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1 IN THE UNITED STATES DISTRICT COURT FOR
2 THE WESTERN DISTRICT OF WASHINGTON
3 AT SEATTLE
4

5 GORDON K. HIRABAYASHI,)
6)
7 Petitioner,)
8)
9 vs.)
10 UNITED STATES OF AMERICA,)
11)
12 Respondent.)
13)
14)
15)
16)
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18)
19)
20)
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23)
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No. C83-122V

FILED ENTERED
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JAN 9 1986
AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
BY DEPUTY

VOLUME V

June 25, 1985

ORIGINAL

1
2 MORNING SESSION

3 (9 a.m., June 25, 1985)

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

7 THE COURT: Good morning, all.

8 MR. BARNETT: Judge, I produced the
9 excerpts that I reported to you yesterday. It's the best I
10 could do. It's a pickup page where the instructions start.

11 THE COURT: Have you looked them over?

12 MR. STONE: I've just gotten them now and
13 they seem to look something like a newspaper report. It's
14 just that they're excerpts. I am a little concerned about
15 some of the et cetera, et ceteras thrown in. On the top of
16 the next page, for example, on the top of page 2 there are a
17 bunch of et ceteras, et ceteras. The very first line on the
18 top of the second page gets me a little worried.

19 THE COURT: All right. Let me do read this.

20 Gosh, he said "You don't receive any
21 written instructions to take to the jury room." I know that
22 many federal courts still don't, and I think the Fifth
23 Circuit criticizes district courts sending written instruc-
24 tions to the jury. We always send them here. What has been
25 your experience?MR. STONE: Well, this is forty years ago.
We do a lot more paperwork now that we have Xerox machines.

1 They were always busy retyping originals with eight carbons.

2 THE COURT: Yes, that's true.

3 MR. STONE: I imagine that's part of the
4 reason, I think, that I agree with you. Now that we have
5 Xerox machines we get them cleaned up and we Xerox twenty
6 copies, one set for the jury, one for counsel, and so on.

7 THE COURT: Sometimes for each juror.
8 Let me start reading down at the bottom where it says Judge
9 Black. I'm going to start reading there.

10 MR. BARNETT: Yes, Your Honor. That's
11 where it starts.

12 THE COURT: Well, I would -- I really
13 would like to see a copy of the Court's instructions but I
14 am fearful that this doesn't do it. Did you say that some-
15 body has a shorthand record of the instructions?

16 MR. BARNETT: These are set forth in
17 quotes and they were taken in shorthand, and the shorthand
18 notes are at the University of Washington, in the archives.

19 THE COURT: Was that person an observer at
20 the trial, a spectator?

21 MR. BARNETT: Ann Fisher was there all the
22 time and was making her notes. She is an author and a
23 writer.

24 THE COURT: I don't care about that, but
25 was she there as a spectator or as a reporter?

1 MR. BARNETT: Yes, she was sitting out as
2 a spectator.

3 THE COURT: As a spectator.

4 MR. STONE: Also starting at page 19, I
5 kind of also wonder about pages 1 to 18.

6 THE COURT: Yes. I would certainly like
7 to see a copy of the instructions. We have, I think, in the
8 record, I believe in the file there are the instructions
9 proposed by the Government and by the defendant. Those are
10 in the record. There is no problem about those.

11 MR. STONE: Right.

12 THE COURT: And the Court's instructions
13 did not go up on appeal; is that right? They're not part of
14 the appellate record in the Ninth Circuit.

15 MR. BARNETT: No, they're not.

16 THE COURT: That's odd.

17 MR. BARNETT: On the record, I can say
18 that I've spent a great deal of time trying to get the
19 actual court reporter's records and they were not in the
20 archives in Washington, D.C. They spent two weeks looking
21 for them.

22 MR. STONE: I think, Your Honor, from the
23 way I read the record on appeal which was put together by
24 Mr. Hirabayashi's lawyers, they did not at that time wish
25 to preserve an objection to the jury instructions, per se.

1 Rather, their argument was the problem that the judge made
2 was in his denial of the pretrial ruling where he said "I'm
3 not going to give the jury this issue of law," and I think
4 that's why in their proposed instructions, they seek again
5 to have him give that instruction to the jury, and he says
6 huh-uh. The question of law is for me. So they designate
7 the proposed instruction but they don't cover the actual
8 instructions nor the facts because that was not precisely
9 -- in other words, their objection preceded that.

10 MR. BARNETT: On page 20, the third page
11 of this copy, he does object and Black recognizes or
12 accepted the exceptions.

13 MR. STONE: Right, and in fact that first
14 paragraph lays it out clearly where it says "Defense counsel
15 took exception to the instructions of the Court insofar as
16 they refused to allow the jury to pass upon the real issue.
17 In other words, the complaint was that it never went to the
18 jury.

19 THE COURT: Well, I think what I've got to
20 rule is that I cannot accept these as being the instructions
21 actually given by the Court. You know, there are just too
22 many et ceteras, et ceteras, and too many omissions here
23 for me to put it in the record as to the instructions
24 actually given by the Court.

25 MR. BARNETT: Well, then, I would feel like

1 making an offer of proof.

2 THE COURT: That would be fine. Why don't
3 you go ahead for the record? Do you want to give us a copy,
4 or let me use this copy right here. Why don't you mark that
5 as the next -- do you have a Petitioner's next number?

6 THE CLERK: I believe it might be 142.

7 MR. KAWAKAMI: That sounds right.

8 MR. LEONG: I believe it is 142.

9 THE COURT: All right. Why don't you go
10 ahead and make the offer?

11 MR. BARNETT: I would make an offer of
12 proof, Your Honor, on this exhibit. What is the number now?

13 THE CLERK: 142.

14 MR. BARNETT: 142, commencing with page
15 19, the bottom paragraph, where Judge Black addresses the
16 jury, as follows:

17 "Members of the Jury:

18 "You have heard the evidence. You have
19 heard counsel. Now it becomes your duty to listen to the
20 instructions of the Court. You do not receive any written
21 instructions to take to the jury room with you.

22 "This is an important case. It is your
23 duty, and I am confident you will do your duty as jurors,
24 to consider free from prejudice. You can readily understand
25 that the Government can only be maintained by maintaining

1 the law. You are not concerned with any interpretation of
2 the law.

3 "You are instructed that in this case
4 and in every case, et cetera, et cetera, it is your duty to
5 take the law from the Court and to accept the law as stated
6 by the Court, and despite any opinion of your own that the
7 law is different. The instructions must be understood and
8 applied. You have already heard me use the term "reasonable
9 doubt." If the jury is not convinced of the guilt of the
10 defendant, then they have a reasonable doubt as far as this
11 case is concerned. It is one of this question: If whether
12 or not the defendant did report as required --"

13 THE COURT: Let me stop you there, if I
14 might. Why don't you tell me down to what point you'd like
15 to make the Court accept this as being the instructions
16 rather than reading all of them into the record?

17 MR. BARNETT: What I am interested in,
18 Your Honor, are the next two paragraphs.

19 THE COURT: The ones beginning "The laws
20 are valid and enforceable"?

21 MR. BARNETT: Yes.

22 THE COURT: And next, "I hereby instruct
23 you"?

24 MR. BARNETT: Yes, Your Honor.

25 THE COURT: All right. I will accept that

1 as your offer of proof, but I am going to exclude this as
2 being the instructions given by the trial court to the jury.

3 One thing that you might consider doing,
4 because you were at the trial, were you not?

5 MR. BARNETT: Yes.

6 THE COURT: You might consider yourself,
7 you know, what the instructions were. It may be that you
8 could testify better than this record is on what the Court
9 instructed.

10 I gather from what I've seen of the record
11 and what I see here is the Court simply put up to the jury,
12 "Do you find that Mr. Hirabayashi was of Japanese ancestry?
13 Did he fail to observe the curfew? Did he fail to register?
14 If you find that, you must find him guilty. Isn't that
15 right? That was the only thing the jury was permitted to
16 consider?

17 MR. BARNETT: If we have counsel's consent
18 to my doing that, that's fine.

19 THE COURT: Why don't you do this, just
20 so that he'll have a chance to look at it. Why don't you
21 put into writing your recollection of what the Court's
22 instructions were? Show them to counsel, and if he concurs,
23 then I would consider those as being the Court's instructions.
24 I really would have more faith in what your recollection is
25 than I have faith in this recording.

1 But as I said before, I gather everything
2 that I know about this case, that the jury was obviously
3 not permitted to consider any of the constitutional issues.
4 The only things placed before the Court were certain
5 factual findings. Don't you agree, Mr. Stone?

6 MR. BARNETT: Yes, Your Honor.

7 THE COURT: That is, if you find he was
8 of Japanese ancestry --

9 MR. STONE: That's the way the record
10 looks to me. That's the way the record looks to me, but
11 again, the pieces of the record that we have.

12 THE COURT: Yes.

13 MR. BARNETT: What I think, Your Honor,
14 and what I offered yesterday under Rule 803 --

15 THE COURT: You mean this?

16 MR. BARNETT: -- Subsection 6, it allows
17 memoranda taken by somebody whose regular business is an
18 author, a writer, or recalling --

19 THE COURT: I just don't find it meets the
20 3(6), but as I said before, because I know you were keenly
21 interested at the time, have been interested all through
22 these years, I think that I would permit you to submit a
23 statement as to your recollection of what the Court's
24 instructions were, and I would have more faith in that than
25 I would have in this recording.

1 MR. STONE: Your Honor, if he chooses to
2 do that, along with that I would like, if I could, to be
3 supplied with the full copy because I'm sort of interested
4 in the stuff I'm catching the last paragraph of which is the
5 last paragraph of the Petitioner's attorney on the top of
6 19, so I wonder if in considering that I could also be
7 supplied with, if he's got it, pages 1 through 18.

8 THE COURT: Do you have a full transcript?

9 MR. BARNETT: Yes, I do.

10 THE COURT: Would you do that?

11 MR. BARNETT: Yes.

12 MR. STONE: Only if he's going to supply
13 something so I could be able to compare one in context with
14 the other and get a feeling for it.

15 THE COURT: Could you do that?

16 As I said before, I'm just repeating myself,
17 I would have more confidence in your reconstruction of the
18 instructions than I have in this sort of fragmented --

19 MR. BARNETT: I would be glad to do it,
20 Your Honor, if counsel will stipulate it doesn't interfere
21 with my remaining as one of the attorneys.

22 THE COURT: Oh, I don't think there is any
23 problem there.

24 MR. STONE: No, because this would relate
25 to, it seems to me, a legal matter. It's something within

1 his direct knowledge. It's a little different than speculating
2 about historical documents.

3 THE COURT: I think it would be helpful
4 to have those jury instructions reconstructed. I was really
5 so surprised when I looked at the file. Everything is in
6 there but the Court's instructions, not only on the trial
7 level but the appellate level.

8 MR. BARNETT: I'll be using these to
9 refresh my recollection.

10 THE COURT: That would be fine. Yes, that
11 would be fine.

12 All right. Now, anything else that I
13 should consider?

14 MR. HALL: We only got to Exhibit 49 of
15 the Government's exhibits.

16 THE CLERK: Your Honor, I believe you
17 reserved ruling on No. 133, the interrogatories. You wanted
18 to discuss them.

19 THE COURT: All right. Let me do that.
20 Let me go out in the courtroom and pull my copy of the
21 exhibits. I'll be right back.

22 Let's take up 133 first, and that, I
23 believe, was the interrogatories, didn't you say?

24 THE CLERK: Yes, Judge.

25 THE COURT: I know I don't want to consider

1 all of those interrogatories, but there may be one there.
2 I don't seem to have a copy. Could somebody give me a copy?
3 MR. LEONG: Sure.
4 THE COURT: Let's see. This is offered
5 by the Petitioner. Which interrogatories do you want me to
6 consider?
7 MR. KAWAKAMI: Request for Admission No.
8 24.
9 MR. LEONG: 24 on page 33?
10 MR. KAWAKAMI: 32.
11 THE COURT: Anything else?
12 MR. STONE: Well, I think that's the only
13 one they wanted, but I'll respond on it.
14 THE COURT: Let me just see. Any others?
15 MR. KAWAKAMI: No, Your Honor.
16 THE COURT: All right.
17 MR. STONE: That request for admission
18 says: "Admit that under delimitation agreement made on or
19 about June 4, 1940, between several United States civilian
20 and military intelligence agencies, the Office of Naval
21 Intelligence was assigned primary responsibility for investi-
22 gation of Japanese-American population on the West Coast of
23 the United States."
24 The answer is: "Admitted." However, I
25 think that that admission is irrelevant because I don't think

1 we are in the time frame of June 4th, on or about June 4th,
2 1940, and subsequent to that time there were at least two
3 revisions of that agreement. That's my first objection.
4 The time frame is well in advance of the issues that we are
5 talking about now.

6 The second objection is that that has to
7 do with primary responsibility for investigation of Japanese-
8 American population, and we will point out through one of
9 our experts that all that was designed to do was make sure
10 that you didn't basically have policemen from three different
11 police forces at the scene of the crime. It had nothing to
12 do with who had the responsibility and the authority to
13 evaluate, because they all three agencies shared the reports
14 that colloquially the policemen from either ONI, FBI or MID
15 would provide. So it was simply a way of making sure you
16 didn't have three police forces at the scene of each crime.

17 THE COURT: All right. I think really
18 that goes to the weight of it rather than the admissibility,
19 so I will admit 133, the response to Request for Admission
20 No. 24, for whatever relevance it has.

21 (Petitioner's Exhibit No. 133
22 for identification received
in evidence.)

23 MR. STONE: Do you, under the circumstances,
24 want to allow me to impeach continuing validity in '41 and
25 '42?

1 THE COURT: That is, with your witnesses
2 or exhibits?

3 MR. STONE: I hope I can still dig out the
4 exhibits that I had. It may be a little tough but I'll try
5 and dig them out, but I'll certainly ask that of my witnesses.

6 THE COURT: All right. Let's see. This
7 was handed to me by someone. You probably want it back.

8 MR. KAWAKAMI: Your Honor, along those
9 lines --

10 THE COURT: Excuse me just one moment. I
11 suppose this is the exhibit on the offer of proof. You can
12 just take that.

13 MR. KAWAKAMI: Along those lines, we would
14 make an offer of proof on Exhibit 96, our Exhibit 96, which
15 was, I believe, excluded in a prior hearing.

16 THE COURT: And what was it?

17 MR. KAWAKAMI: This was a delimitation
18 agreement, or revised or amended delimitation agreement which
19 was in 1942.

20 THE COURT: I thought I admitted that. Did
21 I admit one delimitation agreement?

22 MR. KAWAKAMI: You admitted one but not
23 the other. I think it got to the point where I was asked
24 whether I could remember giving the document to Mr. Stone
25 and at that time we talked about that document and I couldn't

1 make a positive representation.

2 THE COURT: Was it given to you?

3 MR. STONE: I don't think it was given to
4 me with the original batch. No, that was one that I never
5 found that had been asked for and I never got. On that
6 basis you decided that it wasn't appropriate. Again, the
7 offer of proof --

8 THE COURT: I think what I'll do, in light
9 of giving you permission to challenge this - what do you
10 call it? - delimitation agreement --

11 MR. STONE: That's correct.

12 THE COURT: No. 96 is another delimitation
13 agree --

14 MR. KAWAKAMI: It refers to the June 4th,
15 I believe, delimitation agreement that's in evidence.

16 THE COURT: Do you have a copy, by any
17 chance?

18 MR. STONE: You know, Your Honor, maybe we
19 avoid the whole problem, since I'm going to have an historical
20 witness on the stand, he could just simply cross-examine my
21 witness about that subject. I'm planning to ask a question
22 on it which will open the door and you won't have to worry
23 about the 1940 agreement that has been excluded or the offer
24 of proof.

25 THE COURT: Let's do this: When that

1 witness is on the stand, 96 may become relevant in light of
2 what that witness testifies to. Then you can use it on
3 impeachment. If you don't, bring it up again and I probably
4 will admit it.

5 Anything else? We don't really have too
6 much time, but now here are the exhibits. I think we're
7 starting with about A-50.

8 MR. STONE: Before we get into those, there
9 is one point I'd like to make, because I think it might
10 relate to today more importantly than this. Of my two
11 expert witnesses whom I plan to put on, one to give the
12 general background and lay the foundation and then the second
13 one to --

14 THE COURT: How much longer is Hammond
15 going to be on?

16 MR. EDWARDS: We estimate about fifteen
17 more minutes of direct.

18 THE COURT: I see.

19 MR. STONE: Very short. I had planned to
20 put my experts on (1) to lay the general foundation and then
21 the second in the context of that to discuss the Magic
22 documents. However, my general witness is the one who was
23 in the hospital two days this weekend and on intravenous.
24 She is better now, but I would like to do it in reverse
25 order. It's a little more confusing, but I think she will

1 get another day's rest --

2 THE COURT: No problem.

3 MR. STONE: So it's going to be a little
4 backwards. I'll put the specific one on and then her right
5 after to tie it up before anybody sort of forgets what went
6 on. I hope you'll understand it won't be quite in the right
7 order.

8 THE COURT: No problem. How much longer
9 do you think you'll take, or how long will the Government
10 take?

11 MR. STONE: Well, I actually think --

12 THE COURT: Today is Tuesday.

13 MR. STONE: We were thinking that we may
14 be done Thursday.

15 THE COURT: That would be fine.

16 MR. STONE: It seems to be moving in that
17 order. We rushed some witnesses in here --

18 THE COURT: It seems to be going very
19 smoothly and very quickly.

20 MR. STONE: That's why we used that half
21 an hour yesterday. We rushed a couple of people in who
22 weren't supposed to come until later in the week, so we sort
23 of stacked them up and moved along.

24 THE COURT: That's fine. Then let's see.

25 A-50 --

1 MR. KAWAKAMI: Our objection to that was
2 just that this document seems to go to military necessity
3 and we would object on that basis.

4 MR. HALL: It also, if it is offered for
5 the truth, is rank hearsay, and secondly, I don't know what
6 this last page of the document is.

7 MR. STONE: Let me see the last page, if
8 you would. That shows the file that it came out of.

9 MR. HALL: Whose writing is this?

10 MR. STONE: That's the writing of the
11 archives, and we will put on we stipulated to authenticity.
12 That is the providence of the document, but my witness will
13 be able to testify to it anyway because she personally was
14 there. This is a document which was listed in my original
15 March listing, Judge, and it's one of the ones you said in
16 open court was admitted.

17 It is also a document specifically
18 referred to by designation in the official printed history
19 of the evacuation, Stetson Kahn's Guarding America's Out-
20 posts.

21 THE COURT: I think it should be admitted
22 and I will admit it. That's A-50.

23 (Respondent's Exhibit No. A-50
24 for identification received
in evidence.)

25 MR. KAWAKAMI: Your Honor, A-51 through

1 62 are maps which I believe --

2 THE COURT: Oh, yes. And they had to do
3 with the G-2 reports, I believe.

4 MR. STONE: There are one or two of the
5 maps which also have an Air Force memo on them, but that's
6 because that was part of the attachment that was left off
7 the other exhibit, so there are one or two that aren't just
8 maps.

9 THE COURT: That's A-51 through what?
10 A-62?

11 MR. STONE: Yes.

12 THE COURT: I'm going to admit those. If
13 this were a jury trial, I would be much more concerned
14 about admitting or excluding, but I trust that when the time
15 comes for final argument I can separate the relevant from
16 the irrelevant, both ways.

17 Just so that you'll know, let me say it
18 again. That is A-51 through A-62. Those are admitted.

19 (Respondent's Exhibits Nos.
20 A-51 through A-62, inclusive,
received in evidence.)

21 THE COURT: A-63?

22 MR. STONE: Is an Army regulation which
23 we could have asked you to take judicial notice of, but you
24 said you would like to physically have some of those things.

25 THE COURT: For whatever relevant it is,

1 I think it should be admitted. That is A-63.

2 (Respondent's Exhibit No. A-63
3 for identification received
4 in evidence.)

5 MR. STONE: A-64 is a document which you
6 have already -- unless I've got it wrong --

7 THE COURT: It's a Columbia Law Review.
8 Who wrote this. Oh, I see. Nanette Dambetz.

9 MR. STONE: Is that A-64 or A-66?

10 THE COURT: Oh, I'm sorry. That's A-66.

11 MR. STONE: A-64 is --

12 THE COURT: I don't have that, 64 or 65.

13 MR. STONE: A-64 is missing from this
14 package. A-64 was the one that we called A-4 before. That's
15 what happened to it.

16 THE COURT: So it's blank. A-64 is blank?

17 MR. STONE: Well, when we did A-4 we said
18 we were going to call it A-64, so you've got to go to the
19 packet and find and write on it A-64.

20 MR. LEONG: A-4 is a memo from Walters to
21 Eisenhower.

22 MR. STONE: No, it's the cover memo of the
23 same package. That is the package -- we have one right here
24 and it's -- how many do we have? We've got plenty right
25 here. Hold it! Let's just give everybody one. Judge, here
is an A-64 and here is the original. There we go. We can

1 just do it right like that and not mess around with A-6 as
2 long as we've got a bunch. Maybe that's what happened.

3 Okay. Now we've got A-64 right here, and
4 you will see that the top document is the memo from Mr. Canaga,
5 the second page is the Waller-Eisenhower memo which dis-
6 cusses the top document, and the third and fourth pages
7 are -- I'm sorry -- the third page. The fourth page is a
8 copy of the third page. The second and third page show
9 distribution of the top page. That's all they show.

10 THE COURT: Have I made a ruling on A-64
11 yet?

12 THE CLERK: No, Judge, you haven't.

13 THE COURT: Do you want to be heard on
14 that? I think it should be admitted.

15 MR. STONE: It is also one of the documents
16 that was attached to the March pleading.

17 MR. KAWAKAMI: One of them, and I'm just
18 checking. One of them -- one of the attachments to that was
19 excluded.

20 MR. STONE: No, that was one of the
21 attachments to the February 7th Ringle memo that was
22 excluded.

23 MR. HALL: What does this have to do with
24 anything in this case? This is about people who are already
25 in the camps.

1 MR. STONE: This is talking about people
2 who have been released from camps on May 26th, and the
3 violation here occurred in May, so it is the same exact month,
4 and Mr. Canaga, by virtue of the other evidence, is Mr.
5 Ringle's supervisor.

6 THE COURT: I'm going to admit that, A-64,
7 for whatever relevance it has, and the two documents I think
8 give the distribution of it, the two attached letters.

9 THE CLERK: Judge, did you then wish to
10 exclude A-4?

11 MR. STONE: We have excluded A-4 but we
12 have admitted A-64, as I understand it, to avoid duplication.

13 THE COURT: All right. Does that sound
14 all right? Apparently that's what the Government wants to
15 do here, so let's exclude A-4 and admit A-64.

16 MR. KAWAKAMI: No. A-4 was an attachment
17 in 64 and A-4, I believe, was excluded.

18 MR. HALL: Because of A-64.

19 MR. STONE: Because of A-64, to avoid
20 duplication. That's just why we did it.

21 MR. KAWAKAMI: Okay.

22 (Respondent's Exhibit No. A-64
23 for identification received
in evidence.)

24 THE COURT: Now, I'm going to stop at this
25 point. Are you going to be using any of these others this

1 morning?

2 MR. STONE: I will be using A-71, which
3 you agreed to admit the other day, A-71 being --

4 THE COURT: Let me take a look at it.
5 Oh, this is Marshall's letter.

6 MR. STONE: Yes.

7 MR. HALL: You admitted it.

8 THE COURT: Did I?

9 MR. HALL: It's a letter to Governor Dewey.

10 THE COURT: Yes. A-71 is admitted.

11 MR. STONE: And I will be using the cover
12 letter to A-50, which appears as A-79 and also A-81. I made
13 two copies of this and the A-81 copy is much bigger, but
14 that is simply the cover letter to what was A-50.

15 THE COURT: Give me those numbers again.

16 A what?

17 MR. STONE: A-79 and A-81 are two identical
18 copies of the cover letter to A-50.

19 THE COURT: I don't seem to have those.
20 A-78 seems to be the last one I have.

21 THE CLERK: Is A-81 the two you gave me
22 yesterday, Counsel?

23 MR. STONE: Yes. I think I may have
24 another copy right here.

25 MR. HALL: I don't have them, either.

1 MR. STONE: Those are ones we provided the
2 other day.
3 MR. EDWARDS: I have two extra copies.
4 MR. STONE: We've got two extra copies of
5 81.
6 MR. EDWARDS: And lots of copies of 79.
7 MR. STONE: And lots of copies of 79.
8 This was 79 and this was 81, and you can see they're identical
9 but we got a bigger printed copy so it's easier to read it.
10 THE COURT: Well, then, why don't we at
11 least tentatively, why don't we exclude 79?
12 MR. STONE: Good.
13 THE COURT: And this is February 12th, '42.
14 MR. STONE: And if you look in both the
15 top of the document on the -- I'm sorry -- where it says
16 "Enclosure" at the bottom of the document, that document
17 that it's enclosing is A-50 that you've just admitted.
18 THE COURT: All right. I think that A-81
19 should be admitted. A-79 should be excluded.
20 (Respondent's Exhibit No. A-81
21 for identification received
22 in evidence.)
23 MR. STONE: Okay.
24 THE COURT: I'm going to keep these copies.
25 All right. Let's go on out into the court-
room.

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(The following proceedings
occurred in open court:)

THE COURT: Good morning.

WILLIAM HAMMOND, resumed the witness stand and
testified further, as follows:

DIRECT EXAMINATION (resumed)

BY MR. EDWARDS:

Q Good morning, Mr. Hammond.

A Good morning.

THE COURT: You are still under oath, of
course.

THE WITNESS: Yes. Thank you, sir.

THE COURT: You may recall, but I think
your last question was his being familiar with General
DeWitt.

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

THE COURT: And did you know of his
reputation.

MR. EDWARDS: That's correct.

Q , (by Mr. Edwards) As I recall the last question was
were you familiar with General DeWitt's reputation. I believe
you answered yes to that.

A I did.

Q Could you tell us what his reputation was?

1 A Well, his reputation was that he was a high type
2 Commanding General. He was intelligent, and from all I can
3 gather, was highly respected by the War Department.

4 Q Were you able to form an opinion as to whether -- or
5 were you aware of his reputation as to whether he was the
6 kind of person who was likely to be affected by political
7 pressure?

8 A I don't think so. He was a man who had opinions that
9 were related to his military background, and he was a strong
10 disciplinarian. I encountered that with respect to some of
11 his actions, and I just believe that he wouldn't have been
12 so affected.

13 Q Do you recall any reputation he might have had with
14 regard to his racial views?

15 A I recall none.

16 Q Are you aware -- do you recall any incidents that would
17 lead you to conclude in your opinion that General DeWitt
18 was a man of racist views?

19 A I recall nothing that occurred or was said at that time
20 that would leave me with that opinion.

21 Q Turning to Colonel Stroh, whom I believe you testified
22 you served under for a while, could you tell us what his
23 reputation was for his professional competence?

24 A Well, I encountered him first before Pearl Harbor when
25 he came up to Fort Lewis with his First Sergeant and tested

1 the intelligence sections of our division, the 41st Division,
2 the Third Division, and also the regimental intelligence
3 sections. I worked with him and I found him to be an even-
4 tempered individual; I found him to be very capable, and
5 his tests were excellent, and so I came to the conclusion
6 after that extended period of time that he was a well-
7 qualified General Staff officer.

8 Q And did your opinion or your knowledge of his reputation
9 change at all when you began to work under him at General
10 Headquarters?

11 A Not at all.

12 Q Are you familiar at all with Colonel Stroh's racial
13 views?

14 A Well, I encountered nothing during our extended visits
15 and working together up in Fort Lewis and later down at the
16 Presidio that would indicate that he had any racial tendencies.

17 Q With regard to Colonel Weckerling, could you again tell
18 us your knowledge of the reputation he had for professional
19 competence?

20 THE COURT: Again, I think you spelled it
21 once, but would you spell that again, please?

22 THE WITNESS: W-e-c-k-e-r-l-i-n-g.

23 THE COURT: Weckerling?

24 THE WITNESS: Weckerling.

25 THE COURT: Was there a G on the end?

1 THE WITNESS: Yes.

2 MR. EDWARDS: Yes, there is a G on the end.

3 A Well, my first contact with him is when I reported in
4 the latter part of December after Pearl Harbor to the G-2
5 section, and he was at that time under Colonel Stroh in
6 charge of the Combat Intelligence Section and number one
7 assistant to Colonel Stroh. I worked under him for an
8 extended period of time before he became G-2 and during that
9 period of time I learned that he had been a military attache
10 to Japan, spoke Japanese fluently. Very obviously he was
11 well acquainted with the geography of the Pacific Basin
12 with the military -- the composition of the military in
13 Japan and with their apparent capabilities.

14 Q Do you recall any views he might have had, racially,
15 towards the Japanese?

16 A No, I don't recall anything. He had the knowledge of
17 the Japanese military and that was very obvious that he was
18 capable there. I should have added that in working under
19 him, I found him a very capable in intelligence matters,
20 combat intelligence matters.

21 Q Mr. Hammond, just as a general question, during your
22 four years that you served -- roughly four years that you
23 served in the G-2 Section of the Western Defense Command,
24 the Fourth Army, do you recall any people in that section
25 expressing what you would characterize as racially

1 derogatory views?

2 A No, I don't remember anything of that type.

3 Q You don't recall any discussion, for example, dealing
4 with derogatory terms or statements about the Japanese?

5 A Well, it's been --

6 Q By Japanese I mean the Japanese in the United States.

7 A I thought that's what you meant. It's been over forty
8 years, but frankly at this moment, I don't recall anything
9 of that nature.

