and
25 Endow opinions when they were issued?

1 A I read through most of them, yes.

2 Q Did you have occasion to read those briefs at any time?

3 A No, I didn't.

4 Q Do you know of Morton Grotzins' book, Americans Betrayed,
5 which discusses your case?

6 A Yes, I've heard of it.

7 Q I would ask if we could have Exhibit -- the brown
8 exhibit, which is Military Reports, a rather thick one here.
9 I was hoping to get it turned to a particular page. This is
10 Annex 4 to G-2 Periodic Report No. 33. It's about half an
11 inch above tab 96.

12 THE COURT: And the date of that report
13 was?

14 MR. STONE: It says 15 August 1942, Annex
15 No. 4 to G-2 Periodic Report No. 33.

16 THE COURT: And how do we identify this
17 particular exhibit?

18 MR. STONE: It's got tab 95, and it's
19 Exhibit --

20 THE COURT: This is a Government exhibit,
21 is it not?

22 MR. STONE: No. It's not a Government
23 exhibit. It's a Petitioner's Exhibit. It's Exhibit 110.

24 THE COURT: I'm looking at -- is it tab 95?

25 MR. STONE: It's in tab 95, about -- it's a

1 pretty big tab. I would say an inch and a half, two inches
2 down. If you'd like, I can just read the paragraph.

3 THE COURT: I think I have it, so I can
4 just give it to the witness. No. 33?

5 MR. STONE: No. 33, Annex 4. There are
6 annexes attached to it, and it's Annex 4, page 3.

7 Annex 4 says: "Espionage and Subversive
8 Activities, and it's Annex 4 to G-2 Periodic Report 33, on
9 page 3.

10 Q (by Mr. Stone) Perhaps I can just read the paragraph,
11 which is all that I really wanted to do. It's paragraph
12 numbered two on page 3, and it says:

13 "Cary McWilliams, California State
14 Commissioner of Immigration and Housing, who wrote articles
15 on California and the Japanese for the March 2nd and April
16 6th, 1942 issues of New Republic, is contributing to the
17 'Pacific Cable', a mimeographed publication of the American
18 Friends Service Committee, Seattle, Washington, and the
19 Seattle Youth Fellowship of Reconciliation."

20 My question was, were you familiar either
21 with Mr. McWilliams or his publications?

22 A I was familiar with Mr. McWilliams but not of that par-
23 ticular publication.

24 Q Okay. Could you tell us what acquaintance you had with
25 him and when?

1 A Well, he did writings on labor groups in California, and
2 during the war he wrote about Japanese-Americans.

3 Q Okay.

4 A And I read an article that was in the Public Affairs
5 pamphlet. He wrote books like Brothers Under the Skin and
6 things like that.

7 Q Right. And he wrote a book called Prejudice: Japanese-
8 Americans Symbol of Racial Intolerance. Had you read that
9 book?

10 A Yes.

11 Q And it discusses your case. Okay.

12 A Did you have a question?

13 THE COURT: Wait just a minute. Let me
14 please ask all of you not to make any kind of a demonstration
15 to any question or any answer.

16 All right.

17 Q (by Mr. Stone) My question went to the content of the
18 book, but I think the judge probably wants most of the
19 exhibits to speak for themselves.

20 THE COURT: I think that's right.

21 MR. STONE: I just wanted to establish
22 that he read the book, so it's a relevant exhibit.

23 THE COURT: All right.

24 Q (by Mr. Stone) Well, I'll just try one question. On
25 page 114 of that book --

1 THE COURT: Now which book is this?
2 Brothers Under the Skin?

3 MR. STONE: No; Prejudice, by Cary
4 McWilliams, Japanese-Americans.

5 Q (by Mr. Stone) Mr. McWilliams identifies Lieutenant
6 Commander Ringle, ONI, as the author of the Harper's magazine
7 article in 1942. Mr. McWilliams' book is cited five times
8 in the dissent in the Korematsu case.

9 Did your reading of that book on its own
10 spark any kind of desire on your behalf to reopen the case?

11 A I was glad to find supporting documents to my views
12 about the situation. I felt the same way about Rostau's
13 article, but I didn't see any legal devices, nothing
14 occurred to me, not being a lawyer, and I did not hear any-
15 thing from the American Civil Liberties Union from Rostau's
16 article or any others, so I figured there must not be a
17 legal platform for doing something.

18 Q Could you hand Petitioner's Exhibit 124 to the witness,
19 please?

20 THE CLERK: Tab number?

21 THE COURT: The tab number.

22 MR. STONE: Oh, it has no tab number.
23 124 is simply the Appellant's opening brief in the Court of
24 Appeals.

25 Q (by Mr. Stone) If you would turn to page 11, please.

1 At the bottom of this page there is an argument which is
2 quoted and it states at the beginning of the paragraph, at
3 the very bottom of the page:

4 "There exists a sound reason for a suspicion
5 that alien enemies, those who owe their allegiance to hostile
6 powers, would commit such acts of treason. It would be but
7 the natural thing for them to do."

8 And above, the paragraph above, describes
9 those acts of treason as acts of espionage or acts of
10 sabotage of national defense materials, premises or utilities.

11 Is that still your belief that as to alien
12 enemies we were entitled to make a presumption that they
13 would commit acts of treason?

14 A The statement that I had given to my parents and their
15 group regarding my own views was that since this is war and,
16 unfortunately, by technicality, since they weren't allowed
17 to naturalize as Americans, they are still Japanese subjects
18 and so therefore they are enemy aliens, after the declaration
19 of war.

20 THE COURT: If you will, let me go back to
21 his question. That is, in apparently the opening brief
22 filed on your behalf, and I won't be able to give it to you
23 exactly, but apparently there is a statement, "There exists
24 a sound reason for the suspicion that aliens who commit acts
25 of treason," is that approximately the statement in the brief?

1 THE WITNESS: Yes.

2 THE COURT: And then his question is,
3 is that still your belief with respect to alien enemies?

4 THE WITNESS: That's not my belief. I
5 think precautions must be taken for the national defense, but
6 they should be reasonable ones, and as I understood Mr.
7 Ennis' statements, they had picked up community leaders
8 right after Pearl Harbor and had surveillance on others, so
9 they had taken steps of that nature, and I would interpret
10 this sentence to sort of go along with the position that the
11 -- Mr. Ennis' department took in their actions.

12 Q (by Mr. Stone) Well, this was the statement of your
13 counsel.

14 A Yes.

15 Q On the next page the paragraph begins: "Yet the appli-
16 cation of the exclusion orders against American citizens
17 without according them any hearing where they could prove
18 their loyalty, and especially the manner in which the
19 exclusion orders were applied to American citizens, consti-
20 tuted not only an attaching of a suspicion of treasonable
21 intent to them as a class merely because of their ancestry,
22 but more, it amounted to an imposition of guilt of such
23 treasonable intent."

24 The purpose of this statement, if I under-
25 stood it correctly, is that you believed you were entitled

1 to a hearing, an individual hearing. Am I right?

2 A Well, as a minimum, yes.

3 Q Okay. Do you know of any place in the brief where you
4 argued that even if there were a hearing, that would not be
5 denied? I understood your brief to make the point --

6 THE COURT: Let me say this: I believe
7 those are legal arguments that can be made to me, and the
8 briefs speak for themselves.

9 MR. STONE: Sure. Okay.

10 Q (by Mr. Stone) Am I correct, Mr. Hirabayashi, that in
11 1981 you testified before the Commission - you were then co-
12 chairman of a JACL committee supporting financial redress for
13 Japanese-Americans who were interned during World War II,
14 and in connection therewith, you also supported congressional
15 action allowing you to reopen your conviction?

16 A I believe so.

17 Q You still currently support financial redress, don't you?

18 A Yes.

19 Q I wonder if just in the outlines of it you could tell us
20 the dates and types of redress-type activities you've engaged
21 in.

22 MR. KAWAKAMI: Your Honor, I believe this
23 is getting a little far afield.

24 THE COURT: I think it is. I think it's
25 sufficient for the purposes here for me to know that he was --

1 let's see -- I guess co-chairman of such a group.

2 MR. STONE: Okay.

3 THE WITNESS: For one year while I was
4 here on sabbatical.

5 THE COURT: What year was that?

6 THE WITNESS: The 1980-81 academic year.

7 Q (by Mr. Stone) You participated, didn't you, in a
8 Sixty Minutes T.V. program with Peter Irons as well as
9 several other of the petitioners in this case?

10 A Yes.

11 Q And you have also appeared in the local press and on
12 T.V. in this community in the last two weeks, pointing out
13 that your purpose in bringing the suit is to remove any
14 lingering cloud of suspicion concerning the loyalty of all
15 Japanese-Americans. You've made that statement, haven't you?

16 A Yes.

17 Q After you served your sentence in this case, your per-
18 sonal belief that Japanese-Americans had been unfairly
19 discriminated against caused you to again violate laws that
20 you felt were unfairly discriminatory, some of the Selective
21 Service laws, and you were convicted of a felony in that
22 regard?

23 A Not for the way in which you stated the reasons.

24 Q Please describe it, if you would.

25 A Well, I received a questionnaire after I had finished

1 my sentence in Arizona. I returned to Spokane and about a
2 month afterwards I received a Selective Service questionnaire.
3 It said something like Special Questionnaire to Persons of
4 Japanese Ancestry, so I became concerned as to whether this
5 questionnaire was sent to all American citizens of various
6 ancestry or only to Japanese ancestry.

7 And the types of questions in it were, for
8 the most part, what I had already filled in in the original
9 Selective Service questionnaire, plus about thirty additional
10 questions. So I wrote to the draft board asking if this is
11 a form that was sent to various ancestries or only to
12 Japanese ancestry.