10 Q Do you recall a Captain Michael Revisto?

11 A I do.

12 Q Could you tell us --

13 THE COURT: Tell the reporter first how
14 you spell his name.

15 THE WITNESS: R-e-v-i-s-t-o, I think.

16 THE COURT: That's B as in Baker?

17 THE WITNESS: No; V as in --

18 THE COURT: V as in Victor?

19 THE WITNESS: Victor, yes.

20 THE COURT: Once again?

21 THE WITNESS: R-e-v-i-s-t-o.

22 THE COURT: Is that right?

23 MR. EDWARDS: Yes, sir.

24 Q (by Mr. Edwards) Could you tell us who Captain Revisto
25 was?

1 A Well, as I mentioned earlier, we had a Northwest Sector,
2 Southern California Sector, and he was one of the Assistant
3 G-2's of the Northwest Sector.

4 Q About how many officers, as you recall, G-2 officers,
5 would have been in the Northwest Sector?

6 A Not too many. As I recall, around four or five, perhaps.

7 Q Did you have any contact with Captain Revisto?

8 A Yes, I did. We had frequent telephone exchanges, either
9 he called in to report information and intelligence, or me
10 calling him, calling the G-2 Section and talking to him,
11 requesting information or investigation.

12 Q And could you tell us what your opinion was of Captain
13 Revisto as an officer?

14 A Well, in all of our contacts which were over the phone
15 with the exception of I think one personal contact when I
16 made an inspection up there, were that he was intelligent
17 and he was very active. Not a passive individual but very
18 active in the pursuit of his work, and he sounded like a
19 professional individual.

20 Q I'm not sure if I have asked you this: Did you testify
21 whether Captain Revisto was an intelligence officer, was in
22 G-2?

23 A Yes. He was an assistant to the G-2 of the Northwest
24 Sector of the Western Defense Command, Fourth Army.

25 Q So I take it he had access to classified information --

1 A Well, I would think so.

2 MR. HALL: Object to the leading question.

3 A That was the usual procedure.

4 THE COURT: It is leading. I'm going to
5 overrule the objection.

6 Q (by Mr. Edwards) Please continue.

7 A As I've stated before, copies of our weekly reports
8 would go to the G-2 Sector and the usual procedure would be
9 that he would have reference to that and also information
10 that we would transmit by telephone and occasional messages.

11 MR. EDWARDS: At this time, Your Honor,
12 although you haven't ruled on the chart the Petitioners
13 have offered with regard to the War Department either in or
14 out, we feel it necessary, since there has been no definite
15 ruling, to address that chart, with your permission.

16 THE COURT: Did you want this witness to
17 identify it?

18 MR. EDWARDS: Yes, Your Honor.

19 THE COURT: That would be fine.

20 MR. EDWARDS: Also, I'm not familiar with
21 this Court's procedure. I wanted to know if it would be
22 possible to have the chart displayed such that you could see
23 it, the witness could mark on it --

24 THE COURT: That would be fine.

25 MR. EDWARDS: It was represented to me

1 last week by one of the counsel for Petitioner that with a
2 plastic covering a Magic Marker would be marked on it and it
3 could be subsequently erased.

4 THE COURT: Do you want to come up here and
5 pick up the chart that you want, and you might take that time
6 line down and then you could place the chart that you want
7 on the easel.

8 MR. HALL: Your Honor, may I bounce around
9 so I can watch better?

10 THE COURT: Oh, certainly. All of you may.

11 MR. EDWARDS: If there is a secret to
12 moving the time line, I won't destroy it.

13 THE COURT: You can lay it up against the
14 wall, I believe. Then the chart you want, I believe, is
15 probably sitting right there.

16 MR. EDWARDS: And may the witness come
17 around to mark on that, or should I do it on his instructions?

18 THE COURT: You could go down, if you will.
19 Take that hand microphone, if you will.

20 For the questions you want to ask, do you
21 need him here or --

22 MR. EDWARDS: No, I would like to ask him
23 over here at the chart.

24 THE COURT: Why don't you take that hand
25 microphone, if you will, Mr. Hammond.

1 Any of you counsel can stand up here
2 closer to the chart if you want to.

3 MR. EDWARDS: Can you see the chart, Your
4 Honor?

5 THE COURT: I can see it vaguely.

6 Q (by Mr. Edwards) Mr. Hammond, based on your first-
7 hand experiences in the Western Defense Command, looking at
8 that chart, can you tell the Court whether it is accurate?

9 A It's not accurate in several instances.

10 Q For ease of reference, starting in the lower left-hand
11 corner and workign our way out, in the lower left-hand
12 corner, for the record, there is a box which reads Assistant
13 Chief of Staff William Ryan.

14 First of all, are you familiar with the
15 position called simply Assistant Chief of Staff?

16 A Well, either Chief of Staff, Assistant Chief of Staff
17 or Deputy Chief of Staff, yes.

18 MR. HALL: Your Honor, may we have a time
19 period? I think one of the objections to this chart earlier
20 was that it didn't have a time period attached to it, and
21 if the witness could give us a time period for which he's
22 testifying --

23 MR. EDWARDS: That's exactly right, Your
24 Honor. That was going to be the next thing. I hope
25 insofar as possible that all of our corrections will be made

1 with time periods on them, to the extent that the witness can
2 recall.

3 THE COURT: Now, this hasn't been offered,
4 hasn't been admitted into evidence. Is there any reason for
5 me even to want to change it? As of the present moment, I'm
6 not even going to be considering it.

7 MR. EDWARDS: Well, among other things,
8 Your Honor, I think it goes to the fact that as I recall,
9 one of their researchers, Mr. Irons, testified that he
10 assisted them prepare this. The fact that it is substantially
11 incorrect goes to the validity of Mr. Irons' testimony.

12 THE COURT: Well, it really doesn't. If
13 they had offered it in evidence and I considered it in evi-
14 dence, then I would certainly hear testimony about it. But
15 is there a particular facet of this that you feel is
16 important that you would like for Mr. Hammond to correct?

17 MR. EDWARDS: Well, the fact that they
18 have the wrong people listed as G-2's; that they have the
19 wrong people listed in the Military Intelligence Division,
20 and they have left out several people as Chiefs of Staff --

21 THE COURT: All right. But it hasn't been
22 offered. I have not admitted it, so I don't think we need
23 to have testimony on it.

24 MR. EDWARDS: If at such time as Your
25 Honor -- as I recall, Your Honor, you decided to reserve

1 ruling on whether it would be admitted.

2 THE COURT: Yes.

3 MR. EDWARDS: If subsequently you do
4 decide to admit it, however, Mr. Hammond will be off in
5 Olympia and we'll be deprived of his testimony.

6 THE COURT: That's not too far away.

7 THE WITNESS: I'll be farther than that
8 later.

9 THE COURT: Is that right?

10 As I said before, since I haven't admitted
11 it -- let me ask counsel, do you at some later time want to
12 admit it?

13 MR. HALL: We don't believe so, Your Honor.

14 MR. EDWARDS: I'm sorry. What was that?

15 THE COURT: He said he does not think so.
16 So I don't think it's worth the time to correct a chart
17 that has not been admitted into evidence and probably will
18 not be admitted into evidence.

19 MR. EDWARDS: Okay, Your Honor. Well, in
20 that case, can I just take about two minutes and quickly --
21 let the witness resume his seat and quickly run through a
22 few things?

23 THE COURT: That will be fine.

24 MR. EDWARDS: Okay. Thank you, Your Honor.

25 Q (by Mr. Edwards) Mr. Hammond, in the interest of time,

1 if you could just speak briefly, we do know you have seen the
2 chart. Could you tell us what Mr. William Ryan's position
3 was?

4 A He was one of the Assistant G-3's.

5 Q At what time?

6 A At the time under review, as I recall, and became a G-3
7 of the Western Defense Command at the same time I became G-2.

8 THE COURT: Let me ask, I know what G-2 is.
9 G-3 is what?

10 MR. HAMMOND: Is plans and training.

11 THE COURT: Plans and training. And the
12 last name of that person?

13 THE WITNESS: Ryan, R-y-a-n. William Ryan.

14 Q (by Mr. Edwards) And was Colonel Forney ever G-2 for
15 the Western Defense Command?

16 A No, sir. Colonel Forney, when I came there, as I recall,
17 was head of the Counterintelligence Division of the G-2
18 Section.

19 Q Can you list, just briefly and so far as you can recall,
20 the times and who the G-2's were of the Western Defense
21 Command?

22 A When I first came down there, Colonel Stroh was the G-2.
23 Then, when he left for a period of some thirty days, it was
24 Colonel Harrington who was Acting G-2. Then Colonel
25 Weckerling took over as the G-2 and he was G-2 until I was

1 made Acting G-2, and then around the 20th of December of '43
2 I became G-2 and was promoted to Colonel.

3 Q Can you tell us to your knowledge, during the period
4 immediately after Pearl Harbor through early 1942, was
5 Colonel Stroh ever in the Military Intelligence Division in
6 the War Department?

7 A I really don't remember.

8 Q Can you tell us whether Colonel Weckerling --

9 A Yes. Colonel Weckerling, as I said earlier, had me
10 divide the G-2 Section into two parts, one part to help form
11 the G-2 Section of the Ninth Army. He went at that time,
12 which was in the early part of '43, I believe, to this spot
13 where they were organizing the headquarters of the Ninth
14 Army. The next I heard from him he had become a member of
15 the G-2 Section of the War Department and was promoted to
16 Brigadier General.

17 Q About when was that, if you recall?

18 A Well, it would have to be sometime in '43, I believe.

19 Q And finally, Mr. Hammond, do you recall whether during
20 the period you served in the Western Defense Command there
21 were any Chiefs of Staff other than McCormick and Wilbur?

22 A Yes, there was, and when General Emmons came in, he
23 brought with him his own Chief of Staff, Colonel Bathurst.

24 Q Could you spell Bathurst, please?

25 A I beg your pardon?

1 Q Could you spell Bathurst, please?

2 A Well, that will have to be phonetic. B-a-t-h-u-r-s-t.

3 Q And were there any other Chiefs of Staff while you were
4 there?

5 A Yes, there was one Chief of Staff that I recall before
6 Colonel McCormick. He was a Brigadier General. I don't
7 recall his name at this time.

8 MR. EDWARDS: That concludes our direct
9 examination.

10 THE COURT: All right. Any cross-
11 examination?

12 MR. HALL: Yes, Your Honor.

13
14 CROSS-EXAMINATION

15 BY MR. HALL:

16 Q Mr. Hammond, my name is Camden Hall and I'm representing
17 the Petitioner in this matter.

18 You never had any training in counter-
19 intelligence, did you?

20 A The only training that I had in counterintelligence was
21 the training that we got at the Commander General Staff
22 School when they broke down into sections and gave us, in my
23 case, special training in intelligence. Most of it was
24 combat intelligence but there was some element of counter-
25 intelligence in it, and very little in the G-2 section of

1 the Division.

2 Q You never had any responsibilities with regard to
3 counterintelligence, did you?

4 A No, I did not.

5 Q Maybe you could --

6 A Not in the Headquarters of the Fourth Army in the
7 Western Defense Command.

8 Q Would you explain, please, the difference between combat
9 intelligence in which you worked and counterintelligence in
10 which you did not work?

11 A Well, combat intelligence generally dealt with actions
12 of the enemy, the armed enemy, military, and counter-
13 intelligence dealt with such things as espionage and related
14 activities.

15 Q Maybe I heard you wrong, but I thought you gave a
16 definition both times of counterintelligence.

17 THE COURT: No, he said combat intelligence.

18 Q Combat intelligence was first with regard to the actions
19 of the alien enemy --

20 THE COURT: Armed enemy.

21 Q Armed enemy, and counterintelligence was with regard to
22 espionage.

23 A Espionage and related activities.

24 Q So insofar as your activities about which you've been
25 testifying, you have no training nor experience nor opinions

1 with regard to the issue of espionage on the West Coast?

2 MR. STONE: I object, Your Honor, before
3 the witness answers. He has asked already if he had training
4 and the answer to that, and now he's rephrasing it saying he
5 had no training. That's not the testimony.

6 THE COURT: Let me hear your question again,
7 would you, please?

8 Q (by Mr. Hall) With regard to the issue of espionage,
9 it is a fact, is it not, that you had no experience nor
10 opinions with regard to espionage on the West Coast?

11 THE COURT: Well, let me ask you this:
12 I don't recall that he has testified about espionage or
13 sabotage. Has he?

14 MR. HALL: I think that's an important
15 fact, if it's true.

16 MR. EDWARDS: Well, Your Honor, as I recall,
17 yesterday all he testified was, I asked him briefly, did he
18 have any responsibilities in this field. He testified no.

19 THE COURT: Do you object to the question?

20 MR. EDWARDS: Yes, Your Honor.

21 THE COURT: I think I'll sustain that.

22 Q (by Mr. Hall) You gathered intelligence within the
23 realm of your duties in combat intelligence?

24 A That's right.

25 Q What is the difference between intelligence and information?

1 A Well, information would be, you'd get a report of, say,
2 a submarine sighting. Then, if you make investigations and
3 if it's confirmed or if it's nearly confirmed to the point
4 that it's a likely actual submarine, that would become
5 intelligence.

6 Q Now, basically, it was your job to move paper?

7 MR. EDWARDS: Object to the characterization,
8 Your Honor.

9 THE COURT: I'm going to sustain that.
10 I think that's sort of a pejorative question.

11 Q (by Mr. Hall) Basically it was your job, Mr. Hammond, --

12 THE COURT: I move an awful lot of paper
13 myself.

14 MR. HALL: So do I. I don't think it's
15 necessarily pejorative, either.

16 Q (by Mr. Hall) Basically it was your job to review
17 information that was sent to you in reports and then to pass
18 that information on to higher authorities?

19 A Well, not exactly. We received reports of, most of them
20 by telephone, for activities up and down the Coast and from
21 the Navy, for example, and from the Air Force, from other
22 related organizations. When we received a report they might
23 be and they might not be subject to further investigation to
24 determine whether they were information or intelligence.

25 Q But you did not personally go out to verify the

1 accuracy of the reports or information?

2 A Well, there's a difference between going out personally
3 and making extensive telephone calls and sending out messages
4 and receiving messages to elicit information which would
5 confirm them, and I did extensive interrogations of that
6 nature.

7 Q Do you recall your deposition was taken on June 13th,
8 1985?

9 A That's right.

10 Q Do you recall a question was asked:

11 "Q Now, when you did receive information that
12 you wanted to confirm or investigate the
13 information, did you personally go out in
14 the field?

15 "A Generally no, because we were on duty here
16 24 hours a day, seven days a week and
17 working shifts."

18 A That's right.

19 Q Do you recall that question and that answer?

20 A I do.

21 Q Now, you said when you received information you passed
22 in on oftentimes to somebody else to try to verify the
23 accuracy of the information?

24 A That's right. If we received information concerning
25 something happened in say the Northwest Sector, maybe that

1 came to us from the Navy or the Army Air Corps and we would
2 call the G-2 section of the sector and ask for investigation.

3 Q Did you ever ask the FBI to assist in any investigation?

4 A Well, in the period under review, I personally didn't
5 have too much contact with the FBI, but I'm sure that like
6 Colonel Weckerling was in there in charge of combat intelli-
7 gence and he had frequent contact with the FBI. Later I did.
8 We would receive information from them and would pass infor-
9 mation along to them.

10 Q So you know that the FBI was responsible for trying to
11 verify some of these reports which you had received of enemy
12 activity on the West Coast?

13 A Well, as I say, most of the time in the period under
14 review, I didn't have too much in the way of personal contact
15 with the FBI, so I would only speculate.

16 Q What about the FCC? Did you refer information to the
17 FCC for verification?

18 A Most of the time. I would say that the counterintelli-
19 gence division would be the ones in contact with the FCC,
20 and we would probably refer that route or get it back through
21 that route or get it back through that route. It may have
22 been that on some instances we directly contacted the FCC,
23 or maybe the Sector, through the Sector, because they were
24 operating in more than one area.

25 Q You know you referred shore to ship signaling reports

1 to the FCC?

2 A I beg your pardon?

3 Q You know you referred shore to ship signaling reports
4 to the FCC, did you not?

5 A Shore to ship?

6 Q Yes.

7 A Well, what type of signaling? Do you mean electronic
8 signaling? The FCC was interested in electronic transmissions.

9 Q That's right. Electronic signals, and you referred
10 those sorts of reports to the FCC?

11 A One way or the other.

12 Q And did the FCC follow up on the references?

13 A Yes, they did.

14 Q And do you recall the results of their follow-ups?

15 A I do, but only generally, because as I said, it's been
16 about forty some odd years since then, but I specifically do
17 recall in several instances when they reported they were on
18 the track of an unidentified radio transmission. They
19 arrived there just shortly after whoever was making the
20 transmissions had departed.

21 Q And did the FCC ever report to you that individuals who
22 was making the radio transmissions were Japanese?

23 A I don't recall at this time anything of that nature.

24 Q So as far as you know, the individuals making the radio
25 transmissions that the FCC reported to you about may have

1 been Irish?

2 A At this time, some forty years later, I don't recall
3 anything of an identification nature given us by the FCC.

4 Q You're satisfied that the FCC followed up competently
5 on the reports that you gave them, are you not?

6 A To the best of my knowledge.

7 Q You referred to your contacts with General DeWitt and
8 you expressed some opinions with regard to General DeWitt.
9 It is true, is it not, though, that your contacts with
10 General DeWitt were extremely limited?

11 A Well, limited in this sense: I did not personally have
12 more than maybe one or two casual visits with him, but before
13 the war when I was Aide to the Commanding General of the 41st
14 Division, my General met with General DeWitt on several
15 occasions and I was with the General at that time. And
16 during our maneuvers in California, the same thing, and down
17 at the Presidio I saw him and heard of him frequently.

18 Q But when you were testifying with regard to your
19 opinions concerning General DeWitt, you were testifying with
20 reference to your observations of General DeWitt at some
21 distance; not as a basis of your intimate contact on a
22 repeated or sustained basis with General DeWitt?

23 A Well, I was reporting on the basis of what my Commanding
24 General at that time would tell me about his opinion of
25 General DeWitt, on my observations of what he said and their

1 conversations together.

2 Q Have you ever heard the quote attributed to General
3 DeWitt, "A Jap is a Jap"?

4 A I never heard it. It was mentioned to me after I got
5 here but I never heard it.

6 Q Who mentioned it to you after you got here?

7 A One of our attorneys.

8 Q In connection with this trial?

9 A That's right.

10 Q You testified yesterday about the G-2 reports and
11 counsel called your attention to several G-2 reports that,
12 among other things, reported Japanese submarine sightings?

13 A I did.

14 Q Now, was it your opinion that these G-2 reports were
15 accurately prepared and contained reliable information?

16 A It's my opinion that these G-2 weekly reports contained
17 the best information available at the time.

18 Q And how did you make use of the G-2 reports, examples
19 of which you testified about yesterday?

20 A Well, those were weekly G-2 reports issued by the G-2
21 Section of the Western Defense Command, the Fourth Army.
22 They were, of course, first given to our Commanding General,
23 to members of the General Staff and the Headquarters, sent
24 to the War Department, G-2 Section, to the G-2's of our
25 Sections, to the intelligence officer of the Western Sea

1 Frontier, to the G-2 Section of the Fourth Army -- of the
2 Fourth Air Force, I should say.

3 Q Now, in your activities in connection with combat
4 intelligence, did you ever see or come across an armed enemy
5 of the United States?

6 A I wasn't in a position where that opportunity or the
7 opposite was available.

8 Q You testified yesterday that there was no doubt that
9 there would be an attack on the Northwest in the period
10 after Pearl Harbor. Do you recall that testimony?

11 MR. EDWARDS: Your Honor, I believe that's
12 not quite accurate as a characterization.

13 THE COURT: I don't believe that's quite
14 accurate.

15 MR. EDWARDS: I believe he testified there
16 was a strong fear or that there was a basis --

17 MR. HALL: The record will say what it
18 says.

19 MR. EDWARDS: I have no doubt of that.

20 Q (by Mr. Hall) What was your opinion with regard to
21 the threat of attack after Pearl Harbor?

22 THE COURT: You're withdrawing the other
23 question?

24 MR. HALL: Well, I'll say the record will
25 say what it says on that and ask another question.

1 THE COURT: You ask another question.

2 Q (by Mr. Hall) What was your opinion with regard to the
3 threat of an attack on the Northwest shortly after December
4 7th, 1941?

5 A Well, for the period starting on December 7th, for the
6 next week or ten days, as I reported, I was with the new
7 Commanding General of the 41st Division, and our 41st
8 Division was deployed in the Northwest protecting the shore-
9 line and the Straits of Juan de Fuca and the entrances to
10 Puget Sound, and on the basis of the information we had and
11 didn't have, we fully expected that we could be subject to
12 attack or some type or another.

13 Q An invasion?

14 A We weren't necessarily considering it would be a massive
15 invasion, but some type of an invasion.

16 Q What is some type of an invasion?

17 A In small forces.

18 Q And what are small forces?

19 THE COURT: I think that speaks for itself,
20 although you might give a range, if you will.

21 A Well, the attack could be an attack by Naval units, a
22 shelling. Air attacks, landing harassing attacks by landing
23 forces, or an attack to establish a beachhead, but we
24 weren't -- we were looking for the possibility of something
25 of that nature; not necessarily a massive attack where the

1 enemy had the obvious intent of taking territory and
2 exploiting it at that time.

3 Q I would like to call your attention, if I may, to
4 Exhibit 64, tab 51.

5 A Is that No. 9?

6 Q Yes. No. 9, G-2 Report for the period 28 February 1942.
7 Now on page 2, about three inches from the top of the page,
8 the paragraph numbered five, which reads: "No hostile
9 ground units are believed to be nearer than the enemy
10 forces in the Jaluit --"

11 A Excuse me. Where are you now?

12 THE COURT: Page 2.

13 Q Page 2, the paragraph numbered five, about three inches
14 from the top.

15 A Oh, yes, I see.

16 Q Quoting. "No hostile ground units are believed to be
17 nearer than the enemy forces in the Jaluit-Wotje area of the
18 eastern mandated islands about two thousand miles west by
19 south of the Hawaiian Islands."

20 Do you see that?

21 A Yes.

22 Q And when you read the G-2 reports about which you
23 testified yesterday, when you read them at or about February
24 of 1942, you read that provision, did you not?

25 A I did, but I very likely didn't at that time have any

1 actual participation in the preparation of it.

2 Q Now, you didn't mean to testify yesterday that these
3 radio signals that you talked about or that the enemy
4 submarines off of the shore of the United States were in
5 any way the responsibility of Japanese-Americans or Japanese
6 aliens residing in the United States, did you?

7 A Well, with respect to the operation of the submarines,
8 those operations were obviously of the armed military of the
9 Japanese Army or Navy.

10 Q But they would have been citizens of Japan in the
11 Japanese Navy or military.

12 A The personnel operating the submarines, yes.

13 Q So I'll ask you my question again. When you testified
14 yesterday with regard to signaling and enemy sightings of
15 submarines, you did not intend to infer that any of that
16 signaling or the involvement of submarines had anything to
17 do with Japanese-Americans or Japanese individuals residing
18 in the United States?

19 THE COURT: You know, I think I would be
20 more interested in what his beliefs were at that time
21 rather than what he intended to imply by his testimony
22 yesterday. So if you would ask him a question about what he
23 thought at the time, I would admit that question.

24 Q (by Mr. Hall) Did you hear what the judge said with
25 regard to my question?

1 A I did.

2 Q Can you answer the judge's question?

3 THE COURT: Can you put it in the form of
4 a question?

5 Q (by Mr. Hall) In 1942 you had no information and did
6 not believe, therefore, that the reports of signaling shore
7 to ship, ship to shore, or reports of enemy submarines off
8 the Coast had anything to do with Japanese-American citizens
9 or Japanese aliens residing in the United States?

10 A Well, we assumed that if there were signals by lights
11 or radio transmissions that were directed towards the sea,
12 that they were -- they were done by friends of the enemy
13 and the most likely friends of the enemy at that time were
14 persons of either Japanese aliens or Japanese that were
15 friendly to the enemy.

16 Q The Germans weren't friendly to the enemy?

17 A The Germans had never shown any activity on our coast.

18 Q You have no information as you sit here today to which
19 you can point which specifically identifies a single Japanese-
20 American or a single Japanese alien residing in the United
21 States being responsible for any signaling from shore to
22 ship in 1941, '42 or '43?

23 MR. EDWARDS: Your Honor, we've just
24 jumped forty years. A minute ago he was asking what did he
25 know then. Now he's telling him he doesn't recall now, or

1 he doesn't have any evidence now. First of all, as I believe
2 you said a minute ago, you're interested in what he knew
3 then.

4 THE COURT: I think that's right. I would
5 be interested in what he knew then with respect to the origin
6 of the signals. He has testified as to what he, in his
7 opinion, the most likely source of the signals was. Would
8 you want to ask whether he at that time had any information?

9 Q (by Mr. Hall) That most likely source of the signals
10 is simply an assumption on your part, is it not?

11 A Oh, quite naturally, unless you caught up with somebody.
12 But that type of activity followed up would have been done
13 by the counterintelligence in many instances.

14 Q And so far as you know, as far as you knew then, you're
15 not aware of any instance where Japanese-American citizens
16 or Japanese aliens residing in the United States were
17 apprehended by any military or civil authorities for the
18 reason of sending shore to ship signals to enemy vessels?

19 THE COURT: That is back at that time.

20 A I can't recall that. May I make a general observation?

21 Q I think the Court would be interested in any comment
22 you wish to make.

23 A From our standpoint, I can say this, that we had
24 numerous reports of electronic transmissions and flashing
25 lights over a period of time, but after the Japanese were

1 removed from the Coast, we had hardly any. Not any that I
2 can recall.

3 Q Are you aware of the FCC's discussion of that very topic?

4 A I am not.

5 Q Now, with regard to the G-2 reports, they refer from
6 time to time to espionage work which was being performed in
7 the United States?

8 A The G-2 reports?

9 Q Yes.

10 A There were some that did, yes.

11 Q And do you know to what source the G-2 reports referred
12 when it claimed that espionage was being conducted in the
13 United States in relation to Japan or Japanese interests?

14 THE COURT: That is, the source of the
15 information?

16 MR. HALL: The source of the information.

17 A Having devoted my entire time prior to being G-2 of
18 the Western Defense Command to combat intelligence, I didn't
19 have anything to do with that. That section of the G-2
20 report was prepared by the counterintelligence division of
21 the G-2 Section.

22 Q (by Mr. Hall) I would like to call your attention to
23 Exhibit 64, tab 51, page 3, the bottom of the page, and
24 read the -- I would like to read the sentence which begins
25 in paragraph F, "Enemy's Probably Knowledge of our Situations:

1 The enemy's probably knowledge of our situation has not been
2 gained by observation or reconnaissance but by information
3 learned during peace by the activities of accredited
4 diplomatic military and naval attaches and their agents."

5 Do you see that sentence?

6 A I followed it.

7 Q Do you recall having seen that sentence at or about
8 February, 1942?

9 A I don't recall anything specific in that nature, that
10 having been so many years ago. That particular section
11 would have been prepared either by the counterintelligence
12 section or was knowledgeable to Colonel Weckerling with his
13 background or Colonel Stroh with his background.

14 Q So that statement you just made would apply to the
15 entire contents of that paragraph and not just the portion
16 that I read to you?

17 A I'll have to read the rest of it.

18 THE COURT: Why don't you read the rest of
19 it?

20 THE WITNESS: Shall I read it out loud,
21 sir?

22 THE COURT: No. Read it to yourself.

23 MR. HALL: Read it to yourself.

24 A What is your question with respect to the rest of that?

25 Q (by Mr. Hall) The limitation with regard to your

1 knowledge and activities during 1942 that you gave with
2 regard to the first sentence in that paragraph would apply,
3 would it not, to the balance of that paragraph?

4 A That would. In other words, I had no participation in
5 the development of that information.

6 Q Now, counsel yesterday asked you to review the last
7 page of Exhibit 64, tab 51, and to relate to the Court under
8 Enemy Capabilities, Items 1 and 2, Item 1 being surprise
9 raids or attacks against any portion of the Pacific Coast,
10 including Alaska and the Panama Canal or against Hawaii,
11 and Item 2 being sporadic attacks by submarines or surface
12 craft, including commerce raids against shipping in Pacific
13 waters in this theater."

14 Do you see that?

15 A I do.

16 Q Can you remember your testimony yesterday as those being
17 two items of particular concern to you?

18 A That's right.

19 Q Now, I'd like to call your attention to the middle of
20 the page where it talks about the probabilities of what the
21 enemy was going to do, and under the section small b(1) it
22 states: "Negative reports relative to (2), which is the
23 item that I referred to above, and (4) which is also
24 included, and known activity relative to (1) and (3) leaves
25 the assumption that the enemy will find itself with these

1 capabilities at present. Activity relative to (1) may be
2 sporadic and undertaken as a spectacular stunt in the Axis
3 war of nerves to be renewed at times considered psychological
4 by the Japanese. Activity related to (2) may be renewed at
5 any time."

6 Is it not true that with regard to Items
7 1 through 4 there was a greater probability of activity
8 concerning some than with regard to the others?

9 A Well, in the first place, you must remember that these
10 reports are weekly reports, and each report has to do with
11 the previous week and not with the whole period prior to
12 that week. So if there was a report of submarines in one
13 week and no report in the next week, the reports would read
14 thus.

15 Of course there was, as far as Sub-
16 paragraph (3) is concerned, there was ongoing warfare there.
17 That's the Bataan Peninsula and so on and so forth. (1) and
18 (2) have to do with activities that we had previously
19 reported in our weekly reports.

20 THE COURT: I think the exhibit speaks for
21 itself with respect to your question.

22 MR. HALL: I just want to call the Court's
23 attention to the comments which have not previously been
24 called to the Court's attention.

25 Q (by Mr. Hall) Exhibit A-58, please. It's a map with

1 some attachments.

2 You testified yesterday with regard to this
3 exhibit and some information concerning radio fixes.

4 A Well, this is a periodic intelligence report from the
5 Headquarters of the Fourth Air Force. Is that what we're
6 talking about?