13 I didn't hear in three weeks' time, some-
14 thing like three weeks, so I concluded that my positions
15 were correct and I returned the questionnaire unfilled to
16 the draft board saying, "Since I did not hear, I presume that
17 it is correct that only Japanese had received this, persons
18 of Japanese ancestry, and if so, this is discriminatory by
19 race and unconstitutional, and I didn't wish to participate
20 in unconstitutional activities."

21 Q You were presumably aware then, and your recent activities,
22 public ones, I'm sure make you aware now that the more visible
23 you are, the more you will be the recipient of letters from
24 members of the public; isn't that right?

25 A It's possible.

1 Q In fact, you have something of a committee that raises
2 funds for your defense currently now; isn't that right?

3 A That's right.

4 Q And they have been moderately, maybe even very success-
5 ful, in getting positive reinforcement from many members of
6 the community; isn't that right?

7 A Yes.

8 Q You mentioned that in 1979 Senator Gorton suggested
9 that you move to quash, or in that discussion in Tacoma,
10 mention was made --

11 A Not the Senator.

12 THE COURT: I thought he said the judge,
13 whoever the judge was.

14 THE WITNESS: Yes. Whoever the judge was.
15 I can't remember his name now.

16 Q (by Mr. Stone) -- suggested that you move to quash
17 your outstanding conviction. You never did that, did you?

18 A I consulted -- I didn't retain a lawyer for this, and
19 I consulted people to see what they thought of that idea
20 and I didn't get any active or positive responses because
21 the kind of questions I'm asking involves looking into
22 things, so I didn't do any more than that.

23 Q When your petition was filed, and before any response
24 was filed here, you were made aware - I would like to at
25 least establish through your attorneys - that the Department

1 of Justice did want to move to quash your conviction.

2 A That's right. Without judicial comment.

3 Q The story which is being put before the judge by virtue
4 of the exhibits and the testimony that relates to Government
5 misconduct, as such, is not a story that you discovered or
6 you brought to the lawyers. Am I correct? It is a story
7 that Mr. Irons brought to you. Am I correct?

8 A Right.

9 MR. STONE: I don't have any further
10 questions, Your Honor.

11 THE COURT: All right. Any redirect?

12 MR. KAWAKAMI: No, Your Honor.

13 THE COURT: All right. You may step down.

14 (Witness excused.)

15 MR. KAWAKAMI: Your Honor, at this point
16 I wonder if the Court would be inclined to hear Mr. Barnett
17 on the issue of completing the Court's file on the matter
18 of the jury instructions.

19 MR. BARNETT: Your Honor, we had hoped to
20 file exhibits to make the record complete. We talked about
21 that in open court a few days ago.

22 THE COURT: Yes.

23 MR. BARNETT: There is no evidence in the
24 record of instructions given by the defendant, but I recall
25 from a footnote of Mr. Irons' book, a citation to a writer,

1 an author, who lives here in Seattle, and I was going to call
2 her this morning. We misestimated our time. She became ill.
3 She is 84. She was going to testify. She took down the
4 proceedings, all of the proceedings, in shorthand.

5 THE COURT: Was she the court reporter or
6 just a spectator?

7 MR. BARNETT: No, she wasn't. She was an
8 outside writer and I was going to call her under the Federal
9 Rules of Criminal Procedure, Rule 863, Sections 5 and 6,
10 under which people in the business who make an accurate
11 record can testify and turn over their records.

12 THE COURT: What do you propose to do with
13 respect to the instructions? Do you wish to testify?

14 MR. BARNETT: She's gone, and her stuff
15 has been in the archives at the University. I was expecting
16 to call both witnesses and talk to Mr. Stone about recessing
17 during a period in the morning to get this testimony in. It
18 would be done shortly by me, but he may have extended examina-
19 tion.

20 THE COURT: Well, why don't you do this,
21 because I think probably everybody wants to have in the
22 record what the Court's instructions to the jury were. For
23 some reason or other, as you remarked, they just don't happen
24 to be in the file. Apparently the practice then was not to
25 make a record of the Court's instructions.

1 So why don't you talk to Mr. Stone over-
2 night and see if you can agree upon it. If not, you might
3 be able to agree upon a method of doing it. Does that sound
4 all right?

5 MR. BARNETT: I'm going to do that, Your
6 Honor.

7 MR. STONE: If they can get a verbatim
8 record, that would be perfect, Your Honor. I would be very
9 happy if somebody could transcribe it. If it's anything
10 less, maybe I would just like to see it ahead of time.

11 THE COURT: All right.

12 MR. STONE: It doesn't have to come in
13 during these proceedings.

14 THE COURT: You were at the trial, were
15 you not, Mr. Barnett?

16 MR. BARNETT: Yes, I was.

17 THE COURT: I assume the instructions were
18 not very extensive, were they?

19 MR. BARNETT: Well, yes. There were about
20 two pages, and I'm having those pages typed over to give
21 copies to all counsel, but that's not very extensive.

22 THE COURT: That's not very extensive, but
23 those are the Court's instructions?

24 MR. BARNETT: Yes, Your Honor.

25 THE COURT: All right. Why don't you see

1 whether you can agree upon having that admitted tomorrow?

2 All right. Anything else?

3 MR. KAWAKAMI: Yes, Your Honor. We have
4 one or two other housekeeping things, I suppose. Exhibit
5 133, Petitioner's Exhibit 133, does not have a tab either.

6 THE COURT: All right.

7 MR. STONE: I thought these passed out of
8 the case with the pretrial order, Your Honor. I thought that
9 was your ruling.

10 THE COURT: Well, I think at one point
11 somebody asked me what do we do about interrogatories and I
12 said the thing to do was to prepare an exhibit. Let's take
13 a look at the particular interrogatory that you're concerned
14 with, and then I'll hear you, Mr. Stone.

15 MR. STONE: I wonder if this is something
16 we'd want to take up tomorrow morning, because I don't know
17 that I can refresh my recollection on my feet as to a par-
18 ticular interrogatory. This is a pretty big request and I
19 don't have those answers with me. If he tells me which one,
20 I'll try and be prepared tomorrow morning.

21 MR. KAWAKAMI: Yes, Your Honor. That's
22 fine, so long as we can reserve a ruling on that matter.

23 THE COURT: That will be fine. You want
24 to put it in in your case?

25 MR. KAWAKAMI: Yes, Your Honor.

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THE COURT: All right.

MR. STONE: You let me know which ones.

MR. KAWAKAMI: Yes.

THE COURT: All right. Anything else?

MR. KAWAKAMI: Yes, Your Honor. I believe the time line in two of the charts have been marked and identified as being prepared and we would like to at this time move for their admittance into evidence.

THE COURT: Let me ask Mr. Stone, have you looked them over?

MR. STONE: I don't believe any of them are accurate, and if you want to suspend ruling, I'll have my witnesses comment on them.

THE COURT: All right. I don't think that I can admit them unless some witness testifies as to each date, but maybe you and counsel could agree. I think it might be helpful to me to see some kind of a time line when I'm going over the testimony, but why don't you talk to counsel about it? You may be able to agree that a certain date is wrong, or certain dates are wrong. Talk to counsel.

MR. KAWAKAMI: Okay.

THE COURT: All right.

MR. KAWAKAMI: I believe that we have an eight-foot tall one here, I believe, but we prepared a smaller one for the Court.

1 THE COURT: I believe that is right. That
2 is the one I have right here.

3 MR. KAWAKAMI: Yes. And that would give
4 the exact same thing as that.

5 THE COURT: That is No. 133?

6 THE CLERK: No, Judge. That's 123.

7 THE COURT: Oh, that is 123. I'm going to
8 reserve a ruling on that until counsel have had a chance to
9 talk to each other.

10 MR. KAWAKAMI: Your Honor, I guess one
11 final thing and that is if you would like to hear, we also
12 have some offers of proof related to some of the documents
13 which were excluded, and we can take those up as well
14 tomorrow morning in chambers while we're going over the
15 testimony.

16 THE COURT: All right. Let's do that.
17 Anything else?

18 MR. KAWAKAMI: No, Your Honor.

19 THE COURT: All right. Then, do you want
20 to proceed now or would you rather come in tomorrow?

21 MR. STONE: I think we have a short witness
22 we could put on. He's outside, and maybe we could get him
23 done.

24 THE COURT: That would be fine.
25 You might stop right there, if you will.

1 WILLIAM HAMMOND, called as a witness on behalf
2 of the Respondent, being duly
sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MR. EDWARDS:

5 Q Could you state your name for the record, please?

6 A My name is William H. Hammond, AUS, retired.

7 THE COURT: That's H-a-m-m-o-n-d?

8 THE WITNESS: That's H-a-m-m-o-n-d. And
9 that's Army of the United States.

10 Q What is your address, Mr. Hammond?

11 A My address is 4928-1 Cooper Point Road Northwest,
12 Olympia, Washington 98502.

13 Q What is your age?

14 A Seventy-seven.

15 Q What is your present occupation, Mr. Hammond?

16 A Retired.

17 Q Retired from what?

18 A Retired from the staff of the Association of Washington
19 Business.

20 Q Could you describe briefly for the Court your military
21 service?

22 A In 1926 I spent a voluntary month as a member of the
23 CMTC, Citizens Military Training Camp, at Vancouver,
24 Washington. I had two years of ROTC in the early thirties.
25 I did special studies and became a Second Lieutenant in the

1 Reserves, and in '37 I joined the Oregon National Guard which
2 was a part of the 41st Division including the Northwestern
3 states, and at that time I was aide to the Commanding
4 General of the 82nd Brigade.

5 In 1939 I became aide to the Commanding
6 General of the Division, and in September of 1940, we went
7 on active duty at Fort Lewis. Thereafter a short time as
8 aide to the Commanding General, I was transferred to the
9 General Staff as Assistant G-3 in the Division for, oh, a
10 month or so. Then I was shifted over to Assistant G-2 of the
11 Division. I then went to the first class of the Commanding
12 Generals Staff School in Fort Leavenworth, Kansas, during
13 the winter of '40-'41.