7 Q Are any of the fixes that are referred to --

8 THE COURT: Wait just one moment. I think
9 we're looking at A -- did you say A-58?

10 MR. HALL: Yes, Your Honor.

11 THE COURT: Do you have that?

12 THE WITNESS: I've got a map marked A-58.

13 THE COURT: And your question, then?

14 Q (by Mr. Hall) My question is, are any of these fixes
15 that are referred to here from shore to ship, or originating
16 on shore?

17 A Well, if this is an attachment to the report of the
18 Headquarters, Fourth Air Force, I would have to study it
19 because it was their report. Now, apparently we've got some-
20 thing -- this is marked "Headquarters, Western Defense
21 Command" at the bottom, that's the map, and it's attached
22 to a periodic intelligence report from the Headquarters of
23 the Fourth Air Force.

24 Q When you testified yesterday, then, about these fixes,
25 you hadn't studied this so that you are able to now tell me

1 whether any of these fixes originated on land?

2 MR. EDWARDS: Your Honor, I don't think he
3 has recalled to the witness's recollection that this was a
4 part of the G-2 report as was found in G-2 Report No. 9, as
5 were the attachments on the back of the periodic report were
6 from the Fourth Army.

7 MR. HALL: I appreciate counsel's help, but
8 I think that's a matter for redirect.

9 THE COURT: No. I think you're absolutely
10 right, Counsel. This says it is to accompany Report No. 9
11 which bears another exhibit number. However, let's go back
12 simply to your question, which was originally, are any of
13 these fixes made from shore?

14 MR. HALL: Yes, and the witness testified
15 he'd have to study.

16 Q (by Mr. Hall) My next question is, then when he testi-
17 fied yesterday, he had not conducted such a study to enable
18 him to testify that these fixes were from shore.

19 THE COURT: Did he so testify yesterday?

20 MR. HALL: I think the implication was
21 there's no point in implying that the radio fixes from the
22 sea to the land had anything to do with Japanese-Americans
23 or Japanese aliens residing in the United States.

24 THE COURT: Then, as I said before, let's
25 go back to your question, the one you started out with,

1 which was, I believe, are any of these radio fixes --

2 MR. HALL: Shore originated.

3 THE COURT: -- shore originated.

4 Can you tell by looking at that?

5 THE WITNESS: I would have to study this.

6 I'm not in a position to give you just an immediate answer,
7 but I do know that there were shore fixes from high elevations.

8 Q (by Mr. Hall) But you also do not know who was
9 responsible for any radio broadcasts originating at those
10 fixes?

11 A Well, the fix would be made by a friendly force of an
12 unidentified source such as a submarine, a surface craft,
13 something of that nature.

14 Q You testified about a Captain Michael Revisto today?

15 A Yes.

16 Q Michael Revisto was an Italian-American?

17 A Only do I assume that from his name.

18 Q So you don't know anything about his parentage?

19 A No, I don't.

20 Q Do you know if Captain -- do you know at this time that
21 you knew Captain Revisto that the United States was at war
22 with Italy?

23 A I think that it was.

24 Q And was Captain Revisto ever subjected to curfew or
25 exclusion as a consequence of the United States being at war

1 with Italy?

2 MR. EDWARDS: Your Honor, I think the
3 record shows that Italian-Americans were not subject to --

4 THE COURT: I think that's right.

5 MR. EDWARDS: I also object to the fact
6 that this is based on the assumption that Revisto is an
7 Italian name.

8 Q (by Mr. Hall) Exhibit 65, tab 52.

9 Do you recall this exhibit, Colonel Hammond,
10 when you testified about it yesterday?

11 A I recall reference to some G-2 reports of yesterday, yes.

12 Q This, I believe, is one of the reports that you testi-
13 fied about?

14 A It could have been.

15 Q I'd like to call your attention again to page 3, para-
16 graph F. If I may, I would like to read it.

17 THE COURT: Go ahead.

18 Q It says: "The enemy's probably knowledge of our
19 situation has not been gained by observation or reconnais-
20 sance, but by information learned during peace by the
21 activities of accredited diplomatic military and naval
22 attaches and their agents. Efforts to deny this information
23 to the enemy include the creation of military zones from
24 which all persons of Japanese ancestry, including military
25 personnel of German and Italian ancestry will be excluded

1 within the next sixty days. General surveillance of enemy
2 aliens, internment of alien leaders and suspected spies and
3 agents , seizure of contraband in the possession of enemy
4 aliens, and the adoption of stringent censorship measures."

5 In February of 1942, were you aware of
6 that -- excuse me. In March of 1942, were you aware of that
7 statement being made in G-2 reports?

8 A I was.

9 Q Did that statement in the G-2 reports influence your
10 belief, if you had one, with regard to whether Japanese-
11 American citizens or non-military or consular Japanese aliens
12 residing in the United States were responsible for espionage?

13 MR. EDWARDS: Your Honor, could he ask
14 first whether the witness recalls at all?

15 THE COURT: I thought he said he was
16 familiar with it, so I'll permit the question. Will you
17 restate the question?

18 MR. HALL: May I ask the reporter to read
19 it back, please?

20 (Question read by reporter.)

21 THE COURT: You're going to have to re-
22 frame it.

23 Q (by Mr. Hall) Does that statement -- in 1942, having
24 read that statement, did it influence your opinion as to
25 whether Japanese-American citizens or non-consular or

1 military Japanese aliens residing in the United States were
2 responsible for espionage?

3 MR. EDWARDS: Your Honor, doesn't it also
4 say "or their agents"?

5 THE COURT: Let me ask the witness, do you
6 understand the question?

7 THE WITNESS: Yes, I do.

8 THE COURT: All right. Can you answer it?

9 A Well, to start with, this is in the area of counter-
10 intelligence and also in the area covered by the general
11 officer in charge of, or maybe later covered by the general
12 officer in charge of such activities. I was concerned
13 strictly with combat intelligence that we were collecting
14 on a current basis, and I just don't recall what my attitude
15 might have been at that time.

16 Q (by Mr. Hall) Thank you. Did you ever seen any FCC
17 reports with regard to radio fixes and investigations that
18 they conducted concerning radio fixes?

19 A I don't recall having seen any, I presume written
20 reports by them, no. I recall verbal reports.

21 Q I would like to call your attention to Exhibit 71, tab
22 58, and page 4 of that exhibit.

23 A Is this 58?

24 Q In tab 58, Exhibit 71, the last -- the next to the
25 last page of that exhibit under "Conclusions."

1 A I have it.

2 Q Now, yesterday counsel asked you to recite again
3 Conclusions 1 and 2 as relating to enemy capabilities.

4 A Yes.

5 Q But isn't it true if you read under paragraph (b) that
6 the exhibit says that the enemy will probably confine itself
7 to capability 3 for the present. Activity relative to 1, 2
8 and 4 can be resorted to at any time by the enemy.

9 Do you see that?

10 A I do, and I should like to underline the words "for the
11 present" and refer back to my answer to a question when I
12 said that these G-2 reports were for weekly periods and had
13 no reference to what might come up in the next week or what
14 had happened in the previous week.

15 Q You're not able to give any opinion with regard to
16 Colonel Weckerling's competence in counterintelligence, are
17 you?

18 A Only this: That having been a military attache in
19 Japan, he certainly would have to have a considerable amount
20 of information of that order.

21 Q Well, didn't you testify in your deposition that you
22 couldn't appraise his ability in counterintelligence?

23 A No, I couldn't first-hand.

24 Q And the same is true with regard to Colonel Stroh; is
25 that not correct?

1 A Colonel Stroh I knew from a combat intelligence stand-
2 point, but he was a thoroughly professional officer.

3 Q But you have no opinion with regard to his capabilities
4 in counterintelligence?

5 A I have no first-hand opinion.

6 Q Are you familiar with the term "Magic"?

7 A No.

8 Q As used with regard to codes?

9 A I have no information of that, no knowledge of it.

10 MR. HALL: No further questions.

11 THE COURT: Any redirect?

12 MR. EDWARDS: Yes, Your Honor. A few
13 questions.

14
15 REDIRECT EXAMINATION

16 BY MR. EDWARDS:

17 Q On cross-examination you were being asked the difference
18 between combat intelligence and counterintelligence. I'd
19 just like to clarify, would your responsibilities in combat
20 intelligence include receiving reports and making investi-
21 gations concerning sightings of submarines?

22 A Right.

23 Q And would that also, combat intelligence include reports
24 regarding signaling on shore to ship or ship to shore?

25 A We did investigations of those.

1 Q You were also questioned regarding your first-hand
2 experience in the field, shall we say. Now, you have testi-
3 fied that you served in HQ of the Western Defense Command.
4 Did you ever serve at a field level as an intelligence
5 officer?

6 A Well, during the spring and summer of 1941, I was acting
7 G-2 of the 41st Division in any number of maneuvers in the
8 Northwest and on the Hunter-Liggett Military Reservation in
9 California when we maneuvered against the Third Armored
10 Division, the 40th Division, the National Guard, and the
11 Seventh Division commanded by Senator Joe Stillwell.

12 Q You were also questioned regarding what agencies you
13 would refer reports of shore to ship signaling, and I
14 believe you testified at least sometimes it was the FCC; is
15 that correct?

16 A Yes, because they had the facilities for getting -- for
17 locating the shore part.

18 Q Could I ask the clerk to hand the witness Exhibit A-83,
19 please?

20 Your Honor, this is a report dated
21 December 31, 1981. It was provided to us by the Petitioner --

22 THE COURT: Sure it was 1981?

23 MR. EDWARDS: I'm sorry, Your Honor?

24 THE COURT: What was the year?

25 MR. EDWARDS: 1941, Your Honor.

1 Q (by Mr. Edwards) At the bottom on this Xerox it says
2 "Request for additional notice, 1-30." As I recall, this
3 was provided to us by Petitioner as an appendix to that
4 request.

5 Do you have that, Colonel Hammond, in
6 front of you?

7 A FCC, San Francisco?

8 Q That's right. I direct your attention first of all to
9 the last part of the typed -- the dark type where it says
10 the initials LRF. Do you see that?

11 A Yes.

12 Q Are you familiar with any officer -- excuse me. Are
13 you familiar with any person whose initials are RLF?

14 A Well, it could be --

15 MR. HALL: I'd object if he doesn't know.
16 If he's guessing or speculating, I don't think it's appropri-
17 ate where he starts of his answer with "It could be."

18 THE COURT: This down at the bottom, I
19 don't know who typed this in. It speaks about a Lieutenant
20 Colonel Forney.

21 MR. EDWARDS: Yes, Your Honor.

22 THE COURT: Do you happen to know his
23 initials?

24 THE WITNESS: I don't off hand.

25 Q (by Mr. Edwards) Do you know if his first name was

1 Leslie?

2 A I don't recall the first name of Colonel Forney. I
3 remember meeting Colonel Forney and talking to Colonel
4 Forney down there when he was head of the counterintelligence
5 division.

6 THE COURT: Now, did you say that this
7 exhibit was provided to you by the Petitioner?

8 MR. EDWARDS: As I recall, the bottom --
9 well, Your HOnor, it was not provided to us for this hearing
10 in the sense that, and they marked their exhibits prior to.
11 It was given to us originally, though, as you see at the
12 bottom as a request for judicial notice 130 at the very
13 bottom that I believe was a tab attached by the Petitioner
14 months ago.

15 THE COURT: You go ahead. Go ahead with
16 your question.

17 Q (by Mr. Edwards) I direct your attention specifically
18 to the second paragraph of that. I would ask you if you
19 could read the second paragraph to the Court.

20 MR. HALL: Your Honor, I'm going to object.
21 It seems to me that counsel is trying to impeach his own
22 witness. His own witness said he had no reason to suspect
23 the competency of the FCC, and now he's trying to impeach
24 his witness with his own testimony.

25 MR. EDWARDS: Your Honor, I'm trying to

1 refresh the witness's recollection. He said he doesn't recall
2 and now I'm trying to help him to recall.

3 THE COURT: Let me read the question.

4 MR. HALL: Your Honor, there is no indi-
5 cation the witness has ever seen this before so he can have
6 a refreshed recollection.

7 MR. EDWARDS: Your Honor, as I understand
8 the Rules of Evidence --

9 THE COURT: Let me read it.

10 MR. EDWARDS: Yes, sir.

11 THE COURT: I think I'll permit him to read
12 it into the record. And did you want to refer him to para-
13 graph 2; is that right?

14 MR. EDWARDS: Yes, Your Honor.

15 THE COURT: All right. What do you want
16 him to do?

17 MR. EDWARDS: I would like for him to read
18 that part and then I have a question for him with regard to
19 that, once his recollection has been refreshed.

20 THE WITNESS: That whole section?

21 MR. EDWARDS: Yes, sir.

22 A "He operates only a monitoring service and has only a
23 very few men. These will cooperate as well as possible in
24 tracing cases of radio interference and in trying to locate
25 specific sending stations that may be reported. His entire

1 force is now engaged in this work. He has no record of
2 suspected illegal sets on this Coast. Such records and
3 reports are handled by inspectorate operating out of
4 Washington and all such reports are in Washington. There
5 probably are a large number of these records in Washington
6 pertaining to this area but they are not immediately avail-
7 able to him. He has no means of knowing how many of the
8 suspected cases in this area relate to enemy aliens. He is
9 of the opinion that even with access to those records in
10 Washignton, there would not be more than ten to twenty-five
11 cases of reasonably probable illegal operations radio sending
12 sets on the entire Pacific Coast."

13 Q (by Mr. Edwards) And for purposes of clarity in the
14 record, the "he" they refer to does appear to be Mr. Grieves
15 as referred to in that first paragraph?

16 A Well, at the top it says FCC-San Francisco (Mr. Grieves),
17 and then it has G-2, WDT, Fourth Army.

18 Q And in the first paragraph?

19 A It says C.I. Branch, Lieutenant Colonel Forney.

20 Q And the first paragraph of the text?

21 A It says, "FCC" with an arrow pointing down to Mister.
22 "Grieves was asked if he had answered General DeWitt's letter.
23 He replied that he had not because he did not know how to
24 answer it. He then went on with an explanation of which
25 the following is the gist."

1 Q Okay. Now, Colonel Hammond, having read that document
2 from December 31, 1941, do you recall whether the consensus
3 at that time was the FCC was overburdened and --

4 THE COURT: I would prefer that you ask
5 him in a non-leading fashion.

6 MR. EDWARDS: I'm sorry.

7 THE COURT: What was the consensus with
8 respect to the FCC?

9 MR. HALL: I think there has been no
10 foundation laid that he has any knowledge of the consensus.

11 THE COURT: Let's see if you can lay a
12 foundation.

13 MR. EDWARDS: Thank you.

14 Q (by Mr. Edwards) Mr. Hammond, can you recall a knowledge
15 at that time of the FCC's capabilities?

16 A Well, I can recall that they were a bit harried with
17 all of the requests for investigations and I have some
18 recollection of their complaining about having limited forces.

19 Q And is this document you've just read assist you with
20 your recollection at that time?

21 A I never -- I don't recall having had access to this
22 document I just read from, no. Obviously it was something
23 involving the Counterintelligence Division.

24 Q On cross-examination you were also questioned, I believe,
25 regarding knowledge of actual episodes of sabotage or

1 espionage by Japanese-Americans; is that right, that you were
2 questioned about that on cross-examination?

3 A I believe that's the case.

4 Q I would ask that the clerk hand the witness a copy of
5 Document A-1, please

6 THE COURT: That would be back in the
7 period the early months of 1942?

8 MR. EDWARDS: Yes, Your Honor. The par-
9 ticular document that I'm pointing to is dated February 9,
10 1942. That would be the second page.

11 THE COURT: And what is that document?

12 MR. EDWARDS: I'm sorry, Your Honor?

13 THE COURT: What is the exhibit?

14 MR. EDWARDS: That is Exhibit A-1 which
15 has not been admitted yet, Your Honor.

16 THE COURT: All right.

17 THE CLERK: You have excluded it.

18 MR. EDWARDS: I hope to use this document,
19 the second and third page of this document, to refresh the
20 witness's recollection with regard to the incidents he
21 testified he could not remember on cross-examination.

22 THE COURT: All right. We are right at
23 recess time, so let me take a look. I'll take A-1 with me,
24 maybe rule on it when we come back.

25 MR. EDWARDS: All right. Thank you, Your

1 Honor. I'll especially have him looking at the second and
2 third paragraphs.

3 THE COURT: Second and third paragraphs.

4 MR. EDWARDS: Yes, Your Honor, on the
5 first page.

6 THE COURT: All right.

7 (Recess.)

8 THE COURT: Counsel, have you seen this
9 Exhibit A-1?

10 MR. HALL: Yes.

11 THE COURT: Any objection to questioning
12 him on it? I see that it has to do with the enemy alien
13 program of the Western Defense Command.

14 MR. HALL: That's right. That is one of
15 the reasons that the Court excluded it to begin with.
16 Secondly, the question was with regard to espionage and
17 sabotage, and this deals with contraband, and except for the
18 broadest stretch of one's paranoid imagination could one
19 connect this with espionage or sabotage.

20 THE COURT: Let me ask counsel, what is
21 the question you want to ask?

22 MR. EDWARDS: What I want to ask, Your
23 Honor, is whether he recalls receiving information from the
24 FBI with regard to seizures of dynamite, of radio trans-
25 mitters, short wave transmitters, telegrapher's keys, fuses,

1 camers, revolvers.

2 THE COURT: All right. I'm goign to add
3 the phrase, from Japanese and German aliens.

4 MR. EDWARDS: Yes, Your Honor.

5 THE COURT: Then I'll permit you to ask
6 that question.

7 MR. EDWARDS: Thank you, Your Honor.

8 Q (by Mr. Edwards) Mr. Hammond, do you recall receiving
9 reports similar to this one with regard to the FBI's
10 seizure in the period of early 1942 of dynamite, blasting
11 caps, telegrapher's keys, revolvers, receiving and trans-
12 mitting short wave and other radio equipment?

13 A I don't recall --

14 THE COURT: From enemy aliens.

15 MR. EDWARDS: I'm sorry.

16 Q (by Mr. Edwards) From enemy aliens similar to this.
17 I don't recall the specific report but I do know this: That
18 there was a -- specifically there was a continuing exchange
19 of intelligence information between G-2 and the FBI. That
20 was a regular procedure.

21 Q So if there had been reports such as this, can you tell
22 us whether you probably would have received those kinds of
23 reports at that time?

24 A You mean the G-2 Section or me as an assistant in the
25 combat intelligence?

1 Q The G-2 Section, speaking of your official capacity.

2 A The G-2 Section, yes. The G-2 would have had it.

3 Q Okay. Thank you. I believe you were being questioned
4 on cross-examination with regard to the basis for your
5 personal opinion of General DeWitt and how often you knew
6 him.

7 In addition to your personal opinion,
8 though, were you familiar enough there at HQ with his
9 reputation - not your personal opinion based on your per-
10 sonal experience with him - but General DeWitt's reputation
11 there at Headquarters?

12 THE COURT: Well, I thought he testified
13 about that. As a matter of fact, the question was what was
14 his reputation. He testified to that.

15 MR. EDWARDS: Okay. Thank you.

16 Q (by Mr. Edwards) Directing your attention to tab 51,
17 please, which you were questioned about during cross-
18 examination, and specifically page 2 of tab 51.

19 Again, for the record, this is the G-2
20 periodic report No. 9.

21 A Page 2?

22 Q Yes, sir. That's Petitioner's Exhibit 64.

23 A All right.

24 Q You were asked about there, the second complete para-
25 graph from the top, (5) No hostile ground units are believed

1 to be nearer than the enemy forces in the -- I'll take a
2 stab at it -- Jaluit-Wotje area of the Eastern Mandated
3 Islands about two thousand miles west by south of the
4 Hawaiian Islands."

5 THE COURT: Is that the Gilberts or the
6 Marshalls? Do you know?

7 THE WITNESS: I don't recall, sir.

8 THE COURT: I think it's one or the other.

9 Q (by Mr. Edwards) Were you also concerned not just with
10 ground forces but with shelling and the possibility of air
11 attacks?

12 MR. HALL: That has been asked and answered,
13 Your Honor.

14 THE COURT: I'll permit it to be re-
15 asked, if it was asked before.

16 A Would you restate that?

17 Q (by Mr. Edwards) Yes, sir. Were you also concerned
18 with the possibilities of shelling and of air attacks along
19 the Coast?

20 A Yes, we were, because -- and later both occurred.

21 Q And I direct your attention below that to little (b)
22 where it says "Hostile Naval forces which may operate in
23 the waters of the Pacific off the West Coast could be
24 reinforced by special task forces, locations not definitely
25 known, or by elements of the enemy's First and Fourth Fleets

1 estimated to be in the Mandated Islands. It is possible for
2 elements of these units, including carriers, to allude our
3 Naval defense and air patrols in the vast expanses of the
4 Pacific, especially to the northwest. Ground troops for
5 raids or attack in force our Pacific Coast, including Alaska,
6 or our island possessions in the Eastern Pacific are avail-
7 able in Japan, Formosa and possibly in the Mandated Islands."

8 Were these the kinds of concerns you had
9 at that time with regard to possible attacks along the
10 Pacific Coast?

11 A That's right. I should say that every day the G-2
12 Section received top secret reports from the South Pacific
13 and the Pacific area which, after reading, we rescrambled
14 and sent on. And also we had reports from the War Depart-
15 ment which were the subject matter of which was brought
16 into our G-2 reports.

17 Q Do you recall as a matter of fact whether there ever
18 was any Japanese shelling of the Pacific Coast?

19 A Yes, there were. The Japanese submarines shelled a
20 point. First it was Goleta near Santa Barbara on the
21 California Coast was shelled, and then it was Point Stephen
22 on Vancouver Island, and thirdly was Fort Stevens which was
23 a coast artillery station near the mouth of the Columbia in
24 Oregon.

25 Q Do you recall whether there were in fact any air

1 attacks along the Pacific Coast?

2 A Yes. There was one specific one. It was, if I recall,
3 it was in the southwestern corner of the state of Oregon
4 when an enemy sub-based plane flew in, dropped an incendiary
5 bomb and flew out again to the enemy submarine.

6 I should say that we were aware, largely
7 from Colonel Weckerling's knowledge, having been a military
8 attache, that the enemy had submarines with the capability
9 of carrying sub-based planes.

10 Q Now I'd like to direct your attention to Document A-58,
11 Respondent's Exhibit A-58, which was shown to you on cross-
12 examination. Do you see on the first page, at least of my
13 copy, there is a map there?

14 A Do you mean situation map?

15 Q Yes, sir. At the bottom it says "To accompany G-2
16 Periodic Report."

17 A Oh, yes, I have that.

18 Q Do you have that?

19 A I have it.

20 Q I ask you to look in the upper right-hand corner, right
21 above where it says "Canada" on the map, and notice the block
22 that says "Eight radio fixes established in this area since
23 14 Feb. on 8348 KCS."

24 A I read that.

25 Q You were asked earlier regarding whether these fixes

1 would have been land based. Do you recall, considering the
2 proximity to the Coast, whether those fixes would have been
3 land based or otherwise?

4 THE COURT: Let me say this: This would
5 be my understanding, that the fixes, eight radio fixes means
6 that there were some radio transmissions out in the ocean;
7 isn't that correct?

8 THE WITNESS: That's right.

9 THE COURT: That's where the transmissions
10 were.

11 THE WITNESS: The transmissions were in the
12 ocean. The fixes could have been taken from a land-based
13 operation or --

14 THE COURT: But the fixes would have been
15 made by friendly --

16 THE WITNESS: Friendly forces would make
17 the fixes. Could be land-based, could be aircraft, could be
18 friendly surface craft or submarines if they were surfaced.

19 Q (by Mr. Edwards) And those radio transmissions from
20 that -- that are referred to there, in your opinion were
21 those close enough to the shore that they could have been
22 - the actual suspicious transmissions that fixes were
23 developed on - could those transmissions have been directed
24 toward the shore?

25 MR. HALL: I object for two reasons. One,

1 it calls for speculation. Secondly, the witness testified
2 earlier on cross-examination he hadn't made a study of the
3 source or the location of the transmissions so that he could
4 testify yesterday, let alone today, about their sources.

5 MR. EDWARDS: Well, Your Honor, --

6 THE COURT: You restate your question,
7 would you?

8 MR. EDWARDS: Could I rephrase it slightly?
9 Would that help?

10 THE COURT: That would be fine.

11 Q (by Mr. Edwards) Mr. Hammond, based upon your experience
12 in combat intelligence, and based upon the location of the
13 radio fixes on this map, is that location near enough to
14 shore that those radio transmissions could have been
15 directed towards the shore?

16 MR. HALL: I object.

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

19 THE WITNESS: The question is sustained?

20 THE COURT: I sustained the objection. You
21 can forget about the question.

22 Q (by Mr. Edwards) If you would turn, Mr. Hammond, to
23 the next page of that document, about a third of the way up
24 from the bottom you see it says, Arabic 3, period, Enemy
25 Activities, comma, Naval. (a) Submarines reported, some

1 considered credible: And proceeds to list by date, location
2 and possible results, one, two, three, four, and on the
3 next page five, six, seven, eight reports of submarine
4 sightings.

5 Were these the kinds of reports that your
6 office tended to get with regard to submarine sightings?

7 A That's right.

8 Q And I note for the record this covers the period,
9 according to this document, February 20, 1942 to February 28,
10 1942 -- February 26, 1942.

11 On page 2, directing your attention to
12 Arabic 6, Enemy Knowledge of Our Situation. Do you see
13 that?

14 A I do.

15 Q Do you see under (a) it says: "Of our military
16 installations: Probably a fairly complete knowledge of our
17 permanent military installations and profitable objectives
18 not only from agents but also from press and magazine
19 articles and photographs published prior to December 7th,
20 1941."

21 But then in (b), I direct your attention
22 to, it says: "Of our detailed military and naval
23 dispositions and movements on the West Coast frontier,
24 undetermined."

25 Likewise, in (c), "Of our reserves, men,

1 material and production capacities, undetermined."

2 Could you give us your opinion at this
3 time whether that indicates that past December 7th, 1941,
4 the -- this was prepared by the Fourth Air Force but the
5 report came to the Western Defense Command -- so could you
6 tell us your opinion at that time whether there was a
7 belief that the enemy did indeed have knowledge of --
8 detailed knowledge of our military and naval dispositions,
9 or our reserves, men, material and production which would
10 have been gained subsequent to December 7th, 1941?

11 MR. HALL: I'm going to object for the
12 reason that counsel just stated that this material went to
13 the Western Defense Command. I don't think there is any
14 proof of that.

15 THE COURT: I'm going to sustain the
16 objection. I just really don't see the relevance of it.
17 The issue of military necessity is not before me. It is
18 really as to whether anything was concealed or suppressed
19 by the Government, and I don't see how the answer to that
20 question could help me. I'm going to sustain the objection.

21 MR. EDWARDS: Okay. The only reason I was
22 trying to go into that was to show what kind of information
23 was filtering up to General DeWitt.

24 Q (by Mr. Edwards) I have one last question with regard
25 to that same document you have in front of you, Mr. Hammond.

1 On the very last page of that document, which is typewritten
2 at the bottom 3, there is the small letter (b) and this is
3 the last part of the text.

4 "Numerous flares, signal lights and
5 unidentified naval surface craft have been reported but not
6 included in this report because of: (1) The unreliability
7 of source, or (2) improbability of information, or (3)
8 negative investigation reports have included reasonable or
9 probable natural causes for reported phenomena."

10 Now, what I want to know is based upon
11 this kind of information, isn't it true -- strike that.

12 Was it true that the kind of information
13 that was included in these reports and passed on to General
14 DeWitt was not necessarily every instance but only those
15 that achieved a certain degree of reliability?

16 A That's right. We're talking about a difference between
17 information and intelligence.

18 MR. HALL: Just for the purpose of making
19 clear, I think that the question is entirely leading.

20 THE COURT: It is leading. Do you want to
21 reframe the question?

22 MR. EDWARDS: Yes, sir, I will.

23 Q (by Mr. Edwards) Does this show, in your opinion,
24 whether there was some degree of analysis and screening of
25 reports before they were considered trustworthy enough to

1 be passed on?

2 A It does. This report indicates the usual procedure
3 followed by G-2 sections in receiving reports. As I've
4 stated before, many reports developed to be erroneous or
5 without confirmation, but as also stated in this report,
6 there are confirmations of some.

7 Q I direct your attention again to tab 51 of Petitioner's
8 notebook, Exhibit 64, and to what would be the third page,
9 the bottom paragraph (f), Enemy's Probably Knowledge of Our
10 Situation. You were asked about this during cross-examination.

11 A Right.

12 Q Do you see that in front of you?

13 A I do.

14 Q Do you see the part that was read to you earlier that
15 said: "The enemy's probable knowledge of our situation has
16 not been gained by observation or reconnaissance but by
17 information learned during peace by the activities of
18 accredited diplomatic, military and naval attaches and their
19 agents."

20 Do you recall what knowledge there was
21 as to who the enemy's agents were?

22 A I don't recall any specifics in that category. Things
23 of that nature were handled by the G-2 himself who had
24 capabilities of a broader nature and by counterintelligence.

25 Q With regard to the reports of the sub signallings, based

1 upon your experience in the military intelligence, can you
2 tell us what the belief was as to who those subs were
3 signalling to?

4 A They were obviously signalling to, friendly to them,
5 recipients ashore.

6 Q Now, on cross-examination you were asked whether this
7 wasn't just an assumption that some of those friendlies
8 would have been Japanese-Americans. What I would ask is
9 as an officer in military intelligence, did you have to act
10 sometimes based on rational assumptions?

11 A Well, yes, we did.

12 Q And were your assumptions in the military intelligence
13 field based upon the expertise you and the other officers
14 in that field had developed?