14 I came back after graduating from the
15 Commanding Generals Staff School, I came back to Fort Lewis,
16 expecting to be assigned as Assistant G-2 of the Division
17 only to find that the G-2, a Lieutenant Colonel, had been
18 assigned to other duties training recruits, so I became
19 Acting G-2 of the Division which duty I held through the
20 spring and most of the summer. I was, oh, in a month or so
21 I was promoted to Major. I had been Captain when I went to
22 Staff School.

23 THE COURT: You spoke about spring and
24 summer. Of what year?

25 THE WITNESS: Oh, that was spring and

1 summer of 1941, sir.

2 THE COURT: '41.

3 A (continuing) Then, the latter part of '41 my Commanding
4 General became ill with cancer and his aide had gone to
5 Infantry School so I was temporary aide at the aide's desk
6 in the office. Then, when we got a new Commanding General,
7 General Fuller who came to us from the Commanding General
8 Staff School, I was assigned as chief of staff and temporary
9 aide to him until his regular aide reported for duty.

10 It was while I was serving as temporary
11 aide that Pearl Harbor happened, and it so happened that the
12 41st Division had the responsibility for protecting the
13 coastline, the Straits of Juan de Fuca and the openings to
14 the rest of the waters in Puget Sound.

15 I was with him day and night with about two
16 hours' sleep a night for around, oh, I'd say ten days. That
17 was a very interesting experience because there was no doubt
18 in our minds but what enemy landings or attacks of one type
19 or another could really happen.

20 MR. HALL: Your Honor, I think the question
21 was about this gentleman's military experience. He went
22 into a long narrative and I think we ought to proceed in
23 a question and answer format rather than a long narrative.

24 MR. EDWARDS: Your Honor, if long narratives
25 were the criteria, I don't think Mr. Hirabayashi's statements

1 would have been --

2 THE COURT: Yes. Well, let's go ahead
3 with your military career. You were with the 41st Division
4 at Pearl Harbor, I believe.

5 THE WITNESS: That's right.

6 THE COURT: Then why don't you carry on
7 through World War II, if you will.

8 THE WITNESS: All right.

9 A (continuing) After about ten days with the General, I
10 was transferred to the Fourth Army and Western Defense
11 Command at the Presidio in San Francisco, and I arrived there
12 the end of December.

13 Q (by Mr. Edwards) And what was your position at the
14 Western Defense Command?

15 A My position there was as a member of the G-2 Section,
16 Military Intelligence Division.

17 Q Had you had any training aside from on-the-job training
18 prior to that time in military intelligence?

19 A Well, I had what I mentioned plus an experience in May
20 of 1940 as acting G-2 of the Third Division in its final
21 maneuver.

22 Q And did your training in the Commanding Generals Staff
23 School include any intelligence training?

24 A Yes, it did. At that particular time all the students
25 had the same training for a half to two-thirds of the time

1 and the rest of the time we gave special attention to our
2 General Staff assignment, and mine was intelligence G-2.

3 Q When you joined the G-2 section of Western Defense
4 Command in the Fourth Army, what division of that G-2 Section
5 were you in?

6 A Well, it was the Military Intelligence.

7 Q Did you --

8 A Combat intelligence, I should say, rather.

9 Q Do you recall, aside from combat intelligence, what
10 other divisions there were in the G-2 section?

11 A There was a Counterintelligence Division.

12 Q At the time you joined the Western Defense Command,
13 G-2 Section, who was your immediate supervisor?

14 A That was Lieutenant Colonel Weckerling.

15 THE COURT: Would you spell that for the
16 court reporter, please?

17 THE WITNESS: Yes. W-e-c-k-e-r-l-i-n-g.

18 Q (by Mr. Edwards) And was he head of the combat
19 intelligence division?

20 A Yes, he was.

21 Q And who was his immediate superior?

22 A Colonel Stroh, S-t-r-o-h.

23 Q And was he Assistant Chief of Staff of G-2?

24 A He was Assistant Chief of Staff, G-2, of Fourth Army
25 and Western Defense Command.

1 Q Do you recall who headed the Counterintelligence
2 Division of G-2?

3 A I believe it was, at that particular time was Colonel
4 Forney.

5 THE COURT: Would you spell that, please?

6 THE WITNESS: F-o-r-n-e-y.

7 Q Turning your attention to the spring of 1942, do you
8 recall if Colonel Stroh left his position?

9 A Spring of --

10 Q 1942.

11 A Yes. Around about that time he left the headquarters
12 and there was an officer that took his position temporarily
13 for about thirty days as Acting G-2 and then Colonel
14 Weckerling was assigned G-2 of the Command.

15 Q And did that affect your position at all?

16 A Yes, it did, because when Colonel Weckerling went to
17 that assignment, he was promoted to full Colonel and I was
18 promoted to Lieutenant Colonel and took Colonel Weckerling's
19 place as head of the Combat Intelligence Division.