15 MR. HALL: Leading.

16 THE COURT: I'm going to permit it. Go
17 ahead.

18 MR. EDWARDS: I'm sorry. What was your
19 ruling?

20 THE COURT: I'll permit it.

21 Q (by Mr. Edwards) What was the witness's answer?

22 A That's right.

23 Q And finally, you were asked whether you recalled that
24 during your deposition you said that you were not able to
25 form an opinion as to Colonel Westerling's capabilities in

1 the field of counterintelligence.

2 Do you recall whetehr during your deposition
3 I asked you whether you were capable -- whether there was
4 any information that you observed or that you knew that led
5 you to conclude that Colonel Weckerling was any less capable
6 in the field of counterintelligence than he had demonstrated
7 to you in the field of combat intelligence.

8 MR. HALL: I don't believe that's proper
9 use of the deposition.

10 THE COURT: I think that's right. I'll
11 sustain that. Improper use of the deposition.

12 Q (by Mr. Edwards) In that case, aside from the deposition,
13 was there any knowledge that you had that led you to conclude
14 that Colonel Weckerling had any less abilities in the field
15 of counterintelligence than in combat intelligence?

16 A Absolutely not. Quite the contrary, as I indicated
17 earlier, based on his previous experience.

18 Q And with regard to Colonel Stroh, was there any infor-
19 mation that would lead you to conclude he had any less
20 capabilities?

21 A No.

22 MR. EDWARDS: Thank you, Your Honor.
23 That's all.

24 THE COURT: Any recross?

25 MR. HALL: No questions.

1 THE COURT: All right. You may step down.
2 Thank you.

3 THE WITNESS: Thank you, sir.
4 (Witness excused.)

5 MR. STONE: At this time we are going to
6 get our next witness who is an expert witness, Your Honor.

7 THE COURT: Step right up here and be
8 sworn.

9
10 DAVID D. LOWMAN, called as a witness on behalf of
11 the Respondent, being duly sworn,
testified as follows:

12 THE COURT: Would you want to take any of
13 those things with you to the witness stand, those books?

14 MR. STONE: Why don't you? If you want
15 to take them, that's fine. You can put them on the floor
16 in case you need them.

17
18 DIRECT EXAMINATION

19 BY MR. STONE:

20 Q Would you please give your name and spell it for the
21 court reporter, please?

22 A My name is David D. Lowman, L-o-w-m-a-n.

23 Q Your age, please?

24 A I'm sixty-three.

25 Q When and where did you graduate college?

1 A I graduated from the Stanford University in 1949, and
2 I graduated from George Washington University in 1953, J.D.
3 degree, the last place, and from Stanford a B.A. degree.

4 Q Can you tell me what your major field of study was at
5 Stanford?

6 A I took a degree in Pacific-Asiatic Studies.

7 Q What does that mean?

8 A That was a study of the culture and the history and
9 the background, political situation, geographical features
10 of the countries of the Far East, including the Soviet Union,
11 Siberia.

12 Q Did you study any languages in connection with that?

13 A Yes, I studied the Russian language extensively while I
14 was in college.

15 Q And have you subsequently studied other languages?

16 A I lived for several years in Japan and while I was in
17 Japan I studied the Japanese language, but I certainly
18 wouldn't consider myself very adept at Japanese.

19 Q What occupation have you had?

20 A After I graduated from Stanford University I went to
21 work for the National Security Agency and I worked there for
22 the next twenty-eight years.

23 Q Could you speak up just a little bit louder?

24 A Yes.

25 Q When did you start there and what was the agency called?

1 A I commenced work in 1949. At that time it was in the
2 predecessor which was known as the Armed Forces Security
3 Agency and it became NSA in 1952.

4 Q And you continued to work there until when?

5 A Until 1977 when I retired.

6 Q And did you subsequently work there after retirement?

7 A Yes. After I retired for about three years I returned
8 there as a consultant and worked on several different pro-
9 jects.

10 Q Generally, am I correct that at NSA you worked on com-
11 munications intelligence?

12 A That's correct.

13 Q Could you please define communications intelligence for
14 us?

15 A Communications intelligence breaks down into two basic
16 fields. The first field is what we call traffic analysis
17 which is the study of the externals of the message. You
18 don't have to read the message. You look at who it's from,
19 who it's to, volume, priorities, and hopefully from this
20 you can construct a communication network.

21 From this communication network you can
22 derive order of battle, chain of command, movement of troops,
23 traffic analysis. It usually applies to military type com-
24 munications.

25 A valuable adjunct to traffic analysis is

1 radio direction finding. This is when a transmitter comes
2 up, you tune several receivers located at different locations
3 towards this transmitter, draw a line between the receiver
4 and transmitter, and if you have enough lines crossing a
5 particular point, you have a good operator, good equipment,
6 and you have a good analytic basis, you can determine the
7 location of that transmitter. If your analysis is good
8 and you know that that call sign equates to an aircraft
9 carrier and your lines cross and you have the right technical
10 base, you've got yourself a carrier location.

11 The other field of communications
12 intelligence is cryptanalysis, and this of course is reading
13 the messages themselves. The information, if it's a secret
14 type of information, is encoded on enciphered, and through
15 cryptanalytic techniques, you break into that system, if
16 you're lucky and you're good, and you can read those messages.

17 There is actually a third application.
18 Since you are dealing always with foreign type communications,
19 there are usually linguistic applications as well.

20 Q Did your work at the National Security Agency, which
21 for the record let me say I think sometimes we'll probably
22 just call NSA, did your work entail knowledge and responsi-
23 bility for all of these types of communications intelligence
24 over that 28-year period?

25 A Yes. I worked in all three of those major fields.

1 Q And you worked both at various times as a line employee
2 as a supervisor in various different branches of NSA?
3 A That's correct.
4 Q Prior to your retirement from NSA, did you at any point
5 advise -- act as an advisor to the director of the NSA?
6 A During the congressional investigation of the intelligence
7 community in 1975 and '76, I served as a special assistant
8 to the Director of the National Security Agency in dealing
9 with congressional matters concerning the investigation of
10 the intelligence community.
11 Q Have you ever received any special awards from NSA?
12 A I was awarded the highest medal that the agency gives
13 which is called the Exceptional Civilian Meritorious Service
14 Award.
15 Q Can you tell me who William Friedman was, please?
16 A William Friedman worked in the Army and he was the lead
17 cryptanalyst for the Army for many years. He was generally
18 regarded today as the world's greatest cryptanalyst.
19 Q Did you take training courses of various kinds and types
20 at NSA?
21 A I did.
22 Q Were any of those courses devised by Mr. Friedman?
23 A Yes. A number of them were.
24 Q Did you ever meet him?
25 A Yes, I have.

1 Q Did you ever go to his home?

2 A I have.

3 Q After you returned to NSA as a consultant after you
4 formally retired, did you have occasion to work on projects
5 as a result of Executive Order 11065?

6 A Yes. 11065 was a Presidential Order which decreed the
7 declassification of World War II information, and I did work
8 on that on declassification of communications intelligence
9 from World War II. Included amongst that was what we call
10 "Magic."

11 Q What do you mean when you say "Magic?" Could you just
12 please define that?

13 A "Magic" was the cover name which the U.S. gave to the
14 intercept and exploitation of the worldwide communications
15 of the Japanese Foreign Ministry. This was transmitted in
16 some fourteen different crypt systems, the highest grade of
17 which the Japanese considered not breakable, and so they
18 entrusted their espionage messages to these communications.

19 So "Magic" was made up of two forms of
20 information messages. One was purely diplomatic messages
21 and the other was espionage messages.

22 Q Have you published articles on the Magic cables that
23 have nothing to do with the effect of Magic cables upon the
24 evacuation of the Japanese-Americans from the West Coast of
25 the United States?

1 A Yes, I have.

2 Q When did you get interested in the question of the
3 effect of the "Magic" intelligence on the decision to
4 evacuate Japanese-Americans?

5 A I first became interested in that when I first heard
6 about it and that was early in 1983. I had -- we had
7 retired out to Honolulu and was living there, and when the
8 Commission on Wartime Relocation and Internment of Civilians
9 report, Personal Justice Denied, was released to the public,
10 it received a good deal of publicity and I read some of the
11 conclusions in the newspapers that they had made and got a
12 copy of it and read it and was astounded to learn that this
13 report claimed that there was no intelligence whatsoever of
14 any importance available to President Roosevelt and his key
15 advisors of espionage committed by Japanese residents on the
16 West Coast.

17 Q At that time you were in retirement living in Hawaii?

18 A That's correct.

19 Q Have you since been asked to testify about these
20 "Magic" documents before Congress?

21 A I have.

22 Q When and where?

23 A In 1984, in June, I testified before the House Judiciary
24 Committee on the subject, and in August in Southern California
25 I testified before the Senate Committee on the same subject.

1 Q Have you refined and expanded your knowledge and infor-
2 mation about this particular part of the "Magic" information
3 since that time?

4 A That's correct. During the last year I've done addi-
5 tional research and uncovered additional information about
6 this issue.

7 Q Is it your opinion that the "Magic" cables were used as
8 a basis for military intelligence reports which were passed
9 along to the highest civilian officials and the President in
10 1942?

11 A There's no question about it. I have traced the
12 cables through these reports and they were military, the
13 Army Military Intelligence Division and the Navy, Office of
14 Naval Intelligence, and in the FBI.

15 Q Could the clerk please hand Exhibit A-81 -- I'm sorry.
16 Let's make it A-50 to the witness and A-40. I'm sorry. I
17 would like the witness to have A-81 as well.

18 THE CORUT: A-40, A-50 and A-81.

19 Q Directing your attention first to A-81, the subject of
20 that, just for the record, that's a February 12th, 1942
21 letter from Brigadier General Mark Clark.

22 A Yes, I have it.

23 Q Okay. To John J. McCloy. The subject of it is Enemy
24 Aliens on the West Coast. The second paragraph -- I would
25 just like to read the second paragraph. It says: "Some of

1 the information contained therein may be of assistance to
 2 you in settling this question," and at the bottom it shows
 3 an enclosure, Information Bulletin No. 6, G-2, GHQ January
 4 21, 1942.

5 Is the enclosure --

6 THE COURT: Do you know, I missed that.
 7 I'm looking at A-81.

8 MR. STONE: A-81.

9 Q (by Mr. Stone) There's an enclosure down on the left
 10 bottom. It says "Enclosure."

11 THE COURT: Yes, I do have that.

12 Q That enclosure is described in the text of the document.
 13 Your Honor, would you like me to read the document without
 14 the enclosure or need I not read it? I was just going to
 15 ask if the enclosure is in fact Document A-50, but if you
 16 like, I will read the description.

17 THE COURT: You can ask him the question
 18 because I would be interested in knowing what the enclosure
 19 was, yes. So can you identify it for me?

20 MR. STONE: Yes.

21 Q (by Mr. Stone) The enclosure is listed on the bottom
 22 left of A-81. Is that enclosure A-50, Mr. Lowman?

23 A Yes, it is A-50.

24 Q Can you --

25 MR. HALL: Just a minute, please. I don't

1 know how the witness can say it's A-50. I mean the documents
2 speak for themselves. It says Information Bulletin No. 6.

3 MR. STONE: Okay.

4 Q (by Mr. Stone) Mr. Lowman, --

5 MR. HALL: May I finish my objection, Your
6 Honor?

7 MR. STONE: I'm sorry.

8 MR. HALL: If the witness is testifying
9 from personal knowledge that this is the enclosure, fine.
10 If he's testifying from these records or something, then we
11 ought to know --

12 MR. STONE: I'll lay the foundation, Your
13 Honor.

14 THE COURT: Let me say this. A-50 does
15 seem to be this document, being Information Bulletin No. 6,
16 G-2, GHQ, January 21, 1942, so I think that's all right.

17 MR. STONE: I'll ask another question any-
18 way.

19 Q (by Mr. Stone) Mr. Lowman, you in fact went to the
20 McCloy files where A-81 and A-50 are located, didn't you?

21 A That's correct.

22 Q And so you personally saw that both of these documents
23 are in those McCloy files in the National Archives; isn't
24 that right.

25 A That is correct.

1 Q Okay. Turning now your attention to Document A-50 --

2 MR. HALL: Just a minute, Your Honor. If
3 I may, if that line of questioning was trying to elicit from
4 the witness the fact that Exhibit A-50 was the attachment to
5 A-81, I don't believe it did. We're not arguing whether it
6 was in the McCloy files. That is all the testimony was.

7 MR. STONE: Your Honor, --

8 THE COURT: I'm satisfied that the enclosure
9 with A-81 is A-50 from the way it's described there. Now,
10 you go ahead.

11 Q (by Mr. Stone) Turning your attention now to A-50, Mr.
12 Lowman, is there a part of A-50 - it's a three-page document
13 - is there a part of that which you believe is directly
14 traceable to information from the Magic document? May I
15 direct you?

16 A Yes. Let me say Mr. McCloy was the Assistant Secretary
17 of War under Henry Simpson. We're struggling with the
18 question --

19 THE COURT: Let's answer that question, if
20 you will. That is, is there a part of A-50 which you believe
21 stems from "Magic"?

22 A The conclusions in Paragraph 6, particularly --

23 Q What page is that on?

24 A That's on page 3, paragraph 6, under Conclusions, Sub-
25 paragraph (b).

1 Q Would you read that, please?

2 A It says: "Their espionage net" - referring here to the
3 Japanese government - "containing Japanese aliens, first
4 and second generation Japanese and other Nationals, is now
5 thoroughly organized and working underground."

6 Q Okay. What I would like to do next is have the witness
7 look at A-40. Are you familiar with this document, Mr.
8 Lowman?

9 A Yes, I am.

10 Q Would you describe it, please?

11 A This is an Office of Naval Intelligence wrap-up of
12 intelligence during the year 1941. This was published
13 December 4th, three days before Pearl Harbor, and in this
14 document, a 26-page document, they list the various
15 espionage kinds of activities which the Japanese in this
16 country were engaged in. In this document, the first twelve
17 pages of this document, some twenty-five "Magic" messages
18 are used in which they are either quoted directly or para-
19 phrased or referred to.

20 Q Okay. What I would propose to do now, Your Honor, is
21 ask the witness to take -- to be given Exhibits A-12 through
22 A-40(b).

23 MR. HALL: Your Honor, I'm going to object
24 to the use of "Magic" because I think it goes to military
25 necessity and not to the governmental misconduct of

1 preventing the Supreme Court from having information or
2 depriving Mr. Hirabayashi and his counsel from information
3 which was material to the defense of their case. That's
4 all this testimony goes to is military necessity, which is
5 not an issue in the case.

6 MR. STONE: Your Honor, if they would like
7 to stipulate to the accuracy of G-2 Robinet's views that
8 there were in fact espionage nets, including first and
9 second generation Japanese, operating at that time, when Mr.
10 McCloy asked on February 12th and got the receipt on
11 February 13th, if they would want to stipulate to the
12 accuracy of that, then I don't need this testimony, but I
13 thought they wanted to see some foundation for it.

14 THE COURT: Well, it seems to bear upon
15 the issue of military necessity. I'm going to let you go
16 ahead and proceed and then determine its relevance later.

17 MR. STONE: Thank you, Your Honor.

18 Q (by Mr. Stone) So I'm going to hand the witness A-12
19 through A-40(b).

20 If you will allow me now, Your Honor,
21 instead of engaging in a tremendous number of Q's and A's,
22 I would like to ask the witness, since he is an expert
23 witness, to please explain with the use of those exhibits
24 how he reached that last conclusion he gave, which was that
25 many "Magic" messages made their way into that December 4th,

1 1941 report.

2 MR. HALL: Your Honor, I object to this
3 form of inquiry. The witness in the anteroom earlier, prior
4 to his testimony, I am told was telling several people that
5 all of his testimony was going to be was a series of narra-
6 tives by him with Mr. Stone asking several key questions.

7 I think it's inappropriate to let the
8 witness ramble free with regard to what he may wish to say,
9 and I think counsel should ask questions and answers and if
10 there is a narrative within the framework of a narrow ques-
11 tion, that's proper, but not an exposition or impromptu
12 speech by the witness.

13 THE COURT: Well, let's do this first.
14 We've got Exhibits A-50 and A-40. A-50 was referred to
15 first. You tell me, Mr. Stone, what is, in your opinion,
16 the relevance of A-50? What portion of that is relevant?

17 MR. STONE: We've already identified, Your
18 Honor, that on Exhibit A-50 at page 3, paragraph 6(b), that
19 paragraph 6(b) is a sentence which he believes was derovoed
20 directly from the "Magic" documents.

21 He has then identified --

22 THE COURT: All right. Why don't we take
23 these up one at a time. Let's say, using A-50, --

24 MR. STONE: Okay.

25 THE COURT: -- having him refer to the

1 "Magic" document that sustained that agreement.

2 MR. STONE: Okay. What I'd like to do,
3 Your Honor, I think it's similar to what you allowed Dr.
4 Irons to do and similar to what you allowed Mr. Hirabayashi
5 to do. I'd like to ask him with respect to that sentence
6 that talks about first and second generation Japanese and
7 other Nationals, I'd like to be allowed to ask him to dis-
8 cuss how that comes out of the "Magic" documents, if I may.

9 THE COURT: Yes. That's what I was con-
10 templating.

11 Mr. Hall?

12 MR. HALL: I want to make sure, if I may,
13 that this witness is not testifying with regard to the truth
14 of what is asserted in here. He's just testifying that he
15 has seen some documents that we've tracked from point A, to
16 point B to point C and winds up as an exhibit. He is not
17 qualified to testify with regard to analysis or truth
18 because he has no testamentary knowledge at all.

19 THE COURT: That's right. My understanding
20 is that he's testifying that certain decipherments, which
21 of course were highly secret, got into these reports without
22 any reference to their having come from "Magic" or having
23 come from the fact that they were deciphered of Japanese
24 messages.

25 MR. STONE: Right.

1 So I'll permit the question to be asked.

2 MR. HALL: Just for the record, because
3 I didn't mention it a minute ago, we're not waiving our
4 objection to the use of "Magic" in general.

5 THE COURT: That's right.

6 Q (by Mr. Stone) Mr. Lowman, from that group of documents
7 in front of you, will you show us how you came to the con-
8 clusion that the statement on the third page of Lieutenant
9 Colonel G-2 Robinet's statement is made that first and second
10 generation Japanese and other Nationals are now thoroughly
11 organized and working underground. Can you please trace for
12 us how you think that derives from the "Magic" cables?

13 A Yes. That statement does stem from and is rooted in
14 "Magic" intelligence, but it wasn't just happenstance that
15 in this particular time --

16 THE COURT: Can you point out the specific
17 "Magic" messages which support this statement?

18 THE WITNESS: What I would like to do is --

19 THE COURT: I'm going to tell you how we're
20 going to do it.

21 THE WITNESS: Yes, sir. I can do that.

22 THE COURT: All right.

23 THE WITNESS: May I do it in a narrative
24 form?

25 THE COURT: Yes, provided you point out

1 to me, because counsel has objected to the narrative form
2 and he wants questions and answers, so let me state to you
3 that I'd like to have you point out for me the "Magic"
4 messages which support this statement, the one on page 3,
5 paragraph 6, subparagraph b.

6 Q (by Mr. Stone) Why don't you start with Document A-17
7 and then after you've discussed A-17, you can discuss docu-
8 ment A-22.

9 MR. HALL: I'm going to object to leading
10 questions.

11 THE COURT: I think that's right. I think
12 the witness himself should do it.

13 MR. STONE: Okay.

14 A I would like to point out, I think that all of the
15 "Magic" messages here contributed to some degree to the
16 mosaic which makes up the conclusion which I gave earlier,
17 but speaking to specific messages, starting in -- these
18 systems -- Judge, may I explain that these systems were
19 readable and how we derived the information from them?

20 MR. HALL: I would object. It's not a
21 question.

22 THE COURT: I think I know how they were
23 translated from other readings.

24 THE WITNESS: Okay.

25 MR. STONE: Your Honor, in light of the

1 latitude you've given some of the Petitioner's witnesses,
2 could we allow Mr. Lowman to make about a two-minute intro-
3 duction before he gets to the specifics, just for framework
4 purposes?

5 THE COURT: He has told us -- I guess you
6 didn't say this, but isn't it true that William Friedman
7 really broke the Japanese diplomatic code?

8 THE WITNESS: He broke the purple system.
9 Yes, sir.

10 Q (by Mr. Stone) What year did he do that in, Mr. Lowman?

11 A He did that in the early fall of 1940 when these purple
12 communications became readable and thereby the whole complex
13 of diplomatic messages were readable by the U.S.

14 Q What earlier codes were broken by Mr. Friedman, and in
15 what years?

16 A Well, he had been instrumental in working in Army codes
17 for a good while prior to breaking the purple.

18 Q How many years before had the Army been reading Japanese
19 codes?

20 A The Army commenced reading Japanese diplomatic codes in
21 1921, and we exploited Japanese communications for the next
22 twenty years leading up to the statement here of Robinet's,
23 and it was the sum total of that accumulated experience,
24 expertise, which led us to the posture we enjoyed at the
25 start of 1941, which is the political turning point in

1 Japanese-U.S. relations.

2 THE COURT: Now let's go to A-50, and you
3 tell me the "Magic" messages which support this.

4 THE WITNESS: At the beginning of 1941,
5 the foreign ministry began transmitting messages to their
6 diplomatic posts in the United States, instructing them to
7 set up an intelligence network for the whole Western
8 Hemisphere: Canada, the United States, Central America and
9 South America. This was to be a vast espionage net which
10 was to be designed to function in a wartime environment.

11 These are all in messages, the information
12 I'm telling you, is all coming from messages. They appointed
13 Second Secretary Terazaki to be head of all Japanese
14 espionage in the Western Hemisphere. They were to appoint
15 curriers to run between the various consular offices and
16 embassy offices. They were to construct espionage nets in
17 Mexico, Central America and South America which would be
18 fallback positions in the event of war with the United
19 States.

20 THE COURT: Let's go back to the question
21 that I asked about before. That is, with reference to the
22 statement in A-50, the statement is "Their espionage net
23 containing Japanese aliens, first and second generation
24 Japanese and other Nationals, is now thoroughly organized
25 and working underground." That was dated January 21, 1942.

1 What "Magic" messages support that statement?

2 THE WITNESS: Sir, I assume that the
3 instructions from the foreign ministry to set up nets is a
4 prelude to recruiting agents.

5 THE COURT: That doesn't prove a thing to
6 me in support of this. I'm not challenging you. I'm simply
7 saying that to do this, what I'd like to see if what you say
8 is true, that there are "Magic" messages which support the
9 truth of this statement, then point out to me those "Magic"
10 messages that their espionage net is now thoroughly
11 organized and working underground.

12 THE WITNESS: All right. In response to
13 these requirements to set up an espionage net, in April the
14 foreign ministry asked what the status was of the nets. He
15 had earlier instructed the diplomatic posts --

16 THE COURT: This is April --

17 THE WITNESS: -- to recruit Japanese.

18 THE COURT: This is April of what year?

19 THE WITNESS: This is April, 1941.

20 THE COURT: The foreign minister asked,
21 what is the status?

22 THE WITNESS: It was actually in January
23 that the diplomatic posts were instructed to recruit
24 resident Japanese, both first and second generation, for
25 their espionage nets.

1 THE COURT: Is there a "Magic" message
2 among the exhibits we can look at?

3 THE WITNESS: Yes. It is Exhibit 17.

4 MR. STONE: A-17.

5 THE WITNESS: A-17.

6 Q (by Mr. Stone) Do you want to read the relevant part
7 of that, please? Would you read paragraph 1 of A-17 and
8 then skip to paragraph 7 -- 6?

9 MR. HALL: I'm going to object to this.
10 This man is testifying as a witness. Counsel just asked him
11 to read the relevant part and now he's directing him to
12 specific paragraphs, which is leading the witness.

13 THE COURT: I think that's right. Let's
14 have him read what he thinks is relevant.

15 THE WITNESS: I believe, sir, the whole
16 message is relevant.

17 Q (by Mr. Stone) Go ahead and testify, please.

18 A It begins -- it is from the foreign ministry under
19 minister's orders, and it says:

20 (1) Establish an intelligence organ in
21 the embassy which will maintain liaison with private and semi-
22 private intelligence organs. See my message back to Washington
23 earlier. Earlier messages build up to this. He goes on to
24 say the focal point of our investigation shall be the
25 determination of the total strength of the United States.

1 Our investigation shall be divided into three general classi-
2 fications, political, economic and military, and a definite
3 course of action shall be mapped out.

4 Make a survey of all persons or organiza-
5 tions which either openly or secretly oppose participation
6 in the war.

7 Make investigations of all anti-Semitism,
8 Communism, movements of Negroes, and labor movements.

9 Utilize U.S. citizens of foreign extraction,
10 other than Japanese, aliens other than Japanese, Communists,
11 Negroes, labor union members and anti-Semites in carrying out
12 the investigations described in the preceding paragraph would
13 undoubtedly bear the best results.

14 These men, moreover, should have access to
15 governmental establishments, laboratories, governmental
16 organizations of various characters, factories, and trans-
17 portation facilities.

18 Paragraph 6. Utilization of our second
19 generations and our resident nationals. In view of the fact
20 that if there is any slip in this phase, our people in the
21 U.S. will be subjected to considerable persecution, the
22 utmost caution must be exercised.

23 The message goes on to say that the fall-
24 back positions for the nets, once constructed, will be
25 Mexico and they are to cooperate with the Italian and German

1 espionage arrangement in the United States.

2 Q (by Mr. Stone) Mr. Lowman, can you describe to us how
3 that document was distributed throughout the intelligence
4 agencies?

5 A Yes. It was not distributed in the present form that
6 I have it here, because what I have here shows it comes from
7 Japanese communications. That kind of information went to a
8 relatively few people, top level in the Government of the
9 United States.

10 It was sanitized, however, and sent out to
11 all kinds of other people. By "sanitized" I mean that the
12 source of the information was removed. It was put down as
13 highly reliable, highly confidential source, because it was
14 most important that we protect the fact the information that
15 we were reading the Japanese code. It was fragile intelli-
16 gence and could disappear almost overnight.

17 So the message was taken, shorn of the
18 "from" and "to" and other parts that would indicate it was
19 a message, and it was sent to various elements of the
20 intelligence organization, the Army, military intelligence
21 Division, it went to the counterintelligence people. Copies
22 were sent to the FBI, the Director of the Office of Naval
23 Intelligence notified the Director of the FBI of the
24 contents of this message. It also went to various Naval
25 Districts, the District intelligence officers. It received

1 distribution within, of course, the Military Intelligence
2 Division and the Office of Naval Intelligence.

3 Q Sir, turning your attention to 17-A through 17-H, and
4 A-40 and A-6 -- you will need A-40 and A-6 -- will you please
5 substantiate what you just said?

6 MR. HALL: Your Honor, I thought the
7 question was what specific "Magic" messages support the
8 statement in Exhibit 50. Now we're getting on to a whole
9 series of side offers. I would object to the relevance of
10 this inquiry and I would also object to the diversion.

11 THE COURT: I'm going to permit it. A-17
12 apparently is a "Magic" message, as I understand it, in which
13 they ask the -- I suppose the Ambassador in Washington or
14 his office to do certain things. Then the question was, how
15 was the information in A-17 distributed.

16 MR. STONE: Right. With specific references
17 to Exhibits A-17(a) through (h).

18 Q (by Mr. Stone) Will you please tell us what they are
19 and show us where it's distributed right down that whole list,
20 Mr. Lowman?

21 A A-17(a) is a War Department memo, Military Intelligence
22 Division, which was the G-2 for the Army. It's a memorandum
23 for the Chief of Counterintelligence Branch. Subject:
24 Reorganization, Japanese Intelligence Services in the United
25 States, and it points out that this branch has information

1 from a highly reliable source to the effect that the Japanese
2 Intelligence Service in the United States is being reorganized
3 and enlarged and is cooperating with German and Italian
4 services. It then goes on to quote, verbatim, the message
5 that I just read a moment ago, which was No. -- Exhibit No.
6 17.

7 This particular message not only went to
8 the Counterintelligence Branch of MID, but a copy went to the
9 Federal Bureau of Investigation.

10 Q On page 2, paragraph 6, could you read page 2, paragraph
11 6 of A-17(a) so the record shows what you mean by that?

12 A "Utilization of second generation Japanese to be made
13 with utmost caution as a slip in this phase would subject
14 Japanese in America to considerable persecution."

15 Q Could you now pick up 17-B and do the same thing?

16 A This is from the Office of Naval Intelligence, a memo
17 for J. Edgar Hoover. "The attached copy of the latest
18 information on the Japanese espionage organization in the
19 United States may be of interest to you." It is signed,
20 W. B. Phillips, Captain, U.S. Navy. It is actually a copy of
21 a memo which went to the Chief of Naval Operations, and says:

22 "Japanese Espionage Organizatons in the
23 United States:

24 It is recommended that the following be
25 brought to the attention of the President and the Secretary

1 of the Navy. This information has been compiled from highly
2 confidential and reliable sources by the Domestic Intelligence
3 Branch of the Office of Naval Intelligence from documentary
4 evidence in its possession.

5 And they go on to repeat most of Exhibit
6 17 along with some other information also from other cables.

7 Q On the second page of that attachment, what is now again
8 called paragraph 6 at the top, would you read this paragraph
9 6 at the top of that page?

10 A It says: "Nisei Japanese and Japanese resident
11 nationals are to be employed but if there is any 'slip' in
12 this phase, the Japanese Government thinks these nationals
13 in the United States will be subject to considerable perse-
14 cution; therefore, extreme caution should be used."

15 Q It says "exercised," doesn't it?

16 A "Exercised." I'm sorry, yes.

17 Q Do you recall, by the way, the date of translation of
18 A-17, the cable itself?

19 A It was some few days after it was intercepted. I
20 believe it was February 9th. I would have to check it.

21 Q You have some books there by you where you can look at
22 the cable itself. One of those may help you.

23 MR. HALL: It shows February 7th.

24 Q (by Mr. Stone) Okay. February 7th is the date of
25 translation.

1 A February 7th.

2 Q What is the date of this Navy Department memo and
3 attachment to J. Edgar Hoover?

4 A February 13th.

5 THE COURT: That is in '41, is it not?

6 THE WITNESS: '41, yes.

7 THE COURT: We are right at recess time.
8 We'll take a recess now until 1:30.

9 (Noon recess.)

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1 AFTERNOON SESSION

2 (1:30 p.m., June 25, 1985)

3
4 DAVID D. LOWMAN, resumed the witness stand and
5 testified further, as follows:6 MR. STONE: Your Honor, I believe that the
7 witness had just -- was holding in his hand A-17(b) at the
8 time we took the recess.

9 THE COURT: All right.

10
11 DIRECT EXAMINATION (resumed)

12 BY MR. STONE:

13 Q Mr. Lowman, is there anything you want to continue on
14 with on A-17(b)?15 A No. We've finished 17(b). I would like to move right
16 on now to 17(c). This is from the War Department, Military
17 Intelligence Division, Summary of Information. Distribution
18 on it was to the First through Ninth Court areas, Puerto
19 Rico, Canal Zone, Philippine Islands, Territory of Hawaii.
20 This evaluation of information is reliable, the highest one
21 they had, for both source and information.22 Your Honor, if you would look at paragraph
23 6 of this document, it is the same as paragraph 6 in the
24 cable utilization --

25 Q Your mike is off.

1 A The mike is off? I'm sorry.

2 Paragraph 6 of the cable is the same as
3 paragraph 6 of the document which I just cited. Utilization
4 to be made of citizens -- I'm reading from the document now
5 -- Utilization to be made of citizens of foreign extraction
6 other than Japanese, aliens other than Japanese, Communists,
7 Negroes, labor union members, anti-Semites, in carrying out
8 investigations to get best results.

9 "Utilization of second generation Japanese
10 to be made with the utmost caution as a slip in this phase
11 would subject Japanese in America to considerable persecution."

12 In this document the paragraphs correspond
13 to those of the Exhibit 17, the Japanese message.

14 Moving on to the next document, 17(d),
15 this is an internal FBI document signed by J. Edgar Hoover,
16 and sent to all of his primary supervisors. It quotes other
17 parts of Exhibit 17. You look at the bottom of page 1 of
18 the summary document, it corresponds to paragraph 2 of the
19 message, and in the document it says, "Available information
20 indicates that the main objective of all Japanese espionage
21 is to be the determination of the total strength of the
22 United States. Investigations allegedly will be divided
23 into political, economic, and military classifications, and
24 a definite course of action is being mapped out."

25 Q Mr. Lowman, would you just read the part of A-17 that

1 relates to, please?

2 A That particular document referred to other parts of
3 A-17; not paragraph 6.

4 Q Would you read the part of A-17 that tracks that, please?

5 A I just read part of it. I'm about to read another part
6 of it.

7 Q Okay.

8 A Paragraph 7 of Exhibit 17, the middle of the paragraph
9 on page 2, reads: "In further anticipation of such an
10 eventuality (that is, war) Mexican International intelligence
11 routes will be established. It is stated that the Japanese
12 intelligence net covering Argentina, Brazil, Chile, Peru,
13 will be centered in Mexico. Japanese representatives
14 allegedly have been instructed to cooperate with German and
15 Italian organizations, which move has been approved by Tokyo
16 by representatives of the Axis Alliance."

17 The next document is 17 --

18 Q Before we move on, Mr. Lowman, would you please pick up
19 A-17 now and show the judge or read us the same paragraph
20 that you just read?

21 A Paragraph 7 in the message --

22 THE COURT: A-17 speaks for itself. It's
23 in evidence.

24 MR. STONE: Okay. Can you see, Judge,
25 that paragraphs 2 and paragraph 7 of A-17 are identical to

1 the two that he just read. I just want to be sure it's clear.

2 THE COURT: Yes.

3 A (continuing) The next document is A-17(e). This is
4 from an FBI field office in Boston sending back to J. Edgar
5 Hoover the contents of Exhibit 17. He says that he obtained
6 this from a highly reliable source. Actually he had gotten
7 it from the Army Intelligence organization in that area, and
8 to make certain that the FBI was aware of it, this field
9 office sent it back to J. Edgar Hoover.

10 THE COURT: This speaks for itself. He
11 essentially copies the same memo.

12 THE WITNESS: The same memo exactly.
13 Utilization in paragraph 5 in the document is the same as
14 the message. Utilization to be made of citizens of foreign
15 extraction other than Japanese, aliens other than Japanese,
16 Communists, Negroes, labor union members and anti-Semites."

17 THE COURT: It speaks for itself.

18 MR. STONE: Paragraph 6 on the second page,
19 that speaks for itself, too, Judge?

20 THE COURT: It certainly does.

21 MR. STONE: Okay. Just so that we know
22 it's paragraph 6 of the cable.

23 A (continuing) The next document, A-17(f), is a summary
24 by the Federal Bureau of Investigation concerning Japanese
25 espionage activity in the United States.

1 Q (by Mr. Stone) What is the date of the document, Mr.
2 Lowman?

3 A The date of that document is September 26th, 1941.

4 THE COURT: And is there any reference at
5 all in it to "Magic"?

6 THE WITNESS: Yes, sir. There are a
7 number of them relating back to Exhibit 17. May I read them?

8 THE COURT: Why don't you refer me to the
9 paragraph, just to save time?

10 THE WITNESS: On the first page, paragraph
11 2, of A-17 is quoted, paragraph 2 being "The focal point of
12 our investigation shall be the determination of the total
13 strength of the U.S."

14 THE COURT: I'm afraid I don't follow you.
15 I am looking at A-17(f). Is that correct?

16 THE WITNESS: Yes, sir.

17 THE COURT: And you're referring me to
18 page --

19 THE WITNESS: The first page of that docu-
20 ment.

21 THE COURT: Of the attachment? "Japanese
22 Espionage"?

23 THE WITNESS: Where the paragraph starts,
24 "In addition to the Japanese Consulate . . ."

25 THE COURT: Yes.

1 THE WITNESS: The last part of that para-
2 graph reads, "They show that the focal point of Japanese
3 interests apparently is the determination of the total
4 strength of the United States. Their inquiries towards this
5 end have disclosed particular interest in information of a
6 political, economic and military character."

7 If you look at paragraph 2, you see it
8 says "The focal point --"

9 THE COURT: Of A-17?

10 THE WITNESS: Of A-17. Correct. It reads,
11 "The focal point of our investigation shall be the determina-
12 tion of the total strength of the U.S. Our investigation
13 shall be divided into three general classifications;
14 political, economic and military, and a definite course of
15 action shall be mapped out."

16 Moving on in the same document to the
17 next page, one, two, three, four paragraphs down where it
18 starts, "The services of second generation Japanese, known
19 as Nesei Japanes, and Japanese resident nationals are to be
20 enlisted in this field, but utilization of such persons is
21 to be handled most cautiously because of the belief that any
22 such individual who might be caught would be subject to
23 considerable persecution."

24 That is the same as paragraph 6 of Exhibit
25 17, "Utilization of our second generation and our resident

1 nationals . . . if there is any slip in this phase would be
2 subjected to considerable persecution."

3 Moving on to the next paragraph, the same
4 page, that is approximately the same as paragraph 7 in the
5 message, which reads: "In the event of U.S. participation
6 in war, our intelligence setup will be moved to Mexico
7 making that country the nerve center of our intelligence net.
8 Therefore, will you bear this in mind and in anticipation of
9 such an eventuality, set up facilities for a U.S.-Mexico
10 international intelligence route. The net which will cover
11 Brazil, Argentina, Chile and Peru will also be centered in
12 Mexico."

13 This is all in this FBI wrapup of the
14 current Japanese espionage situation.

15 Moving on to the next document, which is
16 A-17(g) --

17 THE COURT: Is Kimball with the FBI?

18 THE WITNESS: Kimball of the FBI. It is
19 an FBI document dated October 31st, 1941.

20 We now move clear to October and again the
21 FBI summary is quoting the Exhibit 17. On page -- the first
22 page of the document, the attachment, the bottom of paragraph
23 one, two, three, four, the bottom of paragraph 4 reads,
24 again about Japanese espionage efforts. "Their inquiries
25 towards this end have disclosed particular interest in

1 information of a political, economic and military character."
2 Again, that relates back to the second paragraph of Exhibit
3 17 where they say, "The focal point of our investigation
4 shall be the determination of the total strength of the U.S.
5 Our investigations shall be divided into three general
6 classifications: political, economic and military."

7 Moving on to the next page the document,
8 the second paragraph where it reads, "It has been reported
9 that," that is a reflection of paragraph 3 and 5 in Exhibit
10 A-17. It reads: "It has been reported that the Japanese
11 will make a survey of all persons and organizations which
12 openly or secretly oppose the United States' participation
13 in the present war, possibly for the intention of approaching
14 such parties for information of an intelligence nature.
15 Further, it has been averred that the Japanese contemplate
16 using citizens of foreign extraction, Communists, Negroes,
17 labor union members, anti-Semites and men having access to
18 Government Departments, experimental laboratories, factories,
19 transportation facilities and Governmental organizations of
20 various characters."

21 That corresponds to paragraphs 3 and 5 in
22 Exhibit A-17.

23 Moving on, the same page, the FBI summary
24 document reads: "The services of second generation Japanese
25 known as Nisei Japanese and Japanese resident nationals are

1 to be enlisted in this field, but utilization of such
2 persons is to be handled most cautiously because of the
3 belief that any such individual who might be caught would be
4 subject to considerable persecution." That being paragraph
5 6 of Exhibit 17.

6 The next paragraph in 17(g) which corres-
7 ponds to paragraph 7 in Exhibit 17, reads: "The possibility
8 of war between Japan and the United States has been given
9 consideration and it has been decided that in such an
10 eventuality the Japanese intelligence network would be moved
11 to Mexico, which would make that country the nerve center
12 of their intelligence unit in the Western Hemisphere. Closer
13 cooperation between Germany and Italy, through Tokyo, is
14 also being given consideration."

15 Moving on to the next exhibit, this is an
16 Office of Naval Intelligence wrapup. The report itself is
17 dated December 24th, 1941. We are now several weeks past
18 the attack on Pearl Harbor.

19 Q (by Mr. Stone) Mr. Lowman, before you discuss that
20 December 24th ONI memo, why don't you just, since we stay
21 chronological, discuss the December 4th ONI memo which is
22 Exhibit 40, and then we'll get to this one. Exhibit 40
23 chronologically precedes this one.

24 THE COURT: That is, I believe, A-40; isn't
25 that correct?

1 MR. STONE: Yes, A-40.
2 THE WITNESS: Yes.
3 THE COURT: Do you have it before you?
4 THE WITNESS: Yes, I do, sir.
5 THE COURT: Apparently he has it and I have
6 a copy.
7 THE WITNESS: It is an ONI, Office of Naval
8 Intelligence, wrapup for the year 1941. It is dated December
9 4th, 1941. It is titled Japanese Intelligence and Propaganda
10 in the United States During 1941.
11 THE COURT: Would that be an internal
12 memorandum?
13 THE WITNESS: No, sir. If you'll look at
14 the last page, you'll see the distribution on this.
15 THE COURT: I see.
16 THE WITNESS: It is to all Naval Districts,
17 to the FBI, Military Intelligence Division, State Department.
18 On page 2 --
19 THE COURT: We're still looking at A-40?
20 THE WITNESS: Yes, still looking at
21 Exhibit A-40. On page 2 of A-40, the paragraphs aren't
22 numbered but if you count down one, two, three, four --
23 THE COURT: Let me ask you to do this,
24 because I think this would tell me what you want to tell me.
25 That is, refer to the page and then tell me the paragraphs

1 that you think relate back to A-17. So on page 2, is it the
2 first full paragraph?

3 THE WITNESS: No. The first paragraph
4 refers to this particular message is the first full paragraph,
5 you are correct.

6 THE COURT: That refers back to A-17?

7 THE WITNESS: That refers to A-17. "The
8 focal point of Japanese espionage . . ."

9 THE COURT: The next paragraph?

10 THE WITNESS: The next paragraph down is,
11 skip one and then start with, "The new program envisages."

12 THE COURT: Yes.

13 THE WITNESS: That paragraph relates back
14 to approximately the same wording as in Exhibit 17.

15 The next paragraph, "In the event of open
16 hostilities," that relates back to Exhibit 17.

17 On the next page, under "German-Japanese
18 Collaboration," the first paragraph relates back to Exhibit
19 17, talks about maintaining liaison with German and
20 Italian intelligence organizations.

21 Q (by Mr. Stone) Before we move to 17(h), are you done
22 with Exhibit A-40 yet?

23 A No. I want to make an additional comment on it. The
24 ones I have just discussed, the paragraphs and pages which
25 relate back to Exhibit A-17, were the ones that related

1 directly to A-17. In this particular message there are
2 references to 25 "Magic" messages. We've only discussed here
3 one.

4 Q Before you leave A-40, would you just tell us what A-40(a)
5 and A-40(b) are?

6 A These are from different files. A-40 is from the
7 Military Intelligence file.

8 THE COURT: A-40? Now, A-40, I thought,
9 was ONI. Is this A-40(a)?

10 THE WITNESS: The report was originated by
11 ONI, sir. What we're showing here, in addition to the distri-
12 bution on the document itself, is that this same document
13 came from different files.

14 THE COURT: Did you say A-40(a)?

15 THE WITNESS: A-40(a) came out of the FBI
16 file. A-40 came out of the Military Intelligence file.

17 THE COURT: A-40(b)?

18 THE WITNESS: A-40 -- just A-40. A-40 came
19 out of the Military Intelligence files where A-40(a) came out
20 of the FBI files.

21 Q (by Mr. Stone) And A-40(b)?

22 A A-40(b) is forwarding -- it is an ONI, Office of Naval
23 Intelligence, cover forwarding A-40 to all of the major
24 divisions of the Office of Naval Intelligence and telling
25 them that this is a model report and that each of them

1 concerning the French, German, Italian propaganda as concerns
2 the United States, wanting those organizations to make a
3 report similar to the one made here, A-40. This is a model
4 document.

5 Q Okay. Do you want to take us back now to A-17(h)?

6 A All right. If I may recapitulate for just a moment,
7 we're back now on A-17(h)?

8 THE COURT: That's right.

9 A And there is a cover on it here transmitting the report.
10 It is addressed to Mr. Hoover. It is signed by Captain
11 Waller who was the head of Domestic and Special Intelligence
12 in the Office of Naval Intelligence, one step below the
13 Director of Naval Intelligence. He is forwarding this
14 report which he calls Japanese Tokyo Club Syndicate with its
15 interlocking affiliations to J. Edgar Hoover.

16 The report ranges over many subjects but
17 does include a number of "Magic" messages. On page 3 with
18 just the three I's on the introduction, the following page
19 is called Japanese Intelligence Machine in Western Hemis-
20 phere. It's the third page as you start counting from
21 December 4th.

22 THE COURT: Triple I down at the bottom?

23 THE WITNESS: Yes, triple I at the bottom.

24 THE COURT: Yes.

25 A The next to the last paragraph is taken from paragraphs

1 2 and 3 of Exhibit 17 and talks about evidence of concrete
2 steps taken to put this new Intelligence Machine into
3 operation is available in numerous reports received during
4 the Spring of 1941. From these it appears that the focal
5 point of the Japanese espionage effort has been the deter-
6 mination of the total strength of the United States. In
7 anticipation of possible open conflict with this country,
8 Japan vigorously utilized every available agency to secure
9 military, naval, and commercial information, paying par-
10 ticular attention to the West Coast, the Panama Canal, and
11 the Territory of Hawaii. To this end, surveys were made of
12 persons and organizations opposing U.S. intervention in the
13 present European War, and close attention was paid to all
14 anti-Jewish, Communist, Negro and Labor movements.

15 That relates back to paragraphs 2 and 3
16 of Exhibit 17.

17 Turning to the next page, that would be
18 paragraph 4, the top of the page, referring back to para-
19 graphs again in exhibit 17, "The new program provided for
20 the utilization of citizens of foreign extraction, aliens,
21 Communists, Negroes, labor union members, anti-Semites,
22 and individuals having access to Government Departments,
23 experimental laboratories, factories, transportation
24 facilities, and governmental organizations of various kinds.
25 Nisei, second generation Japanese, and alien Japanese

1 residents were not overlooked. Realizing, however, that its
2 nationals in this country would be subject to prosecution in
3 the event of a slip, the Japanese Government advised extreme
4 caution in their employment."

5 THE COURT: And you say that goes back to
6 A-17?

7 THE WITNESS: Yes, it does, sir. Let me
8 read to you what A-17 --

9 THE COURT: No, I remember that.
10 And the next paragraph, paragraph 2?

11 THE WITNESS: Paragraph 2 also relates
12 back to --

13 THE COURT: To A-17.

14 THE WITNESS: -- to A-17.

15 THE COURT: All right. I think that's all
16 you need to tell me.

17 THE WITNESS: There are other areas in
18 this document.

19 Q (by Mr. Stone) I think that's the end.

20 A That's it for that particular message.

21 Q All right. Would you pick up A-6 now? It's not exactly
22 in chronological order with those documents, but the next
23 document we need to look at is A-6.

24 A Just one minute. Can you give me the subject of that?

25 Q That's the January 3rd, 1942 War Department MID wrapup

1 of the Japanese Tokyo Club members.

2 A I have it now. Thank you.

3 This is a War Department, Military
4 Intelligence Division, report dated January 3rd, 1942, almost
5 one month after Pearl Harbor. Distribution is to the FBI,
6 the State Department, the Special Defense Unit of the
7 Department of Justice, and to the First through Ninth Court
8 areas. Again, it is evaluated -- its evaluation is the
9 highest. It talks about recent activities --

10 Q Before you begin, would you tell us what the reference
11 is in the upper left-hand corner of the document?

12 A The reference is Tokyo Club, which is the document which
13 I have just read.

14 Q Read us the whole reference, please, in the upper left
15 corner. What does it say?

16 A It's dated December 24th, 1941, Japanese Tokyo Club.

17 Q And it says ONI in front of that. Right?

18 A Well, on mine it's kind of obscure, but --

19 THE COURT: His and mine are both obscure.

20 MR. STONE: Okay. We'll make sure you have
21 a good one, but it says ONI, 12/24/41, Japanese Tokyo Club.

22 THE WITNESS: What that reference is is
23 to the document which I just completed.

24 MR. HALL: I would just like to make sure
25 the copy I have is a copy that says ONI, too.

1 MR. STONE: Okay. We will make sure --

2 THE COURT: Mine does appear to have NI,
3 although the O is obscure.

4 MR. HALL: You have one that says O?

5 MR. STONE: Yes. This says A-41. I don't
6 know if that's the same document as A-41 and we switched
7 them over.

8 Would you see if you have an A-41 there?
9 We'll supply these later, Your Honor.

10 THE COURT: That will be fine.

11 MR. STONE: I can hand this one up to the
12 judge so he can look on with this one.

13 Q (by Mr. Stone) This is a summary of that Exhibit 17(h),
14 is it not, Mr. Lowman?

15 A Yes, it is, and it relates back to 17(a), but it also
16 relates back to the Tokyo Club document, the ONI document
17 which we just quoted some messages from. Again, it goes
18 back to the organization of Japanese intelligence nets in
19 this country, making the focal point the Japanese espionage
20 effort which as in Exhibit 17 is the total strength of the
21 U.S., and the last --

22 Q Can you tell us about paragraph 4 on page 2, please,
23 the last sentence of it?

24 A Well, they're talking there about the program of
25 utilization of citizens of foreign extraction, aliens,

1 Communists, Negroes, labor unions and anti-Semites, indi-
2 viduals who have access to Government Departments, laboratories,
3 factories, transportation, Nisei --

4 THE COURT: Would you wait just one moment.
5 What is your question again, Mr. Stone?

6 MR. STONE: I wanted him to get to -- to
7 not overlook the last sentence of the fourth paragraph on
8 the second page.

9 THE COURT: The first full paragraph?

10 MR. STONE: Fourth. Fourth full para-
11 graph.

12 THE COURT: Yes, you're right.

13 A The last sentence of that reads, "Nisei and Japanese
14 aliens were not overlooked." Again, largely the whole docu-
15 ment here relating back to Exhibit A-17, but it also relates
16 in paragraph C to the ONI report which I have previously
17 read about the Tokyo Club, saying that there can be no doubt
18 that leaders have been and still continue to function as key
19 operatives for the Japanese Government on the West Coast.

20 Q So then, Mr. Lowman, when we leave this particular
21 "Magic" document that talks about second generation Japanese
22 in this country, is it your opinion that these documents
23 traced the language of that particular intercepted telegram
24 from February 1941 when intercepted through this document
25 in January, 1942?

1 A Yes. The Army report is rooted in and stems from these
2 Japanese messages, governmental messages.

3 MR. HALL: Your Honor, --

4 Q Would you do that with just one more cable, please?

5 MR. HALL: May I inquire as to whether
6 this last half hour or so of questioning is relating to the
7 issue of or supports the statement in Exhibit 50, because I
8 thought that was the main question which the Court asked
9 the witness to testify to.

10 THE COURT: Well, I'm waiting for that and
11 that is that there has been a domestic organization. I'm
12 going to let counsel proceed the way he wants to.

13 MR. STONE: Okay. I advised you this
14 morning that for a reason unrelated to this, I took these
15 two witnesses out of order. Our witness --

16 THE COURT: That's fine. Let's go ahead.

17 A (continuing) I would like now to jump to the next
18 Japanese Governmental message which is labeled A-22.

19 MR. HALL: Your Honor, I don't think there
20 is a question. The witness just says "I'd like to jump,"
21 and I don't know what the question is and why he's jumping.

22 THE COURT: Can you ask your question
23 again?

24 MR. STONE: Sure.

25 Q (by Mr. Stone) The question was, can you point me, Mr.

1 Lowman, to the next intercepted "Magic" cable which specifi-
2 cally discusses second generation Japanese used as espionage
3 agents?

4 A Yes. That exhibit -- the next one is A-22.

5 Q Was that particular intercepted cable which is identified
6 as A-22 distributed in the same way as A-17?

7 A Yes, it was. As a matter of fact, it had a larger
8 distribution than A-17, because this went from the -- this
9 particular message here went from J. Edgar Hoover to the
10 President of the United States.

11 Q Would you just walk us through the distribution the way
12 you did with the other --

13 THE COURT: Why don't you walk me through
14 the message first?

15 MR. STONE: Okay.

16 A May I -- I'm going to read Exhibit A-22. It is from
17 Los Angeles to Tokyo. It references message 180. 180 asked
18 for a status report from the diplomatic post in the United
19 States, how well they were doing on setting up --

20 THE COURT: Yes. Go ahead.

21 MR. HALL: I think the ruling of the Court
22 is that there can be no testimony about exhibits not in
23 evidence. I don't know if 180 is in evidence or not. I
24 don't know if 180 is one of the documents counsel included
25 in his list or omitted from his list. I would like to have

1 that established before we have testimony.

2 Q (by Mr. Stone) Do you know which one, Mr. Lowman, it is?

3 A For the "Magic" background it is message 165.

4 Q 165.

5 Your Honor, 165 is one of our supplemental
6 exhibits and Mr. Cam Hall has now brought it up. We will be
7 delighted to have read 165. Everybody has a copy of that
8 one.

9 MR. HALL: Which exhibit is 165?

10 MR. STONE: 165 is Exhibit A-102.

11 MR. HALL: Is that in evidence yet?

12 MR. STONE: It's not in evidence yet. He
13 will be delighted to read it for you if you'd like him to.

14 MR. HALL: I just object to references to
15 documents not in evidence.

16 THE COURT: I'm going to permit it here.
17 The reference here is to your message No. 180.

18 THE WITNESS: Yes.

19 THE COURT: Do you have No. 180 there?

20 THE WITNESS: I do, sir.

21 THE COURT: What does it say?

22 THE WITNESS: It's from Tokyo to Washington
23 and it says, "I would like to be informed of the intelligence
24 organizations in your office and its recent activity relative
25 to my No. 43," which said to establish intelligence

1 organizations, and 44, which is Exhibit 17 we've just been
2 talking about.

3 THE COURT: All right. Now let's go to
4 A-22. A-22, and I don't want you to read it all for the
5 record, but you point out to me the paragraph that you feel
6 speaks about espionage, sabotage, and participation by
7 Japanese aliens but particularly Japanese-American citizens
8 in this country.

9 THE WITNESS: Sir, this particular message
10 is very strong in that respect and every paragraph --

11 THE COURT: You point it out to me.

12 THE WITNESS: In the first paragraph it
13 says, "We are doing everything in our power to establish
14 outside contacts in connection with our efforts to gather
15 intelligence material. In this regard, we have decided to
16 make of white persons and Negroes, through Japanese persons
17 who we can trust completely. It not only would be very
18 difficult to hire U.S. military experts for this work at the
19 present time, but the expenses would be exceedingly high.
20 We shall, furthermore, maintain close connections with the
21 Japanese Association, the Chamber of Commerce, and the
22 newspapers.

23 "With regard to airplane manufacturing
24 plants and other military establishments in other parts,
25 we plan to establish very close relations with various

1 organizations and in strict secrecy have them keep these
2 military establishments under close surveillance. Through
3 such means, we hope to be able to obtain accurate and
4 detailed intelligence reports. We have already established
5 contacts with absolutely reliable Japanese in the San Pedro
6 and San Diego area, who will keep a close watch on all
7 shipments of airplanes and other war materials, and report
8 the amounts and destinations of such shipments. The same
9 steps have been taken with regard to traffic across the U.S.-
10 Mexican border.

11 "We shall maintain connection with our
12 second generations who are at present in the U.S. Army, to
13 keep us informed of various developments in the Army. We
14 also have connections with our second generations working in
15 airplane plants for intelligence purposes.

16 "With regard --"

17 Q (by Mr. Stone) Mr. Lowman, what does the use of second
18 generations mean in the two paragraphs you just read?

19 THE COURT: I know what that means.

20 MR. HALL: Your Honor, the question was
21 what in this exhibit demonstrates the second generation
22 connection, and the witness has read three paragraphs, only
23 one of which says anything about second generations.

24 THE COURT: I realize that.

25 MR. HALL: I move that the first two

1 paragraphs be stricken.

2 THE COURT: I'm going to leave it in. It's
3 a matter for argument.

4 All right. You go ahead.

5 A The next paragraph, "With regard to the Navy, we are
6 cooperating with our Naval Attache's office and are submitting
7 reports as accurately and as speedily as possible.

8 "We are having Nakazawa investigate and
9 summarize information gathered through first-hand and news-
10 paper reports, with regard to military movements, labor
11 disputes, communistic activities and other similar matters.
12 With regard to anti-Jewish movements, we are having
13 investigations made by both prominent Americans and Japanese
14 who are connected with the movie industry which is centered
15 in this area. We have already established connections with
16 very influential Negroes to keep up informed with regard to
17 the Negro movement."

18 THE COURT: Now, next question.

19 Q (by Mr. Stone) Yes. Mr. Lowman, will you now trace
20 for us specifically the language that said "We shall main-
21 tain connection with our second generations who are at
22 present in the U.S. Army to keep us informed of various
23 developments in the Army, and we also have connections with
24 our second generations working in airplane plants for
25 intelligence purposes." Will you trace that paragraph for

1 us, please?

2 A Exhibit 22(a), A-22(a). A-22(a) is to J. Edgar Hoover
3 from the Chief, Naval Intelligence.

4 MR. STONE: Your Honor, I neglected to
5 ask him the date of A-22 when it was translated so that we'll
6 know what the gap is in time.

7 Q It's on the last page of A-22. It's got the Navy
8 translation date.

9 A That was translated on May 19th, 1941. The date of this
10 first document is May 21st, 1941, two days later.

11 This memo from the Chief of Naval Intelli-
12 gence to J. Edgar Hoover is almost an entire transmission
13 of the Japanese cable. However, I was asked only for that
14 pertaining to second generations.

15 Q Would you look at the fourth and fifth paragraphs,
16 please?

17 A I beg your pardon?

18 Q Would you look at the fourth and fifth paragraph on the
19 letter.

20 A The fourth paragraph reads, "They are maintaining
21 relations with second generation Japanese who are now in the
22 United States Army so that the Japanese authorities can be
23 kept informed of the various developments in that branch of
24 the service."

25 Paragraph 5 reads, "They already have

1 representatives among the second generation Japanese working
2 in airplane plants for intelligence purposes."

3 Q The rest of the document is substantially the rest of
4 that cable; am I correct?

5 A That is correct.

6 Q Okay. Without reading it, why don't we just turn, then,
7 to the next document, A-22(b).

8 A The next document is a retype of 22(a). If you'll
9 notice the "Confidential" stamp is in a different place and
10 different type is used. For some reason or another, the
11 Chief of ONI felt that a second message should go to J.
12 Edgar Hoover on this. I don't have the reason.

13 Q Is the signature slightly different?

14 A The signature is slightly different, also, but the same
15 name.

16 Moving on to the next exhibit which is
17 A-22(c) --

18 Q Would you describe --

19 A -- these are ONI documents maintained on 3 by 5 cards
20 dated May 21st, 1941.

21 MR. HALL: May we have some foundation as
22 to what these are, because they don't of themselves identify
23 themselves and I am curious if the witness has personal
24 knowledge so he can lay a foundation as to what these are.

25 THE COURT: Do you want to ask him some

1 questions about them?