20 Q Did you remain throughout the war as head of the Combat
21 Intelligence Division?

22 A Yes, I did, until I retired from active duty the end
23 of 1945.

24 Q At any time did you become Assistant Chief of Staff
25 G-2 for the entire Western Defense Command?

1 A Yes, I did. In the first part of, I believe it was of
2 1943 they separated the Western Defense Command from what
3 was then to become the start of the headquarters of the
4 Ninth Army, and Colonel Weckerling asked me to separate the
5 G-2 Section into two parts, one to remain there as the
6 nucleus of the G-2 Section for Western Defense Command and
7 the other one to go along and to form the basis for a G-2
8 Section of the new Ninth Army.

9 I was supposed to go along with the Ninth
10 Army but the new Commanding General came in and asked who
11 was Senior Lieutenant Colonel and that was me and he said,
12 "You're staying. You're not going" and I became Acting G-2
13 of the Western Defense Command.

14 Q Could the clerk please hand to the witness Petitioner's
15 tab 51? I believe that is Petitioner's Exhibit 64. I would
16 also ask that the clerk hand the witness Respondent's Exhibit
17 A-58. For purposes of the record, this exhibit at tab 51 is
18 headed G-2 Periodic Report from 12 Noon, 21 February 1942
19 to 12 Noon, 28 February 1942. Respondent's Exhibit A-58 at
20 the bottom of that page notes that it is to accompany the
21 G-2 Periodic Report No. 9, 28 February 1942.

22 Mr. Hammond, have you had an opportunity to
23 look over the G-2 Periodic Report?

24 A Well, just since it arrived here.

25 Q Could you turn to the last page, please?

1 A Yes.

2 Q Do you recognize whose signature block is there?

3 A Colonel Stroh.

4 Q Mr. Hammond, were you familiar with this kind of report,
5 G-2 Periodic Reports?

6 A Yes, I was.

7 Q And do you recall the frequency with which these were
8 prepared and issued?

9 A Would you give me that again?

10 Q Do you recall the frequency with which these G-2 Periodic
11 Reports were prepared?

12 A Weekly.

13 Q Weekly. Thank you. Do you know whether Colonel Stroh
14 himself would prepare these or were they prepared by those
15 under his command?

16 A Well, the Combat Intelligence part of it would be pre-
17 pared by the Combat Intelligence Division and submitted to
18 him for approval and possible editing before being published.

19 Q Are you familiar with how these reports were distributed?

20 A If I recall correctly, after all it was about 43 years
21 ago or so, but one copy went to the War Department G-2 and
22 of course, immediately our Commanding General, to other
23 General Staff sections, to our sectors in the Command, and
24 to the top Navy command which was the Western Sea Frontier,
25 and the top Army Air Corps command which was the Fourth Air

1 Force.

2 Q And I don't believe I brought out, did you participate
3 in the creation of these periodic reports?

4 A After I had been there a little while and had an
5 opportunity to become acquainted with procedures, I did
6 piece by piece become involved in it.

7 Q Mr. Hammond, I direct your attention to the last page
8 of Exhibit 64, the one that begins at the top, "Conclusions."
9 Do you see that?

10 A Yes.

11 Q And underneath it it says "Enemy Capabilities." Could
12 you please read for the record the first two paragraphs under
13 "Enemy Capabilities"?

14 A "Enemy Capabilities:

15 (1) Surprise raids or attacks against any
16 portion of the Pacific Coast, including Alaska and the Panama
17 Canal or against Hawaii;

18 (2) Harassing attacks by submarines or
19 surface craft, including commerce raiders against shipping
20 in Pacific waters of this theater."

21 Q And Colonel Hammond, do you recall when these statements
22 were included in these report which were later distributed
23 up and down the chain and to the War Department whether
24 those statements were made in good faith and that you
25 believed they were correct?

1 A I do recall that period of time, and from my recollec-
2 tion, these statements were justifiable.

3 Q I also ask you to turn --

4 THE COURT: I think the question was
5 were made in good faith and were believed to be true at the
6 time.

7 THE WITNESS: Yes.

8 Q (by Mr. Edwards) I ask you to turn to the attachment
9 now, Respondent's Exhibit A-58 which you have in front of
10 you. The first page of that appears to be a map plotting,
11 according to the bottom of the chart, radio fixes, sub-
12 marines and aircraft.

13 A Yes.

14 Q Did you participate at all in the preparation of these
15 charts?

16 A Later. I don't remember this particular incident, but
17 as time went on, I did.

18 Q And were these charts regularly attached to the G-2
19 Periodic Reports which were distributed?

20 A They were.

21 Q I ask the clerk now to hand to the witness tab 52, which
22 I believe is Plaintiff's Exhibit 65, and Respondent's Exhibit
23 A-59. Again, for the record, this is the G-2 Periodic
24 Report from 28 February of 1942 to 12 Noon, 7 March 1942,
25 and it is numbered 10 in the upper left-hand corner.

1 A Yes, that's right.

2 Q And Respondent's Exhibit A-59 at the bottom notes that
3 it is to accompany G-2 Periodic Report No. 10, 7 March 1942.

4 Once again I ask you to turn to the last
5 page of the G-2 Periodic Report. Is Colonel Harrington
6 there the one you identified as temporarily being the G-2?

7 A Yes, I remember him.

8 Q Do you recall again whether this -- strike that.

9 So I take it, then, that your earlier
10 statement that G-2 Periodic Reports tended to be distributed
11 to the Commanding General, General Staff, War Department,
12 G-2's of other sectors, would apply equally to this report?

13 A Well, yes, as far as I know. That was the usual pro-
14 cedure.

15 Q And once again I ask you to look at the bottom of page
16 3 of this document, under (4) Conclusions, (a) Enemy
17 Capabilities, and read to yourself parens 1 and 2.

18 THE COURT: Read out loud or to himself?

19 MR. EDWARDS: My next question is going to
20 be identical to the earlier ones. The situation had not
21 changed.

22 A It seems to me the same as the one I read previously.

23 THE COURT: Before I thought he read just
24 the first two paragraphs.

25 MR. EDWARDS: Yes, sir, and that's what I

1 was asking him to read this time, parens 1 and 2.

2 Q (by Mr. Edwards) Rather than go through the rest of
3 the G-2 Periodic Reports, I ask the clerk to please hand
4 to the witness tab 58, which is Petitioner's Exhibit 71.
5 This is one of the last of the G-2's that I said were
6 included.

7 On that one, Mr. Hammond, I ask you again
8 to turn to the last page and then tell the Court the name
9 of the -- the name listed there.

10 A John Weckerling, Colonel, GSC.

11 Q At the time Colonel Weckerling was the G-2, as I recall,
12 you testified you were the head of the Combat Intelligence
13 Section?

14 A That's right.

15 Q And am I correct in assuming that you would have had
16 participation again in the drafting of this report?

17 A Yes. I would have had responsibility as he did before
18 in the drafting of the Combat Intelligence parts of the G-2
19 Report.

20 Q And this G-2 report which is listed on the front as
21 being No. 16, and the date on it is 18 April 1942; is that
22 correct?

23 A Right.

24 Q And finally, once again I ask you to turn to the next
25 to the last page, page 4, and read again the section under

1 "Conclusions, (a) Enemy Capabilities, parens 1 and 2.

2 A Under Enemy Capabilites:

3 (1) Surprise raids or attacks on the
4 Pacific Coast, the Panama Canal, Hawaii and Alaska;

5 (2) Harassing attacks by submarines or
6 surface craft, including commerce raiders, against shipping
7 in the Pacific waters of this theater."

8 Q And once again, are we to assume that by virtue of
9 this being included in the G-2 Periodic Report that you did
10 in good faith believe those statements and they were made
11 while you believed in their accuracy?

12 MR. HALL: We'll object to the leading
13 question.

14 THE COURT: I think it's all right. I
15 would assume that they were made in good faith and that G-2
16 believed that these reports were true at the time that they
17 were made.

18 MR. EDWARDS: Okay. Thank you, Your Honor.

19 THE COURT: Anything further?

20 Q (by Mr. Edwards) Colonel Hammond, do you recall how
21 many people worked in the Combat Intelligence Division when
22 you were the head of Combat Intelligence?

23 A Not the exact number because it fluctuated, but in the
24 neighborhood of eight officers and a group of enlisted
25 personnel headed by -- well, it was either a top Sergeant

1 or probably a Sergeant.

2 Q Now, just briefly to explain to the Court the structure
3 of the Western Defense Command, you, as I understand, were
4 in the headquarters; is that right?

5 A I was in the headquarters of the Western Defense Command,
6 Fourth Army.

7 Q And what were the - for purposes of identification - what
8 were the field units under you?

9 A Under the Command?

10 Q Yes, sir.

11 A There was, according to my recollection, there was a
12 Northwest sector, headquartered at Fort Lewis, and a Southern
13 California sector in the vicinity of Los Angeles.

14 Q And what became of Northern California?

15 A As I recall, that was taken care of by our headquarters.

16 Q Do you recall the geographic boundaries, roughly, of the
17 Northwest sector?

18 A Actually I don't. I could just -- it was located in
19 Fort Lewis and was all of Washington and I would say the
20 Northwest part of the Coast.

21 Q Could you describe for the Court, briefly, what the
22 reporting procedures were between your headquarters operation
23 and the various sectors, information flowing both ways.

24 Could you describe that?

25 A Well, we had tie lines for telephone calls between our

1 -- between us and our sector, and information that was
2 developed by the sector came into us, mostly by telephone
3 but sometimes by message, and information we had for them
4 were inquiries for certain things to be done went by tele-
5 phone.

6 Q And did your headquarters operation share information or
7 intelligence with other entities other than the sectors?

8 A Yes, we did. There was in San Francisco what was known
9 as the joint information center, and the Army, the Navy that
10 was the Western Sea Frontier which encompassed the whole West
11 Coast, and the Fourth Air Force, which was the Army Air Corps
12 head command, had liaison officers in this joint information
13 center and there is where we had an exchange of information.