2 MR. STONE: Yes, Your Honor. These are
3 Xerox copies of ONI cards --

4 THE COURT: Why don't you ask him what
5 they are?

6 MR. STONE: Well, Your Honor, in terms of
7 the actual originals, we, if you will recall, stipulated as
8 to the authenticity, so I would have to call one of my
9 authentication witnesses to tell you that these are in fact
10 3 by 5 cards which come out of, if you'll look at the third
11 page, Office of Chief of Staff, Military Intelligence
12 Division, War Department file, and they come out of a
13 declassified file from NARS, which is the National Archives
14 Research Service. I could have my next witness testify
15 about --

16 THE COURT: I think you had better do that.

17 MR. STONE: -- testify about the foundation,
18 but I just want to make a point for the record. If I'm going
19 to have to provide authentication witnesses for these docu-
20 ments, I have to know today to bring in those people.

21 THE COURT: Let me say these cards are
22 not self-authenticating. Many of these documents bear a
23 letterhead, a signature, a date, and so forth, but these
24 cards don't bear that same self-authentication.

25 MR. STONE: Well, Your Honor, they come --

1 these are -- the stamp on the third page is the back of the
2 page, the back of the cards. Unfortunately, that's the only
3 way that they can be done, and if you'll look at the top of
4 the card 1 on the first page --

5 THE COURT: Let's move ahead.

6 MR. STONE: All right. Let's go to --

7 THE COURT: Are you willing to accept --

8 MR. HALL: I was willing to let the testi-
9 mony proceed. I thought the witness had seen this before
10 and he could say "In all my research, I've seen these."

11 MR. STONE: He didn't actually see these
12 cards. He has seen cards --

13 MR. HALL: If he's never seen them before,
14 then I do object.

15 MR. STONE: All right. Then I want a
16 ruling right now so my authentication witnesses --

17 THE COURT: Let's move ahead.

18 MR. STONE: This is a verbatim quote of a
19 teletype coming out of the file at the page where he shows
20 this came out of.

21 THE COURT: You're going to have to have
22 somebody testify out of which file they came.

23 MR. STONE: Okay. I'll have my next wit-
24 ness, who is out of order, testify about it.

25 THE COURT: That will be fine.

1 MR. STONE: Then can I have him just
2 simply talk about card No. 2 at the top of page 1? It says,
3 "No. 2 - Espionage."

4 THE COURT: You know, all of these docu-
5 ments really just repeat the information in A-22.

6 MR. STONE: Yes. That's exactly right.
7 They quote it again and again, Your Honor.

8 THE COURT: Once you've had this authenti-
9 cated, then I can read it. He doesn't need to read it.

10 MR. STONE: Okay.

11 Q (by Mr. Stone) Okay. Would you take us to A-22(d)
12 please?

13 A A-22(d) is a War Department, Military Intelligence
14 Division G-2 memo, internal memo for the Chief of the
15 Counterintelligence Branch. Copies have gone to the G-2
16 of the Ninth Corps area. It is dated May 21st, and it is
17 a summary of Exhibit A-22.

18 Q Can you read us the paragraph -- can you identify it
19 and read us the paragraph?

20 A Yes.

21 THE COURT: Don't read it. Just tell me
22 the paragraphs.

23 A Paragraph D refers specifically to second generation
24 Japanese.

25 THE COURT: You tell me which one.

1 THE WITNESS: Paragraph E of the document
2 says, "Close contact with second generation Japanese at
3 present in the U.S. Army or working in aircraft factories."

4 THE COURT: All right.

5 THE WITNESS: The rest of it are other
6 parts of the exhibit.

7 MR. STONE: Before we move off that docu-
8 ment, Your Honor, I would like to point out for the record
9 that the file number at the top right-hand of that document,
10 1766-Z-699, and underneath that, Chief of Staff Division,
11 War Department, June 17, 1941, is exactly the same file
12 number that appears on card 1 of A-22(c) that we just talked
13 about a moment ago.

14 THE COURT: All right.

15 MR. STONE: It's exactly the same file
16 stamp as appears on page 3 of Exhibit A-22(c).
17 A (continuing) The next document is 22(e), and again it
18 is on 3 by 5 cards, ONI report dated May 21st, 1941.

19 THE COURT: Are these not duplicates of
20 these other cards?

21 THE WITNESS: They come from different
22 files.

23 THE COURT: Do you know where these came
24 from?

25 THE WITNESS: The ones I have in my hand

1 come from the Federal Bureau of Investigation.

2 THE COURT: All right.

3 MR. HALL: I have the same objection. I
4 don't think they are self-authenticating.

5 THE COURT: Well, if he said they came
6 from the Federal Bureau of Investigation, I would accept
7 that.

8 MR. HALL: Then I'd like to ask a
9 foundation question on voir dire. How does he know except
10 by just reading the lower right-hand corner? If he knows
11 it from personal knowledge, I have no objection.

12 MR. STONE: Your Honor, I object. This
13 was stipulated to before the trial began. If I'm going to
14 need authentication witnesses, then I should not have been
15 told that I could leave them all at home.

16 THE COURT: All right. This does bear the
17 stamp down here, Federal Bureau of Investigation, so I'll
18 permit him to testify to this. I don't place a great deal
19 of weight to these because admittedly they show the distri-
20 bution but they show the same things over and over and over
21 again.

22 MR. STONE: That's right, Your Honor.

23 THE COURT: So if it's just distribution
24 you're introducing them for, we should be able to do that
25 very quickly.

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MR. STONE: Okay.

THE COURT: A-22(e) is from the files of the FBI?

THE WITNESS: That is correct, and again it is repetitious of Exhibit A-22.

Q (by Mr. Stone) It is essentially identical, isn't it, Mr. Lowman?

A Yes.

Q Okay. I don't know that we need to read it, then, as long as the judge understands it's identical.

MR. HALL: I would object that it's not identical.

MR. STONE: Okay. Then I would like him to read it.

MR. HALL: It is essentially identical.

THE COURT: No, no. I can read it. The same reference is being made in this as in the others. It may not be the exact same words.

MR. STONE: Card 2 of this is identical word for word.

THE COURT: All right.

Q (by Mr. Stone) Okay. Let's go to A-22(f).

THE COURT: A-22(g)? What was the -- no; (f) I guess it would be.

MR. STONE: (f) now.

1 MR. HALL: For the record, we have the same
2 objection on (f).

3 THE COURT: I don't seem to have an (f).

4 Q (by Mr. Stone) Would you turn, Mr. Lowman, to the last
5 page of A-22(f)?

6 THE COURT: I don't have it yet.

7 MR. STONE: Oh, excuse me. I have two
8 extras here, Your Honor.

9 THE COURT: Why don't you give me one?

10 MR. STONE: Why don't I just give you
11 those two. On the last page, Your Honor.

12 A These are ONI cards. I might add, even though they're
13 cards, it shows distribution to Naval Districts 1 through 15,
14 Military Intelligence Division, and the FBI. The last card
15 numbered 3 on the last page of the document reads: "Recent
16 information has been received from a thoroughly reliable
17 and highly confidential source that Ken Nakazawa is at
18 present investigating and summarizing information gathered
19 through first-hand and newspaper reports with regard to
20 military movements, labor disputes, Communistic activities,
21 and other similar matters for the Japanese Government."

22 THE COURT: Now, these cards all relate,
23 as I gather, to a Dr. Ken Nakazawa; is that right?

24 THE WITNESS: That is correct, sir. In
25 the -- well, yes, I believe that's true. The only part we

1 have used here is the part taken directly from the cable
2 itself. Others come from other sources.

3 MR. STONE: It comes from one of the other
4 paragraphs of the cable that is labeled A-22.

5 Q (by Mr. Stone) Isn't that right, Mr. Lowman?

6 A That's right.

7 Q Okay.

8 A The next exhibit is A-22(g). It is a memo for the
9 Attorney General signed by J. Edgar Hoover. It is dated May
10 22nd, 1941. The second paragraph of the document reads:
11 "With reference to their intelligence activities in Southern
12 California, it is stated that Japanese authorities are making
13 every effort to establish useful contacts and in this
14 connection they are endeavoring to make use of white persons
15 and Negroes, as well as Japanese associations, Japanese
16 chambers of commerce and Japanese newspapers. It is stated
17 that they already have established contacts with reliable
18 Japanese in the San Pedro and San Diego areas who will observe
19 closely all shipments of airplanes and other war materials
20 and who will report the amounts and destinations of such
21 shipments. It is indicated that they have also taken steps
22 to have the traffic of war materials across the Mexican
23 border closely watched.

24 "It is further stated --"

25 THE COURT: I don't want to take the time

1 to read it all for the record.

2 THE WITNESS: The next paragraph is on the
3 use of second generation Japanese, sir.

4 THE COURT: That is page 1, third paragraph.

5 THE WITNESS: Yes.

6 THE COURT: All right. I'll read that.

7 A "It is further stated --"

8 THE COURT: No, I have read that, or I'm
9 reading that. That's essentially what A-22 said. It is
10 your testimony that paragraph is based on A-22?

11 THE WITNESS: Yes, sir.

12 A In reference to utilization of second generation in
13 airplane plants for intelligence purposes, the message
14 reads as follows:

15 THE COURT: Just refer me to A-22. What
16 paragraph?

17 THE WITNESS: Paragraph 3.

18 THE COURT: All right. Then the next
19 exhibit?

20 THE WITNESS: The next exhibit is A-22(h).
21 It is to the FBI field office .

22 Q (by Mr. Stone) Do you want to give us the date, please,
23 Mr. Lowman, of these documents?

24 A I beg your pardon?

25 Q I need a date of the document for the record, please.

1 A The date is May 22nd, 1941. It is an internal FBI docu-
2 ment from J. Edgar Hoover going out to his field office in
3 Los Angeles, California, in which he encloses the May 21
4 memo he received from the Director of the Office of Naval
5 Intelligence telling him about the contents of Exhibit 22.

6 Q He encloses A-22(a) in its entirety, doesn't he?

7 A Yes, he does. That's the letter. He encloses the
8 letter at the time. The letter itself is almost a complete
9 representation of Exhibit 22. The cover letter is to
10 Special Agent in charge, Los Angeles, California. It says,
11 "Forwarded herewith to your office and to the San Diego
12 office --"

13 THE COURT: I can read the letter.

14 Q Would you tell us on page 2 where else it shows a carbon
15 copy of this letter goes?

16 THE COURT: Doesn't it say San Diego? Is
17 that right?

18 MR. STONE: Yes. It goes to the San Diego
19 field office as well.

20 THE WITNESS: Yes.

21 THE COURT: And the next one?

22 MR. STONE: The next one is A-22(i).

23 A A-22(i) dated May 24th, 1941, filed in the Office of
24 the Chief of Staff, Military Division --

25 Q Can you talk up, please, Mr. Lowman?

1 A Filed in the Chief of Staff, Military Division files.
2 The subject is Espionage Activities in Los Angeles of the
3 Japanese Consul. Distribution to the G-2 of the Ninth Corps
4 area. Evaluation, top evaluation, reliable source and infor-
5 mation. It is largely a repetition of Exhibit 22. Paragraph
6 3 reads, "Close contact with second generation Japanese in
7 the U.S. Army at the present time or working in aircraft
8 factories." This is at the top of the paragraph under which
9 that fits is "Their plans include the following:" The other
10 paragraphs relate also to Exhibit 22.

11 Q Before we leave this, Mr. Lowman, the Ninth Corps area
12 includes the Western Defense Command, does it not?

13 A My understanding of the G-2, the Ninth Corps area did
14 get into the Western Defense Command arena.

15 The next document, A-22(j) --

16 Q Just one moment. Before we leave A-22(i), Mr. Lowman,
17 the date of that document was?

18 A The date of that document was May 24th, 1941.

19 Q And that was how many days after the teletype had
20 actually been intercepted?

21 A Well, it was translated on May 19th.

22 Q Okay. So that's five days later.

23 A About five days.

24 Q All right. Let's go to A-22(j).

25 A The next document is an FBI document. It is a wrapup of

1 subversive activities by consular and diplomatic services of
2 the Japanese Government in the United States. It is dated
3 June 27th.

4 Q What year, please?

5 A 1941.

6 Q To save time, I think we want to go to page 15 and 16.
7 It's not very dark on the bottom.

8 A Not very dark. Mine doesn't really show a page number
9 on it.

10 THE COURT: What are the words down at
11 the bottom, just the last line? In other words, read me
12 the last line, will you?

13 THE WITNESS: Of what, sir?

14 THE COURT: Counsel, did you say page 15?

15 MR. STONE: We want to go to page 16,
16 actually, Your Honor.

17 THE COURT: Just read me the last line,
18 will you?

19 MR. STONE: The last line on page 16 says
20 "private and semi-official intelligence organizations."

21 THE COURT: That's fine.

22 MR. STONE: File 61-10556-267X.

23 THE COURT: You've read really more than
24 I needed.

25 MR. STONE: Okay. Sorry.

1 THE COURT: "Private and semi-official
2 intelligence organizations." Are those the words?

3 MR. STONE: That's the page, yes.

4 THE WITNESS: Yes. I haven't found the
5 page because I don't have page numbers on mine.

6 THE COURT: Look at the bottom line. It
7 says "Private and semi-official."

8 THE WITNESS: I still don't see it. May
9 I look at yours again?

10 THE COURT: Surely.

11 MR. STONE: May I steer him to the right
12 page, Your Honor?

13 THE COURT: All right.

14 THE WITNESS: Okay.

15 Q (by Mr. Stone) Turning your attention, Mr. Lowman, to
16 the page that has as a last line "Private and semi-official
17 intelligence organizations" --

18 A Yes, I have it now.

19 Q Would you tell us about the first paragraph on that
20 page, the last sentence?

21 A The last sentence reads, "While second general Japanese
22 and Japanese resident nationals are also to be employed, the
23 Japanese authorities have indicated that extreme caution
24 should be exercised in the use of such persons for intelli-
25 gence work because of the belief that any such person who

1 might be caught would be subject to considerable prosecution."

2 That relates back to the document we had
3 talked about earlier, Judge.

4 THE COURT: Yes, I recognize that.

5 THE WITNESS: Exhibit 17, as does the
6 next paragraph.

7 "The report further reflects that Japanese
8 representatives in this country have been cautioned to bear
9 in mind --"

10 MR. HALL: I don't think there is a ques-
11 tion before the witness. Counsel called his attention to
12 the first paragraph; now he's reading the second.

13 THE COURT: Well, I'm going to permit him
14 to go ahead if that second paragraph is based also on A-17.

15 THE WITNESS: It is, sir.

16 Q (by Mr. Stone) Now would you go to the next to the
17 last page --

18 A Let me finish reading the paragraph.

19 THE COURT: Let me read it myself.

20 THE WITNESS: All right. You can read
21 that yourself.

22 THE COURT: That's a repetition of some-
23 thing that's been testified to before.

24 THE WITNESS: Yes. It is from --

25 THE COURT: A-17.

1 THE WITNESS: A-17. That's correct.

2 THE COURT: The next question?

3 Q (by Mr. Stone) Would you please go to the next to the
4 last page of the document.

5 THE COURT: And the heading at the top is
6 Japanese Consulate?

7 MR. STONE: Los Angeles, California.

8 THE COURT: Mine has San Francisco,
9 California. That's my next to the last page.

10 MR. STONE: I'm sorry. Mine has Japanese
11 Consulate, Los Angeles, California.

12 THE COURT: Do you want to refer him to
13 that?

14 MR. STONE: Yes. Let me see if there's a
15 page missing from mine. No, you're right, Your Honor.

16 THE COURT: Why don't you go to the one up
17 at the top that says Japanese Consulate, Los Angeles?

18 THE WITNESS: Again, I don't seem to have
19 it.

20 MR. STONE: Let's find it. It's page --

21 THE COURT: Let me have yours just for a
22 moment, will you?

23 MR. STONE: It's actually page 26 on this
24 fairly washed out copy, but I hope yours have that.

25 THE COURT: This is the one.

1 THE WITNESS: Thank you.

2 THE COURT: All right. I think we're both
3 looking at Japanese Consulate, Los Angeles.

4 THE WITNESS: Yes.

5 MR. STONE: Yes. Japanese Consulate, Los
6 Angeles, California.

7 THE WITNESS: That is correct. The first
8 paragraph of that --

9 Q (by Mr. Stone) Would you please read me the third para-
10 graph?

11 A Third paragraph states: "They are planning to establish
12 close relations with individuals and various organizations
13 in order to keep airplane manufacturing plants and military
14 and naval establishments under close surveillance. They have
15 already established contacts with reliable Japanese in the
16 San Pedro and San Diego areas who will keep a close watch on
17 all shipments of airplanes and other war materials and report
18 the amounts and destinations of such shipments. They have
19 already taken steps to watch closely the traffic of war
20 materials across the United States-Mexican border."

21 The last paragraph reads: "They are maintain-
22 ing relations with second generation Japanese who are now in
23 the United States Army so that the Japanese authorities can
24 be kept informed of the various developments in that branch
25 of the service."

1 MR. HALL: I move that the last paragraph
2 be stricken from the testimony because counsel only asked
3 him to refer to the next to the last paragraph. The witness
4 unilaterally went on to the last.

5 MR. STONE: Thank you for being so techni-
6 cal, Mr. Hall.

7 THE COURT: Well, now wait a second. I see
8 this particular page and I have looked at all four of those
9 paragraphs and made a note to that effect.

10 MR. STONE: Okay. And the first paragraph
11 which is one sentence long on the next page, Your Honor,
12 which I will just quickly read. It says, "They already
13 have representatives among the second generation Japanese
14 working in airplane plants for intelligence purposes."

15 THE COURT: On my copy that is stricken.

16 MR. STONE: Oh. I guess that probably
17 should not have been because it's a requote of the cable.
18 Since we're only talking about distribution, it serves the
19 same purpose whether the paragraph on the page before is in
20 or that one is in.

21 THE COURT: All right.

22 Q (by Mr. Stone) Let's go to the next document which is
23 A-22(k).

24 A The document we just talked about was A-22(j). The
25 next exhibit, Exhibit A-22(k) is a cover letter forwarding

1 that document. It's dated June 27th, 1941.

2 Q That's the same date as the last exhibit.

3 A Same date as the report itself.

4 Q And would you just read the first sentence, please?

5 A To General Watson, who was the President's Military
6 Advisor. It says:

7 "Dear General Watson:

8 "As of possible interest to the President
9 and you, I am transmitting herewith a memorandum containing
10 information with respect to sympathies expressed by persons
11 acting for the Japanese Government."

12 Q Now, the next paragraph shows how they characterize the
13 information, does it not? It is as close as anybody gets
14 to using the words "Magic," isn't it, Mr. Lowman?

15 MR. HALL: Object to the leading question.

16 MR. STONE: All right. Let him just read
17 the second sentence, then.

18 THE COURT: I can read it. Are we talking
19 about the second paragraph?

20 MR. STONE: Yes, the second paragraph.
21 May he read it, Your Honor?

22 THE COURT: He can read it.

23 Q (by Mr. Stone) Why don't you read the second paragraph,
24 please?

25 A "It should be borne in mind that the informant is not

1 in possession of complete details, but in view of the
2 importance of this matter it is considered advisable to bring
3 these data to your attention."

4 Signed, J. Edgar Hoover.

5 THE COURT: Now, first, was Hoover aware
6 of "Magic"?

7 MR. STONE: Well, Your Honor, I wanted the
8 witness to talk generally and I would bring that out. If you
9 want to ask him, he'll tell us.

10 THE COURT: Was he?

11 THE WITNESS: Mr. Hoover at this period of
12 time was not on direct distribution for all the details of
13 "Magic." He was kept informed of the intelligence in the
14 "Magic" messages without being privy, officially, to the
15 derivation of "Magic."

16 THE COURT: I see. All right.

17 Q (by Mr. Stone) Were there, Mr. Lowman, other individuals
18 like that who knew generally about the "Magic" project but
19 didn't get the "Magic" messages?

20 THE COURT: I'm not going to accept that
21 unless this witness knows that.

22 MR. STONE: He does, Your Honor.

23 THE COURT: My impression is that only the
24 President, the Secretary of War, Secretary of State, Secretary
25 of the Navy, and then the Chief of Staff, head of ONI --

1 THE WITNESS: What happened, Your Honor,
2 was General Marshall and Admiral Stark, after they saw the
3 valuable weapon they had here, in January 1943 decided to
4 limit the distribution of the knowledge about "Magic" and
5 how it was derived to a very select group, the group that
6 you just outlined. Ten people in all, including the President
7 of the United States.

8 Those people had "Magic" messages in their
9 entirety selected for them and distributed to them every day.
10 That was one set of distribution. Those people had privy to
11 everything about it. They knew the source. They knew it was
12 from the Japanese Government itself. Then, the intelligence
13 organizations who got these messages, the Office of Naval
14 Intelligence, Military Intelligence Division, sanitized the
15 information here. They took off where the source of the
16 information was.

17 THE COURT: I'm referring really now to the
18 fact that counsel indicated something that I thought you were
19 saying Hoover was suggesting this came from "Magic." My
20 impression is that Hoover was unaware of "Magic."

21 THE WITNESS: He was officially unaware,
22 yes, sir.

23 THE COURT: All right.

24 MR. STONE: And that's what this document
25 shows. He didn't know enough to tell the President to use

1 the word "Magic."

2 THE COURT: I don't think the document says
3 that.

4 MR. STONE: Okay. That's fine.

5 Q (by Mr. Stone) Let's take A-22(1) now.

6 A A-22(1) is dated June 28th. It is to the Honorable
7 Adolf A. Berle, Jr., Assistant Secretary of State. It is
8 from J. Edgar Hoover, and again, it transmits the 27 June
9 study about the subversive activity of Japanese diplomatic
10 posts in this country.

11 Q Okay.

12 MR. HALL: May I just ask for a house-
13 keeping matter? My exhibit doesn't show Hoover.

14 MR. STONE: It does not have his signature.
15 It has Federal Bureau of Investigation on the bottom, and
16 it's got initials EWT which is E. W. Tamm who signs for
17 Mr. Hoover. If we need to, we'll bring in the authentication,
18 who is Mr. Hornberger from the FBI.

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

20 MR. HALL: I don't have any objection to
21 the exhibit except for the testimony that it was from Mr.
22 Hoover.

23 MR. STONE: Okay. On that point it can be
24 from the FBI, then. It serves the same purpose, Your Honor.

25 A (continuing) The next document, A-22(m), dated June

1 30th, 1941, is a memorandum for Acting Attorney General, the
2 Honorable Francis Biddle, and it transmits to the Attorney
3 General the 27 June study about subversive activities in
4 diplomatic posts in the United States. This one is signed,
5 J. Edgar Hoover.

6 The next document, A-22(n), is a summary
7 of the 27 June document, signed by Mr. P. E. Foxworth,
8 Federal Bureau of Investigation. It is a memorandum for
9 the Director, J. Edgar Hoover, and it summarizes the 27 June
10 document.

11 On page 2, the paragraph next to the end,
12 relates to Exhibit 17, A-17, "Japan has decided to strengthen
13 its intelligence network . . . and to this end Japanese
14 diplomatic and consular representatives have been instructed
15 to reorganize and strengthen their intelligence facilities
16 in this country. It is stated that this reorganization
17 and strengthening is pointed toward the goal of determining
18 the total strength of the United States.

19 On the next page, page 3, the third para-
20 graph down, it is out of A-22, and it reads --

21 THE COURT: That's all I think you need to
22 say.

23 THE WITNESS: Okay. It relates back to
24 the message itself, the exhibit.

25 THE COURT: All right.

1 Q (by Mr. Stone) A-22(o)?

2 A The next exhibit, A-22(o), 3 by 5 cards from the Office
3 of Naval Intelligence again, with again distribution of these
4 cards to the Naval Districts 1 through 15, to the Military
5 Intelligence Division, and to the FBI.

6 Q These show on the bottom the file they come out of,
7 don't they? Look at the bottom right.

8 A It comes out of the FBI file.

9 MR. HALL: I object. I don't think this
10 witness has any personal knowledge in order to testify as
11 he just did, and I take the same objection with regard to
12 these cards which are not self-authenticating.

13 MR. STONE: They are stamped on the bottom
14 front, Your Honor, from the FBI file.

15 THE COURT: I'm going to exclude these
16 for the same reason as I did the others.

17 MR. STONE: I'm going to fly in my
18 authentication witnesses --

19 THE COURT: Let me say this. I don't
20 think it makes a bit of difference, because the distribution
21 is widespread.

22 MR. STONE: Okay. Good. That's the point
23 I'm trying to make.

24 Q (by Mr. Stone) Mr. Lowman, would you please now pick
25 up A-40 again?

1 A Yes, I have A-40.

2 Q Can you direct me to the page and paragraph on A-40
3 which is a direct paraphrase of that cable which we have
4 identified as A-22?

5 A There are several references to that particular exhibit.
6 On page 10 under the title West Coast, the first paragraph
7 under West Coast, "In an effort to establish --"

8 THE COURT: Why don't you just give me
9 the reference, if you will? Paragraph 1?

10 MR. STONE: Under the words "West Coast."

11 THE COURT: Yes. I see. that.

12 Q (by Mr. Stone) Am I correct, under the words "West
13 Coast" for the next --

14 A The next one, two, three, four -- all of the paragraphs
15 on page 10 under West Coast.

16 Q They are virtually a restatement of the cable; isn't
17 that right, Mr. Lowman?

18 MR. HALL: Object to the leading question,
19 Your Honor.

20 THE COURT: I think that's right. You say
21 they come from what?

22 THE WITNESS: A-22.

23 THE COURT: They come from A-22. All right.
24 Next question.

25 Q (by Mr. Stone) Mr. Lowman, would you pick up for me,

1 please, the document which is numbered A-23?

2 A Exhibit A-23, Japanese Government message from Seattle
3 to Tokyo dated May 12th, 1941. Again, he is referencing
4 Japanese Cable 180 which asks for a status report.

5 THE COURT: We are right at recess time
6 so we'll take a recess until 3 o'clock. Then we'll come
7 back to A-23.

8 MR. STONE: Yes. Thank you, Your Honor.

9 (Recess.)

10 MR. STONE: I believe, Your Honor, we had
11 just picked up A-23.

12 THE COURT: Yes.

13 Q (by Mr. Stone) Mr. Lowman, you were starting to tell
14 us how A-23 relates to second generation Japanese.

15 A Is that on that? This cable is from Seattle to Tokyo.
16 Again it references the Japanese message 180 asking for a
17 status report. The Consul is going back to Tokyo telling
18 him how he stands so far as gathering intelligence is con-
19 cerned under Political Contacts in the first paragraph;
20 the second paragraph, Economic Contacts. He talks about the
21 production of ships, airplanes produced, copper, aluminum
22 yield.

23 The last sentence of paragraph 2 refers to
24 second generation Japanese, but I don't know in what way
25 because the intercept operator was unable to pick up some

1 of the groups.

2 The next paragraph about Military Contacts
3 talks about sending men into the field at night to contact
4 a Lieutenant Okada, who was subsequently deported as a spy
5 in June, in order to gather information, military type
6 information.

7 The last paragraph talks about contacts
8 with labor unions, and on the last page of that message --

9 Q Mr. Lowman, before you go to the last page, would you
10 tell us about the last sentence under No. 3, Military
11 Contacts, before you get to No. 4?

12 A Yes. On that paragraph, under Military Contacts, "For
13 the future we have made arrangements to collect intelligence
14 from second generation Japanese draftees on matters dealing
15 with the troops, as well as troop speech and behavior," and
16 some groups are missing.

17 Turning to the next page, the last sentence
18 of paragraph 5, it says, "We are making use of a second
19 generation Japanese lawyer by the name of." The name here
20 has been eliminated in the declassification process. We know
21 from other sources, Office of Naval Intelligence, who subse-
22 quently has developed the name of that individual, and of
23 course it would be in the original "Magic" message.

24 Q Do you want to take us to A-23(a) now, please?

25 A A-23(a) is a memorandum for the Chief of Counter-

1 intelligence Branch, Military Intelligence Division, memo
2 dated June 9th, 1941, and it covers essentially the same
3 thing I just said as far as political, economic and military
4 information.

5 On the last page it specifically mentions
6 second generation Japanese selectees report on the military
7 service, morale, discipline, and so on.

8 The last paragraph under (d) under labor
9 unions mentions a second generation Japanese lawyer named
10 Ito who collects information on anti-war participation
11 organizations. It shows this was an FBI file notated at
12 the bottom of the page.

13 Q Who is the memo to, Mr. Lowman?

14 A It's to the Chief, Counterintelligence Branch, Subject,
15 Japanese Espionage.

16 Q The date is how long after the interception of the
17 cable itself, the translation? You'll have to go back to
18 the actual cable to see the translation date.

19 A Translation date was June the 9th. This memo is the
20 same day.

21 Q And it shows a copy on the bottom of the first page to?

22 A FBI.

23 Q Okay. Do you want to take us to A-23(b), please, now?

24 A A-23(b) is from the Director of the Office of Naval
25 Intelligence. It is dated June 12, 1941. It is addressed

1 to Mr. Hoover, Director, Federal Bureau of Investigation.

2 Essentially this memo sends the information
3 to Mr. Hoover that was contained in Exhibit 23. It mentions
4 a second -- the first paragraph mentions a second generation
5 Japanese lawyer by the name of Ito, probably Kenji Ito --
6 that was the name that was left out of the cable itself in
7 the sanitation process, as the same.

8 Q Okay. And this is a distribution of that A-23, is it
9 not, Mr. Lowman?

10 A Yes. From the Director of ONI to the FBI.

11 MR. STONE: Your Honor, I wonder at this
12 point, without belaboring the point and showing any more,
13 since I think you saw it before, may I ask a slightly broader
14 question now that I've been through these narrower questions
15 which is Mr. Lowman's opinion of the distribution of the
16 cables, generally. May he talk about that now?

17 THE COURT: I think that would be all right.

18 MR. STONE: Thank you.

19 Q (by Mr. Stone) Mr. Lowman, will you tell us now about
20 the distribution of the cables during this period of time,
21 and you can refer to any of those cables if you wish that are
22 in front of you.

23 A Any of the exhibits?

24 Q Yes. Why don't you just start with the time period
25 around the first one.

1 THE COURT: I thought you were asking about
2 distribution generally; not specifically but generally.

3 MR. STONE: Right.

4 THE COURT: And we're now speaking about
5 the "Magic" cables.

6 MR. STONE: Right.

7 THE COURT: The relevant ones.

8 MR. STONE: Right.

9 Q (by Mr. Stone) Why don't you start with --

10 A I should start with the Exhibit A-12 which is the
11 directions to set up and start distributing -- I beg your
12 pardon. Going back to the first of the year, our crypt-
13 analytic posture --

14 Q Talking about the first of 1941?

15 A Yes.

16 Q Please specify.

17 A Beginning in 1941. Our cryptanalytic posture was such
18 that we were not leading any of the high-grade military. The
19 Navy had lost the Admiral's Flight Code and what we were left
20 with, so far as the Government of Japan was concerned, was
21 the "Magic" communications.

22 Q Would you define what you mean by "lost," Mr. Lowman?

23 A They had changed --

24 Q Who is "they"?

25 A -- the cryptanalytic features.

1 Q Who is "they"?

2 A The Government of Japan. We were no longer reading any
3 of the high-grade Japanese traffic which we had been reading
4 for some years. We were left only with the "Magic" communi-
5 cations of the Foreign Ministry of Japan, which, as I indi-
6 cated earlier, contained two types of messages, diplomatic
7 messages and espionage type messages.

8 The diplomatic messages, of course, went
9 back directly to, in most cases, were involved with the
10 embassy in Washington, D.C.. The Japanese were setting up,
11 according to the "Magic" --

12 THE COURT: Let me stop you there because
13 I do want to move ahead. I think your question was as to
14 the distribution of the messages.

15 MR. STONE: Yes.

16 THE COURT: That's what I want you to talk
17 about, the distribution.

18 THE WITNESS: Yes, sir.

19 A The distribution was, as we talked about earlier, to a
20 select group of people having full access to all details of
21 the "Magic," the President of the United States, Secretary
22 of State, Secretary of War, Secretary of the Navy, CNO --

23 Q Who is CNO, Mr. Lowman?

24 A Pardon?

25 Q Who is CNO?

1 THE COURT: Chief of Naval Operations.

2 A Chief of Naval Operations. The War Plans people in both
3 the Navy and the Army, General Jerot in the Army; Admiral
4 Turner in the Navy, and to General Miles who was Chief of
5 MID, and to the Chief of the Office of Naval Intelligence.
6 These people were serviced daily with "Magic" messages.
7 They were then sanitized.

8 Q (by Mr. Stone) Mr. Lowman, how do you get serviced?
9 Would you explain how you get serviced with a message that
10 no one is supposed to see? I think you had better say some-
11 thing about that.

12 A The way these messages were processed in Washington
13 had a bearing on that question. The organization responsible
14 for communications intelligence in the Army was in the Signal
15 Corps and it was called Signals Intelligence Service, SIS.

16 The organization responsible for producing
17 communications intelligence in the Navy was in the Naval
18 Office of Communications and was called the Communications
19 Security Unit or OP-20G.

20 After we had broken into all of the diplo-
21 matic systems, a processing unit was set up in Washington,
22 D.C. by each of these organizations. "Magic" messages
23 would come in. Distribution would be made from that point.

24 In the Army, a Colonel Bratten saw that
25 the Army customers were serviced, the high level customers

1 who got everything about "Magic." In the Navy a Commander
2 Kramer took care of that distribution to the high level
3 Naval personnel who received "Magic". It was on an every
4 other month basis between the Army and the Navy for delivery
5 to the President and the Secretary of State, alternating
6 every other month.

7 In addition to that distribution, the
8 Office of Naval Intelligence and the Military Intelligence
9 Division to whom the Signal Intelligence Service and OP-20G
10 turned over the messages, after they had intercepted them,
11 broken them, got them translated, then distribution was made
12 through the Army and Navy Intelligence Services. They then
13 saw that further distribution of these "Magic" messages was
14 made.

15 THE COURT: Now, that would be sanitized
16 versions?

17 THE WITNESS: That would be the sanitized
18 version. Exactly.

19 A (continuing) Without any reference to the source of
20 the material except that, of course, the services marked them
21 as highly reliable.

22 THE COURT: Let me say this to you: This
23 has nothing to do with this case, but I'm surprised the
24 sanitized versions follow the "Magic" messages so closely.

25 THE WITNESS: Yes, sir. One of the ironies,

1 with all of the super precautions which General Marshall in
2 particular took to make sure that this information did not
3 leak out that we had broken the code, actually when it was
4 delivered to this high group of people it was delivered in a
5 pouch, and they had a key which opened it, and only they
6 could open it.

7 THE COURT: This was the "Magic" messages
8 themselves?

9 THE WITNESS: The "Magic" messages going
10 to the Secretary of State and the President, but when they
11 sanitized the message, as you observed quite correctly, when
12 sending them out to other echelons they merely took off the
13 source of the information. Of course, repeating a message
14 verbatim is very bad security practice, and if it had fallen
15 into the hands of the Japanese Government, they could
16 readily have seen it matched exactly their cable sent out
17 and they would know that their code had been compromised.
18 You are indeed correct it was somewhat ironic, but they
19 were taking all these super precautions at the highest levels
20 but at lower levels they were sending out messages in some
21 cases verbatim. They should, of course, have been para-
22 phrased, but this is an argument which goes on in the
23 intelligence community, or did then and probably still does.
24 The consumer, the person who actually uses this intelligence,
25 likes to see the original words. He doesn't like to have

1 somebody else give him his words, so this is a struggle which
2 goes on between security and getting the actual --

3 THE COURT: I caused you to take off on a
4 long tangent, but we're still interested in the distribution.

5 MR. STONE: Right.

6 Q (by Mr. Stone) Did Mr. Bratten and Mr. Kramer physi-
7 cally deliver those documents, and did they do it the same
8 days?

9 A Yes. The Army, Colonel Bratten, who was the head of
10 the Far Eastern desk in MID, he physically selected the
11 messages that he thought that General Marshall, General
12 Jerot and General Miles and the Secretary of State and the
13 President might want to see.

14 Usually these messages, about twenty-five
15 a day, were selected in the normal practice and they were
16 then carried in locked pouches to the recipients who had
17 their own key and they opened up the pouch. In some cases,
18 particularly in the State Department, the pouch was left
19 over night or even longer, but always in the pouch and you
20 had to have a special key to get into it.

21 In the Navy Commander Kramer selected the
22 messages for the Naval recipients, and of course on an every
23 other month basis when the Navy delivered to the President
24 and the Secretary of State. There was a rule that these
25 high level people never discussed "Magic" on the phone.

1 They never made any memos about it. They were forbidden to
2 write up in their diaries, leave scraps of paper around -
3 super precautions - so that the information did not leak
4 out that we had broken these codes.

5 Q Was the Army and Navy translating the same cables the
6 same day?

7 A No. There were so many cables coming in that they
8 decided to divide their efforts in order to get maximum use
9 out of their personnel, and the arrangement was that the
10 Army would exploit -- by exploit I mean decrypt and trans-
11 late -- they would take the Japanese cables that were
12 transmitted on even days and the Navy would exploit or
13 translate, decrypt, those messages which were transmitted
14 on odd days. Thus, they effectively got all of their
15 people working so there was no duplication.

16 Q How many cables were coming in a day, Mr. Lowman, if
17 they selected twenty-five?

18 A It got to be as high as about 125 or 30. It changed,
19 of course, depending upon relations between Japan and the
20 United States and what was happening, but toward the end
21 the volume was very consistently around 125 messages.

22 Q Were people with stacks of paper busy trying to decrypt
23 these codes at a clip of a hundred a day? How did they
24 decrypt them with that kind of volume?

25 A Well, if the message was in the purple system, purple

1 was a Japanese machine system. It was the one that Mr.
2 Friedman broke with a team of experts under him. It took
3 them twenty months of nervewracking endeavor to break the
4 purple machine. As a matter of fact, after the war was over,
5 the Japanese people who were familiar with the purple machine
6 didn't believe that anybody could break that system with
7 normal analytic means. They went to their graves feeling
8 that somehow or another the United States had compromised
9 that system.

10 What Friedman did was to build a machine
11 which did exactly the same thing as the machine that the
12 Japanese had. We didn't know what it looked like, but we
13 had a machine that did the same thing. Essentially you
14 typed in plain text that went through an electronic maze
15 with almost infinite possibilities, came out in cypher on
16 a second typewriter. The reverse process was used when a
17 cypher message came in. You typed the cypher, it went
18 through the maze in reverse order and came out in plain text.

19 So although the purple machine was certainly
20 the most complex and highest grade cypher the Japanese had,
21 it was easily decrypted because all we had to do was type it
22 up in the machine and it came out, whereas some of the other
23 systems such as J-19, for example, which was the consular
24 code, was not a machine system, and that had keys changing
25 every day and transposition changes three times a month.

1 That took a lot more labor to get that particular message
2 out than did the higher grade thing.

3 And there was, of course, these people were
4 always hardpressed for additional personnel because, as you
5 mentioned, so many messages coming in. Usually the high
6 grade was taken first. Then the J-19, and then the lower
7 grade systems. That sometimes meant, of course, that the
8 information in some of the lower grade messages took longer
9 to translate and to get out.

10 THE COURT: Now, let's go back to the
11 distribution.

12 MR. STONE: Yes.

13 Q (by Mr. Stone) Was the distribution only of information
14 coming from the Pacific Theater of War?

15 A No. As I explained earlier, "Magic" was a worldwide
16 system, so the information coming in contained all of the
17 diplomatic messages sent between the Japanese Foreign
18 Ministry and its embassies and consulates around the world,
19 but we didn't always have so much cover, intercept cover, on
20 some of the other lanes. Of the lanes coming into the
21 United States, we used as many of our intercept facilities
22 as we could spare to translate those. We didn't have the
23 same degree of coverage on the others.

24 But on the other ones, the important
25 things such as the Axis capital going from Berlin to Tokyo,

1 or Rome to Tokyo, those of course we covered.

2 During this period of time, of course
3 we're talking about 1941, was a critical period in Japanese
4 and U.S. relations. Edmund DeMurrow had been sent to see
5 if he could effect a political situation with Japan.

6 THE COURT: I'm going to stop you. I find
7 it interesting but I want to get to the distribution.

8 MR. STONE: The point I was trying to make
9 was --

10 THE COURT: Back to the distribution.

11 MR. STONE: Right.

12 Q (by Mr. Stone) The distribution went to the highest
13 levels because it included sensitive material about the
14 German organization as well as the Baron Oshima; isn't that
15 right?

16 A Well, that is correct. You're referring to the Japanese
17 ambassador in Berlin who was Baron Oshima.

18 THE COURT: I'm going to ask you to stop.

19 MR. STONE: Okay. I was just trying to
20 show --

21 THE COURT: I know what you're trying to
22 show, but I want to get to the distribution.

23 MR. STONE: Okay.

24 Q (by Mr. stone) Did the distribution include the Attorney
25 General or any of the Attorney General's subordinates, Mr.

1 Lowman?

2 A No, sir. They were not on the full "Magic" distribution.

3 THE COURT: Now, let me ask, I understand
4 that's true of the "Magic" messages themselves.

5 THE WITNESS: Right.

6 THE COURT: The Attorney General was not
7 included.

8 THE WITNESS: That's correct.

9 THE COURT: What about the substance of
10 these reports?

11 THE WITNESS: Yes. The substance of these
12 reports did go to the Attorney General. For example, if you
13 recall, one of the Hoover memos I read here in the trace was
14 forwarded to the Attorney General, some of the information
15 contained in "Magic". And again, it was the sanitized type
16 "Magic."

17 Q (by Mr. Stone) Mr. Lowman, did the Far Eastern section
18 of the Military Intelligence Division of the U.S. Army have
19 access to "Magic"?

20 A Well, the Chief of the Far Eastern section of MID was
21 Colonel Bratten, who actually delivered, so that he did.
22 However, his boss, Coloner Croner, I believe his name was,
23 did not have access to the full extent of "Magic" information.
24 They skipped an echelon in there. It was a need to know
25 proposition. If you had no need to know about "Magic," you

1 were skipped over, as long as the system could continue to
2 function.

3 Q What about in the Navy? Was the head of the Office of
4 Naval Intelligence, Far Eastern Section, given access? Did
5 he have need to know? Who was that?

6 THE COURT: I think you said Turner, head
7 of ONI.

8 THE WITNESS: Head of ONI, yes. He had it,
9 but again, there was an echelon skipped there. I believe it
10 was Captain Hurd. He did not receive "Magic" because there
11 was no need to know. And it was not uncommon in this type
12 of business where you may be doing things that several
13 echelons above you do not know what you're doing because of
14 the compartmentalization.

15 Q (by Mr. Stone) The head -- you didn't answer my ques-
16 tion. The head of the Far Eastern Section of ONI, do you
17 recall who that was?

18 A As I recall, it was Captain Hurd, and he did not have
19 access.

20 Q Below Captain Hurd?

21 A Below Captain Hurd was McCullough, who did have access
22 to it.

23 Q Was "Magic" complete intelligence for World War II, or
24 did it only present a window into a broader intelligence
25 picture? What were they getting?

1 A It was a window onto a much larger scene. The reasons
2 for that were two. First of all, we didn't intercept all of
3 the messages going between the Foreign Ministry and their
4 diplomatic posts, or the lateral communications, and if you
5 look through the volumes here of the "Magic" background on
6 Pearl Harbor, every once in a while you'll see a footnote
7 saying "Not Available." That was because it wasn't inter-
8 cepted. We didn't get that message.

9 But the reason that we missed a lot of
10 messages was because in June the Foreign Ministry of Japan
11 went out in a message and he said that from -- he admonished
12 people about sending messages through code radio that were
13 not time sensitive. As he pointed out, the science of
14 cryptanalysis has grown and there is a possibility that some-
15 one may read our messages, so information which is particularly
16 sensitive, you should send by courier mail.

17 So a great deal, probably the bulk of
18 espionage messages, went by courier mail instead of radio.
19 As a matter of fact, after that message in June, we saw very
20 few messages that were not time sensitive. Prior to that
21 time a number of messages such as a couple of the exhibits
22 I read here, Exhibits A-17 and Exhibit 22 and Exhibit 23,
23 they perhaps could have gone by courier mail. I don't recall
24 anything particularly time sensitive about those. They were
25 merely status reports. But after the warning not to send

1 sensitive information by code radio, that kind of message
2 was no longer seen except only rarely.

3 Q Mr. Lowman, when was "Magic" first declassified and
4 spoken about publicly in any form at all other than within
5 the military?

6 A Yes. After Pearl Harbor, a number of investigations
7 were conducted on how we could have been caught napping and
8 surprised at Pearl Harbor. The last of these investigations,
9 the most comprehensive of all, was the Joint Congressional
10 Committee investigating the Pearl Harbor attack.

11 This Committee began its work in November
12 of 1945, sat for a number of months, interviewed everybody
13 who had something to do with Pearl Harbor. It looked at the
14 materials, and in order to complete its investigation,
15 President Truman declassified certain "Magic" that figured
16 into the Pearl Harbor attack. "Magic" messages going between
17 the Foreign Ministry of Japan and the United States. That
18 was the first declassification of "Magic".

19 Incidentally, the hearings on this Joint
20 Congressional Committee comprised 39 volumes of hearings, by
21 far the most exhaustive study of Pearl Harbor ever made, and
22 "Magic" is the most single discussed subject in those
23 hearings.

24 Q They didn't at that time declassify all the cables, did
25 they, Mr. Lowman?

1 A No. No, not at all. We only declassified those which
2 maybe a group thought might have some bearing on the attack
3 on Pearl Harbor. Some of the espionage messages were de-
4 classified. All of them having to do with Honolulu, many of
5 them having to do with the West Coast. Diplomatic messages,
6 some were declassified which had a bearing on the Pearl
7 Harbor attack.

8 Q The declassification of the balance of the messages is
9 what you in fact worked on in 1975?

10 A No, later than that. '77. In '77 the "Magic" background
11 to Pearl Harbor. There was an executive order, presidential
12 executive order No. 11065, which decreed the declassification
13 of "Magic" and in response to that, then, a large-scale
14 declassification occurred, part of which was the five volume
15 with three appendices book.

16 Q What kinds of deletions appear in the published book,
17 or in some of the copies of the exhibits you've been handed
18 as compared with the original cables?

19 A Certain deletions were made in the declassification of
20 "Magic". That occurred -- commenced in the seventies, and
21 those deletions were as follows: First of all, any
22 technical information was taken out. The name of the crypt
23 system that the message had been transmitted in. Certain
24 other kinds of technical data considered not historical and
25 was deemed better not to release that kind of material.

1 Also deleted were the names of people not
2 acting in their official capacity where some derogatory
3 information might have been noted, the theory being, why
4 bring up this 35 years later and cause embarrassment or
5 worse to some individual, and also there were certain
6 privacy considerations in effect at that time which we felt
7 made it necessary to take out certain names.

8 Now, that didn't happen across the board.
9 There were occasionally some names that slipped out. As a
10 matter of fact, some of the "Magic" messages released by
11 NSA itself do contain the names of private individuals in
12 some instances.

13 Q When you say privacy considerations, do you mean the
14 Privacy Act?

15 A Yes.

16 Q Would you hand the witness A-71, please?

17 Let me state for the record, this is a
18 letter from George C. Marshall to Governor Dewey. It is
19 dated 27 September 1944. It's the time that Dewey was
20 running for election as president in the 1944 elections.

21 Mr. Lowman, I guess you're reading the
22 letter. Let me let you read the letter.

23 A Yes. What was your question?

24 Q My question is at the time this letter was sent by
25 George Marshall to then Governor and Candidate Dewey,

1 September 27th, 1944, was "Magic" yet declassified as a
2 subject?

3 A Yes, it certainly was. The war was still going on.
4 The first declassification did not occur until those
5 messages, which President Truman released in 1945 for the
6 Congressional Committee.

7 Q My question was, was it declassified yet?

8 A No.

9 Q This letter is evidence of that fact, is it not?

10 A Yes, it certainly is.

11 Q Okay.

12 A Because the content of the letter is General Marshall's
13 plea to Governor Dewey not to make a campaign issue of the
14 fact that we were caught napping at Pearl Harbor, because
15 General Marshall was afraid that if this became a campaign
16 issue, it might somehow or other divulge that we were reading
17 the Japanese codes at the time of Pearl Harbor, and in 1944
18 we were still reading those same codes.

19 Q Mr. Lowman, when you were introducing the subject of
20 Signal Intelligence, you spoke about the ability to direction
21 find as being a part of Signal Intelligence. Do you know
22 the views of the Signal Intelligence Service and the
23 Communication Security Unit of the Navy about the FCC
24 expertise and capability in the summer of 1942?

25 A By the summer of '42, those services were thoroughly

1 disillusioned with the FCC direction finding efforts. They
2 reported that they had been wrong so often that they had
3 stopped putting any reliance in them whatsoever, and they
4 attributed this largely to the fact that they -- the personnel,
5 the equipment and the expertise and the analytic base was
6 simply missing.

7 Q Were you aware that in 1943 the Joint Chiefs of Staff
8 and the Secretary of War and the Secretary of the Navy made
9 some recommendations with respect to the FCC?

10 A Yes. Both the Army and the Navy Chiefs of Staff, CNO
11 and Chief of Staff of the Army, supported by a good many
12 other high dignitaries in both the Navy and the Army went to
13 President Roosevelt and said that they thought that this
14 FCC effort ought to be abolished; that it not only was not
15 helpful but actually detrimental.

16 MR. STONE: Your Honor, I was going to have
17 Mr. Lowman approach the charts and show us on the charts
18 where no provision had been made for the Signal Intelligence
19 Service of the Army or the Navy Communications Unit of the
20 Navy, but if those charts are not in, I won't bother.

21 THE COURT: Apparently they are not going
22 to be offered, so that will be fine.

23 MR. STONE: Okay.

24 Before I conclude, Your Honor, do you think
25 I need at this point to discuss any of all the other cables?

1 I thought I gave enough of a discussion of a handful that
2 the rest that are put in, he doesn't need to go through
3 them.

4 THE COURT: Well, the thing that I would
5 be interested in would be any cable which indicated that
6 any of these plans that the Japanese had of enlisting
7 Japanese-American citizens in their efforts, any cable that
8 indicates that, I would be interested in.

9 MR. STONE: Okay.

10 Q (by Mr. Stone) Mr. Lowman, are there others of those
11 cables which refer to Japanese-American Nationals or second
12 generation Japanese? Does that language appear in the
13 cables?

14 A Excuse me. I'm sorry.

15 Q That was my question.

16 A There are a number of messages which refer to our
17 nationals. There are also messages which refer to the
18 existence of espionage nets in the United States. For
19 example, there is a flurry of messages in July, 1941, dis-
20 cussing the land routes from the United States into Mexico
21 from the existing intelligence nets in the United States.

22 THE COURT: Do you have the exhibit numbers
23 of the exhibits I should look at?

24 Q (by Mr. Stone) If you give me the cable numbers, I can
25 translate it to exhibit numbers.

1 A Yes, I can give it to you. In Volume -- The Magic
2 Background of Pearl Harbor, in Volume II, message 393, it
3 says the intelligence --

4 THE COURT: Why don't you wait just a
5 minute? Is that an exhibit?

6 MR. STONE: That is A-105, Your Honor.
7 That is one of the ones which we were going to put in if the
8 subject comes up. It's not mentioned in the first group,
9 but if the subject is brought up, it's one of the ones.

10 Q (by Mr. Stone) Mr. Lowman, do you have some more you
11 can give us?

12 A Yes. These are talking about the existence of
13 espionage nets themselves. Later I want to get into the
14 naming of some specific individuals.

15 Volume II, message 400.

16 Q That's A-33.

17 A The next one is Volume II, 411.

18 A That's A-34.

19 A And finally, Volume II, 413. Again, those all talk
20 about the existing espionage nets.

21 THE COURT: What was the last one? You
22 gave him a number and I didn't get the exhibit number.

23 MR. STONE: That will be A-225, if that is
24 brought up by the Petitioner.

25 THE COURT: All right. So A-105, A-33,

1 A-34 and A-225?

2 MR. STONE: Yes. I think he has some
3 more.

4 A They talk about the existence of nets. I'm now going
5 to get into some more specifics.

6 Volume I, message 162, discusses whether or
7 not they should hire a particular Japanese resident.

8 Q That's A-20.

9 THE COURT: A-20.

10 A (continuing) Another message dated May -- Volume II,
11 message No. 219, talks about needing more money for hiring
12 nationals.

13 Volume II --

14 THE COURT: Wait just a moment. Do you have
15 an exhibit number on that?

16 MR. STONE: I'm looking. He's a little
17 faster than I am.

18 THE WITNESS: I know you have that among
19 the exhibits.

20 MR. STONE: I'll have to fill that one in
21 later. I don't have that one at my fingertips.

22 THE COURT: Why don't you give me your
23 reference, would you, please?

24 THE WITNESS: My reference for that last
25 one was Volume II, message 219.

1 THE COURT: All right. Now go to the next
2 one.
3 A (continuing) The next one I have is Volume II, message
4 384. In case of war with the United States, we will endeavor
5 to use our nationals.
6 MR. STONE: That's A-32.
7 THE COURT: All right.
8 THE WITNESS: The next one is Volume II --
9 MR. STONE: I found 219. That's A-28.
10 THE COURT: All right. The next one is
11 Volume II --
12 THE WITNESS: Volume II, message No. 352.
13 Engage a Japanese named Iwasaki to liaison with Silver
14 Shirts.
15 THE COURT: That exhibit number?
16 MR. STONE: That's A-104.
17 THE COURT: All right.
18 THE WITNESS: The next one is Volume IV,
19 message No. 458. We have been using a Japanese named
20 Akida to work with Negroes in intelligence matters.
21 MR. STONE: That's A-106.
22 THE WITNESS: Then, of course, there were
23 the ones we had talked about earlier, Exhibits 22 and 23,
24 which specify --
25 THE COURT: I think I already have reference

1 to those.

2 THE WITNESS: Yes, you have, Your Honor.

3 We ran a trace on those.

4 Now, there are other messages that perhaps
5 have an implication, one of them being, for example, Volume I,
6 message No. 167.

7 MR. STONE: Which is A-21.

8 THE WITNESS: In that message the Foreign
9 Ministry asks all of the consulates to gather rather detailed
10 information on all the Japanese living within their juris-
11 diction as to their citizenship, whether they were an
12 independent or non-independent, male or female, and the
13 replies, particularly from Chicago, going back indicated
14 that the consulates were keeping an incredible amount of
15 detail on all the Japanese in their areas.

16 There are also some messages which refer --
17 I'm sorry. It talks about working with Japanese associations
18 in order to get intelligence from them, but that is in one
19 of the messages we've already mentioned.

20 I think that there is another message which
21 relates that I would like to mention. It's a Mexican message
22 from the Japanese ambassador in Mexico City going back.

23 THE COURT: What is its volume?

24 MR. STONE: Give me the SIS number and
25 I'll give the judge a number for it.

1 THE WITNESS: That is Volume II, 422 is
2 the name of the message. That message --

3 THE COURT: Do you have an exhibit number
4 on that?

5 MR. STONE: Yes. That is 36, A-36.

6 THE WITNESS: That message probably made a
7 significant impact on the intelligence community of the
8 United States because what it said was the Ambassador to
9 Mexico held a meeting in his office at which representatives
10 from the entire population of Mexico met in his office and
11 they agreed to abide by the orders and directions of the
12 Japanese ambassadors. Mexico was divided into nine separate
13 regions --

14 THE COURT: I'll tell you what. Let's
15 move ahead. I've got A-36. What is the next one?

16 THE WITNESS: I think that concludes the
17 ones that I have.

18 THE COURT: All right.

19 Q (by Mr. Stone) Okay. Mr. Lowman, am I correct that
20 for the most part, the interception of what we call "Magic"
21 was substantially confined after Pearl Harbor because the
22 consulates who were one-half of this sending and receiving
23 team and the embassy in the U.S. were all closed down?

24 A That's correct. Official communication between the
25 United States and Tokyo ceased.

1 MR. HALL: Counsel is trying to make a big
2 point and lobs a leading question to the witness.

3 THE COURT: Yes, the questions are leading.

4 MR. STONE: Okay.

5 THE COURT: My understanding was that
6 "Magic" picked up. At least that's what I thought you said.

7 THE WITNESS: No, sir. "Magic" ceased
8 between the United States and the Foreign Ministry in Tokyo
9 because there was no longer any representation here, of
10 course. But "Magic," of course, remained intact for the
11 rest of the world.

12 THE COURT: All right.

13 THE WITNESS: What was your question?

14 THE COURT: I think you've answered it.
15 That is, what happened after Pearl Harbor.

16 THE WITNESS: Well, there were additional
17 espionage activities after Pearl Harbor.

18 THE COURT: Well, I thought you were
19 referring to the "Magic" traffic.

20 MR. STONE: I was referring to the "Magic"
21 traffic worldwide.

22 THE COURT: And he has answered.

23 A Worldwide?

24 Q (by Mr. Stone) Yes, worldwide.

25 A Worldwide it continued, of course, except where nations

1 had broken diplomatic relations with Japan or declared war
2 on them. There was no longer any diplomatic representation,
3 there was no longer any "Magic" to that official communication.

4 Q How did the U.S. -- did the U.S. intercept "Magic" after
5 Pearl Harbor?

6 A Oh, yes.

7 Q How did we do that?

8 A Well, again, "Magic" --

9 THE COURT: They plucked it out of the air.
10 Really. They were radio messages, weren't they, most of
11 them?

12 THE WITNESS: Yes, sir. Practically all
13 the messages we're talking about were intercepted out of the
14 airways.

15 THE COURT: As a matter of fact, I think
16 some of the most important messages were picked up over at
17 Bainbridge Island.

18 THE WITNESS: That's correct. Bainbridge
19 Island was one of the best collectors they had. Not only
20 that, they had a 60-word per minute circuit so they could
21 get it from Bainbridge Island back to Washington as quickly
22 as possible. The Army had some problems. For example, when
23 they picked up "Magic" messages in Hawaii, they had to come
24 back by clipper service usually. They also did use, of
25 course, encyphered means of sending some of them, but that

1 wasn't a very good practice. We didn't like to send the
2 fact that we were sending these messages around.

3 Q (by Mr. Stone) Was the "Magic" code superencyphered,
4 Mr. Lowman?

5 THE COURT: I tell you, it was plenty
6 encyphered. I think that's all we need to know.

7 MR. STONE: Well, I think that's a term
8 of art.

9 A The answer is yes. Only in certain instances, but it
10 was capable of superencypherments and in certain instances
11 for very special messages it was superencyphered.

12 THE COURT: That just means it was cyphered
13 from cypher to cypher. Do it once and then do it again.

14 THE WITNESS: Yes, sir. Actually what
15 they did was they combined the code associated with the
16 consular code, J-19, and then they put it on the crypto-
17 machine. Actually all of the important diplomatic messages
18 were not indigenous but they were in letters, Roman letters.
19 It was true of the purple system; it was true of the consular
20 system, and it was true of their third level position which
21 they called WAKE and we called PAK-2, also Roman letters.

22 Q (by Mr. Stone) Mr. Lowman, are there any important
23 espionage messages which get put through the "Magic" system
24 through the air after June, 1941?

25 A Yes. Pertaining to possible espionage in the United

1 States, very definitely. Just in November the Japanese took
2 great pains to get all of their diplomatic personnel who had
3 anything to do with intelligence down to South America because
4 South America, as had been called for in their previous plans,
5 became a base for espionage against the United States because
6 they still had diplomatic representation in some of the
7 countries, particularly in Argentina and Chile.

8 THE COURT: Now, let's see. Your question
9 was after June of '41?

10 MR. STONE: I was trying to find out the
11 nature of the espionage messages, if for example, they
12 mentioned second generation Japanese, and if not, why not.