14 Q Did you ever receive information from the FBI or the FCC
15 at the time from Pearl Harbor to the end of 1942?

16 A Well, when I was an Assistant to the -- and when I first
17 got down there I was about third assistant -- I didn't have
18 any contact with the FBI. As time went on I did occasionally.
19 Not too much.

20 Q And with regard to the FCC?

21 A Not too much. That was mostly between the Counter-
22 intelligence Division and the FCC. We did receive the
23 information if it went to the Counterintelligence, we got it
24 either from them or sometimes we might get it direct, or from
25 a sector.

1 Q Do you remember now whether your office received reports
2 of unidentified signaling along the Pacific Coast?

3 A Yes, we did. Frequently.

4 Q From whom would these reports of signaling come?

5 A Well, the reports would come from our sectors, patrols
6 along the beaches, from the Navy. The Navy had blimps out
7 over the ocean, Navy planes, from the Air Force that flew
8 regular flights out over the waters offshore, and civilian
9 sightings. There were many areas where there were civilians
10 regularly stationed for just that type of thing.

11 Q Do you recall what the ordinary procedure was when you
12 received these reports?

13 A We would follow up and ask questions to determine whether
14 this was a good sighting, in other words, it was an accurate
15 sighting, if it was true in fact, or whether it might be
16 some phenomena.

17 Q I'm sorry?

18 A Well, you're talking on shore or offshore?

19 Q Both.

20 A Well, in the case of on shore, we would of course
21 contact the sector and ask them to check it, and it might be
22 something that the FBI could do something about. We would
23 at least let them know about it, and if it was on shore,
24 that would be about the usual way of doing it.

25 Q And were these reports that you received, because of

1 their number, did you ever begin to take them -- to not take
2 them seriously?

3 A We always took them seriously. Every time we received
4 a report, we did our very best to confirm it.

5 Q Do you recall whether your office received reports of
6 sightings of submarines off the Coast?

7 A Yes, we did.

8 Q Do you recall whether any of those sub sightings were
9 confirmed?

10 A Yes, they were.

11 Q Do you recall how many?

12 A No, I really don't. It's been so long ago that those
13 details are just a little foggy in my memory.

14 Q Can you remember whether your office received reports
15 of unidentified radio transmissions?

16 A Yes, we did.

17 Q What would be the procedure when you got such a report?

18 A Well, the FCC had the - that's the Federal Communication
19 Commission - had the facilities with direction finders and
20 whatnot to trace these down, and they were the most likely
21 agency to be notified of this report so that they could
22 follow up. They could contact the source.

23 Q Do you remember if they ever succeeded?

24 A I can't recall, although I remember a number of instances
25 when they said that they got there very shortly after the

1 source of the radio transmission had left.

2 Q Can you recall what contacts, if any, your office had
3 with the Office of Naval Intelligence?

4 A Well, as I said earlier, most of our contacts with the
5 Office of Naval Intelligence was through our joint information
6 center. On occasion, if we had something that was rather
7 -- that we had to get an immediate answer on or they had
8 something they wanted to get a more immediate answer on than
9 going through the information center, we would contact them
10 or they'd contact us.

11 Q Do you remember if at any time your office was ever
12 asked to prepare a report concerning possible subversive
13 activities by people of Japanese ancestry in the United
14 States?

15 A Well, as I said in the beginning, I was in the Combat
16 Intelligence Division and that was not an activity of ours.
17 That was an activity that came under the scope of responsi-
18 bility of the Counterintelligence Division.

19 Q Do you remember whether your office was ever -- whether
20 your office ever received reports of subversive activity
21 by people of Japanese ancestry.

22 A Well, we normally wouldn't necessarily receive a report
23 of it from the Counterintelligence Section. If we did hear
24 anything during the course of casual conversation with members
25 of that Division.

1 Q Were you, either in your personal or official capacity,
2 ever asked for your opinion by your superiors or headquarters
3 officers as to curfew of evacuation?

4 A No, I was never so asked.

5 Q Do you remember whether the FBI ever took a position
6 regarding the curfew or evacuation?

7 A I don't know. I didn't have that much contact with them.

8 Q Did you know General DeWitt?

9 A Yes, I did.

10 Q Were you familiar with his reputation?

11 A Yes, I was. My contacts with him were first before the
12 war when I was aide to the Commanding General of the 41st
13 Division. I never had any talks with him directly but I was
14 there when there conversations going on between the two of
15 them, and then doing our encampment for a year, year and a
16 half up at Fort Lewis and in our training down in Hunter-
17 Liggett Military Reservation in California.

18 THE COURT: We are right at recess time
19 so we'll pick that up tomorrow. I suppose I should meet
20 with counsel at 9 o'clock to take up a few matters we left
21 up int he air, including the matter about the Court's
22 instructions at trial, and there were a couple of other
23 matters.

24 We'll take a recess until 9:30 tomorrow.
25 Can you rejoin us then?

THE WITNESS: Yes, sir.

(Court adjourned.)