13 A I'm sorry. Did you say June? I thought you said after
14 Pearl Harbor.

15 Q (by Mr. Stone) No, I said after June. I'm sorry. I
16 had better start the question again, then.

17 THE COURT: Well, let me ask you this: Do
18 you have those exhibits identified, after June '41?

19 MR. STONE: Yes. Most of my exhibits are
20 pre-June '41.

21 THE COURT: That's what I thought. Now,
22 unless they're identified so we can look at them, I'm not
23 going to let him testify generally about the messages after
24 June '41. If you have them identified, that would be fine.

25 THE WITNESS: We do have some exhibits like

1 Q (by Mr. Stone) Okay. Would you give me the numbers
2 of any exhibits?

3 A They're in the 200 series. I'm sorry. I have them in
4 front of me. They are A-24. This was a September 4th
5 message.

6 Q Can you just tell me in your own words what it means so
7 we don't have to go through reading it?

8 A Well, this is a message --

9 THE COURT: Well, I'll tell you what I'd
10 rather do is, you give us an identification. The exhibits
11 are marked, and then I'll look at them. A-24 is one?

12 THE WITNESS: A-24 is one.

13 THE COURT: The next one?

14 THE WITNESS: A-25, A-26, A-27. What
15 these messages are are national defense information going
16 back to Tokyo about the movements of ships in harbors, per-
17 ticularly here at Bremerton. This, incidentally, I think
18 is a --

19 THE COURT: Where did they originate?

20 THE WITNESS: They originate from Seattle,
21 from San Francisco, from Seattle --

22 THE COURT: From the consulate office?

23 THE WITNESS: From the consulate office,
24 yes.

25 THE COURT: All right.

1 A (continuing) And they are the kinds of intelligence
2 which was requested and which had been gathered, and after
3 -- they really started going out in June. It's an interest-
4 ing coincidence, it was in May that the consulate first
5 reported that they had hired first and second generation
6 Japanese to watch these sorts of things. In June messages
7 start going back to Tokyo containing National Defense infor-
8 mation, a great many of them.

9 THE COURT: Next question.

10 Q (by Mr. Stone) Okay. We've now identified individual
11 names and the existence of a net. Are there any other
12 cables among the ones you have which that less directly but
13 nonetheless inferentially show the existence of the
14 espionage net in Exhibits -- any of the exhibits in front
15 of you, A-12 through A-39?

16 If you like, why don't you just quickly
17 flip through them so that -- some you've talked about and
18 some you haven't.

19 A You wanted to know A-12 to A-39, if I have those? I
20 don't seem to have them in order. Do you have a --

21 Q I can give you the volume number, if that's easier?

22 A Yes. If you'll give me the volume number.

23 Q A-12 is 1-112.

24 A Well, there was a whole series of messages beginning
25 with that particular message, establishing -- telling the

1 consulate to establish, and the embassies to establish
2 espionage nets at each of their -- working out of their
3 organization.

4 Q And that covers 112?

5 A Well, what 112 actually says, that with the arrival of
6 Admiral Namura, we wish to start an espionage net, a two-
7 prong attack against the United States, (1) to solve their
8 problems, diplomatically if they could, by running parallel
9 with that, prepared for military action, and in conjunction
10 with that, start building up the intelligence network in the
11 Western Hemisphere.

12 Q 113?

13 A 113 instructs as first step in building this espionage
14 that the Japanese consulates go out and recruit all Japanese
15 representatives in this country, business men, newspaper men,
16 bank representatives, business representatives, into a
17 collection gathering organization. They also directed that
18 information which was gathered was to go back through the
19 consular offices for security purposes, so there was this
20 first initial step.

21 THE COURT: Let's go through these exhibits,
22 that is, by numbers, if you will.

23 MR. STONE: Right. That last one was A-13
24 and the first one was A-12. Now we're up to A-14 or 1-114.

25 THE COURT: I really don't want to take

1 the time to read them into the record.

2 MR. STONE: No, I don't want him to read
3 them, either.

4 THE COURT: Then, after A-114?

5 THE WITNESS: A-114 is an extension of
6 113.

7 Q (by Mr. Stone) Okay. The next one is A-115.

8 A A-15 directs the same kind of activity set forth in
9 A-112 and A-113, namely to go out and start building an
10 espionage net, prepare for the worst; step one, to recruit
11 business men, bank officials, and to do the same thing in
12 Latin America, that same kind of activity.

13 Q A-16?

14 THE COURT: You're saying A-16. Is it
15 116? A-116?

16 MR. STONE: No. They don't continue to
17 relate after that, but our list shows that A-16 is 1-118.
18 I'll give both numbers so that the record is clear.

19 A A-16 again has to do with setting up the intelligence
20 nets and being prepared for the worst. In other words, set
21 it up so that it will function in a wartime environment.

22 Q Okay. A-17, which is cable 10-119.

23 A 119 was the one that established consular requirements
24 and told the consulates to recruit first and second generation
25 Japanese.

1 Q A-18, which is cable 1-131?

2 A What was that cable again?

3 Q 1-131. It's A-18. It should be in front of you.

4 A Do I have A-18? It must be in here. Yes, I have it.

5 Exhibit 17 had talked about requirements
6 in general and total intelligence and contacting possible
7 dissident groups. This exhibit here, A-18, goes into much
8 more detail on the kinds of information which is desired to
9 be collected. They talk about ship and plane movements,
10 particularly large bombers, seaplanes, whether or not
11 merchant vessels are being requisitioned by the Government,
12 and noteworthy deviations from regular schedules, whether
13 any remodeling is being done, calling up Army and Navy
14 personnel, et cetera, et cetera. Much more detailed.

15 Q Okay. A-19, which is 1-143.

16 A A-19 from Tokyo to Washington, tells the embassy to
17 put Secretary Terazaki in full charge of directing infor-
18 mation and propaganda in the United States. He is to head
19 up the intelligence network, not only in the United States,
20 but other messages indicate the whole Western Hemisphere.
21 He is the chief spymaster. He is also a man that Tokyo
22 told the ambassador to get out of the United States as quickly
23 as possible in early December, and Ambassador Namura went
24 back and said, as a personal favor to me, will you please
25 leave Terazaki here until December 19th, almost unprecedented

1 for the ambassador to ask for the second secretary to stay a
2 little bit longer. Tokyo was adamant and said he must leave
3 immediately. He was the spymaster who was going to run the
4 net that had been established in the eventuality of war.

5 Q By the way, did he get out of the country?

6 A No, he didn't.

7 Q A-20, which is cable 1-162.

8 THE COURT: I really don't want to go into
9 the content of these cables. Give me the reference. A-20.
10 What is the next one?

11 MR. STONE: Well, Your Honor, there is a
12 sentence or two. I think if he keys to each one, it will be
13 much easier to read them later. That's what I was trying to
14 get him to do, give two sentences of each one that will key
15 into --

16 THE COURT: How many more do you have?

17 MR. STONE: Well, that's about halfway
18 down the list now.

19 THE COURT: Well, I would prefer just to
20 have the numbers, and then in final argument you can point
21 out a particular sentence you want to look at.

22 MR. STONE: Okay.

23 THE COURT: After A-20.

24 MR. STONE: Well, after A-20, was it A-21?

25 THE COURT: And the next one?

1 MR. STONE: And A-22 is the one we dis-
2 cussed earlier.

3 THE COURT: Right.

4 MR. STONE: And then he has referred to
5 most of the other A numbers in the discussion that we had
6 preceding this one.

7 Q (by Mr. Stone) I would only ask him to address A-39,
8 which is cable 4-457. That will be the final one.

9 A Yes, I have it. A-39 is from Tokyo to Washington, and
10 it says: "Will you please have Terazaki" -- he was the man
11 who was the chief spymaster, "Tagaki and Yamamoto leave by
12 plane within the next couple of days." This has reference
13 to what I have spoken of earlier; an attempt to get their
14 intelligence people out of the country before the attack.
15 And they were sent, incidentally, the plans were to have
16 them go to Latin America to assist in the base down there,
17 and Commander Kramer, who selected the messages for President
18 Roosevelt, wrote on this particular message that Terazaki
19 and his chief aides were leaving the country.

20 Q Does the "Magic" information, generally, Mr. Lowman,
21 indicate that the spy network which the Japanese wanted had
22 been set up?

23 A Yes. Certainly the report back by the consulate people
24 that they had recruited Japanese for this particular project,
25 and the messages themselves, the dozens of messages going

1 back to Tokyo contain national defense information as evi-
2 dence to that.

3 Now, I would like to point out that Japan
4 was a first-rate power with a professional diplomatic corps.
5 These people were industrious, eager and professional in
6 every respect. They carried out their job.

7 Q Do the reports which you looked at you showed us before,
8 including the ones that are dated post-Pearl Harbor, indi-
9 cate that the Military Intelligence Agency believed that
10 Japan had successfully left an espionage network in place?

11 A Yes, they did. After the pickup of suspect aliens
12 immediately after Pearl Harbor, even after that point there
13 were two Office of Naval Intelligence reports which stated
14 that the Japanese espionage net was still intact and still
15 functioning, and there was an Army report dated January 21st
16 which concluded the same thing.

17 Q Is it your opinion that those various military reports
18 which quote parts of the "Magic" cables were in fact based
19 on the information from the "Magic" cables?

20 A The existence of those? Yes. They certainly were,
21 because they were told to organize these nets in such a
22 fashion that after war, they would still be in existence.

23 THE COURT: I thought the question was
24 different. That is, was information sent out to the various
25 military intelligence offices, were they based upon "Magic."

1 Was that your question?

2 MR. STONE: Well, actually I was trying
3 to establish, Your Honor, whether or not the reports which
4 he has just referred to were at least in part based upon
5 "Magic" in his opinion, having gone through all this material.

6 THE WITNESS: Yes.

7 THE COURT: Which reports are these? The
8 ones made by American authorities?

9 MR. STONE: Yes. The American Authority
10 post-Pearl Harbor report.

11 THE WITNESS: There is another aspect to
12 this that you --

13 THE COURT: Well, let's go to this question.
14 Which are the post-Pearl Harbor ones? Is A -- no, A-113 and
15 so forth, those are "Magic" messages.

16 MR. STONE: Now, A-17 -- wait a minute,
17 Your Honor.

18 THE COURT: I was under the impression
19 that A-17 was a "Magic" message.

20 THE WITNESS: That's correct. A-17 is a
21 "Magic" message.

22 MR. STONE: A-17(h), Your Honor, is one
23 that we had previously discussed with you as being a
24 December 24th ONI wrapup.

25 THE COURT: Well, --

1 MR. STONE: And A-40 is a December 4th ONI
2 wrapup which is just preceding Pearl Harbor. A-6 is a
3 January 3rd, 1942 memo --

4 THE COURT: He has certainly testified to
5 the fact that many of those intelligence reports were based
6 upon "Magic" messages. Wasn't that the gist of his testi-
7 mony?

8 THE WITNESS: Yes, it was.

9 THE COURT: The sanitized messages?

10 THE WITNESS: And I also testified that
11 there were ONI reports and MID reports well after Pearl
12 Harbor, attesting to the fact that the Japanese espionage
13 nets were still in existence, intact, and working.

14 Q (by Mr. Stone) Mr. Lowman, would the "Magic" distri-
15 bution have been made to a person who had the rank of an
16 Assistant District Intelligence officer in a single Naval
17 district? Would he have been informed about either the
18 existence of "Magic" as a project, or would he be actually
19 privy to having a particular cable in his hands?

20 A Well, I indicated earlier that many of these messages,
21 we talked about "Magic" messages, had been sent to the Naval
22 Districts. They would go to the district intelligence
23 officers. What they would be receiving is the intelligence
24 from "Magic," not the complete data about where the infor-
25 mation was derived and how, but yet, certainly the district

1 intelligence officers and the assistant district intelligence
2 officers were on distribution for these messages, as we
3 pointed out.

4 Q Would they know about the "Magic" project?

5 A No, they would not know the source of the information.

6 Q Would they, therefore, have any way of determining the
7 truth of the information in the bulletin to them?

8 MR. HALL: Just a minute. I think this
9 is calling for speculation.

10 THE COURT: I think it's speculative.

11 MR. STONE: Okay. I think I have no
12 further questions of this witness.

13 THE COURT: All right. Any cross-
14 examination?

15 MR. HALL: Yes, Your Honor.

16

17 CROSS-EXAMINATION

18 BY MR. HALL:

19 Q It is true, is it not, that many of the exhibits other
20 than the "Magic" cables about which you've been testifying
21 you've never seen prior to your involvement in this lawsuit?

22 A I'm sorry. I have a slight difficulty in hearing.
23 Would you speak up, please?

24 Q Is it not true that many of the documents about which
25 you've been testifying about here today, other than the

1 "Magic" cables themselves, you have not seen prior to this
2 lawsuit?

3 MR. STONE: Your Honor, may I object? If
4 this is going to authenticity, I will produce an authenti-
5 cation witness.

6 THE COURT: No, no, no. I think it's all
7 right. I'm going to permit the question.

8 A There were several reports that Mr. Stone brought that
9 I had not seen before. Most of them I had, however. The
10 great majority of them.

11 Q (by Mr. Hall) Can you point me to any "Magic" cables
12 which allude to sabotage?

13 A Sabotage, of course, is an activity which is normally
14 not engaged in in a country with whom you're on friendly
15 terms. The answer to that is no. "Magic" messages going in
16 and out of the United States during 1941 did not discuss
17 sabotage.

18 Q Well, how about 1942?

19 A There were no messages coming into the United States or
20 out of the United States in 1942.

21 Q What about "Magic" messages intercepted by United States
22 people on a lane between Japan and another country referring
23 to sabotage in the United States?

24 A There were no messages like that, to my knowledge.

25 Q It's true, isn't it, that to your knowledge there are

1 no "Magic" cables at all which refer to sabotage in the
2 United States?

3 A That is right, "Magic" cables. There are intelligence
4 reports which refer to sabotage but not "Magic" cables.

5 Q And therefore it is true, is it not, that there are no
6 "Magic" cables which refer in any way to Japanese-American
7 citizens or Japanese aliens residing in the United States
8 being involved in sabotage within the United States?

9 A That is correct.

10 Q Did anything dramatic happen in June of 1941 which
11 affected the Japanese spy network in the United States?

12 A Yes, sir. Some of the Japanese Naval spies, Tachibana
13 and Okada, were arrested and deported.

14 Q Who is Tachibana?

15 A Tachibana was a Japanese Naval --

16 THE COURT: Will you excuse me just one
17 moment. Will you spell it for the court reporter?

18 MR. STONE: I don't know that we got into
19 this on direct, Your Honor. I guess if you want to let him
20 get into it on cross, it's okay, but I don't think any of
21 this was covered on direct.

22 THE COURT: Well, there were a number of
23 references in the messages that I saw to individuals, and
24 this may be one. I'm not sure.

25 MR. STONE: Well, Mr. Tachibana is not

1 one. I believe Mr. Okada was.

2 THE COURT: I'm going to permit it.

3 MR. STONE: Okay.

4 THE COURT: Will you spell it, please?

5 MR. HALL: T-a-c-h-i-b-a-n-a.

6 THE COURT: Your quesiton was, who was he?

7 Q (by Mr. Hall) Who was Tachibana?

8 A Tachibana was an undercover Japanese Naval officer who
9 operated in Southern California area, was responsible for
10 espionage type work.

11 Q And you say he was deported?

12 A Yes, he was.

13 THE COURT: Was that in June, '41?

14 THE WITNESS: In June, I believe, he was
15 deported.

16 Q (by Mr. Hall) How was it determined that Mr. Tachibana
17 was a spy, if you know?

18 A Well, as I understand it, it was an American he attempted
19 to employ who turned him in.

20 Q And Mr. Okada, O-k-a-d-o, is that how you spell it?

21 A O-k-a-d-a.

22 Q Spell it, please. Spell the whole name.

23 A How was he apprehended?

24 Q No, no. Will you spell the name? I didn't hear you.

25 A I think it's O-k-a-d-a.

1 Q Thank you. Who is Mr. Okada?

2 A He was also a Japanese Naval officer. He worked out of
3 the Seattle area up here, an undercover agent again.

4 Q And what happened to him in about June of 1941?

5 A He was also arrested and subsequently deported. He was
6 arrested for speeding and they found some material in his
7 possession that connected him with Tachibana.

8 Q What was the effect of the deportation of these two
9 individuals on Japanese espionage agents in the United States,
10 if you know?

11 A Well, they were intelligence officers, and they had been
12 gathering information and they were important links, and so
13 this means that some of the Japanese intelligence was lost.
14 However, as soon as they were arrested, in fact on 10 June,
15 the Japanese consulates in San Francisco, Los Angeles and
16 Seattle were told that since these officers had been arrested,
17 they would now have to be responsible for following the U.S.
18 Navy ships, and this probably put more pressure on the
19 consulates to recruit additional agents because of the
20 additional requirements laid on them. The activities of
21 Okada and Tachibana continued in the consulates.

22 Q Now you say it probably put more pressure. You're just
23 speculating, aren't you, because --

24 A Well, they were asked if they could pick up the
25 additional duties.

1 Q May I finish my question? You were just speculating,
2 were you not, because you don't have any documentary evidence
3 in front of you now that demonstrates that; isn't that true?

4 A I would assume if a man is told to do additional duties,
5 that's additional duties.

6 Q Can you show me a document in the exhibits that are in
7 evidence in this case that demonstrates this?

8 A Yes.

9 Q That this additional pressure was put on the consulates?

10 A Not that additional, no. They were asked to take up
11 their activities.

12 Q I would like to call your attention, if I may, to --

13 MR. STONE: Your Honor, he's not done.
14 He's looking for the cable to respond.

15 THE COURT: Apparently counsel accepted
16 his answer.

17 MR. HALL: I asked about additonal pressure
18 and he gave an answer.

19 MR. STONE: You asked if there were any
20 cables that showed it. If you accept a yes, then that's it.

21 MR. HALL: That talked about additional
22 pressure.

23 THE COURT: All right. Why don't you go
24 ahead? Why don't you select those cables --

25 A That cable which asked the three consulates to pick up

1 the additional duties is Volume 2, Message 221.

2 MR. STONE: That is A-103, Your Honor.

3 THE COURT: All right.

4 MR. HALL: May I see 103, Exhibit 103?

5 We've never seen 103 before this instant,
6 Your Honor, to my knowledge.

7 MR. STONE: They were given all of the
8 cables, I believe, Monday morning, including these lists,
9 Your Honor.

10 THE COURT: Was A-103 given to him?

11 MR. STONE: Here is 103, and if they
12 question him about subjects that respond to a cable, then I
13 assume he's free to respond.

14 Q (by Mr. Hall) Were Mr. Tachibana and Mr. Okada language
15 officers?

16 A Well, they were called language officers but they were
17 espionage agents and all of the intelligence reports about
18 them so recognizes.

19 Q Can you tell me what document you rely upon to form the
20 conclusion that you've just expressed, that Tachibana and
21 Okada were language officers?

22 A Yes. I can't name it offhand but there are documents
23 which clearly discuss them as language officers. I cannot
24 recall what documents they are at the moment.

25 Q You've been referring to some notes in these proceedings?

1 A Yes, I have. These notes right here.

2 Q May I see them, please?

3 A Yes, you may.

4 MR. HALL: May I approach the witness,
5 Your Honor?

6 THE COURT: Yes.

7 MR. STONE: Your Honor, while he's looking
8 at that, may I just direct the witness's attention to A-40,
9 page 14? I think that's the document he was trying to
10 recall.

11 MR. HALL: I think this is totally
12 inappropriate, Your Honor. That's a proper matter for
13 redirect and counsel has interrupted my cross-examination
14 on the other witness and I think it's inappropriate and
15 respectfully suggest it is.

16 THE COURT: All right. Let's do reserve
17 that to redirect. Go ahead on this. Should I be concerned
18 whether they were referred to as language officers?

19 MR. HALL: NO. Well, I don't know. The
20 cable refers to language officers and it doesn't refer to
21 these individuals by name.

22 THE COURT: You said -- when were they
23 arrested?

24 THE WITNESS: I think in early June,
25 before June 10th.

1 THE COURT: And this message is of June
2 10th.

3 THE WITNESS: Yes.

4 THE COURT: I see. All right. I don't
5 think it's worthwhile to explore that further.

6 Q (by Mr. Hall) Were these notes prepared for these
7 proceedings or some other proceedings?

8 A They were prepared for these proceedings.

9 MR. HALL: May I ask that the witness keep
10 these so that if I need to see them later on, I may, or see
11 them after court.

12 THE COURT: Will you do that?

13 THE WITNESS: Yes.

14 Q (by Mr. Hall) I'd like to call your attention, Mr.
15 Lowman, to Exhibit A-50, please. Can you tell me where that
16 document says it refers to activities in the mainland of the
17 United States, Continental United States?

18 THE COURT: Does this speak about activities
19 by a particular group of persons? Is that your question, Mr.
20 Hall?

21 MR. HALL: The question that I'm asking
22 the witness is whether this document is essentially relating
23 to activities in Hawaii as opposed to Continental United
24 States.

25 A Some of the associations here are based in Seattle,

1 Washington, one of them. Another one is New York.

2 Q I would like to call your attention now to --

3 MR. STONE: Excuse me, Your Honor. He's
4 not done. I think he's still giving the location of
5 organizations.

6 A Another one is San Francisco.

7 Q (by Mr. Hall) Are you through?

8 THE COURT: I see Japanese associations
9 in Utah down here, Intermountain Japanese Association.

10 THE WITNESS: Yes, Japanese Association
11 of Utah.

12 THE COURT: I think it does speak about
13 activities other than in Hawaii.

14 Q (by Mr. Hall) Is it not true that the principal con-
15 centration of the analysis in this document relates to
16 activities in Hawaii and not in the Continental United States?

17 A No, not at all.

18 Q I would like to call your attention to Exhibit 50, page
19 12.

20 A Call my attention to what?

21 Q Exhibit 50, page 12, 13, 14.

22 THE CLERK: Is that A-50?

23 MR. HALL: Yes, please.

24 THE COURT: Would you give me that refer-
25 ence? A-50?

1 MR. HALL: A-50, pages 12 through 14,
2 relating to Hawaii.

3 THE COURT: You must mean A-40, or do you?

4 MR. HALL: Oh, I'm sorry. I do.

5 THE COURT: Is it A-40?

6 MR. HALL: Yes.

7 THE COURT: My A-50 didn't have that many
8 pages. Will you give us a reference to the pages?

9 MR. HALL: Pages 12 through 14, Your Honor.

10 A May I add a remark to your previous question?

11 Q (by Mr. Hall) No, you can't add a remark to my question.
12 Have you compared Exhibit 40 at pages 12
13 through 14, describing Hawaii, to the activities listed in
14 Exhibit 50 about which we've been just talking?

15 MR. STONE: Your Honor, if this is a com-
16 parison, I think the documents will speak for themselves
17 and they can now be used in closing argument.

18 THE COURT: I think they do. I think you
19 can make that argument to me.

20 MR. STONE: Thank you.

21 Q (by Mr. Hall) Is there anything in Exhibit 50 --

22 THE COURT: That would be A-50, I suppose.

23 MR. HALL: Yes. A-50.

24 Q -- which specifically says that the espionage net
25

1 referred to on the last page is an espionage net on the
2 mainland of the United States and not an espionage net in
3 the territory of Hawaii?

4 MR. STONE: Again, Your Honor, I think the
5 document speaks for itself, doesn't it?

6 THE COURT: I'm going to sustain the
7 objection. You can make that argument to me.

8 Q (by Mr. Hall) I'd like to call your attention again
9 to Exhibit 40, page 2. The second full paragraph, the
10 first sentence, says -- again, this is the document that
11 talks about Japanese intelligence and propaganda in the
12 United States during 1941 dated December 4, 1941, and in
13 the section under "Methods of Operation and Point of Attack,"
14 page 2, the second full paragraph says, in part:

15 "Although not yet fully developed, this
16 new espionage organization is characterized by a high degree
17 of decentralization." Do you see that?

18 A Yes.

19 Q Now, do you know what the status of the espionage net-
20 work was on December 4, 1941, so it could lead the author
21 of this document to state that the network was not fully
22 developed?

23 A No, I don't know why he would say that because other
24 ONI documents do not say that.

25 Q Are you saying that there is something inaccurate or

1 incomplete?

2 A I'm saying that the ONI documents are not consistent in
3 their terms. I noted this before. He says it's not yet
4 fully developed, but I note other ONI reports which don't
5 make that qualification.

6 Q Do you have any explanation for this inconsistency
7 between the ONI report to which you referred and Exhibit 40,
8 page 2?

9 A No, I don't.

10 Q Are you claiming as you sit here today that you have
11 knowledge that the statement in Exhibit 40, page 2, is false?

12 MR. STONE: Your Honor, I think this
13 question is going to truth and this witness was put on to
14 establish that the trail of information is not -- the witness
15 who is testifying about the military value of this information,
16 that will be the next witness. His testimony was to show
17 how we derived -- how it got in there; not whether it's true.

18 THE COURT: I'm going to permit the ques-
19 tion. Can you repeat the question? Do you have any infor-
20 mation that --

21 Q (by Mr. Hall) -- that the information on page 2 of
22 Exhibit 40, to which we have just been referring, is false?

23 A I can only say it's inconsistent.

24 Q Now, isn't it true that after December 7th, 1941, the
25 Government of Japan found it necessary to set up a spy

1 network under the egis of Latin American countries and the
2 country of Spain?

3 A That's correct, they did. They had a two-pronged effect
4 going into the United States to get information. One through
5 Spain and the other in various countries in Latin America.

6 Q Why was this necessary?

7 A Pardon me?

8 Q Why was this necessary, to set up networks through
9 Spain and Latin America?

10 A Well, because they had to have some way of continuing
11 information out of the country. I do not know for a fact
12 that the agents sent up from Latin America and from Spain
13 liased with Japanese people, but I do know that they arrived
14 at a point in time in which the services, the intelligence
15 services, sat that these nets were still in operation, and
16 the instructions from Spain were for liaison purposes.

17 Q As you sit here today, you have no information whatso-
18 ever that indicates that any representative of the Spanish
19 Japanese spy network met with any Japanese-American citizens
20 or Japanese aliens residing in the United States for the
21 purposes of espionage.

22 A No, I have no concrete evidence that that took place.

23 Q And the same would be true with regard to meetings
24 between Latin American individuals and Japanese-Americans
25 or Japanese aliens residing in the United States?

1 A I have no concrete evidence that took place.

2 Q Based upon your observation of the records, what was
3 the impact of the arrests by civil and military authorities
4 of Japanese individuals on and after December 7th, 1941,
5 those arrests being for purposes of detaining these indi-
6 viduals who were suspected of being dangerous to the
7 security of the United States?

8 A The impact of the --

9 Q Arrests on the spy network.

10 A Of the language officers?

11 Q Let's go back. You are aware, are you not, that on
12 December 7th and afterwards, there were literally thousands
13 of Japanese individuals arrested in the United States?

14 A Yes.

15 Q And the reason they were arrested was because the FBI
16 and other civilian and other military authorities suspected
17 these individuals of being disloyal to the United States and
18 were representing a threat to the security of the United
19 States.

20 A I'm aware of that.

21 Q And there has already been testimony in this case that
22 somewhere between -- up to five thousand individuals were
23 arrested over the period of time of this program.

24 MR. STONE: Your Honor, I disagree with
25 that characterization. The five thousand individuals Mr.

1 Ennis testified to were not actually put in custody until
2 Mr. Ennis said, if I recall his testimony, around May. He
3 said maybe fifteen hundred individuals were put in custody
4 within the first week of December.

5 THE COURT: Well, I can't recall exactly
6 what he said, but he did say around five thousand were
7 arrested. My understanding was these were Japanese aliens;
8 is that correct?

9 MR. HALL: I think they were aliens and
10 some citizens.

11 Q (by Mr. Hall) MY question is, up to five thousand
12 people arrested during the duration of the program. You're
13 aware of that fact, are you not?

14 A Yes.

15 Q What was the impact of those arrests on the Japanese spy
16 networks in the United States?

17 A I'm sure it had an impact. However, the February 7th
18 report by the assistant district intelligence officer from
19 Los Angeles, Lieutenant Commander Ringle, on February 7th,
20 assessed the security threat on Terminal Island, 75 per cent
21 espionage, 20 per cent sabotage, five per cent of fifth
22 column activities. That was his assessment of the risk on
23 February 7th.

24 In addition to that, an ONI report dated
25 24 December states "Although severely handicapped, the

1 Japanese espionage nets remain intact."

2 Q And you believe that Commander Ringle was an authorita-
3 tive individual on whom you would base the testimony you've
4 just given?

5 A I think that Commander Ringle was a professional
6 intelligence officer. He saw still a great danger at Terminal
7 Island.

8 Q Terminal Island was a -- how big is Terminal Island?

9 A I really can't answer that. I don't know. I know it
10 was strategically placed. I know that several thousand
11 Japanese lived there, but I can't give you the dimensions.

12 Q You're confident right now that the testimony which
13 you've given about Commander Ringle is testimony upon which
14 you rely in making the statements you've just made?

15 MR. STONE: I think that's already been
16 asked and answered, Your Honor.

17 THE COURT: I think he has answered that.

18 Q (by Mr. Hall) Are you confident that the testimony
19 you've given about Commander Ringle just now is accurate and
20 not mistaken?

21 MR. STONE: The same objection, Your Honor.
22 The same question.

23 MR. HALL: I would respectfully ask that
24 this question be answered by the witness because I can see
25 something that might come up on redirect, and I'd like to

1 cut it off, if possible.

2 THE COURT: I think he's answered it.

3 MR. HALL: Okay. If it comes up on
4 redirect --

5 THE COURT: That will open it up again.

6 All right. We'll take a recess now until
7 9:30 tomorrow morning. May we see you then?

8 (Court adjourned.)

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